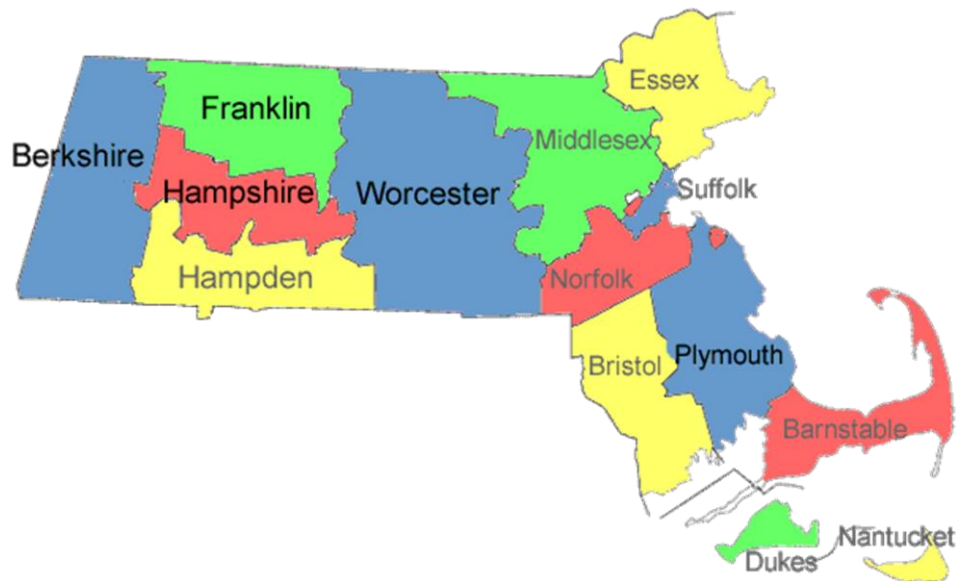


# Housing Choice Voucher Program Administrative Plan

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MASSACHUSETTS DEPARTMENT OF HOUSING &  
COMMUNITY DEVELOPMENT



Effective Date: October 1, 2020

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# **CHAPTER 1 : OVERVIEW**

## **1.1 INTRODUCTION**

Massachusetts Department of Housing and Community Development (DHCD) receives its funding for the Housing Choice Voucher (HCV) program (formerly known as and still commonly referred to as “Section 8”) from the U.S. Department of Housing and Urban Development (HUD). DHCD is not a federal department or agency. DHCD is a governmental or public body, created and authorized by state law to develop and operate housing and housing programs for low-income families. DHCD enters into an Annual Contributions Contract with HUD to administer the program requirements on behalf of HUD. DHCD 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.

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. DHCD’s MTW Agreement was extended through 2028.

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.

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. Where a HUD regulation, including as cited within this plan, conflicts with an MTW policy, the MTW policy will prevail. 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.

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

## **1.2 ORGANIZATION AND STRUCTURE OF THE PHA**

DHCD subcontracts the day-to-day management and operations of its HCV and Moderate Rehabilitation programs to designees including qualified agencies. These designees, as regional administering agencies (see [current list](#)), manage the day-to-day operations of 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 may periodically re-qualify designated agencies, and DHCD will periodically review its designees’ administrative practices to ensure consistency in program administration. At any time, DHCD may require the designees to amend or modify their discretionary procedures.

## **1.3 PHA MISSION**

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.

## **1.4 SECTION 8 PROGRAMS**

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 the applicable chapter.

- [NED – DESIGNATED HOUSING AND ONE-YEAR MAINSTREAM PROGRAM](#)
- [FIVE-YEAR MAINSTREAM HOUSING PROGRAM](#)
- [MAINSTREAM 2018 \(MS2018\)](#)
- [FAMILY UNIFICATION PROGRAM](#)
- [HOUSING OPTIONS PROGRAM](#)
- [TENANT-BASED VOUCHER PROGRAM FOR PERSONS WITH HIV/AIDS](#)
- [RAISING THE NEXT GENERATION](#)
- [VETERANS HOUSING VOUCHER PROGRAM](#)
- [COMMUNITY CHOICE INITIATIVE](#)
- [HOLYOKE CONSENT DECREE](#)
- [PROJECT-BASED ASSISTANCE FOR PERSONS LIVING WITH HIV/AIDS](#)

## **1.5 THE HOUSING CHOICE VOUCHER (HCV) PROGRAM**

### **1.5.1 Overview and History of the Program**

#### The United States Housing Act of 1937

The Act of 1937 is responsible for the birth of federal housing program initiatives. The Act of 1937 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.

#### The Housing and Community Development (HCD) Act of 1974

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% 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% of adjusted income. Consequently, depending on the actual rental cost of the unit selected, a family might pay more or less than 30% 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% 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.

## **1.5.2 HCV Program Basics**

The tenant-based HCV program offers mobility to eligible families by allowing them to search for suitable housing anywhere in DHCD’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, DHCD or its designee issues the family a housing voucher. When the family finds a suitable housing unit and funding is available, DHCD or its designee 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 DHCD or its designee determines if the family is eligible for the program, the owner has the responsibility of determining if the family is a suitable renter. DHCD or its designee continues to make payments to the owner as long as the family is eligible and the housing unit continues to qualify under the program.

#### 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 – DHCD or its designee – 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 and screen families for admission;
- Issue voucher to eligible families 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;

- DHCD or its designee 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 DHCD or its designee;
- 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 DHCD or its designee 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 DHCD or its designee;
- Allow DHCD or its designee 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 DHCD or its designee 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 DHCD or its designee of any changes in family composition;
- Not commit fraud, bribery, or any other corrupt or criminal act in connection with any housing programs.

### **1.5.3 Applicable Authority**

This Administrative Plan is governed by the following authorities:

- DHCD's Moving to Work Demonstration Agreement between DHCD and the U.S. Department of Housing and Urban Development; and
- DHCD's MTW Annual Plan.

Applicable regulations include:

- 24 CFR Part 5: General Program Requirements
- 24 CFR Part 8: Nondiscrimination
- 24 CFR Part 35: Lead-Based Paint
- 24 CFR Part 100: The Fair Housing Act
- 24 CFR Part 982: Section 8 Tenant-Based Assistance: Housing Choice Voucher Program
- 24 CFR Part 983: Section 8 Project-Based Voucher (PBV) Program

Where an MTW policy in this plan conflicts with a cited regulation, the MTW policy shall supersede the regulation.

## **1.6 STATUTORY AND REGULATORY WAIVERS DURING EMERGENCIES**

During periods of declared states of emergency, as designated by the Governor of the Commonwealth or his/her designee, DHCD may adopt HUD-published statutory and/or regulatory waivers to respond to the emergency. Where such waivers are adopted (and when updated), DHCD will retain documentation to identify the statute or regulation waived, as well as the alternative requirement and the period start and end dates for such waivers. DHCD will make these waivers and updates available to the public via its website, and will follow all applicable tenant notification guidance from HUD regarding changes to policies or rules.

Where permissible under state and federal law, DHCD also may adopt waivers and publish guidance in response to Commonwealth-specific emergencies or exigent circumstances as designated by the Governor or his/her designee.

## **1.7 THE HCV ADMINISTRATIVE PLAN**

### **1.7.1 Overview and Purpose of the Plan**

The Administrative Plan is required by HUD. It is a supporting document to DHCD's MTW Plan, and is available for public review. All issues related to the administration of the HCV program not addressed in this document are governed by 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.

DHCD and its designees are responsible for complying with all changes in HUD regulations pertaining to the HCV program. Except in the case of approved MTW policies, if such changes conflict with this plan, HUD regulations will have precedence.

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.

### **1.7.2 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. DHCD's Administrative Plan is the foundation of those policies and procedures. HUD's directions require DHCD to make policy choices that provide guidance to staff and consistency to program applicants and participants.

### **1.7.3 Identifying MTW Policy Additions and Modification**

As an MTW agency, DHCD is provided with the flexibility to waive certain provisions of the US Housing Act of 1937 and related federal regulations, and to design and test approaches for providing housing assistance that address one or more of the following statutory objectives:

- 1) Reduce cost and achieve greater cost effectiveness in federal expenditures;
- 2) Provide incentives to families with children whose heads of household are either working, seeking work, or are participating in job training, educational or other programs that assist in obtaining employment and becoming economically self-sufficient; and
- 3) Increase housing choices for low-income families.

Details about DHCD's specific MTW activities, including its MTW Annual Plans and program details, can be found at <https://www.mass.gov/service-details/moving-to-work-program-mtw> and [MTW Activity Plan](#).

### **1.7.4 Updating and Revising the Plan**

DHCD or its designee will review and update the plan to reflect changes in regulations, MTW policies, DHCD operations, or when needed to ensure staff consistency in operation. Designees will be notified of additions or changes to this Administrative Plan and DHCD policies and procedures by email or other suitable communication.

## **1.8 ADMINISTRATIVE FEE RESERVE**

[24 CFR 982.155]

DHCD conforms to the requirements of the MTW Agreement with respect to maintenance of reserves.

## **1.9 DETERMINATION OF INSUFFICIENT FUNDING**

The HCV regulations allow DHCD or its designee 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 982.354(e)(1) and 982.454; see also [Notice PIH 2019-08](#)]. Insufficient funding may also impact DHCD's or its designee's ability to issue vouchers to families on the waiting list. This part discusses the methodology DHCD will use to determine whether or not DHCD has sufficient funding to issue vouchers, approve moves, and to continue subsidizing all families currently under a HAP contract. DHCD will determine whether

there is adequate funding to issue vouchers using the HUD methodology for claiming and documenting insufficient funds.

## **1.10 MANAGEMENT ASSESSMENT (SEMAP)**

As an MTW agency, DHCD has elected not to participate in SEMAP, effective June 19<sup>th</sup>, 2008.

## **1.11 RECORDKEEPING**

DHCD and its designees 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, DHCD and its designees must ensure that all applicant and participant files are maintained in a way that protects an individual's privacy rights.

### **1.11.1 Record Retention**

[24 CFR 982.158]

#### Leasing Records

During the full term of each assisted lease including any extensions, and for at least seven years thereafter, DHCD or its designee must keep:

- A copy of the executed lease;
- The HAP contract;
- Records to document the basis for DHCD's or its designee's determination that rent to owner is a reasonable rent (initially and during the term of a HAP contract); and
- The application from the family or the screen shot from the waiting list when and if the application is not available. When and if DHCD moves to an online application, DHCD or its designee will retain the electronic application file in accordance with record retention requirements.

Those records may be purged after the seven years following termination of the subject lease.

#### Participant Administrative Actions

In addition, DHCD or its designee must keep the following records for at least seven years from the effective date of action (which may also be purged thereafter):

- Required reexamination reports, including pursuant to a move to new unit;
- Unit inspection reports;
- Lead-based paint records as required by 24 CFR 35, Subpart B.

- Accounts and other records supporting contract rent, tenant rent share or payment, and budget and financial statements for the program;
- Termination of family; and
- Other records specified by HUD.

### Records for Length of Participation and Seven Years

Records that provide racial, ethnic, gender, and disability status data on program participants must be kept for a least seven years after the end of participation by the family.

### Applicant Records

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. This includes:

- An application or wait list screen shot from each ineligible family and the notice (or screen shot, showing date and reason for ineligibility) that the applicant is not eligible; and
- Records that provide income, racial, ethnic, gender, and disability status data on program applicants.

### EIV Income Reports and Records

EIV Income Reports from terminated client files will be destroyed three years after end of participation. EIV records for active participants may be purged after seven years.

### Citizenship Status

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 Retention of Documents.

## **1.11.2 Records Management**

All applicant and participant information will be kept in a secure location and access will be limited to authorized DHCD or designee staff.

DHCD's and its designees' 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.

### **1.11.2.1 Privacy Act Requirements**

[24 CFR 5.212 and HUD 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, or a DHCD version thereof. These forms incorporate the Federal Privacy Act Statement and describe how the information collected using the forms may be used, and under what conditions HUD or DHCD or its designee may release the information collected.

#### **1.11.2.2 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.

#### **1.11.2.3 Criminal Records**

DHCD or its designee may only disclose the criminal conviction records which DHCD or its designee receives from a law enforcement agency to officers or employees of DHCD or its designee, or to authorized representatives of DHCD or its designee who have a job-related need to have access to the information [24 CFR 5.903(e)].

DHCD and its designees must establish and implement a system of records management that ensures that any criminal record received by DHCD or its designee 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 DHCD or designee action without institution of a challenge or final disposition of any such litigation [24 CFR 5.903(g)]. DHCD or its designee will retain a record of the screening, including the type of screening and the date performed.

DHCD and its designees must establish and implement a system of records management that ensures that any sex offender registration information received by DHCD or its designee 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 DHCD or designee 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 DHCD or its designee other than under 24 CFR 5.905.

#### **1.11.2.4 Medical/Disability Records**

If DHCD or its designee receives a verification document that provides medical information, DHCD or its designee should place this information in a confidential envelope in the tenant file.

#### **1.11.2.5 Documentation of Domestic Violence, Dating Violence, Sexual Assault, or Stalking**

For requirements and DHCD policies related to management of documentation obtained from survivors of domestic violence, dating violence, sexual assault, or stalking, see [Violence Against Women Reauthorization Acts of 2005 AND 2013 \(VAWA\)](#).

## CHAPTER 2 : FAIR HOUSING, EQUAL OPPORTUNITY, AND VAWA

### 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 affirmatively further fair housing pertains to all areas of the PHA's housing choice voucher (HCV) operations.

### 2.2 NONDISCRIMINATION

DHCD and its designees 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)
- Massachusetts General Laws Chapter 151B, section 4
- The Equal Access to Housing in HUD Programs regardless of Sexual Orientation or Gender Identity Final Rule, published in the *Federal Register* February 3, 2012
- Any other applicable state laws or local ordinances and any legislation protecting individual rights of tenants, applicants, or staff that may subsequently be enacted

Federal law and rules prohibit discrimination in housing on the basis of race, color, national origin, religion, sex, sexual orientation, familial status, gender identity, marital status, and disability. Familial status includes families with children under the age of 18 in the household, pregnant women, and people securing custody of children under the age of 18. In addition, under the lead paint laws, Massachusetts prohibits discrimination against a family with a child under the age of six with regard to a dwelling that contains or may contain lead paint. Massachusetts further prohibits discrimination in housing on the basis of receipt of public assistance (including Section 8), gender expression, military or veteran status, age, and ancestry.

DHCD and its designees 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.

DHCD and its designees will consider the needs of people with disabilities, with limited English proficiency, or subject to VAWA coverage and make accommodations where applicable.

#### Providing Information to Families and Owners

Fair housing rights and responsibilities are explained to applicants at the briefing session, and all applicants receive fair housing documentation, including information on how to file a discrimination complaint, at the briefing (see [Oral Briefing](#) and [Briefing Packet](#)). 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 (see also Non-Discrimination).

#### Discrimination Complaints

Applicants or participants who believe that they have been subject to unlawful discrimination may notify DHCD or its designee either orally or in writing. DHCD or its designee will attempt to remedy discrimination complaints made against them.

DHCD or its designee may refer the complainant to the appropriate fair housing center. If necessary, DHCD or its designee 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) or the Massachusetts Commission Against Discrimination (MCAD).

## **2.3 POLICIES RELATED TO PERSONS WITH DISABILITIES**

DHCD and its designees must ensure that persons with disabilities have full access to DHCD's programs and services. A person with a disability may require reasonable accommodations in order to have equal access to the HCV program, and refusal to allow a reasonable accommodation is prohibited by the Fair Housing Act. The types of reasonable accommodations DHCD or its designees 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 DHCD or its designee, 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.

The responsibility to ensure full access begins with the first inquiry of an interested family and continues through every programmatic area of the HCV program.

### Types of Reasonable Accommodations

When needed, DHCD or its designee must modify normal procedures to accommodate the needs of a person with disabilities. Examples include but are not limited to:

- 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 DHCD’s range) if DHCD determines this is necessary to enable a person with disabilities to obtain a suitable housing unit (see [Payment Standard Exceptions & Reasonable Accommodations](#));
- 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 DHCD’s designee’s staff;
- Displaying posters and other housing information in locations throughout DHCD’s designee’s office in such a manner as to be easily readable from a wheelchair.

#### **2.3.1 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, DHCD or its designee will treat the information as a request for a reasonable accommodation, even if no formal request is made. The applicant or participant does not need to say the words “reasonable accommodation.”

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

If the need for the accommodation is not readily apparent or known to DHCD or its designee, 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.

#### **2.3.2 Verification of Disability**

Before providing an accommodation, DHCD or its designee must determine that the person meets the civil rights definition of a person with a disability or “individual with handicaps” (see [24 CFR 8.3](#) and [24 CFR 100.201](#)), and that there is an identifiable relationship, or nexus, between the requested accommodation and the person’s disability.

If a person’s disability is obvious or otherwise known to DHCD or its designee, and if the need for the requested accommodation is also readily apparent or known, no further verification will be



required. If a family indicates that an accommodation is required for a disability that is not obvious or otherwise known to DHCD or its designee, DHCD or its designee will verify that the person meets the definition of a person with a disability, and that there is a relationship between the requested accommodation and the disability.

Verification must be obtained from an individual identified by the family who is competent to make the determination, such as 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.

### **2.3.3 Approval/Denial of a Requested Accommodation**

DHCD or its designee 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 DHCD's or its designee'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 alternative accommodations that would effectively meet the family's disability-related needs.

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

After a request for an accommodation is presented together with all requested supportive documentation, and after an interactive process, DHCD or its designee will respond, in writing, within 15 business days.

### **2.3.4 Program Accessibility for Persons with Hearing or Vision Disabilities**

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

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

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.

### **2.3.5 Physical Accessibility**

DHCD and its designees 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

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

- This plan describes the key policies that govern DHCD's and its designees' 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 design, construction, or alteration of DHCD's and its designees' 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 DHCD or its designee 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.

### **2.3.6 Denial or Termination of Assistance**

DHCD'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(c)(2)(iv)].

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

When reviewing reasonable accommodation requests, DHCD will consider whether any circumstances can be verified to explain and overcome the problem that led to DHCD's decision to deny or terminate assistance.

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

Language for persons with limited English proficiency (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.

DHCD and its designees will take affirmative steps to communicate with people who need services or information in a language other than English.

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, DHCD and its designees 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 DHCD/its designees and costs.

Balancing these four factors will ensure meaningful access by LEP persons to critical services while not imposing undue burdens on DHCD and its designees.

DHCD has developed a written Language Access Plan consistent with requirements for providing meaningful access by LEP persons to DHCD's Housing Choice Voucher program and services.

DHCD's [Language Access Plan](#), effective July 2009 and revised in 2017, is available on its website.

#### **2.4.1 Oral Interpretation**

In a courtroom, a hearing, or situations in which health, safety, or access to important benefits and services are at stake, DHCD or its designee will generally offer, or ensure that the family is offered through other sources, competent services free of charge to the LEP person. Individuals may refer to DHCD's and its designees' Language Access Plans for specific information regarding interpreter services.

#### **2.4.2 Written Translation**

DHCD and its designees will provide written translations of the vital documents consistent with their LEP policies. In addition, the [HUD website](#) contains translations of some of its forms into a number of languages. Translation of other documents, if needed, can be provided orally, upon request.

### **2.5 VIOLENCE AGAINST WOMEN REAUTHORIZATION ACTS OF 2005 AND 2013 (VAWA)**

#### **2.5.1 Overview**

The Violence Against Women Act of 2013 (VAWA) provides special protections for survivors of domestic violence, dating violence, sexual assault and stalking who are applying for or receiving assistance under the HCV program. Protections under VAWA are not limited to women but cover survivors of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation. (See also protections under state law at [M.G.L. c. 186, §§ 23-29](#).)

#### **2.5.2 Definitions**

The definitions pertinent to VAWA and this section are found at [24 CFR 5.2003](#).

### **2.5.3 VAWA Self-Petitioners**

DHCD or its designee will review non-citizen applicant or resident requests for admission or continued assistance as a result of being a self-petitioner under the Violence Against Women Reauthorization Act of 2013. A VAWA Self-Petitioner is a non-citizen applicant or tenant who claims to be a survivor of “battery or extreme cruelty,” which includes domestic violence, dating violence, sexual assault and stalking perpetrated by their spouse or parent, who is a citizen or lawful permanent resident.

A VAWA Self-Petitioner may indicate that they are a survivor of “battery or extreme cruelty” and that they have “satisfactory immigration status,” though DHCD or its designee has not yet verified their satisfactory immigration status. Satisfactory immigration status means an immigration status which does not make the individual ineligible for financial assistance. A VAWA Self-Petitioner may submit an I-360 VAWA Self Petition, an I-130 Family-Based VISA Petition, or a USCIS Form 1-797 to demonstrate a claim of satisfactory immigration status. When an I-360 VAWA Self Petition, an I-130 Family-Based VISA Petition, or a USCIS Form 1-797 is submitted, DHCD or its designee may not request any additional information from the VAWA Self-Petitioner other than what is required to complete the verification. When a VAWA Self-Petitioner uses the Family-Based VISA petition to satisfy immigration status, upon verification of the Family-Based VISA petition, DHCD or its designee will require the petitioner to submit evidence of battery or extreme cruelty.

DHCD or its designee may provide assistance to a non-citizen, applicant VAWA self-petitioner while DHCD or its designee verifies his/her eligible immigration status. Additionally, DHCD or its designee may provide continued assistance to the non-citizen participant VAWA petitioner during the time that DHCD or its designee verifies his/her eligible immigration status. Housing assistance and all other VAWA protections will be granted to the VAWA Self-Petitioner applicant or tenant throughout the verification process until a final determination of lawful permanent residency can be made.

If DHCD or its designee later determines that the VAWA Self-Petitioner does not have eligible immigration status, DHCD or its designee will notify the individual and take action to terminate assistance. DHCD or its designee will also inform the individual of local agencies that provide domestic violence and immigration support services.

### **2.5.4 Prohibition Against Denial of Assistance to Survivors of Domestic Violence, Dating Violence, Sexual Assault, and Stalking**

Applicants who otherwise qualify for assistance or admission will not be denied admission on the basis that the applicant is or has been a survivor of domestic violence, dating violence, sexual assault, or stalking. VAWA does not limit DHCD’s or its designee’s authority to deny assistance to an individual or household that is not otherwise qualified or eligible for assistance.

### **2.5.5 Prohibition Against Termination of Assistance Related to Survivors of Domestic Violence, Dating Violence, Sexual Assault, and Stalking**

Criminal activity directly relating to domestic violence, dating violence, sexual assault or, stalking, engaged in by a member of a tenant’s family or any guest or other person under the tenant’s control will not be the basis for termination of assistance, tenancy, or occupancy rights if the tenant or an immediate member of the tenant’s household is the survivor or threatened survivor of that domestic violence, dating violence, sexual assault, or stalking.

Incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking will not be construed either as serious or repeated violations of the lease by the survivor of such violence or as good cause for terminating the tenancy or occupancy rights of the survivor of such violence.

Notwithstanding the foregoing, DHCD or its designee may exercise its authority to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against household members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the survivor of such violence who is also a tenant or lawful occupant.

DHCD or its designee may exercise its discretion to remove or terminate assistance to tenants or lawful occupants who perpetrate such violence against survivors or affiliated individuals.

Further, DHCD or its designee retains its authority to terminate the tenancy of any tenant if DHCD or its designee concludes that there is 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. VAWA does not limit DHCD's or its designee's authority to deny or terminate assistance to an individual or family that is not otherwise qualified or eligible for assistance. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include [24 CFR 5.2003]:

- 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
- Whether the threat is toward an employee or tenant other than the survivor 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 survivor relocate to a confidential location

Even when a survivor poses an actual and imminent threat, however, HUD regulations authorize DHCD or its designee to terminate the survivor's assistance "only when there are no other actions that could be taken to reduce or eliminate the threat" [24 CFR 5.2005(d)(4)].

If the tenant wishes to contest DHCD's or its designee'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.

DHCD or its designee may terminate assistance for any violation of the program not premised on the kinds of violence described above, as long as DHCD or its designee refrains from subjecting a survivor of domestic violence, dating violence, sexual assault, or stalking to a more demanding standard than applied to other tenants facing lease termination. VAWA does not limit DHCD's or its designee's authority to deny or terminate assistance to an individual or family that is not otherwise qualified or eligible for assistance.

Notwithstanding the protections provided to tenants under VAWA, DHCD and its designees will:

- Comply with court orders that address the rights of access to or control of property, including civil protection orders issued to protect survivors of domestic violence, dating violence, sexual assault, and stalking; and
- Comply with court orders that address the distribution or possession of property among members of a household.

In the event DHCD or its designee terminates assistance to an individual, DHCD or its designee will refrain from penalizing the survivor of such criminal activity who is a tenant or lawful occupant. DHCD or its designee will also provide any remaining family members an opportunity to establish eligibility for continued occupancy, if the individual terminated was the sole tenant eligible for housing assistance. If a tenant is unable to establish eligibility, DHCD or its designee will provide tenant a reasonable time, not to exceed 60 days, to find new housing.

### **2.5.6 Confidentiality Requirements – VAWA**

DHCD or its designee will not disclose or release or enter into any shared database any personally identifying information or individual information collected in connection with VAWA protections requested or denied except to the extent that the disclosure is:

- Requested or consented to by the individual in writing;
- Required for use in an eviction proceeding; or
- Otherwise required by applicable law.

If disclosure is required for use in an eviction proceeding or is otherwise required by applicable law, DHCD or its designee will make reasonable attempts to provide notice to survivors affected by the disclosure of information and will take steps necessary to protect the privacy and safety of the persons affected by the release of the information.

At the time the applicant is denied, DHCD or its designee may share the following:

- Non-personally identifying data in the aggregate regarding services to their tenants and non-personally identifying demographic information in order to comply with federal or state reporting, evaluation, or data collection requirements;
- Court-generated information and law enforcement-generated information containing insecure, governmental registries for protection order enforcement purposes; and
- Law enforcement-generated and prosecution-generated information necessary for law enforcement and prosecution purposes.

DHCD or its designee will provide notice to applicants and tenants in assisted housing of protections provided under VAWA, in multiple languages when necessary, at the following junctures:

- At the time the applicant is denied ;
- At the time the individual is admitted to a unit in an assisting housing program; and
- With any notification of eviction or notification of termination of assistance.

DHCD and its designees acknowledge that a survivor of domestic violence, dating violence, stalking, or sexual assault may have an unfavorable history (i.e., a poor credit history, non-payment of rent as an assisted housing tenant, a record of previous damage to an apartment/public housing unit, a prior/current conviction) that would warrant denial or termination

under DHCD's policies. Therefore, if DHCD or its designee makes a determination to deny admission to an applicant or to terminate assistance to a resident, DHCD or its designee will include in its notice of denial/termination:

- A statement of protections provided by VAWA;
- A description of the DHCD confidentiality requirements; and
- A request that an applicant/head of household wishing to claim this protection submit to DHCD or its designee documentation meeting the specifications outlined in this plan or a request for an informal hearing, whichever is applicable.

DHCD or its designee will provide VAWA information to owners which will consist of the VAWA notice provided to applicants and participating households and the form HUD-5382.

### **2.5.7 Survivor Documentation**

DHCD or its designee will require that an applicant claiming that the cause of an unfavorable history is that a member of the applicant family is or has been a survivor of domestic violence, dating violence, sexual assault, or stalking provide documentation of such claim, including:

- Demonstrating the connection between the abuse and the unfavorable history; and
- Naming the perpetrator of the abuse if it is safe to provide the name and if it is known to the survivor.

When a family is facing assistance termination because of the actions of a tenant, household member, guest, or other person under the tenant's control and a client or affiliated individual of the tenant's household claims that she or he is the survivor of such actions and that the actions are related to domestic violence, dating violence, sexual assault, or stalking, DHCD or its designee will require the individual to submit documentation affirming that claim.

Tenants may provide **one** of the following to demonstrate that they should receive protections under VAWA:

- A document signed by the survivor and an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional, or a mental health professional (collectively, "professional") from whom the survivor has sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse. The document must specify, under penalty of perjury, that the professional believes the incident or incidents of domestic violence, dating violence, sexual assault, or stalking occurred and meet the definition of "domestic violence," "dating violence," "sexual assault," or "stalking" in HUD's regulations at 24 CFR 5.2003.
- A record of a federal, state, tribal, territorial, or local law enforcement agency, court, or administrative agency; or
- At the discretion of the housing provider, a statement or other evidence provided by the applicant or tenant.

### **2.5.8 Time Frame for Submitting Documentation**

If an applicant for, or tenant of, DHCD housing represents to DHCD or its designee that they are entitled to protections under VAWA, DHCD or its designee may request, either verbally or in writing, that the applicant/tenant submit a form of documentation as described above. The



applicant/tenant must submit the required certification and supporting documentation to DHCD or its designee within 14 business days after DHCD or its designee has requested the documentation from the applicant/tenant. The 14-day deadline may be extended at the discretion of DHCD or its designee. If the individual does not provide the required certification and supporting documentation within 14 business days of DHCD's or its designee's request, or within the approved extension period, DHCD or its designee may proceed with denial or termination of assistance.

### **2.5.9 Response to Conflicting Certification**

In cases where DHCD or its designee receives conflicting certification documents from two or more members of a household, each claiming to be a survivor and naming one or more of the other petitioning household members as the perpetrator, DHCD or its designee may determine which is the true survivor by requiring third-party documentation from each member as described in this plan. Third-party documentation to substantiate the occurrence of a VAWA-related offense must be submitted within 30 calendar days. DHCD or its designee shall honor any court orders addressing rights of access or control of the property, including civil protection orders issued to protect the survivor or to address the distribution or possession of property among the household.

### **2.5.10 Terminating Tenancy of a Domestic Violence Offender**

This section does not provide protection for perpetrators of domestic violence, dating violence, sexual assault, or stalking. DHCD or its designee may terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against household members or others without terminating assistance to, or otherwise penalizing, the survivor of such violence who is also a tenant or lawful occupant. This authority supersedes any local, state, or other federal law to the contrary. However, if DHCD or its designee chooses to exercise this authority, DHCD or its designee will follow any procedures prescribed by HUD or by applicable local, state, or federal law regarding termination of assistance.

When the actions of a client or other household member result in a decision to terminate the household's assistance and another household member claims that the actions involve criminal acts of physical violence against household members or others, DHCD or its designee will request that the survivor submit the required certification and supporting documentation in accordance with the stated timeframe. If the certification and supporting documentation are submitted within the required timeframe, or any approved extension period, DHCD or its designee will terminate the offender's assistance. If the survivor does not provide the certification and supporting documentation, as required, DHCD or its designee will deny relief for protection under VAWA and proceed with termination of the household's assistance.

If DHCD or its designee can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if the client's tenancy is not terminated, DHCD or its designee will bypass the standard process and proceed with the immediate termination of the household's assistance.

### **2.5.11 Transfers and Portability Under VAWA**

DHCD or its designee may provide a voucher and allow a household to move in violation of its lease if the household has complied with all other obligations of the voucher program and has moved out of the assisted unit in order to protect the health or safety of an individual who is or has been the survivor of domestic violence, dating violence, stalking or sexual assault and who

reasonably believes that he or she is imminently threatened by harm from further violence if he or she remains in the assisted unit.

This policy permits DHCD or its designee to provide emergency transfers to survivors of domestic violence, dating violence, sexual assault, and stalking if the tenant expressly requests the transfer and the tenant reasonably believes that he/she is threatened with imminent harm from further violence if the tenant remains in the unit. In the case of a tenant who is the survivor of sexual assault, an emergency transfer may be provided if the individual reasonably believes there is a threat of imminent harm from further violence if they remain in their unit or if the individual reasonably believes there is a threat of imminent harm from further violence if they remain in their unit or if the sexual assault occurred on the premises during the 90-day period preceding the request for a transfer. See Family Right to Move (Opt Out) with Tenant-Based Assistance.

See [Emergency Transfers Under VAWA](#) for specific guidance on emergency transfer requests for survivors of domestic violence, dating violence, sexual assault, or stalking.

DHCD or its designee will maintain the confidentiality of the tenant's new location in the event the tenant receives an emergency transfer related to VAWA protections.

#### **2.5.12 Remedies Available to VAWA Survivors**

Notwithstanding any federal, state, or local law to the contrary, DHCD or its designee may remove a household member from the program without regard to whether the household member is a signatory to the lease. This action may be taken in order to evict, remove, terminate occupancy rights, or terminate assistance to any tenant or lawful occupant who engages in criminal acts of physical violence against household members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the survivor of such violence who is a tenant or lawful occupant. Such eviction, removal, termination of occupancy rights, or termination of assistance shall be effected in accordance with the procedures prescribed by federal, state, or local law for termination of assistance the relevant Section 8 HCV, and Section 8 project-based programs. Tenants who remain in the household after a lease bifurcation, who have not already established eligibility for housing assistance will be given at least 90 days from the date of the bifurcation of the lease in order to establish eligibility for housing assistance or to find alternative housing.

#### **2.5.13 VAWA Record Retention**

[24 CFR 5.2005(e)(12)]

DHCD or its designee will retain a record of all VAWA emergency transfer requests and outcomes for a period not less than three years and will report to HUD on the VAWA requests and outcomes as required.

## CHAPTER 3 : APPLICATIONS, WAITING LIST, AND TENANT SELECTION

### 3.1 INTRODUCTION

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

DHCD and its designees are 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 DHCD 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 DHCD and its designees affirmatively further fair housing goals in the administration of the program [24 CFR 982.53].

### 3.2 THE APPLICATION PROCESS

#### 3.2.1 Applying for Assistance

Any family that wishes to receive HCV assistance must apply for admission to the program. HUD permits DHCD to determine the format and content of HCV applications, as well as how such applications will be made available to interested families and how applications will be accepted by DHCD or its designee.

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

A one-step process may 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, DHCD or its designee initially will require families to complete a pre-application which provides only the information needed to place the family on the waiting list. The family will be required to provide all of the additional 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 offices of DHCD or its designees 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 [DHCD's website](#).

Completed applications must be returned to DHCD or its designee by mail, submitted in person during normal business hours, or online if available. Applications must be complete in order to be accepted by DHCD or its designee 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; and
- Racial and ethnic designation of the head of household.

Incomplete applications will not be accepted. DHCD and its designees are not responsible for material that is illegible or missing as a result of transmitting by fax or email or lost/delayed through the mail.

If an application is incomplete, DHCD or its designee will notify the family in writing of the additional information required if an address has been provided. If the waiting list is closed before return of the completed application, a corrected application will not be accepted unless the applicant can demonstrate mitigating circumstances.

### **3.2.2 Accessibility of the Application Process**

DHCD and its designees 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 application process, including providing accommodations to people with disabilities and taking reasonable steps to ensure meaningful access for persons with limited English proficiency.

### **3.2.3 Placement on the Waiting List**

DHCD or its designee must accept applications from families for whom the list is open unless there is good cause for not accepting the application. DHCD will enter completed applications on the waiting list according to the date and time the completed application was received.

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)].

#### **3.2.3.1 Eligible for Placement on the Waiting List**

DHCD or its designee will send written notice of placement on the waiting list to all new HCVP applicants whose complete pre-applications have been received.

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 DHCD or its designee.

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 DHCD nor its designees will provide applicants with their number on the waiting list. Upon request, DHCD or its

designee will provide applicants with an estimate of the wait time based on its average agency turnover.

### **3.3 THE WAITING LIST**

#### **3.3.1 Organization of the Waiting List**

[24 CFR 982.204 and 205]

DHCD's/its designees' HCV waiting lists must be organized in such a manner to allow the DHCD and its designees 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; and
- Racial and ethnic designation of the head of household.

DHCD and its designees will maintain a separate waiting list for each region within the Commonwealth of Massachusetts.

#### **Regional Designation**

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**

After the initial regional designation has been assigned it may be changed only for three reasons:

- 1) Change of address (see Reporting Changes in Family Circumstances While on the Waiting List) – an applicant may change their regional designation if they have moved to a community within Massachusetts 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. Original date and time of application will not change.

However, an applicant who resides in Massachusetts at the time of application and then moves out of state prior to selection from the waiting list will be required to change their regional designation to zero. If that applicant moves back to Massachusetts prior to selection from the waiting list, that applicant may regain the regional residency preference of their new Massachusetts residence upon provision of verification of residence at the new address.

- 2) Employment out of region – 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. Original date and time of application will not change.
- 3) If the applicant resides in a shelter at the time of application – 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. Original date and time of application will not change.

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 DHCD or its designee. The applicant must request the change in writing and provide proper verification.

Certain special programs, namely, MTW activities, are not administered statewide. If any of DHCD's designees receives a referral for a regional project-based special program other than PBV, DHCD must be consulted.

### **3.3.2 Opening and Closing the Waiting List**

[24 CFR 982.206]

#### Closing the Waiting List

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

On March 27, 2000, DHCD opened its waiting list with the intention that it will remain open indefinitely.

If the waiting list is closed, DHCD 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.

DHCD 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. DHCD and its designees will 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 a regional administering area have been exhausted, DHCD will open the list in a limited manner accepting applications only from applicants who reside or work in that region.

### **3.3.3 Family Outreach**

DHCD and its designees will conduct outreach as necessary to ensure that there is a sufficient number of applicants on the waiting list to use the HCV resources it has been allotted.

Because HUD requires DHCD and its designees to serve a specified percentage of extremely low income families, DHCD and its designees may need to conduct special outreach to ensure that an adequate number of such families apply for assistance.

DHCD and its designees' outreach efforts will 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

The outreach efforts of DHCD and its designees 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
- Conducting targeted outreach efforts if and when certain identified populations are being underserved

#### **3.3.4 Reporting Changes in Family Circumstances While on the Waiting List**

While the family is on the waiting list, the family must immediately inform DHCD or the appropriate designee 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.

DHCD or its designee will not provide notice that an address or other change was received and processed.

#### **3.3.5 Change in Head of Household While on the Waiting List**

While a family is on the waiting list, the head of household named on the application may not be changed or removed from the application without the written consent of that named head of household. In the event that written consent is not possible (e.g. the named head of household has died), DHCD will evaluate changes in head of household on a case-by-case basis.

If the original head of household changes while the family is on the waiting list, the family must complete an update to the application and identify the new head of household. DHCD or its designee will allow the family to keep their initial date and time of application if the new head of household is the spouse of the named head of household. If the new head of household is anyone other than the spouse of the named head of household, the family must submit a new application, if the waiting list is open, and will be given a new date and time of application. DHCD may make exceptions to this policy and will evaluate exceptions on a case-by-case basis.

### **3.3.6 Family Break-Up or Split Households While on the Waiting List**

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.

In the absence of a judicial decision, or an agreement among the original family members, the original head of household will retain the application date. Exceptions to the policy will be made on a case-by-case basis and may include consideration of the following factors:

- The interest of any minor children, including custody arrangements;
- The interest of any ill, elderly, or disabled family members;
- The interest of a family member who is the survivor 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.

### **3.3.7 Updating the Waiting List**

#### **3.3.7.1 Purging the Waiting List**

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, DHCD or its designee will generally update only those applications that are anticipated to be selected from the waiting list for the next 24-month period.

To update the waiting list, DHCD or its designee 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. DHCD or its designee may also complete updates via email, online portal, or text. Applicants will be provided with update instructions, including the delivery method for updates.



This update request will be sent to the last address that DHCD or its designee 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.

If the family fails to respond within the established response time, the family will be removed from the waiting list without further notice. An informal review will not be offered.

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.

### **3.3.8 Reinstatement to Waiting List**

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

Applicants who 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. DHCD or its designee shall reinstate the application if the applicant has no previous history or failure to respond to written notices. DHCD or its designee 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 error by DHCD or its designee;
- DHCD or its designee 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 DHCD or its designee determines that the applicant's failure to respond is caused by documented the error of DHCD or its designee.

An applicant who 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 DHCD or its designee 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 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.

DHCD and its designees do not accept responsibility for mail delays and/or nonreceipt by the applicant.

### **3.3.9 Removal from the Waiting List**

If at any time an applicant family is on the waiting list, DHCD or its designee determines that the family is not eligible for assistance (see [CHAPTER 4](#)) the family will be removed from the waiting list.

If a family is removed from the waiting list because DHCD or its designee 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 decision of DHCD or its designee (see [CHAPTER 16](#)) [24 CFR 982.201(f)].

DHCD or its designee will remove names of applicants:

- Who do not respond to a written request for information or updates;
- Who have become a participant in any of DHCD's HCV programs;
- Who request removal from the waiting list; or
- If correspondence to the applicant is returned by the Postal Service for any reason. In these instances, DHCD or its designee is not required to make any further effort to contact the applicant. An informal review is not required to be offered.

See Effect of Selection on the Waiting Status for Other Programs for policies on removal from the waiting list once housed.

## **3.4 SELECTION FOR HCV ASSISTANCE**

DHCD and its designees will maintain a clear record of all information required to verify that the family is selected for HCV assistance according to DHCD's selection policies.

### **3.4.1 Targeted Funding**

[24 CFR 982.204(e)]

When HUD awards special funding for certain family types, families who qualify are placed on the waiting list. When a specific type of funding becomes available, the waiting list is searched for the first available family meeting the targeted funding criteria.

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 DHCD or its designee. Where there are criteria specific to the targeted vouchers (e.g. Mainstream vouchers), those applicants who meet those specific criteria will be selected first.

If there is no one on the waiting list eligible for the targeted program, DHCD or its designee may admit families that are not on the waiting list, or without considering the family's position on the waiting list. DHCD or its designee will maintain records showing that such families were admitted with special program funding.

Applicants for targeted funding programs must meet additional specific eligibility requirements. For some targeted programs, applicants are referred by agencies that provide services to the targeted population. Eligibility for these targeted programs is indicated on the application and on the waiting list, and the applicant is placed on the regular HCV waiting list if it is open. When a family cannot establish basic target program eligibility at the time of application, the provider agency is prohibited from making a referral and/or DHCD or its designee 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 denials 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.

### **3.4.2 Local Admission Preferences**

[24 CFR 982.207]

DHCD has established local admission preferences and gives priority to serving families that meet the criteria of those admission preferences.

#### Regional Residency Preference

A regional residency preference will be applied to all applicants who meet the residency criteria. The residency criteria are based upon the residence/employment of the head, co-head, or spouse. 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 regional administering agencies. 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. Applicants may select their regional residence preference based on either their current residence or place of employment.

For employment, either full- or part-time employment qualifies a family for the regional residency preference.

#### Single Applicants

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.

DHCD’s designee’s selection letter must describe the implications of being a one-member household that is not elderly or a person with a disability upon determination of 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.

#### Non-Elderly Disabled Preferences

There is a limited preference for 75 vouchers for families that include a person with disabilities who is at least 18 and less than 62 years of age. See [FIVE-YEAR MAINSTREAM HOUSING PROGRAM \(MS5\)](#). DHCD reserves the right to update this allocation consistent with funding availability.

There is additionally a limited preference for 89 vouchers for families that include a person with disabilities who is at least 18 and less than 62 years of age and who is in an institution or other segregated setting or is homeless. See [MAINSTREAM 2018 \(MS2018\)](#). DHCD reserves the right to update this allocation consistent with funding availability.

### **3.4.3 Selection from the Waiting List**

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.

Selection from the waiting list is made in the order as outlined below. For applicants within the same category, selection will be made according to date and time of application. For families within the same category who, solely due to insufficient funding, were previously terminated or had vouchers recalled, selection will be made according to date and time of termination. Order of selection is as follows:

- 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 DHCD or its designee resumes issuing vouchers after a funding shortfall, if the DHCD or its designee is not assisting the required number of NEDs, VASH, and FUP vouchers, DHCD or its designee will issue vouchers to special purpose voucher categories of families on its waiting list until DHCD or its designee is assisting its required number of special purpose vouchers.
- d. Families without special purpose vouchers who, solely due to insufficient funding, were previously terminated or had vouchers recalled (these families will be selected according to the date and time of termination/recall).
- e. PB 1 Opt-Out: Forced Opt-Out.

- f. PB Opt-Out: Under-housed.
- g. PB Opt-Out: Over-housed.
- h. PB Voluntary Opt-Out (subject to the applicable cap; see Family Right to Move (Opt Out) with Tenant-Based Assistance).
- 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.

#### **3.4.3.1 Project-Based Opt-Outs**

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

PB 1: Forced Opt-Outs  
 PB 2: Under-housed  
 PB 3: Over-housed  
 PB 4: Voluntary PB Opt-Outs (subject to the applicable annual cap; see [Family Right to Move \(Opt Out\) with Tenant-Based Assistance](#))

Category PB 4 is subject to the applicable annual cap. For policy information on the voluntary PB Opt-Out cap and further information on opt-outs, see [Family Right to Move \(Opt Out\) with Tenant-Based Assistance](#).

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

- Households that are survivors of domestic violence pursuant to the VAWA policy;
- Households that require a tenant-based voucher to address an approved reasonable accommodation request;
- Where relocation has been specifically recommended by law enforcement, households that have been victims of or witnesses to a violent crime;
- 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.

#### **3.4.4 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 DHCD'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 DHCD or its designee 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)(1)(v)].

DHCD and its designees 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.

#### **3.4.5 Effect of Selection on the Waiting Status for Other Programs**

An applicant may be on the tenant-based and project-based waiting lists but may be processed from only one DHCD-managed waiting list at a time.

When an applicant successfully completes the admission process by leasing a unit under any DHCD Section 8 program, their waiting list status on other DHCD lists will be maintained. If the applicant chooses to remain on other lists, it will be the applicant's responsibility to update contact information as necessary.

### **3.5 NOTIFICATION OF SELECTION**

DHCD's designee will notify the family by first-class mail when it is selected from the waiting list. See [CHAPTER 4](#) for screening and eligibility policies.

## CHAPTER 4 : ELIGIBILITY

### 4.1 INTRODUCTION

DHCD or its designee 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 DHCD or its designee 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 DHCD or its designee.
  - 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 (see [Social Security Numbers](#)).
  - Consent to DHCD's or its designee's collection and use of family information as provided for in designee-provided consent forms.
- DHCD or its designee must determine that the current or past behavior of household members does not include activities that are prohibited by HUD or DHCD or its designee.

### 4.2 DEFINITIONS OF FAMILY AND HOUSEHOLD MEMBERS

#### 4.2.1 Family and Household

[24 CFR 982.201(c); 24 CFR 5.403]

##### 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 (see Local Admission Preferences for limitations on eligibility for single persons); 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.

A family also includes two or more individuals who are not related by blood, marriage, adoption, or other operation of law. DHCD or its designee has the discretion to determine if any other group of persons qualifies as a family. 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.

### Household

Household is a broader term that includes additional people who, with the permission of DHCD or its designee, live in an assisted unit, such as live-in aides, foster children, and foster adults.

#### **4.2.2 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.

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.

#### **4.2.3 Spouse, Co-head, and Other Adult**

A family may have a spouse or co-head, but not both.

### Spouse

Spouse means the marriage partner of the head of household.

### Co-head

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.

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

### Other Adult

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.

#### **4.2.4 Interdependent Relationship or Domestic Partnership**



To claim an interdependent relationship or domestic partnership, individuals must demonstrate and certify that each individual's income and other resources will be available to meet the needs of the family and that the family otherwise comprises a "housekeeping unit," meaning the individuals share expenses, household chores, household shopping responsibilities, and other common household activities. An interdependent relationship/domestic partnership may exist regardless of actual or perceived sexual orientation, gender identity, or marital status.

An interdependent relationship or domestic partnership is defined as a committed relationship between two adults, in which the partners:

- Maintain a common residence, and intend to continue to do so (or would maintain a common residence but for an assignment abroad or other employment-related, financial, or similar obstacle);
- Are at least 18 years of age and mentally competent to consent to contract;
- Share responsibility for a significant measure of each other's financial obligations;
- Are not the domestic partner of anyone else;
- Are willing to certify, if required by the agency, that they understand that willful falsification of any documentation required to establish that an individual is in a domestic partnership may lead to disciplinary action and the recovery of the cost of benefits received related to such falsification.

#### **4.2.5 Dependent**

[24 CFR 5.603(b)]

A dependent is a family member who is:

- Under 18 years of age;
- A person of any age who is a person with a disability; or
- A full-time student.

The following persons can never be dependents:

- The head of household;
- Spouse;
- Co-head;
- Foster children;
- Foster adults; and
- Live-in aides.

#### **Joint Custody of Dependents**

Dependents who 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% 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, DHCD or its designee 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.

#### **4.2.6 Full-Time Student**

[24 CFR 5.603(b)]

A full-time student 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.

#### **4.2.7 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.

#### **4.2.8 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 HUD definition of disability for the purposes of eligibility (and deductions) is found at [24 CFR 5.403](#).

##### Disabled Family

A disabled family is one in which the head, spouse, or co-head is a person with disabilities.

Even though persons with drug or alcohol dependencies are considered persons with disabilities for the purpose of non-discrimination, this does not prevent DHCD or its designee 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 15](#).

#### **4.2.9 Live-In Aide**

[24 CFR 5.403]

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.

DHCD or its designee must approve a live-in aide if needed as a reasonable accommodation 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(c)]. Live-in aides have no rights to the unit or voucher and cannot become a remaining family member for continued occupancy. 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.

It is preferred that a family's request for a live-in aide 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.

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 will not be approved for a live-in aide under these circumstances.

DHCD or its designee will conduct a background check on a prospective live-in aide and 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 DHCD or its designee, 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, DHCD or its designee will notify the family of its decision in writing.

A participant must immediately notify DHCD or its designee of any changes in the status of a live-in aide and family members, if any. Failure to do so may result in program termination.

#### Live-In Aide With Spouse or Dependent

A PHA may only approve one additional bedroom for a live-in aide. Although a live-in aide may have family member(s) approved by DHCD or its designee live with him/her in the assisted unit, no additional bedrooms will be provided for the family members of the live-in aide. DHCD's designee must ensure that housing quality standards (HQS) and occupancy standards 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 or occupancy standards, the additional family members of the live-in aide may not be approved.

DHCD or its designee must perform a criminal-background check on live-in aides and their family members 18 years of age or older who will be residing in the unit. The background check must be acceptable for approval to be granted.

#### **4.2.10 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 who are living with an applicant or assisted family are considered household members but not family members. Foster children/adults do not qualify for a dependent deduction [24 CFR 5.603].

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 set forth in 24 CFR 982.401.

Children who 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.

#### **4.2.11 Absent Family Members**

##### Definition of Temporarily Absent

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

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

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 DHCD or its designee indicating that the student has established a separate household or the family declares that the student has established a separate household.

### Deployed Military Families

DHCD or its designee will make reasonable exceptions to program requirements for active-duty military families, to the extent possible while responsibly administering the HCV program. These exceptions will be granted at the sole discretion of DHCD or its designee on a case-by-case basis.

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, DHCD or its designee 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 DHCD or its designee 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 reexamination and then conducting an interim reexamination 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.

If a child has been placed in foster care, DHCD or its designee 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

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

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.

DHCD or its designee 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

The family must request the approval of DHCD or its designee for the return of any adult family members that DHCD or its designee has determined to be permanently absent. The individual is subject to the eligibility and screening requirements discussed elsewhere in this chapter.

## **4.3 TYPES OF LOW-INCOME FAMILIES**

- Low-income family: A family whose annual income does not exceed 80% of the median income for the area, adjusted for family size.
- Very low-income family: A family whose annual income does not exceed 50% of the median income for the area, adjusted for family size.
- Extremely low-income family: A family whose annual income does not exceed the higher of the federal poverty level or 30% 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% of the median income for an area if HUD finds that such variations are necessary because of unusually high or low family incomes.

## **4.4 BASIC ELIGIBILITY CRITERIA**

### **4.4.1 Income Eligibility**

#### **4.4.1.1 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 meets additional eligibility criteria specified in DHCD's administrative plan. Such additional criteria will be consistent with DHCD's Annual Plan and with the consolidated plans for local governments in DHCD's jurisdiction.
- A low-income household made up 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 for the purposes of eligibility.
- 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].

#### **4.4.1.2 Continuously Assisted**

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 "continuously 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.

### **4.5 THE APPLICATION INTERVIEW**

Once an applicant has reached the top of the waiting list, DHCD or its designee will send written notice notifying the applicant of selection from the waiting list. Depending on DHCD's or its designee's requirements, the notice will either (1) request that the applicant respond indicating his or her interest in continuing the eligibility process, after receipt of which an eligibility interview will be scheduled or (2) directly schedule an eligibility interview. If DHCD or its designee opts to send a scheduling notice, the notice will include the following:

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

If a notification letter is returned to DHCD or its designee with no forwarding address, the family will be removed from the waiting list. A notice of denial (see [Removal from the Waiting List](#)) will be sent to the family's address of record, as well as to any known alternate address. An informal review will not be offered.

Generally, all adult household members are required to attend the screening interview. However, either the head of household or 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 DHCD or its designee.

The interview will be conducted only if the head of household and co-head provide appropriate documentation of legal identity ([CHAPTER 6](#) 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. DHCD or its designees will not provide assistance to a family until all SSN documentation requirements are met. See [Timeframe to Submit Documents for SSN](#). However, if DHCD or its designee determines that an applicant family is otherwise eligible to participate in the program but has not yet provided complete SSN documentation, the family may retain its place on the waiting list for 60 days from the date of request, after which the family will be determined ineligible.

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, DHCD or its designee 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 DHCD's or its designee's 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.

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, DHCD or its designee will provide translation services in accordance with its LEP plan. DHCD's designees with bilingual staff are encouraged to offer interviews in another language, either routinely, or upon special request.

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

If the family is unable to attend a scheduled interview, the family should contact DHCD or the appropriate designee in advance of the interview to schedule a new appointment. In all circumstances, if a family does not attend a scheduled interview, DHCD or its designee will send another notification letter with a new interview appointment time. Applicants who fail to attend two scheduled interviews without the approval of DHCD or its designee 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 4](#). No informal review will be offered.

#### **4.5.1 Completing the Eligibility Process**

DHCD or its designee must verify all information provided by the family (see [CHAPTER 6](#)). Based on verified information, DHCD or its designee must make a final determination of eligibility (see [CHAPTER 4](#)) 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.

If DHCD or its designee determines that the family is ineligible, DHCD or its designee 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 16](#)).

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. DHCD or its designee will notify the family in writing that it has been returned to the waiting list, and will specify the reasons for it.

If DHCD or its designee determines that the family is eligible to receive assistance, DHCD or its designee will invite the family to attend a briefing in accordance with the policies in [CHAPTER 5](#).

### **4.6 APPLICANT SCREENING**

DHCD or its designee conducts applicant screening to evaluate the eligibility and suitability of families who apply to the HCV program. DHCD or its designee may deny assistance to an applicant based on the screening of applicants for family behavior or suitability for tenancy.

No applicant to the HCV program who has been a survivor of domestic violence, dating violence, stalking or sexual assault shall be denied admission into the program if they are otherwise qualified.

Debt, criminal background, sex offender, and past and current behavior screening policies include basic screening information, reasons for mandatory and non-mandatory denial and mitigating factors. Mitigating factors may be considered for certain screening outcomes. Upon consideration of mitigating factors, DHCD or its designee may, on a case-by-case basis, decide not to deny assistance.

#### **4.6.1 EIV Existing and Former Tenant Search**

DHCD and its designees will conduct EIV screening for new applicants. An EIV Existing Tenant Search will be conducted on minor and adult members of an applicant household and when adding an adult or minor to an existing household.

DHCD and its designees will discuss with the applicant if the EIV Existing Tenant Search identifies that the applicant or a member of the applicant's household is residing at another federally subsidized housing location, giving the applicant the opportunity to explain any circumstances relative to his/her being assisted at another location.

DHCD and its designees will follow up with the respective public housing agency or owner to confirm the individual's program participation status before admission, if necessary, depending on the outcome of the discussion with the applicant.

DHCD and its designees will retain the search results with the application along with any documentation obtained as a result of contact with the applicant and the PHA and/or owner at the other location.

An EIV Former Tenant Search will be conducted on adult members of an applicant household and when adding an adult to an existing household. DHCD and its designees will follow its policies on denial and termination of assistance when reviewing and acting on results of the EIV Former Tenant Search.

#### **4.6.2 Screening for Criminal Background and Sex Offender Registration**

DHCD and its designees are authorized to obtain criminal conviction records from law enforcement agencies to screen applicants for admission to the HCV program (see [Criminal Activity](#)). This authority assists DHCD and its designees in complying with requirements and 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, DHCD or its designee requires every applicant family to submit a consent form signed by each adult household member [24 CFR 5.903].

DHCD or its designee 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](#).

DHCD or its designee will not base a determination that an applicant or household engaged in criminal activity warranting denial of admission, termination of assistance, or eviction on a record of arrest(s). Although a record of arrest(s) may not be used to deny a housing opportunity, DHCD or its designee may make an adverse housing decision based on the conduct underlying an arrest if the conduct indicates that the individual is not suitable for tenancy and DHCD or its designee has sufficient evidence other than the fact of arrest that the individual engaged in the conduct. The conduct, not the arrest, is what is relevant for admissions and tenancy decisions [Notice PIH 2015-19].

DHCD and its designees are required to perform 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 Mandatory Denial of Assistance for more detail.

If DHCD or its designee proposes to deny assistance based on a criminal record or on lifetime sex offender registration information, DHCD or its designee 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)].

#### **4.6.3 Debt Screening**

DHCD or its designee will conduct a debt screening on all members 18 years or older to determine:

- If the applicant owes rent or other amounts to DHCD or its designee, other Housing Authorities or other assisted housing programs in connection with the HCV program or public housing;
- If the family has not reimbursed the DHCD or its designee, 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 DHCD or its designee, 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 DHCD or its designee, other Housing Authorities, or other assisted housing programs to repay amounts paid to an owner by DHCD or its designee, other Housing Authorities, or other assisted housing programs.

When an applicant currently owes DHCD or its designee, other Housing Authorities or other assisted housing programs money from previous public or assisted housing residency or HCV program participation, DHCD or its designee 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 DHCD or its designee during the last six 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.

DHCD or its designee 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.

#### **4.6.4 Screening for Suitability as a Tenant**

[24 CFR 982.307]

DHCD and its designees have no liability or responsibility to the owner for the family’s behavior or suitability for tenancy.

#### **4.6.5 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 who 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 DHCD's [Language Access Plan](#), the notice must be in a language that is understood by the individual if the individual is not proficient in English.

#### **4.6.5.1 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.

#### **4.6.5.2 U.S. Citizens and Nationals**

Citizens and nationals are required to submit only a signed declaration as verification of their status. Family members who declare citizenship or national status will not be required to provide additional documentation unless DHCD or its designee receives information indicating that an individual's declaration may not be accurate.

#### **4.6.5.3 Eligible Noncitizens**

In addition to providing a signed declaration, except for persons 62 years or older, those declaring eligible noncitizen status must sign a verification consent form and cooperate with the efforts of DHCD or its designees to verify their immigration status as described in [CHAPTER 6](#).

Additional documents are required based upon the person's status:

- 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.
- Noncitizens who claim eligible immigration status also must present the applicable USCIS document. Acceptable USCIS documents include:
  - 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.

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].

#### **4.6.5.4 Ineligible Noncitizens**

Ineligible noncitizens are those noncitizens who do not wish to contend their immigration status. DHCD and its designees require that noncitizens sign a certification attesting to their ineligible immigration status. DHCD and its designees are not required to verify a family member's ineligible status and are 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.

#### **4.6.5.5 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 7](#) for a discussion of how rents are prorated, and [CHAPTER 16](#) for a discussion of informal hearing procedures.

#### **4.6.5.6 Ineligible Families**

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

DHCD and its designees will not provide assistance to a family before the verification of the eligibility of the individual or at least one family member.

When DHCD or its designee 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 DHCD or its designee. The informal hearing with DHCD or its designee 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 16](#).

#### **4.6.5.7 Timeframe for Determination of Citizenship Status**

[24 CFR 5.508(g)]

DHCD and its designees 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, DHCD or its designee will 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.

#### **4.6.6 Social Security Numbers**

[24 CFR 5.216 and 5.218]

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 6](#).

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 reexamination. 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.

DHCD or its designee will 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**

Applicants will be required to provide an SSN on the pre-application form. DHCD or its designee 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.

If a child is added to an applicant household within six months prior to the date of admission the applicant may become a participant if the Social Security number is provided within 90 calendar days from the effective date of the HAP contract. If after 90 days, verification of the Social Security number is not provided, DHCD or its designee may grant one 90-day extension assistance if the delay is caused by circumstances beyond the applicant's control. See [Social Security Numbers](#) for policies on verification for timelines for provision of SSN documentation for new admissions and new household members where individuals are under six and in cases where individuals are at least six years of age.

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

#### **4.7 FAMILY CONSENT TO RELEASE OF INFORMATION**

[24 CFR 5.230]

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 (or a DHCD version thereof), and other consent forms as needed to collect information relevant to the family's eligibility and level of assistance. [CHAPTER 6](#) provides detailed information concerning the consent forms and verification requirements.

DHCD and its designees will deny admission to the program if any member of the applicant family fails to sign and submit the consent forms for obtaining information that DHCD or its designees have determined necessary in the administration of the HCV program in accordance with 24 CFR 5, Subparts B and F [24 CFR 982.552(b)(3)].

#### **4.8 STUDENTS ENROLLED IN INSTITUTIONS OF HIGHER EDUCATION**

[24 CFR 5.612]

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 DHCD policy, the income of the student's parents will not be considered in determining the student's eligibility.

This 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.

##### **4.8.1 Determining Student Eligibility**



For any student who is subject to the restrictions in 24 CFR 5.612, DHCD or its designee 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; and
- Follow the policies below, if applicable, in determining whether the student's parents are income eligible for the program.

If DHCD or its designee determines that the student, the student's parents (if applicable), or the student's "family" is not eligible, DHCD or its designee 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 16](#).

In determining whether and how the new eligibility restrictions apply to a student, the PHA will rely on the following definitions:

- **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**

In order to be considered an independent student, the individual must meet one or more of the following criteria:

1. The individual is 24 years of age or older by December 31<sup>st</sup> of the award year;
2. The individual is an orphan, in foster care, or a ward of the court at any time when the individual was 13 years of age or older;
3. The individual is, or was immediately prior to attaining the age of majority, an emancipated minor or in legal guardianship as determined by a court of competent jurisdiction in the individual's state of legal residence;
4. The individual is a veteran of the U.S. Armed Forces or is currently serving active duty for other than training purposes;
5. The individual is a graduate or professional student;
6. The individual is married;
7. The individual has legal dependents other than a spouse;



8. The individual has been verified during the school year in which the application is submitted as either an unaccompanied youth who is a homeless child or youth, or as unaccompanied, at risk of homelessness, and self-supporting by a local educational agency homeless liaison; the director or designee of the director of a program funded under the Runaway and Homeless Youth Act, or of a program funded under Subtitle B of Title IV of the McKinney-Vento Homeless Assistance Act; or a financial aid administrator;
9. The individual is a student for whom a financial aid administrator makes a documented determination of independence by reason of other unusual circumstances.

DHCD or its designee will verify that a student meets the above criteria in accordance with the policies in [CHAPTER 6](#).

- Institution of Higher Education

DHCD or its designee will use the statutory definitions found at [20 USC § 1001](#) and [1002](#) to determine whether a student is attending an *institution of higher education*.

- Parents

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.

- Person with Disabilities

DHCD or its designee will use the statutory definition under [42 USC § 3\(b\)\(3\)\(E\)](#) to determine whether a student is a person with disabilities.

- Veteran

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.

#### **4.8.2 Determining Parental Income Eligibility**

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

- If the student's parents are married and living together, DHCD or its designee will obtain a joint income declaration and certification of joint income from the parents.
- If the student's parent is widowed or single, DHCD or its designee will obtain an income declaration and certification of income from that parent.

- If the student's parents are divorced or separated, DHCD or its designee 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, DHCD or its designee 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. DHCD or its designee 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, DHCD or its designee will use the income limits for the jurisdiction in which the parents live.

## **4.9 DENIAL OF ASSISTANCE**

### **4.9.1 Overview**

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

#### **4.9.1.1 Forms of Denial**

[24 CFR 982.552(a)(2)]

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

#### **4.9.1.2 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 DHCD's jurisdiction (see [CHAPTER 12](#))

- 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 survivor of domestic violence, dating violence, sexual assault, or stalking if the applicant is otherwise qualified for assistance

#### **4.9.2 Mandatory Denial of Assistance**

[24 CFR 982.553(a)]

HUD requires DHCD and its designees to deny assistance in the following cases:

- Any member of the household has been evicted from federally-assisted housing in the last three years for drug-related criminal activity. DHCD or its designee will admit an otherwise eligible family if the family can demonstrate that the person who committed the crime is no longer living in the household. DHCD or its designee may admit an otherwise eligible family who was evicted from state- or federally-assisted housing within the past three years for drug-related criminal activity if DHCD or its designee is presented with evidence to balance the criminal offense with mitigating circumstances, such as completion of a drug rehabilitation program approved by DHCD.
- DHCD or its designee determines that any household member is currently engaged in the use of illegal drugs, as defined by federal law. "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.
- DHCD or its designee 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.
- Any household member has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine in any location, not just on the premises of federally assisted housing.
- Any household member is subject to a lifetime registration requirement under a state sex offender registration program.

DHCD or its designee will 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.

DHCD or its designee will verify information provided by the applicant by searching both the Massachusetts Sex Offender Registry Board (SORB) website (<https://www.mass.gov/orgs/sex-offender-registry-board>) and the Dru Sjodin National Sex Offender database (<http://www.nsopr.gov/>). A record of this screening, including date performed, shall be retained in the family file. DHCD and its designees will destroy the results of the search in accordance with 24 CFR 5.903(g).

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 the person must register for his or her 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 offense(s) which require lifetime sex offender registration under 803 CMR 1.00,
- Has been convicted of a sexually violent offense, or
- Has been convicted of a sex offense involving a child.

The above is a summary. For a complete definition of offenses, go to <https://www.mass.gov/orgs/sex-offender-registry-board>, and read the definition in [803 CMR 1.00](#).

#### **4.9.3 Other Permitted Reasons for Denial of Assistance**

##### **4.9.3.1 Criminal Activity**

[24 CFR 982.553]

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 lifelong 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

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

- 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 DHCD or its designees (including employee(s), contractor(s), subcontractor(s), or agent(s)).

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

- Any conviction for drug-related or violent criminal activity within the past three years.
- Any arrests for drug-related or violent criminal activity within the past three years.
- Any record of eviction from public or privately-owned housing as a result of criminal activity within the past three 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, DHCD or its designee will consider the factors discussed in this chapter. Upon consideration of such factors, DHCD or its designee may, on a case-by-case basis, decide not to deny assistance.

#### **4.9.3.2 Previous Behavior in Assisted Housing**

[24 CFR 982.552(c)]

DHCD or its designee 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.

DHCD or its designee will deny assistance to an applicant family if:

- The family does not provide information that DHCD or its designee or HUD determines is necessary in the administration of the program.
- The family does not provide complete and true information to DHCD or its designee.
- Any family member has been evicted from federally- or state-assisted housing in the last five years (three years for drug-related criminal activity).
- 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.
- A family member has engaged in or threatened violent or abusive behavior toward DHCD personnel or personnel of its designees.

DHCD or its designee may deny assistance to an applicant family if:

- 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, DHCD or its designee will consider the family for assistance.
- 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](#).

Abusive or violent behavior towards DHCD personnel or personnel of its designees 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, DHCD or its designee will consider the factors discussed in [Criteria for Deciding to Deny Assistance](#). Upon consideration of such factors, DHCD or its designee may, on a case-by-case basis, decide not to deny assistance.

#### **4.9.4 Criteria for Deciding to Deny Assistance**

##### **4.9.4.1 Evidence**

[24 CFR 982.553(c)]

DHCD and its designees will use the concept of the preponderance of the evidence as the standard for making all admission 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.

Documentation may include police reports or arrest/disturbance reports.

##### **4.9.4.2 Consideration of Circumstances**

[24 CFR 982.552(c)(2)]

HUD authorizes DHCD or its designee 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 [Mandatory Denial of Assistance](#)).

DHCD or its designee 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 Survivors of Domestic Violence, Dating Violence, Sexual Assault, and Stalking](#)) a survivor 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. DHCD or its designee 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.

#### **4.9.4.3 Removal of a Family Member's Name from the Application**

[24 CFR 982.552(c)(2)(ii)]

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 the request of DHCD or its designee.

#### **4.9.4.4 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.

If the family indicates that the behavior of a family member with a disability is the reason for the proposed denial of assistance, DHCD or its designee will determine whether the behavior is related to the disability.

If so, upon the family's request, DHCD or its designee will determine whether alternative measures are appropriate as a reasonable accommodation. See [Policies Related to Persons with Disabilities](#) for a discussion of reasonable accommodation.

#### **4.9.5 Notice of Eligibility or Denial**

If the family is eligible for assistance, DHCD or its designee will notify the family when it extends the invitation to attend the voucher briefing appointment, as discussed in [CHAPTER 5](#).

If DHCD or its designee determines that a family is not eligible for the program for any reason, the family must be notified in writing within 15 business days of the determination.

The notice will 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 [Informal Reviews](#) for policies and procedures [24 CFR 982.554(a)].

If, based on a criminal record or sex offender registration information, an applicant family appears to be ineligible, DHCD or its designee 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 DHCD or its designee to dispute the information within that 15-day period, DHCD or its designee 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 [Hearing and Appeal Provisions for Non-Citizens](#).

Notice policies related to denying admission to applicants who may be survivors of domestic violence, dating violence, sexual assault, or stalking can be found in [Violence Against Women Reauthorization Acts of 2005 AND 2013 \(VAWA\)](#).

#### **4.9.6 Prohibition Against Denial of Assistance to Survivors 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 survivor of domestic violence, dating violence, sexual assault, or stalking.

Definitions of key terms in VAWA are provided in [Violence Against Women Reauthorization Acts of 2005 AND 2013 \(VAWA\)](#), where general VAWA requirements and policies pertaining to notification documentation, and confidentiality are also located.

##### **4.9.6.1 Notification**

DHCD and its designees acknowledges that a survivor 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 offense) that would warrant denial under DHCD's policies.

Therefore, if DHCD or its designee makes a determination to deny admission to an applicant family, DHCD or its designee will include in its notice of denial the information described in



[CHAPTER 16](#) of this plan and will request that an applicant wishing to claim protection under VAWA notify DHCD or its designee within 10 business days.

#### **4.9.6.2 Survivor Documentation**

If an applicant claims the protection against denial of assistance that VAWA provides to survivors of domestic violence, dating violence, sexual assault, or stalking, DHCD or its designee will request in writing that the applicant provide documentation supporting the claim in accordance with [Violence Against Women Reauthorization Acts of 2005 AND 2013 \(VAWA\)](#).

#### **4.9.6.3 Perpetrator Documentation**

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 survivor and perpetrator must also sign or attest to the documentation.

## **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, DHCD or its designee 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, DHCD or its designee issues the family a voucher. The voucher includes the unit size the family qualifies for based on DHCD'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.

### **5.2 BRIEFING SESSIONS**

DHCD or its designees will conduct briefings for applicant families. The briefing provides a broad description of owner and family responsibilities, explains DHCD's policies and procedures, and includes instructions on how to lease a unit.

DHCD or its designee 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, DHCD or its designee must ensure effective communication in accordance with the requirements of 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](#).

Briefings will be conducted in group meetings and held at the office of the applicable DHCD designee.

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

If the family cannot attend a briefing because of illness or disability, DHCD or its designee 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 staff member.

Briefings will be conducted in English. For limited English proficient (LEP) applicants, DHCD or its designee will provide translation services in accordance with the its LEP plan (See [CHAPTER 2](#)).

#### **5.2.1 Notification and Attendance**

DHCD or its designee will send eligible families a written notice to invite them 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 4](#)) 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. DHCD or its designee will notify the family of the date and time of the second scheduled briefing. Applicants who fail to attend two scheduled briefings, without the approval of DHCD or its designee, will be denied assistance (see [CHAPTER 4](#)). No informal review will be offered.

### **5.2.2 Oral Briefing Session Content**

[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 DHCD's jurisdiction and any information on selecting a unit that HUD provides;
- An explanation of how portability works. An explanation of how portability may affect the family's assistance through screening, subsidy standards, payment standards, and any other elements of the portability process which may affect the family's assistance. DHCD and its designees cannot discourage families from choosing to live anywhere in DHCD's jurisdiction, or outside DHCD's jurisdiction under portability procedures, unless otherwise expressly authorized by statute, regulation, PIH Notice, the MTW policy, or court order.
- An explanation of the advantages of living in areas that do not have a high concentration of low income families; and

DHCD or its designee will also inform the family of the following:

- When DHCD- or designee-owned units are available for lease, the family has the right to select any eligible unit available for lease, and is not obligated to choose a DHCD- or designee-owned unit.
- Applicable MTW policies.
- 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 [Exception Payment Standards](#) and [Unit-by-Unit Exceptions](#) for a description of DHCD's policy on granting exception payment standards for MTW and non-MTW vouchers.
- An explanation of the reasonable accommodation policies of DHCD or its designees.

### **5.3 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 DHCD's policies on any extensions or suspensions of the term. If DHCD 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 DHCD or its designee determines the payment standard for a family, how DHCD or its designee determines total tenant payment for a family, and information on the payment standard and utility allowance schedule.
- The advantages of areas that do not have a high concentration of low-income families.
- An explanation of how DHCD or its designee 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 DHCD jurisdiction under portability procedures, the information must include an explanation of how portability works, including information on how portability may affect the family's assistance through screening, subsidy standards, and any other elements of the portability process which may affect the family's assistance.
- Restrictions on the number and timing of moves by a household.
- The HUD-required tenancy addendum, which must be included in the lease (see [Lease and Tenancy Addendum](#)).
- 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 DHCD policy on providing information about families to prospective owners.
- The DHCD subsidy standards including when and how exceptions are made.
- Materials on how to select a unit and any additional information on selecting a unit that HUD provides.
- 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 known to DHCD or its designees who may be willing to lease a unit to the family or other resources such as newspapers, organization and online search tools, known to the PHA that may assist the family in locating a unit. DHCD or its designees must ensure that the list of landlords or other resources covers areas outside 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 DHCD or its designee.
- The family obligations under the program.
- The grounds on which DHCD or its designee may terminate assistance for a participant family because of family action or failure to act.
- Informal review and hearing procedures including when DHCD or its designee is required to offer a participant family the opportunity for an informal review or hearing, and how to request the hearing.
- Information related to requirements under the MTW Demonstration including how families with vouchers funded under MTW are subject to different policies, e.g., biennial reexamination, limit on voluntary reexaminations.

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

- Information about the characteristics of these areas including job opportunities, schools, transportation, and other services.
- A list of portability contact persons for neighboring PHAs with names, addresses, and telephone numbers.

### **5.3.1 Additional Items to Be Included in the Briefing Packet**

DHCD's designee will provide the following additional materials in the briefing packet.

- 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 survivors of domestic violence, dating violence, sexual assault, and stalking (See [Violence Against Women Reauthorization Acts of 2005 AND 2013 \(VAWA\)](#)).
- "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.
- Statement of Family Responsibility (see [Family Obligations](#))
- Other items as DHCD or its designee may determine.

## 5.4 SUBSIDY STANDARDS AND VOUCHER ISSUANCE

### 5.4.1 Determining Family Unit (Voucher) Size

[24 CFR 982.402]

For each family, DHCD or its designee determines the appropriate number of bedrooms under DHCD’s 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 (see [CHAPTER 26: GLOSSARY 90](#)).

The following requirements apply when DHCD or its designee 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 HUD’s maximum HQS space standards and the [Massachusetts State Sanitary Code](#).
- 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.
  - 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 DHCD or its designees will increase the family’s subsidy size as appropriate, and when appropriate. In any case, DHCD or its designees 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 over-housed and the subsidy size will be reduced.

- A family that consists of a pregnant woman (with no other persons) must be treated as a two-person family, and will be entitled to a voucher appropriate to the anticipated family size.
- Any live-in aide (approved by DHCD or its designee to reside in the unit to care for a family member who is disabled, elderly, or near-elderly) 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 DHCD's subsidy standards.

DHCD or its designee 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 or partners) will be allocated separate bedrooms.
- Live-in aides will be allocated a separate bedroom.
- Single person families will be allocated one bedroom.
- For purposes of determining subsidy standards, an adult is 21 years of age or older and 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.
- 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, DHCD or its designee must consider custody and the amount of time that the child spends with the applicant/participant. DHCD or its designee must quantify the amount of time the child spends with the applicant/participant based on documentary proof provided by the applicant/participant. See [Dependent](#). More than one applicant or participant cannot claim the same child.

### 5.4.2 Exceptions to Subsidy Standards

In determining family unit size for a particular family, DHCD or its designee may grant an exception to its established subsidy standards if DHCD or its designee 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)]

DHCD or its designee will consider granting an exception for any of the reasons specified in the regulation: the age, sex, health, disability, 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.

Reasonable accommodation 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.

DHCD or its designee 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.

### 5.5 VOUCHER ISSUANCE

[24 CFR 982.302]

When a family is selected from the waiting list or as a special admission, or when a participant family wants to move to another unit, DHCD or its designees issues a Housing Choice Voucher, form HUD-52646. For voucher issuance associated with moves of program participants, please refer to [CHAPTER 13](#) and [CHAPTER 14](#).

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 DHCD or its designees has determined the family to be eligible for the program, and that DHCD expects to have money available to subsidize the family if the family finds an approvable unit.



A voucher can be issued to an applicant family only after DHCD or its designee 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.

If funds are insufficient to house the family at the top of the waiting list, DHCD or its designee must wait until it has adequate funds before it calls another family from the list.

If DHCD or its designee determines that there is insufficient funding after a voucher has been issued, DHCD or its designee may rescind the voucher, following HUD approval, and place the affected family back on the waiting list.

Prior to issuing any vouchers, DHCD or its designee will determine whether it has sufficient funding in accordance with the policies in [Determination of Insufficient Funding](#). If, due to budgetary constraints, DHCD or its designee must rescind vouchers that have already been issued to families, DHCD or its designee will do so according to the instructions under each of the categories below.

DHCD or its designee 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 (RFTA) and proposed lease have not been submitted to DHCD or its designee. 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 DHCD or its designee. Vouchers will be rescinded in order of the date and time the RFTA was submitted to DHCD or its designee, 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 DHCD selection policies described in [CHAPTER 3](#).

#### **5.5.1 Voucher Term**

[24 CFR 982.303]

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 DHCD or its designee grants an extension. See [CHAPTER 14](#) for policies related to portability.

#### **5.5.2 Extensions of Voucher Term**

[24 CFR 982.303(b)]

DHCD or its designee will approve one 30-day extension upon written request from the family.

DHCD or its designee 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 DHCD or its designee. The following is a list of non-exhaustive extenuating circumstances that DHCD or its designee 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 DHCD or its designee
  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. DHCD or its designee 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 DHCD or its designee prior to the expiration date of the voucher (or extended term of the voucher).

DHCD or its designee 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.

### **5.5.3 Suspensions of Voucher Term**

[24 CFR 982.303(c)]

"Suspension" means stopping the clock on a family's voucher term [24 CFR 982.4]. DHCD's or its designee's determination not to suspend a voucher term is not subject to informal review. [24 CFR 982.554(c)(4)].

When a Request for Tenancy Approval is received by DHCD or its designee, the term of any initial or extended voucher will be suspended (the clock stopped) from the date the family submits a request for tenancy approval until the date DHCD or its designee notifies the family, in writing, whether the request has been approved or denied.

When DHCD or its designee 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.

### **5.5.4 Expiration of Voucher Term**

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

DHCD or its designee 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. If the family reapplies and is later selected to receive a voucher, the prior inability to locate a unit and expiration does not make the family ineligible for the later voucher.

## **CHAPTER 6 : VERIFICATION**

DHCD and its designees 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. DHCD and its designees must not pass on the cost of verification to the family.

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.

### **6.1 GENERAL VERIFICATION REQUIREMENTS**

The following are general verification requirements:

- Document must be the original or authentic document generated by a third-party source.
- Any documents used for verification generally must be dated within 60 days of the date of request by DHCD or its designee. The documents must not be damaged, altered or in any way illegible.
- DHCD or its designee will accept documents dated more than 60 days after the 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, DHCD or its designee would accept the most recent report.
- The DHCD or designee's 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 DHCD or its designee 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 DHCD or designee's staff member. If not signed in DHCD's or a designee's presence, then the self-certification must be under penalty of perjury. If in their sound discretion, the DHCD or designee's 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.
- Written third-party verification forms must be signed and dated by the verifier.
- The cost of verification will not be passed on to the family.
- Documents must not be damaged, altered, or illegible in any way. DHCD or its designee may reject any tenant provided documentation if:
  - The document is not an original; or
  - The original document has been altered, mutilated or is not legible; or

- The document appears to be a forged document (i.e., does not appear to be authentic).
- At its discretion, DHCD or its designee may reject any participant-provided documents and follow-up directly with the source to obtain necessary verification of information.
- Documents must be date-stamped on the day they are received by DHCD's designee.
- All verification documents must be original and not photocopied.
- Allow five business days for receipt of requested verification before moving onto the next level of verification.
- Printouts from webpages are considered original documents. For example, a bank statement obtained from an online banking report is considered an original document.
- Paystubs must be consecutive (extenuating circumstances must be documented).
- Round figures at the final annual calculation and not before. For example, if the monthly benefit is \$356.79, multiply  $\$356.79 \times 12 = \$4,281.48$ . Round at the annual calculation \$4,281.
- When verification documents use a range of hours and/or rates, calculate the average number of hours and/or rates using the range provided.
- For fully excluded income, such as food stamps and full-time student income, self-verification using the Family Certification Form is acceptable. Third-party verification is not required for fully excluded income. However, the income must be entered and excluded when completing the transaction.

#### **6.1.1 HUD's Verification Hierarchy**

DHCD and its designees may use six methods to verify household information. In general, DHCD or its designee will use the most reliable form of verification that is available and to document the reasons when DHCD or its designee uses a lesser form of verification. In order of priority, the forms of verification that DHCD or its designee will use are:

1. Up-front Income Verification (UIV) using HUD's Enterprise Income Verification (EIV) system and the Income Validation Tool (IVT) (see [Enterprise Income Verification \(EIV\) System](#))
2. Up-front Income Verification (UIV) using a non-HUD system
3. Written Third-Party Verification (may be provided by applicant or participant)
4. Written Third-Party Verification Form
5. Oral Third-Party Verification

## 6. Self-Certification

### 6.1.2 File Documentation

DHCD or its designee 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 DHCD or its designee 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.

DHCD or its designees 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 DHCD or its designee is unable to obtain third-party verification, DHCD or its designee will document in the family file the reason that the third-party verification was not available [Notice PIH 2017-12; Notice PIH 2010-19].

### 6.1.3 Family Consent to Release of Information

[24 CFR 982.516; 24 CFR 982.551; 24 CFR 5.230]

The family must supply any information that DHCD or its designee or HUD determines is necessary to the administration of the program and must consent to verification of that information [24 CFR 982.551].

#### 6.1.3.1 Consent Forms

All adult applicants and participants are required sign form HUD-9886, Authorization for Release of Information, or a DHCD version thereof. Adult family members must sign other consent forms as needed to collect information relevant to the family's eligibility and level of assistance.

#### 6.1.3.2 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, DHCD or its designee 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.

## 6.2 UP-FRONT INCOME VERIFICATION (UIV)

Up-front income verification (UIV) refers to DHCD's and its designees' 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 and or its designees.

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 DHCD or its designee 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 DHCD or its designee.

See [CHAPTER 7](#) for DHCD's policy on the use of UIV/EIV in [Basis of Annual Income Projection](#).

### **6.3 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 DHCD and its designees to use the EIV system in its entirety. The following policies apply to the use of HUD's EIV system.

#### **6.3.1 Safeguarding EIV Data Within the Tenant File**

To prevent prohibited disclosure to unauthorized viewers of EIV data, DHCD and its designees must take measures to retain all timely EIV record hard copies and electronic copies in a secure fashion. DHCD or its designee will maintain EIV records consistent with [HUD EIV security requirements](#).

For electronic files, DHCD's housing software has a password-enabled platform and thus 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.

#### **6.3.2 Income Validation Tool (IVT)**

The IVT report facilitates and enhances identification of unreported or under-reported income during interim and regular reexaminations. The IVT also provides income and wage, unemployment compensation, and SSA benefit information. Additionally, the IVT report provides income information for heads of household and family members where there may be discrepancies in family reported income and employer reported information.

At each regular and interim reexamination of income and family composition DHCD or its designees will:

- Review the EIV Income and IVT reports to confirm/validate tenant-reported income;
- Print and maintain the EIV Income and IVT Reports in the tenant file;
- Obtain current acceptable tenant-provided documentation to supplement EIV information (where applicable); and
- Use current tenant-provided documentation and/or third-party verification to calculate annual income.

Additionally, at each regular and interim reexamination of income and family composition, using the IVT, DHCD or its designees will:

- Identify any reported discrepancies in family reported income and employer reported information;
- Request the tenant to provide any documentation to confirm or dispute the income discrepancy;
- If applicable, determine the tenant rent using the correct and updated income;

- Determine the degree of tenant underreporting or misreporting of income information; and
- Take action in accordance with DHCD policy to resolve the identified discrepancies.

### **6.3.3 EIV Income Reports**

DHCD or its designees will obtain EIV income reports for regular and interim reexams and will use the reports, as required by HUD, to verify and calculate applicable income and expenses. DHCD or its designees will not run EIV income reports for interim reexaminations solely related to changes in contract rent.

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, Dual Entitlement, 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 in separate folders or envelopes marked “Confidential” or “For Official Use Only.”

If there is no EIV income report available, or the EIV income report indicates “Failed EIV Prescreening” or “Pending Verification,” DHCD or its designee will print the “available” information and retain it in the file to document the use of EIV. DHCD or its designee will use other forms of verification.

When DHCD or its designee 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 17](#).

#### New Admission

For each new admission, DHCD or its designees will review the EIV Income and IVT Reports within 120 days from the first PIC submission date to ensure that families, at the time of admission, accurately reported income. DHCD or its designees will print and retain the reports and will take action to address any income discrepancies within 60 days from running the EIV income report.

#### Historical Adjustment

For each historical adjustment, DHCD or its designees will run the EIV Income and IVT Reports within 120 days from the PIC submission date to ensure that families accurately reported income. DHCD or its designees will print and retain the reports and will take action to address any income discrepancies within 60 days from running the EIV/IVT reports.

#### Interim Reexamination of Family Income and Composition

For each interim reexamination of family income and composition, DHCD or its designees will review the EIV Income and IVT Reports to ensure that families accurately reported income. DHCD

or its designees will print and retain the reports and will follow up with the family and resolve the differences between reported information using the HUD hierarchy of verification.

#### Regular Reexamination

For each regular reexamination of family income and composition, DHCD or its designees will review and retain in the tenant file the EIV Income and IVT Reports and any applicable documentation to resolve identified income discrepancies.

### **6.3.4 EIV Discrepancies**

Discrepancies between tenant-reported income and information reported on the EIV Income Report will be investigated by DHCD or its designee.

EIV income reports will be compared to family-provided information in order to identify discrepancies. When it appears that a family may have concealed or under-reported income, DHCD or its designee will request written third-party verification of the income in question. When DHCD or its designee 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 17](#).

### **6.3.5 EIV Identity Verification**

DHCD or its designee will identify participants whose identity verification has failed by reviewing EIV's Identity Verification Report on a monthly basis.

DHCD or its designee will attempt to resolve PIC/SSA discrepancies by obtaining appropriate documentation from the participant. When DHCD or its designee determines that discrepancies exist due to staff errors such as spelling errors or incorrect birth dates, the errors will be corrected promptly.

## **6.4 THIRD-PARTY WRITTEN VERIFICATION**

Written third-party verification documents are original and authentic documents generated by a third-party source and provided by the third-party source or the family.

Examples of acceptable written third-party documents include, but are not limited to: payroll summary reports, employer notices 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.

DHCD or its designees 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. If DHCD or its designee determines that third-party documents provided by the family are not acceptable, staff will explain the reason to the family and request additional documentation.

## **6.5 WRITTEN THIRD-PARTY VERIFICATION FORM**

When upfront verification is not available or rejected by DHCD or its designee, and the family is unable to provide written third-party documents, DHCD or its designee must request verification



directly from a third party through use of a written third-party verification form. DHCD or its designee may mail, fax, or email third-party written verification form requests to third-party sources.

Use of a written third-party verification form is mandatory when there is an unreported source of income or a substantial difference in reported income (\$2400 or more annually) and there is no UIV or tenant-provided documentation to support the income discrepancy.

## **6.6 ORAL THIRD-PARTY VERIFICATION**

For third-party oral verification, DHCD or its designees contact sources, identified by UIV techniques or by the family, by telephone or in person. Third-party oral verification is used when requests for written third-party verification forms have not been returned within a reasonable time.

Oral third-party verification is mandatory if neither form of written third-party verification is available.

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 orally to the initial written request for verification, the PHA will accept that response as oral verification.

## **6.7 SELF-CERTIFICATION**

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 DHCD or its designee.

DHCD or its designee 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 DHCD or its designees 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 DHCD or designee staff member. If not signed in the presence of DHCD or its designee, then the self-certification must be made under penalty of perjury. If in their sound discretion, the 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.

## **6.8 WHEN THIRD-PARTY VERIFICATION IS NOT REQUIRED**

If the family cannot provide original documents, and/or there is a service charge for obtaining third-party verification, DHCD or its designee will deem third-party verification unavailable. DHCD or its designee will use other forms of verification according to the required verification hierarchy. The cost of verification will not be passed on to the family.

- 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**  
DHCD or its designee will accept a self-certification from a family as verification of assets disposed of for less than fair market value.

## **6.9 VERIFYING FAMILY INFORMATION**

### **6.9.1 Photo ID**

To ensure DHCD or its designee has the ability to identify all persons 18 years of age or older (not just the head of household), all adult household members will be required to provide a current, government-issued identification at admission, upon addition to a HCV household or upon turning 18. For example, if a household member turns 18 between regular reexamination, he or she must provide a government-issued photo identification at the household's next regular recertification.

DHCD or its designee reserves the right to request an updated photo ID after admission to the program to confirm legal identity.

As an accommodation for individuals with disabilities and elderly individuals, as well as for individuals with religious considerations, with prior DHCD or designee approval, DHCD or its designee may accept other forms of identification to establish identity.

### **6.9.2 Social Security Numbers**

[24 CFR 5.216; Notice PIH 2012-10; Notice PIH 2010-03]

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. DHCD or its designee will verify each disclosed SSN by:

- Obtaining documentation from applicants and participants that is acceptable as evidence of Social Security numbers and
- Making a copy of the original documentation submitted, returning it to the individual, and retaining a copy in the file folder.

DHCD or its designee will 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

DHCD or its designee 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.

DHCD or its designee 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 90 days.

#### **6.9.2.1 Applicant Families with Children Under Six Who Lack a Social Security Number**

DHCD or its designee will provide a 90-day grace period and admit an applicant family even if the family lacks the documentation necessary to verify the SSN of a family member under the age of 6 years. An extension of one additional 90-day period will be granted if DHCD or its designee determines that, in its discretion, the applicant's failure to comply was due to circumstances that could not reasonably be foreseen and were outside of the control of the applicant, e.g., processing delay by the SSA. If the applicant does not produce the required documentation of SSN with the authorized time period, DHCD or its designee will terminate assistance for the family.

#### **6.9.2.2 Addition of a New Household Member**

When the participant requests to add a new household member who is at least 6 years of age, the participant must provide the complete and accurate SSN assigned to each new member at the time of reexamination or reexamination, in addition to the documentation required to verify it. DHCD or its designee may not add the new household member until such documentation is provided, unless the addition is a noncitizen who does not contend eligible immigration status.

When a participant requests to add a new household member who is under the age of 6 and has not yet been assigned an SSN, the participant must provide the SSN assigned to the 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, DHCD or its designee will grant the family an additional 90-day period to comply with the SSN disclosure and documentation requirement, if DHCD or its designee determines that the participant's failure to comply was due to unforeseen circumstances and was outside of the participant's control. During the period DHCD or its designee 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, DHCD or its designee will terminate the family's assistance.

#### **6.9.3 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.

If an official record of birth or evidence of social security retirement benefits cannot be provided, DHCD or its designee 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 DHCD or its designee 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.

#### **6.9.4 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 4](#).

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.

##### **6.9.4.1 Marriage**

Certification by the head of household is normally sufficient verification. If DHCD or its designee has reasonable doubts about a marital relationship, DHCD or its designee will require the family to document the marriage. A marriage certificate generally is required to verify that a couple is married.

##### **6.9.4.2 Interdependent Relationship**

Two individuals certifying as having an interdependent relationship or domestic partnership will be asked to self-certify that they meet DHCD's definition of interdependent relationship. Additionally, DHCD or its designee will request that one or more of the items outlined below be provided to verify the existence of an interdependent relationship or domestic partnership:

- Joint bank accounts
- Shared apartment lease or mortgage
- Joint credit card(s)
- Health care proxy for one another
- Joint utility bills
- Joint car lease or car title

##### **6.9.4.3 Separation or Divorce**

Certification by the head of household is normally sufficient verification. If DHCD or its designee has reasonable doubts about a separation or divorce, DHCD or its designee will require the family to document the divorce, or separation, and if so, a certified copy of a divorce decree, signed by

a court officer, is required to document that a couple is divorced and 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.

#### **6.9.4.4 Absence of Adult Member**

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 DHCD or its designee if the “proof of a negative” becomes as a practical matter not reasonable to obtain.

#### **6.9.4.5 Foster Children and Foster Adults**

DHCD or its designee will accept an official record from the state or local government agency responsible for the placement of the individual with the family.

### **6.9.5 Verification of Student Status**

#### **6.9.5.1 General Requirements**

DHCD and its designees require 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.

#### **6.9.5.2 Independent Student**

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.

In accordance with the verification hierarchy described in [HUD's Verification Hierarchy](#), DHCD or its designee will determine whether the student meets the criteria of independent student by verifying:

- The individual is 24 years of age or older by December 31 of the award year;
- The individual is an orphan, in foster care, or a ward of the court at any time when the individual was 13 years of age or older;

- The individual is, or was immediately prior to attaining the age of majority, an emancipated minor or in legal guardianship as determined by a court of competent jurisdiction in the individual's state of legal residence;
- The individual is a veteran of the U.S. Armed Forces or is currently serving active duty for other than training purposes;
- The individual is a graduate or professional student;
- The individual is married;
- The individual has legal dependents other than a spouse;
- The individual has been verified during the school year in which the application is submitted as either an unaccompanied youth who is a homeless child or youth, or as unaccompanied, at risk of homelessness, and self-supporting by a local educational agency homeless liaison; the director or designee of the director of a program funded under the Runaway and Homeless Youth Act, or of a program funded under Subtitle B of Title IV of the McKinney-Vento Homeless Assistance Act; or a financial aid administrator;
- The individual is a student for whom a financial aid administrator makes a documented determination of independence by reason of other unusual circumstances.

In addition, DHCD or its designee 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:

- Review and verify previous address information to determine evidence of a separate household or verify the student meets the U.S. Department of Education's definition of independent student.
- Review a student's prior year income tax returns to verify the student is independent or verify the student meets the U.S. Department of Education's definition of *independent student*.
- Verify income provided by a parent by requiring a written certification from the individual providing the support. Certification is also required if the parent is providing no support to the student. Financial assistance that is provided by persons not living in the unit is part of annual income, except if the student meets the Department of Education's definition of *independent student*, under the definition of [Independent Student](#). Students who meet the definition of independent student under paragraphs 2, 3, or 8 under [Independent Student](#) are considered "vulnerable youth." Such determination is all that is necessary to determine a person is an independent student for purposes of using only the student's income for determining eligibility for Section 8 assistance.

#### **6.9.6 Verification of Disability**

DHCD or its designee must verify the existence of a disability in order to allow certain income disallowances and deductions from income. DHCD and its designees are not permitted to inquire about the nature or extent of a person's disability [24 CFR 100.202(c)]. DHCD or its designee may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If DHCD or its designee receives a verification document that provides such information, DHCD or its designee will not place this information in the generally accessible tenant file. Under no circumstances will DHCD or its designee request a participant's medical record(s).

The following inquiries are not prohibited, provided these inquiries are made of all applicants, whether or not they are persons with disabilities:

- 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.

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 EIV system.

If documentation from HUD's EIV system is not available, DHCD or its designee will request a current SSA benefit verification letter from each family member claiming disability status. If the family is unable to provide the document(s), DHCD or its designee will ask the family to request a benefit verification letter. Once the applicant or participant receives the benefit verification letter they will be required to provide it to DHCD or its designee.

Verification of receipt of disability benefits under the Commonwealth of Massachusetts Emergency Aid to the Elderly, Disabled, and Children (EAEDC) is sufficient verification of disability.

#### 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 42 USC 423.

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 or does not meet the HUD definition of disability. See [Persons with Disabilities and Disabled Family](#) for the HUD definition of disability.

### **6.9.7 Citizenship or Eligible Immigration Status**

[24 CFR 5.508]

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 [CHAPTER 4](#). This chapter discusses HUD and DHCD 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)].

#### **6.9.7.1 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.

Family members who claim U.S. citizenship or national status will not be required to provide additional documentation unless DHCD or its designee receives information indicating that an individual's declaration may not be accurate.

#### **6.9.7.2 Eligible Non-Citizens**

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 (see [Eligible Noncitizens](#)).

For family members age 62 or older who claim to be eligible noncitizens, proof of age is required in the manner described in the [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 noncitizens, DHCD or its designee must verify immigration status with the United States Citizenship and Immigration Services (USCIS).

DHCD or its designee will follow all USCIS protocols for verification of eligible immigration status.

## **6.10 VERIFICATION OF PREFERENCE STATUS**



DHCD or its designee will offer a preference to any family that has been terminated from its HCV program due to insufficient program funding. DHCD or its designee will verify this preference using the termination records of DHCD or its designee.

Where an applicant claims a residency preference, DHCD will verify, at the time of screening, that the head of household, co-head, and/or spouse live or work in the jurisdiction for which they are being selected for housing (see [Local Admission Preferences](#)). Verification of the residency preference will consist of documents to confirm the living address or employment of the head, co-head, and/or spouse including but not limited to:

- Driver's license
- Lease
- Utility bill
- Pay stubs
- Letter from the employer

## 6.11 VERIFYING INCOME

[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 DHCD policies that supplement the general verification procedures already specified in this chapter.

## 6.12 EARNED INCOME

### 6.12.1 Employment Income

As verification of earned income, DHCD or its designee will request pay stubs according to the pay frequencies identified below. Pay stubs must be dated within 60 days of DHCD's or its designee's request.

<u>Frequency of Pay</u>	<u>Number of Consecutive Pay Stubs</u>
Weekly	4
Bi-weekly	2
Monthly	2

#### 6.12.1.1 Tips

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.

### 6.12.2 Business and Self-Employment Income

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.

DHCD or its designee 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, DHCD or its designee 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 months, DHCD or its designee will accept the family member's certified estimate of income and schedule an interim reexamination in three months.

If the family member has been self-employed for three to 12 months, DHCD or its designee will require the family to provide documentation of income and expenses for this period and use that information to project income.

### **6.13 SOCIAL SECURITY/SSI BENEFITS**

To verify the SS/SSI benefits of applicants, DHCD or its designee will request a current SSA benefit verification letter from each family member who receives social security benefits. If the family is unable to provide the document(s), DHCD or its designee will ask the family to request one by contacting the SSA. Once the applicant has received the benefit verification letter, they will be required to provide it to DHCD or its designee.

To verify the SS/SSI benefits of participants, DHCD or its designee will obtain information about social security/SSI benefits through the HUD EIV system. If the participant disputes the EIV-reported benefit amount, or if benefit information is not available in HUD systems, DHCD or its designee will request a current SSA benefit verification letter from each family member who receives social security benefits. If the family is unable to provide the document(s), DHCD or its designee will ask the family to request one by contacting the SSA. Once the participant has received the benefit verification letter, they will be required to provide it to DHCD or its designee.

### **6.14 ALIMONY OR CHILD SUPPORT**

DHCD or its designee 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.
  - Self-certification of receipt of court-ordered child support is not acceptable.

## 6.15 ASSETS AND INCOME FROM ASSETS

**Non-MTW Policy:** DHCD or its designee will obtain third-party verification of all family assets upon admitting a family to the program or adding a new household member and then again at least every three years thereafter. During the intervening annual reexaminations, DHCD or its designee will accept a family's declaration of asset value and income when the total net assets are equal to or less than \$5,000. DHCD or its designee will always follow the HUD verification hierarchy to verify assets when the net family assets exceed \$5,000.

Upon implementation of this provision, DHCD or its designees will complete third-party verification of all assets. Thereafter, all households will follow the same three-year cycle for third-party verification of assets.

Whenever a family member is added, DHCD or its designee will obtain third-party verification of that family member's assets. The family will continue to follow the existing three-year cycle of verification; however if the addition of the new household member results in the total net family assets being over \$5,000, DHCD or its designee will obtain third-party verification of the family's assets at the next annual reexamination of income following the addition of that family member.

### MTW Policy

DHCD or its designee will accept a self-certification of asset value and asset income when the face value of the family assets are up to \$50,000. Assets with a face value greater than \$50,000 will be subject to the verification requirements imposed under HUD regulations. See [Assets](#) for guidance on calculating asset income for MTW households.

### 6.15.1 Assets Disposed of for Less than Fair Market Value

DHCD or its designee will verify the value of disposed assets only if:

- DHCD or its designee 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 \$60,000 certificate of deposit at the last annual reexamination and DHCD or its designee verified this amount. Now the person reports that she has given this \$60,000 to her son. DHCD or its designee has a reasonable estimate of the value of the asset; therefore, reexamination 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 \$55,000. Based upon market conditions, this declaration does not seem realistic. Therefore, DHCD or its designee will verify the value of this asset.

## **6.16 NET INCOME FROM RENTAL PROPERTY**

The family must provide:

- A current executed lease for the property that shows the rental amount or certification from the current tenant and
- 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, DHCD or its designee 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.

## **6.17 RETIREMENT ACCOUNTS**

DHCD or its designee 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, DHCD or its designee 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 six months from the effective date of the examination.

Upon retirement, DHCD or its designee 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, DHCD or its designee 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.

## **6.18 INCOME FROM EXCLUDED SOURCES**

A detailed discussion of excluded income is provided in [CHAPTER 6](#).

DHCD or its designee will not conduct third-party verification of fully-excluded income (e.g. full-time student income, SNAP). Self-certification of fully-excluded income will be the method for verification of fully-excluded income.

## **6.19 ZERO-INCOME STATUS**

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) are not being received by the household. Receipt of SNAP benefits is not considered income for the purposes of zero-income verification, and thus families receiving SNAP with no other income will be required to verify zero-income status as described in this section and will be subject to the zero income recertification frequency. Families with other fully-excluded income and no additional income will not be considered zero-income. For example, families with only excluded full-time student wage income and/or families with only excluded wage income as a result of the Earned Income Disallowance are not considered zero-income families and are not subject to the zero-income reporting and/or verification requirements.

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.

### Zero Income Verification Requirements

DHCD or its designee 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;
- Third-party DTA verification to confirm that no benefits are received;
- Third-party verification from DOR to confirm that no child support/alimony is paid;
- Completion of an Asset Self-Certification
- Third-party verification of taxes from the IRS (when EIV is not available); and

Every six months after the claim of zero income, DHCD or its designee 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.

## **6.20 VERIFICATION OF TEMPORARY, NONRECURRING, OR SPORADIC INCOME**

Individuals reporting only temporary, nonrecurring, or sporadic income (see [Temporary, Nonrecurring, or Sporadic Income](#)) will be subject to zero-income verification policies, except that DHCD or its designee will conduct third-party verification to confirm that the income is temporary, nonrecurring, or sporadic.

## **6.21 VERIFICATION OF STUDENT FINANCIAL ASSISTANCE AND FEES**

For a discussion of student financial assistance included and excluded in annual income, see [Student Financial Assistance](#).

DHCD or its designee will verify the amounts of student financial assistance by requesting student financial award documents or through written third-party verification sent to the entity providing the financial assistance.

DHCD or its designee will verify the amounts of tuition and required fees charged by the school when determining annual income. DHCD or its designee will verify those amounts using the student's bill or account statement (including an online account statement) as provided by the school's bursar's office, or by contacting the bursar's office directly. DHCD or its designee may also visit the school's website as many institutions of higher education provide an itemized list covering tuition and fees that are charged to a majority of their students on their websites.

If DHCD or its designee is unable to obtain third-party written verification of the requested information, DHCD or its designee will pursue other forms of verification following the verification hierarchy.

#### **6.21.1 Verification of Parental Income of Students Subject to Eligibility Restrictions**

If DHCD or its designee is required to determine the income eligibility of a student's parents, DHCD or its designee will request an income declaration and certification of income from the appropriate parent(s) (as determined in [CHAPTER 4](#)). DHCD or its designee will send the request directly to the parents, who will be required to certify to their income under penalty of perjury. Certification is also required if the parent is providing no support to the student. Financial assistance that is provided by persons not living in the unit is part of annual income (except if the student meets the Department of Education's definition of "independent student").

The parents will be required to submit the information directly to DHCD or its designee. The required information must be submitted (postmarked) within 15 business days of the date of the request or within any extended timeframe approved by DHCD or its designee.

DHCD or its designee 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 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.

### **6.22 VERIFYING MANDATORY DEDUCTIONS**

#### **6.22.1 Dependent and Elderly/Disabled Household Deductions**

The dependent and elderly/disabled family deductions require only that DHCD or its designee verify that the family members identified as dependents or elderly/disabled persons meet the statutory definitions. No further verifications are required.

##### **6.22.1.1 Dependent Deduction**

See [Dependent Deduction](#) for a full discussion of this deduction. DHCD or its designee 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

### **6.22.1.2 Elderly/Disabled Family Deduction**

See [Elderly and Near-Elderly Persons, and Elderly Family](#) and [Persons with Disabilities and Disabled Family](#) for a definition of elderly and disabled families and [Elderly or Disabled Family Deduction](#) for a discussion of the deduction. DHCD or its designee must verify that the head, spouse, or co-head is 62 years of age or older or a person with disabilities.

### **6.22.2 Medical Expense Deduction**

Policies related to the calculation of medical expenses are found in [Medical Expenses Deduction](#). The amount of the deduction will be verified following the standard verification procedures described in [General Verification Requirements](#).

#### Amount of Expense

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.

In addition, DHCD or its designee 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. DHCD or its designee 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 [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 DHCD's policy on what counts as a medical expense.

To be eligible for the medical expenses deduction, the costs must not be reimbursed by another source. 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

When anticipated costs are related to ongoing payment of medical bills incurred in past years, DHCD or its designee will verify:

- 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.

### **6.22.3 Disability Assistance Expenses**

Policies related to the calculation of disability assistance expenses are found in [Disability Assistance Expenses Deduction](#). The amount of the deduction will be verified following the standard verification procedures described in the verification requirements set forth in this chapter.

In addition, DHCD or its designee 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, and
- The expense is not reimbursed from another source.

### Amount of Expense

- Attendant Care

DHCD or its designee will accept written third-party documents provided by the family. If family-provided documents are not available, DHCD or its designee will send a third-party verification form directly to the care provider requesting the needed information.

- Auxiliary Apparatus

Expenses for auxiliary apparatus will be verified using 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. See [Disability Assistance Expenses Deduction](#).

### Eligibility for Deduction of Disability Assistance Expense

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. DHCD or its designee will verify that the expense is incurred for a person with disabilities (see [Verification of Disability](#) in this chapter).



### Family Member(s) Permitted to Work

DHCD or its designee must verify that the expenses claimed actually enable a family member, or members, (including the person with disabilities) to work.

DHCD or its designee 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

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.

#### **6.22.4 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 [General Verification Requirements](#) of this chapter. In addition, DHCD or its designee 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, and
- 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. DHCD or its designee will verify that the child being cared for (including foster children) is under the age of 13 (see [Documentation of Age](#) in this chapter).

### Unreimbursed Expense

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

DHCD or its designee 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.

- Information to be Gathered

DHCD or its designee 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, DHCD or its designee will use documentation from a state or local agency that monitors work-related requirements (e.g., welfare or unemployment). In such cases, DHCD or its designee will request documentation from the agency of the member's job seeking efforts to date and require the family to submit to DHCD or its designee any reports provided to the other agency.

In the event documentation is not available, DHCD or its designee will provide the family with a form on which the family member must record job search efforts. DHCD or its designee will review this information at each subsequent reexamination for which this deduction is claimed.

- Furthering Education

DHCD or its designee will request third-party documentation to verify that the person permitted to further his or her education by the child care is attending. The documentation may be provided by the family.

- Gainful Employment

DHCD or its designee 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](#).

DHCD or its designee will verify that the type of child care selected by the family is allowable.

DHCD or its designee 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).

DHCD or its designee 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. The actual costs the family incurs will be evaluated by DHCD or its designee for reasonableness to ensure that the costs are allowable.

If the family presents a justification for costs that exceed typical costs in the area, DHCD or its designee will request additional documentation, as required, to support a determination that the higher cost is appropriate.

# CHAPTER 7 : INCOME AND SUBSIDY DETERMINATIONS

## 7.1 INTRODUCTION

A family's income determines eligibility for assistance and is also used to calculate the family's payment and DHCD's subsidy. DHCD or its designee 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.

## 7.2 ANNUAL INCOME

Annual income includes all amounts, monetary or not, which:

- Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or
- Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and
- Which are not specifically excluded in [24 CFR 5.609](#).

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 and DHCD's MTW Plans establish policies for treating specific types of income and assets. The full texts of the regulatory portions of the regulations can be found using the links below. Income policies related to DHCD's MTW Plan can be found in this plan.

- Annual Income Inclusions (see [24 CFR 5.609\(b\)](#))
- Annual Income Exclusions (see [24 CFR 5.609\(c\)](#))
  - Some common income exclusions in 24 CFR 5.609(c) are outlined below:
    - Reimbursement of medical expenses
    - 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
    - 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)
    - 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

- Adoption assistance payments in excess of \$480 per adopted child
- Refunds or rebates on property taxes paid on the dwelling unit
- 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

### 7.2.1 Household Composition and Income

Income received by all family members must be counted unless specifically excluded by the regulations. 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		
Person	Include	Exclude
Live-in aides	<ul style="list-style-type: none"> <li>• No income is included</li> </ul>	<ul style="list-style-type: none"> <li>• Exclude income from all sources</li> </ul>
Income to and/or on behalf of Foster child or foster adult	<ul style="list-style-type: none"> <li>• Include earned income for foster adults</li> <li>• Include all unearned income for foster children and adults</li> </ul>	<ul style="list-style-type: none"> <li>• Exclude payments received for the care of foster children or foster adults</li> <li>• Exclude earned income for foster children</li> </ul>
Children under 18 years of age	<ul style="list-style-type: none"> <li>• Include all other sources of income, except those specifically excluded by the regulations</li> </ul>	<ul style="list-style-type: none"> <li>• Exclude all earned income</li> </ul>
Full-time students 18 years of age or older (not head, spouse, or co-head)	<b>Non-MTW Policy</b> <ul style="list-style-type: none"> <li>• Include the first \$480 of earned income</li> <li>• Include all other sources of income, except those specifically excluded by the regulations</li> </ul>	<b>Non-MTW Policy</b> <ul style="list-style-type: none"> <li>• Exclude earned income above \$480/year</li> </ul>
	<b>MTW Policy</b> <ul style="list-style-type: none"> <li>• Include all other sources of income, except those specifically excluded under MTW</li> </ul>	<b>MTW Policy</b> <ul style="list-style-type: none"> <li>• Exclude all earned income of full-time students 18 years of age or older (not head, spouse, or co-head)</li> </ul>

#### 7.2.1.1 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. DHCD'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 [Absent Family Members](#).

#### 7.2.1.2 Family Members Permanently Confined for Medical Reasons

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.

#### **7.2.1.3 Caretakers for a Child**

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 [Caretakers for a Child](#).

#### **7.2.2 Anticipating Annual Income**

DHCD or its designees 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”

#### **7.2.3 Basis of Annual Income Projection**

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

- An imminent change in circumstances is expected
- 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)]
- DHCD or its designee believes that past income is the best available indicator of expected future income [24 CFR 5.609(d)]

DHCD and its designees 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)].

DHCD or its designees 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 DHCD or its designee annualized projected income.

When DHCD or its designee cannot readily anticipate income based upon current circumstances (e.g., in the case of seasonal employment, unstable working hours, or suspected fraud), DHCD or its designee 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 DHCD or its designee to show why the historic pattern does not represent the family’s anticipated income.

#### **7.2.4 Known Changes in Income**

If DHCD or its designee 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:  $(\$8/\text{hour} \times 40 \text{ hours} \times 7 \text{ weeks}) + (\$8.25 \times 40 \text{ hours} \times 45 \text{ weeks})$ .

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, DHCD or its designee 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 DHCD's policy on reexaminations does not require interim reexaminations for other types of changes.

### **7.2.5 Projecting Income**

DHCD and its designees will not use EIV quarterly wages to project annual income, unless using historical patterns of income is required to determine projected income.

## **7.3 EARNED INCOME**

### **7.3.1 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)].

For persons who regularly receive bonuses or commissions, DHCD or its designee will verify and then average amounts received for the one year preceding admission or reexamination. In addition the family may provide, and DHCD or its designee 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, DHCD or its designee will count only the amount estimated by the employer.

### **7.3.2 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)].

### **7.3.3 Business Income**

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.

To determine business expenses that may be deducted from gross income, DHCD or its designee will use current applicable Internal Revenue Service (IRS) rules for determining allowable business expenses, unless a topic is addressed by HUD regulations or guidance as described below.

### Business Expansion

HUD regulations do not permit DHCD or its designees to deduct from gross income expenses for business expansion.

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 DHCD or its designees to deduct from gross income the amortization of capital indebtedness.

Capital indebtedness is defined as the principal portion of the payment on a capital asset such as land, buildings, and machinery. This means DHCD and its designees 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 DHCD and its designees 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. 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, DHCD or its designee 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



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.

### **7.3.4 Earned Income Not Counted in Annual Income**

Certain elements of earned income are not counted in the calculation of annual income. The next section includes the types of earned income which are excluded from the calculation of annual income.

#### **7.3.4.1 Temporary, Nonrecurring, or Sporadic Income**

[24 CFR 5.609(c)(9)]

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.

Sporadic income includes temporary payments from the U.S. Census Bureau for employment lasting no longer than 180 days.

Individuals reporting only temporary, nonrecurring, or sporadic income will be treated as zero-income individuals.

#### **7.3.4.2 Seasonal Income Calculation**

People in some occupations regularly work less than 12 months per year, i.e., school employees, agricultural workers, and construction workers. To determine annual income for individuals who have seasonal income, DHCD or its designee will use past actual income received or earned within the last 12 months of the determination date. Therefore, interim reexaminations will not be completed when circumstances change. Documentation may include, but is not limited to UIV, EIV, W-2 forms, and tax returns.

#### **Example**

Mary is a teacher with the ABC school district, earning \$2,000 per month. She works for nine months a year. At the time of her regular reexamination Mary is not working. DHCD runs an EIV income report which has the actual income earned for the prior year. The EIV income report shows income of \$24,053 for the prior year. Mary received \$20,000 for her job as a teacher and collected \$4,053 in unemployment the prior year. DHCD would use \$24,053 as her income for the upcoming certification.

#### **7.3.4.3 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 4](#) on Eligibility and [Foster Children and Foster Adults](#) for the definition of a foster child.)

#### **7.3.4.4 Earned Income of Full-Time Students**

**Non-MTW Policy:** 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)].

**MTW Policy**

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.

To be considered “full-time,” a student must be considered “full-time” by an educational institution with a degree or certificate program.

**7.3.4.5 Earned Income from 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)].

DHCD 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.

DHCD 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.

In calculating the incremental difference, DHCD or its designee 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 DHCD’s interim reporting requirements.

**7.3.4.6 Earned Income from 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.

To qualify as a training program, the program must meet the definition of training program provided above for state and local employment training programs.

**7.3.4.7 Earned Income Tax Credit**

Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 USC 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.

#### **7.3.4.8 Income of a Live-In Aide**

Income received 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 4](#) for a full discussion of live-in aides).

#### **7.3.4.9 Federal Income Exclusions**

Income from some federal programs is specifically excluded from consideration as income. The following are the most common federal income exclusions. For a full list, see [Federally Mandated Exclusions from Income](#).

- Payments to volunteers under the Domestic Volunteer Services Act of 1973 (42 USC 5044(f)(1))
- Awards under the federal work-study program (20 USC 1087uu)
- Payments received from programs funded under Title V of the Older Americans Act of 1965 (42 USC 3056g)
- Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 USC 12637(d))

#### **7.3.4.10 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 DHCD or its designee or property 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 DHCD's or its designee's governing board. No resident may receive more than one such stipend during the same period of time.

### **7.4 EARNED INCOME DISALLOWANCE**

#### **7.4.1 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. On April 7, 2016, under the [PIH Notice on Streamlining Administrative Regulations for Programs Administered by Public Housing Agencies](#), HUD revised the Earned Income Disallowance calculation and time frames. Families that currently benefit from the EID, or who become eligible prior to the effective date of EID changes are eligible to receive the EID benefit for 24 months over a 48-month period, as was in effect prior to the effective date of this provision.

While qualification for the disallowance is the same for all families, calculation of the disallowance will differ depending on when the family member qualified for the EID. Tenants qualifying prior to May 1, 2016 will have the disallowance calculated under the "Original Calculation Method"

described below, which requires a maximum lifetime disallowance period of up to 48 consecutive months. Residents qualifying on or after May 1, 2016 will be subject to the “Revised Calculation Method,” which shortens the lifetime disallowance period to 24 consecutive months.

### 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

Once a family member is determined to have been eligible for the EID, the 24-calendar-month period starts. This calculation applies only to residents who qualified for the EID on or after May 1, 2016.

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.” DHCD 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.

- If the family member discontinues the employment that initially qualified the family for the EID, the 24-calendar-month period continues;
- During the 24-calendar-month period, EID benefits are recalculated based on changes to family member income and employment (no change from current practice);

- During the 24-calendar-month period, DHCD will exclude all increased income resulting from the qualifying employment of the family member;
- The EID benefit is limited to a lifetime 24-month period for the qualifying family member;
- At the end of the 24 calendar months, the EID ends regardless of how many months were “used.”

The table below includes an example of how the revised EID calculation works.

<b>Time Frame</b>	<b>EID Under this Regulation</b>
<ul style="list-style-type: none"> <li>• January 2017 <ul style="list-style-type: none"> <li>• (month one)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Carl begins working and is eligible for EID.</li> <li>• 100% of Carl’s increase in earned income is excluded.</li> </ul>
<ul style="list-style-type: none"> <li>• July 2017 <ul style="list-style-type: none"> <li>• (month seven)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Carl is laid off.</li> <li>• EID “clock” continues to run.</li> </ul>
<ul style="list-style-type: none"> <li>• February 2018 <ul style="list-style-type: none"> <li>• (month 14)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Carl begins working again.</li> </ul>
<ul style="list-style-type: none"> <li>• December 2018 <ul style="list-style-type: none"> <li>• (month 24)</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• This is the final month during which Carl receives his EID benefit.</li> </ul>

#### EID and Applicability to Training Income Exclusions

If a tenant meets the criteria for the mandatory earned income disallowance, DHCD or its designee shall not deny a tenant the disallowance based on the tenant’s receipt of any prior training income exclusion.

#### EID and Applicability to Child Care and Disability Assistance Expense Deductions

The amount deducted for child care and disability assistance expenses necessary to permit employment shall not exceed the amount of employment income that is included in annual income. Therefore, for families entitled to the earned income disallowance, the amounts of the EID exclusions from income shall not be used in determining the cap for child care and disability assistance expense deductions.

### **7.4.2 Earned Income Disallowance for Persons with Disabilities – MTW**

#### **MTW Policy**

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.

#### **7.4.2.1 Eligibility**

**MTW Policy**

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.

**7.4.2.2 Calculation of the Disallowance****MTW Policy**

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.

**EID and Applicability to Child Care and Disability Assistance Expense Deductions**

The amount deducted for child care and disability assistance expenses necessary to permit employment shall not exceed the amount of employment income that is included in annual income. Therefore, for families entitled to the earned income disallowance, the amounts of the EID exclusions from income shall not be used in determining the cap for child care and disability assistance expense deductions.

**7.4.2.3 24-Month Exclusion****MTW Policy**

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 DHCD or its designee.

During the 24-month exclusion period, the full amount (100%) of any earned income attributable to the disabled individual's new employment is excluded. The 24 months are consecutive.

**7.4.2.4 Lifetime Limitation****MTW Policy**

The EID has a 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 24-month eligibility period begins on the first of the month following the date of hire and ends 24 consecutive months later.

#### **7.4.2.5 Required Reporting**

##### **MTW Policy**

During the 24-month eligibility period, the eligible member is required to report the loss of earned income. DHCD or its designee will then schedule and conduct an interim reexamination. DHCD or its designee will also conduct an interim reexamination at the end of the lifetime maximum eligibility period.

#### **7.4.2.6 Earned Income Disallowance Example**

##### **MTW Policy**

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. DHCD or its designee 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, DHCD or its designee would complete an interim, on June 1, 2014 which is 24 consecutive months after the EID employment began.

At the June 1, 2014 reexamination, DHCD or its designee would include in income both her SSI income and her employment income.

## **7.5 ASSETS**

[24 CFR 5.609(b)(3); 24 CFR 5.603(b)]

There is no asset limitation for participation in the HCV program. This section discusses how the income from various types of assets is determined. For most types of assets, DHCD must determine the value of the asset in order to compute income from the asset.

### **7.5.1 Income from Assets**

DHCD and its designees generally will use current circumstances to determine both the value of an asset and the anticipated income from the asset.

Anytime 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 DHCD or its designee to show why the asset income determination does not represent the family's anticipated asset income.

### **7.5.2 Asset Income Exclusion**

#### **MTW Policy**

When family assets are valued at \$50,000 or less, DHCD will exclude the income from these assets.

### **7.5.3 Valuing Assets**

The calculation of asset income sometimes requires DHCD or its designee 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 costs that would be incurred when converting the asset to cash. 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

### **7.5.4 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). (For a discussion of lump-sum payments that represent the delayed start of a periodic payment, most of which are counted as income, see [Periodic Payments](#) and [Payments in Lieu of Earnings](#).)

### **7.5.5 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 DHCD-approved passbook savings rate.

DHCD 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%) to the Savings National Rate in effect on or about the first of the fiscal year. At no time will DHCD's passbook savings rate be less than 0%. DHCD or its designee will apply this policy to calculate imputed asset income.

**Non-MTW Policy:** When the family has net family assets in excess of \$5,000, DHCD or its designee will include in annual income the greater of the:

- Actual income derived from the assets or
- Imputed income. Imputed income from assets is calculated by multiplying the total cash value of all family assets by the passbook savings rate as determined by DHCD.

#### **MTW Policy**

When market/face value of family assets are in excess of \$50,000, DHCD or its designee will calculate asset income by taking the market/face value of assets and multiplying that value by the DHCD-approved passbook savings rate.

### **7.5.6 Determining Actual Anticipated Income from Assets**

**Non-MTW Policy:** It may or may not be necessary for DHCD 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.

### **7.5.7 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.

### **7.5.8 Jointly-Owned Assets**

Annual income includes "amounts derived (during the 12-month period) from assets to which any member of the family has access" [24 CFR 5.609(a)(4)].

If an asset is owned by more than one person and any family member has unrestricted access to the asset, DHCD or its designee 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, DHCD or its designee will prorate the asset according to the percentage of ownership. If no percentage is specified or provided for by state or local law, DHCD or its designee will prorate the asset evenly among all owners.

#### **7.5.9 Assets Disposed Of for Less than Fair Market Value** [24 CFR 5.603(b)]

HUD regulations require DHCD or its designee 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.

##### **7.5.9.1 Minimum Threshold**

DHCD or its designee 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 reexaminations, the family may request an interim reexamination to eliminate consideration of the asset(s).

Assets placed by the family in non-revocable 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.

##### **7.5.9.2 Family Declaration of Assets Disposed of Less than Fair Market Value**

**Non-MTW Policy:** Families must sign a declaration form at initial certification and each regular reexamination 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. DHCD or its designee may verify the value of the assets disposed of if other information available to DHCD or its designee does not appear to agree with the information reported by the family.

##### **MTW Policy**

Families must sign an Asset Self-Certification at initial certification and each regular reexamination. 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. DHCD or its designee will

conduct third-party verification on all assets when the combined family assets are in excess of \$50,000.
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### **7.5.9.3 Assets Disposed of Less than Fair Market Value in 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.

### **7.5.10 Assets in Separation or Divorce**

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.

### **7.5.11 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.

- In determining the value of a checking account, DHCD or its designee will use the average monthly balance for the last three months.
- In determining the value of a savings account, DHCD or its designee will use the current balance.
- In determining the anticipated income from an interest-bearing checking or savings account, DHCD or its designee will multiply the value of the account by the current rate of interest paid on the account.

### **7.5.12 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.

In determining the market value of an investment account, DHCD or its designee 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), DHCD or its designee will calculate asset income based on the earnings for the most recent reporting period.

### 7.5.13 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.

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
- 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
- Equity in owner-occupied cooperatives and manufactured homes in which the family lives
- 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 [Business Income](#)
- Interests in Indian Trust lands
- Real property and capital assets that are part of an active business or farming operation

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.

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.

### 7.5.14 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. 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 (e.g. in the case of a special needs (Supplemental Needs) trust), as appropriate [24 CFR 5.603(b)] (see [Periodic Payments](#) and [Lump-Sum Payments for the Delayed Start of a Periodic Payment](#) discussed in this chapter).

#### **7.5.15 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, DHCD or its designee must know whether the money is accessible before retirement.

While a family member is employed, only the amount the family member can withdraw without retiring or terminating employment is counted as an asset.

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, except to the extent that it represents funds invested in the account by the family member. (For more on periodic payments, [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.

#### **7.5.16 Personal Property**

Personal property held as an investment, such as gems, jewelry, coin collections, antique cars, etc., is considered an asset.

In determining the value of personal property held as an investment, DHCD or its designee will use the family's estimate of the value. However, DHCD or its designee 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)]. 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.

#### **7.5.17 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.

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.

### **7.6 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.

#### **7.6.1 Periodic Payments Included in Annual Income**

Periodic payments are 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)].

#### **7.6.2 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.

When a delayed-start payment is received and reported during the period in which DHCD or its designee is processing a regular reexamination, DHCD or its designee will adjust the family share and subsidy amount 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 DHCD or its designee.

#### **7.6.3 Treatment of Overpayment Deductions from Social Security Benefits**

DHCD or its designee must make a special calculation of annual income when the Social Security Administration (SSA) overpays an 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, DHCD

or its designee must use the reduced benefit amount after deducting only the amount of the overpayment withholding from the gross benefit amount.

#### **7.6.4 Periodic Payments Excluded from Annual Income**

- DHCD or its designee 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. 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.
- 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.
- Amounts received under the Low-Income Home Energy Assistance Program.
- Amounts received under the Child Care and Development Block Grant Act of 1990.
- Earned Income Tax Credit (EITC) refund payments. 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.
- Lump-sums or prospective monthly amounts received as deferred disability benefits from the Department of Veterans Affairs (VA).

#### **7.7 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 [7.6 Periodic Payments](#)).

#### **7.8 WELFARE ASSISTANCE**

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)].

##### **7.8.1 Sanctions Resulting in the Reduction of Welfare Benefits**

DHCD or its designee must make a special calculation of annual income when the welfare agency imposes certain sanctions on certain families. The requirements are summarized below (see [24](#)

[CFR 5.615](#) for the full text of the regulation). This rule applies only if a family was receiving HCV assistance at the time the sanction was imposed.

### **7.8.2 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)].

### **7.8.3 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, DHCD or its designee must include in annual income “imputed” welfare income. DHCD or its designee must request that the welfare agency inform DHCD or its designee 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)].

### **7.8.4 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)].

## **7.9 ALIMONY AND CHILD SUPPORT**

DHCD or its designee must count alimony or child support amounts awarded as part of a divorce or separation agreement. To determine income from child support and alimony, DHCD or its designee will count only amounts that are actually being paid to the family.

## **7.10 REGULAR CONTRIBUTIONS OR GIFTS**

DHCD or its designee 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)].

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), DHCD or its designee will include an average amount based upon past history.

## **7.11 STUDENT FINANCIAL ASSISTANCE**

[24 CFR 5.609(b)(9)]

DHCD or its designee will include amounts of financial assistance an individual receives in excess of tuition and other required fees and charges when determining annual income. DHCD or its designee will verify tuition and fees according to its verification policies at [Verification of Student Financial Assistance and Fees](#).

The Department of Education defines tuition as the amount of money charged to students for instructional services which may be charged per term, per course, or per credit. These values represent what a typical student would be charged and may not be the same for all students at an institution.

If tuition is charged on a per-credit-hour basis, the average full-time credit hour load for an entire academic year is used to estimate average tuition.

Required fees include all fixed sum charges that are required of a large proportion of all students. The student who does not pay the charges is an exception. Examples of required fees include, but are not limited to, writing and science lab fees and fees specific to the student's major or program (i.e., nursing program).

Expenses related to attending an institution of higher education must not be included as tuition. Examples of these expenses include, but are not limited to, room and board, books, supplies, meal plans, transportation and parking, student health insurance plans, and other non-fixed sum charges.

Example:

Kim, a 22 year old, married, participant in an HCV program is enrolled in a nursing program at her local community college. She is receiving \$7,000 in financial assistance to cover the full cost of tuition and fees of \$6,000 for the academic year. The \$6,000 includes:

- \$2,500 in tuition per semester (total \$5,000) *plus*
- \$500 in individual fees (total \$1,000) – athletic fee, writing laboratory fee, student center fee, science laboratory fee, technology fee – charged to every student per semester.

In this example, the excess \$1,000 (\$7,000 - \$6,000) Kim received in financial assistance will be included in her annual income in accordance with 24 CFR 5.609(b)(9).

### **7.11.1 Student Financial Assistance Included in Annual Income**

[24 CFR 5.609(b)(9)]

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 in [20 USC § 1001](#) and [1002](#).
- 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, and other required fees received: (1) under the 1965 HEA, (2) from a private source, or (3) from an institution of higher education, as defined in [20 USC § 1001](#) and [1002](#), must be included in annual income.

To determine annual income in accordance with the above requirements, DHCD or its designee will use the definitions of dependent child, institution of higher education, and parents in [CHAPTER 4](#), along with the following definitions:

- 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.

#### **7.11.2 Student Financial Assistance Excluded from Annual Income**

[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 4](#)
- Students who are receiving financial assistance through a governmental program not authorized under the 1965 HEA

### **7.12 ADJUSTED INCOME**

HUD regulations require DHCD and its designees to deduct from annual income certain mandatory deductions for which a family qualifies. The resulting amount is the family's adjusted income.

#### **7.12.1.1 Anticipating Expenses**

Generally, DHCD or its designee will use current circumstances to anticipate expenses and determine adjusted income. 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), DHCD or its designee will estimate costs based on historic data and known future costs.

### **7.12.2 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)].

### **7.12.3 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 (defined at [24 CFR 5.403](#)).

### **7.12.4 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 3% 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.

#### **MTW Policy**

Unreimbursed medical expenses for eligible households will be calculated using past paid, unreimbursed expenses in addition to prospective medical insurance premiums. Over-the-counter medications must be accompanied by physician's prescriptions and paid receipts.

Unreimbursed medical expenses may be deducted to the extent that, in combination with any disability assistance expenses, they exceed 3% of gross annual income.

#### **Definition of Medical Expenses**

**Non-MTW Policy:** Medical expenses include medical insurance premiums, and other covered medical expenses that are anticipated during the period for which annual income is computed, and that are not covered by insurance [24 CFR 5.603(b)]. The most current IRS Publication 502, Medical and Dental Expenses, will be used to determine the costs that qualify as medical expenses. Over-the-counter products will not be eligible for deductions as medical expenses unless they are accompanied by a doctor's prescription.

#### **Summary of Allowable Medical Expenses from IRS Publication 502**

<ul style="list-style-type: none"> <li>• Services of medical professionals</li> <li>• Surgery and medical procedures that are necessary, legal, non-cosmetic</li> <li>• Services of medical facilities</li> <li>• Hospitalization, long-term care, and in-home nursing services</li> <li>• Prescription medicines and insulin, but not nonprescription medicines even if recommended by a doctor</li> <li>• Improvements to housing directly related to medical needs (e.g., ramps for a wheel chair, handrails)</li> <li>• Substance abuse treatment programs</li> <li>• Psychiatric treatment</li> </ul>	<ul style="list-style-type: none"> <li>• Ambulance services and some costs of transportation related to medical expenses</li> <li>• The cost and care of necessary equipment related to a medical condition (e.g., eyeglasses/lenses, hearing aids, crutches, and artificial teeth)</li> <li>• Cost and continuing care of necessary service animals</li> <li>• Medical insurance premiums or the cost of a health maintenance organization (HMO)</li> <li>• Amounts paid for the prevention and alleviation of dental disease</li> </ul>
<p>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.</p>	

### Families That Qualify for Both Medical and Disability Assistance Expenses

When expenses anticipated by a family could be defined as either medical or disability assistance expenses, DHCD or its designee will consider them medical expenses unless it is clear that the expenses are incurred exclusively to enable a person with disabilities to work.

#### **7.12.5 Disability Assistance Expenses Deduction**

[24 CFR 5.603(b); 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 3% 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.

The family must identify the family members enabled to work as a result of the disability assistance expenses. In evaluating the family’s request, DHCD or its designee 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 DHCD or its designee 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

- Eligible Auxiliary Apparatus

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.

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, necessary grooming, and other continuing necessary 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.

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, DHCD or its designee 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.

DHCD or its designee 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 DHCD or its designee will consider, the family's justification for costs that exceed typical costs in the area.

### **7.12.6 Child Care Expense Deduction**

[24 CFR 5.603(b)]

Child care expenses are “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.

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. 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.

#### **7.12.6.1 Qualifying for the Deduction**

- Determining Who Is Enabled to Pursue an Eligible Activity

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, DHCD or its designee 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

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 DHCD or its designee.

- **Furthering Education**

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**

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.

#### **7.12.6.2 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.

DHCD or its designee 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.

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, DHCD or its designee 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.

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.

#### **7.12.6.3 Eligible Child Care Expenses**

The type of care to be provided is determined by the assisted family. DHCD or its designee 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.

- Allowable Child Care Activities

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, DHCD or its designee 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

Reasonable child care expenses for a qualified child (see subsection above) may be considered as a part of a participant's disability assistance 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 disability. 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.

Only reasonable child care costs can be deducted. If DHCD or its designee 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 DHCD or its designee, 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 DHCD or its designee that the higher cost is appropriate, DHCD or its designee must document the file accordingly.



## 7.13 CALCULATING FAMILY SHARE AND SUBSIDY AMOUNTS

### 7.13.1 TTP Formula

[24 CFR 5.628]

Total tenant payment (TTP) is the highest of the following amounts, rounded to the nearest dollar:

- 30% of the family's monthly adjusted income (adjusted income is defined in Part II)
- 10% 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 of \$50, established by DHCD

DHCD or its designee has authority to suspend and exempt families from minimum rent when a financial hardship exists, as defined in [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: Welfare rent does not apply in this locality [24 CFR 5.628].

Minimum Rent: The minimum rent for this locality is \$50 [24 CFR 5.630].

#### 7.13.1.1 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 DHCD's applicable payment standard: (1) the family will pay more than the TTP, and (2) at initial occupancy DHCD or its designee may not approve the tenancy if it would require the family share to exceed 40% of the family's monthly adjusted income. (See [Applying Payment Standards](#) later in this chapter.)

#### 7.13.1.2 DHCD Subsidy

[24 CFR 982.505(b)]

DHCD or its designee 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 [Applying Payment Standards](#) later in this chapter.)

## 7.14 FINANCIAL HARDSHIPS AFFECTING MINIMUM RENT

[24 CFR 5.630]

Because DHCD has established a minimum rent greater than zero, DHCD or its designee will 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 DHCD or its designee determines that a hardship exists, the family share is the highest of the remaining components of the family's calculated TTP.

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. 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 for non-payment of rent or tenant-paid utilities because it is unable to pay the minimum rent.
- Family income has decreased because of changed family circumstances, including the loss of employment.
- A death has occurred in the family. 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).

#### 7.14.1 Determination of Hardship

When a family requests a financial hardship exemption, DHCD or its designee must suspend the minimum rent requirement beginning the first of the month following the family's request.

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.

DHCD or its designee then determines whether the financial hardship exists and whether the hardship is temporary or long-term. Temporary hardship is defined 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.

DHCD or its designee will make the determination of hardship within 30 calendar 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.

<b>Example: Impact of Minimum Rent Exemption</b>			
Family Share – No Hardship		Family Share – With Hardship	
\$0	30% of monthly adjusted income	\$0	30% of monthly adjusted income

\$15	10% of monthly gross income	\$15	10% of monthly gross income
N/A	Welfare rent	N/A	Welfare rent
\$50	Minimum rent	\$50	Minimum rent
Minimum rent applies. TTP = \$50		Hardship exemption granted. TTP = \$15	

- No Financial Hardship

If DHCD or its designee determines there is no financial hardship, DHCD or its designee will reinstate the minimum rent and require the family to repay the amounts suspended. DHCD or its designee will require the family to repay the suspended amount within 30 calendar days of the notice that a hardship exemption has not been granted.

- Temporary Hardship

If DHCD or its designee determines that a qualifying financial hardship is temporary, DHCD or its designee 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 DHCD or its designee the amounts suspended, unless DHCD or its designee determines that circumstances have changed and the hardship is now a long-term hardship. Otherwise, DHCD or its designee will enter into a repayment agreement in accordance with the procedures found in [Repayment Agreement](#) of this plan.

- Long-Term Hardship

If DHCD or its designee determines that the financial hardship is long-term, DHCD or its designee 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.

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 Financial Hardships and the corresponding circumstances that make a family no longer eligible for a financial hardship.

<b>HUD-Defined Financial Hardship</b>	<b>Financial Hardship Ends</b>
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.

## 7.15 APPLYING PAYMENT STANDARDS

[24 CFR 982.505]

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 a 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, DHCD or its designee must use the appropriate payment standard for the exception area.

DHCD or its designee 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, DHCD or its designee will recalculate the HAP using the lower of the initial payment standard or the gross rent for the unit. The family and landlord will be informed of the change.

Example:

A six-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.

### 7.15.1 Changes in Payment Standards

See [Payment Standards](#) for DHCD's policy for applying changes in payment standards when the published FMRs cause the current payment standard amounts to be outside the basic range.

### **MTW Policy**

Except as described below, DHCD or its designee will apply the current payment standard in effect on the effective date of the regular reexamination regardless of fluctuations, whether decreases or increases, 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.

However, where a household on a biennial or triennial cycle has an interim increase in contract rent, the payment standard will be updated to the current payment standard at the time of that interim reexam, unless the current standard reflects a decrease from the payment standard applied at the previous regular reexam, in which case the payment standard from the previous regular reexamination will be applied.

In the event that a new payment standard is applied at an interim contract rent reexamination, that payment standard will continue to be used until the next regular reexam (or another intervening contract rent increase, e.g. for a family on a triennial cycle that receives another contract rent increase request).

### **7.15.2 Decreases in Payment Standard**

**Non-MTW Policy:** 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.

DHCD or its designee will determine the payment standard for the family as follows:

Step 1: At the first regular reexamination following the decrease in the payment standard, DHCD or its designee 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: DHCD or its designee 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 DHCD or its designee at the first regular reexamination following the decrease in the payment standard will be the higher of these two payment standards. DHCD or its designee 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 DHCD or its designee 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.

### **7.15.3 Increases in Payment Standard**

**Non-MTW Policy:** 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.

#### **7.15.4 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 DHCD'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.

#### **7.15.5 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.

#### **7.15.6 Reasonable Accommodation**

If a family requires a higher payment standard as a reasonable accommodation for a family member who is a person with disabilities, DHCD or its designee is allowed to establish a higher payment standard for the family within the basic range. See MTW and non-MTW policies at [Payment Standard Exceptions & Reasonable Accommodations](#).

### **7.16 APPLYING UTILITY ALLOWANCES**

[24 CFR 982.517(d)]

DHCD or its designee 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 DHCD subsidy standards.

- For example, if a family has a 2BR voucher and leases a 3BR unit, DHCD or its designee will apply the utility allowance for the 2BR unit.

For project-based units, DHCD or its designee will apply the utility allowance for the unit size.

See [CHAPTER 5](#) for information on DHCD's subsidy standards. For policies on establishing and updating utility allowances, see [Utility Allowances](#).

#### **7.16.1 Utility Reimbursement**

[24 CFR 982.514(b)]

When the subsidy for a family exceeds the rent to owner, the family is due a utility reimbursement.

**Non-MTW Policy:** DHCD or its designee will make utility reimbursements to the family. However, DHCD or its designee 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.

**MTW Policy**

DHCD or its designee will make utility reimbursements to the family when and if such reimbursements are more than \$25/month. However, DHCD or its designee 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. DHCD or its designee will not make any utility reimbursement to a family if such reimbursement is \$25 or less per month.

### 7.16.2 Reasonable Accommodation

DHCD or its designee will approve a utility allowance amount higher than shown on DHCD'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, DHCD or its designee will approve an allowance for air conditioning, even if DHCD or its designee 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, DHCD or its designee will not approve a reasonable accommodation for an additional utility allowance for heat.

The family must request an additional allowance and provide DHCD or its designee with documentation of the need for the reasonable accommodation. DHCD or its designee will determine reasonable accommodations for other utilities on a case-by-case basis. See policies on [Reasonable Accommodation – Utility Allowances](#) and Policies Related to Persons with Disabilities.

### 7.16.3 Applying Revised Utility Allowances

DHCD may implement revised utility allowance schedules on a specific date and time for all families provided the family has been given at least 60 days' notice of the change.

**Non-MTW Policy:** At regular and interim reexaminations, DHCD or its designee will use the DHCD utility allowance schedule in effect as of the effective date of the transaction.

**MTW Policy**

At regular reexamination, DHCD or its designee will use the utility allowance schedule in effect as of the effective date of the transaction.

At interim reexamination, DHCD or its designee will use the utility allowance which was applied at the last regular reexamination.
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### **7.17 PRORATED ASSISTANCE FOR MIXED FAMILIES**

[24 CFR 5.520]

A *mixed family* is one that includes at least one U.S. citizen or eligible noncitizen and any number of ineligible family members. DHCD or its designee must prorate the assistance provided to a mixed family. DHCD or its designee 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.



## **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 DHCD to establish additional requirements. The use of the term "HQS" in this plan refers to the combination of both HUD and DHCD-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.

### **8.2 REASONABLE MODIFICATIONS & 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]

DHCD or its designee conducts the following types of inspections as needed. Each type of inspection is discussed in the paragraphs that follow.

- **Initial Inspections.** DHCD or its designee 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. DHCD or its designee will inspect the unit within 15 business days of receiving the RFTA.
- **Annual and Biennial Inspections.** HUD requires DHCD or its designee to inspect each unit under lease at least biennially to confirm that the unit still meets HQS. The inspection may be conducted in conjunction with the family's regular reexamination but also may be conducted separately.
- **Special Inspections.** A special inspection may be requested by the owner, the family, or DHCD or its designee as a result of problems identified with a unit between annual inspections.
- **Audit Inspections.** HUD requires that a sample of units be reinspected by a supervisor or other qualified individual to ensure that HQS are being enforced correctly and uniformly by all inspectors.

### 8.3.1 Biennial HQS Inspections

DHCD or its designee will inspect units on a biennial basis except under the following circumstances:

- Units constructed pre-1978, where a letter of lead compliance is required and children under six years of age reside, will be inspected annually.
- Based on DHCD's or its designee's review of property conditions, DHCD or its designee may switch to an annual inspection frequency.
- In buildings inspected under REAC, DHCD or its designee will use the score of the REAC inspection to determine whether to inspect the units in the building annually or biennially. The scoring and inspection frequency are as follows:

<b>Score</b>	<b>Frequency of Inspection</b>
80-100	Every two years
79 and below	Every year

DHCD or its designee 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 or its designee 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 or its designee 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.

Tenants cannot opt for their unit to remain on an annual inspection schedule; however, either the tenant or the owner 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.

An owner may request to remain on an annual inspection schedule by making a written request to DHCD or its designee. DHCD or its designee will review the request and make a determination as to the required inspection frequency.

#### **8.4 NOTICE AND SCHEDULING OF INSPECTIONS**

[24 CFR 982.551(d)]

The family must allow DHCD or its designee to inspect the unit at reasonable times with reasonable notice. 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, DHCD or its designee will give as much notice as possible, given the nature of the emergency.

#### **8.5 OWNER AND FAMILY INSPECTION ATTENDANCE**

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**

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.

DHCD or its designee and tenant may agree on a new inspection date that generally should take place within five business days of the originally-scheduled date. DHCD or its designee may schedule an inspection more than five business days after the original date for good cause.

DHCD or its designee 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**

When the proper advance notice of the inspection has been provided by DHCD or its designee 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. DHCD or its designee 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**

DHCD or its designee 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 OWNER CERTIFICATION OF CERTAIN HQS REQUIREMENTS**

DHCD or its designee may accept a written owner certification for certain HQS requirements where inspection may present a safety risk to the inspector or result in potentially destructive or damaging testing. DHCD will establish and maintain a list of HQS items where owner certification of compliance will be accepted, including the following:

- Installation of anti-tipping devices on stoves/range
- Certification of safe and proper operation of GFCI circuits and outlets. DHCD or its designee will convey a failed HQS inspection rating where an owner does not certify safe and proper operation of GFCI circuits and outlets. Inspection staff will not test GFCI or other outlets or circuits.

## **8.10 INSPECTOR SAFETY**

Conditions during HQS inspections that present a danger to inspection staff may result in a halted inspection until the dangerous condition is abated/corrected. Staff may elect to halt an inspection for any perceived safety reason and may also request additional staff be present to complete the inspection. Once the dangerous condition has been abated/corrected, inspectors/staff will continue and complete the inspection. Examples of dangerous conditions include but are not limited to:

- Visible friable asbestos present.
- Infestations of fleas, bees, bed bugs, rats, or other health threats.
- Inspectors do not test for mold, lead, radon, or other contaminants (professional testing may be required; tenants may be required to submit test results for HQS citation).
- Presence of animals/pets that pose a threat or allergen to staff (staff may elect not to enter unless the pet is removed or securely restrained).
- Walking fire escapes, porches, floors, or stairways that appear unsound (certification of structural stability or Inspection Certification may be required).
- Flooded basement or sewerage backup.
- Entering crawl spaces or climbing unsafe pull-down attic stairs (these instances should be noted by staff).

## **8.11 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.

### **8.11.1 Utilities Not On During Initial Unit Inspection**

Frequently, at initial inspection the unit is vacant and the utilities are turned off. DHCD or its designee may require the owner to have utilities turned on during vacant unit inspections. In the

event that DHCD or its designee 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.

#### **8.11.2 Appliances Not in the Unit**

If the refrigerator and/or stove are owner-supplied and they are not in the unit during the inspection, DHCD or its designee will fail the unit. The lease effective date cannot be established until all owner-supplied appliances are in the unit.

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 DHCD or its designee.

#### **8.11.3 Tenant-Supplied Appliances**

In the case of missing or out-of-order 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 five business days of notification may result in tenant termination from the program. 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.

#### **8.11.4 Subject to Approval**

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 DHCD's designee disagrees with the decision rendered by the appropriate qualified professional or believes that the condition requires further evaluation, the designee 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.
- 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.

## **8.12 REGULAR AUDIT INSPECTIONS**

Three percent (3%) of all units under lease are audited each year. DHCD's Inspection Manager conducts audits and also requires each designee to perform internal audits of units each quarter. DHCD includes a designee's internal audit inspections as counting toward its 3% annual audit goal. The results are used to determine which designees need additional training, and when necessary, which designees 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 designee based on the previous year's performance. Designees' unit audits must be conducted in the same manner and format as a DHCD unit audit.

To select units for the audit inspection, each designee 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 two years so

as not to create an imposition to the tenant. After DHCD has made selections, the designee may select from the remaining list for in-house audits.

All audit results by both DHCD and designees must be entered regularly into the DHCD's designated software. All violations must show a designation for either "Staff Oversight" or "Maintenance Fail." Designees 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.

All designees 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 inspector's 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 designee 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 seven days prior to the completion of the quarter.

#### Sanctions Related To Audit Inspections

HUD reserves the right to impose administrative fee sanctions on any designee which receives greater than 25% audit failure rate on HUD audits. If HUD sanctions any DHCD designee, DHCD will withhold the designated amount of money from the designee, and will use the money to satisfy the HUD sanction. DHCD also reserves the right to impose administrative fee sanctions on any designee 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 designee being considered for DHCD-imposed sanctions, and will provide a prescribed period of time in which the designee can demonstrate improved performance.

### **8.13 HQS TRAINING**

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 designee's 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.

It is DHCD's designee's responsibility to train inspection staff and it is the responsibility of each designee to ensure that all inspectors complete the required HUD Visual Assessment Training for Lead-Based Paint.

## **8.14 INSPECTION RESULTS**

Each unit must pass the regular inspection. 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 designee, DHCD or HUD.

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.

When 24-hour violations are identified, upon DHCD approval, the designee may be authorized to terminate the HAP contract immediately, with proper notice.

### **8.14.1 24-Hour HQS Violations**

Violations that present an immediate threat to the health and life safety of the family must be corrected within 24 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.

DHCD or its designee must contact the owner within 24 hours of citing the violation. If the contact is via phone, the phone call must be followed-up in writing. If DHCD or its designee is unable to contact the owner or agent by phone, email, fax, or in person, the written notice must be sent by certified mail. Owners are required to provide emergency contact information so DHCD or its designee 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 DHCD or its designee 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.



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 reinspection. 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 reinspection. If the unit is in compliance upon reinspection and the owner can document an earlier repair completion date, the HAP payment may resume as of that actual compliance date.

#### **8.14.2 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 business days from the date of the failed HQS, DHCD or its designee will provide the owner with written notification (which may be via email) outlining the corrective action to be taken and possible penalties for failure to comply.

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.

DHCD or its designee will reinspect the unit on, or immediately after, the required completion date. An on-site reinspection 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. Depending upon the inspector's assessment of the HQS deficiency, DHCD or its designee may elect to suspend rent or grant an extension.

#### **8.14.3 New HQS Violations**

New HQS violations are violations that are cited subsequent to the initial, failed regular, 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 DHCD or its designee communicate to the owner that any new violations noted at each reinspection must be cited. DHCD or its designee must make every effort to ensure that initial inspections are thorough, to minimize the possibility of finding new HQS violations upon reinspection.

#### **8.14.4 Tenant-Caused HQS Violations**

[24 CFR 982.404(b)]

An applicable court, not DHCD or its designee, makes the final determination of tenant responsibility for damages and perimeters of normal wear and tear. DHCD or its designee 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 Massachusetts law or from any security deposit rather than absorb rent loss and possible eviction costs. DHCD or its

designees 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 DHCD or its designees, including any extensions; DHCD or its designee will terminate the family's assistance in accord with DHCD'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. 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.

#### **8.14.5 Other Deficiencies or Comment Items**

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 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 they will not turn into violations at a later date.

#### **8.15 HQS ENFORCEMENT**

This section addresses violations the owner is responsible for correcting. Treatment of tenant caused HQS violations is addressed in [Tenant-Caused HQS Violations](#). 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.

#### **8.15.1 New Violations Cited During a Reinspection**

A violation that is cited for the first time at a reinspection (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 reinspection date without impacting the progress of the initial fail.

##### **8.15.1.1 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.

DHCD or its designee will notify the owner, in writing, that:

- The HAP payment will stop including the effective date. DHCD or its designees will provide the owner with a 30-day written notice of abatement. This requirement does not apply to abatements due to 24-hour violations;
- 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.

Whenever the HAP payment is suspended, the family must be notified in writing. The notice to the family will state that:

1. The HAP payment has been suspended.
2. The family is advised to seek legal counsel on paying its rent share during the period of suspension and that the family must continue to pay rent if it chooses not to consult an attorney.
3. If the owner continues to neglect the repairs, DHCD or its designee may terminate the HAP Contract.

##### **8.15.1.2 Work Plans and/or a “No-Penalty” Extension of Time to Complete Repairs**

“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 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, DHCD or its designee 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”:

- DHCD or its designee determines the acceptability of the timeframes of the plan.
- Temporary repairs to stabilize the condition can be required prior to acceptance of the plan.
- DHCD or its designee may reject a plan when the time frame is excessive. Other more available contractors may be needed.
- At initial inspection, DHCD or its designee may halt the inspection and decline to lease the unit without offering a work plan option.
- At regular inspection, DHCD or its designee may elect to terminate the contract if it is determined that occupancy would present a risk to the tenant during the work.

Other repairs may be within the owner’s ability to complete without reliance on a contractor. Instead of an accepted proposal, DHCD or its designee 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.

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, DHCD or its designee 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.

#### **8.15.1.3 “With Penalty” Extension of Time to Complete Repairs**

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 reinspection 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, DHCD or its designee 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.

When suppression/abatement of HAP payment occurs, the family should be advised:

- To seek competent legal counsel with respect to appropriate rent withholding procedures under Massachusetts state law. DHCD and its designees must not attempt to provide legal advice to tenants.
- That DHCD or its designee may have to terminate the HAP contract and that if the HAP Contract is terminated, DHCD or its designees will issue the family a new subsidy and provide the family with access to a list of available units known to DHCD or its designee 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 DHCD or its designee.

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. 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 the on the date of the failed reinspection, and continuing until the repairs are completed.
- Family is advised to seek legal counsel relative to their rent share.
- On April 15, unit is reinspected 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 6<sup>th</sup> up until but not including April 15<sup>th</sup>).
- 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, DHCD or its designee may terminate the HAP contract when it becomes apparent that the owner will not cooperate in making the necessary unit corrections. DHCD or its designee should not allow more than 10 days for a 24-hour HQS violations.

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.

DHCD and its designees must ensure that any schedule it develops is fair and that a consistent process is followed. Each designee will outline its method for making these determinations. This method must be approved by DHCD and incorporated into the designee's procedures.

DHCD and each designee's Section 8 Program Director must ensure that abatement decisions are being thoughtfully, reasonably, and consistently implemented. This is consistent with the rental owner's expectations under Massachusetts's law.

#### **8.15.1.4 Terminate the HAP Contract**

DHCD or its designees will not terminate the HAP contract until the family finds another unit or until a reasonable time for finding another unit has elapsed.

HAP termination proceedings will begin 10 days after the failed reinspection for 24-hour HQS violations. With DHCD approval, the designee may terminate the HAP contract immediately for 24-hour HQS violations.

For other HQS violations, HAP termination begins 60 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. DHCD or its designee must send written notice to both the family and the owner advising them of the date of the contract termination.

When a decision is made to terminate a HAP contract, the family should be issued a voucher. DHCD or its designees will notify the family 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 [Voucher Term](#) or an approved extension of the termination effective date. If the family remains in place and the voucher 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 DHCD or its designee.

The effective date of the subsidy voucher should coincide with the effective date of the HAP Contract termination, although the subsidy voucher may be issued prior to the termination date.

If the HAP contract is terminated, DHCD or its designee 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.

If the family pursues a court action against the owner instead of moving, it must notify DHCD or its designee. If the family chooses not to move because of a pending court action, and subsequently loses in court, the designee 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).

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. DHCD or its designee should send written request for such referral to DHCD's Bureau of Rental Assistance. The referral should include a brief summary of the case.

#### **8.15.2 HQS – Unit Remains in Extended Non-Compliance**

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.

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.

## **8.16 LEAD-BASED PAINT COMPLIANCE AND REPORTING**

DHCD requirements for notification, evaluation, and reduction of lead-based paint hazards as well as requirements for DHCD and owner responses to elevated blood lead levels can be found in Requirements for Notification, Evaluation, and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance; Response to Elevated Blood Lead Levels (see [FR-5816-P-01](#); [HUD and DHCD Inspection Training Guide](#)).

If DHCD or its designee 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 six years of age, living in an HCV-assisted unit has been identified as having an environmental intervention blood-lead level, DHCD or its designee will procure a risk assessment of the dwelling unit. The risk assessment will be completed in accordance with program requirements, and the result of the risk assessment will be provided to the owner of the dwelling unit. In cases where the applicable public health department has already completed a risk assessment, this information will be provided to the owner and the risk assessment will be deemed completed. DHCD or its designee will maintain a copy of the public health department risk assessment in the client file.

Within 30 days after receiving the risk assessment report from DHCD or its designee, or the evaluation from the public health department, the owner is required to complete the abatement activities in accordance with the lead-based paint regulations. Following the 30-day time frame, after notification from the owner that the work has been completed, DHCD or its designee will send an outside agency to conduct a clearance test to ensure abatement of the lead-based paint hazards. If the owner does not complete the abatement activities as required, the dwelling unit is in violation of HQS and DHCD or its designee will take action in accordance with regulatory requirements.

Prior to conducting the initial HQS Inspection, if a child less than six years of age will be an occupant of the unit and the property was built prior to January 1, 1978, DHCD or its designee must collect and review the required lead compliance documents prior to scheduling an HQS inspection. DHCD or its designee 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, DHCD or its designee 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 Massachusetts Dept. of Public Health-Childhood Lead Poisoning Prevention Program for follow-up action.



## **CHAPTER 9 : RENT REASONABLENESS AND RENT CHANGES**

### **Overview**

[24 CFR 982.507]

DHCD and its designees are required 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. No HAP contract can be approved until DHCD or its designee 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.

A reasonable rent is defined as one that does not exceed the rent charged for comparable, unassisted units in the same market area. Owners also may not charge more for assisted units than for comparable units on the premises.

### **9.1 PHA-OWNED UNITS & REASONABLE RENT**

[24 CFR 982.352(b)]

In cases where an HCV family is receiving assistance in a unit owned by DHCD or its designee ("PHA-owned unit"), DHCD or its designee 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 public housing authority ("PHA") entity (here, DHCD or its designee) 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).

### **9.2 WHEN RENT REASONABLENESS DETERMINATIONS ARE REQUIRED**

DHCD or its designee will complete reasonable rent determinations:

- When a unit is placed under HAP contract for the first time;
- If there is a 10% decrease in the Fair Market Rent that goes into effect at least 60 days before the contract anniversary date;
- Before any increase in rent to owner; and
- At any other time DHCD or its designee or HUD deems it necessary.

At initial occupancy, DHCD or its designee may not approve a lease until the DHCD or the designee determines that the initial rent to owner is a reasonable rent. 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. DHCD or its designee will determine whether the requested increase is reasonable. The owner will be notified of the determination in writing.

For rent increase requests, DHCD or its designee may request owners to provide information about the rents charged for other units on the premises, if the premises include more than four

units. In evaluating the proposed rents in comparison to other units on the premises, DHCD or its designee will consider unit size and length of tenancy in the other units.

All rents adjustments that are approved will be effective the first of the month following 60 days after DHCD's or its designee'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, DHCD or its designee must ensure that the owner reduces the requested rent to a reasonable rent. DHCD or its designee will terminate the existing contract for any unit where the landlord does not agree to a reasonable rent.

### **9.3 RENT REASONABLENESS METHODOLOGY**

DHCD and its designees will take into consideration the factors listed below when determining rent comparability. DHCD or its designee 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

The rent for a unit proposed for HCV assistance will be compared to the rent charged for comparable units in the same market area. DHCD's designee will notify the owner of the rent that DHCD or its designee will approve based upon its analysis of comparable units.

#### **9.3.1 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.

#### **9.3.2 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 four units.

By accepting the HAP 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 DHCD or its designee information regarding rents charged for other units on the premises.

### **9.3.2.1 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. DHCD or its designee 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. DHCD or its designee 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 paid by unsubsidized tenants-at-will (with no written lease), DHCD or its designee 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.

## **9.4 DOCUMENTING RENT REASONABLENESS**

### Documentation of Methods

DHCD and its designees will maintain a written description of the methods and forms for valuation of comparables, including justification for selection of a particular valuation.

### Requirement and Retention of RR Documentation

DHCD or its designee will 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.

## **9.5 CONTRACT UNIT WITH OTHER SUBSIDIES**

In accordance with 24 CFR 982.521, DHCD or its designee will consider whether the contract unit is receiving other subsidies when determining reasonable rent. Units with other subsidies may be subject to pertinent limits in addition to rent reasonableness.

## **9.6 RENT INCREASES TO OWNERS**

Owners seeking a contract rent increase must send a written request to DHCD's designee, copied to the tenant, at least 60 days prior to the proposed date of the increase. The contract rent may not be increased until after the initial term of the lease, or after one year has elapsed from a prior contract rent increase.

DHCD and its designees may not approve and the owner may not receive any increase of rent to owner until unless and until the owner has complied with requirements of the HAP contract, including compliance with HQS. The owner may not receive any retroactive increase of rent for any period of noncompliance.

DHCD or its designees will not approve a rent increase for any apartment that is considered in violation of HQS standards for deficiencies attributable to the owner.

If 20% of the units in a project-based development have failed HQS inspection and are in a non-compliance status, the Director of Leased Housing may deny a yearly rent increase for all units in the same property.

## **9.7 RENT INCREASES IN SUBSIDIZED BUILDINGS**

In all cases, the requested rent must meet DHCD's rent reasonableness test. When the approved rents in subsidized buildings exceed the published FMR, DHCD and its designees will treat the request for rent increase 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 : PAYMENT STANDARDS AND UTILITY ALLOWANCES

### 10.1 PAYMENT STANDARDS

[24 CFR 982.503]

The payment standard sets the maximum subsidy payment a family can receive from DHCD or its designee 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 40<sup>th</sup> percentile of rents in the market area.

DHCD must establish a payment standard schedule that establishes payment standard amounts for each FMR area within DHCD's jurisdiction, and for each unit size within each of the FMR areas. For each unit size, DHCD 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, DHCD is required to establish a payment standard within a "basic range" established by HUD – between 90 and 110% of the published FMR for each unit size.

#### 10.1.1 Updating Payment Standards

DHCD 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," DHCD may consider the following factors when determining whether an adjustment should be made to the payment standard schedule:

- **Funding Availability:** DHCD 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. DHCD 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% of their monthly adjusted income as the family share. When 40% or more of families, for any given unit size, are paying more than 30% of adjusted monthly income as the family share, DHCD will consider increasing the payment standard. In evaluating rent burdens, DHCD will not include families renting a larger unit than their family unit size.
- **Quality of Units Selected:** DHCD 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:** DHCD 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:** DHCD will review the availability of units for each unit size, particularly in areas with low concentrations of poor and minority families.

- Lease-up Time and Success Rate: DHCD 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. Designees must seek DHCD approval prior to implementing any payment standard changes for this reason.

DHCD will revise and implement its payment standard amount and schedule, if a revision is necessary to stay within the basic range, no later than three months following the effective date of the change in the FMR. Pursuant to this change, a new payment standard schedule may go into effect on or after the effective date of the published FMR, but no later than three months following the effective date of the published FMR [Notice PIH 2018-01].

The following scenarios apply:

- (i) For reexaminations of income with an effective date prior to the effective date of the new payment standard schedule, the old payment standard schedule will be used.
- (ii) For reexaminations of income that are effective on or after the effective date of the new payment standard schedule, the new payment standard will be used.
- (iii) The payment standard employed for a newly issued voucher will depend on the effective date of the HAP contract. If the effective date of the HAP contract is before the effective date of the new payment standard schedule, then the old payment standard schedule is used. If the effective date of the HAP contract is on or after the effective date of the new payment standard schedule, then the new payment standard schedule is used.

### **10.1.2 Exception Payment Standards**

DHCD 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% of the population of the FMR area.

### **10.1.3 Payment Standard Exceptions & Reasonable Accommodations**

**Non-MTW Policy:** A family that requires a reasonable accommodation may request a higher payment standard at the time the Request for Tenancy Approval (RFTA) or request for contract rent increase is submitted. The family must document the need for the exception. (See [CHAPTER 2](#) for a discussion of reasonable accommodations.) This type of exception does not affect DHCD's payment standard schedule.

DHCD may approve a payment standard of not more than 120% of the FMR without HUD approval if required as a reasonable accommodation for a family that includes a person with disabilities. Approval of exception payment standards is subject to DHCD determinations as outlined in the DHCD policy.

A reasonable accommodation request for an 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.

In order to approve an exception payment standard, DHCD or its designee must determine that (see Notice PIH 2013-18):

- The family requested lease approval for the unit and requested an exception payment standard as a reasonable accommodation;
- There is a shortage of affordable units that would be appropriate for the family;
- The family's TTP would otherwise exceed 40% of adjusted monthly income; and
- The rent for the unit is reasonable; and
- The unit has features that meet the needs of a family member with disabilities. For example, a unit may be suitable because of its physical features or for other reasons, such as having the requisite number of bedrooms, location on an accessible transit route, or proximity to accessible employment, education, services, or recreation.

One person at DHCD or its designee must be responsible for approving all exception payment standards. Approvals must be in writing and kept in the participant file.

#### **MTW Policy**

DHCD is authorized to approve, without HUD approval, any documented and reasonable exception to payment standards as a reasonable accommodation for HCV households with disabled household members. This policy is utilized without regard to the percentage increase over the payment standard.

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 reasonable for the reasonable accommodation, including evidence of the disability and/or the necessity of the accommodation.

In order to approve an exception, DHCD or its designee 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% of adjusted monthly income;
- The rent for the unit is reasonable; and

- In the case of a reasonable accommodation, the unit has features that meet the needs of a family member with disabilities.

#### **10.1.4 Unit-by-Unit Exceptions**

Other than the above, unit-by-unit exceptions to DHCD's payment standards generally are not permitted.

#### **10.1.5 "Success Rate" Payment Standard Amounts**

If a substantial percentage of families have difficulty finding a suitable unit, DHCD may request a "success rate payment standard" that applies to the entire jurisdiction. If approved by HUD, a success rate payment standard allows DHCD to set its payment standards at 90-110% of a higher FMR (the 50<sup>th</sup>, rather than the 40<sup>th</sup> percentile FMR). To support the request, DHCD or its designee must demonstrate that during the most recent six-month period for which information is available:

- Fewer than 75% of families who were issued vouchers became participants;
- DHCD had established payment standards for all unit sizes, and for the entire jurisdiction, at 110% of the published FMR; and
- DHCD 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, DHCD may choose to adjust the payment standard for only some unit sizes in all, or a designated part, of DHCD's jurisdiction within the FMR area.

#### **10.1.6 Decreases in the Payment Standard Below the Basic Range**

[24 CFR 982.503(d)]

DHCD 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% of program participants exceeds 30% of adjusted monthly income.

### **10.2 UTILITY ALLOWANCES**

[24 CFR 982.517]

**Non-MTW Policy:** DHCD and its designees 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, DHCD or its designee must use normal patterns of consumption for the community as a whole, and current utility rates.



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, DHCD and its designees 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.

#### **MTW Policy**

DHCD utilizes a utility allowance schedule, regardless of fuel type, geographical area and building type, for tenant-paid heat and other electricity only. The utility allowance schedule includes the utility allowance for heat and other electricity. DHCD and its designees will apply the utility allowance for tenant-paid heat and other electricity using the smaller of the unit size or bedroom size. Utility allowances for any other tenant-paid utilities, other than heat and other electricity, will not be provided, except in the case of reasonable accommodation. In developing the UA schedule for heat, in addition to basing the heat utility allowance on typical cost and consumption, DHCD used a weighted average of the two highest fuel types by bedroom size.

In developing the UA schedule for other electricity, DHCD calculated the utility allowance using assumed electric cost based on kWh per bedroom size, generation charges and customer fee, weighted by DHCD's designee.

The table below includes DHCD's programs and their related applicability to the MTW UA allowance policy.

<b>MTW Utility Allowance Program Applicability Table</b>	
<b>Program</b>	<b>Apply MTW UA Policy Yes or No</b>
Designated Housing	Yes
MTW FSS Participants	Yes
FUP	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
Mod Rehab	No
HOME (Tenant-Based Vouchers only)	No

<b>MTW Utility Allowance Program Applicability Table</b>	
<b>Program</b>	<b>Apply MTW UA Policy Yes or No</b>
LIHTC (Tenant-Based Vouchers only)	No
Mainstream 5	No
Port Outs	No
VASH	No
<b>Non-Section 8 Programs</b>	
AHVP	N/A
MRVP	N/A
Shelter Plus Care	N/A
Mod Rehab SRO	N/A
<b>Consistent with Published HUD Guidance</b>	
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

### 10.2.1 Air Conditioning

The majority of housing units in DHCD's jurisdiction do not include central air conditioning. Therefore, DHCD has not included an allowance for air conditioning in its utility allowance schedule.

### 10.2.2 Reasonable Accommodation – Utility Allowances

DHCD or its designee will approve a utility allowance amount higher than shown on DHCD's schedule if a higher allowance is needed as a reasonable accommodation for a family member with a disability. (See [Reasonable Accommodation](#) or policy information on reasonable accommodations and utility allowances.) For example, if a family member with a disability requires such an accommodation, DHCD or its designee will approve an allowance for air conditioning, even if DHCD 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).

Where the other electricity utility allowance policy provides a UA for other electricity and a household has an approved reasonable accommodation for other electricity which is higher than the other electric from the UA table, DHCD or its designee will use the higher of the reasonable accommodation other electric UA or the other electric UA from its UA table.

### 10.2.3 Utility Allowance Revisions

**Non-MTW Policy:** DHCD and its designees will review its schedule of utility allowances each year, and will revise the schedule if there has been a change of 10% or more in any utility rate since the last time the allowance for that utility was revised. The utility allowance schedule must be prepared and submitted on HUD Form-52667.

DHCD and its designees will maintain information supporting its annual review of utility allowance and any revisions made in its utility allowance schedule.

Current [utility allowance schedules](#) are posted on the DHCD website. Copies of the payment standard and utility allowance schedules are available for review in DHCD's designees' offices during normal business hours.

Updated utility allowances and back-up documentation are due to DHCD within required timeframes. DHCD approval of utility allowance schedules is not required prior to implementation.

DHCD and its designees will follow HUD guidance regarding the methodology for establishing utility allowance schedules.

#### **MTW Policy**

DHCD will periodically, at its discretion, review utility allowance schedules to determine if adjustments are required. Annual updates will not be required.

#### **10.2.4 Determining Unit Size for Applying the Utility Allowance**

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.

#### **10.2.5 Direct Payment of Tenant Utilities**

If the housing assistance payment exceeds the rent to owner, DHCD or its designee 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 designees 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. See policies on [Utility Reimbursement](#).

## **CHAPTER 11 : GENERAL LEASING POLICIES**

### **11.1 INTRODUCTION**

In order for DHCD or its designee to assist a family in a particular dwelling unit, or execute a Housing Assistance Payments (HAP) contract with the owner of a dwelling unit, DHCD or its designee 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 DHCD or its designee 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 DHCD or its designee, 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% of the family's monthly adjusted income [24 CFR 982.305(a)]

### **11.2 TENANT SCREENING**

DHCD and its designees have 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 approval of the tenancy. DHCD or its designee will inform the owner of that responsibility.

DHCD or its designee will inform owners of their responsibility to screen tenants and, if requested, will provide prospective owners with the known name and address information for the family's current owner, at the time of the initial HQS inspection or before.

DHCD or its designee will inform the owner or manager of their responsibility to comply with VAWA [24 CFR 5.2007(3)(ii)]. DHCD and its designees will not provide any additional information to the owner, such as tenancy history, criminal history, etc.

### **11.3 OWNER PARTICIPATION**

DHCD and its designees do not formally approve an owner to participate in the HCV program. However, there are a number of criteria where DHCD or its designee 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 [Owner Qualifications](#) for a full discussion of owner qualification to participate in the HCV program.

## **11.4 INELIGIBLE UNITS**

[24 CFR 982.352(a)]

DHCD or its designee 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 USC 1437f);
- In a nursing home, board and care home, or facilities providing continual psychiatric, medical, or nursing services;
- In a college or other school dormitories;
- A unit 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.

## **11.5 ELIGIBLE UNITS**

Generally, a voucher-holder family may choose any available rental dwelling unit on the market in DHCD's jurisdiction. This includes the dwelling unit they are currently occupying.

### **11.5.1 PHA-Owned Units**

[24 CFR 982.352(b)]

DHCD and some designees have eligible PHA-owned units available for leasing under the voucher program. DHCD or its designee will inform the family of this housing at the time of the briefing. DHCD or its designee 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 DHCD or its designee.

### **11.5.2 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.

### **11.5.3 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 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.

### **11.5.4 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 [Subsidy Standards and Voucher Issuance](#), for a full discussion of subsidy standards.

### **11.5.5 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.

### **11.5.6 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% of the family’s monthly adjusted income. See [Calculating Family Share and Subsidy Amounts](#) for a discussion of calculation of gross rent, the use of payment standards, and calculation of family income, family share of rent and HAP.

## **11.6 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 DHCD or its designee to approve the assisted tenancy in the selected unit.

The owner and the family must submit all requested documents to DHCD or its designees including, but not limited to the completed Request for Tenancy Approval (RFTA) and a copy of the proposed lease. The lease must include the prescribed Tenancy Addendum.

Both the RFTA and the proposed lease must be submitted no later than the expiration date stated on the voucher.

#### **11.6.1 Request for Tenancy Approval (RFTA)**

[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 DHCD or its designee 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 DHCD or its designee has granted a request for reasonable accommodation for a person with a disability who is a member of the tenant household.

For units constructed prior to 1978 (and proposed to be occupied by a family with a child under the age of six), owners must provide documentation that the unit, common areas, and exterior have been found to be free of lead-based paint by a certified inspector.

The RFTA must be signed by both the family and the owner. The owner may submit the RFTA on behalf of the family.

The completed RFTA (including the proposed dwelling lease) must be submitted as hard copies, in person, email, by mail, or by fax.

The family may not submit, and DHCD and its designees will not process, more than one RFTA at a time. When the family submits the RFTA, DHCD or its designee 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, DHCD or its designee 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, email 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, DHCD or its designee 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, DHCD or its designee 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, email or by fax. DHCD or its designee will not accept corrections by phone.

Because of the time-sensitive nature of the tenancy approval process, DHCD or its designee will attempt to communicate with the owner and family by phone, fax, or email. DHCD or its designee will use mail when the parties can't be reached by phone, fax, or email.

### **11.6.2 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; DHCD and its designees are not a party to this contract. However, the owner must provide a copy to DHCD's designee and DHCD's designee will ensure that both the owner and the assisted family receive copies of the dwelling lease.

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)]

#### **11.6.2.1 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, that standard lease form or the DHCD model lease must be used. If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease, including the DHCD model lease. The HAP contract prescribed 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 required Tenancy Addendum must also be added word-for-word to the owner's standard lease form, for use with the assisted family. DHCD's model lease contains the Tenancy Addendum. The Tenancy Addendum includes the tenancy requirements for the program and the composition of the household as approved by DHCD or its designee. 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 conflicting or inconsistent provisions of the lease.

#### **11.6.2.2 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; and
- 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.

#### **11.6.2.3 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.

DHCD or its designee 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 DHCD or its designee 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., a lease commencing 2/2/08 shall have initial term through 1/31/09. 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.
- DHCD or its designee will approve an initial lease term of less than one year only where DHCD or its designee 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 six 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. There are no HUD requirements regarding any renewal extension terms, except that they must be in the dwelling lease if they exist.

DHCD or its designee 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)].

#### **11.6.2.4 Security Deposit**

[24 CFR 982.313(a) and (b)]

DHCD or its designee will allow the owner to collect any security deposit amount the owner determines is appropriate provided that the security deposit amount is in compliance with [M.G.L. c. 186, § 15B](#), is not in excess of private market practice, or is not in excess of the amounts charged by the owner to unassisted tenants.

#### **11.6.2.5 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 DHCD's or its designee'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)].

DHCD 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.

#### **11.6.2.6 DHCD's or Its Designee's Review of Lease**

DHCD or its designee will review the dwelling lease for compliance with all applicable program requirements.

If the dwelling lease is incomplete or incorrect, DHCD or its designee 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. DHCD and its designees will not accept missing and corrected information over the phone.

Because the initial leasing process is time-sensitive, DHCD or its designee will attempt to communicate with the owner and family by phone, fax, or email. DHCD or its designee will use mail when the parties can't be reached by phone, fax, or email.

DHCD or its designee will not review the owner's lease for compliance with state/local law.

#### **11.6.3 Tenancy Approval**

[24 CFR 982.305]

DHCD or its designee will complete its tenancy approval determination within 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.

If DHCD or its designee 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. DHCD or its designee 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), DHCD or its designee will attempt to negotiate the rent with the owner. If a new, approvable rent is negotiated, the otherwise-eligible 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.

#### **11.6.4 HAP Contract Execution**

[24 CFR 982.305]

The HAP contract is a written agreement between DHCD's designee and the owner of the dwelling unit occupied by a HCV-assisted family. Under the HAP contract, DHCD's designee 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.

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 19](#) for a discussion of any special housing types included in DHCD's HCV program.

If DHCD or its designee has given approval for the family of the assisted tenancy, the owner and DHCD's designee 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)].

DHCD or its designee is permitted to execute a HAP contract even if the funding currently available does not extend for the full term of the HAP contract.

DHCD's designee 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. DHCD or its designee 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, DHCD or its designee 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 DHCD or its designee may not pay any housing assistance payment to the owner.

The owner and DHCD's designee will execute the HAP contract. DHCD's designee will not execute the HAP contract until the owner has demonstrated that he/she has met the program requirements. DHCD's designee will ensure that the owner receives a copy of the executed HAP contract. See [CHAPTER 18](#) for a discussion of owner responsibilities and the HAP contract and contract provisions.

### **11.7 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 DHCD or its designee a copy of such changes. The lease, including any changes, must remain in accordance with the requirements of this chapter.

Generally, DHCD's or its designee's 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 DHCD or its designee 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](#).

## CHAPTER 12 : CONTINUED OCCUPANCY

### 12.1 INTRODUCTION

DHCD or its designee 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, DHCD or its designee 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.

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 FAMILY OBLIGATIONS

Obligations of the family are described in the Housing Choice Voucher (HCV) Program regulations and on the voucher itself. These obligations include responsibilities the family is required to fulfill, as well as prohibited actions. 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 15](#).

#### Family Obligations [24 CFR 982.551]

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

- The family must supply any information that DHCD or its designee 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 DHCD or its designee 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.
- The family must allow DHCD or its designee 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.
- The family must notify DHCD or its designee and the owner before moving out of the unit or terminating the lease. The family must comply with lease requirements regarding written notice to the owner. The family must provide written notice to DHCD or its designee at the same time the owner is notified.
- The family must promptly give DHCD or its designee 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 DHCD or its designee.
- The family must not sublease the unit, assign the lease, or transfer the unit. 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 promptly notify DHCD or its designee when the family is absent from the unit (see [Absence from the Unit](#)).
- The family must pay utility bills and provide and maintain any appliances that the owner is not required to provide under the lease.
- The family and household members (including live-in aides) 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 17](#) 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 15](#) for HUD and DHCD 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 15](#) for a discussion of HUD and DHCD 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 DHCD or its designee 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.

## **12.3 TIME FRAMES FOR REPORTING CHANGES & PROVIDING INFORMATION**

Unless otherwise noted, when family obligations require the family to respond to a request for information/documents, the family will be required to provide the information/documents within seven business days.

Unless otherwise noted, when family obligations require the family to notify DHCD or its designee of a change, i.e., change in income or a change in family composition, 15 business days is the required time frame.

When a family is required to provide notice DHCD or its designee, the notice must be in writing.

## **12.4 REGULAR REEXAMINATIONS**

DHCD or its designee 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.

### **12.4.1 Reexamination Cycle**

#### **12.4.1.1 Annual Cycle**

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
- Any household reporting zero income will have reexaminations conducted on an annual schedule until the household is no longer zero-income.

#### **12.4.1.2 Biennial Cycle**

##### **MTW Policy**

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

- Housing Options Program
- Enhanced Vouchers – In Year Two
- Mainstream 1 Vouchers
- Family Unification Program (FUP) Vouchers
- FUP Adolescent Outreach Program (AOP) Vouchers
- Designated Housing Vouchers
- Mainstream 1 Vouchers
- Health Starts at Home (HSAH) Vouchers
- Secure Jobs Initiative (SJI) Vouchers
- Tenant-Based Rental Assistance for Persons with HIV/AIDS Vouchers
- FSS participants with MTW vouchers

Any household that believes they would benefit by an annual reexamination may request an annual reexamination. After the annual reexamination, the household will revert to a biennial cycle unless an annual reexamination is requested again.

#### 12.4.1.3 Triennial Cycle

##### **MTW Policy**

MTW households who are elderly and/or disabled families and whose sole income is a fixed income may be eligible for a triennial reexam cycle. Fixed income sources include Social Security, SSI, and pensions.

An eligible household who has dependent members (not including full-time students) remains eligible. An otherwise eligible household who has a working adult or a family member who is an adult and able to work is not eligible for a triennial cycle.

If the family composition or source(s) of income change and the family is no longer eligible for a triennial cycle, the cycle will be adjusted at the next regular reexam and not at an intervening interim reexam.

#### 12.4.2 Scheduling Regular Reexaminations

DHCD or its designee will begin the regular reexamination process 120 days in advance of its scheduled effective date. Generally, DHCD or its designee will schedule regular reexamination effective dates to coincide with the family's anniversary date. DHCD or its designee also may schedule a regular reexamination for completion prior to the anniversary date for administrative purposes.

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, DHCD or its designee will perform a new regular reexamination and will update the family's anniversary date to coincide with the new lease/HAP contract anniversary date. If the family's latest regular reexamination effective date is no more than four months prior to the new HAP contract anniversary, DHCD or its designee will 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. DHCD or its designee will 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 [General Verification Requirements](#)).

#### **12.4.3 Notification of and Participation in the Regular Reexamination Process**

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 DHCD or its designee 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 DHCD or its designee in advance of the interview to schedule a new appointment. If a family does not attend the scheduled interview, DHCD or its designee will send a second notification with a new interview appointment time.

If a family fails to attend two scheduled interviews without DHCD's or its designee's approval, or if the notice is returned by the post office with no forwarding address, a notice of termination (see [CHAPTER 15](#)) 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 DHCD or its designee must execute a certification attesting to the role and assistance of any such third party.

#### **12.4.4 Conducting Regular Reexaminations**

Families will be asked to bring (or mail) all required information (as described in the reexamination notice) to the reexamination appointment.

Any required documents or information must be provided by the family within the required time frame ([Time Frames For Reporting Changes & Providing Information](#)). 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 15](#)).

The information provided by the family generally must be verified in accordance with the policies in [CHAPTER 6](#). 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

#### **12.4.5 Mail-In Reexamination**

DHCD or its designee may complete mail-in reexaminations. However, except for a birth, adoption, or court-awarded custody of a child, mail-in reexaminations cannot be completed when there is a change in the household composition. If the tenant has had a change in household composition or is requesting to add or remove a household member, DHCD or its designee will send the household a reexamination appointment letter to schedule an on-site reexamination appointment.

If the reexamination package is returned to DHCD or its designee as undeliverable, DHCD or its designee will mail the household a termination letter and follow applicable termination policies.

#### **12.4.6 Documents Not Returned Timely – Mail-In Reexamination**

If reexamination documents have not been returned to DHCD or its designee, DHCD or its designee will send a mail-in reexamination reminder notice. If the household fails to return the packet by the specified deadline, DHCD or its designee will schedule an on-site reexamination appointment and send the household an appointment letter. If the household fails to attend the scheduled on-site reexamination appointment, DHCD or its designee will send the tenant a termination letter and follow applicable termination policies.

#### **12.4.7 Missing Information – Mail-In Reexamination**

If the household does not or is unable to provide all required information/documents needed to complete the mail-in reexamination, DHCD or its designee will send a request for additional information. This information must be provided by the household by the specified deadline; however, the household may request an extension. If the household does not provide the required documents or information within the required time frame (plus any extensions), the tenant will be sent a termination letter.

#### **12.4.8 Effective Dates for Rent Changes – Regular Reexaminations**

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 fewer 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 DHCD or its designee 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 DHCD or its designee, 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 originally-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 [Repayment Agreement](#).

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 family causes a delay in processing the regular reexamination, decreases in the family share of the rent will not be applied retroactively to the originally-scheduled effective date of the reexamination but will be applied prospectively, as of 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 DHCD or its designee by the date specified, and this delay prevents the designee from completing the reexamination as scheduled.

#### **12.4.9 Determining Ongoing Eligibility of Live-In Aides**

For continued approval of a live-in aide, the live-in aide must personally sign the Live-In Aide Certification Form at each regular reexamination.

#### **12.4.10 Determining Ongoing Eligibility of Certain Students**

[24 CFR 982.552(b)(5)]

If a student enrolled in an institution of higher education does not meet the requirements for independent student as referenced in the policies on [Students Enrolled in Institutions of Higher Education](#), 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 DHCD 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.

During the regular reexamination process, DHCD or its designee 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 on [Students Enrolled in Institutions of Higher Education](#) and subject to verification of this student's status per the policies in [Verification of Student Status](#), 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 15](#).

If the student continues to be income eligible based on his/her own income and the income of his/her parents (if applicable), DHCD or its designee will process a reexamination in accordance with the policies in this chapter.

#### **12.4.11 State Lifetime Sex Offender Registration**

DHCD or its designee 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, DHCD or its designee will pursue termination of assistance to the extent currently allowed by law. See [CHAPTER 15](#).

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.

#### **12.4.12 Household Member Turning 18 Between When the Reexamination Documents are Completed and Provided to the PHA & the Effective Date of Reexamination**

##### Income & Deductions

When a household member will turn 18 between the date the reexamination documents are completed and the effective date of the reexamination, DHCD or its designee will include the household member's income in the calculation of annual income.

For example, a household has a reexamination effective date of November 1<sup>st</sup>. The household completed the reexamination documents and provided them to DHCD's designee on August 1<sup>st</sup>. At the time the reexamination documents were completed and provided to DHCD's designee, one of the household members was still 17; however, he/she will turn 18 on September 30<sup>th</sup>. DHCD's designee 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

When a household member will turn 18 between the date the reexamination documents are completed and provided to DHCD or its designee and the effective date of the reexamination, the DHCD or its designee will have a parent/legal guardian sign any consent/release forms on behalf of that household member in order to authorize DHCD or its designee to obtain their income verification.

#### **12.4.13 Household Member Turning 18 Between Regular Reexaminations**

If a household member turns 18 between regular reexaminations, a CORI and applicable consent forms will be completed at the next regular reexamination. Changes in household income resulting from a household member turning 18 between regular reexaminations will not be applied until the next 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. See [Zero-Income Households](#). In this circumstance, an interim reexamination will be conducted when the household member turns 18.

## **12.5 INTERIM REEXAMINATIONS**

DHCD or its designee may conduct interim reexaminations of income or family composition at any time. When an interim reexamination is conducted, only the income/expenses of the individual(s) who reported the change(s) will be verified and adjusted.

In addition to specifying what information the family must report, the family may, subject to DHCD's policies, request an interim determination if other aspects of the family's income or composition changes. DHCD or its designee will complete the interim reexamination within a reasonable time after the family's request.

### **12.5.1 Processing the Interim Reexamination**

#### Method of Reporting

The family may notify DHCD or its designee of changes either orally or in writing. If the family provides oral notice, DHCD or its designee 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 DHCD or its designee determines that an interview is warranted, the family may be required to attend.

Based on the type of change reported, DHCD or its designee will determine the documentation the family will be required to submit. The family must submit any required information or documents within the required time frame, see policies on [Time Frames For Reporting Changes & Providing Information](#). This time frame may be extended for good cause with approval of DHCD or its designee. DHCD or its designee will accept required documentation by mail, email, fax, or in person.

### **12.5.2 Required Interim Reexaminations**

DHCD or its designee will conduct interim reexaminations in the following required circumstances:

- If the family's last interim reexamination resulted in a rent reduction, families are required to report all increases in income within 15 business days of the date the increase 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.

- If the family reported zero income at their last regular or interim reexamination, the family is required to report all increases in income within 15 business days of the date the change takes effect.
- Families paying minimum rent are required to report all increases in income 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 within 15 business days of completion of the repayment and restoration of the full benefit.
- 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 (see [Financial Hardships Affecting Minimum Rent](#)) 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 [Zero-Income Households](#).

### **12.5.3 Temporary, Nonrecurring, and Sporadic Income**

Households reporting only temporary, nonrecurring, or sporadic income are required to report increases in income between regular reexaminations. Temporary, nonrecurring, and sporadic income is excluded from the calculation of annual income. Households/household members reporting only temporary, nonrecurring, or sporadic income will be subject to policies set forth in [Zero-Income Status](#) in the verification chapter. DHCD or its designee will conduct an interim reexamination when a household that had reported only temporary, nonrecurring, or sporadic income reports other income.

### **12.5.4 Seasonal Income**

Generally, interim reexaminations will not be conducted for seasonal or cyclic employment. See [Seasonal Income Calculation](#).

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 DHCD or its designee 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 [12.5.7.1 Limit on Voluntary Reexaminations](#).

### **12.5.5 Zero-Income Households**

Zero-income households are required to report all changes in income or benefits between regular recertification periods. DHCD or its designee will conduct an interim recertification when a zero-income household or individual reports income.

Once income or benefits are reported, the household is no longer required to report increases in income/benefits until the next regular recertification. See [Zero-Income Status](#) in the verification chapter.

Zero-income households are required to report all changes in income within 15 business days from the date the change occurred.

Every 180 days, DHCD or its designee will run an EIV check on zero-income households and take action as required for unreported income.

### **12.5.6 Changes in Family and Household Composition**

The family must notify DHCD or its designee in writing within 15 business days of the birth, adoption, or court-awarded custody of a child. The family must request approval from DHCD or its designee to add any other family member as an occupant of the unit. The request to add a family member must be submitted in writing and approved prior to the person moving into the unit. DHCD or its designee will determine eligibility of the new member in accordance with the policies in [CHAPTER 4](#).

The family must notify DHCD or its designee in writing within 15 business days if any family member no longer lives in the unit.

If DHCD or its designee has given approval, a foster child, or a live-in aide may reside in the unit. DHCD or its designee has the discretion to adopt reasonable policies concerning residency by a foster child or a live-in aide, and to define when the consent of DHCD or its designee may be given or denied. For policies related to the request and approval/disapproval of foster children, foster adults, and live-in aides, see policies related to [Foster Children and Foster Adults](#).

DHCD or its designee will conduct interim reexaminations to account for any changes in household composition that occur between regular reexaminations.

#### **MTW Policy**

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, DHCD or its designee will 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]. See [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 HQS space standards (see [CHAPTER 8](#)), DHCD or its designee must issue the family a new voucher, and the family and DHCD or its designee must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by



the family, DHCD or its designee must terminate the family's HAP contract in accordance with its terms [24 CFR 982.403].

#### **12.5.6.1 New Family Members Not Requiring Approval**

The addition of a family member as a result of birth, adoption, or court-awarded custody does not require approval from DHCD or its designee. However, the family must notify DHCD or its designee within 15 business days of the addition [24 CFR 982.551(h)(2)].

#### **12.5.6.2 New Family and Household Members Requiring Approval**

Families must request approval from DHCD or its designee and the property owner 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 in writing to both DHCD or its designee and the property owner and approved by both prior to the individual moving into the unit. It is the responsibility of the family, not DHCD or its designee, to initially request and obtain the owner's written approval for the addition of family members.

Upon receipt of the family's request, DHCD or its designee 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, criminal background and sex offender registration. DHCD or its designee will not approve the addition of a new family or household member unless the individual meets DHCD's eligibility criteria (see [CHAPTER 4](#)) and documentation requirements (see [CHAPTER 6](#)).

DHCD or its designee will not approve the addition of a foster child or foster adult if it will cause a violation of HQS space standards. DHCD or its designee 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 DHCD or its designee, DHCD or its designee will issue a new voucher and the family may move.

If DHCD or its designee determines an individual meets DHCD's eligibility criteria and documentation requirements, DHCD or its designee 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 the written decision to both the family and DHCD or its designee.

If approved, a copy of the approval of DHCD or its designee and the owner approval, if received, will be attached to the HAP contract.

#### **12.5.6.3 Disapproval of Addition of Family Members**

Should the owner not agree to the addition of family members, DHCD and its designees 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;
- 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 DHCD or its designee does not; e.g., unacceptable CORI, the family must abide by the decision of DHCD or its designee and the individual(s) may not move in. If the family allows the individual(s) to move in, DHCD or its designee will terminate assistance to the family.

If DHCD or its designee determines that an individual does not meet DHCD's eligibility criteria or documentation requirements, DHCD or its designee 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.

DHCD or its designee will make its determination within 15 business days of receiving all information required to verify the individual's eligibility.

#### **12.5.6.4 Departure of a Family or Household Member**

If a household member ceases to reside in the unit, the family must inform DHCD or its designee 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 DHCD or its designee within 15 business days.

#### **12.5.7 Voluntary Reporting**

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. 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 [Welfare Assistance](#).
- 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, DHCD or its designee 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, DHCD or its designee will not conduct an interim reexamination.

##### **12.5.7.1 Limit on Voluntary Reexaminations**

**Non-MTW Policy:** 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].

### **MTW Policy**

For families holding MTW vouchers, two voluntary interim reexaminations are permitted between regular reexaminations.

Elderly and disabled MTW households, FSS participants, families participating in the SNO Mass program, and households who live in an Expiring Use project on the conversion date and select a PBV will be exempt from the limit on interim reexaminations.

For families holding MTW vouchers who have requested and received approval for annual reexaminations, one voluntary interim reexamination is permitted between regular reexaminations.

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 in the FSS program;
- Interim reexaminations required by DHCD or its designee 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 household income is greater than 30% and beyond the control of the family.

### **12.5.8 Summary of Income/Expense Changes and Related Actions**

The table below includes both MTW and non-MTW situations and related actions:

<b>SITUATION</b>	<b>ACTION</b>
a) Decrease in income for any reason, except for decrease that is subject to Imputed Welfare Income Rules <ul style="list-style-type: none"> <li>• Voluntary</li> <li>• MTW and Non-MTW</li> </ul>	○ For MTW households, the action is subject to the limit on interim reexaminations.
b) Increase in unreimbursed medical expenses (for elderly and disabled households only) <ul style="list-style-type: none"> <li>• Voluntary</li> <li>• MTW and Non-MTW</li> </ul>	○ DHCD or its designee will process an interim reduction in the rent.
c) Increase in unreimbursed child care expenses (subject to the eligibility requirements for this deduction) <ul style="list-style-type: none"> <li>• Voluntary</li> <li>• MTW and Non-MTW</li> </ul>	○ DHCD or its designee will process an interim reduction in the rent. ○ For MTW households, the action is subject to the limit on interim reexaminations.

<b>SITUATION</b>	<b>ACTION</b>
d) Increase or decrease in income due to a change in family composition <ul style="list-style-type: none"> <li>• Required</li> <li>• MTW and Non-MTW</li> </ul>	<ul style="list-style-type: none"> <li>○ DHCD or its designee will process an interim reexamination.</li> <li>○ For MTW households, this interim reexamination will not count toward the limit on interim reexaminations.</li> </ul>
e) Any increase in income: <ul style="list-style-type: none"> <li>i. Following a rent decrease at an interim reexamination</li> <li>ii. For a family on minimum rent</li> <li>iii. For a family reporting zero income <ul style="list-style-type: none"> <li>• Required</li> <li>• MTW and Non-MTW</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>○ DHCD or its designee will process an interim rent increase for any income increases.</li> <li>○ Households do not have to report the next increase in income until the next regular reexamination.</li> <li>○ For MTW households, the action will not count toward the limit on interim reexaminations.</li> </ul>
f) The end of the exclusion period of earned income disallowance <ul style="list-style-type: none"> <li>• Required</li> <li>• MTW and Non-MTW</li> </ul>	<ul style="list-style-type: none"> <li>○ DHCD or its designee will process an interim reexamination.</li> <li>○ For MTW households, the DHCD or designee action will not count toward the limit on interim reexaminations.</li> </ul>
g) Any changes in household income/expenses and/or changes in circumstances for a family with a financial hardship exemption from minimum rent <ul style="list-style-type: none"> <li>• Required</li> <li>• MTW and Non-MTW</li> </ul>	<ul style="list-style-type: none"> <li>○ DHCD or its designee will process an interim reexamination and rent change.</li> <li>○ For MTW households, the action will not count toward the limit on interim reexaminations.</li> </ul>
h) Any increase in earned income for an FSS household <ul style="list-style-type: none"> <li>• Voluntary</li> <li>• MTW and Non-MTW</li> </ul>	<ul style="list-style-type: none"> <li>○ DHCD or its designee will process an interim reexamination and rent change.</li> <li>○ For MTW households, the action will not count toward the limit on interim reexaminations.</li> </ul>
i) 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 <ul style="list-style-type: none"> <li>• Required</li> <li>• MTW and Non-MTW</li> </ul>	<ul style="list-style-type: none"> <li>○ DHCD or its designee will process an interim reexamination and rent change.</li> <li>○ For MTW households, the action will not count toward the limit on interim reexaminations.</li> </ul>

### 12.5.9 DHCD/Designee-Initiated Interim Reexaminations

DHCD or its designee's initiated interim reexaminations are those that are scheduled based on circumstances or criteria defined by DHCD or its designee. They are not considered "voluntary" interim reexaminations. DHCD or its designee will conduct interim reexaminations in each of the following instances:

- For non-MTW families receiving the Earned Income Disallowance (EID), DHCD or its designee will conduct an interim reexamination at the start and 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, DHCD or its designee will conduct an interim reexamination if there is a substantial difference between the income used and that received from the third party.

- If at the time of the regular reexamination or applicable interim reexamination a family has been self-employed for less than three months, accept the family's self-certification of income and expenses and schedule an interim reexamination in three months. Request third-party documents to verify income and expenses.
- DHCD or its designee 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.

### **12.5.10 Deceased Tenant**

#### Monitoring Deceased Tenant Report

DHCD and its designees will use the Deceased Tenant Report to assist in identifying families with deceased household members.

#### Notifying the Owner and the Remaining Household Members

DHCD or its designee 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.

DHCD or its designee must immediately contact the owner and notify them of the death. If the deceased tenant was a single member household, DHCD or its designee must notify the owner that the death will result in termination of the HAP contract and housing assistance payments.

#### Actions Required by DHCD or Its Designees

DHCD or its designee will complete transactions consistent with HUD PIH Notice 2012-04 including data entry requirements related to the following:

- Death of a Sole Household Member

Once DHCD or its designee has confirmed the death of the Head of Household, the DHCD or its designee will immediately terminate program assistance. The effective date of termination will be the last day of the month in which the tenant's death occurred (e.g. if the death occurred on May 1 or May 30, the effective date of termination would be May 31).

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, DHCD or its designee must immediately notify the owner in writing of the ineligible HAP and require the owner to repay the overpayment to DHCD or its designee within 30 days.

- When the Remaining Household Member is a live-in aide, DHCD or its designee 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 9<sup>th</sup> 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 30<sup>th</sup>, the rent decrease would be effective October 1<sup>st</sup>. If the family reported the death on November 5<sup>th</sup>, the rent reduction and interim reexamination to remove the deceased household member would be effective on December 1<sup>st</sup>. DHCD or its designee 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 family member died then the household would lose the dependent deduction and the rent would increase, or if a family member with a number of medical expenses 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 30<sup>th</sup>, the rent increase would be effective on November 1<sup>st</sup>. If the family failed to report the change by September 30<sup>th</sup>, the effective date of the rent increase would be applied retroactively to November 1<sup>st</sup>. 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 DHCD or its designee has confirmed the death, DHCD or its designee will complete an interim reexamination. The effective date of action will be consistent with DHCD policy on reporting requirements and processing interim reexaminations. See the example above.

At the interim reexamination, DHCD or its designee 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.

### 12.5.11 Effective Dates for Rent Changes – Interim Reexaminations

In the above interim situations, 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 this plan.

In the above interim situations, 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, through no fault of the family, cannot be verified until after the date the change would have become effective, the change will be made retroactively.

## **12.6 REMAINING MEMBERS**

### **12.6.1 Family Break-Up**

[24 CFR 982.315]

DHCD or its designee has discretion to determine which members of an assisted family continue to receive assistance if the family breaks up. Tenant families who separate while being assisted under the tenant-based programs will be assessed on a case-by-case basis, with the following considerations, to determine which family members remain assisted under the program.

- If a court determines the disposition of property between members of the assisted family in a divorce or separation decree or settlement, DHCD and its designees are bound by the court's determination of which family members continue to receive assistance.
- At the time of the family break-up, the head of household, co-head, or remaining family member of the household who has full legal custody of the minor children in the unit will retain the use of the tenant-based voucher. DHCD and its designees must recognize that verification of legal custody may not always be possible, particularly in domestic violence situations. DHCD and its designees 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 DHCD or its designee. See [Caretakers for a Child](#).
- In situations of split custody, where each parent receives custody of one or more children, 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 DHCD or its designee has discretion to determine who retains the subsidy considering this policy and the circumstances of the individual case.
- In cases of joint custody (split visitation), 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 survivor of domestic violence, dating violence, sexual assault, or stalking and provides documentation in accordance with [Survivor Documentation](#) of this plan; or
  - Any possible risks to family members as a result of criminal activity.
- In cases where the head of household dies or otherwise leaves the household, leaving minor children, the new head of household will be subject to all the DHCD eligibility and admission requirements.
  - In order for a minor to continue to receive assistance as a remaining family member, the court has to have awarded emancipated minor status to the minor or DHCD or its designee has to verify that the Department of Children and Families and/or the Juvenile Court has arranged for another adult to be brought into the assisted unit to care for the child(ren) for an indefinite period of time.
  - 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 DHCD or its designee for at least six consecutive months immediately prior to the transfer.
  - In the event that the head of household moves out of the assisted unit or dies, a remaining adult household member (with or without children in the unit) may retain use of the tenant-based voucher if that adult was part of the household for at least six consecutive months immediately prior to the head of the household's move or death, is in compliance with all program rules and regulations, and meets all other program eligibility and continued occupancy requirements.
  - In cases where there is a head of household and a co-head with no minor children, the original head of household will retain the use of the tenant-based voucher.
  - If there are no minor children, 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 survivor of domestic violence, dating violence, sexual assault, or stalking and provides documentation in accordance with [Survivor Documentation](#) of this plan; or
    - Any possible risks to family members as a result of criminal activity.

If the family break-up results from an occurrence of domestic violence, dating violence, sexual assault, or stalking, DHCD or its designee will ensure that the survivor retains assistance. (For documentation requirements and policies related to domestic violence, dating violence, sexual assault, and stalking, see [Survivor Documentation](#).)

In cases where a live-in aide is added to a household as a result of a care situation for an elderly or disabled household member, the live-in aide is not considered to be a remaining family member and is not eligible to retain the use of the tenant-based voucher. See [Live-In Aide](#).

Foster children and foster adults are never considered remaining family members and have no rights to the voucher or unit when and if the head of household or co-head moves out of the unit, is evicted, or is deceased.

If exceptional circumstances exist concerning the remaining member of a tenant family, a discretionary administrative determination may be made by the HCV program designee on a case-by-case basis.

### **12.6.2 Remaining Family Members and VAWA**

If the family break-up results from an occurrence of domestic violence, dating violence, sexual assault, or stalking as provided in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), DHCD and its designees will ensure that the survivor retains assistance. The factors to be considered in making this decision under the DHCD policy include:

- Whether the assistance should remain with family members remaining in the original assisted unit.
- The interest of minor children or of ill, elderly, or disabled family members.
- Whether family members are forced to leave the unit as a result of actual or threatened domestic violence, dating violence, sexual assault, or stalking.
- Whether any of the family members are receiving protection as survivors of domestic violence, dating violence, sexual assault, or stalking, as provided in 24 CFR part 5, subpart L, and whether the abuser is still in the household.

### **12.6.3 Remaining Family Members in Special Programs**

As above, but if there is no longer a family member eligible for the supportive services offered by the targeted program administered by DHCD, 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.

### **12.6.4 Caretakers for a Child**

If neither a parent nor a designated guardian remains in a household receiving HCV assistance, DHCD or its designee 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 DHCD's eligibility and screening criteria unless information is provided that would confirm that the caretaker's role is temporary. In such cases, DHCD or its designee 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.

## **12.7 ABSENCE FROM THE UNIT**

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 consecutive calendar days. Written notice must be provided to DHCD or its designee at the start of the extended absence. If the family will be absent from the unit for more than 30 consecutive days it must promptly notify both the owner and DHCD or its designee in writing, and obtain approval from DHCD or its designee.

To obtain approval, the family must:

- Satisfy notice requirements;
- Provide documentation acceptable to DHCD or its designee regarding the length of absence and the reason for the absence;
- Affirm their intent to return to the unit at the end of the leave period;
- Agree to be responsible for receiving and responding to all notices sent by DHCD or its designee to the unit during periods of absence;
- Pay rent to the owner and pay for utilities while they are absent; and
- Make arrangements for the unit to be available for inspections by DHCD or its designee as necessary.

If this procedure is not followed, the unit will be considered abandoned and DHCD or its designee will terminate housing assistance payments and the family's participation in the program.

Regardless of notice, the family may not be absent from the unit for more than 90 consecutive calendar days. Absence in this context means that no member of the family is residing in the unit. Family absences for more than 90 consecutive days will result in termination of assistance. See policies on termination for [Family Absence from the Unit](#).

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

## **12.8 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.

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% 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.

## **12.9 RECALCULATING FAMILY SHARE AND SUBSIDY AMOUNT**

### **12.9.1 Overview**

After gathering and verifying required information for a regular or interim reexamination, DHCD or its designee must recalculate the family share of the rent and the subsidy amount, and notify the family and owner of the changes.

### **12.9.2 Applying Payment Standards, Subsidy Standards and Utility Allowances**

#### **12.9.2.1 Payment Standards**

[24 CFR 982.505]

When determining the family share of the rent and HAP calculations, DHCD or its designee 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. See [Applying Payment Standards](#) for information on how to select the appropriate payment standard.

At an interim reexamination, DHCD or its designee will apply the payment standard in effect at the last regular reexamination.

#### **12.9.2.2 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.

#### **12.9.2.3 Utility Allowances**

[24 CFR 982.517]

The family share of the rent and HAP calculations must reflect any changes in the family's utility arrangement with the owner, or in DHCD's utility allowance schedule. See [Changes in Lease or Rent](#); [Utility Allowances](#) discusses how utility allowance schedules are established.

When there are changes in the utility arrangement with the owner, DHCD or its designee must use the utility allowance schedules in effect on the effective date of the new lease and HAP contract.

For policies on applying utility allowances and utility allowance revisions, see [Applying Utility Allowances](#).

**Non-MTW Policy:** At regular and interim reexaminations, DHCD or its designee will use DHCD's current utility allowance schedule.

DHCD 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.

#### **MTW Policy**

At regular reexamination, DHCD or its designee will use the DHCD current utility allowance schedule.

At interim reexamination, DHCD or its designee will apply the utility allowance in effect at the last regular reexamination, including interim reexaminations due to a change in family composition.

DHCD may implement revised UA schedules on a specific date and time, including on a rolling basis, for all families provided the family has been given at least 60 days' notice of the change.

### **12.9.3 Notification of New Family Share and HAP Amount**

DHCD or its designee must notify the owner and family of any changes in the amount of the HAP payment. The notice must include the following information:

- 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 DHCD's or its designee'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 [Informal Hearings for Participants](#)). 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.

### **12.9.4 Discrepancies**

During a regular or interim reexamination, DHCD or its designee may discover that information previously reported by the family was in error, or that the family intentionally misrepresented

information. In addition, DHCD or its designee may discover errors made by DHCD or its designee. When errors resulting in the overpayment or underpayment of subsidy are discovered, corrections will be made in accordance with the policies in [CHAPTER 18](#).

### **12.9.5 Fraud Prevention**

After two or more instances of job loss or income reduction within 120 days of the effective date of a regular reexamination, the household's rent will be determined using past, rather than prospective, income data. DHCD or its designee also reserves the right to conduct an investigation regarding the changes in income or expenses. In instances of job loss or income reduction within 120 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.

Use of the prior year's income information may not be required if the household can provide verifiable evidence that the two or more instances of job loss or income reduction within 120 days of a regular or interim reexamination are reasonable.

If the household disagrees with DHCD or its designee, they have the right to request an informal hearing.

## CHAPTER 13 : MOVES

### 13.1 ALLOWABLE MOVES

Permission to move is subject to the restrictions set forth in this chapter under [Restrictions on Moves](#). In all cases, if the family terminates the lease on notice to the owner, the family must give DHCD or its designee a copy of the notice at the same time [24 CFR 982.354(d)(1)]. 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 982.354(b)(3)].
- When the family or a member of the family is or has been the survivor 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)]. 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 moved out of the assisted dwelling unit in order to protect the health or safety of an individual who is or has been a survivor 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." This condition applies even when the family has moved out of its unit in violation of the lease, with or without prior notification to DHCD or its designee.

If a family requests permission to move with continued assistance based on a claim that the move is necessary to protect the health or safety of a family member who is or has been the survivor of domestic violence, dating violence, sexual assault, or stalking, DHCD or its designee will request documentation to support their claim in accordance with [Survivor Documentation](#) 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 982.354(b)(1)(ii)].
- 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 982.354(b)(2)]. The family must give DHCD or its designee a copy of any owner eviction notice [24 CFR 982.551(g)].
- When DHCD or its designee has terminated the assisted lease for the family's unit for the owner's breach [24 CFR 982.354(b)(1)(i)].
- When DHCD or its designee 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, DHCD or its designee must issue the family a new voucher, and the family, with assistance from DHCD or its designee, must try to find an acceptable unit as soon as possible. If an acceptable unit is available for the family, DHCD or its designee will 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 DHCD or its designee gives notice to the owner [24 CFR 982.403].

## **13.2 RESTRICTIONS ON MOVES**

DHCD or its designee will deny a family permission to move under the following conditions:

### **13.2.1 Insufficient Funding**

[24 CFR 982.354(e)(1) ]

DHCD or its designee may only deny a family permission to move to a higher cost unit within DHCD's jurisdiction or to a higher cost area outside DHCD's jurisdiction if DHCD does not have funding for continued assistance.

DHCD or its designee will deny a family permission to move on grounds that DHCD or its designee does not have sufficient funding for continued assistance if DHCD or its designee 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;

DHCD or its designee will provide written notification to the local HUD Office within 10 business days of determining it is necessary to deny moves to a higher-cost unit based on insufficient funding.

DHCD or its designee 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.

DHCD or its designee 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 be selected in accordance with the policies in [Selection from the Waiting List](#). These families take precedence over families on the waiting list. DHCD or its designee 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. DHCD or its designee 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.

### **13.2.2 Grounds for Denial or Termination of Assistance**

DHCD or its designee may deny a family permission to move if it has grounds for denying or terminating the family's assistance [24 CFR 982.354(e)(2)]. If termination proceedings have commenced, the participant may not be considered a tenant in good standing and may not move with assistance. DHCD or its designee should not accept or act upon any RFTAs

submitted by the participant while an appeal is pending. However, protections afforded by the Violence Against Women Act of 2005 and 2013 (VAWA) apply.

### **13.2.3 Restrictions on Elective Moves**

[24 CFR 982.354(c)]

DHCD or its designee will deny a family permission to make an elective move during the family's initial lease term. This policy applies to moves within DHCD's jurisdiction or outside it under portability.

DHCD or its designee 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 DHCD's jurisdiction.

DHCD or its designee 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);
- To address an emergency situation over which a family has no control; or
- To address a 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, either within DHCD's jurisdiction or out of state, if they are in non-compliance with a repayment agreement and have outstanding debt to DHCD or its designee. The family must make all overdue payments on the existing agreement before DHCD or its designee will issue a voucher to the family. However, a participant family will not be permitted to move out of state until the debt is paid in full.

The above prohibitions do not apply when the family or a member of the family is or has been the survivor 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 on documentation of abuse, see [Survivor Documentation](#).

## **13.3 MOVING PROCESS**

### **13.3.1 Notification**

If a family wishes to move to a new unit, the family must notify DHCD or its designee and the owner before moving out of the old unit or terminating the lease on notice to the owner [24 CFR 982.354(d)]. The notices must be in writing.

### **13.3.2 Approval**

Upon receipt of a family's notification that it wishes to move, DHCD or its designee will determine whether the move is approvable in accordance with the regulations and policies set forth in this chapter. DHCD or its designee will notify the family in writing of its determination within 15 business days following receipt of the family's notification.



### **13.4 MOVES & REEXAMINATION OF FAMILY INCOME AND COMPOSITION**

For families approved to move to a new unit within DHCD's jurisdiction, DHCD or its designee will perform a new regular reexamination and reset the next reexamination date to coincide with the effective month of the new lease. For more information on reexaminations, see the policies set forth in [CHAPTER 12](#). A regular reexamination is necessary to ensure that the new unit meets the affordability standard.

### **13.5 VOUCHER ISSUANCE AND BRIEFING**

For families approved to move to a new unit within DHCD's jurisdiction, DHCD or its designee will issue a voucher. No briefing is required for these families. DHCD or its designee 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 DHCD or its designee approves.

### **13.6 HOUSING ASSISTANCE PAYMENTS**

[24 CFR 982.311(d)]

When a family moves out of an assisted unit, DHCD or its designee 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.

### **13.7 UNIT NOT READY ON SCHEDULED VACATE DATE**

If the participant family's new unit is not available at the time of the scheduled vacate date from the current unit, the family may submit a written request signed by both owner and tenant to remain in their current unit with HCV assistance for a period not to exceed one month. For further extensions, additional written requests will be required.

### **13.8 FAMILY OPTS NOT TO MOVE**

If the participant elects not to vacate their current unit, the participant must provide to DHCD or its designee a written agreement signed by both owner and tenant to reinstate the lease and HAP contract. The written agreement to reinstate the tenancy must be submitted to DHCD or its designee prior to the expiration date of the voucher.



## CHAPTER 14 : PORTABILITY

### 14.1 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. When a family decides to use the voucher outside of DHCD or its designee's jurisdiction (or a family outside Massachusetts wishes to use their voucher in Massachusetts), this is called "portability." A DHCD participant family wishing to relocate outside of Massachusetts must notify DHCD or its designee of its desire to relocate and must specify the location where it wants to live. 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. DHCD or its designee will follow the rules and policies outlined in this chapter when it is acting as the initial PHA or receiving PHA.

### 14.2 TRANSFERS BETWEEN DHCD AND OTHER MASSACHUSETTS PHAS

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, DHCD's designees may not administer or absorb any transfers from a Massachusetts PHA unless approved by DHCD in advance. Exceptions for special circumstances such as conflict of interest or reasonable accommodation issues must be approved by DHCD.

Transfers between DHCD designees are not considered port-ins and/or port-outs. When a participant moves between one designee and another the action is treated as a transfer.

### 14.3 ALLOWABLE MOVES UNDER PORTABILITY

A participant family may port out of DHCD's jurisdiction with continued assistance in accordance with the regulations and policies set forth in [CHAPTER 14](#).

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 will provide the family with the contact information for the receiving PHAs and the family will select the receiving PHA. In cases where the family prefers not to select, the initial PHA will choose the receiving PHA on behalf of the family.

Applicant families that have been issued vouchers as well as participant families may qualify to lease a unit outside the initial PHA's jurisdiction under portability. The initial PHA, in accordance with HUD regulations and initial PHA policy, determines whether a family qualifies.

#### **14.4 PORT-OUTS**

A family may move with voucher assistance only to an area where there is at least one PHA administering a voucher program and in accord with the portability policies in this plan. The family must notify DHCD or its designee of its desire to relocate and must specify the location where it wants to live. If there is more than one HA in the area, DHCD or its designee will provide the family with the contact information for the receiving HAs and the family will select the receiving HA. In cases where the family prefers not to select, DHCD or its designee will select the receiving HA on behalf of the family.

Section 8 Moderate Rehabilitation and project-based assistance is not portable.

##### **14.4.1 Applicant Families**

A family that has not leased a unit under the HCV program is eligible for portability if the head of family or spouse was a resident in DHCD or its designee's jurisdiction at the time the application for assistance was submitted.

If neither the head of household nor the spouse/co-head of an applicant family had a domicile (legal residence) in DHCD or its designee's jurisdiction at the time the family's application for assistance was submitted, the family must live in DHCD or its designee's jurisdiction with voucher assistance for the initial lease term before requesting portability. DHCD or its designee will consider exceptions to this policy for purposes of reasonable accommodation. DHCD or its designee may deny a portability move by an applicant family for insufficient funding or if grounds for denial of assistance are present.

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. The family must specify the area to which the family wishes to move.

DHCD or its designee will determine whether the family is income eligible in the area to which the family wishes to move. If the applicant family is not income eligible in that area, DHCD or its designee will inform the family that it may not move there and receive voucher assistance.

##### **14.4.2 Participant Families**

DHCD or its designee will not provide portable assistance for a tenant if a family has moved out of its assisted unit in violation of the lease.

A family, however, is exempt from this prohibition if the family is otherwise in compliance with program obligations, but has moved to protect the health or safety of an individual in the family who is or has been a survivor 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.

DHCD or its designee will not redetermine income eligibility when a tenant family ports out of DHCD or its designee's jurisdiction.

#### **14.4.3 Recertification of Household Income and Composition**

A new reexamination of family income and composition is not required for a tenant family who is approved to move out of DHCD or its designee's jurisdiction under portability. However, for a tenant family approved to move out of DHCD or its designee's jurisdiction under portability, DHCD or its designee generally will conduct a reexamination of family income and composition if the family's regular reexamination will be effective within 120 days from the request to port out.

#### **14.4.4 Briefing**

No formal briefing will be required for a tenant family wishing to move outside of DHCD or its designee's jurisdiction under portability. However, DHCD or its designee will provide the family with the same oral and written explanation of portability that it provides to applicant households selected for admission to the program. See [CHAPTER 5](#).

DHCD or its designee will provide the name, address, and phone of the contact for the HA in the jurisdiction to which they wish to move. DHCD or its designee will advise the family that they will be under the receiving PHA's policies and procedures, including subsidy standards and voucher extension policies.

#### **14.4.5 Voucher Issuance and Term**

Generally, when a tenant requests to port out, DHCD or its designee will first conduct screening for eligibility for a move and then issue a voucher. See [Moving Process](#). An applicant family has no right to portability until after the family has been issued a voucher.

#### **14.4.6 Voucher Extensions and Suspensions**

DHCD or its designee may approve extensions to a voucher issued to an applicant or tenant family porting out of DHCD or its designee's jurisdiction under the following circumstances:

- The initial term of the voucher will expire before the portable family will be issued a voucher by the receiving HA;
- The family decides to return to the DHCD or its designee's jurisdiction and search for a unit; or
- The family decides to search for a unit in a third HA's jurisdiction.

In the cases above, DHCD or its designee's policies on voucher extension and suspensions will apply, including the requirement that the family apply for an extension in writing prior to the

expiration of the initial voucher term. See policies on Voucher Issuance, Extensions of Voucher Term, Suspensions of Voucher Term, Expiration of Voucher Term.

Once the receiving HA issues the family a voucher, the receiving HA's policies on extensions of the voucher term apply. The receiving HA must notify DHCD or its designee of any extensions granted to the term of the voucher. DHCD or its designees must determine whether it will extend the initial billing submission deadline if and when a voucher extension is granted.

#### **14.4.7 Initial Contact with the Receiving HA**

After approving a family's request to move under portability, DHCD or its designee will notify the receiving HA to expect the family. DHCD or its designee will also advise the family on how to contact and request assistance from the receiving HA.

Because the portability process is time-sensitive, DHCD or its designee will notify the receiving HA by phone, fax, or email to expect the family and to determine if the receiving HA will absorb or administer the voucher. The receiving HA must notify DHCD or its designee, in writing, via email or other confirmed delivery method, of its decision.

If the receiving HA notifies DHCD or its designee that it will absorb the voucher, the receiving HA may not reverse its decision at a later date without DHCD or its designee's consent.

If the receiving HA will bill DHCD or its designee for the portability voucher and the cost of the HAP will increase due to the move, the initial HA may deny the move if it does not have sufficient funding for continued assistance in accordance with the regulatory requirements.

DHCD or its designee will advise the family that they must promptly contact the receiving HA in order to be informed of the receiving HA's procedures for incoming portable households and comply with these procedures.

#### **14.4.8 Sending Documentation to the Receiving HA**

DHCD or its designee will send the receiving HA the following documents:

- Form HUD-52665, Family Portability Information, with Part I filled out;
- A copy of the family's voucher;
- 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; and
- A copy of the most recent EIV report (if available).

In addition to these documents, DHCD or its designee will provide the following information, if available, to the receiving HA:

- Social Security numbers;
- Documentation of legal identity;

- Documentation of eligible immigration status;
- Documentation of participation in the earned income disregard; and
- Documentation of participation in a Family Self-Sufficiency (FSS) program.

#### **14.4.9 Initial Billing Deadline**

If DHCD or its designee has not received an initial billing notice from the receiving HA by the deadline specified on form HUD-52665, it will contact the receiving HA by phone, fax, or email. If the receiving HA reports that the family is not yet under HAP contract, DHCD or its designee will inform the receiving HA whether it will honor a late billing submission. DHCD or its designee will send the receiving HA a written confirmation of its decision.

The initial billing submission must be completed and mailed by the receiving HA so that it is received by the initial HA no later than 90 days following the expiration of the initial HA's voucher.

DHCD or its designee 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 HA.

#### **14.4.10 Monthly Billing Payments**

If the receiving HA is administering the family's voucher, DHCD or its designee will make billing payments in a timely manner. The first billing amount is due within 30 days after DHCD or its designee receives Part II of form HUD-52665 from the receiving HA. Subsequent payments must be received by the receiving HA no later than the fifth business day of each month.

DHCD or its designee will reimburse the receiving HA for the full amount of the housing assistance payments made by the receiving HA for the portable family. Additionally, DHCD or its designee will reimburse the receiving HA for the lesser of 80% of DHCD or its designee's prorated column B administrative fee rate or 100% of the receiving HA's prorated column B administrative fee rate for each program unit under HAP contract on the first day of the month for which the receiving HA is billing DHCD or its designee. If administrative fees are prorated, the proration will apply to the amount of the administrative fee for which the receiving HA may bill. If both PHAs agree, the PHAs may negotiate a different amount of reimbursement.

DHCD or its designee may utilize direct deposit to ensure that the payment is received by the deadline.

#### **14.4.11 Subsequent Household Moves**

If a receiving HA is administering a DHCD or its designee voucher family and the family subsequently decides to move out of the receiving HA's jurisdiction, DHCD or its designee will issue the family a voucher to move and will send form HUD-52665 and supporting documentation to the new receiving HA.

#### **14.4.12 Denial or Termination of Assistance**

If DHCD or its designee has grounds for denying or terminating assistance for a portable family that has not been absorbed by the receiving HA, DHCD or its designee may act on those grounds at any time.

#### **14.4.13 Regular Recertification**

The receiving HA must send to DHCD or its designee a copy of a portable family's updated form HUD-50058 after each regular reexamination for the duration of time the receiving HA is billing DHCD or its designee on behalf of the family, regardless of whether there is a change in the billing amount. The reexamination and updated billing are due to DHCD or its designee within ten days of the reexamination effective date.

#### **14.4.14 Change in Billing Amount**

The receiving HA is required to notify DHCD or its designee, 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; or
- 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 DHCD or its designee 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.

### **14.5 PORT-INS**

When a family that is issued a voucher from another HA uses that voucher to lease a unit in DHCD or its designee's jurisdiction that process is referred to as porting-in. In the case of a port-in, DHCD or its designee is the receiving HA and the housing authority from which the family came is the initial HA.

#### **14.5.1 Receiving HA Role**

For households that port-in to DHCD or its designee's jurisdiction, the family's unit size or voucher size is determined in accordance with DHCD or its designee's subsidy standards and the amount of the family's housing assistance payment is determined in the same manner as for other HAs.

If a family has a right to lease a unit in DHCD or its designee's jurisdiction under portability, DHCD or its designee will provide assistance for the family. DHCD or its designee's procedures and preferences for selection among eligible applicants do not apply, and DHCD or its designee's waiting list is not used. However, the family's unit, or voucher, size is determined in accordance

with DHCD or its designee's subsidy standards, and the amount of the family's housing assistance payment is determined in the same manner as for other non-MTW households in DHCD or its designee's Voucher Program.

#### **14.5.2 Port-Ins and MTW**

DHCD MTW policies are applied to port-ins as follows:

<b>MTW Policy</b>	<b>Apply to Port-In Yes or No</b>
Biennial Recertification	No
Limit on Interim Recertification	Yes
Utility Allowance Heat & Other Electric Only	Yes
No UAP under \$25	Yes
Asset Self Certification, Asset Income Exclusion, and Imputed Asset Income Calculation	Yes
MTW Full-Time Student Income Exclusion	Yes
MTW Earned Income Disregard	Yes
Apply the Current Payment Standard regardless of Fluctuations between Recerts	Yes

If DHCD or its designee absorbs a port-in voucher, the family is subject to all of DHCD or its designee's MTW policies.

#### **14.5.3 Responding to the Initial PHA's Request**

DHCD or its designee will respond via email or other confirmed delivery method to the initial HA's inquiry to determine whether the family's voucher will be billed or absorbed.

#### **14.5.4 Initial Contact with Household**

When a family moves into DHCD or its designee's jurisdiction under portability, the family is responsible for promptly contacting DHCD or its designee and complying with DHCD or its designee's procedures for incoming portable households.

If the voucher issued to the family by the initial HA has expired, DHCD or its designee will not process the family's paperwork, but will instead refer the family back to the initial HA.

Although DHCD or its designee may initially bill the initial HA for the family's assistance, it may later decide to absorb the family into its own program provided.

#### **14.5.5 Criminal Background Screening & Port-Ins**

DHCD or its designee will conduct a criminal background and sex offender registry check on all adult family members who are porting into DHCD's jurisdiction. DHCD or its designees will follow its policies on screening to guide determinations related to criminal background and sex offender registration screening.

#### **14.5.6 Briefing**

DHCD or its designee will inform the family orally and in writing about DHCD or its designee's payment and subsidy standards, procedures for requesting approval of a unit, the unit inspection process, and the leasing process.

#### **14.5.7 Income Eligibility and Recertification**

For any family moving into its jurisdiction under portability, DHCD or its designee will conduct a new reexamination of family income and composition. DHCD or its designee will not delay issuing the family a voucher for this reason, nor will DHCD or its designee delay approving a unit for the family until the reexamination process is complete unless the family is an applicant and DHCD or its designee 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, DHCD or its designee will rely upon any verifications provided by the initial HA 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.

Port-in households are recertified on an annual basis.

#### **14.5.8 Voucher Issuance**

When a family ports in to DHCD or its designee's jurisdiction, DHCD or its designee will issue the family a voucher. Generally, DHCD or its designee will issue the voucher within two weeks after receiving the family's paperwork from the initial HA if the information is in order, the family has contacted DHCD or its designee, and the family complies with the DHCD or its designee's procedures

#### **14.5.9 Voucher Term**

If the initial HA's voucher expires before DHCD or its designee issues the portable family a voucher, DHCD or its designee will contact the initial HA to determine if it will extend the voucher term. DHCD or its designee will not issue a voucher to the portable family if the initial HA voucher term is expired and no extension is authorized by the initial HA.

Under no circumstances, will the term of DHCD or its designee's voucher expire before 30 calendar days from the expiration date of the initial HA voucher term. For example, if the initial HA voucher term expires on 7/12/15, DHCD or its designee's voucher term, as the receiving HA, will not expire before 8/12/15.

#### **14.5.10 Voucher Extensions & Suspensions**

DHCD or its designee may provide additional search time to the family beyond the expiration date of the initial HA's voucher. DHCD or its designee will only extend the term of the voucher for a port-in tenant if the initial HA extends their voucher expiration date as well. In this way DHCD or its designee can better 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 HA.



#### **14.5.11 Notifying the Initial HA**

DHCD or its designee will notify the initial HA 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 DHCD or its designee's voucher. DHCD or its designee will use Part II of form HUD-52665, Family Portability Information, for this purpose.

If an incoming portable family ultimately decides not to lease in DHCD or its designee's jurisdiction, but instead wishes to return to the initial HA's jurisdiction or to search in another jurisdiction, DHCD or its designee will refer the family back to the initial HA. In such a case the voucher of record for the family is once again the voucher originally issued by the initial HA. Any extension of search time provided by the receiving HA's voucher is only valid for the family's search in the receiving HA's jurisdiction.

#### **14.5.12 Initial Billing Deadline**

If a portable family's search for a unit is successful and DHCD or its designee intends to administer the family's voucher, DHCD or its designee's initial billing notice (Part II of form HUD-52665) must be completed and mailed so that it is received by the initial HA no later than 90 days following the expiration of the initial HA's voucher. A copy of the family's form HUD-50058, Family Report, completed by DHCD or its designee will be attached to the initial billing notice. DHCD or its designee may send these documents either by mail, fax, or email.

#### **14.5.13 Billing Procedures**

If administering the port-in voucher, DHCD or its designee will bill the initial HA once a month for Housing Assistance Payments. The billing cycle for other amounts, including administrative fees and special claims will be once a month. DHCD or its designee will bill 100% of the Housing Assistance Payment and the lesser of 80% of the initial HA prorated column B administrative fee rate or 100% of DHCD or its designee's prorated column B administrative fee rate for each unit under HAP contract on the first day of the month for which DHCD or its designee is billing the initial HA. Additionally, as provided by HUD, DHCD or its designee will prorate administrative fees in accordance with any HUD prorations.

DHCD or its designee will notify the initial HA of changes in subsidy amounts within ten days of any change in the monthly payment. DHCD or its designee will update Administrative Fees when and if HUD revises the fees and/or related prorations.

#### **14.5.14 Denial or Termination of Assistance**

At any time, DHCD or its designee may make a determination to deny assistance to an applicant portable family or terminate assistance to a participant portable family for family action or inaction.

If DHCD or its designee elects to deny or terminate assistance for a portable family, DHCD or its designee will notify the initial HA after the informal review or hearing if the denial or termination is upheld. DHCD or its designee will base its denial or termination decision on the policies set forth in this plan.

#### **14.5.15 Absorbing a Portable Household**

Absorption is the point at which a receiving HA starts making assistance payments with funding under its consolidated ACC. DHCD or its designee may absorb a voucher providing that (a) DHCD or its designee has funding available under its Annual Contributions Contract (ACC) and (b) absorbing the family will not result in over-leasing.

If DHCD or its designee notifies an initial HA that it will absorb the voucher, DHCD or its designee will not reverse its decision at a later date without consent of the initial HA. DHCD or its designee has 10 business days from the effective date of the absorption to send an updated form HUD-52665 to the initial PHA.

If DHCD or its designee decides to absorb a family, after administering the voucher, DHCD or its designee will provide the initial HA with 30 days advance notice.

When a portable family is absorbed by DHCD or its designee, the family will be subject to DHCD or its designee policies, including MTW policies.

#### **14.6 VASH & PORTABILITY**

HUD-VASH participant families may reside only in those jurisdictional areas that are accessible to case management services as determined by the Veteran's Administration Medical Center (VAMC). If the family initially leases up, or moves, under portability provisions, but the initial PHA's partnering VAMC will still be able to provide the necessary case management services due to the family's proximity to the partnering VAMC, the receiving PHA must process the portability move.

Since the initial PHA must maintain records on all HUD-VASH families receiving case management services from its partnering VAMC or CBOC, receiving PHAs without a HUD-VASH program must bill the initial PHA.

The receiving HA may bill the initial HA or absorb the family into its own HUD-VASH program if the VAMC providing the initial case management agrees to the absorption by the receiving HA and the transfer of case management.

If the initial HA cannot provide case management services, the VAMC must first determine that the HUD-VASH family could be served by another VAMC or community-based outreach center (CBOC) that is participating in this program, and the receiving HA must have a HUD-VASH voucher available for this family. In these cases, the families must be absorbed by the receiving HA.

Upon absorption, the initial HA's HUD-VASH voucher will be available to lease to a new HUD-VASH-eligible family and the absorbed family will count toward the number of HUD-VASH slots awarded to the receiving HA.

DHCD or its designee will use the codes for the special purpose vouchers on the 50058 and continue to use such codes while DHCD or its designee is administering a portable voucher.

#### **14.7 FUP & PORTABILITY**

DHCD or its designee may not restrict or deny portability for a Family Unification Program (FUP) participant for reasons other than those specified in HCV program regulations.

A FUP participant does not have to move to a jurisdiction that administers FUP.

The receiving HA does not need to have FUP to bill the initial PHA for a ported FUP voucher. The receiving HA has discretion on whether to absorb or bill a ported FUP voucher.

## CHAPTER 15 : TERMINATIONS

HUD regulations specify the reasons for which DHCD or its designee 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.

### 15.1 GROUNDS FOR TERMINATION OF ASSISTANCE

#### 15.1.1 Family No Longer Requires Assistance

[24 CFR 982.455]

As a family's income increases, the amount of subsidy goes down. If the amount of HCV assistance provided by DHCD or its designee drops to zero and remains at zero for 180 consecutive calendar days, the family's assistance terminates automatically.

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 DHCD or its designee of the changed circumstances and request an interim reexamination before the expiration of the 180-day period.

#### 15.1.2 Family Chooses to Terminate Assistance

The family may request that DHCD or its designee terminate the family's assistance at any time.

When a family requests to be terminated from the program, they must do so in writing, signed by the head of household, spouse, or co-head, to DHCD or its designee. DHCD or its designee 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. The family will be notified of the consequences of withdrawal.

#### 15.1.3 Mandatory Termination of Assistance

HUD requires DHCD or its designee to terminate assistance in the following circumstances.

##### 15.1.3.1 Eviction

[24 CFR 982.552(b) (2)]

DHCD or its designee 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 (see Section [12.2 Family Obligations](#)). 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 survivor or threatened victim of such violence or stalking.

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. DHCD or its designee will consider whether the reason for the eviction was through no fault of the tenant or guests.

A family will be considered evicted after a court has issued a judgment for eviction, 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, DHCD or its designee 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 [Alternatives to Termination of Assistance](#), [Criteria for Deciding to Terminate Assistance](#), and [Terminating the Assistance of Domestic Violence, Dating Violence, Sexual Assault, or Stalking Survivors and Perpetrators](#) [24 CFR 5.2005]. Upon consideration of such alternatives and factors, DHCD or its designee may, on a case-by-case basis, choose not to terminate assistance.

#### **15.1.3.2 Failure to Provide Consent**

[24 CFR 982.552(b)(3)]

DHCD or its designee must terminate assistance if any family member fails to sign and submit any consent form they are required to sign for a reexamination. See [Family Consent to Release of Information](#) for a complete discussion of consent requirements.

#### **15.1.3.3 Failure to Document Citizenship or Other Eligible Immigration Status**

[24 CFR 982.552(b)(4) and 24 CFR 5.514(c)]

DHCD or its designee 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 DHCD or its designee, 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 6](#) for a complete discussion of documentation requirements for citizenship.

#### **15.1.3.4 Failure to Disclose and Document Social Security Numbers**

[24 CFR 5.218(c), Notice PIH 2010-03]

DHCD or its designee 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 DHCD or its designee 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, DHCD or its designee 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 DHCD or its designee determined the family to be non-compliant.

DHCD or its designee 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.

DHCD and its designees may not deny assistance to mixed families due to nondisclosure of an SSN by an individual who does not contend to have eligible immigration status.

#### **15.1.3.5 Methamphetamine Manufacture or Production**

[24 CFR 982.553(b)(1)(ii)]

DHCD or its designee 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.

#### **15.1.3.6 Failure of Students to Meet Ongoing Eligibility Requirements**

[24 CFR 982.552(b)(5)]

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, is not residing with his/her parents in an HCV-assisted household, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, DHCD or its designee will 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 DHCD 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.

#### **15.1.3.7 Death of the Sole Family Member**

[24 CFR 982.311(d), Notice PIH 2010-9, and Notice 2012-04]

DHCD or its designee must terminate program assistance for deceased single member households according to the required timeframes. For more details, see [Deceased Tenant](#).

#### **15.1.4 Other Authorized Terminations**

[24 CFR 982.553(b) and 982.551(l)]

##### Mandatory Policies

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 accordingly (see [Termination Due to State Registered Lifetime Sex Offender Status](#)).

#### **15.1.4.1 Use of Illegal Drugs and Alcohol Abuse**

DHCD or its designee 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 12 months unless the household member is enrolled in and fully compliant with treatment.

DHCD or its designee 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.

DHCD or its designee 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, DHCD or its designee will consider alternatives as described in [Alternatives to Termination of Assistance](#) and other factors described in [Criteria for Deciding to Terminate Assistance](#) and [Terminating the Assistance of Domestic Violence, Dating Violence, Sexual Assault, or Stalking Survivors and Perpetrators](#). Upon consideration of such alternatives and factors, DHCD or its designee may, on a case-by-case basis, choose not to terminate assistance.

#### **15.1.4.2 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 USC 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.

DHCD or its designee 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.

DHCD or its designee 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, DHCD or its designee will consider alternatives as described in [Criteria for Deciding to Terminate Assistance](#) and [Terminating the Assistance of Domestic Violence, Dating Violence, Sexual Assault, or Stalking Survivors and Perpetrators](#). Upon consideration of such alternatives and factors, DHCD or its designee may, on a case-by-case basis, choose not to terminate assistance.

#### **15.1.4.3 Termination Due to State Registered Lifetime Sex Offender Status**

[Notice 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 DHCD or its designee 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), DHCD or its designee will immediately pursue termination of assistance for the household member. If DHCD or its designee erroneously admitted a lifetime sex offender, DHCD or its designee 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, DHCD or its designee will terminate assistance for the household. Rules for hearings for the HCV program at 24 CFR § 982.555 continue to apply.

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.

#### **15.1.5 Other Reasons for Termination of Assistance**

[24 CFR 982.552(c)]

HUD permits DHCD or its designee to terminate assistance under a number of other circumstances. The Violence Against Women Reauthorization Act of 2005 and 2013 explicitly prohibits public housing authorities from considering incidents or actual threatened domestic violence, dating violence, sexual assault, or stalking as reasons for terminating the assistance of a survivor of such violence.

DHCD or its designee will terminate a family's assistance if:

- The family has failed to comply with any family obligations under the program. See [Family Obligations](#) for a list of family obligations.
- 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 for any reason covered in DHCD's policies for termination.



- 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 public housing authority in connection with the HCV, Certificate, Moderate Rehabilitation, or public housing programs.
- The family has not reimbursed any public housing authority for amounts the housing authority 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 DHCD or its designee.
- A family member has engaged in or threatened violent or abusive behavior toward DHCD or designee personnel. Abusive or violent behavior toward 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 per the policies.

In making its decision to terminate assistance, DHCD or its designee may consider alternatives as described in [Criteria for Deciding to Terminate Assistance](#) and [Terminating the Assistance of Domestic Violence, Dating Violence, Sexual Assault, or Stalking Survivors and Perpetrators](#). Upon consideration of such alternatives and factors, DHCD or its designee may, on a case-by-case basis, choose not to terminate assistance.

#### **15.1.5.1 Family Absence from the Unit**

[24 CFR 982.312]

If the family is absent from the unit for more than 90 consecutive calendar days, the family's assistance will be terminated (see Absence from the Unit). Absence in this context means that no member of the family is residing in the unit. Notice of termination will be sent in accordance with the policies in [Termination Notice](#).

#### **15.1.5.2 Insufficient Funding**

[24 CFR 982.454]

DHCD or its designee may terminate HAP contracts if DHCD determines, in accordance with HUD requirements, that funding under the consolidated ACC is insufficient to support continued assistance for families in the program.

DHCD will determine whether there is sufficient funding to pay for currently assisted families as per [Determination of Insufficient Funding](#). If DHCD determines there is a shortage of funding, prior to terminating any HAP contracts, DHCD 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, DHCD or its designee will terminate HAP contracts as a last resort.

Prior to terminating any HAP contracts, DHCD will inform the local HUD field office. DHCD will terminate the minimum number needed in order to reduce HAP costs to a level within DHCD's annual budget authority.

If DHCD or its designee must terminate HAP contracts due to insufficient funding, DHCD or its designee will do so in accordance with the following criteria and instructions:

DHCD or its designee will terminate families due to insufficient funding in the following order. DHCD will adopt the policy first in, first out. Under this option, DHCD or its designee 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.

## **15.2 APPROACH TO TERMINATION OF ASSISTANCE**

### **15.2.1 Method of Termination**

[24 CFR 982.552(a)(3)]

The way in which DHCD or its designee terminates assistance depends upon individual circumstances. DHCD or its designee may 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.

### **15.2.2 Alternatives to Termination of Assistance**

#### Change in Household Composition

[24 CFR 982.552(c)(2)(ii)]

As a condition of continued assistance, DHCD or its designee may require that any household member who participated in or was responsible for an offense no longer resides in the unit, and 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 the request of DHCD or its designee.

#### Repayment of Family Debts

If a family owes amounts to DHCD or its designee, as a condition of continued assistance, DHCD or its designee will require the family to repay the full amount or to enter into a repayment agreement, within 30 days of receiving notice from DHCD or its designee of the amount owed. See sections on [Family Debts to DHCD](#) through [Repayment Agreement](#).

### **15.2.3 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)].

DHCD and its designees 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.

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

DHCD and its designees are permitted, but not required, to consider all relevant circumstances when determining whether a family's assistance should be terminated.

DHCD or its designee 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 a survivor 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. DHCD or its designee 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, DHCD's or its designee's decision to terminate the family's assistance is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.

If a family indicates that the behavior of a family member with a disability is the reason for a proposed termination of assistance, DHCD or its designee will determine whether the behavior is related to the disability. If so, upon the family's request, DHCD or its designee will determine whether alternative measures are appropriate as a reasonable accommodation. DHCD or its designee 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.

#### **15.2.4 Termination Notice**

If a family's assistance is to be terminated, whether voluntarily or involuntarily, DHCD or its designee 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 [Informal Hearings for Participants](#);
- The right to request a reasonable accommodation;
- In multiple languages, a notice that this is an important document and the recipient may request translation and/or interpretation services from DHCD's designee;
- The VAWA Notice of Occupancy Rights and VAWA Certification Form.

If a criminal record is the basis of the termination, DHCD or its designee will 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's termination, the special notice requirements for termination based on citizenship status must be followed. See Notice of Termination Based on Citizenship Status below.

When termination is initiated by DHCD or its designee, DHCD or its designee 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. DHCD or its designee will provide the termination notice at least 30 calendar days prior to the effective date of the termination.

However, if a family vacates the unit without informing DHCD or its designee, 30 days' notice will not be given. In these cases, the notice to terminate will be sent at the time DHCD or its designee learns the family has vacated the unit.

Notice to the family will 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 DHCD or its

designee, but the regular mail is not returned to DHCD or its designee by the post office, allegations by the tenant that they did not receive the notice of termination will not be considered by DHCD or its designee as a reason for failure to submit a request for an informal hearing or otherwise respond to the notice. Unless both are returned to DHCD or its designee, there is the presumption that the notice has been received. Notice to the owner may be sent by certified mail only.

#### Notice of Termination Based on Citizenship Status [24 CFR 5.514 (c) and (d)]

DHCD or its designee 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) DHCD or its designee 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 DHCD or its designee either upon completion of the USCIS appeal or in lieu of the USCIS appeal. Informal hearing procedures are contained in [CHAPTER 16](#).

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.

### **15.2.5 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.

### **15.3 TERMINATING THE ASSISTANCE OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING SURVIVORS AND PERPETRATORS** [24 CFR 5.2005]

The Violence Against Women Reauthorization Act of 2005 and 2013 (VAWA) provides protections against termination of assistance for survivors of domestic violence, dating violence, sexual assault, and stalking. For general VAWA requirements and DHCD policies pertaining to notification, documentation, and confidentiality, see [Violence Against Women Reauthorization Acts of 2005 AND 2013 \(VAWA\)](#).

### **15.4 TERMINATION OF TENANCY BY THE OWNER**

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.

#### **15.4.1 Grounds for Owner Termination of Tenancy** [24 CFR 982.310]

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.

##### **15.4.1.1 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 survivor is protected from eviction by VAWA. However, the failure of DHCD or its designee to make a HAP payment to the owner is not a violation of the lease between the family and the owner.

##### **15.4.1.2 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.

##### **15.4.1.3 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 survivor, the criminal activity may not be construed as cause for terminating the survivor's tenancy. See [Terminating the Assistance of Domestic Violence, Dating Violence, Sexual Assault, or Stalking Survivors 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.

#### **15.4.1.4 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.

#### **15.4.1.5 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.

#### **15.4.2 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 quit, 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 DHCD or its designee a copy of any notice to quit and other eviction paperwork at the same time the owner notifies the family. The family is also required to give DHCD or its designee a copy of any notice to quit and other eviction paperwork.

If the eviction action is finalized in court, the owner must provide DHCD or its designee 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.

#### **15.4.3 Deciding Whether to Terminate Tenancy**

[24 CFR 982.310(h); 24 CFR 5.105; M.G.L. c. 151B, § 4(10)]

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 USC 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 all fair housing and equal opportunity provisions.



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 5.2001 et seq.].

#### **15.4.4 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 DHCD or its designee has no other grounds for termination of assistance, DHCD or its designee may issue a new voucher so that the family can move with continued assistance (see [CHAPTER 13](#)).

## **CHAPTER 16 : INFORMAL REVIEWS AND HEARINGS**

When DHCD's designee 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.

### **16.1 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.

#### **16.1.1 Decisions Subject to Informal Review**

DHCD's designee will give an applicant the opportunity for an informal review of a decision denying assistance [24 CFR 982.554(a)]; however, not all forms of denial are subject to informal review. 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
- Denying assistance based on an unfavorable history, such as poor credit history, poor rental history, a record of previous damage to an apartment, as a result of an action covered under VAWA
- 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 DHCD's designee
- General policy issues or class grievances
- A determination of the family unit size under DHCD subsidy standards
- A determination by DHCD's designee not to grant approval of the tenancy
- A determination by DHCD's designee that the unit is not in compliance with the HQS
- A determination by DHCD's designee that the unit is not in accordance with the HQS due to family size or composition
- A determination by DHCD's designee not to approve the extension of the voucher term

DHCD's designee will only offer an informal review to applicants for whom assistance is being denied.

#### **16.1.2 Notice to the Applicant**

[24 CFR 982.554(a)]

DHCD's designee must give an applicant prompt written notice of a decision denying assistance. The notice must contain a brief statement of the reasons for the designee's 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.

### **16.1.3 Scheduling an Informal Review**

A request for an informal review must be made in writing and delivered to DHCD's designee in person or by first-class mail, email, or fax, by the close of the business day, no later than 15 business days from the date on the written notification denying assistance.

Except as provided in [CHAPTER 4](#), DHCD's designee must schedule and send written notice of the informal review within 15 business days of the family's request.

### **16.1.4 Informal Review Procedures**

[24 CFR 982.554(b)]

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 designee's 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 DHCD's designee.

The person conducting the review will make a recommendation to DHCD's designee, but DHCD's designee is responsible for making the final decision as to whether assistance should be granted or denied.

### **16.1.5 Informal Review Decision**

[24 CFR 982.554(b)]

DHCD's designee must notify the applicant of the designee's final decision, including a brief statement of the reasons for the final decision.

In rendering a decision, DHCD's designee will evaluate the following matters:

- Whether or not the grounds for denial were clearly and explicitly stated in the Notice.
- The validity of grounds for denial of assistance. If the grounds for denial are not specified in the policies and/or regulations, then the decision to deny assistance will be overturned.
- The validity of the evidence. DHCD's designee 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, DHCD's designee will uphold the decision to deny assistance. If the facts prove the grounds for denial, and the denial is discretionary, DHCD's designee will consider the recommendation of the person conducting the informal review in making the final decision whether to deny assistance.

DHCD's designee will notify the applicant in writing 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 DHCD's designee are final and cannot be appealed to DHCD.

## **16.2 INFORMAL HEARINGS FOR PARTICIPANTS**

[24 CFR 982.555]

DHCD's designees must offer an informal hearing for certain designee determinations relating to the individual circumstances of a participant family. A participant is defined as a family that has been admitted to DHCD's HCV program and is currently assisted in the program. The purpose of the informal hearing is to consider whether DHCD's designee's decisions related to the family's circumstances are in accordance with the law, HUD regulations, and DHCD policies.

DHCD's designee 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

### **16.2.1 Decisions Subject to Informal Hearing**

Circumstances for which DHCD's designee will 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 DHCD utility allowance schedule
- A determination of the family unit size under DHCD's subsidy 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 DHCD 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 DHCD's designee
- General policy issues or class grievances
- Establishment of the DHCD schedule of utility allowances for families in the program
- A determination by DHCD's designee not to approve an extension of a voucher term

- A determination by DHCD's designee not to approve a unit or tenancy
- A determination by DHCD's designee that a unit selected by the applicant is not in compliance with the HQS
- A determination by DHCD's designee that the unit is not in accordance with HQS because of family size
- A determination by DHCD's designee to exercise or not to exercise any right or remedy against an owner under a HAP contract

DHCD's designees will only offer participants the opportunity for an informal hearing when required to by the regulations.

### **16.2.2 Notice to the Family**

[24 CFR 982.555(c)]

When DHCD's designee makes a decision that is subject to informal hearing procedures, the designee must inform the family of its right to an informal hearing at the same time that it informs the family of the decision. The designee will also include information on how to request a reasonable accommodation if needed.

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, DHCD's designee 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 DHCD'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.

In cases where DHCD's designee 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 designee;
- 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 designee'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, including to whom the hearing request should be addressed; and
- A copy of the designee's hearing procedures.

If the family does not avail itself of the opportunity for an informal hearing at DHCD's designee, it may not appeal a termination decision to DHCD.

### **16.2.3 Scheduling an Informal Hearing**

[24 CFR 982.555(d)]

A request for an informal hearing must be made in writing and delivered to DHCD's designee in person or by first-class mail, email, or fax by the close of the business day, no later than 15 business days from the date of the designee's decision or notice to terminate assistance.

DHCD's designee 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, DHCD's designee 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 DHCD's designee within 24 hours of the scheduled hearing date, excluding weekends and holidays.

DHCD's designee 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. Generally, hearings will not be scheduled more than three times.

### **16.2.4 Pre-Hearing Right to Discovery**

[24 CFR 982.555(e)]

Participants and DHCD's designee are permitted pre-hearing discovery rights. Prior to the hearing, the family must be given the opportunity to examine any of DHCD's designee's documents that are directly relevant to the hearing. The family must be allowed to copy any such documents at their own expense. If DHCD's designee does not make the document available for examination on request of the family, the designee may not rely on the document at the hearing.

For the purpose of informal hearings, documents include records and regulations.

The participant has the right to bring any documents to the hearing that they would like the hearing officer to consider. The participant must provide DHCD's designee with a copy of all documents they intend to present at the hearing.

### **16.2.5 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.

### **16.2.6 Informal Hearing Officer**

[24 CFR 982.555(e)(4)]

Informal hearings will be conducted by a neutral person or persons approved by DHCD's designee, other than the person who made or approved the decision or a subordinate of the person who made or approved the decision.

#### **16.2.7 Attendance at the Informal Hearing**

The following persons may attend the hearing:

- A representative(s) of DHCD's designee and any witnesses for the designee.
- The participant and any witnesses for the participant.
- The participant's counsel or other representative.
- An interpreter, if desired.
- Any other person approved by DHCD's designee, whether as a reasonable accommodation for a person with a disability or for support.

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 responsibility of DHCD's designee 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, DHCD's designee must determine if they qualify under this section.

#### **16.2.8 Interpretive Services**

In order to communicate with people who need services or information in a language other than English, including American Sign Language, DHCD or its designee will offer, or ensure that the family is offered through other sources competent language interpretation services free of charge to the person requiring the services. Where the person requiring services desires, 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 DHCD or its designee.

#### **16.2.9 Conduct at Hearings**

The person who conducts the hearing may regulate the conduct of the hearing in accordance with the DHCD's hearing procedures [24 CFR 982.555(4)(ii)].

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.

#### **16.2.10 Evidence**

[24 CFR 982.555(e)(5)]

DHCD's designee 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.

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 DHCD or its designee. 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.

The hearing officer has the authority to overrule any objections to evidence.

#### **16.2.11 Recording of the Hearing**

DHCD's designee will record and maintain an audio recording of all informal hearings. The designee may determine how to make the recording, but it must be possible to make a transcript from the recording, if necessary.

#### **16.2.12 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. In rendering a decision, the hearing officer will consider the following matters:

- *DHCD's Designee's Notice to the Family*: The hearing officer will determine if the designee's Notice was appropriately issued and if the reasons for termination contained in the Notice are allowable under the federal regulations and DHCD policies.
- *Discovery*: The hearing officer will determine if the designee and the family were given the opportunity to examine any relevant documents in accordance with DHCD policy.
- *DHCD's Designee's Evidence to Support the Designee's Decision*: The hearing officer will evaluate the facts to determine if they support the designee's conclusion.
- *Whether the Facts Support Termination on the Grounds Specified in the Termination Notice*: The hearing officer will determine if the termination of assistance is for one of the reasons specified in the Notice. If the reasons for termination are not specified in the Notice and/or are not in compliance with DHCD policies, then the decision of the designee will be overturned.



The hearing officer will issue a written decision to the family and DHCD's designee no later than 30 business days after the hearing. The decision 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 DHCD's designee's 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 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 DHCD's designee's decision.
- *Order:* The hearing report will include a statement of whether DHCD's designee's decision is upheld or overturned. If it is overturned, the hearing officer will instruct the designee to change the decision in accordance with the hearing officer's determination. In the case of termination of assistance, if overturned, the hearing officer will instruct the designee to restore the participant's program status.

#### **16.2.13 Rehearing or Further Hearing**

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.

Except as otherwise required, if the family misses an appointment or deadline ordered by the hearing officer, the action of DHCD's designee will take effect and another hearing will not 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. Within 15 business days after the date the hearing officer's report is mailed to DHCD's designee and the participant, the designee 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.

It shall be within the sole discretion of DHCD's designee 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.

#### **16.2.14 Notice of Final Decision**

[24 CFR 982.555(f)]

DHCD and its designees are not bound by the decision of the hearing officer for matters in which DHCD's designee 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 DHCD or its designee determines it is not bound by the hearing officer's decision in accordance with HUD regulations, the designee must promptly notify the family of the determination and the reason for the determination.

DHCD's designee 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. The participant will be mailed the original "Notice of Final Decision". A copy of the "Notice of Final Decision" will be maintained in the designee's file.

#### **16.2.15 Appeals to DHCD**

Of DHCD's designee's 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 designee level.

When DHCD's designee 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 calendar 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 informing each party that DHCD reviews only the written record, and asking each party to make a written submission. DHCD's designee is asked to provide DHCD with a copy of documents and evidence submitted at the hearing. The participant is asked to submit a written statement explaining why s/he should not be terminated from the program. Each party is asked to send a copy of the submission to the other party.

The hearing officer will review all submitted materials and will make a decision after consideration of the facts presented. There is no "in-person" hearing at DHCD. DHCD then reviews the material submitted and issues a written decision.

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. As a result, there will be occasions where the designee 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.

#### **16.2.16 Portable Families**

Participants not holding a DHCD voucher may appeal a designee's decision to termination assistance, but may not appeal to DHCD.

#### **16.2.17 Appeals Following Reinstatement with Conditions**

When a participant is reinstated with conditions (by DHCD or its designee) 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, DHCD's designee must conduct another hearing to determine if the circumstances have changed.

If the participant is subsequently terminated for a different reason, DHCD's designee must conduct a new hearing.

### **16.3 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 participant 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 participant family may not be terminated or denied while the DHCD/its designee's 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 DHCD/its designee's informal hearing process, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

#### **16.3.1 Notice of Denial or Termination of Assistance**

[24 CFR 5.514(d)]

As discussed in [CHAPTER 4](#) and [Termination Notice](#)~~Error! Reference source not found.~~, 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 if at least one family member is a citizen or has eligible immigration status.
- 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 DHCD's designee 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.

### **16.3.2 USCIS Appeal Process**

[24 CFR 5.514(e)]

When DHCD or its designee receives notification that the USCIS secondary verification failed to confirm eligible immigration status, DHCD's designee will notify the family of the results of the USCIS verification within 15 business days of receiving the results. 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 DHCD's designee with a copy of the written request for appeal and the 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 DHCD or its designee, of its decision. When the USCIS notifies DHCD or its designee of the decision, DHCD or its designee will notify 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.

### **16.3.3 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 DHCD's designee provide a hearing. The request for a hearing must be made either within 30 days of receipt of the designee's notice of denial, or within 30 days of receipt of the USCIS appeal decision.

### **16.3.4 Informal Hearing Officer**

DHCD or its designee 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.

### **16.3.5 Evidence**

The family will 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 DHCD's designee 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.

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 DHCD's designee, and to confront and cross-examine all witnesses on whose testimony or information the designee relies.

### **16.3.6 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.

DHCD will ensure that people who need language access services are provided those services, as described in [Interpretive Services](#).

### **16.3.7 Recording of the Hearing – Non-Citizens**

DHCD's designee will record and maintain an audio recording of all informal hearings. The designee may determine how to make the recording, but it must be possible to make a transcript from the recording, if necessary.

### **16.3.8 Hearing Decision**

DHCD's designee 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.

### **16.3.9 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 DHCD's designee provide a hearing. The request for a hearing must be made either within 30 days of receipt of DHCD's designee's 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 [Informal Hearings for Participants](#).

### **16.3.10 Retention of Documents**

[24 CFR 5.514(h)]

DHCD's designee must retain for a minimum of five years the following documents that may have been submitted to the designee by the family, or provided to the designee as part of the USCIS appeal or DHCD's 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

## CHAPTER 17 : PROGRAM INTEGRITY

### 17.1 INTRODUCTION

DHCD and its designees are committed to ensuring that subsidy funds made available to DHCD and its designees are spent in accordance with HUD requirements. This chapter covers HUD and DHCD policies designed to prevent, detect, investigate, and resolve instances of program abuse or fraud.

### 17.2 PREVENTING ERRORS AND PROGRAM ABUSE

DHCD and its designees are required to use the EIV system in its entirety in accordance with HUD administrative guidance as a tool to prevent errors and program abuse [24 CFR 5.233]. DHCD and its designees 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

To ensure that DHCD’s HCV program is administered effectively and according to the highest ethical and legal standards, DHCD and its designees will employ a variety of techniques to ensure that both errors and intentional program abuse are rare.

- DHCD or its designee will discuss program compliance and integrity issues during the voucher briefing sessions described in [CHAPTER 5](#).
- DHCD or its designee 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.
- DHCD or its designee will provide each applicant and participant with a copy of “What You Should Know about EIV,” a guide to the EIV system published by HUD as an attachment to Notice PIH 2010-19. In addition, DHCD or its designee will require the head of each household to acknowledge receipt of the guide by signing a copy for retention in the family file.
- DHCD or its designee will place a warning statement about the penalties for fraud (as described in 18 USC 1001 and 1010) on key forms and form letters that request information from a family or owner.
- DHCD or its designee’s staff will be required to review and explain the contents of all HUD- and PHA-required forms prior to requesting family member signatures.

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.

#### 17.2.1 Detecting Errors and Program Abuse

### Quality Control and Analysis of Data

DHCD or its designee will review a random sample of tenant records to determine if the records conform to program requirements and to conduct quality control inspections of a sample of units to ensure HQS compliance.

In addition, DHCD or its designee will employ a variety of methods to detect errors and program abuse, including:

- DHCD or its designee routinely will use available sources of up-front income verification, including HUD's EIV system to compare with family-provided information.
- DHCD or its designee will compare family-reported income and expenditures to detect possible unreported income.

### Independent Audits and HUD Monitoring

OMB Uniform Guidance (Super Circular) requires all PHAs that expend \$750,000 or more in federal awards annually to have an independent audit (IPA). In addition, HUD conducts periodic on-site and automated monitoring of DHCD activities and notifies DHCD of errors and potential cases of program abuse.

DHCD 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 DHCD's error detection and abuse prevention efforts.

### Individual Reporting of Possible Errors and Program Abuse

DHCD and its designees will encourage staff, program participants, and the public to report possible program abuse.

## **17.2.2 Investigating Errors and Program Abuse**

### When DHCD or its Designee Will Investigate

DHCD or its designee 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 DHCD or its designee 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.

DHCD or its designee 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]



DHCD or its designee may investigate possible instances of error or abuse using all available PHA and public records. If necessary, DHCD or its designee will require HCV families to give consent to the release of additional information.

### Analysis and Findings

DHCD or its designee 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, DHCD or its designee will determine (1) whether an error or program abuse has occurred, (2) whether any amount of money is owed to DHCD or its designee, 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 DHCD or its designee will enforce other corrective actions and penalties depends upon the nature of the error or program abuse.

In the case of family-caused errors or program abuse, DHCD or its designee 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, DHCD or its designee 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

Upon conclusion of the investigation, DHCD or its designee 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 DHCD or its designee 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 16](#)).

## **17.3 CORRECTIVE MEASURES AND PENALTIES**

### **17.3.1 Subsidy Underpayments and Overpayments**

A subsidy underpayment 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, DHCD or its designee must promptly correct the HAP, family share, and any utility reimbursement prospectively.

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 DHCD or its designee or DHCD or its designee 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.

#### **17.3.2 Family-Caused Errors and Program Abuse**

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 DHCD or its designee to use incorrect information provided by a third party.

Any of the following will be considered evidence of family program abuse:

- Payment to the owner in excess of amounts authorized by DHCD or its designee for rent, security deposit, and additional services
- Offering bribes or illegal gratuities to employees, contractors, or other representatives or DHCD or its designees, or the Board of Directors of any of DHCD's designees.
- 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 DHCD or its designees 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.
- DHCD or its designee may determine other actions to be program abuse based upon a preponderance of the evidence, as defined earlier in this chapter.

#### **17.3.2.1 Family Reimbursement to DHCD or Its Designee**

In the case of family-caused errors or program abuse, the family will be required to repay any excess subsidy received. DHCD or its designee may, but is not required to, offer the family a repayment agreement in accordance with the policies in this chapter of the Plan (see sections [Family Debts to DHCD](#) through [Repayment Agreement](#)). If the family fails to repay the excess subsidy, DHCD or its designee will terminate the family's assistance in accordance with the policies in [CHAPTER 15](#).

#### **17.3.2.2 Reimbursement to Family**

DHCD or its designee 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, DHCD or its designee will process a reexamination effective no earlier than the month following when the issue was brought to the attention of DHCD or its designee by the family or the month following the date the issue was discovered by DHCD or its designee. The tenant family is obligated to provide the required information needed by DHCD or its designee 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 5<sup>th</sup>, DHCD or its designee would conduct an interim reexamination effective November 1<sup>st</sup> but would not retroactively reimburse the tenant starting in June for the overpayment of rent.

#### **17.3.2.3 Penalties for Program Abuse**

In the case of program abuse caused by a family, DHCD or its designees may, at its discretion, impose any of the following remedies.

- DHCD or its designees will require the family to repay excess subsidy amounts paid by DHCD or its designees, as described earlier in this section.
- DHCD or its designees may require, as a condition of receiving or continuing assistance, that a culpable family member not reside in the unit. See policies in [CHAPTER 4](#) (for applicants) and [CHAPTER 15](#) (for participants)
- DHCD or its designees may deny or terminate the family's assistance following the policies set forth in [CHAPTER 4](#) and [CHAPTER 15](#) respectively.
- DHCD or its designees may refer the family for state or federal criminal prosecution as described in this chapter.

#### **17.3.3 Owner-Caused Error or Program Abuse**

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 DHCD or Its Designee

In all cases of overpayment of subsidy caused by the owner, the owner must repay to DHCD or its designees any excess subsidy received in accordance with the policies in this plan. DHCD or its designees may recover overpaid amounts by withholding housing assistance payments due for subsequent months, or if the debt is large, DHCD or its designees may allow the owner to pay in installments over a period of time.

#### Prohibited Owner Actions

An owner participating in the HCV program must not:

- Make any false statement to DHCD or its designee [18 USC 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)]

Any of the following will be considered evidence of owner program abuse:

- Charging the family rent above or below the amount specified by DHCD or its designee
- 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 employees, contractors, or other representatives or DHCD or its designees, or the Board of Directors of any of DHCD's designees.
- Offering payments or other incentives to an HCV family as an inducement for the family to make false or misleading statements to DHCD or its designees
- Residing in the unit with an assisted family

#### Remedies and Penalties

When DHCD or its designee determines that the owner has committed program abuse, DHCD or its designee 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 this chapter.
- Terminate the HAP contract (see [HAP Contract Term and Terminations](#)).
- Bar the owner from future participation in any DHCD programs.
- Refer the case to state or federal officials for criminal prosecution as described in this chapter.

#### **17.3.4 DHCD-Caused Errors or Program Abuse**

This section specifically addresses actions of a DHCD or its designee's staff member that are considered errors or program abuse related to the HCV program. Additional standards of conduct may be provided in the DHCD or its designee's personnel policy.

Incorrect subsidy determinations caused by DHCD or its designee 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.

##### **17.3.4.1 Repayment to the DHCD or Its Designee**

Neither a family nor an owner is required to repay an overpayment of subsidy if the error or program abuse is caused by DHCD or its designee's staff.

##### **17.3.4.2 DHCD's or Its Designee's Reimbursement to Family or Owner**

DHCD or its designee 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 administrative fee reserves.

##### **17.3.4.3 Prohibited Activities**

Any of the following will be considered evidence of program abuse by DHCD's or its designee's 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 DHCD or its designees
- Disclosing confidential or proprietary information to outside parties, except as authorized or otherwise required
- Gaining profit as a result of insider knowledge of DHCD's or its designee's 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

#### **17.3.4.4 Criminal Prosecution**

When DHCD or its designee determines that substantial program abuse by an owner, family, or DHCD's or its designee's staff member has occurred, DHCD or its designee may refer the matter to the appropriate entity, including the HUD Office of Inspector General, for investigation or prosecution.

Other criminal violations related to the HCV program will be referred to the appropriate local, state, or federal entity.

#### **17.3.5 Fraud and Program Abuse Recoveries**

DHCD or its designee may retain a portion of program fraud losses that DHCD or its designee recovers from a family or owner through litigation, court order, or a repayment agreement [24 CFR 982.163].

DHCD or its designee 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. DHCD or its designees are permitted to retain the greater of [24 CFR 792.202]:

- 50% 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 DHCD or its designee 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 [Informal Hearings for Participants](#).

If HUD incurs costs on behalf of DHCD or its designee related to the collection, these costs must be deducted from the amount retained by DHCD or its designee.

### **17.4 OWNER AND FAMILY DEBTS TO DHCD**

When an action or inaction of an owner or participant results in the overpayment of housing assistance, DHCD or its designee holds the owner or participant liable to return any overpayments to DHCD or its designee.

DHCD or its designee 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 DHCD or its designee, DHCD or its designee will utilize other available collection alternatives including, but not limited to, the following:

- Collection agencies
- Small claims court
- Civil lawsuit

## **17.5 REPAYMENT OF OWNER DEBTS TO DHCD**

Any amount due to DHCD or its designee by an owner must be repaid by the owner within 30 days of the designee's determination of the debt.

If the owner fails to repay the debt within the required time frame and is entitled to future HAP payments, DHCD or its designee 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, DHCD or its designee 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, DHCD or its designee will ban the owner from future participation in the program and pursue other modes of collection.

## **17.6 FAMILY DEBTS TO DHCD**

[Notice PIH 2017-12]

Any amount owed to DHCD or its designee 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, DHCD or its designee 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, DHCD or its designee will terminate assistance in accordance with the policies in [CHAPTER 15](#) 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 DHCD or its designee may take action to collect the amount owed even though the family is no longer a Section 8 participant.

## **17.7 GENERAL REPAYMENT AGREEMENT GUIDELINES FOR FAMILIES**

DHCD or its designee is not obligated to enter into a repayment agreement with a family. When deciding whether to enter into a repayment agreement with the family, DHCD or its designee 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.

- DHCD or its designee 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.

The following should also be considered when deciding if DHCD or its designee should enter into a repayment agreement with the family. If DHCD or its designee enters into a repayment agreement, DHCD or its designee will use the factors outlined below to determine the term, down payment, and monthly payment:

- 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.

## **17.8 REPAYMENT AGREEMENT**

[24 CFR 792.103] [Notice PIH 2017-12]

The term repayment agreement refers to a formal written document signed by a tenant or owner and provided to DHCD or its designee 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 DHCD's designee 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 DHCD or its designee 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.

### **17.8.1 Term of Agreement**

The maximum term of a repayment agreement is 60 months. A waiver of up to two additional years may be granted only by DHCD's designee's Leased Housing Director or their designee for verifiable mitigating circumstances.

### **17.8.2 Minimum Monthly Payment**

The monthly payment is structured at the discretion of DHCD or its designee 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 a lump sum payment at the onset of the agreement or any time during the term of the agreement 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, DHCD or its designee may make an exception to the 60-month payment structure. If a two-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.

### **17.8.3 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.

### **17.8.4 Debts Owed for FSS Participants**

If the FSS family has not paid the family contribution towards rent, or other amounts, if any, due under the Section 8-assisted lease, the balance in the family's FSS account shall be reduced by that amount (as reported to DHCD or its designee in the Section 8 FSS program) before prorating the interest income.

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 DHCD or its designee or the property owner, the FSS Coordinator will advise the family that they are not able to receive the FSS money until and unless the money owed to DHCD or its designee 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 DHCD or its designee, and the family is otherwise eligible to graduate from FSS and receive their escrow balance, DHCD or its designee may disburse the escrow balance in two checks. The first would be for the amount owed to DHCD or its designee. When the tenant/graduate signs the check back over to DHCD or its designee, the debt is cleared and DHCD or its designee 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.

## **CHAPTER 18 : OWNERS**

### **18.1 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.

### **18.2 OWNER RECRUITMENT AND RETENTION**

#### **Recruitment**

DHCD and its designees are responsible for ensuring that very low income families have access to all types and ranges of affordable housing in DHCD’s jurisdiction, particularly housing outside areas of poverty or minority concentration. A critical element in fulfilling this responsibility is for DHCD and its designees to ensure that a sufficient number of owners, representing all types and ranges of affordable housing in DHCD’s jurisdiction, are willing to participate in the HCV program.

To accomplish this objective, DHCD and its designees must identify and recruit new owners to participate in the program.

DHCD or its designees will conduct owner outreach to ensure that owners are familiar with the program and its advantages. DHCD or its designees 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

DHCD’s designees 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, DHCD and its designees must also provide the kind of customer service that will encourage participating owners to remain active in the program.

All DHCD/designee 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.

DHCD or its designee will provide owners with information that explains the program, including HUD and DHCD policies and procedures, in easy-to-understand language.

DHCD or its designee will give special attention to helping new owners succeed through activities such as:

- Providing the owner with a designated contact person
- Coordinating inspection and leasing activities between the designee, 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.

### **18.3 BASIC HCV PROGRAM REQUIREMENTS FOR OWNERS**

HUD requires DHCD and its designees to aid families in their housing search by providing the family with a list of landlords or other parties known to DHCD or its designee who may be willing to lease a unit to the family, or to help the family find a unit. Although DHCD or its designees cannot maintain a list of owners that are pre-qualified to participate in the program, owners may indicate to DHCD or its designee 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)].

Owners who 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 DHCD or its designee. DHCD or its designee 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. DHCD or its designee has no liability or responsibility to the owner or other persons for the family's behavior or suitability for tenancy. See [CHAPTER 4](#) and [CHAPTER 10](#) for more detail on tenant family screening policies and process.

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 DHCD or its designee, 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 [Request for Tenancy Approval](#) 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]. If an owner uses a standard lease for unassisted tenancies, the owner should use that standard lease for assisted tenancies. 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. DHCD's model lease contains the requirements contained in the Tenancy Addendum. See [Lease and Tenancy Addendum](#) for a discussion of the dwelling lease and tenancy addendum, including lease terms and provisions.

DHCD or its designee 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 [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 [HAP Contracts](#).

HUD regulations stipulate that an assisted tenancy can be approved only under certain conditions, and the owner must be qualified to participate in the program. Owner qualifications are discussed later in this chapter, See [Owner Qualifications](#).

The selected unit must be of a type that is eligible for the program [24 CFR 982.305(a)]. In addition, the owner must document legal ownership of the specified unit. See [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)]. DHCD or its designee will inspect the 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.

DHCD or its designee 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, DHCD or its designee must determine that the share of rent to be paid by the family does not exceed 40% of the family's monthly adjusted income [24 CFR 982.305(a)]. See [Rent Burden](#) and [Calculating Family Share and Subsidy](#) for a discussion of the calculation of family income, family share of rent, and HAP.

## **18.4 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 fair housing and 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 DHCD or its designee), 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.
- Complying 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.

## **18.5 OWNER QUALIFICATIONS**

DHCD or its designee does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where DHCD or its designee 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)].

### **18.5.1 Owners Barred from Participation**

[24 CFR 982.306(a) and (b)]

DHCD or its designee must not approve the assisted tenancy if DHCD or its designee 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 DHCD or its designee not to approve a tenancy request if a court or administrative agency has determined that the owner violated the Fair Housing Act, state fair housing laws, or other equal opportunity requirements, or if such an action is pending.

As no household member can have any ownership interest in the unit, DHCD or its designee will not approve the assisted tenancy if an approved live-in aide is also an owner of the unit.

### **18.5.2 Leasing to Relatives**

[24 CFR 982.306(d)]

DHCD or its designee must not approve an RFTA if the owner is the parent, child, grandparent, grandchild, sister, or brother of any member of the family. DHCD or its designee 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, including through assignment of the HAP contract to a new owner,

may not be approved (see Form HUD-52641, § 14(e); [Change in Ownership/Assignment of the HAP Contract](#)).

### **18.5.3 Conflict of Interest**

[24 CFR 982.161]

DHCD or its designee 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 DHCD or its designee (except a participant commissioner)
- Any employee of DHCD or its designee, or any contractor, subcontractor, or agent of DHCD or its designee, 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. DHCD or its designee must submit a waiver request to the appropriate HUD Field Office for determination. Any waiver request submitted by DHCD or its designee must include:

- 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, DHCD or its designee, 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 employee of DHCD or its designee, 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 DHCD or its designee, description of the nature of the investment, including disclosure/divestiture plans.

Where DHCD or its designee has requested a conflict of interest waiver, DHCD or its designee may not execute the HAP contract until HUD has made a decision on the waiver request.

In considering whether to request a conflict of interest waiver from HUD, DHCD or its designee 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.

#### **18.5.4 Owner Actions That May Result in Disapproval of a Tenancy Request**

[24 CFR 982.306(c)]

HUD regulations permit DHCD or its designee, at the discretion of DHCD or its designee, to refuse to approve a request for tenancy if the owner has committed any of a number of different actions.

If DHCD or its designee 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.

DHCD or its designee will refuse to approve a request for tenancy if DHCD or its designee 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 USC 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 DHCD or its designee, 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, DHCD or its designee 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, DHCD or its designee may, on a case-by-case basis, choose to approve an owner.

### **18.5.5 Legal Ownership of Unit**

DHCD or its designee will only enter into a contractual relationship with the legal owner of a qualified unit. DHCD or its designee may require acceptable documentation of legal ownership (e.g., deed of trust, proof of taxes for most recent year).

## **18.6 NON-DISCRIMINATION**

The owner must not discriminate against any person because of race, color, national origin, religion, sex, sexual orientation, familial status, gender identity, gender expression, marital status, disability, military or veteran status, age, ancestry, or receipt of public assistance, in connection with any actions or responsibilities under the HCV program and the HAP contract with DHCD or its designees.

The owner must cooperate with DHCD or its designee and with HUD in conducting any equal opportunity compliance reviews and complaint investigations in connection with the HCV program and the HAP contract with DHCD or its designee.

See [CHAPTER 2](#) for a more thorough discussion of Fair Housing and Equal Opportunity requirements.

## **18.7 HAP CONTRACTS**

The HAP contract represents a written agreement between DHCD or its designee and the owner of the dwelling unit occupied by a HCV assisted family. See [CHAPTER 11](#) for a discussion of the leasing process, including provisions for execution of the HAP contract. The contract spells out the owner's responsibilities under the program, as well as DHCD's or its designees' obligations. The HAP contract must be executed no later than 60 calendar days from the beginning of the lease term.

### **18.7.1 HAP Contract Payments**

#### **18.7.1.1 General**



During the term of the HAP contract, and subject to the provisions of the HAP contract, DHCD or its designee will 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. No HAP payments will be made until the executed HAP contract is received by DHCD or its designee.

The amount of the HAP payment is determined according to the policies described in [CHAPTER 7](#) and is subject to change during the term of the HAP contract. DHCD or its designee must notify the owner and the family in writing of any changes in the HAP payment.

The monthly HAP payment by DHCD or its designee is credited toward the monthly rent to owner under the family's lease. The total of the rent paid by the tenant, plus 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 DHCD and its designees are 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 11](#) 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 DHCD or its designee, the excess amount must be returned immediately. If DHCD or its designee determines that the owner is not entitled to all or a portion of the HAP, DHCD or its designee may deduct the amount of overpayment from any amounts due to the owner, including amounts due under any other Section 8 HCV contract. See [Owner-Caused Error or Program Abuse](#).

#### **18.7.1.2 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.

By endorsing the monthly check from DHCD or its designee, the owner certifies 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.

#### **18.7.1.3 Late HAP Payments**

[24 CFR 982.451(a)(5)]

DHCD or its designee 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 DHCD or its designee 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 (see M.G.L. c. 186, § 15B(1)(c)); 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.

DHCD or its designee is not required to pay a late payment penalty if HUD determines that the payment is late for reasons beyond DHCD's or its designee's control. In addition, late payment penalties are not required if DHCD or its designee intentionally delays or denies payment as a remedy to an owner breach of the HAP contract.

#### **18.7.1.4 Termination of HAP Payments**

[24 CFR 982.311(b)]

DHCD or its designee 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 is eligible for assistance and the tenancy has not been terminated, 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, DHCD or its designee 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.

The owner must inform DHCD or its designee when the owner has initiated eviction proceedings against the family and the family continues to reside in the unit.

The owner must inform DHCD or its designee when the owner has obtained a court judgment or other process allowing the owner to evict the tenant, and provide DHCD or its designee 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, DHCD or its designee 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 DHCD or its designee of the date when the family actually moves from the unit or the family is physically evicted from the unit.

#### **18.7.2 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 DHCD or its designee determines that a breach of the HAP contract has occurred, it may exercise any of its rights and remedies under the HAP contract. DHCD's or its designee's 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. DHCD or its designee may also obtain additional relief by judicial order or action.

DHCD or its designee 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. DHCD or its designee must provide the owner with written notice of any reduction in housing assistance payments or the termination of the HAP contract.

Before DHCD or its designee invokes a remedy against an owner, DHCD or its designee will evaluate all information and documents available to determine if the contract has been breached. If relevant, DHCD or its designee 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, DHCD or its designee 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.

DHCD or its designee must keep records of interactions with owners for the following circumstances:

- If an owner threatens the health or safety of, or otherwise abuses DHCD's or its designee's employees. In instances where there is a documented history of threats or abuse to employees, the designee can seek DHCD approval to terminate the HAP contract.
- If an owner threatens the life of a DHCD or its designee's employee, DHCD or its designee can immediately terminate the HAP contract.

When HAP contracts are terminated under these circumstances, HCVP participants must be issued vouchers and allowed to move.

### **18.7.3 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 payments made under the HAP contract terminate if:

- The owner or the family terminates the lease;
- The lease expires;
- DHCD or its designee terminates the HAP contract;
- DHCD or its designee 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 DHCD or its designee made the last housing assistance payment to the owner;
- The family is absent from the unit for longer than the maximum period permitted by DHCD;
- The Annual Contributions Contract (ACC) between DHCD and HUD expires
- DHCD or its designee elects to terminate the HAP contract.

DHCD or its designee 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 – see [CHAPTER 4](#);
- The owner breaches the HAP contract [24 CFR 982.453(b)].

If DHCD or its designee terminates the HAP contract, DHCD or its designee must give the owner and the family written notice. The notices must specify the effective date of the termination, and the notice to the family must specify the reasons for the termination.

In all cases, the HAP contract terminates at the end of the calendar month that follows the calendar month in which DHCD or its designee gives written notice to the owner. The owner is not entitled to any housing assistance payment after this period, and must return to DHCD or its designee 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.

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 duplicate subsidy payment.

#### **18.7.4 Change in Ownership/Assignment of the HAP Contract**

The HAP contract cannot be assigned to a new owner without the prior written consent of DHCD or its designee.

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 [Owner Qualifications](#).

DHCD or its designee 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, DHCD or its designee will inform the current owner in writing whether the assignment may take place.

The new owner must provide a written certification to DHCD or its designee 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 (see [Leasing to Relatives](#)).

If the new owner does not agree to an assignment of the HAP contract, or fails to provide the necessary documents, DHCD or its designee 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, DHCD or its designee will process the leasing in accordance with the policies in [CHAPTER 13](#).

#### **18.8 MTW OWNER INCENTIVE FUND PILOT PROGRAM**

See the [MTW Activity Plan](#) for policy information on this activity.

## **CHAPTER 19 : SPECIAL HOUSING TYPES**

### **19.1 INTRODUCTION**

DHCD permits the following special housing types: single room occupancy, congregate housing, group homes, shared housing, cooperative housing, manufactured homes, and assisted living facilities.

### **19.2 SINGLE ROOM OCCUPANCY**

[24 CFR 982.602 through 982.605]

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.

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.

#### **19.2.1 Payment Standard, Utility Allowance, and HAP Calculation**

The payment standard for SRO housing is 75% of the zero-bedroom payment standard amount on DHCD's payment standard schedule.

The utility allowance for an assisted person residing in SRO housing is 75% 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.

#### **19.2.2 Housing Quality Standards**

HQS requirements described in [CHAPTER 8](#) apply to SRO housing except as modified below.

##### Access

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.

##### Fire Safety

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.

## **19.3 CONGREGATE HOUSING**

[24 CFR 982.606 through 982.609]

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 DHCD or its designee, a family member or live-in aide may reside with the elderly person or person with disabilities (see [Live-In Aide](#)).

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.

### **19.3.1 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), DHCD or its designee 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), DHCD or its designee 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 resident's costs for food service should not be included in the rent for a congregate housing unit.

### **19.3.2 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.

## **19.4 GROUP HOME**

[24 CFR 982.610 through 982.614]

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 DHCD or its designee, a live-in aide may live in the group home with a person with disabilities (see [Live-In Aide](#)).

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.

### **19.4.1 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 zero- or one-bedroom, depending on DHCD's subsidy standard. If there is a live-in aide, the aide must be counted in determining the household's unit size.

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 pro rata share of the payment standard for the group home size. The pro rata 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 pro rata 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 pro rata 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.

#### **19.4.2 Housing Quality Standards**

HQS requirements described in [CHAPTER 8](#) apply to group homes except for the requirements stated below.

##### Sanitary Facilities

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.

## **19.5 SHARED HOUSING**

[24 CFR 982.615 through 982.618]

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 DHCD or its designee, a live-in aide may reside with the family to care for a person with disabilities (see [Live-In Aide](#)).

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.

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 housing authority 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 DHCD or its designee must conduct the single inspection.

### **19.5.1 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 pro rata share of the payment standard for the shared housing unit size.

The pro rata 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 pro rata share of the utility allowance for the shared housing unit.

**Example:** A family holds a 2-bedroom voucher. The family decides to occupy 3 out of 4 bedrooms available in the unit.

The utility allowance for a 4-bedroom unit equals \$200

The utility allowance for a 2-bedroom unit equals \$100

The pro rata share of the utility allowance is \$150 (3/4 of \$200)

DHCD or its designee will use the 2-bedroom utility allowance of \$100.

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, DHCD or its designee should consider whether sanitary and food preparation areas are private or shared.

### **19.5.2 Housing Quality Standards**

DHCD or its designee 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.

## **19.6 COOPERATIVE HOUSING**

[24 CFR 982.619]

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 (non-profit 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.

### **19.6.1 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.

### **19.6.2 Housing Quality Standards**

All standard HQS requirements apply to cooperative housing units. There are no additional HQS requirements.

## **19.7 MANUFACTURED HOMES**

[24 CFR 982.620 through 982.624]

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. A manufactured home may be an assisted unit under the HCV program in one of three ways:

1. Regular rental assistance: The family rents a manufactured home under the regular voucher program. There is no separate charge to the family for the home space – the rental of the unit covers both the manufactured housing unit and the space [Notice PIH 2017-18]. DHCD or its designee must permit a family to lease a manufactured home and space with assistance under the program – this is not a special housing type where DHCD or its designee has discretion over whether to provide this type of assistance.
2. Manufactured home space rental assistance: The family owns the manufactured home but is renting the space under the manufactured home space rental special housing type. This is also special housing type under the HCV program.

## **19.7.1 Special Policies for Manufactured Home Owners Who Lease a Space**

### **19.7.1.1 Family Income**

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.

### **19.7.1.2 Lease and HAP Contract**

There is a separate Tenancy Addendum (Form 52642-a) and separate HAP Contract (Form 52642) for this special housing type.

## **19.7.2 Payment Standard, Utility Allowance, and HAP Calculation**

### Payment Standards

The payment standard for manufactured homes is determined in accordance with 24 CFR 982.505 and is the payment standard used for the HCV program. It is based on the applicable FMR for the area in which the manufactured home space is located.

The payment standard for the family is the lower of the family unit size (voucher size) or the payment standard for the number of bedrooms in the manufactured home.

### Utility Allowance

DHCD maintains a utility allowance schedule, regardless of fuel type, geographical area and building type, for tenant-paid heat and "other electric" 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 utility hook-up 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.

If the amount of the monthly assistance payment for a family exceeds the monthly rent for the manufactured home space (including the owner's monthly management and maintenance charges), DHCD or its designee may pay the remainder to the family, lender, or utility company.

### Space Rent

The rent for the manufactured home space (including other eligible housing expenses) is the total of:

- The rent charged for the manufactured home space;
- Owner maintenance and management charges for the space;
- The monthly payments made by the family to amortize the cost of purchasing the manufactured home, including any required insurance and property taxes; and
- The applicable allowance for tenant-paid utilities.

### Amortization Costs

The monthly payment made by the family to amortize the cost of purchasing the manufactured home is the debt service established at the time of application to a lender for financing the purchase of the manufactured home if monthly payments are still being made. Any increase in debt service due to refinancing after purchase of the home may not be included in the amortization cost. Debt service for set-up charges incurred by a family may be included in the monthly amortization payments made by the family. In addition, set-up charges incurred before the family became an assisted family may be included in the amortization cost if monthly payments are still being made to amortize the charges.

### 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, DHCD or its designee must determine that the rent for the manufactured home space is reasonable based on rents for comparable manufactured home spaces. DHCD or its designee 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.

## **19.7.3 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.

## **19.8 HOMEOWNERSHIP**

[24 CFR 982.625 through 982.643]

DHCD does not presently offer a homeownership program.

## **19.9 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 non-profit corporation or association may own an assisted living facility.

#### **19.9.1 Program Requirements**

All housing choice voucher program rules apply to assisted living facilities (e.g., housing quality standards, rent reasonableness).

#### **19.9.2 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 20 : PROJECT-BASED VOUCHER PROGRAM**

### **20.1 OVERVIEW**

DHCD operates a Project-Based Voucher (PBV) Program. Under the PBV program, DHCD enters into Housing Assistance Payments contracts with property owners to provide rental assistance to eligible low-income households.

Pursuant to its MTW authority, DHCD has implemented an Enhanced Local PBV Program that project-bases HCVs. Except as otherwise noted in this chapter, or unless specifically prohibited by PBV program requirements described herein, DHCD policies for the Tenant-Based Voucher Program contained in this Administrative Plan also apply to the PBV program and its tenants.

Many of the provisions of the tenant-based voucher regulations also apply to the PBV program. This includes requirements related to determining eligibility and selecting applicants from the waiting list. Even with these similarities, there are requirements that are unique to the PBV program. This chapter describes the requirements and policies related to eligibility and admission to the PBV program.

### **20.2 BUDGET AUTHORITY**

#### **MTW Policy**

DHCD will increase the 30% cap on PB units in its portfolio. Increasing this cap will allow DHCD to partner with a greater number of housing providers that enable low-income families to relocate to high opportunity areas. DHCD will use a 40% as the cap for budget authority allocated to project-based vouchers.

### **20.3 RELOCATION REQUIREMENTS**

Any persons displaced as a result of implementation of the PBV program must be provided relocation assistance in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA) [42 USC 4201-4655] and implementing regulations at 49 CFR part 24.

The cost of required relocation assistance may be paid with funds provided by the owner, local public funds, or funds available from other sources. Unless explicitly provided for in DHCD program guidance, DHCD may not use voucher program funds to cover relocation costs. However, DHCD may use its administrative fee reserve to pay for relocation expenses after all other program administrative expenses are satisfied, and provided that payment of the relocation benefits is consistent with state and local law. Use of the administrative fee for these purposes must also be consistent with other legal and regulatory requirements, including the requirement in 24 CFR 982.155 and other official HUD issuances.

The acquisition of real property for a PBV project is subject to the URA and 49 CFR part 24, subpart B. It is the responsibility of DHCD to ensure the owner complies with these requirements.

### **20.4 APPROVED METHODS FOR PROPOSAL SELECTION**

DHCD may use the following methods of selection for PBV proposals.



- Selection Method 1: DHCD may publicly issue a competitive request for PBV proposals.
- Selection Method 2: DHCD may 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.
- Selection Method 3: Under the Housing Opportunities through Modernization Act (HOTMA), DHCD may attach PBVs to projects in which the PHA has an ownership interest or has control of, without following a competitive process, in cases where the PHA is engaged in an initiative to improve, develop, or replace a public housing property or site. An ownership interest means that the PHA or its officers, employees or agents are in an entity that holds any such direct or indirect interest in the building, including, but not limited to an interest as: titleholder; lessee; a stockholder; a member, or general or limited partner; or a member of a limited liability corporation. In order to be subject to this non-competitive exception, the PHA must be planning rehab or construction on the project with a minimum of \$25,000 per unit in hard costs.

#### **20.4.1 Public Notice of DHCD Request for PBV Proposals**

DHCD utilizes its web page at [www.mass.gov/dhcd/](http://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.

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/](http://www.mass.gov/dhcd/).

#### **20.4.2 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.

### **20.4.3 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. DHD solicits proposals and awards funds for these development programs based on publicly announced competitive selection criteria established for each of them. 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 AHTF.

DHCD reserves the right to implement additional “development” initiatives.

See [Exhibit 18-1: Selection Criteria for DHCD Development Programs](#).

## **20.5 SELECTION OF PUBLICLY SOLICITED PBV PROPOSALS**

When using Selection Method 1, DHCD will select PBV proposals as follows:

### **20.5.1 “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 its applicable designee 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.

### **20.5.2 “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.

### **20.5.3 “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.

#### **20.5.4 “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.

### **20.6 SELECTION OF PBV PROPOSALS PREVIOUSLY SELECTED THROUGH A NON-PBV COMPETITION**

When using Selection Method 2, DHCD will award PBV contracts as outlined below:

- 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; and
- 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.

### **20.7 SELECTION OF PHA-OWNED HOUSING PROPOSALS**

When using Selection Method 3, DHCD will employ the following selection process for any PHA-owned housing:

### **20.7.1 “Existing” PBV PHA-Owned Unit Proposals**

#### **20.7.1.1 “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 make its determination.

#### **20.7.1.2 “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.

### **20.7.2 “Development” PBV for 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).

## **20.8 DHCD NOTICE OF OWNER SELECTION**

DHCD will give prompt written notice to the party that submitted a selected proposal. Such notice may include a deadline by which the parties must enter into an AHAP/HAP contract. DHCD will also give prompt public notice of such selection DHCD approval. Public notice procedures may include publication of public notice in a local newspaper of general circulation, on DHCD’s website or other means designed and actually operated to provide broad public notice

## **20.9 HOUSING TYPE**

DHCD may attach PBV assistance for units in existing housing or for newly constructed or rehabilitated housing developed under and in accordance with an agreement to enter into a housing assistance payments contract that is executed prior to the start of construction.

A housing unit is considered an existing unit for purposes of the PBV program, if, at the time of notice of DHCD selection, the units substantially comply with HQS. Units for which new construction or rehabilitation begins after the owner’s proposal submission but prior to the execution of the HAP do not subsequently qualify as existing housing. Units that are newly constructed or rehabilitated in violation of program requirements also do not qualify as existing housing.

### **20.9.1 Prohibition of Assistance for Certain Units**

DHCD will not attach or pay PBV assistance to:

- A public housing unit;
- A unit subsidized with any other form of Section 8 assistance;
- A unit subsidized with any governmental rent subsidy;
- A unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing;
- A unit subsidized with Section 236 rental assistance payments (except that a PHA may attach assistance to a unit subsidized with Section 236 interest reduction payments);
- A Section 202 project for non-elderly with disabilities;
- Section 811 project-based supportive housing for persons with disabilities;
- Section 202 supportive housing for the elderly;
- A Section 101 rent supplement project;
- A unit subsidized with any form of tenant-based rental assistance;
- A unit with any other duplicative federal, state, or local housing subsidy, as determined by HUD or DHCD in accordance with HUD requirements.

### **20.10 SUBSIDY LAYERING REVIEW (SLR)**

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.” Subsidy layering reviews do not apply to existing housing. A further subsidy layering review is not required for new construction or rehabilitation if HUD's designee has conducted a review that included a review of PBV assistance in accordance with the PBV subsidy layering guidelines.

### **20.11 CAP ON NUMBER OF PBV UNITS IN PROJECT**

#### **MTW Policy**

DHCD may project-base up to 100% of the dwelling units in any PBV project or building.

### **20.12 FAMILIES RECEIVING SUPPORTIVE SERVICES**

Where supportive services are provided, the project will make supportive services available to all families receiving PBV assistance in the project, but the family does not actually have to accept and receive supportive services for the exception to apply to the unit, although the family must be eligible to receive the supportive services.

The RFP for PBV assistance will describe the type of supportive services that are required under the solicitation. It is not necessary that the services be provided at or by the project, but must be reasonably available to families receiving PBV assistance at the project and designed to help families in the project achieve self-sufficiency or live in the community as independently as possible

DHCD or its designee will monitor the excepted family's continued receipt of supportive services and take appropriate action regarding those families that fail without good cause to complete their supportive services requirement.

A family that becomes ineligible for the supportive services during its tenancy cannot be terminated from the program or evicted from the unit for that reason.

DHCD may support PBV units targeted to families receiving supportive services, including but 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 Children and Families (DCF), 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 DHCD's designee has approved the services.

## **20.13 SITE SELECTION STANDARDS**

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:

### **20.13.1 Existing and Rehabilitated Housing Site and Neighborhood Standards**

DHCD will enter into an agreement when it is confirmed that a site complies with the following site and neighborhood standards. The site must:

- Be adequate in size, exposure, and contour to accommodate the number and type of units proposed;
- Have adequate utilities and streets available to service the site;
- Promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons;
- Be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units; and

- Be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

### **20.13.2 New Construction Site and Neighborhood Standards**

In order to be selected for PBV assistance, a site for newly constructed housing must meet the following site and neighborhood standards:

- The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed;
- The site must have adequate utilities and streets available to service the site;
- The site must not be located in an area of minority concentration unless the PHA determines that sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration or that the project is necessary to meet overriding housing needs that cannot be met in that housing market area;
- The site must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.
- The site must promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons;
- The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate;
- The housing must be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units; and
- Except for housing designed for elderly persons, the housing must be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

DHCD will also further assess each proposal to determine if it achieves the following DHCD Consolidated Plan and Administrative 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 Massachusetts 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.

### **20.14 ENVIRONMENTAL REVIEW**

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.

In the case of existing housing, the responsible entity that is responsible for the environmental review under 24 CFR part 58 must determine whether or not PBV assistance is categorically excluded from review under NEPA and whether or not the assistance is subject to review under the laws and authorities listed in 24 CFR 58.5.

DHCD will require the owner to carry out mitigating measures required by the responsible entity (or HUD, if applicable) as a result of the environmental review.

## **20.15 LEAD-BASED PAINT**

The lead-based paint requirements for the tenant-based voucher program do not apply to the PBV program. Instead, the Lead-Based Paint Poisoning Prevention Act (42 USC 4821-4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 USC 4851-4856), and implementing regulations at 24 CFR part 35, subparts A, B, H, and R, apply to the PBV program.

## **20.16 HOUSING ACCESSIBILITY FOR PERSONS WITH DISABILITIES**

The housing must comply with program accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (29 USC 794) and implementing regulations at 24 CFR part 8. DHCD or its designee will ensure that the percentage of accessible dwelling units complies with the requirements of section 504 of the Rehabilitation Act of 1973 (29 USC 794), as implemented by HUD's regulations at 24 CFR 8, subpart C.

Housing first occupied after March 13, 1991, must comply with design and construction requirements of the Fair Housing Amendments Act of 1988 and implementing regulations at 24 CFR 100.205, as applicable. (24 CFR 983.102).

## **20.17 INSPECTIONS**

### **20.17.1 Pre-Selection Inspection**

DHCD or its designee may examine the proposed site before the proposal selection date. If the units to be assisted already exist, DHCD or its designee may inspect all the units before the proposal selection date, and will determine whether the units substantially comply with HQS.

To qualify as existing housing, units must substantially comply with HQS on the proposal selection date. However, DHCD or its designee will not execute the HAP contract until the units fully comply with HQS.

### **20.17.2 Pre-HAP Contract Inspections**



DHCD or its designee will inspect each contract unit before execution of the HAP contract. DHCD or its designee will not enter into a HAP contract covering a unit until the unit fully complies with HQS.

### **20.17.3 Turnover Inspections**

Before providing assistance to a new family in a contract unit, DHCD or its designee will inspect the unit. DHCD or its designee will not provide assistance on behalf of the family until the unit fully complies with HQS.

### **20.17.4 Biennial HQS Inspections**

All PB sites will be placed on a biennial inspection frequency except under the conditions outlined below.

- Units constructed pre-1978, where a letter of lead compliance is required and children under six years of age reside, will be inspected annually.
- Based on DHCD's designee's review of property conditions, the designee may switch to an annual inspection frequency.
- In buildings inspected under REAC, DHCD's designee will use the score of the REAC inspection to determine whether to inspect the units in the building annually or biennially. The scoring and inspection frequency are as follows:

<b>Score</b>	<b>Frequency of Inspection</b>
80-100	Every two years
79 & below	Every year

Based upon its inspection staff availability and the site management's capacity, DHCD's designee 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.

DHCD or its designee 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.

Tenants cannot opt for their site to remain on an annual inspection schedule; however, either the tenant or the owner 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.

An owner may request to remain on an annual inspection schedule by making a written request to DHCD or its designee. DHCD or its designee will review the request and make a determination as to the required inspection frequency.

When a PB unit turns over, DHCD or its designee 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 2018 and the site is on a biennial inspection frequency. One of the units turns over in July 2018. DHCD or its designee conducts a turnover inspection on the unit in July 2018, prior to the new tenant moving in. The next scheduled regular HQS inspection for that unit will be March 2020 which is consistent with the regular HQS inspection date for the units at the site.

#### **20.17.5 Other Inspections**

DHCD or its designee will inspect contract units whenever needed to determine that the contract units comply with HQS and that the owner is providing maintenance, utilities, and other services in accordance with the HAP contract. DHCD or its designee will take into account complaints and any other information coming to its attention in scheduling inspections.

DHCD or its designee will conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected an HQS violation, and will conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family violation of HQS.

#### **20.17.6 Inspecting PHA-Owned Units**

In the case of DHCD-owned units, the inspections will be performed by an independent agency designated by DHCD and approved by HUD. The independent entity will furnish a copy of each inspection report to DHCD or its designee and to the HUD field office where the project is located. DHCD or its designee will take all necessary actions in response to inspection reports from the independent agency, including exercise of contractual remedies for violation of the HAP contract by DHCD as the owner.

#### **20.17.7 Remedies for HQS Violations**

If PBV units are not maintained in accordance with DHCD PBV HQS standards (or other HAP requirements), the DHCD or its designee 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.

### **20.18 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 DHCD or its designee.

#### **20.18.1 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. 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.
5. The owner must provide various certifications and provide the required attachments prior to AHAP execution.
6. 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.” 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.

#### **20.18.2 Required Mandatory Meeting with Owner/Project Sponsor for “Development” PBV Projects**

DHCD or its designee may inform owners that they must attend a mandatory meeting with DHCD to discuss all key AHAP and HAP requirements. It is the owner/sponsor’s responsibility to contact DHCD’s Division of Rental Assistance 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 Division of Rental Assistance invites DHCD staff and the appropriate designee 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.

#### **20.18.3 Agreement to Enter into a HAP Contract**

DHCD or its designee will promptly enter into the Agreement with the owner after receiving both environmental approval and notice that subsidy layering requirements have been met, and before construction or rehabilitation work is started.

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.

Time for completion of work should be based on estimated completion date, with some cushion provided for unforeseeable delays. DHCD or its designee may extend the completion date if all work is not completed by the date indicated for reasonable cause acceptable to DHCD or its designee.

DHCD or its designee and the owner will use the most current version of the HUD approved AHAP contract documents or any other local form developed and approved by DHCD.

Each page of all exhibits must include: 1) the project name; 2) address; 3) contract number, and 4) the exhibit letter.

All construction must be completed within the time specified in the AHAP (including any extensions approved by DHCD's designee). When all work has been completed and the units pass DHCD's HQS inspection and are accepted by the designee, the owner and the designee 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.

#### **20.18.4 Labor Standards**

If an Agreement covers the development of nine or more contract units (whether or not completed in stages), the owner and the owner's contractors and subcontractors must pay Davis-Bacon wages to laborers and mechanics employed in the development of housing. The HUD-prescribed form of the Agreement will include the labor standards clauses required by HUD, such as those involving Davis-Bacon wage rates.

The owner, contractors, and subcontractors must also comply with the Contract Work Hours and Safety Standards Act, Department of Labor regulations in 29 CFR part 5, and other applicable federal labor relations laws and regulations. DHCD or its designee will monitor compliance with labor standards.

#### **20.18.5 Completion of Housing**

The Agreement will specify the deadlines for completion of the housing, and the owner will develop and complete the housing in accordance with these deadlines. The Agreement will also specify the deadline for submission by the owner of the required evidence of completion.

##### **20.18.5.1 Evidence of Completion**

At a minimum, the owner must submit the following evidence of completion to DHCD or its designee in the form and manner required:

- Owner certification that the work has been completed in accordance with HQS and all requirements of the Agreement; and
- Owner certification that the owner has complied with labor standards and equal opportunity requirements in development of the housing.

#### **20.18.5.2 Acceptance of Completed Units**

Upon notice from the owner that the housing is completed, the DHCD or its designee will inspect to determine if the housing has been completed in accordance with the Agreement, including compliance with HQS and any additional requirements imposed under the Agreement. DHCD or its designee will also determine if the owner has submitted all required evidence of completion.

If the work has not been completed in accordance with the Agreement, DHCD or its designee will not enter into the HAP contract.

If DHCD or its designee determines the work has been completed in accordance with the Agreement and that the owner has submitted all required evidence of completion, DHCD or its designee will submit the HAP contract for execution by the owner and DHCD or its designee.

### **20.19 HOUSING ASSISTANCE PAYMENTS CONTRACT**

#### **20.19.1 Term of HAP Contract and Effective Date of First Payment**

The HAP contract may be executed for a term of up to 20 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.

#### **20.19.2 HAP Contract Year, Anniversary & Expiration Dates**

The HAP contract year is the period of 12 calendar months preceding each annual anniversary of the HAP contract during the HAP contract term. The initial contract year is calculated from the first day of the first calendar month of the HAP contract term.

The annual anniversary of the HAP contract is the first day of the first calendar month after the end of the preceding contract year.

There is a single annual anniversary and expiration date for all units under a particular HAP contract, even in cases where contract units are placed under the HAP contract in stages (on different dates) or units are added by amendment. The anniversary and expiration dates for all units coincide with the dates for the contract units that were originally placed under contract.

#### **20.19.3 HAP Contract Extensions**

Within one year of expiration of the initial HAP contract, DHCD may agree to extend the contract for an additional term not to exceed 20 years. Any extension of the term must be on the form and subject to the conditions prescribed by DHCD at the time of the extension. DHCD may provide for multiple extensions; however, in no circumstances may such extensions exceed 20 years, cumulatively.

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.
- 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.

#### **20.19.4 Wrong Unit Size for In-Place Family at Time of Contract Extension Request**

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.

#### **20.19.5 HAP Contract Termination or Expiration Notice Requirements**

Not less than one year before termination of the PBV HAP contract, the owner must notify DHCD and assisted tenants of the termination. This policy does not exempt owners of notice requirements for termination of affordability restriction under M.G.L. Chapter 40T, section 2.

For purposes of this section, the term "termination" means the expiration of the HAP contract or an owner's refusal to renew the HAP contract.

If an owner does not give timely notice of termination, the owner must permit the tenants in assisted units to remain in their units for the required notice period with no increase in the tenant

portion of their rent, and with no eviction as a result of an owner's inability to collect an increased tenant portion of rent.

An owner may renew the terminating contract for a period of time sufficient to give tenants one-year advance notice under such terms as HUD may require.

Upon termination or expiration of the contract, a family living at the property is entitled to receive a tenant-based voucher. Tenant-based assistance would not begin until the owner's required notice period ends.

DHCD or its designee will provide the family with a voucher and the family will also be given the option by DHCD or its designee and owner to remain in their unit with HCV tenant-based assistance as long as the unit complies with inspection and rent reasonableness requirements.

The family must pay their total tenant payment (TTP) and any additional amount if the gross rent exceeds the applicable payment standard. The family has the right to remain in the project as long as the units are used for rental housing and are otherwise eligible for HCV assistance.

The owner may not terminate the tenancy of a family that exercises its right to remain except for serious or repeated lease violations or other good cause. Families that receive a tenant-based voucher at the expiration or termination of the PBV HAP contract are not new admissions to the HCV tenant-based program, and are not subject to income eligibility requirements or any other admission requirements. If the family chooses to remain in their unit with tenant-based assistance, the family may do so regardless of whether the family share would initially exceed 40% of the family's adjusted monthly income.

## **20.19.6 HAP Contract Amendments**

### **20.19.6.1 Substituting Contract Units**

DHCD or its designee 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.

### **20.19.6.2 Amendment to Add Contract Units**

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 HAP can be amended to add contract units regardless of when the HAP contract was signed; however the additional units are subject to the 40% program cap on PBV units.
- 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.

### **20.19.6.3 Reduction in HAP Contract Units Due to Vacancies**

If any contract units have been vacant for 120 or more days since owner notice of the vacancy, DHCD or its designee may give notice to the owner amending the HAP contract to reduce the number of contract units by subtracting the number of contract units (according to the bedroom size) that have been vacant for this period.

#### **20.19.6.4 Reduction of Unit(s) from HAP Contract for Tenant-Caused Program Violations**

If a tenant family is terminated by DHCD or its designee for program violations during the term of the HAP contract, 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.

#### **20.19.6.5 Reduction of Unit(s) from HAP Contract when Tenant Rent Equals Rent to Owner**

Units occupied by families whose income has increased during their tenancy resulting in the tenant rent equaling the rent to the owner, shall be removed from the HAP Contract 180 days following the last housing assistance payment on behalf of the family. 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.

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.

#### **20.19.7 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.
- A rent reasonableness test for each unit must be performed by DHCD or its designee.
- The units must be determined eligible 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.

#### **20.19.8 Termination by PHA**

The term of DHCD's contractual commitment is subject to the availability of sufficient appropriated funding as determined by HUD or by DHCD in accordance with the MTW Plan or HUD instruction. For these purposes, sufficient funding means the availability of appropriations, and of funding under the ACC from such appropriations, to make full payment of housing assistance payments payable to the owner for any contract year in accordance with the terms of the HAP contract.

If it is determined that there may not be sufficient funding to continue housing assistance payments for all contract units and for the full term of the HAP contract, DHCD may terminate the HAP contract by notice to the owner. The termination must be implemented in accordance with HUD instructions.

#### **20.19.9 Termination of the HAP Contract by Owner Because of Rent Reduction**

If DHCD or its designee performs a rent reasonableness test that results in a reduced amount below the initial contract rent, the owner may elect to terminate the HAP contract and the tenant must be offered the next available tenant-based voucher.

#### **20.20 IN-PLACE FAMILIES**

All in-place households must be simultaneously listed on the appropriate designee'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 designee's waiting list. It is the tenant's option to accept the owner's offer of the appropriately sized unit.

An eligible family residing in a proposed PBV contract unit on the date the proposal is selected by DHCD or its designee is considered an "in-place family." These families are afforded protection from displacement under the PBV rule.

If a unit to be placed under contract (either an existing unit or a unit requiring rehabilitation) is occupied by an eligible family on the date the proposal is selected, the in-place family must be placed on DHCD or its designee's waiting list.

Once the family's continued eligibility is determined (DHCD or its designee may deny assistance to an in-place family for the grounds specified in 24 CFR 982.552 and 982.553), the family must be given an absolute selection preference and DHCD or its designee must refer these families to the project owner for an appropriately sized PBV unit in the project. Admission of eligible in-place families is not subject to income targeting requirements.

This regulatory protection from displacement does not apply to families that are not eligible to participate in the program on the proposal selection date.

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.

## **20.21 WAITING LIST**

DHCD will maintain a site-specific waiting list for each respective PBV project. Where an owner does not maintain its own site-specific waiting list, DHCD or its designee will manage the waiting list.

DHCD's PBV site-specific waiting lists are available on DHCD's website at <https://www.mass.gov/service-details/rental-assistance-applications-documentation>.

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; and
5. Where applicable, any special preference and/or occupancy considerations.

### **MTW Policy**

Starting in FY 2013, DHCD authorized new PBV developments to establish and manage their own site-based waiting lists. DHCD may also work with existing owners to transition to owner-managed site-based waiting lists.

DHCD authorizes owner/managers of PBV developments to be responsible for all PBV waiting list intake and management functions for their development. Generally, DHCD intends to require PBV owners to assume and manage these functions; however, exceptions may be made at DHCD's option. Applicants contact the owner/manager of a specific development in order to file an application. Applicant files and the waiting list itself are maintained at the development site. Owner/managers are responsible for contacting and screening applicants who come to the top of the waiting list, collecting all needed information from the applicant, and then forwarding the applicant to DHCD's designee for eligibility determination and processing.

All PBV developments utilizing the new waiting list management methods are required to modify their tenant selection plans and other documents as needed, and must administer the waiting list in conformance with DHCD's Affirmative Fair Housing Marketing Plan and all other applicable HUD fair housing regulations and guidance.

### **20.21.1 Notification of All HCVP Applicants**

DHCD's tenant-based HCVP pre-application includes information to prospective HCVP applicants of their right to be listed on one or more of PBV site-specific waiting list.

### **20.21.2 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, DHCD or its designee will not place the applicant on that project's waiting list. It is the applicant's responsibility to follow up with DHCD's designee 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 DHCD's designee may adversely affect their position on some or all site-specific lists.

### **20.21.3 PBV Referrals**

It is the responsibility of PBV owners and project sponsors to refer applicants to the site-specific waiting list for their respective project.

DHCD's designees and their respective Housing Consumer Education Center (HCEC) may also make referrals to the site-specific lists. If units are not promptly filled because of lack of referrals, DHCD's designees must arrange to meet with the owner/project sponsor to emphasize their responsibility to make a suitable number of referrals or risk contract termination.

#### **Referrals for "Development" PBV Projects**

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 will be listed on this list. The owner/project sponsor, DHCD's designee and the HCEC may 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.

#### **Development for "Existing" Projects**

Simultaneous with approving the HAP for an "existing" PBV project, DHCD or its designee 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, DHCD or its designee will send referrals to the owners for all vacant units.

Generally, DHCD or its designees 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 DHCD or its designee. This process will occur after the owner/project sponsor has screened and selected the tenant(s).

Referred applicants who fail to respond for a period greater than two weeks will be withdrawn from the waiting list. DHCD or its designee will not require the owner to hold a unit vacant while it attempts to locate the applicant.

#### 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, DHCD or its designee will refer applicants from its DHCD site-specific waiting list to the LHA for all DHCD PBV units. The LHA and DHCD or its designee will 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.

### **20.22 OWNER'S WRITTEN TENANT SELECTION PLAN**

Prior to AHAP or HAP execution each owner must submit a tenant selection plan for approval by DHCD or its designee. 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 DHCD's designee 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 DHCD's designee 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 DHCD's designee.

The owner may propose use of differing screening criteria where required by other federal program funds in use in the project. DHCD or its designee will determine if these criteria are approvable.

### **20.23 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, and the unit is ready to come under contract, but the unit is no longer the appropriate size for the household, the applicant will be placed back on the waiting list with their updated family composition size.

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.

## **20.24 PREFERENCES**

The tenant selection plan for the PBV site includes the specific admission preferences used to select applicants from the waiting list. On a case-by-case basis, DHCD or its designee may approve a project sponsor's request to combine preferences, e.g., homeless veterans. These preferences would be subject to approval and outlined in the project's affirmative fair housing marketing plan and tenant selection plan.

### **20.24.1 Pre-Qualifying for Certain Preference Units**

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 or its designee 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 – DHCD or its designee will inform the applicant that if they wish to be considered for these units, they must submit documentation to pre-qualify their eligibility for this priority consideration. The letter to the applicant will 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.

### **20.24.2 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.

### **20.24.3 Homeless Preference**

DHCD may approve homeless criteria for occupancy of units that are created to address the issue of homelessness.

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 supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing), or
- 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

- A public or private place not designed for, or ordinarily used as, a regular sleeping place for human beings.

#### **20.24.4 Homeless Veterans Preference**

An applicant will generally be considered a veteran, unless otherwise provided by DHCD or its designee, if the applicant:

- Served in the active military, navy, or air service; and
- Was discharged or released from such service under conditions other than dishonorable.

#### **20.24.5 Youth Aging Out Preference**

DHCD may approve a PBV preference for youth aging out of foster care and receiving supportive services.

#### **20.24.6 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. Clients of the MA Department of Mental Health (DMH) and the MA Department of Developmental Services (DDS) 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 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.

#### **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 Developmental Services (DDS) who

require services. 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 below in Preference for Disabled Households Needing Services.
- Second Priority: All other disabled clients requiring services in accordance with the criteria outlined below in Preference for Disabled Households Needing Services.
- Eligibility for first priority in units funded with FCF will be documented by a DMH- or DDS-approved entity.

#### Preference for Disabled Households Needing Services

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 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 above. 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.

#### Applicant Referrals for Units with Disability Preference

All disabled applicant referrals will be made from the project's site specific waiting list maintained by DHCD or its designee. The owner/project sponsor will send all applicant referrals written notification of their selection determination, with a copy to DHCD or its designee.

#### **20.24.7 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.

#### **20.24.8 Transfer Preference**

##### **MTW Policy**

DHCD or its designee may provide a PBV transfer preference for families who have verified educational opportunities or employment offers that are more than 25 miles from the family's current PB unit and/or for over or under-housed families who are willing to move to another PB unit in another region within DHCD's jurisdiction. The PB transfer preference is subject to availability of another PB unit within a 25-mile radius of the educational opportunity or employment offer. The over-/under-housed PB transfer preference will be consistent with family composition and DHCD occupancy standards.

#### **20.24.9 Other Preferences**

DHCD may establish other tenant selection preferences for its PBV projects, provided these preferences support DHCD's mission. DHCD will amend this PBV plan and announce any new preference(s) on DHCD's website at [www.mass.gov/dhcd/](http://www.mass.gov/dhcd/).

### **20.25 SCREENING**

When the owner selects from the list of referrals provided by DHCD or its designee in accordance with its approved written tenant selection plan, the owner may screen prospective applicants based in the order in which the applicant contacts the owner, comes to see the unit, and completes the owner's selection requirements.

#### DHCD or Designee Responsibility

DHCD or its designee will not verify an applicant's Section 8 eligibility until after the owner has screened and selected the tenant(s).

DHCD or its designee will inform owners of their responsibility to screen prospective tenants, and will provide owners with the required known name and address information, at the time of the turnover HQS inspection or before. DHCD or its designee will not provide any additional information to the owner, such as tenancy history, criminal history, etc.

#### Owner Responsibility

The owner is responsible for screening and selection of the family to occupy the owner's unit. When screening families the owner may consider a family's background with respect to the following factors:

- Payment of rent and utility bills;
- Caring for a unit and premises;
- Respecting the rights of other residents to the peaceful enjoyment of their housing;



- Drug-related criminal activity or other criminal activity that is a threat to the health, safety, or property of others; and
- Compliance with other essential conditions of tenancy.

#### **20.25.1 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 DHCD's designee and must advise the applicant of any appeal rights to the owner. The applicant may request that the designee review the owner's denial to verify compliance with the owner's approved written tenant selection plan. DHCD's required Tenant Selection Plan addendum contains provisions as to review of an owner's denial.

#### **20.25.2 Denial of Eligibility for PBV Applicant**

HCVP appeal procedures will be utilized and shall be the same as currently in effect for the HCVP as set forth in [CHAPTER 16](#) of this plan.

### **20.26 BRIEFING**

All applicants selected to occupy the PBV units must be briefed by DHCD's designee on program benefits and responsibilities. The oral briefing must include a description of how the PBV program works and family and owner responsibilities.

### **20.27 UNIT OFFER**

Owners are generally required to offer vacant units to existing PBV households within the owner's PBV portfolio prior to housing applicants on the site-based waiting list.

### **20.28 UNIT REFUSAL**

If an applicant responds to the owner and states he/she is no longer interested in a PBV unit or turns down the offer of a PBV unit, the owner or RAA will remove the applicant from that waiting list. The applicant will retain his/her position on all other PBV and DHCD waiting lists.

The owner may not remove a tenant from the PBV waiting list if the tenant had good cause for refusing the unit.

If an applicant refuses a PBV unit without good cause, removal from the owner's waiting list is subject to the owner's Tenant Selection Plan.

#### **20.28.1 Good Cause Refusal of PBV Units**

Applicants/tenants may refuse to accept a unit offer for "good cause." If a good cause for refusal is verified by DHCD or its designee, applicants/tenants may retain their waiting list position. There are two types of good cause:

- Situations in which an applicant/tenant is willing to move but is unable to do so at the time of the unit offer (e.g. the applicant/tenant is in the hospital or is serving on a sequestered jury);

- Situation in which the applicant/tenant demonstrates that acceptance of the offer would cause undue hardship not related to considerations of the applicant's race, color, national origin, etc.

Examples of good cause for refusal of a unit offer include, but are not limited to, the following:

- Inaccessibility to source of employment, education, or job training, children's day care, or educational program for children with disabilities, such that accepting the unit offer would require the adult family member to quit a job, drop out of an educational institution or job training program, or take a child out of day care or an educational program for children with disabilities;
- The family demonstrates to DHCD or its designee's satisfaction that accepting the offer will place a family member's life, health, or safety in jeopardy. The family should offer specific and compelling documentation consistent with [Survivor Documentation](#). Reasons offered must be specific to the family. Refusals due to location alone do not qualify for this good cause exemption;
- A health professional verifies temporary hospitalization or recovery from illness of the principal household member, other household members (as listed on the final application or lease) or live-in aide necessary to the care of the principal household member;
- The unit is inappropriate for the applicant's/tenant's disabilities, or the family does not need the accessible features in the unit offered and does not want to be subject to a 30-day notice to move;

DHCD or its designee will require documentation of good cause for unit refusals and will verify all claims of good cause. Good cause refusal policies may also be applied to unit offers related to applicable transfers.

## **20.29 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 DHCD or its designee's site-specific waiting list before DHCD will permit its designee to lease such a unit to a non-disabled applicant (see also [Inappropriately Housed in an Accessible Unit](#)). Owners must list accessible units with the MassAccess Housing Registry.

## **20.30 LEASING**

After an applicant has been selected from the waiting list, determined eligible by DHCD or its designee, referred to an owner and determined suitable by the owner, the family will sign the lease and occupancy of the unit will begin.

### **20.30.1 Lease**

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.

### **20.30.2 Form of Lease**

The tenant and the owner must enter into a written lease agreement that is signed by both parties. If an owner uses a standard lease form for rental units to unassisted tenants in the locality or premises, the same lease must be used for assisted tenants, except that the lease must include a HUD-required tenancy addendum. The tenancy addendum will include, word-for-word, all provisions required by HUD; however DHCD may develop its own local version of the PBV tenancy addendum for consistency with its MTW policies.

If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease, such as a DHCD or its designee's model lease.

DHCD or its designee will not review the owner's lease for compliance with state or local law.

### **20.30.3 Lease Requirements**

The lease for a PBV unit will specify all of the following information:

- The names of the owner and the tenant;
- The unit rented (address, apartment number, if any, and any other information needed to identify the leased contract unit);
- The term of the lease (initial term and any provision for renewal);
- The amount of the tenant rent to owner, which is subject to change during the term of the lease in accordance with HUD requirements;
- A specification of the services, maintenance, equipment, and utilities that will be provide by the owner; and
- The amount of any charges for food, furniture, or supportive services.

### **20.30.4 Tenancy Addendum**

The tenancy addendum in the lease will state:

- The program tenancy requirements;
- The composition of the household as approved by DHCD or its designee (the names of family members and any PHA-approved live-in aide);
- All provisions in the HUD-required tenancy addendum or MTW Tenancy Addendum must be included in the lease. The terms of the tenancy addendum prevail over other provisions of the lease.

### **20.30.5 Initial Term and Lease Renewal**

The initial lease term must be for at least one year. The lease must provide for automatic renewal after the initial term of the lease in either successive definitive terms (e.g. month-to-month or year-to-year) or an automatic indefinite extension of the lease term. For automatic indefinite extension of the lease term, the lease terminates if any of the following occur:

- The owner terminates the lease for good cause
- The tenant terminates the lease
- The owner and tenant agree to terminate the lease
- DHCD or its designee terminates the HAP contract

- DHCD or its designee terminates assistance for the family

#### **20.30.6 Changes in the Lease**

If the tenant and owner agree to any change in the lease, the change must be in writing, and the owner must immediately give DHCD or its designee a copy of all changes.

The owner must notify DHCD or its designee in advance of any proposed change in the lease regarding the allocation of tenant and owner responsibilities for utilities. Such changes may only be made if approved by DHCD or its designee and in accordance with the terms of the lease relating to its amendment.

DHCD or its designee will redetermine reasonable rent based on any change in the allocation of the responsibility for utilities between the owner and the tenant. The redetermined reasonable rent will be used in calculation of the rent to owner from the effective date of the change.

#### **20.30.7 Security Deposits**

The owner may collect a security deposit from the tenant; however, owners are prohibited from collecting security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants (see M.G.L. c. 186, § 15B).

When the tenant moves out of a contract unit, the owner, subject to state and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid tenant rent, damages to the unit, or other amounts owed by the tenant under the lease.

The owner must give the tenant a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used to reimburse the owner, the owner must promptly refund the full amount of the balance to the tenant.

If the security deposit does not cover the amount owed by the tenant under the lease, the owner may seek to collect the balance from the tenant. DHCD or its designee have no liability or responsibility for payment of any amount owed by the family to the owner.

#### **20.30.8 Owner Termination of Tenancy**

With two exceptions, the owner of a PBV unit may terminate tenancy for the same reasons an owner may in the tenant-based voucher program (see [Termination of Tenancy by the Owner](#)). In the PBV program, terminating tenancy for “good cause” does not include doing so for a business or economic reason, or a desire to use the unit for personal or family use or other non-residential purpose.

#### **20.30.9 Tenant Absence from the Unit**

The lease may specify a maximum period of family absence from the unit that may be shorter than the maximum period permitted by DHCD policy. The family’s assistance must be terminated if they are absent from the unit for more than 180 consecutive days. DHCD termination of assistance actions due to family absence from the unit are subject to 24 CFR 982.312, except that the unit is not terminated from the HAP contract if the family is absent for longer than the maximum period permitted.

### **20.30.10 Tenants with Zero HAP**

If a participating family receiving zero assistance experiences a change in circumstances that would result in a HAP payment to the owner, the family must notify DHCD or its designee of the change and request an interim reexamination before the expiration of the 180-day period.

### **20.31 UNDER-HOUSED, OVER-HOUSED, AND ACCESSIBLE UNITS**

If DHCD or its designee offers the family a tenant-based voucher, DHCD or its designee will terminate the housing assistance payments for a wrong-sized or accessible unit at the earlier of the expiration of the term of the family's voucher (including any extension granted) or the date upon which the family vacates the unit. If the family does not move out of the wrong-sized unit or accessible unit by the expiration of the term of the family's voucher, DHCD or its designee will remove the unit from the HAP contract.

If DHCD or its designee offers the family another form of assistance that is not a tenant-based voucher, and the family does not accept the offer, does not move out of the PBV unit within a reasonable time as determined by DHCD or its designee, DHCD or its designee will terminate the housing assistance payments for the unit at the expiration of a reasonable period as determined by DHCD or its designee and remove the unit from the HAP contract.

#### **20.31.1.1 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, the family must relocate, at their expense, 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.

#### **20.31.1.2 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, the family 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.

#### **20.31.1.3 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.

#### **20.31.1.4 Inappropriately Housed in an Accessible Unit**

DHCD or its designee will 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:

- It has been vacant for at least 45 days, and,
- Both DHCD or its designee 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 will 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, DHCD or its designee 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. DHCD or its designee will be authorized to pay for this move from its administrative fee and DHCD will reimburse its designee for this expenditure.
- See section above on reasonable time to relocate if over/under-housed or relocation requirement when a tenant-based voucher is issued. DHCD will be authorized to pay for this move from its administrative fee and DHCD will reimburse its designee 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.

#### **20.31.1.5 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 DHCD or its designee. 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 DHCD or its designee 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.

### **20.32 FAMILY RIGHT TO MOVE (OPT OUT) WITH TENANT-BASED ASSISTANCE**

## MTW Policy

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. (See [Right to Move From VASH Project-Based Unit \(Opt Out\) With Tenant-Based Assistance](#) for opt-out provisions related to VASH participants.)

Each calendar year, the number of vouchers that will be available to issue to voluntary opt-outs will be limited to a percentage of DHCD's designee's 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 designee non-targeted MTW voucher portfolio on December 31 of the prior calendar year.
2. Determine the number of the designees 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 designee's 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 the designees 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:

- A designee administers 2,000 non-targeted MTW program vouchers and 200 PBVs.  $200/2,000 = .1 = 10\%$
- The designee had approximately 135 non-targeted MTW vouchers turn over in the prior calendar year.
- This designee will have 14 tenant-based vouchers available to issue to PBV voluntary opt-outs.  $135 \times 10\% = 13.5$  rounded to 14

All PBV families that wish to move must submit a written request to opt out. A designee 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 designee 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 this plan.

Upon designee approval for a tenant-based voucher, the participant must give the owner advance written notice of intent to vacate with a copy to the designee 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 survivors 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
• Under-housed	2
• Over-housed	3
• Voluntary Opt-Out	4

For example, if a PB household applies for a voluntarily opt out on April 1, 2017 and another PB household is over-housed with a date of July 1, 2017, then the over-housed PB family will receive the tenant based voucher first since the over-housed 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 designee has an 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 DHCD or its designee.

## **20.33 EMERGENCY TRANSFERS UNDER VAWA**



Where a tenant in a project-based unit is the survivor of domestic violence, dating violence, sexual assault, or stalking, DHCD or its designee will provide several options for continued assistance.

- DHCD or its designee will first try to transfer the participant to another PBV unit in the same development or transfer to a different development where DHCD has PBV units. DHCD or its designee will expedite the administrative processes in this case in an effort to conduct the transfer as quickly as possible.
- If no units are available for an internal transfer, or if there is reasonable cause to believe that such a transfer would put the survivor in jeopardy, the participant may receive continued assistance with a tenant-based voucher. Such a decision will be made by DHCD or its designee based on the availability of tenant-based vouchers and the submission of documentation as per [Survivor Documentation](#). Such families will be placed on the wait list and selected as a forced opt-out according to [Project-Based Opt-Outs](#).
- If a survivor wishes to move, but no tenant-based vouchers are available, DHCD or its designee will offer the participant an internal transfer to another PBV unit in the same development or a transfer to a different development where DHCD has PBV units. DHCD or its designee will expedite the administrative processes in this case in an effort to conduct the transfer as quickly as possible.

## **20.34 RENT TO OWNER**

The amount of the initial rent to an owner of units receiving PBV assistance is established at the beginning of the HAP contract term. Although for rehabilitated or newly constructed housing, the agreement to enter into HAP Contract (Agreement) states the estimated amount of the initial rent to owner, the actual amount of the initial rent to owner is established at the beginning of the HAP contract term.

During the term of the HAP contract, the rent to owner is redetermined at the owner's request in accordance with program requirements, and at such time that there is a 10% or greater decrease in the published FMR.

### **20.34.1 Initial Rent**

When determining the initial rent to owner, DHCD or its designee will use the most recently published FMR in effect and the utility allowance schedule in effect at execution of the HAP contract.

DHCD or its designee will apply any HUD-approved exception payment standard amount under the tenant-based voucher program to the project-based voucher program.

With the exception of rents for units with other subsidy discussed in [Rents for Units with Other Subsidy](#), at the initial HAP contract the maximum gross rent will be set at the lesser of:

- 110% of the applicable FMR or the HUD-approved exception rent,
- The reasonable rent, or
- The owner-requested rent.

### **20.34.2 Rent in Low Income Housing Tax Credit (LIHTC) Units**

For certain tax credit units, the rent limits are determined differently than for other PBV units. Different limits apply to contract units that meet all of the following criteria:

- The contract unit receives a low-income housing tax credit under the Internal Revenue Code of 1986;
- The contract unit is not located in a qualified census tract;
- There are comparable tax credit units of the same bedroom size as the contract unit in the same project, 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 110% of the fair market rent or any approved exception payment standard.

For contract units that meet all of these criteria, the rent to owner must not exceed the lowest of:

- The tax credit rent minus any utility allowance,
- The reasonable rent, or
- The rent requested by the owner.

#### **Definitions**

A *qualified census tract* (QCT) is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50% of households have an income of less than 60% of Area Median Gross Income (AMGI), or where the poverty rate is at least 25% and where the census tract is designated as a qualified census tract by HUD.

*Tax credit rent* is the rent charged for comparable units of the same bedroom size in the project that also receive the low-income housing tax credit but do not have any additional rental assistance (e.g., tenant-based voucher assistance).

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.

### **20.34.3 Rents for Units with Other Subsidy**

To comply with subsidy layering requirements, at the discretion of HUD or its designee, a DHCD or its designee shall reduce the rent to owner because of other governmental subsidies, including tax credits or tax exemptions, grants, or other subsidized funding.

For units in any of the following types of federally subsidized projects, the rent to owner may not exceed the subsidized rent (basic rent) or tax credit rent as determined in accordance with requirements for the applicable federal program:

- An insured or non-insured Section 236 project;
- A formerly insured or non-insured Section 236 project that continues 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.

#### **20.34.4 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.

#### **20.34.5 Rent Reasonableness**

DHCD's designee must perform a rent reasonableness test on all contracted units both at initial HAP and under the following circumstances:

- Whenever the owners requests a rent adjustment;
- Whenever DHCD or its designee approves a change in the allocation of responsibility for utilities between the owner and the tenant;
- Whenever the HAP contract is amended to substitute a different contract unit in the same building or project;
- Whenever there is any other change that may substantially affect the reasonable rent;
- Whenever there is a 10% or greater decrease in the published FMR in effect 60 days before the contract anniversary (for the unit sizes specified in the HAP contract) as compared with the FMR in effect one year before the contract anniversary; and
- At any other time the DHCD or its designee deems it necessary.

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.

Where applicable and when noted in the HAP contract, DHCD or its designee will not reduce rents below the initial rent to owner except:

- To correct errors in calculations in accordance with HUD requirements;

- If additional housing assistance has been combined with PBV assistance after the execution of the initial HAP contract and a rent decrease is required pursuant to 24 CFR § 983.55; or
- If a decrease in rent to owner is required based on changes in the allocation of responsibility for utilities between the owner and the tenant.

Where the HAP contract does not provide that any redetermined rent will not be reduced below the initial contract rent of the initial contract, DHCD or its designee will terminate the existing contract for any unit where the landlord does not agree to a reasonable rent.

### **20.35 REDETERMINATION OF RENT**

[24 CFR 983.302]

Each year, at the HAP contract anniversary date, the owner may be granted an opportunity for a rent adjustment.

When redetermining the rent to owner, DHCD or its designee will use the most recently published FMR and the utility allowance schedule in effect at the time of redetermination.

Except for certain tax credit units, the rent to owner must not exceed the lowest of:

- An amount determined by DHCD or its designee, not to exceed 110% of the applicable fair market rent (or any exception payment standard approved by the Secretary) for the unit bedroom size minus any utility allowance;
- The reasonable rent; or
- The rent requested by the owner.

#### **MTW Policy**

The redetermined rent to owner will not exceed the lowest of the following:

- The reasonable rent;
- The rent requested by the owner; or
- Such other amount determined by DHCD or its designee to be appropriate for the unit, based upon nature of the unit and the RFP form which the owner was selected. For example, in certain cases, DHCD believes that a shallower or higher subsidy may be more appropriate.

This policy eliminates consideration of the FMR limits when redetermining PBV 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 approved rent adjustment. Adjustments may not be applied retroactively. Requests received after the HAP anniversary date will not be considered until the next HAP anniversary date.

### **20.35.1 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 redetermination for reasons stated in [Rent Reasonableness](#).

### **20.35.2 Notice of Rent Change**

The rent to owner is redetermined by written notice by DHCD or its designee to the owner specifying the amount of the redetermined rent. DHCD's or its designee's notice of rent adjustment constitutes an amendment of the rent to owner specified in the HAP contract. The adjusted amount of rent to owner generally applies for the period of 12 calendar months from the annual anniversary of the HAP contract.

### **20.36 RENT TO OWNER IN DHCD-OWNED UNITS**

For DHCD-owned PBV units, the initial rent to owner and the annual redetermination of rent at the anniversary of the HAP contract are determined by the independent entity approved by HUD. DHCD or its designee will use the rent to owner established by the independent entity.

### **20.37 REQUEST TO USE A BUILDING-SPECIFIC OR LOCAL HOUSING AUTHORITY UTILITY ALLOWANCE**

At the request of the owner, DHCD or its designee may agree to allow a building-specific or the local housing authority utility allowance to be used in the project.

### **20.38 PAYMENT TO OWNER**

#### **20.38.1 Vacancy Payments**

[24 CFR 983.352]

DHCD will decide on a case-by-case basis if DHCD will provide vacancy payments to the owner. The HAP contract with the owner will contain any such agreement, including the amount of the vacancy payment and the period for which the owner will qualify for these payments.

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.

Where vacancy payments apply, the following requirements must be satisfied in order for a vacancy payment to be made:

- *Prompt notification of vacancy to DHCD or its designee*

The owner must promptly notify DHCD's designee 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 DHCD or its designee 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 DHCD or its designee 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 DHCD or its designee 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 DHCD. 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*

DHCD or its designee will consider the frequency and nature of vacancy requests when deciding whether or not to renew an expiring PBV HAP contract.

## **20.39 TENANT RENT TO OWNER**

The tenant rent is the portion of the rent to owner paid by the family. The amount of tenant rent is determined by DHCD or its designee in accordance with HUD and MTW policies. Any changes in the amount of tenant rent will be effective on the date stated in the rent notice to the family and owner.

The family is responsible for paying the tenant rent (total tenant payment minus the utility allowance). The amount of the tenant rent determined by DHCD or its designee is the maximum

amount the owner may charge the family for rental of a contract unit. The tenant rent covers all housing services, maintenance, equipment, and utilities to be provided by the owner. The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by DHCD or its designee. The owner must immediately return any excess payment to the tenant.

## **20.40 TENANT AND DHCD RESPONSIBILITIES**

The family is not responsible for the portion of rent to owner that is covered by the housing assistance payment and the owner may not terminate the tenancy of an assisted family for nonpayment by DHCD or its designee.

Likewise, DHCD or its designee is responsible only for making the housing assistance payment to the owner in accordance with the HAP contract. DHCD or its designee is not responsible for paying tenant rent, or any other claim by the owner, including damage to the unit.

## **20.41 UTILITY REIMBURSEMENTS**

See [Utility Reimbursement](#) policies which also apply to the PBV program.

## **20.42 OTHER FEES AND CHARGES**

### **20.42.1 Meals and Supportive Services**

With the exception of PBV assistance in assisted living developments, the owner may not require the tenant to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy.

In assisted living developments receiving PBV assistance, the owner may charge for meals or supportive services. These charges may not be included in the rent to owner, nor may the value of meals and supportive services be included in the calculation of the reasonable rent. However, non-payment of such charges is grounds for termination of the lease by the owner in an assisted living development.

### **20.42.2 Other Charges by Owner**

The owner may not charge extra amounts for items customarily included in rent in the locality or provided at no additional cost to unsubsidized tenants in the premises.

## **20.43 RENTAL ASSISTANCE DEMONSTRATION PROGRAM (RAD) & PBV**

### **MTW Policy**

Consistent with the RAD PIH Notices, DHCD may apply MTW flexibilities to units converted to PBV under the Rental Assistance Demonstration to the extent that said flexibilities are not in conflict with RAD provisions specified in HUD's Notice(s).

In FY 2015, DHCD modified the income eligibility requirements for tenants who occupy units at the time of a RAD conversion to the PBV program. For only those existing tenants, annual income must not exceed the moderate income limit for the area which is 80% of AMI, except for elderly and disabled households whose incomes may not exceed 95% of AMI.

- DHCD may revise standards for acceptable income verification documents for clients at the time of conversion. Specifically, when completing initial certifications at the time of a RAD or Expiring Use conversion, DHCD may waive the HUD requirement regarding the age of documents at the time of effective date. Authorized in Attachment C Section D of DHCD's MTW Agreement.
- Notwithstanding proposed changes to PBV regulations, DHCD will continue to define "existing housing" as "Housing units that already exist on the proposal selection date and that substantially comply with the HQS on that date." Authorized in Attachment C Section D of DHCD's MTW Agreement.
- DHCD may institute other changes, on a case-by-case basis, as long as such changes are consistent with the MTW authorizations.

## 20.44 EXPIRING USE PRESERVATION INITIATIVE

### MTW Policy

This initiative is designed to preserve the long-term affordability of expiring use properties by making use of the resources provided by HUD in the form of Enhanced and Tenant Protection Vouchers to continue the affordability of the units in these projects by converting eligible units immediately to project-based units with a 15-year affordability period.

DHCD may consider the following criteria when determining eligibility of projects for conversion (except where prohibited for certain projects by PIH Notice 2012-32):

- Located in neighborhoods which offer economic and educational opportunities and relatively low concentrations of poverty;
- The cost per unit will ensure long-term viability for both DHCD and the project;
- The cost per unit will generally fall within DHCD's then current PBV MTW voucher per unit cost;
- There is substantial community and tenant support for units to be converted to project-based units as documented by the Project Developers;
- The Project Developer must request from HUD that DHCD be the Administrator of the Enhanced Vouchers resulting from the conversion action;
- DHCD will make a determination on the level of resident interest prior to pursuing administration of the Enhanced and PB vouchers.
- The Project Developer agrees to participate in and support MTW-related self-sufficiency activities for the tenants of the project. The type and extent of support provided will be determined by site. For example, a project may provide case management services to its MTW residents.

DHCD may modify the selection criteria listed above at its discretion, and may place limitations on the number, types and/or characteristics of units to be supported under this initiative. As part of the conversion process, DHCD will provide residents, who are eligible to receive a voucher, with the option to receive an Enhanced Voucher or to have their unit converted to project-based assistance. As part of the determination process, DHCD will provide detailed information to residents so that an informed choice can be made.



Pursuant to HUD's 2012 updated guidance on the use of special purpose vouchers, DHCD may apply MTW operating flexibilities to Enhanced Vouchers upon issuance, provided that these 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 reexaminations, biennial inspections, rent simplification (provided that it does not infringe on EV protections), 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 and payment standards will also continue to apply to these households. DHCD does not apply term limits to any of its Housing Choice Voucher participants.

For existing tenants on the conversion date who elect to receive a project-based voucher and who are considered over-housed, DHCD may waive the subsidy standard policy, provided that there must be at least one household member for each bedroom in the apartment. In addition, tenants may request a reasonable accommodation if applicable. The only Enhanced Voucher provision which applies to tenants selecting the project-based option is the initial income eligibility requirement.

DHCD's other MTW PBV policies apply upon the conversion action, except for the following:

- Tenants who live in the development at the time of the conversion action and who select a PBV will be permitted to move after the first year of assisted tenancy following the conversion action. They will be added to the waiting list for a tenant-based voucher in accordance with the Administrative Plan;
- Tenants who live in the development at the time of the conversion action and who select a PBV will not be subject to the limit on voluntary interim rent decreases; and
- DHCD may waive the limitation on the number of units per project generally applied to PBV developments and allow up to 100% of units in all types of developments to be project-based.

Notwithstanding proposed changes to PBV regulations, DHCD will continue to define "existing housing" as "Housing units that already exist on the proposal selection date and that substantially comply with the HQS on that date."

DHCD may institute other changes, on a case-by-case basis, as long as such changes are consistent with the MTW authorizations granted herein.

#### **20.44.1 Expiring Use Preservation Activity and RAD**

##### **MTW Policy**

Consistent with PIH Notice 2012-32, DHCD may apply MTW flexibilities to units converted to PBV under the Rental Assistance Demonstration to the extent that said flexibilities are not in conflict with RAD provisions specified in HUD's Notice(s).

DHCD may revise standards for acceptable income verification documents for clients at the time of conversion. Specifically, when completing initial certifications at the time of a RAD or Expiring Use conversion, DHCD may waive the HUD requirement regarding the age of documents at the time of effective date.

In FY 2015, DHCD modified the income eligibility requirements for tenants who occupy units at the time of a RAD conversion to the PBV program. For only those existing tenants, annual income must not exceed the moderate income limit for the area which is 80% of AMI, except for elderly and disabled households whose incomes may not exceed 95% of AMI.

## **CHAPTER 21 : ENHANCED VOUCHERS**

### **21.1 OVERVIEW OF ENHANCED VOUCHERS**

Enhanced Vouchers are authorized under Section 8(t) of the U.S. Housing Act of 1937. Enhanced Vouchers are normally not provided in the case of HUD enforcement actions against an owner resulting in the termination of a Section 8 contract. In such cases, regular voucher assistance is usually applicable, particularly if the unit would not meet housing quality standards.

Enhanced Vouchers are replacement vouchers (i.e., a replacement for the previous HUD subsidy) and so do not come out of a housing authority's regular pool of HCVs but rather from HUD. HUD provides the vouchers to the housing authority on a one-for-one replacement basis to make up for the loss of affordable housing units in the community, subject to the availability of appropriations. A voucher is considered "enhanced" only as long as the tenant who received the voucher remains in the project that was subject to the Housing Conversion Action.

If there are any vouchers remaining after DHCD or its designee assists the eligible tenants of the project, DHCD or its designee may use the vouchers to assist households on DHCD or its designee regular HCV waiting list. In such a case, the voucher would be treated as a regular voucher without any enhanced features.

### **21.2 INDIVIDUALS COVERED BY ENHANCED VOUCHER PROVISIONS**

A person residing in DHCD or its designee's jurisdiction is eligible for an Enhanced Voucher if, on the effective date of the Housing Conversion Action:

- The resident meets the income requirements;
- Any rent increase under the Enhanced Voucher Program is in accordance with the lease agreement and program regulations; and
- The family decides to stay in the unit located in the property that was subject to the Housing Conversion Action instead of moving.

Prior to DHCD or its designee approving a family to lease a dwelling unit with Enhanced Voucher assistance, the following conditions must be met:

- The unit must be eligible;
- The unit must pass HQS;
- The lease must include the applicable tenancy addendum; and
- The rent to the owner must be reasonable.

### **21.3 PROVISIONS OF ENHANCED VOUCHERS**

The following requirements apply to Enhanced Voucher assistance. Unless otherwise described in this chapter, or in the PBV chapter (preservation and RAD conversions) standard HCV requirements generally apply to Enhanced Vouchers.

- Enhanced Vouchers issued to a family as a result of housing conversion actions are always tenant-based assistance. Households may move outside of DHCD or its designee's jurisdiction under the portability provisions of the voucher program. However, if a family does not remain in the property that was subject to the Housing Conversion Action, the voucher will not be considered "enhanced" and will instead be governed by MTW HCV program policies.
- A higher "enhanced" payment standard will be used to determine the amount of subsidy in cases where the gross rent of the unit (rent to owner plus the utility allowance for any tenant-supplied utilities) exceeds the normally applicable DHCD or its designee's payment standard. In such instances, the gross rent for the unit is used in the subsidy calculation instead of the normally applicable payment standard. This means that the tenant will not have to pay out of pocket if the gross rent is greater than the payment standard, as would be the case with a regular HCV. The enhanced payment standard policy will be applicable to the Enhanced Voucher so long as the tenant remains in the unit that was subject to the Housing Conversion Action.
- Notwithstanding the preceding paragraph regarding the enhanced payment standard, DHCD or its designee will not approve a unit leased with an Enhanced Voucher until a determination is made that the initial rent to the owner is a reasonable rent. If DHCD or its designee determines that the proposed rent is not reasonable, the landlord will have to lower the rent or the family will have to find another unit in order to benefit from the Enhanced Voucher subsidy.
- DHCD or its designee maintains its authority to screen potentially eligible households or deny assistance for any grounds described in this Administrative Plan. DHCD or its designee will maintain the same screening and admissions policies for households assisted with Enhanced Vouchers as it does for regular admissions of households from DHCD or its designee's waiting list; except where superseded by an MTW policy.
- DHCD or its designee will provide a family the opportunity for an informal review if it denies the family admission to the voucher program in accordance with the HCV regulations.
- DHCD or its designee will conduct its own income determination and verification for households assisted with Enhanced Vouchers. At its discretion, DHCD or its designee may use the owner's most recent family income examination if the owner's current certification for the tenant is no more than six months old.
- The owner of the property is required to continue to allow the tenant holding the Enhanced Voucher to live at the property after the conversion action, as long as the units are used for rental housing and are otherwise eligible for HCV assistance in accordance with the requirements of this chapter and the Administrative Plan. The owner may not terminate the tenancy of a family that exercises its right to remain except for serious or repeated lease violations or other good cause.
- DHCD or its designee will issue Enhanced Vouchers according to DHCD or its Designee's established subsidy standards, not the actual size of the unit the family is currently occupying. If the bedroom size of the tenant's unit exceeds the number of

bedrooms for which the tenant qualifies under DHCD or its designee subsidy standards, the tenant is considered to be over-housed.

- If a family chooses to move from the project at any time, DHCD MTW HCV tenant-based program rules apply to the subsidy calculation for the new unit; the voucher will no longer be considered as “enhanced.”
- DHCD or its designee will provide households with search time that is reasonably required to locate housing and will grant exceptions and extensions on a case-by-case basis.
- DHCD or its designee will use the same rent reasonable standards regardless of whether the vouchers are standard HCV vouchers or enhanced.
- DHCD or its designee will not approve any temporary or short-term leases between the owner and family. The initial lease term will be for one year unless DHCD or its designee determines that a shorter term would improve housing opportunities for the tenant and such shorter term is the prevailing local market practice.
- All units leased with Enhanced Vouchers must meet the HQS standards of the tenant-based HCV Program regardless of whether the family is residing in a unit that was previously assisted under a Section 8 unit-based contract. DHCD or its designee will not issue any Housing Assistance Payments for any period of time prior to the date that the unit is inspected and meets HQS.
- DHCD or its designee will execute the HAP contract within 60 calendar days after the beginning of the lease term.
- If a family chooses to stay in a unit where a property has undergone a conversion action, the lease term will not be effective prior to the target date of the Housing Conversion Action. DHCD or its designee may approve a tenancy that begins before the target date of the conversion action for a family that is moving from the property.
- DHCD or its designee will maintain records of eligibility determinations for households who are income eligible for an Enhanced Voucher, but there is no HAP payment because the family’s Total Tenant Payment equals or is greater than the gross rent.
- When a family moves from a project the voucher will become a regular tenant-based voucher, thus the voucher will no longer be enhanced. At that time, DHCD or its designee will apply the normally applicable payment standards in determining the family’s Housing Assistance Payment.

## **21.4 OVER-HOUSED FAMILIES WITH ENHANCED VOUCHERS**

When DHCD or its designee determines the family is over-housed, DHCD or its designee will inform the family and explain the requirements for over-housed families. If the family indicates it wishes to remain at the project with enhanced voucher assistance, DHCD or its designee will inform the owner of the project that the family is in an over-sized unit. DHCD or its designee will also provide the owner with the bedroom size for which the family actually qualifies under DHCD’s subsidy standards (i.e., the appropriate size unit). The owner must then identify all appropriate

size units that are available in the project. An “appropriate size unit” also includes an available bedroom size unit that is smaller than the family’s current unit but is not smaller than the appropriate size unit for which the family qualifies under DHCD’s subsidy standards.

The over-housed family must move to an appropriate size unit in the project if one is available in order to receive enhanced voucher assistance. The family and owner will enter into a lease and DHCD or its designee will execute a voucher housing assistance payments (HAP) contract on behalf of the family for the appropriate size unit to which the family moves. The enhanced voucher housing assistance payment calculation is based on the gross rent of the appropriate size unit.

If an over-housed enhanced voucher family refuses to move to the appropriate size unit, and one exists and is available for occupancy, DHCD or its designee will calculate the family’s housing assistance payment for the over-sized unit based on the normally applicable voucher subsidy formula using the applicable payment standard established by DHCD or its designee for the voucher program. The family will be responsible for any amount of the gross rent not covered by the housing assistance payment.

If an appropriate size unit is not available, but a unit with fewer bedrooms sufficient for the family is available, the family must move to the smaller unit within a reasonable time. DHCD defines “reasonable time” to be 30 days.

If there are no appropriate size units, the family may remain in their over-sized unit and the value of their EV will be based on rent of the over-sized unit. Once an appropriate size unit becomes available, the family must move to it, again within a reasonable time not to exceed 30 days.

## **21.5 ENHANCED VOUCHER MINIMUM RENT**

DHCD or its designee will calculate the enhanced voucher minimum rent for each eligible family. A family receiving enhanced voucher assistance must pay no less for rent than the family was paying for rent on the date of the eligibility event (the enhanced voucher minimum rent). In accordance with enhanced voucher rules, the family must pay at least this amount for the family share for as long as the family remains in the property with voucher assistance, unless the family suffers a significant decrease in income.

If the enhanced voucher family’s rent suffers a significant decrease in income (a decrease of at least 15% from the family income on the date of the eligibility event, the enhanced voucher minimum rent changes from the dollar amount the family was paying for rent to the percentage of income the family was paying for rent at the time of the eligibility event.

Specifically, for families who were previously unassisted on the date of the eligibility event, the family’s revised enhanced voucher minimum rent is the greater of:

- The percentage of the monthly adjusted income the family paid for gross rent on the effective date of the eligibility event, or
- 30% of the family’s current adjusted monthly income.

For families who were previously assisted under a project-based or tenant-based contract on the date of the eligibility event, the family’s revised enhanced voucher minimum rent is the greater of:

- The percentage of adjusted monthly income the family Total Tenant Payment (TTP) or the voucher family share on the effective date of the eligibility event, or
- 30% of the family's current adjusted monthly income.

After the enhanced voucher minimum rent for the family is changed from the dollar amount to the percentage of income calculation, the enhanced voucher minimum rent will normally continue to remain that specific percentage of adjusted monthly income so long as the family receives enhanced voucher assistance.

## 21.6 CONVERSION OF ENHANCED VOUCHERS TO MTW VOUCHERS

### **MTW Policy**

DHCD may apply MTW operating flexibilities to Enhanced Vouchers upon issuance, provided that these 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 or triennial reexaminations, biennial inspections, rent simplification (provided that it does not infringe on EV protections), 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 and payment standards will also continue to apply to these households.

## **CHAPTER 22 : FAMILY SELF-SUFFICIENCY**

### **22.1 OVERVIEW**

Under its approved Moving to Work Agreement and MTW Plans, DHCD has modified and enhanced the Family Self-Sufficiency (FSS) program in an effort to encourage participation and support completion of the program. The policies contained in this chapter reflect DHCD's MTW FSS program.

MTW FSS policies will apply to participants from all HCV programs, including Mainstream 5 and VASH.

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. Additionally, among the goals of the FSS program are the elimination of participants' needs for public assistance and enhancement of participants' abilities to achieve homeownership, if desired.

The FSS program helps eligible families achieve economic independence and self-sufficiency over a five-year period. DHCD and its designees 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" (COP) 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 DHCD to set aside funds for the participant's use at the end of the program.

Each DHCD designee administering the Section 8 Housing Choice Voucher program will establish and operate the FSS program in accordance with agency requirements. Each designee will establish a coordinating committee representing local stakeholders and resource-providers to support the success of the program and its participants. If there is a another FSS program coordinating committee in the designee's jurisdiction with whom the designee can partner, the designee need not set up its own coordinating committee. Partnering with another coordinating committee is also contingent on the committee being comprised of shared local stakeholders and resource providers.

### **22.2 PROGRAM BENEFITS AND ROLES AND RESPONSIBILITIES**

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. At a minimum, FSS staff should maintain quarterly communications with FSS participants. Each of DHCD's designees must provide access to a Financial Literacy/Budgeting class for all FSS participants. Completion of this class is a program requirement.

### **22.3 OUTREACH**

DHCD's designees 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.

### **22.4 PROGRAM SIZE**

The size of each designee's FSS program will be established by DHCD. DHCD has exceeded its statewide program size and continues to add participating families. DHCD's FSS target for participants is in the range of 850 to 1000 participants. Each of DHCD's designees is expected to support 50 FSS participants per each FSS FTE. DHCD may modify this allocation based on program need and participation levels.

### **22.5 SELECTION OF FSS PARTICIPANTS**

DHCD's designee will use the date the family expressed an interest in participating in FSS as the means to select and order selection of FSS participants. There are no selection preferences for participation in DHCD's FSS program.

### **22.6 ELIGIBILITY**

All families participating in the Section 8 Housing Choice Voucher program operated by DHCD's designees under subcontract to DHCD are eligible to enroll in the FSS program administered by the designee for their region of residency.

Each designee will use the following criteria to determine eligibility for participation in the MTW FSS program:

- May be a current tenant of HCV or PB programs;
- Must not owe the DHCD or its designees money related to their participation in the HCV or PBV programs and if money is due, family must be current on a repayment agreement or pay the debt in full prior to enrollment;
- Must be in compliance with the lease and other program requirements. Receipt of two or more proposed termination letters in a 12-month period will be deemed "not in compliance with program requirements";
- Must complete the specified tasks, or attend required meetings; and
- Must demonstrate interest and motivation to participate in the FSS program. Such screening will measure the family's interest and motivation, not their qualifications or

ability. Examples of motivational screening tasks which DHCD's designee may require include:

- Attendance at FSS orientation session or pre-selection interviews;
- Completion of certain tasks that indicate the family's willingness to undertake the FSS contract obligations such as:
  - Contacting a job training program
  - Contacting an educational program

As a condition for participation in Metro Housing|Boston's FSS program, applicants must attend three Compass workshops before they enroll in FSS.

The head of household must be a participant in FSS before any other family members will be considered.

## **22.7 STATEWIDE RE-ENROLLMENT POLICY**

- A proposed participant must not owe DHCD or its designees money related to their participation in the HCV or PBV programs and if money is due, family must be current on a repayment agreement or pay the debt in full prior to enrollment;
- Participants must set new goals that move them further along the self-sufficiency path.
  - If a graduate earned a high school diploma during their prior FSS enrollment, then he/she should complete job training, or enroll in college, increase skills through on the job training etc.
  - If working part-time at the end of the prior FSS enrollment, he/she should increase work hours or hourly wage
  - New goals shall also include asset development activities such as opening college savings accounts for children, savings bonds, or improving credit score.
- The \$25,000 cap applies to all re-enrollees regardless of when they graduated (including interim disbursements and all incentives).
- Participants who have not maintained employment through no fault of their own, such as a reduction in hours available, layoffs, health crises, loss of child care or transportation, will be allowed to re-enroll.
- Decisions for re-enrollment under other circumstances will be on a case-by-case basis.
- Participants who are terminated from FSS or who voluntarily withdraw will be considered for reenrollment after a six-month waiting period.

## **22.8 FSS CONTRACT OF PARTICIPATION**

A family enrolls in the FSS Program, with all rights and responsibilities, by entering into an FSS COP and signing the COP with DHCD's designee. FSS participants are subject to all applicable regulations and policies which are stipulated in the COP.

Prior to enrollment in the FSS program, the family and DHCD's designee will set personal achievable goals and specific interim goals as a means to measure the family's progress toward achieving economic independence. The designated head of each family participating in the FSS program must execute an FSS COP.

The income and rent numbers inserted on the COP are taken from the last reexamination or interim before the family's participation in FSS. A new reexamination will NOT be completed even if it has been more than 120 days since the last reexamination or interim.

A participant whose enrollment income is zero must complete zero-income screening per DHCD's Zero Income Verification Requirements.

At the time of enrollment in FSS, if family member is out on a leave (medical or other type of leave) and is not receiving a salary from the employer, DHCD or its designee will use the last earned income from the employer as the baseline for escrow calculations.

The effective date of the COP is the first day of the month following the date the contract was signed by the family and a representative of DHCD's designee. The expiration date of the COP is five years from the effective date.

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 COP, which includes the Individual Training and Service Plan (ITSP) and, as outlined in the FSS COP, their residency lease. DHCD's designee will establish procedures for addressing situations in which a family is not in compliance with the FSS COP. A family's participation in the Section 8 Housing Choice Voucher Program will not be terminated solely for failure to comply with the FSS COP or FSS program requirements.

### **22.8.1 Extensions to the FSS Contract of Participation**

The following are the DHCD policies regarding extensions to the FSS COP.

- All contract extensions will be for six months or less;
- No more than four six-month extensions will be allowed;
- No contract extensions should be given solely to allow for participant to earn more escrow;
- No contract extensions should be given to enable the head of household time to find a job if all escrow was the result of another wage earner (this issue should be identified and corrected 12-18 months before graduation); and
- No contract extensions should be longer than the time needed to reach the goal of the extension – if a household needs eight months to be free of cash assistance, the first

extension is six months, the second (assuming approval of an extension) can only be for two months.

### **22.8.2 Completion of the Contract**

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 DHCD or its designee, when it has met the conditions established in DHCD's FSS program. 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 12 months).

The family's contract will be considered completed if:

- The FSS family has fulfilled all obligations under the contract on or before the expiration of the contract term (or extension), or
- The applicable percentage of the family's monthly adjusted income equals or exceeds the published existing HUD Fair Market Rent for the size unit for which the family qualifies based on DHCD occupancy standards. The COP will be considered completed and the family's participation in the FSS program concluded on this basis even though the contract term, including any extension thereof, has not expired, and the family members who have individual training and services plans have not completed all the activities set forth in their plans.

A family may request to be determined to have successfully completed their FSS participation prior to the end of their contract period, and if DHCD's designee determines that they have met the requirements for successful completion they will be eligible to graduate and receive their escrow account funds. The family does not have to be free of housing assistance to have completed the contract.

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.

### **22.8.3 Consequences of Non-Compliance with the Contract**

If the family does not comply with the contract, DHCD's designee may:

- Withhold the supportive services; and/or
- Terminate the family's participation in the FSS program, or

If the head of the FSS family does not seek and maintain employment or never becomes employed during the contract's five-year term, the family has not met its FSS obligations. Any escrow generated by the increase in earned income of other household members will be forfeited.

Families may request an informal hearing after being notified of a corrective action by DHCD's designee.

### **22.8.4 Termination of the FSS Contract**

The FSS contract is automatically terminated if HCV assistance is terminated. The contract may also be terminated by:

- Mutual consent;
- Failure of family to meet contract obligations without good cause;
- Family withdrawal from FSS program; and/or
- Other act deemed inconsistent with the purpose of the FSS program or operation of law.

DHCD's designee will terminate participation in the FSS program and require forfeiture of the FSS escrow without terminating HCV program assistance as a consequence of not completing the obligations of the ITSP or FSS COP. The designee will review the circumstances of the non-compliance to determine the appropriate remedy. The designee may also consider renegotiating or revising the ITSP with the family.

If DHCD's designee decides to withhold escrow, terminate FSS supportive services, or terminate the FSS contract because the family failed to comply with its ITSP or FSS COP, DHCD will offer the family the opportunity for an informal hearing.

## **22.9 INDIVIDUAL TRAINING AND SERVICE PLAN**

As a required attachment to the FSS COP, the family head of household also signs the FSS ITSP. The ITSP 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 at least 12 months prior to the end of their contract period.

The FSS ITSP may be 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 COP.

The ITSP includes:

- The supportive services to be provided to the family member;
- The activities to be completed by that family member;
- The agreed upon completion dates for the services and activities;
- A mandatory interim goal for families on welfare to be free of welfare assistance for at least 12 consecutive months prior to the expiration of the COP. This language must be included in all COPs regardless of whether the household is receiving public assistance at enrollment; and
- A final goal to maintain suitable employment. Only the FSS head is required to obtain employment as a condition of completing the contract goals.

The ITSP is mandatory for the FSS head, and optional for other family members.

## **22.10 CHANGE IN FAMILY COMPOSITION**

If the FSS family head leaves the family during the term of the contract, and the remaining family members want to continue participation in the FSS program, the new head of household will be designated as the FSS head. The contract will have to be revised to reflect the new head of the FSS family.

If the head of the FSS family leaves the family prior the expiration of the COP, the contract provides for the remaining family members to designate a family member to receive the escrow.

If any family member with an individual training and services plan leaves the assisted family during the term of the FSS contract, DHCD's designee will delete the ITSP for that family member.

DHCD's designee will determine whether new or revised ITSPs need to be established for the family to continue its participation in the FSS program.

If the initially designated head of the FSS family or any other family member with an ITSP did not meet the obligations under the contract, DHCD's designee may terminate the FSS contract or terminate assistance under the program.

## **22.11 PROVISION OF SERVICES**

DHCD's designee is responsible to ensure that the services provided to the family are adequate. If a social service agency fails to deliver the supportive services identified in the ITSP, DHCD's designee will make a good faith effort to obtain the services from another agency. If the designee is unable to obtain the services, they will decide whether another available service would achieve the same purpose. If the unavailable services are not key to the family's ability to achieve self-sufficiency, the designee will revise the ITSP to delete the services and modify the contract accordingly. If the services are integral, the designee will declare the contract null and void.

## **22.12 ESCROW ACCOUNTS**

Generally, as the family's earnings increase over time, the escrow account is credited with a portion of the amount of increased rent they pay due to increases in earned income. Each of DHCD's designees will establish an FSS Escrow Account; with subsidiary ledgers to track FSS Escrow Account balances applicable to each participating family.

The family's annual income, earned income, and family rent are inserted into the COP at execution. These become the baseline figures for future escrow calculations. Escrow credits are based on increase of earned income. Other escrow account features include:

- Increases in income other than earned income do not contribute to the escrow credit.
- For the baseline and all subsequent escrow calculations, DHCD's designee will use the calculated TTP for use in determining escrow even if the participant is on minimum rent. For example, if the calculated TTP is \$30 and the minimum rent paid by the family is \$50, the designee will use \$30 when calculating escrow.

- At the time of enrollment in FSS, if a family member is out on a leave (medical or other type of leave) and is not receiving a salary from the employer, DHCD's designee will use the last earned income from the employer as the baseline for escrow calculations.
- If additional family members are approved by DHCD's designee, their earned income is counted when computing the escrow regardless of whether they have an individual training and services plan.
- A lifetime cap of on the amount of escrow (including incentives) of \$25,000 per family. The caps may be periodically reviewed and modified.
  - The \$25,000 cap on escrow is effective for all COPs with effective dates on or after December 1, 2013.
- All incentive payments count toward the escrow cap.
- The \$25,000 cap is cumulative. If an FSS participant re-enrolls, the escrow cap will include any escrow accumulated/dispensed during a prior FSS participation.
- No credits will be made to the family's FSS escrow account after the FSS family has completed the COP or when the contract is terminated or otherwise nullified.

Earned income is income from wages, tips, salaries, other employee compensation, military pay that is normally included in the annual income definition and any earnings from self-employment. Earned income does not include pensions, annuity payments, transfer payments, cash or in-kind benefits, or funds deposited in or accrued interest on the escrow account established by DHCD's designee or an Initial Housing Authority on behalf of a participating family.

### **22.12.1 FSS Escrow Credit**

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.

DHCD's designee will provide the opportunity for escrow credit to all FSS families regardless of their income level. The designee will apply the FSS credit methodology for very low income families to all FSS families regardless of their income level.

### **22.12.2 Timing of the Escrow Credit Calculations**

- When the family is selected for the FSS program and executes a COP, DHCD's designee will enter the baseline income data into the contract.
- There will not be an escrow calculation until the family has a qualifying increase in earned income after the date of the contract.
- Thereafter, whenever the designee conducts a regular or interim reexamination during the contract, the designee will also calculate the monthly escrow credit.

- The designee will follow the Administrative Plan to determine whether an interim reexamination should be conducted, and when increases will go into effect.
- If the family has one or more interim reexaminations during the year, the monthly escrow amount may change during the year. Otherwise, the monthly escrow credit will be the same for the entire period between annual reexaminations.
- Interim reexaminations for families in the FSS program will not count toward the limit on voluntary interim reexaminations.

### **22.12.3 Crediting the Escrow Account**

- Each of DHCD's designees will deposit all escrowed credits into a single depository account.
- The IRS does not count the funds or interest on the funds in the escrow account as income for purposes of income taxes, either before or when the family actually receives the escrow.
- The total of the combined FSS account funds for families will be supported in DHCD's designee's accounting records by a subsidiary ledger. This ledger will show the balance applicable to each FSS family.
- Each designee should credit the account monthly, since interim adjustments may change the amount of the credit.
- If the designee finds that a family did not report income they were required to report, the designee will not credit the family's escrow account retroactively with any portion of the unreported income.
- In addition, if the family committed program fraud, it is grounds for termination from the HCV program, as well as the FSS program.

### **22.12.4 Investing the FSS Escrow Account**

Each of DHCD's designees will invest funds in the FSS account in HUD-approved investments specified in HUD Handbook 7475.1 REV. The investment income for funds in the FSS account will be prorated and credited to each family's FSS account. The credit will be based on the balance in each family's FSS account at the end of the investment income credit period.

Before applying the interest, the designee will check to see whether:

- The owner has reported that the family has not paid rent or other amounts due under the lease.
- The designee will not submit IRS form 1099 to FSS families with escrow account balances or who receive final disbursements. This is not required by the IRS.

### **22.12.5 Reporting on the FSS Escrow Account**



- Each designee will make a report twice per year to each FSS family on the status of the family's FSS account.
- At a minimum, the report must include:
  - The balance at the beginning of the reporting period;
  - The amount of the family's rent payment that was credited to the FSS account during the reporting period;
  - Any deductions made from the account for amounts due the designee before interest is distributed;
  - The amount of interest earned on the account during the year (interest will be reported annually); and
  - The total in the account at the end of the reporting period.

#### **22.12.6 Disbursing the FSS Escrow Account**

The amount in an FSS account, in excess of any amount owed to DHCD or its designee by the FSS family, is paid to the head of the FSS family:

- When the COP has been completed (even if the contract term has not expired); or
- Whenever the family's monthly adjusted income equals or exceeds the FMR for the unit size for which the family qualifies, based on DHCD's occupancy standards (even if the five years is not up); and
- When, at contract completion, the head of the family certifies that, to the best of his/her knowledge and belief, no family member receives federal or state welfare assistance.

Even if the family is welfare-free for 12 consecutive months before the contract expiration date, if the family has not met its other FSS obligations, including obtaining employment, the family is not eligible for the escrow.

An intergenerational family whose head becomes independent of welfare assistance but whose adult child with a child continues to receive TANF is not eligible for the escrow because ALL family members must be free of federal and state welfare assistance.

DHCD's designee may, at its sole discretion, disburse a portion of the funds from the family's escrow account during the contract period for contract-related expenses if the family:

- Has fulfilled certain interim contract goals; and
- Needs a portion of the FSS account funds for purposes consistent with the contract such as:
  - School tuition (or other school costs);

- Job training expenses;
- Business start-up expenses;  
Car (when public transportation is unavailable or inaccessible to the family); or
- Other approved self-sufficiency activities.

Interim disbursements can only be made for a participant twice in a six-month period, and cannot exceed 30% of the account's balance. Exceptions to this interim disbursement requirement will be considered on a case-by-case basis and must be approved by DHCD prior to releasing funds. DHCD recognizes there may be extraordinary circumstances that require an exception to this guideline, and will base their decisions on what is in the best interest of the FSS participants. The following is an exception to the interim disbursement restriction;

- **Jump Start Funds exception to the interim disbursement restrictions**  
Subject to DHCD's approval, FSS participants may be eligible to withdraw more than 30% of their escrow balance under the following conditions:
  - There is less than \$300 in the escrow account
  - The participant is otherwise eligible for Jump Start funds
  - The participant uses the entire escrow account balance towards the cost of the approved expense, with Jump Start funds used to pay the balance of the expense.

See [Debts Owed for FSS Participants](#) to determine escrow disbursement policies when debt is owed by a FSS participant.

#### **22.12.7 Use of FSS Escrow Funds**

The family may use the final disbursement of escrow account funds without restriction.

An FSS family may use its FSS escrow account funds for the purchase of a home, including a home:

- Under one of HUD's homeownership programs; or
- Under other federal, state, or local homeownership programs.

Before disbursing the funds, DHCD's designee will verify that the family is no longer receiving welfare assistance by:

- Requesting copies of documents; and
- Contacting the welfare agency.

If a family receives an advance payment from their escrow account prior to completing the contract, the advance payment does not have to be repaid to DHCD's designee if they withdraw from the FSS program, unless the payment was based on fraud or misinformation by the family.

#### **22.12.8 Forfeiting the Escrow Account**

Amounts in the FSS account will be forfeited if:

- The COP is terminated; or
- The COP is completed but the family is receiving welfare assistance when the contract expires, including extensions; or
- The COP is completed; however, the head of household has not maintained suitable employment.

If the head of the family dies and the remaining members of the family choose not to continue participating in the program and the contract obligations have not been met, the escrow funds would be forfeited.

If families do not pay their rents to the HCV owner, the funds may be forfeited because:

- Compliance with the applicable HCV lease is a family obligation under the contract; and
- Nonpayment of rent is grounds for terminating a family's FSS participation and forfeiture of the escrow.

FSS account funds forfeited by the family will be treated as program receipts for payment of program expenses under DHCD's HCV budget.

The escrow funds may be used by DHCD for HUD approved expenses such as HCV housing assistance payments.

## **22.13 OTHER FSS INCENTIVES**

DHCD, using its MTW flexibility, has developed a number of FSS incentives to encourage participation and successful completion of the FSS program. The incentives are applied against the lifetime \$25,000 escrow cap, with the exception of the \$5000 Homeownership bonus. These incentives support self-sufficiency and homeownership goals and include the following:

- A discretionary fund to assist FSS participants with short term assistance in order to enable household members to participate in employment or educational activities (i.e., funding for car insurance or child care, etc.);
- Funding to reward families who choose to delay full-time employment in order to pursue education and/or training which will better prepare them to attain long-term self-sufficiency than immediate entry into the work force;
- Goal-specific incentive payments to be awarded when a family attains an established goal (i.e., completion of a GED, successful completion of a semester of college courses, etc.).
- An incentive payment for FSS graduates who purchase a home and withdraw from the HCV program within two years of completion of the FSS program. The initial incentive payment will be set at \$5,000 but may be periodically reviewed and updated at DHCD's

discretion. To qualify for the homebuyer purchase bonus, the FSS homebuyer must complete a CHAPA-approved homebuyer education course. The \$5,000 bonus may be used for a down payment or for post-purchase expenses.

## **22.14 FAIR HOUSING**

DHCD's designees will administer their FSS programs 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.

## **22.15 FSS PORTABILITY**

As established in the FSS COP, the family must live in Massachusetts at least 12 months from the effective date of the Contract.

- A family that is enrolled in the FSS Program through one of DHCD's designees may relocate to another region within Massachusetts and immediately continue their participation and FSS COP through DHCD's designee 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.
- FSS families will not be penalized in exercising their right to portability.
- DHCD's designee will not terminate a family's assistance solely because they cannot participate in the FSS program in their new location.
- If a family is subject to termination in the FSS program because of failure to meet a contract obligation, the family will not able to use a portability move to avoid the consequences. In this case, DHCD's designee may exercise its authority to terminate the family's HCV assistance.
- When an HCV FSS family moves outside of DHCD's jurisdiction under portability, DHCD's designee may take one of the following actions:
  - The designee may permit the family to continue to participate in its FSS program with DHCD if the family demonstrates that it can meet its FSS responsibilities in the new location, or
  - The receiving housing authority may allow the family to participate in its FSS program, or
  - The designee may terminate the contract in cases where the family cannot fulfill its obligations in the new location, or if the receiving housing authority does not

allow the family to participate in its FSS program. In either of these cases, the family would forfeit the funds in the escrow account.

#### **22.15.1 Transfer to DHCD's FSS Program Under Portability**

A relocating family may participate in DHCD's FSS if approved by DHCD's designee.

The designee is not obligated to accept a relocating FSS family in its FSS program.

If the designee allows the family to participate, the designee enters into a new contract with the family for the term remaining on the initial housing authority's FSS contract. The initial housing authority will terminate its FSS contract with the family. The family is subject to DHCD's MTW FSS program rules and requirements.

The effective date of the contract between the family and the designee is the first day of the month following the date the contract was signed by the family and the designee's representative.

The expiration date of the contract between the designee and the family must be the same as the expiration date of the contract between the initial housing authority and the family.

The designee will use the amounts listed for Annual Income, Earned Income, and Family Rent (TTP) on the original COP between the initial housing authority and the family.

#### **22.15.2 Escrow Accounts and Portability**

Regardless of whether the relocating FSS family is in the initial housing authority's or DHCD's designee's program, there will be a single FSS account maintained by the initial housing authority.

If the designee absorbs the family into its voucher program, the initial housing authority must transfer the family's FSS account to the designee, whether or not the designee has an existing FSS program.

#### **22.15.3 Monitoring Status for FSS Clients Under Portability**

The PHA which is party to the FSS contract will be responsible for monitoring the family's FSS goal attainment, resource needs, and status. This will be DHCD's designee if the family remains in the designee's FSS program and it will be the receiving housing authority if the family becomes a client in the receiving housing authority's FSS program.

#### **22.15.4 Termination and Portability**

The PHA that is a party to the contract and is monitoring the FSS status is responsible for determining whether the family has violated the FSS contract and whether the family's HCV assistance should be terminated, in accordance with its FSS Action Plan policies.

Where the family is not absorbed by the receiving HA, but is participating in the receiving housing authority's FSS program, the initial housing authority will abide by the termination decision of the receiving housing authority.

If a relocating FSS family is unable to fulfill its obligations under the FSS contract, the PHA which is party to the FSS COP may:

- Terminate the family from the FSS program and the family's FSS account will be forfeited, and
- Terminate the family's HCV assistance since the family failed to meet its obligations under the FSS contract.

If the family's FSS account is forfeited, the funds in the account will revert to the PHA maintaining the FSS account for the family and will be treated as program receipts.

## **22.16 FSS REPORTING REQUIREMENTS**

DHCD shall submit to HUD, as part of its MTW Annual Plan and MTW Annual Report, a report regarding the MTW FSS program. The report will be in the format as prescribed by HUD including baseline, benchmarks, and outcomes. In addition, all FSS programs will report program activities in all DHCD-required reporting tools.

## **CHAPTER 23 : HUD-VETERANS AFFAIRS SUPPORTIVE HOUSING PROGRAM (VASH)**

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. The goal of the program is to combine Section 8 rental assistance vouchers with case management and clinical services provided by the Veterans Affairs Department at its medical centers to enable homeless veterans to re-integrate in the community to lead healthy, productive lives.

VASH vouchers are not subject to MTW policies (other than FSS).

### **23.1 OUTREACH**

The VASH program is a targeted referral program. All veterans and their advocates seeking information on selection to the VASH program must be referred to a participating VAMC. DHCD designees 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 designee 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.

### **23.2 REFERRAL TO DHCD**

DHCD serves as the central contact for all veteran referrals from the VAMCs. The VAMC will email 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 its appropriate designee. Once the referral is made, DHCD's designee will complete 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 designees of VASH referrals within a maximum of two working days. The VAMC can informally notify designees of pending referrals, so that designees' 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 designees to proceed.

### **23.3 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, DHCD's designee will be asked to perform a HUD-VASH eligibility screen. HUD-VASH voucher eligibility is limited to only two criteria, and DHCD's designee must issue a voucher to any referral that meets these two requirements:

- (1) DHCD's designee will screen VASH applicants for income eligibility (up to 80% of AMI for the household size), in accordance with 24 CFR 982.201, and
- (2) lifetime registration under state sex offender registration programs. Immediately upon issuing the voucher, DHCD's designee should perform a CORI check on the veteran and all members over 18 in the veteran's household. 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.

When new family member members are added after the veteran is a participant, regular DHCD screening criteria apply.

### **23.4 VOUCHER ISSUANCES AND BRIEFINGS**

The initial term for a VASH voucher will be 120 days. Vouchers will be issued after attendance at a mandatory voucher briefing session which may be arranged with the VAMC in group settings.

### **23.5 TENANT AUTHORIZATION TO RELEASE INFORMATION**

In addition to the HUD Authorization to Release form, the veteran must sign the VASH Tenant Authorization to Release Information form at the initial briefing and at each annual reexamination. This form will allow DHCD's designee to share information about all voucher-related activities related to the veteran with the veteran's case manager, as well as allowing the case manager to share information with the designee about those matters that may have an impact on the veteran's housing status.

### **23.6 PRIVACY IDENTIFIER**

DHCD's designees should discuss with their partner VAMC(s) the VAMC's requirements for exchanging personally identifiable written/fax/email information about a veteran of a private nature. This decision should be made jointly between the VAMC and DHCD's designee.

### **23.7 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.

### **23.8 INITIAL INSPECTION**



After the issuance of the VASH voucher, and upon receipt of an RFTA, DHCD's designee's 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.

### **23.9 INITIAL LEASE TERM**

Initial lease terms may be less than one-year for HUD-VASH participants.

### **23.10 CASE MANAGEMENT REQUIREMENTS**

A condition of eligibility for a HUD-VASH voucher is that the VASH participant must receive case management services as verified by the VAMC. The VAMC screens homeless veterans to determine eligibility for the HUD-VASH program as established by Veteran's Affairs national office; identifies the social service and medical need of the homeless veteran; ensures that the veteran receive ongoing case management, health services, and other supportive services as identified; and maintains records as required by HUD and Veterans Affairs. A HUD-VASH family's HCV assistance must be terminated if the family refuses, without good cause, to participate in required case management as determined by the VAMC.

### **23.11 VASH PARTICIPANT NO LONGER NEEDS CASE MANAGEMENT**

If the VAMC determines that the VASH participant family no longer requires cases management, this is not grounds for termination. With explicit DHCD approval, DHCD's designees may offer the family continued HCV assistance through one of its regular vouchers and free from the HUD-VASH voucher for another eligible family referred by the VAMC. If DHCD's designee does not have vouchers to offer, as determined by DHCD, the family will retain the HUD-VASH voucher.

### **23.12 RIGHT TO MOVE FROM VASH PROJECT-BASED UNIT (OPT OUT) WITH TENANT-BASED ASSISTANCE**

At the end of a full year of assisted tenancy in a project-based HUD-VASH unit and upon referral by the applicable VAMC, a participant in good standing may request a tenant-based HUD-VASH voucher in order to move to a unit of their choice with continued assistance. This is referred to as a voluntary opt-out. If there is no tenant-based HUD-VASH voucher available, the participant will be placed on a list to wait until such voucher is available.

### **23.13 HQS INSPECTIONS**

To expedite the leasing process, DHCD's designee may pre-inspect available units that veterans may be interested in leasing, in order to maintain a pool of eligible units. If a VASH family selects a unit that passed a HQS inspection (without intervening occupancy) within 45 days of the date of the Request for Tenancy Approval (form HUD-52517), the unit may be approved, provided that it meets all other conditions under 24 CFR 982.305. However, the veteran must be free to select his/her unit and cannot be steered to these units.

### **23.14 ABSENCE FROM UNIT**

A VASH participant may be absent from the unit for a maximum of six months, provided his/her case manager provides a written statement to DHCD's designee 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 DHCD's designee will do likewise.

#### **23.14.1 Recertifications During Absence from Unit**

If the veteran is scheduled for an annual reexamination during an absence from the unit, DHCD's designee 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 reexamination. In exceptional circumstances where this activity would not be possible, the designee should recertify using the same information from the prior year, and make all adjustments retroactively upon the veteran's return to the unit.

#### **23.15 PORTABILITY**

VASH veterans are free to move to other communities, both within Massachusetts 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 DHCD or its designee. See VASH & Portability.

##### Within Massachusetts – to Another DHCD Designee

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 Massachusetts veterans (Bedford [Bedford VAMC, Lowell CBOC, Haverhill CBOC], Northampton [Pittsfield CBOC], Providence, RI [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. DHCD's appropriate designee will assume all leasing activities and VASH reporting requirements. The issuing designee must notify the DHCD VASH Coordinator, by email with a copy to the receiving designee, when a VASH veteran moves to another designee's region, noting the effective date of the transfer and any other information required to comply with HUD and DHCD transfer reporting criteria.

##### Within Massachusetts – to Another Massachusetts VASH PHA

See policies on [VASH & Portability](#) in the Portability chapter.

##### Out-of-State

See policies on [VASH & Portability](#) in the Portability chapter.

#### **23.16 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 DHCD or its designee. The designee must then notify the participant that the designee is mandated to terminate the VASH voucher effective 30 days from the date of notification and the rental subsidy will stop at that time.

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 DHCD's designee that the participant has been terminated from the VASH program.

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, DHCD's designee may initiate a termination for a program violation such as engaging in criminal activity, program fraud, or serious lease violations.) The provisions of [Grounds for Termination of Assistance](#) are applicable.

### **23.17 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, and 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 the 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 reexamination of income when the veteran returns; however, DHCD will be flexible in the resetting of the annual reexamination calendar.

### **23.18 OTHER VASH REQUIREMENTS**

#### VASH Participant: Perpetrator of Domestic Violence

In accordance with Notice PIH 2017-08, for HUD-VASH vouchers, when the veteran is the perpetrator of domestic violence, dating violence, sexual assault, or stalking, the survivor must continue to be assisted. Upon termination of the perpetrator's HUD-VASH voucher, the survivor

should be given a regular HCV if one is available (upon approval by DHCD), and the perpetrator's HUD-VASH voucher should be used to serve another eligible family. If a regular HCV is not available, the survivor will continue to use the HUD-VASH voucher, which must be issued to another eligible family upon the voucher's turnover.

### **23.19 VMS REPORTING**

HUD-VASH vouchers are administered in accordance with HUD-VASH notices. The VASH Vouchers are monitored in VMS separately from all other tenant-based vouchers.

## **CHAPTER 24 : TARGETED PROGRAMS**

### **24.1 NED – DESIGNATED HOUSING AND ONE-YEAR MAINSTREAM PROGRAM**

#### **24.1.1 Overview**

The Designated Housing program (DSG) assists non-elderly families where either the head, spouse, or co-head is disabled. The One-Year Mainstream Housing Program (MS1) provides Section 8 housing assistance to very low-income non-elderly families with disabilities.

NED (MS1 and DSG) vouchers are subject to MTW policies.

#### **24.1.2 Eligibility**

At least one person in the household must have a disability. The disabled household member must be the head of household, co-head, or spouse. A household where a child under the age of 18 is the only family member with a disability is not eligible for this program.

DHCD's designees will verify an applicant's disability status for purposes of determining program eligibility in accordance with [CHAPTER 6](#).

#### **24.1.3 Waiting List Management and Selection**

New increments of targeted vouchers must be issued to the target population specified in the Notice of Funding Availability. Upon turnover, DHCD's designees will issue NED turnover vouchers to eligible, non-elderly disabled households selected from their regional standard HCV waiting list.

If a NED applicant moves out of the initial designee's region, DHCD must be notified and the allocation of vouchers will be adjusted between the initial and receiving designee in order to prevent over-issuance of NED vouchers.

#### **24.1.4 Services**

Each designee must provide applicants with housing search assistance that includes, at a minimum: a list of available units in the area. Applicants may utilize the designee'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.

### **24.2 FIVE-YEAR MAINSTREAM HOUSING PROGRAM (MS5)**

#### **24.2.1 Overview**

The Mainstream Five Housing Program (MS5) provides Section 8 housing assistance to very low-income families that include a person with disabilities who is at least 18 and less than 62 years of age. Upon turnover, a MS5 voucher must be reissued to the next family that includes at least one non-elderly (at least 18 and less than 62 years of age) person with disabilities.

MS5 vouchers are not classified as NED vouchers and are not subject to MTW policies (other than FSS MTW policies).

#### **24.2.2 Eligibility**

#### **24.2.2.1 Disability Status**

This program serves very low-income families that include a person with disabilities who is at least 18 and less than 62 years of age.

DHCD's designees will verify the family's disability status for purposes of determining program eligibility. See [CHAPTER 6](#).

#### **24.2.3 Waiting List Management and Selection**

DHCD's designees 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 designee's region, DHCD must be notified and the allocation of vouchers will be adjusted between the initial and receiving designee in order to prevent over-issuance of MS5 vouchers.

#### **24.2.4 Services**

Each designee must provide applicants with housing search assistance that includes, at a minimum, a list of available units in the area. Applicants may utilize the designee'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.

### **24.3 MAINSTREAM 2018 (MS2018)**

#### **24.3.1 Overview**

MS2018 vouchers are subject to MTW policies.

#### **24.3.2 Eligibility**

Vouchers must be used to assist non-elderly persons with disabilities and their families. The non-elderly person with disabilities must be at least 18 years of age and less than 62 years of age. The eligible household member does not need to be the head of household. A household where a child under age 18 is the only family member with a disability is not eligible for this program.

DHCD's designees will verify an applicant's disability status for purposes of determining program eligibility in accordance with [CHAPTER 6](#).

#### **24.3.3 Waiting List Management and Selection**

New increments of targeted vouchers must be issued to the specific target population in the NOFA. Upon turnover, DHCD's designees will issue MS2018 turnover vouchers to eligible, non-elderly disabled households selected from their regional standard HCV waiting list.

For MS2018 vouchers, assistance is provided to the following populations<sup>1</sup>, in the order listed below:

1. Qualifying applicants who are in institutional or other segregated settings

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<sup>1</sup> As defined in HUD Notice of Funding Availability # FR-6100-N-43.

## 2. Qualifying applicants who are homeless

*Institutional or other segregated settings* include, but are not limited to:

1. congregate settings populated exclusively or primarily with individuals with disabilities;
2. congregate settings characterized by regimentation in daily activities, lack of privacy or autonomy, policies limiting visitors, or limits on individuals' ability to engage freely in community activities and to manage their own activities of daily living; or
3. settings that provide for daytime activities primarily with other individuals with disabilities.

*Homeless* means:

1. An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:
  - i. An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground;
  - ii. An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, State, or local government programs for low-income individuals); or
  - iii. An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution;
2. An individual or family who will imminently lose their primary nighttime residence, provided that:
  - i. The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance;
  - ii. No subsequent residence has been identified; and
  - iii. The individual or family lacks the resources or support networks, e.g., family, friends, faith-based or other social networks, needed to obtain other permanent housing;
3. Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:
  - i. Are defined as homeless under section 387 of the Runaway and Homeless Youth Act (42 USC 5732a), section 637 of the Head Start Act (42 USC 9832), section 41403 of the Violence Against Women Act of 1994 (42 USC 14043e-2), section 330(h) of the Public Health Service Act (42 USC 254b(h)), section 3 of the Food and Nutrition Act of 2008 (7 USC 2012), section 17(b) of the Child Nutrition Act of 1966 (42 USC 1786(b)), or section 725 of the McKinney-Vento Homeless Assistance Act (42 USC 11434a);
  - ii. Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance;
  - iii. Have experienced persistent instability as measured by two moves or more during the 60-day period immediately preceding the date of applying for homeless assistance; and
  - iv. Can be expected to continue in such status for an extended period of time because of chronic disabilities; chronic physical health or mental health conditions; substance addiction; histories of domestic violence or childhood abuse (including neglect); the presence of a child or youth with a disability; or two

or more barriers to employment, which include the lack of a high school degree or General Education Development (GED), illiteracy, low English proficiency, a history of incarceration or detention for criminal activity, and a history of unstable employment; or

4. Any individual or family who:

- i. Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence;
- ii. Has no other residence; and
- iii. Lacks the resources or support networks, e.g., family, friends, and faith-based or other social networks, to obtain other permanent housing.

### **24.3.4 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. DHCD's designees 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 designee must provide applicants with housing search assistance that includes, at a minimum: a list of available units in the area. Applicants may utilize the designee'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.

## **24.4 FAMILY UNIFICATION PROGRAM**

### **24.4.1 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,
- (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,
- (3) survivors of domestic violence with their children who have not secured permanent, standard, replacement housing, and
- (4) youth ages 18 to 24 who are homeless or at risk of being homeless, those who left foster care at age 16 or older, or those who are within 90 days of leaving foster care.

All applicants must be referred by DCF and have an open DCF case at the time of referral, at the time of application, at the time of selection, and when the voucher is issued.

FUP vouchers are non-MTW vouchers to which MTW efficiencies (including FSS policies) are applied.

#### **24.4.2 Eligibility**

A FUP-eligible family is one that:

- 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
- DHCD's designee has determined is eligible for Section 8 rental assistance.

A FUP-eligible youth is defined as:

- A youth age 18 to 24 who is homeless or at risk of being homeless, who left foster care at age 16 or older, or who is within 90 days of leaving foster care. For the purpose of defining "at risk of being homeless," DHCD uses the definition of at risk of homelessness at 24 CFR 576.2; and
- That DHCD's designee has determined is eligible for Section 8 rental assistance.

#### **Lack of Adequate Housing**

Lack of adequate housing means one or more of the following:

1. A family or youth is living in substandard or dilapidated housing.
2. A family or youth is homeless.

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.
5. A family or youth is living in an overcrowded unit.
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.

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.

Applicants who meet the above criteria for “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 survivor, by a person with whom the survivor shares a child in common, by a person who is cohabitating with or has cohabitated with the survivor as a spouse, by a person similarly situated to a spouse of the survivor under the domestic or family violence laws of Massachusetts, or by any other person against an adult or youth survivor 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.

### **24.4.3 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's designees 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 the DCF Central Office before referring applicants to the FUP program. The DCF Central Office will ensure that the applicants being referred are FUP-eligible and then forward the Referral Form/Certification of Eligibility to DHCD's appropriate designee. The Central Office may also make referrals directly.

#### Housing Agency Referrals to DCF

If a Section 8 applicant appears to be FUP-eligible, DHCD's designees 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.

### **24.4.4 Waiting List Management & Selection**

Regional waiting lists are maintained by DHCD's designees. 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.

DHCD's designees 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.

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 DHCD's designee. Incomplete referrals will be returned to the DCF by the designee. An applicant will not be placed on the FUP waiting list until the referral is complete. If a designee receives a referral for an applicant who 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 designees.

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 regional DHCD jurisdiction, the first eligible applicant in that region will receive the subsidy. If there is no eligible applicant in that region, DHCD's designee will inform the DCF Central Office of the availability of a subsidy and request a referral. DCF and DHCD's designee will work closely regarding the disposition of all applications.

Any applicant who 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, DHCD's designee 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, DHCD's designee will select the applicant and require that they complete a detailed Section 8 application. The designee will perform a standard Section 8 eligibility check, as described in [CHAPTER 4](#). Verification of preference/eligibility will be required in accordance with this plan.

When verification of eligibility is complete, DHCD's designee 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.

DHCD's designee will remain in close contact with the DCF Central Office regarding the status of each FUP applicant throughout this process.

#### **24.4.5 Transfers and Portability**

##### **Moves Within Massachusetts**

If a FUP applicant moves out of the initial designee's region, the applicant must be absorbed by the receiving designee with a FUP voucher when one becomes available. If a FUP voucher is not available, the receiving designee must bill the issuing designee 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.

#### **24.4.6 Appeals**

DHCD's designees are responsible for defending their eligibility decisions, pertaining to the family's eligibility for FUP Section 8 rental assistance. Where an applicant's eligibility is denied, informal review procedures will be utilized and shall be as set forth in Section [16.1 Informal Reviews](#).

The DCF is responsible for defending its family eligibility determinations and a similar informal review procedure will be utilized.

#### **24.4.7 Ongoing 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 DCF 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.

DHCD's designees 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 DHCD's designee of any changes in the family's situation or composition, such as the permanent removal of children from the household.

#### **24.4.8 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.

### **24.5 FAMILY UNIFICATION – ADOLESCENT OUTREACH PROGRAM**

#### Eligibility

A youth age 18 to 24 who is homeless or at risk of being homeless, who left foster care at age 16 or older, or who is within 90 days of leaving foster care. For the purpose of defining "at risk of being homeless," DHCD uses the definition of at risk of homelessness at 24 CFR 576.2.

Applicants must meet eligibility guidelines and be young adults ages 18 to 24 who:

- 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 36 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 36-month period. If program participants are not ready to assume the full costs of independence at the 36-month limit, DCF AOP staff will facilitate the transition of program participants at the end of this period to a more supportive setting.

## **24.6 HOUSING OPTIONS PROGRAM**

### **24.6.1 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).<sup>2</sup> 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, DDS, DPH-BSAS, MRC, HomeStart, EOEA, MassHealth, and JRI.

### Interagency Advisory Team

The Interagency Advisory Team (IAT) meets as needed and consists of representatives of DHCD, participating EOHHS agencies, HomeStart, JRI Health (JRI), Metro Housing|Boston, 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.

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<sup>2</sup> 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).

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.

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, Metro Housing|Boston, for housing referral, screening, administration, and placement. After securing housing placement, ongoing 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.

#### **24.6.2 Eligibility**

All HOP participants must meet each of the program eligibility criteria listed below.

##### **24.6.2.1 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 residing in a long term care facility and eligible for a MassHealth 1915(c) HCBS waiver but were not eligible for Money Follows the Person (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)

##### **24.6.2.2 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.



### **24.6.2.3 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.

### **24.6.2.4 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 DHCD or its designee 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, DHCD or its designee 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.

### **24.6.2.5 Verification Requirements: Homeless and At Risk of Homelessness**

Homeless applicants who meet the “homeless” criteria 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 “at risk of homelessness” criteria 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.

#### **24.6.2.6 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.

#### **24.6.2.7 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.

#### **24.6.2.8 Need for Services**

All applicants must demonstrate a need for the services provided through HOP and be willing to accept those services.

### **24.6.3 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.

### **24.6.4 Waiting List Management, Referrals, and Selection**

The HOP subsidies are allocated, as determined by the IAT, to 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.

#### **24.6.4.1 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.

#### **24.6.4.2 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<sup>3</sup> and related documentation have been received by JRI and are thus ready for referral to Metro Housing|Boston 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 Metro Housing|Boston from the JRI referral pool.

Metro Housing|Boston will enter all JRI referrals onto DHCD's waiting list/admissions tracking system by date/time the referral is received.

#### **24.6.4.3 Selection**

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<sup>3</sup> 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.).

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.

#### **24.6.4.4 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.

#### **24.6.4.5 Selection when a Subsidy Becomes Available Upon Turnover**

Within 5 business days of a voucher becoming available, Metro Housing|Boston notifies JRI by fax and phone of this availability. JRI is responsible for notifying the appropriate vendor of this availability. Within four 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 Metro Housing|Boston for review within five business days.
- If the designated vendor has no viable applicants in the JRI referral pool, the designated vendor has five business days to submit a referral (i.e. pre-screened application) to JRI. After completing the referral, the designated vendor has five additional business days to submit that referral's completed application to the JRI Referral pool for review. JRI will forward this completed application to Metro Housing|Boston for review within five business days.
- If the designated vendor does not submit a completed application for an eligible candidate to JRI within the ten 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 Metro Housing|Boston for review within five business days.

#### **24.6.4.6 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.

### **24.6.5 Support Services**

Services are coordinated through the members of the IAT with oversight and case coordination provided by JRI.

#### **24.6.5.1 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.

#### **24.6.5.2 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.

#### **24.6.5.3 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.

#### **24.6.6 Appeals**

Metro Housing Boston 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.

#### **24.6.7 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 Metro Housing|Boston's region, the receiving DHCD designee will administer the HOP voucher for as long as the participant remains in their region. In order for JRI to coordinate services, Metro Housing|Boston and the receiving designee 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 designee must inform Metro Housing|Boston and JRI.

#### **24.6.8 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 or effectively; or 4) other problematic program issues arise.

#### Evaluation & Follow-Up

JRI and other vendors should conduct follow-up evaluations on all clients housed through HOP. The follow-up evaluations review the level of services the clients are receiving, their satisfaction and security in their home, and their ability to meet the terms of the lease, including the ability to financially maintain the unit. During the entire length of the participants' tenancy, they will have direct access to JRI to provide them with any assistance they 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.

Metro Housing|Boston 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.

### **24.7 TENANT-BASED VOUCHER PROGRAM FOR PERSONS WITH HIV/AIDS**

The Tenant-Based Rental Assistance Program (TBRA AIDS) 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.

#### **24.7.1 Overview**

This program utilizes tenant-based Section 8 vouchers and is administered throughout the Commonwealth by DHCD's Section 8 designees. 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.

### **24.7.2 Eligibility**

#### **Disability Status**

At least one person in a household must be diagnosed with AIDS or disabled due to HIV. JRI will determine through a physician's certification that a person meets the eligibility criteria.

#### **Supportive Services**

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.

### **24.7.3 Outreach**

DHCD's designees, 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.

### **24.7.4 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 DHCD designee and the corresponding geographic region.

When a TBRA AIDS voucher is available to issue, DHCD's designee will contact JRI for a referral. The designee 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.

### **24.7.5 Services**

Either the local AIDS service organization or JRI, through the Community Housing Innovations Program (CHIP), will provide applicants with housing search assistance.

Each DHCD designee 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 DHCD's designees' Housing Consumer Education Centers, which provide assistance in housing search and contain listings of available units, a computer to access listing on the Internet, local newspapers, and telephone participants can use during housing search.

### **24.7.6 Appeals**

DHCD's designees are responsible for defending its decisions pertaining to the person's eligibility for TBRA AIDS Section 8 vouchers. See [CHAPTER 16](#).

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.

#### **24.7.7 Portability**

##### Initial Year In-State Restriction

TBRA AIDS 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 AIDS 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 AIDS 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 designee's region, the applicant or participant must be absorbed by the receiving designee with a TBRA AIDS voucher if one is available. If a TBRA AIDS voucher is not available, the receiving designee will temporarily add one TBRA AIDS voucher to its allocation. The initial designee will simultaneously lose one TBRA AIDS voucher from its allocation. In order for JRI to coordinate services, the initial and receiving designees 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 designee, the receiving designee must inform the initial designee and JRI. Both the initial and receiving designees will return to their original allocations.

#### **24.7.8 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 or effectively; or 4) other problematic program issues arise.

### **24.8 RAISING THE NEXT GENERATION**

#### **24.8.1 Overview**

The Raising the Next Generation Program (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. DHCD's designee, Metro Housing|Boston, is directly responsible for administering the Section 8 vouchers and connecting participants to supportive services, when necessary and requested.

#### **24.8.2 Eligibility**



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.<sup>4</sup> Foster children will not be allowed except for those that are kinship care placements within the Massachusetts Department of Children and Families (DCF) system.

To be an RNG eligible family, the head of household must have physical custody of a dependent who 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).

Custody must be verified by:

1. *One* of the following forms of documentation:

- Probate court records
- Juvenile court records
- Adoption decree
- Records from 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.

### **24.8.3 Outreach**

Metro Housing|Boston, through its Housing Consumer Education Center (HCEC), will recruit applicants who are seeking housing counseling or who are referred directly by DHCD. Once a

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<sup>4</sup> Kinship adoption is defined as a permanent kinship arrangement under which a relative has become the primary caregiver to a child by legal adoption.

household has been identified as potentially RNG-eligible, the HCEC staff will send an RNG referral to the leased housing department for placement on the RNG waiting list.

#### **24.8.4 Waiting List Management & Selection**

##### Waiting List Management

The RNG waiting list will be maintained as a subset of Metro Housing|Boston's HCVP Section 8 waiting list/admissions tracking system and will be maintained by Metro Housing|Boston. The date and time of Metro Housing|Boston's leased housing department's receipt of the completed referral form from the HCEC 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 placed on the RNG waiting list will be restricted to 25 while the allocation of RNG vouchers is fully utilized.

##### Selection

Selection will be based on date and time of referral.

Upon selection from the RNG waiting list, Metro Housing|Boston will conduct a complete Section 8 eligibility screening including: completion of a Section 8 application, verification of family composition, household income, eligible immigration status of each household member, and a CORI check on each adult household member. In addition, prior rental assistance participation will be verified to determine if the prior participation ended in good standing.

#### **24.8.5 Appeals**

Metro Housing|Boston is responsible for defending its decisions pertaining to the person's eligibility for RNG Section 8 rental assistance. See [CHAPTER 16](#).

#### **24.8.6 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 Metro Housing|Boston's region, the receiving DHCD designee 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 designee absorbs the voucher.

#### **24.8.7 Changes in Family Composition**

After a subsidy is issued, but prior to the applicant family leasing, if there is a change in the family composition, it must be reported to Metro Housing|Boston leased housing staff. If the change in the family's situation or composition is the permanent removal of the child(ren) from the household, the family will be denied eligibility and will not be allowed to lease a unit.

If there is a change in the participant family composition that makes the family ineligible for the RNG program after the household has leased a unit under the RNG program, Metro Housing|Boston will make an effort to absorb the current voucher into its conventional Section 8 voucher portfolio. If Metro Housing|Boston is successful at absorbing this subsidy, an 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.

#### **24.8.8 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.

#### **24.8.9 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.

#### **24.8.10 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 or effectively; or 3) other problematic program issues arise.

### **24.9 VETERANS HOUSING VOUCHER PROGRAM**

#### **24.9.1 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 (VHVP) has a limited number of Section 8 vouchers available for very low-income, homeless veterans with disabilities or psychiatric or substance abuse disorders.

VHVP vouchers are subject to MTW policies.

#### **24.9.2 Eligibility**

Applicants must meet all of the following:

##### **24.9.2.1 Veteran**

An applicant must be an honorably discharged veteran.

##### **24.9.2.2 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.

#### **24.9.2.3 Disability or Psychiatric or Substance Abuse Disorder**

- An applicant must have a disability which can be verified in accordance with [CHAPTER 6](#); 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.

#### **24.9.2.4 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, DHCD's designee will verify eligibility for all other Section 8 requirements. Due to the length of time an applicant may be on the waiting list, the designee may need to reconfirm eligibility with the referring agency.

#### **24.9.3 Outreach & Referrals**

DHCD or its designee 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 designee by submitting a "Referral Form/Certification of Eligibility."

#### **24.9.4 Waiting List Management & Selection**

A regional VHVP waiting list is maintained by each DHCD designee. 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 DHCD's designee. 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 designee's waiting list manager will return the referral form to the provider agency and will not place the applicant on the waiting list. If a designee 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 designee may issue the voucher to the next eligible applicant on the designee's HCVP waiting list. The designee must track these vouchers and make a VHVP voucher available when a VHVP eligible applicant is referred.

#### **Housing Search**

DHCD's designees will refer applicants to its regional Housing Consumer Education Center (HCEC) to assist in housing search. Where available, applicants will have access to the HCEC'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.

#### **24.9.5 Appeals**

Appeal procedures will be utilized as set forth in [CHAPTER 16](#).

#### **24.9.6 Portability**

##### Initial Year In-State Restriction

VHVP participants must reside in Massachusetts for their initial year in the program.

##### Transfers

If a VHVP applicant or participant moves out of the initial designee's region, the applicant or participant must be absorbed by the receiving designee with a VHVP voucher if one is available. If a VHVP voucher is not available, the receiving designee will temporarily add one VHVP voucher to its allocation. The initial designee will simultaneously lose one VHVP voucher from its allocation.

When a VHVP voucher becomes available at the receiving designee, the receiving designee must absorb the participant and inform the initial designee. Both the initial and receiving designees will return to their original allocations. This procedure will prevent over-issuance of VHVP vouchers and will maintain regional allocations. The initial and receiving designees must report all VHVP transfers on the quarterly report.

#### **24.9.7 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.

### **24.10 COMMUNITY CHOICE INITIATIVE**

Formerly known as the Boston Consent Decree, this Consent Decree requires appropriate actions to be taken to outreach to the under-served program-eligible Black population in the City of Boston.

### **24.11 HOLYOKE CONSENT DECREE**

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

### **24.12 PROJECT-BASED ASSISTANCE FOR PERSONS LIVING WITH HIV/AIDS**

#### **24.12.1 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.

<b>Project</b>	<b>Management</b>	<b>AIDS Service Organization</b>	<b>Unit No. &amp; Size</b>
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.

## **24.12.2 Eligibility**

### **24.12.2.1 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.

### **24.12.2.2 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.

## **24.12.3 Ongoing Outreach**

DHCD's designee 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.

### **24.12.4 Waiting 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 DHCD's designee. The designee will enter the referral onto DHCD's waiting list/admissions tracking system by the date and time the referral is received.

### **24.12.5 Appeals**

DHCD's designees 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 16](#).

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.

### **24.12.6 Grant Compliance**

Each designee must ensure that all PBRA AIDS units are filled by other eligible applicants upon turnover.

DHCD's designees 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.

## CHAPTER 25 : ACRONYMS

NO	ACRONYM	DEFINITION
1.	ACC	Annual contributions contract
2.	ADA	Americans with Disabilities Act of 1990
3.	AIDS	Acquired immune deficiency syndrome
4.	AMI	Annual median income
5.	BR	Bedroom
6.	CDBG	Community Development Block Grant (Program)
7.	CFR	Code of Federal Regulations (published federal rules that define and implement laws; commonly referred to as “the regulations”)
8.	EID	Earned income disallowance
9.	EIV	Enterprise Income Verification
10.	EV	Enhanced voucher
11.	FDIC	Federal Deposit Insurance Corporation
12.	FHEO	(HUD Office of) Fair Housing and Equal Opportunity
13.	FMR	Fair market rent
14.	FR	Federal Register
15.	FSS	Family Self-Sufficiency (Program)
16.	FUP	Family Unification Program
17.	FY	Fiscal year
18.	HA	Housing authority or housing agency
19.	HAP	Housing assistance payment
20.	HCV	Housing choice voucher
21.	HOTMA	Housing Opportunities Through Modernization Act
22.	HQS	Housing quality standards
23.	HUD	Department of Housing and Urban Development
24.	HUDCLIPS	HUD Client Information and Policy System
25.	IPA	Independent public accountant
26.	IRA	Individual retirement account
27.	IRS	Internal Revenue Service
28.	JTPA	Job Training Partnership Act
29.	LBP	Lead-based paint
30.	LEP	Limited English proficiency
31.	LIHTC	Low Income Housing Tax Credit
32.	MSA	Metropolitan statistical area (established by the U.S. Census Bureau)
33.	MTW	Moving to Work
34.	NOFA	Notice of funding availability
35.	OIG	HUD’s Office of Inspector General
36.	PASS	Plan to Achieve Self-Support
37.	PBV	Project-based voucher
38.	PHA	Public housing agency
39.	PIC	PIH Information Center
40.	PIH	(HUD Office of) Public and Indian Housing
41.	PS	Payment standard
42.	QC	Quality control
43.	REAC	(HUD) Real Estate Assessment Center
44.	RFP	Request for proposals



<b>NO</b>	<b>ACRONYM</b>	<b>DEFINITION</b>
45.	RFTA (also RTA)	Request for tenancy approval
46.	SEMAP	Section 8 Management Assessment Program
47.	SRO	Single room occupancy
48.	SSA	Social Security Administration
49.	SSI	Supplemental security income
50.	SWICA	State wage information collection agency
51.	TANF	Temporary Aid to Needy Families
52.	TPV	Tenant protection vouchers
53.	TR	Tenant rent
54.	TTP	Total tenant payment
55.	UA	Utility allowance
56.	UFAS	Uniform Federal Accessibility Standards
57.	UIV	Upfront income verification
58.	UR	Utility reimbursement
59.	VASH	Veterans Affairs Supportive Housing
60.	VAWA	Violence Against Women Reauthorization Act of 2013

## CHAPTER 26 : GLOSSARY

1. **Absorption.** In portability (under subpart H of this part 982): the point at which a receiving PHA stops billing the initial PHA for assistance on behalf of a portability family. The receiving PHA uses funds available under the receiving PHA's consolidated ACC.
2. **Accessible.** The facility or portion of the facility can be approached, entered, and used by persons with disabilities.
3. **Adjusted income.** Annual income, less allowable HUD deductions and allowances.
4. **Administrative fee.** Fee paid by HUD to the PHA for administration of the program. See §982.152.
5. **Administrative Plan.** The plan that describes PHA policies for administration of the tenant-based programs. The Administrative Plan and any revisions must be approved by the PHA's board and included as a supporting document to the PHA Plan. See § 982.54.
6. **Admission.** The point when the family becomes a participant in the program. The date used for this purpose is the effective date of the first HAP contract for a family (first day of initial lease term) in a tenant-based program.
7. **Affiliated individual.** With respect to an individual, a spouse, parent, brother, sister, or child of that individual, or an individual to whom that individual stands in loco parentis (in the place of a parent), or any individual, tenant, or lawful occupant living in the household of that individual.
8. **Amortization payment.** In a manufactured home space rental: The monthly debt service payment by the family to amortize the purchase price of the manufactured home.
9. **Annual.** Happening once a year.
10. **Annual contributions contract (ACC).** The written contract between HUD and a PHA under which HUD agrees to provide funding for a program under the 1937 Act, and the PHA agrees to comply with HUD requirements for the program.
11. **Annual income.** The anticipated total income of an eligible family from all sources for the 12-month period following the date of determination of income, computed in accordance with the regulations.
12. **Applicant (applicant family).** A family that has applied for admission to a program but is not yet a participant in the program.
13. **Area exception rent.** An amount that exceeds the published FMR beyond the basic range (i.e. 90-110% of the FMR). See 24 CFR 982.504(b).
14. **As-paid states.** States where the welfare agency adjusts the shelter and utility component of the welfare grant in accordance with actual housing costs.
15. **Assets.** (See *net family assets*.)
16. **Auxiliary aids.** Services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities receiving federal financial assistance.
17. **Biennial.** Happening every two years.
18. **Bifurcate.** 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.

19. **Budget authority.** An amount authorized and appropriated by the Congress for payment to PHAs under the program. For each funding increment in a PHA program, budget authority is the maximum amount that may be paid by HUD to the PHA over the ACC term of the funding increment.
20. **Child.** A member of the family other than the family head or spouse who is under 18 years of age.
21. **Child care expenses.** 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, 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.
22. **Citizen.** A citizen or national of the United States.
23. **Co-head.** An individual in the household who is equally responsible for the lease with the head of household. A family may have a co-head or spouse but not both. A co-head never qualifies as a dependent. The co-head must have legal capacity to enter into a lease.
24. **Common space.** In shared housing, the space available for use by the assisted family and other occupants of the unit.
25. **Computer match.** The automated comparison of databases containing records about individuals.
26. **Confirmatory review.** An on-site review performed by HUD to verify the management performance of a PHA.
27. **Consent form.** Any consent form approved by HUD to be signed by assistance applicants and participants to obtain income information from employers and SWICAs; return information from the Social Security Administration (including wages, net earnings from self-employment, and retirement income); and return information for unearned income from the IRS. Consent forms expire after a certain time and may authorize the collection of other information to determine eligibility or level of benefits.
28. **Congregate housing.** Housing for elderly persons or persons with disabilities that meets the HQS for congregate housing. A special housing type: see 24 CFR 982.606–609.
29. **Contiguous MSA.** In portability (under subpart H of part 982): An MSA that shares a common boundary with the MSA in which the jurisdiction of the initial PHA is located.
30. **Continuously assisted.** An applicant is continuously assisted under the 1937 Act if the family is already receiving assistance under any 1937 Housing Act program when the family is admitted to the voucher program.
31. **Contract authority.** The maximum annual payment by HUD to a PHA for a funding increment.
32. **Cooperative** (term includes mutual housing). Housing owned by a non-profit corporation or association, and where a member of the corporation or association has the right to reside in a particular apartment, and to participate in management of the housing. A special housing type (see 24 CFR 982.619).
33. **Covered families.** Statutory term for families who are required to participate in a welfare agency economic self-sufficiency program and who may be subject to a welfare benefit sanction for non-compliance with this obligation. Includes families who receive welfare assistance or other public assistance 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 the assistance.

34. **Dating violence.** Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the survivor; 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
35. **Dependent.** A member of the family (except foster children and foster adults) other than the family head or spouse, who is under 18 years of age, or is a person with a disability, or is a full-time student.
36. **Dependent child.** In the context of the student eligibility restrictions, a dependent child of a student enrolled in an institution of higher education. The dependent child must also meet the definition of *dependent* as specified above.
37. **Disability assistance expenses.** Reasonable expenses that are anticipated, during the period for which annual income is computed, for attendant care and auxiliary apparatus for a disabled family member, and that are necessary to enable a family member (including the disabled member) to be employed, provided that the expenses are neither paid to a member of the family nor reimbursed by an outside source.
38. **Disabled family.** A family whose head, co-head, spouse, or sole member is a person with disabilities; two or more persons with disabilities living together; or one or more persons with disabilities living with one or more live-in aides.
39. **Disabled person.** See *person with disabilities*.
40. **Disallowance.** Exclusion from annual income.
41. **Displaced family.** A family in which each member, or whose sole member, is a person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to federal disaster relief laws.
42. **Domestic violence.** Felony or misdemeanor crimes of violence committed by a current or former spouse of the survivor, by a person with whom the survivor shares a child in common, by a person who is cohabitating with or has cohabitated with the survivor as a spouse, by a person similarly situated to a spouse of the survivor under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth survivor who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.
43. **Domicile.** The legal residence of the household head or spouse as determined in accordance with state and local law.
44. **Drug-related criminal activity.** 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.
45. **Economic self-sufficiency program.** Any program designed to encourage, assist, train or facilitate the economic independence of assisted families, or to provide work for such families. Can include job training, employment counseling, work placement, basic skills training, education, English proficiency, Workfare, financial or household management, apprenticeship, or any other program necessary to ready a participant to work (such as treatment for drug abuse or mental health treatment). Includes any work activities as defined in the Social Security Act (42 USC 607(d)). See also 24 CFR 5.603(c).

46. **Elderly family.** A family whose head, co-head, spouse, or sole member is a person who is at least 62 years of age; two or more persons who are at least 62 years of age living together; or one or more persons who are at least 62 years of age living with one or more live-in aides.
47. **Elderly person.** An individual who is at least 62 years of age.
48. **Eligible family.** A family that is income eligible and meets the other requirements of the 1937 Act and Part 5 of 24 CFR. See also *family*.
49. **Employer identification number (EIN).** The nine-digit taxpayer identifying number that is assigned to an individual, trust, estate, partnership, association, company, or corporation.
50. **Evidence of citizenship or eligible status.** The documents which must be submitted as evidence of citizenship or eligible immigration status. See 24 CFR 5.508(b).
51. **Expiring use.** Privately owned properties where federal and/or state subsidies were used to finance or produce the housing and for which a commitment to maintain affordability was required for a defined period of time which is now concluding.
52. **Extremely low-income family.** A family whose annual income does not exceed the federal poverty level or 30% of the median income for the area, whichever number is higher. Area median income is determined by HUD, with adjustments for smaller and larger families. HUD may establish income ceilings higher or lower than 30% of median income if HUD finds such variations are necessary due to unusually high or low family incomes. See 24 CFR 5.603.
53. **Facility.** All or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock, or other real or personal property or interest in the property.
54. **Fair Housing Act.** Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988.
55. **Fair market rent (FMR).** The rent, including the cost of utilities (except telephone), as established by HUD for units of varying sizes (by number of bedrooms), that must be paid in the housing market area to rent privately owned, existing, decent, safe, and sanitary rental housing of modest (non-luxury) nature with suitable amenities. See periodic publications in the *Federal Register* in accordance with 24 CFR Part 888.
56. **Family.** Includes but is not limited to the following, regardless of actual or perceived sexual orientation, gender identity, or marital status, and can be further defined in PHA policy.
- A family with or without children (the temporary absence of a child from the home due to placement in foster care is not considered in determining family composition and family size)
  - An elderly family or a near-elderly family
  - A displaced family
  - The remaining member of a tenant family
  - A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a tenant family.
57. **Family rent to owner.** In the voucher program, the portion of rent to owner paid by the family.
58. **Family self-sufficiency program (FSS program).** The program established by a PHA in accordance with 24 CFR part 984 to promote self-sufficiency of assisted families, including the coordination of supportive services (42 USC 1437u).
59. **Family share.** The portion of rent and utilities paid by the family. For calculation of family share, see 24 CFR 982.515(a).

60. **Family unit size.** The appropriate number of bedrooms for a family, as determined by the PHA under the PHA subsidy standards.
61. **Federal agency.** A department of the executive branch of the federal government.
62. **Foster child care payment.** A payment to eligible households by state, local, or private agencies appointed by the state to administer payments for the care of foster children.
63. **Full-time student.** A person who is attending school or vocational training on a full-time basis (carrying a subject load that is considered full-time for day students under the standards and practices of the educational institution attended). See 24 CFR 5.603.
64. **Funding increment.** Each commitment of budget authority by HUD to a PHA under the consolidated annual contributions contract for the PHA program.
65. **Gender identity.** Actual or perceived gender-related characteristics.
66. **Gross rent.** The sum of the rent to owner plus any utility allowance.
67. **Group home.** A dwelling unit that is licensed by a state as a group home for the exclusive residential use of two to twelve persons who are elderly or persons with disabilities (including any live-in aide). (A special housing type: see 24 CFR 982.610–614.)
68. **Handicap.** Any condition or characteristic that renders a person an individual with handicaps. (See *person with disabilities*.)
69. **HAP contract.** The housing assistance payments contract. A written contract between the PHA and an owner for the purpose of providing housing assistance payments to the owner on behalf of an eligible family.
70. **Head of household.** The adult member of the family who is the head of the household for purposes of determining income eligibility and rent.
71. **Household.** A household includes additional people other than the family who, with the PHA's permission, live in an assisted unit, such as live-in aides, foster children, and foster adults.
72. **Housing assistance payment.** The monthly assistance payment by a PHA, which includes: (1) A payment to the owner for rent to the owner under the family's lease; and (2) An additional payment to the family if the total assistance payment exceeds the rent to owner.
73. **Housing agency (HA).** See *public housing agency*.
74. **Housing quality standards (HQS).** The HUD minimum quality standards for housing assisted under the voucher program.
75. **HUD.** The U.S. Department of Housing and Urban Development.
76. **Imputed asset.** An asset disposed of for less than fair market value during the two years preceding examination or reexamination.
77. **Imputed asset income.** The PHA-established passbook rate multiplied by the total cash value of assets. The calculation is used when net family assets exceed \$5,000.
78. **Imputed welfare income.** An amount of annual income that is not actually received by a family as a result of a specified welfare benefit reduction, but is included in the family's annual income and therefore reflected in the family's rental contribution.
79. **Income.** Income from all sources of each member of the household, as determined in accordance with criteria established by HUD.
80. **Income for eligibility.** Annual income.
81. **Individual with handicaps.** See *person with disabilities*.

82. **Initial PHA.** In portability, the term refers to both: (1) A PHA that originally selected a family that later decides to move out of the jurisdiction of the selecting PHA; and (2) A PHA that absorbed a family that later decides to move out of the jurisdiction of the absorbing PHA.
83. **Initial payment standard.** The payment standard at the beginning of the HAP contract term.
84. **Initial rent to owner.** The rent to owner at the beginning of the HAP contract term.
85. **Institution of higher education.** An institution of higher education as defined in [20 USC § 1001](#) and [1002](#). See also [Determining Student Eligibility](#) in this plan.
86. **Jurisdiction.** The area in which the PHA has authority under state and local law to administer the program.
87. **Landlord.** Either the owner of the property or his/her representative, or the managing agent or his/her representative, as shall be designated by the owner.
88. **Lease.** A written agreement between an owner and a tenant for the leasing of a dwelling unit to the tenant. The lease establishes the conditions for occupancy of the dwelling unit by a family with housing assistance payments under a HAP contract between the owner and the PHA.
89. **Live-in aide.** A person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who:
- Is determined to be essential to the care and well-being of the persons;
  - Is not obligated for the support of the persons; and
  - Would not be living in the unit except to provide the necessary supportive services.
90. **Living/sleeping room.** A living room may be used as sleeping (bedroom) space, but no more than two persons may occupy the space. A bedroom or living/sleeping room must have at least one window and two electrical outlets in proper operating condition.
91. **Local preference.** A preference used by the PHA to select among applicant families.
92. **Low-income family.** A family whose income does not exceed 80% of the median income for the area as determined by HUD with adjustments for smaller or larger families, except that HUD may establish income limits higher or lower than 80% for areas with unusually high or low incomes.
93. **Manufactured home.** A manufactured structure that is built on a permanent chassis, is designed for use as a principal place of residence, and meets the HQS. (A special housing type: see 24 CFR 982.620 and 982.621.)
94. **Manufactured home space.** In manufactured home space rental: A space leased by an owner to a family. A manufactured home owned and occupied by the family is located on the space. See 24 CFR 982.622 to 982.624.
95. **Medical expenses.** 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 (a deduction for elderly or disabled families only). These allowances are given when calculating adjusted income for medical expenses in excess of 3% of annual income.
96. **Minor.** A member of the family household other than the family head or spouse, who is under 18 years of age.
97. **Mixed family.** A family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.
98. **Mod Rehab.** The Mod Rehab provides rental assistance for low-income families to live in renovated properties.

99. **Monthly adjusted income.** One twelfth of adjusted income.
100. **Monthly income.** One twelfth of annual income.
101. **Mutual housing.** Included in the definition of *cooperative*.
102. **National.** A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.
103. **Near-elderly family.** A family whose head, spouse, or sole member is a person who is at least 50 years of age but below the age of 62; or two or more persons, who are at least 50 years of age but below the age of 62, living together; or one or more persons who are at least 50 years of age but below the age of 62 living with one or more live-in aides.
104. **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.
105. **Noncitizen.** A person who is neither a citizen nor national of the United States.
106. **Notice of funding availability (NOFA).** For budget authority that HUD distributes by competitive process, the *Federal Register* document that invites applications for funding. This document explains how to apply for assistance and the criteria for awarding the funding.
107. **Office of General Counsel (OGC).** The General Counsel of HUD.
108. **Overcrowded.** A unit that does not meet the following HQS space standards: (1) Provide adequate space and security for the family; and (2) Have at least one bedroom or living/sleeping room for each two persons.
109. **Owner.** Any person or entity with the legal right to lease or sublease a unit to a participant.
110. **Participant (participant family).** A family that has been admitted to the PHA program and is currently assisted in the program. The family becomes a participant on the effective date of the first HAP contract executed by the PHA for the family (first day of initial lease term).
111. **PHA Plan.** The annual plan and the five-year plan as adopted by the PHA and approved by HUD.
112. **PHA's quality control sample.** An annual sample of files or records drawn in an unbiased manner and reviewed by a PHA supervisor (or by another qualified person other than the person who performed the original work) to determine if the work documented in the files or records conforms to program requirements. For minimum sample size see CFR 985.3.
113. **Payment standard.** The maximum monthly assistance payment for a family assisted in the voucher program (before deducting the total tenant payment by the family).
114. **Person with disabilities.** *For the purposes of program eligibility:* A person who has a disability as defined under the Social Security Act or Developmental Disabilities Care Act, or a person who has a physical or mental impairment expected to be of long and indefinite duration and whose ability to live independently is substantially impeded by that impairment but could be improved by more suitable housing conditions. This includes persons with AIDS or conditions arising from AIDS but excludes persons whose disability is based solely on drug or alcohol dependence. *For the purposes of reasonable accommodation:* A person with a physical or mental impairment that substantially limits one or more major life activities, a person regarded as having such an impairment, or a person with a record of such an impairment.
115. **Portability.** Renting a dwelling unit with a Section 8 housing choice voucher outside the jurisdiction of the initial PHA.



116. **Premises.** The building or complex in which the dwelling unit is located, including common areas and grounds.
117. **Previously unemployed.** With regard to the earned income disallowance, a person with disabilities who has earned, in the 12 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.
118. **Private space.** In shared housing, the portion of a contract unit that is for the exclusive use of an assisted family.
119. **Processing entity.** The person or entity that, under any of the programs covered, is responsible for making eligibility and related determinations and any income reexamination. In the HCV program, the “processing entity” is the “responsible entity.”
120. **Project-based voucher.** Housing assistance that is tied to a particular unit, not a family, and thus a family who moves from that unit generally has no right to continued assistance.
121. **Project owner.** The person or entity that owns the housing project containing the assisted dwelling unit.
122. **Public assistance.** Welfare or other payments to families or individuals, based on need, which are made under programs funded, separately or jointly, by federal, state, or local governments.
123. **Public housing agency (PHA).** Any state, county, municipality, or other governmental entity or public body, or agency or instrumentality of these entities, that is authorized to engage or assist in the development or operation of low-income housing under the 1937 Act.
124. **Qualified census tract.** With regard to certain tax credit units, any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50% of households have an income of less than 60% of Area Median Gross Income (AMGI), or where the poverty rate is at least 25%, and where the census tract is designated as a qualified census tract by HUD.
125. **Reasonable rent.** A rent to owner that is not more than rent charged: (1) For comparable units in the private unassisted market; and (2) For comparable unassisted units in the premises.
126. **Reasonable accommodation.** A change, exception, or adjustment to a rule, policy, practice, or service to allow a person with disabilities to fully access the PHA’s programs or services.
127. **Receiving PHA.** In portability: A PHA that receives a family selected for participation in the tenant-based program of another PHA. The receiving PHA issues a voucher and provides program assistance to the family.
128. **Recertification.** Sometimes called *reexamination*. The process of securing documentation of total family income used to determine the rent the tenant will pay for the next 12 months if there are no additional changes to be reported.
129. **Remaining member of the tenant family.** The person left in assisted housing who may or may not normally qualify for assistance on their own circumstances (i.e., an elderly spouse dies, leaving widow age 47 who is not disabled).
130. **Rent to owner.** The total monthly rent payable to the owner under the lease for the unit (also known as contract rent). Rent to owner covers payment for any housing services, maintenance, and utilities that the owner is required to provide and pay for.
131. **Residency preference.** A PHA preference for admission of families that reside anywhere in a specified area, including families with a member who works or has been hired to work in the area (See *residency preference area*).

132. **Residency preference area.** The specified area where families must reside to qualify for a residency preference.
133. **Responsible entity.** For the public housing and the Section 8 tenant-based assistance, project-based voucher assistance, and moderate rehabilitation programs, the responsible entity means the PHA administering the program under an ACC with HUD. For all other Section 8 programs, the responsible entity means the Section 8 owner.
134. **Secretary.** The Secretary of Housing and Urban Development.
135. **Section 8.** Section 8 of the United States Housing Act of 1937.
136. **Section 8 covered programs.** All HUD programs which assist housing under Section 8 of the 1937 Act, including Section 8 assisted housing for which loans are made under Section 202 of the Housing Act of 1959.
137. **Section 214.** Section 214 of the Housing and Community Development Act of 1980, as amended.
138. **Section 214 covered programs.** The collective term for the HUD programs to which the restrictions imposed by Section 214 apply. These programs are set forth in 24 CFR 5.500.
139. **Security deposit.** A dollar amount (maximum set according to the regulations) which can be used for unpaid rent or damages to the owner upon termination of the lease.
140. **Set-up charges.** In a manufactured home space rental, charges payable by the family for assembling, skirting, and anchoring the manufactured home.
141. **Sexual assault.** Any nonconsensual sexual act proscribed by federal, tribal, or state law, including when the survivor lacks capacity to consent (42 USC 12291(a)(29)).
142. **Sexual orientation.** Homosexuality, heterosexuality, or bisexuality.
143. **Shared housing.** A unit occupied by two or more families. The unit consists of both common space for shared use by the occupants of the unit and separate private space for each assisted family. (A special housing type: see 24 CFR 982.615–982.618.)
144. **Single person.** A person living alone or intending to live alone.
145. **Single room occupancy housing (SRO).** A unit that contains no sanitary facilities or food preparation facilities, or contains either, but not both, types of facilities. (A special housing type: see 24 CFR 982.602–982.605.)
146. **Social Security number (SSN).** The nine-digit number that is assigned to a person by the Social Security Administration and that identifies the record of the person's earnings reported to the Social Security Administration. The term does not include a number with a letter as a suffix that is used to identify an auxiliary beneficiary.
147. **Special admission.** Admission of an applicant that is not on the PHA waiting list or without considering the applicant's waiting list position.
148. **Special housing types.** See subpart M of part 982. Subpart M states the special regulatory requirements for: SRO housing, congregate housing, group homes, shared housing, cooperatives (including mutual housing), and manufactured homes (including manufactured home space rental).
149. **Specified welfare benefit reduction.** Those reductions of welfare benefits (for a covered family) that may not result in a reduction of the family rental contribution. A reduction of welfare benefits because of fraud in connection with the welfare program, or because of welfare sanction due to non-compliance with a welfare agency requirement to participate in an economic self-sufficiency program.

150. **Spouse.** The marriage partner of the head of household.
151. **Stalking.** 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.
152. **State wage information collection agency (SWICA).** The state agency, including any Indian tribal agency, receiving quarterly wage reports from employers in the state, or an alternative system that has been determined by the Secretary of Labor to be as effective and timely in providing employment-related income and eligibility information.
153. **Subsidy standards.** Standards established by a PHA to determine the appropriate number of bedrooms and amount of subsidy for families of different sizes and compositions.
154. **Suspension.** The term on the family's voucher stops from the date the family submits a request for PHA approval of the tenancy, until the date the PHA notifies the family in writing whether the request has been approved or denied. This practice is also called *tolling*.
155. **Tax credit rent.** With regard to certain tax credit units, the rent charged for comparable units of the same bedroom size in the building that also receive the low-income housing tax credit but do not have any additional rental assistance (e.g., tenant-based voucher assistance).
156. **Tenancy addendum.** For the housing choice voucher program, the lease language required by HUD in the lease between the tenant and the owner.
157. **Tenant.** The person or persons (other than a live-in aide) who executes the lease as lessee of the dwelling unit.
158. **Tenant rent to owner.** See *family rent to owner*.
159. **Term of lease.** The amount of time a tenant agrees in writing to live in a dwelling unit.
160. **Total tenant payment (TTP).** The total amount the HUD rent formula requires the tenant to pay toward rent and utilities.
161. **Unit.** Residential space for the private use of a family. The size of a unit is based on the number of bedrooms contained within the unit and generally ranges from zero bedrooms to six bedrooms.
162. **Utilities.** Water, electricity, gas, other heating, refrigeration, cooking fuels, trash collection, and sewage services. Telephone service is not included.
163. **Utility allowance.** If the cost of utilities (except telephone) and other housing services for an assisted unit is not included in the tenant rent but is the responsibility of the family occupying the unit, an amount equal to the estimate made or approved by a PHA or HUD of the monthly cost of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.
164. **Utility reimbursement.** In the voucher program, the portion of the housing assistance payment which exceeds the amount of rent to owner.
165. **Utility hook-up charge.** In a manufactured home space rental: Costs payable by a family for connecting the manufactured home to utilities such as water, gas, electrical and sewer lines.
166. **Very low-income family.** A low-income family whose annual income does not exceed 50% of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 50% of the median income

for the area on the basis of its finding that such variations are necessary because of unusually high or low family incomes. This is the income limit for the housing choice voucher program.

- 167. **Veteran.** A person who has served in the active military or naval service of the United States at any time and who shall have been discharged or released therefrom under conditions other than dishonorable.
- 168. **Violence Against Women Reauthorization Act (VAWA) of 2013.** Prohibits denying admission to the program to an otherwise qualified applicant or terminating assistance on the basis that the applicant or program participant is or has been a survivor of domestic violence, dating violence, sexual assault, or stalking.
- 169. **Violent criminal activity.** Any illegal criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person or property of another.
- 170. **Voucher (housing choice voucher).** A document issued by a PHA to a family selected for admission to the housing choice voucher program. This document describes the program and the procedures for PHA approval of a unit selected by the family. The voucher also states obligations of the family under the program.
- 171. **Voucher holder.** A family holding a voucher with an unexpired term (search time).
- 172. **Voucher program.** The housing choice voucher program.
- 173. **Waiting list.** A list of families organized according to HUD regulations and PHA policy who are waiting for a unit to become available.
- 174. **Waiting list admission.** An admission from the PHA waiting list.
- 175. **Welfare assistance.** Income assistance from federal or state welfare programs, including assistance provided under TANF and general assistance. Does not include assistance directed solely to meeting housing expenses, nor programs that provide health care, child care or other services for working families. For the FSS program (984.103(b)), welfare assistance means income assistance from federal or state welfare program, and includes only cash maintenance payments designed to meet a family's ongoing basic needs.

## CHAPTER 27 : EXHIBITS

### Exhibit 18-1: 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 One-Stop 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](http://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. 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 Developmental Services (DDS). 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 DDS 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 Ongoing Basis

All housing must be pre-approved by DDS or DMH. These agencies provide services to residents, and all residents are DMH or DDS clients. (N.B. DHCD has advised DMH and DDS 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 20.24](#) 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, survivors 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 project's total development cost. 50% of residents in HIF projects must be low income (80% AMI or less), and 25% must be extremely low income (higher of 30% of AMI or federal poverty level).

#### 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 Developmental Services (DDS) 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 at 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 (see [Section 20.24.6](#)).

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 Ongoing 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.