

Housing Authority of Cook County

Housing Choice Voucher Program Administrative Plan

Effective April 1, 2019 until replaced by an updated version

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Chapter 1

OVERVIEW OF THE PROGRAM AND PLAN

INTRODUCTION

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

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

There are three parts to this chapter:

Part I: The Housing Authority of Cook County (HACC). This part includes a description of the HACC, its jurisdiction, its programs, and its mission and intent.

Part II: The HCV Program. This part contains information about the Housing Choice Voucher program operation, roles and responsibilities, and partnerships.

Part III: The HCV Administrative Plan. This part discusses the purpose and organization of the plan and its revision requirements.

PART I: The HACC

1-I.A. OVERVIEW

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

The HACC administers the HCV Program throughout its suburban Cook County jurisdiction. The HACC jurisdictional service area is a large geographical area with great social, racial and economic diversity.

1-I.B. ORGANIZATION AND STRUCTURE OF THE HACC

The tenant-based HCV Program is funded by the federal government and administered by the HACC for the jurisdiction of suburban Cook County, Illinois, with the exception of Chicago, Cicero, Maywood, Oak Park, Park Forest, and Elgin.

The officials of the HACC are known as commissioners or, collectively, as the board of commissioners. Commissioners are appointed in accordance with state housing law and generally serve in the same capacity as the directors of a corporation, establishing policies under which the HACC conducts business, ensuring that policies are followed by the HACC staff, and ensuring that the HACC is successful in its mission. The board is responsible for preserving and expanding the agency's resources and assuring the agency's continued viability.

Formal actions of the HACC are taken through written resolutions, adopted by the board of commissioners and entered into the official records of the Authority.

The principal staff member of the HACC is the executive director (ED), hired and appointed by the board of commissioners. The ED is directly responsible for carrying out the policies established by the commissioners. The ED is delegated the responsibility for hiring, training, and supervising the remainder of the HACC's staff in order to manage the day-to-day operations of the Authority, ensuring compliance with the directives of the programs managed as well as federal, state, and local laws. In addition, the ED's duties include budgeting and financial planning for the agency.

1-I.C.THE HACC's MISSION STATEMENT

To promote adequate and affordable housing, economic opportunity, and a suitable living environment free from discrimination

1-I.D. THE HACC's PROGRAMS

The following programs are included under this administrative plan:

- Housing Choice Vouchers – tenant based rental assistance
- Project Based Vouchers

1-I.E. THE HACC's COMMITMENT TO ETHICS AND SERVICE

As a public service agency, the HACC is committed to providing excellent service to HCV program participants – families and owners – in the community. The HACC's standards include:

1. Subsidize affordable, decent, safe and sanitary housing for low income persons who are eligible for rental assistance under HUD regulations and the HACC policies
2. Manage the Housing Choice Voucher and Project Based Voucher programs available in a proper and efficient manner to eligible households
3. Promote freedom of housing choice for applicants and participants
4. Provide information to applicants and participants on communities and units outside areas of poverty or minority concentration
5. Encourage the participation of owners throughout the HACC jurisdiction, particularly the owners of units outside areas of poverty or minority concentration
6. Promote Fair Housing and the opportunity for participants to locate housing in all areas of the HACC jurisdiction
7. Ensure that all assisted units meet Housing Quality Standards
8. Ensure that all participants pay fair and reasonable rents
9. Promote a housing program that maintains quality service and integrity to all applicants, participants and owners

10. Encourage self-sufficiency of participant families and assist in the expansion of family opportunities which address educational, socio-economic, recreational and other human services needs.
11. Create positive public awareness and expand the level of family, owner, and community support in accomplishing the HACC's mission.

1-I.F. AFFIRMATIVELY FURTHERING FAIR HOUSING

Equal housing opportunity for all persons is a fundamental policy of the HACC. The HACC is committed to ensuring that the HACC's housing programs comply fully with all local, state, and federal fair housing laws including, the Fair Housing Act of 1968, as amended (Fair Housing Act) and its implementing regulations, as well as the Cook County Human Rights Ordinance, the Illinois Human Rights Act, and the Illinois Safe Homes Act. Additionally, the HACC is implementing the following actions to affirmatively further fair housing as required by Section 808(e) (5) of the Fair Housing Act.

To affirmatively further fair housing in the Housing Choice Voucher Program, the HACC:

- Promotes housing choice through ongoing educational opportunities by conducting ongoing training of HACC staff on Fair Housing regulations and requirements, including ADA/504 rules and providing fair housing literature that describes applicable local, federal, and state fair housing laws and regulations.
- Ensures that all HACC buildings and communications facilitate service delivery and are accessible to persons with disabilities. If requested, services can be provided at other locations. The HACC will use the relay number 7-1-1 for communication with the hearing impaired.
- Displays the Equal Housing Opportunity poster in all of its offices.
- Participates in a web-based housing locator service - www.ILHousingSearch.org - which is sponsored by the Illinois Housing Development Authority, in an effort to overcome the barriers to finding safe and affordable housing. Landlords throughout the State are encouraged to list affordable housing units and provide specific descriptions of accessibility features.
- Provides fair housing information at the initial briefing, including how to find a safe and affordable unit and leasing provisions that are prohibited under law.
- Provides information on how to file a Fair Housing Complaint with HUD, including the telephone number for the Housing Discrimination Hotline, 1-800-669-9777. The HUD Housing Discrimination Complaint form is given to applicants and participants which provides information on what housing discrimination is and the steps the tenant should take to submit a detailed report.
- Provides information on how to file a Housing Discrimination Complaint with the Cook County Commission on Human Rights.
- Has written policies and procedures on Reasonable Accommodation. These are outlined in this HCV Administrative Plan and are explained to HCV applicants at the time of the initial briefing.
- Requests exception payment standards for units that are in housing opportunity areas in Cook County and participates in the Small Area Fair Market Rents (SAFMR) Demonstration.

- Routinely examines current and proposed programs to ensure compliance and identify impediments to fair housing choice within these programs.
- Maintains analyses and records of actions to remove fair housing barriers, including claims filed, basis for claims, actions taken, settlement agreements, and administrative hearing decisions.
- Refers families who are at risk of losing housing assistance to local service providers for assistance with maintaining lease compliance.
- Publishes a quarterly newsletter for participants, owners, and vendors, which features articles on fair housing, housing search, and family obligations.
- Administers a Tax Savings Program for landlords whose HCV housing units are located in eligible townships with less than 10 percent poverty.
- Operates a voluntary HCV mobility counseling program, the Community Choice Program. This program offers participants extra assistance in finding units in opportunity areas that are defined as top-ranked communities in Cook County. Services include special briefings, coaching, tours of and information about opportunity areas, search assistance, and access to a security deposit loan program or security deposit grant program, as funding permits.

PART II: THE HOUSING CHOICE VOUCHER (HCV) PROGRAM

1-II.A. OVERVIEW AND HISTORY OF THE PROGRAM

The United States Housing Act of 1937 (the “Act”) is responsible for the birth of federal housing program initiatives. The Act was intended to provide financial assistance to states and cities for public works projects, slum clearance and the development of affordable housing developments for low-income residents.

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

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

If the family chose to move to another privately-owned rental unit that met program requirements, the rental assistance remained with the family. Consequently, the Certificate program was characterized as tenant-based assistance, rather than unit-based assistance.

The Housing and Community Development (HCD) Act of 1987 authorized a new version of tenant-based assistance – the Section 8 Voucher program. The Voucher program was very

similar to the Certificate program in that eligible families were able to select housing in the private rental market and receive assistance in that housing unit.

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

In 1998, the Quality Housing and Work Responsibility Act (QHWRA) – also known as the Public Housing Reform Act – was signed into law. QHWRA eliminated all statutory differences between the Certificate and Voucher tenant-based programs and required that the two programs be merged into a single tenant-based assistance program, now known as the Housing Choice Voucher (HCV) program. The HCV program was modeled closely on the pre-merger Voucher program. However, unlike the pre-merger Voucher program, the HCV program requires an assisted family to pay at least 30 percent of adjusted income for rent. The transition of assistance from the Certificate and Voucher programs to the new HCV program began in October 1999. By October 2001, all families receiving tenant-based assistance were converted to the HCV program.

1-II.B. HCV PROGRAM BASICS

The purpose of the HCV program is to provide rental assistance to eligible families. The rules and regulations of the HCV program are determined by the U.S. Department of Housing and Urban Development (HUD). The HACC is afforded choices in the operation of the program which are included in this administrative plan, a document approved by the board of commissioners of the HACC. The HCV program offers mobility to eligible families because they may search for suitable housing anywhere in the HACC’s jurisdiction and may also be eligible to move under portability to other PHAs’ jurisdictions.

When a family is determined to be eligible for the program and funding is available, the HACC issues the family a housing voucher. When the family finds a suitable housing unit and funding is available, the HACC 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.

Even though the family is determined to be eligible for the program, the owner has the responsibility of approving the family as a suitable renter. The HACC continues to make payments to the owner as long as the family is eligible, the housing unit continues to qualify under the program, and the owner complies with program regulations.

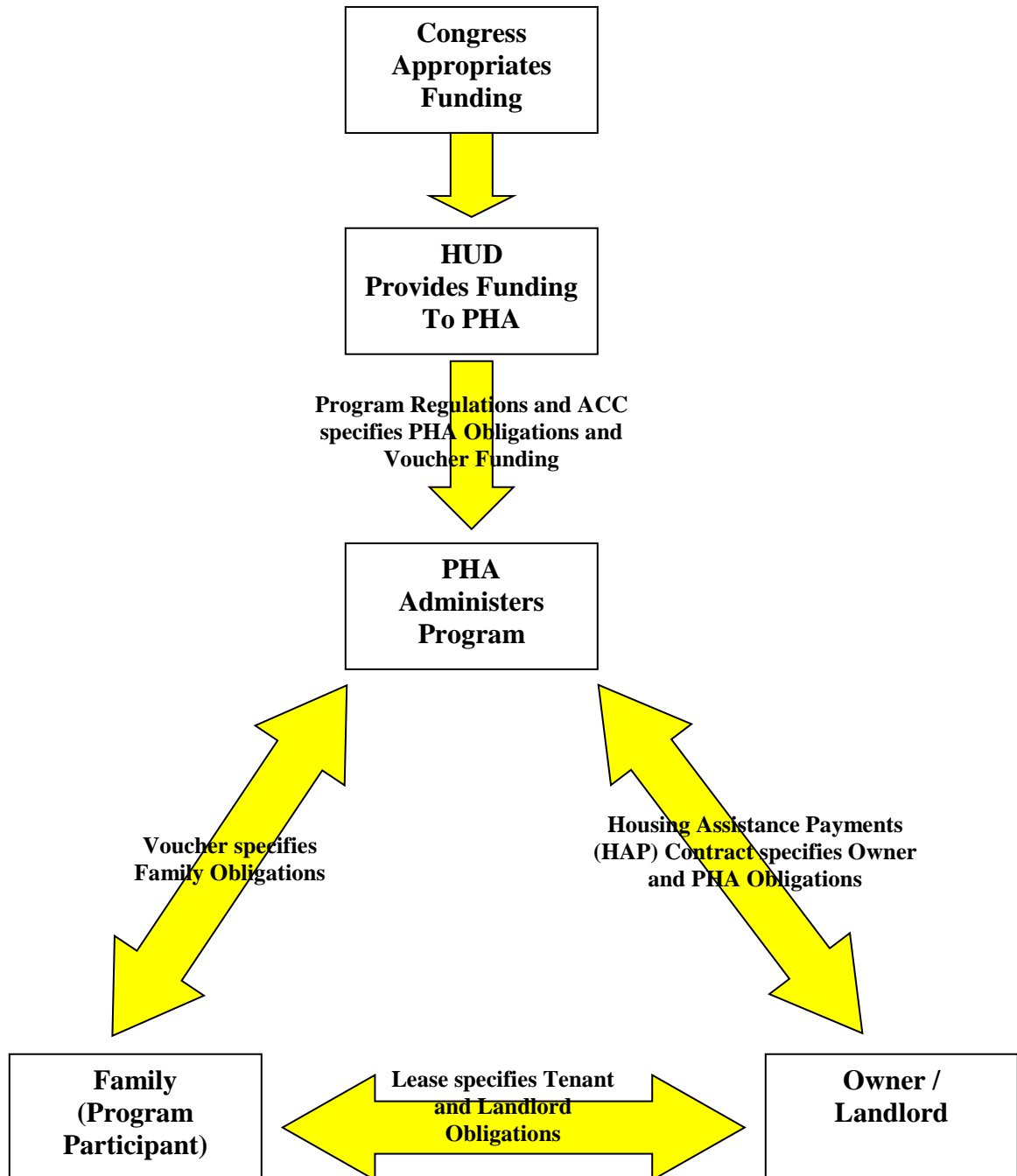
1-II.C. THE HCV PARTNERSHIPS

To administer the HCV program, the HACC enters into a contractual relationship with HUD. The HACC also enters into contractual relationships with the assisted family and the owner or

landlord of the housing unit. The roles and responsibilities of all parties are defined in federal regulations and in legal documents that parties execute to participate in the program.

The chart that follows illustrates key aspects of these relationships.

The HCV Relationships:



HUD has the following major responsibilities:

- Develop regulations, requirements, handbooks, notices and other guidance to implement HCV 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.

The HACC major responsibilities:

- Establish local policies;
- Review applications from interested applicant families to determine whether applicants are eligible for the program;
- Maintain the waiting list and select families for admission;
- Issue a voucher to a selected family and, if necessary, assist the family in finding a place to live;
- Conduct outreach to owners, with special attention to owners outside areas of poverty or minority concentration;
- Approve the rental unit (including assuring compliance with housing quality standards and rent reasonableness);
- Approve the owner and the tenancy (valid lease);
- 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 HACC's administrative plan, and other applicable federal, state and local laws.

The Owner major responsibilities:

- Screen families who apply for tenancy, to determine if they will be good renters.
 - The primary responsibility for tenant screening rests with the owner. The owner should consider family background factors such as rent and bill-paying history, history of caring for property, respecting the rights of others to peaceful enjoyment of the property, compliance with essential conditions of tenancy, whether the family is engaging in drug-related criminal activity or other criminal activity that might threaten others.
- Comply with the terms of the Housing Assistance Payments contract executed with the HACC;
- 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.

Participant major responsibilities:

- Provide the HACC with complete and accurate information determined by the HACC to be necessary for administration of the program;
- Make their best and most timely efforts to find a place to live that is suitable for them and that qualifies for the program;
- Attend all appointments scheduled by the HACC;
- Allow the HACC to inspect the unit at reasonable times and after reasonable notice;
- Take responsibility for care of the housing unit, including any violations of housing quality standards caused by the family;
- Comply with the terms of the lease with the owner;
- Comply with the family obligations of the voucher;
- Not commit serious or repeated violations of the lease;
- Not engage in drug-related or violent criminal activity;
- Notify the HACC and the owner before moving or terminating the lease;
- Use the assisted unit only for residence and as the sole residence of the family. Not sublet the unit, assign the lease, or have any interest in the unit;
- Promptly notify the HACC of any changes in family composition;
- Promptly notify the HACC of any changes in family income;
- Not commit fraud, bribery, or any other corrupt or criminal act in connection with any housing programs.

If all parties fulfill their obligations in a professional and timely manner, the program responsibilities will be fulfilled effectively. Full responsibilities under the Program are discussed in depth in various chapters of this Administrative Plan and require the HACC's approval.

1-II.D. APPLICABLE REGULATIONS

Applicable regulations include:

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

PART III: THE HCV ADMINISTRATIVE PLAN

1-III.A. OVERVIEW AND PURPOSE OF THE PLAN

The administrative plan is required by HUD. The purpose of the administrative plan is to establish policies for carrying out the programs in a manner consistent with HUD requirements and local goals and objectives contained in the HACC's agency plan. This administrative plan is a supporting document to the HACC Agency Plan and is available for public review as required by 24 CFR Part 903.

This administrative plan is set forth to define the HACC's local policies for operation of the housing programs in the context of federal laws and regulations. All issues related to the HCV Program not addressed in this document are governed by such federal regulations, HUD handbooks and guidebooks, notices and other applicable law. The policies in this administrative plan have been designed to ensure compliance with the consolidated ACC and all HUD-approved applications for program funding.

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

Administration of the HCV program and the functions and responsibilities of the HACC staff shall be in compliance with the HACC's personnel policy and HUD's HCV Program regulations as well as all federal, state and local fair housing laws and regulations.

1-III.B. CONTENTS OF THE PLAN

HUD regulations contain a list of what must be included in the administrative plan [24 CFR 982.54]. The HACC administrative plan must cover the HACC policies on these subjects:

- Selection and admission of applicants from the waiting list, including any admission preferences, procedures for removing applicant names from the waiting list, and procedures for closing and reopening the waiting list (Chapter 4);
- Issuing or denying vouchers, including the HACC policy governing the voucher term and any extensions or suspensions of the voucher term. 'Suspension' means stopping the clock on the term of a family's voucher after the family submits a request for approval of the tenancy. If the HACC decides to allow extensions or suspensions of the voucher term, the administrative plan must describe how the HACC determines whether to grant extensions or suspensions and how the HACC determines the length of any extension or suspension (Chapter 5);
- Any special rules for use of available funds when HUD provides funding to the HACC for a special purpose (e.g., desegregation), including funding for specified families or a specified category of families (Chapter 4);
- Occupancy policies, including definition of what group of persons may qualify as a 'family', definition of when a family is considered to be 'continuously assisted'; standards for denying admission or terminating assistance based on criminal activity or alcohol abuse in accordance with 982.553 (Chapters 3 and 12);

- Encouraging participation by owners of suitable units located outside areas of low income or minority concentration (Chapter 13);
- Assisting a family that claims that illegal discrimination has prevented the family from leasing a suitable unit (Chapter 2);
- Providing information about a family to prospective owners (Chapters 3 and 9);
- Disapproval of owners (Chapter 13);
- Subsidy standards (Chapter 5);
- Family absence from the dwelling unit (Chapter 12);
- How to determine who remains in the program if a family breaks up (Chapter 3);
- Informal review procedures for applicants (Chapter 16);
- Informal hearing procedures for participants (Chapter 16);
- The process for establishing and revising voucher payment standards (Chapter 16);
- The method of determining that rent to owner is a reasonable rent (initially and during the term of a HAP contract) (Chapter 8);
- Special policies concerning special housing types in the program (e.g., use of shared housing) (Chapter 15);
- Policies concerning payment by a family to the HACC of amounts the family owes the HACC (Chapter 16);
- Interim redeterminations of family income and composition (Chapter 11);
- Restrictions, if any, on the number of moves by a participant family (Chapter 10);
- Approval by the board of commissioners or other authorized officials to charge the administrative fee reserve (Chapter 16);
- Procedural guidelines and performance standards for conducting required housing quality standards inspections (Chapter 8); and
- The HACC screening of applicants for family behavior or suitability for tenancy (Chapter 3).

Mandatory vs. Discretionary Policy

HUD makes a distinction between:

- Mandatory policies: those driven by legislation, regulations, current handbooks, notices, and legal opinions, and
- Optional, non-binding guidance, including guidebooks, notices that have expired and recommendations from individual HUD staff.

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

Following HUD guidance, even though it is not mandatory, provides the HACC with a “safe harbor.” HUD has already determined that the recommendations and suggestions it makes are consistent with mandatory policies. If the HACC adopts an alternative strategy, it must make its own determination that the alternative approach is consistent with legislation, regulations, and other mandatory requirements.

1-III.C. ORGANIZATION OF THE PLAN

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

1-III.D. UPDATING AND REVISING THE PLAN

The HACC will review the Plan at least once a year, and update if needed, to reflect changes in regulations, the HACC operations, or when needed to ensure staff consistency in operation. The original Plan and any changes must be approved by the Board of Commissioners, the pertinent sections included in the Agency Plan, and a copy provided to HUD.

Chapter 2 FAIR HOUSING AND EQUAL OPPORTUNITY

INTRODUCTION

It is the HACC policy to comply with all federal, state and local non-discrimination laws. The HACC administers the HCV Program in accordance with rules and regulations governing Fair Housing and Equal Opportunity in housing and employment. The HACC does not utilize criteria or policies of administration in the admission to or access to its housing programs which have the effect of discriminating against persons on the basis of race, color, religion, national or ethnic origin, gender, source of income, disability, age or familial status. When the waiting list application period is open, the HACC does not deny any family the opportunity to apply for housing or assistance under the HCV Program. The HACC does not deny an eligible applicant or participant the opportunity to lease any dwelling unit in any housing structure suitable to its needs that meets program requirements.

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

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

Part I: Nondiscrimination. This part presents the body of laws and regulations governing the responsibilities of the HACC regarding nondiscrimination.

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

Part III: Prohibition of Discrimination Against Limited English Proficiency Persons. This part details the obligations of the HACC to ensure meaningful access to the HCV program and its activities by persons with limited English proficiency (LEP). This part incorporates HUD and DOJ's Notice of Guidance, published December 19, 2003 in the *Federal Register*.

PART I: NONDISCRIMINATION

2-I.A. OVERVIEW

Federal laws require PHAs to treat all applicants and participants equally, providing the same quality of service, regardless of family characteristics and background. Federal law prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, age, familial status, and disability. The HACC 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 (VAWA)
- When more than one civil rights law applies to a situation, the laws will be read and applied together.
- Any applicable state laws or local ordinances and any legislation protecting individual rights of tenants, applicants, or staff that may subsequently be enacted

2-I.B. NONDISCRIMINATION

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

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

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

The HACC will not:

- Deny to any family the opportunity to apply for housing, nor deny to any qualified applicant the opportunity to participate in the housing choice voucher program
- Provide housing that is different from that provided to others
- Subject anyone to segregation or disparate treatment

- Restrict anyone's access to any benefit enjoyed by others in connection with the housing program
- Treat a person differently in determining eligibility or other requirements for admission
- Steer an applicant or participant toward or away from a particular area based any of these factors
- Deny anyone access to the same level of services
- Deny anyone the opportunity to participate in a planning or advisory group that is an integral part of the housing program
- Discriminate in the provision of residential real estate transactions
- Discriminate against someone because they are related to or associated with a member of a protected class
- Publish or cause to be published an advertisement or notice indicating the availability of housing that prefers or excludes persons who are members of a protected class.

Providing Information to Families and Owners

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

Discrimination Complaints

The HACC will provide voucher holders with information on federal, state and local laws regarding housing discrimination and any recourse available. Voucher holders will be briefed about their Fair Housing rights during the voucher briefing session. A copy of form HUD-903, HUD Housing Discrimination Complaint, will be provided in the briefing packet. Upon request, the HACC will provide families with information on how to fill out and file a housing discrimination complaint, whether it be federal, state, or local.

Applicants or participants who allege to have encountered illegal discrimination in leasing a suitable unit will be given assistance to file the discrimination complaint. The HACC staff will explain any policy or procedure that may have been misunderstood by the complainant. If necessary, the HACC staff will refer a family to local Fair Housing organizations and legal aid for assistance with housing issues and complaints. The HACC will cooperate with HUD Fair Housing staff, as requested, to resolve any complaints.

The HACC will attempt to remedy discrimination complaints made against the HACC.

PART II: POLICIES RELATED TO PERSONS WITH DISABILITIES

2-II.A. OVERVIEW

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

It is the HACC's policy to comply fully with the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act. No otherwise qualified individual with a disability shall, solely by reason of disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the HCV Program.

The HACC is fully committed to ensuring that reasonable accommodations are made to applicants and participants with disabilities. The HACC takes appropriate measures to ensure that an individual with disabilities shall have equal access to available services and programs offered. All persons with disabilities, who properly request a reasonable accommodation, and upon verification and approval, will be provided the reasonable accommodation so that they may fully access and utilize the housing program and related services. The HACC endeavors to ensure that reasonable accommodations are made to persons with disabilities, including, but not limited to, the following:

1. Providing notice to applicants and participants that they may request a reasonable accommodation of the HACC if a family member is a person with disabilities;
2. Providing reasonable extensions of time, to the extent allowable by HUD regulations, for the completion of program requirements and for the terms of the voucher;
3. Encouraging families to seek assistance from outside agencies in the completion of forms and documents required by the program;
4. Conducting an in-home briefing for families who are unable to travel to the briefing site because of a documented medical reason;
5. Providing assistance with the family's housing search;
6. Maintaining Telecommunication Devices for the Deaf (TDD) and/or a relay service and publicizing the availability; and
7. Providing sign language interpreters, as appropriate.

The HACC will ask all applicants and participants if they require any type of accommodations, in writing, on the intake application, reexamination documents, and notices of adverse action by the HACC, by including the following language:

“If you or anyone in your family is a person with disabilities, and you require a specific accommodation in order to fully utilize our programs and services, please contact the housing authority.”

A specific name and phone number will be indicated as the contact for requests for accommodation for persons with disabilities.

2-II.B. DEFINITION OF REASONABLE ACCOMMODATION

A person with a disability may require special accommodations in order to have equal access to the HCV program. The types of reasonable accommodations the HACC can provide include changes, exceptions, or adjustments to a rule, policy, practice, or service. The HACC cannot make an accommodation if it would violate a Federal Regulation.

Federal regulations stipulate that requests for accommodations will be considered reasonable if they do not create an "undue financial and administrative burden" for the HACC or result in a "fundamental alteration" in the nature of the program or service offered. A fundamental alteration is a modification that alters the essential nature of a provider's operations.

Types of Reasonable Accommodations

When needed, the HACC will consider modifying normal procedures to accommodate the needs of a person with disabilities. The HACC policy fully complies with this requirement. Examples of modification to normal procedures may include:

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

2-II.C. REQUEST FOR AN ACCOMMODATION

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

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

2. The family will be asked to explain what type of accommodation is needed to provide the person with the disability full access to the HACC's programs and services.
3. There must be an identifiable relationship, or nexus, between the requested accommodation and the individual's disability.

2-II.D. VERIFICATION OF DISABILITY

The regulatory civil rights definition for persons with disabilities is provided in Exhibit 2-1 at the end of this chapter. The definition of a person with a disability for the purpose of obtaining a reasonable accommodation is much broader than the HUD definition of disability which is used for waiting list preferences and income allowances.

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

If a person's disability is obvious or otherwise known to the HACC, and if the need for the requested accommodation is also readily apparent or known, the HACC may not request further verification [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].

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

When verifying a disability, the HACC will follow the verification policies provided in Chapter 7. All information related to a person's disability will be treated in accordance with the confidentiality policies provided in Chapter 16. In addition to the general requirements that govern all verification efforts, the following requirements apply when verifying a disability:

- Third-party verification must be obtained from a qualified individual who is competent to make the determination. A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may provide verification of a disability [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act]
- The HACC will request only information that is necessary to evaluate the disability-related need for the accommodation. The HACC will not inquire about the nature or extent of any disability.
- Medical records will not be accepted or retained in the participant file.

2-II.E. APPROVAL/DENIAL OF A REQUESTED ACCOMMODATION

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

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

Requests for accommodations will be assessed on a case-by-case basis, taking into account factors such as the cost of the requested accommodation, the financial resources of the HACC at the time of the request, the benefits that the accommodation would provide to the family, and the availability of alternative accommodations that would effectively meet the family's disability-related needs.

The HACC will not consider an accommodation request if the family has received a notice of termination due to an intentional violation of the rules and regulations and the family is seeking an accommodation as a way to come into compliance for past or current actions or violations, but the family may raise the issue of a reasonable accommodation during the appeal process as a consideration or alternative to termination.

Example: If the family has received a notice of termination for failing to disclose the familial relationship to the owner of the subsidized unit, the HACC will not consider a new request for an accommodation to rent from a relative.

Example: If the family has received a notice of termination for an unauthorized occupant in the assisted unit, the HACC will not consider a new request for an accommodation to have the unauthorized person added as a live-in aide.

However, if the family has received a notice of termination and the reason for termination is directly related to the disability of a family member, the HACC will consider the request.

Example: The family living with depression received a notice of termination for failing to provide required documentation in the renewal process. The family did not supply the documentation because the disabled family member stopped taking his/her medication and was unable to deal with his/her depression. The family then seeks assistance from its service provider who assists the family member mental health services and then requests a reasonable accommodation to complete the renewal process.

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

After a request for an accommodation is presented, the HACC will respond, in writing, within 15 business days. This response may be for additional information. The final decision regarding the

request for a reasonable accommodation will be made within 15 business days of the HACC receiving all documentation required to process the request.

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

If the HACC believes that the family has failed to identify a reasonable alternative accommodation after interactive discussion and negotiation, the HACC will notify the family, in writing, of its determination within 15 business days from the date of the most recent discussion or communication with the family.

The intent is to conclude all matters within 45 calendar days. Approved requests for reasonable accommodations will be reviewed on an annual basis to determine if the need for the accommodation still exists, unless, based on a previous verification, it is apparent the need is permanent or still exists.

2-II.F. PROGRAM ACCESSIBILITY FOR PERSONS WITH HEARING OR VISION IMPAIRMENTS

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

To meet the needs of persons with hearing impairments, TTD/TTY communication or the Illinois Relay Service will be available as an alternative form of communication.

To meet the needs of persons with vision impairments, large-print or audio discussions of key program documents will be present upon request, given 72 hours advance notice. When visual aids are used in public meetings or presentations, or in meetings with the HACC 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.

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

2-II.G. PHYSICAL ACCESSIBILITY

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

- PIH Notice 2010-26 Non-Discrimination and Accessibility for Persons with Disabilities

- Section 504 of the Rehabilitation Act of 1973
- The Americans with Disabilities Act of 1990
- The Architectural Barriers Act of 1968
- The Fair Housing Act of 1988

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

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

When issuing a voucher to a family that includes an individual with disabilities, the HACC will include a current list of available accessible units known to the HACC 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. However, the owner is not required to pay for the modifications and may require that the unit be restored to its original state at the family's expense when the family moves.

2-II.H. DENIAL OR TERMINATION OF ASSISTANCE

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

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

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

The HACC will consider mitigating circumstances and possible accommodations during the appeal process and may approve a reasonable accommodation as an alternative to termination.

PART III: IMPROVING ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY (LEP)

2-III.A. OVERVIEW

Language for Limited English Proficiency Persons (LEP) can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by the HCV program. In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally-assisted programs and activities may violate the prohibition under Title VI against discrimination on the basis of national origin. This part incorporates the Notice of Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Affecting Limited English Proficient Persons, published December 19, 2003 in the *Federal Register*.

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

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

In order to determine the level of access needed by LEP persons, the HACC will balance the following four factors: (1) the number or proportion of LEP persons eligible to be served or likely to be encountered by the Housing Choice Voucher program; (2) the frequency with which LEP persons come into contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to the HACC and costs.

Balancing these four factors will ensure meaningful access by LEP persons to critical services while not imposing undue burdens on the HACC. The HACC currently uses Language Line Solutions for people with LEP, in both written form and via verbal communication.

2-III.B. ORAL INTERPRETATION

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

The HACC will analyze the various kinds of contacts it has with the public to assess language needs and decide what reasonable steps should be taken. "Reasonable steps" do not include instances where the costs imposed on the HACC substantially exceed the benefits.

Where feasible, the HACC may arrange for bilingual staff or services to be available, pool resources with other PHAs, and standardize documents. Where feasible and possible, the HACC will encourage the use of qualified community volunteers.

Where LEP persons desire, they will be permitted to use, at their own expense, an interpreter of their own choosing, in place of or as a supplement to the free language services offered by the HACC. The interpreter may be a family member or friend.

2-III.C. WRITTEN TRANSLATION

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

In order to comply with written-translation obligations, the HACC will take the following steps:

- The HACC will provide written translations of vital documents for each eligible LEP language group that constitutes 5 percent or 1,000 persons, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or
- If there are fewer than 50 persons in a language group that reaches the 5 percent trigger, the HACC does not translate vital written materials, but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.

2-III.D. IMPLEMENTATION PLAN

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

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

If it is determined that the HACC serves very few LEP persons, and the HACC has very limited resources, the HACC will not develop a written LEP plan, but will consider alternative ways to articulate in a reasonable manner a plan for providing meaningful access. Entities having significant contact with LEP persons, such as schools, grassroots and faith-based organizations, community groups, and groups working with new immigrants will be contacted for input into the process.

If the HACC determines it is appropriate to develop a written LEP plan, the following five steps will be taken:

- Identifying LEP individuals who need language assistance;
- Identifying language assistance measures;
- Training staff;
- Providing notice to LEP persons; and
- Monitoring and updating the LEP plan.

EXHIBIT 2-1: DEFINITION OF A PERSON WITH A DISABILITY UNDER FEDERAL CIVIL RIGHTS LAWS [24 CFR Parts 8.3 and 100.201]

A person with a disability, as defined under federal civil rights laws, is any person who:

- Has a physical or mental impairment that substantially limits one or more of the major life activities of an individual, or
- Has a record of such impairment, or
- Is regarded as having such impairment.

The phrase “physical or mental impairment” includes:

- Any physiological disorder or condition, cosmetic or disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or
- Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term “physical or mental impairment” includes, but is not limited to: such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

“Major life activities” includes, but is not limited to, caring for oneself, performing manual tasks, walking, seeing, hearing, breathing, learning, and/or working.

“Has a record of such impairment” means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

“Is regarded as having an impairment” is defined as having a physical or mental impairment that does not substantially limit one or more major life activities but is treated by a public entity (such as the HACC) as constituting such a limitation; has none of the impairments defined in this section but is treated by a public entity as having such an impairment; or has a physical or mental impairment that substantially limits one or more major life activities, only as a result of the attitudes of others toward that impairment.

The definition of a person with disabilities does not include:

- Current illegal drug users
- People whose alcohol use interferes with the rights of others
- Persons who objectively pose a direct threat or substantial risk of harm to others that cannot be controlled with a reasonable accommodation under the HCV program

The above definition of disability determines whether an applicant or participant is entitled to any of the protections of federal disability civil rights laws. Thus, a person who does not meet this disability definition is not entitled to a reasonable accommodation under federal civil rights and fair housing laws and regulations.

The HUD definition of a person with a disability is much narrower than the civil rights definition of disability. The HUD definition of a person with a disability is used for purposes of receiving the disabled family preference, the \$400 elderly/disabled household deduction, the \$480 dependent deduction, the allowance for medical expenses, or the allowance for disability assistance expenses.

The definition of a person with a disability for purposes of granting a reasonable accommodation is much broader than the HUD definition of disability. Many people will not qualify as a disabled person under the HCV program, yet an accommodation is needed to provide equal opportunity.

Chapter 3

ELIGIBILITY

INTRODUCTION

The HACC's objective is to uniformly apply the admission criteria to properly evaluate the eligibility of all applicants for the program. In making an eligibility determination the HACC staff will carefully review all information provided by the family. All applicants will be provided an opportunity to furnish additional information and to discuss and explain their circumstances with the HACC staff, as appropriate. As necessary, the family will receive a written explanation of the basis for any eligibility decision that is made.

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

To be eligible for the HCV program:

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

This chapter contains three parts:

Part I: Definitions of Family and Household Members. This part contains HUD and the HACC definitions of family and household members and explains initial and ongoing eligibility issues related to these members.

Part II: Basic Eligibility Criteria. This part discusses income eligibility and rules regarding citizenship, social security numbers, and family consent.

Part III: Denial of Assistance. This part covers factors related to an applicant's past or current conduct that can cause the HACC to deny assistance.

PART I: DEFINITIONS OF FAMILY AND HOUSEHOLD MEMBERS

3-I.A. OVERVIEW

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

3-I.B. FAMILY AND HOUSEHOLD

The terms *family* and *household* have different meanings in the HCV program. Information on this topic can be found at **24 CFR 982.201c and in the HUD-50058 IB, p. 13.**

Family

Family, as defined by HUD, includes a family with a child or children, two or more elderly or disabled persons living together, one or more elderly or disabled persons living with one or more live-in aides, or a single person. A single person family may be an elderly person, a disabled person, or any other single person. A family also includes two or more individuals who are not related by blood, marriage, adoption, or other operation of law, but who can demonstrate that they have either lived together previously or certify that each individual's income and other resources will be available to meet the needs of the family. The HACC 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 of application and must update this information if the family's composition changes.

Household

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

3-I.C. FAMILY BREAK-UP AND REMAINING MEMBER OF TENANT FAMILY

Family Break-up [24 CFR 982.315]

The HACC has discretion to determine which members of an assisted family continue to receive assistance if the family breaks up. However, if a court determines the disposition of property between members of the assisted family in a divorce or separation decree, the HACC is bound by the court's determination of which family members continue to receive assistance.

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. The original HOH from the initial application will retain the original application date. Other former family members may make a new application with a new application date if the waiting list is open.

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

agreement among the original family members, the HACC will determine which family will continue to receive assistance taking into consideration the following factors:

- The interest of any minor children, including custody arrangements,
- The interest of any ill, elderly, or disabled family members,
- Any possible risks to family members as a result of domestic violence or criminal activity, and
- The recommendations of social service professionals.

If the HOH becomes permanently absent due to non-voluntary reasons, such as death, placement in a nursing home, etc., then a new HOH may be established. If the HOH becomes permanently absent due to voluntary reasons, such as marriage, moving out of state, or no longer needing assistance for himself, then a new HOH may not be established. The HACC has no obligation to assist remaining family members when the head of household dies or leaves the assisted unit. Such cases will be reviewed and a determination will be made on a case by case basis.

Remaining Member of a Tenant Family [24 CFR 5.403]

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

If dependents are the only “remaining members of a tenant family” and there is no family member able to assume the responsibilities of the head of household, see Chapter 6, Section 6-I.B, for the policy on “Caretakers for a Child.”

3-I.D. HEAD OF HOUSEHOLD

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 head of household must have the legal capacity to enter into a lease under state and local law. The family may designate any qualified family member as the head of household at the time of admission or at the time of family break up [24 CFR 5.504(b)].

3-I.E. SPOUSE, CO-HEAD, AND OTHER ADULT

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

Spouse means the marriage partner of the head of household. A *marriage partner* includes the partner in a "common law" marriage as defined in state law. The term “spouse” does not apply to friends, roommates, or significant others who are not marriage partners.

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.

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

3-I.F. DEPENDENT

A *dependent* is a family member who is under 18 years of age or a person of any age who is a person with a disability or a full-time student, except that the following persons can never be dependents: the head of household, spouse, co-head, foster children/adults and live-in aides [24 CFR 5.603]. Identifying each dependent in the family is important because each dependent qualifies the family for a deduction from annual income as described in Chapter 6.

Joint Custody of Dependents

Dependents that are subject to a joint custody arrangement will be considered a member of the family if they can document they live with the applicant or participant family more than 50 percent of the time.

When more than one applicant or participant family is claiming the same dependents as family members, the family with primary custody at the time of the initial examination or reexamination will be able to claim the dependents. If there is a dispute about which family should claim them, the HACC will make the determination based on available documents such as court orders, or an IRS return showing which family has claimed the child for income tax purposes.

For dependents not born to, adopted by or awarded to the custody of the head of household or other family member, the family must submit documentation showing that the dependent's custody is approved by the biological parent, documentation showing the dependent resides in the subsidized unit, and/or self-certification that the custody cannot be approved by the biological parent and the reason for the lack of approval. The head of household must certify that all income for the dependent will be used to calculate the household income and family rent portion in accordance with HUD requirements.

3-I.G. FULL-TIME STUDENT

A *full-time student* (FTS) is a person who is attending school or vocational training on a full-time basis. The time commitment or subject load that is needed to be full-time is defined by the educational institution [24 CFR 5.603; HCV GB, p. 5-29].

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

3-I.H. ELDERLY AND NEAR-ELDERLY PERSONS, AND ELDERLY FAMILY

Elderly Persons

An *elderly person* is a person who is at least 62 years of age [24 CFR 5.100 and 5.403].

Near-Elderly Persons

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

Elderly Family

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

3-I.I. PERSONS WITH DISABILITIES AND DISABLED FAMILY

Persons with Disabilities

Under the HCV program, special rules apply to persons with disabilities and to any family whose head, spouse, or co-head is a person with disabilities. The technical definitions of persons with disabilities are provided in Exhibit 3-1 at the end of this chapter. These definitions are used for a number of purposes including ensuring that persons with disabilities are not discriminated against based upon disability [24 CFR 5.403].

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

Disabled Family

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

Even though persons with drug or alcohol dependencies are considered persons with disabilities for the purpose of non-discrimination, this does not prevent the HACC from denying assistance for reasons related to alcohol and drug abuse following policies found in Part III of this chapter or from terminating assistance following the policies in Chapter 12.

3-I.J. GUESTS

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 [24 CFR 5.100].

A guest can remain in the assisted unit no more than 21 days during the lease term.

Children who are subject to a joint custody arrangement or for whom a family has visitation privileges, that are not included as a family member because they live outside of the assisted household more than 50 percent of the time, are not subject to the time limitations of guests as described above. The family must provide proof of the custody arrangement.

A family may request an exception to this policy for valid reasons (e.g., care of a relative recovering from a medical procedure that is expected to last 40 consecutive days). An exception will not be made unless the family can identify and provide documentation of the residence to which the guest will return.

3.I.K. 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].

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. There is no reference to a definition for *foster child* in the regulations.

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

A foster child or foster adult may be allowed to reside in the unit if their presence would not result in a violation of HQS space standards according to 24 CFR 982.401. If their presence would cause a violation of HQS, the addition may not be approved. The same HACC voucher subsidy standards apply to foster children/adults as to the regular HCV Program. Separate bedrooms may not be allocated for foster children/adults.

Children that are temporarily absent from the home as a result of placement in foster care are discussed in Section 3-I.L.

3-I.L. ABSENT FAMILY MEMBERS

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

Definitions of Temporarily and Permanently Absent

Generally an individual who is or is expected to be absent from the assisted unit for 180 days or less in any 12 month period is considered temporarily absent and continues to be considered a family member. Generally an individual who is or is expected to be absent from the assisted unit for more than 180 days in any 12 month period 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 the HACC indicating that the student has established a separate household or the family declares that the student has established a separate household. This does not, however, apply to a family with a sole family member. Sole member families may not attend school away from home; they must use the subsidized unit as their only residence.

Absences Due to Placement in Foster Care

Children temporarily absent from the home as a result of placement in foster care are considered members of the family [24 CFR 5.403].

If a child has been placed in foster care, the HACC 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 for twenty-four (24) months after placement. After twenty-four (24) months, the child will be considered permanently absent and will be removed from the household.

The family is responsible for providing the status of the child's absence at the annual recertification of eligibility.

Absent Head, Spouse, or Co-head

An employed head, spouse, or co-head absent from the unit more than 180 days due to employment will continue to be considered a family member and his/her income will be included when determining household income.

The family must notify the HACC within 30 days of the determination that his/her absence will be longer than 180 days with the estimated return date. The family is responsible to notify the HACC with any changes in the return date and/or if the absence becomes permanent. If the head of household is the sole member of the family, then the absence may not be longer than 180 days.

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 [HCV GB, p. 5-22].

The HACC 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 HACC approval for the return of any family members that the HACC has determined to be permanently absent. The individual is subject to the eligibility and screening requirements discussed elsewhere in this chapter. Head of households previously determined to be permanently absent will not be eligible to return to the household. The HACC may also prohibit the return of any other previous family members.

3-I.M. LIVE-IN AIDE

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

A live-in aide is a member of the household, not the family, and the income of the aide is not considered in income calculations [24 CFR 5.609(b)]. While a relative may be considered to be a live-in aide, they must meet the above requirements, especially the last. 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.

A family's request for a live-in aide must be made in writing. Written verification will be required from a reliable, knowledgeable professional, such as a doctor, social worker, or case worker, that the live-in aide is essential for the care and well-being of the elderly, near-elderly, or disabled family member. If the live-in aide works outside of the household, the work schedule should not conflict with the hours of care needed. The HACC will re-verify annually the continued need for the live-in aide, unless the initial request states the need for the live-in aide is permanent.

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.

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

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

- The person commits fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
- The person commits drug-related criminal activity or violent criminal activity; or
- The person currently owes rent or other amounts to the HACC or to another PHA in connection with HCV or public housing assistance under the 1937 Act.
- Additionally, the HACC will not approve an unauthorized person residing in the assisted unit as a live-in aide.

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

PART II: BASIC ELIGIBILITY CRITERIA

3-II.A. INCOME ELIGIBILITY AND TARGETING

Income Limits

HUD is required by law to set income limits that determine the eligibility of applicants for HUD's assisted housing programs, including the housing choice voucher program. The income limits are published annually and are based on HUD estimates of median family income in a particular area or county, with adjustments for family size. It is the responsibility of the head of household to report all sources of household income. The HACC will use the guidelines in Chapter 6 to identify included and excluded income sources.

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

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

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

Extremely low-income family. A family whose annual income does not exceed the higher of 30 percent of the median income for the area or the federal poverty level, adjusted for family size. The HACC does not have to research the federal poverty level as the HUD issued ELI dollar amounts are calculated in accordance with this definition.

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

Using Income Limits for Eligibility [24 CFR 982.201]

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

- A *very low-income* family.
- A *low-income* family that 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].
- 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 who is unable to work due to age or disability.

- A low income family who is applying for PBV rental assistance in an LIHTC community whose income limit is 60%.
- A low income family who is applying for assistance under a targeted funding program, such as VASH, FUP, SPC, NED, FLOW, or PSH where supportive services are provided to help stabilize the family or promote self-sufficiency.

HUD permits the HACC to establish additional categories of low-income families that may be determined eligible. The last three bullet points above are examples of additional categories. The HACC will limit these three categories in new admissions to 10% of its annual turnover.

Using Income Limits for Targeting [24 CFR 982.201]

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

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

3-II.B. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS

Housing assistance is available only to individuals who are U.S. citizens, U.S. nationals (herein referred to as citizens and nationals), or noncitizens that have eligible immigration status. At least one family member must be a citizen, national, or noncitizen with eligible immigration status in order for the family to qualify for any level of assistance [24 CFR 5, Subpart E].

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

Declaration [24 CFR 5.508]

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

U.S. Citizens and Nationals

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

of their status, such as a passport. The HACC may require family members who declare citizenship or national status to provide additional documentation such as a government issued and valid ID or other certification.

Eligible Noncitizens

In addition to providing a signed declaration, those declaring eligible noncitizen status must sign a verification consent form and cooperate with PHA efforts to verify their immigration status as described in Chapter 7. The documentation required for establishing eligible noncitizen status varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, the person's age, and the date on which the family began receiving HUD-funded assistance.

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

Ineligible Noncitizens

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

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

Mixed Families

A family is eligible for assistance as long as at least one member is a citizen, national, or eligible noncitizen. Families that include eligible and ineligible individuals are considered *mixed families*. Such families will be given notice that their assistance will be prorated and that they may request a hearing if they contest this determination. See Chapter 6 for a discussion of how rents are prorated, and Chapter 16 for a discussion of informal hearing procedures.

Ineligible Families

The HACC will not provide assistance to a family before the verification of the eligibility of the individual or one family member [24 CFR 5.514(d), (e), and (f)]. Verification of eligibility for this purpose occurs when the individual or family members have submitted documentation to the HACC in accordance with program requirements [24 CFR 5.512(a)].

When the HACC 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 notice of Denial of Assistance within 15 business days of the determination.

The 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 review (procedures discussed in Chapter 16) with the HACC. The informal review with the HACC 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 review process.

Timeframe for Determination of Citizenship Status

For new occupants joining the assisted family, the HACC will verify status at the time the request is made to add the individual to the family [24 CFR 5.508(g)].

If an individual qualifies for a time extension for the submission of required documents, the HACC 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.

3-II.C. SOCIAL SECURITY NUMBERS

Every family member must provide documentation of a valid Social Security Number (SSN). Assistance cannot be provided to a family until all SSN documentation requirements are met. A detailed discussion of acceptable documentation is provided in Chapter 7.

Addition of new household member who is at least 6 years of age or under the age of 6 and has an assigned SSN: When the participant requests to add a new household member to the family who is at least 6 years of age, or is under the age of 6 and has an assigned SSN, the participant must provide the documentation to the HACC at the time of the request, or at the time of processing the interim reexamination or recertification of family composition that includes the new member(s) [24 CFR 5.216 (i)]

Addition of new household member who is under the age of 6 and has no assigned SSN: When a participant requests to add a new household member who is under the age of 6 and has not been assigned an SSN, the participant must be required to provide the complete and accurate SSN and the documentation to verify the SSN for each new child within 90 calendar days of the child being added to the household. [24 CFR 5.216 (ii)]

If any member of the family obtains a previously undisclosed SSN, or has been assigned a new SSN, the documentation must be submitted at the family's next regularly scheduled reexamination. The HACC must deny assistance to an applicant family if they do not meet the SSN disclosure, documentation and verification, and certification requirements contained in 24 CFR 5.216.

3-II.D. FAMILY CONSENT TO RELEASE OF INFORMATION

HUD requires each adult family member, and the head of household, spouse, or co-head, regardless of age, to sign form HUD-9886 Authorization for the Release of Information/Privacy Act Notice, and other consent forms as needed to collect information relevant to the family's eligibility and level of assistance [24 CFR 5.230]. Chapter 7 provides detailed information concerning the consent forms and verification requirements.

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

3-II.E. STUDENTS ENROLLED IN INSTITUTIONS OF HIGHER EDUCATION

Section 327 of Public Law 109-115 and the implementing regulation at 24 CFR 5.612 established new restrictions on the eligibility of certain students (both part- and full-time) who are enrolled in institutions of higher education [24 CFR 5.612 and FR Notice 4/10/06].

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, and does not have a dependent child, 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 the HACC's policy (see following page for the HACC definition), the income of the student's parents will not be considered in determining the student's eligibility.

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

Definitions

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

Dependent Child

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

Independent Student

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

- A. The individual is of legal contract age under state law.

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

The HACC will verify that a student meets the above criteria in accordance with the policies in Section 7-II.E. If the student is determined eligible and will be the sole family member, the student must use the subsidized unit as his/her only residence.

Institution of Higher Education

The HACC will use the statutory definition under section 102 of the Higher Education Act of 1965 to determine whether a student is attending an *institution of higher education* (see Exhibit 3-2).

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 (e.g., grandparents, aunt/uncle, godparents, etc.).

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.

Determining Student Eligibility

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

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

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

If the HACC determines that the student, the student's parents (if applicable), or the student's "family" is not eligible, the HACC will send a notice of denial in accordance with the policies in Section 3-III.F, and the applicant family will have the right to request an informal review in accordance with the policies in Section 16-III.B.

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* in this section, the HACC will determine the income eligibility of the student's parents as follows:

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

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

PART III: DENIAL OF ASSISTANCE

3-III.A. OVERVIEW

A family that does not meet the eligibility criteria discussed in Parts I and II must be denied assistance.

In addition, HUD requires the HACC to deny assistance based on certain types of current or past behaviors of family members, but also permits the HACC, if it chooses, to deny assistance based on other types of current or past behavior of family members.

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
- Refusing to enter into a HAP contract or approve a lease
- Refusing to process a request for or to provide assistance under portability procedures

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

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

- Age, disability, race, color, religion, sex, or national origin. (See Chapter 2 for additional information about fair housing and equal opportunity requirements.)
- Where a family lives prior to admission to the program
- Where the family will live with assistance under the program. Although eligibility is not affected by where the family will live, there may be restrictions on the family's ability to move outside the HACC's jurisdiction (See Chapter 10, Portability.)
- 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 has been a victim of domestic violence, dating violence, or stalking

3-III.B. MANDATORY DENIAL OF ASSISTANCE

HUD requires the HACC to deny assistance in the following cases [24 CFR 982.553(a)]:

- Any member of the household has been evicted from federally-assisted housing in the last 3 years for drug-related criminal activity. HUD permits, but does not require, the HACC to admit an otherwise-eligible family if the household member has completed a HACC-

approved drug rehabilitation program or the circumstances which led to eviction no longer exist (e.g., the person involved in the criminal activity no longer lives in the household).

The HACC will admit an otherwise-eligible family who was evicted from federally-assisted housing within the past 3 years for drug-related criminal activity, if the HACC is able to verify that the household member who engaged in the criminal activity has completed a supervised drug rehabilitation program approved by the HACC or the person who committed the crime is no longer living in the household. If the person is no longer residing in the unit, the family must supply evidence of the current address.

- The HACC determines that any household member is currently engaged in the use of illegal drugs. *Currently engaged in* is defined as any use of illegal drugs during the previous twelve (12) months.
- The HACC 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. In determining reasonable cause, the HACC will consider all credible evidence, including but not limited to, any record of convictions, conduct underlying arrests, or evictions of household members related to the use of illegal drugs or the abuse of alcohol. A conviction will be given more weight than an arrest. The HACC will also consider evidence from treatment providers or community-based organizations providing services to household members.
- Any household member has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine on the premises of federally assisted housing
- Any household member is subject to a lifetime registration requirement under a state sex offender registration program

3-III.C. OTHER PERMITTED REASONS FOR DENIAL OF ASSISTANCE

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

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 the possession of a drug with intent to manufacture, sell, or distribute [24 CFR 5.100].
 - For simple possession of cannabis, the HACC will review the activity within the last years.

- *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].
- 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 (within a three-block radius of the premises); or
- Criminal activity that may threaten the health or safety of property owners and management staff and persons performing contract administration functions or other responsibilities on behalf of the HACC (including a HACC employee or a HACC contractor, subcontractor, or agent)

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

- Any conviction for drug-related or violent criminal activity within the past 3 years (1 year for possession of cannabis)
- Any conduct underlying arrests and evidence that the household member engaged in the conduct for drug-related or violent criminal activity within the past 3 years
- Any record of eviction from public or privately-owned housing as a result of criminal activity within the past 3 years
- A conviction for drug-related or violent criminal activity will be given more weight than the conduct underlying an arrest for such activity.

In making its decision to deny assistance, the HACC will consider the factors discussed in Section 3-III.E. In considering the factors, the HACC will look at the release from prison date, the arrest date, and the conviction date. Upon consideration of such factors, the HACC may, on a case-by-case basis, decide not to deny assistance.

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

HUD authorizes the HACC to deny assistance based on the family's previous behavior in assisted housing. The HACC **will** deny assistance to an applicant family if:

- The family does not provide information that the HACC or HUD determines is necessary in the administration of the program.
- The family does not provide complete and true information to the HACC.
- Any family member has been evicted from federally-assisted housing in the last three years, unless the circumstances that lead to the eviction no longer exist. For example, a member of the current household resided with a household that was evicted, but had nothing to do with the reason the household was evicted.

- Any PHA has ever terminated assistance under the program for any member of the family, unless the circumstances that lead to the termination no longer exist. For example, a member of the current household resided with a household whose assistance was terminated, but had nothing to do with the reason the assistance was terminated.
- Any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.
- The family owes rent or other amounts to any PHA in connection with the HCV, PBV, Certificate, Moderate Rehabilitation or public housing programs, unless the family repays the full amount of the debt prior to being selected from the waiting list or has entered into a repayment agreement with the PHA and has been making timely payments.
- The family has breached the terms of a repayment agreement entered into with the HACC or any PHA, unless the family repays the full amount of the debt covered in the repayment agreement prior to being selected from the waiting list.
- A family member has engaged in or threatened violent or abusive behavior toward PHA personnel.

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

In making its decision to deny assistance, the HACC will consider the factors discussed in Section 3-III.E. Upon consideration of such factors, the HACC may, on a case-by-case basis, decide not to deny assistance.

The HACC **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 or the Welfare to Work voucher program.

3-III.D. SCREENING

Screening for Eligibility

PHAs are authorized to obtain criminal conviction records from law enforcement agencies or other reputable screening companies to screen applicants for admission to the HCV program. This authority assists the HACC in complying with HUD requirements and PHA policies to deny assistance to applicants who are engaging in or have engaged in certain criminal activities. In order to obtain access to the records the HACC must require every applicant family to submit a consent form signed by each adult household member [24 CFR 5.903].

The HACC will perform a criminal background check for every adult household member age 18 and older at the time of admission to the program and when the family makes a request to add an adult family member to the household at any time during their participation in the program. The

HACC may perform a criminal background check for every adult household member age 18 and older once every five (5) years at annual recertification. Additionally, the HACC will perform criminal background checks on participants if the HACC has knowledge or reason to believe that a member of the household has engaged in criminal activity.

If the results of the criminal background check indicate that there may be past criminal activity, but the results are inconclusive, the HACC may request a fingerprint card and may request information from the National Crime Information Center (NCIC).

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

If the HACC proposes to deny assistance based on a criminal record or on lifetime sex offender registration information, the HACC 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 final denial of admission. [24 CFR 5.903(f) and 5.905(d)].

Screening for Suitability as a Tenant

The HACC has no liability or responsibility to the owner for the family's behavior or suitability for tenancy. The HACC will not conduct additional screening to determine an applicant family's suitability for tenancy.

The owner is responsible for screening and selection of the family to occupy the owner's unit. The HACC must inform the owner that screening and selection for tenancy is the responsibility of the owner. An owner may consider a family's history with respect to factors such as: payment of rent and utilities, caring for a unit and premises, respecting the rights of other residents to the peaceful enjoyment of their housing, criminal activity that is a threat to the health, safety or property of others, and compliance with other essential conditions of tenancy.

HUD requires PHAs to provide prospective owners, upon written request from the prospective owner, with the family's current and prior address (as shown in PHA records) and the name and address (if known) of the owner at the family's current and prior addresses. The HACC will not provide any additional information to the owner, such as tenancy history, criminal history, etc.

3-III.E. CRITERIA FOR DECIDING TO DENY ASSISTANCE

Evidence [24 CFR 982.553(c)]

The HACC 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.

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

HUD authorizes the HACC 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 Section 3-III.B).

The HACC 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 section 3-III.G) a victim of domestic violence, dating violence, or stalking
- The length of time since the violation occurred, the family's recent history and the likelihood of favorable conduct in the future
- In the case of drug or alcohol abuse, whether the culpable household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully. The HACC will require the applicant to submit evidence of the household member's current participation in or successful completion of a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

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

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

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 HACC's request.

The HACC will not remove a household member with income who voluntarily leaves the household after the HACC has determined the family's income exceeds the income limits for admission and has sent a denial letter to the applicant. In the case where a family who has members who are removed from the household as a result of death, admission to a nursing home,

incarceration or other involuntary reasons, the HACC may reevaluate the family's eligibility even if a denial had been made for exceeding the income limits.

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

If the family includes a person with disabilities, the HACC'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, the HACC will determine whether the behavior is related to the disability. If so, upon the family's request, the HACC will determine whether alternative measures are appropriate as a reasonable accommodation. The HACC will only consider accommodations that can reasonably be expected to address the behavior that is the basis of the proposed denial of assistance. See Chapter 2 for a discussion of reasonable accommodation.

3-III.F. NOTICE OF ELIGIBILITY OR DENIAL

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

If the HACC determines that a family is not eligible for the program for any reason, the family will be notified within 15 business days. The notice must describe: (1) the reasons for which assistance has been denied, (2) the family's right to an informal review, and (3) the process for obtaining the informal review [24 CFR 982.554 (a)]. See Chapter 16, for informal review policies and procedures.

If based on a criminal record or sex offender registration information an applicant family appears to be ineligible, the HACC 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. If the family does not contact the HACC to dispute the information within that 15-day period, the HACC 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 Section 3-II.B.

Notice policies related to denying admission to applicants who may be victims of domestic violence, dating violence, or stalking are contained in Section 3-III.G.

3-III.G. PROHIBITION AGAINST DENIAL OF ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, AND STALKING

The Violence Against Women Reauthorization Act (VAWA) [Pub.L. 109-162] prohibits denial of admission to an otherwise qualified applicant on the basis that the applicant is or has been a victim of domestic violence, dating violence, or stalking. Specifically, Section 606(1) of VAWA

adds the following provision to Section 8 of the U.S. Housing Act of 1937, which lists contract provisions and requirements for the housing choice voucher program:

- That an applicant or participant is or has been a victim of domestic violence, dating violence, or stalking is not an appropriate reason for denial of program assistance or for denial of admission if the applicant otherwise qualifies for assistance or admission.

Definitions

As used in VAWA:

- The term domestic violence includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.
- The term *dating violence* means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim and where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - The length of the relationship
 - The type of relationship
 - The frequency of interaction between the persons involved in the relationship
- The term *stalking* means:
 - To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate; or
 - To place under surveillance with the intent to kill, injure, harass, or intimidate another person; and
 - In the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (1) that person, (2) a member of the immediate family of that person, or (3) the spouse or intimate partner of that person.
- The term *immediate family member* means, with respect to a person:
 - A spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in the position or place of a parent; or
 - Any other person living in the household of that person and related to that person by blood or marriage.

Notification and Victim Documentation

The HACC acknowledges that a victim of domestic violence, dating violence, or stalking may have an unfavorable history that would warrant denial under the HACC's policies. Therefore, if the HACC makes a determination to deny admission to an applicant family, the HACC will

include in its notice of denial a statement of the protection against denial provided by VAWA and will offer the applicant the opportunity to provide documentation affirming that the cause of the unfavorable history is that a member of the applicant family is or has been a victim of domestic violence, dating violence, or stalking.

The documentation must include one of the following elements:

- 1) A signed statement by the victim that provides the name of the perpetrator and certifies that the incidents in question are bona fide incidents of actual or threatened domestic violence, dating violence, or stalking, **or**
- 2) A police or court record documenting the actual or threatened abuse, **or**
- 3) A statement signed by an employee, agent, or volunteer of a victim service provider; an attorney; a medical professional; or another knowledgeable professional from whom the victim has sought assistance in addressing the actual or threatened abuse. The professional must attest under penalty of perjury that the incidents in question are bona fide incidents of abuse, and the victim must sign or attest to the statement.

The applicant must submit the required documentation with her or his request for an informal review (see section 16-III.D) or must request an extension in writing at that time. If the applicant so requests, the HACC will grant an extension of 15 business days and will postpone scheduling the applicant's informal review until after it has received the documentation or the extension period has elapsed. If, after reviewing the documentation provided by the applicant, the HACC determines the family is eligible for assistance, no informal review will be scheduled and the HACC will proceed with admission of the applicant family.

Perpetrator Removal or Documentation of Rehabilitation

In cases where an applicant family includes the perpetrator as well as the victim of domestic violence, dating violence, or stalking, the HACC will proceed as above but will require, in addition, either (a) that the perpetrator be removed from the applicant household and not reside in the assisted housing unit or (b) that the family provide documentation that the perpetrator has successfully completed, or is successfully undergoing, rehabilitation or treatment.

If the family elects the second option, the documentation must be signed by an employee or agent of a domestic violence service provider or by a medical or other knowledgeable professional from whom the perpetrator has sought or is receiving assistance in addressing the abuse. The signer must attest under penalty of perjury to his or her belief that the rehabilitation was successfully completed or is progressing successfully. The victim and perpetrator must also sign or attest to the documentation. This additional documentation must be submitted within the same time frame as the documentation required above from the victim.

The HACC Confidentiality Requirements

All information provided to the HACC regarding domestic violence, dating violence, or stalking, including the fact that an individual is a victim of such violence or stalking, must be retained in confidence and may neither be entered into any shared database nor provided to any related entity, except to the extent that the disclosure (a) is requested or consented to by the individual in

writing, (b) is required for use in an eviction proceeding, or (c) is otherwise required by applicable law.

EXHIBIT 3-1: DETAILED DEFINITIONS RELATED TO DISABILITIES

Person with Disabilities [24 CFR 5.403]

The term *person with disabilities* means a person who has any of the following types of conditions:

- Has a disability, as defined in 42 U.S.C. Section 423(d)(1)(A), which reads:

Inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months; *or*

In the case of an individual who has attained the age of 55 and is blind (within the meaning of “blindness” as defined in section 416(i)(1) of this title), inability by reason of such blindness to engage in substantial gainful activity, requiring skills or ability comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time.

- Has a developmental disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C.15002(8)], which defines developmental disability in functional terms as follows:

(A) In General

The term “developmental disability” means a severe, chronic disability of an individual that:

- (i) is attributable to a mental or physical impairment or combination of mental and physical impairments;
- (ii) is manifested before the individual attains age 22;
- (iii) is likely to continue indefinitely;
- (iv) results in substantial functional limitations in 3 or more of the following areas of major life activity: (I) Self-care, (II) Receptive and expressive language, (III) Learning, (IV) Mobility, (V) Self-direction, (VI) Capacity for independent living, (VII) Economic self-sufficiency; and
- (v) reflects the individual’s need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

(B) Infants and Young Children

An individual from birth to age 9, inclusive, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting 3 or more of the criteria described in clauses (i) through (v) of subparagraph (A) if the individual, without services and supports, has a high probability of meeting those criteria later in life.

- Has a physical, mental, or emotional impairment that is expected to be of long-continued and indefinite duration; substantially impedes his or her ability to live independently, and is of such a nature that the ability to live independently could be improved by more suitable housing conditions.

People with the acquired immunodeficiency syndrome (AIDS) or any conditions arising from the etiologic agent for AIDS are not excluded from this definition.

A person whose disability is based solely on any drug or alcohol dependence does not qualify as a person with disabilities for the purposes of this program.

For purposes of reasonable accommodation and program accessibility for persons with disabilities, the term person with disabilities refers to an individual with handicaps.

Individual with Handicaps [24 CFR 8.3]

Individual with handicaps means any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment or is regarded as having such impairment. The term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the individual from participating in the program or activity in question, or whose participation, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others. As used in this definition, the phrase:

(1) Physical or mental impairment includes:

- (a) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or
- (b) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

(2) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

- (3) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.
- (4) *Is regarded as having an impairment* means:
 - (a) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by a recipient as constituting such a limitation;
 - (b) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or
 - (c) Has none of the impairments defined in paragraph (1) of this section but is treated by a recipient as having such an impairment.

EXHIBIT 3-2: DEFINITION OF INSTITUTION OF HIGHER EDUCATION [20 U.S.C. 1001 and 1002]

Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Supplementary Guidance; Notice [Federal Register, April 10, 2006]

Institution of Higher Education shall have the meaning given this term in the Higher Education Act of 1965 in 20 U.S.C. 1001 and 1002.

Definition of “Institution of Higher Education” From 20 U.S.C. 1001

- (a) Institution of higher education. For purposes of this chapter, other than subchapter IV and part C of subchapter I of chapter 34 of Title 42, the term “institution of higher education” means an educational institution in any State that
 - (1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;
 - (2) Is legally authorized within such State to provide a program of education beyond secondary education;
 - (3) Provides an educational program for which the institution awards a bachelor’s degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree;
 - (4) Is a public or other nonprofit institution; and
 - (5) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted pre-accreditation status by such an agency or association that has been recognized by the Secretary for the granting of pre-

accreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

- (b) Additional institutions included. For purposes of this chapter, other than subchapter IV and part C of subchapter I of chapter 34 of Title 42, the term “institution of higher education” also includes:
 - (1) Any school that provides not less than a 1-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provision of paragraphs (1), (2), (4), and (5) of subsection (a) of this section; and
 - (2) A public or nonprofit private educational institution in any State that, in lieu of the requirement in subsection (a)(1) of this section, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.
- (c) List of accrediting agencies. For purposes of this section and section 1002 of this title, the Secretary shall publish a list of nationally recognized accrediting agencies or associations that the Secretary determines, pursuant to subpart 2 of part G of subchapter IV of this chapter, to be reliable authority as to the quality of the education or training offered.

Definition of “Institution of Higher Education” From 20 U.S.C. 1002

- (a) Definition of institution of higher education for purposes of student assistance programs
 - (1) Inclusion of additional institutions. Subject to paragraphs (2) through (4) of this subsection, the term “institution of higher education” for purposes of subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 includes, in addition to the institutions covered by the definition in section 1001 of this title—
 - (A) A proprietary institution of higher education (as defined in subsection (b) of this section);
 - (B) A postsecondary vocational institution (as defined in subsection (c) of this section); and
 - (C) Only for the purposes of part B of subchapter IV of this chapter, an institution outside the United States that is comparable to an institution of higher education as defined in section 1001 of this title and that has been approved by the Secretary for the purpose of part B of subchapter IV of this chapter.
 - (2) Institutions outside the United States
 - (A) In general - For the purpose of qualifying as an institution under paragraph (1)(C), the Secretary shall establish criteria by regulation for the approval of institutions outside the United States and for the determination that such institutions are comparable to an institution of higher education as defined in section 1001 of this title (except that a

graduate medical school, or a veterinary school, located outside the United States shall not be required to meet the requirements of section 1001 (a)(4) of this title). Such criteria shall include a requirement that a student attending such school outside the United States is ineligible for loans made, insured, or guaranteed under part B of subchapter IV of this chapter unless—

(i) In the case of a graduate medical school located outside the United States—

(I)(aa) At least 60 percent of those enrolled in, and at least 60 percent of the graduates of, the graduate medical school outside the United States were not persons described in section 1091(a)(5) of this title in the year preceding the year for which a student is seeking a loan under part B of subchapter IV of this chapter; and

(bb) At least 60 percent of the individuals who were students or graduates of the graduate medical school outside the United States or Canada (both nationals of the United States and others) taking the examinations administered by the Educational Commission for Foreign Medical Graduates received a passing score in the year preceding the year for which a student is seeking a loan under part B of subchapter IV of this chapter; or

(II) The institution has a clinical training program that was approved by a State as of January 1, 1992; or

(ii) In the case of a veterinary school located outside the United States that does not meet the requirements of section 1001(a)(4) of this title, the institution's students complete their clinical training at an approved veterinary school located in the United States.

(B) Advisory panel

(i) In general - For the purpose of qualifying as an institution under paragraph (1)(C) of this subsection, the Secretary shall establish an advisory panel of medical experts that shall—

(I) Evaluate the standards of accreditation applied to applicant foreign medical schools; and

(II) Determine the comparability of those standards to standards for accreditation applied to United States medical schools.

(ii) Special rule if the accreditation standards described in clause (i) are determined not to be comparable, the foreign medical school shall be required to meet the requirements of section 1001 of this title.

(C) Failure to release information - The failure of an institution outside the United States to provide, release, or authorize release to the Secretary of such information as may

be required by subparagraph (A) shall render such institution ineligible for the purpose of part B of subchapter IV of this chapter.

(D) Special rule - If, pursuant to this paragraph, an institution loses eligibility to participate in the programs under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, then a student enrolled at such institution may, notwithstanding such loss of eligibility, continue to be eligible to receive a loan under part B while attending such institution for the academic year succeeding the academic year in which such loss of eligibility occurred.

(3) Limitations based on course of study or enrollment - An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution:

(A) Offers more than 50 percent of such institution's courses by correspondence, unless the institution is an institution that meets the definition in section 2471 (4)(C) of this title;

(B) Enrolls 50 percent or more of the institution's students in correspondence courses, unless the institution is an institution that meets the definition in such section, except that the Secretary, at the request of such institution, may waive the applicability of this subparagraph to such institution for good cause, as determined by the Secretary in the case of an institution of higher education that provides a 2-or 4-year program of instruction (or both) for which the institution awards an associate or baccalaureate degree, respectively;

(C) Has a student enrollment in which more than 25 percent of the students are incarcerated, except that the Secretary may waive the limitation contained in this subparagraph for a nonprofit institution that provides a 2-or 4-year program of instruction (or both) for which the institution awards a bachelor's degree, or an associate's degree or a postsecondary diploma, respectively; or

(D) Has a student enrollment in which more than 50 percent of the students do not have a secondary school diploma or its recognized equivalent, and does not provide a 2-or 4-year program of instruction (or both) for which the institution awards a bachelor's degree or an associate's degree, respectively, except that the Secretary may waive the limitation contained in this subparagraph if a nonprofit institution demonstrates to the satisfaction of the Secretary that the institution exceeds such limitation because the institution serves, through contracts with Federal, State, or local government agencies, significant numbers of students who do not have a secondary school diploma or its recognized equivalent.

(4) Limitations based on management - An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if—

(A) The institution, or an affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management or policies of the institution, has filed for bankruptcy, except that this paragraph shall not apply to a

- nonprofit institution, the primary function of which is to provide health care educational services (or an affiliate of such an institution that has the power, by contract or ownership interest, to direct or cause the direction of the institution's management or policies) that files for bankruptcy under chapter 11 of title 11 between July 1, 1998, and December 1, 1998; or
- (B) The institution, the institution's owner, or the institution's chief executive officer has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, or has been judicially determined to have committed fraud involving funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.
- (5) Certification - The Secretary shall certify an institution's qualification as an institution of higher education in accordance with the requirements of subpart 3 of part G of subchapter IV of this chapter.
- (6) Loss of eligibility - An institution of higher education shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution is removed from eligibility for funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 as a result of an action pursuant to part G of subchapter IV of this chapter.

(b) Proprietary institution of higher education

- (1) Principal criteria - For the purpose of this section, the term "proprietary institution of higher education" means a school that:
- (A) Provides an eligible program of training to prepare students for gainful employment in a recognized occupation;
- (B) Meets the requirements of paragraphs (1) and (2) of section 1001 (a) of this title;
- (C) Does not meet the requirement of paragraph (4) of section 1001 (a) of this title;
- (D) Is accredited by a nationally recognized accrediting agency or association recognized by the Secretary pursuant to part G of subchapter IV of this chapter;
- (E) Has been in existence for at least 2 years; and
- (F) Has at least 10 percent of the school's revenues from sources that are not derived from funds provided under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, as determined in accordance with regulations prescribed by the Secretary.
- (2) Additional institutions - The term "proprietary institution of higher education" also includes a proprietary educational institution in any State that, in lieu of the requirement in paragraph (1) of section 1001 (a) of this title, admits as regular students persons who

are beyond the age of compulsory school attendance in the State in which the institution is located.

(c) Postsecondary vocational institution

(1) Principal criteria - For the purpose of this section, the term “postsecondary vocational institution” means a school that—

(A) Provides an eligible program of training to prepare students for gainful employment in a recognized occupation;

(B) Meets the requirements of paragraphs (1), (2), (4), and (5) of section 1001 (a) of this title; and

(C) Has been in existence for at least 2 years.

(2) Additional institutions - The term “postsecondary vocational institution” also includes an educational institution in any State that, in lieu of the requirement in paragraph (1) of section 1001 (a) of this title, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.

Chapter 4

APPLICATIONS, WAITING LIST AND TENANT SELECTION

INTRODUCTION

The HACC ensures that all families who express an interest in housing assistance are given an equal opportunity to apply to the waiting list when the waiting list is open. The HACC will treat all applicants in a fair and consistent manner. The HACC's objective is to ensure that applicants are placed on and maintained in the proper order on the waiting list so that an offer of assistance is not delayed to any applicant or made prematurely to any applicant.

Except for special admissions, applicants will be selected from the HACC waiting list in accordance with the HACC policies and preferences. The HACC will use a single waiting list for admission to its Housing Choice Voucher tenant-based assistance program. The HACC will maintain waiting list information that permits the HACC to select participants from the waiting list in accordance with the HACC admission policies.

When a family wishes to receive HCV assistance, and provided the wait list is open, the family must submit an application that provides the HACC with the information needed to determine the family's eligibility. HUD requires the HACC to place all families that apply for assistance on a waiting list, if the waiting list is open. When HCV assistance becomes available, the HACC must select families from the waiting list in accordance with HUD requirements and the HACC's policies as stated in the HACC's administrative plan and annual plan.

The HACC is required to adopt a clear approach to accepting applications, placing families on the waiting list, selecting families from the waiting list, and must follow this approach consistently. The actual order in which families are selected from the waiting list can be affected if a family has certain characteristics designated by HUD or the HACC 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 PHAs affirmatively further fair housing goals in the administration of the program [24 CFR 982.53]. Adherence to the selection policies described in this chapter ensures that HACC will be in compliance with all relevant fair housing requirements as described in Chapter 2.

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

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

Part II: Managing the Waiting List. This part presents the policies that govern how the HACC's waiting list is structured, when it is opened and closed, and how the public is

notified of the opportunity to apply for assistance. It also discusses the process the HACC will use to keep the waiting list current.

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

PART I: THE APPLICATION PROCESS

4-I.A. OVERVIEW

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

4-I.B. APPLYING FOR ASSISTANCE

Any family that wishes to receive HCV assistance must apply for admission to the program. HUD permits the HACC 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 the HACC.

1. The HACC will inform the public through newspaper or other public media that the waiting list is open. The notification may include the specific or limited type of assistance for which applications are being solicited. The HACC reserves the right to limit the number of applications that will be accepted.
2. Instructions for where, how, and when applications may be available will be outlined in the public notice. The HACC may choose a fully electronic process for opening the wait list.
3. Applications are the first step to being placed on the HACC Housing Choice Voucher waiting list.

4-I.C. ACCESSIBILITY OF THE APPLICATION PROCESS

Elderly and Disabled Populations [24 CFR 8]

The HACC 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 HACC application process. This could include people with disabilities, certain elderly individuals, as well as persons with limited English proficiency (LEP). The HACC must provide reasonable

accommodation to the needs of individuals with disabilities. The application-taking facility and the application process must be fully accessible or the HACC must provide an alternate approach that provides full access to the application process. Chapter 2 provides a full discussion of the HACC's policies related to providing reasonable accommodations for people with disabilities.

Limited English Proficiency

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

4-I.D. PLACEMENT ON THE WAITING LIST

The HACC must review each application received and make a preliminary assessment of the family's eligibility. Full eligibility at the time of application will not be determined. The HACC will review the information provided on the application at face value to determine whether the family is eligible for placement on the wait list.

The HACC must accept applications from families for whom the list is open unless there is good cause for not accepting the application (such as denial of assistance) for the grounds stated in the regulations [24 CFR 982.206(b)(2)]. Where the family is determined to be ineligible, the HACC must notify the family in writing [24 CFR 982.201(f)]. Where the family is determined to be eligible, the family will be placed on a waiting list of applicants. No applicant has a right or entitlement to be listed on the waiting list or to any particular position on the waiting list [24 CFR 982.202(c)].

APPLICATION PROCESSING

A. Distribution of Applications

1. Households who respond to the notice that the waiting list is open will complete an Application and submit it as outlined in the notice. This letter will also inform persons about the preferences and will indicate that all applicants will be given an opportunity to show that they qualify for a preference.
2. The letter will state that those persons qualifying for a preference may receive housing before any other applicant who is not so qualified.
3. In addition, the letter will inform all applicants that for those persons not claiming a preference, screening will be conducted according to the order in which the Applications are received or by lottery, whichever method is specified in the notice.
4. All submitted Applications will be tracked, indicating the time and date received if this is the method specified in the notice. If the process is electronic, the system will automatically time and date stamp the application. If the lottery method is used, then applications will be randomized according to the method specified in the notice. The Application computer log will indicate whether the applicant has claimed a preference or has requested a handicapped

accessible unit.

B. Processing Applications

1. Applications will be stored electronically in the HACC's system of records. Any preferences or special occupancy categories will be tracked in the system.
2. Applications will only be accepted when the wait list is open.

Ineligible for Placement on the Waiting List

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

The waiting list will contain, at a minimum, the following information for each applicant listed:

- Name and social security number of head of household
- Number of family members expected to reside in the unit
- Amount and source of annual income
- Accessibility requirement, if any
- Date and time of application or application number if the wait list was generated by lottery
- Household type (family, elderly, disabled)
- Admission preference, if any
- Race and ethnicity of the head of household

If this information is not provided by the family the application may be determined to be incomplete and may be rejected.

Eligible for Placement on the Waiting List

The HACC will review completed applications to determine preliminary eligibility based on the information provided on the application. Written notification, which may be in the form of email, will be sent to applicants whose applications have been determined to be ineligible within 30 business days of preliminary determination.

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.

PART II: MANAGING THE WAITING LIST

4-II.A. OVERVIEW

The HACC must have policies regarding various aspects of organizing and managing the waiting list of applicant families. This includes opening the list to new applicants, closing the list to new applicants, notifying the public of waiting list openings and closings, updating waiting list information, purging the list of families that are no longer interested in or eligible for assistance, as well as conducting outreach to ensure a sufficient number of applicants.

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

4-II.B. ORGANIZATION OF THE WAITING LIST

The HACC's HCV waiting list must be organized in such a manner to allow the HACC to accurately identify and select families for assistance in the proper order, according to the admissions policies described in this Plan [24 CFR 982.204 and 205].

HUD requires the HACC to maintain a single waiting list for the HCV program unless it serves more than one county or municipality, in which case it may maintain a separate list for each municipality.

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

HUD permits, but does not require, that PHAs maintain a single merged waiting list for their public housing, HCV, and other subsidized housing programs. The HACC will not merge the HCV waiting list with the waiting list for any other program the HACC operates.

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

4-II.C. OPENING AND CLOSING THE WAITING LIST

Closing the Waiting List

The HACC is permitted to close the waiting list if it has an adequate pool of families to use its available HCV assistance [24 CFR 982.206]. Alternatively, the HACC may elect to continue to accept applications only from certain categories of families that meet particular preferences or funding criteria.

The HACC opens the waiting list for a prescribed period of time or number of applications only. During that time, interested families can obtain the pre-application form as noted in the public solicitation that the waiting list is open. The pre-application must be mailed to a particular post office box established by the HACC or designee prior to the due date. If the pre-application is received after the due date, it will not be considered.

Reopening the Waiting List

The HACC will announce the reopening of the waiting list at least 5 business days prior to the date that pre-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.

The HACC will give public notice by publishing the relevant information in one or more suitable media outlets such as, but not limited to local newspapers, radio stations and common social media tools.

4-II.D. FAMILY OUTREACH

The HACC must conduct outreach as necessary to ensure that the Authority has a sufficient number of applicants on the waiting list to use the HCV resources it has been allotted [HCV GB, pp. 4-2 to 4-4].

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

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

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

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

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

4-II.E. REPORTING CHANGES IN FAMILY CIRCUMSTANCES

The applicant is responsible for notifying the HACC of any changes in family circumstances. Failing to report changes may result in the HACC's inability to correspond with the applicant, which may lead to the applicant being removed from the wait list.

When placed on the Waiting List, applicants will be informed to notify the HACC in writing in person, by regular mail, email, or fax when the following changes occur:

- Address and/or phone number
- Household composition
- Preference status

4-II.F. UPDATING THE WAITING LIST

Purging the Waiting List

The waiting list will be updated as needed to ensure that all applicants and applicant information is current and timely [24 CFR 982.204]. The family will be asked to update information provided at the initial application that relates to household composition, preference status, and income.

The following steps will be taken to update the waiting list:

1. To update the waiting list, the HACC will send an update letter via first class mail to all applicants it expects to be able to assist in the next 12 months. The HACC may also choose to send update letters to more applicants if it deems it necessary based on the number of applicants on the wait list.
2. This update request will be sent to the last address that the HACC 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.
3. The family's response must be in writing and must be delivered as directed in the letter. Responses should be postmarked or received as directed by the letter by the HACC not later than the time and date specified in the letter, which will provide at least 15 business days from the date of the HACC's letter.
4. If the family fails to respond within the time specified, the application will be removed from the waiting list without further notice.
5. If the notice is returned by the post office with no forwarding address or any other reason other than insufficient postage, the applicant will be removed from the waiting list without further notice.
6. If the HACC is responsible for the non-delivery, the notice will be re-sent to the address indicated. The family will have the time specified in the original notice to respond from the date the letter was re-sent. If the family fails to respond within this time frame, the family will be removed from the waiting list without further notice.
7. When a family is removed from the waiting list during the update process for failure to respond, no informal review will be offered. Such failures to act on the part of the applicant prevent the HACC from making an eligibility determination; therefore, no informal review is required.
8. If a family is removed from the waiting list for failure to respond, the ED or his/her designee may reinstate the family if s/he determines the lack of response was due to the HACC error or to circumstances beyond the family's control.

Removal from the Waiting List

If a family is removed from the waiting list because the HACC has determined the family is not eligible for admission, a notice will be sent to the family's address of record. 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 HACC's decision.

An applicant will be removed from the waiting list when the applicant:

- Successfully leases a unit and becomes an HCV Participant
- Successfully leases a Project Based Voucher unit
- Is determined to be ineligible
- Requests in writing to be removed
- Fails to respond to written requests for information
- Fails to provide information requested by the HACC
- Mail is returned by the Post Office as undeliverable
- Misses two scheduled briefings
- Has not located a suitable unit within the term of the voucher
- Is deceased

The decision to withdraw an applicant family that includes a person with disabilities from the waiting list is subject to reasonable accommodation. If the applicant did not respond to the HACC's request for information or updates as a direct result of the family member's disability, the HACC must reinstate the applicant family to their former position on the waiting list [24 CFR 982.204(c)(2)]. The request for reinstatement must be substantiated to the HACC for reinstatement to occur. The request must be in writing and received by the HACC within 180 days of the withdrawal.

PART III: SELECTION FOR HCV ASSISTANCE

4-III.A. OVERVIEW

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

The order in which families receive assistance from the waiting list depends on the selection method chosen by the HACC and is impacted in part by any selection preferences that the family qualifies for. The source of HCV funding and/or participation in one of the HACC's special initiative programs also may affect the order in which families are selected from the waiting list. Families selected from the wait list for potential participation in a special initiative program who do not meet the special criteria of that program or choose not to participate in that program will

maintain their current placement on the wait list. However, if the reason the family does not qualify for a special initiative program is also a reason they would not qualify for the tenant-based HCV Program, they will be removed from the wait list. For example, if the family was selected for a special initiative program, but is found to be subject to a life-time sex offender registration requirement, the family will be removed from the wait list.

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

4-III.B. SELECTION AND HCV FUNDING SOURCES

Special Admissions [24 CFR 982.203]

HUD may award funding for specifically-named families living in specified types of units (e.g., a family that is displaced by demolition of public housing; a non-purchasing family residing in HOPE 1 or 2 projects). In these cases, the HACC may admit families that are not on the waiting list, or without considering the family's position on the waiting list. The HACC must maintain records showing that such families were admitted with special program funding.

Targeted Funding [24 CFR 982.204(e)]

HUD may award the HACC funding for a specified category of families on the waiting list. The HACC must use this funding only to assist the families within the specified category. Within this category of families, the order in which such families are assisted is determined according to the policies provided in Section 4-III.C.

Regular HCV Funding

Regular HCV funding may be used to assist any eligible family on the waiting list. Families are selected from the waiting list according to the policies provided in Section 4-III.C.

Special Initiative Program Funding

Funding for any of the HACC's special initiative programs, such as FLOW, the Family Opportunity Pilot Program, and the Re-entry Program comes from the regular HCV funding. The HACC will provide a preference for participants of these programs until the maximum number of vouchers has been issued and the families have been housed.

The FLOW Program provides vouchers to formerly homeless people residing in permanent supportive housing (PSH) who no longer need the services of the housing, but are unable to pay full market rent without a housing subsidy. The HACC works with the Continuum of Care to administer this program and has allocated 150 vouchers to support this initiative. This enables other chronically homeless people to become housed in the PSH units.

The Family Opportunity Pilot Program provides vouchers to up to 200 families with school age children, at least one under the age of 13, who are living in high poverty communities. The HACC has made a commitment to assist families with children to enhance their quality of life by

moving to communities where there are quality schools for the children, lower crime rates, lower poverty rates, and access to more employment opportunities. This program has been in the pipeline for several years as the eligibility requirements are being determined. Families will be selected to participate from the HCV wait list. Because of the preference for up to 200 vouchers, some of the families may receive an earlier selection date from the wait list than they would have without this pilot program. If they do not meet the eligibility criteria or choose not to participate, they will retain their position on the HCV wait list until their name reaches the top. They will not lose their place on the wait list if they do not participate in this program.

The Re-entry Pilot Program provides vouchers to 25 formerly incarcerated people who have turned their lives around, but are in need of affordable housing. Eligible participants come through our admissions process who may not technically qualify based on our criminal screening criteria, but have completed an appropriate recovery program for their criminal activity.

4-III.C. SELECTION METHOD

PHAs must describe the method for selecting applicant families from the waiting list, including the system of admission preferences that the HACC will use [24 CFR 982.202(d)].

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

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

Admissions Preferences

The HACC has established a system of preferences for the selection of families admitted to the Program. Preferences will be applied cumulatively and must be verified. The following are the preferences the HACC has established:

- Homelessness (see below for definition) – 4 points
- Veterans and veterans' families – 3 points
- People with disabilities – 2 points
- Victims of domestic violence (VAWA) – 1 point

To meet the preference definition of homelessness, an applicant must qualify as follows: An individual who lacks a fixed, regular and adequate nighttime residence and whose primary nighttime residence is a supervised publicly or privately operated shelter designed to provide temporary living accommodations; OR an institution that provides a temporary residence for individuals intended to be institutionalized; OR a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

The HACC will use these same preferences in its project-based voucher (PBV) program, but may apply them in a different order. Additionally, additional preferences may apply to the PBV program based on the type of housing receiving assistance. Chapter 17 describes the preferences as they apply to PBV projects.

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

HUD requires that extremely low-income (ELI) families make up at least 75% of the families admitted to the HCV program during the HACC's fiscal year. ELI families are those with annual incomes at or below 30% of the area median income. The HACC 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.

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

Order of Selection

The HACC's system of preferences will select families according to the rank of their preference and then the date and time of application.

1. Families will be selected from the waiting list based on time and date of their application and the preference(s) for which they qualify. Preferences are cumulative. Applicants with the highest point totals will be ranked higher, along with time and date for when preference points are equivalent.
2. When selecting applicants from the waiting list, the HACC will match the characteristics of the available assistance to determine the number of applicants to be called for eligibility determination from the waiting lists. The HACC will offer vouchers to the highest-ranking applicants who qualify for subsidy.
3. Matching the available funding with the number of applicants, success rates of voucher holders, etc., is not an exact science and the HACC reserves the right to deny funding to voucher holders in accord with regulations should a funding shortage be anticipated or occur.

4-III.D. NOTIFICATION OF SELECTION

When a family has been selected from the waiting list, the HACC must notify the family. The HACC will notify the family by first class mail when it is selected from the waiting list.

The notice will inform the family of the following:

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

If a notification letter is returned to the HACC, the family will be removed from the waiting list. A notice of denial (see Chapter 3) will be sent to the family's address of record.

4-III.E. THE APPLICATION INTERVIEW

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

Families selected from the waiting list are required to participate in an eligibility interview.

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

All adult household members age 18 and older must attend the interview together and provide appropriate documentation of legal identity. (Chapter 7 provides a discussion of proper documentation of legal identity). If the adult household members do not provide the required documentation, the appointment may be rescheduled when the proper documents have been obtained.

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

Any required documents or information that the family is unable to provide at the interview must be provided within 10 business days of the interview (Chapter 7 provides details about longer submission deadlines for particular items, including documentation of Social Security numbers and eligible noncitizen status). If the family is unable to obtain the information or materials within the required time frame, the family may request an extension in writing. If the required documents and/or requested information are not provided within the required time frame, including any extensions, the family will be sent a notice of denial (See Chapter 3).

Interviews will be conducted in English. For limited English proficient (LEP) applicants, the HACC will provide translation services in accordance with the HACC's LEP plan. An advocate, interpreter, or other assistant may assist the family with the application and the interview process.

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

4-III.F. COMPLETING THE APPLICATION PROCESS

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

If the HACC determines that the family is ineligible, the HACC 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, eligibility preferences at the time of application), the family will be returned to its original position on the waiting list. The HACC will notify the family in writing that it has been returned to the waiting list and will specify the reasons for it. If a family claims preferences for which they did not qualify in order to be moved up on the wait list, the family may be denied assistance for providing false information on the application.

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

Chapter 5

BRIEFINGS AND VOUCHER ISSUANCE

INTRODUCTION

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

This chapter describes HUD regulations and the HACC policies related to these topics in two parts:

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

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

PART I: BRIEFINGS AND FAMILY OBLIGATIONS

5-I.A. OVERVIEW

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

5-I.B. BRIEFING

The HACC must give the family an oral briefing and provide the family with a briefing packet containing written information about the program [24 CFR 982.301]. Families may be briefed individually or in groups. At the briefing, the HACC must ensure effective communication in

accordance with Section 504 requirements (Section 504 of the Rehabilitation Act of 1973) and ensure that the briefing site is accessible to individuals with disabilities. For a more thorough discussion of accessibility requirements, refer to Chapter 2.

The head of household is required to attend the briefing. All adult household members age 18 and older are encouraged to attend the briefing; their signature is required on many of the documents and they must understand the program requirements.

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

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

Notification and Attendance

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

If the notice is returned by the post office with no forwarding address, a notice of denial (see Chapter 3) will be sent to the family's address of record.

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

Oral Briefing [24 CFR 982.301(a)]

Each briefing must provide information on the following subjects:

- How the Housing Choice Voucher program works;
- Family and owner responsibilities;
- Where the family can lease a unit, including renting a unit inside or outside the HACC's jurisdiction;
- For families eligible under portability, an explanation of portability. The HACC cannot discourage eligible families from moving under portability;
- For families living in high-poverty census tracts, an explanation of the advantages of moving to areas outside of high-poverty concentrations; and
- For families receiving welfare-to-work vouchers, a description of any local obligations of a welfare-to-work family and an explanation that failure to meet the obligations is grounds for denial of admission or termination of assistance.

Briefing Packet [24 CFR 982.301(b)]

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

- The term of the voucher and the HACC's policies on any extensions or suspensions of the term. If the HACC allows extensions, the packet must explain how the family can request an extension.
- A description of the method used to calculate the housing assistance payment for a family, including how the HACC determines the payment standard for a family, how the HACC determines total tenant payment for a family, and information on the payment standard and utility allowance schedule.
- An explanation of how the HACC determines the maximum allowable rent for an assisted unit.
- Where the family may lease a unit. For a family that qualifies to lease a unit outside the HACC jurisdiction under portability procedures, the information must include an explanation of how portability works.
- The HUD-required tenancy addendum, which must be included in the lease.
- The form the family must use to request approval of tenancy and a description of the procedure for requesting approval for a tenancy.
- A statement of the HACC policy on providing information about families to prospective owners.
- The HACC subsidy standards including when and how exceptions are made.
- The HUD brochure on how to select a unit.
- The HUD pamphlet on lead-based paint entitled *Protect Your Family from Lead in Your Home*.
- Information on federal, state and local equal opportunity laws and a copy of the housing discrimination complaint form.
- A list, or other resource such as a website, of landlords or other parties willing to lease to assisted families or help families find units, especially outside areas of poverty or minority concentration.
- Notice that if the family includes a person with disabilities, the family may request a list of available accessible units known to the HACC.
- VAWA Notice of Occupancy Rights (Form HUD-5380) and Certification of Domestic Violence, Dating Violence, Sexual Assault or Stalking (Form HUD-5382)
- The family obligations under the program, including any obligations of a welfare-to-work family.
- The grounds on which the HACC may terminate assistance for a participant family because of family action or failure to act. PHA informal hearing procedures including when the HACC is required to offer a participant family the opportunity for an informal hearing and how to request the hearing.

Because the HACC is located in a metropolitan FMR area, the following additional information must be included in the briefing packet in order to receive full points under SEMAP Indicator 7, Expanding Housing Opportunities [24 CFR 985.3(g)].

- Maps showing areas with housing opportunities outside areas of poverty or minority concentration, both within its jurisdiction and its neighboring jurisdiction.
- Information about the characteristics of these areas including job opportunities, schools, transportation and other services.
- An explanation of how portability works, including a list of portability contact persons for neighboring PHAs including names, addresses, and telephone numbers.

Additional Items to be Included in the Briefing Packet

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

The HACC may provide the following additional materials in the briefing packet:

- If and when the HACC-owned units are available for lease, a written statement that the family has the right to select any eligible unit available for lease, and is not obligated to choose a HACC-owned unit;
- Information on how to fill out and file a housing discrimination complaint form;
- The publication *Fraud: Is It Worth It?* (HUD-1141) that explains the types of actions a family must avoid and the penalties for program abuse.

5-I.C. FAMILY OBLIGATIONS

Obligations of the family are described in the housing choice voucher (HCV) regulations and on the voucher itself. These obligations include responsibilities the family is required to fulfill, as well as prohibited actions. The HACC must inform families of these obligations during the oral briefing and the same information must be included in the briefing packet. When the family's unit is approved and the HAP contract is executed, the family must meet those obligations in order to continue participating in the program. Violation of any family obligation may result in termination of assistance, as described in Chapter 12.

Time Frames for Reporting Changes Required By Family Obligations

Unless otherwise noted below, when family obligations require the family to respond to a request or notify the HACC of a change, notifying the HACC of the request or change within 30 days is required. When a family is required to provide notice to the HACC, the notice must be in writing.

Family Obligations [24 CFR 982.551]

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

1. The family must supply any information or documentation requested by the HACC or HUD determined to be necessary for use in the administration of the program, regularly scheduled reexamination, or interim reexamination. The information includes, but is not limited to:
 - a. Signed Release of Information - Form HUD- 9886
 - b. Disclosure and verification of social security numbers
 - c. Evidence of citizenship or eligible immigration status
 - d. Fully executed Request for Tenancy Approval (RFTA) when in move status
2. Any information that the family supplies must be complete and accurate.
3. Families must not willfully make or cause to be made any false statements or misrepresentations relating to their application or eligibility under this program. (See Chapter 3, Sections I.K and I.M and Chapter 11, Section II.B)
4. The family must report in writing to the HACC within 30 days of all changes that occur in their household's income, family composition, or assets, including:
 - a. The birth, adoption or court awarded custody of a child
 - b. Any household members whom are no longer living in the unit
 - c. Marriage
 - d. When there is an increase, decrease, or new income in household for any family member
 - e. When the family is absent 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 calendar days. Written notice must be provided to the HACC at the start of the extended absence.
5. The family must request and receive approval to add any other family member as an occupant of the unit. The HACC reserves the right to deny the addition of household or family members.
6. The family must obtain the approval of the HACC to change the head of household.
7. No persons, other than those listed on the family's application, may occupy the dwelling unit for more than a total of 21 days during the lease term without the written approval of the HACC and the landlord.
8. The family must supply any information requested by the HACC to verify that the family is living in the unit or information related to family absence from the unit.
9. The family must use the assisted unit for residence by the family. The unit must be the family's only residence.
10. 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.
11. The family must notify the HACC 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 the HACC at the same time the owner is notified.
12. The family must not commit any serious or repeated violations of the lease.
13. The family must promptly give the HACC a copy of any owner eviction notice.

14. The family must promptly respond to all written requests for information within 30 days or the time frame specified on the notice, if applicable.
15. The family is only to pay the amount of the rent specified by the HACC.
16. Families who owe money to the HACC or any other HCV landlord may be cancelled from the program or denied assistance if they do not satisfy their liability as required.
17. The family must allow the HACC to inspect the unit at reasonable times and after reasonable notice. (See Chapter 8 for further information on inspections)
18. 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 fully reimburse the landlord for all repairs that must be made as a result of the damage.
19. The family must pay the utility bills as specified in the Request for Tenancy Approval (RFTA), the HAP Contract, and the lease. Utilities must be in the name of an adult member of the household.
20. The family must provide and maintain any appliances that the owner is not required to provide under the lease.
21. 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.
22. 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 (including in-laws), unless the HACC has determined, and has notified the owner and the family of such determination, that approving rental of the unit, notwithstanding such relationship, would provide a reasonable accommodation for a family member who is a person with disabilities.
23. The family must not own or have any interest in the unit. Families in the HACC's Homeownership Program are exempt from this obligation.
24. Family members and their guests must not commit fraud, bribery, or any other corrupt or criminal act in connection with the program. (See Chapter 14, Program Integrity, for additional information)
25. Family members and their guests must not engage in the abuse of alcohol, drug-related criminal activity, violent criminal activity, or any other criminal activity in a way that threatens the health, safety, or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises. This includes violent or abusive behavior towards HACC personnel. (See Chapter 12 for HACC and HUD policies related to alcohol abuse, drug activity, and criminal activity)

PART II: SUBSIDY STANDARDS AND VOUCHER ISSUANCE

5-II.A. OVERVIEW

PHAs must establish subsidy standards that determine the number of bedrooms needed for families of different sizes and compositions. This part presents the policies that will be used to determine the family unit size (also known as the voucher size) a particular family should receive

and the policies that govern making exceptions to those standards. The HACC also must establish policies related to the issuance of the voucher, to the voucher term, and to any extensions or suspensions of that term.

5-II.B. DETERMINING FAMILY UNIT (VOUCHER) SIZE

For each family, the HACC determines the appropriate number of bedrooms under the HACC 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 [24 CFR 982.402].

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

- The subsidy standards must provide for the smallest number of bedrooms needed to house a family without overcrowding.
- The subsidy standards must be consistent with space requirements under the housing quality standards.
- The subsidy standards must be applied consistently for all families of like size and composition.
- A child who is temporarily away from the home because of placement in foster care is considered a member of the family in determining the family unit size.
- A family that consists of a pregnant woman (with no other persons) must be treated as a two-person family.
- Any live-in aide (approved by the HACC to reside in the unit to care for a family member who is disabled or is at least 50 years of age) must be counted in determining the family unit size.
- The HACC may only approve one (1) additional bedroom for a live-in aide even if the live-in aide has other family members who will move into the subsidized unit.
- The HACC will not approve family members of the live-in aide if adding such family members would result in a violation of HQS [PIH 2010-51].
- Unless a live-in-aide resides with a family, the family unit size for any family consisting of a single person must be either a zero- or one-bedroom unit, as determined under the HACC subsidy standards.

The HACC will assign one bedroom for each two persons within the household. However, a live-in aide will be assigned one separate bedroom. In the event of insufficient funding, a single person household may be assigned zero bedrooms.

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

Voucher Size	Persons in Household (Minimum – Maximum)
0 Bedroom	1-2
1 Bedroom	1-2
2 Bedrooms	3-4
3 Bedrooms	4-7
4 Bedrooms	5-9
5 Bedrooms	6-11
6 Bedrooms	8-13

5-II.C. EXCEPTIONS TO SUBSIDY STANDARDS

In determining family unit size for a particular family, the HACC may grant an exception to its established subsidy standards if it determines that the exception is justified, and the HACC has sufficient funding to do so, such as a reasonable accommodation [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)].

The HACC will consider granting an exception for any of the reasons specified in the regulation; however, the HACC will not grant exceptions based on the age, sex, or relationship of family members. The HACC, however, must still ensure that the family is assigned the smallest unit size based on the HACC's subsidy standards.

Requests for reasonable accommodations for an exception to the subsidy standards must be made in writing and have a direct relationship to a family member's disability. See Chapter 2 for the processing of reasonable accommodations.

5-II.D. VOUCHER ISSUANCE

When a family is selected from the waiting list (or as a special admission as described in Chapter 4) or when a participant family wants to move to another unit, the HACC issues a Housing Choice Voucher, form HUD-52646 [24 CFR 982.302]. This chapter deals only with voucher issuance for applicants. For voucher issuance associated with moves of program participants, please refer to Chapter 10.

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

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

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

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

5-II.E. VOUCHER TERM, EXTENSIONS, AND SUSPENSIONS

Voucher Term [24 CFR 982.303]

The initial term of a voucher must be at least 60 calendar days or 90 calendar days for person with disabilities or seniors who request an accommodation for a longer initial term. The initial term must be stated on the voucher [24 CFR 982.303(a)].

The family must submit a Request for Tenancy Approval and proposed lease within the 60-day period [90-day period for seniors and persons with disabilities who requested the 90-day term] unless the HACC grants an extension.

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

The HACC has the authority to grant extensions of search time, to specify the length of an extension, and to determine the circumstances under which extensions will be granted.

The HACC may approve an extension in the following circumstances:

- It is necessary as a reasonable accommodation for a person with disabilities.
- It is necessary due to reasons beyond the family's control, as determined by the HACC. Following is a list of extenuating circumstances that the HACC may consider in making its decision. The presence of these circumstances does not guarantee that an extension will be granted:
 - Serious illness or death in the family
 - Other family emergency
 - Obstacles due to employment
 - Whether the family has already submitted requests for tenancy approval that were not approved by the HACC
 - Whether family size or other special requirements make finding a unit difficult

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

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

The HACC 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. The HACC will not issue extensions to the voucher term beyond a total of 180 days active search time. The HACC's decision to deny a request for an extension of the voucher term is not subject to informal review [24 CFR 982.554(c)(4)].

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

When a Request for Tenancy Approval (RFTA) and a proposed lease are received by the HACC, the term of the voucher will be suspended while the HACC processes the request. "Suspension" means stopping the clock on a family's voucher term from the time a family submits the RFTA until the time the HACC approves or denies the request

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

Expiration of Voucher Term

If an applicant family's voucher term or extension expires before the family has submitted a Request for Tenancy Approval (RFTA), the family will be denied assistance and the HACC will require the family to reapply for assistance when the waiting list re-opens. If a RFTA that was submitted prior to the expiration date of the voucher is subsequently disapproved by the HACC (after the voucher term has expired), the family will be required to reapply for assistance.

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

Within 15 business days after the expiration of the voucher or any extension thereof, including suspension of the voucher, for a participant family, the HACC will notify the family in writing that the voucher has expired and the options available to them:

- Remain in the currently subsidized unit with the owner's permission; or
- Request a hearing to contest the termination of participation in the voucher program

If the participant family is not living in a unit under a HAP Contract and has been unassisted for a period of longer than 180 days, the HACC may take steps to terminate the family [24 CFR 982.312(a)] (see Chapter 12 for more information on termination).

Chapter 6

INCOME AND SUBSIDY DETERMINATIONS

[24 CFR Part 5, Subparts E and F; 24 CFR 982]

INTRODUCTION

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

- Part I: Annual Income. HUD regulations specify the sources of income to include and exclude to arrive at a family's annual income. These requirements and the HACC policies for calculating annual income are found in Part I.
- Part II: Adjusted Income. Once annual income has been established HUD regulations require the HACC to subtract from annual income any of five mandatory deductions for which a family qualifies. These requirements and the HACC policies for calculating adjusted income are found in Part II.
- Part III: Calculating Family Share and PHA Subsidy. This part describes the statutory formula for calculating total tenant payment (TTP), the use of utility allowances, and the methodology for determining PHA subsidy and required family payment.

PART I: ANNUAL INCOME

6-I.A. OVERVIEW

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

5.609 Annual income.

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

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

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

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

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

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

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

Sections 6-I.B and 6-I.C discuss general requirements and methods for calculating annual income. The rest of this section describes how each source of income is treated for the purposes of determining annual income. HUD regulations present income inclusions and exclusions separately [24 CFR 5.609(b) and 24 CFR 5.609(c)]. In this plan, however, the discussions of income inclusions and exclusions are integrated by topic (e.g., all policies affecting earned income are discussed together in section 6-I.D). Verification requirements for annual income are discussed in Chapter 7.

6-I.B. HOUSEHOLD COMPOSITION AND INCOME

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

Summary of Income Included and Excluded by Person	
Live-in aides	Income from all sources is excluded [24 CFR 5.609(c)(5)].
Foster child or foster adult	Income from all sources is excluded [24 CFR 5.609(c)(2)].
Head, spouse, or co-head Other adult family members	All sources of income not specifically excluded by the regulations are included.
Children under 18 years of age	Employment income is excluded [24 CFR 5.609(c)(1)]. All other sources of income, except those specifically excluded by the regulations, are included.
Full-time students 18 years of age or older (not head, spouse,	Employment income above \$480/year is excluded [24 CFR 5.609(c)(11)].

or co-head)	All other sources of income, except those specifically excluded by the regulations, are included.
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Temporarily Absent Family Members

The income of family members approved to live in the unit will be counted, even if the family member is temporarily absent from the unit [HCV GB, p. 5-18].

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

Generally an individual who is or is expected to be absent from the assisted unit for more than 180 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 the HACC indicating that the student has established a separate household or the family declares that the student has established a separate household. This does not, however, apply to a family with a sole family member. Sole member families may not attend school away from home; they must use the subsidized unit as their only residence.

Absences Due to Placement in Foster Care

Children temporarily absent from the home as a result of placement in foster care are considered members of the family [24 CFR 5.403].

If a child has been placed in foster care, the HACC 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 for the first 24 months or until the second recertification after placement, whichever comes first. After that time, the HACC may exclude the child from the household and adjust the voucher size accordingly.

Absent Head, Spouse, or Co-head

An employed head, spouse, or co-head absent from the unit more than 180 days due to employment will continue to be considered a family member. Their income will be included as a part of household income. If the head of household is the sole member of the family then the absence may not be for more than 180 days.

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 [HCV GB, p. 5-22].

The HACC 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.

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.

Joint Custody of Dependents

Dependents that are subject to a joint custody arrangement will be considered a member of the family, if they can document that they live with the applicant or participant family more than 50 percent of the time.

When more than one applicant or participant family is claiming the same dependents as family members, the family with primary custody at the time of the initial examination or reexamination will be able to claim the dependents. If there is a dispute about which family should claim them, the HACC will make the determination based on available documents such as court orders, or an IRS return showing which family has claimed the child for income tax purposes.

Caretakers for a Child

If neither a parent nor a designated guardian remains in a household receiving HCV assistance, the HACC 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 unless information is provided that would confirm that the caretaker's role is temporary. Requests for an extension must be submitted in writing along with the supporting documentation. In such cases, the HACC may extend the caretaker's status as an eligible visitor for a period not to exceed an additional 90 days. After this period, the caretaker will be considered a family member and his/her income will be included.

- (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.
- (4) 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.

6-I.C. ANTICIPATING ANNUAL INCOME

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

Basis of Annual Income Projection

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

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

When the HACC cannot readily anticipate income based upon current circumstances (e.g., in the case of seasonal employment, unstable working hours, continual/constant changes in income, or suspected fraud), the HACC 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. Anytime current circumstances are not used to project annual income, a clear rationale for the decision will be documented in the file. In all such cases the family may present information and documentation to the HACC to show why the historic pattern does not represent the family's anticipated income.

Known Changes in Income

If the HACC 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 \$6/hour will begin to receive \$6.25/hour in the eighth week after the effective date of the reexamination. In such a case HACC would calculate annual income as follows: $(\$6/\text{hour} \times 40 \text{ hours} \times 7 \text{ weeks}) + (\$6.25 \times 40 \text{ hours} \times 45 \text{ weeks})$.

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 HACC will calculate annual income using current circumstances and then require an interim reexamination when the change actually occurs. This requirement will be imposed even if the HACC's policy in Chapter 11 does not require interim reexaminations for other types of changes.

Using Up-Front Income Verification (UIV) to Project Income

Up-front income verification (UIV) is "the verification of income, before or during a family reexamination, through an independent source that systematically and uniformly maintains income information in computerized form for a large number of individuals" [VG, p. 7].

The HACC procedures for anticipating annual income will include the use of UIV methods approved by HUD in conjunction with family-provided documents dated within the last 60 days of the HACC interview date.

The HACC will follow "HUD Guidelines for Projecting Annual Income When Up-Front Income Verification (UIV) Data Is Available" in handling differences between UIV and family-provided income data. In accordance with 24 CFR §5.236(b)(2)(3), PHAs are required to compare the information on the UIV with the family-reported information. If the UIV reveals an income source that was not reported by the tenant or a substantial difference (generally \$200 or more) in the reported income information, the PHA is required to take the following actions:

1. Discuss the income discrepancy with the tenant; and
2. Request the tenant to provide any documentation to confirm or dispute the unreported or underreported income and/ or income sources; and
3. In the event the tenant is unable to provide acceptable documentation to resolve the income discrepancy, the PHA is required to request from the third party source, any information necessary to resolve the income discrepancy; and
4. If applicable, determine the tenant's underpayment of rent as a result of unreported or underreported income, retroactively*; and
5. Take any other appropriate action as directed by HUD or the PHA's administrative policies.

*The PHA is required to determine the retroactive rent as far back as the existence of complete file documentation (form HUD-50058 and supporting documentation) to support such retroactive rent determination.

6-I.D. EARNED INCOME

Types of Earned Income Included in Annual Income

Wages and Related Compensation

The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services is included in annual income [24 CFR 5.609(b)(1)].

For persons who regularly receive bonuses or commissions, the HACC will verify and then average amounts received for the two years preceding admission or reexamination. If only a one-year history is available, the HACC will use the prior year amounts. In either case the family may provide, and the HACC will consider, a credible justification for not using this history to anticipate future bonuses or commissions. If a new employee has not yet received any bonuses or commissions, the HACC will count only the amount estimated by the employer.

Some Types of Military Pay

All regular pay, special pay and allowances of a member of the Armed Forces are counted [24 CFR 5.609(b)(8)] except for the special pay to a family member serving in the Armed Forces who is exposed to hostile fire [24 CFR 5.609(c)(7)].

Types of Earned Income Not Counted in Annual Income

Temporary, Nonrecurring, or Sporadic Income [24 CFR 5.609(c)(9)]

This type of income (including gifts) is not included in annual income.

Sporadic income is income that is not received periodically and cannot be reliably predicted. For example, the income of an individual who works occasionally as a handyman would be considered sporadic if future work could not be anticipated and no historic, stable pattern of income existed.

Children's Earnings

Employment income earned by children (including foster children) under the age of 18 years is not included in annual income [24 CFR 5.609(c)(1)]. (See Eligibility chapter for a definition of *foster children*.)

Certain Earned Income of Full-Time Students

Earnings in excess of \$480 for each full-time student 18 years old or older (except for the head, spouse, or co-head) are not counted [24 CFR 5.609(c)(11)]. To be considered "full-time," a student must be considered "full-time" by an educational institution with a degree or certificate program [HCV GB, p. 5-29]. All earnings of a full-time student who is the head, co-head, or spouse are counted in household income.

Income of a Live-in Aide

Income earned by a live-in aide, as defined in [24 CFR 5.403], is not included in annual income [24 CFR 5.609(c)(5)]. (See Eligibility chapter for a full discussion of live-in aides.)

Income Earned under Certain Federal Programs

Income from some federal programs is specifically excluded from consideration as income [24 CFR 5.609(c)(17)], including:

- Payments to volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058)
- Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b))
- Awards under the federal work-study program (20 U.S.C. 1087 uu)
- Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f))
- Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d))
- Allowances, earnings, and payments to participants in programs funded under the Workforce Investment Act of 1998 (29 U.S.C. 2931)

Resident Service Stipend

Amounts received under a resident service stipend are not included in annual income. A resident service stipend is a modest amount (not to exceed \$200 per individual per month) received by a resident for performing a service for the HACC or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of HACC's governing board. No resident may receive more than one such stipend during the same period of time [24 CFR 5.600(c)(8)(iv)].

State and Local Employment Training Programs

Incremental earnings and benefits to any family member resulting from participation in qualifying state or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff are excluded from annual income. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives and are excluded only for the period during which the family member participates in the training program [24 CFR 5.609(c)(8)(v)].

The HACC 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 to time. It is designed to lead to a higher level of proficiency and it enhances the individual's ability to obtain employment. It may have performance standards to measure proficiency. Training may include, but is not limited to: (1) classroom training in a specific occupational skill, (2) on-the-

job training with wages subsidized by the program, or (3) basic education” [expired Notice PIH 98-2, p. 3].

The HACC defines *incremental earnings and benefits* as the difference between: (1) the total amount of welfare assistance and earnings of a family member prior to enrollment in a training program and (2) the total amount of welfare assistance and earnings of the family member after enrollment in the program [expired Notice PIH 98-2, pp. 3–4].

In calculating the incremental difference, the HACC will use as the pre-enrollment income the total annualized amount of the family member’s welfare assistance and earnings reported on the family’s most recently completed HUD-50058.

End of participation in a training program must be reported in accordance with the HACC’s interim reporting requirements.

HUD-Funded Training Programs

Amounts received under training programs funded in whole or in part by HUD [24 CFR 5.609(c)(8)(i)] are excluded from annual income. Eligible sources of funding for the training include operating subsidy, HCV administrative fees, modernization, Community Development Block Grant (CDBG), HOME program, and other grant funds received from HUD.

Earned Income Tax Credit

Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j)), are excluded from annual income [24 CFR 5.609(c)(17)]. Although many families receive the EITC annually when they file taxes, an EITC can also be received throughout the year. The prorated share of the annual EITC is included in the employee’s payroll check.

Earned Income Disallowance

The earned income disallowance for persons with disabilities is discussed in section 6-I.E below.

6-I.E. EARNED INCOME DISALLOWANCE FOR PERSONS WITH DISABILITIES

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 [24 CFR 5.617]. The full text of 24 CFR 5.617 is included as Exhibit 6-4 at the end of this chapter. Eligibility criteria and limitations on the disallowance are summarized below.

Eligibility

This disallowance applies only to individuals in families already participating in the HCV program (not at initial examination). To qualify, the family must experience an increase in annual income that is the result of one of the following events:

- Employment of a family member who is a person with disabilities and who was previously unemployed for one or more years prior to employment. *Previously unemployed* includes a person who annually has earned not more than the minimum wage applicable to the community multiplied by 500 hours. The applicable minimum wage is the federal minimum wage unless there is a higher state or local minimum wage.
- Increased earnings by a family member who is a person with disabilities and whose earnings increase during participation in an economic self-sufficiency or job-training program. A self-sufficiency program includes a program designed to encourage, assist, train, or facilitate the economic independence of HUD-assisted families or to provide work to such families [24 CFR 5.603(b)].
- New employment or increased earnings by a family member who is a person with disabilities and who has received benefits or services under Temporary Assistance for Needy Families (TANF) or any other state program funded under Part A of Title IV of the Social Security Act within the past six months. If the benefits are received in the form of monthly maintenance, there is no minimum amount. If the benefits or services are received in a form other than monthly maintenance, such as one-time payments, wage subsidies, or transportation assistance, the total amount received over the six-month period must be at least \$500.

Calculation of the Disallowance

Calculation of the earned income disallowance for an eligible member of a qualified family begins with a comparison of the member's current income with his or her "prior income."

HACC 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.

The HACC will calculate the period effective the first of the month following the family's report of new or increased earnings. The HACC may take action to terminate if the family fails to report new or increased earnings in accordance with the family obligations. The HACC will consider the family's disability when making the decision to terminate.

Initial 12-Month Exclusion

During the initial 12-month exclusion period, the full amount (100 percent) of any increase in income attributable to new employment or increased earnings is excluded. The 12 months are cumulative and need not be consecutive.

The initial EID exclusion period will begin on the first of the month following the date an eligible member of a qualified family is first employed or first experiences an increase in earnings.

Second 12-Month Exclusion and Phase-In

During the second 12-month exclusion period, the exclusion is reduced to half (50 percent) of any increase in income attributable to employment or increased earnings. The 12 months are cumulative and need not be consecutive.

Lifetime Limitation

The EID has a two-year (24-month) lifetime maximum. The two-year eligibility period begins at the same time that the initial exclusion period begins and ends 24 months later. The one-time eligibility for the EID applies even if the eligible individual begins to receive assistance from another housing agency, if the individual moves between public housing and HCV assistance, or if there are breaks in assistance.

During the 24-month eligibility period, the HACC will schedule and conduct an interim reexamination each time there is a reported or anticipated change in the family member's annual income that affects or is affected by the EID (e.g., when the family member's income falls to a level at or below his/her prequalifying income, when one of the exclusion periods ends, and at the end of the lifetime maximum eligibility period).

6-I.F. BUSINESS INCOME

Annual income includes the net income from the operation of a business or profession [24 CFR 5.609(b)(2)]. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family [24 CFR 5.609(b)(2)].

Business Expenses

Net income is "gross income less business expense" [HCV GB, p. 5-19].

To determine business expenses that may be deducted from gross income, the HACC will use current applicable Internal Revenue Service (IRS) rules for determining allowable business expenses [see IRS Publication 535], unless a topic is addressed by HUD regulations or guidance as described below.

Business Expansion

HUD regulations do not permit HACC 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 HACC 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 the HACC 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 HACC 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, the HACC 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.

6-I.G. ASSETS

Overview

HUD requires that PHAs include in annual income the "interest, dividends, and other net income of any kind from real or personal property" [24 CFR 5.609(b)(3) and 24 CFR 5.603(b)]. This section discusses how the income from various types of assets is determined. For most types of assets, HACC must determine the value of the asset in order to compute income from the asset. Therefore, for each asset type, this section discusses:

- How the value of the asset will be determined
- How income from the asset will be calculated

Exhibit 6-1 provides the regulatory requirements for calculating income from assets [24 CFR 5.609(b)(3)] and Exhibit 6-3 provides the regulatory definition of *net family assets*. This section

begins with a discussion of general policies related to assets and then provides HUD rules and HACC policies related to each type of asset.

General Policies

Income from Assets

HACC generally will use current circumstances to determine both the value of an asset and the anticipated income from the asset. As is true for all sources of income, HUD authorizes PHAs to use other than current circumstances to anticipate income when (1) an imminent change in circumstances is expected (2) it is not feasible to anticipate a level of income over 12 months or (3) HACC believes that past income is the best indicator of anticipated income. For example, if a family member owns real property that typically receives rental income but the property is currently vacant, HACC can take into consideration past rental income along with the prospects of obtaining a new tenant.

Valuing Assets

The calculation of asset income sometimes requires the HACC to make a distinction between an asset's market value and its cash value. The cash value of family's assets may not exceed \$100,000, unless the family is a participant in the HACC's Homeownership Program. The cash value of the home is not included as an asset for the first ten years of ownership [24 CFR 5.603(b)(4)]. Beginning in the eleventh year, the cash value of the home will be included as an asset for the purposes of determining income from assets, whether actual income or imputed. It will not, however, be counted against the \$100,000 asset limitation. The cash value of all other family assets combined cannot exceed \$100,000.

- 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).
- The cash value of an asset is its market value less all reasonable amounts 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 [HCV GB, p. 5-28].

Lump-Sum Receipts

Payments that are received in a single lump sum, such as inheritances, capital gains, lottery winnings, insurance settlements, and proceeds from the sale of property, are generally considered assets, not income. However, such lump-sum receipts are counted as assets only if they are retained by a family in a form recognizable as an asset (e.g., deposited in a savings or checking account) [RHIIP FAQs]. (For a discussion of lump-sum payments that represent the delayed start of a periodic payment, most of which are counted as income, see sections 6-I.H and 6-I.I.)

Imputing Income from Assets [24 CFR 5.609(b)(3)]

When net family assets are \$5,000 or less, the HACC will include in annual income the actual income anticipated to be derived from the assets. When the family has net family assets in excess of \$5,000, the HACC will include in annual income the greater of (1) the actual income derived from the assets or (2) the imputed income. Imputed income from assets is calculated by multiplying the total cash value of all family assets by the current HACC-established passbook savings rate. The HACC will review its passbook rate annually to ensure it is within 75 basis points (plus or minus .75 percent) of the Savings National Rate in effect at the time of review.

Determining Actual Anticipated Income from Assets

It may or may not be necessary for the HACC 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.

Withdrawal of Cash or Liquidation of Investments

Any withdrawal of cash or assets from an investment will be included in income except to the extent that the withdrawal reimburses amounts invested by the family. For example, when a family member retires, the amount received by the family from a retirement plan is not counted as income until the family has received payments equal to the amount the family member deposited into the retirement fund.

Jointly Owned Assets

The regulation at 24 CFR 5.609(a)(4) specifies that annual income includes "amounts derived (during the 12-month period) from assets to which any member of the family has access."

If an asset is owned by more than one person and any family member has unrestricted access to the asset, the HACC will count the full value of the asset. 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.

If an asset is owned by more than one person, including a family member, but the family member does not have unrestricted access to the asset, the HACC will prorate the asset according to the percentage of ownership. If no percentage is specified or provided for by state or local law, the HACC will prorate the asset evenly among all owners.

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

HUD regulations require PHAs to count as a current asset any business or family asset that was disposed of for less than fair market value during the two years prior to the effective date of the examination/reexamination, except as noted below.

Minimum Threshold

The *HVC Guidebook* permits HACC to set a threshold below which assets disposed of for less than fair market value will not be counted [HCV GB, p. 5-27].

The HACC will not include the value of assets disposed of for less than fair market value unless the cumulative fair market value of all assets disposed of during the past two years exceeds the gross amount received for the assets by more than \$1,000.

When the two-year period expires, the income assigned to the disposed asset(s) also expires. If the two-year period ends between annual recertifications, the family may request an interim recertification to eliminate consideration of the asset(s).

Assets placed by the family in 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.

Separation or Divorce

The regulation also specifies that assets are not considered disposed of for less than fair market value if they are disposed of as part of a separation or divorce settlement and the applicant or tenant receives important consideration not measurable in dollar terms.

All assets disposed of as part of a separation or divorce settlement will be considered assets for which important consideration not measurable in monetary terms has been received. In order to qualify for this exemption, a family member must be subject to a formal separation or divorce settlement agreement established through arbitration, mediation, or court order.

Foreclosure or Bankruptcy

Assets are not considered disposed of for less than fair market value when the disposition is the result of a foreclosure or bankruptcy sale.

Family Declaration

Families must sign a declaration form at initial certification and each annual recertification identifying all assets that have been disposed of for less than fair market value or declaring that no assets have been disposed of for less than fair market value. The HACC may verify the value of the assets disposed of if other information available to the HACC does not appear to agree with the information reported by the family.

Types of Assets

Checking and Savings Accounts

For regular checking accounts and savings accounts, *cash value* has the same meaning as *market value*. If a checking account does not bear interest, the anticipated income from the account is zero.

In determining the value of a checking account, the HACC will use the average monthly balance for the last six months.

In determining the value of a savings account, the HACC will use the current balance.

In determining the anticipated income from an interest-bearing checking or savings account, the HACC will multiply the value of the account by the current rate of interest paid on the account.

Employer direct payroll cards, in which no additional funds can be added, will be treated as savings accounts. Reloadable pre-paid debit cards and similar accounts will be treated as checking accounts.

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, the HACC will use the value of the account on the most recent investment report.

How anticipated income from an investment account will be calculated depends on whether the rate of return is known. For assets that are held in an investment account with a known rate of return (e.g., savings certificates), asset income will be calculated based on that known rate (market value multiplied by rate of earnings). When the anticipated rate of return is not known (e.g., stocks), the HACC will calculate asset income based on the earnings for the most recent reporting period.

Equity in Real Property or Other Capital Investments

Equity (cash value) in a property or other capital asset is the estimated current market value of the asset less the unpaid balance on all loans secured by the asset and reasonable costs (such as broker fees) that would be incurred in selling the asset [HCV GB, p. 5-25].

Equity in real property and other capital investments is considered in the calculation of asset income except for the following types of assets:

- Equity accounts in HUD homeownership programs [24 CFR 5.603(b)]
- The value of a home currently being purchased with assistance under the HCV program Homeownership Option for the first 10 years after the purchase date of the home [24 CFR 5.603(b)]
- Equity in owner-occupied cooperatives and manufactured homes in which the family lives [HCV GB, p. 5-25]

- Equity in real property when a family member's main occupation is real estate [HCV GB, p. 5-25]. This real estate is considered a business asset, and income related to this asset will be calculated as described in section 6-I.F.
- Interests in Indian Trust lands [24 CFR 5.603(b)]
- Real property and capital assets that are part of an active business or farming operation [HCV GB, p. 5-25]

A family may have real property as an asset in two ways: (1) owning the property itself and (2) holding a mortgage or deed of trust on the property. In the case of a property owned by a family member, the anticipated asset income generally will be in the form of rent or other payment for the use of the property. If the property generates no income, actual anticipated income from the asset will be zero.

In the case of a mortgage or deed of trust held by a family member, the outstanding balance (unpaid principal) is the cash value of the asset. The interest portion only of payments made to the family in accordance with the terms of the mortgage or deed of trust is counted as anticipated asset income.

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 HACC determines that the family receives no income from the property and is unable to sell or otherwise convert the asset to cash.

However, with the enactment of the Housing Opportunity through Modernization Act (HOTMA) in 2016, there are limitations on eligibility for assistance based on assets. The HACC may not rent a dwelling unit or assist families with an ownership interest in property that is suitable for occupancy. This restriction does not apply to victims of domestic violence who are fleeing the property they have ownership interest in, individuals using housing assistance for the HACC's Homeownership Program, or a family who is offering a property for sale. The HACC must require applicants to authorize financial institutions to disclose records necessary to determine eligibility.

Trusts

A *trust* is a legal arrangement generally regulated by state law in which one party (the creator or grantor) transfers property to a second party (the trustee) who holds the property for the benefit of one or more third parties (the beneficiaries).

Revocable Trusts

If any member of a family has the right to withdraw the funds in a trust, the value of the trust is considered an asset [HCV GB, p. 5-25]. Any income earned as a result of investment of trust funds is counted as actual asset income, whether the income is paid to the family or deposited in the trust.

Non-revocable Trusts

In cases where a trust is not revocable by, or under the control of, any member of a family, the value of the trust fund is not considered an asset. However, any income distributed to the family from such a trust is counted as a periodic payment or a lump-sum receipt, as appropriate [24 CFR 5.603(b)]. (Periodic payments are covered in section 6-I.H. Lump-sum receipts are discussed earlier in this section.)

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, HACC must know whether the money is accessible before retirement [HCV GB, p. 5-26].

While a family member is employed, only the amount the family member can withdraw without retiring or terminating employment is counted as an asset [HCV GB, p. 5-26].

After a family member retires or terminates employment, any amount distributed to the family member is counted as a periodic payment or a lump-sum receipt, as appropriate [HCV GB, p. 5-26], except to the extent that it represents funds invested in the account by the family member. (For more on periodic payments, see section 6-I.H.) The balance in the account is counted as an asset only if it remains accessible to the family member.

IRA, Keogh, and Similar Retirement Savings Accounts

IRA, Keogh, and similar retirement savings accounts are counted as assets even though early withdrawal would result in a penalty [HCV GB, p. 5-25].

Personal Property

Personal property held as an investment, such as gems, jewelry, coin collections, antique cars, etc. is considered an asset [HCV GB, p. 5-25].

In determining the value of personal property held as an investment, the HACC will use the family's estimate of the value. However, the HACC 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.

Life Insurance

The cash value of a life insurance policy available to a family member before death, such as a whole life or universal life policy is included in the calculation of the value of the family's assets [HCV GB 5-25]. The cash value is the surrender value. If such a policy earns dividends or interest that the family could elect to receive, the anticipated amount of dividends or interest is counted as income from the asset whether or not the family actually receives it.

6-I.H. PERIODIC PAYMENTS

Periodic payments are forms of income received on a regular basis. HUD regulations specify periodic payments that are and are not included in annual income.

Periodic Payments Included in Annual Income

- Periodic payments from sources such as social security, unemployment and welfare assistance, annuities, insurance policies, retirement funds, and pensions. However, periodic payments from retirement accounts, annuities, and similar forms of investments are counted only after they exceed the amount contributed by the family [24 CFR 5.609(b)(4) and (b)(3)].
- Disability or death benefits and lottery receipts paid periodically, rather than in a single lump sum [24 CFR 5.609(b)(4) and HCV, p. 5-14]

Lump-Sum Payments for the Delayed Start of a Periodic Payment

Most lump sums received as a result of delays in processing periodic payments, such as unemployment or welfare assistance, are counted as income. However, lump-sum receipts for the delayed start of periodic social security or supplemental security income (SSI) payments are not counted as income [CFR 5.609(b)(4)].

When a delayed-start payment is received and reported during the period in which the HACC is processing an annual reexamination, the HACC will adjust the family share and HACC subsidy retroactively for the period the payment was intended to cover. The family may pay in full any amount due or request to enter into a repayment agreement with the HACC.

Periodic Payments Excluded from Annual Income

- Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the assisted family, who are unable to live alone) [24 CFR 5.609(c)(2)]

The HACC will exclude payments for the care of foster children and foster adults only if the care is provided through an official arrangement with a local welfare agency [HCV GB, p. 5-18].

- Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home [24 CFR 5.609(c)(16)]
- Amounts received under the Low-Income Home Energy Assistance Program (42 U.S.C. 1626(c)) [24 CFR 5.609(c)(17)]
- Amounts received under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q) [24 CFR 5.609(c)(17)]
- Earned Income Tax Credit (EITC) refund payments (26 U.S.C. 32(j)) [24 CFR 5.609(c)(17)].
Note: EITC may be paid periodically if the family elects to receive the amount due as part of payroll payments from an employer.
- Lump sums received as a result of delays in processing Social Security and SSI payments (see section 6-I.J.) [24 CFR 5.609(b)(4)].

6-I.I. 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 the discussion of periodic payments in section 6-I.H and the discussion of lump-sum receipts in section 6-I.G.)

6-I.J. WELFARE ASSISTANCE

Overview

Welfare assistance is counted in annual income. Welfare assistance includes Temporary Assistance for Needy Families (TANF) and any payments to individuals or families based on need that are made under programs funded separately or jointly by federal, state, or local governments [24 CFR 5.603(b)].

Sanctions Resulting in the Reduction of Welfare Benefits [24 CFR 5.615]

PHAs must make a special calculation of annual income when the welfare agency imposes certain sanctions on certain families. The full text of the regulation at 24 CFR 5.615 is provided as Exhibit 6-5. The requirements are summarized below. This rule applies only if a family was receiving HCV assistance at the time the sanction was imposed.

Covered Families

The families covered by 24 CFR 5.615 are those “who receive welfare assistance or other public assistance benefits (‘welfare benefits’) from a State or other public agency (‘welfare agency’) under a program for which Federal, State or local law requires that a member of the family must

participate in an economic self-sufficiency program as a condition for such assistance” [24 CFR 5.615(b)]

Imputed Income

When a welfare agency imposes a sanction that reduces a family’s welfare income because the family commits fraud or fails to comply with the agency’s economic self-sufficiency program or work activities requirement, HACC must include in annual income “imputed” welfare income. HACC must request that the welfare agency inform HACC when the benefits of an HCV participant family are reduced. The imputed income is the amount the family would have received if the family had not been sanctioned.

This requirement does not apply to reductions in welfare benefits: (1) at the expiration of the lifetime or other time limit on the payment of welfare benefits, (2) if a family member is unable to find employment even though the family member has complied with the welfare agency economic self-sufficiency or work activities requirements, or (3) because a family member has not complied with other welfare agency requirements [24 CFR 5.615(b)(2)].

Offsets

The amount of the imputed income is offset by the amount of additional income the family begins to receive after the sanction is imposed. When the additional income equals or exceeds the imputed welfare income, the imputed income is reduced to zero [24 CFR 5.615(c)(4)].

6-I.K. PERIODIC AND DETERMINABLE ALLOWANCES

Annual income includes periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing with an assisted family [24 CFR 5.609(b)(7)].

Alimony and Child Support

PHAs must count alimony or child support amounts awarded as part of a divorce or separation agreement.

The HACC will count court-awarded amounts for alimony and child support unless the HACC verifies that: (1) the payments are not being made **AND** (2) the family has made reasonable efforts to collect amounts due, including filing with courts or agencies responsible for enforcing payments [HCV GB, pp. 5-23 and 5-47].

Families who do not have court-awarded alimony and child support awards are not required to seek a court award and are not required to take independent legal action to obtain collection.

Regular Contributions or Gifts

HACC 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 HACC. For contributions that may vary from month to month (e.g., utility payments), the HACC will include an average amount based upon past history.

6-I.L. STUDENT FINANCIAL ASSISTANCE

In 2005, Congress passed a law (for HCV programs only) requiring that certain student financial assistance be included in annual income. Prior to that, the full amount of student financial assistance was excluded [24 CFR 5.609(b)(9)]. For some students, the full exclusion still applies.

Student Financial Assistance Included in Annual Income [24 CFR 5.609(b)(9) and FR 4/10/06]

The regulation requiring the inclusion of certain student financial assistance applies only to students who satisfy all of the following conditions:

- They are enrolled in an institution of higher education, as defined under the Higher Education Act (HEA) of 1965.
- They are seeking or receiving HCV assistance on their own—that is, apart from their parents—through the HCV program, the project-based certificate program, the project-based voucher program, or the moderate rehabilitation program.
- They are under 24 years of age **OR** they have no dependent children.

For students who satisfy these three conditions, any financial assistance in excess of tuition received: (1) under the 1965 HEA, (2) from a private source, or (3) from an institution of higher education, as defined under the 1965 HEA, must be included in annual income.

To determine annual income in accordance with the above requirements, HACC will use the definitions of *dependent child*, *institution of higher education*, and *parents* in Section 3-II.E, along with the following definitions [FR 4/10/06, pp. 18148-18150]:

- *Assistance under the Higher Education Act of 1965* includes Pell Grants, Federal Supplement Educational Opportunity Grants, Academic Achievement Incentive Scholarships, State Assistance under the Leveraging Educational Assistance Partnership Program, the Robert G. Byrd Honors Scholarship Program, and Federal Work Study programs.

- *Assistance from private sources* means assistance from nongovernmental sources, including parents, guardians, and other persons not residing with the student in an HCV assisted unit.
- *Tuition* will have the meaning given this term by the institution of higher education in which the student is enrolled.

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 HCV 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 Section 3-II.E
- Students who are receiving financial assistance through a governmental program not authorized under the 1965 HEA.

6-I.M. ADDITIONAL EXCLUSIONS FROM ANNUAL INCOME

Other exclusions contained in 24 CFR 5.609(c) that have not been discussed earlier in this chapter include the following:

- Reimbursement of medical expenses [24 CFR 5.609(c)(4)]
- Amounts received by participants in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred and which are made solely to allow participation in a specific program [24 CFR 5.609(c)(8)(iii)]
- Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS) [(24 CFR 5.609(c)(8)(ii)]
- Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era [24 CFR 5.609(c)(10)]
- Adoption assistance payments in excess of \$480 per adopted child [24 CFR 5.609(c)(12)]
- Refunds or rebates on property taxes paid on the dwelling unit [24 CFR 5.609(c)(15)]
- Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home [24 CFR 5.609(c)(16)]
- Amounts specifically excluded by any other federal statute [24 CFR 5.609(c)(17)]. HUD publishes an updated list of these exclusions periodically. It includes:

- (a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 (b))
- (b) Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058)
- (c) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c))
- (d) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e)
- (e) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f))
- (f) Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b)) (Effective July 1, 2000, references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998 (29 U.S.C. 2931).)
- (g) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, 90 Stat. 2503-04)
- (h) The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408)
- (i) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f))
- (j) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in *In Re Agent-product liability litigation*, M.D.L. No. 381 (E.D.N.Y.)
- (k) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721)
- (l) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q)
- (m) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j))
- (n) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433)

- (o) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d))
- (p) Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran (38 U.S.C. 1805)
- (q) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602)
- (r) Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931)

PART II: ADJUSTED INCOME

6-II.A. INTRODUCTION

Overview

HUD regulations require PHAs to deduct from annual income any of five mandatory deductions for which a family qualifies. The resulting amount is the family's adjusted income. Mandatory deductions are found in 24 CFR 5.611.

5.611(a) Mandatory deductions. In determining adjusted income, the responsible entity [PHA] must deduct the following amounts from annual income:

- (1) \$480 for each dependent;
- (2) \$400 for any elderly family or disabled family;
- (3) The sum of the following, to the extent the sum exceeds three percent of annual income:
 - (i) Unreimbursed medical expenses of any elderly family or disabled family;
 - (ii) Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with disabilities, to the extent necessary to enable any member of the family (including the member who is a person with disabilities) to be employed. This deduction may not exceed the earned income received by family members who are 18 years of age or older and who are able to work because of such attendant care or auxiliary apparatus; and

- | |
|--|
| (4) Any reasonable child care expenses necessary to enable a member of the family to be employed, seek employment, or to further his or her education. |
|--|

This part covers policies related to these mandatory deductions. Verification requirements related to these deductions are found in Chapter 7.

Anticipating Expenses

Generally, the HACC will use current circumstances to anticipate expenses. When possible, for costs that are expected to fluctuate during the year (e.g., child care during school and non-school periods and cyclical medical expenses), the HACC will estimate costs based on historic data and known future costs.

If a family has an accumulated debt for medical or disability assistance expenses, the HACC will include as an eligible expense the portion of the debt that the family expects to pay during the period for which the income determination is being made. However, amounts previously deducted will not be allowed even if the amounts were not paid as expected in a preceding period. The HACC may require the family to provide documentation of payments made in the preceding year.

6-II.B. DEPENDENT DEDUCTION

A deduction of \$480 is taken for each dependent [24 CFR 5.611(a)(1)]. *Dependent* is defined as any family member other than the head, spouse, or co-head who is under the age of 18 or who is 18 or older and is a person with disabilities or a full-time student. Foster children, foster adults, and live-in aides are never considered dependents [24 CFR 5.603(b)].

6-II.C. ELDERLY OR DISABLED FAMILY DEDUCTION

A single deduction of \$400 is taken for any elderly or disabled family [24 CFR 5.611(a)(2)]. An *elderly family* is a family whose head, spouse, co-head, or sole member is 62 years of age or older, and a *disabled family* is a family whose head, spouse, co-head, or sole member is a person with disabilities [24 CFR 5.403].

6-II.D. MEDICAL EXPENSES DEDUCTION

Unreimbursed medical expenses may be deducted to the extent that, in combination with any disability assistance expenses, they exceed three percent of annual income [24 CFR 5.611(a)(3)(i)].

The medical expense deduction is permitted only for families in which the head, spouse, or co-head is at least 62 or is a person with disabilities. If a family is eligible for a medical expense deduction, the medical expenses of all family members are counted [VG, p. 28].

Definition of *Medical Expenses*

HUD regulations define *medical expenses* at 24 CFR 5.603(b) to mean “medical expenses, including medical insurance premiums, that are anticipated during the period for which annual income is computed, and that are not covered by insurance.”

The most current IRS Publication 502, *Medical and Dental Expenses*, will be used to determine the costs that qualify as medical expenses.

Summary of Allowable Medical Expenses from IRS Publication 502	
Services of medical professionals Surgery and medical procedures that are necessary, legal, non-cosmetic Services of medical facilities Hospitalization, long-term care, and in-home nursing services Prescription medicines and insulin, but not nonprescription medicines even if recommended by a doctor Improvements to housing directly related to medical needs (e.g., ramps for a wheel chair, handrails)	Substance abuse treatment programs Psychiatric treatment Ambulance services and some costs of transportation related to medical expenses The cost and care of necessary equipment related to a medical condition (e.g., eyeglasses/lenses, hearing aids, crutches, and artificial teeth) Cost and continuing care of necessary service animals Medical insurance premiums or the cost of a health maintenance organization (HMO)
Note: This chart provides a summary of eligible medical expenses only. Detailed information is provided in IRS Publication 502. Medical expenses are considered only to the extent they are not reimbursed by insurance or some other source.	

Families That Qualify for Both Medical and Disability Assistance Expenses

This policy applies only to families in which the head, spouse, or co-head is 62 or older or is a person with disabilities.

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

6-II.E. DISABILITY ASSISTANCE EXPENSES DEDUCTION

Reasonable expenses for attendant care and auxiliary apparatus for a disabled family member may be deducted if they: (1) are necessary to enable a family member 18 years or older to work, (2) are not paid to a family member or reimbursed by an outside source, (3) in combination with any medical expenses, exceed three percent of annual income, and (4) do not exceed the earned income received by the family member who is enabled to work [24 CFR 5.603(b) and 24 CFR 5.611(a)(3)(ii)].

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, the HACC will consider factors such as how the work schedule of the relevant family members relates to the hours of care provided, the time required for transportation, the relationship of the family members to the person with disabilities, and any special needs of the person with disabilities that might determine which family members are enabled to work.

When the HACC determines that the disability assistance expenses enable more than one family member to work, the expenses will be capped by the sum of the family members’ incomes.

Eligible Disability Expenses

Examples of auxiliary apparatus are provided in the *HCV Guidebook* as follows: “Auxiliary apparatus are items such as wheelchairs, ramps, adaptations to vehicles, or special equipment to enable a blind person to read or type, but only if these items are directly related to permitting the disabled person or other family member to work” [HCV GB, p. 5-30].

HUD advises PHAs to further define and describe auxiliary apparatus [VG, p. 30].

Eligible Auxiliary Apparatus

Expenses incurred for maintaining or repairing an auxiliary apparatus are eligible. In the case of an apparatus that is specially adapted to accommodate a person with disabilities (e.g., a vehicle or computer), the cost to maintain the special adaptations (but not maintenance of the apparatus itself) is an eligible expense. The cost of service animals trained to give assistance to persons with disabilities, including the cost of acquiring the animal, veterinary care, food, grooming, and other continuing costs of care, will be included.

Eligible Attendant Care

The family determines the type of attendant care that is appropriate for the person with disabilities.

Attendant care includes, but is not limited to, reasonable costs for home medical care, nursing services, in-home or center-based care services, interpreters for persons with hearing impairments, and readers for persons with visual disabilities.

Attendant care expenses will be included for the period that the person enabled to work is employed plus reasonable transportation time. The cost of general housekeeping and personal services is not an eligible attendant care expense. However, if the person enabled to work is the

person with disabilities, personal services necessary to enable the person with disabilities to work are eligible.

If the care attendant also provides other services to the family, the HACC 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.

The HACC determines the reasonableness of the expenses based on typical costs of care or apparatus in the locality. To establish typical costs, the HACC will collect information from organizations that provide services and support to persons with disabilities. A family may present, and the HACC will consider, the family's justification for costs that exceed typical costs in the area.

Families That Qualify for Both Medical and Disability Assistance Expenses

This policy applies only to families in which the head or spouse is 62 or older or is a person with disabilities.

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

6-II.F. CHILD CARE EXPENSE DEDUCTION

HUD defines *child care expenses* at 24 CFR 5.603(b) as “amounts anticipated to be paid by the family for the care of children under 13 years of age during the period for which annual income is computed, but only where such care is necessary to enable a family member to actively seek employment, be gainfully employed, or to further his or her education and only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for child care. In the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of employment income that is included in annual income.”

Clarifying the Meaning of *Child* for This Deduction

Child care expenses do not include child support payments made to another on behalf of a minor who is not living in an assisted family’s household [VG, p. 26]. However, child care expenses for foster children that are living in the assisted family’s household, are included when determining the family’s child care expenses [HCV GB, p. 5-29].

Qualifying for the Deduction

Determining Who Is Enabled to Pursue an Eligible Activity

The family must identify the family member(s) enabled to pursue an eligible activity. The term *eligible activity* in this section means any of the activities that may make the family eligible for a child care deduction (seeking work, pursuing an education, or being gainfully employed).

In evaluating the family’s request, the HACC 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 the HACC. The HACC will generally use 10 hours per week as a guideline.

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.

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 HACC may require additional documentation when a family claims child care expenses that exceed 50% of its annual income.

The earned income used for this purpose is the amount of earned income verified after any earned income disallowances or income exclusions are applied.

When the person who is enabled to work is a person with disabilities who receives the earned income disallowance (EID) or a full-time student whose earned income above \$480 is excluded, child care costs related to enabling a family member to work may not exceed the portion of the person’s earned income that actually is included in annual income. For example, if a family member who qualifies for the EID makes \$15,000 but because of the EID only \$5,000 is included in annual income, child care expenses are limited to \$5,000.

HACC must not limit the deduction to the least expensive type of child care. If the care allows the family to pursue more than one eligible activity, including work, the cap is calculated in proportion to the amount of time spent working [HCV GB, p. 5-30].

When the child care expense being claimed is to enable a family member to work, only one family member’s income will be considered for a given period of time. When more than one family member works during a given period, the HACC generally will limit allowable child care expenses to the earned income of the lowest-paid member. The family may provide information that supports a request to designate another family member as the person enabled to work.

Eligible Child Care Expenses

The type of care to be provided is determined by the assisted family. HACC may not refuse to give a family the child care expense deduction because there is an adult family member in the household that may be available to provide child care [VG, p. 26].

Allowable Child Care Activities

For school-age children, costs attributable to public or private school activities during standard school hours are not considered. Expenses incurred for supervised activities after school or during school holidays (e.g., summer day camp, after-school sports league) are allowable forms of child care.

The costs of general housekeeping and personal services are not eligible. Likewise, child care expenses paid to a family member who lives in the family’s unit are not eligible; however, payments for child care to relatives who do not live in the unit are eligible.

If a child care provider also renders other services to a family or child care is used to enable a family member to conduct activities that are not eligible for consideration, the HACC 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.

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.

Child care expenses will be considered for the time required for the eligible activity plus reasonable transportation time. For child care that enables a family member to go to school, the time allowed may include not more than one study hour for each hour spent in class.

To establish the reasonableness of child care costs, the HACC will use the schedule of child care costs from the local welfare agency. Families may present, and the HACC will consider, justification for costs that exceed typical costs in the area.

PART III: CALCULATING FAMILY SHARE AND PHA SUBSIDY

6-III.A. OVERVIEW OF RENT AND SUBSIDY CALCULATIONS

TTP Formula [24 CFR 5.628]

HUD regulations specify the formula for calculating the total tenant payment (TTP) for an assisted family. TTP is the highest of the following amounts, rounded to the nearest dollar:

- 30 percent of the family's monthly adjusted income (adjusted income is defined in Part II)
- 10 percent of the family's monthly gross income (annual income, as defined in Part I, divided by 12)
- The welfare rent (in as-paid states only)
- A minimum rent between \$0 and \$50 that is established by HACC

HACC has authority to suspend and exempt families from minimum rent when a financial hardship exists, as defined in section 6-III.B.

The amount that a family pays for rent and utilities (the family share) will never be less than the family's TTP but may be greater than the TTP depending on the rent charged for the unit the family selects.

Welfare Rent [24 CFR 5.628]

Welfare rent does not apply in this locality.

Minimum Rent [24 CFR 5.630]

The minimum rent for this locality is \$50.00.

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 HACC's applicable payment standard: (1) the family will pay more than the TTP and (2) at initial occupancy HACC may not approve the tenancy if it would require the family share to exceed 40 percent of the family's monthly adjusted income. The income used for this determination must have been verified no earlier than 60 days before the family's voucher was issued. (For a discussion of the application of payment standards, see section 6-III.C.)

PHA Subsidy [24 CFR 982.505(b)]

HACC 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. (For a discussion of the application of payment standards, see section 6-III.C.)

Utility Reimbursement [24 CFR 982.514(b)]

When HACC subsidy for a family exceeds the rent to owner, the family is due a utility reimbursement. HUD permits HACC to pay the reimbursement to the family or directly to the utility provider.

6-III.B. FINANCIAL HARDSHIPS AFFECTING MINIMUM RENT

Overview

If HACC establishes a minimum rent greater than zero, HACC must grant an exemption from the minimum rent if a family is unable to pay the minimum rent because of financial hardship [24 CFR 5.630].

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 HACC determines that a hardship exists, the family share is the highest of the remaining components of the family's calculated TTP.

HUD-Defined Financial Hardship

Financial hardship includes the following situations:

- (1) 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.

- (2) The family would be evicted because it is unable to pay the minimum rent. For a family to qualify under this provision, the cause of the potential eviction must be the family's failure to pay rent to the owner or tenant-paid utilities.
- (3) Family income has decreased because of changed family circumstances, including the loss of employment.
- (4) 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).

Implementation of Hardship Exemption

Determination of Hardship

When a family requests a financial hardship exemption, HACC must suspend the minimum rent requirement beginning the first of the month following the family's request. HACC then determines whether the financial hardship exists and whether the hardship is temporary or long-term. The HACC defines temporary hardship as a hardship expected to last 90 days or less. Long-term hardship is defined as a hardship expected to last more than 90 days.

When the minimum rent is suspended, the family share reverts to the highest of the remaining components of the calculated TTP. The example below demonstrates the effect of the minimum rent exemption.

Example: Impact of Minimum Rent Exemption	
Assume HACC has established a minimum rent of \$50.	
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

Hardship Exemption

To qualify for a hardship exemption, a family must submit a request for a hardship exemption in writing. The request must explain the nature of the hardship and how the hardship has affected the family's ability to pay the minimum rent.

The HACC will make the determination of hardship within 30 calendar days.

No Financial Hardship

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

Temporary Hardship

If the HACC determines that a qualifying financial hardship is temporary, the HACC must suspend the minimum rent for the 90-day period beginning the first of the month following the date of the family's request for a hardship exemption.

At the end of the 90-day suspension period, the family must resume payment of the minimum rent and must repay the HACC the amounts suspended. HUD requires the HACC to offer a reasonable repayment agreement, on terms and conditions established by the HACC. The HACC also may determine that circumstances have changed and the hardship is now a long-term hardship.

The HACC may enter into a repayment agreement in accordance with the procedures found in Chapter 16 of this plan.

Long-Term Hardship

If the HACC determines that the financial hardship is long-term, the HACC 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:

- (1) At an interim or annual reexamination, the family's calculated TTP is greater than the minimum rent.
- (2) 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.
- (3) For hardship conditions based upon hardship-related expenses, the minimum rent exemption will continue to be recognized until the cumulative amount exempted is equal to the expense incurred.

6-III.C. APPLYING PAYMENT STANDARDS

Overview

The HACC's schedule of payment standards is used to calculate housing assistance payments for HCV families [24 CFR 982.505]. This section covers the application of the HACC's payment standards. The establishment and revision of the HACC's payment standard schedule are covered in Chapter 16.

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 HACC's subsidy standards [24 CFR 982.4(b)], or (2) the payment standard for the size of the dwelling unit rented by the family.

If the HACC has established an exception payment standard for a designated part of an FMR area and a family's unit is located in the exception area, the HACC must use the appropriate payment standard for the exception area.

The HACC 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 owner lowers the rent, the HACC will recalculate the HAP using the lower of the initial payment standard or the gross rent for the unit [HCV GB, p. 7-8].

Changes in Payment Standards

When the HACC revises its payment standards during the term of the HAP contract for a family's unit, it will apply the new payment standards in accordance with HUD regulations.

Decreases

If the amount on the payment standard schedule is decreased during the term of the HAP contract, the lower payment standard generally will be used beginning at the effective date of the family's second regular reexamination following the effective date of the decrease in the payment standard. The HACC will determine the payment standard for the family as follows:

Step 1: At the first regular reexamination following the decrease in the payment standard, the HACC will determine the payment standard for the family using the lower of the payment standard for the family unit size or the size of the dwelling unit rented by the family.

Step 2: The HACC will compare the payment standard from step 1 to the payment standard last used to calculate the monthly housing assistance payment for the family. The payment standard used by the HACC at the first regular reexamination following the decrease in the payment standard will be the higher of these two payment standards. The HACC will advise the family that the application of the lower payment standard will be deferred until the second regular reexamination following the effective date of the decrease in the payment standard.

Step 3: At the second regular reexamination following the decrease in the payment standard, the lower payment standard will be used to calculate the monthly housing assistance payment for the family unless the HACC has subsequently increased the payment standard, in which case the payment standard will be determined in accordance with procedures for increases in payment standards described below.

Increases

If the payment standard is increased during the term of the HAP contract, the increased payment standard will be used to calculate the monthly housing assistance payment for the family beginning on the effective date of the family's first regular reexamination on or after the effective date of the increase in the payment standard.

Families requiring or requesting interim reexaminations will not have their HAP payments calculated using the higher payment standard until their next annual reexamination [HCV GB, p. 7-8].

Changes in Family Unit Size

Irrespective of any increase or decrease in the payment standard, if the unit size increases or decreases during the HAP contract term, the new unit size must be used to determine the

payment standard for the family beginning at the family's first regular reexamination following the change in unit size.

Reasonable Accommodation

If a family requires a higher payment standard as a reasonable accommodation for a family member who is a person with disabilities, the HACC is allowed to establish a higher payment standard for the family within the basic range.

6-III.D. APPLYING UTILITY ALLOWANCES

Overview

The HACC's utility allowance schedule is used in determining family share of the rent and PHA subsidy [24 CFR 982.517]. The utility allowance for a family shall be the lower of: (1) the utility allowance amount for the family voucher size; or (2) the utility allowance amount for the unit size of the unit rented by the family. This applies only to vouchers issued after June 2014 and to current program participants at their next annual reexamination after June 2014.

However, upon the request of a family that includes a person with disabilities, the PHA must approve a utility allowance higher than the applicable amount if such a higher utility allowance is needed as a reasonable accommodation to make the program accessible to and usable by the family member with a disability.

For policies on establishing and updating utility allowances, see Chapter 16.

Reasonable Accommodation

HCV program regulations require the HACC to approve a utility allowance amount higher than shown on the HACC's schedule if a higher allowance is needed as a reasonable accommodation for a family member with a disability. For example, if a family member with a disability requires such an accommodation, the HACC will approve an allowance for air-conditioning, even if the HACC has determined that an allowance for air-conditioning generally is not needed.

The family must request the higher allowance and provide the HACC with an explanation of the need for the reasonable accommodation and information about the amount of additional allowance required [HCV GB, p. 18-8].

Utility Allowance Revisions

At reexamination, the HACC must use the HACC's current utility allowance schedule [24 CFR 982.517(d)(2)]. Revised utility allowances will be applied to a family's rent and subsidy calculations at the first annual reexamination that is effective after the allowance is adopted.

6-III.E. PRORATED ASSISTANCE FOR MIXED FAMILIES

HUD regulations prohibit assistance to ineligible family members [24 CFR 5.520]. A *mixed family* is one that includes at least one U.S. citizen or eligible immigrant and any number of ineligible family members. The HACC must prorate the assistance provided to a mixed family. The HACC will first determine assistance as if all family members were eligible and then prorate the assistance based upon the percentage of family members that actually are eligible. For example, if the HACC subsidy for a family is calculated at \$500 and two of four family members are ineligible, the HACC subsidy would be reduced to \$250.

EXHIBIT 6-1: ANNUAL INCOME INCLUSIONS

24 CFR 5.609

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

- (1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or
- (2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and
- (3) Which are not specifically excluded in paragraph (c) of this section.
- (4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

(b) Annual income includes, but is not limited to:

- (1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;
- (2) The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a

business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;

(3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;

(4) The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in paragraph (c)(14) of this section);

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay

(except as provided in paragraph (c)(3) of this section);

(6) Welfare assistance payments.

(i) Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income only to the extent such payments:

(A) Qualify as assistance under the TANF program definition at 45 CFR 260.31¹; and

(B) Are not otherwise excluded under paragraph (c) of this section.

(ii) If the welfare assistance payment includes an amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

(A) The amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities; plus

(B) The maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities. If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph shall be the amount resulting from one application of the percentage.

(7) Periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing in the dwelling;

(8) All regular pay, special pay and allowances of a member of the Armed Forces (except as provided in paragraph (c)(7) of this section)

(9) For section 8 programs only and as provided in 24 CFR 5.612, any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. For purposes of this paragraph, "financial assistance" does not include loan proceeds for the purpose of determining income.

HHS DEFINITION OF "ASSISTANCE"

**45 CFR: GENERAL TEMPORARY
ASSISTANCE FOR NEEDY FAMILIES**

260.31 What does the term "assistance" mean?

(a)(1) The term "assistance" includes cash, payments, vouchers, and other forms of benefits designed to meet a family's ongoing basic needs (i.e., for food, clothing, shelter, utilities, household goods, personal care items, and general incidental expenses).

(2) It includes such benefits even when they are:

(i) Provided in the form of payments by a TANF agency, or other agency on its behalf, to individual recipients; and

(ii) Conditioned on participation in work experience or community service (or any other work activity under 261.30 of this chapter).

¹ Text of 45 CFR 260.31 follows.

(3) Except where excluded under paragraph (b) of this section, it also includes supportive services such as transportation and child care provided to families who are not employed.

(b) [The definition of “assistance”] excludes: (1) Non-recurrent, short-term benefits that:

(i) Are designed to deal with a specific crisis situation or episode of need;

(ii) Are not intended to meet recurrent or ongoing needs; and

(iii) Will not extend beyond four months.

(2) Work subsidies (i.e., payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training);

(3) Supportive services such as child care and transportation provided to families who are employed;

(4) Refundable earned income tax credits;

(5) Contributions to, and distributions from, Individual Development Accounts;

(6) Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support; and

(7) Transportation benefits provided under a Job Access or Reverse Commute project, pursuant to section 404(k) of [the Social Security] Act, to an individual who is not otherwise receiving assistance.

EXHIBIT 6-2: ANNUAL INCOME EXCLUSIONS

24 CFR 5.609

(c) Annual income does not include the following:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);

(3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (b)(5) of this section);

(4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(5) Income of a live-in aide, as defined in Sec. 5.403;

(6) Subject to paragraph (b)(9) of this section, the full amount of student financial assistance paid directly to the student or to the educational institution;

(7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;

(8) (i) Amounts received under training programs funded by HUD;

(ii) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the HACC or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the HACC's governing board. No resident may receive more than one such stipend during the same period of time;

(v) Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program;

(9) Temporary, nonrecurring or sporadic income (including gifts);

(10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;

(11) Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse);

(12) Adoption assistance payments in excess of \$480 per adopted child;

(13) [Reserved]

(14) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts.

(15) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;

(16) Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(17) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the Federal Register and distributed to PHAs and housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary. [See the following chart for a list of benefits that qualify for this exclusion.]

Sources of Income Excluded by Federal Statute from Consideration as Income for Purposes of Determining Eligibility or Benefits

- a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 (b));
- b) Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058);
- c) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c));
- d) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);
- e) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));
- f) Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b); (effective July 1, 2000, references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998 (29 U.S.C. 2931);
- g) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub.L- 94-540, 90 Stat. 2503-04);

h) The first \$2000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first \$2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408);

i) Amounts of scholarships funded under title IV of the Higher Education Act of 1965, including awards under federal work-study program or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);

j) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f));

k) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in In Re Agent-product liability litigation, M.D.L. No. 381 (E.D.N.Y.);

l) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721);

m) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q);

n) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j));

o) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433);

p) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d));

q) Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran (38 U.S.C. 1805);

r) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602); and

s) Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931).

EXHIBIT 6-3: TREATMENT OF FAMILY ASSETS

24 CFR 5.603(b) Net Family Assets

(1) Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded.

(2) In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining annual income under Sec. 5.609.

(3) In determining net family assets, PHAs or owners, as applicable, shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefore.

In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

(4) For purposes of determining annual income under Sec. 5.609, the term "net family assets" does not include the value of a home currently being purchased with assistance under part 982, subpart M of this title. This exclusion is limited to the first 10 years after the purchase date of the home.

EXHIBIT 6-4: EARNED INCOME DISALLOWANCE FOR PERSONS WITH DISABILITIES

24 CFR 5.617 Self-sufficiency incentives for persons with disabilities—Disallowance of increase in annual income.

(a) Applicable programs. The disallowance of increase in annual income provided by this section is applicable only to the following programs: HOME Investment Partnerships Program (24 CFR part 92); Housing Opportunities for Persons with AIDS (24 CFR part 574); Supportive Housing Program (24 CFR part 583); and the Housing Choice Voucher Program (24 CFR part 982).

(b) Definitions. The following definitions apply for purposes of this section.

Disallowance. Exclusion from annual income.

Previously unemployed includes a person with disabilities who has earned, in the twelve months previous to employment, no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage.

Qualified family. A family residing in housing assisted under one of the programs listed in paragraph (a) of this section or receiving tenant-based rental assistance under one of the programs listed in paragraph (a) of this section.

(1) Whose annual income increases as a result of employment of a family member who is a person with disabilities and who was previously unemployed for one or more years prior to employment;

(2) Whose annual income increases as a result of increased earnings by a family member who is a person with disabilities during participation in any economic self-sufficiency or other job training program; or

(3) Whose annual income increases, as a result of new employment or increased earnings of a family member who is a person with disabilities, during or within six months after receiving assistance, benefits or services under any state program for temporary assistance for needy families funded under Part A of Title IV of the Social Security Act, as determined by the responsible entity in consultation with the local agencies administering temporary assistance for needy families (TANF) and Welfare-to-Work (WTW) programs. The TANF program is not limited to monthly income maintenance, but also includes such benefits and services as one-time payments, wage subsidies and transportation assistance-- provided that the total amount over a six-month period is at least \$500.

(c) Disallowance of increase in annual income—

(1) Initial twelve month exclusion. During the cumulative twelve month period beginning on the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the responsible entity must exclude from annual income (as defined in the regulations governing the applicable program listed in paragraph (a) of this section) of a qualified family any increase in income of the family member who is a person with disabilities as a result of employment over prior income of that family member.

(2) Second twelve month exclusion and phase-in. During the second cumulative twelve month period after the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the responsible entity must exclude from annual income of a qualified family fifty percent of any increase in income of such family member as a result of employment over income of that family member prior to the beginning of such employment.

(3) Maximum two year disallowance. The disallowance of increased income of an individual family member as provided in paragraph (b)(1) or (b)(2) of this section is limited to a lifetime 24 consecutive month period. The disallowance only applies for a maximum of twelve months for disallowance under paragraph (b)(1) of this section and a maximum of twelve months for disallowance under paragraph (b)(2) of this section, during the 24 consecutive month period starting from the initial exclusion under paragraph (b)(1) of this section. (4) Effect of changes on currently participating families. Families eligible for and participating in the disallowance of earned income under this section prior to May 9, 2016 will continue to be governed by this section in effect as it existed immediately prior to that date.

(d) Inapplicability to admission. The disallowance of increases in income as a result of employment of persons with disabilities under this section does not apply for purposes of admission to the program (including the determination of income eligibility or any income targeting that may be applicable).

EXHIBIT 6-5: THE EFFECT OF WELFARE BENEFIT REDUCTION

24 CFR 5.615**Public housing program and Section 8 tenant-based assistance program: How welfare benefit reduction affects family income**

(a) Applicability. This section applies to covered families who reside in public housing (part 960 of this title) or receive Section 8 tenant-based assistance (part 982 of this title).

(b) Definitions. The following definitions apply for purposes of this section:

Covered families. Families who receive welfare assistance or other public assistance benefits ("welfare benefits") from a State or other public agency ("welfare agency") under a program for which Federal, State, or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance.

Economic self-sufficiency program. See definition at Sec. 5.603.

Imputed welfare income. The amount of annual income not actually received by a family, as a result of a specified welfare benefit reduction, that is nonetheless included in the family's annual income for purposes of determining rent.

Specified welfare benefit reduction.

(1) A reduction of welfare benefits by the welfare agency, in whole or in part, for a family member, as determined by the welfare agency, because of fraud by a family member in connection with the welfare program or because of welfare agency sanction against a family member for noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

(2) "Specified welfare benefit reduction" does not include a reduction or termination of welfare benefits by the welfare agency:

- (i) at expiration of a lifetime or other time limit on the payment of welfare benefits;
- (ii) because a family member is not able to obtain employment, even though the family member has complied with welfare agency economic self-sufficiency or work activities requirements; or
- (iii) because a family member has not complied with other welfare agency requirements.

(c) Imputed welfare income.

(1) A family's annual income includes the amount of imputed welfare income (because of a specified welfare benefits reduction, as specified in notice to the HACC by the welfare agency), plus the total amount of other annual income as determined in accordance with Sec. 5.609.

(2) At the request of the HACC, the welfare agency will inform the HACC in writing of the amount and term of any specified welfare benefit reduction for a family member and the reason for such reduction and will also inform the HACC of any subsequent changes in the term or amount of such specified welfare benefit reduction. The HACC will use this information to determine the amount of imputed welfare income for a family.

(3) A family's annual income includes imputed welfare income in family annual income, as determined at the HACC's interim or regular reexamination of family income and composition,

during the term of the welfare benefits reduction (as specified in information provided to the HACC by the welfare agency).

(4) The amount of the imputed welfare income is offset by the amount of additional income a family receives that commences after the time the sanction was imposed. When such additional income from other sources is at least equal to the imputed

(5) The HACC may not include imputed welfare income in annual income if the family was not an assisted resident at the time of sanction.

(d) Review of PHA decision.

(1) Public housing. If a public housing tenant claims that the HACC has not correctly calculated the amount of imputed welfare income in accordance with HUD requirements, and if the HACC denies the family's request to modify such amount, the HACC shall give the tenant written notice of such denial, with a brief explanation of the basis for the HACC determination of the amount of imputed welfare income. The HACC notice shall also state that if the tenant does not agree with the HACC determination, the tenant may request a grievance hearing in accordance with part 966, subpart B of this title to review the HACC determination. The tenant is not required to pay an escrow deposit pursuant to Sec. 966.55(e) for the portion of tenant rent attributable to the imputed welfare income in order to obtain a grievance hearing on the HACC determination.

(2) Section 8 participant. A participant in the Section 8 tenant-based assistance program may request an informal hearing, in accordance with Sec. 982.555 of this title, to review the HACC determination of the amount of imputed welfare income that must be included in the family's annual income in accordance with this section. If the family claims that such amount is not correctly calculated in accordance with HUD requirements, and if the HACC denies the family's request to modify such amount, the HACC shall give the family written notice of such denial, with a brief explanation of the basis for the HACC determination of the amount of imputed welfare income. Such notice shall also state that if the family does not agree with the HACC determination, the family may request an informal hearing on the determination under the HACC hearing procedure.

(e) PHA relation with welfare agency.

(1) The HACC must ask welfare agencies to inform the HACC of any specified welfare benefits reduction for a family member, the reason for such reduction, the term of any such reduction, and any subsequent welfare agency determination affecting the amount or term of a specified welfare benefits reduction. If the welfare agency determines a specified welfare benefits reduction for a family member, and gives the HACC written notice of such reduction, the family's annual income shall include the imputed welfare income because of the specified welfare benefits reduction.

(2) The HACC is responsible for determining the amount of imputed welfare income that is included in the family's annual income as a result of a specified welfare benefits reduction as determined by the welfare agency, and specified in the notice by the welfare agency to the HACC. However, the HACC is not responsible for determining whether a reduction of welfare benefits by the welfare agency was correctly determined by the welfare agency in accordance with welfare program requirements and procedures, or for providing the opportunity for review or hearing on such welfare agency determinations.

(3) Such welfare agency determinations are the responsibility of the welfare agency, and the family may seek appeal of such determinations through the welfare agency's normal due process procedures. The HACC shall be entitled to rely on the welfare agency notice to the HACC of the welfare agency's determination of a specified welfare benefits reduction.

Chapter 7

VERIFICATION

[24 CFR 982.516, 24 CFR 982.551, 24 CFR 5.230]

INTRODUCTION

PHAs must verify all information that is used to establish the family's eligibility and level of assistance and is required to obtain the family's consent to collect the information. Applicants and program participants must cooperate with the verification process as a condition of receiving assistance. The HACC must not pass on the cost of verification to the family.

The HACC will follow the verification guidance provided by HUD in PIH Notice 2017-12 and PIH Notice 2017-12 Verification Guidance and any subsequent guidance issued by HUD. This chapter summarizes those requirements and provides supplementary the HACC policies.

Part I describes the general verification process. More detailed requirements related to individual factors are provided in subsequent parts including family information (Part II), income and assets (Part III), and mandatory deductions (Part IV).

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 HACC.

PART I: GENERAL VERIFICATION REQUIREMENTS

7-I.A. FAMILY CONSENT TO RELEASE OF INFORMATION

The family must supply any information that the HACC or HUD determines is necessary to the administration of the program and must consent to the HACC verification of that information [24 CFR 982.516 AND 982.551, 24 CFR 5.230].

Consent Forms

It is required that all adult applicants and participants sign form HUD-9886, Authorization for Release of Information. The purpose of form HUD-9886 is to facilitate automated data collection and computer matching from specific sources and provides the family's consent only for the specific purposes listed on the form. HUD and the HACC may collect information from State Wage Information Collection Agencies (SWICAs) and current and former employers of adult family members. Only HUD is authorized to collect information directly from the Internal Revenue Service (IRS) and the Social Security Administration (SSA). Adult family members must sign other consent forms as needed to collect information relevant to the family's eligibility and level of assistance.

Penalties for Failing to Consent [24 CFR 5.232]

If any family member who is required to sign a consent form fails to do so, the HACC 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 the HACC procedures.

7-I.B. OVERVIEW OF VERIFICATION REQUIREMENTS

HUD's Verification Hierarchy

HUD authorizes PHAs to use six methods to verify family information and specifies the circumstances in which each method will be used. In general HUD requires PHAs to use the most reliable form of verification that is available and to document the reasons when the HACC uses a lesser form of verification.

The HACC should begin with the highest level of verification techniques. All verifications, regardless of technique, require the HACC to review for multiple subsidy payments. HACC is required to review the EIV Former Tenant and Existing Tenant Report for any SSA matches involving another PHA or a Multi-family entity and follow-up on any issues identified. HACC is required to maintain the report and documentation of any follow-up in the tenant file. If the tenant is a new admission to the HACC, and a match is identified at a Multi-family property, the HACC must report the program admission date to the Multi-family property and document the notification in the tenant file. HACC also need to obtain an Income Report for each household. The PHA is required to maintain the Income Report in the tenant file along with the form HUD-50058 and other supporting documentation to support income and rent determinations for all interim and mandatory annual reexaminations of family income and composition.

In order of priority, the forms of verification that the HACC will use are:

6. Up-front Income Verification (UIV) – HUD Enterprise Income Verification (EIV) system
5. UIV – non-HUD systems
4. Third-party Written Verification
3. Third-party Written Verification Form
2. Third-party Oral Verification
1. Tenant Declaration

Each of the verification methods is discussed in subsequent sections below.

Requirements for Acceptable Documents

- Any documents used for verification must be the original (not photocopies) and generally must be dated within 60 calendar days of the date they are provided to the HACC. The documents must not be damaged, altered, or in any way, illegible.
- The HACC will accept documents dated up to 6 months before the effective date of the family's reexamination if the document represents the most recent scheduled report from a source. For example, if the holder of a pension annuity provides semi-annual reports, the HACC would accept the most recent report.
- Verifiable print-outs from web pages are considered original documents.
- The HACC staff member who views the original document must make a photocopy, annotate the copy with the name of the person who provided the document and the date the original was viewed, and sign the copy.
- Any family self-certifications must be made in a format acceptable to the HACC and must be signed in the presence of the HACC representative or the HACC notary public.

File Documentation

PHAs must document in the file how the figures used in income and rent calculations were determined. All verification attempts, information obtained, and decisions reached during the verification process will be recorded in the family's file in sufficient detail to demonstrate that the HACC 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.

7-I.C. UP-FRONT INCOME VERIFICATION (UIV)

HUD's Enterprise Income Verification (EIV) System is a web-based application, which provides the HACC with employment, wage, unemployment compensation and social security benefit information of participants under the jurisdiction of the Office of Public and Indian Housing (PIH). This system is available to all PHAs nationwide. Information in EIV is derived from computer matching programs initiated by HUD with the Social Security Administration (SSA) and the U.S. Department of Health and Human Services (HHS), for all program participants with valid personal identifying information (name, date of birth (DOB), and social security number (SSN)) reported on the form HUD-50058.

The HACC is required to review the EIV Income Report of each family before or during mandatory annual and interim reexaminations of family income and/or composition to reduce tenant under reporting of income and improper subsidy payments. EIV is classified as an UIV technique (or automated written third party verification), which helps to identify income sources and/or amounts that the tenant may not have disclosed. This UIV technique in many instances will reduce the need to mail or fax third party verification request forms to an income source.

EIV also provides various reports to assist PHAs with the following:

- Identifying tenants whose reported personal identifiers do not match the SSA database;
- Identifying tenants who need to disclose a SSN;
- Identifying tenants whose alternate identification number (Alt ID) needs to be replaced with a SSN;
- Identifying tenants who may not have reported complete and accurate income information;
- Identifying tenants who have started a new job;
- Identifying tenants who may be receiving duplicate rental assistance;
- Identifying tenants who are deceased and possibly continuing to receive rental assistance; and
- Identifying former tenants of PIH rental assistance programs who voluntarily or involuntarily left the program and have a reportable adverse status and/or owe money to a PHA or HCV landlord.

Upfront Income Verification (UIV) (Level 6/5)

The verification of income before or during a family reexamination, through an independent source that systematically and uniformly maintains income information in computerized form for a number of individuals.

The EIV system is available to the HACC as a UIV technique. The HACC will continue to use other non-HUD UIV tools, such as The Work Number (an automated verification system) and state government databases, to validate tenant-reported income.

7-I.D. THIRD-PARTY VERIFICATION

Written Third Party Verification (Level 4)

An original or authentic document generated by a third party source dated either within the 60-day period preceding the reexamination or PHA request date. Such documentation may be in the possession of the tenant (or applicant), and is commonly referred to as tenant-provided documents. Such tenant-provided documents are written third party verification since these documents originated from a third party source. The HACC may, at its discretion, reject any tenant-provided documents and follow up directly with the source to obtain necessary verification of information.

Examples of acceptable tenant-provided documentation (generated by a third party source) include, but are not limited to: pay stubs, payroll summary report, employer notice/letter of hire/termination, SSA benefit verification letter, bank statements, child support payment stubs,

welfare benefit letters and/or printouts, and unemployment monetary benefit notices. Current acceptable tenant-provided documents must be used for income and rent determinations. The HACC will obtain at a minimum, two current and consecutive pay stubs for determining annual income from wages. For new income sources or when two pay stubs are not available, the HACC will project income based on the information from a traditional written third party verification form or the best available information.

Written Third Party Verification Form (Level 3)

This form of verification is also known as traditional third party verification, using a standardized form to collect information from a third party source. The form is completed by the third party by hand (in writing or typeset). The HACC will send the form directly to the third party source by mail, fax, or email.

The HACC, given HUD's guidance in PIH Notice 2010-19 and PIH Notice 2017-12 will attempt to reduce the administrative burden and risk associated with use of the traditional third party verification form by relying on acceptable documents that are generated by a third party, but in the possession of and provided by the tenant (or applicant).

The HACC must rely on documents that originate from a third party source's computerized system and/or database, as this process reduces the likelihood of incorrect or falsified information being provided on the third party verification request form. The use of acceptable tenant-provided documents, which originate from a third party source, will improve the integrity of information used to determine a family's income and rent and ultimately reduce improper subsidy payments. This verification process will also streamline the income verification process.

Oral Third Party Verification (Level 2)

Independent verification of information by contacting the individual income/expense source(s), as identified through the UIV technique or identified by the family, via telephone or in-person visit. The HACC staff will document in the tenant file, the date and time of the telephone call or visit to the third-party, the name of the person contacted and telephone number, along with the confirmed information. This verification method is commonly used in the event that the independent source does not respond to the HACC's faxed, mailed, or e-mailed request for information in a reasonable time frame, i.e., ten (10) business days.

7-I.E. TENANT DECLARATION

When information cannot be verified by a third party or by review of documents, family members will be required to submit tenant declarations attesting to the accuracy of the information they have provided to the HACC.

The HACC may require a family to certify that a family member does not receive a particular type of income or benefit.

The tenant declaration must be made in a format acceptable to the HACC and must be signed by the family member whose information or status is being verified. All tenant declarations must be signed in the presence of an HACC representative or the HACC notary public.

Part II: VERIFYING FAMILY INFORMATION

7-II.A. VERIFICATION OF LEGAL IDENTITY

The HACC will require families to furnish verification of legal identity for each household member.

Verification of Legal Identity for Adults	Verification of Legal Identity for Children
Certificate of birth, naturalization papers	Certificate of birth
Church issued baptismal certificate	Adoption papers
Current, valid driver's license or Department of Motor Vehicles identification card	Custody agreement
U.S. military discharge (DD 214)	Health and Human Services ID
U.S. passport	School records
Employer identification card	

If a document submitted by a family is illegible or otherwise questionable, more than one of these documents may be required.

If none of these documents can be provided and at the HACC's discretion, a third party who knows the person may attest to the person's identity. The certification must be provided in a format acceptable to the HACC and be signed in the presence of an HACC representative or the HACC notary public.

Legal identity will be verified on an as needed basis.

7-II.B. SOCIAL SECURITY NUMBERS

Every family member must provide documentation of a valid Social Security Number (SSN) [24 CFR 5.216 and HCV GB, p. 5-12].

Addition of new household member who is at least 6 years of age or under the age of 6 and has an assigned SSN: When the participant requests to add a new household member who is at least 6 years of age, or is under the age of 6 and has an assigned SSN, the participant must provide the documentation to the HACC at the time of the request, or at the time of processing

the interim reexamination or recertification of family composition that includes the new member(s): [24 CFR 5.216 (i)]

Addition of new household member who is under the age of 6 and has no assigned SSN:

When a participant requests to add a new household member who is under the age of 6 and has not been assigned an SSN, the participant must provide the complete and accurate SSN assigned to each new child and the documentation referred to below to verify the SSN for each new child within 90 calendar days of the child being added to the household. [24 CFR 5.216 (ii)]

The following are acceptable forms of documentation of the SSN:

- Original SSN card issued by the SSA;
- Original SSA-issued document which contains the name and SSN of the individual;
- Original document issued by a federal, state, or local government agency which contains the name and SSN of the individual, such as a government issued driver's license;
- Other identification card issued by a federal, state, or local agency, a medical insurance company (including a Medicare card) or provider, or employer or trade union which contains the name and SSN of the individual;
- Payroll stubs which contain the name and SSN of the individual;
- Benefit award letters from government agencies, retirement benefit letters, life insurance policies which contain the name and SSN of the individual; or
- Court records such as real estate transactions, tax notices, marriage licenses, divorce decrees, child support orders, judgments, and bankruptcy records which contain the name and SSN of the individual

If the family is unable to disclose and provide evidence of the SSN within 90 calendar days, the HACC is required to grant the family an additional 90-day period to comply with the SSN disclosure and documentation requirement, **only if** the HACC determines the family was unable to comply with the requirements due to circumstances that could not have reasonably been foreseen and were outside the control of the family. Examples include but are not limited to: delayed processing of SSN application by the SSA, natural disaster, fire, or death in family.

The child is to be included as part of the assisted household and is entitled to all the benefits of being a household member during the allotted time for the family to comply with the SSN disclosure and documentation requirements. The HACC is required to generate an ALT ID. Upon expiration of the provided time period, if the family has not complied with the SSN disclosure and documentation requirements, the HACC **must** terminate the entire family's assistance or deny admission to the program.

If the family reports an SSN but cannot provide acceptable documentation of the number, the HACC will require a self-certification stating that documentation of the SSN cannot be provided at this time. The HACC will instruct the family to provide appropriate documentation as listed above within 90 calendars days from the date of the self-certification.

For individuals who are at least 62 years of age and are unable to submit the required documentation of their SSN within the initial 90-day period, the HACC will grant an additional 90 calendar days to provide documentation. If the family is a participant, assistance must be terminated. If the family is an applicant, assistance cannot be provided until proper documentation of the SSN is provided.

Social security numbers must be verified only once during continuously-assisted occupancy. If any family member obtains a SSN after admission to the program, the new SSN must be disclosed at the next regularly scheduled reexamination. The social security numbers of household members, such as live-in aids, must be verified for the purpose of conducting criminal background checks.

7-II.C. 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, the HACC 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) and to provide a self-certification.

Age must be verified only once during continuously-assisted occupancy.

7-II.D. 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 Eligibility chapter.

Family relationships are verified only to the extent necessary to determine a family's eligibility and level of assistance. Certification by the head of household normally is sufficient verification of family relationships.

Marriage

Certification by the head of household is normally sufficient verification. If the HACC has reasonable doubts about a marital relationship, the HACC will require the family to document the marriage by providing a copy of the marriage certificate.

In the case of a common law marriage, the couple must demonstrate that they hold themselves to be married (e.g., by telling the community they are married, calling each other husband and wife, using the same last name, filing joint income tax returns).

Separation or Divorce

A certified copy of a divorce decree, signed by a court officer, is required to document that a couple is divorced.

A copy of a court-ordered maintenance or other court record is required to document a separation.

If no court document is available, certification by the head of household or documentation from a community-based agency will be accepted.

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 utility bill - electric, water, gas issued within 90 days; pension or retirement statement; bank statement dated within 90 days; credit report issued by Experian, Equifax, or Transunion; renter's insurance policy; letter on official school letterhead dated within 90 days; official mail received from a state, county, city, village, or federal government agency; paystub dated within 90 days; state issued identification card or driver's license issued within 90 days).

Foster Children and Foster Adults

Third-party verification from the state or local government agency responsible for the placement of the individual with the family is required.

7-II.E. VERIFICATION OF STUDENT STATUS

General Requirements

The HACC requires families to provide information about the student status of all students who are 18 years of age or older. This information will be verified only if:

- The family reports full-time student status for an adult other than the head, spouse, or co-head, unless the head is a sole family member.
- The family reports child care expenses to enable a family member to further his or her education.
- The family includes a student enrolled in an *institution of higher education*.

Restrictions on Assistance to Students Enrolled in Institutions of Higher Education

This section applies only to students who are seeking assistance on their own, separately from their parents. It does not apply to students residing with parents who are seeking or receiving HCV assistance.

In accordance with the verification hierarchy described in Section 7-1.B, the HACC will determine whether the student is exempt from the restrictions in 24 CFR 5.612 by verifying any one of the following exemption criteria:

- The student is enrolled at an educational institution that does not meet the definition of *institution of higher education* in the Higher Education Act of 1965 (see Section Exhibit 3-2).
- The student is at least 24 years old.
- The student is a veteran, as defined in Section 3-II.E.
- The student is married.
- The student has at least one dependent child, as defined in Section 3-II.E.

If the HACC cannot verify at least one of these exemption criteria, the HACC will conclude that the student is subject to the restrictions on assistance at 24 CFR 5.612. In addition to verifying the student's income eligibility, the HACC will then proceed to verify either the student's parents' income eligibility (see Section 7-III.J) or the student's independence from his/her parents (see below).

Independent Student

The HACC 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:

- Reviewing and verifying previous address information to determine whether the student has established a household separate from his/her parents for at least one year **or** reviewing and verifying documentation relevant to determining whether the student meets the U.S. Department of Education's definition of *independent student* (see Section 3-II.E)
- Reviewing prior year income tax returns to verify whether a parent has claimed the student as a dependent
- Requesting and obtaining written certification directly from the student's parents identifying the amount of support they will be providing to the student, even if the amount of support is \$0.

7-II.F. DOCUMENTATION OF DISABILITY

The HACC must verify the existence of a disability in order to allow certain income disallowances and deductions from income. The HACC is not permitted to inquire about the nature or extent of a person's disability [24 CFR 100.202(c)]. The HACC may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the HACC receives a verification document that provides such information, the HACC will not place this information in the tenant file. Under no circumstances will the HACC request a participant's medical record(s). For more information on health care privacy laws, see the Department of Health and Human Services' website at www.os.dhhs.gov.

The above cited regulation does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they are persons with disabilities [VG, p. 24]:

- Inquiry into an applicant's ability to meet the requirements of ownership or tenancy
- Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with disabilities or to persons with a particular type of disability
- Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with disabilities or to persons with a particular type of disability
- Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance
- Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance

Family Members Receiving SSA Disability Benefits

For family members claiming disability who receive disability benefits from the SSA, the HACC will attempt to obtain information about disability benefits through the HUD Enterprise Income Verification (EIV) system when it is available. If documentation from HUD's EIV System is not available, the HACC will request a current (dated within the last 60 days) SSA benefit verification letter from each family member claiming disability status. If the family is unable to provide the document(s), the HACC will ask the family to request a benefit verification letter by either calling SSA at 1-800-772-1213 or by requesting it from www.ssa.gov. Once the applicant or participant receives the benefit verification letter they will be required to provide it to the HACC.

Family Members Not Receiving SSA Disability Benefits

Receipt of veteran's disability benefits, worker's compensation, or other non-SSA benefits based on the individual's claimed disability are not sufficient verification that the individual meets HUD's definition of disability in 24 CFR 5.603.

For family members claiming disability who do not receive disability benefits from the SSA, a knowledgeable professional must provide third-party verification that the family member meets the HUD definition of disability and/or complete the HACC's Disability Verification Form. See the Eligibility chapter for the HUD definition of disability. The knowledgeable professional will verify whether the family member does or does not meet the HUD definition. The HACC may also refer to the disability status listed on the EIV report.

7-II.G. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS

Overview

Housing assistance is not available to persons who are not citizens, nationals, or eligible immigrants [24 CFR 5.508]. Prorated assistance is provided for "mixed families" containing both eligible and ineligible persons. A detailed discussion of eligibility requirements is in the

Eligibility chapter. This verifications chapter discusses HUD and the HACC verification requirements related to citizenship status.

The family must provide a certification that identifies each family member as a U.S. citizen, a U.S. national, an eligible noncitizen or an ineligible noncitizen and submit the documents discussed below for each family member. Once eligibility to receive assistance has been verified for an individual it need not be collected or verified again during continuously-assisted occupancy. [24 CFR 5.508(g)(5)]

U.S. Citizens and Nationals

HUD requires a declaration for each family member who claims to be a U.S. citizen or national. The declaration must be signed personally by any family member 18 or older and by a guardian for minors.

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

Eligible Immigrants

Documents Required

All family members claiming eligible immigration status must declare their status in the same manner as U.S. citizens and nationals.

The documentation required for eligible noncitizens varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, age, and the date on which the family began receiving HUD-funded assistance. Exhibit 7-2 at the end of this chapter summarizes documents family members must provide.

PHA Verification [HCV GB, pp. 5-3 and 5-7]

For family members age 62 or older who claim to be eligible immigrants, proof of age is required in the manner described in 7-II.C. of this plan. No further verification of eligible immigration status is required.

For family members under the age of 62 who claim to be eligible immigrants, the HACC must verify immigration status with the United States Citizenship and Immigration Services (USCIS).

The HACC will follow all USCIS protocols for verification of eligible immigration status.

7-II.H. VERIFICATION OF PREFERENCE STATUS

PHAs must verify any preferences claimed by an applicant.

PART III: VERIFYING INCOME AND ASSETS

Chapter 6, Part I 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 the HACC policies that supplement the general verification procedures specified in Part I of this chapter.

7-III.A. EARNED INCOME

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.

7-III.B. 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 completed for filing federal and local taxes in the preceding year.
- If accelerated depreciation was used on the tax return or financial statement, an accountant's calculation of depreciation expense, computed using straight-line depreciation rules.

The HACC will provide a format for any person who is unable to provide such a statement to record income and expenses for the coming year. The business owner/self-employed person will be required to submit the information requested and to certify to its accuracy at all future reexaminations.

At any reexamination the HACC may request documents that support submitted financial statements such as manifests, appointment books, cash books, or bank statements.

If a family member has been self-employed less than three (3) months, the HACC will accept the family member's certified estimate of income and schedule an interim reexamination in three (3) months. If the family member has been self-employed for three (3) to twelve (12) months the HACC will require the family to provide documentation of income and expenses for this period and use that information to project income.

7-III.C. PERIODIC PAYMENTS AND PAYMENTS IN LIEU OF EARNINGS

Social Security/SSI Benefits

To verify the SS/SSI benefits of applicants, the HACC will request a current SSA benefit verification letter from each family member that receives social security benefits. If the family is unable to provide the document(s), the HACC will ask the family to request a benefit verification letter by either calling SSA at 1-800-772-1213 or by requesting it from www.ssa.gov. Once the applicant has received the benefit verification letter they will be required to provide it to the HACC.

To verify the SS/SSI benefits of participants, the HACC will obtain information about social security/SSI benefits through the HUD EIV System or the Tenant Assessment Subsystem (TASS). If benefit information is not available in HUD systems, the HACC will request a current SSA benefit verification letter from each family member that receives social security benefits. If the family is unable to provide the document(s) the HACC will ask the family to request a benefit verification letter by either calling SSA at 1-800-772-1213 or by requesting it from www.ssa.gov. Once the participant has received the benefit verification letter they will be required to provide it to the HACC.

7-III.D. ALIMONY OR CHILD SUPPORT

The way the HACC will seek verification for alimony and child support differs depending on whether the family declares that it receives regular payments.

If the family declares that it *receives regular payments*, verification will be sought in the following order:

- If payments are made through a state or local entity, the HACC will request a record of payments for the past 12 months and request that the entity disclose any known information about the likelihood of future payments. This request may come through a website that deals with child support payments.
- Third-party verification from the person paying the support
- Copy of a separation or settlement agreement or a divorce decree stating amount and type of support and payment schedules
- Copy of the latest check and/or payment stubs
- 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.

If the family declares that it *receives irregular or no payments*, in addition to the verification process listed above, the family must provide evidence that it has taken all reasonable efforts to collect amounts due. This may include:

- A statement from any agency responsible for enforcing payment that shows the family has requested enforcement and is cooperating with all enforcement efforts
- If the family has made independent efforts at collection, a written statement from the attorney or other collection entity that has assisted the family in these efforts

7-III.E. ASSETS AND INCOME FROM ASSETS

Assets Disposed of for Less than Fair Market Value

The family must certify whether any assets have been disposed of for less than fair market value in the preceding two years. The HACC needs to verify only those certifications that warrant documentation [HCV GB, p. 5-28].

The HACC will verify the value of assets disposed of only if:

- The HACC does not already have a reasonable estimation of its value from previously collected information, or
- The amount reported by the family in the certification appears obviously in error.

Example 1: An elderly participant reported a \$10,000 certificate of deposit at the last annual reexamination and the HACC verified this amount. Now the person reports that she has given this \$10,000 to her son. The HACC has a reasonable estimate of the value of the asset; therefore, re-verification of the value of the asset is not necessary.

Example 2: A family member has disposed of its 1/4 share of real property located in a desirable area and has valued her share at approximately \$5,000. Based upon market conditions, this declaration does not seem realistic. Therefore, the HACC will verify the value of this asset.

7-III.F. 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
- A self-certification from the family members engaged in the rental of property providing an estimate of expenses for the coming year and the most recent IRS Form 1040 with Schedule E (Rental Income). If schedule E was not prepared, the HACC will require the family members involved in the rental of property to provide a self-certification of income and expenses for the previous year and may request documentation to support the statement including: tax statements, insurance invoices, bills for reasonable maintenance and utilities, and bank statements or amortization schedules showing monthly interest expense.

7-III.G. RETIREMENT ACCOUNTS

When third-party verification is not available, the type of original document that will be accepted depends upon the family member's retirement status.

Before retirement, the HACC will accept an original document from the entity holding the account with a date that shows it is the most recently scheduled statement for the account but in no case earlier than 6 months from the effective date of the examination.

Upon retirement, the HACC will accept an original document from the entity holding the account that reflects any distributions of the account balance, any lump sums taken and any regular payments.

After retirement, the HACC will accept an original document from the entity holding the account dated no earlier than 12 months before that reflects any distributions of the account balance, any lump sums taken and any regular payments.

7-III.H. INCOME FROM EXCLUDED SOURCES

A detailed discussion of excluded income is provided in Chapter 6, Part I.

PHAs must obtain verification for income exclusions only if, without verification, the HACC would not be able to determine whether the income is to be excluded. For example: if a family's 16 year old has a job at a fast food restaurant, the HACC will confirm that PHA records verify the child's age but will not send a verification request to the restaurant. However, if a family claims the earned income disallowance for a source of income, both the source and the income must be verified.

The HACC will reconcile differences in amounts reported by the third party and the family only when the excluded amount is used to calculate the family share (as is the case with the earned income disallowance). In all other cases, the HACC will report the amount to be excluded as indicated on documents provided by the family.

7-III.I. ZERO ANNUAL INCOME STATUS

The HACC will check UIV sources and/or request information from third-party sources to verify that certain forms of income such as unemployment benefits, TANF, SSI, etc., are not being received by families claiming to have zero annual income.

For families claiming zero income, all adult family members will be required to answer a questionnaire regarding payment for miscellaneous expenses to determine if regular contributions are being made on behalf of the family.

The HACC may schedule an interim reexamination every ninety (90) days for families reporting zero (0) income.

7-III.J. STUDENT FINANCIAL ASSISTANCE

Any financial assistance, in excess of amounts received for tuition, that a person attending an institution of higher education receives under the Higher Education Act of 1965, from private sources, or from an institution of higher education must be considered income unless the student is over the age of 23 with dependent children or is residing with parents who are seeking or receiving HCV assistance [24 CFR 5.609(b)(9) and FR 4/10/06]. If the student is the sole family member, the amount received in excess of tuition is also considered income.

For students over the age of 23 with dependent children or students residing with parents who are seeking or receiving HCV assistance, the full amount of student financial assistance is excluded from annual income [24 CFR 5.609(c)(6)]. The full amount of student financial assistance is also excluded for students attending schools that do not qualify as institutions of higher education (as defined in Exhibit 3-2). Excluded amounts are verified only if, without verification, the HACC would not be able to determine whether or to what extent the income is to be excluded (see Section 7-III.H).

For a student subject to having a portion of his/her student financial assistance included in annual income in accordance with 24 CFR 5.609(b)(9), the HACC will request third-party written verification of both the source and the amount from the educational institution attended by the student as well as from any other person or entity providing such assistance, as reported by the student.

In addition, the HACC will request written verification from the institution of higher education regarding the student's tuition amount.

If the HACC is unable to obtain third-party written verification of the requested information, the HACC will pursue other forms of verification following the verification hierarchy in Section 7-I.B.

7-III.K. PARENTAL INCOME OF STUDENTS SUBJECT TO ELIGIBILITY RESTRICTIONS

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, and does not have a dependent child, the income of the student's parents must be considered when determining income eligibility, unless the student is determined independent from his or her parents in accordance with PHA policy [24 CFR 5.612 and FR 4/10/06, p. 18146].

This provision does not apply to students residing with parents who are seeking or receiving HCV assistance. It is limited to students who are seeking or receiving assistance on their own, separately from their parents.

If the HACC is required to determine the income eligibility of a student's parents, the HACC will request an income declaration and certification of income from the appropriate parent(s) (as determined in Section 3-II.E). The HACC will send the request directly to the parents, who will be required to certify to their income under penalty of perjury. The parents will be required to submit the information directly to the HACC. The required information must be submitted

(postmarked) within 15 business days of the date of the HACC's request or within any extended timeframe approved by the HACC.

The HACC reserves the right to request and review supporting documentation at any time if it questions the declaration or certification. Supporting documentation may include, but is not limited to, Internal Revenue Service (IRS) tax returns, consecutive and original pay stubs, bank statements, pension benefit statements, benefit award letters, and other official and authentic documents from a federal, state, or local agency.

PART IV: VERIFYING MANDATORY DEDUCTIONS

7-IV.A. DEPENDENT AND ELDERLY/DISABLED HOUSEHOLD DEDUCTIONS

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

Dependent Deduction

See Chapter 6 (6-II.B.) for a full discussion of this deduction. The HACC must verify that:

- Any person under the age of 18 for whom the dependent deduction is claimed is not the head, spouse, or co-head of the family and is not a foster child
- Any person age 18 or older for whom the dependent deduction is claimed is not a foster adult or live-in aide, and is a person with a disability or a full time student

Elderly/Disabled Family Deduction

See Eligibility chapter for a definition of elderly and disabled families and Chapter 6 (6-II.C.) for a discussion of the deduction. The HACC must verify that the head, spouse, or co-head is 62 years of age or older or a person with disabilities.

7-IV.B. MEDICAL EXPENSE DEDUCTION

Policies related to medical expenses are found in 6-II.D. The amount of the deduction will be verified following the standard verification procedures described in Part I.

Amount of Expense

The HACC will provide a third-party verification form directly to the medical provider requesting the needed information.

Medical expenses will be verified through:

- Third-party verification form signed by the provider, when possible
- If third-party is not possible, copies of cancelled checks used to make medical expense payments along with printouts or receipts from the source will be used. In this case the HACC will make a best effort to determine what expenses from the past are likely to continue to occur in the future. The HACC will also accept evidence of monthly payments or total payments that will be due for medical expenses during the upcoming 12 months.
- 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, the HACC must verify that:

- The household is eligible for the deduction.
- The costs to be deducted are qualified medical expenses.
- The expenses are not paid for or reimbursed by any other source.
- Costs incurred in past years are counted only once.

Eligible Household

The medical expense deduction is permitted only for households in which the head, spouse, or co-head is at least 62 or a person with disabilities. The HACC must verify that the family meets the definition of an elderly or disabled family provided in the Eligibility chapter and as described in Chapter 7 (7-IV.A.) of this plan.

Qualified Expenses

To be eligible for the medical expenses deduction, the costs must qualify as medical expenses. See Chapter 6 (6-II.D.) for the HACC's policy on what counts as a medical expense.

Unreimbursed Expenses

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

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 on-going payment of medical bills incurred in past years, the HACC 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

7-IV.C. DISABILITY ASSISTANCE EXPENSES

To be eligible for the disability assistance expense deduction, the costs incurred for attendant care or auxiliary apparatus must enable a family member or members, including the person with disabilities, to work. The HACC will verify that the expense is incurred for a person with disabilities (See 7-II.F.).

The HACC will seek third-party verification from a qualified 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 (See 6-II.E.).

If third-party verification and document review have been attempted, but is either unavailable or proves unsuccessful, the family must certify that the disability assistance expense frees a family member or members, including the family member with disabilities, to work.

Policies related to disability assistance expenses are found in 6-II.E. The amount of the deduction will be verified following the standard verification procedures described in Part I.

Amount of Expense

Attendant Care

The HACC will provide a third-party verification form directly to the care provider requesting the needed information.

Expenses for attendant care will be verified through:

- Third-party verification form signed by the provider, when possible
- If third-party is not possible, copies of cancelled checks used to make attendant care payments along with receipts from care source
- If third-party or document review is not possible, written family certification as to costs anticipated to be incurred for the upcoming 12 months

Auxiliary Apparatus

Expenses for auxiliary apparatus will be verified through:

- Third-party verification of purchase costs of auxiliary apparatus
- If third-party is not possible, 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

- If third-party or document review is not possible, written family certification of estimated apparatus costs for the upcoming 12 months

In addition, the HACC must verify that:

- The family member for whom the expense is incurred is a person with disabilities (as described in 7-II.F above).
- The expense permits a family member, or members, to work (as described in 6-II.E.).
- The expense is not reimbursed from another source (as described in 6-II.E.).

Unreimbursed Expenses

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

An attendant care provider will be asked to certify that, to the best of the provider's knowledge, the expenses are not paid by or reimbursed to the family from any source.

The family will be required to certify that attendant care or auxiliary apparatus expenses are not paid by or reimbursed to the family from any source.

7-IV.D. CHILD CARE EXPENSES

Policies related to child care expenses are found in Chapter 6 (6-II.F). The amount of the deduction will be verified following the standard verification procedures described in Part I of this chapter. In addition, PHAs must verify that:

- The child is eligible for care.
- The costs claimed are not reimbursed.
- The costs enable a family member to pursue an eligible activity.
- The costs are for an allowable type of child care.
- The costs are reasonable.

Eligible Child

To be eligible for the child care deduction, the costs must be incurred for the care of a child under the age of 13. The HACC will verify that the child being cared for (including foster children) is under the age of 13 (See 7-II.C.).

Unreimbursed Expense

To be eligible for the child care deduction, the costs must not be reimbursed by another source.

The child care provider will be asked to certify that, to the best of the provider's knowledge, the child care expenses are not paid by or reimbursed to the family from any source.

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

PHAs must verify that the family member(s) that the family has identified as being enabled to seek work, pursue education, or be gainfully employed, are actually pursuing those activities.

Information to be Gathered

The HACC will verify information about how the schedule for the claimed activity relates to the hours of care provided, the time required for transportation, the time required for study (for students), 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

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

In the event third-party verification is not available, the HACC will provide the family with a form on which the family member must record job search efforts. The HACC will review this information at each subsequent reexamination for which this deduction is claimed.

Furthering Education

The HACC will ask that the academic or vocational educational institution verify that the person permitted to further his or her education by the child care is enrolled and provide information about the timing of classes for which the person is registered.

Gainful Employment

The HACC will seek verification from the employer 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 work schedules for all relevant family members may be verified.

Allowable Type of Child Care

The HACC will verify that the type of child care selected by the family is allowable, as described in Chapter 6 (6-II.F).

The HACC will verify that the fees paid to the child care provider cover only child care costs (e.g., no housekeeping services or personal services) and are paid only for the care of an eligible child (e.g., prorate costs if some of the care is provided for ineligible family members).

The HACC 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 compared with the HACC's established standards of reasonableness for the type of care in the locality to ensure that the costs are reasonable.

Reasonable expenses include the following:

Up to 50% of the income earned that allows a family member to work

Expenses paid for no more than 15 hours per week for a family member seeking employment

Expenses paid for the time a family member is in school plus two additional hours each day that class is in session for studying purposes

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

**EXHIBIT 7-1: SUMMARY OF DOCUMENTATION REQUIREMENTS
FOR NONCITIZENS [HCV GB, pp. 5-9 and 5-10]**

- **All** noncitizens claiming eligible status must sign a declaration of eligible immigrant status on a form acceptable to HACC.
- Except for persons 62 or older, all noncitizens must sign a verification consent form
- Additional documents are required based upon the person's status.

Elderly Noncitizens

- A person 62 years of age or older who claims eligible immigration status also must provide proof of age such as birth certificate, passport, or documents showing receipt of SS old-age benefits.

All other Noncitizens

- Noncitizens that claim eligible immigration status also must present the applicable USCIS document. Acceptable USCIS documents are listed below.

- Form I-551 Alien Registration Receipt Card (for permanent resident aliens)
- Form I-94 Arrival-Departure Record annotated with one of the following:
 - “Admitted as a Refugee Pursuant to Section 207”
 - “Section 208” or “Asylum”
 - “Section 243(h)” or “Deportation stayed by Attorney General”
 - “Paroled Pursuant to Section 221 (d)(5) of the USCIS”

- Form I-94 Arrival-Departure Record with no annotation accompanied by:
 - A final court decision granting asylum (but only if no appeal is taken);
 - A letter from a USCIS asylum officer granting asylum (if application is filed on or after 10/1/90) or from a USCIS district director granting asylum (application filed before 10/1/90);
 - A court decision granting withholding of deportation; or
 - A letter from an asylum officer granting withholding or deportation (if application filed on or after 10/1/90).

- Form I-688 Temporary Resident Card annotated “Section 245A” or Section 210”.

Form I-688B Employment Authorization Card annotated “Provision of Law 274a. 12(11)” or “Provision of Law 274a.12”.

- 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*

Chapter 8

HOUSING QUALITY STANDARDS AND RENT REASONABLENESS DETERMINATIONS

[24 CFR 982 Subpart I and 24 CFR 982.507]

INTRODUCTION

HUD requires that all units occupied by families receiving Housing Choice Voucher (HCV) assistance meet HUD's Housing Quality Standards (HQS) and permits PHAs to establish additional requirements. The use of the term "HQS" in this plan refers to the combination of both HUD and PHA-established requirements. HQS inspections are required before the Housing Assistance Payments (HAP) Contract is signed and at least biennially during the term of the contract.

HUD also requires PHAs to determine that units rented by families assisted under the HCV program have rents that are reasonable when compared to comparable unassisted units in the market area.

This chapter explains HUD and the HACC requirements related to housing quality and rent reasonableness as follows:

Part I. Physical Standards. This part discusses the physical standards required of units occupied by HCV-assisted families and identifies decisions about the acceptability of the unit that may be made by the family based upon the family's preference. It also identifies life-threatening conditions that must be addressed on an expedited basis.

Part II. The Inspection Process. This part describes the types of inspections the HACC will make and the steps that will be taken when units do not meet HQS.

Part III. Rent Reasonableness Determinations. This part discusses the policies the HACC will use to make rent reasonableness determinations.

Special HQS requirements for homeownership, manufactured homes, and other special housing types are discussed in Chapter 15 to the extent that they apply in this jurisdiction.

PART I: PHYSICAL STANDARDS

8-I.A. GENERAL HUD REQUIREMENTS

HUD Performance and Acceptability Standards

HUD's performance and acceptability standards for HCV-assisted housing are provided in 24 CFR 982.401. These standards cover the following areas:

- Sanitary facilities
- Food preparation and refuse disposal
- Space and Security

- Thermal Environment
- Illumination and electricity
- Structure and materials
- Interior Air Quality
- Water Supply
- Lead-based paint
- Access
- Site and neighborhood
- Sanitary condition
- Smoke Detectors

A summary of HUD performance criteria is provided in Attachment 8-1. Additional guidance on these requirements is found in the following HUD resources:

- Housing Choice Voucher Guidebook, Chapter 10
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (4/15) and Inspection Checklist, form HUD-52580-A (4/15)
- HUD Notice 2003-31, Accessibility Notice: Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Architectural Barriers Act of 1968 and the Fair Housing Act of 1988

Tenant Preference Items

HUD requires PHAs to enforce minimum HQS but also requires that certain judgments about acceptability be left to the family. For example, the HACC must ensure that the unit contains the required sanitary facilities, but the family decides whether the cosmetic condition of the facilities is acceptable. Attachment 8-2 summarizes those items that are considered tenant preferences.

Modifications to Provide Accessibility

Under the Fair Housing Act of 1988 an owner must not refuse the request of a family that contains a person with a disability to make necessary and reasonable modifications to the unit. Such modifications are at the family's expense. The owner may require restoration of the unit to its original condition if the modification would interfere with the owner or next occupant's full enjoyment of the premises. The owner may not increase a customarily required security deposit. However, the landlord may negotiate a restoration agreement that requires the family to restore the unit and, if necessary to ensure the likelihood of restoration, may require the tenant to pay a reasonable amount into an interest bearing escrow account over a reasonable period of time. Any owner that intends to negotiate a restoration agreement or require an escrow account must submit the agreement(s) to the HACC for review. The interest in any such account accrues to the benefit of the tenant. The owner may also require reasonable assurances that the quality of the work will be acceptable and that any required building permits will be obtained.[24 CFR 100.203; Notice 2003-31].

Modifications to units to provide access for a person with a disability must meet all applicable HQS requirements and conform to the design, construction, or alteration of facilities contained in

the UFAS and the ADA Accessibility Guidelines (ADAAG) [28 CFR 35.151(c) and Notice 2003-31]. See Chapter 2 of this plan for additional information on reasonable accommodations for persons with disabilities.

8.I.B. ADDITIONAL LOCAL REQUIREMENTS

The HACC may impose additional quality standards as long as the additional criteria are not likely to adversely affect the health or safety of participant families or severely restrict housing choice. HUD approval is required if more stringent standards are imposed. HUD approval is not required if the HACC additions are clarifications of HUD's acceptability criteria or performance standards [24 CFR 982.401(a)(4)].

Thermal Environment [HCV GB p.10-7]

PHAs must define a “healthy living environment” for the local climate. This may be done by establishing a temperature that the heating system must be capable of maintaining that is appropriate for the local climate.

The heating system must be capable of maintaining an interior temperature of 65 degrees Fahrenheit between October 1 and May 1.

Clarifications of HUD Requirements

As permitted by HUD, the HACC has adopted the following specific requirements that elaborate on HUD standards.

Walls

In areas where plaster or drywall is sagging, severely cracked, or otherwise damaged, it must be repaired or replaced.

Windows

Window sashes must be in good condition, solid and intact, and properly fitted to the window frame. Damaged or deteriorated sashes must be replaced.

Windows must be weather-stripped as needed to ensure a weather-tight seal.

Window screens must be in good condition (applies only if screens are present).

Doors

All exterior doors must be weather-tight to avoid any air or water infiltration, be lockable, have no holes, have all trim intact, and have a threshold.

All interior doors must have no holes, have all trim intact, and be openable without the use of a key.

Floors

All wood floors must be sanded to a smooth surface and sealed. Any loose or warped boards must be re-secured and made level. If they cannot be leveled, they must be replaced.

All floors must be in a finished state. Raw wood or unsealed concrete is not permitted.

All floors should have some type of base shoe, trim, or sealing for a "finished look." Vinyl base shoe is permitted.

Sinks

All sinks and commode water lines must have shut off valves, unless faucets are wall mounted.

All worn or cracked toilet seats and tank lids must be replaced and toilet tank lid must fit properly.

All sinks must have functioning stoppers.

Security

If window security bars or security screens are present on emergency exit windows, they must be equipped with a quick release system. The owner is responsible for ensuring that the family is instructed on the use of the quick release system.

Lead Based Paint Hazards

If the subsidized unit was built prior to 1978 and a child under the age of six is living in the unit and there is chipping and peeling paint above a de minimus level found in the unit, the garage and/or the common areas servicing the dwelling unit, the landlord will be cited for a Lead Based Paint (LBP) deficiency. In order to clear the LBP deficiency, the landlord must either have a lead based paint assessment conducted by a certified company showing acceptable results or the landlord must contract with a Lead-Safe Certified Renovator to perform the abatement work and submit documentation of the work performed and the clearance examination.

8.I.C. LIFE THREATENING CONDITIONS

HUD requires the HACC to define life threatening conditions and to notify the owner or the family (whichever is responsible) of the corrections required [24 CFR 982.404(a)]. The responsible party must correct life threatening conditions within 24 hours of the HACC's notification.

The following are considered life threatening conditions:

- Any condition that jeopardizes the security of the unit
- Major plumbing leaks or flooding, waterlogged ceiling or floor in imminent danger of falling
- Natural or LP gas or fuel oil leaks
- Any electrical problem or condition that could result in shock or fire
- Absence of a working heating system when outside temperature is below 50 degrees Fahrenheit.
- Utilities not in service, including no running hot water
- Conditions that present the imminent possibility of injury
- Obstacles that prevent safe entrance or exit from the unit
- Absence of a functioning toilet in the unit

- Missing or inoperable smoke detectors
- Missing or inoperable carbon monoxide detectors

If an owner fails to correct life threatening conditions as required by the HACC, the housing assistance payment will be abated and the HAP contract will be terminated. See 8-II-G.

If a family fails to correct a family caused life threatening condition as required by the HACC, the family's Utility Assistance Payment (UAP), if applicable, will be abated and the HACC will terminate the family's assistance. See 8-II.H.

The owner will be required to repair an inoperable smoke detector and/or carbon monoxide detector unless the HACC determines that the family has intentionally disconnected it (by removing batteries or other means). In this case, the family will be required to make the repair within 24 hours.

8-I.D. OWNER AND FAMILY RESPONSIBILITIES

Family Responsibilities

The family is responsible for correcting the following HQS deficiencies [24 CFR 982.404]:

- Tenant-paid utilities not in service
- Failure to provide or maintain family-supplied appliances
- A fire exit that is blocked by family furniture
- The heavy accumulation of refuse or debris in the unit
- No battery in the smoke and/or carbon monoxide detector
- The smoke and/or carbon monoxide detector has been removed by the family
- Excessive grease or dirt on the stove
- Damage to the unit or premises caused by a household member or guest beyond normal wear and tear. "Normal wear and tear" is defined as items which could not be charged against the tenant's security deposit under state law or court practice.

Owner Responsibilities

The owner is responsible for all HQS violations not listed as a family responsibility above, even if the violation is caused by the family's living habits (e.g., vermin infestation). However, if the family's actions constitute a serious or repeated lease violation the owner may take legal action to evict the family or impose other remedies as outlined in the lease (e.g., charge back for tenant caused damages).

Infestation Protocol

If infestation is cited, a landlord of three or more units is required to submit a professional treatment plan for the cited deficiency indicating treatment after the date of the deficiency along with the address, treatment plan and license number(s) of the exterminator. The infestation deficiency is cleared upon receipt of the treatment plan.

The reports are submitted to the inspection company for review and clearance. If the infestation is the only deficiency and a treatment plan is submitted and cleared, a follow up inspection is not

required. If there are other deficiencies, the infestation is cleared with the receipt date of the treatment plan. The other deficiencies will be cleared during the re-inspection.

If infestation is cited for a single family or duplex unit, the landlord may professionally treat and submit the reports to the inspection company showing evidence of treatment. The inspection company will review and provide clearance. If the infestation is the only deficiency, and a treatment plan report is submitted and cleared, a follow up inspection is not required. If there are other deficiencies, the infestation is cleared with the receipt date of the treatment plan. The other deficiencies will be cleared during the re-inspection.

If the unit is a single family or duplex and the landlord does not submit a professional treatment plan report, the infestation deficiency will be cleared if the inspector does not see any evidence of infestation during the follow-up inspection.

8-I-E. SPECIAL REQUIREMENTS FOR CHILDREN WITH ELEVATED BLOOD LEAD LEVEL (EBLL)

If the HACC is notified by a public health department or other medical health care provider, or verifies information from a source other than a public health department or medical health care provider, that a child of less than 6 years of age, living in an HCV-assisted unit has been identified as having an elevated blood lead level (EBLL), the HACC must complete an environmental investigation of the dwelling unit and the common areas servicing that unit within 15 calendar days. In cases where the public health department has already completed an evaluation of the unit, the HACC is not required to perform an additional environmental investigation and can rely on the results of the health department's evaluation. In cases where the HACC performs the environmental investigation, the results of the investigation shall be given to the owner. If lead-based paint hazards are found in the child's unit in a multiunit property, a risk assessment must be conducted on any other assisted units in the property with a child under the age of 6 residing as well as the common areas servicing those units. The owner is responsible for conducting the risk assessment on the other assisted units.

Within 30 days after receiving the results of the environmental investigation report from the HACC or the public health department, the owner is required to complete any required lead hazard control (including pass clearance) in accordance with the lead-based paint regulations. If the owner does not complete the lead hazard control as required, the dwelling unit is in violation of HQS and the HACC will take action in accordance with Section 8-II.G.

The HACC notification and verification requirements, data collection and record keeping responsibilities related to children with an elevated blood lead level are discussed in Chapter 16.

8-I-F. VIOLATION OF HQS SPACE STANDARDS

If the HACC determines that a unit does not meet the HQS space standards because of an increase in family size or a change in family composition, the HACC must issue the family a new voucher and the family must try to find an acceptable unit as soon as possible [24 CFR 982.403]. If an acceptable unit is available for rental by the family, the HACC must terminate the HAP contract in accordance with its terms.

PART II: THE INSPECTION PROCESS

8-II.A. OVERVIEW

Types of Inspections

The HACC conducts the following types of inspections as needed. Each type of inspection is discussed in the paragraphs that follow [24 CFR 982.405].

- *Initial Inspections.* PHAs conduct 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.
- *Biennial Inspections.* HUD requires PHAs to inspect each unit under lease at least biennially to confirm that the unit still meets HQS. The biennial inspection may be conducted in conjunction with the family's annual reexamination but also may be conducted separately.
- *Special Inspections.* A special inspection may be requested by the owner, the family, or a third party as a result of problems identified with a unit between biennial inspections.
- *Quality Control Inspections.* HUD requires that a sample of units be re-inspected by a supervisor or other qualified individual to ensure that HQS are being enforced correctly and uniformly by all inspectors.

Inspection of PHA-owned Units [24 CFR 982.352(b)]

PHAs must obtain the services of an independent entity to perform all HQS inspections in cases where an HCV family is receiving assistance in the HACC-owned unit. A HACC-owned unit is defined as a unit that is owned by the HACC that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the HACC). The independent agency must communicate the results of each inspection to the family and the HACC. The independent agency must be approved by HUD, and may be the unit of general local government for the HACC jurisdiction (unless the HACC is itself the unit of general local government or an agency of such government).

Inspection Costs

PHAs may not charge the family or owner for unit inspections [24 CFR 982.405(e)]. In the case of inspections of PHA-owned units, the HACC may compensate the independent agency from ongoing administrative fee for inspections performed. The HACC and the independent agency may not charge the family any fee or charge for the inspection [24 CFR.982.352(b)].

Notice and Scheduling

The family must allow the HACC to inspect the unit at reasonable times with reasonable notice [24 CFR 982.551(d)].

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. Inspections may be scheduled between 8:00 a.m. and 7:00 p.m. Generally inspections will be conducted on business days only. In the case of a life threatening emergency, the HACC will give as much notice as possible, given the nature of the emergency.

Owner and Family Inspection Attendance

When a family occupies the unit at the time of inspection, the HACC encourages an adult family member to be present for the inspection. In cases where an adult family member cannot be present, the family may designate another responsible adult, including the owner, to be present for the inspection. If someone other than an adult family member will be present, the family must notify the HACC in writing, giving that person authorization to be present for the inspection prior to the inspection. If an adult family member is present, the presence of the owner or the owner's representative is encouraged but is not required.

At initial inspection of a vacant unit, the HACC will inspect the unit in the presence of the owner or owner's representative. The presence of a family representative is permitted, but is not required.

Once the inspection is scheduled, it is expected that a responsible adult be present. If a change in the inspection date is needed, the family or owner must notify the HACC in advance, generally 24 hours, of the inspection.

8-II.B. INITIAL HQS INSPECTION

Timing of Initial Inspections

HUD requires the unit to pass HQS before the effective date of the lease and HAP Contract [24 CFR 982.401(a)]. HUD requires PHAs with fewer than 1,250 budgeted units to complete the initial inspection, determine whether the unit satisfies HQS, and notify the owner and the family of the determination within 15 days of submission of the Request for Tenancy Approval (RFTA).

For PHAs with 1,250 or more budgeted units, such as the HACC, to the extent practicable, such inspection and determination must be completed within 15 days. The 15-day period is suspended for any period during which the unit is not available for inspection [982.305(b)(2)].

Inspection Results and Re-inspections

If any HQS violations are identified, the owner will be notified of the deficiencies and be given a time frame to correct them. If requested by the owner, the time frame for correcting the deficiencies may be extended by the HACC for good cause so long as the extension does not place the HACC in violation of HUD regulations concerning the time frame of HQS inspections. The HACC will re-inspect the unit within 5 business days of the date the owner notifies the HACC that the required corrections have been made.

If the time period for correcting the deficiencies (or any HACC -approved extension) has elapsed, or the unit fails HQS at the time of the re-inspection, the HACC will notify the owner and the family that the unit has been rejected and that the family must search for another unit. The HACC may agree to conduct a second re-inspection, for good cause, at the request of the family and owner.

Following a failed re-inspection, the family may submit a new Request for Tenancy Approval for the unit if the family has not found another unit by the time the owner completes all repairs and the family continues to wish to live in the unit.

Utilities

Generally, at initial lease-up, the owner is responsible for demonstrating that all utilities are in working order, including those utilities that the family will be responsible for paying.

All utilities must be in service prior to the inspection. If the utilities are not in service at the time of inspection, the inspector will notify the tenant or owner (whomever is responsible for the utilities) to have the utilities turned on and to contact the office to schedule a re - inspection.

The HACC will re-inspect the unit to confirm that utilities are operational before the HAP contract is executed by the HACC.

Appliances

If the family is responsible for supplying the stove and/or refrigerator, the HACC will allow the stove and refrigerator to be placed in the unit after the unit has met all other HQS requirements. The required appliances must be in place before the HAP contract is executed by the HACC. The HACC will execute the HAP contract based upon a certification from the family that the appliances have been installed and are working.

8.II.C. BIENNIAL HQS INSPECTIONS

Scheduling the Inspection

Each unit under HAP contract must have a biennial inspection no more than 24 months after the most recent inspection [24 CFR 982.405(a)].

If an adult family member, owner, or other responsible adult designated by the family cannot be present on the scheduled date, the family should request that the HACC reschedule the inspection. The HACC and family will agree on a new inspection date that generally should take place within 10 business days of the originally-scheduled date. The HACC may schedule an inspection more than 10 business days after the original date for good cause.

If the family misses the first scheduled appointment without requesting a new inspection date, the HACC will automatically schedule a second inspection. If the family misses two scheduled inspections without the HACC approval, the HACC will consider the family to have violated its obligation to make the unit available for inspection. This may result in termination of the family's assistance in accordance with Chapter 12.

\$15.00 Missed Appointment Fee-The HACC may charge a missed appointment fee of \$15.00 to a family who fails to be present at a biennial inspection, or any follow up inspections related to the biennial inspection, scheduled in accordance with this Plan. If a fee is imposed, the fee must be paid before another inspection is scheduled. Once the fee is paid, the Inspections Department will contact the tenant to reschedule the appointment. If the missed appointment fee is not paid, the tenant may be subject to termination.

8-II.D. SPECIAL INSPECTIONS

The HACC will conduct a special inspection if the owner, family, or another source reports HQS violations in the unit. Before the HACC will schedule a special inspection, the claiming party shall submit to the HACC a copy of the written notice submitted to the other party outlining the deficiencies and outlining the reasonable timeframe to make the repairs. Once the timeframe for repairs has expired and the repairs are not complete, the HACC will schedule the special inspection [HCV GB, p. 10-30].

During a special inspection, the HACC generally will inspect only those deficiencies that were reported. However, the inspector will record any additional HQS deficiencies that are observed and will require the responsible party to make the necessary repairs.

If the biennial inspection has been scheduled or is due within 90 days of the date the special inspection is scheduled the HACC may elect to conduct a full biennial inspection.

Changes in the number of bedrooms in the unit

Changes to the unit that increase or decrease the number of bedrooms in the unit will only be considered at the time of the family's annual recertification and will be verified with the scheduled biennial inspections or a special inspection.

The owner must submit a written request to the HACC to change the bedroom size of the unit and include evidence that the owner is in compliance with local codes and local requirements, such as permits, certificate of occupancy or other similar documentation.

The HACC will conduct an inspection to verify that the bedroom(s) meet HQS as well as local requirements before any change will be made to payment standards, utility allowances or the contract rent.

8-II.E. QUALITY CONTROL INSPECTIONS

HUD requires a HACC supervisor or other qualified person to conduct quality control inspections of a sample of units to ensure that each inspector is conducting accurate and complete inspections and that there is consistency in the application of the HQS [24 CFR 982.405(b); HCV GB, p. 10-32].

The unit sample must include only units that have been inspected within the preceding 3 months. The selected sample will include (1) each type of inspection (initial, annual, and special), (2) inspections completed by each inspector, and (3) units from a cross-section of neighborhoods.

8.II.F. INSPECTION RESULTS AND REINSPECTIONS FOR UNITS UNDER HAP CONTRACT

Notification of Corrective Actions

The owner and the family will be notified in writing of the results of all inspections. When an inspection identifies HQS failures, the HACC will determine (1) whether or not the failure is a life threatening condition and (2) whether the family or owner is responsible. If there are no life threatening repair items, no lead based paint (LBP) deficiencies, no "failure to gain access" deficiencies and if there are ten (10) or less repair items, the written notification will outline the unit is eligible for self-certification. The owner and/or tenant must certify that all repairs are

corrected. The self-certification must be submitted to the HACC or its contractor within the time specified in the written notification.

When life threatening conditions are identified, the HACC will immediately notify both parties by telephone, facsimile, or email. The notice will specify who is responsible for correcting the violation. The corrective actions must be taken within 24 hours of the HACC's notice.

When failures that are not life threatening are identified, the HACC will send the owner and the family a written notification of the inspection results within 5 business days of the inspection. The written notice will specify who is responsible for correcting the violation and the time frame within which the failure must be corrected. Generally not more than 30 days will be allowed for the correction.

The notice of inspection results will inform the owner that if life threatening conditions are not corrected within 24 hours and non-life threatening conditions are not corrected within the specified time frame (or any HACC -approved extension), the owner's HAP will be abated in accordance with HACC policy (see 8-II.G.). Likewise, in the case of family caused deficiencies, the notice will inform the family that if corrections are not made within the specified time frame (or any HACC -approved extension, if applicable) the family's UAP will be abated and the family's assistance will be terminated in accordance with the HACC policy (see Chapter 12).

Extensions

For conditions that are life-threatening, the HACC cannot grant an extension to the 24 hour corrective action period. For conditions that are not life-threatening, the HACC may grant an exception to the required time frames for correcting the violation, if the HACC determines that an extension is appropriate [24 CFR 982.404]. The HACC may not grant an extension if it will place the unit out of compliance with the HUD regulations for the time frame of the HQS inspections.

Extensions will be granted in cases where the HACC has determined that the owner has made a good faith effort to correct the deficiencies and is unable to for reasons beyond the owner's control. Reasons may include, but are not limited to:

- A repair cannot be completed because required parts or services are not available.
- A repair cannot be completed because of weather conditions.
- A reasonable accommodation is needed because the family includes a person with disabilities.

The length of the extension will be determined on a case by case basis, but will not exceed 60 days, except in the case of delays caused by weather conditions. Weather related extensions for exterior defective paint deficiencies and concrete walkway and foundation work may be granted/approved for the period November 1st through April 30th. Re-inspections for weather related items will be conducted beginning May 1st. In order for Weather Related Extensions to be approved, all interior deficiencies cited on the inspection report must be in a passed status.

Re-inspections

The HACC will conduct a re-inspection immediately following the end of the corrective period or any HACC approved extension for units that have over ten (10) repair items, have life-threatening repair items, have LBP deficiencies, or have "failure to gain access" deficiencies.

The family and owner will be given reasonable notice of the re-inspection appointment. If the deficiencies have not been corrected by the time of the re-inspection, the HACC will send a notice of abatement to the owner, or in the case of family caused violations, a notice of abatement of the UAP and termination of assistance to the family, in accordance with the HACC policies. If the HACC is unable to gain entry to the unit in order to conduct the scheduled re-inspection, the HACC will consider the family to have violated its obligation to make the unit available for inspection. This may result in termination of the family's assistance in accordance with Chapter 12.

\$30 Reinstatement Fee-Owners who have not resolved inspection failures that are their responsibility once the unit goes into abatement may be required to pay a \$30 reinstatement fee before a re-inspection can be scheduled. Once the fee is paid, the Inspections Department will contact the Landlord to schedule the re-inspection appointment.

8.II.G. ENFORCING OWNER COMPLIANCE

If the owner fails to maintain the dwelling unit in accordance with HQS, the HACC must take prompt and vigorous action to enforce the owner obligations.

HAP Abatement

If an owner fails to correct HQS deficiencies by the time specified by the HACC, HUD requires the HACC to abate housing assistance payments no later than the first of the month following the specified correction period (including any approved extension) [24 CFR 985.3(f)]. No retroactive payments will be made to the owner for the period of time the rent was abated. Owner rents are not abated as a result of HQS failures that are the family's responsibility.

The HACC will make all HAP abatements effective the first of the month following the expiration of the HACC specified correction period (including any extension).

The HACC will inspect abated units within 5 business days of the owner's notification that the work has been completed and the payment of any re-instatement fee. Payment will resume effective on the day the unit passes inspection.

During any abatement period the family continues to be responsible for its share of the rent. The owner must not seek payment from the family for abated amounts and may not use the abatement as cause for eviction.

HAP Contract Termination

The maximum length of time that a HAP may be abated is 90 days. The HACC should not terminate the contract until the family finds another unit, provided the family does so in a reasonable time [HCV GB p. 10-29], and must give the owner reasonable notice of the termination (30 days). The HACC will issue a voucher to permit the family to move to another unit as described in Chapter 10.

However, if the owner completes corrections and notifies the HACC before the termination date of the HAP contract, the HACC may rescind the termination notice if (1) the family still resides in the unit and wishes to remain in the unit and (2) the unit passes inspection.

8.II.H. ENFORCING FAMILY COMPLIANCE WITH HQS

Families are responsible for correcting any HQS violations listed in paragraph 8.I.D [24 CFR 982.404(b)]. If the family fails to correct a violation within the period allowed by HACC (and any extensions), the HACC will abate the family's UAP no later than the first of the month following the specified correction period (including any approved extension) and the HACC will terminate the family's assistance, according to the policies described in Chapter 12. No retroactive UAP will be paid to the tenant for the period of time of the abatement.

If the owner carries out a repair for which the family is responsible under the lease, the owner may bill the family for the cost of the repair.

\$30 Reinstatement Fee-Tenants who have not resolved inspection failures that are their responsibility once the unit goes into abatement may be required to pay a \$30 reinstatement fee before a re-inspection can be scheduled. Once the fee is paid, the Inspections Department will contact the Tenant to schedule the re-inspection appointment.

8.II.I. MISCELLANEOUS HQS ISSUES

If the municipality where the unit is located requires the landlord to obtain a valid Certificate of Occupancy, or equivalent such as a rental license, prior to the tenant moving into the unit, the HACC will not pass the inspection until a valid Certificate of Occupancy is received by the HACC.

If the municipality where the unit is located does not approve bedrooms in the basement, any rooms in the basement will not be approved by the HACC as bedrooms. If the local municipality allows bedrooms in the basement, the HACC will not approve the room as a bedroom unless it is in compliance with the HQS guidelines and the International Residential Code (revised 2006), Section R310, page 52, which states:

- There must be two working outlets or one working outlet and one working, permanently installed light fixture; and
- There is at least one window with a sill height of not more than 44 inches above the floor.

PART III: RENT REASONABLENESS [24 CFR 982.507]

8-III.A. OVERVIEW

No HAP contract can be approved until the HACC has determined that the rent for the unit is reasonable. The purpose of the rent reasonableness test is to ensure that a fair rent is paid for each unit rented under the HCV program.

HUD regulations define a reasonable rent as one that does not exceed the rent charged for comparable, unassisted units in the same market area. HUD also requires that owners not charge more for assisted units than for comparable units on the premises. This part explains the method used to determine whether a unit's rent is reasonable.

PHA-owned Units [24 CFR 982.352(b)]

In cases where an HCV family is receiving assistance in a HACC-owned unit, the HACC 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 HACC-owned unit is defined as a unit that is owned by the HACC that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the HACC). The independent agency must communicate the results of the rent reasonableness determination to the family and the HACC. The independent agency must be approved by HUD and may be the unit of general local government for the HACC jurisdiction (unless the HACC is itself the unit of general local government or an agency of such government).

8-III.B. WHEN RENT REASONABLENESS DETERMINATIONS ARE REQUIRED

Owner-initiated Rent Determinations

The HACC must make a rent reasonableness determination at initial occupancy. Thereafter, the HACC shall make a rent reasonableness determination one time per year when the owner requests a rent adjustment.

The owner and family first negotiate the rent for a unit. The HACC (or independent agency in the case of PHA-owned units) will assist the family with the negotiations upon request. At initial occupancy, the HACC must determine whether the proposed rent is reasonable before a HAP Contract is signed. The owner must not change the rent during the initial lease term. Subsequent requests for rent adjustments must be consistent with the lease between the owner and the family. Rent increases will not be approved unless any failed items identified by the most recent HQS inspection have been corrected.

After the initial lease period, the owner may request a rent adjustment in accordance with the owner's lease. Owners may submit one request per recertification year following the initial lease period. For rent increase requests after the initial period, the HACC may request owners to provide information about the rents charged for other units on the premises if the premises include more than 4 units. In evaluating the proposed rents in comparison to other units on the premises, the HACC will consider unit size and length of tenancy in the other units.

The HACC will determine whether the requested increase is reasonable within 15 business days of receiving the request from the owner. The owner will be notified of the determination in writing.

All rent adjustments will be effective the first of the month following 60 days after the HACC's receipt of the owner's request or on the date specified by the owner, whichever is later.

If the HACC issues a notification of a freeze on owner-initiated rent increases, then HACC will not conduct a rent reasonableness determination until the freeze is lifted. However, in situations where the gross rent exceeds the payment standard, and any increase would be borne by the family, then HACC shall conduct a rent reasonableness determination regardless of the freeze.

PHA- and HUD-Initiated Rent Reasonableness Determinations

HUD requires PHAs to make a determination of rent reasonableness (even if the owner has not requested a change) if there is a 5 percent decrease in the Fair Market Rent that goes into effect at least 60 days before the contract anniversary date. HUD also may direct the HACC to make a determination at any other time. The HACC may decide that a new determination of rent reasonableness is needed at any time.

In addition to the instances described above, the HACC will make a determination of rent reasonableness at any time after the initial occupancy period if: (1) the HACC determines that the initial rent reasonableness determination was in error or (2) the HACC determines that the information provided by the owner about the unit or other units on the same premises was incorrect.

8-III.C. HOW COMPARABILITY IS ESTABLISHED

Factors to Consider

HUD requires PHAs to take into consideration the factors listed below when determining rent comparability. The HACC may use these factors to make upward or downward adjustments to the rents of comparison units when the units are not identical to the HCV-assisted unit.

- Location and age
- Unit size including the number of rooms and square footage of rooms
- The type of unit including construction type (e.g., single family, duplex, garden, low-rise, high-rise)
- The quality of the units including the quality of the original construction, maintenance and improvements made.
- Amenities, services, and utilities included in the rent

Units that Must Not be Used as Comparable Units

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.

Rents Charged for Other Units on the Premises

The Request for Tenancy Approval (HUD-52517) requires owners to provide information on the form itself about the rent charged for other unassisted comparable units on the premises if the premises include more than 4 units.

By accepting the HACC payment each month, the owner certifies that the rent is not more than the rent charged for comparable unassisted units on the premises. If asked to do so, the owner must give the HACC information regarding rents charged for other units on the premises.

8-III.D. PHA RENT REASONABLENESS METHODOLOGY

How Market Data is Collected

The HACC will utilize a service that will collect and maintain data on market rents in the HACC's jurisdiction. Information sources include newspapers, realtors, market surveys, inquiries of owners and other available sources. The data will be maintained by bedroom size and market areas. Market areas may be defined by zip codes, census tract, neighborhood, and identifiable natural or man-made boundaries. The data will be updated on an ongoing basis and rent information that is more than 12 months old will be eliminated from the database.

How Rents are Determined

The rent for a unit proposed for HCV assistance will be compared to the rent charged for comparable units in the same market area. The HACC will develop a range of prices for comparable units by bedroom size within defined market areas. Units proposed for HCV assistance will be compared to the units within this rent range. Because units may be similar, but not exactly like the unit proposed for HCV assistance, the HACC may make adjustments to the range of prices to account for these differences.

The adjustment must reflect the local market. Not all differences in units require adjustments (e.g., the presence or absence of a garbage disposal may not affect the rent in some market areas).

Adjustments may vary by unit type (e.g., a second bathroom may be more valuable in a three-bedroom unit than in a two-bedroom).

The adjustment must reflect the rental value of the difference – not its construction costs (e.g., it might cost \$20,000 to put on a new roof, but the new roof might not make any difference in what a tenant would be willing to pay because rented units are presumed to have functioning roofs).

When a comparable project offers rent concessions (e.g., first month rent-free or reduced rent) reported monthly rents will be adjusted accordingly. For example, if a comparable project reports rents of \$500/month but new tenants receive the first month's rent free, the actual rent for the unit would be calculated as follows: $\$500 \times 11 \text{ months} = 5500 / 12 \text{ months} = \text{actual monthly rent of } \488 .

The HACC will notify the owner of the rent the HACC can approve based upon its analysis of rents for comparable units. The owner may submit information about other comparable units in the market area. The HACC will confirm the accuracy of the information provided and may consider this additional information when making rent determinations. The owner must submit any additional information within 5 business days of the HACC's request for information or the owner's request to submit information.

EXHIBIT 8-1: OVERVIEW OF HUD HOUSING QUALITY STANDARDS

Note: This document provides an overview of HQS. For more detailed information, see the following documents:

- 24 CFR 982.401, Housing Quality Standards (HQS)
- Housing Choice Voucher Guidebook, Chapter 10.

- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 and Inspection Checklist, form HUD-52580-A

Sanitary Facilities

The dwelling unit must include sanitary facilities within the unit. The sanitary facilities must be usable in privacy and must be in proper operating condition and adequate for personal cleanliness and disposal of human waste.

Food Preparation and Refuse Disposal

The dwelling unit must have space and equipment suitable for the family to store, prepare, and serve food in a sanitary manner.

Space and Security

The dwelling unit must provide adequate space and security for the family. This includes having at least one bedroom or living/sleeping room for each two persons.

Thermal Environment

The unit must have a safe system for heating the dwelling unit. Air conditioning is not required but if provided must be in proper operating condition. The dwelling unit must not contain unvented room heaters that burn gas, oil, or kerosene. Portable electric room heaters or kitchen stoves with built-in heating units are not acceptable as a primary source of heat for units located in climatic areas where permanent heat systems are required.

Illumination and Electricity

Each room must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of occupants. The dwelling unit must have sufficient electrical sources so occupants can use essential electrical appliances. Minimum standards are set for different types of rooms. Once the minimum standards are met, the number, type and location of electrical sources are a matter of tenant preference.

Structure and Materials

The dwelling unit must be structurally sound. Handrails are required when four or more steps (risers) are present, and protective railings are required when porches, balconies, and stoops are thirty inches or more off the ground. The elevator servicing the unit must be working [if there is one]. Manufactured homes must have proper tie-down devices capable of surviving wind loads common to the area.

Interior Air Quality

The dwelling unit must be free of air pollutant levels that threaten the occupants' health. There must be adequate air circulation in the dwelling unit. Bathroom areas must have one openable window or other adequate ventilation. Any sleeping room must have at least one window. If a window was designed to be opened, it must be in proper working order.

Water Supply

The dwelling unit must be served by an approved public or private water supply that is sanitary and free from contamination. Plumbing fixtures and pipes must be free of leaks and threats to health and safety.

Lead-Based Paint

Lead-based paint requirements apply to dwelling units built prior to 1978 that are occupied or can be occupied by families with children under six years of age, excluding zero bedroom dwellings. Owners must:

- Disclose known lead-based paint hazards to prospective tenants before the lease is signed,
- provide all prospective families with "Protect Your Family from Lead in Your Home",
- Stabilize deteriorated painted surfaces and conduct hazard reduction activities when identified by the HACC
- Notify tenants each time such an activity is performed
- Conduct all work in accordance with HUD safe practices
- As part of ongoing maintenance ask each family to report deteriorated paint.

For units occupied by children under 6 years of age with an elevated blood lead level (EBLL), unless an investigation is conducted by the local health department, an environmental investigation must be conducted by the HACC. If lead hazards are identified during the environmental investigation, the owner must complete the reduction of lead-based paint hazards using a certified lead-based paint abatement firm or certified lead renovation firm. Work shall include occupant protection and clearance of the unit, and common areas servicing the unit, by an independent certified risk assessor or a trained dust sampling technician working under the risk assessor. .

See HCV GB p. 10-15 for a detailed description of these requirements. For additional information on lead-based paint requirements see PIH Notice 2017-13 and 24 CFR 35, Subparts A, B, M, and R.

Access

Use and maintenance of the unit must be possible without unauthorized use of other private properties. The building must provide an alternate means of exit in case of fire.

Site and Neighborhood

The site and neighborhood must be reasonably free from disturbing noises and reverberations, excessive trash or vermin, or other dangers to the health, safety, and general welfare of the occupants.

Sanitary Condition

The dwelling unit and its equipment must be in sanitary condition and free of vermin and rodent infestation. The unit must have adequate barriers to prevent infestation.

Smoke Detectors

Smoke detectors must be installed in accordance with and meet the requirements of the National Fire Protection Association Standard (NFPA) 74 (or its successor standards). If the dwelling unit is occupied by any person with a hearing impairment, smoke detectors must have an appropriate alarm system as specified in NFPA 74 (or successor standards).

Carbon Monoxide Detectors

Where the unit is heated with gas, carbon monoxide detectors must be installed within 15 feet of any room used for sleeping and within 15 feet of any fossil fuel burning system.

Hazards and Health/Safety

The unit, interior and exterior common areas accessible to the family, the site, and the surrounding neighborhood must be free of hazards to the family's health and safety.

<p style="text-align: center;">EXHIBIT 8-2: SUMMARY OF TENANT PREFERENCE AREAS RELATED TO HOUSING QUALITY</p>
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Note: This document provides an overview of unit and site characteristics and conditions for which the family determines acceptability. For more detailed information see the following documents:

- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 and Inspection Checklist, form HUD-52580-A

Provided the minimum housing quality standards have been met, HUD permits the family to determine whether the unit is acceptable with regard to the following characteristics:

- *Sanitary Facilities.* The family may determine the adequacy of the cosmetic condition and quality of the sanitary facilities, including the size of the lavatory, tub, or shower; the location of the sanitary facilities within the unit; and the adequacy of the water heater.
- *Food Preparation and Refuse Disposal.* The family selects size and type of equipment it finds acceptable. When the family is responsible for supplying cooking appliances, the family may choose to use a microwave oven in place of a conventional oven, stove, or range. When the owner is responsible for providing cooking appliances, the owner may offer a microwave oven in place of an oven, stove, or range only if other subsidized and unsubsidized units on the premises are furnished with microwave ovens only. The adequacy of the amount and type of storage space, the cosmetic conditions of all equipment, and the size and location of the kitchen are all determined by the family.
- *Space and Security.* The family may determine the adequacy of room sizes and room locations. The family is also responsible for deciding the acceptability of the type of door and window locks.
- *Energy conservation items.* The family may determine whether the amount of insulation, presence or absence of storm doors and windows and other energy conservation items are acceptable.
- *Illumination and Electricity.* The family may determine whether the location and the number of outlets and fixtures (over and above those required to meet HQS standards) are acceptable or if the amount of electrical service is adequate for the use of appliances, computers, or stereo equipment.
- *Structure and Materials.* Families may determine whether minor defects, such as lack of paint, or worn flooring or carpeting will affect the livability of the unit.
- *Indoor Air.* Families may determine whether window and door screens, filters, fans, or other devices for proper ventilation are adequate to meet the family's needs. However, if screens are present they must be in good condition.
- *Sanitary Conditions.* The family determines whether the sanitary conditions in the unit, including minor infestations, are acceptable.

- *Neighborhood conditions.* Families may determine whether neighborhood conditions such as the presence of drug activity, commercial enterprises, and convenience to shopping will affect the livability of the unit.

Chapter 9

GENERAL LEASING POLICIES

INTRODUCTION

Chapter 9 covers the lease-up process from the family's submission of a Request for Tenancy Approval to execution of the HAP contract.

In order for the HACC to assist a family in a particular dwelling unit or execute a Housing Assistance Payments (HAP) contract with the owner of a dwelling unit, the HACC must determine that all the following program requirements are met:

- The unit itself must qualify as an eligible unit [24 CFR 982.305(a)]
- The unit must be inspected by the HACC or its contractor and meet the Housing Quality Standards (HQS) [24 CFR 982.305(a)]
- The lease offered by the owner must be approvable and must include the required Tenancy Addendum [24 CFR 982.305(a)]
- The rent to be charged by the owner for the unit must be reasonable [24 CFR 982.305(a)]
- The owner must be an eligible owner, approvable by the HACC, with no conflicts of interest [24 CFR 982.306]
- For families initially leasing a unit only: Where the gross rent of the unit exceeds the applicable payment standard for the family, the share of rent to be paid by the family cannot exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]

9-I.A. TENANT SCREENING

The HACC has no liability or responsibility to the owner or other persons for the family's behavior or suitability for tenancy [24 CFR 982.307(a)(1)].

The HACC will not screen applicants for family behavior or suitability for tenancy. See Chapter 3 for a discussion of the HACC's policies with regard to screening applicant families for program eligibility [24 CFR 982.307(a)(1)].

The owner is responsible for screening and selection of the family to occupy the owner's unit. At the time of inspection or before the HACC approval of the tenancy, the HACC must inform the owner that screening and selection for tenancy is the responsibility of the owner [24 CFR 982.307(a)(2)]. The HACC must also inform the owner or manager of their responsibility to comply with Violence Against Women Act. [Pub.L. 109-162]

If requested, the HACC must provide the owner with the family's current and prior address (as shown in the HACC records) and the name and address (if known to the HACC) of the landlord at the family's current and prior address. [24 CFR 982.307 (b)(1)]. Additionally, the HACC may provide the prospective landlord with the family's status as it pertains to the HCV Program.

The HACC's policy on providing information to the owner must be included in the family's briefing packet [24 CFR 982.307(b)(3)].

9-I.B. REQUESTING TENANCY APPROVAL

After the family is issued a voucher, the family must locate an eligible unit with an owner or agent willing to participate in the voucher program. Once a family finds a suitable unit and the owner is willing to lease the unit under the program, the owner and the family must request the HACC to approve the assisted tenancy in the selected unit.

The owner and the family must submit the following documents to the HACC:

- Completed original Request for Tenancy Approval (RFTA) – Form HUD-52517
- Copy of the proposed lease, including the HUD-prescribed Tenancy Addendum – Form HUD-52641-A
- Copy of the Payment and Ownership Declaration Form, signed by the Owner
- A W-9 form
- Copy of the Social Security Card and/or IRS Tax Identification Letter
- Proof of Ownership- Deed or Settlement Statement or Title Insurance Policy
- Management Agreement (if applicable)
- Direct Deposit Form

The RFTA contains important information about the rental unit necessary for the HACC to determine whether to approve the assisted tenancy, including the unit address, number of bedrooms, structure type, year constructed, utilities included in the rent, and the requested beginning date of the lease. Owners must certify to the most recent amount of rent charged for the unit and provide an explanation for any difference between the prior rent and the proposed rent.

Owners must certify that they, including any principal, are not the parent, child, grandparent, grandchild, spouse, sister or brother of any member of the family, including in-laws, unless the HACC has granted a request for reasonable accommodation for a person with disabilities who is a member of the tenant household.

For units constructed prior to 1978, owners must either 1) certify that the unit, common areas, and exterior have been found to be free of lead-based paint by a certified inspector or 2) attach a lead-based paint disclosure statement.

Both the RFTA and the proposed lease must be submitted no later than the expiration date stated on the voucher [HCV GB p.8-15]. The following will be reviewed:

1. The RFTA must be signed by both the family and the owner.
2. The owner may submit the RFTA on behalf of the family.

3. Completed RFTA (including the proposed dwelling lease) must be submitted as hard copies in-person or by mail.
4. The family may not submit and the HACC will not process, more than one (1) RFTA at a time.
5. When the family submits the RFTA, the HACC will review the RFTA for completeness.
 - If the RFTA is incomplete (including lack of signature by family, owner, or both) or if the dwelling lease is not submitted with the RFTA, the HACC 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, by email, or by fax. The HACC will not accept missing information over the phone.
6. When the family submits the RFTA and proposed lease, the HACC will also review the terms of the RFTA for consistency with the terms of the proposed lease.
 - If the terms of the RFTA are not consistent with the terms of the proposed lease, the HACC 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, by email, or by fax. The HACC will not accept corrections by phone.
7. Because of the time sensitive nature of the tenancy approval process, the HACC will attempt to communicate with the owner and family by phone, fax, or email. The HACC will use mail when the parties can't be reached by phone, fax, or email.

9-I.C. OWNER PARTICIPATION

The HACC does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where the HACC may deny approval of an assisted tenancy based on past owner behavior, conflict of interest, or other owner-related issues. No owner has a right to participate in the HCV program [24 CFR 982.306(e)].

See Chapter 13 for a full discussion of owner qualification to participate in the HCV program.

9-I.D. ELIGIBLE UNITS

There are a number of criteria that a dwelling unit must meet in order to be eligible for assistance under the voucher program. Generally, a voucher-holder family may choose any available rental dwelling unit on the market in the HACC's jurisdiction. This includes the dwelling unit they are currently occupying.

Ineligible Units [24 CFR 982.352(a)]

The HACC may not assist a unit under the voucher program if the unit is a public housing or Indian housing unit; a unit receiving project-based assistance under Section 8 of the 1937 Act (42 U.S.C. 1437f); nursing homes, board and care homes, or facilities providing continual psychiatric, medical, or nursing services; college or other school dormitories; units on the grounds of penal, reformatory, medical, mental, and similar public or private institutions; a unit occupied by its owner or by a person with any interest in the unit.

PHA-Owned Units [24 CFR 982.352(b)]

The HACC does not have any eligible PHA-owned units available for leasing under the voucher program.

Special Housing Types [24 CFR 982 Subpart M]

HUD regulations permit, but do not generally require, the HACC to permit families to use voucher assistance in a number of special housing types in accordance with the specific requirements applicable to those programs. These special housing types include single room occupancy (SRO) housing, congregate housing, group home, shared housing, manufactured home space (where the family owns the manufactured home and leases only the space), cooperative housing and homeownership option. See Chapter 15 for specific information and policies on any of these housing types that the HACC has chosen to allow.

The regulations do require the HACC to permit use of any special housing type if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

Duplicative Assistance [24 CFR 982.352(c)]

A family may not receive the benefit of HCV tenant-based assistance while receiving the benefit of any of the following forms of other housing subsidy, for the same unit or for a different unit:

- Public or Indian housing assistance;
- Other HCV assistance (including other tenant-based assistance);
- Assistance under former Section 23 of the United States Housing Act of 1937 (before amendment by the Housing and Community Development Act of 1974);
- Section 101 rent supplements;
- Section 236 rental assistance payments;
- Tenant-based assistance under the HOME Program;
- Rental assistance payments under Section 521 of the Housing Act of 1949 (a program of the Rural Development Administration);
- Any local or state rent subsidy;
- Section 202 supportive housing for the elderly;

- Section 811 supportive housing for persons with disabilities; (11) Section 202 projects for non-elderly persons with disabilities (Section 162 assistance); or
- Any other duplicative federal, state, or local housing subsidy as determined by HUD. For this purpose, 'housing subsidy' does not include the housing component of a welfare payment, a social security payment received by the family, or a rent reduction because of a tax credit.

Housing Quality Standards (HQS) [24 CFR 982.305 and 24 CFR 982.401]

In order to be eligible, the dwelling unit must be in decent, safe and sanitary condition. This determination is made using HUD's Housing Quality Standards (HQS) and/or equivalent state or local standards approved by HUD. See Chapter 8 for a full discussion of the HQS standards, as well as the process for HQS inspection at initial lease-up.

Unit Size

In order to be eligible, the dwelling unit must be appropriate for the number of persons in the household. A family must be allowed to lease an otherwise acceptable dwelling unit with fewer bedrooms than the number of bedrooms stated on the voucher issued to the family, provided the unit meets the applicable HQS space requirements [24 CFR 982.402(d)]. The family must be allowed to lease an otherwise acceptable dwelling unit with more bedrooms than the number of bedrooms stated on the voucher issued to the family. See Chapter 5 for a full discussion of subsidy standards.

Rent Reasonableness [24 CFR 982.305 and 24 CFR 982.507]

In order to be eligible, the dwelling unit must have a reasonable rent. The rent must be reasonable in relation to comparable unassisted units in the area and must not be in excess of rents charged by the owner for comparable, unassisted units on the premises. See Chapter 8 for a full discussion of rent reasonableness and the rent reasonableness determination process.

Rent Burden [24 CFR 982.508]

Where a family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the family, the dwelling unit rent must be at a level where the family's share of rent does not exceed 40 percent of the family's monthly adjusted income. See Chapter 6 for a discussion of calculation of gross rent, the use of payment standards, and calculation of family income, family share of rent and HAP.

9-I.E. LEASE AND TENANCY ADDENDUM

The family and the owner must execute and enter into a written dwelling lease for the assisted unit. This written lease is a contract between the tenant family and the owner; the HACC is not a party to this contract.

The tenant must have legal capacity to enter a lease under state and local law. 'Legal capacity' means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner [24 CFR 982.308(a)].

Lease Form and Tenancy Addendum [24 CFR 982.308]

If the owner uses a standard lease form for rental to unassisted tenants in the locality or the premises, the lease must be in such standard form. If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease. The HAP contract prescribed by HUD contains the owner's certification that if the owner uses a standard lease form for rental to unassisted tenants, the lease is in such standard form.

All provisions in the HUD-required Tenancy Addendum must also be added word-for-word to the owner's standard lease form for use with the assisted family. The Tenancy Addendum includes the tenancy requirements for the program and the composition of the household as approved by the HACC. As a part of the lease, the tenant shall have the right to enforce the Tenancy Addendum against the owner and the terms of the Tenancy Addendum shall prevail over any other provisions of the lease.

- The HACC does not provide a model or standard dwelling lease for owners to use in the HCV program.

Lease Information [24 CFR 982.308(d)]

The assisted dwelling lease must contain all of the required information as listed below:

- The names of the owner and the tenant
- The unit rented (address, apartment number, and any other information needed to identify the contract unit)
- The term of the lease (initial term and any provisions for renewal)
- The amount of the monthly rent to owner
- A specification of what utilities and appliances are to be supplied by the owner and what utilities and appliances are to be supplied by the family

Term of Assisted Tenancy

The initial term of the assisted dwelling lease must be for at least one year [24 CFR 982.309] and is stated in the HAP contract. During the initial term of the lease, the owner may not raise the rent to owner [24 CFR 982.309].

Any provisions for renewal of the dwelling lease will be stated in the dwelling lease [HCV Guidebook, pg. 8-22]. There are no HUD requirements regarding any renewal extension terms, except that they must be in the dwelling lease if they exist.

The HACC 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(b)].

Security Deposit [24 CFR 982.313 (a) and (b)]

The owner may collect a security deposit from the tenant. The HACC will allow the owner to collect any security deposit amount the owner determines is appropriate, provided the owner does not charge more to HCV participants than to others not receiving rental assistance. Therefore, no modifications to the HAP contract will be necessary.

Separate Non-Lease Agreements between Owner and Tenant

Owners may not demand or accept any rent payment from the family in excess of the rent to the owner minus the HACC'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)].

1. The HACC 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.
2. 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.
3. Any items, appliances, or other services that are not customarily provided to unassisted families as part of the dwelling lease, 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.
4. 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.
5. Separate non-lease agreements that involve additional items, appliances or other services may be considered amenities offered by the owner and may be taken into consideration when determining the reasonableness of the rent for the property.

PHA Review of Lease

The HACC will review the dwelling lease for compliance with all applicable requirements.

If the dwelling lease is incomplete or incorrect, the HACC will notify the family and the owner of the deficiencies. Missing and corrected lease information will only be accepted in writing in person, by mail, by email, or by fax. The HACC will not accept missing and corrected information over the phone.

Because the initial leasing process is time-sensitive, the HACC will attempt to communicate with the owner and family by phone, fax, or email. The HACC will use mail when the parties cannot be reached by phone, fax, or email.

The HACC will not review the owner's lease for compliance with state/local law.

Lease Purchase Agreements

A family leasing a unit with assistance under the program may enter into an agreement with an owner to purchase the unit [24 CFR 982.317]. So long as the family is receiving such rental assistance, all requirements applicable to families otherwise leasing units under the tenant-based program apply. Any homeownership premium (e.g., increment of value attributable to the value of the lease-purchase right or agreement such as an extra monthly payment to accumulate a down payment or reduce the purchase price) included in the rent to the owner that would result in a higher subsidy amount than would otherwise be paid by the PHA must be absorbed by the family.

In determining whether the rent to owner for a unit subject to a lease-purchase agreement is a reasonable amount in accordance with § 982.503, any homeownership premium paid by the family to the owner must be excluded when the PHA determines rent reasonableness. Owners and families must submit to the HACC a copy of the lease-purchase agreements. Owners must certify that the lease-purchase agreement is in accordance with local law, that lease-purchase agreements are offered to both market-rate renters and families participating in the program and that all monies paid toward the homeownership premium are refundable if either party opts not to continue the lease-purchase agreement.

9-I.F. TENANCY APPROVAL

After receiving the family's Request for Tenancy Approval with the proposed dwelling lease, the HACC must promptly notify the family and owner whether the assisted tenancy is approved [24 CFR 982.305]. Prior to approving the assisted tenancy and execution of a HAP contract, the HACC must ensure that all required actions and determinations discussed in Part I of this chapter have been completed. These actions include:

- Ensuring that the unit is eligible;
- The unit has been inspected by the HACC and meets the Housing Quality Standards (HQS);
- The lease offered by the owner is approvable and includes the required Tenancy Addendum;
- The rent to be charged by the owner for the unit is reasonable;

- Where the family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the family, the share of rent to be paid by the family does not exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)];
- If the portion of rent to be paid by the family exceeds 30 percent of the family's adjusted income, the increased portion must be approved by the family;
- The owner is an eligible owner, not disapproved by the HACC, with no conflicts of interest [24 CFR 982.306]; and
- The family and the owner have executed the lease, including the Tenancy Addendum, and the lead-based paint disclosure information [24 CFR 982.305(b)].
- The owner has signed and submitted the HAP Contract

The HACC will process the initial Housing Assistance Payment within 15 business days of receiving all required information.

If the terms of the RFTA/proposed lease are changed for any reason, including but not limited to negotiation with the HACC, the HACC will obtain corrected copies of the RFTA and proposed lease, signed by the family and the owner. Corrections to the RFTA/proposed lease will only be accepted in writing in-person, by mail, by email, or by fax. The HACC will not accept corrections over the phone.

If the HACC determines that the tenancy cannot be approved for any reason, the owner and the family will be notified in writing and given the opportunity to address any reasons for disapproval. The HACC will instruct the owner and family of the steps that are necessary to approve the tenancy.

If the tenancy is not approved because the unit is not in compliance, the family must continue to search for eligible housing within the timeframe of the issued voucher.

If the tenancy is not approvable due to rent affordability (including rent burden and rent reasonableness), the HACC will attempt to negotiate the rent with the owner. If a new, approvable rent is negotiated, the tenancy will be approved. If the owner is not willing to negotiate an approvable rent, the family must continue to search for eligible housing within the timeframe of the issued voucher.

9-I.G. HAP CONTRACT EXECUTION

The HAP contract is a written agreement between the HACC and the owner of the dwelling unit occupied by a housing choice voucher assisted family [24 CFR 982.305]. Under the HAP contract, the HACC 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.

If the HACC has given approval for the family of the assisted tenancy, the owner and the HACC 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)]. If a participant family moves from one assisted unit to another

assisted unit with continued tenant-based assistance, the HACC may restrict the effective date of the lease and the HAP contract to the first of the month only.

The HACC is permitted to execute a HAP contract even if the funding currently available does not extend for the full term of the HAP contract.

The HACC must make a best effort to ensure that the HAP contract is executed before the beginning of the lease term. Regardless, the HAP contract must be executed no later than 60 calendar days from the beginning of the lease term.

The HACC may not pay any housing assistance payment to the owner until the HAP contract has been executed. If the HAP contract is executed during the period of 60 calendar days from the beginning of the lease term, the HACC will pay housing assistance payments after execution of the HAP contract (in accordance with the terms of the HAP contract), to cover the portion of the lease term before execution of the HAP contract (a maximum of 60 days).

Any HAP contract executed after the 60 day period is void and the HACC may not pay any housing assistance payment to the owner.

Owners who have not previously participated in the HCV program can attend a meeting with the HACC in which the terms of the Tenancy Addendum and the HAP contract will be explained.

The owner and the assisted family will execute the dwelling lease and the owner must provide a copy to the HACC. The HACC will ensure that both the owner and the assisted family receive copies of the dwelling lease.

The owner and the HACC will execute the HAP contract. The HACC will not execute the HAP contract until the owner has submitted IRS form W-9. The HACC will ensure that the owner receives a copy of the executed HAP contract.

See Chapter 13 for a discussion of the HAP contract and contract provisions.

9-I.H. CHANGES IN LEASE OR RENT

If the tenant and the owner agree to any changes in the lease, such changes must be in writing and the owner must immediately give the HACC a copy of such changes [24 CFR 982.308]. The lease, including any changes, must remain in accordance with the requirements of this chapter.

Generally, PHA approval of tenancy and execution of a new HAP contract are not required for changes in the lease. However, under certain circumstances, voucher assistance in the unit shall not be continued unless the HACC 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.

Where the owner is changing the amount of rent, the owner must notify the HACC of any changes in the amount of the rent to owner at least 60 days before any such changes go into effect [24 CFR 982.308(g)(4)]. The owner and tenant must sign the *Rent Increase Request* form. The HACC will agree to such an increase only if the amount of the rent to owner is considered reasonable according to the rent reasonableness standards discussed in Chapter 8 and the HACC has sufficient funding to support the increase. If the requested rent is not found to be reasonable, the owner must either reduce the requested rent increase or give the family notice in accordance with the terms of the lease. The family must agree in writing to any proposed rent increase.

No rent increase is permitted during the initial term of the lease [24 CFR 982.309(a)(3)].

Where the owner is requesting a rent increase, the HACC will determine whether the requested increase is reasonable within 15 business days of receiving the request from the owner. The owner will be notified of the determination in writing.

Rent increases will go into effect on the first of the month following the 60 day period after the owner notifies the HACC of the rent change or on the date specified by the owner, whichever is later.

Chapter 10

MOVING WITH CONTINUED ASSISTANCE AND PORTABILITY

INTRODUCTION

Freedom of choice is a hallmark of the Housing Choice Voucher (HCV) program. Therefore, HUD regulations impose few restrictions on where families may live or move with HCV assistance. This chapter sets forth HUD regulations and the HACC policies governing moves within or outside the HACC's jurisdiction in two parts:

Part I: Moving with Continued Assistance. This part covers the general rules that apply to all moves by a family assisted under the HACC's HCV program, whether the family moves to another unit within the HACC's jurisdiction or to a unit outside the HACC's jurisdiction under portability.

Part II: Portability. This part covers the special rules that apply to moves by a family under portability, whether the family moves out of or into the HACC's jurisdiction. This part also covers the special responsibilities that the HACC has under portability regulations and procedures.

PART I: MOVING WITH CONTINUED ASSISTANCE

10-I.A. ALLOWABLE MOVES

HUD lists five regulatory conditions and the statutory condition under the Violence Against Women Reauthorization Act (VAWA) in which an assisted family is allowed to move to a new unit with continued assistance. Permission to move is subject to the restrictions set forth in section 10-I.B.

- The family has a right to terminate the lease on notice to the owner (for the owner's breach or otherwise) and has given a notice of termination to the owner in accordance with the lease [24 CFR 982.314(b)(3)]. If the family terminates the lease on notice to the owner, the family must give HACC a copy of the notice at the same time [24 CFR 982.314(d)(1)].
- The VAWA provides that a family may receive a voucher from a public housing agency and move to another jurisdiction under the tenant-based assistance program if the family has complied with all other obligations of the HCV program and has moved out of the assisted dwelling unit in order to protect the health or safety of an individual who is or has been a victim of domestic violence, dating violence, 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. [Pub.L. 109-162]
- The lease for the family's unit has been terminated by mutual agreement of the owner and the family [24 CFR 982.314(b)(1)(ii)]. The family must give the HACC a copy of the termination agreement.

- The owner has given the family a notice to vacate, has commenced an action to evict the family, or has obtained a court judgment or other process allowing the owner to evict the family [24 CFR 982.314(b)(2)]. However, if the eviction is due to program violations by the family, the family may not be allowed to move. The family must give the HACC a copy of any owner eviction notice [24 CFR 982.551(g)].
- The HACC has terminated the assisted contract for the family's unit for the owner's breach [24 CFR 982.314(b)(1)(i)].
- The HACC determines that the family's current unit does not meet the HQS space standards because of an increase in family size or a change in family composition. In such cases, the HACC must issue the family a new voucher and the family and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for the family, the HACC must terminate the HAP contract for the family's old unit in accordance with the HAP contract terms and must notify both the family and the owner of the termination. The HAP contract terminates at the end of the calendar month that follows the calendar month in which the HACC gives notice to the owner. [24 CFR 982.403(a) and (c)]

10-I.B. RESTRICTIONS ON MOVES

The HACC will deny a family permission to move on grounds that the HACC does not have sufficient funding for continued assistance if (a) the move is initiated by the family, not the owner or the HACC; (b) the HACC can demonstrate that the move will, in fact, result in higher subsidy costs; and (c) the HACC can demonstrate, in accordance with the policies in Part VIII of Chapter 16, that it or the receiving PHA does not have sufficient funding in its annual budget to accommodate the higher subsidy costs. This policy applies to moves within the HACC's jurisdiction as well as to moves outside it under portability. The HACC may also restrict moves to the first of the month following the date of the passed inspection as a means of reducing HAP expenses.

A family's right to move is generally contingent upon the family's compliance with program requirements [24 CFR 982.1(b)(2)]. HUD specifies two conditions under which the HACC may deny a family permission to move and two ways in which HACC may restrict moves by a family.

Denial of Moves

HUD regulations permit the HACC to deny a family permission to move under the following conditions:

- **Insufficient Funding** –The HACC may deny a family permission to move if HACC does not have sufficient funding for continued assistance [24 CFR 982.314(e)(1) 982.354 (e)(1)].
- **Grounds for Denial or Termination of Assistance** - If the HACC has grounds for denying or terminating the family's assistance, the HACC will act on those

grounds in accordance with the regulations and policies set forth in Chapters 3 and 12, respectively. [24 CFR 982.314(e)(2)].

If a family has been issued a termination notice and is not in a unit or is at risk of becoming homeless due to circumstances in their current unit (i.e. foreclosure, uninhabitable, pending eviction), the HACC may allow the issuance of moving papers if an appeal has been requested. If the family can remain in the current unit and is not in imminent risk of becoming homeless, they will not be eligible to receive moving papers until the termination has been resolved.

VAWA creates an exception to these restrictions for families who are otherwise in compliance with program obligations, but have moved to protect the health or safety of an individual who is or has been a victim of domestic violence, dating violence or stalking, and who reasonably believed he or she was imminently threatened by harm from further violence if they remained in the unit. [Pub.L. 109-162] In general, it will not deny a family permission to move for this reason; however, it retains the discretion to do so under special circumstances. Refer to sections 3-III.G and 12-II.E for VAWA provisions.

Restrictions on Elective Moves [24 CFR 982.314(c)]

HUD regulations permit the HACC to prohibit any elective move by a participant family during the family's initial lease term. They also permit the HACC to prohibit more than one elective move by a participant family during any 12-month period.

The HACC will deny a family permission to make an elective move during the family's initial lease term. The HACC will limit the time of the move to coincide with the annual reexamination. This policy applies to moves within the HACC's jurisdiction or outside it under portability.

The HACC will also deny a family permission to make more than one elective move during any 12-month period. This policy applies to all assisted families residing in the HACC's jurisdiction.

The HACC 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
- for purposes of reasonable accommodation of a family member who is a person with disabilities (see Chapter 2).

10-I.C. MOVING PROCESS

Notification

If a family wishes to move to a new unit, the family must notify the HACC and the owner before moving out of the old unit or terminating the lease on notice to the owner [24 CFR 982.314(d)(2)]. If the family wishes to move to a unit outside the HACC's jurisdiction under portability, the notice to the HACC must specify the area where the family wishes to move [24 CFR 982.314(d)(2), Notice PIH 2012-42]. The notices must be in writing [24 CFR 982.5]. The HACC requires a written notice prior to the moving papers being issued.

Approval

Upon receipt of a family's notification that it wishes to move, the HACC will determine whether the move is approvable in accordance with the regulations and policies set forth in sections 10-I.A and 10-I.B. The HACC will notify the family in writing of its determination within 15 business days following receipt of the family's notification.

Reexamination of Family Income and Composition

The family may complete an interim reexamination if there is a substantial change in household income or family members. Otherwise, the annual reexamination will be completed every 12 months on the anniversary date. The anniversary date of the annual reexamination may not correspond with the effective date of a new lease.

For families moving into or families approved to move out of the HACC's jurisdiction under portability, the HACC will follow the policies set forth in Part II of this chapter.

Voucher Issuance and Briefing

For families approved to move to a new unit within the HACC's jurisdiction, the HACC will issue a new voucher within 15 business days of the HACC's written approval to move. The HACC may require the family to attend a briefing. The HACC will provide the family with a briefing packet (as described in Chapter 5) and will inform the family about the HACC's payment and subsidy standards, procedures for requesting approval of a unit, the unit inspection process, and the leasing process. The HACC will follow the policies set forth in Chapter 5 on voucher term, extension, and expiration. If a family does not locate a new unit within the term of the voucher and any extensions, the family may remain in its current unit with continued voucher assistance if the owner agrees and the HACC approves. Otherwise, the family will lose its assistance. Refer to Chapter 5-II.E for voucher issuance, expirations, extensions and suspensions.

If the family has moved out of its unit and is no longer receiving assistance (no HAP made on behalf of the family) during the move process, the family must begin receiving assistance again within 180 days to remain eligible for the program.

For families moving into or families approved to move out of the HACC's jurisdiction under portability, the HACC will follow the policies set forth in Part II of this chapter.

Housing Assistance Payments [24 CFR 982.311(d)]

When a family moves out of an assisted unit, the HACC 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 unless the HACC does not have sufficient funding to pay the additional subsidy; the subsidy may be prorated from the date of move-out.

If a participant family moves from an assisted unit with continued tenant-based assistance, the term of the lease and the HAP contract may be restricted to the first of the month following the move out date of the old assisted unit so the HACC does not pay subsidy to more than one landlord in one month for the participant family.

PART II: PORTABILITY

10-II.A. OVERVIEW

Within the limitations of the regulations and this plan, a participant family or an applicant family that has been issued a voucher has the right to use tenant-based voucher assistance to lease a unit anywhere in the United States providing that the unit is located within the jurisdiction of a PHA administering a tenant-based voucher program [24 CFR 982.353(b)]. The process by which a family obtains a voucher from one PHA and uses it to lease a unit in the jurisdiction of another PHA is known as portability. The first PHA is called the **initial PHA**. The second is called the **receiving PHA**.

The receiving PHA has the option of administering the family's voucher for the initial PHA or absorbing the family into its own program. Under the first option, the receiving PHA bills the initial PHA for the family's housing assistance payments and the fees for administering the family's voucher. Under the second option, the receiving PHA pays for the family's assistance out of its own program funds and the initial PHA has no further relationship with the family.

The same PHA commonly acts as the initial PHA for some families and as the receiving PHA for others. Each role involves different responsibilities as described in Part II.

10-II.B. INITIAL PHA ROLE – WHERE THE HACC IS THE INITIAL PHA

Allowable Moves under Portability

A family may move with voucher assistance only to an area where there is at least one PHA administering a voucher program [24 CFR 982.353(b)]. If there is more than one PHA in the area, the HACC will provide the family with the contact information for the receiving PHAs and the family will choose the receiving PHA. The family may request HACC to choose the receiving PHA if that is the family's preference [24 CFR 982.355(b)].

Applicant Families

Under HUD regulations, most applicant families qualify to lease a unit outside the HACC's jurisdiction under portability. The HACC, in accordance with HUD regulations and PHA policy,

determines whether a family qualifies. However, HUD gives PHAs discretion to deny a portability move by an applicant family for the same two reasons that it may deny any move by a participant family: insufficient funding and grounds for denial or termination of assistance.

In addition, the HACC has established a policy denying the right to portability to nonresident applicants during the first 12 months after they are admitted to the program [24 CFR 982.353(c)]. If neither the head of household nor the spouse/co-head of an applicant family had a domicile (legal residence) in the HACC's jurisdiction at the time the family's application for assistance was submitted, the family must live in the HACC's jurisdiction with voucher assistance for at least 12 months before requesting portability.

The HACC will consider exceptions to this policy for purposes of reasonable accommodation (see Chapter 2). However, any exception to this policy is subject to the approval of the receiving PHA [24 CFR 982.353(c)(3)].

Participant Families

The HACC must not provide portable assistance for a participant if a family has moved out of its assisted unit in violation of the lease [24 CFR 982.353(b)]. The HACC will not provide portable assistance for a participant if the family owes a balance to the HACC and/or if the family has an active repayment agreement until the balance is paid in full. The HACC will determine whether a participant family may move out of its jurisdiction with continued assistance in accordance with the regulations and policies set forth here and in sections 10-I.A and 10-I.B of this chapter. The HACC will notify the family of its determination in accordance with the approval policy set forth in section 10-I.C of this chapter. VAWA creates an exception to this prohibition for families who are otherwise in compliance with program obligations.

Determining Income Eligibility

Applicant Families

The HACC is responsible for determining whether the family is income eligible in the area to which the family wishes to move [24 CFR 982.355(c)(1)]. If the applicant family is not income eligible in that area, the HACC must inform the family that it may not move there and receive voucher assistance [Notice PIH 2012-42].

Participant Families

The income eligibility of a participant family is not re-determined if the family moves to a new jurisdiction under portability [24 CFR 982.353(d)(2), 24 CFR 982.355(c)(1)].

Reexamination of Family Income and Composition

No new reexamination of family income and composition is required for an applicant family.

For a participant family approved to move out of its jurisdiction under portability, the HACC generally will conduct a reexamination of family income and composition only if the family's

annual reexamination must be completed on or before the initial billing deadline specified on form HUD-52665, Family Portability Information.

The HACC will make any exceptions to this policy necessary to remain in compliance with HUD regulations.

Briefing

The regulations and processes on briefings set forth in Chapter 5 of this plan require the HACC to provide information on portability to all applicant families that qualify to lease a unit outside the HACC's jurisdiction under the portability procedures. Therefore, no special briefing is required for these families.

The HACC may choose to conduct a formal briefing for a participant family wishing to move outside the HACC's jurisdiction under portability. The HACC will provide the family with the same oral and written explanation of portability that it provides to applicant families selected for admission to the program (see Chapter 5). The HACC will provide the name, address, and phone of the contact for the PHA in the jurisdiction to which they wish to move. The HACC will advise the family that they will be under the receiving PHA's policies and procedures, including subsidy standards and voucher extension policies.

Voucher Issuance and Term

For families approved to move out of HACC's jurisdiction under portability, the HACC will issue a new voucher within 15 business days of the HACC's written approval to move. The initial term of the voucher will be at least 60 days.

In issuing vouchers to applicant families, the HACC will follow the regulations and procedures set forth in Chapter 5. A new voucher is not required for portability purposes.

Voucher Extensions and Expiration

The HACC will approve **no** extensions to a voucher issued to an applicant or participant family porting out of the HACC's jurisdiction except under the following circumstances: (a) the initial term of the voucher will expire before the portable family will be issued a voucher by the receiving PHA, (b) the family decides to return to the initial PHA's jurisdiction and search for a unit there, or (c) the family decides to search for a unit in a third PHA's jurisdiction. In such cases, the policies on voucher extensions set forth in Chapter 5, section 5-II.E, of this plan will apply, including the requirement that the family apply for an extension in writing prior to the expiration of the initial voucher term.

To receive or continue receiving assistance under the HACC's voucher program, a family that moves to another PHA's jurisdiction under portability must be under HAP contract in the receiving PHA's jurisdiction within 90 days following the expiration date of the HACC's voucher term, including any extensions. (See below under "Initial Billing Deadline" for one exception to this policy.) If the family has moved out of its unit in the HACC's jurisdiction and is no longer receiving assistance (no HAP made on behalf of the family) during the portability

process, the family must begin receiving assistance again within 180 days to remain eligible for the program [24 CFR 982.312(a)].

Initial Contact with the Receiving PHA

After approving a family's request to move under portability, the HACC must promptly notify the receiving PHA to expect the family [24 CFR 982.355(c)(3)]. This means that the HACC must contact the receiving PHA directly on the family's behalf [Notice PIH 2012-42]. The HACC must also advise the family how to contact and request assistance from the receiving PHA [24 CFR 982.355(c)(3)].

Because the portability process is time-sensitive, the HACC will notify the receiving PHA by phone, fax, or e-mail to expect the family. The HACC will also ask the receiving PHA to provide any information the family may need upon arrival, including the name, fax, email, and telephone number of the staff person responsible for business with incoming portable families and procedures related to appointments for voucher issuance. The HACC will pass this information along to the family. The HACC will also ask for the name, address, telephone number, fax, and email of the person responsible for processing the billing information.

Sending Documentation to the Receiving PHA

The HACC is required to send the receiving PHA the following documents:

- Form HUD-52665, Family Portability Information, with Part I filled out [Notice PIH 2012-42] [24 CFR 982.355(c)(4)]
- A copy of the family's voucher [Notice PIH 2012-42]
- A copy of the family's most recent form HUD-50058, Family Report, or, if necessary in the case of an applicant family, family and income information in a format similar to that of form HUD-50058 [24 CFR 982.355(c)(4), Notice PIH 2012-42]
- Copies of the income verifications backing up the form HUD-50058 [24 CFR 982.355(c)(4), Notice PIH 2012-42]

In addition to these documents, the HACC will provide the following information, if available, to the receiving PHA:

- Social security numbers (SSNs)
- Documentation of SSNs for all family members age 6 and over
- Documentation of legal identity
- Documentation of citizenship or eligible immigration status
- Documentation of participation in the earned income disallowance (EID) benefit
- Documentation of participation in a family self-sufficiency (FSS) program

The HACC may notify the family in writing regarding any information provided to the receiving PHA [HCV GB, p. 13-3].

Initial Billing Deadline [Notice PIH 2004-12]

When the HACC sends form HUD-52665 to the receiving PHA, it specifies in Part I the deadline by which it must receive the initial billing notice from the receiving PHA. This deadline is 90 days following the expiration date of the voucher issued to the family by the HACC. If the HACC has not received an initial billing notice from the receiving PHA by the deadline specified on form HUD-52665, it will contact the receiving PHA by phone, fax, or e-mail on the next business day. If the receiving PHA reports that the family is not yet under HAP contract, the HACC will inform the receiving PHA that it will not honor a late billing submission and will return any subsequent billings that it receives on behalf of the family. The HACC will send the receiving PHA a written confirmation of its decision by mail.

The HACC will allow an exception to this policy if the family includes a person with disabilities and the late billing is a result of a reasonable accommodation granted to the family by the receiving PHA.

Monthly Billing Payments [24 CFR 982.355(e), Notice PIH 2012-42]

If the receiving PHA is administering the family's voucher, the HACC is responsible for making billing payments in a timely manner. The first billing amount is due within 30 calendar days after the HACC receives Part II of form HUD-52665 from the receiving PHA. The HACC will utilize direct deposit to ensure that the payment is received by the deadline unless the receiving PHA notifies the HACC that direct deposit is not acceptable to them.

Subsequent payments must be **received** by the receiving PHA no later than the fifth business day of each month. The payments must be provided in a form and manner that the receiving PHA is able and willing to accept.

The HACC may not terminate or delay making payments under existing portability billing arrangements as a result of over-leasing or funding shortfalls. The HACC must manage its tenant-based program in a manner that ensures that it has the financial ability to provide assistance for families that move out of its jurisdiction under portability and are not absorbed by receiving PHAs as well as for families that remain within its jurisdiction.

Annual Updates of Form HUD-50058

If the HACC is being billed on behalf of a portable family, it should receive an updated form HUD-50058 each year from the receiving PHA. If the HACC fails to receive an updated 50058 by the family's annual reexamination date, the HACC should contact the receiving PHA to verify the status of the family.

Subsequent Family Moves

Within the Receiving PHA's Jurisdiction [24 CFR 314(e)(1), Notice PIH 2005-1]

The HACC has the authority to deny subsequent moves by portable families whom it is assisting under portability billing arrangements if it does not have sufficient funding for continued assistance. If the HACC determines that it must deny moves on the grounds that it lacks

sufficient funding (see section 10-I.B), it will notify all receiving PHAs with which it has entered into portability billing arrangements that they, too, must deny moves to higher cost units by portable families from the HACC's jurisdiction.

The HACC will allow exceptions to this policy for purposes of reasonable accommodation of a family member who is a person with disabilities.

Outside the Receiving PHA's Jurisdiction [Notice PIH 2012-42]

If the HACC is assisting a portable family under a billing arrangement and the family subsequently decides to move out of the receiving PHA's jurisdiction, the HACC is responsible for issuing the family a voucher while the family is either being assisted or has a voucher from the receiving PHA and, if the family wishes to port to another jurisdiction, sending form HUD-52665 and supporting documentation to the new receiving PHA. Any extensions of the HACC's voucher necessary to allow the family additional search-time to return to the HACC's jurisdiction or to move to another jurisdiction would be at the discretion of the HACC.

Denial or Termination of Assistance [24 CFR 982.355(c)(9)]

If the HACC has grounds for denying or terminating assistance for a portable family that has not been absorbed by the receiving PHA, the HACC may act on those grounds at any time. (For PHA policies on denial and termination, see Chapters 3 and 12, respectively.)

10-II.C. RECEIVING PHA ROLE – WHERE THE HACC IS THE RECEIVING PHA

If a family has a right to lease a unit in the HACC's jurisdiction under portability, the HACC must provide assistance for the family [24 CFR 982.355(10)]. The HACC's procedures and preferences for selection among eligible applicants do not apply and the HACC's waiting list is not used [24 CFR 982.355(10)]. However, the family's unit or voucher size is determined in accordance with the subsidy standards of the HACC [24 CFR 982.355(7)] and the amount of the family's housing assistance payment is determined in the same manner as for other families in the HACC's voucher program [24 CFR 982.355(e)(2)].

Initial Contact with Family

When a family moves into the HACC's jurisdiction under portability, the family is responsible for promptly contacting the HACC and complying with the HACC's procedures for incoming portable families [24 CFR 982.355(c)(3)].

If the voucher issued to the family by the initial PHA has expired, the HACC does not process the family's paperwork, but instead refers the family back to the initial PHA [Notice PIH 2012-42].

When a portable family requests assistance from the HACC, the HACC must promptly (within 15 days of the HACC issuing the voucher) inform the initial PHA whether the HACC will bill the initial PHA for assistance on behalf of the portable family or will absorb the family into its own program [24 CFR 982.355(c)(5)]. If the HACC initially bills the initial PHA for the

family's assistance, it may later decide to absorb the family into its own program [Notice PIH 2012-42]. (See later under "Absorbing a Portable Family" for more on this topic.)

If for any reason the HACC refuses to process or provide assistance to a family under the portability procedures, the family must be given the opportunity for an informal review or hearing [Notice PIH 2012-42]. (For more on this topic, see later under "Denial or Termination of Assistance.")

Briefing

The HACC may require the family to attend a briefing. The HACC will provide the family with a briefing packet (as described in Chapter 5) and will inform the family about the HACC's payment and subsidy standards, procedures for requesting approval of a unit, the unit inspection process, and the leasing process.

Income Eligibility and Reexamination

For any family moving into its jurisdiction under portability, the HACC will conduct a new reexamination of family income and composition. However, the HACC will not delay issuing the family a voucher for this reason. Nor will the HACC delay approving a unit for the family until the reexamination process is complete unless the family is an applicant and the HACC cannot otherwise confirm that the family is income eligible for admission to the program in the area where the unit is located.

In conducting its own reexamination, the HACC will rely upon any verifications provided by the initial PHA to the extent that they (a) accurately reflect the family's current circumstances and (b) were obtained within the last 120 days. Any new information may be verified by documents provided by the family and adjusted, if necessary, when third party verification is received.

Voucher Issuance

When a family ports into its jurisdiction, the HACC will issue the family a voucher based on the paperwork provided by the initial PHA unless the family's paperwork from the initial PHA is incomplete, the family's voucher from the initial PHA has expired, or the family does not comply with the HACC's procedures. The HACC will update the family's information when verification has been completed.

HUD expects the receiving PHA to issue the voucher within two weeks after receiving the family's paperwork from the initial PHA.

Voucher Term

The term of the HACC's voucher may not expire before the term of the initial PHA's voucher [24 CFR 982.355(c)(13)]. The term of the HACC's voucher may not expire before 30 calendar days from the expiration date of the initial PHA's voucher

Voucher Extensions [24 CFR 982.355(c)(14), Notice 2012-42]

The HACC may provide additional search time to the family beyond the expiration date of the receiving PHA's voucher; however, if it does so, it must inform the initial PHA of the extension. It must also bear in mind the billing deadline provided by the initial PHA. Unless willing and able to absorb the family, the HACC should ensure that any voucher expiration date would leave sufficient time to process a request for tenancy approval, execute a HAP contract, and deliver the initial billing to the initial PHA.

The HACC generally will not extend the term of the voucher beyond the required 30 days that it issues to an incoming portable family unless it plans to absorb the family into its own program, in which case it will follow the policies on voucher extension set forth in section 5-II.E. The HACC will consider an exception to this policy as a reasonable accommodation to a person with disabilities (see Chapter 2).

Notifying the Initial PHA

The HACC will promptly notify the initial PHA if the family has leased an eligible unit under the program or if the family fails to submit a request for tenancy approval for an eligible unit within the term of the HACC's voucher [24 CFR 982.355(c)(8)]. The HACC is required to use Part II of form HUD-52665, Family Portability Information for this purpose [24 CFR 982.355(e)(5), Notice PIH 2012-42]. (For more on this topic and the deadline for notification, see below under "Administering a Portable Family's Voucher.")

If an incoming portable family ultimately decides not to lease in the jurisdiction of the HACC but instead wishes to return to the initial PHA's jurisdiction or to search in another jurisdiction, the HACC will refer the family back to the initial PHA. In such a case the voucher of record for the family is once again the voucher originally issued by the initial PHA. Any extension of search time provided by the HACC voucher is only valid for the family's search in HACC's jurisdiction. [Notice PIH 2012-42]

Administering a Portable Family's Voucher

Initial Billing Deadline

If a portable family's search for a unit is successful and the HACC intends to administer the family's voucher, the HACC must submit its initial billing notice (Part II of form HUD-52665) in time that the notice will be **received** no later than 90 days following the expiration date of the family's voucher issued by the initial PHA [Notice PIH 2016-08]. A copy of the family's form HUD-50058 Family Report completed by the HACC must be attached to the initial billing notice. The HACC may send these documents by mail, fax, or e-mail to meet the billing deadline, but will also send the notice by regular mail.

If the HACC fails to send the initial billing by the billing deadline (90 days after the initial PHA voucher expiration), it is required to absorb the family into its own program unless (a) the initial PHA is willing to accept the late submission or (b) HUD requires the initial PHA to honor the late submission (e.g., because the HACC is over-leased) [Notice PIH 2016-08].

Ongoing Notification Responsibilities [Notice PIH 2016-08, HUD-52665]

Annual Reexamination. The HACC must send the initial PHA a copy of a portable family's updated form HUD-50058 after each annual reexamination for the duration of time the HACC is billing the initial PHA on behalf of the family, regardless of whether there is a change in the billing amount.

Change in Billing Amount. The HACC is required to notify the initial PHA, using form HUD-52665, of any change in the billing amount for the family as a result of:

- A change in the HAP amount because of a reexamination, a change in the applicable payment standard, a move to another unit, etc. (Subsequent moves follow the policy in Section 10-I.C. above.)
- An abatement or subsequent resumption of the HAP payments
- Termination of the HAP contract
- Payment of a damage/vacancy loss claim for the family
- Termination of the family from the program

The timing of the notice of the change in the billing amount should correspond with the notification to the owner and the family in order to provide the initial PHA with advance notice of the change. Under no circumstances should the notification be later than 10 business days following the effective date of the change in the billing amount.

Late Payments [Notice PIH 2016-08]

If the initial PHA fails to make a monthly payment for a portable family by the fifth business day of the month, the HACC must promptly notify the initial PHA in writing of the deficiency. The notice must identify the family, the amount of the billing payment, the date the billing payment was due, and the date the billing payment was received (if it arrived late). The HACC must send a copy of the notification to the Office of Public Housing (OPH) in the HUD area office with jurisdiction over the HACC. If the initial PHA fails to correct the problem by the second month following the notification, the HACC may request by memorandum to the director of the OPH with jurisdiction over the HACC that HUD transfer the unit in question. A copy of the initial notification and any subsequent correspondence between the HACC on the matter must be attached. The HACC must send a copy of the memorandum to the initial PHA. If the OPH decides to grant the transfer, the billing arrangement on behalf of the family ceases with the transfer, but the initial PHA is still responsible for any outstanding payments due to the HACC.

Overpayments [Notice PIH 2016-08]

In all cases where the HACC has received billing payments for billing arrangements no longer in effect, the HACC is responsible for returning the full amount of the overpayment (including the portion provided for administrative fees) to the initial PHA.

In the event that HUD determines billing payments have continued for at least three months because the HACC failed to notify the initial PHA that the billing arrangement was terminated, the HACC must take the following steps:

- Return the full amount of the overpayment, including the portion provided for administrative fees, to the initial PHA.
- Once full payment has been returned, notify the Office of Public Housing in the HUD area office with jurisdiction over the HACC of the date and the amount of reimbursement to the initial PHA.

At HUD's discretion, the HACC will be subject to the sanctions spelled out in Notice PIH 2004-12.

Denial or Termination of Assistance

If the HACC elects to deny or terminate assistance for a portable family, the HACC will notify the initial PHA within 15 business days after the informal review or hearing if the denial or termination is upheld. The HACC will base its denial or termination decision on the policies set forth in Chapter 3 or Chapter 12, respectively. The informal review or hearing will be held in accordance with the policies in Chapter 16. The HACC will furnish the initial PHA with a copy of the review or hearing decision.

Absorbing a Portable Family

The HACC may absorb an incoming portable family into its own program when the HACC executes a HAP contract on behalf of the family or at any time thereafter providing that (a) the HACC has funding available under its annual contributions contract (ACC) and (b) absorbing the family will not result in over-leasing [24 CFR 982.355(d)(1), Notice PIH 2016-08].

If the HACC decides to absorb a portable family upon the execution of a HAP contract on behalf of the family, the HACC will notify the initial PHA by the initial billing deadline specified on form HUD-52665. The effective date of the HAP contract will be the effective date of the absorption. If the HACC absorbs a family from the point of admission, the admission will be counted against the income targeting obligation of the HACC [24 CFR 982.201(b)(2)(vii)].

If the HACC decides to absorb a family after that, it will provide the initial PHA with 30 days advance notice.

Following the absorption of an incoming portable family, the family is assisted with funds available under the consolidated ACC for the HACC's voucher program [24 CFR 982.355(d)], and the HACC becomes the initial PHA in any subsequent moves by the family under portability.

Chapter 11

REEXAMINATIONS

INTRODUCTION

The HACC is required to reexamine each family's income and composition at least annually and to adjust the family's level of assistance accordingly. Interim reexaminations are also needed in certain situations. This chapter discusses both annual and interim reexaminations and the recalculation of family share and subsidy that occurs as a result. HUD regulations and the HACC policies concerning reexaminations are presented in three parts:

Part I: Annual Reexaminations. This part discusses the process for conducting annual reexaminations.

Part II: Interim Reexaminations. This part details the requirements for families to report changes in family income and composition between annual reexaminations.

Part III: Recalculating Family Share and Subsidy Amount. This part discusses the recalculation of family share and subsidy amounts based on the results of annual and interim reexaminations.

Policies governing reasonable accommodation, family privacy, required family cooperation, and program abuse, as described elsewhere in this plan, apply to both annual and interim reexaminations.

PART I: ANNUAL REEXAMINATIONS [24 CFR 982.516]

11-I.A. OVERVIEW

The HACC must conduct a reexamination of family income and composition at least annually. This includes gathering and verifying current information about family composition, income, and expenses. Based on this updated information, the family's income and rent must be recalculated. This part discusses the schedule for annual reexaminations, the information to be collected and verified, and annual reexamination effective dates.

11-I.B. SCHEDULING ANNUAL REEXAMINATIONS

The HACC must establish a policy to ensure that the annual reexamination for each family is completed *within* a 12-month period and may require reexaminations more frequently.

The HACC will begin the annual reexamination process 120 days in advance of its scheduled effective date. Generally, the HACC will schedule annual reexamination effective dates to coincide with the family's anniversary date.

Anniversary date is defined as 12 months from the effective date of the family's last annual reexamination or, during a family's first year in the program, from the effective date of the family's initial examination (admission).

If the family moves to a new unit, the HACC may perform a new annual reexamination.

The HACC also may schedule an annual reexamination for completion prior to the anniversary date for administrative purposes.

Notification of and Participation in the Annual Reexamination Process

The HACC is required to obtain the information needed to conduct annual reexaminations. How that information will be collected is left to the discretion of each PHA.

The HACC may conduct annual reexaminations by mail or by in-person interviews. Families may be required to participate in an annual reexamination interview which must be attended by all adult family members age 18 and older. If participation in an in-person interview poses a hardship because of a family member's disability, the family should contact the HACC to request a reasonable accommodation (see Chapter 2).

Notification of annual 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 must contact the HACC in advance of the interview to schedule a new appointment. If a family does not attend the scheduled interview, the HACC will send a second notification with a new interview appointment time.

If a family fails to attend two scheduled interviews without the HACC approval, or if the notice is returned by the post office with no forwarding address, a notice of termination (see Chapter 12) will be sent to the family's address of record.

An advocate, interpreter, or other assistant may assist the family in the interview process. The family and the HACC must execute a certification attesting to the role and assistance of any such third party.

11-I.C. CONDUCTING ANNUAL REEXAMINATIONS

As part of the annual reexamination process, families are required to provide updated information to the HACC regarding the family's income, expenses, assets, and composition [24 CFR 982.551(b)]. It is the responsibility of the head of household to report all sources of household income. The HACC will use the guidelines in Chapter 6 to determine included and excluded income sources.

Families will be asked to bring all required information (as described in the reexamination notice) to the reexamination appointment, if applicable, or submit by mail. The method will be

described in the notice. The required information will include a HACC -designated reexamination form, an Authorization for the Release of Information/Privacy Act Notice, as well as supporting documentation related to the family's income, expenses, and family composition.

Any required documents or information that the family is unable to provide at the time of the interview must be provided within 15 business days of the interview. 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, including any extensions, the family will be sent a notice of termination (See Chapter 12).

The information provided by the family must be verified in accordance with the policies in Chapter 7. Unless the family reports a change, or the agency has reason to believe a change has occurred in information previously reported by the family, certain types of information that are verified at admission typically do not need to be re-verified on an annual basis. These include:

- Legal identity
- Age
- Social security numbers
- A person's disability status
- Citizenship or immigration status

If adding a new family member to the unit causes overcrowding according to the Housing Quality Standards (HQS) (see Chapter 8), the HACC must issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the HACC must terminate the HAP contract in accordance with its terms [24 CFR 982.403].

11-I.D. DETERMINING ONGOING ELIGIBILITY OF CERTAIN STUDENTS

Section 327 of Public Law 109-115 established new restrictions on the ongoing eligibility of certain students (both part- and full-time) who are enrolled in institutions of higher education [24 CFR 982.552(b)(5)].

If a student enrolled in an institution of higher education is under the age of 24, is not a veteran, is not married, and does not have a dependent child, the student's eligibility must be reexamined along with the income eligibility of the student's parents on an annual basis. In these cases, both the student and the student's parents must be income eligible for the student to continue to receive HCV assistance. If, however, a student in these circumstances is determined independent from his or her parents in accordance with PHA policy, the income of the student's parents will not be considered in determining the student's ongoing eligibility.

Students who reside with parents in an HCV assisted unit are not subject to this provision. It is limited to students who are receiving assistance on their own, separately from their parents.

During the annual reexamination process, the HACC will determine the ongoing eligibility of each student who is subject to the eligibility restrictions in 24 CFR 5.612 by reviewing the student's individual income as well as the income of the student's parents. If the student has been determined "independent" from his/her parents based on the policies in Sections 3-II.E and 7-II.E, 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 Section 12-I.D.

If the student continues to be income eligible based on his/her own income and the income of his/her parents (if applicable), the HACC will process a reexamination in accordance with the policies in this chapter.

11-I.E. EFFECTIVE DATES

Increases

In general, an *increase* in the family share of the rent that results from an annual reexamination will take effect on the family's anniversary date and the family will be notified at least 30 days in advance.

If less than 30 days remain before the scheduled effective date, the increase will take effect on the first of the month following the end of the 30-day notice period if the delay is the responsibility of the HACC. However, if the family causes a delay in processing the annual reexamination, *increases* in the family share of the rent will be applied retroactively, to the scheduled effective date of the annual reexamination. The family will be responsible for any overpaid subsidy and may be offered a repayment agreement in accordance with the policies in Chapter 16. Notice is not required if the family does not respond within 60 days of the initial notice of reexamination.

If a family moves to a new unit, the increase will take effect on the effective date of the new lease and HAP contract and no 30-day notice is required.

If the HACC chooses to schedule an annual reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be determined by the HACC, but will always allow for the 30-day notice period.

Decreases

In general, a *decrease* in the family share of the rent that results from an annual 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 HACC chooses to schedule an annual reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be determined by the HACC.

If the family causes a delay in processing the annual reexamination, *decreases* in the family share of the rent will be applied prospectively, from the first day of the month following completion of the reexamination processing. Delays in reexamination processing are considered to be caused by the family if the family fails to provide information requested by the HACC by the date specified and this delay prevents the HACC from completing the reexamination as scheduled.

PART II: INTERIM REEXAMINATIONS [24 CFR 982.516]

11-II.A. OVERVIEW

Family circumstances may change throughout the period between annual reexaminations. HUD and PHA policies dictate what kinds of information about changes in family circumstances must be reported and under what circumstances the HACC must process interim reexaminations to reflect those changes. HUD regulations also permit the HACC to conduct interim reexaminations of income or family composition at any time. When an interim reexamination is conducted, the HACC will verify and adjust the changes reported by the family and any changes shown on the EIV income report obtained for the family [PIH 2010-19, PIH 2017-12, 24 CFR 5.236(b)(2)(3)].

In addition to specifying what information the family must report, HUD regulations permit the family to request an interim determination if other aspects of the family's income or composition changes. The HACC must complete the interim reexamination within a reasonable time after the family's request.

The HACC requires families to report all changes in family income and composition. This part includes policies describing how the HACC will process interim reexaminations.

11-II.B. CHANGES IN FAMILY AND HOUSEHOLD COMPOSITION

PHAs must adopt policies prescribing when and under what conditions the family must report changes in family composition. However, due to family obligations under the program, the HACC has limited discretion in this area. The HACC will conduct interim reexaminations to account for any changes in household composition that occur between annual reexaminations.

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 PHA approval. However, the family is required to promptly notify the HACC of the addition [24 CFR 982.551(h)(2)].

If a change in family size causes a violation of Housing Quality Standards (HQS) space standards (see Chapter 8), the HACC must issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for

rental by the family, the HACC must terminate the HAP contract in accordance with its terms [24 CFR 982.403].

New Proposed Family and Household Members Requiring Approval

Families must request the HACC's approval to add a new family or household member, aside from those listed in the above section. Requests must be made in writing and approved by the HACC prior to the individual moving into the unit. The HACC may not approve the addition of a new family or household member unless it is due to the birth, adoption, court awarded custody of a child, marriage, or as a reasonable accommodation for a family member with disabilities.

The HACC is not obligated to serve anyone who is not a member of the assisted household. The HACC reserves the right to not allow the addition of family or household members for good cause. Examples of *good cause* include, but are not limited to, a reduction in funding, an increase in the subsidy payment or voucher size, overcrowding of the family's unit, and the family's standing in the HCV Program. The HACC will not approve the addition of a new family or household member unless the individual meets the HACC's eligibility criteria (see Chapter 3). The HACC will not approve the addition of a foster child, foster adult, or any other household member, except a live-in aide, if it will cause a violation of HQS space standards. The HACC may also consider the voucher size and the availability of additional funding when approving or denying the addition of a new family/household member. The HACC may not consider the return of a family/household member who was previously removed from the household.

If the HACC determines an individual meets the HACC's eligibility criteria as defined in Chapter 3, the HACC will provide written approval to the family. When any new family member is added, the HACC must conduct a reexamination to determine any new income or deductions associated with the additional family member and to make appropriate adjustments in the family share of the rent and the HAP payment [24 CFR 982.516(e)].

If the HACC determines that an individual does not meet the HACC's eligibility criteria as defined in Chapter 3, the HACC will notify the family in writing of its decision to deny approval of the new family or household member and the reasons for the denial.

The HACC will make its determination within 30 business days of receiving all information required to verify the individual's eligibility.

Departure of a Family or Household Member

If a household member ceases to reside in the unit, the family must inform the HACC within 30 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.

Adult members with income contributing to the family TTP will not be removed without proof of their new address.

Changes, or transfers of voucher assistance, in the head of household will be approved in the following circumstances:

- Death of the head of household with remaining family members – The remaining member must have been a member of the household for a period greater than one year. In the event all remaining members are minors, only the individual with guardianship/custody of the members may continue to receive assistance.
- The head of household has been placed in an extended care facility and is unable to return to the assisted unit.

Exceptions to this policy may be granted on a case by case basis.

If a live-in aide, foster child, or foster adult ceases to reside in the unit, the family must inform the HACC within 15 business days.

11-II.C. CHANGES AFFECTING INCOME OR EXPENSES

Interim reexaminations can be scheduled either because the HACC has reason to believe that changes in income or expenses may have occurred or because the family reports a change. It is the responsibility of the head of household to report all sources of household income. The HACC will use the guidelines set forth in Chapter 6 to determine included and excluded income sources.

PHA-Initiated Interim Reexaminations

The HACC-initiated interim reexaminations are those that are scheduled based on circumstances or criteria defined by the HACC. They are not scheduled because of changes reported by the family.

The HACC will conduct interim reexaminations in each of the following instances:

- For families receiving the Earned Income Disallowance (EID), the HACC will conduct an interim reexamination at the start and conclusion of the second 12 month exclusion period (50 percent phase-in period).
- The HACC will schedule an interim reexamination every ninety (90) days for families reporting zero (\$0) income. At the interim reexamination all adult family members will be required to certify their income. If the income for the family remains at zero (\$0), a signed and notarized certificate of zero (\$0) income will be required from all adult household members. At the annual certification families reporting zero (\$0) income will be required to have all adult family members sign a certificate of income form that indicates each adult household member has no income. The certificate of income form must be notarized. Additionally, all adult household members in a zero (\$0) income household will be required to sign a release allowing the HACC to obtain, as appropriate, further confirmation on the family's income. At all income reviews the HACC will utilize HUD's Enterprise Income Verification (EIV) system to determine if zero income households have unreported income. The family's failure to report any and all income or

comply with the reexamination requirements will be considered grounds for termination of assistance.

- If at the time of the annual reexamination, it is not feasible to anticipate a level of income for the next 12 months (e.g. seasonal or cyclic income), the HACC may schedule an interim reexamination to coincide with the end of the period for which it is feasible to project income.
- If at the time of the annual reexamination, tenant-provided documents were used on a provisional basis due to the lack of third-party verification, and third-party verification becomes available, the HACC may conduct an interim reexamination.
- The HACC may conduct an interim reexamination at any time in order to correct an error in a previous reexamination.

Family-Initiated Interim Reexaminations

PHAs must adopt policies prescribing when and under what conditions the family must report changes in family income or expenses [24 CFR 982.516(c)]. In addition, HUD regulations require that the family be permitted to obtain an interim reexamination any time the family has experienced a change in circumstances since the last determination [24 CFR 982.516(b)(2)].

Required Reporting

Families are required to report all increases in earned income, including new employment, within 30 days of the date the change takes effect.

The HACC will conduct interim reexaminations and adjust rent portions accordingly for families that have had a substantial increase in income - \$200 or more per month. The HACC will also conduct interim reexaminations for families that qualify for the earned income disallowance (EID), but only when the EID family's share of rent will change as a result of the increase.

Optional Reporting

The family may request an interim reexamination any time the family has experienced a change in circumstances since the last determination [24 CFR 982.516(b)(2)]. The HACC will process the request if the family reports a change that will result in a reduced family income [HCV GB, p. 12-9]. However, the HACC will not process more than three (3) interim adjustments in a twelve (12) month period. For the third interim adjustment, the HACC will use the average of the household's income from the last twelve (12) months to determine annual income. In addition, if the change will last less than 30 days, no reexamination is required.

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 Chapter 6. If a decrease in household income is reported as a means to avoid paying an increased rent portion (i.e. a decrease in income is reported immediately after the family's rent portion increases or a

household member with income is reported as no longer residing in the unit immediately after the family's rent portion has increased), the HACC may elect not to process an interim adjustment. In the event the HACC elects to process the adjustment, the effective date of the decrease will be the first of the month, 3 months from the date all required documentation to verify the change is submitted.

11-II.D. PROCESSING THE INTERIM REEXAMINATION

Method of Reporting

The family may notify the HACC, in writing, of changes documented by mail, by fax, by email, or in person. However, if the HACC determines that an interview is warranted, the family may be required to attend.

Based on the type of change reported, the HACC will determine the documentation the family will be required to submit. The family must submit any required information or documents within 15 business days of receiving a request from the HACC. This time frame may be extended for good cause with the HACC approval.

Effective Dates

PHAs must establish the time frames in which any changes that result from an interim reexamination will take effect [24 CFR 982.516(d)]. The changes may be applied either retroactively or prospectively, depending on whether there is to be an increase or a decrease in the family share of the rent and whether the family reported any required information within the required time frames [HCV GB, p. 12-10].

If the family share of the rent is to *increase*:

The increase generally will be effective on the first of the month following 30 days' notice to the family.

If a family fails to report a change within the required time frames, or fails to provide all required information within the required time frames, the increase will be applied retroactively, to the date it would have been effective had the information been provided on a timely basis. The family will be responsible for any overpaid subsidy and may be offered a repayment agreement in accordance with the policies in Chapter 16.

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 all required documentation to verify the change and any subsequent benefits the family may be entitled to (i.e. workmen's compensation, unemployment, etc.) is submitted. The family is responsible for ensuring all required documents are submitted in a timely manner.

PART III: RECALCULATING FAMILY SHARE AND SUBSIDY AMOUNT

11-III.A. OVERVIEW

After gathering and verifying required information for an annual or interim reexamination, the HACC must recalculate the family share of the rent and the subsidy amount and notify the family and owner of the changes [24 CFR 982.516(d)(2), HCV 12-6 and 12-10]. While the basic policies that govern these calculations are provided in Chapter 6, this part lays out policies that affect these calculations during a reexamination.

11-III.B. CHANGES IN PAYMENT STANDARDS AND UTILITY ALLOWANCES

In order to calculate the family share of the rent and HAP amount correctly, changes in payment standards, subsidy standards, or utility allowances may need to be updated and included in the HACC's calculations.

Specific policies governing how subsidy standards, payment standards, and utility allowances are applied are discussed below.

Payment Standards [24 CFR 982.505]

The family share of the rent and HAP calculations must use the correct payment standard for the family, taking into consideration the family unit size, the size of unit, and the area in which the unit is located [HCV GB, p. 12-5]. See Chapter 6 for information on how to select the appropriate payment standard.

When the HACC changes its payment standards or the family's situation changes, new payment standards are applied at the following times:

- If the HACC's payment standard amount changes during the term of the HAP contract, the date on which the new standard is applied depends on whether the standard has increased or decreased:
 - If the payment standard amount has *increased*, the increased payment standard will be applied at the *first annual* reexamination following the effective date of the increase in the payment standard.
 - If the payment standard amount has *decreased*, the decreased payment standard will be applied at the *second annual* reexamination following the effective date of the decrease in the payment standard.
- 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.

Subsidy Standards [24 CFR 982.505(c)(4)]

If there is a change in the family unit 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 HACC's subsidy standards (see Chapter 5), the new family unit size must be used to determine the payment standard

amount for the family at the family's *first annual* reexamination following the change in family unit size.

Utility Allowances [24 CFR 982.517(d)]

The family share of the rent and HAP calculations must reflect any changes in the family's utility arrangement with the owner or in the HACC's utility allowance schedule [HCV GB, p. 12-5]. Chapter 16 discusses how utility allowance schedules are established.

When there are changes in the utility arrangement with the owner, the HACC must use the utility allowances in effect at the time the new lease and HAP contract are executed.

At reexamination, the HACC must use the HACC current utility allowance schedule [24 CFR 982.517(d)(2)].

11-III.C. NOTIFICATION OF NEW FAMILY SHARE AND HAP AMOUNT

The HACC must notify the owner and family of any changes in the amount of the HAP payment [HUD-52641, HAP Contract]. The notice must include the following information [HCV GB, p. 12-6]:

- The amount and effective date of the new HAP payment
- The amount and effective date of the new family share of the rent
- The amount and effective date of the new tenant rent to owner

The family must be given an opportunity for an informal hearing regarding the HACC'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 Chapter 16).

11-III.D. DISCREPANCIES

During an annual or interim reexamination, the HACC may discover that information previously reported by the family was in error or that the family intentionally misrepresented information. In addition, the HACC may discover errors made by the HACC. When errors resulting in the overpayment or underpayment of subsidy are discovered, corrections will be made in accordance with the policies in Chapter 14.

Chapter 12

TERMINATION OF ASSISTANCE AND TENANCY

HUD regulations specify the reasons for which the HACC can terminate a family's assistance and the ways in which such terminations must take place. They also dictate the circumstances under which an owner may terminate the tenancy of an assisted family. This chapter presents the policies that govern voluntary and involuntary terminations of assistance and termination of tenancy by the owner. It is presented in three parts:

Part I: Grounds for Termination of Assistance. This part discusses various reasons that a family's assistance may be terminated, including voluntary termination by the family, termination because the family no longer qualifies to receive subsidy, and termination by the HACC based on the family's behavior.

Part II: Approach to Termination of Assistance. This part describes the policies that govern how an involuntary termination takes place. It specifies the alternatives that the HACC may consider in lieu of termination, the criteria the HACC must use when deciding what action to take, and the steps the HACC must take when terminating a family's assistance.

Part III: Termination of Tenancy by the Owner. This part presents the policies that govern the owner's right to terminate an assisted tenancy.

PART I: GROUNDS FOR TERMINATION OF ASSISTANCE

12-I.A. OVERVIEW

HUD requires the HACC to terminate assistance for certain offenses and when the family no longer requires assistance. HUD permits the HACC to terminate assistance for certain other actions family members take or fail to take. In addition, a family may decide to stop receiving HCV assistance at any time by notifying the HACC.

12-I.B. FAMILY NO LONGER REQUIRES ASSISTANCE AND/OR ZERO HAP FOR 180 DAYS

As a family's income increases, the amount of the HACC subsidy decreases. If the amount of HCV assistance provided by the HACC drops to zero and remains at zero for 180 consecutive calendar days, the family's assistance terminates automatically [24 CFR 982.455]. The HACC will send notice to the family of the proposed termination when the HACC sends the notice of rent portion. The notice of the proposed termination will notify the family of its right to request an adjustment if a change occurs within 180 days of the HAP dropping to zero.

If a participating family receiving zero assistance experiences a change in circumstances that would cause the HAP payment to rise above zero, the family must notify the HACC of the changed circumstances and request an interim reexamination before the expiration of the 180-day period.

The participation of the family will end if the HACC has not paid HAP for 180 consecutive days for any reason, including but not limited to the following:

- The family has exhausted the search time on the voucher, including any extensions
- The family has moved from the unit
- The HAP is abated for HQS violations
- The owner is no longer eligible to receive HAP

The family is responsible for ensuring their continued eligibility for the Program. The HACC will issue a notice to the family at least 30 days before the end of participation.

12-I.C. FAMILY CHOOSES TO TERMINATE ASSISTANCE

The family may request that the HACC terminate the family's assistance at any time. The request to terminate assistance must be made in writing and signed by the head of household, spouse, or co-head. Before terminating the family's assistance, the HACC will follow the notice requirements in Section 12-II.F.

12-I.D. MANDATORY TERMINATION OF ASSISTANCE

Eviction [24 CFR 982.552(b)(2), Pub.L. 109-162]

The HACC must terminate assistance whenever a family is evicted from a unit assisted under the HCV program for a serious or repeated violation of the lease. Incidents of actual or threatened violence, dating violence, or stalking may not be construed as serious or repeated violations of the lease by the victim or threatened victim of such violence or stalking.

A family will be considered *evicted* if the family moves after a legal eviction order, such as an order for possession, has been issued, whether or not physical enforcement of the order was necessary.

If a family moves after the owner has given the family an eviction notice for serious or repeated lease violations but before a legal eviction order has been issued, termination of assistance is not mandatory. However, the HACC will determine whether the family has committed serious or repeated violations of the lease based on available evidence and may terminate assistance or take any of the alternative measures described in Section 12-II.C and other factors as described in Sections 12-II.E. Upon consideration of such alternatives and factors, the HACC may, on a case-by-case basis, choose not to terminate assistance.

Serious and repeated lease violations will include, but are not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, or living or housekeeping habits that cause

damage to the unit or premises and criminal activity. Generally, the criterion to be used is whether the reason for the eviction was through no fault of the tenant or guests.

Failure to Provide Consent [24 CFR 982.552(b)(3)]

The HACC must terminate assistance if any family member fails to sign and submit any consent form they are required to sign for a reexamination. See Chapter 7 for a complete discussion of consent requirements.

Failure to Document Citizenship [24 CFR 982.552(b)(4) and [24 CFR 5.514(c)]

The HACC must terminate assistance if (1) a family fails to submit required documentation within the required timeframe concerning any family member's citizenship or immigration status; (2) a family submits evidence of citizenship and eligible immigration status in a timely manner, but United States Citizenship and Immigration Services (USCIS) primary and secondary verification does not verify eligible immigration status of the family; or (3) a family member, as determined by the HACC, has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit.

For (3) above, such termination must be for a period of at least 24 months. This does not apply to ineligible noncitizens already in the household where the family's assistance has been prorated. See Chapter 7 for a complete discussion of documentation requirements.

Failure to Provide Social Security Documentation [24 CFR 5.218(c)]

The HACC must terminate assistance if a participant family fails to provide the documentation or certification required for any family member who does not disclose his/her social security number and provide documentation required to verify the social security number [PIH 2012-10].

Methamphetamine Manufacture or Production [24 CFR 982.553(b)(1)(ii)]

The HACC must terminate assistance if any household member has ever been convicted of the manufacture or production of methamphetamine on the premises of federally-assisted housing.

Failure of Students to Meet Ongoing Eligibility Requirements [24 CFR 982.552(b)(5) and FR 4/10/06]

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, does not have dependent children, and is not residing with his/her parents in an HCV assisted household, the HACC must 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 the student is the sole family member and is not using the subsidized address as his/her sole residence, the HACC will terminate assistance.

If a participant household consists of both eligible and ineligible students, the eligible students shall not be terminated, but must be issued a voucher to move with continued assistance in

accordance with program regulations and PHA policies or must be given the opportunity to lease in place if the terminated ineligible student members elect to move out of the assisted unit.

12-I.E. MANDATORY POLICIES AND OTHER AUTHORIZED TERMINATIONS

Mandatory Policies [24 CFR 982.553(b) and 982.551(l)]

HUD requires the HACC to establish policies that permit the HACC to terminate assistance if the HACC 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

Use of Illegal Drugs and Alcohol Abuse

The HACC 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 six months.

The HACC will terminate assistance if any household member's abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

The HACC will consider all credible evidence, including but not limited to, any record of arrests, convictions, or eviction of household members related to the use of illegal drugs or abuse of alcohol.

In making its decision to terminate assistance, the HACC will consider alternatives as described in Section 12-II.C and other factors described in Section 12-II.D. Upon consideration of such alternatives and factors, the HACC may, on a case-by-case basis, choose not to terminate assistance.

Drug-Related and Violent Criminal Activity [24 CFR 5.100]

The HACC 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.

Drug means a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

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

Violent criminal activity means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

The HACC will consider all credible evidence, including but not limited to, any record of arrests and/or convictions of household members related to drug-related or violent criminal activity, and any eviction or notice to evict based on drug-related or violent criminal activity.

In making its decision to terminate assistance, the HACC will consider alternatives as described in Section 12-II.C and other factors described in Section 12-II.D. Upon consideration of such alternatives and factors, the HACC may, on a case-by-case basis, choose not to terminate assistance.

Other Authorized Reasons for Termination of Assistance [24 CFR 982.552(c), Pub.L. 109-162]

HUD permits the HACC to terminate assistance under a number of other circumstances. It is left to the discretion of the HACC whether such circumstances in general warrant consideration for the termination of assistance. The Violence Against Women Reauthorization Act (VAWA) explicitly prohibits PHAs from considering incidents or actual threatened domestic violence, dating violence, or stalking as reasons for terminating the assistance of a victim of such violence.

The HACC **will** terminate a family's assistance if:

- The family has failed to comply with any family obligations under the program. See Exhibit 12-1 for a listing of family obligations and related PHA policies.
- Any family member has been evicted from federally-assisted housing in the last five years.
- Any PHA has ever terminated assistance under the program for any member of the family.
- Any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.
- The family currently owes rent or other amounts to any PHA or other HCV landlord in connection with the HCV, PBV, Certificate, Moderate Rehabilitation, public housing programs or another other rental assistance program.
- The family has not reimbursed any PHA for amounts the PHA paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease.
- The family has breached the terms of a repayment agreement entered into with the HACC.
- A family member has engaged in or threatened violent or abusive behavior toward the HACC personnel.

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

Threatening refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.

In making its decision to terminate assistance, the HACC will consider alternatives as described in Section 12-II.C and other factors described in Section 12-II.D and Section 12-II.E. Upon consideration of such alternatives and factors, the HACC may, on a case-by-case basis, choose not to terminate assistance.

The HACC **will not** terminate a family's assistance because of the family's failure to meet its obligations under the Family Self-Sufficiency or Welfare to Work voucher programs.

Family Absence from the Unit [24 CFR 982.312]

The family may be absent from the unit for brief periods. If the family is absent from the unit for more than 180 calendar days, the family's assistance will be terminated. Notice of termination will be sent in accordance with Section 12-II.E.

Death of the Sole Household Member [Notice PIH 2010-9 (HA)]

For deceased single member households or a household where the remaining household member is a live-in aide, the HACC is required to discontinue HAP to the owner no later than the first of the following month after the death occurred. The owner is not entitled to HAP for any month following the month in which the death occurred. There are no exceptions to this policy.

When the head of household (HOH) dies and the only remaining household member is a live-in aide, the live-in aide is not entitled or eligible for any rental assistance or continued occupancy in a subsidized unit. By definition, the live-in aide would not be living in the subsidized unit except to provide the necessary supportive services on behalf of the elderly or disabled HOH. The HACC may not designate the live-in aide as the new HOH nor pay HAP on behalf of the live-in aide for any month after the month in which the HOH died.

The HACC must notify the live-in aide that the HAP will terminate at the end of the month. If the live-in aide does not vacate the unit, the owner/landlord may offer the live-in aide a lease for the unit or follow local Tenant and Landlord laws to regain possession of the unit.

Insufficient Funding [24 CFR 982.454]

The HACC will determine whether there is sufficient funding to pay for currently assisted families according to the policies in Part VIII of Chapter 16. If the HACC determines there is a shortage of funding, prior to terminating any HAP contracts, the HACC will determine if any other actions can be taken to reduce program costs. If after implementing all reasonable cost cutting measures there is not enough funding available to provide continued assistance for current participants, the HACC will terminate HAP contracts as a last resort.

Prior to terminating any HAP contracts, the HACC will inform the local HUD field office. The HACC will terminate the minimum number needed in order to reduce HAP costs to a level within the HACC's annual budget authority.

If the HACC must terminate HAP contracts due to insufficient funding, the HACC will do so in accordance with any combination of the following:

1. Perform an analysis to determine if funding can be provided at a reduced level to a number of households to prevent relocation;
2. Attempt to work with landlords to lower HAP payments;
3. Terminate vouchers not yet under lease;
4. Terminate vouchers that have been leased to working families within the past 12 months.

PART II: APPROACH TO TERMINATION OF ASSISTANCE

12-II.A. OVERVIEW

The HACC is required by regulation to terminate a family's assistance if certain program rules are violated. For other types of offenses, the regulations give the HACC the discretion to either terminate the family's assistance or to take another action. This part discusses the various actions the HACC may choose to take when it has discretion and outlines the criteria the HACC will use to make its decision about whether or not to terminate assistance. It also specifies the requirements for the notice that must be provided before terminating assistance.

12-II.B. METHOD OF TERMINATION

The way in which the HACC terminates assistance depends upon individual circumstances [24 CFR 982.552(a)(3)]. HUD permits HACC to terminate assistance by:

- Terminating housing assistance payments under a current HAP contract,
- Refusing to approve a request for tenancy or to enter into a new HAP contract, or
- Refusing to process a request for, or to provide assistance under portability procedures.

12-II.C. ALTERNATIVES TO TERMINATION OF ASSISTANCE

Change in Household Composition

As a condition of continued assistance, the HACC may require that any household member who participated in or was responsible for an offense no longer resides in the unit [24 CFR 982.552(c)(2)(ii)].

The head of household must certify and substantiate 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 HACC's request.

Repayment of Family Debts

If a family owes amounts to the HACC, as a condition of continued assistance, the HACC will require the family to repay the full amount or to enter into a repayment agreement within 30 days of receiving notice from the HACC of the amount owed. See Chapter 16 for policies on repayment agreements.

If a participant in the Family Self Sufficiency (FSS) Program enters into a repayment agreement because of unreported income or other fraud or abuse, the participant forfeits his/her right to escrow payments during the time the income was not reported to the HACC. If a participant in the FSS Program has a repayment agreement at the time of graduation from the FSS Program, any escrow funds will first be applied to the debt owed to the HACC before any escrow funds are disbursed to the family.

12-II.D. CRITERIA FOR DECIDING TO TERMINATE ASSISTANCE

Evidence

For criminal activity, the HACC will 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.

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.

In all cases, if the family raises the defense that the head of household was not aware of the actions of other household member, the family must submit information or documentation to support the claim. Information may include, but is not limited to: verification that the head of household was incapacitated during the time of the violation, verification that the household member was residing outside of the subsidized unit at the time of the violation, verification that the head of household's disability or medical condition adversely effects his/her ability to oversee the actions of household members.

The head of household is the family member responsible for ensuring other members provide true and complete information and comply with all program rules. Violations by any member of the household may result in the family's termination (see consideration of circumstances below).

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

The HACC will consider the following factors when making its decision to terminate assistance:

- The seriousness of the case, especially with respect to how it would affect other residents
- The effects that termination of assistance may have on other members of the family who were not involved in the action or failure
- The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities or (as discussed further in section 12-II.E) a victim of domestic violence, dating violence, or stalking
- The length of time since the violation occurred, the family's recent history and the likelihood of favorable conduct in the future
- In the case of drug or alcohol abuse, whether the culpable household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully
- The HACC will require the participant to submit evidence of the household member's current participation in or successful completion of a supervised drug or alcohol rehabilitation program, or evidence of otherwise having been rehabilitated successfully.
- In the case of program abuse, the dollar amount of the overpaid assistance and whether or not a false certification was signed by the family

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

If the family includes a person with disabilities, the HACC'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, the HACC will determine whether the behavior is related to the disability. If so, upon the family's request, the HACC will determine whether alternative measures are appropriate as a reasonable accommodation. The HACC 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.

12-II.E. TERMINATING THE ASSISTANCE OF DOMESTIC VIOLENCE, DATING VIOLENCE, OR STALKING VICTIMS AND PERPETRATORS AND THE ILLINOIS SAFE HOMES ACT

The Violence Against Women Reauthorization Act (VAWA) provides that "criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control shall not be a cause for termination of assistance, tenancy, or occupancy rights if the tenant or an immediate member of the tenant's family is the victim or threatened victim of that domestic violence, dating violence, or stalking." [81 Fed Reg 80724, Pub.L. 109-162, Pub.L. 109-271] and the Illinois Safe Homes Act [765 ILCS 750]

VAWA also gives PHAs the authority to “terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant.”

VAWA does not limit the authority of the HACC to terminate the assistance of any participant if the HACC “can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant is not evicted or terminated from assistance.”

Victim Documentation

When a participant family is facing assistance termination because of the actions of a participant, household member, guest, or other person under the participant’s control and a participant or immediate family member of the participant’s family claims that she or he is the victim of such actions and that the actions are related to domestic violence, dating violence, or stalking, the HACC will require the individual to submit documentation affirming that claim.

The documentation must include one of the following elements:

- 1) A signed statement by the victim that provides the name of the perpetrator and certifies that the incidents in question are bona fide incidents of actual or threatened domestic violence, dating violence, or stalking, **or**
- 2) A police or court record documenting the actual or threatened abuse, **or**
- 3) A statement signed by an employee, agent, or volunteer of a victim service provider; an attorney; a medical professional; or another knowledgeable professional from whom the victim has sought assistance in addressing the actual or threatened abuse. The professional must attest under penalty of perjury that the incidents in question are bona fide incidents of abuse, and the victim must sign or attest to the statement.

The required certification and supporting documentation must be submitted to the HACC within 14 business days after the HACC issues their written request. The 14-day deadline may be extended at the HACC’s discretion. If the individual does not provide the required certification and supporting documentation within 14 business days or the approved extension period, the HACC may proceed with assistance termination.

If the HACC can demonstrate an actual and imminent threat to other participants or those employed at or providing service to the property if the participant’s tenancy is not terminated, the HACC will bypass the standard process and proceed with the immediate termination of the family’s assistance.

Terminating the Assistance of a Domestic Violence Perpetrator

Although VAWA provides assistance termination protection for victims of domestic violence, it does not provide protection for perpetrators. VAWA gives the HACC the explicit authority to

“terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others without terminating assistance to, or otherwise penalizing the victim 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 the HACC chooses to exercise this authority, it must follow any procedures prescribed by HUD or by applicable local, state, or federal law regarding termination of assistance [Pub.L. 109-271].

When the actions of a participant or other family member result in an the HACC decision to terminate the family’s assistance and another family member claims that the actions involve criminal acts of physical violence against family members or others, the HACC will request that the victim submit the above required certification and supporting documentation in accordance with the stated time frame. If the certification and supporting documentation are submitted within the required time frame, or any approved extension period, the HACC will terminate the perpetrator’s assistance. If the victim does not provide the certification and supporting documentation, as required, the HACC will proceed with termination of the family’s assistance.

If the HACC can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if the participant’s tenancy is not terminated, the HACC will bypass the standard process and proceed with the immediate termination of the family’s assistance.

HACC Confidentiality Requirements

All information provided to the HACC regarding domestic violence, dating violence, or stalking, including the fact that an individual is a victim of such violence or stalking, must be retained in confidence and may neither be entered into any shared data base nor provided to any related entity, except to the extent that the disclosure is (a) requested or consented to by the individual in writing, (b) required for use in an eviction proceeding, or (c) otherwise required by applicable law.

Illinois Safe Homes Act (765 ILCS 750)

The Illinois Safe Homes Act (765 ILCS 750) provides an affirmative defense in any action brought by a landlord against a tenant to recover rent for breach of lease or for rent for the period after which a tenant vacates the premises if the court finds 1) at the time the tenant vacated the premises, tenant or a member of the tenant’s family was under a credible imminent threat of domestic or sexual violence at the premises or the tenant or a member of the tenant’s family was a victim of sexual violence on the premises and 2) the tenant gave written notice prior to or within 3 days of vacating the premises that the reason for vacating was because of the imminent threat of or the actual domestic or sexual violence. The Act does not provide a defense for any period of time before the tenant vacated the premises. The Act also requires that landlords change the locks or allow the tenant to change the locks of the premises within 48 hours of the tenant submitting a written request to the landlord signed by all lessees or accompanied by evidence to support the claim of threatened or actual domestic or sexual violence. If the threatened or actual violence is from a person who is a lessee in the unit, the written notice must contain a plenary order of protection or a plenary civil no contact order granting the tenant exclusive possession of the premises.

12-II.F. TERMINATION NOTICE

If a family's assistance is to be terminated, whether voluntarily or involuntarily, the HACC must give the family and the owner written notice that specifies:

- The reasons for which assistance has been terminated, including references to the CFR, the voucher, and/or the obligations of the family and citing the actions or lack of action by the family
- The effective date of the termination
- The family's right to an informal hearing as described in Chapter 16, including the right to request a reasonable accommodation
- Notice of the family's rights under VAWA, including Form HUD-5380 and Form HUD-5382

If a criminal record is the basis of the termination, a copy of the record must accompany the notice. A copy of the criminal record also must be provided to the subject of the record [24 CFR 982.553(d)].

When termination is initiated by the HACC, 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. However, if a family vacates the unit at any time without informing the HACC, the HAP will stop as of the first of the month following the vacate date, regardless of any previously sent 30 day notice of the family's proposed termination. If a termination notice was not sent prior to the vacate date, the HACC will send the 30 day notice of termination, but the HAP not be paid for any month after the month in which the family vacates the unit. The HACC may take action to recover overpaid HAP for vacant units or for any other reasons for which HAP should not be paid.

When a family requests to be terminated from the program they must do so in writing to the HACC (see section 12-I.C.). The HACC will then send a confirmation notice to the family and the owner within 15 business days of the family's request, to confirm the termination effective date (as requested by the family).

Notice of Termination Based on Citizenship Status [24 CFR 5.514 (c) and (d)]

The HACC must terminate assistance if (1) a family fails to submit required documentation within the required timeframe concerning any family member's citizenship or eligible immigration status; (2) evidence of citizenship and eligible immigration status is submitted timely, but USCIS primary and secondary verification does not verify eligible immigration status of a family; or (3) the HACC 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, that

they may submit additional documentation or a written explanation in support of the appeal, and that they have the right to request an informal hearing with the HACC, 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.

12-II.G. HOW TERMINATION OF ASSISTANCE AFFECTS THE HAP CONTRACT AND LEASE

When the family's assistance is terminated, the lease and HAP contract terminate automatically [Form HUD-52641].

The owner may offer the family a separate unassisted lease [HCV GB, p. 15-8].

PART III: TERMINATION OF TENANCY BY THE OWNER

12-III.A. OVERVIEW

Termination of an assisted tenancy is a matter between the owner and the family; the HACC is not directly involved. However, the owner is under some constraints when terminating an assisted tenancy and the reasons for which a tenancy is terminated dictate whether assistance also will be terminated.

12-III.B. GROUNDS FOR OWNER TERMINATION OF TENANCY

[24 CFR 982.310 and Form HUD-52641-A, Tenancy Addendum, Pub.L. 109-162]

During the term of the lease, the owner is not permitted to terminate the tenancy except for serious or repeated violations of the lease, certain violations of state or local law, or other good cause.

Serious or Repeated Lease Violations

The owner is permitted to terminate the family's tenancy for serious or repeated violations of the terms and conditions of the lease, including failure to pay rent or other amounts due under the lease, except when the violations are related to incidents of actual or threatened domestic violence, dating violence, or stalking against that participant. This includes failure to pay rent or other amounts due under the lease. However, the HACC's failure to make a HAP payment to the owner is not a violation of the lease between the family and the owner.

Violation of Federal, State, or Local Law

The owner is permitted to terminate the tenancy if a family member violates federal, state, or local law that imposes obligations in connection with the occupancy or use of the premises.

Criminal Activity or Alcohol Abuse

The owner may terminate tenancy during the term of the lease if any *covered person*, meaning any member of the household, a guest or another person under the tenant's control commits any of the following types of criminal activity:

- 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.

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 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.

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.

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, except in certain incidents where the criminal activity directly relates to domestic violence, dating violence, or stalking and the tenant or an immediate member of the tenant's family is the victim or threatened victim of the domestic violence, dating violence, or stalking. (See Section 12-II.E).

Other Good Cause

During the initial lease term, the owner may not terminate the tenancy for “other good cause” unless the owner is terminating the tenancy because of something the family did or failed to do. 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.

12-III.C. EVICTION

[24 CFR 982.310(e) and (f) and Form HUD-52641-A, Tenancy Addendum]

The owner must give the tenant a written notice that specifies the grounds for termination of tenancy during the term of the lease. The tenancy does not terminate before the owner has given this notice and the notice must be given at or before commencement of the eviction action.

The notice of grounds may be included in, or may be combined with, any owner eviction notice to the tenant.

Owner eviction notice means a notice to vacate or a complaint or other initial pleading used under state or local law to commence an eviction action. The owner may only evict the tenant from the unit by instituting a court action. The owner must give the HACC a copy of any eviction notice at the same time the owner notifies the family. The family is also required to give the HACC a copy of any eviction notice (see Chapter 5).

If the eviction action is finalized in court, the owner must provide the HACC 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.

12-III.D. DECIDING WHETHER TO TERMINATE TENANCY

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 [24 CFR 982.310(h), **Pub.L. 109-162**].

The owner's termination of tenancy actions must be consistent with the fair housing and equal opportunity provisions in 24 CFR 5.105.

An owner's decision to terminate tenancy for incidents related to domestic violence, dating violence, or stalking is limited by the Violence Against Women Reauthorization Act (VAWA). (See Section 12-II.E)

12-III.E. EFFECT OF TENANCY TERMINATION ON THE FAMILY'S ASSISTANCE

If a termination is not due to a serious or repeated violation of the lease, and if the HACC has no other grounds for termination of assistance, the HACC may issue a new voucher so that the family can move with continued assistance (see Chapter 10).

If a termination of tenancy is due to a serious or repeated violation of the lease, the HACC will issue a notice of termination of participation in accordance with the procedures outlined in this chapter.

EXHIBIT 12-1: STATEMENT OF FAMILY OBLIGATIONS
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Following is a listing of a participant family's obligations under the HCV program:

1. The family must supply any information or documentation requested by the HACC or HUD determined to be necessary for use in the administration of the program, regularly scheduled reexamination, or interim reexamination. The information includes, but is not limited to:
 - a. Signed Release of Information - Form HUD- 9886
 - b. Disclosure and verification of social security numbers
 - c. Evidence of citizenship or eligible immigration status
 - d. Fully executed Request for Tenancy Approval (RFTA) when in move status
2. Any information that the family supplies must be complete and accurate.
3. Families must not willfully make or cause to be made any false statements or misrepresentations relating to their application or eligibility under this program. (See Chapter 3, Sections I.K and I.M and Chapter 11, Section II.B)
4. The family must report in writing to the HACC within 30 days of all changes that occur in their household's income, family composition, or assets, including:
 - a. The birth, adoption or court awarded custody of a child
 - b. Any household members whom are no longer living in the unit
 - c. Marriage
 - d. When there is an increase, decrease, or new income in household for any family member
 - e. When the family is absent 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 calendar days. Written notice must be provided to the HACC at the start of the extended absence.
5. The family must request and receive approval to add any other family member as an occupant of the unit. The HACC reserves the right to deny the addition of household or family members.
6. The family must obtain the approval of the HACC to change the head of household.

7. No persons, other than those listed on the family's application, may occupy the dwelling unit for more than a total of 21 days during the lease term without the written approval of the HACC and the landlord.
8. The family must supply any information requested by the HACC to verify that the family is living in the unit or information related to family absence from the unit.
9. The family must use the assisted unit for residence by the family. The unit must be the family's only residence.
10. 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.
11. The family must notify the HACC 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 the HACC at the same time the owner is notified.
12. The family must not commit any serious or repeated violations of the lease.
13. The family must promptly give the HACC a copy of any owner eviction notice.
14. The family must promptly respond to all written requests for information within 30 days or the time frame specified on the notice, if applicable.
15. The family is only to pay the amount of the rent specified by the HACC.
16. Families who owe money to the HACC or any other HCV landlord may be cancelled from the program or denied assistance if they do not satisfy their liability as required.
17. The family must allow the HACC to inspect the unit at reasonable times and after reasonable notice. (See Chapter 8 for further information on inspections)
18. 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 fully reimburse the landlord for all repairs that must be made as a result of the damage.
19. The family must pay the utility bills as specified in the Request for Tenancy Approval (RFTA), the HAP Contract, and the lease. Utilities must be in the name of an adult member of the household.
20. The family must provide and maintain any appliances that the owner is not required to provide under the lease.
21. 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.
22. 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 (including in-laws), unless the HACC has determined, and has notified the owner and the family of such determination, that approving rental of the unit, notwithstanding such relationship, would provide a reasonable accommodation for a family member who is a person with disabilities.
23. The family must not own or have any interest in the unit. Families in the HACC's Homeownership Program are exempt from this obligation.
24. Family members and their guests must not commit fraud, bribery, or any other corrupt or criminal act in connection with the program. (See Chapter 14, Program Integrity, for additional information)

25. Family members and their guests must not engage in the abuse of alcohol, drug-related criminal activity, violent criminal activity, or any other criminal activity in a way that threatens the health, safety, or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises. This includes violent or abusive behavior towards HACC personnel. (See Chapter 12 for HACC and HUD policies related to alcohol abuse, drug activity, and criminal activity)

Chapter 13

OWNERS

INTRODUCTION

Owners play a central role in the HCV program by supplying decent, safe, and sanitary housing for participating families.

The term “owner” refers to any person or entity with the legal right to lease or sublease a unit to a participant in the HCV program [24 CFR 982.4(b)]. The term “owner” includes a principal or other interested party [24 CFR 982.453; 24 CFR 982.306(f)], such as a designated agent of the owner.

Owners have numerous responsibilities under the program, including screening and leasing to families, maintaining the dwelling unit, enforcing the lease, and complying with various contractual obligations. However, this chapter is not meant to be an overview of all aspects of owner participation in the HCV program.

The chapter is organized in two parts:

Part I: Owners in the HCV Program. This part discusses the role of an owner in the HACC’s HCV program and highlights key owner rights and responsibilities.

Part II: HAP Contracts. This part explains provisions of the HAP contract and the relationship between the HACC and the owner as expressed in the HAP contract.

For detailed information about HCV program responsibilities and processes, including the HACC policies in key areas, owners will need to refer to several other chapters in this plan. Where appropriate, Chapter 13 will reference the other chapters.

PART I. OWNERS IN THE HCV PROGRAM

13-I.A. OWNER RECRUITMENT AND RETENTION

Recruitment

PHAs are responsible for ensuring that very low income families have access to all types and ranges of affordable housing in their jurisdiction, particularly housing outside areas of poverty or minority concentration. A critical element in fulfilling this responsibility is for the HACC to ensure that a sufficient number of owners, representing all types and ranges of affordable housing in the jurisdiction, are willing to participate in the HCV program [HCV GB, pp. 2-4 to 2-6].

To accomplish this objective, the HACC recruits new owners to participate in the program.

The HACC will conduct owner outreach to ensure that owners are familiar with the program and its advantages. The HACC 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

Outreach strategies will be monitored for effectiveness, and adapted accordingly.

Retention

In addition to recruiting owners to participate in the HCV program, PHAs must also provide the kind of customer service that will encourage participating owners to remain active in the program.

All the HACC's activities that may affect an owner's ability to lease a unit will be processed in three to five business days, or as rapidly as possible, in order to minimize vacancy losses for owners.

The HACC will provide owners with information that explains the program, including HUD and the HACC policies and procedures, which may include the following:

- Providing a contact list for HACC staff
- Coordinating inspection and leasing activities between the HACC, the owner, and the family
- Explaining the inspection process, including providing a sample inspection booklet and other resource materials about HUD housing quality standards
- 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.

13-I.B. BASIC HCV PROGRAM REQUIREMENTS

HUD requires PHAs to aid families in their housing search by providing the family with a list of landlords or other parties known to the HACC who may be willing to lease a unit to the family or

to help the family find a unit. The HACC will refer all owners interested in participating in the program to ILHousingSearch.org to list available units. The HACC will refer all families searching for a unit to ILHousingSearch.org for available units.

When a family approaches an owner to apply for tenancy, the owner is responsible for screening the family and deciding whether to lease to the family, just as the owner would with any potential tenant. The HACC has no liability or responsibility to the owner or other persons for the family's behavior or suitability for tenancy. See chapters 3 and 9 for more detail on tenant family screening policies and process.

If the owner is willing, the family and the owner must jointly complete a Request for Tenancy Approval (RFTA, Form HUD 52517), which constitutes the family's request for assistance in the specified unit and which documents the owner's willingness to lease to the family and to follow the program's requirements. When submitted to the HACC, 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. In addition to the RFTA, the owner must complete a packet of information and provide supporting documentation. This packet includes the Declaration of Ownership Form, a W-9 Form, and a Direct Deposit Form. Along with the forms, the owner must submit a copy of the Social Security card or IRS EIN letter, proof of ownership of the property, and a copy of the owner's proposed dwelling lease, including the HUD-required Tenancy Addendum (Form HUD-52641-A). See Chapter 9 for more detail on request for tenancy approval policies and process.

HUD regulations stipulate that an assisted tenancy can be approved only under certain conditions:

- The owner must be qualified to participate in the program [24 CFR 982.306]. Some owners are precluded from participating in the program or from renting to a particular family, either because of their past history with this or another federal housing program, or because of certain conflicts of interest. Owner qualifications are discussed later in this chapter.
- The selected unit must be of a type that is eligible for the program [24 CFR 982.305(a)]. Certain types of dwelling units cannot be assisted under the HCV program. Other types may be assisted under certain conditions. In addition, the owner must document legal ownership of the specified unit. See chapter 9 for more detail on unit eligibility policies and process.
- The selected unit must meet HUD's HQS and/or equivalent state or local standards approved by HUD [24 CFR 982.305(a)]. The HACC will inspect the owner's dwelling unit at various stages of HCV program participation to ensure that the unit continues to meet HQS requirements. See chapter 8 for a discussion of the HQS standards, as well as the process for HQS inspections at initial lease-up and throughout the family's tenancy.
- The HACC 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 8 for a discussion of requirements and policies on rent reasonableness, rent comparability and the rent reasonableness determination process.

- The HACC must determine affordability of the unit, that the share of the rent to be paid by the family does not exceed 40% of the family's monthly adjusted income [24 CFR 982.305(a)]. See chapter 6 for a discussion of the calculation of the family income, family share of rent and HAP.

The dwelling lease must comply with all program requirements [24 CFR 982.308]. Owners are encouraged to use their standard leases when renting to an assisted family. However, the HCV program requires that the Tenancy Addendum, which helps standardize the tenancy requirements for all assisted families, be added word-for-word to that lease. See chapter 9 for a discussion of the dwelling lease and tenancy addendum, including lease terms and provisions.

HACC 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 chapter 9 for a discussion of the HAP contract execution process. Specific HAP contract provisions and responsibilities are discussed later in this chapter 13.

13-I.C. OWNER RESPONSIBILITIES

The basic owner responsibilities in the HCV program are outlined in the regulations as follows [24 CFR 982.452, Pub.L. 109-162]:

- Performing all of the owner's obligations under the Housing Assistance Payments (HAP) contract and the lease
- Performing all management and rental functions for the assisted unit, including selecting a voucher-holder to lease the unit, and deciding if the family is suitable for tenancy of the unit
- Maintaining the unit in accordance with the Housing Quality Standards (HQS), including performance of ordinary and extraordinary maintenance
- Complying with equal opportunity requirements
- Complying with Fair Housing Laws, including the Source of Income Protection under the Cook County Human Rights Ordinance
- Preparing and furnishing to the HACC information required under the HAP contract
- Collecting from the family any security deposit, the tenant's contribution to rent (that part of rent to owner not covered by the housing assistance payment from the HACC), and any charges for unit damage by the family
- Enforcing tenant obligations under the dwelling lease
- Paying for utilities and services (unless paid by the family under the lease)
- Making modifications to a dwelling unit occupied or to be occupied by a disabled person [24 CFR 100.203]
- Comply with the Violence Against Women Reauthorization Act (VAWA) when screening and terminating tenants
- Complying with the Illinois Safe Homes Act (765 ILCS 750)

13-I.D. OWNER QUALIFICATIONS

PHAs do not formally approve an owner to participate in the HCV program. However, there are a number of criteria where the HACC 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)].

Owners Barred from Participation [24 CFR 982.306(a) and (b)]

The HACC must not approve the assisted tenancy if the HACC has been informed that the owner, including any principals or interested parties, has been debarred, suspended, or subject to a limited denial of participation under 24 CFR part 24. HUD may direct the HACC not to approve a tenancy request if a court or administrative agency has determined that the owner violated the Fair Housing Act or other federal equal opportunity requirements, or if such an action is pending.

Leasing to Relatives [24 CFR 982.306(d), HCV GB p. 11-2]

The HACC will not approve a RFTA if the owner is the parent, child, grandparent, grandchild, spouse, aunt, uncle, sister, or brother of any member of the family, including in-laws. The HACC 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 or to disclose any relationship. 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 that were executed prior to this restriction, effective June 18, 1998, may continue, but any new leases or contracts for these families may not be approved.

If the HACC discovers the owner and family are related after the family receives assistance for a particular unit and that the owner or family failed to disclose the relationship, the HACC will take action to terminate the family, ban the owner, and may take action to recover HAP or UAP paid for that particular unit.

When considering a reasonable accommodation allowing a family to live in a unit owned by a relative, the HACC may require the family to provide information to show how the unit accommodates the family member's disability in a way that no other unit can.

Conflict of Interest [24 CFR 982.161; HCV GB p. 8-19]

HACC must not approve a tenancy in which any of the following classes of persons has any interest, direct or indirect, during tenure or for one year thereafter:

- Any present or former member or officer of the HACC (except a participant commissioner)
- Any employee of the HACC, or any contractor, subcontractor or agent of the HACC, who formulates policy or who influences decisions with respect to the programs
- Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the programs
- Any member of the Congress of the United States

HUD may waive the conflict of interest requirements, except for members of Congress, for good cause. The HACC must submit a waiver request to the appropriate HUD Field Office for determination.

Any waiver request submitted by the HACC must include [HCV Guidebook pp.11-2 and 11-3]:

- Complete statement of the facts of the case;
- Analysis of the specific conflict of interest provision of the HAP contract and justification as to why the provision should be waived;
- Analysis of and statement of consistency with state and local laws. The local HUD office, the HACC, 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 HACC or assistance under the HCV program for an eligible PHA employee, explanation of the responsibilities and duties of the position, including any related to the HCV program;
- If the case involves an investment on the part of a member, officer, or employee of the HACC, description of the nature of the investment, including disclosure/divestiture plans.

Where the HACC has requested a conflict of interest waiver, the HACC 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, the HACC will consider factors the reasons for waiving the requirement; consistency with state and local laws; the existence of alternative housing available to families; the individual circumstances of a particular family; the specific duties of individuals whose positions present a possible conflict of interest; the nature of any financial investment in the property and plans for disclosure/divestiture; and the possible appearance of impropriety.

Owner Actions and Circumstances That May Result in Disapproval of a Tenancy Request [24 CFR 982.306(c)]

HUD regulations permit the HACC, at the HACC's discretion, to refuse to approve a request for tenancy if the owner has committed any of a number of different actions.

If the HACC 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 or the HACC has

determined the owner's behavior or pattern of behavior is such that the owner be banned from participation in the program. In the event that an owner is banned from participation in the program, the HACC will offer paperwork to any assisted families to move with continued assistance.

The HACC will refuse to approve a request for tenancy if the HACC becomes aware that any of the following are true:

- The owner has violated obligations under a HAP contract under Section 8 of the 1937 Act (42 U.S.C. 1437f);
- The owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
- The owner has 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 failing to terminate tenancy of tenants of units assisted under HCV 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 HACC, 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;
- The owner has a history or practice of renting units that fail to meet state or local housing codes; or
- The owner has not paid state or local real estate taxes, fines, or assessment.
- A member of the family has an equitable or beneficial present or future interest in the subject property that currently provides any member of the assisted family with a residence or right of possession in the subsidized housing unit. This may include, but is not limited to, a beneficial interest in a land trust, a beneficial interest in a special needs trust, a life estate, a leasehold with a term of more than four years, a leasehold with a vested or springing future ownership interest, a leasehold obtained through a sale and lease back transaction, or similar interest.

In considering whether to disapprove owners for any of the discretionary reasons listed above, the HACC will consider any mitigating factors. Such factors may include, but are not limited to, the seriousness of the violation in relation to program requirements, the impact on the ability of families to lease units under the program, health and safety of participating families, among others. Upon consideration of such circumstances, the HACC may, on a case-by-case basis, choose to approve an owner. If the HACC chooses to ban an owner from participation in the program, the HACC will send notice to the owner outlining the reasons and when the HAP will end, if applicable. If requested by the owner, the HACC will offer an opportunity to appeal the decision to ban through the submission of evidence and/or an informal hearing.

The HACC will track owners who have been banned to prevent future participation in the program unless the owner can demonstrate that any and all reasons for the original disbarment have been rectified.

Legal Ownership of Unit

The HACC will only enter into a contractual relationship with the legal owner of a qualified unit. No tenancy will be approved without a copy of the deed or Title Insurance policy outlining legal ownership. If a Deed or Title Insurance policy is not available, the HACC will accept a tax bill or HUD-1 (settlement statement) form as proof of ownership following verification with the Office of the Recorder by an authorized HACC staff member.

In the event that the property is included in a Trust, the HACC will require a copy of the trust agreement or other legal documentation identifying the ownership of the property.

In the event that a third party is designated as the Payee or Agent, the HACC will require a Management Agreement or other binding agreement signed by the Owner and the Agent.

In the event that the property is subject to an installment agreement to purchase the property, the HACC will issue payment to the person/entity listed on the deed until the sale is final and the deed is issued to the purchaser.

The HACC will require that ownership information on HACC ownership forms (such as the Declaration of Ownership and W9) match the proof of ownership submitted to ensure that tax information is appropriately reported. The HACC will require a copy of the Social Security Card or IRS EIN letter to ensure proper reporting of tax information to the IRS.

13-I.E. NON-DISCRIMINATION

The owner must not discriminate against any person because of race, color, religion, sex, national origin, age, familial status, source of income, disability, or status as a victim of domestic violence in connection with any actions or responsibilities under the HCV program and the HAP contract with the HACC HAP Contract – Form HUD-52641].

The owner must cooperate with the HACC and with HUD in conducting any equal opportunity compliance reviews and complaint investigations in connection with the HCV program and the HAP contract with the HACC.

See Chapter 2 for a more thorough discussion of Fair Housing and Equal Opportunity requirements in the HCV program.

13-I.F. TAX SAVINGS PROGRAM

General

The HACC participates in this initiative from the Illinois General Assembly, valid through 2024. If the Illinois General Assembly enacts legislation to renew the program, the HACC will continue to participate. This program targets property owners in low poverty areas of economic growth and provides an incentive to these owners to rent to families who have Housing Choice Vouchers. The program rewards participating eligible property owners with reduced property

taxes. In order to qualify for the tax reductions the owner must meet the eligibility requirements listed below. The owner must make an application through the HACC and cannot apply directly to the Cook County Clerk.

Requirements

State Law requires that in order to receive a tax reduction, the unit must:

- Be located in an eligible township. Township eligibility is subject to change from one tax year to the next. The HACC will publish a new listing when township eligibility is determined,
- Be located in an eligible census tract, where the poverty rate is less than 10% at the most recent US Census for which poverty rate data is available,
- Be occupied by a person who has a Housing Choice Voucher on January 1st of the tax year, and
- The unit must have passed the most recent Housing Quality Standards (HQS) inspection and must be in compliance with the local code for the community in which the unit is located.
- Not have received a tax reduction under this program in a total of 10 previous years.

Application Process

The HACC will mail applications to property owners who had a Housing Choice Voucher Program tenant in an eligible unit as of January 1st of the tax year. The HACC will charge owners a fee of \$25 per application for processing. The application will contain instructions for completing the form and the requirement to complete all sections of the application, the requirement to include a current tax bill and the requirement to include the fee for each application. The property owner completes one application for each property, as identified by a single Property Index Number (PIN), and returns the application to the HACC with a current tax bill and a check or money order for the fee.

The HACC reviews the applications and ensures that the property meets the requirements of the program. Applications received without tax bills, received without the fee and incomplete applications will not be processed and the HACC will not send further notice to the owner. The HACC will not refund any processing fees regardless of the outcome of the application or eligibility of the unit. The HACC will only review applications received before the application deadline. Applications received after the deadline will not be reviewed. The HACC may consider applications from only the previous tax year if another fee is paid. Applications for other years will not be considered.

The HACC sends the Cook County Clerk the list of eligible properties and the Clerk applies the tax credit. The credit appears on the tax bills as a reduction in the tax for several taxing districts with a note at the bottom of the bill: "These taxing districts made abatements that reduced your tax bill by \$X.XX"

PART II. HAP CONTRACTS

13-II.A. OVERVIEW

The HAP contract represents a written agreement between the HACC and the owner of the dwelling unit occupied by a HCV assisted family. The contract spells out the owner's responsibilities under the program, as well as the HACC's obligations. Under the HAP contract, the HACC agrees to make housing assistance payments to the owner on behalf of a specific family occupying a specific unit.

The HAP contract is used for all HCV program tenancies except for assistance under the HCV homeownership program and assistance to families that own a manufactured home and lease the space. See chapter 15 for a discussion of any special housing types included in the HACC's HCV program.

If the HACC has given approval for the family of the assisted tenancy, the owner and the HACC execute the HAP contract. See chapter 9 for a discussion of the leasing process, including provisions for execution of the HAP contract.

13-II.B. HAP CONTRACT CONTENTS

The HAP contract format is required by HUD, specifically Housing Assistance Payment (HAP) Contract, Form HUD-52641.

The HAP contract contains three parts.

Part A of the contract includes basic contract information about the name of the tenant family, address of the contract unit, names of all household members, first and last dates of initial lease term, amount of initial monthly rent to owner, amount of initial housing assistance payment, utilities and appliances to be supplied by owner and tenant, signatures of PHA and owner [HCV Guidebook, pp 11-10 and 11-11].

In general, the HAP contract cannot be modified. However, PHAs do have the discretion to add language to Part A of the HAP contract which prohibits the owner from collecting a security deposit in excess of private market practices or in excess of amounts charged to unassisted tenants. HACC policy on the amount of security deposit an owner may collect is found in Chapter 9.

In addition, PHAs have the discretion to add language to Part A of the HAP contract that defines when the housing assistance payment by the HACC is deemed received by the owner (e.g., upon mailing by the HACC or actual receipt by the owner). The HACC has not adopted a policy that defines when the housing assistance payment by the HACC is deemed received by the owner. Therefore, no modifications to the HAP contract will be necessary.

Part B is the body of the contract. It describes in detail program requirements affecting the owner and owner roles and responsibilities under the HCV program. Most of the requirements

contained in Part B of the HAP contract are outlined elsewhere in this plan. Topics addressed in Part B include:

- Lease of Contract Unit
- Maintenance, Utilities, and Other Services
- Term of HAP Contract
- Provision and Payment of Utilities and Appliances
- Rent to Owner: Reasonable Rent
- PHA Payment to Owner
- Prohibition of Discrimination
- Owner's Breach of HAP Contract
- PHA and HUD Access to Premises and Owner's Records
- Exclusion of Third Party Rights
- Conflict of Interest
- Assignment of the HAP Contract
- Written Notices
- Entire Agreement Interpretation

Part C of the contract includes the Tenancy Addendum (Form HUD-52641-A). The addendum sets forth the tenancy requirements for the program and the composition of the household, as approved by the HACC. The tenant has the right to enforce the Tenancy Addendum against the owner. The terms of the Tenancy Addendum prevail over any other provisions of the lease.

13-II.C. HAP CONTRACT PAYMENTS

General

During the term of the HAP contract, and subject to the provisions of the HAP contract, the HACC must make monthly HAP payments to the owner on behalf of the family. If a lease term begins after the first of the month, the HAP payment for the first month is prorated for a partial month.

The amount of the HAP payment is determined according to the policies described in Chapter 6 and is subject to change during the term of the HAP contract. The HACC must notify the owner and the family in writing of any changes in the HAP payment.

HAP payments can be made only during the lease term, only while the family is residing in the unit, and only while the Owner has maintained the unit in compliance with HQS.

The monthly HAP payment by the HACC is credited toward the monthly rent to owner under the family's lease. The total of the rent paid by the tenant, plus the HACC HAP payment, should be equal to the rent specified in the lease (the rent to owner).

The family is not responsible for payment of the HAP payment and the HACC is not responsible for payment of the family's 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 9 for a discussion of separate, non-lease agreements for services, appliances, and other items that are not included in the lease.

If the owner receives any excess HAP from the HACC, the excess amount must be returned immediately. If the HACC determines that the owner is not entitled to all or a portion of the HAP, the HACC may deduct the amount of overpayment from any amounts due to the owner, including amounts due under any other HCV contract. See Chapter 16 for additional detail on owner reimbursement of HAP overpayments.

Owner Certification of Compliance

Unless the owner complies with all provisions of the HAP contract, the owner is not entitled to receive housing assistance payments under the HAP contract [HAP Contract – Form HUD-52641].

By endorsing the monthly check from the HACC or accepting the direct deposit of HAP funds, the owner certifies to compliance with the terms of the HAP contract. This includes certification that the owner is maintaining the unit and premises in accordance with HQS; that the contract unit is leased to the tenant family and, to the best of the owner's knowledge, the family resides in the unit as the family's only residence; the rent to owner does not exceed rents charged by the owner for comparable unassisted units on the premises; and that the owner does not receive (other than rent to owner) any additional payments or other consideration for rent of the contract unit during the HAP term.

Late HAP Payments [24 CFR 982.451(a)(5)]

The HACC is responsible for making HAP payments promptly when due to the owner, in accordance with the terms of the HAP contract. After the first two calendar months of the HAP contract term, the HAP contract provides for penalties if the HACC fails to make the HAP payment on time.

Penalties for late HAP payments can only be imposed if 1) the penalties are in accordance with generally accepted local rental market practices and law governing penalties for late payment by tenants; 2) it is the owner's normal business practice to charge late payment penalties for both assisted and unassisted families; and 3) the owner charges the assisted family for late payment of the family's share of the rent.

The HACC is not required to pay a late payment penalty if HUD determines that the payment is late for reasons beyond the HACC's control. In addition, late payment penalties are not required

if the HACC intentionally delays or denies payment as a remedy to an owner's breach of the HAP contract [HCV Guidebook p. 11-7].

Termination of HAP Payments [24 CFR 982.311(b)]

The HACC must continue making housing assistance payments to the owner in accordance with the HAP contract as long as the tenant continues to occupy the unit and the HAP contract is not violated.

HAP payments terminate when the HAP contract terminates or when the tenancy is terminated in accordance with the terms of the lease.

If the owner has initiated eviction proceedings against the family and the family continues to reside in the unit, the HACC 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 the HACC when the owner has initiated eviction proceedings against the family and the family continues to reside in the unit.
- The owner must inform the HACC when the owner has obtained a court judgment or other process allowing the owner to evict the tenant, and provide the HACC with a copy of such judgment or determination.
- After the owner has obtained a court judgment or other process allowing the owner to evict the tenant, the HACC will continue to make HAP payments to the owner until the family actually moves from the unit or until the family is physically evicted from the unit, whichever is earlier. The owner must inform the HACC of the date when the family actually moves from the unit or the family is physically evicted from the unit.

13-II.D. BREACH OF HAP CONTRACT

Any of the following actions by the owner constitutes a breach of the HAP contract [24 CFR 982.453]:

- 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 HCV
- 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 regulation for the applicable program; or if the owner has committed fraud, bribery or any other corrupt or criminal act in connection with the mortgage or loan
- If the owner has engaged in drug-related criminal activity
- If the owner has committed any violent criminal activity

If the HACC determines that a breach of the HAP contract has occurred, it may exercise any of its rights and remedies under the HAP contract. The HACC rights and remedies against the owner under the HAP contract include recovery of any HAP overpayment, suspension of housing assistance payments, abatement or reduction of the housing assistance payment, termination of the payment or termination the HAP contract. The HACC may also obtain additional relief by judicial order or action.

Before the HACC invokes a remedy against an owner, the HACC will evaluate all information and documents available to determine if the contract has been breached. If relevant, the HACC will conduct an audit of the owner's records pertaining to the tenancy or unit.

If it is determined that the owner has breached the contract, the HACC 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.

The HACC must notify the owner of its determination and provide in writing the reasons for the determination. The notice may require the owner to take corrective action by an established deadline. The HACC must provide the owner with written notice of any reduction in housing assistance payments or the termination of the HAP contract.

13-II.E. HAP CONTRACT TERM AND TERMINATIONS

The term of the HAP contract runs concurrently with the term of the dwelling lease [24 CFR 982.451(a)(2)], beginning on the first day of the initial term of the lease and terminating on the last day of the term of the lease, including any lease term extensions.

The HAP contract and the housing assistance payments made under the HAP contract terminate if [HCV Guidebook pp.11-4 and 11-5, pg. 15-3]:

- The owner or the family terminates the lease;
- The lease expires;
- The HACC terminates the HAP contract;
- The HACC 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;
- A single member household dies or where the only remaining household member is a live-in aide. In this situation, the owner is entitled to keep the housing assistance payment for the month in which the death occurred. The owner is not entitled to HAP for any month following the month in which the death occurred, and the HACC will seek repayment from any owner who has received any excess subsidy, pursuant to the procedures contained in Chapters 14 and 16;
- 180 calendar days have elapsed since the HACC made the last housing assistance payment to the owner;

- The family is absent from the unit for longer than the maximum period permitted by the HACC;
- The Annual Contributions Contract (ACC) between the HACC and HUD expires;
- The HACC elects to terminate the HAP contract.

The HACC may elect to terminate the HAP contract in each of the following situations:

- Available program funding is not sufficient to support continued assistance for families in the program [24 CFR 982.454];
- The unit does not meet HQS size requirements due to change in family composition [24 CFR 982.403] – see chapter 8;
- The unit does not meet HQS [24 CFR 982.404] – see chapter 8;
- The family breaks up [HUD Form 52641] – see chapter 3;
- The owner breaches the HAP contract [24 CFR 982.453(b)] – see Section 13-II.D.

If the HACC terminates the HAP contract, the HACC must give the owner and the family written notice. The notice must specify the reasons for the termination and the effective date of the termination. Once a HAP contract is terminated, no further HAP payments may be made under that contract [HCV Guidebook pg.15-4].

In all cases, the HAP contract terminates at the end of the calendar month that follows the calendar month in which the HACC gives written notice to the owner. The owner is not entitled to any housing assistance payment after this period and must return to the HACC any housing assistance payment received after this period.

If the family moves from the assisted unit into a new unit, even if the new unit is in the same building or complex as the assisted unit, the HAP contract for the assisted unit terminates. A new HAP contract would be required [HCV GB, p. 11-17].

When the family moves from an assisted unit into a new unit, the term of the HAP contract for the new unit may begin in the same month in which the family moves out of its old unit. This is not considered a duplicative subsidy [HCV GB, p. 8-22].

13-II.F. CHANGE IN OWNERSHIP / ASSIGNMENT OF THE HAP CONTRACT

Assignment of the HAP Contract [**HUD-52641**] will be approved only if the new owner is qualified to become an owner under the HCV program according to the policies in Section 13-I.D. of this chapter.

The HACC must be notified of any change in ownership as soon as is possible after the change. The existing owner will generally be the one to notify the HACC; however, the HACC will accept notification from new owners, banks, or other agencies when the previous or existing owner is not able to provide information, such as in a foreclosure or at the death of an existing owner. The notification must include the name and address of the new HAP payee and the effective date of the assignment of the existing contract. Within 15 business days of receiving the

owner's request, the HACC will inform the current owner in writing whether the assignment may take place.

The new owner must provide a written certification to the HACC that includes:

- A copy of the deed or title insurance policy (or other acceptable documentation of legal ownership as outlined in Section 13.I.D.);
- A copy of the owner's IRS Form W-9, Request for Taxpayer Identification Number and Certification, or the social security number of the new owner;
- The effective date of the HAP contract assignment;
- A written agreement to comply with the terms of the HAP contract; and
- Confirmation that the new owner is not a prohibited relative.

If the new owner does not agree to an assignment of the HAP contract, or fails to provide the necessary documents, the HACC will terminate the HAP contract with the old owner. If the new owner wants to offer the family a new lease and the family elects to stay with continued assistance, the HACC will process the leasing in accordance with the policies in Chapter 9.

Chapter 14

PROGRAM INTEGRITY

INTRODUCTION

The HACC is committed to ensuring that subsidy funds made available to the Authority are spent in accordance with HUD requirements.

This chapter covers HUD and the HACC policies designed to prevent, detect, investigate and resolve instances of program abuse or fraud. It also describes the actions that will be taken in the case of unintentional errors and omissions.

Part I: Preventing, Detecting, and Investigating Errors and Program Abuse. This part presents the HACC's policies related to preventing, detecting, and investigating errors and program abuse.

Part II: Corrective Measures and Penalties. This part describes the corrective measures the HACC must and may take when errors or program abuses are found.

PART I: PREVENTING, DETECTING, AND INVESTIGATING ERRORS AND PROGRAM ABUSE

14-I.A. PREVENTING ERRORS AND PROGRAM ABUSE

The HACC anticipates that the vast majority of families, owners, and the HACC employees intend to and will comply with program requirements and make reasonable efforts to avoid errors.

To ensure that the HACC's HCV program is administered effectively and according to the highest ethical and legal standards, the HACC will employ a variety of techniques to ensure that both errors and intentional program abuse are rare.

- The HACC will discuss program compliance and integrity issues during the voucher briefing sessions described in Chapter 5.
- The HACC will provide each applicant and participant with a statement of obligation under the program including required actions and actions that must be avoided. These obligations will also be provided on the Voucher, HUD Form 52646.
- The HACC will place a warning statement about the penalties for fraud (as described in the False Statement Act, U.S.C. 1001 and 1010) on key HACC forms and form letters that request information from a family or owner.

- The HACC staff will be required to review and explain the contents of all HUD- and the HACC -required forms prior to requesting family member signatures.
- The HACC will encourage first-time owners (or their agents) to participate in a briefing session on HAP contract requirements. The HACC will invite all owners to regularly scheduled landlord meetings.
- The HACC will provide each HACC employee with the necessary training on program rules and the organization's standards of conduct and ethics.

For purposes of this chapter the term *error* refers to an unintentional error or omission. *Program abuse or fraud* refers to a single act or pattern of actions that constitute a false statement, omission, or concealment of a substantial fact, made with the intent to deceive or mislead.

14-I.B. DETECTING ERRORS AND PROGRAM ABUSE

In addition to taking steps to prevent errors and program abuse, the HACC will use a variety of activities to detect errors and program abuse.

Quality Control and Analysis of Data

Under the Section 8 Management Assessment Program (SEMAP), HUD requires PHAs to review a random sample of tenant records annually to determine if the records conform to program requirements and to conduct quality control inspections of a sample of units to ensure HQS compliance [24 CFR, Part 985]. (See Chapter 16 for additional information about SEMAP requirements).

In addition to the SEMAP quality control requirements, the HACC will employ a variety of methods to detect errors and program abuse.

- The HACC routinely will use available sources of up-front income verification to compare with family-provided information.
- At each annual reexamination, current information provided by the family will be compared to information provided at the last annual reexamination to identify inconsistencies and incomplete information.
- The HACC will compare family-reported income and expenditures to detect possible unreported income.

Independent Audits and HUD Monitoring

OMB Circular A-133 requires all PHAs that expend \$500,000 or more in federal awards annually to have an independent audit (IPA). In addition, HUD conducts periodic on-site and automated monitoring of the HACC activities and notifies the HACC of errors and potential cases of program abuse.

The HACC will use the results reported in any IPA or HUD monitoring reports to identify potential program abuses as well as to assess the effectiveness of the HACC's error detection and abuse prevention efforts.

Individual Reporting of Possible Errors and Program Abuse

The HACC will encourage staff, program participants, and the public to report possible program abuse.

14-I.C. INVESTIGATING ERRORS AND PROGRAM ABUSE

When HACC Will Investigate

The HACC will review all referrals, specific allegations, complaints, and tips from any source including other agencies, companies, and individuals, to determine if they warrant investigation. In order for the HACC to investigate, the allegation must contain at least one independently-verifiable item of information, such as the name of an employer or the name of an unauthorized household member.

The HACC will investigate inconsistent information related to the family that is identified through file reviews and the verification process.

Consent to Release of Information [24 CFR 982.516]

The HACC may investigate possible instances of error or abuse using all available the HACC and public records. If necessary, the HACC will require HCV families to give consent to the release of additional information.

Analysis and Findings

The HACC will base its evaluation on a preponderance of the evidence collected during its investigation. *Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence that as a whole shows that the fact sought to be proved is more probable than not. Preponderance of evidence may not be determined by the number of witnesses, but by the greater weight of all evidence

For each investigation the HACC will determine (1) whether an error or program abuse has occurred, (2) whether any amount of money is owed the HACC, and (3) what corrective measures or penalties will be assessed.

Consideration of Remedies

All errors and instances of program abuse must be corrected prospectively. Whether the HACC 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, the HACC will take into consideration (1) the seriousness of the offense and the extent of participation or culpability of individual family members, (2) any special circumstances surrounding the case, (3) any mitigating circumstances related to the disability of a family member, (4) the effects of a particular remedy on family members who were not involved in the offense.

In the case of owner-caused errors or program abuse, the HACC 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

The HACC will inform the relevant party in writing of its findings and remedies within 15 business days of the conclusion of the investigation. The notice will include (1) a description of the error or program abuse, (2) the basis on which the HACC 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).

PART II: CORRECTIVE MEASURES AND PENALTIES

14-II.A. SUBSIDY UNDERPAYMENTS OR OVERPAYMENTS

A subsidy underpayments 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

If the incorrect subsidy determination caused an overpayment, the HACC will correct the HAP, family share, and any utility reimbursement prospectively. If the determination caused an underpayment, the correction will be made retroactive to the original effective date of the transaction.

- Increase in the family share will be implemented only after the family has received a 30 day notice.
- Any decreases in the family share will become effective the first of the month following the discovery of the error.

Reimbursement

Whether the family or owner is required to reimburse the HACC or the HACC 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 three sections that follow.

14-II.B. FAMILY-CAUSED ERRORS AND PROGRAM ABUSE

Family obligations and general administrative requirements for participating in the program are discussed throughout this plan. This section deals specifically with errors and program abuse by family members.

An incorrect subsidy determination caused by a family generally would be the result of incorrect reporting of family composition, income, assets, or expenses, but also would include instances in which the family knowingly allows the HACC to use incorrect information provided by a third party.

If the family raises the defense that the head of household was not aware of the actions of other household member, the family must submit information or documentation to support the claim. Information may include, but is not limited to: verification that the head of household was incapacitated during the time of the violation, verification that the household member was residing outside of the subsidized unit at the time of the violation, verification that the head of household's disability or medical condition adversely affects his/her ability to oversee the actions of household members.

The head of household is the family member responsible for ensuring other members provide true and complete information and comply with all program rules. Violations by any member of the household may result in the family's termination (see consideration of circumstances below).

Family Reimbursement to PHA [HCV GB pp. 22-12 to 22-13]

In the case of family-caused errors or program abuse, the family will be required to repay any excess subsidy received. The HACC may, but is not required to, offer the family a repayment agreement in accordance with Chapter 16. If the family fails to repay the excess subsidy, the HACC will terminate the family's assistance in accordance with the policies in Chapter 12.

HACC Reimbursement to Family [HCV GB p. 22-12]

The HACC will not reimburse the family for any underpayment of assistance when the underpayment clearly is caused by the family.

Prohibited Actions

An applicant or participant in the HCV program must not knowingly:

- Make a false statement to the HACC [Title 18 U.S.C. Section 1001].
- Commit fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program [24 CFR 982.552(c)(iv)].

Any of the following will be considered evidence of family program abuse:

- Payment to the owner in excess of amounts authorized by the HACC for rent, security deposit, and additional services

- Offering bribes or illegal gratuities to the HACC Board of Commissioners, employees, contractors, or other HACC representatives
- Offering payments or other incentives to the owner or a third party as an inducement for the third party to make false or misleading statements to the HACC on the family's behalf
- Use of a false name or the use of falsified, forged, or altered documents
- Intentional misreporting of family information or circumstances (e.g. income, family composition)
- Omitted facts that were obviously known by a family member (e.g., not reporting employment income)
- Admission of program abuse by an adult family member

The HACC may determine other actions to be program abuse based upon a preponderance of the evidence, as defined earlier in this chapter.

Penalties for Program Abuse

In the case of program abuse caused by a family the HACC may, at its discretion, impose any of the following remedies.

- The HACC may require the family to repay excess subsidy amounts paid by the HACC, as described earlier in this section.
- The HACC may deny deposits into the escrow account of an FSS Program participant.
- The HACC may require, as a condition of receiving or continuing assistance, that a culpable family member not reside in the unit. See policies in Chapter 3 (for applicants) and Chapter 12 (for participants).
- The HACC may deny or terminate the family's assistance following the policies set forth in Chapter 3 and Chapter 12 respectively.
- The HACC may refer the family for state or federal criminal prosecution as described in section 14-II.E.

14-II.C. OWNER-CAUSED ERROR OR PROGRAM ABUSE

Owner requirements that are part of the regular process of offering, leasing, and maintaining a unit (e.g., HQS compliance, fair housing) are addressed in the appropriate chapters of this plan. This section focuses on errors and program abuse by owners.

An incorrect subsidy determination caused by an owner generally would be the result of an incorrect owner statement about the characteristics of the assisted unit (e.g., the number of bedrooms, which utilities are paid by the family). It also includes accepting duplicate housing

assistance payments for the same unit in the same month or after a family no longer resides in the unit.

Owner Reimbursement to HACC

In all cases of overpayment of subsidy caused by the owner, the owner must repay to the HACC any excess subsidy received. The HACC may recover overpaid amounts by withholding housing assistance payments due for subsequent months, or if the debt is large, the HACC may allow the owner to pay in installments over a period of time [HCV GB p. 22-13].

In cases where the owner has received excess subsidy, the HACC will require the owner to repay the amount owed in accordance with the policies in Section 16-IV.B.

Prohibited Owner Actions

An owner participating in the HCV program must not:

- Make any false statement to the HACC [Title 18 U.S.C. Section 1001].
- Commit fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program [24 CFR 982.453(a)(3)] including:

Any of the following will be considered evidence of owner program abuse:

- Charging the family rent above or below the amount specified by the HACC
- Charging a security deposit other than that specified in the family's lease
- Charging the family for services that are provided to unassisted tenants at no extra charge
- Knowingly accepting housing assistance payments for any month(s) after the family has vacated the unit
- Knowingly accepting incorrect or excess housing assistance payments
- Offering bribes or illegal gratuities to the HACC Board of Commissioners, employees, contractors, or other HACC representatives
- Offering payments or other incentives to an HCV family as an inducement for the family to make false or misleading statements to the HACC
- Residing in the unit with an assisted family
- Renting to a relative without disclosing the relationship and obtaining HACC written approval to rent to a family as a reasonable accommodation for a disabled family member
- Submitting altered or falsified documents

Remedies and Penalties

When the HACC determines that the owner has committed program abuse, the HACC 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 Chapter 16.
- Terminate the HAP contract (See Chapter 13).
- Bar the owner from future participation in any HACC programs.
- Refer the case to state or federal officials for criminal prosecution as described in section 14-II.E.

14-II.D. PHA-CAUSED ERRORS OR PROGRAM ABUSE

The responsibilities and expectations of PHA staff with respect to normal program administration are discussed throughout this plan. This section specifically addresses actions of a HACC staff member that are considered errors or program abuse related to the HCV program. Additional standards of conduct may be provided in the HACC personnel policy.

A HACC -caused incorrect subsidy determination includes (1) failing to correctly apply HCV rules regarding family composition, income, assets, and expenses, (2) assigning the incorrect voucher size to a family, and (3) errors in calculation.

Repayment to HACC

Neither a family nor an owner is required to repay an overpayment of subsidy if the error or program abuse is caused by the HACC staff [HCV GB. 22-12].

PHA Reimbursement to Family or Owner

The HACC must reimburse a family for any underpayment of subsidy, regardless of whether the underpayment was the result of staff-caused error or staff or owner program abuse. Funds for this reimbursement must come from the HACC's administrative fee reserves [HCV GB p. 22-12].

Prohibited Activities

Any of the following will be considered evidence of program abuse by HACC staff:

- Failing to comply with any HCV program requirements for personal gain
- Failing to comply with any HCV program requirements as a result of a conflict of interest relationship with any applicant, participant, or owner
- Seeking or accepting anything of material value from applicants, participating families, vendors, owners, contractors, or other persons who provide services or materials to the HACC
- Disclosing confidential or proprietary information to outside parties

- Gaining profit as a result of insider knowledge of the HACC 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

14-II.E. CRIMINAL PROSECUTION

When the HACC determines that program abuse by an owner, family, or the HACC staff member has occurred and the amount of overpaid subsidy meets or exceeds the threshold for prosecution under local or state law, the HACC will refer the matter to the appropriate entity for prosecution. When the amount of overpaid assistance meets or exceeds the federal threshold, the case will also be referred to the HUD Office of Inspector General (OIG).

Other criminal violations related to the HCV program will be referred to the appropriate local, state, or federal entity.

14-II.F FRAUD AND PROGRAM ABUSE RECOVERIES

The HACC may retain a portion of program fraud losses that the HACC recovers from a family or owner through litigation, court order, or a repayment agreement [24 CFR 982.163].

The HACC must be the principal party initiating or sustaining the action to recover amounts due from tenants that are due as a result of fraud and abuse. 24 CFR 792.202 permits the HACC to retain the greater of:

- 50 percent of the amount it actually collects from a judgment, litigation (including settlement of a lawsuit) or an administrative repayment agreement, or
- Reasonable and necessary costs that the HACC incurs related to the collection including costs of investigation, legal fees, and agency collection fees.

The family must be afforded the opportunity for an informal hearing in accordance with requirements in 24 CFR 982.555.

If HUD incurs costs on behalf of the HACC related to the collection, these costs must be deducted from the amount retained by the HACC.

Chapter 15

SPECIAL HOUSING TYPES

[24 CFR 982 Subpart M]

INTRODUCTION

With the exception of Homeownership, families will not be permitted to use any special housing types, unless use is needed as a reasonable accommodation so that the program is readily accessible to a person with disabilities. Families were previously allowed to use Shared Housing and Manufactured Homes. Those families may continue in their current Shared Housing or Manufactured Home, but any future moves will not be allowed into these Special Housing Types. Additionally, single room occupancy (SRO) may be permitted in project-based voucher settings as permanent supportive housing.

Special housing types include single room occupancy (SRO), congregate housing, group homes, shared housing, cooperative housing, manufactured homes where the family owns the home and leases the space, and homeownership [24 CFR 982.601].

This chapter consists of the following seven parts. Each part contains a description of the housing type and any special requirements associated with it. Except as modified by this chapter, the general requirements of the HCV program apply to special housing types.

Part I: Single Room Occupancy

Part II: Congregate Housing

Part III: Group Homes

Part IV: Shared Housing

Part V: Cooperative Housing

Part VI: Manufactured Homes (including manufactured home space rental)

Part VII: Homeownership

PART I: SINGLE ROOM OCCUPANCY

[24 CFR 982.602 through 982.605]

15-I.A. OVERVIEW

A single room occupancy (SRO) unit provides living and sleeping space for the exclusive use of the occupant but requires the occupant to share sanitary and/or food preparation facilities with others. More than one person may not occupy an SRO unit. HCV regulations do not limit the number of units in an SRO facility, but the size of a facility may be limited by local ordinances.

When providing HCV assistance in an SRO unit, a separate lease and HAP contract are executed for each assisted person and the standard form of the HAP contract is used.

15-I.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION

The payment standard for SRO housing is 75 percent of the 0-bedroom payment standard amount on the HACC's payment standard schedule.

The utility allowance for an assisted person residing in SRO housing is 75 percent of the zero bedroom utility allowance.

The HAP for an assisted occupant in an SRO facility is the lower of the SRO payment standard amount minus the TTP or the gross rent for the unit minus the TTP.

15-I.C. HOUSING QUALITY STANDARDS (HQS)

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 and space and security standards must meet local code requirements for SRO housing. In the absence of local code standards the requirements discussed below apply [24 CFR 982.605].

- *Sanitary Facilities:* 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. 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:* 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.

Because no children live in SRO housing, the housing quality standards applicable to lead-based paint do not apply.

PART II: CONGREGATE HOUSING

[24 CFR 982.606 through 982.609]

15-II.A. OVERVIEW

Congregate housing is intended for use by elderly persons or persons with disabilities. A congregate housing facility contains a shared central kitchen and dining area and a private living area for the individual household that includes at least a living room, bedroom and bathroom. Food service for residents must be provided.

If approved by the HACC, a family member or live-in aide may reside with the elderly person or person with disabilities. The HACC must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in congregate housing, a separate lease and HAP contract are executed for each assisted family and the standard form of the HAP contract is used.

15-II.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION

The payment standard for an individual unit in a congregate housing facility is based on the number of rooms in the private living area. If there is only one room in the unit (not including the bathroom or the kitchen, if a kitchen is provided), the HACC 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, HACC must use the 1-bedroom payment standard.

The HAP for an assisted occupant in a congregate housing facility is the lower of the applicable payment standard minus the TTP or the gross rent for the unit minus the TTP.

The gross rent for the unit for the purpose of calculating HCV assistance is the shelter portion (including utilities) of the resident's monthly housing expense only. The residents' costs for food service should not be included in the rent for a congregate housing unit.

15-II.C. 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 that is not provided by the residents themselves.

The housing quality standards applicable to lead-based paint do not apply.

PART III: GROUP HOME

[24 CFR 982.610 through 982.614 and HCV GB p. 7-4]

15-III.A. OVERVIEW

A group home is a state-licensed facility intended for occupancy by elderly persons and/or persons with disabilities. Except for live-in aides, all persons living in a group home, whether assisted or not, must be elderly persons or persons with disabilities. Persons living in a group home must not require continuous medical or nursing care.

A group home consists of bedrooms for residents, which can be shared by no more than two people, and a living room, kitchen, dining area, bathroom, and other appropriate social, recreational, or community space that may be shared with other residents.

No more than 12 persons may reside in a group home including assisted and unassisted residents and any live-in aides.

If approved by the HACC, a live-in aide may live in the group home with a person with disabilities. The HACC must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in a group home, a separate lease and HAP contract is executed for each assisted family and the standard form of the HAP contract is used.

15-III.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION

Unless there is a live-in aide, the family unit size for an assisted occupant of a group home must be 0- or 1-bedroom, depending on the HACC's subsidy standard. If there is a live-in aide, the aide must be counted in determining the household's unit size.

The payment standard used to calculate the HAP is the lower of the payment standard for the family unit size or 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 HACC

should consider whether sanitary facilities and facilities for food preparation and service are common facilities or private facilities.

15-III.C. 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.

PART IV: SHARED HOUSING

[24 CFR 982.615 through 982.618]

15-IV.A. OVERVIEW

Shared housing is a single housing unit occupied by an assisted family and another resident or residents. The shared unit consists of both common space for use by the occupants of the unit and separate private space for each assisted family.

An assisted family may share a unit with other persons assisted under the HCV program or with other unassisted persons. The owner of a shared housing unit may reside in the unit, but housing assistance may not be paid on behalf of the owner. The resident owner may not be related by blood or marriage to the assisted family.

If approved by the HACC, a live-in aide may reside with the family to care for a person with disabilities. The HACC must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in shared housing, a separate lease and HAP contract are executed for each assisted family and the standard form of the HAP contract is used.

15-IV.B. 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.

The rents paid for families living in shared housing are subject to generally applicable standards for rent reasonableness. The rent paid to the owner for the assisted family must not exceed the pro-rata portion of the reasonable rent for the shared unit. In determining reasonable rent, the HACC should consider whether sanitary and food preparation areas are private or shared.

15-IV.C. HOUSING QUALITY STANDARDS

The HACC 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.

PART V: COOPERATIVE HOUSING

[24 CFR 982.619]

15-V.A. OVERVIEW

This part applies to rental assistance for a cooperative member residing in cooperative housing. *It does not apply to assistance for a cooperative member who has purchased membership under the HCV homeownership option or to rental assistance for a family that leases a cooperative housing unit from a cooperative member.*

A cooperative is a form of ownership (nonprofit corporation or association) in which the residents purchase memberships in the ownership entity. Rather than being charged “rent” a cooperative member is charged a “carrying charge.”

When providing HCV assistance in cooperative housing, the standard form of the HAP contract is used.

15-V.B. 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.

15-V.C. HOUSING QUALITY STANDARDS

All standard HQS requirements apply to cooperative housing units. There are no additional HQS requirements.

PART VI: MANUFACTURED HOMES

[24 CFR 982.620 through 982.624]

15-VI.A. OVERVIEW

A manufactured home is a manufactured structure, transportable in one or more parts, that is built on a permanent chassis, and designed for use as a principal place of residence. HCV-assisted families may occupy manufactured homes in two different ways.

(1) A family can choose to rent a manufactured home already installed on a space and HACC must permit it. In this instance program rules are the same as when a family rents any other residential housing, except that there are special HQS requirements as provided in 15-VI.D below.

(2) HUD also permits an otherwise eligible family that owns a manufactured home to rent a space for the manufactured home and receive HCV assistance with the rent for the space. PHAs may, but are not required to, provide assistance for such families.

15-VI.B. SPECIAL POLICIES FOR MANUFACTURED HOME OWNERS WHO LEASE A SPACE

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.

Lease and HAP Contract

There is a separate Tenancy Addendum (Form 52642-a) and separate HAP Contract (Form 52642) for this special housing type.

15-VI.C. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION

Payment Standards

The FMR for a manufactured home space is generally 40 percent of the published FMR for a 2-bedroom unit or, where approved by HUD, the 40th percentile of the rental distribution of manufactured home spaces for the FMR area. The HACC may establish a payment standard for manufactured home spaces that is between 90-110 percent of the FMR for manufactured home spaces.

Utility Allowance

The HACC must establish utility allowances for manufactured home space rental. For the first 12 months of the initial lease term only, the allowance must include an amount for a utility hook-up charge if the family actually incurred a hook-up charge because of a move. This allowance

will not be given to a family that leases in place. Utility allowances for manufactured home space must not include the costs of digging a well or installing a septic system.

Space Rent

The space rent is the sum of the rent to the owner for the manufactured home space, any charges for maintenance and management provided by the owner, and the utility allowance for tenant-paid utilities.

Housing Assistance Payment

The HAP for a manufactured home space under the housing choice voucher program is the lower of the payment standard minus the TTP or the (gross) manufactured home space rent minus the TTP.

Rent Reasonableness

Initially, and annually thereafter the HACC must determine that the rent for the manufactured home space is reasonable based on rents for comparable manufactured home spaces. The HACC 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.

15-VI.D. HOUSING QUALITY STANDARDS

Under either type of occupancy described in 15-VI.A 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.

PART VII: HOMEOWNERSHIP

[24 CFR 982.625 through 982.643]

15-VII.A. OVERVIEW

The homeownership option is used to assist a family residing in a home purchased and owned by one or more members of the family [24 CFR 982.625]. A family assisted under this option must be an existing participant in the HCV program. The HACC must have the capacity to operate a successful HCV homeownership program as defined by the regulations.

There are two forms of homeownership assistance the HACC may offer under this option: monthly homeownership assistance payments or a single down payment assistance grant. The HACC offers monthly homeownership assistance payments. However, if necessary as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities, the HACC must offer single down payment assistance. The HACC must determine what is reasonable based on the specific circumstances and individual needs of the person with a disability. Reasonable Accommodations are discussed in more detail in Chapter 2.

15-VII.B. FAMILY ELIGIBILITY

The family must meet all of the requirements listed below before the commencement of homeownership assistance [24 CFR 982.627]. The HACC may also establish additional initial requirements as long as they are described in the HACC Administrative Plan.

- The family must have been admitted to the Housing Choice Voucher program and completed an initial one year lease term.
- The family must qualify as first-time homeowner. A family of which a family member is a person with disabilities, and such person needs use of the homeownership option as a reasonable accommodation so the program is readily accessible to and usable, is exempt from the first time homebuyer requirement. A “first-time homeowner” means that no member of the household has had an ownership interest in any residence during the three years preceding commencement of homeownership assistance. However, a single parent or displaced homemaker who while married, owned a home with a spouse (or resided in a home owned by a spouse) is considered a first-time homeowner for purposes of the HCV homeownership option; and the right to purchase title to a residence under a lease-purchase agreement is not considered an ownership interest.
- The family must meet the Federal minimum income requirement. The family must have a gross annual income equal to the Federal minimum wage multiplied by 2000 based on the income of adult family members who will own the home. The HACC may establish a higher income standard for families. However, a family that meets the federal minimum income requirement (but not the HACC's requirement) will be considered to meet the minimum income requirement if it can demonstrate that it has been pre-qualified or pre-approved for financing that is sufficient to purchase an eligible unit.
- For disabled families, the minimum income requirement is equal to the current SSI monthly payment for an individual living alone, multiplied by 12.
- For elderly or disabled families, welfare assistance payments for adult family members who will own the home will be included in determining whether the family meets the minimum income requirement. It will not be included for other families.
- The family must satisfy the employment requirements by demonstrating that one or more adult members of the family who will own the home at commencement of homeownership assistance is currently employed on a full-time basis (the term 'full-time employment' means not less than an average of 30 hours per week); and has been continuously so employed during the two years before commencement of

homeownership assistance for the family. There must be a commitment for continuous employment, including the willingness to perform temporary or low-wage jobs.

- The employment requirement does not apply to elderly and disabled families. In addition, if a family, other than an elderly or disabled family includes a person with disabilities, the HACC must grant an exemption from the employment requirement if the HACC determines that it is needed as a reasonable accommodation.
- The family has not defaulted on a mortgage securing debt to purchase a home under the homeownership option
- Except for cooperative members who have acquired cooperative membership shares prior to commencement of homeownership assistance, no family member has a present ownership interest in a residence at the commencement of homeownership assistance for the purchase of any home.
- Except for cooperative members who have acquired cooperative membership shares prior to the commencement of homeownership assistance, the family has entered a contract of sale in accordance with 24 CFR 982.631(c).

15-VII.C. SELECTION OF FAMILIES

Unless otherwise provided (under the homeownership option), the HACC may limit homeownership assistance to families for purposes defined by the HACC and may prescribe additional requirements for commencement of homeownership assistance for a family [24 CFR 982.626].

If the HACC limits the number of families that may participate in the homeownership option, the HACC must establish a system by which to select families to participate. Family Self-Sufficiency (FSS) participants shall receive a priority for participation over standard HCV program participants. Elderly and disabled households are not required to participate in the FSS Program, but will be afforded the same priority.

15-VII.D. ELIGIBLE UNITS

In order for a unit to be eligible, the HACC must determine that the unit satisfies all of the following requirements [24 CFR 982.628]:

- The unit must meet HUD's "eligible housing" requirements. The unit may not be any of the following:
 - A public housing or Indian housing unit;
 - A unit receiving Section 8 project-based assistance;
 - A nursing home, board and care home, or facility providing continual psychiatric, medical or nursing services;
 - A college or other school dormitory;

- On the grounds of penal, reformatory, medical, mental, or similar public or private institutions.
- The unit must be under construction or already exist at the time the family enters into the contract of sale.
- The unit must be a one-unit property or a single dwelling unit in a cooperative or condominium.
- The unit must have been inspected by the HACC and by an independent inspector designated by the family. The family is responsible for the cost of the independent inspection.
- The unit must meet Housing Quality Standards (see Chapter 8).
- For PHA-owned units all of the following conditions must be satisfied:
 - The HACC informs the family, both orally and in writing, that the family has the right to purchase any eligible unit and the HACC-owned unit is freely selected by the family without PHA pressure or steering;
 - The unit is not ineligible housing;
 - The HACC obtains the services of an independent agency to inspect the unit for compliance with HQS, review the independent inspection report, review the contract of sale, determine the reasonableness of the sales price and any PHA provided financing. All of these actions must be completed in accordance with program requirements.

The HACC must not approve the unit if the HACC has been informed that the seller is debarred, suspended, or subject to a limited denial of participation.

15-VII.E. ADDITIONAL PHA REQUIREMENTS FOR SEARCH AND PURCHASE

It is the family's responsibility to find a home that meets the criteria for voucher homeownership assistance [24 CFR 982.629]. The family will be given 180 days to locate a home. The home will be considered located if the family submits a proposed sales agreement with the requisite components. For good cause, the HACC may extend the family's search time in additional 30 day increments, not to exceed 4 extensions. During the family's search time, the family's rental assistance continues, pursuant to the Administrative Plan and federal regulations. The family must report on its progress in finding and purchasing a home. Once a home is located, the family will have 3 months to complete the purchase. If the family is unable to purchase a home within the maximum time established by the HACC, its rental assistance will continue, pursuant to the Administrative Plan and federal regulations. The family may not reapply to the homeownership program until it has completed another year of participation in the general HCV program.

15-VII.F. HOMEOWNERSHIP COUNSELING

Before commencement of homeownership assistance for a family, the family must attend a HACC Homeownership briefing [24 CFR 982.630]. The briefing will provide a general overview of the program, discuss the recertification requirements, the continuous need for employment for participants who are not elderly or disabled, and the FSS requirement as applicable. The family must also attend and satisfactorily complete a housing counseling

program required by the HACC. HUD suggests the following topics for the HACC-required pre-assistance counseling:

- Home maintenance (including care of the grounds);
- Budgeting and money management;
- Credit counseling;
- How to negotiate the purchase price of a home;
- How to obtain homeownership financing and loan pre-approvals, including a description of types of financing that may be available, and the pros and cons of different types of financing;
- How to find a home, including information about homeownership opportunities, schools, and transportation in the HACC jurisdiction;
- Advantages of purchasing a home in an area that does not have a high concentration of low-income families and how to locate homes in such areas;
- Information on fair housing, including fair housing lending and local fair housing enforcement agencies; and
- Information about the Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.) (RESPA), state and Federal truth-in-lending laws, and how to identify and avoid loans with oppressive terms and conditions.

The HACC may adapt the subjects covered in pre-assistance counseling (as listed) to local circumstances and the needs of individual families.

The HACC may also offer additional counseling after commencement of homeownership assistance (ongoing counseling). If the HACC offers a program of ongoing counseling for participants in the homeownership option, the HACC shall have discretion to determine whether the family is required to participate in the ongoing counseling.

If the HACC does not use a HUD-approved housing counseling agency to provide the counseling, the HACC should ensure that its counseling program is consistent with the counseling provided under HUD's Housing Counseling program.

15-VII.G. HOME INSPECTIONS, DOWN PAYMENT, CONTRACT OF SALE, AND PHA DISAPPROVAL OF SELLER

Home Inspections [24 CFR 982.631]

The HACC may not commence monthly homeownership assistance payments or provide down payment assistance grants for a family until the HACC has inspected the unit and has determined that the unit passes HQS.

An independent professional inspector selected by and paid for by the family must also inspect the unit. The independent inspection must cover major building systems and components, including foundation and structure, housing interior and exterior, and the roofing, plumbing,

electrical, and heating systems. The independent inspector must be qualified to report on property conditions, including major building systems and components.

The HACC may not require the family to use an independent inspector selected by the HACC. The independent inspector may not be the HACC employee or contractor, or other person under control of the HACC. However, the HACC may establish standards for qualification of inspectors selected by families under the homeownership option; the inspector must be licensed and bonded.

The HACC may disapprove a unit for assistance based on information in the independent inspector's report, even if the unit was found to comply with HQS.

Down Payment

A minimum down payment of 3% is required. At least 1% of the down payment must come from the family's own resources. The family is responsible for the payment of closing costs. However, the family may access FSS escrow funds and other programs to cover some of these costs. In addition to funding 1% of the down payment, the family must also demonstrate that it has the resources to provide for the acquisition of basic household tools and equipment. These include a hammer, screwdriver set, flashlight, toilet plunger, basic lawn equipment and snow removal equipment. The family must also demonstrate that there are kitchen appliances (stove and refrigerator) or that the family has the resources to acquire kitchen appliances. The family must pay the cost of the home inspection and the family's attorney's fees. The family must be current in the payment of its utility obligations and must have the ability to have utilities turned on the name of the mortgagor(s).

Contract of Sale

Before commencement of monthly homeownership assistance payments or receipt of a down payment assistance grant, a member or members of the family must enter into a contract of sale with the seller of the unit to be acquired by the family. The family must give the HACC a copy of the contract of sale. The contract of sale must:

- Specify the price and other terms of sale by the seller to the purchaser;
- Provide that the purchaser will arrange for a pre-purchase inspection of the dwelling unit by an independent inspector selected by the purchaser;
- Provide that the purchaser is not obligated to purchase the unit unless the inspection is satisfactory to the purchaser;
- Provide that the purchaser is not obligated to purchase the unit unless the purchaser obtains financing approval;
- Provide that the purchaser is not obligated to pay for any necessary repairs; and
- Contain a certification from the seller that the seller has not been debarred, suspended, or subject to a limited denial of participation under CFR part 24.

Disapproval of a Seller

In its administrative discretion, the HACC may deny approval of a seller for the same reasons the HACC may disapprove an owner under the regular HCV program [see 24 CFR 982.306(c)].

15-VII.H. FINANCING

The HACC may establish requirements for financing the purchase of a home under the homeownership option [24 CFR 982.632]. This may include requirements concerning qualification of lenders, terms of financing, restrictions concerning debt secured by the home, lender qualifications, loan terms, and affordability of the debt.

The proposed financing terms must be submitted to and approved by HACC prior to close of escrow. The HACC shall determine the affordability of the family's proposed financing. In making such determination, the HACC may take into account other family expenses, including but not limited to, child care, unreimbursed medical expenses, education and training expenses, and the like. Certain types of financing, including but not limited to, balloon payment mortgages, unless convertible to a variable rate mortgage, are prohibited and will not be approved by the HACC. Seller-financing mortgages shall be considered by the HACC on a case by case basis. If a mortgage is not FHA-insured, the HACC will require the lender to comply with generally accepted mortgage underwriting standards consistent with those of HUD/FHA, Ginnie Mae, Fannie Mae, Freddie Mac, California Housing Finance Agency (CHFA), USDA Rural Housing Services, the Federal Home Loan Bank, or other private lending institution.

Among the options that may be used in underwriting HCV Mortgages, the lender may:

1. Deduct the HAP from the PITI: Under this option the borrower's HAP is applied directly to the PITI, and the housing debt to income ratio is calculated on the "net Housing Obligation" of the borrower.
2. Add the HAP to the borrower's income: Under this option the lender may calculate total income as a combination of the tax-exempt HAP and the borrower's income from employment.
3. Two mortgage option: Under this option the borrower is qualified for the first mortgage and the HAP is used to pay the full PITI on the second mortgage. The HACC may approve other options.

The HACC may not require that families acquire financing from one or more specified lenders, thereby restricting the family's ability to secure favorable financing terms.

15-VII.I. CONTINUED ASSISTANCE REQUIREMENTS; FAMILY OBLIGATIONS

Homeownership assistance may only be paid while the family is residing in the home. If the family moves out of the home, the HACC may not continue homeownership assistance [24 CFR 982.633] after the month when the family moves out. The family or lender is not required to refund to the HACC the homeownership assistance for the month when the family moves out.

Before commencement of homeownership assistance, the family must execute a statement in which the family agrees to comply with all family obligations under the homeownership option.

The family must comply with the following obligations:

- The family must comply with the terms of the mortgage securing debt incurred to purchase the home or any refinancing of such debt.
- The family may not convey or transfer ownership of the home, except for purposes of financing, refinancing, or pending settlement of the estate of a deceased family member. Use and occupancy of the home are subject to 24 CFR 982.551 (h) and (i).
- The family must supply information to the HACC or HUD as specified in 24 CFR 982.551(b). The family must further supply any information required by the HACC or HUD concerning mortgage financing or refinancing, sale or transfer of any interest in the home, or homeownership expenses. The HACC requires three (3) months of mortgage statements at the time of the family's annual recertification.
- The family must notify the HACC before moving out of the home.
- The family must notify the HACC if the family defaults on the mortgage used to purchase the home. The HACC may terminate the family as outlined in Chapter 12.
- The family must notify the HACC when the family refinances the mortgage within 30 days so the HAP can be adjusted to reflect the monthly payment.
- No family member may have any ownership interest in any other residential property.
- The family must comply with the obligations of a participant family described in 24 CFR 982.551, except for the following provisions which do not apply to assistance under the homeownership option: 24 CFR 982.551(c), (d), (e), (f), (g) and (j).

15-VII.J. MAXIMUM TERM OF HOMEOWNER ASSISTANCE

Except in the case of a family that qualifies as an elderly or disabled family, other family members (described below) shall not receive homeownership assistance for more than [24 CFR 982.634]:

- Fifteen years, if the initial mortgage incurred to finance the purchase of the home has a term of 20 years or longer; or
- Ten years, in all other cases.

The maximum term described above applies to any member of the family who:

- Has an ownership interest in the unit during the time that homeownership payments are made or
- Is the spouse of any member of the household who has an ownership interest in the unit during the time homeownership payments are made.

In the case of an elderly family, the exception only applies if the family qualifies as an elderly family at the start of homeownership assistance. In the case of a disabled family, the exception applies if at any time during receipt of homeownership assistance the family qualifies as a disabled family.

If, during the course of homeownership assistance, the family ceases to qualify as a disabled or elderly family, the maximum term becomes applicable from the date homeownership assistance commenced. However, such a family must be provided at least 6 months of homeownership assistance after the maximum term becomes applicable (provided the family is otherwise eligible to receive homeownership assistance).

If the family has received such assistance for different homes, or from different PHAs, the total of such assistance terms is subject to the maximum term described in this part.

15-VII.K. HOMEOWNERSHIP ASSISTANCE PAYMENTS AND HOMEOWNERSHIP EXPENSES

The amount of the monthly assistance payment will be based on three factors [24 CFR 982.635]:

1. the voucher payment standard for which the family is eligible;
2. the monthly homeownership expenses; and
3. the family's household income.

The HACC will pay the lower of either the payment standard minus the total tenant payment (TTP) or the family's monthly homeownership expenses minus the TTP. The HCV family will pay the difference. The total loan payment for principal and interest may not exceed the HACC Payment Standard for the applicable unit size.

In determining the amount of the homeownership assistance payment at initial payment, the HACC will use the same payment standard schedule, payment standard amounts, and subsidy standards as those described elsewhere in this plan for the Housing Choice Voucher (HCV) Program. The payment standard for subsequent years will be the higher of: (1) the payment standard in effect at commencement of homeownership assistance; or (2) the payment standard in effect at the most recent regular family reexamination. The HACC also uses the same utility allowance schedule for the Homeownership Program as for the HCV Program. However, for the Homeownership Program only, the HACC will include a \$50 per month allowance for maintenance expenses.

The HACC will provide the lender with notice of the amount of the homeownership assistance payment prior to close of escrow and will pay the HACC's contribution towards the family's homeowner expense directly into a bank account established to debit the monthly mortgage payment unless otherwise required by the lender. The family will be required to deposit the family's portion into the monthly mortgage payment debit account unless the lender requires direct payment of HACC's contribution.

Homeownership assistance for a family terminates automatically 180 calendar days after the last homeownership assistance payment on behalf of the family. However, the HACC may grant

relief from this requirement in those cases where automatic termination would result in extreme hardship for the family.

The HACC must adopt policies for determining the amount of homeownership expenses to be allowed by the HACC in accordance with HUD requirements. The PITI may not exceed the payment standard.

Homeownership expenses (not including cooperatives) only include amounts allowed by the HACC to cover:

- Principal and interest on initial mortgage debt, any refinancing of such debt, and any mortgage insurance premium incurred to finance purchase of the home;
- Real estate taxes and public assessments on the home;
- Home insurance;
- The HACC allowance for maintenance expenses;
- The HACC allowance for costs of major repairs and replacements;
- The HACC utility allowance for the home;
- Principal and interest on mortgage debt incurred to finance costs for major repairs, replacements or improvements for the home. If a member of the family is a person with disabilities, such debt may include debt incurred by the family to finance costs needed to make the home accessible for such person, if the HACC determines that allowance of such costs as homeownership expenses is needed as a reasonable accommodation so that the homeownership option is readily accessible to and usable by such person;
- Land lease payments where a family does not own fee title to the real property on which the home is located; [see 24 CFR 982.628(b)].
- For a condominium unit, condominium operating charges or maintenance fees assessed by the condominium homeowner association, to the extent the inclusion does not exceed the payment standard.

Homeownership expenses for a cooperative member may only include amounts allowed by the HACC to cover:

- The cooperative charge under the cooperative occupancy agreement including payment for real estate taxes and public assessments on the home;
- Principal and interest on initial debt incurred to finance purchase of cooperative membership shares and any refinancing of such debt;
- Home insurance;
- The HACC allowance for maintenance expenses;
- The HACC allowance for costs of major repairs and replacements;
- The HACC utility allowance for the home; and

- Principal and interest on debt incurred to finance major repairs, replacements or improvements for the home. If a member of the family is a person with disabilities, such debt may include debt incurred by the family to finance costs needed to make the home accessible for such person, if the HACC determines that allowance of such costs as homeownership expenses is needed as a reasonable accommodation so that the homeownership option is readily accessible to and usable by such person.
- Cooperative operating charges or maintenance fees assessed by the cooperative homeowner association.

15-VIII.L. PORTABILITY

Subject to the restrictions on portability included in HUD regulations and PHA policies, a family may exercise portability if the receiving PHA is administering a voucher homeownership program and accepting new homeownership families [24 CFR 982.636, 982.637, 982.353(b) and (c), 982.552, 982.553]. The receiving PHA may absorb the family into its voucher program or bill the initial PHA.

The family must attend the briefing and counseling sessions required by the receiving PHA. The receiving PHA will determine whether the financing for, and the physical condition of the unit, are acceptable. The receiving PHA must promptly notify the initial PHA if the family has purchased an eligible unit under the program or if the family is unable to purchase a home within the maximum time established by the HACC.

15-VII.M. MOVING WITH CONTINUED ASSISTANCE

A family receiving homeownership assistance may move with continued tenant-based assistance. The family may move with voucher rental assistance or with voucher homeownership assistance. Continued tenant-based assistance for a new unit cannot begin so long as any family member holds title to the prior home [24 CFR 982.637].

The HACC may deny permission to move to a new unit with continued voucher assistance as follows:

- Lack of funding to provide continued assistance.
- At any time, the HACC may deny permission to move with continued rental or homeownership assistance in accordance with 24 CFR 982.638, regarding denial or termination of assistance.
- In accordance with the HACC's policy regarding number of moves within a 12-month period.

The HACC must deny the family permission to move to a new unit with continued voucher rental assistance if:

- The family defaulted on an FHA-insured mortgage; and

- The family fails to demonstrate that the family has conveyed, or will convey, title to the home, as required by HUD, to HUD or HUD's designee; and the family has moved, or will move, from the home within the period established or approved by HUD.

15-VII.N. DENIAL OR TERMINATION OF ASSISTANCE

At any time, the HACC may deny or terminate homeownership assistance in accordance with HCV program requirements in 24 CFR 982.552 (Grounds for denial or termination of assistance) or 24 CFR 982.553 (Crime by family members) [24 CFR 982.638].

The HACC may also deny or terminate assistance for violation of participant obligations described in 24 CFR Parts 982.551 or 982.633 and in accordance with its own policy.

The HACC must terminate voucher homeownership assistance for any member of family receiving homeownership assistance that is dispossessed from the home pursuant to a judgment or order of foreclosure on any mortgage (whether FHA insured or non-FHA) securing debt incurred to purchase the home, or any refinancing of such debt.

A participant in the Homeownership Program shall be entitled to the same termination notice and informal hearing procedures as set forth in this Administrative Plan.

PART VIII: SPECIAL PURPOSE VOUCHERS

15-VIII.A. RENTAL ASSISTANCE FOR NON ELDERLY PERSONS WITH DISABILITIES IN SUPPORT OF DESIGNATED HOUSING PROGRAM

Under this HUD authorized program, the HACC to provides Housing Choice Vouchers to non-elderly persons with disabilities on the public housing wait list whose housing options have been reduced as a result of an “elderly only” designation in a public housing community.

Non-elderly persons with disabilities who reside in “elderly only” designated buildings are protected and have the right to remain in place. However, non-elderly families on the public housing waiting list are no longer eligible for housing in these communities.

Current Designated Housing:

The HACC currently owns seven (7) housing developments in south suburban Cook County that are designated as *elderly only*. These housing developments are located in Robbins, Chicago Heights, Park Forest, Riverdale and Harvey and consist of 604 total apartments.

The HACC currently administers 100 non-elderly disabled (NED) vouchers. In the event the HACC decides to apply to designate any other housing as “elderly only,” the HACC will apply for additional NED vouchers from HUD. When any of the 100 vouchers turnover, a new voucher will be issued to another eligible applicant.

Affected Applicants on the Public Housing Waiting List:

If awarded additional NED vouchers, the HACC will make HCV's available to eligible non-elderly persons with disabilities on the HACC's public housing waiting list according to their position on the waiting list and pursuant to HACC's Administrative Plan. In the event voucher capacity exceeds the number of interested and eligible applicants on the public housing waiting list, the HACC will offer assistance to applicants on the HCV waiting list. This will allow low income non-elderly persons with disabilities to gain access to decent, safe, sanitary and affordable housing.

Chapter 16

PROGRAM ADMINISTRATION

INTRODUCTION

This chapter discusses administrative policies and practices that are relevant to the activities covered in this plan. The policies are discussed in seven parts as described below:

Part I: Administrative Fee Reserve. This part describes the HACC's policies with regard to oversight of expenditures from its administrative fee reserve.

Part II: Setting Program Standards and Schedules. This part describes what payment standards are, and how they are updated, as well as how utility allowances are established and revised.

Part III: Informal Reviews and Hearings. This part outlines the requirements and procedures for informal reviews and hearings, and for informal hearings regarding citizenship status.

Part IV: Owner or Family Debts to the HACC. This part describes policies for recovery of monies that the HACC has overpaid on behalf of families, or to owners, and describes the circumstances under which the HACC will offer repayment agreements to owners and families. Also discussed are the consequences for failure to make payments in accordance with a repayment agreement.

Part V: Section 8 Management Assessment Program (SEMAP). This part describes what the SEMAP scores represent, how they are established, and how those scores affect HACC.

Part VI: Record-Keeping. All aspects of the program involve certain types of record-keeping. This part outlines the privacy rights of applicants and participants and record retention policies HACC will follow.

Part VII: Reporting and Record Keeping for Children with Environmental Intervention Blood Lead Level. This part describes the HACC's responsibilities for reporting, data collection, and record keeping relative to children with environmental intervention blood lead levels that are less than six years of age, and are receiving HCV assistance.

Part VIII: Determination of Insufficient Funding. This part describes the policies for determining if there is sufficient funding to issue vouchers, to approve moves to higher cost units or areas, and to continue assistance for all participant families.

PART I: ADMINISTRATIVE FEE RESERVE [24 CFR 982.155]

The HACC must maintain an administrative fee reserve for the program to pay program administrative expenses in excess of administrative fees paid by HUD for the fiscal year. If funds in the administrative fee reserve are not needed to cover the HACC administrative expenses, the HACC may use these funds for other housing purposes permitted by federal, state, and local law.

If the HACC has not adequately administered any HCV program, HUD may prohibit use of funds in the administrative fee reserve and may direct the HACC to use funds in the reserve to improve administration of the program or to reimburse ineligible expenses. HUD also may prohibit use of the funds for certain purposes.

Expenditures from the administrative fee reserve will be made in accordance with all applicable Federal requirements. Expenditures will not exceed \$25,000 per occurrence without the prior approval of the HACC's Board of Commissioners.

PART II: SETTING PROGRAM STANDARDS AND SCHEDULES

16-II.A. OVERVIEW

Although many of the program's requirements are established centrally by HUD, the HCV program's regulations recognize that some flexibility is required to allow the HACC to adapt the program to local conditions. This part discusses how the HACC establishes and updates certain schedules and standards that are used to administer the program locally. Details about how these schedules are applied to individual families are provided in other chapters. The schedules and standards discussed here include:

- *Payment Standards*, which dictate the maximum subsidy a family can receive (application of the payment standards is discussed in Chapter 6) and
- *Utility Allowances*, which specify how a family's payment should be adjusted to account for tenant-paid utilities (application of utility allowances is discussed in Chapter 6).

Copies of the payment standard and utility allowance schedules are available for review in the HACC's offices during normal business hours. Families, owners, and members of the public may submit written comments on the schedules discussed in this part, at any time, for consideration during the next revision cycle. The HACC will retain documentation to support its annual review of payment standards and utility allowance schedules for at least 3 years.

16-II.B. PAYMENT STANDARDS

The payment standard sets the maximum subsidy payment a family can receive from the HACC each month [24 CFR 982.505(a)]. Payment standards are based on HUD's Small Area Fair Market Rents (SAFMRs) published annually by HUD.

The HACC has established a payment standard schedule that establishes payment standard amounts for each SAFMR area within the HACC's jurisdiction and for each unit size within each of the SAFMR areas. For each unit size, the HACC may establish a single payment standard amount for the whole SAFMR area or may set different payment standards for different parts of the SAFMR area. Unless HUD grants an exception, the HACC is required to establish a payment standard within a "basic range" established by HUD – between 90 and 110 percent of the published SAFMR for each unit size.

Updating Payment Standards

The HACC will review the appropriateness of the payment standards on an annual basis when the new SAFMR is published. In addition to ensuring the payment standards are always within the "basic range" the HACC will consider the following factors when determining whether an adjustment should be made to the payment standard schedule:

- **Funding Availability:** The HACC will review the budget to determine the impact projected subsidy adjustments will have on funding available for the program and the number of families served. The HACC will compare the number of families who could be served under revised payment standard amounts with the number assisted under current payment standard amounts.
- **Rent Burden of Participating Families:** Rent burden will be determined by identifying the percentage of families, for each unit size, that are paying more than 30 percent of their monthly adjusted income as the family share. When 40 percent or more of families, for any given unit size, are paying more than 30 percent of adjusted monthly income as the family share, the HACC will consider increasing the payment standard. In evaluating rent burdens, the HACC will not include families renting a larger unit than their family unit size.
- **Quality of Units Selected:** The HACC will review the quality of units selected by participant families when making the determination of the percent of income families are paying for housing to ensure that payment standard increases are only made when needed to reach the mid-range of the market.
- **Changes in Rent to Owner:** The HACC may review a sample of the units to determine how often owners are increasing or decreasing rents and the average percent of increases/decreases by bedroom size.
- **Unit Availability:** The HACC 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:** The HACC 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.

If the current payment standards fall within the basic range, a change to the HACC's payment standards is not required, but may still be made. In deciding when to implement any change, the HACC will consider the reexamination schedule to determine changes that may be required as a result of a change in payment standard.

Exception Payment Standards [982.503(c)]

PHAs 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 SAFMR 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 SAFMR area may not include more than 50 percent of the population of the SAFMR area.

Unit-by-Unit Exceptions [24 CFR 982.503(c)(2)(ii)]

Unit-by-unit exceptions to the HACC's payment standards generally are not permitted. However, an exception may be made as a reasonable accommodation for a family that includes a person with disabilities. (See Chapter 2 for a discussion of reasonable accommodations.) This type of exception does not affect the HACC's payment standard schedule.

When needed as a reasonable accommodation, the HACC may make an exception to the payment standard without HUD approval if the exception amount does not exceed 120 percent of the applicable SAFMR for the unit size. The HACC may request HUD approval for an exception to the payment standard for a particular family if the required amount falls above 120 percent of the SAFMR.

A family that requires a reasonable accommodation may request a higher payment standard at the time the Request for Tenancy Approval (RFTA) is submitted. The family must document the need for the exception. In order to approve an exception, or request an exception from HUD, the HACC must determine that:

- There is a shortage of affordable units that would be appropriate for the family;
- The family's TTP would otherwise exceed 40 percent of adjusted monthly income; and
- The rent for the unit is reasonable.

"Success Rate" Payment Standard Amounts [24 CFR 982.503(e)]

If a substantial percentage of families have difficulty finding a suitable unit, the HACC may request a “success rate payment standard” that applies to the entire jurisdiction. If approved by HUD, a success rate payment standard allows the HACC to set its payment standards at a higher level. To support the request, HACC must demonstrate that during the most recent 6-month period for which information is available:

- Fewer than 75 percent of families who were issued vouchers became participants;
- The HACC had established payment standards for all unit sizes and for the entire jurisdiction at 110 percent of the published SAFMR; and
- The HACC 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 SAFMR area, the HACC may choose to adjust the payment standard for only some unit sizes in all, or a designated part, of HACC’s jurisdiction within the SAFMR area.

Decreases in the Payment Standard Below the Basic Range [24 CFR 982.503(d)]

The HACC must request HUD approval to establish a payment standard amount that is lower than the basic range. At HUD’s sole discretion, HUD may approve establishment of a payment standard lower than the basic range. HUD will not approve a lower payment standard if the family share for more than 40 percent of program participants exceeds 30 percent of adjusted monthly income.

16-II.C. UTILITY ALLOWANCES

The HACC’s established utility allowance schedule is used in determining family share and PHA subsidy [24 CFR 982.517]. The HACC must maintain a utility allowance schedule for (1) all tenant-paid utilities, (2) the cost of tenant-supplied refrigerators and ranges, and (3) other tenant-paid housing services such as trash collection.

The utility allowance schedule must be determined based on the typical cost of utilities and services paid by energy-conservative households that occupy housing of similar size and type in the same locality. In developing the schedule, the HACC 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, the HACC must classify utilities and other housing services according to the following general categories: space heating; air conditioning; cooking; water heating; water; sewer; trash collection; other electric; cost of tenant-supplied refrigerator; cost of tenant-supplied range; and other specified housing services.

The cost of each utility and housing service must be stated separately by unit size and type. Chapter 18 of the *HCV Guidebook* provides detailed guidance to the HACC about establishing utility allowance schedules.

Air Conditioning

An allowance for air-conditioning must be provided when the majority of housing units in the market have central air-conditioning or are wired for tenant-installed air conditioners.

The HACC has not included an allowance for air-conditioning in its schedule.

Reasonable Accommodation

HCV program regulations require the HACC to approve a utility allowance amount higher than shown on the HACC's schedule if a higher allowance is needed as a reasonable accommodation for a family member with a disability. For example, if a family member with a disability requires such an accommodation, the HACC will approve an allowance for air-conditioning, even if the HACC has determined that an allowance for air-conditioning generally is not needed (See Chapter 2 for policies regarding the request and approval of reasonable accommodations).

Utility Allowance Revisions

The HACC will review its schedule of utility allowances starting in January of each year, and must revise the schedule if there has been a change of 10 percent or more in any utility rate since the last time the allowance for that utility was revised.

The HACC must maintain information supporting its annual review of utility allowance and any revisions made in its utility allowance schedule for three (3) years or until utility allowance schedules are revised, whichever is later.

PART III: INFORMAL REVIEWS, HEARINGS, AND POLICY

16-III.A. OVERVIEW

When the HACC makes a decision that has a negative impact on a family, the family is often entitled to appeal the decision. For applicants, the appeal takes the form of an informal review; for participants, or for applicants denied admission because of citizenship issues, the appeal takes the form of an informal hearing.

PHAs are required to include in their administrative plans, informal review procedures for applicants and informal hearing procedures for participants [24 CFR 982.54(d)(12) and (13)].

16-III.B. INFORMAL REVIEWS

Informal reviews are provided for program applicants. An applicant is someone who has applied for admission to the program, but is not yet a participant in the program. Informal reviews are intended to provide a “minimum hearing requirement” [24 CFR 982.554] and need not be as elaborate as the informal hearing requirements. (Federal Register Volume 60, No. 127, p 36490).

Decisions Subject to Informal Review

The HACC must give an applicant the opportunity for an informal review of a decision denying assistance [24 CFR 982.554(a)]. The HACC will only offer an informal review to applicants for whom assistance is being for the following reasons:

- Denying listing on the HACC waiting list
- Denying or withdrawing a voucher
- Refusing to enter into a HAP contract or approve a lease
- Refusing to process or provide assistance under portability procedures

Informal reviews are *not* required for the following reasons [24 CFR 982.554(c)]:

- Discretionary administrative determinations by the HACC
- General policy issues or class grievances
- A determination of the family unit size under the HACC subsidy standards
- The HACC’S determination not to grant approval of the tenancy
- The HACC’S determination that the unit is not in compliance with the HQS
- The HACC’S determination that the unit is not in accordance with the HQS due to family size or composition

Notice to the Applicant [24 CFR 982.554(a)]

The HACC must give an applicant prompt notice of a decision denying assistance. The notice must contain a brief statement of the reasons for the HACC’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.

Scheduling an Informal Review

A request for an informal review must be made in writing and delivered to the HACC either in person, or by first class mail by the close of the business day, no later than 30 business days from the date of the HACC’s denial of assistance.

Except as provided in Section 3-III.G, the HACC must schedule and send written notice of the informal review within 30 business days of the family’s request.

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.

The applicant must be provided an opportunity to present written or oral objections to the decision of the HACC.

The person conducting the review will make a recommendation to the HACC, but the HACC is responsible for making the final decision as to whether assistance should be granted or denied.

Informal Review Decision [24 CFR 982.554(b)]

The HACC must notify the applicant of the HACC's final decision, including a brief statement of the reasons for the final decision. In rendering a decision, the HACC will evaluate the following matters:

- Whether or not the grounds for denial were stated factually in the Notice.
- The validity of grounds for denial of assistance -- If the grounds for denial are not specified in the regulations, then the decision to deny assistance will be overturned.
- The validity of the evidence -- The HACC will evaluate whether the facts presented prove the grounds for denial of assistance. If the facts prove that there are grounds for denial and the denial is required by HUD, the HACC will uphold the decision to deny assistance.
- If the facts prove the grounds for denial and the denial is discretionary, the HACC will consider the recommendation of the person conducting the informal review in making the final decision whether to deny assistance.

The HACC will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed within 15 business days of the informal review to the applicant and his or her representative, if any, along with proof of mailing.

If the decision to deny is overturned as a result of the informal review, processing for admission will resume.

If the family fails to appear for their informal review, the denial of admission will stand and the family will be so notified.

16-III.C. INFORMAL HEARINGS FOR PARTICIPANTS

[24 CFR 982.555, Pub.L. 109-162]

PHAs must offer an informal hearing for certain PHA determinations relating to the individual circumstances of a participant family. A participant is defined as a family that has been admitted

to the HACC's HCV program and is currently assisted in the program. The purpose of the informal hearing is to consider whether the HACC's decisions related to the family's circumstances are in accordance with the law, HUD regulations, and PHA policies.

The HACC is not permitted to terminate a family's assistance until the time allowed for the family to request an informal hearing has elapsed and any requested hearing has been completed. Termination of assistance for a participant may include any or all of the following:

- Refusing to enter into a HAP contract or approve a lease
- Terminating housing assistance payments under an outstanding HAP contract
- Refusing to process or provide assistance under portability procedures

Decisions Subject to Informal Hearing

Circumstances for which the HACC must give a participant family an opportunity for an informal hearing are as follows:

- A determination of the family's annual or adjusted income and the use of such income to compute the housing assistance payment
- A determination of the appropriate utility allowance (if any) for tenant-paid utilities from the HACC utility allowance schedule
- A determination of the family unit size under the HACC's subsidy standards
- A determination that a housing choice voucher program family is residing in a unit with a larger number of bedrooms than appropriate for the family unit size under the HACC's subsidy standards or the HACC determination to deny the family's request for exception from the standards
- A determination to terminate assistance for a participant family because of the family's actions or failure to act
- A determination to terminate assistance because the participant has been absent from the assisted unit for longer than the maximum period permitted under HACC 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)]
- A determination to deny admission based on an unfavorable history that may be the result of domestic violence, dating violence, or stalking.

Circumstances for which an informal hearing is not required are as follows:

- Discretionary administrative determinations by the HACC
- General policy issues or class grievances
- Establishment of the HACC schedule of utility allowances for families in the program
- The HACC'S determination not to approve an extension or suspension of a voucher term

- The HACC'S determination not to approve a unit or tenancy
- The HACC'S determination that a unit selected by the applicant is not in compliance with the HQS
- The HACC'S determination that the unit is not in accordance with HQS because of family size
- A determination by the HACC to exercise or not to exercise any right or remedy against an owner under a HAP contract
- The family's decision to voluntarily withdraw from a rental assistance program.

The HACC will only offer participants the opportunity for an informal hearing when required to by the regulations.

Informal Hearing Procedures

Notice to the Family [24 CFR 982.555(c)]

When the HACC makes a decision that is subject to informal hearing procedures, the HACC must inform the family of its right to an informal hearing at the same time that it informs the family of the decision.

For decisions related to the family's annual or adjusted income, the determination of the appropriate utility allowance, and the determination of the family unit size, the HACC 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.

In cases where the HACC 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 HACC
- A brief statement of the reasons for the decision including the regulatory reference
- The date the proposed action will take place
- A statement of the family's right to an explanation of the basis for the HACC's decision
- A statement that if the family does not agree with the decision, the family may request an informal hearing of the decision
- A deadline for the family to request the informal hearing
- To whom the hearing request should be addressed

Scheduling an Informal Hearing [24 CFR 982.555(d)]

When an informal hearing is required, the HACC must proceed with the hearing in a reasonably expeditious manner upon the request of the family.

A request for an informal hearing must be made in writing and delivered to the HACC either in person or by first class mail by the close of the business day, no later than 30 business days from the date of the HACC's decision or notice to terminate assistance.

The HACC must schedule and send written notice of the informal hearing to the family within 30 business days of the family's request.

The family may request to reschedule a hearing for good cause or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family. Requests to reschedule a hearing must be made orally or in writing prior to the hearing date. At its discretion, the HACC may request documentation of the "good cause" prior to rescheduling the hearing. The HACC will limit the number of scheduled hearings to three (3).

If the family does not appear at the scheduled time and was unable to reschedule the hearing in advance due to the nature of the conflict, the family must contact the HACC within 24 hours of the scheduled hearing date, excluding weekends and holidays. The HACC 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. The HACC will hold the hearing open for at least one week. If the family does not contact the HACC, the hearing officer will make send a written decision to uphold the termination or other decision of the HACC.

Pre-Hearing Right to Discovery [24 CFR 982.555(e)]

The family will be allowed to copy any documents related to the hearing at a cost of \$.35 per page. The family must request discovery of the HACC documents no later than 12:00 p.m. on the business day prior to the scheduled hearing date.

The HACC must be given an opportunity to examine at the HACC offices before the hearing any family documents that are directly relevant to the hearing. Whenever a participant requests an informal hearing, the HACC will automatically mail a letter to the participant requesting a copy of all documents that the participant intends to present or utilize at the hearing. The participant must make the documents available no later than 12:00 pm on the business day prior to the scheduled hearing date.

For the purpose of informal hearings, *documents* include records and regulations.

Participant's Right to Bring Counsel [24 CFR 982.555(e)(3)]

At its own expense, the family may be represented by a lawyer or other representative at the informal hearing.

Informal Hearing Officer [24 CFR 982.555(e)(4)]

Informal hearings will be conducted by a person or persons approved by the HACC, other than the person who made or approved the decision or a subordinate of the person who made or approved the decision.

The HACC will provide a listing of designated hearing officers. A third party may serve as the hearing officer at the HACC discretion.

Attendance at the Informal Hearing

Hearings may be attended by the hearing officer and the following applicable persons:

- An HACC representative(s) and any witnesses for the HACC
- The participant and any witnesses for the participant (may be called in separately)
- The participant's counsel or other representative
- Any other person approved by the HACC as a reasonable accommodation for a person with a disability

Conduct at Hearings

The hearing officer is responsible to manage the order of business and to ensure that hearings are conducted in a professional and businesslike manner. Attendees are expected to comply with all hearing procedures established by the hearing officer and guidelines for conduct. Any person demonstrating disruptive, abusive or otherwise inappropriate behavior will be excused from the hearing at the discretion of the hearing officer.

Evidence [24 CFR 982.555(e)(5)]

The HACC 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 the HACC. Writings include all forms of recorded communication or representation, including letters, words, pictures, sounds, videotapes, symbols, or combinations thereof.
- **Demonstrative evidence:** Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a model, a chart or other diagram.

- **Real evidence:** A tangible item relating directly to the case.

Hearsay Evidence is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter. Even though evidence, including hearsay, is generally admissible, hearsay evidence alone cannot be used as the sole basis for the hearing officer's decision.

If either the HACC or the family fail to comply with the discovery requirements described above, the hearing officer will refuse to admit such evidence. Other than the failure of a party to comply with discovery, the hearing officer has the authority to overrule any objections to evidence.

Hearing Officer's Decision [24 CFR 982.555(e)(6)]

The person who conducts the hearing must issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family must be based on a preponderance of evidence presented at the hearing. A copy of the hearing must be furnished promptly to the family.

In rendering a decision, the hearing officer will consider the following matters:

- **The HACC's Notice to the Family:** The hearing officer will determine if the reasons for the HACC's decision are factually stated in the Notice.
- **Discovery:** The hearing officer will determine if the HACC and the family were given the opportunity to examine any relevant documents in accordance with the HACC policy.
- **The HACC's Evidence to Support HACC's Decision:** The evidence consists of the facts presented. Evidence is not a conclusion and it is not argument. The hearing officer will evaluate the facts to determine if they support the HACC's conclusion.
- **Validity of Grounds for Termination of Assistance (when applicable):** The hearing officer will determine if the termination of assistance is for one of the grounds specified in the HUD regulations and the HACC policies. If the grounds for termination are not specified in the regulations or in compliance with the HACC policies, then the decision of the HACC will be overturned.
- **Mitigating Circumstances:** The hearing officer will briefly outline how he/she considered mitigating circumstances in making the decision, including, but not limited to: a family member's health/medical issue, a family member's disability, a family member's status as a Veteran, and VAWA.

The hearing officer will issue a written decision to the family and the HACC no later than 15 business days after the hearing. The report will contain the following information:

- **Hearing information:**
 - Name of the participant

- Date, time and place of the hearing
- Name of the hearing officer
- Name of the HACC representative; and
- Name of family representative (if any)
- **Background:** A brief, impartial statement of the reason for the hearing.
- **Summary of the Evidence:** The hearing officer will summarize the testimony of each witness and identify any documents that a witness produced in support of his/her testimony and that are admitted into evidence.
- **Findings of Fact:** The hearing officer will include all findings of fact, based on a preponderance of the evidence. *Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.
- **Conclusions:** The hearing officer will render a conclusion derived from the facts that were found to be true by a preponderance of the evidence. The conclusion will result in a determination of whether these facts uphold the HACC's decision.
- **Order:** The hearing report will include a statement of whether the HACC's decision is upheld or overturned. If it is overturned, the hearing officer will instruct the HACC to change the decision in accordance with the hearing officer's determination. If it is upheld, the hearing officer will instruct the HACC to terminate assistance or to otherwise maintain the participant's program status that was the basis for appeal.
- **Family Option:** The hearing report will notify the family of any options available if the family disagrees with the hearing officer's decision. In Cook County, the family has the right to file a petition for a writ of certiorari in the Circuit Court of Cook County.

Procedures for 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. If the family misses an appointment or deadline ordered by the hearing officer, the action of the HACC will take effect and another hearing will not be granted.

If the hearing officer conditionally reinstates the family, the hearing decision shall include the date and time of a compliance meeting at which the family can demonstrate that the family has met the conditions required by the hearing decision for reinstatement.

A further hearing may be requested for the purpose of rectifying any obvious mistake of law made during the hearing or any obvious injustice not known at the time of the hearing.

It shall be within the sole discretion of the HACC to grant or deny the request for further hearing. A further hearing may be limited to written submissions by the parties, in the manner specified by the hearing officer.

PHA Notice of Final Decision [24 CFR 982.555(f)]

The HACC is not bound by the decision of the hearing officer for matters in which the HACC is not required to provide an opportunity for a hearing, decisions that exceed the authority of the hearing officer, decisions that conflict with or contradict HUD regulations, requirements, or are otherwise contrary to federal, state or local laws.

If the HACC determines it is not bound by the hearing officer's decision in accordance with HUD regulations, the HACC must promptly notify the family of the determination and the reason for the determination.

The HACC will mail a "Notice of Final Decision" including the hearing officer's report, to the participant and their representative. This Notice will be sent by first-class mail, postage pre-paid with an affidavit of mailing enclosed. The participant will be mailed the original "Notice of Final Decision" and a copy of the proof of mailing. A copy of the "Notice of Final Decision" along with the original proof mailing will be maintained in the HACC's file.

16-III.D. HEARING AND APPEAL PROVISIONS FOR NON-CITIZENS

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 [24 CFR 5.514].

Assistance to a family may not be delayed, denied, or terminated on the basis of immigration status at any time prior to a decision under the United States Citizenship and Immigration Services (USCIS) appeal process. Assistance to a family may not be terminated or denied while the HACC 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 HACC'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.

Notice of Denial or Termination of Assistance for Noncitizens [24 CFR 5.514(d)]

As discussed in Chapters 3 and 11, the notice of denial or termination of assistance for noncitizens must advise the family:

- That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance.
- The family may be eligible for proration of assistance.

- In the case of a participant, the criteria and procedures for obtaining relief under the provisions for preservation of families [24 CFR 5.514 and 5.518].
- That the family has a right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or explanation in support of the appeal.
- That the family has a right to request an informal hearing with the HACC either upon completion of the USCIS appeal or in lieu of the USCIS appeal.
- For applicants, assistance may not be delayed until the conclusion of the USCIS appeal process, but assistance may be delayed during the period of the informal hearing process.

USCIS Appeal Process [24 CFR 5.514(e)]

When the HACC receives notification that the USCIS secondary verification failed to confirm eligible immigration status, the HACC will notify the family of the results of the USCIS verification within 30 business days of receiving the results.

The family will have 30 calendar days from the date of the notification to request an appeal of the USCIS results. The request for appeal must be made in writing by the family directly to the USCIS. The family must provide the HACC 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 the HACC, of its decision. When the USCIS notifies the HACC of the decision, HACC must notify the family of its right to request an informal hearing. The HACC will send written notice to the family of its right to request an informal hearing within 30 business days of receiving notice of the USCIS decision regarding the family's immigration status.

Informal Hearing Procedures for Applicants [24 CFR 5.514(f)]

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that the HACC provide a hearing. The request for a hearing must be made either within 30 days of receipt of the HACC notice of denial or within 30 days of receipt of the USCIS appeal decision.

The informal hearing procedures for applicant families are described below.

Informal Hearing Officer

The HACC 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. See Section 16-III.C. for a listing of positions that serve as informal hearing officers.

Evidence

The family will be allowed to copy specific documents in their file related to the hearing at a cost of \$.35 per page paid in advance by cash or money order. The family must request discovery of the HACC documents at 12:00 p.m. two business days before the prior to the hearing.

The family must be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

The family must also be provided the opportunity to refute evidence relied upon by the HACC, and to confront and cross-examine all witnesses on whose testimony or information the HACC relies.

Representation and Interpretive Services

The family is entitled to be represented by an attorney or other designee, at the family's expense, and to have such person make statements on the family's behalf.

The family is entitled to arrange for an interpreter to attend the hearing, at the expense of the family or the HACC, as may be agreed upon by the two parties.

Recording of the Hearing

The family is entitled to have the hearing recorded by audiotape. The HACC will not provide a transcript of an audio taped hearing.

Hearing Decision

The HACC must provide the family with a written final decision, based solely on the facts presented at the hearing, within 15 calendar days of the date of the informal hearing. The decision must state the basis for the decision.

Informal Hearing Procedures for Residents [24 CFR 5.514(f)]

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that the HACC provide a hearing. The request for a hearing must be made either within 30 days of receipt of the HACC notice of termination or within 30 days of receipt of the USCIS appeal decision.

For the informal hearing procedures that apply to participant families whose assistance is being terminated based on immigration status, see Section 16-III.C.

Retention of Documents [24 CFR 5.514(h)]

The HACC must retain for a minimum of 5 years the following documents that may have been submitted to the HACC by the family or provided to the HACC as part of the USCIS appeal or the HACC 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

PART IV: OWNER OR FAMILY DEBTS TO HACC

16-IV.A. OVERVIEW

PHAs are required to include in the administrative plan, policies concerning repayment by a family of amounts owed to the HACC [24 CFR 982.54]. This part describes the HACC's policies for recovery of monies that have been overpaid on behalf of families or to owners.

When an action or inaction of an owner or participant results in the overpayment of housing assistance, the HACC holds the owner or participant liable to return any overpayments to the HACC.

The HACC will enter into repayment agreements in accordance with the policies contained in this part as a means to recover overpayments.

When an owner or participant refuses to repay monies owed to the HACC, the HACC will utilize other available collection alternatives including, but not limited to, the following:

- Collection agencies
- Small claims court
- Civil law suit
- State income tax set-off program

16-IV.B. REPAYMENT POLICY

Owner Debts to HACC

Any amount due to the HACC by an owner must be repaid by the owner within 30 days of the HACC determination of the debt.

If the owner fails to repay the debt within the required time frame and is entitled to future HAP payments, the HACC will reduce the future HAP payments by the amount owed until the debt is paid in full. If the owner is not entitled to future HAP payments the HACC will offer to enter into a repayment agreement in accordance with the policies below.

Repayment Agreement for owners [24 CFR 792.103]

The term *repayment agreement* refers to a formal document signed by an owner and provided to the HACC in which an owner acknowledges a debt in a specific amount and agrees to repay the amount due at specific time periods.

The HACC will not enter into a repayment agreement for amounts in excess of \$3,000. If the amount owed to the HACC is over \$3,000, the owner must pay the excess amount before a repayment agreement will be entered. The HACC may waive this requirement on a case by case basis and set an alternate payment schedule.

The following outlines the repayment schedule:

- Amounts between \$1,500 and \$3,000 must be repaid within 24 months
- Amounts between \$500 and \$1,499 must be repaid within 12 months
- No repayment agreement will be executed for amounts under \$500. This will be applied on a case by case basis and will require proof of hardship.

If the owner refuses to repay the debt, enter into a repayment agreement, or breaches a repayment agreement, the HACC will ban the owner from future participation in the program and pursue other modes of collection.

No Offer of Repayment Agreement

The HACC will not enter into a repayment agreement if there is already a repayment agreement in place with the owner or the amounts owed by the owner exceed the federal or state threshold for criminal prosecution. The HACC may choose not to enter into a repayment agreement if the owner previously had a repayment agreement for similar circumstances or other fraudulent activity. The HACC may choose not to enter into a repayment agreement if the overpayment is a result of fraud or program abuse.

Family Debts to HACC [PIH 2015-02]

Any amount due to the HACC by an HCV participant must be repaid by the family. If the family is unable to repay the debt within 30 days, the HACC may offer to enter into a repayment agreement in accordance with the policies below.

If the family refuses to repay the debt, enter into a repayment agreement within 90 days, or breaches a repayment agreement, the HACC will terminate the assistance upon notification to the family and pursue other modes of collection. HUD does not authorize any HACC-sponsored amnesty or debt forgiveness programs.

Repayment Agreement for families [24 CFR 792.103]

The term *repayment agreement* refers to a formal document signed by a tenant and provided to the HACC in which a tenant acknowledges a debt in a specific amount and agrees to repay the amount due at specific time periods.

All repayment agreements will include the following information:

- Total debt owed
- Amount of lump sum payment made at time of execution, if applicable
- The monthly repayment amount
- The due date of the monthly payment
- The reason for the repayment agreement
- The terms of the agreement may be renegotiated if there is a decrease in the family's income, at the written request of the family, or increase in the family's income, at the written notification of the HACC
- Renegotiated terms will not be retroactive, but will be effective the first of the month following the written notice of the family or the HACC
- Late and missed payments constitute default of the repayment agreement and may result in termination of assistance

The HACC will require a 10% down payment of the total debt due unless the family requests a hardship waiver of the down payment.

The monthly retroactive rent payment plus the amount of rent the tenant pays at the time the repayment agreement is executed should be affordable and not exceed 40 percent of the family's monthly adjusted income. The HACC will calculate the monthly payment and the length of the agreement by subtracting the 30% of the family monthly adjusted income or family's monthly rent portion, whichever is higher, from 40% of the family's monthly adjusted income and determining the number of months needed to pay the balance at that rate. If, based on the monthly payment amounts the term of the agreement will exceed sixty (60) months, the HACC may re-negotiate the payments so the term does not exceed sixty (60) months. Families claiming zero income are not exempt from the requirement to repay the debt and must enter into a repayment agreement, if one is offered; the monthly payment and term of the repayment agreement will be discussed on a case by case basis.

Non-Payment

If the family fails to make 3 payments during the repayment period, the HACC will issue a notice of termination for default. The family may appeal the decision as outlined earlier in this chapter. The family may avoid termination by paying any past due balance and resuming monthly payments.

No Offer of Repayment Agreement

The HACC will not enter into a repayment agreement if there is already a repayment agreement in place with the family or the amounts owed by the family exceed the federal or state threshold for criminal prosecution. The HACC may choose not to enter into a repayment agreement if the family previously had a repayment agreement for similar circumstances or other fraudulent activity. The HACC may choose not to enter into a repayment agreement if the overpayment is a result of fraud or program abuse.

The HACC will not enter into repayment agreements in the following circumstances:

- The family owes \$5,000 or more,
- 40% of the family's adjusted income is \$0, or
- The family pays 40% or more of the monthly adjusted income for rent,
- The number of months for repayment would last longer than 60 months.

Debts Owed to Public Housing Agencies and Terminations

The EIV system contains a national repository of families that owe a debt to a PHA and/or have been terminated from a federally assisted housing program, available online for all PHAs to access during the time of application for rental assistance and at annual/interim examinations. The HACC will update the repository with any amounts owed to the HACC by participants.

PHAs may deny admission to a program if the family is not suitable for tenancy for (but not limited to) such reasons as unacceptable past performance in meeting financial obligations, history of criminal activity, eviction from federally assisted housing in the last five years, family has committed fraud, bribery or any other corrupt or criminal act in connection with a federal housing program or if a family currently owes rent or other amounts to the PHA or to another PHA in connection with a federally assisted housing program under US Housing Act of 1937[24 CFR 982.552].

PART V: MANAGEMENT ASSESSMENT (SEMAP)

16-V.A. OVERVIEW

The Section 8 Management Assessment Program (SEMAP) is a tool that allows HUD to measure PHA performance in key areas to ensure program integrity and accountability. SEMAP scores translate into a rating for each PHA as high performing, standard, or troubled. Scores on individual SEMAP indicators, as well as overall SEMAP ratings, can affect the HACC in several ways.

- High-performing PHAs can be given a competitive advantage under notices of funding availability [24 CFR 985.103].
- PHAs with deficiencies on one or more indicators are required to correct the deficiencies and report to HUD [24 CFR 985.106].
- PHAs with an overall rating of “troubled” are subject to additional HUD oversight, including on-site reviews by HUD staff, a requirement to develop a corrective action plan, and monitoring to ensure the successful implementation of the corrective action plan. In addition, PHAs that are designated “troubled” may not use any part of the administrative fee reserve for other housing purposes [24 CFR 985.107].
- HUD may determine that the HACC's failure to correct identified SEMAP deficiencies or to prepare and implement a corrective action plan required by HUD constitutes a default under the ACC [24 CFR 985.109].

16-V.B. SEMAP CERTIFICATION

The HACC must submit the HUD-required SEMAP certification form within 60 calendar days after the end of its fiscal year. The certification must be approved by Board resolution and signed by the Executive Director. If the HACC is a unit of local government or a state, a resolution approving the certification is not required. The certification must be executed by the Executive Director [24 CFR 985.101].

Failure to submit its SEMAP certification within the required time frame will result in an overall performance rating of “troubled.”

The SEMAP certification is subject to HUD verification by an on-site confirmatory review at any time.

Upon receipt of the SEMAP certification, HUD will rate the HACC's performance under each SEMAP indicator in accordance with program requirements.

HUD Verification Method

Several of the SEMAP indicators are scored based on a review of a quality control sample selected for this purpose. The HACC or the Independent Auditor must select an unbiased sample that provides an adequate representation of the types of information to be assessed, in accordance with SEMAP requirements [24 CFR 985.2].

If the HUD verification method for the indicator relies on data in the Form-50058 module (formerly known as MTCS) in the PIH Information Center (PIC), and HUD determines that those data are insufficient to verify the HACC's certification on the indicator due to the HACC's failure to adequately report family data, HUD will assign a zero rating for the indicator [24 CFR 985.3].

16-V.C. SEMAP INDICATORS

The table below lists each of the SEMAP indicators, contains a description of each indicator, and explains the basis for points awarded under each indicator [24 CFR 985.3 and form HUD-52648].

PHA'S that expend less than \$300,000 in federal awards and whose HCV programs are not audited by an independent auditor, are not to be rated under SEMAP indicators 1-7.

SEMAP Indicators
<p>Indicator 1: Selection from the waiting list</p> <p>Maximum Score: 15</p> <ul style="list-style-type: none"> • This indicator shows whether the HACC has written policies in its administrative plan for selecting applicants from the waiting list and whether the HACC follows these policies when selecting applicants for admission from the waiting list. • Points are based on the percent of families that are selected from the waiting list in accordance with the HACC's written policies, according to the HACC's quality control sample.
<p>Indicator 2: Rent reasonableness</p> <p>Maximum Score: 20</p> <ul style="list-style-type: none"> • This indicator shows whether the HACC has and implements a reasonable written method to determine and document for each unit leased that the rent to owner is reasonable based on current rents for comparable unassisted units • Points are based on the percent of units for which the HACC follows its written method to determine reasonable rent and has documented its determination that the rent to owner is reasonable, according to the HACC's quality control sample.
<p>Indicator 3: Determination of adjusted income</p> <p>Maximum Score: 20</p> <ul style="list-style-type: none"> • This indicator measures whether the HACC verifies and correctly determines adjusted income for each assisted family, and where applicable, uses the appropriate utility allowances for the unit leased in determining the gross rent. • Points are based on the percent of files that are calculated and verified correctly, according to the HACC's quality control sample.

Indicator 4: Utility allowance schedule**Maximum Score: 5**

- This indicator shows whether the HACC maintains an up-to-date utility allowance schedule.
- Points are based on whether the HACC has reviewed the utility allowance schedule and adjusted it when required, according to the HACC's certification.

Indicator 5: HQS quality control inspections**Maximum Score: 5**

- This indicator shows whether the HACC supervisor re-inspects a sample of units under contract during the HACC fiscal year, which meets the minimum sample size requirements for quality control of HQS inspections.
- Points are based on whether the required quality control re-inspections were completed, according to the HACC's certification.

Indicator 6: HQS enforcement**Maximum Score: 10**

- This indicator shows whether, following each HQS inspection of a unit under contract where the unit fails to meet HQS, any cited life-threatening deficiencies are corrected within 24 hours from the inspection and all other deficiencies are corrected within no more than 30 calendar days from the inspection or any PHA-approved extension.
- Points are based on whether the HACC corrects all HQS deficiencies in accordance with required time frames, according to the HACC's certification.

Indicator 7: Expanding housing opportunities**Maximum Points: 5**

- Only applies to PHAs with jurisdiction in metropolitan FMR areas.
- This indicator shows whether the HACC has adopted and implemented a written policy to encourage participation by owners of units located outside areas of poverty or minority concentration; informs voucher holders of the full range of areas where they may lease units both inside and outside the HACC's jurisdiction; and supplies a list of landlords or other parties who are willing to lease units or help families find units, including units outside areas of poverty or minority concentration.
- Points are based on whether the HACC has adopted and implemented written policies in accordance with SEMAP requirements, according to the HACC's certification.

Indicator 8: FMR limit and payment standards**Maximum Points: 5 points**

- This indicator shows whether the HACC has adopted a payment standard schedule that establishes payment standard amounts by unit size for each FMR area in the HACC's jurisdiction, that are within the basic range of 90 to 110 percent of the published FMR.
- Points are based on whether the HACC has appropriately adopted a payment standard schedule(s), according to the HACC's certification.

Indicator 9: Annual reexaminations

Maximum Points: 10

- This indicator shows whether the HACC completes a reexamination for each participating family at least every 12 months.
- Points are based on the percent of reexaminations that are more than 2 months overdue, according to data from PIC.

Indicator 10: Correct tenant rent calculations

Maximum Points: 5

- This indicator shows whether the HACC correctly calculates the family's share of the rent to owner.
- Points are based on the percent of correct calculations of family share of the rent, according to data from PIC.

Indicator 11: Pre-contract HQS inspections

Maximum Points: 5

- This indicator shows whether newly leased units pass HQS inspection on or before the effective date of the assisted lease and HAP contract.
- Points are based on the percent of newly leased units that passed HQS inspection prior to the effective date of the lease and HAP contract, according to data from PIC.

Indicator 12: Annual HQS inspections

Maximum Points: 10

- This indicator shows whether the HACC inspects each unit under contract at least annually.
- Points are based on the percent of annual HQS inspections of units under contract that are more than 2 months overdue, according to data from PIC.

Indicator 13: Lease-up

Maximum Points: 20 points

- This indicator shows whether the HACC enters HAP contracts for the number of units or funding reserved under ACC for at least one year.
- Points are based on the percent of units leased during the last completed PHA fiscal year, or the percent of allocated budget authority that has been expended by the HACC, according to data from the HACC's last year-end operating statement that is recorded in HUD's accounting system.

Indicator 14: Family self-sufficiency (FSS) enrollment and escrow account balances

Maximum Points: 10

- Only applies to PHAs with mandatory FSS programs.
- This indicator shows whether the HACC has enrolled families in the FSS program as required, and measures the percent of current FSS participants that have had increases in earned income which resulted in escrow account balances.
- Points are based on the percent of mandatory FSS slots that are filled and the percent of families with escrow account balances, according to data from PIC.

Success Rate of Voucher Holders

Maximum Points: 5

- Only applies to PHAs that have received approval to establish success rate payment standard amounts, and isn't effective until the second full PHA fiscal year following the date of HUD approval of success rate payment standard amounts.
- This indicator shows whether voucher holders were successful in leasing units with voucher assistance.
- Points are based on the percent of families that were issued vouchers, and that became participants in the voucher program.

De-concentration Bonus Indicator

Maximum Points: 5

- Submission of data for this indicator is mandatory for the HACC using one or more payment standard amount(s) that exceed(s) 100 percent of the published FMR set at the 50 percentile rent, starting with the second full PHA fiscal year following initial use of payment standard amounts based on the FMRs set at the 50th percentile.
- Additional points are available to PHAs that have jurisdiction in metropolitan FMR areas and that choose to submit the required data.
- Points are based on whether the data that is submitted meets the requirements for

PART VI: RECORD KEEPING

16-VI.A. OVERVIEW

The HACC must maintain complete and accurate accounts and other records for the program in accordance with HUD requirements, in a manner that permits a speedy and effective audit. All such records must be made available to HUD or the Comptroller General of the United States upon request.

In addition, the HACC must ensure that all applicant and participant files are maintained in a way that protects an individual's privacy rights.

16-VI.B. RECORD RETENTION

During the term of each assisted lease and for at least three years thereafter, the HACC must keep [24 CFR 982.158]:

- A copy of the executed lease;
- The HAP contract; and
- The application from the family.

In addition, the HACC must keep the following records for at least three years:

- Records that provide income, racial, ethnic, gender, and disability status data on program applicants and participants;
- An application from each ineligible family and notice that the applicant is not eligible;
- HUD-required reports;
- Unit inspection reports;
- Lead-based paint records as required by 24 CFR 35, Subpart B.
- Accounts and other records supporting PHA budget and financial statements for the program;
- Records to document the basis for PHA determination that rent to owner is a reasonable rent (initially and during the term of a HAP contract); and
- Other records specified by HUD.

If an informal hearing to establish a family's citizenship status is held, longer retention requirements apply for some types of documents. For specific requirements, see Section 16-III.D., Retention of Documents.

16-VI.C. RECORDS MANAGEMENT

PHAs must maintain applicant and participant files and information in accordance with the regulatory requirements described below:

- All applicant and participant information will be kept in a secure location and access will be limited to authorized HACC staff.
- The HACC staff will not discuss personal family information unless there is a business reason to do so. Inappropriate discussion of family information or improper disclosure of family information by staff will result in disciplinary action.

Privacy Act Requirements [24 CFR 5.212 and Form-9886]

The collection, maintenance, use, and dissemination of social security numbers (SSN), employer identification numbers (EIN), any information derived from these numbers, and income information of applicants and participants must be conducted, to the extent applicable, in compliance with the Privacy Act of 1974, and all other provisions of federal, state, and local law.

Applicants and participants, including all adults in the household, are required to sign a consent form, HUD-9886, Authorization for Release of Information. This form incorporates the Federal Privacy Act Statement and describes how the information collected using the form may be used and under what conditions HUD or the HACC may release the information collected.

Upfront Income Verification (UIV) Records

PHAs that access UIV data through HUD's Enterprise Income Verification (EIV) System are required to adopt and follow specific security procedures to ensure that all EIV data is protected in accordance with federal laws, regardless of the media on which the data is recorded (e.g. electronic paper). These requirements are contained in the HUD issued document, *Enterprise Income Verification (EIV) System, Security Procedures for Upfront Income Verification data*.

Criminal Records

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

The HACC must establish and implement a system of records management that ensures that any criminal record received by the HACC from a law enforcement agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the HACC action without institution of a challenge or final disposition of any such litigation [24 CFR 5.903(g)].

The HACC must establish and implement a system of records management that ensures that any sex offender registration information received by the HACC from a state or local agency is maintained confidentially, not misused or improperly disseminated, and destroyed once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the HACC 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 the HACC other than under 24 CFR 5.905.

Medical/Disability Records

PHAs are not permitted to inquire about the nature or extent of a person's disability. The HACC may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the HACC receives a verification document that provides such information, the HACC should not place this information in the tenant file. HACC should destroy the document.

PART VII: DATA COLLECTION AND RECORD KEEPING FOR CHILDREN WITH AN ELEVATED BLOOD LEAD LEVEL

16-VII.A. OVERVIEW

The HACC has certain responsibilities relative to children with elevated blood lead levels that are receiving HCV assistance. The verification, investigation and monitoring requirements are discussed in Chapter 8. This part deals with the data collection and record keeping responsibilities that the HACC is subject to.

16-VII.B. DATA COLLECTION AND RECORD KEEPING

At least quarterly, the HACC must attempt to obtain from the public health department(s) with a similar area of jurisdiction, the names and/or addresses of children less than 6 years old with an identified elevated blood lead level [24 CFR 35.1225(f)].

If the HACC obtains names and addresses of elevated blood lead level children from the public health department(s), the HACC must match this information with the names and addresses of families receiving HCV assistance, unless the public health department performs such a procedure. If a match occurs, the HACC must carry out the verification, environmental investigation and HQS compliance monitoring as discussed in Chapter 8.

PART VIII: DETERMINATION OF INSUFFICIENT FUNDING

16-VIII.A. OVERVIEW

The HCV regulations allow PHAs to deny families permission to move and to terminate Housing Assistance Payments (HAP) contracts if funding under the consolidated ACC is insufficient to support continued assistance [24 CFR 982.314(e)(1) and 982.454]. Insufficient funding may also impact the HACC's ability to issue vouchers to families on the waiting list. This part discusses the methodology the HACC will use to determine whether or not the HACC has sufficient funding to issue vouchers, approve moves, and to continue subsidizing all families currently under a HAP contract.

16-VIII.B. METHODOLOGY

The HACC will determine whether there is adequate funding to issue vouchers, approve moves to higher cost units and areas, and continue subsidizing all current participants by comparing the HACC's annual budget authority to the annual total HAP needs on a monthly basis. The total HAP needs for the calendar year will be projected by establishing the actual HAP costs year to date. To that figure, the HACC will add anticipated HAP expenditures for the remainder of the calendar year. Projected HAP expenditures will be calculated by multiplying the projected number of units leased per remaining months by the most current month's average HAP. The projected number of units leased per month will take into account the average monthly turnover of participant families. If the total annual HAP needs equal or exceed the annual budget

authority or if the HACC cannot support the cost of the proposed subsidy commitment (voucher issuance or move) based on the funding analysis, the HACC will be considered to have insufficient funding.

PART IX: NOTIFICATION REGARDING APPLICABLE PROVISIONS OF THE VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT OF 2005 (VAWA)

16-IX.A. NOTIFICATION TO PARTICIPANTS

The HACC will provide all participants with notification of their protections and rights under VAWA at the time of admission and at annual reexamination [Pub.L. 109-162].

The notice will explain the protections afforded under the law, inform the participant of the HACC confidentiality requirements, and provide contact information for local victim advocacy groups or service providers.

The HACC will also include in all assistance termination notices a statement explaining assistance termination protection provided by VAWA (see Section 12-II.E).

16-IX.B. NOTIFICATION TO APPLICANTS

The HACC will provide all applicants with notification of their protections and rights under VAWA at the time they request an application for housing assistance.

The notice will explain the protections afforded under the law, inform each applicant of the HACC confidentiality requirements, and provide contact information for local victim advocacy groups or service providers.

The HACC will also include in all notices of denial a statement explaining the protection against denial provided by VAWA (see section 3-III.G).

16-IX.C. NOTIFICATION TO OWNERS AND MANAGERS

VAWA requires PHAs to notify owners and managers of their rights and responsibilities under this law. The HACC may utilize any or all of the following means to notify owners of their VAWA responsibilities [Pub.L. 109-162]:

- As appropriate in day to day interactions with owners and managers.
- Inserts in HAP payments, 1099s, owner workshops, classes, orientations, and/or newsletters.
- Signs in the HACC lobby and/or mass mailings which include model VAWA certification forms.

Chapter 17

PROJECT-BASED VOUCHERS

INTRODUCTION

This chapter describes HUD regulations and PHA policies related to the project-based voucher (PBV) program in nine parts:

Part I: General Requirements. This part describes general provisions of the PBV program including maximum budget authority requirements, relocation requirements, and equal opportunity requirements.

Part II: PBV Owner Proposals. This part includes policies related to the submission and selection of owner proposals for PBV assistance. It describes the factors the HACC will consider when selecting proposals, the type of housing that is eligible to receive PBV assistance, the cap on assistance at projects receiving PBV assistance, subsidy layering requirements, site selection standards, and environmental review requirements.

Part III: Dwelling Units. This part describes requirements related to housing quality standards, the type and frequency of inspections, and housing accessibility for persons with disabilities.

Part IV: Rehabilitated and Newly Constructed Units. This part describes requirements and policies related to the development and completion of rehabilitated and newly constructed housing units that will be receiving PBV assistance.

Part V: Housing Assistance Payments Contract. This part discusses HAP contract requirements and policies including the execution, term, and termination of the HAP contract. In addition, it describes how the HAP contract may be amended and identifies provisions that may be added to the HAP contract at the HACC's discretion.

Part VI: Selection of PBV Program Participants. This part describes the requirements and policies governing how the HACC and the owner will select a family to receive PBV assistance.

Part VII: Occupancy. This part discusses occupancy requirements related to the lease, and describes under what conditions families are allowed or required to move. In addition, exceptions to the occupancy cap (which limits PBV assistance to 25 percent of the units in any project) are also discussed.

Part VIII: Determining Rent to Owner. This part describes how the initial rent to owner is determined and how rent will be re-determined throughout the life of the HAP contract. Rent reasonableness requirements are also discussed.

Part IX: Payments to Owner. This part describes the types of payments owners may receive under this program.

PART I: GENERAL REQUIREMENTS

17-I.A. OVERVIEW

The project-based voucher (PBV) program allows the HACC, which already administers a tenant-based voucher program under an annual contributions contract (ACC) with HUD, to take up to 20 percent of its voucher program allocation and attach the funding to specific units rather than using it for tenant-based assistance [[24 CFR 983.5 & 24 CFR 983.6]. Additionally, the Housing Opportunities through Modernization Act (HOTMA) allows the HACC to project-base an additional 10 percent of its voucher allocation if the additional 10 percent are:

- Made available to individuals and families that are comprised of or include veterans who have served in the US Armed Forces
- Made available to individuals and families that meet the definition of homeless under the McKinney-Vento Homeless Assistance Act
- Provide supportive housing and services to persons with disabilities
- Located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-year Estimates
 - The cap for this option is the greater of 25 units or 40% of the units in the project

The HACC will operate a project-based voucher program using up to 20 percent, or an additional 10% if the housing meets the examples listed above, of its budget allocation for project-based assistance. The HACC's PBV Program is consistent with its Annual Plan and the goal of de-concentrating poverty and expanding housing and economic opportunities [42 U.S.C. 1437f(o)(13)].

PBV assistance may be attached to existing housing or newly constructed or rehabilitated housing [24 CFR 983.52]. If PBV units are already selected for project-based assistance, either under an agreement to enter into HAP Contract (Agreement) or a HAP contract, the HACC is not required to reduce the number of these units if the amount of budget authority is subsequently reduced. However, the HACC is responsible for determining the amount of budget authority that is available for project-based vouchers and ensuring that the amount of assistance that is attached to units is within the amounts available under the ACC [24 CFR 983.6].

17-I.B. TENANT-BASED VS. PROJECT-BASED VOUCHER ASSISTANCE

Except as otherwise noted in this chapter, or unless specifically prohibited by PBV program regulations, the HACC policies for the tenant-based voucher program contained in this Administrative Plan also apply to the PBV program and its participants [24 CFR 983.2].

17-I.C. 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 U.S.C. 4201-4655] and implementing regulations at 49 CFR part 24 [24 CFR 983.7].

The cost of required relocation assistance may be paid with funds provided by the owner, local public funds, or funds available from other sources. PHAs may not use voucher program funds to cover relocation costs, except that PHAs may use their 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 the HACC to ensure the owner complies with these requirements.

17-I.D. EQUAL OPPORTUNITY REQUIREMENTS

The HACC must comply with all equal opportunity requirements under federal law and regulations in its implementation of the PBV program [24 CFR 983.8]. This includes the requirements and authorities cited at 24 CFR 5.105(a). In addition, the HACC must comply with the HACC Plan certification on civil rights and affirmatively furthering fair housing, submitted in accordance with 24 CFR 903.7(o).

PART II: PBV OWNER PROPOSALS

17-II.A. OVERVIEW

The HACC must describe the procedures for owner submission of PBV proposals and for the HACC selection of PBV proposals [24 CFR 983.51]. Before selecting a PBV proposal, the HACC must determine that the PBV proposal complies with HUD program regulations and requirements, including a determination that the property is eligible housing [24 CFR 983.53 and 983.54], complies with the cap on the number of PBV units per building [24 CFR 983.56], and meets the site selection standards [24 CFR 983.57].

17-II.B. OWNER PROPOSAL SELECTION PROCEDURES

The HACC must select PBV proposals by either of the following two methods [24 CFR 983.51].

HACC request for PBV Proposals. The HACC may solicit proposals by using a request for proposals to select proposals on a competitive basis in response to the HACC request. The HACC may not limit proposals to a single site or impose restrictions that explicitly or practically preclude owner submission of proposals for PBV housing on different sites. The HACC may also, through a competitive process, solicit requests for qualifications from developers/owners interested in utilizing PBVs in the development of affordable housing. Once an owner/developer is deemed qualified based on the response to the RFQ, they may submit PBV proposals for a two-year period. The HACC may approve proposals at any time from qualified developers when the proposal is consistent with HACC goals.

The HACC may select proposal that were previously selected based on a competition. This may include selection of a proposal for housing assisted under a federal, state, or local government housing assistance program that was subject to a competition in accordance with the requirements of the applicable program, community development program, or supportive services program that requires competitive selection of proposals (e.g., HOME, and units for which competitively awarded LIHTCs have been provided), where 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.

Solicitation and Selection of PBV Proposals [24 CFR 983.51(b) and (c)]

The HACC Request for Proposals for Rehabilitated and Newly Constructed Units:

- The HACC will advertise its request for proposals (RFP) for rehabilitated and newly constructed housing in local and minority newspapers, trade journals and other publications of general circulation.
- In addition, the HACC will post the RFP, proposal submission, rating, and ranking procedures on its electronic web site.
- The HACC will publish its advertisement in the newspapers and trade journals mentioned above. The advertisement will specify the number of units the HACC estimates that it will be able to assist under the funding the HACC is making available. Proposals will be due in the HACC office by the due date specified in the publication.
- In order for the proposal to be considered, the owner must submit the proposal to the HACC by the published deadline date and the proposal must respond to all requirements as outlined in the RFP. Incomplete proposals will not be reviewed.
- The HACC will rate and rank proposals for rehabilitated and newly constructed housing using the following criteria:
 - Owner experience and capability to build or rehabilitate housing as identified in the RFP;
 - Extent to which the project furthers the HACC goal of de-concentrating poverty and expanding housing and economic opportunities;
 - If applicable, the extent to which services for special populations are provided on site or in the immediate area for occupants of the property; and
 - Projects with less than 25 percent of the units assisted will be rated higher than projects with 25 percent of the units assisted. In the case of projects for occupancy by the elderly, persons with disabilities or families needing other services, the HACC will rate partially assisted projects on the percent of units assisted. Projects with the lowest percent of assisted units will receive the highest score.

HACC Requests for Proposals for Existing Housing Units:

- The HACC will advertise its request for proposals (RFP) for existing housing in local and minority newspapers, trade journals and other publications of general circulation.
- In addition, the HACC will post the notice inviting such proposal submission and the rating and ranking procedures on its electronic web site.
- The HACC will periodically publish its advertisement in the newspapers and trade journals mentioned above for at least one day per week for three consecutive weeks. The advertisement will specify the number of units the HACC estimates that it will be able to assist under the funding the HACC is making available. Owner proposals will be accepted on a first-come first-served basis and will be evaluated using the following criteria:
 - Experience as an owner in the tenant-based voucher program and owner compliance with the owner's obligations under the tenant-based program;
 - Extent to which the project furthers the HACC goal of de-concentrating poverty and expanding housing and economic opportunities;
 - If applicable, extent to which services for special populations are provided on site or in the immediate area for occupants of the property; and
 - Extent to which units are occupied by families that are eligible to participate in the PBV program.

The HACC Selection of Proposals Subject to a Previous Competition under a Federal, State, or Local Housing Assistance Program:

- The HACC will accept proposals for PBV assistance, on an on-going basis, from owners that were competitively selected under another federal, state or local housing assistance program, including projects that were competitively awarded Low-Income Housing Tax Credits.
- The HACC may periodically advertise that it is accepting proposals, in local and minority newspapers and trade journals.
- In addition to, or in place of advertising, the HACC may also directly contact specific owners that have already been selected for Federal, state, or local housing assistance based on a previously held competition, to inform them of available PBV assistance.
- Proposals will be reviewed on a first-come first-served basis. The HACC will evaluate each proposal on its merits using the following factors:
 - Extent to which the project furthers the HACC goal of de-concentrating poverty and expanding housing and economic opportunities and

- Extent to which the proposal complements other local activities such as the redevelopment of a public housing site under the HOPE VI program, the HOME program, CDBG activities, other development activities in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community.

PHA-owned Units [24 CFR 983.51(e) and 983.59]

A HACC-owned unit may be assisted under the PBV program only if the HUD field office or HUD-approved independent entity reviews the selection process and determines that the HACC-owned units were appropriately selected based on the selection procedures specified in the HACC Administrative Plan. If the HACC selects a proposal for housing that is owned or controlled by the HACC, the HACC must identify the entity that will review the HACC proposal selection process and perform specific functions with respect to rent determinations and inspections.

In the case of PHA-owned units, the initial contract rent must be approved by an independent entity. In addition, housing quality standards inspections must be conducted by an independent entity.

The independent entity that performs these program services may be the unit of general local government for the HACC jurisdiction (unless the HACC is itself the unit of general local government or an agency of such government) or another HUD-approved public or private independent entity.

The HACC may only compensate the independent entity and appraiser from PHA ongoing administrative fee income (including amounts credited to the administrative fee reserve). The HACC may not use other program receipts to compensate the independent entity and appraiser for their services. The HACC, independent entity, and appraiser may not charge the family any fee for the appraisal or the services provided by the independent entity.

PHA Notice of Owner Selection [24 CFR 983.51(d)]

The HACC must give prompt written notice to the party that submitted a selected proposal and must also give prompt public notice of such selection. Public notice procedures may include publication of public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice.

- Within 15 business days of the HACC making the selection, the HACC will notify the selected owner in writing of the owner's selection for the PBV program. The HACC will also notify in writing all owners that submitted proposals that were not selected and advise such owners of the name of the selected owner.
- In addition, the HACC will publish its notice for selection of PBV proposals in the same newspapers and trade journals the HACC used to solicit the proposals. The announcement will include the name of the owner that was selected for the PBV program. The HACC will also post the notice of owner selection on its electronic web site.

- The HACC will make available to any interested party its rating and ranking sheets and documents that identify the HACC basis for selecting the proposal. These documents will be available for review by the public and other interested parties for one month after publication of the notice of owner selection. The HACC will not make available sensitive owner information that is privileged, such as financial statements and similar information about the owner.
- The HACC will make these documents available for review at the HACC during normal business hours. The cost for reproduction of allowable documents will be \$.35 per page.

17-II.C. HOUSING TYPE

The HACC 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 was executed prior to the start of construction [24 CFR 983.52]. A housing unit is considered an existing unit for purposes of the PBV program, if, at the time of notice of PHA selection, the units substantially comply with HQS. Units for which new construction or rehabilitation was started in accordance with PBV program requirements do not qualify as existing housing.

The HACC must decide what housing type, new construction, rehabilitation, or existing housing, will be used to develop project-based housing. The HACC choice of housing type must be reflected in its solicitation for proposals.

17-II.D. PROHIBITION OF ASSISTANCE FOR CERTAIN UNITS

Ineligible Housing Types [24 CFR 983.53]

The HACC may not attach or pay PBV assistance to shared housing units; units on the grounds of a penal reformatory, medical, mental, or similar public or private institution; nursing homes or facilities providing continuous psychiatric, medical, nursing services, board and care, or intermediate care (except that assistance may be provided in assisted living facilities); units that are owned or controlled by an educational institution or its affiliate and are designated for occupancy by students; manufactured homes; cooperative housing; and transitional housing. In addition, the HACC may not attach or pay PBV assistance for a unit occupied by an owner and the HACC may not select or enter into an agreement to enter into a HAP contract or HAP contract for a unit occupied by a family ineligible for participation in the PBV program.

High-rise Elevator Projects for Families with Children [24 CFR 983.53(b)]

The HACC may use high-rise elevator building for families with children if it makes a determination that there is no practical alternative and HUD approves HACC determination. The HACC may make this initial determination for its project-based voucher program, in whole or in part, and need not review each project on a case-by-case basis, and HUD may approve on the same basis.

Subsidized Housing [24 CFR 983.54]

The HACC may not attach or pay PBV assistance to units in any of the following types of subsidized housing:

- A public housing unit;
- A unit subsidized with any other form of HCV 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 the HACC 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 the HACC in accordance with HUD requirements.

17-II.E. SUBSIDY LAYERING REQUIREMENTS

The HACC may provide PBV assistance only in accordance with HUD subsidy layering regulations [24 CFR 4.13] and other requirements [24 CFR 983.55].

The subsidy layering review is intended to prevent excessive public assistance by combining (layering) housing assistance payment 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.

The HACC must submit the necessary documentation to HUD for a subsidy layering review. The HACC may not enter into an agreement to enter into a HAP contract or a HAP contract until HUD (or an independent entity approved by HUD) has conducted any required subsidy layering review and determined that the PBV assistance is in accordance with HUD subsidy layering requirements.

The HAP contract must contain the owner's certification that the project has not received and will not receive (before or during the term of the HAP contract) any public assistance for acquisition, development, or operation of the housing other than assistance disclosed in the subsidy layering review in accordance with HUD requirements.

17-II.F. CAP ON NUMBER OF PBV UNITS IN EACH BUILDING

Per Building Cap – Greater of 25 percent of the total units or 25 units [24 CFR 983.56(a)]

In general, the HACC may not select a proposal to provide PBV assistance for units in a building or enter into an agreement to enter into a HAP or a HAP contract to provide PBV assistance for units in a building, if the total number of dwelling units in the building that will receive PBV

assistance during the term of the PBV HAP contract is more than the greater of 25 units or 25 percent of the number of dwelling units (assisted or unassisted) in the building.

Exceptions to the per Building Cap [24 CFR 983.56(b)]

Exceptions are allowed and PBV units are not counted against the greater of 25 units or 25 percent per building cap if:

- The units are in a single-family building (one to four units);
- The units are *excepted units* in a multifamily building because they are specifically made available for elderly or families receiving supportive services (also known as *qualifying families*);
- Units where the project is located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year estimates
 - The cap for these projects is the greater of 25 units or 40% of the total units in the project. If the poverty rate of the census tract changes at any time during the contract, the project would continue to qualify.

The HACC must include in its Administrative Plan the type of services offered to families for a project to qualify for the exception and the extent to which such services will be provided. It is not necessary that the services be provided at or by the project, if they are approved services. The HACC may not require participation in the supported services, other than drug and alcohol treatment in the case of current abusers as a condition of living in an excepted unit, although such services must be offered to qualify as an accepted unit.

The types of supportive services offered to families for a project to qualify for the exception are those intended to promote self-sufficiency and that will allow the family to live independently in the community. Examples of the supportive services include, but are not limited to:

- Outreach
- Case management, counseling
- Health care, psychiatric and mental health care, substance use treatment
- Life skills, budgeting
- Parenting skills, child care
- Employment assistance, job training/placement
- Education, vocational opportunities
- Housing search assistance, transportation

If a family at the time of initial tenancy is receiving, and while the resident of an excepted unit has received, FSS supportive services or any other supportive services as defined in the HACC

administrative plan, and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit.

Promoting Partially-Assisted Buildings [24 CFR 983.56(c)]

The HACC may establish local requirements designed to promote PBV assistance in partially assisted buildings. A *partially assisted building* is a building in which there are fewer units covered by a HAP contract than residential units [24 CFR 983.3].

The HACC may establish a per-building cap on the number of units that will receive PBV assistance or other project-based assistance in a multifamily building containing excepted units or in a single-family building. The HACC may also determine not to provide PBV assistance for excepted units or the HACC may establish a per-building cap of less than 25 percent.

17-II.G. SITE SELECTION STANDARDS

Compliance with PBV Goals, Civil Rights Requirements, and HQS Site Standards [24 CFR 983.57(b)]

The HACC may not select a proposal for existing, newly constructed, or rehabilitated PBV housing on a site or enter into an agreement to enter into a HAP contract or HAP contract for units on the site, unless the HACC has determined that PBV assistance for housing at the selected site is consistent with the goal of de-concentrating poverty and expanding housing and economic opportunities. The standard for de-concentrating poverty and expanding housing and economic opportunities must be consistent with the HACC Plan under 24 CFR 903 and the HACC administrative plan.

In addition, prior to selecting a proposal, the HACC must determine that the site is suitable from the standpoint of facilitating and furthering full compliance with the applicable Civil Rights Laws, regulations, and Executive Orders, and that the site meets the HQS site and neighborhood standards at 24 CFR 982.401(l).

- It is the HACC goal to select sites for PBV housing that provide for de-concentrating poverty and expanding housing and economic opportunities. In complying with this goal the HACC will limit approval of sites for PBV housing in census tracts that have poverty concentrations of 20 percent or less.

However, the HACC will grant exceptions to the 20 percent standard where the HACC determines that the PBV assistance will complement other local redevelopment activities designed to de-concentrate poverty and expand housing and economic opportunities in census tracts with poverty concentrations greater than 20 percent, such as sites in:

- A census tract in which the proposed PBV development will be located in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community;
- A census tract where the concentration of assisted units will be or has decreased as a result of public housing demolition and HOPE VI redevelopment;

- A census tract in which the proposed PBV development will be located is undergoing significant revitalization as a result of state, local, or federal dollars invested in the area;
- A census tract where new market rate units are being developed where such market rate units will positively impact the poverty rate in the area;
- A census tract where there has been an overall decline in the poverty rate within the past five years; or
- A census tract where there are meaningful opportunities for educational and economic advancement.

Under no circumstances will the HACC approve PBV assistance in a census tract with a concentration factor greater than 75 percent of the community-wide poverty rate or forty percent, whichever is lower.

Existing and Rehabilitated Housing Site and Neighborhood Standards [24 CFR 983.57(d)]

The HACC may not enter into an agreement to enter into a HAP contract nor enter into a HAP contract for existing or rehabilitated housing until it has determined that the site complies with the HUD required 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.

New Construction Site and Neighborhood Standards [24 CFR 983.57(e)]

In order to be selected for PBV assistance, a site for newly constructed housing must meet the following HUD required 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 HACC 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.

17-II.H. ENVIRONMENTAL REVIEW

The HACC activities under the PBV program are subject to HUD environmental regulations in 24 CFR parts 50 and 58 [24 CFR 983.58]. The *responsible entity* is responsible for performing the federal environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The HACC may not enter into an agreement to enter into a HAP contract nor enter into a HAP contract until it has complied with the environmental review requirements.

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 the National Environmental Policy Act and whether or not the assistance is subject to review under the laws and authorities listed in 24 CFR 58.5.

The HACC may not enter into an agreement to enter into a HAP contract or a HAP contract with an owner, and the HACC, the owner, and its contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct real property or commit or expend program or local funds for PBV activities under this part, until the environmental review is completed.

The HACC must supply all available, relevant information necessary for the responsible entity to perform any required environmental review for any site. The HACC must require the owner to carry out mitigating measures required by the responsible entity (or HUD, if applicable) as a result of the environmental review.

PART III: DWELLING UNITS

17-III.A. OVERVIEW

This part identifies the special housing quality standards that apply to the PBV program, housing accessibility for persons with disabilities, and special procedures for conducting housing quality standards inspections.

17-III.B. HOUSING QUALITY STANDARDS

The housing quality standards (HQS) for the tenant-based program, including those for special housing types, generally apply to the PBV program [24 CFR 983.101]. HQS requirements for shared housing, cooperative housing, manufactured home space rental, and the homeownership option do not apply because these housing types are not assisted under the PBV program.

The physical condition standards at 24 CFR 5.703 do not apply to the PBV program.

Lead-based Paint [24 CFR 983.101(c)]

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 U.S.C. 4821-4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR part 35, subparts A, B, H, and R, apply to the PBV program.

17-III.C. HOUSING ACCESSIBILITY FOR PERSONS WITH DISABILITIES

The housing must comply with program accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8. The HACC must ensure that the percentage of accessible dwelling units complies with the requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by HUD's regulations at 24 CFR 8, subpart C. Of the units selected to receive PBV rental assistance within the project, 5% should be fully accessible.

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)

17-III.D. INSPECTING UNITS

Pre-selection Inspection [24 CFR 983.103(a)]

The HACC must examine the proposed site before the proposal selection date. If the units to be assisted already exist, the HACC must inspect all the units before the proposal selection date and must determine whether the units substantially comply with HQS. To qualify as existing housing, units must substantially comply with HQS on the proposal selection date. If the units are already occupied, they will be considered to substantially comply with HQS. However, the HACC may not execute the HAP contract until the units fully comply with HQS.

Pre-HAP Contract Inspections [24 CFR 983.103(b)]

The HACC must inspect each contract unit before execution of the HAP contract. The HACC may not enter into a HAP contract covering a unit until the unit fully complies with HQS.

Turnover Inspections [24 CFR 983.103(c)]

Before providing assistance to a new family in a contract unit, the HACC must inspect the unit. The HACC may not provide assistance on behalf of the family until the unit fully complies with HQS.

Annual/Biennial Inspections [24 CFR 983.103(d)]

At least annually during the term of the HAP contract, the HACC must inspect a random sample, consisting of at least 20 percent of the contract units in each building to determine if the contract units and the premises are maintained in accordance with HQS. Turnover inspections are not counted toward meeting this annual inspection requirement.

If more than 20 percent of the annual sample of inspected contract units in a building fails the initial inspection, the HACC must re-inspect 100 percent of the contract units in the building.

Other Inspections [24 CFR 983.103(e)]

The HACC must 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. The HACC must take into account complaints and any other information coming to its attention in scheduling inspections.

The HACC must conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected an HQS violation, and must conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family violation of HQS.

In conducting PHA supervisory quality control HQS inspections, the HACC should include a representative sample of both tenant-based and project-based units.

Inspecting PHA-owned Units [24 CFR 983.103(f)]

In the case of PHA-owned units, the inspections must be performed by an independent agency designated by the HACC and approved by HUD. The independent entity must furnish a copy of each inspection report to the HACC and to the HUD field office where the project is located. The HACC must 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 the HACC-owner.

PART IV: REHABILITATED AND NEWLY CONSTRUCTED UNITS

17-IV.A. OVERVIEW

There are specific requirements that apply to PBV assistance for newly constructed or rehabilitated housing that do not apply to PBV assistance in existing housing [24 CFR 983.151]. This part describes the requirements unique to this type of assistance.

Housing selected for this type of assistance may not at a later date be selected for PBV assistance as existing housing.

17-IV.B. AGREEMENT TO ENTER INTO HAP CONTRACT

In order to offer PBV assistance in rehabilitated or newly constructed units, the HACC must enter into an agreement to enter into HAP contract (Agreement) with the owner of the property. The Agreement must be in the form required by HUD [24 CFR 983.152(a)].

In the Agreement the owner agrees to develop the PBV contract units to comply with HQS, and the HACC agrees that upon timely completion of such development in accordance with the terms of the Agreement, the HACC will enter into a HAP contract with the owner for the contract units [24 CFR 983.152(b)].

Content of the Agreement [24 CFR 983.152(c)]

At a minimum, the Agreement must describe the following features of the housing to be developed and assisted under the PBV program:

- Site and the location of the contract units;
- Number of contract units by area (size) and number of bedrooms and bathrooms;
- Services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent;
- Utilities available to the contract units, including a specification of utility services to be paid by the owner and utility services to be paid by the tenant;
- An indication of whether or not the design and construction requirements of the Fair Housing Act and section 504 of the Rehabilitation Act of 1973 apply to units under the Agreement. If applicable, any required work item resulting from these requirements must be included in the description of work to be performed under the Agreement;
- Estimated initial rents to owner for the contract units;
- Description of the work to be performed under the Agreement. For rehabilitated units, the description must include the rehabilitation work write up and, where determined necessary by the HACC, specifications and plans. For new construction units, the description must include the working drawings and specifications.
- Any additional requirements for quality, architecture, or design over and above HQS.

Execution of the Agreement [24 CFR 983.153]

The HACC will enter into the Agreement with the owner within 15 business days of receiving both environmental approval and notice that subsidy layering requirements have been met. The AHAP must be executed before construction or rehabilitation work is started.

17-IV.C. CONDUCT OF DEVELOPMENT WORK

Labor Standards [24 CFR 983.154(b)]

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. The owner/developer is responsible for ensuring compliance with Davis-Bacon wage reporting requirements. Weekly certified payroll reports must be completed by all contractors/sub-contractors for the duration of their work on the project and maintained by the owner/developer for review by the HACC if requested. The Statement of Compliance (see DOL payroll form WH-347) must be submitted to the HACC on a weekly basis.

Equal Opportunity [24 CFR 983.154(c)]

The owner must comply with Section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations at 24 CFR part 135. The owner must also comply with federal equal employment opportunity requirements.

Owner Disclosure [24 CFR 983.154(d) and (e)]

The Agreement and HAP contract must include a certification by the owner that the owner and other project principals are not on the U.S. General Services Administration list of parties excluded from federal procurement and non-procurement programs.

The owner must also disclose any possible conflict of interest that would be a violation of the Agreement, the HAP contract, or HUD regulations.

17-IV.D. COMPLETION OF HOUSING

The Agreement must specify the deadlines for completion of the housing, and the owner must develop and complete the housing in accordance with these deadlines. The Agreement must also specify the deadline for submission by the owner of the required evidence of completion.

Evidence of Completion [24 CFR 983.155(b)]

At a minimum, the owner must submit the following evidence of completion to the HACC in the form and manner required by the HACC:

- 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.

The HACC will determine the need for the owner to submit additional documentation as evidence of housing completion on a case-by-case basis depending on the nature of the PBV project. The HACC will specify any additional documentation requirements in the Agreement to enter into HAP contract.

PHA Acceptance of Completed Units [24 CFR 983.156]

Upon notice from the owner that the housing is completed, the HACC must 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. The HACC must also determine if the owner has submitted all required evidence of completion.

If the work has not been completed in accordance with the Agreement, the HACC must not enter into the HAP contract.

If the HACC determines the work has been completed in accordance with the Agreement and that the owner has submitted all required evidence of completion, the HACC must submit the HAP contract for execution by the owner and must then execute the HAP contract.

PART V: HOUSING ASSISTANCE PAYMENTS CONTRACT (HAP)

17-V.A. OVERVIEW

The HACC must enter into a HAP contract with an owner for units that are receiving PBV assistance. The purpose of the HAP contract is to provide housing assistance payments for eligible families. Housing assistance is paid for contract units leased and occupied by eligible families during the HAP contract term. The HAP contract must be in the form required by HUD [24 CFR 983.202].

17-V.B. HAP CONTRACT REQUIREMENTS

Contract Information [24 CFR 983.203]

The HAP contract must specify the following information:

- The total number of contract units by number of bedrooms;
- The project's name, street address, city or county, state and zip code, block and lot number (if known), and any other information necessary to clearly identify the site and the building;
- The number of contract units in each building, the location of each contract unit, the area of each contract unit, and the number of bedrooms and bathrooms in each contract unit;
- Services, maintenance, and equipment to be supplied by the owner and included in the rent to owner;
- Utilities available to the contract units, including a specification of utility services to be paid by the owner (included in rent) and utility services to be paid by the tenant;
- Features provided to comply with program accessibility requirements of Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8;
- The HAP contract term;

- The number of units in any building that will exceed the 25 percent per building cap, which will be set-aside for occupancy by qualifying families; and
- The initial rent to owner for the first 12 months of the HAP contract term.

Execution of the HAP Contract [24 CFR 983.204]

The HACC may not enter into a HAP contract until each contract unit has been inspected and the HACC has determined that the unit complies with the Housing Quality Standards (HQS). For existing housing, the HAP contract will be promptly executed pursuant to the HACC's determination that all units pass HQS and any pre-existing household has been determined eligible for continued occupancy in the PBV unit. For newly constructed or rehabilitated housing the HAP contract must be executed within 15 business days after the HACC has inspected the completed units and has determined that the units have been completed in accordance with the agreement to enter into HAP and the owner furnishes all required evidence of completion.

Term of HAP Contract [24 CFR 983.205 and HERA]

The HACC may enter into a HAP contract with an owner for an initial term of no less than one (1) year and no more than twenty (20) years. The term of all PBV HAP contracts will be negotiated with the owner on a case-by-case basis.

Within one year before expiration of the HAP contract, the HACC may extend the term of the contract for an additional term of up to five years if the HACC determines an extension is appropriate to continue providing affordable housing for low-income families. Subsequent extensions are subject to the same limitations. All extensions must be on the form and subject to the conditions prescribed by HUD at the time of the extension.

When determining whether or not to extend an expiring PBV contract, the HACC will consider several factors including, but not limited to:

- The cost of extending the contract and the amount of available budget authority;
- The condition of the contract units;
- The owner's record of compliance with obligations under the HAP contract and lease(s);
- Whether the location of the units continues to support the goals of de-concentrating poverty and expanding housing opportunities; and
- Whether the funding could be used more appropriately for project-based assistance at another development or for tenant-based assistance.

Termination by PHA [24 CFR 983.205(c)]

The HAP contract must provide that the term of the HACC's contractual commitment is subject to the availability of sufficient appropriated funding as determined by HUD or by the HACC in accordance with HUD instructions. 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, the HACC may terminate the HAP contract by notice to the owner. The termination must be implemented in accordance with HUD instructions.

Termination by Owner [24 CFR 983.205(d)]

If in accordance with program requirements the amount of rent to an owner for any contract unit is reduced below the amount of the rent to owner at the beginning of the HAP contract term, the owner may terminate the HAP contract by giving notice to the HACC. In this case, families living in the contract units must be offered tenant-based assistance.

Remedies for HQS Violations [24 CFR 983.207(b)]

The HACC may not make any HAP payment to the owner for a contract unit during any period in which the unit does not comply with HQS. If the HACC determines that a contract unit does not comply with HQS, the HACC may exercise any of its remedies under the HAP contract for any or all of the contract units. Available remedies include termination of housing assistance payments, abatement or reduction of housing assistance payments, reduction of contract units, and termination of the HAP contract.

The HACC will abate and terminate PBV HAP contracts for non-compliance with HQS in accordance with the policies used in the tenant-based voucher program. These policies are contained in Section 8-II.G., Enforcing Owner Compliance.

17-V.C. AMENDMENTS TO THE HAP CONTRACT

Substitution of Contract Units [24 CFR 983.206(a)]

The HACC will generally require the PBV units to be fixed. However, at the HACC's discretion and subject to all PBV requirements, the HAP contract may be amended to substitute a different unit with the same number of bedrooms in the same building for a previously covered contract unit. Before any such substitution can take place, the HACC must inspect the proposed unit and determine the reasonable rent for the unit.

Addition of Contract Units [24 CFR 983.206(b)]

At the HACC's discretion, subject to the restrictions on the number of dwelling units that can receive PBV assistance per building, and on the overall size of the HACC's PBV program, a HAP contract may be amended to add additional PBV units in the same building or project. This type of amendment is subject to all PBV program requirements except that a new PBV proposal is not required.

The HACC will consider adding contract units to the HAP contract when the HACC determines that additional housing is needed to serve eligible low-income families. Circumstances may include, but are not limited to:

- The local housing inventory is reduced due to a disaster (either due to loss of housing units or an influx of displaced families); and
- Voucher holders are having difficulty finding units that meet program requirements.

17-V.D. HAP CONTRACT YEAR, ANNIVERSARY AND EXPIRATION DATES

[24 CFR 983.206(c) and 983.302(e)]

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.

17-V.E. OWNER RESPONSIBILITIES UNDER THE HAP

When the owner executes the HAP contract s/he certifies that at such execution and at all times during the term of the HAP contract [24 CFR 983.209]:

- All contract units are in good condition and the owner is maintaining the premises and contract units in accordance with HQS;
- The owner is providing all services, maintenance, equipment and utilities as agreed to under the HAP contract and the leases;
- Each contract unit for which the owner is receiving HAP is leased to an eligible family referred by the HACC and the lease is in accordance with the HAP contract and HUD requirements;
- To the best of the owner's knowledge the family resides in the contract unit for which the owner is receiving HAP and the unit is the family's only residence;
- The owner (including a principal or other interested party) is not the spouse, parent, child, grandparent, grandchild, sister, or brother (including in-laws) of any member of a family residing in a contract unit;
- The amount of the HAP the owner is receiving is correct under the HAP contract;
- The rent for contract units does not exceed rents charged by the owner for comparable unassisted units;

- Except for HAP and tenant rent, the owner has not received and will not receive any other payment or consideration for rental of the contract unit; and
- The family does not own or have any interest in the contract unit.

17-V.F. ADDITIONAL HAP REQUIREMENTS

Housing Quality and Design Requirements [24 CFR 983.101(e) and 983.207(a)]

The owner is required to maintain and operate the contract units and premises in accordance with HQS, including performance of ordinary and extraordinary maintenance. The owner must provide all the services, maintenance, equipment, and utilities specified in the HAP contract with the HACC and in the lease with each assisted family. In addition, maintenance, replacement and redecoration must be in accordance with the standard practice for the building as established by the owner.

The HACC may elect to establish additional requirements for quality, architecture, or design of PBV housing. Any such additional requirements must be specified in the Agreement to enter into a HAP contract and the HAP contract. These requirements must be in addition to, not in place of, compliance with HQS.

The HACC will identify the need for any special features on a case-by-case basis depending on the intended occupancy of the PBV project. The HACC will specify any special design standards or additional requirements in the invitation for PBV proposals, the agreement to enter into HAP contract, and the HAP contract.

Vacancy Payments [24 CFR 983.352(b)]

At the discretion of the HACC, the HAP contract may provide for vacancy payments to the owner for the HACC-determined period of vacancy extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month. The amount of the vacancy payment will be determined by the HACC and cannot exceed the monthly rent to 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).

The HACC will decide on a case-by-case basis if the HACC 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.

PART VI: SELECTION OF PBV PROGRAM PARTICIPANTS

17-VI.A. OVERVIEW

Many of the provisions of the tenant-based voucher regulations [24 CFR 982] 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 part describes the requirements and policies related to eligibility and admission to the PBV program.

17-VI.B. ELIGIBILITY FOR PBV ASSISTANCE

The HACC may select families for the PBV program from those who are participants in the HACC's tenant-based voucher program and from those who have applied for admission to the voucher program [24 CFR 983.251(a) and (b)]. For voucher participants, eligibility was determined at original admission to the voucher program and does not need to be re-determined at the commencement of PBV assistance. For all others, eligibility for admission must be determined at the commencement of PBV assistance.

Applicants for PBV assistance must meet the same eligibility requirements as applicants for the tenant-based voucher program. Applicants must qualify as a family as defined by HUD and the HACC, have income at or below HUD-specified income limits, and qualify on the basis of citizenship or the eligible immigration status of family members [24 CFR 982.201(a) and 24 CFR 983.2(a)]. In addition, an applicant family must provide social security information for family members [24 CFR 5.216 and 5.218] and consent to the HACC's collection and use of family information regarding income, expenses, and family composition [24 CFR 5.230]. An applicant family must also meet HUD requirements related to current or past criminal activity.

The HACC will determine an applicant family's eligibility for the PBV program in accordance with the policies in Chapter 3.

In-Place Families [24 CFR 983.251(b)]

An eligible family residing in a proposed PBV contract unit on the date the proposal is selected by the HACC 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 the HACC's waiting list. Once the family's continued eligibility is determined (the HACC 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 the HACC 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.

17-VI.C. ORGANIZATION OF THE WAITING LIST

The HACC will establish and manage separate waiting lists for individual projects or buildings that are receiving PBV assistance [24 CFR 983.251(c)]. The HACC will offer to place applicants who are on the tenant-based waiting list on the waiting list for PBV assistance. The HACC may also merge the PBV waiting list with a waiting list for other assisted housing programs offered by the HACC. While not an actual merger of the wait lists, applicants who are currently on one of the HACC's LIPH wait lists are also eligible for placement on a PBV wait list.

The HACC has PBV developments that are designated to serve the homeless. The HACC has site based wait lists for those properties, but often has difficulty filling the units quickly due to the homeless status of the applicants. Many of the homeless do not have mailing addresses or phone numbers, making it difficult to locate them when their names come to the top of the wait list. The HACC participates in suburban Cook County's Continuum of Care, which has a commitment to end homelessness. The CoC uses Coordinated Entry as its system to house the homeless in any housing resources that are available. The Coordinated Entry system increases efficiency to accessing resources to help house the homeless. The Coordinated Entry system helps prioritize people who are most in need. Coordinated Entry can make quick referrals to housing for the homeless. The HACC will accept referrals for the waiting list from Coordinated Entry at any time for the PBV housing designated to serve the homeless. This will help ensure those most in need are housed as quickly as possible and reduce the length of time any units are vacant.

17-VI.D. SELECTION FROM THE WAITING LIST

Applicants who will occupy units with PBV assistance must be selected from the HACC's waiting list [24 CFR 983.251(c)]. The HACC may establish selection criteria or preferences for occupancy of particular PBV units. The HACC may place families referred by the PBV owner on its PBV waiting list if the waiting list is open.

Income Targeting [24 CFR 983.251(c)(6)]

At least 75 percent of the families admitted to the HACC's tenant-based and project-based voucher programs during the HACC fiscal year from the waiting list must be extremely-low income families. The income targeting requirement applies to the total of admissions to both programs.

Units with Accessibility Features [24 CFR 983.251(c)(7)]

When selecting families to occupy PBV units that have special accessibility features for persons with disabilities, the HACC must first refer families who require such features to the owner. However, before processing applicants for the accessible unit, the HACC will see if there are any existing families in non-accessible units who need the features of the accessible unit. If so, the family will transfer and the HACC will process applicants for a non-accessible unit according to the order of the wait list. If there are no existing families who need the features of the accessible unit, the HACC will review the transfer list at the other PBV developments to see if any existing families need the features of the accessible unit.

If there are no families on the wait list for the project and no existing families who need the accessibility features, the HACC will review the other site-based PBV wait lists to determine if there are any other applicants who need the features of the accessible unit and are interested in being processed for eligibility at the alternate PBV site. In the event there are no applicants who need the features of the accessible unit, the HACC will process the applicants at the top of the wait list for occupancy of the accessible unit. If a family who does not need the features moves into the accessible unit, they must sign a transfer form notifying them they must transfer to a comparable unit if a family on the wait list or an existing family needs the features of the accessible unit.

Preferences [24 CFR 983.251(d)]

The HACC may use the same selection preferences that are used for the tenant-based voucher program, establish selection criteria or preferences for the PBV program as a whole or for occupancy of particular PBV developments or units. In addition to the preferences used in the tenant-based HCV Program, the HACC may also implement preferences for specific developments based on the population served. The preferences will still be applied cumulatively, but the priority of the preferences may change from PBV development to PBV development. The HACC must provide an absolute selection preference for eligible in-place families as described in Section 17-VI.B.above.

Although the HACC is prohibited from granting preferences to persons with a specific disability, the HACC may give preference to disabled families who need services offered at a particular project or site if the preference is limited to families (including individuals):

- With disabilities that significantly interfere with their ability to obtain and maintain themselves in housing;
- Who, without appropriate supportive services, will not be able to obtain or maintain themselves in housing; and
- For whom such services cannot be provided in a non-segregated setting.

In advertising such a 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 disabled persons who may benefit from services provided in the project. In these projects, disabled residents may not be required to accept the particular services offered as a condition of occupancy.

If the HACC has buildings with more than 25 percent of the units receiving project-based assistance because those buildings include “excepted units” (units specifically made available for elderly families or families receiving supportive services), the HACC must give preference to such families when referring families to these units [24 CFR 983.261(b)].

The HACC will provide a selection preference when required by the regulation (e.g., eligible in-place families, qualifying families for “excepted units,” mobility impaired persons for accessible units). The HACC will also provide a preference for families meeting the definition of a targeted population at special housing types, such as housing for the homeless, victims of domestic violence, and supportive housing.

17-VI.E. OFFER OF PBV ASSISTANCE

Refusal of Offer [24 CFR 983.251(e)(3)]

The HACC is prohibited from taking any of the following actions against a family who has applied for, received, or refused an offer of PBV assistance:

- Refuse to list the applicant on the waiting list for tenant-based voucher assistance;
- Deny any admission preference for which the applicant qualifies;
- Change the applicant's place on the waiting list based on preference, date, and time of application, or other factors affecting selection under the HACC's selection policy;
- Remove the applicant from the tenant-based voucher waiting list.

Disapproval by Landlord [24 CFR 983.251(e)(2)]

If a PBV owner rejects a family for admission to the owner's units, such rejection may not affect the family's position on the tenant-based voucher waiting list. If the family was not on the HCV wait list at the time of application to the PBV site-based wait list, the family will be removed from the site-based wait list and will not be eligible for placement on the HCV wait list.

Acceptance of Offer [24 CFR 983.252]

Family Briefing

When a family accepts an offer for PBV assistance, the HACC must give the family an oral briefing. The briefing must include information on how the program works and the responsibilities of the family and owner. In addition to the oral briefing, the HACC must provide a briefing packet that explains how the HACC determines the total tenant payment for a family, the family obligations under the program, and applicable fair housing information.

Persons with Disabilities

If an applicant family's head or spouse is disabled, the HACC must assure effective communication, in accordance with 24 CFR 8.6, in conducting the oral briefing and in providing the written information packet. This may include making alternative formats available (see Chapter 2). In addition, the HACC must have a mechanism for referring a family that includes a member with a mobility impairment to an appropriate accessible PBV unit.

Persons with Limited English Proficiency

The HACC should take reasonable steps to assure meaningful access by persons with limited English proficiency in accordance with Title VI of the Civil Rights Act of 1964 and Executive Order 13166 (see Chapter 2).

17-VI.F. OWNER SELECTION OF TENANTS

The owner is responsible for developing written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant's ability to fulfill their obligations under the lease. The owner's Tenant Selection Plan will be attached to the HAP contract as an additional exhibit. An owner must promptly notify in writing any rejected applicant of the grounds for any rejection [24 CFR 983.253(b)].

Leasing [24 CFR 983.253(a)]

During the term of the HAP contract, the owner must lease contract units to eligible families that are selected and referred by the HACC from the HACC's waiting list. The contract unit leased to the family must be the appropriate size unit for the size of the family, based on the HACC's subsidy standards for the PBV Program as follows:

Unit Size	Minimum/Maximum Number of Occupants
0BR	1 – 2
1BR	1 – 2
2BR	2 – 4
3BR	3 – 6
4BR	4 – 8

It is the goal of the HACC to place families in the smallest size needed, avoiding overcrowding, to ensure the maximum number of people can be housed. However, because the PBV Program is based on actual units and each development uses a site-based wait list, units will be filled from the applicants on the wait list, placing no less than the minimum number of people in each unit. While the family may specify what size unit they desire, the HACC will decide which unit is assigned to the family.

Filling Vacancies [24 CFR 983.254(a)]

The owner must promptly notify the HACC of any vacancy or expected vacancy in a contract unit. After receiving such notice, the HACC must make every reasonable effort to promptly refer a sufficient number of families for the owner to fill such vacancies. The HACC and the owner must make reasonable efforts to minimize the likelihood and length of any vacancy.

- The owner must notify the HACC in writing (mail, fax, or e-mail) within 5 business days of learning about any vacancy or expected vacancy.
- The HACC will make every reasonable effort to refer families to the owner within 15 business days of receiving such notice from the owner.

Reduction in HAP Contract Units Due to Vacancies [24 CFR 983.254(b)]

If any contract units have been vacant for 120 days, the HACC may give notice to the owner that the HAP contract will be amended to reduce the number of contract units that have been vacant for this period. The HACC will provide the notice to the owner within 15 business days of the 120th day of the vacancy. The amendment to the HAP contract will be effective the 1st day of the month following the date of the HACC's notice.

17-VI.G. TENANT SCREENING

PHA Responsibility

The HACC is not responsible or liable to the owner or any other person for the family's behavior or suitability for tenancy. The HACC will not conduct screening to determine a PBV applicant family's suitability for tenancy [24 CFR 983.255].

The HACC must provide the owner with an applicant family's current and prior address (as shown in PHA records) and the name and address (if known by HACC) of the family's current landlord and any prior landlords.

The HACC will inform owners of their responsibility to screen prospective tenants. If requested, the HACC will provide owners with the known name and address information of current or previous landlords. The HACC 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.

The HACC will monitor the denial of applicants by the owner/agent based on credit and rental history to ensure that the owner/agent is, in the spirit of affordable housing:

- Only considering factors that address rental obligations;
- Granting applicants an opportunity to appeal the denial; and
- Giving proper consideration to factors that may have resulted in an adverse termination/eviction, such as a major illness or loss of employment/income.

PART VII: OCCUPANCY

17-VII.A. OVERVIEW

After an applicant has been selected from the waiting list, determined eligible by the HACC, referred to an owner and determined suitable by the owner, the family will sign the lease and occupancy of the unit will begin.

17-VII.B. 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 983.256].

Form of Lease [24 CFR 983.256(b)]

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 must include, word-for-word, all provisions required by HUD.

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 the HACC model lease. The HACC will not review the owner's lease for compliance with state or local law.

If the property is designed for families receiving supportive services, the lease must contain the family's obligation to participate in the designated service program. Failure of the family to comply is good cause to terminate the family from the program.

Lease Requirements [24 CFR 983.256(c)]

The lease for a PBV unit must 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 provided by the owner; and
- The amount of any charges for food, furniture, or supportive services.

Tenancy Addendum [24 CFR 983.256(d)]

The tenancy addendum in the lease must state:

- The program tenancy requirements;
- The composition of the household as approved by the HACC (the names of family members and any PHA-approved live-in aide);
- All provisions in the HUD-required tenancy addendum must be included in the lease. The terms of the tenancy addendum prevail over other provisions of the lease.

Initial Term and Lease Renewal [24 CFR 983.256(f) and 983.257(b)]

The initial lease term must be for at least one year. Upon expiration of the lease, an owner may renew the lease, refuse to renew the lease for *good cause*, or refuse to renew the lease without good cause. If the owner refuses to renew the lease without good cause, the HACC must provide the family with a tenant-based voucher and remove the unit from the PBV HAP contract.

Changes in the Lease [24 CFR 983.256(e)]

If the tenant and owner agree to any change in the lease, the change must be in writing, and the owner must immediately give the HACC a copy of all changes.

The owner must notify the HACC 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 the HACC and in accordance with the terms of the lease relating to its amendment. The HACC must re-determine reasonable rent, in accordance with program requirements, based on any change in the allocation of the responsibility for utilities between the owner and the tenant. The re-determined reasonable rent will be used in calculation of the rent to owner from the effective date of the change.

Owner Termination of Tenancy [24 CFR 983.257]

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 Section 12-III.B. and 24 CFR 982.310). 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.

Non-Compliance with Supportive Services

Families may not be required to engage in supportive services. However, if a family is at risk of eviction, the owner may offer the family the opportunity to engage in a formal supportive services plan as a condition of continued occupancy. If this option is used and the family fails to complete its supportive services requirement without good cause, such failure is grounds for lease termination by the owner.

Tenant Absence from the Unit [24 CFR 983.256(g) and 982.312(a)]

The owner may specify in the lease a maximum period of tenant absence from the unit that is shorter than the maximum period permitted by PHA policy. According to program requirements, the family’s assistance must be terminated if they are absent from the unit for more than 180 consecutive days.

Security Deposits [24 CFR 983.258]

The owner may collect a security deposit from the tenant. The HACC will allow the owner to collect a security deposit amount the owner determines is appropriate.

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. The HACC has no liability or responsibility for payment of any amount owed by the family to the owner.

17-VII.C. MOVES

Overcrowded, Under-Occupied, and Accessible Units [24 CFR 983.259]

The HACC will notify the family and the owner of the family's need to move based on the occupancy of a wrong-size or accessible unit within 15 business days of the HACC's determination. The HACC will offer the family the following types of continued assistance in the following order, based on the availability of assistance:

- PBV assistance in the same building or project;
- PBV assistance in another project; and
- Tenant-based voucher assistance

If HACC offers the family a tenant-based voucher, HACC must terminate the housing assistance payments for a wrong-sized or accessible unit at expiration of the term of the family's voucher (including any extension granted by HACC).

When the HACC offers a family another form of assistance that is not a tenant-based voucher, the family will be given 30 days from the date of the offer to accept the offer and move out of the PBV unit. If the family does not move out within this 30-day time frame, the HACC will terminate the housing assistance payments at the expiration of this 30-day period.

The HACC may make exceptions to this 30-day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency of a family member.

Family Right to Move [24 CFR 983.260]

The family may terminate the lease at any time after the first year of occupancy. The family must give advance written notice to the owner in accordance with the lease and provide a copy of such notice to the HACC. If the family wishes to move with continued tenant-based assistance, the family must contact the HACC to request the rental assistance prior to providing notice to terminate the lease.

If the family terminates the lease in accordance with these requirements, the HACC is required to offer the family the opportunity for continued tenant-based assistance, in the form of a voucher or other comparable tenant-based rental assistance. To be eligible for tenant-based assistance, the family must be in good standing with the property (rent paid on time, unit cared for, no lease violations, etc.) and, if applicable, engaged in its supportive services plan. If voucher or other comparable tenant-based assistance is not immediately available upon termination of the family's lease in the PBV unit, the HACC must give the family priority to receive the next available opportunity for continued tenant-based assistance.

If the family terminates the assisted lease before the end of the first year, the family relinquishes the opportunity for continued tenant-based assistance.

17-VII.D. EXCEPTIONS TO THE OCCUPANCY CAP

[24 CFR 983.261]

The HACC may not pay housing assistance under a PBV HAP contract for the greater of 25 units or 25 percent of the number of dwelling units in a building unless the units are [24 CFR 983.56]:

- In a single-family building;
- Specifically made available for elderly families; or
- Specifically made available for families receiving supportive services as defined by the HACC.

If a family at the time of initial tenancy is receiving and while the resident of an excepted unit has received Family Self-Sufficiency (FSS) supportive services or any other service as defined by the HACC and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit.

A family (or remaining members of a family) residing in an excepted unit that no longer meets the criteria for a “qualifying family” in connection with the greater of 25 units or 25 percent per building cap exception (e.g., the family does not successfully complete supportive services requirements, or due to a change in family composition the family is no longer elderly or disabled), must vacate the unit within a reasonable period of time established by the HACC, and the HACC must cease paying housing assistance payments on behalf of the non-qualifying family.

If the family fails to vacate the unit within the established time, the unit must be removed from the HAP contract unless the project is partially assisted, and it is possible for the HAP contract to be amended to substitute a different unit in the building in accordance with program requirements; or the owner terminates the lease and evicts the family. The housing assistance payments for a family residing in an excepted unit that is not in compliance with its family obligations to comply with supportive services requirements must be terminated by the HACC.

PART VIII: DETERMINING RENT TO OWNER

17-VIII.A. OVERVIEW

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 re-determined at the owner’s request in accordance with program requirements, and at such time that there is a five percent or greater decrease in the published FMR.

17-VIII.B. RENT LIMITS

Except for certain tax credit units (discussed below), the rent to owner must not exceed the lowest of the following amounts [24 CFR 983.301]:

- An amount determined by the HACC, not to exceed 110 percent of the applicable fair market rent (or any HUD-approved exception payment standard) for the unit bedroom size minus any utility allowance;
- The reasonable rent; or
- The rent requested by the owner.

Certain Tax Credit Units [24 CFR 983.301(c)]

For certain tax credit units, the rent limits are determined differently than for other PBV units. These 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 building, and the comparable tax credit units do not have any form of rental assistance other than the tax credit; and
- The tax credit rent exceeds the HACC-determined amount (not to exceed 110 percent 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 is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income of less than 60 percent of Area Median Gross Income (AMGI), or where the poverty rate is at least 25 percent 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 building that also receive the low-income housing tax credit but do not have any additional rental assistance (e.g., tenant-based voucher assistance).

Use of FMRs, Exception Payment Standards, and Utility Allowances [24 CFR 983.301(f)]

When determining the initial rent to owner, the HACC must use the most recently published FMR in effect and the utility allowance schedule in effect at execution of the HAP contract. When re-determining the rent to owner, the HACC must use the most recently published FMR

and the utility allowance schedule in effect at the time of redetermination. At its discretion, the HACC may for initial rent, use the amounts in effect at any time during the 30-day period immediately before the beginning date of the HAP contract, or for redeterminations of rent, the 30-day period immediately before the redetermination date.

Any HUD-approved exception payment standard amount under the tenant-based voucher program also applies to the project-based voucher program. HUD will not approve a different exception payment stand amount for use in the PBV program.

Likewise, the HACC may not establish or apply different utility allowance amounts for the PBV program. The same utility allowance schedule applies to both the tenant-based and project-based voucher programs.

- Upon written request by the owner, the HACC will consider using the FMR or utility allowances in effect during the 30-day period before the start date of the HAP, or redetermination of rent. The owner must explain the need to use the previous FMRs or utility allowances and include documentation in support of the request. The HACC will review and make a decision based on the circumstances and merit of each request.
- In addition to considering a written request from an owner, the HACC may decide to use the FMR or utility allowances in effect during the 30-day period before the start date of the HAP, or redetermination of rent, if the HACC determines it is necessary due to the HACC budgetary constraints.

Redetermination of Rent [24 CFR 983.302]

The HACC must re-determine the rent to owner upon the owner's request or when there is a five percent or greater decrease in the published FMR.

Rent Increase

If an owner wishes to request an increase in the rent to owner from the HACC, it must be requested 60 days prior to the annual anniversary of the HAP contract (see Section 17-V.D.). The request must be in writing and in the form and manner required by the HACC. The HACC may only make rent increases in accordance with the rent limits described previously. There are no provisions in the PBV program for special adjustments (e.g., adjustments that reflect increases in the actual and necessary expenses of owning and maintaining the units which have resulted from substantial general increases in real property taxes, utility rates, or similar costs).

The HACC may not approve and the owner may not receive any increase of rent to owner until and unless 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. The HACC may limit the increase to no more than 5% of the total contract rent annually.

Rent Decrease

If there is a decrease in the rent to owner, as established in accordance with program requirements such as a change in the FMR or exception payment standard, or reasonable rent amount, the rent to owner must be decreased regardless of whether the owner requested a rent adjustment.

Notice of Rent Change

The rent to owner is re-determined by written notice by the HACC to the owner specifying the amount of the re-determined rent. The HACC notice of rent adjustment constitutes an amendment of the rent to owner specified in the HAP contract. The adjusted amount of rent to owner applies for the period of 12 calendar months from the annual anniversary of the HAP contract. The HACC will provide the owner with at least 30 days written notice of any change in the amount of rent to owner.

PHA-owned Units [24 CFR 983.301(g)]

For PHA-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. The HACC must use the rent to owner established by the independent entity.

17-VIII.C. REASONABLE RENT

At the time the initial rent is established and all times during the term of the HAP contract, the rent to owner for a contract unit may not exceed the reasonable rent for the unit as determined by the HACC [24 CFR 983.303].

When Rent Reasonable Determinations are Required

The HACC must re-determine the reasonable rent for a unit receiving PBV assistance whenever any of the following occur:

- There is a five percent 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 that was in effect one year before the contract anniversary date;
- The HACC approves a change in the allocation of responsibility for utilities between the owner and the tenant;
- The HAP contract is amended to substitute a different contract unit in the same building; or
- There is any other change that may substantially affect the reasonable rent.

How to Determine Reasonable Rent

The reasonable rent of a unit receiving PBV assistance must be determined by comparison to rent for other comparable unassisted units. When making this determination, the HACC must consider factors that affect market rent. Such factors include the location, quality, size, type and age of the unit, as well as the amenities, housing services maintenance, and utilities to be provided by the owner.

Comparability Analysis

For each unit, the comparability analysis must use at least three comparable units in the private unassisted market. This may include units in the premises or project that is receiving project-based assistance. The analysis must show how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units, and must be retained by the HACC. The comparability analysis may be performed by PHA staff or by another qualified person or entity. Those who conduct these analyses or are involved in determining the housing assistance payment based on the analyses may not have any direct or indirect interest in the property.

PHA-owned Units

For PHA-owned units, the amount of the reasonable rent must be determined by an independent agency approved by HUD in accordance with PBV program requirements. The independent entity must provide a copy of the determination of reasonable rent for PHA-owned units to the HACC and to the HUD field office where the project is located.

Owner Certification of Reasonable Rent

By accepting each monthly housing assistance payment, the owner certifies that the rent to owner is not more than rent charged by the owner for other comparable unassisted units in the premises. At any time, the HACC may require the owner to submit information on rents charged by the owner for other units in the premises or elsewhere.

17-VIII.D. EFFECT OF OTHER SUBSIDY AND RENT CONTROL

In addition to the rent limits discussed in Section 17-VIII.B above, other restrictions may limit the amount of rent to owner in a PBV unit. In addition, certain types of subsidized housing are not even eligible to receive PBV assistance (see Section 17-II.D).

Other Subsidy [24 CFR 983.304]

At its discretion, the HACC may reduce the initial rent to owner because of other governmental subsidies, including tax credit or tax exemption, grants, or other subsidized financing.

For units receiving assistance under the HOME program, rents may not exceed rent limits as required by that program.

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;
- A project receiving low-income housing tax credits;
- Any other type of federally subsidized project specified by HUD.

Combining Subsidy

Rent to owner may not exceed any limitation required to comply with HUD subsidy layering requirements.

Rent Control [24 CFR 983.305]

In addition to the rent limits set by PBV program regulations, the amount of rent to owner may also be subject to rent control or other limits under local, state, or federal law.

PART IX: PAYMENTS TO OWNER

17-IX.A. HOUSING ASSISTANCE PAYMENTS

During the term of the HAP contract, the HACC must make housing assistance payments to the owner in accordance with the terms of the HAP contract [24 CFR 983.351]. During the term of the HAP contract, payments must be made for each month that a contract unit complies with HQS and is leased to and occupied by an eligible family. The housing assistance payment must be paid to the owner on or about the first day of the month for which payment is due, unless the owner and the HACC agree on a later date.

Except for discretionary vacancy payments, the HACC may not make any housing assistance payment to the owner for any month after the month when the family moves out of the unit (even if household goods or property are left in the unit).

The amount of the housing assistance payment by the HACC is the rent to owner minus the tenant rent (total tenant payment minus the utility allowance).

In order to receive housing assistance payments, the owner must comply with all provisions of the HAP contract. Unless the owner complies with all provisions of the HAP contract, the owner does not have a right to receive housing assistance payments.

17-IX.B. VACANCY PAYMENTS

If an assisted family moves out of the unit, the owner may keep the housing assistance payment for the calendar month when the family moves out. However, the owner may not keep the payment if the HACC determines that the vacancy is the owner's fault [24 CFR 983.352].

If the HACC determines that the owner is responsible for a vacancy and, as a result, is not entitled to keep the housing assistance payment, the HACC will notify the landlord of the

amount of housing assistance payment that the owner must repay. The HACC will require the owner to repay the amount owed in accordance with the policies in Section 16-IV.B.

At the discretion of the HACC, the HAP contract may provide for vacancy payments to the owner. The HACC may only make vacancy payments if:

- The owner gives the HACC prompt, written notice certifying that the family has vacated the unit and identifies the date when the family moved out (to the best of the owner's knowledge);
- The owner certifies that the vacancy is not the fault of the owner and that the unit was vacant during the period for which payment is claimed;
- The owner certifies that it has taken every reasonable action to minimize the likelihood and length of vacancy; and
- The owner provides any additional information required and requested by the HACC to verify that the owner is entitled to the vacancy payment.

The owner must submit a request for vacancy payments in the form and manner required by the HACC and must provide any information or substantiation required by the HACC to determine the amount of any vacancy payment.

- If an owner's HAP contract calls for vacancy payments to be made and the owner wishes to receive vacancy payments, the owner must have properly notified the HACC of the vacancy in accordance with the policy in Section 17-VI.F. regarding filling vacancies.
- In order for a vacancy payment request to be considered, it must be made within 15 business days of the end of the period for which the owner is requesting the vacancy payment. The request must include the required owner certifications and the HACC may require the owner to provide documentation to support the request. If the owner does not provide the information requested by the HACC within 15 business days of the HACC's request, no vacancy payments will be made.

17-IX.C. 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 the HACC in accordance with HUD requirements. Any changes in the amount of tenant rent will be effective on the date stated in the HACC notice to the family and owner [24 CFR 983.353].

The family is responsible for paying the tenant rent (total tenant payment minus the utility allowance). The amount of the tenant rent determined by the HACC 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 the HACC. The owner must immediately return any excess payment to the tenant.

Tenant and PHA 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 the HACC.

Likewise, the HACC is responsible only for making the housing assistance payment to the owner in accordance with the HAP contract. The HACC is not responsible for paying tenant rent, or any other claim by the owner, including damage to the unit. The HACC may not use housing assistance payments or other program funds (including administrative fee reserves) to pay any part of the tenant rent or other claim by the owner.

Utility Reimbursements

If the amount of the utility allowance exceeds the total tenant payment, the HACC must pay the amount of such excess to the tenant as a reimbursement for tenant-paid utilities and the tenant rent to the owner must be zero.

The HACC may pay the utility reimbursement directly to the family or to the utility supplier on behalf of the family. If the HACC chooses to pay the utility supplier directly, the HACC must notify the family of the amount paid to the utility supplier.

17-IX.D. OTHER FEES AND CHARGES

[24 CFR 983.354]

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.

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.

17.X. FEES CHARGED TO THE OWNER BY THE HACC

Application Fees

The HACC will impose an application fee of \$2,500 for all proposals submitted in response to the HACC's RFP. Application fees will be paid at the time of proposal submission or as outlined in the RFP and are non-refundable.

Processing Fees

Processing fees will be assessed on proposals selected for PBV assistance at the time of execution of the AHAP. The amount of the fee is based on the number of PBV units requested as follows:

Twenty units or less - \$200 per unit

Over twenty units - \$350 per unit

PART XI. RENTAL ASSISTANCE DEMONSTRATION (RAD) PROGRAM PROJECT-BASED VOUCHER (PBV) PROGRAM

The HACC's RAD PBV Program is a result of the HACC applying for the RAD Program as a means to rehabilitate its public housing communities. Generally the policies surrounding the standard PBV Program will apply to the RAD PBV Program. However, there are some regulatory differences that apply to the RAD PBV Program. The differences are described in this section and can be found in Notice PIH 2012-32, REV-3.

17-XI.A. NO RESCREENING OF TENANTS UPON CONVERSION

Pursuant to the RAD Statute, at conversion, current households cannot be excluded from occupancy at the Covered Project based on any rescreening, income eligibility, or income targeting. With respect to occupancy in the Covered Project, current households in the Converting Project will be grandfathered for application of any eligibility criteria to conditions that occurred prior to conversion, but will be subject to any ongoing eligibility requirements for actions that occur after conversion. Once the grandfathered household moves out, the unit must be leased to an eligible family. The screening requirements in the standard PBV Program will apply.

17-XI.B. RIGHT TO RETURN

Any resident that may need to be temporarily relocated to facilitate rehabilitation or construction has a right to return to an assisted unit at the Converted Project once rehabilitation or construction is completed. Permanent involuntary displacement of residents may not occur as a result of the project's conversion of assistance. Notice H 2016-17 and PIH 2016-17 describe the relocation rights of residents in a Converted Project.

17-XI.C. RENEWAL OF LEASE

Project Owners are required to renew all leases upon lease expiration, unless cause exists.

17-XI.D. PHASE-IN OF TENANT RENT INCREASES

If a tenant's monthly rent increases by more than the greater of 10 percent or \$25 purely as a result of conversion, the rent increase will be phased in over 3 years.

The method described below explains the HACC's phase-in policy. For purposes of this section "Calculated PBV TTP" refers to the TTP calculated in accordance with regulations at 24 CFR §5.628 and the "most recently paid TTP" refers to the TTP recorded on line 9j of the family's most recent HUD Form 50058. For families paying a flat rent immediately prior to conversion, the HACC will use the flat rent amount to calculate the phase-in amount for Year 1, as illustrated below:

Three Year Phase-in:

Year 1: Any recertification (interim or annual) performed prior to the second annual recertification after conversion – 33% of difference between most recently paid TTP or flat rent and the Calculated PBV TTP

Year 2: Year 2 Annual Recertification (AR) and any Interim Recertification (IR) prior to Year 3 AR – 50% of difference between most recently paid TTP and the Calculated PBV TTP

Year 3: Year 3 AR and all subsequent recertifications – Full Calculated PBV TTP

Once the calculated PBV TTP is equal to or less than the previous TTP, the phase-in ends and tenants will pay full TTP from that point forward.

17-XI.E. FAMILY SELF SUFFICIENCY (FSS) PROGRAM

The HACC currently operates an FSS Program, but only HCV residents currently participate. Upon conversion, and subject to future NOFA requirements, residents in the RAD PBV Converted Project will be eligible for the FSS Program. The FSS requirements for the HCV Program will apply to new FSS participants in the Converted Project.

17-XI.F. RESIDENT PARTICIPATION AND FUNDING

Residents of Converted Projects will have the right to establish and operate a resident organization for the purpose of addressing issues related to their living environment. They will also be eligible for resident participation funding. If none such organization exists at the time of conversion, Attachment 1B of PIH 2012-32, REV-3 provides guidance on establishing one. The project owner must provide \$25 per occupied unit annually for resident participation, of which \$15 per occupied unit must be provided to the legitimate resident organization.

17-XI.G. RESIDENT PROCEDURAL RIGHTS

Residents of a Converted Project are eligible for certain procedural rights that are not afforded to residents in a standard PBV project. They are as follows:

- *Termination Notification:* In addition to the regulations at 24 CFR § 983.257 related to Project Owner termination of tenancy and eviction, the termination procedure for RAD conversions to PBV require the HACC to provide adequate written notice of termination of the lease which shall be:
 - A reasonable period of time, but not to exceed 30 days:
 - If the health or safety of other tenants, Project Owner employees, or persons residing in the immediate vicinity of the premises is threatened; or
 - In the event of any drug-related or violent criminal activity or any felony conviction;
 - Not less than 14 days in the case of nonpayment of rent; and
 - Not less than 30 days in any other case, except that if a State or local law provides for a shorter period of time, such shorter period shall apply.
- *Grievance Process:* For issues related to tenancy and termination of assistance, PBV program rules require the Project Owner to provide an opportunity for an informal hearing, as outlined in 24 CFR § 982.555. RAD specifies alternative requirements for 24 CFR § 982.555(b) as follows:
 - An opportunity for an informal hearing for any dispute that a resident may have with respect to a Project Owner action in accordance with the individual's lease or the HACC in accordance with RAD PBV requirements that adversely affect the resident's rights, obligations, welfare, or status.
 - For any hearing required under 24 CFR § 982.555(a)(1)(i)-(vi), the HACC will perform the hearing, as is the current standard in the program.
 - For any additional hearings required under RAD, the Project Owner will perform the hearing.
 - There is no right to an informal hearing for class grievances or to disputes between residents not involving the Project Owner or the HACC.
 - The Project Owner gives residents notice of their ability to request an informal hearing as outlined in 24 CFR § 982.555(c)(1) for informal hearings that will address circumstances that fall outside of the scope of 24 CFR § 982.555(a)(1)(i)-(vi).
 - The Project Owner provides opportunity for an informal hearing before an eviction.

17-XI.H. EARNED INCOME DISREGARD (EID)

Tenants who are employed and are currently receiving the EID exclusion at the time of conversion will continue to receive the EID after conversion, in accordance with regulations at 24 CFR § 5.617. Upon the expiration of the EID for such families, the rent adjustment shall not be subject to rent phase-in; instead, the rent will automatically rise to the appropriate rent level based upon tenant income at that time.

In place families at the time of conversion who are not receiving the EID exclusion will only be eligible after conversion if the family member who becomes employed is a person with disabilities. Non-disabled persons are not eligible for the EID exclusion in the HCV Program.

17-XI.I. WHEN TOTAL TENANT PAYMENT EXCEEDS GROSS RENT

Under normal PBV rules, the HACC may select an occupied unit to be included under the PBV HAP Contract only if the unit's occupants are eligible for housing assistance payments. Also, the HACC must remove a unit from the contract when no assistance has been paid for 180 days because the family's TTP has risen to a level that is equal to or greater than the contract rent, plus any utility allowance (gross rent), for the unit. These two provisions do not apply to residents living in the Converting Project prior to conversion who will return to the Covered Project after conversion. The units for such families must be placed on and/or remain under the HAP Contract when the TTP equals or exceeds the Gross Rent. Until such time that the family's TTP falls below the gross rent, the rent to the owner for the unit will equal the lesser of (a) the family's TTP less the Utility Allowance, or (b) any applicable maximum rent under LIHTC regulations. When the family's TTP falls below the gross rent, normal PBV rules shall apply. In either case, the existing resident is considered a participant under the program and all of the family obligations and protections under RAD and PBV apply. Likewise, all requirements with respect to the unit, such as compliance with the HQS requirements, apply as long as the unit is under HAP Contract.

Following conversion, any new families referred to the RAD PBV project must be initially eligible for a HAP payment at admission to the program, which means their TTP may not exceed the gross rent for the unit at that time. All standard PBV regulations apply to new admissions.

17-XI.J. UNDER-OCCUPIED UNIT

If a family is in an under-occupied unit at the time of conversion, the family may remain in this unit if no appropriate-sized unit is available in the Covered Project at the time of conversion. When an appropriate sized unit becomes available in the Covered Project, the family living in the under-occupied unit must move to the appropriate-sized unit within 30 days.

17-XI.K. ESTABLISHMENT OF WAITING LIST

The HACC currently maintains site-based wait lists in its standard PBV Program as well as its LIPH Program. The HACC will maintain site-based wait lists at all its RAD PBV Conversion Projects.

To establish the initial wait list at the newly converted projects, the HACC will transfer the applicants from the existing site-based LIPH wait list to the newly created site-based wait list for

the converted project in the same order they are on the LIPH wait list. The transferred applicants will receive priority for processing for upcoming vacancies prior to any new applicants who apply when the site-based wait list re-opens. Any future openings of the site-based wait lists will be done in the same manner as the HACC's standard PBV Program.

For applicants on the LIPH waiting list that are likely to be ineligible for admission to a Converted Project because the household's TTP is likely to exceed the RAD gross rent or the household's annual income exceeds 50% of the Area Median Income (AMI) for the number of people in the household, the HACC will offer those applicants the opportunity to be placed on any other site-based LIPH wait list that is open at the time of application transfer.

17-XII. CHOICE-MOBILITY

One of the key features of the PBV program is the mobility component, which provides that if the family has elected to terminate the assisted lease at any time after the first year of occupancy in accordance with program requirements, the HACC must offer the family the opportunity for continued tenant-based rental assistance, in the form of either assistance under the housing choice voucher program or other comparable tenant-based rental assistance.

The HACC will apply this provision in RAD PBV Converted Projects the same as in its standard PBV Program. There will not be any restriction on the number of families that can request this option. However, in the event of a shortfall funding situation in the HCV Program where the HACC is unable to issue any tenant-based vouchers, families who request this option will be placed on a wait list for available vouchers. The HACC will maintain one wait list for both the standard PBV and RAD PBV Programs. The list will be maintained in the order the requests are received.

GLOSSARY

A. ACRONYMS USED IN SUBSIDIZED HOUSING

AAF	Annual adjustment factor (published by HUD in the Federal Register and used to compute annual rent adjustments)
ACC	Annual contributions contract
ADA	Americans with Disabilities Act of 1990
BR	Bedroom
CDBG	Community Development Block Grant (Program)
CFR	Code of Federal Regulations (published federal rules that define and implement laws; commonly referred to as “the regulations”)
CPI	Consumer price index (published monthly by the Department of Labor as an inflation indicator)
FDIC	Federal Deposit Insurance Corporation
FHA	Federal Housing Administration
FICA	Federal Insurance Contributions Act (established Social Security taxes)
FMR	Fair market rent
FR	Federal Register
FSS	Family Self-Sufficiency (Program)
FY	Fiscal year
FYE	Fiscal year end
GAO	Government Accountability Office
GR	Gross rent
HAP	Housing assistance payment
HCV	Housing choice voucher
HQS	Housing quality standards.
HUD	Department of Housing and Urban Development
HUDCLIPS	HUD Client Information and Policy System
IG	(HUD Office of) Inspector General
IPA	Independent public accountant
IRA	Individual Retirement Account
IRS	Internal Revenue Service
JTPA	Job Training Partnership Act
LBP	Lead-based paint

MSA	Metropolitan statistical area (established by the U.S. Census Bureau)
MTCS	Multi-family Tenant Characteristics System (now the Form HUD-50058 sub-module of the PIC system)
NOFA	Notice of funding availability
OMB	Office of Management and Budget
PASS	Plan for Achieving Self-Support
PHA	Public housing agency
PHRA	Public Housing Reform Act of 1998 (also known as the Quality Housing and Work Responsibility Act)
PIC	PIH Information Center
PIH	(HUD Office of) Public and Indian Housing
PS	Payment standard
QC	Quality control
QHWRA	Quality Housing and Work Responsibility Act of 1998 (also known as the Public Housing Reform Act)
REAC	(HUD) Real Estate Assessment Center
RFP	Request for proposals
RFTA	Request for tenancy approval
RIGI	Regional inspector general for investigation (handles fraud and program abuse matters for HUD at the regional office level)
SEMAP	Section 8 Management Assessment Program
SRO	Single room occupancy
SSA	Social Security Administration
SSI	Supplemental security income
TANF	Temporary assistance for needy families
TR	Tenant rent
TTP	Total tenant payment
UA	Utility allowance
URP	Utility reimbursement payment
VAWA	Violence Against Women Reauthorization Act

B. GLOSSARY OF SUBSIDIZED HOUSING TERMS

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 consolidated ACC.

Accessible. The facility or portion of the facility can be approached, entered, and used by individuals with physical disabilities.

Adjusted Income. Annual income, less allowable HUD deductions.

Adjusted Annual Income. Same as Adjusted Income.

Administrative fee. Fee paid by HUD to the HACC for administration of the program. See §982.152.

Administrative fee reserve (formerly “operating reserve”). Account established by PHA from excess administrative fee income. The administrative fee reserve must be used for housing purposes. See §982.155. Administrative fee reserves from FY 2004 and 2005 funding are further restricted to activities related to the provision of tenant-based rental assistance authorized under HCV.

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 HACC’s board and included as a supporting document to the HACC Plan. See §982.54.

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.

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.

Annual contributions contract (ACC). The written contract between HUD and the HACC under which HUD agrees to provide funding for a program under the 1937 Act, and the HACC agrees to comply with HUD requirements for the program.

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.

Applicant (applicant family). A family that has applied for admission to a program but is not yet a participant in the program.

Area Exception Rent. An amount that exceeds the published FMR. See §982.504(b).

“As-paid” States. States where the welfare agency adjusts the shelter and utility component of the welfare grant in accordance with actual housing costs.

Assets. (See Net Family Assets.)

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.

Budget authority. An amount authorized and appropriated by the Congress for payment to HAs under the program. For each funding increment in the HACC program, budget authority is the maximum amount that may be paid by HUD to the HACC over the ACC term of the funding increment.

Child. A member of the family other than the family head or spouse who is under 18 years of age.

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.

Citizen. A citizen or national of the United States.

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.

Common space. In shared housing: Space available for use by the assisted family and other occupants of the unit.

Computer match. The automated comparison of data bases containing records about individuals.

Confirmatory review. An on-site review performed by HUD to verify the management performance of the HACC's.

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.

Congregate housing. Housing for elderly persons or persons with disabilities that meets the HQS for congregate housing. A special housing type: see §982.606 to §982.609.

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.

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.

Contract. (See Housing Assistance Payments Contract.)

Contract authority. The maximum annual payment by HUD to the HACC's for a funding increment.

Cooperative (term includes mutual housing). Housing owned by a nonprofit 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 §982.619.

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 noncompliance 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.

Dating violence. Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship
- The type of relationship
- The frequency of interaction between the persons involved in the relationship

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.

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.

Disabled family. A family whose head, spouse, or sole member is a person with disabilities; or two or more persons with disabilities living together; or one or more persons with disabilities living with one or more live-in aides.

Disabled person. See Person with Disabilities.

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.

Domestic violence. Felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

Domicile. The legal residence of the household head or spouse as determined in accordance with State and local law.

Drug-related criminal activity. As defined in 42 U.S.C. 1437f(f)(5).

Drug-trafficking. The illegal manufacture, sale, or distribution, or the possession with intent to manufacture, sell, or distribute, of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

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 U.S.C. 607(d)). Also see §5.603(c).

Elderly family. A family whose head, spouse, or sole member is a person who is at least 62 years of age; or 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.

Elderly Person. An individual who is at least 62 years of age.

Eligible Family (Family). A family that is income eligible and meets the other requirements of the Act and Part 5 of 24 CFR.

Employer Identification Number (EIN). The nine-digit taxpayer identifying number that is assigned to an individual, trust, estate, partnership, association, company, or corporation.

Evidence of citizenship or eligible status. The documents which must be submitted to evidence citizenship or eligible immigration status. (See §5.508(b).)

Extremely Low Income Family. A family whose annual income does not exceed 30 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish income ceilings higher or lower than 30 percent of median income if HUD finds such variations are necessary due to unusually high or low family incomes. (CFR 5.603)

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.

Fair Housing Act means title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988

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.

Family. Includes but is not limited to the following, 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.

Family rent to owner. In the voucher program, the portion of rent to owner paid by the family.

Family self-sufficiency program (FSS program). The program established by the HACC's in accordance with 24 CFR part 984 to promote self-sufficiency of assisted families, including the coordination of supportive services (42 U.S.C. 1437u).

Family share. The portion of rent and utilities paid by the family. For calculation of family share, see §982.515(a).

Family unit size. The appropriate number of bedrooms for a family, as determined by the HACC under the HACC subsidy standards.

Federal agency. A department of the executive branch of the Federal Government.

Foster Child Care Payment. Payment to eligible households by state, local, or private agencies appointed by the State, to administer payments for the care of foster children.

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). (CFR 5.603)

Funding increment. Each commitment of budget authority by HUD to the HACC's under the consolidated annual contributions contract for HACC program.

Gross rent. The sum of the rent to owner plus any utility allowance.

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 §982.610 to §982.614.

Handicap. Any condition or characteristic that renders a person an individual with handicaps. See 24CFR 8.3.

Handicap Assistance Expense. See "Disability Assistance Expense."

HAP contract. Housing assistance payments contract. (Contract). A written contract between HACC and an owner for the purpose of providing housing assistance payments to the owner on behalf of an eligible family.

Head of household. The adult member of the family who is the head of the household for purposes of determining income eligibility and rent.

Housing assistance payment. The monthly assistance payment by the HACC's, 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.

Housing agency (HA). A State, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) authorized to engage in or assist in the development or operation of low-income housing. ("PHA" and "HA" mean the same thing.)

Housing Quality Standards. The HUD minimum quality standards for housing assisted under the voucher program.

HUD. The Department of Housing and Urban Development.

Immediate family member. A spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in the position or place of a parent; or any other person living in the household of that person and related to that person by blood and marriage.

Imputed Asset. Asset disposed of for less than Fair Market Value during two years preceding examination or reexamination.

Imputed Income. HUD passbook rate multiplied by the total cash value of assets. Calculation used when net family assets exceed \$5,000.

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.

Income. Income from all sources of each member of the household, as determined in accordance with criteria established by HUD.

Income For Eligibility. Annual Income.

Income information means information relating to an individual's income, including:

- All employment income information known to current or previous employers or other income sources
- All information about wages, as defined in the State's unemployment compensation law, including any Social Security Number; name of the employee; quarterly wages of the employee; and the name, full address, telephone number, and, when known, Employer Identification Number of an employer reporting wages under a State unemployment compensation law
- Whether an individual is receiving, has received, or has applied for unemployment compensation, and the amount and the period received
- Unearned IRS income and self-employment, wages and retirement income
- Wage, social security, and supplemental security income data obtained from the Social Security Administration.

Individual with handicaps. Any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment.

Initial PHA. In portability, the term refers to both: (1) The HACC'S that originally selected a family that later decides to move out of the jurisdiction of the selecting PHA; and (2) The HACC'S that absorbed a family that later decides to move out of the jurisdiction of the absorbing PHA.

Initial payment standard. The payment standard at the beginning of the HAP contract term.

Initial rent to owner. The rent to owner at the beginning of the HAP contract term.

Jurisdiction. The area in which the HACC has authority under State and local law to administer the program.

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.

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 HACC.

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.

Local Preference. A preference used by the HACC to select among applicant families.

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.

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 §982.620 and §982.621.

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 §982.622 to §982.624.

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.

Merger Date. October 1, 1999.

Minor. A member of the family household other than the family head or spouse, who is under 18 years of age.

Mixed family. A family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

Monthly adjusted income. One twelfth of adjusted income.

Monthly income. One twelfth of annual income.

Mutual housing. Included in the definition of “cooperative.”

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.

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.

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.

- In cases where a trust fund has been established and the trust is not revocable by, or

under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining annual income under §5.609.

- In determining net family assets, PHAs or owners, as applicable, shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefore. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

Noncitizen. A person who is neither a citizen nor national of the United States.

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.

Office of General Counsel (OGC). The General Counsel of HUD.

Owner. Any person or entity with the legal right to lease or sublease a unit to a participant.

PHA Plan. The annual plan and the 5-year plan as adopted by the HACC and approved by HUD.

PHA's quality control sample. An annual sample of files or records drawn in an unbiased manner and reviewed by the HACC's 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.

Participant (participant family). A family that has been admitted to the HACC 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 HACC for the family (first day of initial lease term).

Payment standard. The maximum monthly assistance payment for a family assisted in the voucher program (before deducting the total tenant payment by the family).

Persons With Disabilities. A person who has a disability as defined in 42 U.S.C. 423 or a developmental disability as defined in 42 U.S.C. 6001. Also includes a person who is determined, under HUD regulations, to have a physical or mental impairment that is expected to be of long-continued and indefinite duration, substantially impedes the ability to live independently, and is of such a nature that the ability to live independently could be improved by more suitable housing conditions. For purposes of reasonable accommodation and program accessibility for persons with disabilities, means and "individual with handicaps" as defined in 24 CFR 8.3. Definition does not exclude persons who have AIDS or conditions arising from AIDS, but does not include a person whose disability is based solely on drug or alcohol dependence (for low-income housing eligibility purposes). See "Individual with handicaps"

Portability. Renting a dwelling unit with a housing choice voucher outside the jurisdiction of the initial PHA.

Premises. The building or complex in which the dwelling unit is located, including common areas and grounds.

Private space. In shared housing: The portion of a contract unit that is for the exclusive use of an assisted family.

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.”

Project owner. The person or entity that owns the housing project containing the assisted dwelling unit.

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.

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.

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.

Receiving PHA. In portability: The HACC’S 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.

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.

Remaining Member of Tenant Family. Person left in assisted housing who may or may not normally qualify for assistance on own circumstances (i.e., an elderly spouse dies, leaving widow age 47 who is not disabled).

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.

Residency Preference. The HACC’S 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 (“residency preference area”).

Residency Preference Area. The specified area where families must reside to qualify for a residency preference.

Responsible entity. For the public housing and HCV, project-based certificate assistance, and moderate rehabilitation programs, the responsible entity means the HACC administering the program under an ACC with HUD. For all other Section 8 programs, the responsible entity means the Section 8 owner.

Secretary. The Secretary of Housing and Urban Development.

Section 8. Section 8 of the United States Housing Act of 1937.

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.

Section 214. Section 214 of the Housing and Community Development Act of 1980, as amended

Section 214 covered programs is the collective term for the HUD programs to which the restrictions imposed by Section 214 apply. These programs are set forth in §5.500.

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.

Set-up charges. In a manufactured home space rental: Charges payable by the family for assembling, skirting and anchoring the manufactured home.

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 §982.615 to §982.618.

Single Person. A person living alone or intending to live alone.

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 §982.602 to §982.605.

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.

Special admission. Admission of an applicant that is not on the HACC waiting list or without considering the applicant's waiting list position.

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).

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 noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

Spouse. The marriage partner of the head of household.

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.

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.

Subsidy standards. Standards established by the HACC's to determine the appropriate number of bedrooms and amount of subsidy for families of different sizes and compositions.

Suspension. Stopping the clock on the term of a family's voucher after the family submits a request for approval of the tenancy. If the HACC decides to allow extensions or suspensions of the voucher term, the HACC administrative plan must describe how HACC determines whether to grant extensions or suspensions, and how the HACC determines the length of any extension or suspension. This practice is also called “tolling”.

Tenancy Addendum. For the Housing Choice Voucher Program, the lease language required by HUD in the lease between the tenant and the owner.

Tenant. The person or persons (other than a live-in aide) who executes the lease as lessee of the dwelling unit.

Tenant rent to owner. See “Family rent to owner”.

Term of Lease. The amount of time a tenant agrees in writing to live in a dwelling unit.

Total Tenant Payment (TTP). The total amount the HUD rent formula requires the tenant to pay toward rent and utilities.

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 (0) bedrooms to six (6) bedrooms.

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 the HACC’s 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.

Utility reimbursement. In the voucher program, the portion of the housing assistance payment which exceeds the amount of rent to owner.

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.

Vacancy Loss Payments. (*Applies only to pre-10/2/95 HAP Contracts in the Rental Certificate Program*). When a family vacates its unit in violation of its lease, the owner is eligible for 80% of the contract rent for a vacancy period of up to one additional month, (beyond the month in which the vacancy occurred) if s/he notifies the HACC as soon as s/he learns of the vacancy, makes an effort to advertise the unit, and does not reject any eligible applicant except for good cause.

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.

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.

Voucher (Housing Choice Voucher). A document issued by the HACC’s 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.

Voucher holder. A family holding a voucher with an unexpired term (search time).

Voucher program. The housing choice voucher program.

Waiting list admission. An admission from the HACC waiting list.

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” includes only cash maintenance payments from Federal or State programs designed to meet a family’s ongoing basic needs, but does not include food stamps, emergency rental and utilities assistance, SSI, SSDI, or Social Security.

Welfare-to-work (WTW) family. A family assisted by the HACC’s with Voucher funding awarded to the HACC under the HUD welfare-to-work voucher program (including any renewal of such WTW funding for the same purpose).