



ADMINISTRATIVE PLAN FOR
THE HOUSING AUTHORITY OF BERGEN
COUNTY HOUSING CHOICE VOUCHER
PROGRAM

Presented to the HABC Board of Commissioners:
Approved by the HA Board of Commissioners:
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REVISIONS

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November 21, 2017	Manufactured Home Space Rentals
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Introduction to References Used in the

HOUSING AUTHORITY OF BERGEN COUNTY (HABC) ADMINISTRATIVE PLAN

AUTHORITIES IN THE ADMINISTRATIVE PLAN

Authority for policies is derived from many sources. Primary among these sources are regulations and guidance issued by HUD. State law also directs HABC policy. State law must be followed where such law exists and does not conflict with federal regulations. In the absence of legal requirements or HUD guidance, industry practice may lead to HABC policy.

HUD

HUD provides the primary source of HABC policy through federal regulations, HUD Notices and handbooks. Compliance with federal regulations, current HUD Notices and HUD handbooks is mandatory.

HUD provides non-mandatory guidance to HABC through HUD published guidebooks. Expired HUD Notices and handbooks also provide guidance for HABC policy. Following HUD guidance is optional, if HABC policies comply with federal law, federal regulations and mandatory policy. Because HUD has already determined that the guidance it provides is consistent with mandatory policies, HABC reliance on HUD guidance provides the HABC with a “safe harbor.”

Content contained on the HUD website can provide further clarification of HUD policies. For example, FAQs on the HUD website can provide direction on the application of federal regulations to a specific pattern.

State Law

Where there is no mandatory federal guidance, HABC must comply with state law, if it exists. Where state law is more restrictive than federal law, but does not conflict with it, the HABC should follow the state law.

Industry Practice

Where no law or HUD authority exists on a subject, industry practice may support HABC policy. An industry practice is a way of doing things that is followed by most housing authorities.

RESOURCES CITED IN THE ADMINISTRATIVE PLAN

The administrative plan cites several documents. Where a document or resource is cited frequently, it may be abbreviated. Where it is cited only once or twice, the administrative plan may contain the entire name of the document or resource. Following is a key to abbreviations used for various sources that are frequently cited in the administrative plan and a list of references and document locations that are referenced in the administrative plan or that may be helpful to you.

Abbreviations

Throughout the administrative plan, abbreviations are used to designate certain documents in citations. The following is a table of abbreviations of documents cited in the administrative plan.

Abbreviation	Document
CFR	Code of Federal Regulations
HCV GB	Housing Choice Voucher Program Guidebook (7420.10G), April 2001.
HUD-50058 IB	HUD-50058 Instruction Booklet
RHIIP FAQs	Rental Housing Integrity Improvement Program (RHIIP) Frequently Asked Questions.
VG	PIH Notice 2004-01 Verification Guidance, March 9, 2004.
HB 4350.3	Occupancy Requirements of Subsidized Multifamily Housing Programs

Resources and Where to Find Them

Following is a list of resources helpful to the PHA or referenced in the administrative plan, and the online location of each.

Document and Location
Code of Federal Regulations https://www.ecfr.gov/cgi-bin/ECFR?page=browse
Enterprise Income Verification (EIV) System, Security Procedures for Upfront Income Verification data https://www.hud.gov/program_offices/public_indian_housing/programs/ph/rhiip/uivsystem
Federal Register https://www.federalregister.gov/agencies/housing-and-urban-development-department

The HUD Web site is <http://www.hud.gov/index.html>.

Guidebooks, handbooks and other HUD resources may be found at the HUDClips Web site: https://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips .

Chapter 1: OVERVIEW OF THE PROGRAM AND PLAN

INTRODUCTION

The Housing Authority of Bergen County (HABC) receives its funding for the Housing Choice Voucher (HCV) program from the Department of Housing and Urban Development. The HABC is not a federal department or agency. The HABC is a public housing agency (PHA), as such, it 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 HABC enters into an Annual Contributions Contract with HUD to administer the program requirements on behalf of HUD. The HABC must ensure compliance with federal laws, regulations and notices and must establish policy and procedures to clarify federal requirements and to ensure consistency in program operation.

This chapter contains information about the HABC 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 sections to this chapter:

Section 1: The Public Housing Agency (PHA). This part includes a description of the HABC, its jurisdiction, its programs, and its mission and intent.

Section 2: The HCV Program. This part contains information about the Housing Choice Voucher program operation, roles and responsibilities, and partnerships.

Section 3: The HCV Administrative Plan. This part discusses the purpose and organization of the plan and its revision requirements.

Ch. 1 Section 1: THE PUBLIC HOUSING AGENCY

1.1.A. OVERVIEW

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

1.1.B. ORGANIZATION AND STRUCTURE OF THE HABC

The Section 8 tenant-based Housing Choice Voucher (HCV) assistance program is funded by the federal government and administered by the Housing Authority of Bergen County for the jurisdiction of the County of Bergen except for Cliffside Park, Edgewater, Englewood, Fort Lee, and Lodi; each of these municipalities receive funding and operate a Housing Choice Voucher Program.

The officials of the HABC 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 HABC conducts business, ensuring that policies are followed by HABC staff and ensuring that the HABC 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 HABC are taken through written resolutions, adopted by the Board of Commissioners and entered into the official records of the HABC.

The principal staff member of the HABC is the Executive Director (ED), hired and appointed by the Board of Commissioners. The Executive Director is directly responsible for carrying out the policies established by the Commissioners and is delegated the responsibility for hiring, training and supervising the remainder of the HABC's staff to manage the day-to-day operations of the HABC to ensure compliance with federal and state laws and directives for the programs managed. In addition, the Executive Director's duties include budgeting and financial planning for the agency.

1.1.C. HABC MISSION

The HABC's mission is to create and preserve affordable housing. We do this by producing and providing safe, decent and sanitary housing conditions for very low-income families and to manage resources efficiently. The HABC is to promote personal, economic and social upward mobility to provide families the opportunity to make the transition from subsidized to non-subsidized housing.

1.1.D. THE HABC'S PROGRAMS

The HABC's administrative plan is applicable to the operation of the Housing Choice Voucher program. In addition, the administrative plan addresses procedural policies that may also apply to the following special voucher programs administered by the HABC:

- HOME Tenant Based Rental Assistance (TBRA)
- Continuum of Care
- Mainstream Vouchers
- Housing Opportunities for Persons with AIDS/HIV (HOPWA)
- HCV Project Based Voucher Program

1.1.E. THE HABC'S COMMITMENT TO ETHICS AND SERVICE

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

- Administer applicable federal and state laws and regulations to achieve high ratings in compliance measurement indicators while maintaining efficiency in program operation to ensure fair and consistent treatment of clients served.
- Provide decent, safe, and sanitary housing in compliance with program housing quality standards for very low-income families while ensuring that family rents are fair, reasonable, and affordable.
- Encourage self-sufficiency of participant families and assist in the expansion of family opportunities which address educational, socio-economic, recreational and other human service's needs.
- Promote fair housing and the opportunity for very low-income families of all ethnic backgrounds to experience freedom of housing choice.
- Promote a housing program which maintains quality service and integrity while providing an incentive to private property owners to rent to very low-income families.
- Promote a market-driven housing program that will help qualified low-income families be successful in obtaining affordable housing and increase the supply of housing choices for such families.
- Create positive public awareness and expand the level of family, owner, and community support in accomplishing the HABC's mission.
- Attain and maintain a high level of standards and professionalism in day-to-day management of all program components.
- Administer an efficient, high-performing agency through continuous improvement of the HABC's support systems and commitment to our employees and their development.

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

Ch. 1 Section 2: THE HOUSING CHOICE VOUCHER (HCV) PROGRAM

1.2.A. OVERVIEW AND HISTORY OF THE PROGRAM

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

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 Existing program (also known as the Section 8 Certificate program). The HCD Act represented a significant shift in federal housing strategy from locally owned public housing to privately owned rental housing.

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

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

The Housing and Community Development (HCD) Act of 1987 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.

1.2.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. The HABC is afforded choices in the operation of the program which are included in the HABC’s administrative plan, a document approved by the board of commissioners of the HABC.

The HCV program offers mobility to eligible families because they may search for suitable housing anywhere in the HABC’s jurisdiction and may also be eligible to move under portability to other HABCs’ jurisdictions.

When a family is determined to be eligible for the program and funding is available, the HABC issues the family a housing voucher. When the family finds a suitable housing unit and funding is available, the HABC 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 HABC continues to make payments to the owner if the family is eligible and the housing unit continues to qualify under the program.

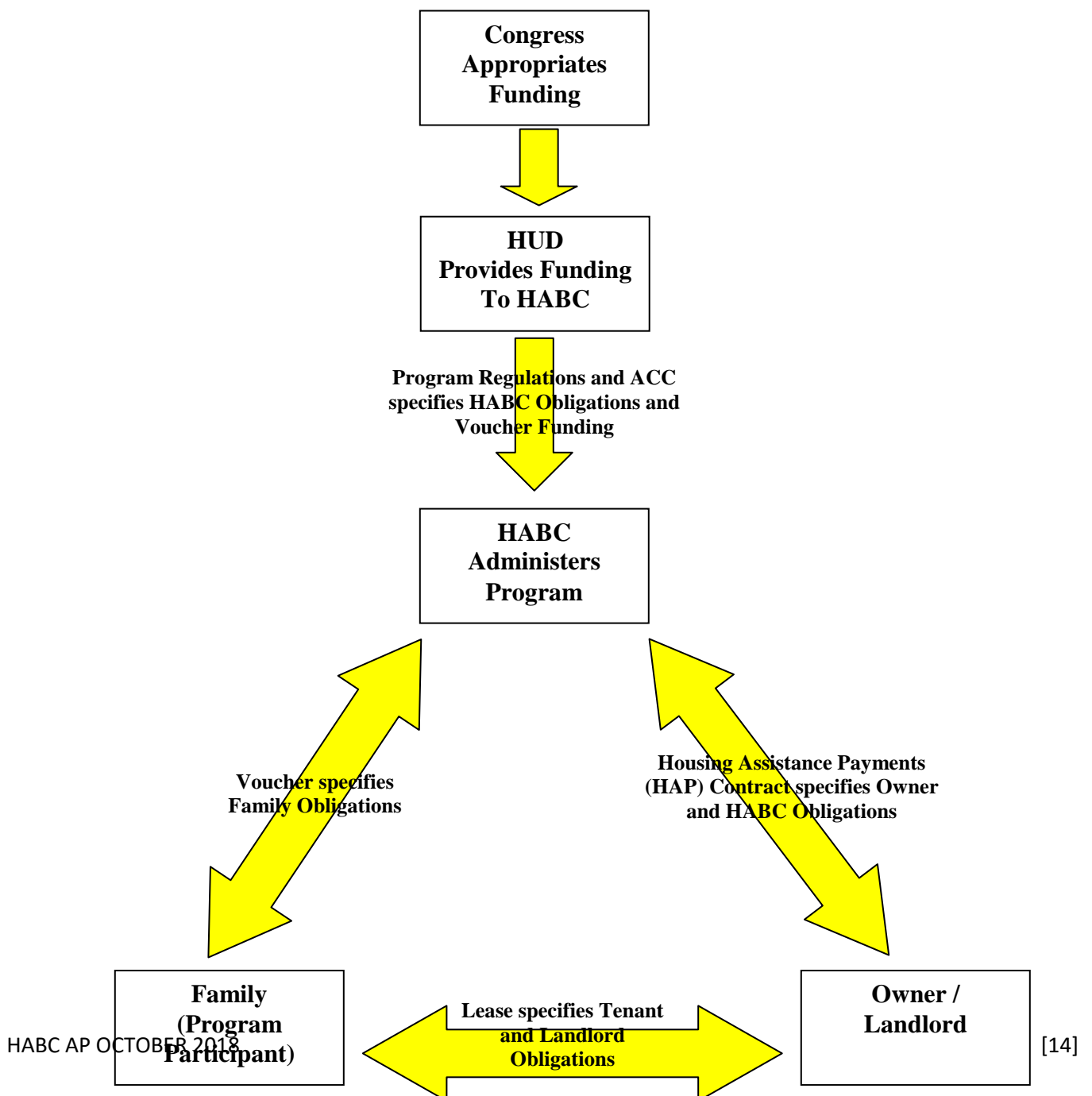
1.2.C. THE HCV PARTNERSHIPS

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

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

The chart on the following page illustrates key aspects of these relationships.

The HCV Relationships:



What does HUD do?

HUD has the following major responsibilities:

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

What does the HABC do?

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

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

What does the Owner do?

The owner has the following major responsibilities:

- Screen families who apply for tenancy, to determine if they will be good renters.
 - The HABC can provide some information to the owner, but the primary responsibility for tenant screening rests with the owner.
 - The owner should consider family background factors such as rent and bill-paying history, history of caring for property, respecting the rights of others to peaceful enjoyment of the property, compliance with essential conditions of tenancy, whether the family is engaging in drug-related criminal activity or other criminal activity that might threaten others.
- Comply with the terms of the Housing Assistance Payments contract, executed with the HABC;
- Comply with all applicable fair housing laws and discriminate against no one;
- Maintain the housing unit by making necessary repairs in a timely manner;
- Collect rent due from the assisted family and otherwise comply with and enforce provisions of the dwelling lease.

What does the Family do?

The family has the following responsibilities:

- Provide the HABC with complete and accurate information, determined by the HABC 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 HABC;
- Allow the HABC 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 HABC 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 HABC of any changes in family composition or 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.

1.2.D. APPLICABLE REGULATIONS

Applicable regulations include:

- 24 CFR Part 5: General Program Requirements
- 24 CFR Part 8: Nondiscrimination
- 24 CFR Part 35: Lead-Based Paint
- 24 CFR Part 982: Section 8 Tenant-Based Assistance: Housing Choice Voucher Program
- 24 CFR Part 983: Project-Based Vouchers
- 24 CFR Part 985: The Section 8 Management Assessment Program (SEMAP)

Ch. 1 Section 3: THE HCV ADMINISTRATIVE PLAN

1.3.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 HABC's agency plan. This administrative plan is a supporting document to the HABC agency plan and is available for public review as required by CFR 24 Part 903.

This administrative plan is set forth to define the HABC's local policies for operation of the housing programs in the context of federal laws and regulations. All issues related to HCV 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 HABC is responsible for complying with all changes in HUD regulations pertaining to the HCV program. If such changes conflict with this plan, HUD regulations will have precedence.

Administration of the HCV program and the functions and responsibilities of HABC staff shall follow the HABC's personnel policy and HUD's Section 8 regulations as well as all federal, state and local fair housing laws and regulations.

1.3.B. CONTENTS OF THE PLAN [24 CFR 982.54]

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 PHAs to develop policies and procedures that are consistent with mandatory policies and to make clear the optional policies the HABC has adopted. The HABC'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 a PHA with a "safe harbor." HUD has already determined that the recommendations and suggestions it makes are consistent with mandatory policies. If a PHA adopts an alternative strategy, it must make its own determination that the alternative approach is consistent with legislation, regulations, and other mandatory requirements. There may be very good reasons for adopting a policy or procedure that is different than HUD's safe harbor, in these cases HABC has carefully thought through those decisions.

1.3.C. UPDATING AND REVISING THE PLAN

The HABC will revise this administrative plan as needed to comply with changes in HUD regulations. The original plan and any changes must be approved by the Board of Commissioners of the agency and HUD.

The HABC will review and update the plan at least once a year, and more often if needed, to reflect changes in regulations, HABC operations, or when needed to ensure staff consistency in operation.

Chapter 2: FAIR HOUSING AND EQUAL OPPORTUNITY

INTRODUCTION

This chapter explains the laws and HUD regulations requiring the HABC 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 HABC's HCV operations.

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

Section 1: Non-discrimination. This part presents the body of laws and regulations governing the responsibilities of the HABC regarding nondiscrimination.

Section 2: 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).

Section 3: Prohibition of Discrimination Against Limited English Proficiency Persons. This part details the obligations of the HABC to ensure meaningful access to the HCV program and its activities by persons with limited English proficiency (LEP). This part incorporates the Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Persons published January 22, 2007, in the *Federal Register*.

Ch. 2 Section 1: NON-DISCRIMINATION

2.1.A. OVERVIEW

Federal laws require HABC to treat all applicants and participants equally, providing the same quality of service, regardless of family characteristics and background. No person shall on the grounds of race, color, religion, sex, creed, national or ethnic origin, age, family or marital status, handicap or disability, or sexual orientation, or other characteristic protected by law be denied the benefits of, or be otherwise subjected to discrimination under the programs, projects, and activities administered by the HABC.

Furthermore, New Jersey offers legal protection based on ancestry, civil union status, domestic partnership status, gender identity or expression, and source of lawful income used for rental or mortgage payments. The HABC will comply fully with all federal, state, and local nondiscrimination laws, and with rules and regulations governing fair housing and equal opportunity in housing and employment, including:

- Title VI of the Civil Rights Act of 1964
- Title VIII of the Civil Rights Act of 1968 (as amended by the Community Development Act of 1974 and the Fair Housing Amendments Act of 1988)
- Executive Order 11063
- Section 504 of the Rehabilitation Act of 1973
- The Age Discrimination Act of 1975
- Title II of the Americans with Disabilities Act (to the extent that it applies, otherwise Section 504 and the Fair Housing Amendments govern)
- Violence Against Women Reauthorization Act of 2005 (VAWA)
- The Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity Final Rule, published in the *Federal Register* February 3, 2012

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 will also apply.

New Jersey's fair housing laws for persons with disabilities are among the strongest in the nation. New Jersey goes beyond federal fair housing standards to offer persons with disabilities particularly effective protection against housing discrimination. The State of New Jersey Law Against Discrimination (LAD) found at N.J.S.A 10:5-1 to 5-49 apply.

2.1.B. NON-DISCRIMINATION

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

The HABC shall not discriminate because of race, color, religion, sex, creed, national or ethnic origin, age, family or marital status, handicap or disability, sexual orientation, or other characteristic protected by law. Nor will the HABC discriminate based on ancestry, civil union status, domestic partnership status, gender identity or expression, and source of lawful income used for rental or mortgage payments.

The HABC will not use any of these factors to:

- Deny to any family the opportunity to apply for housing, nor deny to any qualified applicant the opportunity to participate in the housing choice voucher program
- Provide housing that is different from that provided to others
- Subject anyone to segregation or disparate treatment
- Restrict anyone's access to any benefit enjoyed by others in connection with the housing program
- Treat a person differently in determining eligibility or other requirements for admission
- Steer an applicant or participant toward or away from a particular area based any of these factors
- Deny anyone access to the same level of services
- Deny anyone the opportunity to participate in a planning or advisory group that is an integral part of the housing program
- Discriminate in the provision of residential real estate transactions
- Discriminate against someone because they are related to or associated with a member of a protected class
- Publish or cause to be published an advertisement or notice indicating the availability of housing that prefers or excludes persons who are members of a protected class

Providing Information to Families and Owners

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

Quid Pro Quo and Hostile Environment Harassment

A final rule, *Quid pro Quo and Hostile Environment Harassment and Liability for Discriminatory Practices Under the Fair Housing Act*, and related guidance implemented by HUD on October 14, 2016 created liability for housing providers under the Fair Housing Act, in instances of “quid pro quo harassment” or “hostile environment harassment”. This rule prohibits harassment related to quid pro quo and hostile environment and formalizes standards for evaluating claims of quid pro quo and hostile environment in the housing context. In addition, it provides specific guidance concerning how methods of proof apply regarding disparate treatment and discriminatory effect in fair housing careers, in which adverse actions are based on limited English proficiency (LEP).

In the case of HCV providers, quid pro quo harassment refers to unwelcome request or demand to engage in conduct where submission to the request or demand, either explicitly or implicitly, is made a condition related to: The rental or availability of a dwelling; the terms, conditions, or privileges of the rental, or the provision of services or facilities in connection therewith; or the availability, terms, or conditions of a residential real-estate related transaction. An unwelcome request or demand may constitute quid pro quo harassment even if a person acquiesces in the unwelcome request or demand.

In the case of HCV providers, hostile environment harassment refers to unwelcome conduct that is sufficiently severe or pervasive as to interfere with: The availability, rental, or use or enjoyment of a dwelling; the terms, conditions, or privileges of the rental, or the provision or enjoyment of services or facilities in connection therewith; or the availability, terms or conditions of a residential real-estate related transaction. Hostile environment harassment does not require a change in the economic benefits, terms, or conditions of the dwelling or housing related services or facilities, or of the residential real-estate transaction.

Whether hostile harassment exists depends upon the totality of the circumstances. Factors to be considered to determine whether hostile environment exists include, but are not limited to, the nature of the conduct, the context in which the incident(s) occurred, the severity, scope, frequency, duration, and location of the conduct, and the relationship of the persons involved. Neither psychological nor physical harm must be demonstrated to prove that a hostile environment exists. Evidence of psychological or physical harm may, however, be relevant in determining whether a hostile environment existed and, if so, the amount of damages to which an aggrieved person may be entitled. Whether unwelcome conduct is sufficiently severe or pervasive as to create a hostile environment is evaluated from the perspective of a reasonable person in the aggrieved person’s position.

- Harassment can be written, verbal, or other conduct, and does not require physical contact.
- A single incident of harassment because of race, color, religion, sex, familial status, national origin, handicap or other characteristic or trait protected by law may constitute a discriminatory housing practice, where the incident is sufficiently severe to create a hostile environment or evidences a quid pro quo.
- Quid pro quo and hostile environment harassment because of race, color, religion, sex, familial status, national origin or handicap may violate Fair Housing Act section 804, 805, 806, or 818 of the Fair Housing Act, depending on conduct. The same conduct might violate one or more of these provisions.
- A person is directly liable for failing to take prompt action to correct and end a discriminatory housing practice by a third-party, where the person knew or should have known of the discriminatory conduct and had the power to correct it. The power to take prompt action to correct a discriminatory housing practice by a third-party depends upon the extent of the control or any other legal responsibility the person may have with respect to the conduct of such third-party.
- The affirmative defense to an employer's vicarious liability for hostile environment harassment by a supervisor under Title VII of the Civil Rights Act of 1964 does not apply to cases brought pursuant to the Fair Housing Act.

Discrimination Complaints

If an applicant or participant believes that any family member has been discriminated against by the HABC or an owner, the family should advise the HABC. The HABC will make every reasonable attempt to determine whether the applicant's or participant's assertions have merit and take any warranted corrective action. In addition, the HABC is required to provide the applicant or participant with information about how to file a discrimination complaint [24 CFR 982.304].

Applicants or participants who believe that they have been subject to unlawful discrimination are encouraged to notify the HABC Executive Director either orally or in writing.

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

The HABC will make available in our headquarters and all satellite offices a copy of the discrimination complaint form for use and provide information on how to complete and submit the form to HUD's Office of Fair Housing and Equal Opportunity (FHEO).

Ch. 2 Section 2: POLICIES RELATED TO PERSONS WITH DISABILITIES

2.2.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.

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

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

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

All reasonable accommodation requests for persons with disabilities should be sent to the HABC Executive Director or his/her designee.

2.2.B. DEFINITION OF REASONABLE ACCOMMODATION

A person with a disability may require special accommodations to have equal access to the HCV program. The types of reasonable accommodations the HABC can provide include changes, exceptions, or adjustments to a rule, policy, practice, or service.

Federal regulations stipulate that requests for accommodations will be considered reasonable if they do not create an "undue financial and administrative burden" for the HABC 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 HABC must modify normal procedures to accommodate the needs of a person with disabilities. Examples include:

- Permitting applications and reexaminations to be completed by mail.
- Conducting home visits.
- Using higher payment standards (either within the acceptable range or with HUD approval of a payment standard outside the HABC range) if the HABC determines this is necessary to enable a person with disabilities to obtain a suitable housing unit.
- Providing time extensions for locating a unit when necessary because of lack of availability of accessible units or special challenges of the family in seeking a unit.
- Permitting an authorized designee or advocate to participate in the application or

certification process and any other meetings with HABC staff.

- Displaying posters and other housing information in locations throughout the HABC's office in such a manner as to be easily readable from a wheelchair.

2.2.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 HABC treat the information as a request for a reasonable accommodation, even if no formal request is made [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].

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

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

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

All reasonable accommodation requests for persons with disabilities will be sent to the HABC Executive Director or his/her designee.

2.2.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 HABC 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 HABC's programs and services.

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

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

When verifying a disability, the HABC 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 an individual identified by the family who is competent to make the determination. A doctor or other medical professional, a 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 HABC must request only information that is necessary to evaluate the disability-related need for the accommodation. The HABC will not inquire about the nature or extent of any disability.
- Medical records will not be accepted or retained in the participant file.
- If the HABC does receive confidential information about a person's specific diagnosis, treatment, or the nature or severity of the disability, the HABC will dispose of it. In place of the information, the HABC will note in the file that the disability and other requested information have been verified, the date the verification was received, and the name and address of the knowledgeable professional who sent the information [Notice PIH 2010-26].

2.2.E. APPROVAL/DENIAL OF A REQUESTED ACCOMMODATION [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act, Notice PIH 2010-26].

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

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

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

Before deciding whether to approve the request, the HABC 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 HABC may verify the need for the requested accommodation.

After a request for an accommodation is presented, the HABC will respond, in writing, within 10 business days.

If the HABC 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 HABC's operations), the HABC 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 HABC believes that the family has failed to identify a reasonable alternative accommodation after interactive discussion and negotiation, the HABC will notify the family, in writing, of its determination within 10 business days from the date of the most recent discussion or communication with the family.

2.2.F. PROGRAM ACCESSIBILITY FOR PERSONS WITH HEARING OR VISION IMPAIRMENTS

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

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

To meet the needs of persons with hearing impairments, TTD/TTY (text telephone display / teletype) communication are available by calling (201)336-7669.

To meet the needs of persons with vision impairments one-on-one assistance will be provided upon request and large-print versions of key program documents will be made available upon request.

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

2.2.G. PHYSICAL ACCESSIBILITY

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

- Notice PIH 2010-26
- 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 HABC's policies concerning physical accessibility must be readily available to applicants and participants. They can be found in three key documents:

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

The design, construction, or alteration of HABC facilities must conform to the Uniform Federal Accessibility Standards (UFAS). Newly-constructed facilities must be designed to be readily accessible to and usable by persons with disabilities. Alterations to existing facilities must be accessible to the maximum extent feasible, defined as not imposing an undue financial and administrative burden on the operations of the HCV program.

When issuing a voucher to a family that includes an individual with disabilities, the HABC will include a current list of available accessible units known to the HABC.

In general, owners must permit the family to make reasonable modifications to the unit. However, the owner is not required to pay for the modification and may require that the unit be restored to its original state at the family's expense when the family moves.

2.2.H. DENIAL OR TERMINATION OF ASSISTANCE

HABC'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 HABC's informal review process and their right to request a hearing. In addition, the notice must inform applicants with disabilities of their right to request reasonable accommodations to participate in the informal hearing process.

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

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

Ch. 2 Section 3: IMPROVING ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY (LEP)

2.3.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 Final Guidance to Federal Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Persons, published January 22, 2007, in the *Federal Register*.

The HABC 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 refers to a person's limited ability to read, write, speak, or understand English. For the purposes of this administrative plan, LEP persons are applicants and participants, and parents or family members of applicants and participants.

To determine the level of access needed by LEP persons, the HABC 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 encounter 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 HABC and costs. Balancing these four factors will ensure meaningful access by LEP persons to critical services while not imposing undue burdens on the HABC.

Resources available to the HABC may include obtaining written or oral translation services or drawing upon the language skills of staff members. Similarly, if the family has a member who speaks English or brings another person along to interpret, agreeing to communicate through these individuals could be an alternative. Additionally, the HABC may allow an applicant a reasonable amount of time to take a document to be translated.

2.3.B. ORAL INTERPRETATION

In a hearing the HABC will generally offer or ensure that the family is offered through other sources, competent services free of charge to the LEP person.

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

Where feasible, the HABC will train and hire bilingual staff to be available to act as interpreters and translators, will pool resources with other public housing authorities or county agencies, and will standardize documents. Where feasible and possible, the HABC 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 HABC. The interpreter may be a family member or friend.

2.3.C. WRITTEN TRANSLATION

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

To comply with written-translation obligations, the HABC will take reasonable steps to:

- 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 HABC 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.

CH. 2: EXHIBITS

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

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

Has a physical or mental impairment that substantially limits one or more of the major life activities of an individual, or

- Has a record of such impairment, or
- Is regarded as having such impairment

The phrase “physical or mental impairment” includes:

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

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

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

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

The definition of a person with disabilities does not include:

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

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

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

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

Chapter 3: ELIGIBILITY

INTRODUCTION

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

This chapter contains three parts:

Section 1: Definitions of Family and Household Members. This part contains HUD and HABC definitions of family and household members and explains initial and ongoing eligibility issues related to these members.

Section 2: Basic Eligibility Criteria. This part discusses income eligibility, and rules regarding citizenship, social security numbers, and family consent.

Section 3: Denial of Assistance. This part covers factors related to an applicant's past or current conduct (e.g. criminal activity) that can cause the HABC to deny assistance.

Ch. 3 Section 1: DEFINITIONS OF FAMILY AND HOUSEHOLD MEMBERS

3.1.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.

3.1.B. FAMILY AND HOUSEHOLD [24 CFR 5.403 and 5.100]

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

Family

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

- A single person, who may be an elderly person, disabled person, near-elderly person, or any other single person;
- A group of persons residing together, and such group includes, but is not limited to:
 - A family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family);
 - An elderly family (a family whose head (including co-head), spouse, or sole member is a person who is at least 62 years of age);
 - A near-elderly family (a family whose head (including co-head), spouse, or sole member is a person who is at least 50 years of age but below 62);
 - A disabled family (a family whose head (including co-head), spouse, or sole member is a person with a disability);
 - A 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), and
 - The remaining member of a tenant family.

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

Gender Identity means the gender with which a person identifies, regardless of sex assigned to that person at birth and regardless of the person's perceived gender identity.

Perceived gender identity means the gender with which a person is perceived to identify based on that person's appearance, behavior, expression, other gender related characteristics, or sex assigned to the individual at birth or identified in documents.

Sexual orientation means one's emotional or physical attraction to the same and/or opposite sex.

A family also includes two or more individuals who are not related by blood, marriage, adoption, or other operation of law but who either can demonstrate that they have lived together previously or certify that each individual's income and other resources will be available to meet the needs of the 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 HABC's permission, live in an assisted unit, such as live-in aides, foster children, and foster adults.

3.1.C. FAMILY BREAKUP AND REMAINING MEMBER OF TENANT FAMILY

Family Breakup [24 CFR 982.315]

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

- If the family breakup results from an occurrence of domestic violence, dating violence, or stalking, the HABC must ensure that the victim retains assistance. (For documentation requirements and policies related to domestic violence, dating violence, sexual assault, and stalking, see Chapter 16 of this plan.)
- If a court determines the disposition of property between members of the assisted family in a divorce or separation decree, the HABC 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. 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. Other former family members may make a new application with a new application date if the waiting list is open.

In the absence of a judicial decision or an agreement among the original family members, the HABC will determine which family will retain their placement on the waiting list or continue to receive assistance. In making its determination, the HABC will take into consideration the following factors: (1) the interest of any minor children, including custody arrangements; (2) the interest of any ill, elderly, or disabled family members; (3) the interest of any family member who is the victim of domestic violence, dating violence, sexual assault or stalking, including a family member who was forced to leave an assisted unit as a result of such actual or threatened abuse; (4) any possible risks to family members as a result of criminal activity; and (5) the recommendations of social service professionals involved.

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 for the policy on “Caretakers for a Child.”

3.1.D. HEAD OF HOUSEHOLD [24 CFR 5.504]

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

The family may designate any qualified family member as the head of household.

The head of household must have the legal capacity to enter into a lease under state and local law. A minor who is emancipated under state law may be designated as head of household.

3.1.E. SPOUSE, COHEAD, AND OTHER ADULT

A family may have a spouse or cohead, 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 minor who is emancipated under state law may be designated as a spouse.

A *cohead* is an individual in the household who is equally responsible with the head of household for ensuring that the family fulfills all its responsibilities under the program, but who is not a spouse. A family can have only one cohead. Minors who are emancipated under state law may be designated as a cohead.

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

3.1.F. DEPENDENT [24 CFR 5.603]

A *dependent* is member of the family (except foster children, and foster adults) other than the family dead or spouse, who is under 18 years of age, or is a person with a disability, or is a full-time student. 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 live with the applicant or participant family 50 percent or more of the time.

When there are two separate households on the waiting list or receiving assistance, only one family will be allowed to claim the dependent(s) as family members.

When more than one applicant or participant family is claiming the same dependent(s) 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 HABC 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.

3.1.G. FULL-TIME STUDENT [24 CFR 5.603; HCV GB, p. 5-29]

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

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

3.1.H. ELDERLY AND NEAR-ELDERLY PERSONS [24 CFR 5.100 and 5.403]

An *elderly person* means an individual who is at least 62 years of age.

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

3.1.I. PERSONS WITH DISABILITIES AND DISABLED FAMILY [24 CFR 5.403]

Persons with Disabilities

Under the HCV program, special rules apply to persons with disabilities and to any family whose head, spouse, or cohead is a person with disabilities. The technical definitions of individuals with handicaps and 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.

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

A person with disabilities:

- 1) Means a person who:
 - a) Has a disability, as defined in 42 U.S.C. 423;
 - b) Is determined, pursuant to HUD regulations, to have a physical, mental, or emotional impairment that:
 - i) Is expected to be long-continued and indefinite duration;
 - ii) Substantially impedes his or her ability to live independently, and
 - iii) Is of such a nature that the ability to live independently could be improved by more suitable housing conditions; or
 - c) Has a development disability as defined in 42 U.S.C. 6001.
- 2) Does not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome;
- 3) For purposes of qualifying for low-income housing, does not include a person whose disability is based solely on any drug or alcohol dependence; and
- 4) Means "individual with handicaps", as defined 24 CFR 8.3, for purposes of reasonable accommodation and program accessibility for persons with disabilities.

3.1.J. GUESTS [24 CFR 5.100]

A *guest* means a person temporarily staying in the unit with the consent of a tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant.

A guest can remain in the assisted unit no longer than 30 consecutive days or a total of 90 cumulative calendar days during any 12-month period.

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

A family may request an exception to this policy for valid reasons (e.g., care of a relative recovering from a medical procedure is expected to last 40 consecutive days). An exception will

not be made unless the family can identify and provide documentation of the residence to which the guest will return.

3.1.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].

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

Foster children and foster adults that are living with an applicant or assisted family are considered household members but not family members. The earned income of or payments received for the care 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; HUD-50058 IB, p. 13].

A *foster child* is a child that is in the legal guardianship or custody of a state, county, or private adoption or foster care agency, yet is cared for by foster parents in their own homes, under some kind of short-term or long-term foster care arrangement with the custodial agency.

A foster child or foster adult may be allowed to reside in the unit if their presence would not result in a violation of HQS space standards according to 24 CFR 982.401.

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.

3.1.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.

Informing the HABC

Assisted families must notify the HABC and owner, in writing, if the assisted unit will be vacant for thirty (30) days or more. The written notice must state the exact amount of time the unit will be vacant and the reason for the vacancy. If notification is not received and the unit is vacant for thirty (30) days, the Authority may terminate assistance on the first day of the month the family vacated the unit.

Definitions of Temporarily and Permanently Absent

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

Absent Students

When someone who has been considered a family member attends school away from home, the person will continue to be considered a family member unless information becomes

available to the HABC indicating that the student has established a separate household, or the family declares that the student has established a separate household.

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

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

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

Absent Due to Employment

Any family member absent from the unit more than 180 consecutive days due to employment (i.e. active military duty) will continue to be considered a family member.

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

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

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

3.1.M. LIVE-IN AIDE [24 CFR 5.403]

Live-in aide means a person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who:

1. Is determined to be essential to the care and well-being of the persons;
2. Is not obligated for the support of the persons; and
3. Would not be living in the unit except to provide the necessary supportive services.

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

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

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

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

The HABC will not approve a 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 HABC or to another HABC in connection with Section 8 or public housing assistance under the 1937 Act.

Within 10 business days of receiving a request for a live-in aide, including all required documentation related to the request, the HABC will notify the family of its decision in writing.

Ch. 3 Section 2: BASIC ELIGIBILITY CRITERIA

3.2.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 HCV program. The income limits are published annually and are based on HUD estimates of median family income in a particular area or county, with adjustments for family size.

Types of Low-Income Families [24 CFR 5.603]

Low-income family means 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 means 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 means a family whose annual income does not exceed the higher of the poverty guidelines established by the Department of Health and Human Services or 30 percent of the median income for the area, adjusted for family size.

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

Using Income Limits for Eligibility [24 CFR 982.201]

Income limits are used for eligibility only at admission. Eligibility is established by comparing a family's annual income (gross 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].

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

- 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 an insurance contract on eligible low-income housing as defined in 24 CFR 248.101.

Using Income Limits for Targeting [24 CFR 982.201]

At least 75 percent of the families admitted to the HABC's program during a HABC fiscal year must be extremely low-income families. HUD may approve exceptions to this requirement if the HABC 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 because of prepayment of a mortgage or voluntary termination of a mortgage insurance contract are not subject to the 75 percent restriction.

3.2.B. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS [24 CFR 5, Subpart E]

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

All applicant families are notified of the requirement to submit evidence of their citizenship status when they apply. Where feasible, and in accordance with the HUD's Limited English Proficiency requirements, the HABC will take affirmative steps to communicate with people who need services or information in a language other than English.

For applicants and participants claiming eligible immigration status, status will be verified through the Department of Homeland Security (DHS) automated system and/or secondary verification through a manual records search through DHS.

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, cohead, 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 HABC to request additional documentation of their status, such as a passport.

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

Eligible Noncitizens

In addition to providing a signed declaration, those declaring eligible noncitizen status must sign a verification consent form and cooperate with HABC 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 noncontending family members listing, signed by the head, spouse, or cohead (regardless of citizenship status), indicating their ineligible immigration status. The HABC 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 [24 CFR 5.514(d), (e), and (f)]

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

HABC will not provide assistance to a family before the verification of the family's eligibility.

When HABC 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 within 10 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 hearing with the HABC. The informal hearing with the HABC may be requested in lieu of the USCIS appeal, or at the conclusion of the USCIS appeal process. The notice must also inform the applicant family that assistance may not be delayed until the conclusion of the USCIS appeal process, but that it may be delayed pending the completion of the informal hearing process.

Informal hearing procedures are contained in Chapter 16.

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

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

If an individual qualifies for a time extension for the submission of required documents, the HABC must grant such an extension for no more than 30 days [24 CFR 5.508(h)].

Each family member is required to submit evidence of eligible status only one time during continuous occupancy.

The HABC will verify the status of applicants at the time other eligibility factors are determined.

3.2.C. DISCLOSURE OF SOCIAL SECURITY NUMBERS AND EIN [24 CFR 5 Subpart B]

The applicant and all members of the applicant's household must disclose the complete and accurate social security number (SSN) assigned to each household member, and the documentation necessary to verify each SSN, except for individuals who do not contend eligible immigration status.

An **applicant family** with a child under the age of 6 years that was added to the applicant household within the 6-month period prior the household's date of admission, may become a participant family, even if the SSN for the child has not been verified at the time of admission. The applicant family will have a 90-day period to provide the complete and accurate SSN and verifying documents beginning the effective date of the HAP contract. An extension of one additional 90-day period must be granted if the PHA determines that, in its discretion, the applicant's failure to comply was due to circumstances that could not reasonably have been foreseen and were outside of the control of the applicant.

A **participant family** requesting to add a child 6 years of age or under and has an assigned SSN is required to provide the complete and accurate SSN and the verifying documentation at the time of the request or at the time of processing the certification. If the child who is 6 years of age or under does not have an assigned SSN the participant is required to provide the complete and accurate SSN and verifying documentation within 90 calendar days of the child being added to the household. An extension of one additional 90-day period must be granted if the PHA

determines that, in its discretion, the applicant's failure to comply was due to circumstances that could not reasonably have been foreseen and were outside of the control of the applicant.

During the period that the HABC is awaiting documentation of a SSN, the HABC shall include the child as part of the assisted household and the child shall be entitled to all benefits of being a household member. If upon expiration of the provided time period, the participant fails to produce a SSN, the HABC shall follow provisions of 24 CFR 5.218.

A detailed discussion of acceptable documentation is provided in Chapter 7. These requirements do not apply to noncitizens who do not contend eligible immigration status.

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

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

3.2.D. FAMILY CONSENT TO RELEASE OF INFORMATION [24 CFR 5.230; HCV GB, p. 5-13]

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

The HABC will perform credit checks and tenancy history searches on all applicants. The HABC will not deny assistance based on a credit report or tenancy history. However, the HABC may choose to use the information obtained on the credit report to validate or disprove reported income and assets. The HABC may at any time require tax records or authorization to obtain tax records and/or credit report to verify the completeness and accuracy of income reported.

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

3.2.E. STUDENTS ENROLLED IN INSTITUTIONS OF HIGHER EDUCATION [24 CFR 5.612, FR Notice 4/10/06]

No assistance shall be provided under section 8 of the 1937 Act to any individual who:

- Is enrolled as a student at an institution of higher education, as defined under section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002);
- Is under 24 years of age;
- Is not a veteran of the United States military;
- Is unmarried;

- Does not have a dependent child;
- Is not a person with disabilities, as such term is defined in section 3(b)(3)(E) of the 1937 Act and was not receiving assistance under section 8 of the 1937 Act as of November 30, 2005; and
- Is not otherwise individually eligible, or has parents who, individually or jointly, are not eligible on the basis of income to receive assistance under section 8 of the 1937 Act.

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 is determined independent from his/her parents in accordance with HABC policy, the income of the student's parents will not be considered in determining the student's eligibility.

The law 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 HABC 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 HABC 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:

The individual is of legal contract age under state law.

The individual has established a household separate from his/her parents for at least one year prior to application for occupancy or the individual meets the U.S. Department of Education's definition of independent student.

To be considered an *independent student* according to the Department of Education, a student must meet one or more of the following criteria:

- Be at least 24 years old by December 31 of the award year for which aid is sought
- Be an orphan or a ward of the court through the age of 18
- Be a veteran of the U.S. Armed Forces

- Have one or more legal dependents other than a spouse (for example, dependent children or an elderly dependent parent)
- Be a graduate or professional student
- Be married

The individual was not claimed as a dependent by his/her parents pursuant to IRS regulations, as demonstrated on the parents' most recent tax forms.

The individual provides a certification of the amount of financial assistance that will be provided by his/her parents. This certification must be signed by the individual providing the support and must be submitted even if no assistance is being provided.

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

Institution of Higher Education

The HABC 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 (if they are currently married to the biological or adoptive parent), and guardians (e.g., grandparents, aunt/uncle, godparents, etc.).

Person with Disabilities

The HABC will use the statutory definition under section 3(b)(3)(E) of the 1937 Act to determine whether a student is a *person with disabilities* (see Exhibit 3-1).

Veteran

A *veteran* is a person who served in the active United States 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 HABC 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 HABC 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 HABC 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, if applicable, in determining whether the student's parents are income eligible for the program

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

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 HABC will determine the income eligibility of the student's parents as follows:

- If the student's parents are married and living together, the HABC will obtain a joint income declaration and certification of joint income from the parents.
- If the student's parent is widowed or single, the HABC will obtain an income declaration and certification of income from that parent.
- If the student's parents are divorced or separated, the HABC 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 HABC 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 HABC 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 HABC will use the income limits for the jurisdiction in which the parents live.

Ch. 3 Section 3: DENIAL OF ASSISTANCE

3.3.A. OVERVIEW

A family that does not meet the eligibility criteria discussed in Section 1 and 2, must be denied assistance.

In addition, HUD requires or permits the HABC to deny assistance based on certain types of current or past behaviors of family members.

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

Denial of assistance includes any of the following:

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

Prohibited Reasons for Denial of Program Assistance [24 CFR 982.202 and 24 CFR 5.2005]

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

- Race, color, sex, religion, creed, national or ethnic origin, age, familial status, handicap or disability, sexual orientation, or other characteristic protected by law (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 HABC's jurisdiction under portability (See Chapter 10.);
- Whether members of the family are unwed parents, recipients of public assistance, or children born out of wedlock;
- Whether a family decides to participate in a family self-sufficiency program; or
- If a qualified applicant is or has been a victim of domestic violence, dating violence, or stalking if the applicant is otherwise qualified for assistance (See Chapter 3.3.G.).

3.3.B. MANDATORY DENIAL OF ASSISTANCE [24 CFR 982.553(a)]

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

- Any member of the household has been evicted from federally-assisted housing in the last 3 years for drug-related criminal activity. HUD permits, but does not require, the HABC to admit an otherwise-eligible family if the household member has completed a HABC-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 HABC 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 HABC is able to verify that the household member who engaged in the criminal activity is participating in or has successfully completed drug rehabilitation program, or has otherwise been rehabilitated successfully, or the person who committed the crime, is no longer living in the household.

- The HABC 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 six months.

- The HABC 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 HABC will consider all credible evidence, including but not limited to, any record of convictions, police reports detailing the circumstances of an incident or arrest, witness statements, or evictions of household members related to the use of illegal drugs or the abuse of alcohol. The HABC 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

3.3.C. OTHER PERMITTED REASONS FOR DENIAL OF ASSISTANCE

HUD permits, but does not require, the HABC to deny assistance for the reasons discussed in this section.

Criminal Activity [24 CFR 982.553]

HUD permits, but does not require, the HABC to deny assistance if the HABC 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.

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

- Drug-related criminal activity, defined by HUD as the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug [24 CFR 5.100].
- Violent criminal activity, defined by HUD as any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage [24 CFR 5.100].
- Criminal activity that may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity; or
- Criminal activity that may threaten the health or safety of property owners and management staff, and persons performing contract administration functions or other responsibilities on behalf of the HABC (including a HABC employee or a HABC 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 5 years.
- Any record of eviction from public or privately-owned housing as a result of criminal activity within the past 5 years.

In making its decision to deny assistance, the HABC will consider the factors discussed in Chapter 3.3.E. Upon consideration of such factors, the HABC 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 HABC to deny assistance based on the family's previous behavior in assisted housing.

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

The HABC **will** deny assistance to an applicant family if:

- The family does not sign and submit consent forms or provide information that the HABC or HUD determines is necessary in the administration of the program.

- The family does not provide complete and true information to the HABC.
- Any family member has been evicted from federally-assisted housing in the last five years.
- Any public housing authority 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 owes rent or other amounts to any public housing authority in connection with the HCV, 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.
- If the family has not reimbursed any HABC for amounts the HABC paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease, unless the family repays the full amount of the debt prior to being selected from the waiting list.
- The family has breached the terms of a repayment agreement entered into with the HABC, 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 HABC personnel.

Abusive or violent behavior towards HABC 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 HABC will consider the factors discussed in Section 3.3.E. Upon consideration of such factors, the HABC may, on a case-by-case basis, decide not to deny assistance.

3.3.D. SCREENING

Screening for Eligibility

Public Housing Authorities are authorized to obtain criminal conviction records from law enforcement agencies to screen applicants for admission to the HCV program. This authority assists the HABC in complying with HUD requirements and HABC 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 HABC must require every applicant family to submit a consent form signed by each adult household member [24 CFR 5.903].

The HABC will perform a criminal background check through local law enforcement for every adult household member.

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

Screening for Suitability as a Tenant [24 CFR 982.307]

The HABC has no liability or responsibility to the owner for the family's behavior or suitability for tenancy.

The HABC will perform credit checks and tenancy history searches on all applicants. The HABC will not deny assistance based on a credit report or tenancy history. However, the HABC may choose to use the information obtained on the credit report to validate or disprove reported income and assets.

A landlord may opt to conduct additional screening to determine whether an applicant is likely to be a suitable tenant. The HABC will not conduct additional screening to determine an applicant family's suitability for tenancy.

The landlord is responsible for screening and selection of the family to occupy the owner's unit. The HABC 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.

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

The HABC may not disclose to the owner any confidential information provided in response to a HABC request for documentation of domestic violence, dating violence, or stalking except at the written request or with the written consent of the individual providing the documentation [24 CFR 5.2007(a)(4)].

The HABC will inform owners of their responsibility to screen prospective tenants and will provide owners with the required known name and address information, at the time of the initial HQS inspection or before. The HABC will not provide any additional information to the owner, such as tenancy history, criminal history, etc.

3.3.E. CRITERIA FOR DECIDING TO DENY ASSISTANCE

Evidence [24 CFR 982.553(c)]

The HABC 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 HABC to consider all relevant circumstances when deciding whether to deny assistance based on a family's history except in the situations for which denial of assistance is mandated (see Chapter 3.3.B.).

The HABC 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 HABC 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 HABC 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 HABC request.

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

If the family includes a person with disabilities, the HABC'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 HABC will determine whether the behavior is related to the disability. If so, upon the family's request, the HABC will determine whether alternative measures are appropriate as a reasonable accommodation. The HABC 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.

3.3.F. NOTICE OF ELIGIBILITY OR DENIAL

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

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

The family will be notified of a decision to deny assistance in writing within 10 business days of the determination.

If HABC uses a criminal record or sex offender registration information obtained under 24 CFR 5, Subpart J, as the basis of a denial, a copy of the record must precede the notice to deny, with an opportunity for the applicant to dispute the accuracy and relevance of the information before the HABC can move to deny the application. In addition, a copy of the record must be provided to the subject of the record [24 CFR 5.903(f) and 5.905(d)]. The HABC must give the family an opportunity to dispute the accuracy and relevance of that record, in the informal review process in accordance with program requirements [24 CFR 982.553(d)].

If based on a criminal record or sex offender registration information, an applicant family appears to be ineligible the HABC 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 10 business days to dispute the accuracy and relevance of the information. If the family does not contact the HABC to dispute the information within that 10-day period, the HABC 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 Chapter 3.2.B.

Notice policies related to denying admission to applicants who may be victims of domestic violence, dating violence, or stalking are contained in Chapter 3.3.G.

3.3.G. PROHIBITION AGAINST DENIAL OF ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, AND STALKING [24 CFR 5.2005]

The Violence against Women Act of 2005 (VAWA) and the HUD regulation at 24 CFR 5.2005 prohibit the denial or termination of assistance or eviction of an applicant or tenant on the basis or as a direct result of the fact that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for admission, assistance, participation, or occupancy.

Definitions of key terms used in VAWA are provided in Chapter 16 of this plan, where general VAWA requirements and policies pertaining to notification, documentation, and confidentiality are also located.

Notification

The HABC acknowledges that a victim of domestic violence, dating violence, sexual assault, or stalking may have an unfavorable history (e.g., a poor credit history, a record of previous damage to an apartment, a prior arrest record) that would warrant denial under the HABC's policies. Therefore, if the HABC decides to deny assistance to an applicant family, the HABC will include in its notice of denial the VAWA information described in Chapter 16 of this plan and will request that an applicant wishing to claim protection under VAWA notify the HABC within 10 business days.

Documentation

Victim Documentation [24 CFR 5.2007]

If an applicant claims the protection against denial of assistance that VAWA provides to victims of domestic violence, dating violence, sexual assault, or stalking, the HABC will request in writing that the applicant provide documentation supporting the claim in accordance with Chapter 16 of this plan.

Perpetrator Documentation

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

1. A signed statement (a) requesting that the perpetrator be removed from the application and (b) certifying that the perpetrator will not be permitted to visit or to stay as a guest in the assisted unit
2. Documentation that the perpetrator has successfully completed, or is successfully undergoing, rehabilitation or treatment. The documentation must be signed by an employee or agent of a domestic violence service provider or by a medical or other knowledgeable professional from whom the perpetrator has sought or is receiving assistance in addressing the abuse. The signer must attest under penalty of perjury to his or her belief that the rehabilitation was successfully completed or is progressing successfully. The victim and perpetrator must also sign or attest to the documentation.

CH. 3 EXHIBITS

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 an impairment, or is regarded as having such an impairment. The term does not include any individual who is an alcoholic or drug abuser whose current use of alcohol or drugs prevents the individual from participating in the program or activity in question, or whose participation, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others. As used in this definition, the phrase:

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

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

(a) Definition of institution of higher education for purposes of student assistance programs

(1) Inclusion of additional institutions. Subject to paragraphs (2) through (4) of this subsection, the term “institution of higher education” for purposes of subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 includes, in addition to the institutions covered by the definition in section 1001 of this title—

(A) A proprietary institution of higher education (as defined in subsection (b) of this section);

(B) A postsecondary vocational institution (as defined in subsection (c) of this section); and

(C) Only for the purposes of part B of subchapter IV of this chapter, an institution outside the United States that is comparable to an institution of higher education as defined in section 1001 of this title and that has been approved by the Secretary for the purpose of part B of subchapter IV of this chapter.

(2) Institutions outside the United States

(A) In general. For the purpose of qualifying as an institution under paragraph (1)(C), the Secretary shall establish criteria by regulation for the approval of institutions outside the United States and for the determination that such institutions are comparable to an institution of higher education as defined in section 1001 of this title (except that a graduate medical school, or a veterinary school, located outside the United States shall not be required to meet the requirements of section 1001 (a)(4) of this title). Such criteria shall include a requirement that a student attending such school outside the United States is ineligible for loans made, insured, or guaranteed under part B of subchapter IV of this chapter unless—

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

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

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

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

- (ii) In the case of a veterinary school located outside the United States that does not meet the requirements of section 1001(a)(4) of this title, the institution's students complete their clinical training at an approved veterinary school located in the United States.
 - (B) Advisory panel
 - (i) In general. For the purpose of qualifying as an institution under paragraph (1)(C) of this subsection, the Secretary shall establish an advisory panel of medical experts that shall—
 - (I) Evaluate the standards of accreditation applied to applicant foreign medical schools; and
 - (II) Determine the comparability of those standards to standards for accreditation applied to United States medical schools.
 - (ii) Special rule if the accreditation standards described in clause (i) are determined not to be comparable, the foreign medical school shall be required to meet the requirements of section 1001 of this title.
 - (C) Failure to release information. The failure of an institution outside the United States to provide, release, or authorize release to the Secretary of such information as may be required by subparagraph (A) shall render such institution ineligible for the purpose of part B of subchapter IV of this chapter.
 - (D) Special rule. If, pursuant to this paragraph, an institution loses eligibility to participate in the programs under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, then a student enrolled at such institution may, notwithstanding such loss of eligibility, continue to be eligible to receive a loan under part B while attending such institution for the academic year succeeding the academic year in which such loss of eligibility occurred.
- (3) Limitations based on course of study or enrollment. An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution—
- (A) Offers more than 50 percent of such institution's courses by correspondence, unless the institution is an institution that meets the definition in section 2471 (4)(C) of this title;
 - (B) Enrolls 50 percent or more of the institution's students in correspondence courses, unless the institution is an institution that meets the definition in such section, except that the Secretary, at the request of such institution, may waive the applicability of this subparagraph to such institution for good cause, as determined by the Secretary in the case of an institution of higher education that provides a 2-or 4-year program of instruction (or both) for which the institution awards an associate or baccalaureate degree, respectively;

- (C) Has a student enrollment in which more than 25 percent of the students are incarcerated, except that the Secretary may waive the limitation contained in this subparagraph for a nonprofit institution that provides a 2-or 4-year program of instruction (or both) for which the institution awards a bachelor's degree, or an associate's degree or a postsecondary diploma, respectively; or
 - (D) Has a student enrollment in which more than 50 percent of the students do not have a secondary school diploma or its recognized equivalent, and does not provide a 2-or 4-year program of instruction (or both) for which the institution awards a bachelor's degree or an associate's degree, respectively, except that the Secretary may waive the limitation contained in this subparagraph if a nonprofit institution demonstrates to the satisfaction of the Secretary that the institution exceeds such limitation because the institution serves, through contracts with Federal, State, or local government agencies, significant numbers of students who do not have a secondary school diploma or its recognized equivalent.
- (4) Limitations based on management. An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if—
- (A) The institution, or an affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management or policies of the institution, has filed for bankruptcy, except that this paragraph shall not apply to a nonprofit institution, the primary function of which is to provide health care educational services (or an affiliate of such an institution that has the power, by contract or ownership interest, to direct or cause the direction of the institution's management or policies) that files for bankruptcy under chapter 11 of title 11 between July 1, 1998, and December 1, 1998; or
 - (B) The institution, the institution's owner, or the institution's chief executive officer has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, or has been judicially determined to have committed fraud involving funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.
- (5) Certification. The Secretary shall certify an institution's qualification as an institution of higher education in accordance with the requirements of subpart 3 of part G of subchapter IV of this chapter.
- (6) Loss of eligibility. An institution of higher education shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution is removed from eligibility for funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 as a result of an action pursuant to part G of subchapter IV of this chapter.

(b) Proprietary institution of higher education

(1) Principal criteria. For the purpose of this section, the term “proprietary institution of higher education” means a school that—

- (A) Provides an eligible program of training to prepare students for gainful employment in a recognized occupation;
- (B) Meets the requirements of paragraphs (1) and (2) of section 1001 (a) of this title;
- (C) Does not meet the requirement of paragraph (4) of section 1001 (a) of this title;
- (D) Is accredited by a nationally recognized accrediting agency or association recognized by the Secretary pursuant to part G of subchapter IV of this chapter;
- (E) Has been in existence for at least 2 years; and
- (F) Has at least 10 percent of the school’s revenues from sources that are not derived from funds provided under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, as determined in accordance with regulations prescribed by the Secretary.

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

(c) Postsecondary vocational institution.

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

- (A) Provides an eligible program of training to prepare students for gainful employment in a recognized occupation;
- (B) Meets the requirements of paragraphs (1), (2), (4), and (5) of section 1001 (a) of this title; and
- (C) Has been in existence for at least 2 years.

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

Chapter 4: APPLICATIONS, WAITING LIST AND TENANT SELECTION

INTRODUCTION

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

The HABC 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 HABC to receive preferential treatment. Funding earmarked exclusively for families with particular characteristics may also alter the order in which families are served.

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

This chapter describes HUD and HABC 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:

Section 1: 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 HABC will handle the applications it receives.

Section 2: Managing the Waiting List. This part presents the policies that govern how the HABC'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 HABC will use to keep the waiting list current.

Section 3: Selection for HCV Assistance. This part describes the policies that guide the HABC 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 HABC has the information needed to make a final eligibility determination.

Ch. 4 Section 1: THE APPLICATION PROCESS

4.1.A. OVERVIEW

This part describes the policies that guide the HABC'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 HABC's obligation to ensure the accessibility of the application process to elderly persons, people with disabilities, and people with limited English proficiency (LEP).

4.1.B. APPLYING FOR ASSISTANCE [HCV GB, pp. 4-11 – 4-16, Notice PIH 2009-36]

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

HABC initially will require families to provide only the information needed to make an initial assessment of the family's eligibility, and to determine the family's placement on the waiting list. The family will be required to provide proof of all the information necessary to establish family eligibility and level of assistance when the family is selected from the waiting list.

At the time the HABC is accepting applications it will make public information regarding: availability and submission of applications; income limits, deadlines for submission, and any other important factors pertaining to the receipt and acceptance of the application. Incomplete applications will not be processed.

4.1.C. ACCESSIBILITY OF THE APPLICATION PROCESS [24 CFR 8]

The HABC will 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 HABC application process. This could include people with handicaps, disabilities, certain elderly individuals, as well as persons with limited English proficiency (LEP). The HABC will provide reasonable accommodations to the needs of individuals with disabilities. The application-taking facility and the application process must be fully accessible, or the HABC must provide an alternate approach that provides full access to the application process. Chapter 2 provides a full discussion of the HABC's policies related to providing reasonable accommodations for people with disabilities.

Limited English Proficiency

HABC takes 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 HABC's policies related to ensuring access to people with limited English proficiency (LEP).

4.1.D. PLACEMENT ON THE WAITING LIST

The HABC must review each complete application received and make a preliminary assessment of the family's eligibility. The HABC 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]. Where the family is determined to be ineligible, the HABC must notify the family in writing [24 CFR 982.201(f)]. Where the family is not determined to be ineligible, the family will be placed on a waiting list of applicants.

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

Ineligible for Placement on the Waiting List

If the HABC can determine from the information provided that a family is ineligible, the family will not be placed on the waiting list. Where a family is determined to be ineligible, the HABC will send written notification of the ineligibility determination within 10 business days of determining eligibility. The notice will specify the reasons for ineligibility, and will inform the family of its right to request an informal review and explain the process for doing so (see Chapter 16).

Eligible for Placement on the Waiting List

The HABC will send written notification of the preliminary eligibility determination within 10 business days of determining eligibility.

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 and reviewed.

Applicants will be placed on the waiting list according to any preference(s) for which they qualify, and the date and time their complete application is received by the HABC.

Ch. 4 Section 2: MANAGING THE WAITING LIST

4.2.A. OVERVIEW

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

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

4.2.B. ORGANIZATION OF THE WAITING LIST [24 CFR 982.204 and 205]

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

The waiting list contains the following information for each applicant listed:

- Applicant name;
- Family unit size;
- Date and time of application;
- Qualification for any preference; and
- Income level.

The HABC will maintain a single waiting list for the HCV program. 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.

The HABC will not merge the HCV waiting list with the waiting list for any other program the HABC operates.

Residents of federally declared disaster areas will be permitted to apply for the HCV program, regardless of whether the wait list is open or not.

Homeless families referred through the Coordinated Assessment System for Bergen County will be permitted to apply for the HCV program, regardless of whether the wait list is open or not.

Families removed from the HABC HCV program due to funding shortfalls will be added to the wait list.

The HABC may admit families that are not on the waiting list, or without considering the family's position on the waiting list for specifically named families living in specified types of units such as targeted funding categories, Temporary Rental Assistance, and Project Based Vouchers including those converted under RAD.

4.2.C. OPENING AND CLOSING THE WAITING LIST [24 CFR 982.206]

Closing the Waiting List

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

The HABC will close the waiting list when the estimated waiting period for housing assistance for applicants on the list reaches 24 months for the most current applicants. Where the HABC has particular preferences or funding criteria that require a specific category of family, the HABC may elect to continue to accept applications from these applicants while closing the waiting list to others.

Reopening the Waiting List

If the waiting list has been closed, it cannot be reopened until the HABC publishes a notice in local newspapers of general circulation, minority media, and other suitable media outlets. The HABC will make efforts to announce the reopening of any wait list on its webpage, Facebook account, through intensive outreach and any other specific formats required in accordance with Affirmative Marketing Fair Housing plans that apply. If the list is only being reopened for certain categories of families, this information will be contained in the notice.

The HABC will give public notice by publishing the relevant information in suitable media outlets including, but not limited to:

- The Record
- The Jersey Journal/Dispatch
- HABC Website (www.habcnj.org)

Other means used to publicize this program may include brochures, press releases, and contacts with local community organizations, local and county welfare departments, churches, senior citizen organizations, domestic violence organizations, and shelters and transitional homes.

4.2.D. FAMILY OUTREACH [HCV GB, pp. 4-2 to 4-4]

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

Because HUD requires the HABC to serve a specified percentage of extremely low income families (see Chapter 4), the HABC may need to conduct special outreach to ensure that an adequate number of such families apply for assistance.

HABC 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

HABC 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

The HABC will monitor the characteristics of the population being served and the characteristics of the population as a whole in the HABC's jurisdiction. Targeted outreach efforts will be undertaken if a comparison suggests that certain populations are being underserved.

4.2.E. REPORTING CHANGES IN FAMILY CIRCUMSTANCES

While the family is on the waiting list, the family must immediately inform the HABC of changes in contact information, including current residence, mailing address, email address, and phone number. The changes must be submitted in writing.

4.2.F. UPDATING THE WAITING LIST [24 CFR 982.204]

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

Purging the Waiting List

The waiting list will be updated as funding is available to ensure that all applicants and applicant information is current and timely.

To update the waiting list, the HABC will send an update request via email (if provided) or first class mail to each family on the waiting list to determine whether the family continues to be interested in and to qualify for the program. This update request will be sent to the last address that the HABC has on record for the family. The update request will provide a deadline by which the family must respond and will state that failure to respond will result in the applicant's name being removed from the waiting list.

The family's response must be in writing and may be delivered in person, by mail, email, or online submission through the HABC website. Responses should be received by the HABC not later than 10 business days from the date of the HABC letter.

If the family fails to respond within 10 business days, the family will be removed from the waiting list without further notice. If the notice is returned by the post office with no forwarding address, the applicant will be removed from the waiting list without further notice.

If the notice is returned by the post office with a forwarding address, the notice will be re-sent to the address indicated. If notice to an email address is returned as undeliverable a letter will be mailed to the last known address. The family will have 10 business days to respond from the date the letter was re-sent.

If a family is removed from the waiting list for failure to respond, the Assisted Housing Department Director or other appropriate administrative staff may reinstate the family if s/he determines the lack of response was due to HABC error, or to circumstances beyond the family's control.

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

Removal from the Waiting List

If at any time an applicant family is on the waiting list and the HABC determines that the family is not eligible for assistance (see Chapter 3), the family will be removed from the waiting list. If a homeless family that was accepted on to the waiting list specifically under the homeless referral through the Coordinated Assessment System at a time when the waiting list was closed and at the time of update or eligibility review it is determined that the family does not qualify as homeless, they will be removed from the wait list. This also applies if the wait list is open to certain categories and the individual or family did not meet that category at the time they were accepted on to the wait list through the homeless referral.

If a family is removed from the waiting list because the HABC has determined the family is not eligible for assistance, a notice will be sent to the family's last address or email address on record with the HABC. 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 HABC's decision (see Chapter 16) [24 CFR 982.201(f)].

Ch. 4 Section 3: SELECTION FOR HCV ASSISTANCE

4.3.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 HABC and is impacted in part by any selection preferences that the family qualifies for. The source of HCV funding also may affect the order in which families are selected from the waiting list.

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

4.3.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 a HOPE 1 or 2 projects). In these cases, the HABC may admit families that are not on the waiting list, or without considering the family's position on the waiting list. The HABC must maintain records showing that such families were admitted with special program funding.

Targeted Funding [24 CFR 982.204(e)]

HUD awards HABC funding for a specified category of families on the waiting list. The HABC 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 Chapter 4.3.C.

The HABC administers the following types of targeted funding:

- Home Investment Partnerships Program (HOME) Tenant Based Rental Assistance
- Continuum of Care (CoC)
- Non-Elderly Disabled (NED)
- Family Self Sufficiency (FSS)
- Housing Opportunities for Persons With AIDS/HIV (HOPWA)
- Choice mobility under Project Based Vouchers (PBV) including those converted under RAD
- Mainstream (MS5)

Regular HCV Funding

Regular HCV funding may be used to assist any eligible family on the waiting list. Families are selected from the waiting list according to the policies provided in Chapter 4.3.C.

4.3.C. SELECTION METHOD

HABC uses the following methods for selecting applicant families from the waiting list, and the following system of admission preferences [24 CFR 982.202(d)].

Local Preferences [24 CFR 982.207]

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

The HABC will offer the following preferences, in the following order:

- Insufficient Funding Termination: for families that have been terminated from the HABC HCV program due to insufficient program funding
- Involuntary Displacement Preference: for families that have been involuntarily displaced and are not living in standard, permanent replacement housing as a result of a federal, state or locally declared disaster; regardless of whether the waiting list is open or not
- Targeted Funding Transfers: for families currently receiving rental assistance from a targeted program and transferring to HCV. RAD conversions receive top priority in voucher issuance under HCV transfers.
- Homeless Preference: for families that are homeless, a guest of a Bergen County emergency shelter or receiving services from a Bergen County emergency shelter and referred through the Coordinated Assessment System for Bergen County; regardless of whether the waiting list is open or not. The HUD definition of homeless will be enforced in determining eligibility of homeless families.

In addition to the homeless eligibility requirements specified, the following additional factors will be considered when determining a household's level of need for receiving homeless preference for receiving assistance.

- No other subsequent housing options have been identified
- The household lacks the financial resources to obtain immediate housing or remain in its existing housing; and
- The household lacks appropriate support networks needed to obtain immediate housing, remain in its existing housing or maintain permanent housing.

These additional criteria require the provision of information to determine the household has no other available housing options, support networks and other financial resources to obtain immediate housing, remain in current housing or maintain permanent housing. Additional criteria will aid in determining that homeless preference and HCV assistance is the most appropriate program for the household.

- Targeted Fund Preferences: for families that meet the qualifying factor of the specific fund. (limited number of participants based on funding award).
- Residency Preference: All Bergen County communities. For families who live, work, have been hired to work, or are participating in a job training and/or vocation program in Bergen County.
- Working / Senior/ Disabled Preference: for families where the head, cohead or spouse is employed, have been hired to work or are participating in a job training and/or vocation program; or to families whose head, co-head, spouse or sole member is elderly or disabled.

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 HABC's fiscal year. ELI families are defined as families whose income does not exceed the higher of 30 percent of the area median income or the federal poverty level. To ensure this requirement is met, the HABC may skip non-ELI families on the waiting list in order to select an ELI family.

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

The HABC 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.

Order of Selection

The HABC system of preferences for selecting families is by date and time of application [24 CFR 982.207(c)]. When selecting families from the wait list HABC is required to use targeted funding to assist only those families who meet the specified criteria, and HABC is not permitted to skip down the waiting list to a family that it can afford to subsidize when there are not sufficient funds to subsidize the family at the top of the waiting list [24 CFR 982.204(d) and (e)]. Families will be selected from the waiting list based on the targeted funding or selection preference(s) for which they qualify, and in accordance with the HABC's hierarchy of preferences.

Within each targeted funding or preference category, families will be selected on a first-come, first-served basis according to the date and time their complete application is received by the HABC. Except that, families returned to the wait list for having been terminated due to insufficient funding will be assisted in the same chronologic manner, with the first household terminated being the first to be re-instated, except that NED, Mainstream, HUD-VASH and FUP families must be issued vouchers first until the PHA is assisting its required number of special purpose vouchers.

4.3.D. NOTIFICATION OF SELECTION

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

The HABC will notify the family by first class mail or email 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 the notice is returned by the post office with no forwarding address, the applicant will be removed from the waiting list without further notice.

If the notice is returned by the post office with a forwarding address, the notice will be re-sent to the address indicated. If notice to an email address is returned as undeliverable a letter will be mailed to the last known address.

4.3.E. THE APPLICATION INTERVIEW

HABC obtains 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.

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

Families selected from the waiting list are required to participate in the eligibility interview and all adult members are required to attend the interview.

The interview will be conducted only if the head of household or spouse/cohead provides appropriate documentation of legal identity. (Chapter 7 provides a discussion of proper documentation of legal identity). If the family representative does not provide the required documentation, the appointment may be rescheduled when the proper documents have been obtained.

If not all household members have disclosed their SSNs at the next time the HABC is issuing vouchers, the HABC will issue a voucher to the next eligible applicant family on the waiting list.

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

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

Interviews will be conducted in English. For LEP applicants, the HABC will take affirmative steps to facilitate full participation in the program.

If the family is unable to attend a scheduled interview, the family should contact the HABC in advance of the interview to schedule a new appointment. In all circumstances, if a family does not attend a scheduled interview, the HABC will send another notification letter with a new interview appointment time. Applicants who fail to attend two scheduled interviews without HABC 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.

4.3.F. COMPLETING THE APPLICATION PROCESS

The HABC must verify all information provided by the family (see Chapter 7). Based on verified information, the HABC 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 HABC determines that the family is ineligible, the HABC will send written notification of the ineligibility determination within 10 business days of the determination. The notice will specify the reasons for ineligibility, and will inform the family of its right to request an informal review (Chapter 16).

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

If a disabled family is unable to complete the application process due to current medical circumstances, a reasonable accommodation may be requested to return to the wait list for review at a later time. The reasonable accommodation request must be substantiated with medical documentation and approved by the HABC. The HABC will allow the disabled family to return to the wait list for a minimum period of 6 months until the next selection for review. Should the family request and be approved for a second reasonable accommodation they will be permitted to return to the wait list for a minimum period of 3 months until the next selection for review. Should the family be unable to complete the application process on their third review they will be removed from the waiting list.

If the HABC determines that the family is eligible to receive assistance, the HABC 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 HABC must ensure that the family fully understands the way the program operates and the family's obligations under the program. This is accomplished through both an oral briefing and provision of a briefing packet containing written documentation of information the family needs to know. Once the family is fully informed of the program's requirements, the HABC issues the family a voucher. The voucher includes the unit size the family qualifies for based on the HABC'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 HABC policies related to these topics in two parts:

Section 1: 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 focus on the family's obligations under the program.

Section 2: Subsidy Standards and Voucher Issuance. This part discusses the HABC'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.

Ch. 5 Section 1: BRIEFINGS AND FAMILY OBLIGATIONS

5.1.A. OVERVIEW

HUD regulations require the HABC to conduct mandatory briefings for applicant families. The briefing provides a broad description of owner and family responsibilities, explains the HABC'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.

5.1.B. BRIEFING [24 CFR 982.301]

The HABC must give the family an oral briefing and provide the family with a briefing packet containing written information about the program. Families may be briefed individually or in groups. At the briefing, the HABC 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.

Briefings will be conducted in group meetings. At times where there are a specific and limited number of vouchers to be issued, or the voucher issue is to a targeted group, briefings may be conducted individually.

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

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

Briefings will be conducted in English. For limited English proficient (LEP) applicants, the HABC will take affirmative steps to communicate with those that may need additional services.

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, the applicant will be denied assistance and their name will not be placed back on the waiting list. If the notice is returned by the post office with a forwarding address, the notice will be re-sent to the address indicated.

Applicants who fail to attend a scheduled briefing will automatically be scheduled for another briefing. The HABC will notify the family of the date and time of the second scheduled briefing. Applicants who fail to attend two scheduled briefings, without HABC 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 HABC's jurisdiction;
- For families eligible under portability, an explanation of portability. The HABC 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 HABC's policies on any extensions or suspensions of the term. If the HABC 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 HABC determines the payment standard for a family, how the HABC determines total tenant payment for a family, and information on the payment standard and utility allowance schedule.
- An explanation of how the HABC 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 HABC 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 HABC policy on providing information about families to prospective owners.
- The HABC 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 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 HABC.
- The family obligations under the program, including any obligations of a welfare-to-work family.
- The grounds on which the HABC may terminate assistance for a participant family because of family action or failure to act.
- HABC informal hearing procedures including when the HABC is required to offer a participant family the opportunity for an informal hearing, and how to request the hearing.

The HABC is in a metropolitan FMR area, consequently 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 the areas including job opportunities, schools, transportation, and other services
- An explanation of how portability works, including a list of portability contact persons for neighboring housing authorities

Additional Items to Be Included in the Briefing Packet

In addition to items required by the regulations, HABC may wish to include supplemental materials to help explain the program to both participants and owners.

The HABC will provide the following additional materials in the briefing packet:

- Information about the protections afforded by the Violence against Women Act of 2005 (VAWA).
- “What You Should Know about EIV,” a guide to the Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH 2010-19

5.1.C. FAMILY OBLIGATIONS

Obligations of the family are described in the HCV regulations and on the voucher itself. These obligations include responsibilities the family is required to fulfill, as well as prohibited actions. The HABC 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 HABC of a change, notifying the HABC of the request or change within 10 business days is considered prompt notice.

When a family is required to provide notice to the HABC, the notice must be in writing.

Family Obligations [24 CFR 982.551]

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

- The family must supply any information that the HABC or HUD determines to be necessary, including submission of required evidence of citizenship or eligible immigration status.
- The family must supply any information requested by the HABC or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition.
- The family must disclose and verify social security numbers and sign and submit consent forms for obtaining information.
- Any information supplied by the family must be true and complete.
- The family is responsible for any Housing Quality Standards (HQS) breach 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.

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

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

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

The HABC will determine if a family has committed serious or repeated violations of the lease based on available evidence, including but not limited to, a court-ordered eviction or an owner's notice to evict.

Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, living or housekeeping habits that cause damage to the unit or premises, and criminal activity.

- The family must notify the HABC 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 HABC at the same time the owner is notified.

- The family must promptly give the HABC a copy of any owner eviction notice.
- The family must use the assisted unit for residence by the family. The unit must be the family's only residence.
- The composition of the assisted family residing in the unit must be approved by the HABC. The family must promptly notify the HABC in writing of the birth, adoption, or court-awarded custody of a child. The family must request HABC approval to add any other family member as an occupant of the unit.

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

- The family must promptly notify the HABC in writing if any family member no longer lives in the unit.
- If the HABC has given approval, a foster child or a live-in aide may reside in the unit. The HABC has the discretion to adopt reasonable policies concerning residency by a foster child or a live-in aide, and to define when HABC consent may be given or denied. For policies related to the request and approval/disapproval of foster children, foster adults, and live-in aides, see Chapter 3 and Chapter 11.
- The family must not sublease the unit, assign the lease, or transfer the unit.
Subleasing includes receiving payment to cover rent and utility costs by a person living in the unit who is not listed as a family member.
- The family must supply any information requested by the HABC to verify that the family is living in the unit or information related to family absence from the unit.

- The family must promptly notify the HABC 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 HABC at the start of the extended absence.

- The family must pay utility bills and provide and maintain any appliances that the owner is not required to provide under the lease [Form HUD-52646, Voucher].
- The family must not own or have any interest in the unit, (other than in a cooperative and owners of a manufactured home leasing a manufactured home space).
- Family members must not commit fraud, bribery, or any other corrupt or criminal act in connection with the program. (See Chapter 14, Program Integrity for additional information).
- Family members must not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for HUD and HABC policies related to drug-related and violent criminal activity.
- Members of the household must not engage in abuse of alcohol in a way that threatens the health, safety or right to peaceful enjoyment of the other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for a discussion of HUD and HABC policies related to alcohol abuse.
- An assisted family or member of the family must not receive HCV program assistance while receiving another housing subsidy, for the same unit or a different unit under any other federal, state or local housing assistance program.
- A family must not receive HCV program assistance while residing in a unit owned by a parent, child, grandparent, grandchild, sister or brother of any member of the family under the “leasing from relative prohibition”, unless the HABC has determined (and has notified the owner and the family of such determination) that approving rental of the unit, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities. [Form HUD-52646, Voucher]

All participants requesting an exception to the leasing from relative prohibition will be required to be submitted in writing. Landlord and tenant must be able to demonstrate that approving the unit would provide reasonable accommodation for a family member who is a person with disabilities and no other unit in the market place would be able to afford accommodation. The Executive Director or his/her designee will review and approve or deny the request within 10 business days of the date of the letter.

Ch. 5 Section 2: SUBSIDY STANDARDS AND VOUCHER ISSUANCE

5.2.A. OVERVIEW

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

5.2.B. DETERMINING SUBSIDY STANDARDS (VOUCHER) SIZE [24 CFR 982.402]

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

The HABC will follow all equal access regulations and HUD guidance on lesbian, gay, bisexual, transgender, or nonconforming persons. Transgender or nonconforming persons can self-identify their gender to provide access in accordance with the individual's gender identity. Subsidy standards will be evaluated at issuance of voucher (initial and relocations) and whenever there is a change in household composition, at the next annual reexam following the change.

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

- The subsidy standards must provide for the smallest number of bedrooms needed to house a family without overcrowding.
 - If the HABC experiences a financial short fall the following cost saving measure will be initiated: the living room will be considered a bedroom/sleeping room in determining the minimum number of bedrooms needed to house a family without overcrowding. The HABC may choose to implement these changes at the next recertification regardless of voucher issuance or change in household composition.
- 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 HABC to reside in the unit to care for a family member who is disabled or is at least 50 years of age) must be counted in determining the family unit size;
- Unless a live-in-aide resides with a family, the family unit size for any family consisting of a single person must be either a zero- or one-bedroom unit, as determined under the HABC subsidy standards.

The HABC will assign one bedroom/sleeping area for each two persons within the household, except in the following circumstances:

- Persons of the opposite sex (other than spouses/couples and children under age 8) will be allocated separate bedrooms.
- Live-in aides will be allocated a separate bedroom.

The HABC 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	1-4
2 Bedrooms	2-6
3 Bedrooms	3-8
4 Bedrooms	6-10
5 Bedrooms	9-12
6 Bedrooms	12-14

5.2.C. EXCEPTIONS TO SUBSIDY STANDARDS [24 CFR 982.402]

In determining family unit size for a family, the HABC may grant an exception to its established subsidy standards if the HABC determines that the exception is justified by the age, sex, health, handicap, or relationship of family members or other personal circumstances. 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 family must request any exception to the subsidy standards in writing. The request must explain the need or justification for a larger family unit size, and must include appropriate

documentation. Requests based on medical reasons must follow the reasonable accommodation requirements and process stated in Chapter 2.

The HABC will notify the family of its determination within 10 business days of receiving the family's request. If a participant family's request is denied, the notice will inform the family of their right to request an informal hearing.

5.2.D. VOUCHER ISSUANCE [24 CFR 982.302]

When a family is selected from the waiting list (or as a special admission as described in Chapter 4), or when a participant family wants to move to another unit, the HABC issues a Housing Choice Voucher, form HUD-52646. **This section 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 HABC has determined the family to be eligible for the program, and that the HABC expects to have money available to subsidize the family if the family finds an approvable unit. However, the HABC 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 HABC's HCV program [Voucher, form HUD-52646]

A voucher can be issued to an applicant family only after the HABC 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.

Vouchers will be issued to eligible applicants in conjunction with the mandatory briefing.

The HABC should have sufficient funds to house an applicant before issuing a voucher. If the HABC determines that there is insufficient funding after a voucher has been issued, the HABC must rescind the voucher and return the affected family back to their same position on the waiting list. Vouchers that have been issued will be rescinded in order of the date and time they were first issued, starting with the most recently issued vouchers. Families who have their voucher rescinded will be notified in writing and will be reinstated to their former position on the waiting list.

If, due to budgetary constraints, the HABC determines that there is insufficient funding to issue a voucher to a family that has not completed the eligibility process, the affected family will be returned to former position on the wait list. The HABC may choose to complete the review process to update/purge the wait list.

5.2.E. VOUCHER TERM, EXTENSIONS, AND SUSPENSIONS [24 CFR 982.303]

Term of Voucher

HUD requires the initial term of a voucher to be at least 60 calendar days. And allows the PHA, at its discretion, to grant a family on more extensions of the initial voucher term.

If the family is an applicant the HABC will provide the family with 60 calendar days on the voucher. Extensions will only be approved as a reasonable accommodation to make the program accessible to and usable by a person with disabilities.

To help ex-offenders returning to the community from prison or jail who have no rental history or poor rental history overcome barriers to re-entry the HABC will provide 120 days on the voucher.

If the family is a participant the HABC will provide the family with 90 calendar days on the voucher. Extensions will only be approved as a reasonable accommodation to make the program accessible to and usable by a person with disabilities.

Requests for extensions must follow the reasonable accommodation requirements and process stated in Chapter 2. All requests for extensions to the voucher term must be submitted prior to the expiration date of the voucher.

The HABC will decide whether to approve or deny an extension request within 10 business days of the date the request is received and will immediately provide the family notice of its decision.

Suspensions of Voucher Term

The PHA must provide for suspension of the initial or any extended term of the voucher from the date that the family submits a request for PHA approval of the tenancy until the date the PHA notifies the family in writing whether the request has been approved or denied.

Suspension means the term on the family's voucher stops.

The HABC will consider a *request for PHA approval* to be the submission of a complete Request for Tenancy Approval (RFTA) packet and all requested documents specified in the packet. These additional documents include but are not limited to:

- Proposed lease;
- Current and valid Certificate of Occupancy, Certificate of Continued Occupancy, State Inspection and/or Fire Inspection Certificate as required by the municipality in which the unit is located or state law;

Should HABC deny the submitted RFTA, the family will be notified immediately that the clock on the voucher term continues or has restarted. Notification will include the new expiration date of the voucher if applicable.

Expiration of Voucher Term

Once a family's housing choice voucher term (including any extensions) expires, the family is no longer eligible to search for housing under the program and the HABC will no longer accept a RFTA.

If a family's voucher term or extension expires the family may make a new application with a new application date if the waiting list is open. If a RFTA was submitted prior to the expiration date of the voucher and is subsequently disapproved by the HABC (after the voucher term has expired), the family may make a new application with a new application date if the waiting list is open.

Within 10 business days after the expiration of the voucher term or any extension, the HABC will notify the family in writing that the voucher term has expired.

Chapter 6: INCOME AND SUBSIDY DETERMINATIONS

INTRODUCTION

A family's income determines eligibility for assistance and is also used to calculate the family's payment and the HABC's subsidy payment. The HABC 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 HABC policies related to these topics in three parts as follows:

Section 1: Annual Income. HUD regulations specify the sources of income to include and exclude to arrive at a family's annual income. The requirements and HABC policies for calculating annual income in this section.

Section 2: Adjusted Income. Once annual income has been established HUD regulations require the HABC to subtract from annual income any of five mandatory deductions for which a family qualifies. The requirements and HABC policies for calculating adjusted income are found in this section.

Section 3: Calculating Family Share and HABC Subsidy. This part describes the statutory formula for calculating total tenant payment (TTP), the use of utility allowances, and the methodology for determining HABC subsidy and required family payment.

Ch. 6 Section 1: ANNUAL INCOME

6.1.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 6.1.B and 6.1.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 6.1.D). Verification requirements for annual income are discussed in Chapter 7.

6.1.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 cohead Other adult family members	All income is included except those specifically excluded by the regulations.
Children under 18 years of age	Employment income is excluded [24 CFR 5.609(c)(1)]. All other sources of income are included, except those specifically excluded by the regulations.
Full-time students 18 years of age or older (not head, spouse, or cohead)	Employment income above \$480/year is excluded [24 CFR 5.609(c)(11)]. All other sources of income are included, except those specifically excluded by the regulations.

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 consecutive 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 consecutive days is considered permanently absent and no longer a family member. Exceptions to this general policy are discussed below.

Absent Students

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

Absences Due to Placement in Foster Care

Children temporarily absent from the home because 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 HABC will verify with the appropriate agency whether and when the child is expected to be returned to the home. Unless the agency confirms that the child has been permanently removed from the home, the child will be counted as a family member.

Absent Due to Employment

Any family member absent from the unit more than 180 consecutive days due to employment (i.e. active military duty) will continue to be considered a family member.

Family Members Permanently Confined for Medical Reasons

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

The HABC 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.

Joint Custody of Dependents

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

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 HABC 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.

6.1.C. ANTICIPATING ANNUAL INCOME

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

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

- The HABC believes that past income is the best available indicator of expected future income [24 CFR 5.609(d)]

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

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

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

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

- If EIV or other UIV data is not available,
- If the family disputes the accuracy of the EIV employer data, and/or
- If the HABC determines additional information is needed.

In such cases, the HABC will review and analyze current data to anticipate annual income. In all cases, the family file will be documented with a clear record of the reason for the decision, and a clear audit trail will be left as to how the HABC annualized projected income.

When the HABC cannot readily anticipate income based upon current circumstances (e.g., in the case of seasonal employment, unstable working hours, or suspected fraud), the HABC will review and analyze historical data for patterns of employment, paid benefits, and receipt of other income and use the results of this analysis to establish annual income.

Any time current circumstances are not used to project annual income, a clear rationale for the decision will be documented in the file. In all such cases the family may present information and documentation to the HABC to show why the historic pattern does not represent the family's anticipated income.

Known Changes in Income

If the HABC verifies an upcoming increase or decrease in income, annual income will be calculated by applying each income amount to the appropriate part of the 12-month period.

Example: An employer reports that a full-time employee who has been receiving \$8/hour will begin to receive \$8.25/hour in the eighth week after the effective date of the reexamination. In such a case the HABC would calculate annual income as follows: ($\$8/\text{hour} \times 40 \text{ hours} \times 7 \text{ weeks}$) + ($\$8.25 \times 40 \text{ hours} \times 45 \text{ weeks}$).

The family may present information that demonstrates that implementing a change before its effective date would create a hardship for the family. In such cases the HABC 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 HABC's policy on reexaminations does not require interim reexaminations for other types of changes.

When tenant-provided third-party documents are used to anticipate annual income, they will be dated within the last 60 days of the reexamination interview date.

Projecting Income

In HUD's EIV webcast of January 2008, HUD made clear that HABCs are not to use EIV quarterly wages to project annual income.

HABC will not use EIV quarterly wages to project annual income at an annual or interim reexamination.

6.1.D. EARNED INCOME

Types of Earned Income Included in Annual Income [24 CFR 5.609(b)]

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. Payments in lieu of earnings such as unemployment and disability compensation, worker's compensation and severance pay is included in annual income.

For persons who regularly receive bonuses or commissions, the HABC will include these earnings in anticipated income using the year-to-date earning calculation. For persons who receive sporadic bonuses or commissions the HABC will verify and then average amounts received for the two years preceding admission or reexamination. If only a one-year history is available, the HABC will use the prior year amounts. In either case the family may provide, and the HABC 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 HABC will count only the amount estimated by the employer. The file will be documented appropriately.

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 includes temporary payments from the U.S. Census Bureau for employment lasting no longer than 180 days [Notice PIH 2009-19].

Sporadic income is income that is not received periodically and cannot be reliably predicted. For example, inheritances, insurance payments, legal settlements and 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 cohead) 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].

The full amount of financial assistance paid directly to the student or the educational institution is not included in annual 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(f)(1), 5058)
- Awards under the federal work-study program (20 U.S.C. 1087 uu)
- Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(g))
- Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d))
- Allowances, earnings, and payments to participants in programs funded under the Workforce Investment Act of 1998 (29 U.S.C. 29319a)(2))

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 HABC 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 HABC's governing board. No resident may receive more than one such stipend during the same period of time [24 CFR 5.609(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 HABC 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 HABC 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 HABC 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 HABC’s interim reporting requirements.

HUD-Funded Training Programs

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

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

Earned Income Tax Credit

Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(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 6.1.E.

6.1.E. EARNED INCOME DISALLOWANCE FOR PERSONS WITH DISABILITIES [24 CFR 5.617 and Notice PIH 2016-05]

The earned income disallowance (EID) encourages people with disabilities to enter the work force by not including the full value of increases in earned income for a period of time. Eligibility criteria and limitations on the disallowance are summarized below.

Eligibility

This disallowance applies only to individuals in families already participating in the HCV, HOPWA, HOME, and Supportive Housing 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.
- Tenants (including non-disabled persons) who are employed and are currently receiving the EID exclusion at the time of conversion from Public Housing Projects to Project-Based vouchers under RAD 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 phase-in, instead, the rent will automatically rise to the appropriate rent level based upon tenant income at the time. No other tenant (e.g., tenants who at one time received the EID but are not receiving the EID exclusion at the time of conversion, tenants that move into the property following conversion, etc.) is covered under this section.

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 baseline income

Baseline income means the annual income immediately prior to implementation of the disallowance of a person with disabilities.

The family member's baseline income remains constant throughout the period that he or she is receiving the EID.

Initial 12-Month Exclusion

During the initial 12-month exclusion period, the full amount (100 percent) of any increase in income attributable to new employment or increased earnings is excluded. The 12 months are 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 consecutive.

Maximum 2-Year Disallowance

The EID has a 24-month lifetime maximum. The 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 Section 8 assistance, or if there are breaks in assistance.

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

6.1.F. BUSINESS INCOME [24 CFR 5.609(b)(2)]

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

Business Expenses

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

To determine business expenses that may be deducted from gross income, the HABC 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.

Rent paid on a subsidized unit is not considered a business expense.

Business Expansion

HUD regulations do not permit the HABC 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 the HABC 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 HABC will allow as a business expense interest, but not principal, paid on capital indebtedness.

Negative Business Income

If the net income from a business is negative, no business income will be included in annual income; a negative amount will not be used to offset other family income.

Withdrawal of Cash or Assets from a Business

HUD regulations require the HABC 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 HABC 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.

6.1.G. ASSETS [24 CFR 5.609(b)(3) and 24 CFR 5.603(b)]

Overview

There is no asset limitation for participation in the HCV program. However, HUD requires that the HABC include in annual income the "interest, dividends, and other net income of any kind from real or personal property" [24 CFR 5.609(b)(3)]. This section discusses how the income from various types of assets is determined. For most types of assets, the HABC must determine the value of the asset 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 HABC policies related to each type of asset.

General Policies

Income from Assets

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

Anytime current circumstances are not used to determine asset income, a clear rationale for the decision will be documented in the file. In such cases the family may present information and documentation to the HABC to show why the asset income determination does not represent the family's anticipated asset income.

Valuing Assets

The calculation of asset income sometimes requires the HABC to make a distinction between an asset's market value and its cash value.

- 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 6.1.I.)

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

When net family assets are \$5,000 or less, the HABC 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 HABC 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 HUD-established passbook savings rate.

Determining Actual Anticipated Income from Assets

It may or may not be necessary for the HABC 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 HABC 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 HABC will prorate the asset according to the percentage of ownership. If no percentage is specified or provided for by state or local law, the HABC will prorate the asset evenly among all owners.

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

HUD regulations require the HABC 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.

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 irrevocable 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. 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 HABC may verify the value of the assets disposed of if other information available to the HABC 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 HABC will use the average monthly balance for the last three months.

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

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

Investment Accounts Such as Stocks, Bonds, Saving Certificates, and Money Market Funds

Interest or dividends earned by investment accounts are counted as actual income from assets even when the earnings are reinvested. The cash value of such an asset is determined by deducting from the market value any broker fees, penalties for early withdrawal, or other costs of converting the asset to cash.

In determining the market value of an investment account, the HABC 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 HABC 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].

In determining the equity, the HABC will use the assessed market value used to determine local tax purposes. The HABC will obtain market value by reviewing the local assessment roll of the owner's most recent property tax liability bill.

The HABC will first use the payoff amount for the loan (mortgage) as the unpaid balance to calculate equity. If the payoff amount is not available, the HABC will use the basic loan balance information to deduct from the market value in the equity calculation.

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

- Equity accounts in HUD homeownership programs [24 CFR5.603(b)]

- The value of a home currently being purchased with assistance under the HCV program Homeownership Option for the first 10 years after the purchase date of the home [24 CFR 5.603(b), Notice PIH 2012-3]
- 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]

The HABC must also deduct from the equity the reasonable costs for converting the asset to cash. Using the formula for calculating equity specified above, the net cash value of real property is the market value of the loan (mortgage) minus the expenses to convert to cash [Notice PIH 2012-3].

For the purposes of calculating expenses to convert to cash for real property, the HABC will use ten percent of the market value of the home.

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

Trusts

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

Revocable Trusts

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

funds is counted as actual asset income, whether the income is paid to the family or deposited in the trust.

Irrevocable 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 6.1.H. Lump-sum receipts are discussed earlier in this section.)

Retirement Accounts

Company Retirement/Pension Accounts

To correctly include or exclude as an asset any amount held in a company retirement or pension account by an employed person, the HABC 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 6.1.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

Necessary items of personal property are not considered assets [24 CFR 5.603(b)].

Necessary personal property consists of only those items not held as an investment, and may include clothing, furniture, household furnishings, jewelry, 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.

6.1.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 because 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(c)(14)]. Additionally, any deferred disability benefits that are received in a lump-sum or in prospective monthly amounts from the Department of Veterans Affairs are to be excluded from annual income [FR Notice 11/24/08].

Treatment of Overpayment Deductions from Social Security Benefits

The HABC must make a special calculation of annual income when the Social Security Administration (SSA) overpays an individual, resulting in a withholding or deduction from his or her benefit amount until the overpayment is paid in full. The amount and duration of the withholding will vary depending on the amount of the overpayment and the percent of the benefit rate withheld. Regardless of the amount withheld or the length of the withholding period, the HABC must use the reduced benefit amount after deducting only the amount of the overpayment withholding from the gross benefit amount [Notice PIH 2012-10].

Periodic Payments Excluded from Annual Income

- Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the assisted family, who are unable to live alone) [24 CFR 5.609(c)(2)]. Kinship guardianship assistance payments (Kin-GAP) and other similar guardianship payments are treated the same as foster care payments and are likewise excluded from annual income [Notice PIH 2012-1].

The HABC 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. 8624(f)) [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. 26(l)) [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.
- Deferred periodic amount from supplemental security income and Social Security benefits that are received in a lump-sum amount or in prospective monthly amounts as a result of delays in processing Social Security and SSI payments (see section 6-I.J.) [24 CFR 5.609(c)(14)].
- Deferred Department of Veterans Affairs (VA) disability benefits that are received in a lump sum amount or in prospective monthly amounts (42 U.S.C. 1437a(b)(4) [24 CFR 5.609(c)(14)]

6.1.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)]. 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 are excluded (except as provided in 24 CFR 5.609(b)(5)) [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 6.1.G.)

6.1.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]

The HABC 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, the HABC must include in annual income “imputed” welfare income. The HABC must request that the welfare agency inform the HABC 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)].

6.1.K. PERIODIC AND DETERMINABLE ALLOWANCES [24 CFR 5.609(b)(7)]

Annual income includes periodic and determinable allowances, such as alimony and child support payments, and regular contributions or gifts received from organizations or from persons not residing with an assisted family.

Alimony and Child Support

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

The HABC will count court-awarded amounts for alimony and child support unless the HABC 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

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

6.1.L. STUDENT FINANCIAL ASSISTANCE (for HCV only)

Student Financial Assistance Included in Annual Income [24 CFR 5.609(b)(9)]

Any financial assistance, **in excess** of amounts received for tuition and any other required fees and charges, that an individual receives under the Higher Education Act of 1965, from private sources, or from an institution of higher education shall be considered income to that individual **except** that financial assistance is not considered annual income for persons over the age of 23 with dependent children.

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

- They are enrolled in an institution of higher education, as defined under section 102 of the Higher Education Act (HEA) of 1965;
- Is under 24 years of age;
- Is not a veteran of the United States military;
- Is unmarried;
- Does not have a dependent child;
- Is not a person with disabilities;
- Is not otherwise individually eligible, or has parents who, individually or jointly, are not eligible on the basis of income to receive assistance under HCV of the 1937 Act.

To determine annual income in accordance with the above requirements, the HABC will use the definitions of *dependent child*, *institution of higher education*, and *parents* in Chapter 3, along with the following definitions:

- *Assistance under the Higher Education Act of 1965* includes Pell Grants, Federal Supplement Educational Opportunity Grants, Academic Achievement Incentive Scholarships, State Assistance under the Leveraging Educational Assistance Partnership Program, the Robert G. Byrd Honors Scholarship Program, and Federal Work Study programs.
- *Assistance from private sources* means assistance from nongovernmental sources, including parents, guardians, and other persons not residing with the student in an HCV assisted unit.
- *Tuition* will have the meaning given this term by the institution of higher education in which the student is enrolled and include the cost of mandatory fees and charges imposed by the institution. Mandatory fees often include but are not limited to: student service fees, student association fees, student activity fees, and laboratory fees.

**Financial assistance does not include loan proceeds for the purpose of determining income.*

Student Financial Assistance Excluded from Annual Income [24 CFR 5.609(c)(6)]

Any student financial assistance not subject to inclusion under 24 CFR 5.609(b)(9) is fully excluded from annual income under 24 CFR 5.609(c)(6), whether it is paid directly to the student or to the educational institution the student is attending. This includes any financial assistance received by:

- Students residing with parents who are seeking or receiving Section 8 assistance;
- Students who are enrolled in an educational institution that does **not** meet the 1965 HEA definition of *institution of higher education*;
- Students who are over 23 **AND** have at least one dependent child;
- Students who are receiving financial assistance through a governmental program not authorized under the 1965 HEA.

6.1.M. EXCLUSIONS FROM ANNUAL INCOME

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

- Income from employment of children (including foster children) under the age of 18 years;
- 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);
- 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 24 CFR 5.609 (b)(5));
- Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
- Income of a live-in aide, as defined in §5.403;
- Subject to 24 CFR 5.609 (b)(9) of this section, the full amount of student financial assistance paid directly to the student or to the educational institution;
- The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;
- Amounts received under training programs funded by HUD;
 - 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);

- 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;
- Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period of time;
- 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;
- Temporary, nonrecurring or sporadic income (including gifts);
- 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;
- Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse);
- Adoption assistance payments in excess of \$480 per adopted child;
- Deferred periodic amounts from supplemental security income and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts, or any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts.
- 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;
- 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
- 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.

Ch. 6 Section 2: ADJUSTED INCOME

6.2.A. INTRODUCTION

Overview

HUD regulations require HABC 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 [HABC] 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 (for children 12 years old or younger) necessary to enable a member of the family to be employed or to further his or her education.

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

Anticipating Expenses

Generally, the HABC 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 nonschool periods and cyclical medical expenses), the HABC 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 HABC 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 HABC may require the family to provide documentation of payments made in the preceding year.

6.2.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 cohead 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)].

6.2.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, cohead, or sole member is 62 years of age or older, and a *disabled family* is a family whose head, spouse, cohead, or sole member is a person with disabilities [24 CFR 5.403].

6.2.D. MEDICAL EXPENSES DEDUCTION [24 CFR 5.611(a)(3)(i)]

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

The medical expense deduction is permitted only for families in which the head, spouse, or cohead 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].

Medical Expenses are defined as 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 (24 CFR 5.603).

The most current IRS Publication 502, *Medical and Dental Expenses*, will be used to determine the costs that qualify as medical expenses. Generally, you cannot include in medical expenses amounts paid to improve one's general health or well-being that is not related to a medical condition. You cannot include in medical expenses the cost of an item ordinarily used for personal, living, or family purposes unless it is used primarily to prevent or alleviate a physical or mental defect or illness. You can include the excess of the cost in a special form over the cost of the item in normal form as a medical expense, in example braille book.

Families That Qualify for Both Medical and Disability Assistance Expenses

This policy applies only to families in which the head, spouse, or cohead 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 HABC will consider them medical expenses unless it is clear that the expenses are incurred exclusively to enable a person with disabilities to work.

Summary of Allowable Medical Expenses from IRS Publication 502	
Services of medical professionals	Substance abuse treatment programs
Surgery and medical procedures that are necessary, reconstructive, legal, non-cosmetic	Psychiatric care, psychoanalysis, psychologist expenses for medical care.
Services of medical facilities	Ambulance services and some costs of travel related to medical expenses
Hospitalization, long-term care, and in-home nursing services	The cost and care of necessary equipment related to a medical condition (e.g., eyeglasses/lenses, hearing aids, crutches, artificial teeth, and wigs)
Prescription medicines and insulin, but <u>not</u> nonprescription medicines even if recommended by a doctor	Cost and continuing care of necessary service animals
Improvements to housing directly related to medical needs (e.g., ramps for a wheel chair, handrails)	Medical insurance premiums or the cost of a health maintenance organization (HMO)
Lead paint removal if there is lead poisoning	Sterilization, vasectomy, or fertility enhancement
Stop smoking programs (does not include over the counter purchases)	Lactation expenses (breast pumps and supplies)
Weight-loss program if it is a treatment for a specific disease such as obesity, hypertension, or heart disease	Oxygen and oxygen equipment to relieve breathing problems caused by medical condition
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.	

6.2.E. DISABILITY ASSISTANCE EXPENSES DEDUCTION [24 CFR 5.603(b) and 24 CFR 5.611(a)(3)(ii)]

Reasonable expenses for attendant care and auxiliary apparatus for a disabled family member may be deducted if they: (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.

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 HABC 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 HABC 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 HABCs 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.

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 HABC 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.

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 HABC will consider them medical expenses unless it is clear that the expenses are incurred exclusively to enable a person with disabilities to work.

6.2.F. CHILD CARE EXPENSE DEDUCTION

Child care expenses are defined 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 (24 CFR 5.603).

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 HABC 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 HABC.

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 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 is included in annual income. For example, if a family member who qualifies for the EID makes \$15,000 but because of the EID only \$5,000 is included in annual income, child care expenses are limited to \$5,000.

The HABC 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 HABC generally will limit allowable child care expenses to the earned income of the lowest-paid member. The family may provide information that supports a request to designate another family member as the person enabled to work.

Eligible Child Care Expenses

The type of care to be provided is determined by the assisted family. The HABC 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 HABC 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 be not more than one study hour for each hour spent in class.

To establish the reasonableness of child care costs, the HABC will use the schedule of child care costs from the Bergen County Department of Human Services Office for Children. Families may present, and the HABC will consider, justification for costs that exceed typical costs in the area to reasonably accommodate a disability.

Ch. 6 Section 3: CALCULATING FAMILY SHARE AND HABC SUBSIDY

6.3.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 Section 2 of this chapter)
- 10 percent of the family's monthly gross income (annual income, as defined in Section 1 of this chapter, divided by 12)
- The welfare rent (in as-paid states only)
- The minimum rent established by the HABC

The HABC has authority to suspend and exempt families from minimum rent when a financial hardship exists, as defined in Section 6.3.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 the HABCs jurisdiction, or member communities.

Minimum Rent [24 CFR 5.630]

The HABC minimum rent is \$50.

Family Share [24 CFR 982.305(a)(5)]

If a family chooses a unit with a gross rent (rent to owner plus an allowance for tenant-paid utilities) that exceeds the HABC's applicable payment standard: (1) the family will pay more than the TTP, and (2) at initial occupancy the HABC 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 6.3.C.)

HABC Subsidy [24 CFR 982.505(b)]

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

The HABC will make utility reimbursements to the family.

6.3.B. FINANCIAL HARDSHIPS AFFECTING MINIMUM RENT [24 CFR 5.630]

Overview

If the HABC establishes a minimum rent greater than zero, the HABC must grant an exemption from the minimum rent if a family is unable to pay the minimum rent because of financial hardship.

The financial hardship exemption applies only to families required to pay the minimum rent. If a family's TTP is higher than the minimum rent, the family is not eligible for a hardship exemption. If the HABC 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.

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, the HABC must suspend the minimum rent requirement beginning the first of the month following the family’s request.

The HABC then determines whether the financial hardship exists and whether the hardship is temporary or long-term.

The HABC 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 the HABC 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

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 HABC will make the determination of hardship within 30 calendar days.

No Financial Hardship

If the HABC determines there is no financial hardship, the HABC will reinstate the minimum rent and require the family to repay the amounts suspended.

The HABC will require the family to repay the suspended amount in accordance with the repayment procedures found in Chapter 16 of this plan.

Temporary Hardship

If the HABC determines that a qualifying financial hardship is temporary, the HABC 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 HABC the amounts suspended. HUD requires the HABC to offer a reasonable repayment agreement, on terms and conditions established by the HABC. The HABC also may determine that circumstances have changed and the hardship is now a long-term hardship.

The HABC will require the family to repay the suspended amount in accordance with the repayment procedures found in Chapter 16 of this plan.

Long-Term Hardship

If the HABC determines that the financial hardship is long-term, the HABC 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.

6.3.C. APPLYING PAYMENT STANDARDS [24 CFR 982.505]

Overview

The HABC's schedule of payment standards is used to calculate housing assistance payments for HCV families. This section covers the application of the HABC's payment standards. The establishment and revision of the HABC'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 the HABC's subsidy standards [24 CFR 982.4(b)], or (2) the payment standard for the size of the dwelling unit rented by the family.

The HABC 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 HABC 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 HABC 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 HABC 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 HABC 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 HABC 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 HABC at the first regular reexamination following the decrease in the payment standard will be the higher of these two payment standards. The HABC 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 HABC 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 family unit size increases or decreases during the HAP contract term, the new family 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 family 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 HABC can establish a higher payment standard for the family of not more than 120 percent of the FMR without HUD approval.

6.3.D. APPLYING UTILITY ALLOWANCES [24 CFR 982.517]

Overview

A HABC established utility allowance schedule is used in determining family share and HABC subsidy. Under section 242, the utility allowance for a family shall be the lower of: (1) the utility allowance amount for the family unit size; or (2) the utility allowance amount for the unit size of the unit rented by the family. Upon request of a family that includes a person with disabilities, the HABC must approve a utility allowance higher than the applicable amount if such a higher utility allowance is needed as a reasonable accommodation in accordance with HUD regulations.

The family unit size is the voucher unit size for which the family qualifies using HABC subsidy standards. See Chapter 5 for information on the HABC's subsidy standards.

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

Reasonable Accommodation

HCV program regulations require a HABC to approve a utility allowance amount higher than shown on the HABC'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 HABC will approve an allowance for air-conditioning, even if the HABC has determined that an allowance for air-conditioning generally is not needed.

The family must request the higher allowance and provide the HABC 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 HABC must use the HABC 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.

6.3.E. PRORATED ASSISTANCE FOR MIXED FAMILIES [24 CFR 5.520]

HUD regulations prohibit assistance to ineligible family members. A *mixed family* is one that includes at least one U.S. citizen or eligible immigrant and any number of ineligible family members. The HABC must prorate the assistance provided to a mixed family. The HABC 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 HABC subsidy for a family is calculated at \$500 and two of four family members are ineligible, the HABC subsidy would be reduced to \$250.

CH. 6 EXHIBITS

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)

¹ Text of 45 CFR 260.31 follows.

(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).

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

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

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

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

(iii) Will not extend beyond four months.

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

(3) Supportive services such as child care and transportation provided to families who are employed;

(4) Refundable earned income tax credits;

(5) Contributions to, and distributions from, Individual Development Accounts;

(6) Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support; and

(7) Transportation benefits provided under a Job Access or Reverse Commute project, pursuant to section 404(k) of [the Social Security] Act, to an individual who is not otherwise receiving assistance.

EXHIBIT 6-2: ANNUAL INCOME EXCLUSIONS

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 HABC 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 HABC'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, or any deferred Department of Veterans Affairs disability 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(f)(1), 5058);

c) Certain 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) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub.L- 94-540, section 6);

g) The first \$2000 of per capita shares received from judgment funds awarded by the National Indian Gaming 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);

h) Amounts of scholarships funded under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070), including awards under federal work-study program or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu). For section 8 programs only (42 U.S.C. 1437f), any financial assistance in excess of amounts received by an individual for tuition and any other required fees and charges under the Higher Education Act of 1965 (20 U.S.C. 1001 *et seq.*), from private sources, or an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall not be considered income to that individual if the individual is over the age of 23 with dependent children (Pub. L. 109-115, section 327) (as amended);

i) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(g));

j) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund (Pub. L. 101-201) or any other fund established pursuant to the settlement in *In Re Agent Orange Liability Litigation*, M.D.L. No. 381 (E.D.N.Y.);

k) Payments received under the Maine Indian Claims Settlement Act of 1980 (Pub. L. 96-420, 25 U.S.C. 1728);

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, for programs administered under the United States Housing Act of 1937, title V of the Housing Act of 1949, section 101 of the Housing and Urban Development Act of 1965, and sections 221(d)(3), 235, and 236 of the National Housing Act (26 U.S.C. 32(l));

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. 1833© to children of Vietnam veterans born with spina bifida (38 U.S.C. 1802-05), children of women Vietnam veterans born with certain defects (38 U.S.C. 1811-16), and children of certain Korean service veterans born with spina bifida (38 U.S.C. 1821);

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(c));

r) Allowances, earnings and payments to individuals participating in programs

under the Workforce Investment Act of 1998 (29 U.S.C. 2931(a)(2));

s) Any amount received under the Richard B. Russell School Lunch Act (42 U.S.C. 1760(e)) and the Child Nutrition Act of 1966 (42 U.S.C. 1780(b)), including reduced-price lunches and food under the Special Supplemental Food Program for Women, Infants, and Children (WIC);

t) Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b));

u) Payments from any deferred U.S. Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts (42 U.S.C. 1437a(b)(4));

v) Compensation received by or on behalf of a veteran for service-connected disability, death, dependency, or indemnity compensation as provided by an amendment by the Indian Veterans Housing Opportunity Act of 2010 (Pub. L. 111-269; 25 U.S.C. 4103(9)) to the definition of income applicable to programs authorized under the Native American Housing Assistance and Self Determination Act (NAHASA) (25 U.S.C. 4101 *et seq.*) and administered by the Office of Native American Programs;

w) A lump sum or periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the case entitles *Elouise*

Cobell et al. v. Ken Salazar et al., 816 F.Supp.2d 10 (Oct. 5, 2011 D.D>C.), for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010 (Pub. L. 111-291);

x) Any amounts in an “individual development account” as provided by the Assets for Independence Act, as amended in 2002 (Pub. L. 107-110, 42 U.S.C. 604(h)(4));

y) Per capita payments made from the proceeds of Indian Tribal Trust Cases as described in PIH Notice 20113-30 “Exclusions from Income Payments under Recent Tribal Trusts Settlements” (25 U.S.C. 117b(a)); and

z) Major disaster and emergency assistance received by individuals and families under the Robert T. Stafford Disaster relief and Emergency Assistance Act (Pub. L> 93-288, as amended) and comparable disaster assistance provided by States, local governments, and disaster assistance organizations (42 U.S.C. 5155(d)).

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(d) *Annualization of income.* If it is not feasible to anticipate a level of income over a 12-month period (e.g., seasonal or cyclic income), or the PHA believes that past income is the best available indicator of expected future income, the PHA may annualize the income anticipated for a shorter period, subject to a redetermination at the end of the shorter period.

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, HABCs 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 earned 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.

Baseline income. The annual income immediately prior to implementation of the disallowance described in paragraph (c)(1) of this section of a with disabilities (who is a member of a qualified family).

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 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. Upon the expiration of the 12-month period defined in paragraph (c)(1) of this section and for the subsequent 12-month period, the responsible entity must exclude from annual income of a qualified family at least 50 percent of any increase in income of such family member as a result of employment over the family member's baseline income.

(3) *Maximum 2- year disallowance.* The disallowance of increased income of an individual family member who is a person with disabilities as provided in paragraph (c)(1) or (c)(2) is limited to a lifetime 24-month period. The disallowance applies for a maximum of 12 months for disallowance under paragraph (c)(1) of this section and a maximum of 12 months for disallowance under paragraph (c)(2), during the 24-month period starting from the initial exclusion under paragraph (c)(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 HABC 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 HABC, the welfare agency will inform the HABC 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 HABC of any subsequent changes in the term or amount of such specified welfare benefit reduction. The HABC 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 HABC'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 HABC 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 HABC 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 HABC decision.

(1) Public housing. If a public housing tenant claims that the HABC has not correctly calculated the amount of imputed welfare income in accordance with HUD requirements, and if the HABC denies the family's request to modify such amount, the HABC shall give the tenant written notice of such denial, with a brief explanation of the basis for the HABC determination of the amount of imputed welfare income. The HABC notice shall also state that if the tenant does not agree with the HABC determination, the tenant may request a grievance hearing in accordance with part 966, subpart B of this title to review the HABC 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 HABC 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 HABC 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 HABC denies the family's request to modify such amount, the HABC shall give the family written notice of such denial, with a brief explanation of the basis for the HABC determination of the amount of imputed welfare income. Such notice shall also state that if the family does not agree with the HABC determination, the family may request an informal hearing on the determination under the HABC hearing procedure.

(e) HABC relation with welfare agency.

(1) The HABC must ask welfare agencies to inform the HABC 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 HABC written notice of such reduction, the family's annual incomes shall include the imputed welfare income because of the specified welfare benefits reduction.

(2) The HABC 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 HABC. However, the HABC is not responsible for determining whether a reduction of welfare benefits by the welfare agency was correctly determined by the welfare agency in accordance with

welfare program requirements and procedures, nor for providing the opportunity for review or hearing on such welfare agency determinations.

(3) Such welfare agency determinations are the responsibility of the welfare agency, and the family may seek appeal of such determinations through the welfare agency's normal due process procedures. The HABC shall be entitled to rely on the welfare agency notice to the HABC of the welfare agency's determination of a specified welfare benefits reduction.

Chapter 7: VERIFICATION

INTRODUCTION

The HABC verifies 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 HABC must not pass on the cost of verification to the family.

The HABC will follow the verification guidance provided by HUD in Notice PIH 2010-19 and any subsequent guidance issued by HUD. This chapter summarizes those requirements and provides supplementary HABC policies as follows:

Section 1: General Verification Requirements. This part presents an overview of the verification hierarchy and requirements.

Section 2: Verifying Family Information. This part details the requirements to verify household members' identity, status and eligibility.

Section 3: Verifying Income and Assets. This part details the verification procedures for income and assets and serves as a supplement to Part I.

Section 4: Verifying Mandatory Deductions. This part details the requirements to verify deductions for dependents, elderly, child care, medical, and disability.

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 HABC.

Ch. 7 Section 1: GENERAL VERIFICATION REQUIREMENTS

7-I.A. FAMILY CONSENT TO RELEASE OF INFORMATION [24 CFR 982.516 AND 982.551, 24 CFR 5.230]

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

Consent Forms

It is required that all adult applicants and participants sign form HUD-9886, Authorization for Release of Information. The purpose of form HUD-9886 is to facilitate automated data collection and computer matching from specific sources and provides the family's consent only for the specific purposes listed on the form. HUD and the HABC 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 HABC 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 HABC procedures.

7.1.B. OVERVIEW OF VERIFICATION REQUIREMENTS

HUD's Verification Hierarchy [Notice PIH 2010-19]

HUD authorizes the HABC to use six methods to verify family information and specifies the circumstances in which each method will be used. In general HUD requires the HABC to use the most reliable form of verification that is available and to document the reasons when the HABC uses a lesser form of verification.

In order of priority, the forms of verification that the HABC will use are:

- Up-front Income Verification (UIV) using HUD's Enterprise Income Verification (EIV) system
- Up-front Income Verification (UIV) using a non-HUD system (i.e. SWICA)
- Written Third-Party Verification (may be provided by applicant or participant)
- Written Third-party Verification Form (if discrepancy occurs or if above verifications are not available)
- Oral Third-party Verification
- Self-Certification

Each of the verification methods is discussed in subsequent sections below.

Requirements for Acceptable Documents

Any documents used for verification must generally be the original and must be dated within 60 days of the date they are provided to the HABC. In the case where an original is unavailable photocopies will be acceptable. Documents must not be altered or in any way illegible.

Print-outs from Web pages are considered original documents.

Any family self-certifications must be made in a format acceptable to the HABC and must be signed in the presence of a HABC representative or HABC notary public.

File Documentation

The HABC 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 HABC has followed all 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.

The HABC will document, in the family file, the following:

- Reported family annual income
- Value of assets
- Expenses related to deductions from annual income
- Other factors influencing the adjusted income or income-based rent determination

When the HABC is unable to obtain 3rd party verification, the HABC will document in the family file the reason that third-party verification was not available [24 CFR 960.259(c)(1); Notice PIH 2010-19].

7-I.C. UP-FRONT INCOME VERIFICATION (UIV)

Up-front income verification (UIV) refers to the HABC's use of the verification tools available from independent sources that maintain computerized information about earnings and benefits. UIV will be used to the extent that these systems are available to the HABC.

There may be legitimate differences between the information provided by the family and UIV-generated information. If the family disputes the accuracy of UIV data, no adverse action can be taken until the HABC has independently verified the UIV information and the family has been granted an opportunity to contest any adverse findings through the informal review/hearing process of the HABC.

See Chapter 6 for the HABC's policy on the use of UIV/EIV to project annual income.

Upfront Income Verification Using HUD's Enterprise Income Verification (EIV) System (Mandatory)

HUD's EIV system contains data showing earned income, unemployment benefits, social security benefits, and SSI benefits for participant families. HUD requires the HABC to use the EIV system in its entirety. The following policies apply to the use of HUD's EIV system.

EIV Income Reports

The data shown on income reports is updated quarterly. Data may be between 3 and 6 months old at the time reports are generated.

The HABC will obtain income reports for annual reexaminations monthly. Reports will be generated as part of the regular reexamination process.

Income reports will be compared to family-provided information as part of the annual reexamination process. Income reports may be used in the calculation of annual income, as described in Chapter 6.1.C. Income reports may also be used to meet the regulatory requirement for third party verification, as described above. Policies for resolving discrepancies between income reports and family-provided information will be resolved as described in Chapter 6.1.C. and in this chapter.

Income reports will be used in interim reexaminations to identify any discrepancies between reported income and income shown in the EIV system, and as necessary to verify and calculate earned income, unemployment benefits, Social Security and/or SSI benefits. EIV will also be used to verify that families claiming zero income are not receiving income from any of these sources.

Income reports will be retained in participant files with the applicable annual or interim reexamination documents.

When the HABC determines through income reports and third-party verification that a family has concealed or under-reported income, corrective action will be taken pursuant to the policies in Chapter 14, Program Integrity.

EIV Discrepancy Reports

The EIV discrepancy report is a tool for identifying families who may have concealed or under-reported income. Data in the discrepancy report represents income for past reporting periods and may be between 6 months and 30 months old at the time reports are generated.

Families who have not concealed or under-reported income may appear on the discrepancy report in some circumstances, such as loss of a job or addition of new family members.

Income discrepancies may be identified through use of the EIV "Income Discrepancy Report" or by review of the discrepancy tab for the individual family.

The HABC will monitor the Income Discrepancy Report quarterly.

When the HABC determines that a participant appearing on the Income Discrepancy Report has not concealed or under-reported income, the participant's name will be placed on a list of "false positive" reviews. To avoid multiple reviews in this situation, participants appearing on

this list will be eliminated from discrepancy processing until a subsequent interim or annual reexamination has been completed.

The HABC will review the EIV discrepancy tab, for family income and composition differences, during processing of annual and interim reexaminations.

When it appears that a family may have concealed or under-reported income, the HABC will request written third-party verification of the income in question.

When the HABC determines through file review and third-party verification that a family has concealed or under-reported income, corrective action will be taken pursuant to the policies in Chapter 14, Program Integrity.

EIV Identity Verification

The EIV system verifies tenant identities against SSA records. These records are compared to PIC data for a match on social security number, name, and date of birth.

HABC is required to use EIV's *Identity Verification Report* monthly to improve the availability of income information in EIV [Notice PIH 2012-10].

When identity verification for a participant fails, a message will be displayed within the EIV system and no income information will be displayed.

The HABC will identify participants whose identity verification has failed by reviewing EIV's *Identity Verification Report* monthly.

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

Upfront Income Verification Using Non-HUD Systems (Optional)

In addition to mandatory use of the EIV system, HUD encourages HABC to utilize other upfront verification sources.

The HABC will inform all applicants and participants of its use of the following UIV resources during the admission and reexamination process:

- HUD's EIV system
- State of New Jersey State Wage Information Collection Agency (SWICA)

7.1.D. THIRD-PARTY WRITTEN AND ORAL VERIFICATION

HUD's current verification hierarchy defines two types of written third-party verification. The preferable form, "written third-party verification," consists of an original document generated by a third-party source, which may be received directly from a third-party source or provided to the HABC by the family. If written third-party verification is not available, the HABC must attempt to obtain a "written third-party verification form." This is a standardized form used to collect information from a third party.

Written Third-Party Verification [Notice PIH 2010-19]

Written third-party verification documents must be original and authentic and may be supplied by the family or received from a third-party source.

Examples of acceptable tenant-provided documents include, but are not limited to: pay stubs, payroll summary reports, employer notice or letters of hire and termination, SSA benefit verification letters, bank statements, child support payment stubs, welfare benefit letters and/or printouts, and unemployment monetary benefit notices.

The HABC may reject documentation provided by the family if the document is not an original, if the document appears to be forged, or if the document is altered, mutilated, or illegible.

Third-party documents provided must be dated within 60 days of the HABC request date.

If the HABC determines that third-party documents provided by the family are not acceptable, the HABC will explain the reason to the family and request additional documentation.

As verification of earned income, the HABC will request pay stubs covering the 60-day period prior to the HABC's request.

Written Third-Party Verification Form

When upfront verification is not available and the family is unable to provide written third-party documents, the HABC must request a written third-party verification form. HUD's position is that this traditional third-party verification method presents administrative burdens and risks which may be reduced by using family-provided third-party documents.

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

HABC may mail, fax, or e-mail third-party written verification form requests to third-party sources.

The HABC will send third-party verification forms directly to the third party.

Third-party verification forms will be sent when third-party verification documents are unavailable or are rejected by the HABC.

Oral Third-Party Verification [Notice PIH 2010-19]

For third-party oral verification, HABCs contact sources, identified by UIV techniques or by the family, by telephone or in person.

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

Third-party oral verification may be used when requests for written third-party verification forms have not been returned within a reasonable time—e.g., 10 business days.

HABCs should document in the file the date and time of the telephone call or visit, the name of the person contacted, the telephone number, as well as the information confirmed.

In collecting third-party oral verification, HABC staff will record in the family's file the name and title of the person contacted, the date and time of the conversation (or attempt), the telephone number used, and the facts provided.

When any source responds verbally to the initial written request for verification the HABC will accept the verbal response as oral verification but will also request that the source complete and return any verification forms that were provided.

When Third-Party Verification is Not Required [Notice PIH 2010-19]

Third-party verification may not be available in all situations. HUD has acknowledged that it may not be cost-effective or reasonable to obtain third-party verification of income, assets, or expenses when these items would have a minimal impact on the family's total tenant payment.

The cost of verification will not be passed on to the family. The cost of postage and envelopes to obtain third-party verification of income, assets, and expenses is not an unreasonable cost [VG, p. 18].

Primary Documents

Third-party verification is not required for legal documents that are primary source, such as a birth certificate or other legal documentation of birth.

Imputed Assets

HUD permits HABC to accept a self-certification from a family as verification of assets disposed of for less than fair market value [HCV GB, p. 5-28].

The HABC will accept a self-certification from a family as verification of assets disposed of for less than fair market value.

7.1.E. SELF-CERTIFICATION

Self-certification, or "tenant declaration," is used as a last resort when the HABC is unable to obtain third-party verification.

When the HABC relies on a tenant declaration for verification of income, assets, or expenses, the family's file must be documented to explain why third-party verification was not available.

When information cannot be verified by a third party or by review of documents, family members will be required to submit self-certifications attesting to the accuracy of the information they have provided to the HABC.

The HABC may require a family to certify that a family member does not receive a particular type of income or benefit.

The self-certification must be made in a format acceptable to the HABC and must be signed by the family member whose information or status is being verified. The HABC may request that the self-certifications be signed in the presence of a HABC representative or public notary.

Ch. 7 Section 2: VERIFYING FAMILY INFORMATION

7.2.A. VERIFICATION OF LEGAL IDENTITY

The HABC 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
Current, valid driver's license or Department of Motor Vehicles identification card	Adoption papers
U.S. military discharge (DD 214)	Custody agreement
U.S. passport	Health and Human Services ID
Certificate of marriage	
Divorce decree	

If a document submitted by a family is illegible or otherwise questionable, more than one of these documents may be required.

Legal identity will be verified on an as needed basis.

7.2.B. SOCIAL SECURITY NUMBERS [24 CFR 5.216, Notice PIH 2012-10]

The family must provide documentation of a valid social security number (SSN) for each member of the household, except for individuals who do not contend eligible immigration status. Exemptions also include, existing program participants who were at least 62 years of age as of January 31, 2010, and had not previously disclosed an SSN.

Note that an individual who previously declared to have eligible immigration status may not change his or her declaration to avoid compliance with the SSN disclosure and documentation requirements or penalties associated with noncompliance with these requirements. Nor may the head of household opt to remove a household member from the family composition for this purpose.

The HABC must accept the following documentation as acceptable evidence of the social security number:

- A valid SSN card issued by the Social Security Administration (SSA);
- An original Social Security Assignment letter issued by SSA, which contains the name and SSN of the individual;
- An original document issued by a federal, state, or local government agency, which contains the name and SSN of the individual; along with other identifying information of the individual; or

- Such other evidence of the SSN as HUD may prescribe in administrative instructions.

The HABC may only reject documentation of an SSN provided by an applicant or participant if the document is not an original document, if the original document has been altered, mutilated, or is not legible, or if the document appears to be forged.

The HABC will explain to the applicant or participant the reasons the document is not acceptable and request that the individual obtain and submit acceptable documentation of the SSN to the HABC within 90 days. An extension of one additional 90-day period must be granted if the PHA determines that, in its discretion, the applicant's failure to comply was due to circumstances that could not reasonably have been foreseen and were outside of the control of the applicant such as delayed processing of the SSN application by the SSA, natural disaster, fire, or other emergency. If the individual fails to comply with SSN disclosure and documentation requirements upon expiration of the provided time period, the HABC will terminate the individual's assistance.

When the participant requests to add a new household member who is at least 6 years of age, the participant must provide the complete and accurate SSN assigned to each new member at the time of reexamination, recertification or eligible admission, in addition to the documentation required to verify it. The HABC may not add the new household member until such documentation is provided.

When a participant requests to add a new household member who is under the age of 6 and has not been assigned an SSN, the participant must provide the SSN assigned to each new child and the required documentation within 90 calendar days of the child being added to the household. An extension of one additional 90-day period must be granted if the PHA determines that, in its discretion, the applicant's failure to comply was due to circumstances that could not reasonably have been foreseen and were outside of the control of the applicant such as delayed processing of the SSN application by the SSA, natural disaster, fire, or other emergency. If the individual fails to comply with SSN disclosure and documentation requirements upon expiration of the provided time period, the HABC will terminate the individual's assistance.

Social security numbers must be verified only once during continuously-assisted occupancy.

The HABC will verify each disclosed SSN by:

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

Once the individual's verification status is classified as "verified," the HABC may, at its discretion, remove and destroy copies of documentation accepted as evidence of social security numbers. The retention of the EIV Summary Report or Income Report is adequate documentation of an individual's SSN.

7.2.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.

Age must be verified only once during continuously-assisted occupancy.

7.2.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 HABC has reasonable doubts about a marital relationship, the HABC will require the family to document the marriage.

A marriage certificate generally is required to verify that a couple is married.

In the case of a common-law marriage, the couple must demonstrate that they hold themselves to be married (e.g., by telling the community they are married, calling each other husband and wife, using the same last name, filing joint income tax returns).

Separation or Divorce

Certification by the head of household is normally sufficient verification. If the HABC has reasonable doubts about a separation or divorce, the HABC will require the family to document the divorce, or separation.

A certified copy of a divorce decree, signed by a court officer, is required to document that a couple is divorced.

A copy of a court-ordered maintenance or other court record is required to document a separation.

Absence of Adult Member

If an adult member who was formerly a member of the household is reported to be permanently absent, the family must provide evidence to support that the person is no longer a member of the family (e.g., documentation of another address at which the person resides such as a lease or utility bill).

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.

7.2.E. VERIFICATION OF STUDENT STATUS

General Requirements

HABC Policy

The HABC 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 cohead.
- 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 HABC 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 3.2.E.
- The student is married.
- The student has at least one dependent child, as defined in section 3.2.E.
- The student is a person with disabilities, as defined in section 3.2.E, and was receiving assistance prior to November 30, 2005.

If the HABC cannot verify at least one of these exemption criteria, the HABC 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 HABC will then proceed to verify either the student's parents' income eligibility (see section 7.3.J) or the student's independence from his/her parents (see below).

Independent Student

The HABC 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 the following:

- Either reviewing and verifying previous address information to determine whether the student has established a household separate from his/her parents for at least one year or reviewing and verifying documentation relevant to determining whether the student meets the U.S. Department of Education's definition of *independent student* (see section 3.2.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.

7.2.F. DOCUMENTATION OF DISABILITY

The HABC must verify the existence of a disability to allow certain income disallowances and deductions from income. The HABC is not permitted to inquire about the nature or extent of a person's disability [24 CFR 100.202(c)]. The HABC may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the HABC receives a verification document that provides such information, the HABC will not place this information in the tenant file. Under no circumstances will the HABC request a participant's medical record(s). For more information on health care privacy laws, see the Department of Health and Human Services' website at www.os.dhhs.gov.

The above cited regulation does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they are persons with disabilities [VG, p. 24]:

- Inquiry into an applicant's ability to meet the requirements of ownership or tenancy
- Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with disabilities or to persons with a particular type of disability
- Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with disabilities or to persons with a particular type of disability
- Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance
- Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance

Family Members Receiving SSA Disability Benefits

Verification of the receipt of disability benefits from the Social Security Administration (SSA) is sufficient verification of disability for the purpose of qualifying for waiting list preferences (if applicable) or certain income disallowances and deductions [VG, p. 23].

For family members claiming disability who receive disability benefits from the SSA, the HABC will attempt to obtain information about disability benefits through the HUD Enterprise Income Verification (EIV) system. If documentation from HUD's EIV System is not available, the HABC 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 HABC 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 HABC.

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 5.403.

For family members claiming disability who do not receive disability benefits from the SSA, a knowledgeable professional must provide third-party verification that the family member meets the HUD definition of disability. See 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.

7.2.G. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS [24 CFR 5.508]

Overview

Housing assistance is not available to persons who are not citizens, nationals, or eligible immigrants. Prorated assistance is provided for "mixed families" containing both eligible and ineligible persons. A detailed discussion of eligibility requirements is in the Eligibility chapter. This verifications chapter discusses HUD and HABC verification requirements related to citizenship status.

The family must provide a certification that identifies each family member as a U.S. citizen, a U.S. national, an eligible noncitizen or an ineligible noncitizen and submit the documents discussed below for each family member. Once eligibility to receive assistance has been verified for an individual it need not be collected or verified again during continuously-assisted occupancy. [24 CFR 5.508(g)(5)]

U.S. Citizens and Nationals

HUD requires a declaration for each family member who claims to be a U.S. citizen or national. The declaration must be signed personally by any family member 18 or older and by a guardian for minors.

The HABC may request verification of the declaration by requiring presentation of a birth certificate, United States passport or other appropriate documentation.

Family members who claim U.S. citizenship or national status will not be required to provide additional documentation unless the HABC 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.

HABC 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 HABC must verify immigration status with the United States Citizenship and Immigration Services (USCIS).

The HABC will follow all USCIS protocols for verification of eligible immigration status.

7.2.H. VERIFICATION OF PREFERENCE STATUS

The HABC must verify any preferences claimed by an applicant.

The HABC will offer a preference to any family that:

- **Homeless**: families that are homeless and residing at a Bergen County emergency shelter. The HABC will verify this preference using third party confirmation from the shelter manager.
- **Involuntary Displacement**: families that have been involuntarily displaced and are not living in standard, permanent replacement housing as a result of a federal, state or locally declared disaster. The HABC will verify this preference using third party confirmation from the Red Cross or other disaster relief agency.
- **Targeted Funding**: families receiving temporary or targeted funding from the HABC. The HABC will verify this preference using HABC participant records.
- **Residency Preference**: families who live, work, or have been hired to work or are participating in a job training and/or vocation program in a member community, or sole member is elderly or disabled in a member community. The HABC will verify this preference using current valid driver's license, current valid lease, paystubs, school

enrollment records, social security disability, supplemental social security income benefits.

- Working Preference: families where the head, cohead or spouse is employed or to families whose head and spouse, or sole member is elderly or disabled and unable to work. The HABC will verify this preference using current paystub, third party employer verification, social security retirement benefit award letter
- Insufficient Funding Terminations: families that have been terminated from the HCV program due to insufficient program funding. The HABC will verify this preference using the HABC's termination records.

Ch. 7 Section 3: VERIFYING INCOME AND ASSETS

Chapter 6, Section 1 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 HABC policies that supplement the general verification procedures specified in Section 1 of this chapter.

The HABC may at any time require tax records or authorization to obtain tax records and/or credit report to verify the completeness and accuracy of income reported.

7.3.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.

7.3.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 HABC 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 HABC 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 HABC 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 HABC will require the family to provide documentation of income and expenses for this period and use that information to project income.

7.3.C. PERIODIC PAYMENTS AND PAYMENTS IN LIEU OF EARNINGS

Social Security/SSI Benefits

To verify the SS/SSI benefits of applicants, the HABC will request a current (dated within the last 60 days) SSA benefit verification letter from each family member that receives social security benefits. If the family is unable to provide the document(s), the HABC will help the applicant request a benefit verification letter from SSA's Web site at www.socialsecurity.gov or ask the family to request one by calling SSA at 1-800-772-1213. Once the applicant has received the benefit verification letter they will be required to provide it to the HABC.

To verify the SS/SSI benefits of participants, the HABC will obtain information about social security/SSI benefits through the HUD EIV System, and confirm with the participant(s) that the current listed benefit amount is correct. If the participant disputes the EIV-reported benefit amount, or if benefit information is not available in HUD systems, the HABC 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 HABC will help the participant request a benefit verification letter from SSA's Web site at www.socialsecurity.gov or ask the family to request one by calling SSA at 1-800-772-1213. Once the participant has received the benefit verification letter they will be required to provide it to the HABC.

7.3.D. ALIMONY OR CHILD SUPPORT

The way the HABC 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.

- Copy of the receipts and/or payment stubs for the 60 days prior to HABC request
- Third-party verification form from the state or local child support enforcement agency
- Third-party verification form from the person paying the support
- Family's self-certification of amount received and of the likelihood of support payments being received in the future, or that support payments are not being received.

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

Note: Families are not required to undertake independent enforcement action.

7.3.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 HABC needs to verify only those certifications that warrant documentation [HCV GB, p. 5-28].

The HABC will verify the value of assets disposed of only if:

- The HABC 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 HABC verified this amount. Now the person reports that she has given this \$10,000 to her son. The HABC 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 HABC will verify the value of this asset.

7.3.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 HABC 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.

7.3.G. RETIREMENT ACCOUNTS

The HABC will accept written third-party documents supplied by the family as evidence of the status of retirement accounts.

The type of original document that will be accepted depends upon the family member's retirement status.

- *Before* retirement, the HABC 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 HABC 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 HABC 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.

7.3.H. INCOME FROM EXCLUDED SOURCES

A detailed discussion of excluded income is provided in Chapter 6, Section 1.

The HABC must obtain verification for income exclusions only if, without verification, the HABC 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 HABC will confirm that HABC records verify the child's age but will not require third-party verification of the amount earned. However, if a family claims the earned income disallowance for a source of income, both the source and the income must be verified.

The HABC 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 HABC will report the amount to be excluded as indicated on documents provided by the family.

7.3.I. ZERO ANNUAL INCOME STATUS

The HABC 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.

7.3.J. STUDENT FINANCIAL ASSISTANCE

Any financial assistance, in excess of amounts received for tuition and mandatory fees and charges, 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 [24 CFR 5.609(b)(9)].

For students over the age of 23 with dependent children 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 HABC would not be able to determine whether or to what extent the income is to be excluded (see section 7.3.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 HABC will request written third-party verification of both the source and the amount. Family-provided documents from the educational institution attended by the student will be requested, as well as documents generated by any other person or entity providing such assistance, as reported by the student.

In addition, the HABC will request written verification of the student's tuition amount.

If the HABC is unable to obtain third-party written verification of the requested information, the HABC will pursue other forms of verification following the verification hierarchy in section 7.1.B.

7.3.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, does not have a dependent child, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, 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 HABC 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 HABC is required to determine the income eligibility of a student's parents, the HABC will request an income declaration and certification of income from the appropriate parent(s) (as determined in section 3.2.E). The HABC 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 HABC. The required information must be submitted (postmarked) within 10 business days of the date of the HABC's request or within any extended timeframe approved by the HABC.

The HABC 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.

Ch. 7 Section 4: VERIFYING MANDATORY DEDUCTIONS

7.4.A. DEPENDENT AND ELDERLY/DISABLED HOUSEHOLD DEDUCTIONS

The dependent and elderly/disabled family deductions require only that the HABC 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 for a full discussion of this deduction. The HABC must verify that:

- Any person under the age of 18 for whom the dependent deduction is claimed is not the head, spouse, or cohead 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 for a discussion of the deduction. The HABC must verify that the head, spouse, or cohead is 62 years of age or older or a person with disabilities.

7.4.B. MEDICAL EXPENSE DEDUCTION

Policies related to medical expenses are found in 6.2.D. The amount of the deduction will be verified following the standard verification procedures described in Section 1.

Amount of Expense

Medical expenses will be verified through:

- Written third-party documents provided by the family, such as pharmacy printouts or receipts.
- The HABC will make a best effort to determine what expenses from the past are likely to continue to occur in the future. The HABC will also accept evidence of monthly payments or total payments that will be due for medical expenses during the upcoming 12 months.
- Written third-party verification forms, if the family is unable to provide acceptable documentation.
- 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 HABC 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 cohead is at least 62, or a person with disabilities. The HABC 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 (7.4.A.) of this plan.

Qualified Expenses

To be eligible for the medical expenses deduction, the costs must qualify as medical expenses. See Chapter 6 (6.2.D.) for the HABC'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 HABC 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

7.4.C. DISABILITY ASSISTANCE EXPENSES

Policies related to disability assistance expenses are found in 6.2.E. The amount of the deduction will be verified following the standard verification procedures described in Section 1.

Amount of Expense

Attendant Care

The HABC will accept written third-party documents provided by the family.

If family-provided documents are not available, the HABC will provide a third-party verification form directly to the care provider requesting the needed information.

Expenses for attendant care will be verified through:

- Written third-party documents provided by the family, such as receipts or cancelled checks.
- Third-party verification form signed by the provider, if family-provided documents are not available.
- If third-party verification 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:

- Written third-party documents provided by the family, such as billing statements for purchase of auxiliary apparatus, or other evidence of monthly payments or total payments that will be due for the apparatus during the upcoming 12 months.
- Third-party verification form signed by the provider, if family-provided documents are not available.

In addition, the HABC must verify that:

- The family member for whom the expense is incurred is a person with disabilities (as described in 7.2.F above).
- The expense permits a family member, or members, to work (as described in 6.2.E.).
- The expense is not reimbursed from another source (as described in 6.2.E.).

Family Member is a Person with Disabilities

To be eligible for the disability assistance expense deduction, the costs must be incurred for attendant care or auxiliary apparatus expense associated with a person with disabilities. The HABC will verify that the expense is incurred for a person with disabilities (See 7.2.F.).

Family Member(s) Permitted to Work

The HABC must verify that the expenses claimed enable a family member, or members, (including the person with disabilities) to work.

The HABC will request third-party verification from a rehabilitation agency or knowledgeable medical professional indicating that the person with disabilities requires attendant care or an auxiliary apparatus to be employed, or that the attendant care or auxiliary apparatus enables another family member, or members, to work (See 6.2.E.). This documentation may be provided by the family.

Unreimbursed Expenses

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

7.4.D. CHILD CARE EXPENSES

Policies related to child care expenses are found in Chapter 6. The amount of the deduction will be verified following the standard verification procedures described in Part I of this chapter. In addition, the HABC 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 HABC will verify that the child being cared for (including foster children) is under the age of 13 (See 7.2.C.).

Unreimbursed Expense

To be eligible for the child care deduction, the costs must not be reimbursed by another 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

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

In the event third-party verification is not available, the HABC will provide the family with a form on which the family member must record job search efforts. The HABC will review this information at each subsequent reexamination for which this deduction is claimed.

Furthering Education

The HABC will request third-party documentation to 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. The documentation may be provided by the family.

Gainful Employment

The HABC will seek third-party verification of the work schedule of the person who is permitted to work by the child care. In cases in which two or more family members could be permitted to work, the work schedules for all relevant family members may be verified. The documentation may be provided by the family.

Allowable Type of Child Care

The type of care to be provided is determined by the family, but must fall within certain guidelines, as discussed in Chapter 6.

The HABC will verify that the type of child care selected by the family is allowable, as described in Chapter 6.

The HABC 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 HABC 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 HABC's established standards of reasonableness for the type of care in the locality to ensure that the costs are reasonable.

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

CH. 7 EXHIBITS

EXHIBIT 7-1: SUMMARY OF DOCUMENTATION REQUIREMENTS FOR NONCITIZENS [HCV GB, pp. 5-9 and 5-10]	
<ul style="list-style-type: none"> • All noncitizens claiming eligible status must sign a declaration of eligible immigrant status on a form acceptable to the HABC. • Except for persons 62 or older, all noncitizens must sign a verification consent form • Additional documents are required based upon the person's status. 	
<p>Elderly Noncitizens</p> <ul style="list-style-type: none"> • 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. 	
<p>All other Noncitizens</p> <ul style="list-style-type: none"> • Noncitizens that claim eligible immigration status also must present the applicable USCIS document. Acceptable USCIS documents are listed below. 	
<ul style="list-style-type: none"> • Form I-551 Alien Registration Receipt Card (for permanent resident aliens) • Form I-94 Arrival-Departure Record annotated with one of the following: <ul style="list-style-type: none"> • “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” 	<ul style="list-style-type: none"> • Form I-94 Arrival-Departure Record with no annotation accompanied by: <ul style="list-style-type: none"> • 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).
<ul style="list-style-type: none"> • Form I-688 Temporary Resident Card annotated “Section 245A” or Section 210”. 	<p>Form I-688B Employment Authorization Card annotated “Provision of Law 274a. 12(11)” or “Provision of Law 274a.12”.</p>
<ul style="list-style-type: none"> • 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 <i>Federal Register</i> 	

EXHIBIT 7-2: HOUSING AUTHORITY OF BERGEN COUNTY ENTERPRISE INCOME VERIFICATION (EIV) POLICY

Introduction:

This document outlines the operating procedures of the Public Housing and Housing Choice Voucher (HCV) Programs, Housing Opportunities For People With Aids (HOPWA), Housing Shelter + Plus Care (SPC), Project Based Voucher Rental Assistance and other Assisted Housing Programs of the Housing Authority of Bergen County (HABC) with respect to the confidentiality and security of client information and in particular, the access and use of the US Department of Housing & Urban Development's (HUD) Enterprise Income Verification System (EIV).

HABC staff will be trained and are required to adhere to these procedures. **HABC staff will be held responsible and accountable for maintaining the confidentiality and security of client information obtained from all systems.**

These procedures represent the guidelines pertaining to the Housing Choice Voucher Program (Section 8 or HCV), Public Housing Program and other Assisted Housing Programs. The guidelines will assure that the practices, controls and safeguards used by the HABC adequately protect the confidentiality of participant wage data and are in compliance with the Federal laws regarding the protection of this information. Further, the HABC will integrate EIV documents and/or actions into the HABC occupancy protocols, which also involve Privacy Act related materials, i.e. third party income, medical and other documents.

Information on client wage information is obtained from a variety of sources and transferred to client files and TENMAST tenant accounting system. **HABC staff is therefore required to safeguard client information with respect to access and use of client EIV information.** The procedures outlined in this document therefore apply to all systems supporting the HABC HCV program including the TENMAST, EIV, and any other system utilized by HABC staff to access client wage and or income data.

These procedures represent guidelines to assure that the practices, controls and safeguards used by the HABC adequately protect the confidentiality of resident/client income data and are in compliance with the Federal laws regarding the protection of this information. HABC staff will be held responsible

and accountable for maintaining the confidentiality and security of resident/client income data.

While the intent of these procedures is to be comprehensive in nature, to the extent there are areas not specifically addressed in this document, actions of HABC staff must encompass the spirit of the Federal Privacy Act of 1974, 5 U.S.C. 552 (a), as amended, to ensure the integrity and safety of resident/client information. HABC staff must be held accountable to the highest level of resident/client confidentiality regardless of any omission within these procedures.

Furthermore, The Federal Privacy Act (5 USC §552a, as amended) prohibits the disclosure of an individual's information to another person without the written consent of such individual. As such, the EIV data of an adult household member may not be shared (or a copy provided or displayed) with another adult household member, unless the individual has provided written consent to disclose such information.

However, the HABC will not be prohibited from discussing with the head of household (HOH) and showing the HOH how the household's income and rent were determined based on the total

family income reported and verified.

EIV information and any other information obtained by the HABC for the purpose of determining eligibility and level of assistance for a PIH rental assistance program may not be disclosed to third parties for any reason (even for similar verifications under other programs, such as eligibility for low income housing tax credit units, other federal or state assistance programs), unless the tenant has authorized such disclosure in writing.

EIV Purpose and Background

The primary purpose of EIV is to allow the HABC to verify tenant reported income. The HABC accesses a common database of tenant information via a web browser.

EIV is a management information system that is intended to provide a single source of income related data to the HABC for use in verifying the income

reported by tenants in the various assisted housing program administered by the HABC. The EIV system serves as a repository for automated information used when comparing family income data reported by recipients of federal rental assistance to income data received from external sources, i.e. SSA etc.

The EIV system assists the HABC in the upfront verification for tenant income by matching the tenant supplied income documentation from various sources.

For the HABC to be in compliance with the new regulation regarding EIV and to be aware of potential administrative and subsidy payment errors, the HABC will monitor various EIV reports on a monthly and quarterly basis as follows:

Monthly Reports

- General Income Report
- Deceased Tenant Report
- Identity Verification Report
- Immigration Report

Quarterly Reports

- Income Discrepancy Report
- Multiple Subsidy Report
- New Hires Report

In addition to the above reports, the HABC will conduct “Existing Tenant Search Report” on applicants as part of the eligibility review.

PHA compliance with mandated use of EIV (required file documentation) (24 CFR §5.233(a)(2)(i)).

A. For each new admission (form HUD-50058 action type 1), the HABC must:

- Review the EIV Income Report to confirm/validate family-reported income within 120 days of the PIC submission date; and
- Print and maintain a copy of the EIV Income Report in the tenant file; and
- Resolve any income discrepancy with the family within 60 days of the EIV Income Report date.

B. For each historical adjustment (form HUD-50058 action type 14), the HABC must:

- Review the EIV Income Report to confirm/validate family-reported income

within 120 days of the PIC submission date; and

- Print and maintain a copy of the EIV Income Report in the tenant file; and
- Resolve any income discrepancy with the family within 60 days of the EIV Income Report date.

C. For each interim reexamination (form HUD-50058 action type 3) of family income and composition, the HABC must have the following documentation in the tenant’s file:

- **ICN Page** when there is **no** household income discrepancy noted on the household’s Income Discrepancy Report tab or Income Discrepancy Report.

Note: The ICN Page is available from the Summary Report tab. See following screen shot:

Income Information >> By Head of Household >> Summary Report

[Print All](#)

Summary Report		Certification Page	Income Report	Income Discrepancy Report		
Head of Household Identifiers						
Name:	MIKILA					
Social Security Number:	***-**-****					
Date of Birth (mm/dd/yyyy):	XX/XX/1989					
Program Type:	Sec. 8 Vouchers					
Project:						
Unit Address:						
Participant Code:						
Annual Reexamination Date:	05/01/2010					
Tenant Data from Form 50058 as of:	10/20/2009					
Most Recent Type of Action:	3-Interim Reexamination					
Effective Date:	10/01/2009					
Household Members						
Member SSN	Member First Name	Member Last Name	Date of Birth	Age	Relationship	Identity Verification Status
-**-*	MIKILA		XX/XX/1989	20	Head	Verified
-**-*	MALAYA		XX/XX/2009		Other youth under 18	Verified
The month and day values in the Date of Birth field have been masked for security reasons.						
<input type="button" value="Provide ICN"/>						
Confidential Privacy Act Data. Civil and Criminal penalties apply to misuse of this data.						
Report Generated By: H18XXX NICOLE X FAISON						

- **EIV Income Report** when there is an income discrepancy noted on the household’s Income Discrepancy Report tab or Income Discrepancy Report. See following screen shot:

Summary Report	Income Report	Income Discrepancy Report
Head of Household Information		
Name:	DEBRA	
Social Security Number:		
Program Type:	Public Housing	
Project:		
Effective Date of Action:	03/10/2009	
Annual Reexamination Date:	02/01/2010	
Projected Annual Wages and Benefits from Form HUD-50058:	\$8,328.00	
Period Of Income for Discrepancy Analysis	12/10/2007 - 12/09/2008	
Discrepancy Analysis	Actuals	Annualized Last Quarter
Reported Annual Wages and Benefits from EIV Data:	\$24,919.06	\$26,131.00
Amount of Annual Income Discrepancy:	(\$16,591.06)	(\$17,803.00)
Amount of Monthly Income Discrepancy:	(\$1,382.59)	(\$1,483.58)
Percentage of Income Discrepancy:	(66.58%)	(68.13%)
<small>Note: Negative numbers represent potential under reporting of income. Please discuss this income discrepancy with the tenant. Positive numbers represent potential decrease in tenant income.</small>		
Confidential Privacy Act Data. Civil and Criminal penalties apply to misuse of this data. <small>Report Generated By - H18XXX NICOLE X FAISON</small>		

D. For each annual reexamination of family income and composition, the HABC must have the following documentation in the tenant's file:

- **No Dispute of EIV Information:** EIV Income Report, current acceptable tenant-provided documentation, and *if necessary* (as determined by the HABC), traditional third party verification form(s).
- **Disputed EIV Information:** EIV Income report, current acceptable tenant provided documentation, and/or traditional third party verification form(s) for disputed information.
- **Tenant-reported income not verifiable through EIV system:** Current tenant-provided documents, and *if necessary* (as determined by the HABC), traditional third party verification form(s).

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 HABC will be 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 because of unreported or underreported income, retroactively*; and
5. Take any other appropriate action as directed by HUD or the HABC's administrative policy

Enterprise Income Verification (EIV) Discrepancy/Underreported Income

To minimize tenant underreporting of income, PHAs are required to obtain an EIV Income Report for each family any time the PHA conducts an annual or interim reexamination of family income and composition.

In accordance with 24 CFR §5.236(b)(2)(3), PHAs are required to compare the information on the EIV report with the family-reported information. If the EIV report reveals an income source that was not reported by the tenant or a substantial difference in the reported income information, the HABC will take the following actions:

*The HABC will be 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 determinations.

(Note: A substantial difference is defined as an amount equal to or greater than \$2,400, annually.)

The HABC will provided the tenant an opportunity to contest our determination of tenant rent underpayment. The HABC will notify tenants in writing of any adverse findings because of the income discrepancy resolution process

The HABC may not terminate, deny, suspend, or reduce the family's assistance until the expiration of any notice or grievance period.

When there is an unsubstantial or no disparity between tenant-reported and EIV-reported income information, the HABC will obtain from the tenant, any necessary documentation to complete the income determination process.

The HABC may reject any tenant-provided documentation, if the documentation is deemed unacceptable. The HABC may reject documentation provided by the tenant for only the following HUD-approved reasons:

1. The document is not an original; or
2. The original document has been altered, mutilated, or is not legible; or
3. The document appears to be a forged document (i.e. does not appear to be authentic).

The HABC will explain to the tenant, the reason(s) the submitted documents are not acceptable and request the tenant to provide additional documentation. If at any time, the tenant is unable to provide acceptable documentation that the HABC deems necessary to complete the income determination process, the HABC will send a traditional third party verification form.

If the third-party source does not respond to the HABC's request for information, the HABC will document the tenant file of its attempt to obtain third party verification and that no response to the third-party verification request was received.

The HABC should then pursue lower level verifications in accordance with the verification hierarchy in this policy.

HUD EIV Guidelines:

EIV tenant data only should be used to verify a tenant's eligibility for participation in a HUD Rental Assistance Program and to determine the level of assistance the tenant is entitled to receive. Any other use, unless approved by the HUD Headquarters EIV Coordinator, is specifically prohibited and may result in the imposition of civil or criminal penalties on the responsible person or persons. Further, no adverse action can be taken against a tenant until the HABC has independently verified the EIV information and the tenant has been granted an opportunity to contest any adverse findings through the established grievance, hearing, or other legal procedures.

The data provided via the EIV system must be protected to ensure that it is only used for official purposes and not disclosed in any way that would violate the privacy of the individuals represented in the system data. Privacy of data and data security for computer systems are covered by a variety of Federal laws and regulations, government bulletins, and other guiding documents.

The information processed by the EIV system includes but may not be limited to state wage and income data about private individuals, as well as identifying information such as Social Security Number, Address, and Employment information. As a condition of receiving the EIV data, HABC must establish and maintain the following safeguards designed to prevent unauthorized use of the information and to protect the confidentiality of that information:

Administrative Safeguards

- Restrict access to EIV system a printed or electronic EIV information to authorize personnel who need the information to perform their official duties
- Ensure staff complete annual security awareness training
- Report all security breaches to HUD at PIH.RHIIP.TA@HUD.GOV
- All EIV users, including handlers and viewers of printed or electronic EIV information must complete form HUD 52676
- Maintain forms HUD 52676 for all personnel
 - Subject to inspection/audit

Technical Safeguards

- Do not share HUD-issued user ID and password with others
- Access information for only official purposes

Physical Safeguards

- EIV information must be destroyed 3 years from EOP date unless pending litigation
- Maintain tenant files in a physically safe area
- Ensure areas where tenant files are stored are locked
 - If area is not locked than files should be in locked file cabinets

In addition to the above safeguards the HABC will avoid saving EIV data to a computer hard drive or any other automated information system. If EIV data is saved to a local machine, the EIV data will be stored in a separate directory from other data. Access to this directory will be restricted to authorized users of the EIV data.

Users will retrieve computer printouts as soon as they are generated so that EIV data is not left unattended in printers where unauthorized users may access them. If possible, a dedicated printer should be assigned for EIV use only to minimize the unauthorized interception of printed outputs from the EIV system.

Authorized users of EIV data are directed to avoid leaving EIV data displayed on their computer screens where unauthorized users may view it. A computer should never be left unattended with EIV data displayed on the screen. If an authorized user is viewing EIV data and an unauthorized user approaches the work area, the authorized user must lessen the chance of inadvertent disclosure of EIV data by minimizing or closing out the screen on which the EIV data is being displayed.

Security of EIV Data.

The data in EIV contains personal information on individual tenants which is protected under the Federal Privacy Act. The information in EIV may only be used for limited official purposes, as noted below.

A. Official Purposes Include:

1. The HABC will utilize the EIV System for verifying employment and income at the time of interim and annual reexaminations.
2. HUD staff for monitoring and oversight of HABC compliance with HUD program requirements.
3. Independent Auditors hired by the HABC or HUD to perform a financial audit for use in determining the HABC's compliance with HUD program requirements, including verifying income and determining the accuracy of the rent and subsidy calculations.

Restrictions on disclosure requirements for Independent Auditors:

- (a) May only access EIV income information within family files and only within the

offices of the HABC or the HABC-hired management agent;

- (b) May not transmit or transport EIV income information in any form;

- (c) May not enter EIV income information on any portable media;

- (d) Must sign non-disclosure oaths that the EIV income information will be used only for the audit; and

- (e) May not duplicate EIV income information or re-disclose EIV income information to any user not authorized by Section 435(j)(7) of the Social Security Act to have access to the EIV income data.

B. Official Purposes Does NOT Include:

1. Sharing the information with governmental or private entities not involved in the reexamination process specifically used for PIH rental assistance programs.

Disclosing the EIV information to other private or public entities for purposes

other than determining eligibility and level of assistance for PIH rental assistance programs is prohibited since these entities are not a party to the computer matching agreements with the HHS and SSA. The fact that these entities may find the EIV beneficial for similar eligibility and determination purposes for other low-income housing programs or public benefits, does not permit these entities to use or view information in the EIV system that is covered by the computer matching agreements.

The computer matching agreements are governed by the Privacy Act and the Social Security Act. Specifically, sections 453(j)(7)(E)(ii) and (iv) of the Social Security Act (42 USC §653j) limit disclosure of the data matched between HUD and HHS' National Directory of New Hires (NDNH) database to PHAs, Independent Auditors, the Inspector General (IG) and Attorney General, private owners, management agents, and contract administrators of Multifamily Housing programs.

C. Penalties for Willful Disclosure or Inspection of EIV Data.

1. **Unauthorized Disclosure** – felony conviction and fine up to \$5,000 or imprisonment up to five (5) years, as well as civil damages.
2. **Unauthorized Inspection** – misdemeanor penalty of up to \$1,000 and/or one (1) year imprisonment as well as civil damages.

EIV System & Security Awareness Training Requirements:

EIV System Users are required to complete the following trainings offered by HUD Headquarters. The Security Administrator will oversee training related to all systems supporting the Public Housing and Assisted Housing programs.

- Initial EIV training for new EIV users (prior to accessing the system)
- Updated EIV System semi-annual training for new and existing EIV users (To be completed by April 29th and October 30th of each year¹)
- Annual Security Awareness Training for new EIV users, existing users, and EIV Data Viewer/Handler
- Only HUD Headquarters provided EIV System training fulfills the mandatory training requirements
- Security Awareness training provide by 3rd parties will be acceptable
- HUD Headquarter offers training via webcast at least once a year
- Certification of Completion is not required as a condition of initial or continued EIV system access
- Users self-certify within EIV and on form HUD-52676 that training has been or will be completed
- New employees, who begin employment after March 31st, are required to complete the training by October 30th of the same year
- New employees, who begin employment after September 30th, are required to complete the training by April 29th of the following year

Because security awareness training is a crucial aspect of ensuring the security of the EIV system and data, users/potential users and viewers/handlers will be made aware of the importance of respecting the privacy of data, of following established procedures to maintain privacy and security and of notifying management in the event of security or privacy violation. A variety of methods will be utilized in conjunction with third-party formal training and awareness lessons. These methods may include:

- Discussions at group and managerial meetings; and
- Security bulletins posted throughout the work areas.

Security & Client Confidentiality Violations:

Recognition, reporting, and disciplinary action in response to security violations are crucial to successfully maintaining the security and privacy of the EIV system. These security violations may include the disclosure of private data as well as attempts to access unauthorized data and the unauthorized sharing of User IDs and passwords.

Upon the discovery of a possible improper disclosure of EIV information or another security violation by a HABC employee or any other person, the individual making the observation or receiving the information should contact their Security Administrator. The Security Administrator must promptly notify either the Executive Director of the HABC. The Executive Director will report all security breaches to *HUD* at PIH.RHIIP.TA@HUD.GOV

The document must provide details including who was involved, what was disclosed, how the disclosure occurred, and where and when it occurred. Such matters are handled in a manner appropriate for the situation, including any necessary action by the Executive Director.

The Following contacts should be made:

- Security Administrator should contact and provide the Executive Director, or designee, with the written documentation.
- The Executive Director or designee should provide HUD with the written documentation.

- HUD, upon receipt of the written documentation, will make a determination regarding the referral.

Record Keeping

- Security Administrator will maintain records and monitor security issues. In addition, the Security Administrator will maintain a key control log to track the inventory of keys for locked cabinets for all Assisted Housing Programs.
- The Security Administrator or the HABC designee for each program will maintain a set of keys for the locked cabinets.

The Housing Authority's Security Administrator will have the responsibility of ensuring compliance with the HABC security policies and procedures outlined in this document. These responsibilities include:

- Maintaining and enforcing the security procedures;
- Keeping records and monitoring security issues;
- Communicating security information and requirements to appropriate personnel, including coordinating and conducting security awareness training session.
- Reporting any evidence of unauthorized access or known security breaches to the Security Administrator and taking immediate action to address the impact of the breaches to the Security Administrator and taking immediate action to address the impact of the breach including but not limited to prompt notification to appropriate authorities.
- Assure that a copy of Form HUD-9886 – Authorization for the release of information/Privacy Act Notice, or an equivalent consent form that meets the requirements under 24 CFR 5.230, has been assigned by each member of the Household age 18 years of age or older and is in the household file. By signing this form, the tenant authorizes HUD and Security Administrator to obtain

and verify income and unemployment compensation information from various sources including current and former employers, state agencies, SSA and HHS. HUD is relying on program administrators to have this authorization form on file as required by CFR Part 5.230.

Authorized Use of EIV Data:

EIV data should only be used to verify resident/client eligibility for and the level of assistance to be offered in various HUD assisted housing programs. Any other use, unless approved by the HUD Headquarters EIV Coordinator or HABC Executive Director, is specifically prohibited and may result in the imposition of civil or criminal penalties and disciplinary action on the responsible person or persons. Furthermore, no adverse act can be taken against a resident/client until the HABC has verified the EIV information and the resident/client has been granted an opportunity to contest any adverse findings through the established grievance, hearing, or other procedures.

The data provided via the EIV system must be protected to ensure that it is only used for official purposes and not disclosed in any way that would violate the privacy of the individuals represented in the system data. Privacy of data and data security for computer systems are covered by a variety of Federal laws and regulations, government bulletins, and other guiding documents. The privacy act of 1974, as amended, 5 U.S.C. * 552 (a) is one such regulation and EIV data require careful handling to assure HABC compliance with the Privacy Act.

Access to EIV Data:

Authority-wide review access to resident/client income information and EIV data is limited to the following HABC staff:

- Executive Director
- Section 8 Supervisor/Staff designee
- Director of Leasing & Occupancy/Staff designee
- Property Manager
- Assistant Property Manager
- HABC Staff Designee

EIV data may not be provided to any organization, agency or individual other than the resident/client. Further, the HABC will revoke the access rights of

those users who no longer require such access or modify the access rights if a change in the user's duties or responsibilities indicates a change in the current level of privilege.

Access to the EIV System

HABC Executive Director or authorizing official identifies and authorizes all EIV users. HABC Executive Director or authorizing official and user signs EIV User Access Authorization Form and Rules of Behavior and User Agreement (for HUD-52676). HABC submits form HUD-52676 to the EIV Coordinator at the local HUD Field Office by fax, mail or email.

HUD Field Office approves and grants HABC staff access to EIV. Once the HUD Field Office has approved the HABC User Administrator within EIV, the HABC User Administrator can create access requests for additional and future HABC staff in EIV by selecting users from a list displayed under User Administration or check the applicable check boxes next to the desired role.

EIV User Roles

Application Processor

This role allows the HABC user to access the following verification reports: Debts Owed to PHAs & Terminations Report and Search for Former Tenant (nationally), Existing Tenant Search and Multiple Subsidy Report.

Program Administrator

This role allows the HABC user to review, enter, update or delete debts or terminations of former public housing, Housing Choice Voucher, and other assisted housing program tenants in the Debts Owed to PHAs and Terminations module, access the Debts Owed & Terminations Report and Search for Former Tenants (nationally).

HABC User Administrator

This role allows the user to request EIV access for the HABC staff; assign, modify and remove roles; assign public housing developments, Housing Choice Voucher, and other assisted housing programs; certify users, terminate EIV access; and view User Role History, Termination and Certification reports.

Security Administrator

This role allows the user to monitor staff access to the EIV system by viewing the various audit reports: User Session and Activity and Tenant Data Access Reports.

EIV Users

This role allows the HABC users to access the following functions in EIV: Debts Owed to PHAs & Terminations Report and Search for Former Tenant (nationally), Income Discrepancy Report, Income Information and Verification Reports for the Public Housing, Housing Choice Voucher, and other assisted housing programs. The user is permitted to access specific information for the designated public housing developments and programs assigned to the user's ID

Chapter 8: HOUSING QUALITY STANDARDS AND RENT REASONABLENESS DETERMINATIONS

INTRODUCTION

HUD requires that all units occupied by families receiving Housing Choice Voucher (HCV) assistance meet HUD's Housing Quality Standards (HQS) and permits the HABC to establish additional requirements. The use of the term "HQS" in this plan refers to the combination of both HUD and HABC-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 HABCs 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 HABC requirements related to housing quality and rent reasonableness as follows:

Section 1: 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.

Section 2: The Inspection Process. This part describes the types of inspections the HABC will make and the steps that will be taken when units do not meet HQS.

Section 3: Rent Reasonableness Determinations. This part discusses the policies the HABC 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.

Ch. 8 Section 1: 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 Exhibit 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 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)
- 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 the HABC to enforce minimum HQS but also requires that certain judgments about acceptability be left to the family. For example, the HABC must ensure that the unit contains the required sanitary facilities, but the family decides whether the cosmetic condition of the facilities is acceptable. Exhibit 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. 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.

Any owner that intends to negotiate a restoration agreement or require an escrow account must submit the agreement(s) to the HABC for review.

8.1.B. ADDITIONAL LOCAL REQUIREMENTS

The HABC may impose additional quality standards if 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 HABC additions are clarifications of HUD's acceptability criteria or performance standards [24 CFR 982.401(a)(4)].

Thermal Environment [HCV GB p.10-7]

The HABC must define a "healthy living environment" for the local climate. This may be done by establishing a temperature that the heating system must can maintain, that is appropriate for the local climate.

In accordance with the New Jersey Administrative Code (N.J.A.C. 5:10-14-4) from October 1 of each year to the next succeeding May 1, every unit of and habitable room therein shall be maintained at a temperature of at least 68 degrees Fahrenheit between the hours of 6:00 A.M. and 11:00 P.M. and at least 65 degrees Fahrenheit between the hours of 11:00 P.M. and 6:00 A.M.

Clarifications of HUD Requirements

As permitted by HUD, the HABC 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 can be opened 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 baseboard, trim, or sealing for a "finished look." Vinyl baseboard 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.

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.

8.1.C. LIFE THREATENING CONDITIONS [24 CFR 982.404(a)]

HUD requires the HABC to define life threatening conditions and to notify the owner or the family (whichever is responsible) of the corrections required. The responsible party must correct life threatening conditions within 24 hours of HABC 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
- 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 60 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
- Inoperable smoke detectors

If an owner fails to correct life threatening conditions as required by the HABC, the housing assistance payment will be abated and the HAP contract will be terminated. See 8.2-G.

If a family fails to correct a family caused life threatening condition as required by the HABC, the HABC may terminate the family's assistance. See 8.2I.H.

The owner will be required to repair an inoperable smoke detector unless the HABC determines that the family has intentionally disconnected it (by removing batteries or other means). In this case, the family will be required to repair the smoke detector within 24 hours.

8.1.D. OWNER AND FAMILY RESPONSIBILITIES [24 CFR 982.404]

Family Responsibilities

The family is responsible for correcting the following HQS deficiencies:

- Tenant-paid utilities not in service
- Failure to provide or maintain family-supplied appliances
- 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.

8.1.E. SPECIAL REQUIREMENTS FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL [24 CFR 35.1225]

If a HABC is notified by a public health department or other medical health care provider, or verifies information from a source other than a public health department or medical health care provider, that a child of less than 6 years of age, living in an HCV-assisted unit has been identified as having an environmental intervention blood lead level, the HABC must complete a risk assessment of the dwelling unit. The risk assessment must be completed in accordance with program requirements, and the result of the risk assessment must be immediately provided to the owner of the dwelling unit. In cases where the public health department has already completed an evaluation of the unit, this information must be provided to the owner.

Within 30 days after receiving the risk assessment report from the HABC, or the evaluation from the public health department, the owner is required to complete the reduction of identified lead-based paint hazards in accordance with the lead-based paint regulations [24 CFR 35.1325 and 35.1330]. If the owner does not complete the "hazard reduction" as required, the dwelling unit is in violation of HQS and the HABC will act in accordance with Chapter 8.2.G.

HABC reporting requirements, and data collection and record keeping responsibilities related to children with an environmental intervention blood lead level are discussed in Chapter 16.

8.1.F. VIOLATION OF HQS SPACE STANDARDS [24 CFR 982.403]

If the HABC 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 HABC must issue the family a new voucher, and the family and HABC must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the HABC must terminate the HAP contract in accordance with its terms.

Ch. 8 Section 2: THE INSPECTION PROCESS

8.2.A. OVERVIEW [24 CFR 982.405]

Types of Inspections

The HABC conducts the following types of inspections as needed. Each type of inspection is discussed in the paragraphs that follow.

- *Initial Inspections.* The HABC conducts initial inspections in response to a request from the family to approve a unit for participation in the HCV program. The unit must pass the HQS inspection before the effective date of the HAP Contract.
- *Biennial Inspections.* HUD requires the HABC to inspect each unit under lease at least biennially to confirm that the unit still meets HQS.
- *Special Inspections.* A special inspection may be requested by the owner, the family, or a third party because of problems identified with a unit between biennial inspections.
- *Quality Control Inspections.* HUD requires that a sample of units be inspected by a supervisor or other qualified individual to ensure that HQS are being enforced correctly and uniformly by all inspectors.

Inspection of HABC-owned Units [24 CFR 982.352(b)]

The HABC must obtain the services of an independent entity to perform all HQS inspections in cases where an HCV family is receiving assistance in a HABC-owned unit. A HABC-owned unit is defined as a unit that is owned by the HABC that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the HABC). The independent agency must communicate the results of each inspection to the family and the HABC. The independent agency must be approved by HUD, and may be the unit of general local government for the HABC jurisdiction (unless the HABC is itself the unit of general local government or an agency of such government).

Inspection Costs

The HABC may not charge the family or owner for unit inspections [24 CFR 982.405(e)]. In the case of inspections of HABC-owned units, the HABC may compensate the independent agency from ongoing administrative fee for inspections performed. The HABC 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 HABC to inspect the unit at reasonable times with reasonable notice [24 CFR 982.551(d)].

The family 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 HABC will give as much notice as possible, given the nature of the emergency.

Owner and Family Inspection Attendance

HUD permits the HABC to set policy regarding family and owner presence at the time of inspection [HCV GB p. 10-27].

When a family occupies the unit at the time of inspection an adult family member must be present for the inspection. The presence of the owner or the owner's representative is encouraged but is not required.

At initial inspection of a vacant unit, the HABC 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.

8.2.B. INITIAL HQS INSPECTION [24 CFR 982.401(a)]

Timing of Initial Inspections

HUD requires the unit to pass HQS before the effective date of the lease and HAP Contract. HUD requires HABC 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 (RTA).

The HABC will complete an initial inspection within 5 days from the day the inspection is requested and determine whether the unit satisfies HQS, notify the owner and the family of the determination within 15 days of submission of the Request for Tenancy Approval (RTA). 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 HABC for good cause. The HABC will re-inspect the unit within 14 days or 10 business days of the date the owner notifies the HABC that the required corrections have been made.

If the time frame for correcting the deficiencies (or any HABC-approved extension) has elapsed, or the unit fails HQS at the time of the re-inspection, the HABC will notify the owner and the family that the unit has been rejected and that the family must search for another unit. The HABC 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.

If utility service is not available for testing at the time of the initial inspection, the HABC will allow the utilities to be placed in service after the unit has met all other HQS requirements. The HABC will reinspect the unit to confirm that utilities are operational before the HAP contract is executed by the HABC.

Appliances

If the family is responsible for supplying the stove and/or refrigerator, the HABC 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 HABC. The HABC will execute the HAP contract based upon a certification from the family that the appliances have been installed and are working. A confirmatory inspection will be scheduled within 30 days of HAP contract approval.

8.2.C. BIENNIAL HQS INSPECTIONS [24 CFR 982.405(a)]

Under section 220 of 2014 Appropriations Act allows PHAs to comply with the requirement to inspect assisted dwelling units during the term of the HAP contract by inspecting such units not less than biennially instead of annually and to rely upon alternative inspection methods to meet this requirement.

Alternative inspections that may be used included:

- Inspections completed for HOME Investment Partnerships (HOME) program.
- Inspections completed for Low-Income Housing Tax Credit (LIHTC) program.
- Inspections completed by HUD.

For an inspection to qualify as an alternative inspection method a property must meet the standards or requirements regarding housing quality and safety applicable to the alternative inspection method. If the property receives a pass score, then the PHA may rely on the inspection to demonstrate compliance with the biennial inspection requirement. If the property receives a fail score, then the PHA may not rely on the inspection. For LIHTC there are no pass or fail determinations, therefore the PHA must review the deficiencies listed, if any, to determine whether any cited deficiency would have resulted in a fail score.

For any property or unit that receives a fail score the HABC will conduct an HQS inspection within a reasonable period of time.

Scheduling the Inspection

Each unit under HAP contract must have a biennial inspection no more than 24 months after the most recent inspection.

If an adult family member cannot be present on the scheduled date, the family should request that the HABC reschedule the inspection. The HABC and family will agree on a new inspection date that generally should take place within 5 business days of the originally-scheduled date. The HABC may schedule an inspection more than 5 business days after the original date for good cause.

If the family misses the first scheduled appointment without requesting a new inspection date, the HABC will automatically categorize the inspection as a failed inspection. Notification will be sent to the tenant and the landlord that the HAP will be abated. If the family fails to reschedule and allow an inspection of the unit to be completed, the HABC will consider the family to have violated its obligation to make the unit available for inspection. This will result in termination of the family's assistance in accordance with Chapter 12.

8.2.D. SPECIAL INSPECTIONS [HCV GB, p. 10-30]

The HABC will conduct a special inspection if the owner, family, or another source reports HQS violations in the unit.

During a special inspection, the HABC 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 annual inspection has been scheduled or is due within 90 days of the date the special inspection is scheduled the HABC may elect to conduct a full annual inspection.

8.2.E. QUALITY CONTROL INSPECTIONS [24 CFR 982.405(b); HCV GB, p. 10-32]

HUD requires a HABC 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.

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.

8.2.F. INSPECTION RESULTS AND RE-INSPECTIONS 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 HABC will determine if the failure is a life-threatening condition.

When life threatening conditions are identified, the HABC will immediately notify both parties by telephone, or email. The notice will specify the violations and when the corrective action is required to be completed. The corrective actions must be taken within 24 hours of the HABC's notice.

When failures that are not life threatening are identified, the HABC 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 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 HABC-approved extension), the owner's HAP will be abated in accordance with HABC policy (see 8.2.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 HABC-approved extension, if applicable) the family's assistance will be terminated in accordance with HABC policy (see Chapter 12).

If the time frame for correcting the deficiencies (or any HABC-approved extension) has elapsed, or the unit fails HQS at the time of the re-inspection, the HABC will notify the owner and the family that the unit has been rejected and that the family must search for another unit. The HABC may agree to conduct a second re-inspection, for good cause, at the request of the family and owner.

Extensions

For conditions that are life-threatening, the HABC cannot grant an extension to the 24-hour corrective action period. For conditions that are not life-threatening, the HABC may grant an exception to the required time frames for correcting the violation, if the HABC determines that an extension is appropriate [24 CFR 982.404].

Extensions will be granted in cases where the HABC 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. In the case of weather conditions, extensions may be continued until the weather has improved sufficiently to make repairs possible. The necessary repairs must be made within 15 calendar days, once the weather conditions have subsided.

Re-inspections

The HABC will conduct a re-inspection immediately following the end of the corrective period, or any HABC approved extension.

The family or 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 HABC will send a

notice of abatement to the owner, or in the case of family caused violations, a notice of termination to the family, in accordance with HABC policies. If the HABC is unable to gain entry to the unit to conduct the scheduled re-inspection, the HABC will consider the family to have violated its obligation to make the unit available for re-inspection. This may result in termination of the family's assistance in accordance with Chapter 12.

8.2.G. ENFORCING OWNER COMPLIANCE

If the owner fails to maintain the dwelling unit in accordance with HQS, the HABC 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 HABC, HUD requires the HABC 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 because of HQS failures that are the family's responsibility.

The HABC will make all HAP abatements effective the first of the month following the expiration of the HABC specified correction period (including any extension). The HABC will inspect abated units within 5 business days of the owner's notification that the work has been completed. 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 HABC must decide how long any abatement period will continue before the HAP contract will be terminated. The HABC 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. The HABC will issue a voucher to permit the family to move to another unit as described in Chapter 10.

The maximum length of time that a HAP may be abated is 90 days. However, if the owner completes corrections and notifies the HABC before the termination date of the HAP contract, the HABC 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. Reasonable notice of HAP contract termination by the HABC is 30 days.

8.2.H. ENFORCING FAMILY COMPLIANCE WITH HQS [24 CFR 982.404(b)]

Families are responsible for correcting any HQS violations listed in paragraph 8.I.D. If the family fails to correct a violation within the period allowed by the HABC (and any extensions), the HABC will terminate the family's assistance, according to the policies described in Chapter 12. 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.

Ch. 8 Section 3: RENT REASONABLENESS

8.3.A. OVERVIEW

No HAP contract can be approved until the HABC 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.

HABC-owned Units [24 CFR 982.352(b)]

In cases where an HCV family is receiving assistance in a HABC-owned unit, the HABC 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 HABC-owned unit is defined as a unit that is owned by the HABC that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the HABC). The independent agency must communicate the results of the rent reasonableness determination to the family and the HABC. The independent agency must be approved by HUD, and may be the unit of general local government for the HABC jurisdiction (unless the HABC is itself the unit of general local government or an agency of such government).

8.3.B. WHEN RENT REASONABLENESS DETERMINATIONS ARE REQUIRED

Owner-initiated Rent Determinations

The HABC must make a rent reasonableness determination at initial occupancy and whenever the owner requests a rent adjustment.

The owner and family first negotiate the rent for a unit. At initial occupancy, the HABC 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 occupancy period, the owner may request a rent adjustment annually in conjunction with the annual recertification of the tenant household and accordance with the owner's lease. For rent increase requests after initial lease-up, the HABC 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 HABC will consider unit size and length of tenancy in the other units.

The HABC will determine whether the requested increase is reasonable within 10 business days of receiving the request from the owner. The owner will be notified of the determination in writing.

All rents adjustments will be effective the first of the month following 60 days after the HABC's receipt of the owner's request or on the date specified by the owner, whichever is later.

HABC- and HUD-Initiated Rent Reasonableness Determinations

HUD requires the HABC 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 HABC to make a determination at any other time. The HABC may decide that a new determination of rent reasonableness is needed at any time.

In addition to the instances described above, the HABC will make a determination of rent reasonableness at any time after the initial occupancy period if: (1) the HABC determines that the initial rent reasonableness determination was in error or (2) the HABC determines that the information provided by the owner about the unit or other units on the same premises was incorrect.

8.3.C. HOW COMPARABILITY IS ESTABLISHED

Factors to Consider

HUD requires HABCs to take into consideration the factors listed below when determining rent comparability. The HABC may use these factors to make upward or downward adjustments to the rents of comparison units when the units are not identical to the HCV-assisted unit.

- Location and age
- Unit size including the number of rooms and square footage of rooms
- The type of unit including construction type (e.g., single family, duplex, garden, low-rise, high-rise)
- The quality of the units including the quality of the original construction, maintenance and improvements made
- Amenities, services, and utilities included in the rent

Units that Must Not be Used as Comparables

Comparable units must represent unrestricted market rents. Therefore, units that receive some form of federal, state, or local assistance that imposes rent restrictions cannot be considered comparable units. These include units assisted by HUD through any of the following programs: Section 8 project-based assistance, Section 236 and Section 221(d)(3) Below Market Interest Rate (BMIR) projects, HOME or Community Development Block Grant (CDBG) program-assisted units in which the rents are subsidized; units subsidized through federal, state, or local tax credits; units subsidized by the Department of Agriculture rural housing programs, and units that are rent-controlled by local ordinance.

Note: Notice PIH 2011-46, issued August 17, 2011, provides further guidance on the issue of what constitutes an assisted unit.

Rents Charged for Other Units on the Premises

The Request for Tenancy Approval (HUD-52517) requires owners to provide information, on the form itself, about the rent charged for other unassisted comparable units on the premises if the premises include more than 4 units.

By accepting the HABC 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 HABC information regarding rents charged for other units on the premises.

8.3.D. HABC RENT REASONABLENESS METHODOLOGY

How Market Data is Collected

The HABC will collect and maintain data on market rents in the HABC's jurisdiction. HABC primary resource for rent reasonableness is the software, GoSection8. 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 HABC 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 HABC may adjust 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 rental 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 HABC will notify the owner of the rent the HABC 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 HABC will confirm the accuracy of the information provided and consider this additional information when making rent determinations. The owner must submit any additional information within 5 business days of the HABC's request for information or the owner's request to submit information.

CH. 8 EXHIBITS

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 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)

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 operable 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 HABC
- Notify tenants each time such an activity is performed
- Conduct all work in accordance with HUD safe practices
- As part of ongoing maintenance ask each family to report deteriorated paint.

For units occupied by environmental intervention blood lead level (lead poisoned) children under six years of age, a risk assessment must be conducted (paid for by the HABC). If lead hazards are identified during the risk assessment, the owner must complete hazard reduction activities.

See HCV GB p. 10-15 for a detailed description of these requirements. For additional information on lead-based paint requirements see 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).

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.

**EXHIBIT 8-2: SUMMARY OF TENANT PREFERENCE AREAS
RELATED TO HOUSING QUALITY**

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 (9/00)

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 of 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.

Families have no discretion with respect to lead-based paint standards and smoke detectors.

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.

For the HABC to assist a family in a dwelling unit, or execute a Housing Assistance Payments (HAP) contract with the owner of a dwelling unit, the HABC 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 HABC 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 HABC, 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)]

Ch. 9 Section 1: LEASING POLICIES

9.1.A. TENANT SCREENING

The HABC 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 HABC may elect to screen applicants for family behavior or suitability for tenancy. See Chapter 3 for a discussion of the HABC's policies regarding 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 or before HABC approval of the tenancy, the HABC must inform the owner that screening and selection for tenancy is the responsibility of the owner [24 CFR 982.307(a)(2)]. The HABC must also inform the owner or manager or his/her rights and obligations under the Violence against Women Act (VAWA) [24 CFR 5.2005(a)(2)].

The HABC must provide the owner with the family's current and prior address (as shown in the HABC records) and the name and address (if known to the HABC) of the landlord at the family's current and prior address [24 CFR 982.307(b)(1)] the owner has requested the information as part of their screening process.

The HABC is permitted, but not required, to offer the owner other information in the HABC's possession about the family's tenancy [24 CFR 982.307(b)(2)]. The HABC will not disclose any information beyond the required family and landlord addresses for the current and prior addresses in HABC records. The HABC's policy on providing information to the owner must be included in the family's briefing packet [24 CFR 982.307(b)(3)].

The HABC may not disclose to the owner any confidential information provided in response to a HABC request for documentation of domestic violence, dating violence, or stalking except at the written request or with the written consent of the individual providing the documentation [24 CFR 5.2007(b)(4)].

The HABC will not screen applicants for family behavior or suitability for tenancy.

The HABC will not provide additional screening information to the owner.

9.1.B. REQUESTING TENANCY APPROVAL [Form HUD-52517]

After the family is issued a voucher, the family must locate an eligible unit, with an owner or landlord willing to participate in the voucher program. Once a family finds a suitable unit and the owner is willing to lease the unit under the program, the owner and the family must request the HABC to approve the assisted tenancy in the selected unit.

The owner and the family must submit two documents to the HABC:

- Completed Request for Tenancy Approval (RFTA) – Form HUD-52517
- Copy of the proposed lease, including the HUD-prescribed Tenancy Addendum – Form HUD-52641-A

The RFTA contains important information about the rental unit selected by the family, including the unit address, number of bedrooms, structure type, year constructed, utilities included in the rent, and the requested beginning date of the lease, necessary for the HABC to determine whether to approve the assisted tenancy in this unit.

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 are not the parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the HABC 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 RFTA must be signed by both the family and the owner.

The owner may submit the RFTA on behalf of the family.

Completed RFTA (including the proposed dwelling lease and other requested documents) must be submitted as in-person, by mail, e-mail or fax.

The family may not submit, and the HABC will not process, more than one (1) RFTA at a time.

When the family submits the RFTA the HABC 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 HABC will notify the family and the owner of the deficiencies.
- Missing information and/or missing documents will only be accepted as in-person, by mail, e-mail, or fax. The HABC will not accept missing information over the phone.

When the family submits the RFTA, proposed lease, and other requested documents the HABC 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 HABC 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 in-person, by mail, e-mail or fax. The HABC will not accept corrections by phone.

Because of the time sensitive nature of the tenancy approval process, the HABC will attempt to communicate with the owner and family by phone, fax, or email. The HABC will use mail when the parties can't be reached by phone, fax, or email.

9.1.C. OWNER PARTICIPATION

The HABC does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where the HABC 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.

9.1.D. ELIGIBLE UNITS

There are a number of criteria that a dwelling unit must meet 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 HABC's jurisdiction. This includes the dwelling unit they are currently occupying.

Ineligible Units [24 CFR 982.352(a)]

The HABC 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.

HABC-Owned Units [24 CFR 982.352(b)]

Otherwise eligible units that are owned or substantially controlled by the HABC issuing the voucher may also be leased in the voucher program. For a HABC-owned unit to be leased under the voucher program, the unit must not be ineligible housing and the HABC must inform the family, both orally and in writing, that the family has the right to select any eligible unit available for lease and that the family is free to select a HABC-owned unit without any pressure or steering by the HABC.

The HABC does not have any eligible HABC-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 HABC 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 HABC has chosen to allow.

The regulations do require the HABC to permit use of any special housing type if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

Duplicative Assistance [24 CFR 982.352(c)]

A family may not receive the benefit of HCV tenant-based assistance while receiving the benefit of any of the following forms of other housing subsidy, for the same unit or for a different unit:

- Public or Indian housing assistance;
- Other Section 8 assistance (including other tenant-based assistance);
- Assistance under former Section 23 of the United States Housing Act of 1937 (before amendment by the Housing and Community Development Act of 1974);
- Section 101 rent supplements;
- Section 236 rental assistance payments;
- Tenant-based assistance under the HOME Program;
- Rental assistance payments under Section 521 of the Housing Act of 1949 (a program of the Rural Development Administration);
- Any local or State rent subsidy;
- Section 202 supportive housing for the elderly;
- Section 811 supportive housing for persons with disabilities; (11) Section 202 projects for non-elderly persons with disabilities (Section 162 assistance); or
- Any other duplicative federal, State, or local housing subsidy, as determined by HUD. For this purpose, 'housing subsidy' does not include the housing component of a welfare payment, a social security payment received by the family, or a rent reduction because of a tax credit.

Housing Quality Standards (HQS) [24 CFR 982.305 and 24 CFR 982.401]

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. If the unit does not pass inspection subsidy will not be approved.

Unit Size

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]

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.

9.1.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 HABC 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 HABC. 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 HABC 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]. The initial lease term is also stated in the HAP contract. The HUD program regulations permit the HABC to approve a shorter initial lease term if certain conditions are met.

The HABC will not approve an initial lease term of less than one (1) year unless a new applicant is leasing in place and there is already an existing lease. 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 HABC 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 HABC may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants. However, if the HABC chooses to do so, language to this effect must be added to Part A of the HAP contract [Form HUD-52641].

The HABC prohibits the owner from collecting security deposits in excess of amounts charged by the owner to unassisted tenants. Reasonable security deposit amount does not exceed one and a half months of rent.

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 HABC'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)].

HABC Review of Lease

The HABC will review the dwelling lease for compliance with all applicable requirements.

If the dwelling lease is incomplete or incorrect, the HABC will notify the family and the owner of the deficiencies. Missing and corrected lease information will only be accepted as hard copies, in-person, by mail, or by fax. The HABC will not accept missing and corrected information over the phone

Because the initial leasing process is time-sensitive, the HABC will attempt to communicate with the owner and family by phone, fax, or email. The HABC will use mail when the parties can't be reached by phone, fax, or email.

The HABC will not review the owner's lease for compliance with state/local law.

9.1.F. TENANCY APPROVAL [24 CFR 982.305]

After receiving the family's Request for Tenancy Approval, with proposed dwelling lease, the HABC will promptly notify the family and owner whether the assisted tenancy is approved.

Prior to approving the assisted tenancy and execution of a HAP contract, the HABC must ensure that all required actions and determinations, discussed in this chapter have been completed.

These actions include ensuring that the unit is eligible; the unit has been inspected by the HABC 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 must be 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)]; the owner is an eligible owner, not disapproved by the HABC, with no conflicts of interest [24 CFR 982.306]; 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 HABC will complete its determination within 10 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 HABC, the HABC will obtain corrected copies of the RFTA and proposed lease, signed by the family and the owner.

Corrections to the RFTA/proposed lease will only be accepted as hard copies, in-person, by mail, or by fax. The HABC will not accept corrections over the phone.

If the HABC 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 HABC will instruct the owner and family of the steps that are necessary to approve the tenancy.

Where the tenancy is not approvable because the unit is not approvable, the family must continue to search for eligible housing within the timeframe of the issued voucher.

If the tenancy is not approvable due to rent affordability (including rent burden and rent reasonableness), the HABC 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.

9.1.G. HAP CONTRACT EXECUTION [24 CFR 982.305]

The HAP contract is a written agreement between the HABC and the owner of the dwelling unit occupied by a housing choice voucher assisted family. Under the HAP contract, the HABC agrees to make housing assistance payments to the owner on behalf of a specific family occupying a specific unit and obliges the owner to comply with all program requirements.

The HAP contract format is prescribed by HUD.

If the HABC has given approval for the family of the assisted tenancy, the owner and the HABC execute the HAP contract.

The term of the HAP contract must be the same as the term of the lease [24 CFR 982.451(a)(2)].

The HABC 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 HABC 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 HABC 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 HABC 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 HABC may not pay any housing assistance payment to the owner.

The owner and the assisted family will execute the dwelling lease and the owner must provide a copy to the HABC. The HABC will ensure that both the owner and the assisted family receive copies of the dwelling lease.

The owner and the HABC will execute the HAP contract. The HABC will not execute the HAP contract until the owner has submitted IRS form W-9. The HABC 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.

9.1.H. CHANGES IN LEASE OR RENT [24 CFR 982.308]

If the tenant and the owner agree to any changes in the lease, such changes must be in writing, and the owner must immediately give the HABC a copy of such changes. The lease, including any changes, must remain in accordance with the requirements of this chapter.

Generally, HABC 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 HABC 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 HABC 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 HABC 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. 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.

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 HABC will determine whether the requested increase is reasonable within 10 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 HABC 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. In general, therefore, HUD regulations impose few restrictions on where families may live or move with HCV assistance. This chapter sets forth HUD regulations and HABC policies governing moves within or outside the HABC's jurisdiction in two parts:

Section 1: Moving with Continued Assistance. This part covers the general rules that apply to all moves by a family assisted under the HABC's HCV program, whether the family moves to another unit within the HABC's jurisdiction or to a unit outside the HABC's jurisdiction under portability.

Section 2: 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 HABC's jurisdiction. This part also covers the special responsibilities that the HABC has under portability regulations and procedures.

Ch. 10 Section 1: MOVING WITH CONTINUED ASSISTANCE

10.1.A. ALLOWABLE MOVES

HUD lists six regulatory conditions under 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 10.1.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 the HABC a copy of the notice at the same time [24 CFR 982.314(d)(1)]. A completed Move Out Notice (HABC form) must be provided and is available upon request and on the HABC website.
- 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)]. If the family and the owner mutually agree to terminate the lease for the family's unit, the family and the landlord must provide the HABC with a completed Move Out Notice (HABC form) which is available upon request and on the HABC website.
- The owner has given the family a notice to vacate, has commenced an action to evict the family, or has obtained a court judgment or other process allowing the owner to evict the family [24 CFR 982.314(b)(2)]. The owner and family must give the HABC a copy of any owner eviction notice [24 CFR 982.551(g)].
- The move is needed to protect the health or safety of the family or family member under VAWA [24 CFR 982.314(b)(4)]. This condition applies even when the family has moved out of its unit in violation of the lease, with or without prior notification to the HABC, if the family or family member who is the victim reasonably believed that he or she was imminently threatened by harm from further violence if he or she remained in the unit [24 CFR 982.314(b)(4), 24 CFR 982.353(b)]. The HABC will request documentation in accordance with Chapter 16 of this plan.

The HABC reserves the right to waive the documentation requirement if it determines that a statement or other corroborating evidence from the family or family member will suffice. In such cases the HABC will document the waiver in the family's file.

- The HABC has terminated the assisted lease for the family's unit for the owner's breach [24 CFR 982.314(b)(1)(i)].
- The HABC 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 HABC must issue the family a new voucher, and the family and HABC must try to find an acceptable unit as soon as possible. If an acceptable unit is available for the family, the HABC 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 HABC gives notice to the owner. [24 CFR 982.403(a) and (c)]

10.1.B. RESTRICTIONS ON MOVES

A family's right to move is generally contingent upon the family's compliance with program requirements [24 CFR 982.1(b)(2)]. Only families who are in good standing, with no outstanding debts to the HABC or the owner will be permitted to relocate or activate portability. HUD specifies two conditions under which a HABC may deny a family permission to move and two ways in which a HABC may restrict moves by a family.

Denial of Moves

HUD regulations permit the HABC to deny a family permission to move under the following conditions:

Insufficient Funding

The HABC may deny a family permission to move either within or outside the HABC's jurisdiction if the HABC does not have sufficient funding for continued assistance [24 CFR 982.314(e)(1)]. However, Notice PIH 2011-3 significantly restricts the ability of HABCs to deny permission to move due to insufficient funding and places further requirements on the HABC regarding moves denied due to lack of funding. The requirements found in this notice are mandatory.

The HABC will deny a family permission to move on grounds that the HABC does not have sufficient funding for continued assistance if (a) the move is initiated by the family, not the owner or the HABC; (b) the HABC can demonstrate that the move will, in fact, result in higher subsidy costs; and (c) the HABC can demonstrate, in accordance with the policies in Part VIII of Chapter 16, that it does not have sufficient funding in its annual budget to accommodate the higher subsidy costs.

Unless the receiving PHA will absorb the family, the HABC will create a list of families whose moves have been denied due to insufficient funding. When funds become available, the families on this list will take precedence over families on the waiting list. The HABC will use the same procedures for notifying families with open requests to move when funds become available as it uses for notifying families on the waiting list (see section 4-III.D).

The HABC will inform the family of its policy regarding moves denied due to insufficient funding in a letter to the family at the time the move is denied.

Grounds for Denial or Termination of Assistance

The HABC may deny a family permission to move if it has grounds for denying or terminating the family's assistance [24 CFR 982.314(e)(2)].

If the HABC has grounds for denying or terminating a family's assistance, the HABC will act on those grounds in accordance with the regulations and policies set forth in Chapters 3 and 12, respectively. 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.

Restrictions on Elective Moves [24 CFR 982.314(c)]

HUD regulations permit the HABC to prohibit any elective move by a participant family during the family's initial lease term. They also permit the HABC to prohibit more than one elective move by a participant family during any 12-month period. However, such prohibitions, if adopted, do not apply when the family or a member of the family is or has been the victim of domestic violence, dating violence, or stalking and the move is needed to protect the health or safety of the family or family member. (For the policy on documentation of abuse, see section 10-I.A.)

The HABC will deny a family permission to make an elective move during the family's initial lease term. This policy applies to moves within the HABC's jurisdiction or outside it under portability.

The HABC 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 HABC's jurisdiction.

The HABC 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) for this exception to be granted the family must provide substantial evidence that an extreme hardship would exist if the family was not permitted to relocate, or to address an emergency situation over which a family has no control.

In addition, the HABC will allow exceptions to these policies for purposes of reasonable accommodation of a family member who is a person with disabilities (see Chapter 2).

10.1.C. MOVING PROCESS

Notification

If a family wishes to move to a new unit, the family must notify the HABC 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 HABC's jurisdiction under portability, the notice to the HABC must specify the area where the family wishes to move [24 CFR 982.314(d)(2), Notice PIH 2011-3]. The notices must be in writing [24 CFR 982.5].

Approval

Upon receipt of a completed *Move Out Notice*, the HABC will determine whether the move is approvable in accordance with the regulations and policies set forth in this Chapter. The HABC will notify the family in writing of its determination within 10 business days following receipt of the family's notification.

Reexamination of Family Income and Composition

For families approved to move to a new unit within the HABC's jurisdiction, the HABC will perform a new annual re-examination in accordance with the policies set forth in Chapter 11 of this plan.

For families moving into or families approved to move out of the HABC's jurisdiction under portability, the HABC will follow the policies set forth in Section 2 of this chapter.

Voucher Issuance and Briefing

For families approved to move to a new unit within the HABC's jurisdiction, the HABC will issue a new voucher within 10 business days of the HABC's written approval to move. A relocation brief is required for these families. The HABC 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 HABC approves. Otherwise, the family will lose its assistance.

For families moving into or families approved to move out of the HABC's jurisdiction under portability, the HABC 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 HABC may not make any housing assistance payment to the owner for any month **after** the month the family moves out. The owner may keep the housing assistance payment for the month when the family moves out of the unit.

If a participant family moves from an assisted unit with continued tenant-based assistance, the term of the assisted lease for the new assisted unit may begin during the month the family moves out of the first assisted unit. Overlap of the last housing assistance payment (for the month when the family moves out of the old unit) and the first assistance payment for the new unit, is not considered to constitute a duplicative housing subsidy.

Ch. 10 Section 2: PORTABILITY

10.2.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 public housing authority (PHA) or agency administering a tenant-based voucher program [24 CFR 982.353(b)]. The process by which a family obtains a voucher from one housing authority and uses it to lease a unit in the jurisdiction of another housing authority is known as portability. The first housing authority is called the **initial PHA**. The second is called the **receiving PHA**.

The receiving PHA has the option of administering the family's voucher for the initial PHA or absorbing the family into its own program. Under the first option, the receiving PHA bills the initial PHA for the family's housing assistance payments and the fees for administering the family's voucher. Under the second option, the receiving PHA pays for the family's assistance out of its own program funds, and the initial PHA has no further relationship with the family.

The same PHA commonly acts as the initial PHA for some families and as the receiving PHA for others. Each role involves different responsibilities. The HABC will follow the rules and policies in section 10.2.B when it is acting as the initial PHA for a family. It will follow the rules and policies in section 10.2.C when it is acting as the receiving PHA for a family.

10.2.B. INITIAL PHA ROLE

Allowable Moves under Portability

A family may move with voucher assistance only to an area where there is at least one PHA administering a voucher program [24 CFR 982.353(b)]. If there is more than one PHA in the area, the initial PHA may choose the receiving PHA [24 CFR 982.355(b)].

Applicant families that have been issued vouchers as well as participant families may qualify to lease a unit outside the PHA's jurisdiction under portability. The initial PHA, in accordance with HUD regulations and PHA policy, determines whether a family qualifies.

Applicant Families

Under HUD regulations, most applicant families qualify to lease a unit outside the HABC's jurisdiction under portability. However, HUD gives the HABC 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 determining whether or not to deny an applicant family permission to move under portability because the HABC lacks sufficient funding or has grounds for denying assistance to the family, the HABC will follow the policies established in section 10.1.B of this chapter.

In addition, the HABC may establish a policy denying the right to portability to nonresident applicants during the first 12 months after they are admitted to the program [24 CFR 982.353(c)].

If neither the head of household nor the spouse/cohead of an applicant family had a domicile (legal residence) in the HABC's jurisdiction at the time the family's application for assistance was submitted, the family must live in the HABC's jurisdiction with voucher assistance for at least 12 months before requesting portability.

The HABC will consider exceptions to this policy for purposes of reasonable accommodation (see Chapter 2) or reasons related to domestic violence, dating violence, or stalking. However, any exception to this policy is subject to the approval of the receiving PHA [24 CFR 982.353(c)(3)].

Participant Families

The initial PHA must not provide portable assistance for a participant if a family has moved out of its assisted unit in violation of the lease [24 CFR 982.353(b)]. The Violence against Women Act of 2005 (VAWA) creates an exception to this prohibition for families who are otherwise in compliance with program obligations but have moved to protect the health or safety of a family member 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 unit [24 CFR 982.353(b)].

The HABC will determine whether a participant family may move out of the HABC's jurisdiction with continued assistance in accordance with the regulations and policies set forth here and in sections 10.1.A and 10.1.B of this chapter. The HABC will notify the family of its determination in accordance with the approval policy set forth in Chapter 10.1.C.

Determining Income Eligibility

Applicant Families

An applicant family may lease a unit in a particular area under portability only if the family is income eligible for admission to the voucher program in that area [24 CFR 982.353(d)(3)]. The family must specify the area to which the family wishes to move [Notice 2011-3].

The HABC 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 HABC must inform the family that it may not move there and receive voucher assistance [Notice PIH 2011-3].

Participant Families

The income eligibility of a participant family is not redetermined 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 HABC generally will conduct a reexamination of family income and composition only if the family's annual reexamination must be completed before 30 days following the initial billing deadline specified on form HUD-52665, Family Portability Information.

The HABC will make any exceptions to this policy necessary to remain in compliance with HUD regulations.

Briefing

The regulations and policies on briefings set forth in Chapter 5 of this plan require the HABC to provide information on portability to all applicant families that qualify to lease a unit outside the HABC's jurisdiction under the portability procedures. Therefore, no special briefing is required for these families.

No formal briefing will be required for a participant family wishing to move outside the HABC's jurisdiction under portability. However, the HABC 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 participant family will provide the name, address, and phone of the contact for the PHA in the jurisdiction to which they wish to move. The HABC will advise the family that they will be under the receiving housing authority's policies and procedures, including subsidy standards and voucher extension policies.

Voucher Issuance and Term

An applicant family has no right to portability until after the family has been issued a voucher [24 CFR 982.353(b)]. In issuing vouchers to applicant families, the HABC will follow the regulations and procedures set forth in Chapter 5. A new voucher is not required for portability purposes.

For families approved to move under portability, the HABC will issue a new voucher within 10 business days of the HABC's written approval to move.

The initial term of the voucher will be 60 days.

Voucher Extensions and Expiration

The HABC will approve **no** extensions to a voucher issued to an applicant or participant family porting out of the HABC'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, 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 initial PHA's voucher program, a family that moves to another PHA's jurisdiction under portability must be under HAP contract in the receiving PHA's jurisdiction within 90 days following the expiration date of the initial PHA's voucher term (including any extensions). (See below under "Initial Billing Deadline" for one exception to this policy.)

Preapproval Contact with the Receiving PHA

Prior to approving a family's request to move under portability, the initial PHA must contact the receiving PHA via e-mail or other confirmed delivery method to determine whether the receiving PHA will administer or absorb the family's voucher. Based on the receiving PHA's response, the initial PHA must determine whether it will approve or deny the move [Notice PIH 2011-3].

The HABC will use e-mail, when possible, or other confirmed delivery methods to contact the receiving PHA regarding whether the receiving PHA will administer or absorb the family's voucher.

Initial Notification to the Receiving PHA

After approving a family's request to move under portability, the initial PHA must promptly notify the receiving PHA to expect the family [24 CFR 982.355(c)(2)]. This means that the initial PHA must contact the receiving PHA directly on the family's behalf [Notice PIH 2011-3]. The initial PHA must also advise the family how to contact and request assistance from the receiving PHA [24 CFR 982.355(c)(2)].

Because the portability process is time-sensitive, the HABC will notify the receiving PHA by phone, fax, or e-mail to expect the family. The HABC will also ask for the name, address, telephone number, fax and email of the person responsible for processing the billing information if applicable. The participant family will be advised to contact the receiving PHA after their portability documents have been sent to the receiving PHA.

Sending Documentation to the Receiving HABC

The initial PHA is required to send the receiving PHA the following documents:

- Form HUD-52665, Family Portability Information, with Part I filled out [Notice PIH 2011-3]
- A copy of the family's voucher [Notice PIH 2011-3]
- A copy of the family's most recent form HUD-50058, Family Report, or, if necessary in the case of an applicant family, family and income information in a format similar to that of form HUD-50058 [24 CFR 982.355(c)(4), Notice PIH 2011-3]
- Copies of the income verifications backing up the form HUD-50058, including a copy of the family's current EIV data [24 CFR 982.355(c)(4), Notice PIH 2011-3]

In addition to these documents, the HABC will provide the following information, if available, to the receiving HABC:

- Social security numbers (SSNs)
- Documentation of SSNs for all nonexempt household members whose SSNs have not been verified through the EIV system
- Documentation of legal identity
- Documentation of citizenship or eligible immigration status

- Documentation of participation in the earned income disallowance (EID) benefit
- Documentation of participation in a family self-sufficiency (FSS) program

Initial Billing Deadline [Notice PIH 2011-3]

When the initial PHA sends form HUD-52665 to the receiving PHA, it specifies in Part I the deadline by which it must receive the initial billing notice from the receiving PHA. This deadline is 90 days following the expiration date of the voucher issued to the family by the initial PHA. If the initial PHA does not receive a billing notice by the deadline and does not intend to honor a late billing submission, it must contact the receiving PHA to determine the status of the family. If the receiving PHA reports that the family is not yet under HAP contract, the initial PHA may refuse to accept a late billing submission. If the receiving PHA reports that the family is under HAP contract and the receiving PHA cannot absorb the family, the initial PHA must accept a late billing submission; however, it may report to HUD the receiving PHA's failure to comply with the deadline.

If the HABC 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 PHA reports that the family is not yet under HAP contract, the HABC 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 HABC will send the receiving PHA a written confirmation of its decision by mail.

The HABC will allow an exception to this policy if the family includes a person with disabilities and the late billing is a result of a reasonable accommodation granted to the family by the receiving PHA.

Monthly Billing Payments [24 CFR 982.355(e), Notice PIH 2011-3]

If the receiving PHA is administering the family's voucher, the initial PHA is responsible for making billing payments in a timely manner. The first billing amount is due within 30 calendar days after the initial PHA receives Part II of form HUD-52665 from the receiving PHA. Subsequent payments must be **received** by the receiving PHA no later than the fifth business day of each month. The payments must be provided in a form and manner that the receiving PHA is able and willing to accept.

The initial PHA may not terminate or delay making payments under existing portability billing arrangements because of over leasing or funding shortfalls. The HABC 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 initial PHA is being billed on behalf of a portable family, it should receive an updated form HUD-50058 each year from the receiving PHA. If the initial PHA fails to receive an updated 50058 by the family's annual reexamination date, the initial PHA should contact the receiving PHA to verify the status of the family.

Denial or Termination of Assistance [24 CFR 982.355(c)(9)]

If the initial PHA has grounds for denying or terminating assistance for a portable family that has not been absorbed by the receiving PHA, the initial PHA may act on those grounds at any time. (For HABC policies on denial and termination, see Chapters 3 and 12, respectively.)

10.2.C. RECEIVING PHA ROLE

If a family has a right to lease a unit in the receiving PHA's jurisdiction under portability, the receiving PHA must provide assistance for the family [24 CFR 982.355(10)].

The receiving PHA's procedures and preferences for selection among eligible applicants do not apply, and the receiving PHA's waiting list is not used [24 CFR 982.355(10)]. However, the family's unit, or voucher, size is determined in accordance with the subsidy standards of the receiving PHA [24 CFR 982.355(7)], and the amount of the family's housing assistance payment is determined in the same manner as for other families in the receiving PHA's voucher program [24 CFR 982.355(e)(2)].

Responding to Initial PHA's Request

The receiving PHA must respond via e-mail or other confirmed delivery method to the initial PHA's inquiry to determine whether the family's voucher will be billed or absorbed. If the receiving PHA informs the initial PHA that it will be absorbing the voucher, the receiving PHA cannot reverse its decision at a later date [Notice PIH 2011-3].

The HABC will use e-mail, when possible, or other confirmed method of delivery, to notify the initial PHA whether it will administer or absorb the family's voucher.

Initial Contact with Family

When a family moves into the HABC's jurisdiction under portability, the family is responsible for promptly contacting the HABC and complying with the HABC's procedures for incoming portable families [24 CFR 982.355(c)(3)].

If the voucher issued to the family by the initial PHA has expired, the receiving PHA does not process the family's paperwork but instead refers the family back to the initial PHA [Notice PIH 2011-3].

If for any reason the receiving PHA refuses to process or provide assistance to a family under the portability procedures, the family must be given the opportunity for an informal review or hearing [Notice PIH 2011-3]. (For more on this topic, see later under "Denial or Termination of Assistance.")

Briefing

HUD allows the receiving PHA to require a briefing for an incoming portable family if the requirement does not unduly delay the family's search [Notice PIH 2011-3].

The HABC will not require the family to attend a briefing. The HABC will provide the family with a briefing packet (as described in Chapter 5) and, in an individual briefing, will orally inform the family about the HABC's payment and subsidy standards, procedures for requesting approval of

a unit, the unit inspection process, and the leasing process. The HABC will suggest that the family attend a full briefing at a later date.

Income Eligibility and Reexamination

HUD allows the receiving PHA to conduct its own income reexamination of a portable family [24 CFR 982.355(c)(4)]. However, the receiving PHA may not delay voucher issuance or unit approval until the reexamination process is complete unless the reexamination is necessary to determine that an applicant family is income eligible for admission to the program in the area where the family wishes to lease a unit [Notice PIH 2011-3, 24 CFR 982.201(b)(4)]. The receiving PHA does not re-determine income eligibility for a portable family that was already receiving assistance in the initial PHA's voucher program [24 CFR 982.355(c)(1)].

The HABC will rely upon the income information provided by the initial PHA and will not conduct a new reexamination of income and composition for incoming portable families.

Voucher Issuance

When a family moves into its jurisdiction under portability, the receiving PHA is required to issue the family a voucher [24 CFR 982.355(b)(6)]. The family must submit a request for tenancy approval to the receiving PHA during the term of the receiving PHA's voucher [24 CFR 982.355(c)(6)].

Timing of Voucher Issuance

HUD expects the receiving PHA to issue the voucher within two weeks after receiving the family's paperwork from the initial PHA if the information is in order, the family has contacted the receiving PHA, and the family complies with the receiving PHA's procedures [Notice PIH 2011-3].

When a family ports into its jurisdiction, the HABC 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 HABC's procedures. The HABC will update the family's information when verification has been completed.

Voucher Term

Incoming portability requests will only be accepted with 90 days remaining on the voucher from the time they are received.

The term of the receiving PHA's voucher may not expire before the term of the initial PHA's voucher [24 CFR 982.355(c)(6)].

The receiving PHA's voucher will expire on the same date as the initial PHA's voucher.

Voucher Extensions [24 CFR 982.355(c)(6), Notice 2011-3]

The receiving PHA may provide additional search time to the family beyond the expiration date of the initial PHA's voucher; however, if it does so, it must inform the initial PHA of the extension. It must also bear in mind the billing deadline provided by the initial PHA. Unless willing and able to absorb the family, the receiving PHA should ensure that any voucher

expiration date would leave sufficient time to process a request for tenancy approval, execute a HAP contract, and deliver the initial billing to the initial PHA.

The HABC generally will not extend the term of the voucher that it issues to an incoming portable family unless the HABC plans to absorb the family into its own program, in which case it will follow the policies on voucher extension set forth in Chapter 5.2.E.

The HABC will consider an exception to this policy as a reasonable accommodation to a person with disabilities (see Chapter 2).

Notifying the Initial PHA

The receiving PHA must promptly notify the initial PHA if the family has leased an eligible unit under the program or if the family fails to submit a request for tenancy approval for an eligible unit within the term of the receiving PHA's voucher [24 CFR 982.355(c)(8)]. The receiving PHA is required to use Part II of form HUD-52665, Family Portability Information, for this purpose [24 CFR 982.355(e)(5), Notice PIH 2011-3]. (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 receiving PHA but instead wishes to return to the initial PHA's jurisdiction or to search in another jurisdiction, the receiving PHA must refer the family back to the initial PHA. In such a case the voucher of record for the family is once again the voucher originally issued by the initial PHA. Any extension of search time provided by the receiving PHA's voucher is only valid for the family's search in the receiving PHA's jurisdiction [Notice PIH 2011-3].

Administering a Portable Family's Voucher

Initial Billing Deadline

If a portable family's search for a unit is successful and the receiving PHA intends to administer the family's voucher, the receiving PHA must submit its initial billing notice (Part II of form HUD-52665) (a) no later than 10 business days following the date the receiving PHA **executes** a HAP contract on behalf of the family **and** (b) in time that the notice will be **received** no later than 90 days following the expiration date of the family's voucher issued by the initial PHA [Notice PIH 2011-3]. A copy of the family's form HUD-50058, Family Report, completed by the receiving PHA must be attached to the initial billing notice. The receiving PHA may send these documents by mail, fax, or e-mail.

The HABC will send its initial billing notice by fax or e-mail, if necessary, to meet the billing deadline but will also send the notice by regular mail.

If the receiving PHA fails to send the initial billing within 10 business days following the date the HAP contract is executed, it is required to absorb the family into its own program unless (a) the initial PHA is willing to accept the late submission or (b) HUD requires the initial PHA to honor the late submission (e.g., because the receiving HABC is over leased) [Notice PIH 2011-3].

Ongoing Notification Responsibilities [Notice PIH 2011-3, HUD-52665]

Annual Reexamination. The receiving PHA must send the initial PHA a copy of a portable family's updated form HUD-50058 after each annual reexamination for the duration of time the receiving PHA is billing the initial PHA on behalf of the family, regardless of whether there is a change in the billing amount.

The HABC will send a copy of the updated HUD-50058 by regular mail at the same time the HABC and owner are notified of the reexamination results.

Change in Billing Amount. The receiving PHA is required to notify the initial PHA, using form HUD-52665, of any change in the billing amount for the family as a result of:

- A change in the HAP amount (because of a reexamination, a change in the applicable payment standard, a move to another unit, etc.)
- An abatement or subsequent resumption of the HAP payments
- Termination of the HAP contract
- Payment of a damage/vacancy loss claim for the family
- Termination of the family from the program

The timing of the notice of the change in the billing amount should correspond with the notification to the owner and the family to provide the initial PHA with advance notice of the change. Under no circumstances should the notification be later than 10 business days following the effective date of the change in the billing amount. If the receiving PHA fails to send Form HUD-52665 within 10 days of effective date of billing changes, the initial PHA is not responsible for any increase prior to notification.

Late Payments [Notice PIH 2011-3]

If the initial PHA fails to make a monthly payment for a portable family by the fifth business day of the month, the receiving PHA must promptly notify the initial PHA in writing of the deficiency. The notice must identify the family, the amount of the billing payment, the date the billing payment was due, and the date the billing payment was received (if it arrived late). The receiving PHA must send a copy of the notification to the Office of Public Housing (OPH) in the HUD area office with jurisdiction over the receiving PHA. If the initial PHA fails to correct the problem by the second month following the notification, the receiving PHA may request by memorandum to the director of the OPH with jurisdiction over the receiving PHA that HUD transfer the unit in question. A copy of the initial notification and any subsequent correspondence between the PHAs on the matter must be attached. The receiving PHA must send a copy of the memorandum to the initial PHA. If the OPH decides to grant the transfer, the billing arrangement on behalf of the family ceases with the transfer, but the initial PHA is still responsible for any outstanding payments due to the receiving PHA.

Overpayments [Notice PIH 2011-3]

In all cases where the receiving PHA has received billing payments for billing arrangements no longer in effect, the receiving PHA is responsible for returning the full amount of the overpayment (including the portion provided for administrative fees) to the initial PHA.

If HUD determines billing payments have continued for at least three months because the receiving PHA failed to notify the initial PHA that the billing arrangement was terminated, the receiving PHA must take the following steps:

- Return the full amount of the overpayment, including the portion provided for administrative fees, to the initial PHA.
- Once full payment has been returned, notify the Office of Public Housing in the HUD area office with jurisdiction over the receiving PHA of the date and the amount of reimbursement to the initial PHA.

At HUD's discretion, the receiving PHA will be subject to the sanctions spelled out in Notice PIH 2011-3.

Denial or Termination of Assistance

At any time, the receiving PHA may decide to deny or terminate assistance to a portable family for family action or inaction [24 CFR 982.355(c)(9), 24 CFR 982.355(c)(10)].

In the case of a termination, the PHA should provide adequate notice of the effective date to the initial PHA to avoid having to return a payment. In no event, should the receiving PHA fail to notify the initial PHA later than 10 business days following the effective date of the termination of the billing arrangement [Notice PIH 2011-3].

If the HABC elects to deny or terminate assistance for a portable family, the HABC will notify the initial PHA within 10 business days after the informal review or hearing if the denial or termination is upheld. The HABC 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 HABC will furnish the initial PHA with a copy of the review or hearing decision.

Absorbing a Portable Family

The receiving PHA may absorb an incoming portable family into its own program when the PHA executes a PHA contract on behalf of the family or at any time thereafter providing that (a) the PHA has funding available under its annual contributions contract (ACC) and (b) absorbing the family will not result in over leasing [24 CFR 982.355(d)(1), Notice PIH 2011-3].

If the receiving PHA absorbs a family from the point of admission, the admission will be counted against the income targeting obligation of the receiving PHA [24 CFR 982.201(b)(2)(vii)].

If the receiving PHA absorbs a family after providing assistance for the family under a billing arrangement with the initial PHA, HUD encourages the receiving PHA to provide adequate advance notice to the initial PHA to avoid having to return an overpayment. The receiving PHA must specify the effective date of the absorption of the family [Notice PIH 2011-3].

If the HABC decides to absorb a portable family upon the execution of a HAP contract on behalf of the family, the HABC 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 HABC 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 HABC's voucher program [24 CFR 982.355(d)], and the HABC becomes the initial PHA in any subsequent moves by the family under portability.

Chapter 11: REEXAMINATIONS

INTRODUCTION

The HABC 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 HABC policies concerning reexaminations are presented in three parts:

Section 1: Annual Reexaminations. This part discusses the process for conducting annual reexaminations.

Section 2: Interim Reexaminations. This part details the requirements for families to report changes in family income and composition between annual reexaminations.

Section 3: 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.

Ch. 11 Section 1: ANNUAL REEXAMINATIONS

11.1.A. OVERVIEW

The HABC must conduct a reexamination of family income and composition 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.

11.1.B. SCHEDULING ANNUAL REEXAMINATIONS

The HABC 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 [HCV GB p. 12-1].

The HABC will begin the annual reexamination process 90-days in advance of its scheduled effective date. Generally, the HABC 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 HABC will perform a new annual reexamination. The HABC 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 HABC is required to obtain the information needed to conduct annual reexaminations. How that information will be collected is left to the discretion of the HABC. The HABC will give tenants who were not provided the opportunity the option to complete Form HUD-92006 at this time [Notice PIH 2009-36].

Families generally are required to participate in an annual reexamination interview, which must be attended by all adult members of the family. If participation in an in-person interview poses a hardship because of a family member's disability, the family should contact the HABC 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 should contact the HABC in advance of the interview to schedule a new appointment. If a family does not attend the scheduled interview, the HABC will send a second notification with a new interview appointment time.

If a family fails to attend two scheduled interviews without HABC 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, and to any alternate address provided in the family's file.

An advocate, interpreter, or other assistant may assist the family in the interview process. The family and the HABC must execute a certification attesting to the role and assistance of any such third party.

11.1.C. CONDUCTING ANNUAL REEXAMINATIONS

As part of the annual reexamination process, families are required to provide updated information to the HABC regarding the family's income, expenses, and composition [24 CFR 982.551(b)].

Families will be asked to bring all required information (as described in the reexamination notice) to the reexamination appointment. The required information will include a HABC-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 10 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 (plus any extensions), the family will be sent a notice of termination (See Chapter 12).

The information provided by the family generally must be verified in accordance with the policies in Chapter 7. Unless the family reports a change, or the agency has reason to believe a change has occurred in information previously reported by the family, certain types of information that are verified at admission typically do not need to be re-verified on 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 HABC must issue the family a new voucher, and the family and HABC must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the HABC must terminate the HAP contract in accordance with its terms [24 CFR 982.403].

11.1.D. DETERMINING ONGOING ELIGIBILITY OF CERTAIN STUDENTS [24 CFR 982.552(b)(5)]

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

If a student enrolled in an institution of higher education is under the age of 24, is not a veteran, is not married, does not have a dependent child, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the student's eligibility must be reexamined along with the income eligibility of the student's parents on 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 HABC 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 HABC 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 3.2.E and 7.2.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 12.1.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 HABC will process a reexamination in accordance with the policies in this chapter.

11.1.E. EFFECTIVE DATES

The HABC must establish policies concerning the effective date of changes that result from an annual reexamination [24 CFR 982.516].

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 HABC 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 HABC, but will always allow for the 30-day notice period.
- 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.

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 HABC 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 HABC.
- 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 HABC by the date specified, and this delay prevents the HABC from completing the reexamination as scheduled.

Ch. 11 Section 2: INTERIM REEXAMINATIONS

11.2.A. OVERVIEW

Family circumstances may change throughout the period between annual reexaminations. HUD and HABC policies dictate what kinds of information about changes in family circumstances must be reported, and under what circumstances the HABC must process interim reexaminations to reflect those changes. HUD regulations also permit the HABC to conduct interim reexaminations of income or family composition at any time. When an interim reexamination is conducted, only those factors that have changed are verified and adjusted [HCV GB, p. 12-10].

In addition to specifying what information the family must report, HUD regulations permit the family to request an interim determination if other aspects of the family's income or composition changes. The HABC must complete the interim reexamination within a reasonable time after the family's request.

This part includes HUD and HABC policies describing what changes families are required to report, what changes families may choose to report, and how the HABC will process both HABC- and family-initiated interim reexaminations.

11.2.B. CHANGES IN FAMILY AND HOUSEHOLD COMPOSITION

The HABC 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 HABC has limited discretion in this area.

The HABC 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 HABC approval. However, the family is required to promptly notify the HABC of the addition [24 CFR 982.551(h)(2)].

The family must inform the HABC of the birth, adoption, or court-awarded custody of a child within 10 business days.

New Family and Household Members Requiring Approval

With the exception of children who join the family as a result of birth, adoption, or court-awarded custody, a family must request HABC approval to add a new family member [24 CFR 982.551(h)(2)] or other household member (live-in aide or foster child) [24 CFR 982.551(h)(4)].

When any new family member is added, the HABC 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 a change in family size causes a violation of Housing Quality Standards (HQS) space standards (see Chapter 8), the HABC must issue the family a new voucher, and the family and HABC must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the HABC must terminate the family's HAP contract in accordance with its terms [24 CFR 982.403].

Families must request HABC approval to add a new family member, live-in aide, foster child, or foster adult. This includes any person not on the lease who is expected to stay in the unit for more than 30 consecutive days or 90 cumulative days within a 12-month period and therefore no longer qualifies as a "guest." Requests must be made in writing and approved by the HABC prior to the individual moving into the unit.

The HABC will not approve the addition of a new family or household member unless the individual meets the HABC's eligibility criteria (see Chapter 3) and documentation requirements (see Chapter 7, Section 3).

The HABC will not approve the addition of a foster child or foster adult if it will cause a violation of HQS space standards.

If the HABC determines an individual meets the HABC's eligibility criteria and documentation requirements, the HABC will provide written approval to the family. If the approval of a new family member or live-in aide will cause overcrowding according to HQS standards, the approval letter will explain that the family will be issued a voucher and will be required to move.

If the HABC determines that an individual does not meet the HABC's eligibility criteria or documentation requirements, the HABC 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 HABC will make its determination within 10 business days of receiving all information required to verify the individual's eligibility.

Departure of a Family or Household Member

Families must promptly notify the HABC if any family member no longer lives in the unit [24 CFR 982.551(h)(3)]. Because household members are considered when determining the family unit (voucher) size [24 CFR 982.402], the HABC also needs to know when any live-in aide, foster child, or foster adult ceases to reside in the unit.

If a household member ceases to reside in the unit, the family must inform the HABC within 10 business days. This requirement also applies to a family member who has been considered temporarily absent at the point that the family concludes the individual is permanently absent.

If a live-in aide, foster child, or foster adult ceases to reside in the unit, the family must inform the HABC within 10 business days.

11.2.C. CHANGES AFFECTING INCOME OR EXPENSES

Interim reexaminations can be scheduled either because the HABC has reason to believe that changes in income or expenses may have occurred, or because the family reports a change.

When a family reports a change, the HABC may take different actions depending on whether the family reported the change voluntarily, or because it was required to do so.

HABC-Initiated Interim Reexaminations

HABC-initiated interim reexaminations are those that are scheduled based on circumstances or criteria defined by the HABC. They are not scheduled because of changes reported by the family.

The HABC will conduct interim reexaminations in each of the following instances:

- For families receiving the Earned Income Disallowance (EID), the HABC will conduct an interim reexamination at the start and conclusion of the second 12 month exclusion period (50 percent income included).
- If the family has reported zero income, the HABC will conduct an interim reexamination every 3 months as long as the family continues to report that they have no income.
- 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 HABC will 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 HABC will conduct an interim reexamination.
- The HABC may conduct an interim reexamination at any time in order to correct an error in a previous reexamination, or to investigate a tenant fraud complaint.

Family-Initiated Interim Reexaminations

The HABC 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

HUD regulations give the HABC the freedom to determine the circumstances under which families will be required to report changes affecting income.

Families are required to report all increases in income greater than fifteen percent (15%) of their total household gross annual income within 10 business days of the change occurring. The HABC will conduct an interim reexamination to recalculate the new family share of rent and new subsidy amount.

Optional Reporting

The family may request an interim reexamination any time the family has experienced a change in circumstances (i.e. decrease in income) that exceeds fifteen percent (15%) of total household gross income, the change is expected to have a duration of six weeks or longer, and the family

has not experienced more than 3 interim adjustments within the 12 month period between re-examinations. Exceptions to the above requirements will only be reviewed for extenuating circumstances and on a case by case basis. Extenuating circumstances will include but not limited to significant, unexpected change that has created a great financial hardship.

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.

11.2.D. PROCESSING THE INTERIM REEXAMINATION

Method of Reporting

The family may notify the HABC of changes either orally or in writing. If the family provides oral notice, the HABC may also require the family to submit the changes in writing.

Generally, the family will not be required to attend an interview for an interim reexamination. However, if the HABC determines that an interview is warranted, the family may be required to attend.

Based on the type of change reported, the HABC will determine the documentation the family will be required to submit. The family must submit any required information or documents within 10 business days of receiving a request from the HABC. This time frame may be extended for good cause with HABC approval. The HABC will accept required documentation by mail, by fax, or in person.

Effective Dates

The HABC 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 the change was reported and all required documentation was submitted. In cases where the change cannot be verified or all required documents cannot be submitted the

family should provide written notification of the change until verification or documentation is available. The change can become effective retroactive to the first of the month after the date on which the change was reported in writing.

Ch. 11 Section 3: RECALCULATING FAMILY SHARE AND SUBSIDY AMOUNT

11.3.A. OVERVIEW

After gathering and verifying required information for an annual or interim reexamination, the HABC 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.

11.3.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 HABC'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 HABC changes its payment standards or the family's situation changes, new payment standards are applied at the following times:

- If the HABC'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 HABC'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 HABC'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 HABC must use the utility allowances in effect at the time the new lease and HAP contract are executed.

At reexamination, the HABC must use the HABC 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 after the allowance is adopted.

11.3.C. NOTIFICATION OF NEW FAMILY SHARE AND HAP AMOUNT

The HABC 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 HABC'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).

The notice to the family will include the annual and adjusted income amounts that were used to calculate the family share of the rent and the housing assistance payment. The notice also will state the procedures for requesting an informal hearing.

11.3.D. DISCREPANCIES

During an annual or interim reexamination, the HABC may discover that information previously reported by the family was in error, or that the family intentionally misrepresented information. In addition, the HABC may discover errors made by the HABC. When errors resulting in the overpayment or underpayment of subsidy are discovered, corrections will be made in accordance with the policies in Chapter 13.

Chapter 12: TERMINATION OF ASSISTANCE AND TENANCY

HUD regulations specify the reasons for which a PHA can terminate a family's assistance, and the ways in which such terminations must take place. They also dictate the circumstances under which an owner may terminate the tenancy of an assisted family. This chapter presents the policies that govern voluntary and involuntary terminations of assistance, and termination of tenancy by the owner. It is presented in three parts:

Section 1: 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 HABC based on the family's behavior.

Section 2: Approach to Termination of Assistance. This part describes the policies that govern how an involuntary termination takes place. It specifies the alternatives that the HABC may consider in lieu of termination, the criteria the HABC must use when deciding what action to take, and the steps the HABC must take when terminating a family's assistance.

Section 3: Termination of Tenancy by the Owner. This part presents the policies that govern the owner's right to terminate an assisted tenancy.

Ch. 12 Section 1: GROUNDS FOR TERMINATION OF ASSISTANCE

12.1.A. OVERVIEW

HUD requires the HABC to terminate assistance for certain offenses and when the family no longer requires assistance. HUD permits the HABC 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 HABC.

12.1.B. FAMILY NO LONGER REQUIRES ASSISTANCE [24 CFR 982.455]

As a family's income increases, the amount of HABC subsidy goes down. If the amount of HCV assistance provided by the HABC drops to zero and remains at zero for 180 consecutive calendar days, the family's assistance terminates automatically.

If a participating family receiving zero assistance experiences a change in circumstances that would cause the HAP payment to rise above zero, the family must notify the HABC of the changed circumstances and request an interim reexamination before the expiration of the 180-day period.

12.1.C. FAMILY CHOOSES TO TERMINATE ASSISTANCE

The family may request that the HABC terminate the family's assistance at any time.

The request to terminate assistance should be made in writing and signed by the head of household, spouse, or cohead.

12.1.D. MANDATORY TERMINATION OF ASSISTANCE

HUD requires the HABC to terminate assistance in the following circumstances.

Eviction [24 CFR 982.552(b)(2), 24 CFR 5.2005(c)(1)]

The HABC 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. As discussed further in section 12.2.E, incidents of actual or threatened domestic 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 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. In such cases the HABC 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 12.2.C. In making its decision, the HABC will consider the factors described in sections 12.2.D and 12.2.E. Upon consideration of such factors, the HABC may, on a case-by-case basis, choose not to terminate assistance.

Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises and criminal activity. Generally, the criterion to be used will be whether the reason for the eviction was the fault of the tenant or guests.

Failure to Provide Consent [24 CFR 982.552(b)(3)]

The HABC 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 HABC 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 HABC, has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit.

For (3) above, such termination must be for a period of at least 24 months. This does not apply to ineligible noncitizens already in the household where the family's assistance has been prorated. See Chapter 7 for a complete discussion of documentation requirements.

Failure to Disclose and Document Social Security Numbers [24 CFR 5.218(c), Notice PIH 2012-10]

The HABC must terminate assistance if a participant family fails to disclose the complete and accurate social security numbers of each household member and the documentation necessary to verify each social security number.

However, if the family is otherwise eligible for continued program assistance, and the HABC determines that the family's failure to meet the SSN disclosure and documentation requirements was due to circumstances that could not have been foreseen and were outside of the family's control, the HABC may defer the family's termination and provide the opportunity to comply with the requirement within a period not to exceed 90 calendar days from the date the HABC determined the family to be noncompliant.

The HABC will defer the family's termination and provide the family with the opportunity to comply with the requirement for a period of 90 calendar days for circumstances beyond the participant's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency, if there is a reasonable likelihood that the participant will be able to disclose an SSN by the deadline.

Methamphetamine Manufacture or Production [24 CFR 982.553(b)(1)(ii)]

The HABC 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, is not residing with his/her parents in an HCV assisted household, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the HABC 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 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 HABC policies, or must be given the opportunity to lease in place if the terminated ineligible student members elect to move out of the assisted unit.

Death of the Sole Family Member [24 CFR 982.311(d) and Notice PIH 2010-9]

The HABC must immediately terminate program assistance for deceased single member households.

12.1.E. MANDATORY POLICIES AND OTHER AUTHORIZED TERMINATIONS

Mandatory Policies [24 CFR 982.553(b) and 982.551(l)]

HUD requires the HABC to establish policies that permit the HABC to terminate assistance if the HABC 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 HABC 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.

The HABC 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.

Currently engaged in is defined as any use of illegal drugs during the previous six months.

The HABC will consider all credible evidence, including but not limited to, any record of convictions, police reports detailing the circumstances of an incident or arrest, witness statements, and any notice to evict or eviction of household members related to the use of illegal drugs or abuse of alcohol.

In making its decision to terminate assistance, the HABC will consider alternatives as described in Chapter 12. Upon consideration of such alternatives and factors, the HABC may, on a case-by-case basis, choose not to terminate assistance.

Drug-Related and Violent Criminal Activity [24 CFR 5.100]

Drug means a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

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

Violent criminal activity means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

The HABC will terminate a family's assistance if any household member has violated the family's obligation not to engage in any drug-related or violent criminal activity during participation in the HCV program.

The HABC will consider all credible evidence, including but not limited to, any records of convictions, police reports detailing the circumstances of an incident or arrest, witness statements, and any notice to evict or eviction of the household members connected to drug-related or violent criminal activity.

In making its decision to terminate assistance, the HABC will consider alternatives as described in Chapter 12. Upon consideration of such alternatives and factors, the HABC may, on a case-by-case basis, choose not to terminate assistance.

Other Authorized Reasons for Termination of Assistance [24 CFR 982.552(c), 24 CFR 5.2005(c)]

HUD permits the HABC to terminate assistance under a number of other circumstances. It is left to the discretion of the HABC whether such circumstances in general warrant consideration for the termination of assistance. As discussed further in Chapter 12, the Violence against Women Act of 2005 explicitly prohibits PHAs from considering incidents of, or criminal activity directly related to, domestic violence, dating violence, or stalking as reasons for terminating the assistance of a victim of such abuse.

The HABC **will not** terminate a family's assistance because of the family's failure to meet its obligations under the Family Self-Sufficiency program.

The HABC **will** terminate a family's assistance if:

- The family has failed to comply with any family obligations under the program.

- Any family member has been evicted from federally-assisted housing in the last five years.
- Any PHA has ever terminated assistance under the program for any member of the family.
- Any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.
- The family currently owes rent or other amounts to any PHA in connection with the HCV, Certificate, Moderate Rehabilitation or public housing programs.
- The family has not reimbursed any PHA for amounts the PHA paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease.
- The family has breached the terms of a repayment agreement entered into with the HABC.
- A family member has engaged in or threatened violent or abusive behavior toward HABC personnel.

Abusive or violent behavior towards HABC 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 HABC will consider alternatives as described in Chapter 12.2.C and other factors described in Chapter 12.2.D and 12.2.E. Upon consideration of such alternatives and factors, the HABC may, on a case-by-case basis, choose not to terminate assistance.

Family Absence from the Unit [24 CFR 982.312]

The family may be absent from the unit for brief periods. The HABC must establish a policy on how long the family may be absent from the assisted unit. However, the family may not be absent from the unit for a period of more than 180 consecutive calendar days for any reason. Absence in this context means that no member of the family is residing in the unit.

Assisted families must notify the Authority and owner, in writing, if the assisted unit will be vacant for thirty (30) days or more. The written notice must state the exact amount of time the unit will be vacant and the reason for the vacancy. If notification is not received and the unit is for vacant thirty (30) days, the Authority may terminate assistance on the first day of the month the family vacated the unit.

If the HABC determines or is informed that the family is absent from the unit for more than 180 consecutive calendar days, the family's assistance will be terminated. Notice of termination will be sent in accordance with Section 12-II.F.

Insufficient Funding [24 CFR 982.454]

The HABC may terminate HAP contracts if the HABC determines, in accordance with HUD requirements, that funding under the consolidated ACC is insufficient to support continued assistance for families in the program.

The HABC will determine whether there is sufficient funding to pay for currently assisted families according to the policies in Chapter 16. If the HABC determines there is a shortage of funding, prior to terminating any HAP contracts, the HABC will determine if any other actions can be taken to reduce program costs.

Other actions that may be implemented to reduce program costs and address the financial shortfall of the Housing Choice Voucher (HCV) program the HABC may implement the following initiatives dependent upon financial short falls and the need to maximize participation and optimize financial investments:

- Ensure Reasonable Rents - Determine whether the rent to owner is a reasonable rent in comparison for other comparable unassisted units. In accordance with the HAP contract, Landlords will be provided sixty (60 day) written notice that rent must be reduced. The owner must reduce the rent to the reasonable amount or the HAP contract must be terminated. In addition, request will be made to owners/landlords to voluntarily agree to defer rent increases to help avoid the termination of HAP contracts due to shortfalls in HCV funding.
- Stop Portability Absorption – Due to monthly funding shortfalls and use of HABC reserves monthly to fund existing vouchers portable vouchers moving into the jurisdiction will no longer be absorbed; all port-ins will be billed to the initial PHA.
- Voucher Issuance- No new vouchers will be issued to new applicants and outstanding vouchers will be pulled back for applicants searching that do not have executed HAP contracts.
- Subsidy Standards/Occupancy Standards may be revised for HCV program. In accordance with 24CFR 982.401(d) the minimum subsidy standard will be used to determine voucher size. A dwelling unit will have at least one bedroom or living/sleeping area for each two persons. Individuals of the opposite sex, with the exception of spouses, significant others, and young children (under the age of 8), will not be require to share the same bedroom or living /sleeping area.
- Payment Standards- Payment standard may be lowered for all or some unit sizes. Lower payment standards apply immediately to all new admissions, relocations, and families remaining in their units with a new HAP contact. If necessary, HABC may request a regulatory waiver for good cause so that reduced payment standards may be applied immediately with notice to family in accordance with its administrative plan policy.

In order to further reduce costs and address the financial shortfall of the Housing Choice Voucher (HCV) program the Authority may implement the following initiatives upon the receipt of Board approval and if required local HUD Field Office approval:

- Portability and Moves within the PHA Jurisdiction Restriction: Ports to higher cost areas and moves within HABC jurisdiction to higher cost units may be denied. The Authority must notify the local HUD Field Office prior to denial, and must demonstrate that based on current funding available that there are insufficient funds to pay higher subsidy amounts without termination of current participants.
- Cease Project Based Voucher Issuance: All Project Based Voucher issuance will be suspended.

If after implementing all reasonable cost cutting measures there is not enough funding available to provide continued assistance for current participants, the HABC will terminate HAP contracts as a last resort. Prior to terminating any HAP contracts, the HABC will inform the local HUD field office and its financial analyst at the Financial Management Center. The HABC will terminate the minimum number needed to reduce HAP costs to a level within the HABC's annual budget authority.

If the HABC must terminate HAP contracts due to insufficient funding, the HABC will do so in accordance with the following criteria and instructions:

- Terminations will be determined by lottery.
- Terminations will continue in this manner until all budgetary limitations are satisfied.
- Families comprising the required number of special purpose vouchers, including nonelderly disabled (NED), HUD-Veteran's Affairs Supportive Housing (HUD-VASH), and family unification program (FUP) will be the last to be terminated.

Should funding become available HABC will reinstate those terminated from the program in the same chronologic manner, with the first household terminated being the first to be re-instated, except that NED, MS5, HUD-VASH and FUP families must be issued vouchers first until the PHA is assisting its required number of special purpose vouchers.

Ch. 12 Section 2: APPROACH TO TERMINATION OF ASSISTANCE

12.2.A. OVERVIEW

The HABC 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 HABC the discretion to either terminate the family's assistance or to take another action. This part discusses the various actions the HABC may choose to take when it has discretion and outlines the criteria the HABC 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.

12.2.B. METHOD OF TERMINATION [24 CFR 982.552(a)(3)]

The way in which the HABC terminates assistance depends upon individual circumstances. HUD permits the HABC 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.

12.2.C. ALTERNATIVES TO TERMINATION OF ASSISTANCE

Change in Household Composition

As a condition of continued assistance, the HABC 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)].

As a condition of continued assistance, the head of household must certify that the culpable family member has vacated the unit and will not be permitted to visit or to stay as a guest in the assisted unit. The family must present evidence of the former family member's current address upon HABC request.

Repayment of Family Debts

If a family owes amounts to the HABC, as a condition of continued assistance, the HABC will require the family to repay the full amount or to enter into a repayment agreement, within 30 days of receiving notice from the HABC of the amount owed. See Chapter 16 for policies on repayment agreements.

12.2.D. CRITERIA FOR DECIDING TO TERMINATE ASSISTANCE

Evidence

For criminal activity, HUD permits the HABC to terminate assistance if a *preponderance of the evidence* indicates that a household member has engaged in the activity, regardless of whether the household member has been arrested or convicted [24 CFR 982.553(c)].

The HABC will use the concept of the preponderance of the evidence as the standard for making all termination decisions.

Preponderance of the evidence is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence

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

The HABC is permitted, but not required, to consider all relevant circumstances when determining whether a family's assistance should be terminated.

The HABC 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 12.2.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 HABC 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 HABC'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 HABC will determine whether the behavior is related to the disability. If so, upon the family's request, the HABC will determine whether alternative measures are appropriate as a reasonable accommodation. The HABC 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.

12.2.E. TERMINATIONS RELATED TO DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING

This section addresses the protections against termination of assistance that the Violence against Women Act of 2005 (VAWA) provides for victims of domestic violence, dating violence, sexual assault and stalking. For general VAWA requirements and HABC policies pertaining to notification, documentation, and confidentiality, see Chapter 16 of this plan, where definitions of key VAWA terms are also located.

VAWA Protections against Termination

VAWA provides for specific protections against termination of HCV assistance for victims of domestic violence, dating violence, sexual assault, or stalking. (*Note:* The protections also apply to terminations of tenancy or occupancy by owners participating in the HCV program. So do the limitations discussed under the next heading.)

First, VAWA provides that a HABC may not terminate assistance to a family that moves out of an assisted unit in violation of the lease, with or without prior notification to the HABC, if the move occurred to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the unit [24 CFR 982.314(b)(4)].

Second, it provides that an incident or incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking may not be construed either as a serious or repeated lease violation by the victim or as good cause to terminate the assistance of the victim [24 CFR 5.2005(c)(1)].

Third, it provides that criminal activity directly related to domestic violence, dating violence, sexual assault, or stalking may not be construed as cause for terminating the assistance of a tenant if a member of the tenant's household, a guest, or another person under the tenant's control is the one engaging in the criminal activity and the tenant or an immediate family member of the tenant is the actual or threatened victim [24 CFR 5.2005(c)(2)].

Fourth, it gives HABC the authority to terminate assistance to any tenant or lawful occupant who engages in criminal acts of physical violence against family members or others without terminating assistance to, or otherwise penalizing, the victim of the violence [24 CFR 5.2009(a)].

Limitations on VAWA Protections [24 CFR 5.2005(d) and (e)]

VAWA does not limit the authority of a HABC to terminate the assistance of a victim of abuse for reasons unrelated to domestic violence, dating violence, sexual assault, or stalking so long as the HABC does not subject the victim to a more demanding standard than it applies to other program participants [24 CFR 5.2005(d)(1)].

Likewise, VAWA does not limit the authority of a HABC to terminate the assistance of a victim of domestic violence, dating violence, sexual assault, or stalking if the HABC can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the assisted property if the victim is not terminated from assistance [24 CFR 5.2005(d)(2)].

HUD regulations define *actual and imminent threat* to mean words, gestures, actions, or other indicators of a physical threat that (a) is real, (b) would occur within an immediate time frame, and (c) could result in death or serious bodily harm [24 CFR 5.2005(d)(2) and (e)]. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include:

- The duration of the risk
- The nature and severity of the potential harm
- The likelihood that the potential harm will occur
- The length of time before the potential harm would occur [24 CFR 5.2005(e)]

Even when a victim poses an actual and imminent threat, however, HUD regulations authorize a HABC to terminate the victim's assistance "only when there are no other actions that could be taken to reduce or eliminate the threat" [24 CFR 5.2005(d)(3)].

In determining whether a program participant who is a victim of domestic violence, dating violence, sexual assault, or stalking is an actual and imminent threat to other tenants or those employed at or providing service to a property, the HABC will consider the following, and any other relevant, factors:

- Whether the threat is toward an employee or tenant other than the victim of domestic violence, dating violence, sexual assault, or stalking
- Whether the threat is a physical danger beyond a speculative threat
- Whether the threat is likely to happen within a short period of time
- Whether the threat to other tenants or employees can be eliminated in some other way, such as by helping the victim relocate to a confidential location or seeking a legal remedy to prevent the perpetrator from acting on the threat

If the participant wishes to contest the HABC's determination that he or she is an actual and imminent threat to other tenants or employees, the participant may do so as part of the informal hearing.

Documentation of Abuse [24 CFR 5.2007]

When an individual facing termination of assistance for reasons related to domestic violence, dating violence, sexual assault, or stalking claims protection under VAWA, the HABC will request that the individual provide documentation supporting the claim in accordance with the policies in Chapter 16 of this plan.

The HABC reserves the right to waive the documentation requirement if it determines that a statement or other corroborating evidence from the individual will suffice. In such cases the HABC will document the waiver in the individual's file.

Terminating the Assistance of a Domestic Violence Perpetrator

Although VAWA provides protection against termination of assistance for victims of domestic violence, it does not provide such protection for perpetrators. VAWA gives the HABC 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” [24 CFR 5.2009(a)]. This authority is not dependent on a bifurcated lease or other eviction action by an owner against an individual family member. Further, this authority supersedes any local, state, or other federal law to the contrary. However, if the HABC 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. This means that the HABC must follow the same rules when terminating assistance to an individual as it would when terminating the assistance of an entire family [3/16/07 *Federal Register* notice on the applicability of VAWA to HUD programs].

The HABC will terminate assistance to a family member if the HABC determines that the family member has committed criminal acts of physical violence against other family members or others. This action will not affect the assistance of the remaining, nonculpable family members.

In making its decision, the HABC will consider all credible evidence, including, but not limited to, a signed certification (form HUD-50066) or other documentation of abuse submitted to the HABC by the victim in accordance with this section and section 16.9.D. The HABC will also consider the factors in section 12.2.D. Upon such consideration, the HABC may, on a case-by-case basis, choose not to terminate the assistance of the culpable family member.

If the HABC does terminate the assistance of the culpable family member, it will do so in accordance with applicable law, HUD regulations, and the policies in this plan.

12.2.F. TERMINATION NOTICE

HUD regulations require HABCs to provide written notice of termination of assistance to a family only when the family is entitled to an informal hearing. However, since the family’s HAP contract and lease will also terminate when the family’s assistance terminates [form HUD-52641], it is a good business practice to provide written notification to both owner and family anytime assistance will be terminated, whether voluntarily or involuntarily.

Whenever a family’s assistance will be terminated, the HABC will send a written notice of termination to the family and to the owner of the family’s unit. The notice will state the date on which the termination will become effective. This date generally will be at least 30 calendar days following the date of the termination notice, but exceptions will be made whenever HUD rules, other HABC policies, or the circumstances surrounding the termination require.

When the HABC notifies an owner that a family’s assistance will be terminated, the HABC will, if appropriate, advise the owner of his/her right to offer the family a separate, unassisted lease.

If a family whose assistance is being terminated is entitled to an informal hearing, the notice of termination that the HABC sends to the family must meet the additional HUD and HABC notice requirements discussed in section 16.3.C of this plan. Although HUD does not require PHAs to include information about the protections against termination of assistance provided by the Violence against Women Act of 2005 (VAWA) to victims of domestic violence, dating violence, or stalking, PHAs have the discretion to include such information.

Whenever the HABC decides to terminate a family's assistance because of the family's action or failure to act, the HABC will include in its termination notice the VAWA information described in section 16.9.C of this plan and will request that a family member wishing to claim protection under VAWA notify the HABC within 10 business days.

Still other notice requirements apply in two situations:

- If a criminal record is the basis of a family's termination, a copy of the record must accompany (or precede) the termination notice, and a copy of the record must also be provided to the subject of the record [24 CFR 982.553(d)].
- If immigration status is the basis of a family's termination, as discussed in section 12.1.D, the special notice requirements in section 16.3.D must be followed.

Ch. 12 Section 3: TERMINATION OF TENANCY BY THE OWNER

12.3.A. OVERVIEW

Termination of an assisted tenancy is a matter between the owner and the family; the HABC is not directly involved except in cases of HABC owned units. 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.

12.3.B. GROUNDS FOR OWNER TERMINATION OF TENANCY [24 CFR 982.310, 24 CFR 5.2005(c), and Form HUD-52641-A, Tenancy Addendum]

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, except when the violations are related to incidents of actual or threatened domestic violence, dating violence, or stalking and the victim is protected from eviction by the Violence against Women Act of 2005 (see section 12.2.E). A serious lease violation includes failure to pay rent or other amounts due under the lease. However, the HABC's failure to make a HAP payment to the owner is not a violation of the lease between the family and the owner.

In HABC owned units the PHA will provide 14-day written notice of termination of the lease in the case of nonpayment of rent.

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.

In HABC owned units the PHA will provide 30-day written notice of termination of the lease, except that if a State or local law provides for a shorter period of time, such shorter period shall apply.

Criminal Activity, Drug or Alcohol Abuse

The owner may terminate tenancy during the term of the lease if any *covered person*—meaning any member of the household, a guest, or another person under the tenant's control—commits any of the following types of criminal activity (for applicable definitions see 24 CFR 5.100):

- Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents (including property management staff residing on the premises)
- Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of their residences by, persons residing in the immediate vicinity of the premises

- Any drug-related or violent criminal activity on or near the premises
- Any felony convictions, fugitive felons, or parole violators.

However, in the case of criminal activity directly related to domestic violence, dating violence, or stalking, if the tenant or an immediate member of the tenant's family is the victim, the criminal activity may not be construed as cause for terminating the victim's tenancy (see section 12.2.E).

The owner may terminate tenancy during the term of the lease if any member of the household is:

- Fleeing to avoid prosecution, custody, or confinement after conviction for a crime or an attempt to commit a crime that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or
- Violating a condition of probation or parole imposed under federal or state law.

The owner may terminate tenancy during the term of the lease if any member of the household has engaged in abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

In HABC owned units the PHA will provide a reasonable period of time, but not to exceed 30-day written notice of termination of lease in cases of criminal activity, drug-related activity, or health and safety threats with other tenants, PHA employees, or persons residing in the immediate vicinity of the premises.

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 the covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying the standard of proof used for a criminal conviction.

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
- 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.

Note that “other good cause” does **not** include vacating a property that has been foreclosed upon during the lease term prior to the sale of that property. However, the new owner of the property may terminate the tenancy effective on the date of transfer of the unit if the owner will occupy the unit as a primary residence and has provided the tenant a notice to vacate at least 90 days before the effective date of such notice [Notice PIH 2010-49]. Further information on the protections afforded to tenants in the event of foreclosure can be found in Section 13.2.G.

12.3.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 HABC a copy of any eviction notice at the same time the owner notifies the family. The family is also required to give the HABC a copy of any eviction notice (see Chapter 5).

If the eviction action is finalized in court, the owner must provide the HABC 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.

12.3.D. DECIDING WHETHER TO TERMINATE TENANCY [24 CFR 982.310(h), 24 CFR 982.310(h)(4)]

An owner who has grounds to terminate a tenancy is not required to do so, and may consider all the circumstances relevant to a case before deciding. These might include:

- The nature of the offending action
- The seriousness of the offending action;
- The effect on the community of the termination, or of the owner’s failure to terminate the tenancy;
- The extent of participation by the leaseholder in the offending action;
- The effect of termination of tenancy on household members not involved in the offending activity;
- The demand for assisted housing by families who will adhere to lease responsibilities;

- The extent to which the leaseholder has shown personal responsibility and taken all reasonable steps to prevent or mitigate the offending action;
- The effect of the owner's action on the integrity of the program.

The owner may require a family to exclude a household member in order to continue to reside in the assisted unit, where that household member has participated in or been culpable for action or failure to act that warrants termination.

In determining whether to terminate tenancy for illegal use of drugs or alcohol abuse by a household member who is no longer engaged in such behavior, the owner may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully (42 U.S.C. 13661). For this purpose, the owner may require the tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

The owner's termination of tenancy actions must be consistent with the fair housing and equal opportunity provisions in 24 CFR 5.105.

An owner's decision to terminate tenancy for incidents related to domestic violence, dating violence, or stalking is limited by the Violence against Women Act of 2005 (VAWA) and the conforming regulations in 24 CFR Part 5, Subpart L. (See section 12.2.E.)

12.3.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 HABC has no other grounds for termination of assistance, the HABC may issue a new voucher so that the family can move with continued assistance (see Chapter 10).

CH. 12: EXIHIBITS

EXHIBIT 12-1: STATEMENT OF FAMILY OBLIGATIONS

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

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

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

- The family must allow the HABC to inspect the unit at reasonable times and after reasonable notice, as described in Chapter 8 of this plan.
- The family must not commit any serious or repeated violation of the lease.

The HABC will determine if a family has committed serious or repeated violations of the lease based on available evidence, including but not limited to, a court-ordered eviction or an owner's notice to evict.

Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, living or housekeeping habits that cause damage to the unit or premises, and criminal activity. Generally, the criterion to be used will be whether or not the reason for the eviction was the fault of the tenant or guests. Any incidents of, or criminal activity related to, domestic violence, dating violence, or stalking will not be construed as serious or repeated lease violations by the victim [24 CFR 5.2005(c)(1)].

- The family must notify the HABC 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 HABC at the same time the owner is notified.

- The family must promptly give the HABC a copy of any owner eviction notice.
- The family must use the assisted unit for residence by the family. The unit must be the family's only residence.

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

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

- The family must promptly notify the HABC in writing if any family member no longer lives in the unit.
- If the HABC has given approval, a foster child or a live-in aide may reside in the unit. The HABC has the discretion to adopt reasonable policies concerning residency by a foster child or a live-in aide, and to define when HABC consent may be given or denied. For policies related to the request and approval/disapproval of foster children, foster adults, and live-in aides, see Chapter 3.1.K, 3.1.M, and 11.2.B.
- The family must not sublease the unit, assign the lease, or transfer the unit.

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

- The family must supply any information requested by the HABC to verify that the family is living in the unit or information related to family absence from the unit.
- The family must promptly notify the HABC 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 HABC at the start of the extended absence.

- The family must pay utility bills and provide and maintain any appliances that the owner is not required to provide under the lease [Form HUD-52646, Voucher].
- The family must not own or have any interest in the unit, (other than in a cooperative and owners of a manufactured home leasing a manufactured home space).
- Family members must not commit fraud, bribery, or any other corrupt or criminal act in connection with the program. (See Chapter 14, Program Integrity for additional information).
- Family members must not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for HUD and HABC policies related to drug-related and violent criminal activity.

- Members of the household must not engage in abuse of alcohol in a way that threatens the health, safety or right to peaceful enjoyment of the other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for a discussion of HUD and HABC policies related to alcohol abuse.
- An assisted family or member of the family must not receive HCV program assistance while receiving another housing subsidy, for the same unit or a different unit under any other federal, state or local housing assistance program.
- A family must not receive HCV program assistance while residing in a unit owned by a parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the HABC has determined (and has notified the owner and the family of such determination) that approving rental of the unit, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities.
[Form HUD-52646, Voucher]

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:

Section 1: Owners in the HCV Program. This part discusses the role of an owner in the HABC’s HCV program and highlights key owner rights and responsibilities.

Section 2: HAP Contracts. This part explains provisions of the HAP contract and the relationship between the HABC and the owner as expressed in the HAP contract.

For detailed information about HCV program responsibilities and processes, including HABC 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.

Ch. 13 Section 1: OWNERS IN THE HCV PROGRAM

13.1.A. OWNER RECRUITMENT AND RETENTION [HCV GB, pp. 2-4 to 2-6]

Recruitment

HABC is responsible for ensuring that very low income families have access to all types and ranges of affordable housing in the HABC's jurisdiction, particularly housing outside areas of poverty or minority concentration. A critical element in fulfilling this responsibility is for the HABC to ensure that enough owners, representing all types and ranges of affordable housing in the HABC's jurisdiction, are willing to participate in the HCV program.

To accomplish this objective, HABCs must identify and recruit new owners to participate in the program. The HABC will identify areas of opportunity with an adequate supply of affordable rental housing by evaluating the market rents in our jurisdiction and the supply of units by municipality. Utilizing resources available to our clients this survey will be conducted annually.

The HABC will conduct owner outreach to ensure that owners are familiar with the program and its advantages. The HABC 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
- Holding owner recruitment/information meetings
- 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, the HABC must also provide the kind of customer service that will encourage participating owners to remain active in the program.

All HABC activities that may affect an owner's ability to lease a unit will be processed as rapidly as possible, to minimize vacancy losses for owners.

The HABC will give special attention to helping new owners succeed through activities such as:

- Providing the owner with a designated HABC contact person.
- Coordinating inspection and leasing activities between the HABC, the owner, and the family.
- Being available to the owner to explain the inspection process, and providing an 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.

13.1.B. BASIC HCV PROGRAM REQUIREMENTS

HUD requires the HABC to aid families in their housing search by providing the family with a list of landlords or other parties known to the HABC who may be willing to lease a unit to the family, or to help the family find a unit. Although the HABC cannot maintain a list of owners that are pre-qualified to participate in the program, owners may indicate to the HABC their willingness to lease a unit to an eligible HCV family, or to help the HCV family find a unit [24 CFR 982.301(b)(11)].

Owners that wish to indicate their willingness to lease a unit to an eligible HCV family or to help the HCV family find a unit must notify the HABC. The HABC will maintain a listing of such owners and provide this listing to the HCV family as part of the informational briefing packet.

When a family approaches an owner to apply for tenancy, the owner is responsible for screening the family and deciding whether to lease to the family, just as the owner would with any potential tenant. The HABC 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 HABC, this document is the first step in the process of obtaining approval for the family to receive the financial assistance it will need to occupy the unit. Also, submitted with the RFTA is a copy of the owner's proposed dwelling lease, including the HUD-required Tenancy Addendum (Form HUD-52641-A). 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 family, either because of their 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 Housing Quality Standards (HQS) and/or equivalent state or local standards approved by HUD [24 CFR 982.305(a)]. The HABC 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 HABC 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.

At initial lease-up of a unit, the HABC must determine that the share of rent to be paid by the family does not exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]. See chapter 6 for a discussion of the calculation of 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. The HABC 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 in section 2 of this chapter.

13.1.C. OWNER RESPONSIBILITIES [24 CFR 982.452]

The basic owner responsibilities in the HCV program are outlined in the regulations as follows:

- Performing all the owner's obligations under the housing assistance payments (HAP) contract and the lease
- Performing all management and rental functions for the assisted unit, including selecting a voucher-holder to lease the unit, and deciding if the family is suitable for tenancy of the unit
- Maintaining the unit in accordance with the Housing Quality Standards (HQS), including performance of ordinary and extraordinary maintenance
- Complying with equal opportunity requirements
- Preparing and furnishing to the HABC 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 HABC), 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]

- Complying with the Violence against Women Reauthorization Act of 2005 (VAWA) when screening prospective HCV tenants or terminating the tenancy of an HCV family (see 24 CFR Part 5, Subpart L; 24 CFR 982.310(h)(4); and 24 CFR 982.452(b)(1))

13.1.D. OWNER QUALIFICATIONS

The HABC does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where the HABC may deny approval of an assisted tenancy based on past owner behavior, conflict of interest, or other owner-related issues. Owner disapproval may apply only at the time a family initially receives a voucher for occupancy of a unit. A PHA may not require program participants living in properties owned by disqualified owners to move, but may refuse to enter into a new HAP contract or tenancy addenda for those families if new leases or lease revisions are required. 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 HABC must not approve the assisted tenancy if the HABC has been informed that the owner has been debarred, suspended, or subject to a limited denial of participation under 24 CFR part 24. HUD may direct the HABC 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 HABC must not approve an RFTA if the owner is the parent, child, grandparent, grandchild, sister, or brother of any member of the family. The HABC may make an exception as a reasonable accommodation for a family member with a disability. The owner is required to certify that no such relationship exists. This restriction applies at the time that the family receives assistance under the HCV program for occupancy of a unit.

Conflict of Interest [24 CFR 982.161; HCV GB p. 8-19]

The HABC 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 HABC (except a participant commissioner)
- Any employee of the HABC, or any contractor, subcontractor or agent of the HABC, 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 HABC must submit a waiver request to the appropriate HUD Field Office for determination.

Any waiver request submitted by the HABC 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 HABC, 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 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 HABC or assistance under the HCV program for an eligible HABC 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 HABC, description of the nature of the investment, including disclosure/divestiture plans.

Where the HABC has requested a conflict of interest waiver, the HABC 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 HABC will consider factors the reasons for waiving the requirement; consistency with state and local laws; the existence of alternative housing available to families; the individual circumstances of a particular family; the specific duties of individuals whose positions present a possible conflict of interest; the nature of any financial investment in the property and plans for disclosure/divestiture; and the possible appearance of impropriety.

Owner Actions That May Result in Disapproval of a Tenancy Request [24 CFR 982.306(c)]

HUD regulations permit the HABC, at the HABC's discretion, to refuse to approve a request for tenancy if the owner has committed any of a number of different actions.

If the HABC disapproves a request for tenancy because an owner is not qualified, it may not terminate the HAP contract for any assisted families that are already living in the owner's properties unless the owner has violated the HAP contract for those units [HCV GB p. 11-4].

The HABC will refuse to approve a request for tenancy if the HABC 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 Section 8 or any other federally assisted housing program for activity engaged in by the tenant, any member of the household, a guest or another person under the control of any member of the household that:
 - Threatens the right to peaceful enjoyment of the premises by other residents; (ii)
 - Threatens the health or safety of other residents, of employees of the HABC, or of owner employees or other persons engaged in management of the housing;
 - 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
 - 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 is the parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the HABC determines that approving the unit would provide reasonable accommodation for a family member who is a person with disabilities.
- The owner has not paid state or local real estate taxes, fines, or assessment.

In considering whether to disapprove owners for any of the discretionary reasons listed above, the HABC 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 HABC may, on a case-by-case basis, choose to approve an owner.

Legal Ownership of Unit

The following represents HABC policy on legal ownership of a dwelling unit to be assisted under the HCV program.

The HABC will only enter into a contractual relationship with the legal owner of a qualified unit.

13.1.E. NON-DISCRIMINATION [HAP Contract – Form HUD-52641]

The owner must not discriminate against any person because of race, color, religion, sex, national origin, age, familial status, or disability, in connection with any actions or responsibilities under the HCV program and the HAP contract with the HABC.

The owner must cooperate with the HABC 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 HABC.

See Chapter 2 for a more thorough discussion of Fair Housing and Equal Opportunity requirements in the HCV program.

Ch. 13 Section 2: HAP CONTRACTS

13.2.A. OVERVIEW

The HAP contract represents a written agreement between the HABC 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 HABC's obligations. Under the HAP contract, the HABC agrees to make housing assistance payments to the owner on behalf of a specific family occupying a specific unit.

The HAP contract is used for all HCV program tenancies except for assistance under the Section 8 homeownership program, and assistance to families that own a manufactured home and lease the space. See chapter 15 for a discussion of any special housing types included in the HABC's HCV program.

If the HABC has given approval for the family of the assisted tenancy, the owner and the HABC execute the HAP contract. See chapter 9 for a discussion of the leasing process, including provisions for execution of the HAP contract.

13.2.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 HABC and owner [HCV Guidebook, pp 11-10 and 11-11].

In general, the HAP contract cannot be modified. However, HABC does 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. HABC policy on the amount of security deposit an owner may collect is found in chapter 9.

In addition, housing authorities have the discretion to add language to Part A of the HAP contract that defines when the housing assistance payment by the HABC is deemed received by the owner (e.g., upon mailing by the HABC or actual receipt by the owner).

At this time HABC has not adopted a policy that defines when the housing assistance payment by the HABC 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
- HABC Payment to Owner
- Prohibition of Discrimination
- Owner's Breach of HAP Contract
- HABC 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 HABC. The owner must sign the HUD Tenancy Addendum with the prospective tenant, and the tenant has the right to enforce the Tenancy Addendum against the owner. The terms of the Tenancy Addendum prevail over any other provisions of the lease.

13.2.C. HAP CONTRACT PAYMENTS

General

During the term of the HAP contract, and subject to the provisions of the HAP contract, the HABC must make monthly HAP payments to the owner on behalf of the family, at the beginning of each month. If a lease term begins after the first of the month, the HAP payment for the first month is prorated for a partial month.

The amount of the HAP payment is determined according to the policies described in Chapter 6, and is subject to change during the term of the HAP contract. The HABC must notify the owner and the family in writing of any changes in the HAP payment.

HAP payments can be made only during the lease term, and only while the family is residing in the unit.

The monthly HAP payment by the HABC is credited toward the monthly rent to owner under the family's lease. The total of the rent paid by the tenant, plus the HABC 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 HABC is not responsible for payment of the family share of rent.

The family's share of the rent cannot be more than the difference between the total rent to the owner and the HAP payment. The owner may not demand or accept any rent payment from the tenant in excess of this maximum [24 CFR 982.451(b)(4)]. The owner may not charge the tenant extra amounts for items customarily included in rent in the locality, or provided at no additional cost to unsubsidized tenants in the premises [24 CFR 982.510(c)]. See chapter 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 HABC, the excess amount must be returned immediately. If the HABC determines that the owner is not entitled to all or a portion of the HAP, the HABC may deduct the amount of overpayment from any amounts due to the owner, including amounts due under any other Section 8 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 HABC, 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 HABC 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 HABC 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 HABC is not required to pay a late payment penalty if HUD determines that the payment is late for reasons beyond the HABC's control. In addition, late payment penalties are not

required if the HABC intentionally delays or denies payment as a remedy to an owner breach of the HAP contract [HCV Guidebook p. 11-7].

Termination of HAP Payments [24 CFR 982.311(b)]

The HABC must continue making housing assistance payments to the owner in accordance with the HAP contract if the tenant is in good standing and 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 HABC 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 HABC when the owner has initiated eviction proceedings against the family and the family continues to reside in the unit.

The owner must inform the HABC when the owner has obtained a court judgment or other process allowing the owner to evict the tenant, and provide the HABC 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 HABC will not continue to make HAP payments to the owner. The owner must inform the HABC of the date when the family must move from the unit or the court ordered lock out date.

13.2.D. BREACH OF HAP CONTRACT [24 CFR 982.453]

Any of the following actions by the owner constitutes a breach of the HAP contract:

- If the owner violates any obligations under the HAP contract including failure to maintain the unit in accordance with HQS
- If the owner has violated any obligation under any other HAP contract under Section 8
- If the owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program
- For projects with mortgages insured by HUD or loans made by HUD, if the owner has failed to comply with the regulations for the applicable program; or if the owner has committed fraud, bribery or any other corrupt or criminal act in connection with the mortgage or loan
- If the owner has engaged in drug-related criminal activity
- If the owner has committed any violent criminal activity

If the HABC determines that a breach of the HAP contract has occurred, it may exercise any of its rights and remedies under the HAP contract.

The HABC 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 HABC may also obtain additional relief by judicial order or action.

The HABC 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 HABC must provide the owner with written notice of any reduction in housing assistance payments or the termination of the HAP contract.

Before the HABC invokes a remedy against an owner, the HABC will evaluate all information and documents available to determine if the contract has been breached.

If relevant, the HABC 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 HABC will consider all 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.

13.2.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 HABC terminates the HAP contract;
- The HABC terminates assistance for the family;
- The family moves from the assisted unit. In this situation, the owner is entitled to keep the housing assistance payment for the month when the family moves out of the unit.
- 180 calendar days have elapsed since the HABC 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 HABC;
- The Annual Contributions Contract (ACC) between the HABC and HUD expires
- The HABC elects to terminate the HAP contract.

The HABC 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 13.2.D.

If the HABC terminates the HAP contract, the HABC 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 HABC gives written notice to the owner. The owner is not entitled to any housing assistance payment after this period and must return to the HABC 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].

13.2.F. CHANGE IN OWNERSHIP / ASSIGNMENT OF THE HAP CONTRACT [HUD-52641]

The HAP contract cannot be assigned to a new owner without the prior written consent of the HABC.

An owner under a HAP contract must notify the HABC in writing prior to a change in the legal ownership of the unit. The owner must supply all information as requested by the HABC.

Prior to approval of assignment to a new owner, the new owner must agree to be bound by and comply with the HAP contract. The agreement between the new owner and the former owner must be in writing and in a form that the HABC finds acceptable. The new owner must provide the HABC with a copy of the executed agreement.

Assignment of the HAP contract will be approved only if the new owner is qualified to become an owner under the HCV program according to the policies in Section 13.1.D. of this chapter.

The HABC must receive a signed, written request from the existing owner stating the name and address of the new HAP payee and the effective date of the assignment in order to change the HAP payee under an outstanding HAP contract.

Within 15 business days of receiving the owner's request, the HABC will inform the current owner in writing whether the assignment may take place.

The new owner must provide a written certification to the HABC that includes:

- A copy of the escrow statement or other document showing the transfer of title and recorded deed;
- A copy of the owner's IRS Form W-9, Request for Taxpayer Identification Number and Certification, or the social security number of the new owner;
- The effective date of the HAP contract assignment;
- A written agreement to comply with the terms of the HAP contract; and
- Confirmation that the new owner is not a prohibited relative.

If the new owner does not agree to an assignment of the HAP contract, or fails to provide the necessary documents, the HABC 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 HABC will process the leasing in accordance with the policies in Chapter 9.

13.2.G. FORECLOSURE [HUD-52641 and Notice PIH 2010-49]

Families receiving HCV assistance are entitled to certain protections set forth under the Protecting Tenants at Foreclosure Act (PTFA). Specifically, the HAP contract now contains language stating that in the case of any foreclosure, the immediate successor in interest in the property pursuant to the foreclosure will assume such interest subject to the lease between the prior owner and the tenant, and to the HAP contract between the prior owner and the HABC for the occupied unit. This provision of the HAP contract does not affect any state or local law that provides longer time periods or other additional protections for tenants.

If the HABC learns that a property is in foreclosure, it must take the following actions:

- Make all reasonable efforts to determine the status of the foreclosure and ownership of the property. (Further guidance on how to obtain this information can be found in Notice PIH 2010-49.)
- Continue to make payments to the original owner until ownership legally transfers in accordance with the HAP contract.
- Attempt to obtain a written acknowledgement of the assignment of the HAP contract from the successor in interest. The written agreement should include a request for owner information, such as a tax identification number, and payment instructions from the new owner. Even if the new owner does not acknowledge the assignment of the HAP contract in writing, the assignment is still effective by operation of law.
- Inform the tenant that they must continue to pay rent in accordance with the lease, and if the successor in interest refuses to accept payment or cannot be identified, the tenant should pay rent into escrow. Failure to pay rent may constitute an independent ground for eviction.
- Inform the tenant if the HABC is unable to make HAP payments to the successor in interest due to an action or inaction by the successor that prevents such payments (e.g., rejection of payments or failure to maintain the property according to HQS), or due to an inability to identify the successor. The HABC should also refer the tenant, as needed, to the local legal

aid office to ensure adequate protection of the tenant's rights and enforcement of the successor in interest's performance under the HAP contract.

- Make reasonable inquiries to determine whether the unit, in addition to having a tenant receiving HCV assistance, will be or has been assisted under the Neighborhood Stabilization Program (NSP). (For further guidance on cases in where the units have been assisted under the NSP, see Notice PIH 2010-49.)

HABC is also required to notify HCV applicants who have been issued a voucher, participant heads of household, and current and prospective owners of HCV-assisted housing of the protections afforded to tenants under the PTFA.

The HABC will provide all HCV applicants that have been issued a voucher with information regarding the PTFA at admission (see Section 5.1.B) and to participant heads of household at annual reexamination.

The HABC will provide information regarding the PTFA to participant heads of households and prospective owners as needed.

Note that the foreclosure provision of the HAP contract and additional tenant protections under the Protecting Tenants at Foreclosure Act will sunset December 31, 2014.

See Section 12.3.B for a discussion of foreclosure as it pertains to owner termination of tenancy.

Chapter 14: PROGRAM INTEGRITY

INTRODUCTION

The HABC is committed to ensuring that subsidy funds made available to the HABC are spent in accordance with HUD requirements.

This chapter covers HUD and HABC 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.

Section 1: Preventing, Detecting and Investigating Errors and Program Abuse. This part presents HABC policies related to preventing, detecting, and investigating errors and program abuse.

Section 2: Corrective Measures and Penalties. This part describes the corrective measures the HABC must and may take when errors or program abuses are found.

Ch. 14 Section 1: PREVENTING, DETECTING AND INVESTIGATING ERRORS AND PROGRAM ABUSE

14.1.A. PREVENTING ERRORS AND PROGRAM ABUSE

HUD created the Enterprise Income Verification (EIV) system to provide housing authorities with a powerful tool for preventing errors and program abuse.

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.

HABC is required to use the EIV system in its entirety in accordance with HUD administrative guidance [24 CFR 5.233]. HABC is further required to:

- Provide applicants and participants with form HUD-52675, “Debts Owed to HABCs and Terminations”
- Require all adult members of an applicant or participant family to acknowledge receipt of form HUD-52675 by signing a copy of the form for retention in the family file

The HABC anticipates that the vast majority of families, owners, and HABC employees intend to and will comply with program requirements and make reasonable efforts to avoid errors.

To ensure that the HABC’s HCV program is administered effectively and according to the highest ethical and legal standards, the HABC will employ a variety of techniques to ensure that both errors and intentional program abuse are rare.

- The HABC will discuss program compliance and integrity issues during the voucher briefing sessions described in Chapter 5.
- The HABC will provide each applicant and participant with a copy of “Is Fraud Worth It?” (form HUD-1141-OIG), which explains the types of actions a family must avoid and the penalties for program abuse.
- The HABC will provide each applicant and participant with a copy of “What You Should Know about EIV,” a guide to the Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH 2010-19. In addition, the HABC will require the head of each household to acknowledge receipt of the guide by signing a copy for retention in the family file.
- The HABC will place a warning statement about the penalties for fraud (as described in 18 U.S.C. 1001 and 1010) on key HABC forms and form letters that request information from a family or owner.
- HABC staff will be required to review and explain the contents of all HUD- and HABC-required forms prior to requesting family member signatures.

14.1.B. DETECTING ERRORS AND PROGRAM ABUSE

In addition to taking steps to prevent errors and program abuse, the HABC 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 the HABC 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 HABC will employ a variety of methods to detect errors and program abuse.

- The HABC routinely will use available sources of up-front income verification, including HUD's EIV system, 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 HABC will compare family-reported income and expenditures to detect possible unreported income.

Independent Audits and HUD Monitoring

OMB Circular A-133 requires all HABCs 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 HABC activities and notifies the HABC of errors and potential cases of program abuse.

The HABC will use the results reported in any independent audit or HUD monitoring reports to identify potential program abuses as well as to assess the effectiveness of the HABC's error detection and abuse prevention efforts.

Individual Reporting of Possible Errors and Program Abuse

The HABC encourages staff, program participants, and the public to report possible program abuse.

14.1.C. INVESTIGATING ERRORS AND PROGRAM ABUSE

When the HABC Will Investigate

The HABC will review all referrals, specific allegations, complaints, and tips from any source including other agencies, companies, and individuals, to determine if they warrant investigation. For the HABC 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 HABC 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 HABC may investigate possible instances of error or abuse using all available HABC and public records. If necessary, the HABC will require HCV families to give consent to the release of additional information.

Analysis and Findings

The HABC 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 HABC will determine (1) whether an error or program abuse has occurred, (2) whether any amount of money is owed the HABC, 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 HABC 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 HABC 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 HABC 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 HABC will inform the relevant party in writing of its findings and remedies within 10 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 HABC 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).

Ch. 14 Section 2: CORRECTIVE MEASURES AND PENALTIES

14.2.A. SUBSIDY UNDER- OR OVERPAYMENTS

A subsidy under- or overpayment includes (1) an incorrect housing assistance payment to the owner, (2) an incorrect family share established for the family, and (3) an incorrect utility reimbursement to a family.

Corrections

Whether the incorrect subsidy determination is an overpayment or underpayment of subsidy, the HABC must promptly correct the HAP, family share, and any utility reimbursement prospectively.

Increases in the family share will be implemented only after the family has received 30 days' notice.

Any decreases in family share will become effective the first of the month following the discovery of the error.

Reimbursement

Whether the family or owner is required to reimburse the HABC or the HABC 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.

14.2.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 HABC to use incorrect information provided by a third party.

Family Reimbursement to HABC [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 HABC 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 HABC will terminate the family's assistance in accordance with the policies in Chapter 12.

HABC Reimbursement to Family [HCV GB p. 22-12]

The HABC 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 HABC [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 HABC for rent, security deposit, and additional services

Offering bribes or illegal gratuities to the HABC Board of Commissioners, employees, contractors, or other HABC 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 HABC 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 HABC 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 HABC may, at its discretion, impose any of the following remedies.

- The HABC may require the family to repay excess subsidy amounts paid by the HABC, as described earlier in this section.
- The HABC 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 HABC may deny or terminate the family's assistance following the policies set forth in Chapter 3 and Chapter 12 respectively.
- The HABC may refer the family for state or federal criminal prosecution as described in section 14.2.E.

14.2.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 the HABC

In all cases of overpayment of subsidy caused by the owner, the owner must repay to the HABC any excess subsidy received. The HABC may recover overpaid amounts by withholding housing assistance payments due for subsequent months, or if the debt is large, the HABC 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 HABC will require the owner to repay the amount owed in accordance with the policies in Section 16.4.B.

Prohibited Owner Actions

An owner participating in the HCV program must not:

- Make any false statement to the HABC [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 HABC

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 HABC Board of Commissioners, employees, contractors, or other HABC representatives

Offering payments or other incentives to an HCV family as an inducement for the family to make false or misleading statements to the HABC

Residing in the unit with an assisted family

Remedies and Penalties

When the HABC determines that the owner has committed program abuse, the HABC 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 HABC programs.
- Refer the case to state or federal officials for criminal prosecution as described in section 14.2.E.

14.2.D. HABC-CAUSED ERRORS OR PROGRAM ABUSE

The responsibilities and expectations of HABC staff with respect to normal program administration are discussed throughout this plan. This section specifically addresses actions of a HABC staff member that are considered errors or program abuse related to the HCV program. Additional standards of conduct may be provided in the HABC personnel policy.

HABC-caused incorrect subsidy determinations include (1) failing to correctly apply HCV rules regarding family composition, income, assets, and expenses, (2) assigning the incorrect voucher size to a family, and (3) errors in calculation.

Repayment to the HABC

Neither a family nor an owner is required to repay an overpayment of subsidy if the error or program abuse is caused by HABC staff [HCV GB. 22-12].

HABC Reimbursement to Family or Owner

The HABC 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 HABC's administrative fee reserves [HCV GB p. 22-12].

Prohibited Activities

Any of the following will be considered evidence of program abuse by HABC 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 HABC
- Disclosing confidential or proprietary information to outside parties
- Gaining profit as a result of insider knowledge of HABC 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

14.2.E. CRIMINAL PROSECUTION

When the HABC determines that program abuse by an owner, family, or HABC staff member has occurred and the amount of overpaid subsidy meets or exceeds the threshold for prosecution under local or state law, the HABC 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.

14.2.F. FRAUD AND PROGRAM ABUSE RECOVERIES

The HABC may retain a portion of program fraud losses that the HABC recovers from a family or owner through litigation, court order, or a repayment agreement [24 CFR 982.163].

The HABC 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 HABC to retain the greater of:

- 50 percent of the amount it collects from a judgment, litigation (including settlement of a lawsuit) or an administrative repayment agreement, or
- Reasonable and necessary costs that the HABC 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 HABC related to the collection, these costs must be deducted from the amount retained by the HABC.

Chapter 15: SPECIAL HOUSING TYPES

INTRODUCTION

The HABC may permit a family to use any of the special housing types discussed in this chapter. However, the HABC is not required to permit families receiving assistance in its jurisdiction to use these housing types, except that HABC must permit use of any special housing type if needed as a reasonable accommodation for a person with a disability. The HABC also may limit the number of families who receive HCV assistance in these housing types and cannot require families to use a particular housing type. No special funding is provided for special housing types.

Families will be able to utilize the following special housing types: Single Room Occupancy, Congregate Housing, Group Homes, Shared Housing, Cooperative Housing, and Manufactured Homes.

HABC does not permit the use of Homeownership housing except if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities. It is the sole responsibility of the HABC to determine whether it is reasonable to implement a homeownership program as a reasonable accommodation. The HABC must determine what is reasonable based on the specific circumstances and individual needs of the person with a disability. The HABC may determine that it is not reasonable to offer homeownership assistance as a reasonable accommodation in cases where the HABC has otherwise opted not to implement a homeownership program.

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.

Section 1: Single Room Occupancy

Section 2: Congregate Housing

Section 3: Group Homes

Section 4: Shared Housing

Section 5: Cooperative Housing

Section 6: Manufactured Homes (including manufactured home space rental)

Section 7: Homeownership

Ch. 15 Section 1: SINGLE ROOM OCCUPANCY

15.1.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.

15.1.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 HABC'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.

15.1.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.

Ch. 15 Section 2: CONGREGATE HOUSING

15.2.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 HABC, a family member or live-in aide may reside with the elderly person or person with disabilities. The HABC 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.

15.2.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 HABC must use the payment standard for a 0-bedroom unit. If the unit has two or more rooms (other than the bathroom and the kitchen), the HABC 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.

15.2.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 for the residents, that is not provided by the residents themselves.

The housing quality standards applicable to lead-based paint do not apply.

Ch. 15 Section 3: GROUP HOME

15.3.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 HABC, a live-in aide may live in the group home with a person with disabilities. The HABC 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.

15.3.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 HABC'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 prorata share of the payment standard for the group home size. The prorata share is calculated by dividing the number of persons in the assisted household by the number of persons (assisted and unassisted) living in the group home.

The HAP for an assisted occupant in a group home is the lower of the payment standard minus the TTP or the gross rent minus the TTP.

The utility allowance for an assisted occupant in a group home is the prorata share of the utility allowance for the group home.

The rents paid for participants residing in group homes are subject to generally applicable standards for rent reasonableness. The rent for an assisted person must not exceed the prorata portion of the reasonable rent for the group home. In determining reasonable rent, the HABC should consider whether sanitary facilities and facilities for food preparation and service are common facilities or private facilities.

15.3.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.

Ch. 15 Section 4: SHARED HOUSING

15.4.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 HABC, a live-in aide may reside with the family to care for a person with disabilities. The HABC 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.

15.4.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 prorata share of the payment standard for the shared housing unit size.

The prorata share is calculated by dividing the number of bedrooms available for occupancy by the assisted family in the private space by the total number of bedrooms in the unit.

The HAP for a family in shared housing is the lower of the payment standard minus the TTP or the gross rent minus the TTP. The utility allowance for an assisted family living in shared housing is the prorata share of the utility allowance for the shared housing unit.

The rents paid for families living in shared housing are subject to generally applicable standards for rent reasonableness. The rent paid to the owner for the assisted family must not exceed the pro-rata portion of the reasonable rent for the shared unit. In determining reasonable rent, the HABC should consider whether sanitary and food preparation areas are private or shared.

15.4.C. HOUSING QUALITY STANDARDS

The HABC 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.

Ch. 15 Section 5: COOPERATIVE HOUSING

15.5.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.

15.5.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.

15.5.C. HOUSING QUALITY STANDARDS

All standard HQS requirements apply to cooperative housing units. There are no additional HQS requirements.

Ch. 15 Section 6: MANUFACTURED HOMES

15.6.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. **Regular Rental Assistance:** The family rents a manufactured home under the regular voucher program. There is no separate charge to the family for the home space- the rental of the unit covers both the manufactured housing unit and the space. PHAs must permit a family to lease a manufactured home and space with assistance under the program- this is not a special housing type. Other than having to meet the additional performance requirement and acceptability criteria for manufacture homes, all normal HCV program requirements apply to the family, owner and unit.
2. **Manufactured Home Space Rental Assistance:** The family owns the manufactured home but is renting the space under the manufactured home space rental special housing type. This is special housing under the HCV program. The remainder of this section addresses this category only except where specifically noted.

15.6.B. SPECIAL POLICIES

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.

Rent

The term rent used in the statute for manufactured housing space is expanded to include:

- a) The rent charged for the manufactured home space;
- b) Owner maintenance and management charges for the space the owner must provide under the lease;
- c) Monthly payments made by the family to amortize the cost of purchasing the manufactured home, including any required insurance and property taxes; and
- d) The applicable PHA utility allowances for tenant – paid utilities.

Loan Eligibility

To be eligible, the monthly loan payment must be for the original purchase of the home or a refinance of the original loan. Subsequent loans taken by the family are not included.

Debt service included in the original loan are included. Any increase in debt service due to

refinancing after purchase of the home are not included in the rent calculation. If the family has refinanced the PHA must compare the original loan to the refinance loan (principal and interest). If the original loan debt service amount is more than the current amount the current loan debt service amount will be used. If the original loan debt service amount is less than the current amount, the PHA must use the original loan debt service amount. The PHA will always use the current amounts for the insurance and property taxes.

If the loan covers taxes, insurance and mortgage insurance premium these amounts are included. If the family is paying the cost for home insurance and taxes directly to the insurance company or local government as opposed to the lender as part of the monthly loan payment, they are not included in the rent and HAP calculation.

Verification and Updates

The PHA will require documentation from the family to verify the family is currently making monthly loan payments for the purchase of the manufactured home and the amount of the monthly loan which includes any required insurance and property taxes that are part of the family's monthly loan payment to the lender.

The HABC will also require three most recent and consecutive monthly loan payment statements generated by the lender and the family's evidence (such as cancelled checks, bank statements, or credit card bills) of payment of the monthly loan amount.

If the family's monthly loan ends for any reason including but not limited to the items below, the PHA must adjust HAP to reflect the change in the "rent" and the change in the HAP must be effective immediately.

1. The term of the loan repayment comes to an end and the family has repaid the loan in full.
2. The family (or another party) chooses to pay off the remaining balance on the loan and repay the loan in full before the end of the term of the monthly scheduled loan payments.
3. The family has stopped making the scheduled monthly loan payments for any reason.

The family must promptly report to the PHA any change in the monthly loan amount (including changes resulting from the amount collected by the lender for property taxes and insurance) or if the family stops making the monthly loan payment, failure to do so is grounds for termination of assistance.

Payment Standard

The payment standard used to calculate the HAP for a manufactured home is the same payment standard that would be used for an ordinary rental of the same bedroom size under the HABC's HCV program.

The same rule that applies to the HCV program as a whole for determining bedroom size payment standard applies to manufactured home space rentals where the payment standard amount is the lower of:

- a) The voucher unit size
- b) The actual size of the manufactured home

Utility Allowance

The HABC 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 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.

If the owner of the space charges the family a separate fee for the cost of utilities or trash collection, they are not included in the rent to owner. The PHA will include the utilities paid by the tenant in the utility allowance calculation using the PHA established rate for the utilities instead of the actual fee charged by the owner.

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.

The HAP is paid directly to the owner of the manufactured home space or where the PHA exceeds the rent to the space owner, the HABC has the following options:

- i. The PHA may pay the entire remaining balance to the family,
- ii. The PHA may pay the remainder to either the lender, or utility supplier(s), or both. If any amount of the HAP remains the PHA must provide the remaining HAP amount to the family.
 - a. The HABC will make payment to the lender only if the lender is willing to accept the payment directly from the HABC. The lender has no right to any part of the HAP. The amount of HAP paid to the lender is limited to the amount of the monthly loan payment. The HABC will not make payments to utility supplier(s). Any remaining HAP will be paid directly to the family.

Rent Reasonableness

Initially, and annually thereafter the HABC must determine that the rent for the manufactured home space is reasonable based on rents for comparable manufactured home spaces. Rent reasonable review is required annually, unlike what normally applies for the HCV program which requires reviews only when there is an increase or change in the rent or utilities.

The HABC 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.

The PHA does not take into consideration the condition or characteristics of the manufactured home or the family's monthly loan payments. The PHA is only determining if the rent charged by the owner for the space is reasonable compared to similar spaces.

15.6.C. HOUSING QUALITY STANDARDS

Under either type of occupancy described in 15.6.A above, the manufactured home must meet all HQS performance requirements and acceptability criteria discussed in Chapter 8 of this plan. The family is responsible for all deficiencies of the manufactured home if it is owned by the family. 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.

Ch. 15 Section 7: HOMEOWNERSHIP

15.7.A. OVERVIEW [24 CFR 982.625]

The homeownership option is used to assist a family residing in a home purchased and owned by one or more members of the family. A family assisted under this option may be newly admitted or an existing participant in the HCV program. The HABC must have the capacity to operate a successful HCV homeownership program as defined by the regulations.

There are two forms of homeownership assistance a PHA may offer under this option: monthly homeownership assistance payments, or a single down payment assistance grant. Housing authorities may choose to offer either or both forms of homeownership assistance or choose not to offer either.

The HABC does not offer either form of homeownership assistance except if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities. It is the sole responsibility of the HABC to determine whether it is reasonable to implement a homeownership program as a reasonable accommodation. The HABC must determine what is reasonable based on the specific circumstances and individual needs of the person with a disability. The HABC may determine that it is not reasonable to offer homeownership assistance as a reasonable accommodation in cases where the HABC has otherwise opted not to implement a homeownership program.

15.7.B. FAMILY ELIGIBILITY [24 CFR 982.627]

The family must meet all the requirements listed below before the commencement of homeownership assistance. The HABC may also establish additional initial requirements if they are described in the HABC administrative plan.

- The family must have been admitted to the Housing Choice Voucher program.
- The family must qualify as a first-time homeowner or may be a cooperative member.
- 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 HABC may establish a higher income standard for families. However, a family that meets the federal minimum income requirement (but not the HABC'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 year before commencement of homeownership assistance for the family.
- 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 HABC must grant an exemption from the employment requirement if the HABC 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).

15.7.C. SELECTION OF FAMILIES [24 CFR 982.626]

Unless otherwise provided (under the homeownership option), the HABC may limit homeownership assistance to families or purposes defined by the HABC and may prescribe additional requirements for commencement of homeownership assistance for a family. Any such limits or additional requirements must be described in the HABC administrative plan.

If the HABC limits the number of families that may participate in the homeownership option, the HABC must establish a system by which to select families to participate.

15.7.D. ELIGIBLE UNITS [24 CFR 982.628]

For a unit to be eligible, the HABC must determine that the unit satisfies all the following requirements:

- 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 HABC and by an independent inspector designated by the family.
- The unit must meet Housing Quality Standards (see Chapter 8).
- For a unit where the family will not own fee title to the real property (such as a manufactured home), the home must have a permanent foundation and the family must have the right to occupy the site for at least 40 years.
- For HABC-owned units all the following conditions must be satisfied:
 - The HABC informs the family, both orally and in writing, that the family has the right to purchase any eligible unit and a HABC-owned unit is freely selected by the family without HABC pressure or steering;
 - The unit is not ineligible housing;
 - The HABC 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 HABC provided financing. These actions must be completed in accordance with program requirements.

The HABC must not approve the unit if the HABC has been informed that the seller is debarred, suspended, or subject to a limited denial of participation.

15.7.E. ADDITIONAL HABC REQUIREMENTS FOR SEARCH AND PURCHASE [24 CFR 982.629]

It is the family's responsibility to find a home that meets the criteria for voucher homeownership assistance. The HABC may establish the maximum time that will be allowed for a family to locate and purchase a home and may require the family to report on their progress in finding and purchasing a home. If the family is unable to purchase a home within the maximum time established by the HABC, the HABC may issue the family a voucher to lease a unit or place the family's name on the waiting list for a voucher.

15.7.F. HOMEOWNERSHIP COUNSELING [24 CFR 982.630]

Before commencement of homeownership assistance for a family, the family must attend and satisfactorily complete the pre-assistance homeownership and housing counseling program required by the HABC. HUD suggests the following topics for the HABC-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 HABC 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 HABC may adapt the subjects covered in pre-assistance counseling (as listed) to local circumstances and the needs of individual families.

The HABC may also offer additional counseling after commencement of homeownership assistance (ongoing counseling). If the HABC offers a program of ongoing counseling for participants in the homeownership option, the HABC shall have discretion to determine whether the family is required to participate in the ongoing counseling.

If the HABC does not use a HUD-approved housing counseling agency to provide the counseling, the HABC should ensure that its counseling program is consistent with the counseling provided under HUD's Housing Counseling program.

15.7.G. HOME INSPECTIONS, CONTRACT OF SALE, AND HABC DISAPPROVAL OF SELLER [24 CFR 982.631]

Home Inspections

The HABC may not commence monthly homeownership assistance payments or provide down payment assistance grants for a family until the HABC 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 HABC may not require the family to use an independent inspector selected by the HABC. The independent inspector may not be a HABC employee or contractor, or other person under

control of the HABC. However, the HABC may establish standards for qualification of inspectors selected by families under the homeownership option.

The HABC 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.

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 HABC 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 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 HABC may deny approval of a seller for the same reasons a HABC may disapprove an owner under the regular HCV program [see 24 CFR 982.306(c)].

15.7.H. FINANCING [24 CFR 982.632]

The HABC may establish requirements for financing purchase of a home under the homeownership option. 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 HABC must establish policies describing these requirements in the administrative plan.

A HABC may not require that families acquire financing from one or more specified lenders, thereby restricting the family's ability to secure favorable financing terms.

15.7.I. CONTINUED ASSISTANCE REQUIREMENTS; FAMILY OBLIGATIONS [24 CFR 982.633]

Homeownership assistance may only be paid while the family is residing in the home. If the family moves out of the home, the HABC may not continue homeownership assistance after the month when the family moves out. The family or lender is not required to refund to the HABC 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 HABC or HUD as specified in 24 CFR 982.551(b). The family must further supply any information required by the HABC or HUD concerning mortgage financing or refinancing, sale or transfer of any interest in the home, or homeownership expenses.
- The family must notify the HABC before moving out of the home.
- The family must notify the HABC if the family defaults on the mortgage used to purchase the home.
- 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).

15.7.J. MAXIMUM TERM OF HOMEOWNER ASSISTANCE [24 CFR 982.634]

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:

- Fifteen years, if the initial mortgage incurred to finance 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 HABCs, the total of such assistance terms is subject to the maximum term described in this part.

15.7.K. HOMEOWNERSHIP ASSISTANCE PAYMENTS AND HOMEOWNERSHIP EXPENSES [24 CFR 982.635]

The monthly homeownership assistance payment is the lower of: the voucher payment standard minus the total tenant payment, or the monthly homeownership expenses minus the total tenant payment.

In determining the amount of the homeownership assistance payment, the HABC will use the same payment standard schedule, payment standard amounts, and subsidy standards as those described in elsewhere in this plan for the Housing Choice Voucher program.

The HABC may pay the homeownership assistance payments directly to the family, or at the HABC's discretion, to a lender on behalf of the family. If the assistance payment exceeds the amount due to the lender, the HABC must pay the excess directly to the family.

Homeownership assistance for a family terminates automatically 180 calendar days after the last homeownership assistance payment on behalf of the family. However, a HABC may grant relief from this requirement in those cases where automatic termination would result in extreme hardship for the family.

The HABC must adopt policies for determining the amount of homeownership expenses to be allowed by the HABC in accordance with HUD requirements.

Homeownership expenses (not including cooperatives) only include amounts allowed by the HABC 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 HABC allowance for maintenance expenses;
- The HABC allowance for costs of major repairs and replacements;
- The HABC 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 HABC 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.

Homeownership expenses for a cooperative member may only include amounts allowed by the HABC 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 HABC allowance for maintenance expenses;
- The HABC allowance for costs of major repairs and replacements;
- The HABC 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 HABC 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.

15.7.L. PORTABILITY [24 CFR 982.636, 982.637, 982.353(b) and (c), 982.552, 982.553]

Subject to the restrictions on portability included in HUD regulations and HABC policies, a family may exercise portability if the receiving HABC is administering a voucher homeownership program and accepting new homeownership families. The receiving HABC may absorb the family into its voucher program, or bill the initial HABC.

The family must attend the briefing and counseling sessions required by the receiving HABC. The receiving HABC will determine whether the financing for, and the physical condition of the unit, are acceptable. The receiving HABC must promptly notify the initial HABC 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 HABC.

15.7.M. MOVING WITH CONTINUED ASSISTANCE [24 CFR 982.637]

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.

The HABC 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 HABC 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 HABC's policy regarding number of moves within a 12-month period.

The HABC 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.

15.7.N. DENIAL OR TERMINATION OF ASSISTANCE [24 CFR 982.638]

At any time, the HABC 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).

The HABC 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 HABC 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.

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:

Section 1: Administrative Fee Reserve. This part describes the HABC's policies regarding oversight of expenditures from its administrative fee reserve.

Section 2: 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.

Section 3: Informal Reviews and Hearings. This part outlines the requirements and procedures for informal reviews and hearings, and for informal hearings regarding citizenship status.

Section 4: Owner or Family Debts to the HABC. This part describes policies for recovery of monies that the HABC has overpaid on behalf of families, or to owners, and describes the circumstances under which the HABC will offer repayment agreements to owners and families. Also discussed are the consequences for failure to make payments in accordance with a repayment agreement.

Section 5: Section 8 Management Assessment Program (SEMAP). This part describes what the SEMAP scores represent, how they are established, and how those scores affect a HABC.

Section 6: Record-Keeping. All aspects of the program involve certain types of record-keeping. This part outlines the privacy rights of applicants and participants and record retention policies the HABC will follow.

Section 7: Reporting and Record Keeping for Children with Environmental Intervention Blood Lead Level. This part describes the HABC'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.

Section 8: Determination of Insufficient Funding. This part describes the HABC's policies for determining if there is sufficient funding to issue vouchers, to approve moves to higher cost units or areas, and to continue assistance for all participant families.

Section 9: Violence against Women Act (VAWA): Notification, Documentation, Confidentiality. This part contains key terms used in VAWA and describes requirements related to notifying families and owners about their rights and responsibilities under VAWA; requesting documentation from victims of domestic violence, dating violence, and stalking; and maintaining the confidentiality of information obtained from victims.

Ch. 16 Section 1: ADMINISTRATIVE FEE RESERVE

The HABC must maintain an administrative fee reserve for the program to pay program administrative expenses in excess of administrative fees paid by HUD for a HABC fiscal year. If funds in the administrative fee reserve are not needed to cover HABC administrative expenses, the HABC may use these funds for other housing purposes permitted by Federal, State and local law.

If the HABC has not adequately administered any Section 8 program, HUD may prohibit use of funds in the administrative fee reserve and may direct the HABC 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.

HUD requires the HABC Board of Commissioners or other authorized officials to establish the maximum amount that may be charged against the administrative fee reserve without specific approval.

Expenditures from the administrative fee reserve will be made in accordance with all applicable Federal requirements. In compliance with the bid threshold established by the State of New Jersey expenditures will not exceed \$17,500 per occurrence without the prior approval of the HABC's Board of Commissioners.

Ch. 16 Section 2: SETTING PROGRAM STANDARDS AND SCHEDULES

16.2.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 HABC to adapt the program to local conditions. This part discusses how the HABC 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 on our website www.habcnj.org or for review in the HABC'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 HABC will maintain documentation to support its annual review of payment standards and utility allowance schedules. This documentation will be retained for at least 3 years.

16.2.B. PAYMENT STANDARDS [24 CFR 982.503; HCV GB, Chapter 7]

The payment standard sets the maximum subsidy payment a family can receive from the HABC each month [24 CFR 982.505(a)]. Payment standards are based on fair market rents (FMRs) published annually by HUD. FMRs are set at a percentile within the rent distribution of standard quality rental housing units in each FMR area. For most jurisdictions FMRs are set at the 40th percentile of rents in the market area.

The HABC must establish a payment standard schedule that establishes payment standard amounts for each FMR area within the HABC's jurisdiction, and for each unit size within each of the FMR areas. For each unit size, the HABC may establish a single payment standard amount for the whole FMR area or may set different payment standards for different parts of the FMR area. Unless HUD grants an exception, the HABC is required to establish a payment standard within a "basic range" established by HUD – between 90 and 110 percent of the published FMR for each unit size.

Updating Payment Standards

When HUD updates its FMRs, the HABC must update its payment standards if the standards are no longer within the basic range [24 CFR 982.503(b)]. HUD may require the HABC to make further adjustments if it determines that rent burdens for assisted families in the HABC's jurisdiction are unacceptably high [24 CFR 982.503(g)].

The HABC will review the appropriateness of the payment standards on an annual basis when the new FMR is published. In addition to ensuring the payment standards are always within the

“basic range” the HABC will consider the following factors when determining whether an adjustment should be made to the payment standard schedule:

Funding Availability: The HABC 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 HABC 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 40 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 40 percent of adjusted monthly income as the family share, the HABC will consider increasing the payment standard. In evaluating rent burdens, the HABC will not include families renting a larger unit than their family unit size.

Quality of Units Selected: The HABC 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 HABC 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 HABC 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 HABC 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.

Exception Payment Standards [982.503(c)]

The HABC must request HUD approval to establish payment standards that are higher than the basic range. At HUD’s sole discretion, HUD may approve a payment standard amount that is higher than the basic range for a designated part of the FMR area. HUD may approve an exception payment standard amount (in accordance with program requirements) for all units, or for all units of a given size, leased by program families in the exception area. Any PHA with jurisdiction in the exception area may use the HUD-approved exception payment standard amount. The total population of all HUD-approved exception areas in an FMR area may not include more than 50 percent of the population of the FMR area.

Unit-by-Unit Exceptions [24 CFR 982.503(c)(2)(ii), 24 CFR 982.505(d), Notice PIH 2010-26]

Unit-by-unit exceptions to the HABC’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 HABC’s payment standard schedule.

When needed as a reasonable accommodation, the HABC may make an exception to the payment standard without HUD approval if the exception amount does not exceed 120 percent of the applicable FMR for the unit size [Notice PIH 2016-05].

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. To approve an exception, or request an exception from HUD, the HABC 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;
- The rent for the unit is reasonable; and
- The unit has features that meet the needs of a family member with disabilities.

"Success Rate" Payment Standard Amounts [24 CFR 982.503(e)]

If a substantial percentage of families have difficulty finding a suitable unit, the HABC may request a "success rate payment standard" that applies to the entire jurisdiction. If approved by HUD, a success rate payment standard allows the HABC to set its payment standards at 90-110 percent of a higher FMR (the 50th, rather than the 40th percentile FMR). To support the request, the HABC 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 HABC had established payment standards for all unit sizes, and for the entire jurisdiction, at 110 percent of the published FMR; and
- The HABC had a policy of allowing voucher holders who made sustained efforts to locate units at least 90 days to search for a unit.

Although HUD approves the success rate payment standard for all unit sizes in the FMR area, the HABC may choose to adjust the payment standard for only some unit sizes in all, or a designated part, of the HABC's jurisdiction within the FMR area.

Decreases in the Payment Standard Below the Basic Range [24 CFR 982.503(d)]

The HABC 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.

16.2.C. UTILITY ALLOWANCES [24 CFR 982.517]

A HABC-established utility allowance schedule is used in determining family share and HABC subsidy. The HABC 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 HABC must use normal patterns of consumption for the community 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 HABC 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 HABC 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 HABC has included an allowance for air-conditioning in its schedule. Central air-conditioning or a portable air conditioner must be present in a unit before the HABC will apply this allowance to a family's rent and subsidy calculations.

Reasonable Accommodation

HCV program regulations require a HABC to approve a utility allowance amount higher than shown on the HABC'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 HABC will approve an allowance for air-conditioning, even if the HABC 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 HABC must review its schedule of utility allowances each year, and must revise the schedule if there has been a change of 10 percent or more in any utility rate since the last time the allowance for that utility was revised.

The HABC must maintain information supporting its annual review of utility allowance and any revisions made in its utility allowance schedule.

Ch. 16 Section 3: INFORMAL REVIEWS AND HEARINGS

16.3.A. OVERVIEW

When the HABC 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.

HABC is required to include in the administrative plan, informal review procedures for applicants, and informal hearing procedures for participants [24 CFR 982.54(d) (12) and (13)].

16.3.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* 60, no. 127 (3 July 1995): 34690].

Decisions Subject to Informal Review

The HABC must give an applicant the opportunity for an informal review of a decision denying assistance [24 CFR 982.554(a)]. Denial of assistance may include any or all of the following [24 CFR 982.552(a)(2)]:

- Denying listing on the HABC 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 HABC;
- General policy issues or class grievances;
- A determination of the family unit size under the HABC subsidy standards;
- A HABC determination not to approve an extension or suspension of a voucher term;
- A HABC determination not to grant approval of the tenancy;
- A HABC determination that the unit is not in compliance with the HQS;
- A HABC determination that the unit is not in accordance with the HQS due to family size or composition;
- A HABC determination that a voucher expired.

The HABC will only offer an informal review to applicants for whom assistance is being denied. Denial of assistance includes: denying listing on the HABC waiting list; denying or withdrawing a voucher; refusing to enter into a HAP contract or approve a lease; refusing to process or provide assistance under portability procedures.

Notice to the Applicant [24 CFR 982.554(a)]

The HABC must give an applicant prompt notice of a decision denying assistance. The notice must contain a brief statement of the reasons for the HABC 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 HABC either in person or by first class mail, by the close of the business day, no later than 10 business days from the date of the HABC's notice of denial of assistance.

The HABC must schedule and send written notice of the informal review within 10 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 HABC.

Informal Review Decision [24 CFR 982.554(b)]

The HABC must notify the applicant of the HABC's final decision, including a brief statement of the reasons for the final decision.

In rendering a decision, the HABC 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 HABC 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 HABC will uphold the decision to deny assistance.
- If the facts prove the grounds for denial, and the denial is discretionary, the HABC will consider the recommendation of the person conducting the informal review in making the final decision whether to deny assistance.

The HABC will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed within 10 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.

16.3.C. INFORMAL HEARINGS FOR PARTICIPANTS [24 CFR 982.555]

HABC must offer an informal hearing for certain HABC determinations relating to the individual circumstances of a participant family. A participant is defined as a family that has been admitted to the HABC's HCV program and is currently assisted in the program. The purpose of the informal hearing is to consider whether the HABC's decisions related to the family's circumstances are in accordance with the law, HUD regulations and HABC policies.

The HABC 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 HABC 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 HABC utility allowance schedule;
- A determination of the family unit size under the HABC's subsidy standards;
- A determination to terminate assistance for a participant family because of the family's actions or failure to act;
- A determination to terminate assistance because the participant has been absent from the assisted unit for longer than the maximum period permitted under HABC policy and HUD rules;
- A determination to terminate a family's Family Self Sufficiency contract, withhold supportive services, or propose forfeiture of the family's escrow account [24 CFR 984.303(i)].

Circumstances for which an **informal hearing is not required** are as follows:

- Discretionary administrative determinations by the HABC;
- General policy issues or class grievances;
- Establishment of the HABC schedule of utility allowances for families in the program;
- A HABC determination not to approve an extension or suspension of a voucher term;
- A HABC determination not to approve a unit or tenancy;
- A HABC determination that an assisted unit is not in compliance with the HQS (a family will be provided the opportunity for an informal hearing for a decision to terminate assistance for a breach of the HQS caused by the family);
- A HABC determination that the unit is not in accordance with HQS because of family size;
- A determination by the HABC to exercise or not to exercise any right or remedy against an owner under a HAP contract;
- A HABC determination that the voucher has expired.

The HABC will only offer participants the opportunity for an informal hearing when required to in accordance with the program regulations applicable.

Where Public Housing units have been converted to PBV under RAD the regulation additionally stipulates that:

- (a) An opportunity for an informal hearing be given for any dispute that a resident may have with respect to a PHA (as owner) action in accordance with the individual's lease or the contract administrator in accordance with RAD PBV requirements that adversely affect the resident's rights, obligations, welfare, or status.
- (b) An informal hearing will not be required for class grievances or to disputes between residents not involving the PHA (as owner) or contract administrator. This hearing requirement is not intended and shall not apply as a forum for initiating or negotiating policy changes between a group or groups of residents and the PHA (as owner).
- (c) The PHA (as owner) will provide the opportunity for an informal hearing before an eviction.

Informal Hearing Procedures

Notice to the Family [24 CFR 982.555(c)]

When the HABC makes a decision that is subject to informal hearing procedures, the HABC 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 HABC must notify the family that they may ask for an explanation of the basis of the determination, and

that if they do not agree with the decision, they may request an informal hearing on the decision.

For decisions related to the termination of the family's assistance, or the denial of a family's request for an exception to the HABC's subsidy standards, the notice must contain a brief statement of the reasons for the decision, a statement that if the family does not agree with the decision, the family may request an informal hearing on the decision, and a statement of the deadline for the family to request an informal hearing.

In cases where the HABC 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 HABC.
- A brief statement of the reasons for the decision including the regulatory reference.
- The date the proposed action will take place.
- 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 HABC 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 HABC either in person or by first class mail, by the close of the business day, no later than 10 business days from the date of the HABC's decision or notice to terminate assistance.

The HABC will whenever possible schedule and send written notice of the informal hearing to the family within 15 business days of the family's request.

The family may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family. Requests to reschedule a hearing must be made orally or in writing prior to the hearing date. At its discretion, the HABC may request documentation of the "good cause" prior to rescheduling the hearing.

If the family does not appear at the scheduled time, and was unable to reschedule the hearing in advance due to the nature of the conflict, the family must contact the HABC within 24 hours of the scheduled hearing date, excluding weekends and holidays. The HABC 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. After failure to attend two scheduled hearings, the family will not be given another opportunity for a hearing and the HABC's original decision will stand.

If the HABC, with good effort, was not able to schedule a hearing within 45 days due to the families delay or those working on behalf of the family, the HABC will cease HAP payments until such time the informal hearing is held and if a decision to reinstate the subsidy is made.

Pre-Hearing Right to Discovery [24 CFR 982.555(e)]

Participants and the HABC are permitted pre-hearing discovery rights. The family must be given the opportunity to examine before the hearing any HABC documents that are directly relevant to the hearing. The family must be allowed to copy any such documents at their own expense. If the HABC does not make the document available for examination on request of the family, the HABC may not rely on the document at the hearing.

The HABC hearing procedures may provide that the HABC must be given the opportunity to examine at the HABC offices before the hearing, any family documents that are directly relevant to the hearing. The HABC must be allowed to copy any such document at the HABC's expense. If the family does not make the document available for examination on request of the HABC, the family may not rely on the document at the hearing.

For the purpose of informal hearings, *documents* include records and regulations.

The family will be allowed to copy any documents related to the hearing at a cost of \$.25 per page. The family must request discovery of HABC documents no later than 3 business days prior to the scheduled hearing date.

The HABC must be given an opportunity to examine at the HABC offices before the hearing any family documents that are directly relevant to the hearing. Whenever a participant requests an informal hearing, the HABC 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 one business day prior to the scheduled hearing date.

Participant's Right to Bring Counsel [24 CFR 982.555(e)(3)]

At its own expense, the family may be represented by a lawyer or other representative at the informal hearing.

Informal Hearing Officer [24 CFR 982.555(e)(4)]

Informal hearings will be conducted by a person or persons approved by the HABC, other than the person who made or approved the decision or a subordinate of the person who made or approved the decision.

Attendance at the Informal Hearing

Hearings may be attended by a hearing officer and the following applicable persons:

- A HABC representative(s) and any witnesses for the HABC
- The participant and any witnesses for the participant
- The participant's counsel or other representative

- Any other person approved by the HABC as a reasonable accommodation for a person with a disability

Conduct at Hearings

The person who conducts the hearing may regulate the conduct of the hearing in accordance with the HABC's hearing procedures [24 CFR 982.555(4)(ii)].

The hearing officer is responsible to manage the order of business and to ensure that hearings are conducted in a professional and businesslike manner. Attendees are expected to comply with all hearing procedures established by the hearing officer and guidelines for conduct. Any person demonstrating disruptive, abusive or otherwise inappropriate behavior will be excused from the hearing at the discretion of the hearing officer.

Evidence [24 CFR 982.555(e)(5)]

The HABC 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 HABC. Writings include all forms of recorded communication or representation, including letters, words, pictures, sounds, videotapes or symbols or combinations thereof.

Demonstrative evidence: Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a model, a chart or other diagram.

Real evidence: A tangible item relating directly to the case.

Hearsay Evidence 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 HABC 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:

- If the HABC adhered to regulation applicable to decision to terminate and hearing process.
- Evidence
- Validity of grounds for termination of assistance (when applicable).

The hearing officer will issue a written decision no later than 10 business days after the hearing. The report will contain the following information:

1. **Hearing information:**

- Name of the participant;
- Date, time and place of the hearing;
- Name of the hearing officer;
- Name of the HABC representative; and
- Name of family representative (if any).

2. **Background:** A brief, impartial statement of the reason for the hearing.

3. **Factual Determinations:** The hearing officer will include all finding 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.

4. **Conclusions:** The hearing officer will state briefly the reason for the decision and will render a conclusion derived from identified factual determinations. The hearing report will include a statement of whether the HABC's decision is upheld or overturned.

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 HABC will take effect and another hearing will not be granted.

The HABC is not bound by the decision of the hearing officer for matters in which the HABC 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 HABC determines it is not bound by the hearing officer's decision in accordance with HUD regulations, the HABC must promptly notify the family of the determination and the reason for the determination.

16.3.D. HEARING AND APPEAL PROVISIONS FOR NONCITIZENS [24 CFR 5.514]

Denial or termination of assistance based on immigration status is subject to special hearing and notice rules. Applicants who are denied assistance due to immigration status are entitled to an informal hearing, not an informal review.

Assistance to a family may not be delayed, denied, or terminated on the basis of immigration status at any time prior to a decision under the United States Citizenship and Immigration Services (USCIS) appeal process. Assistance to a family may not be terminated or denied while the HABC 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 HABC informal hearing process, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

Notice of Denial or Termination of Assistance [24 CFR 5.514(d)]

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 HABC 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 HABC receives notification that the USCIS secondary verification failed to confirm eligible immigration status, the HABC must notify the family of the results of the USCIS verification. The family will have 30 days from the date of the notification to request an appeal of the USCIS results. The request for appeal must be made by the family in writing directly to the USCIS. The family must provide the HABC with a copy of the written request for appeal and the proof of mailing.

The HABC will notify the family in writing of the results of the USCIS secondary verification within 10 business days of receiving the results.

The family must provide the HABC with a copy of the written request for appeal and proof of mailing within 10 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 HABC, of its decision. When the USCIS notifies the HABC of the decision, the HABC must notify the family of its right to request an informal hearing.

The HABC will send written notice to the family of its right to request an informal hearing within 10 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 HABC provide a hearing. The request for a hearing must be made either within 30 days of receipt of the HABC 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 HABC must provide an informal hearing before an impartial individual, other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision. ***Evidence***

The family must be provided the opportunity to examine and copy at the family's expense, at a reasonable time in advance of the hearing, any documents in the possession of the HABC pertaining to the family's eligibility status, or in the possession of the USCIS (as permitted by USCIS requirements), including any records and regulations that may be relevant to the hearing.

The family will be allowed to copy any documents related to the hearing at a cost of \$.25 per page. The family must request discovery of HABC documents no later than 3 business days 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 HABC, and to confront and cross-examine all witnesses on whose testimony or information the HABC 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 HABC, 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 HABC may but is not

required to provide a transcript of the hearing.

The HABC will not provide a transcript of an audio taped hearing.

Hearing Decision

The HABC must provide the family with a written final decision, based solely on the facts presented at the hearing, within 14 calendar days of the date of the informal hearing. The decision must state the basis for the decision.

Informal Hearing Procedures for Residents [24 CFR 5.514(f)]

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that the HABC provide a hearing. The request for a hearing must be made either within 30 days of receipt of the HABC 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 HABC must retain for a minimum of 5 years the following documents that may have been submitted to the HABC by the family, or provided to the HABC as part of the USCIS appeal or the HABC 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

Ch. 16 Section 4: OWNER OR FAMILY DEBTS TO THE HABC

16.4.A. OVERVIEW

PHAs are required to include in the administrative plan, policies concerning repayment by a family of amounts owed to the HABC [24 CFR 982.54]. This part describes the HABC's policies for recovery of monies owed to the HABC by families or owners.

When an action or inaction of an owner or participant results in the overpayment of housing assistance, the HABC holds the owner or participant liable to return any overpayments to the HABC.

The HABC 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 HABC, the HABC 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

16.4.B. REPAYMENT POLICY

Owner Debts to the HABC

Any amount due to the HABC by an owner must be repaid by the owner within 30 days of the HABC 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 HABC 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 HABC may, in its sole discretion, offer to enter into a repayment agreement on terms prescribed by the HABC.

If the owner refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, the HABC will ban the owner from future participation in the program and pursue other modes of collection.

Family Debts to the HABC

Any amount owed to the HABC by an HCV family must be repaid by the family. If the family is unable to repay the debt within 30 days, the HABC will offer to enter into a repayment agreement in accordance with the policies below.

If the family refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, the HABC will terminate assistance in accordance with the policies in Chapter 12 and pursue other modes of collection.

Repayment Agreement [24 CFR 792.103]

The term *repayment agreement* refers to a formal written document signed by a tenant or owner and provided to the HABC in which a tenant or owner acknowledges a debt in a specific amount and agrees to repay the amount due at specific time periods.

General Repayment Agreement Guidelines for Families

Payment

Repayment agreements will not exceed 12 months. If a family can provide evidence satisfactory to the HABC that the threshold applicable to the family's debt would impose an undue hardship, the HABC may, in its sole discretion, determine that a lower monthly payment amount over a longer term is reasonable. In making its determination, the HABC will consider all relevant information, including the following:

- The amount owed by the family to the HABC
- The reason for the debt, including whether the debt was the result of family action/inaction or circumstances beyond the family's control
- The family's current and potential income and expenses
- The family's current family share, as calculated under 24 CFR 982.515
- The family's history of meeting its financial responsibilities
- No prior history of repayment agreements/income discrepancies

Execution of the Agreement

Any repayment agreement between the HABC and a family must be signed and dated by the HABC and by the head of household and spouse/cohead (if applicable).

Due Dates

All payments are due by the close of business on the day specified in the repayment agreement. If the due date does not fall on a business day, the payment will be due by the close of business on the first business day after the due date.

Late or Missed Payments

If a payment is not received by the end of the business day on the date due, and prior approval for the missed payment has not been given by the HABC, the HABC will send the family a delinquency notice giving the family 10 business days to make the late payment. If the payment is not received by the due date of the delinquency notice, it will be considered a breach of the agreement and the HABC will terminate assistance in accordance with the policies in Chapter 12.

If a family receives three delinquency notices for unexcused late payments in a 12-month period, the repayment agreement will be considered in default, and the HABC will terminate assistance in accordance with the policies in Chapter 12.

No Offer of Repayment Agreement

The HABC will not enter into a repayment agreement with a family if there currently is already a repayment agreement or there has been a prior repayment agreement in place with the family or if the amount owed by the family exceeds \$5,000.00.

Participants who have had previous repayment agreements or the amount owed exceeds \$5,000.00 will be offered a thirty (30) day amnesty period, in which the total repayment of all debts owed must be received by the HABC. If the total debt is not received within the amnesty period, the HABC will terminate assistance.

Repayment Agreements Involving Improper Payments

Notice PIH 2010-19 requires certain provisions to be included in any repayment agreement involving amounts owed by a family because it underreported or failed to report income:

- A reference to the items in the family briefing packet that state the family's obligation to provide true and complete information at every reexamination and the grounds on which the HABC may terminate assistance because of a family's action or failure to act
- A statement clarifying that each month the family not only must pay to the HABC the monthly payment amount specified in the agreement but must also pay to the owner the family's monthly share of the rent to owner
- A statement that the terms of the repayment agreement may be renegotiated if the family's income decreases or increases
- A statement that late or missed payments constitute default of the repayment agreement and may result in termination of assistance

Ch. 16 Section 5: MANAGEMENT ASSESSMENT (SEMAP)

16.5.A. OVERVIEW

The Section 8 Management Assessment Program (SEMAP) is a tool that allows HUD to measure HABC 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 HABC 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 a PHAs 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].

16.5.B. SEMAP CERTIFICATION [24 CFR 985.101]

HABC 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 HABC board resolution and signed by the HABC executive director. If the HABC is a unit of local government or a state, a resolution approving the certification is not required, and the certification must be executed by the Section 8 program director.

Failure of HABC to submit its SEMAP certification within the required time frame will result in an overall performance rating of “troubled.”

HABC’s SEMAP certification is subject to HUD verification by an on-site confirmatory review at any time.

Upon receipt of the HABC’s SEMAP certification, HUD will rate the HABC’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 HABC 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 that data is insufficient to verify the HABC's certification on the indicator due to the HABC's failure to adequately report family data, HUD will assign a zero rating for the indicator [24 CFR 985.3].

16.5.C. SEMAP INDICATORS [24 CFR 985.3 and form HUD-52648]

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.

SEMAP Indicators
<p>Indicator 1: Selection from the waiting list Maximum Score: 15</p> <ul style="list-style-type: none"> • This indicator shows whether the HABC has written policies in its administrative plan for selecting applicants from the waiting list and whether the HABC 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 HABC's written policies, according to the HABC's quality control sample.
<p>Indicator 2: Rent reasonableness Maximum Score: 20</p> <ul style="list-style-type: none"> • This indicator shows whether the HABC 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 HABC follows its written method to determine reasonable rent and has documented its determination that the rent to owner is reasonable, according to the HABC's quality control sample.
<p>Indicator 3: Determination of adjusted income Maximum Score: 20</p> <ul style="list-style-type: none"> • This indicator measures whether the HABC 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 HABC's quality control sample.
<p>Indicator 4: Utility allowance schedule Maximum Score: 5</p> <ul style="list-style-type: none"> • This indicator shows whether the HABC maintains an up-to-date utility allowance schedule. • Points are based on whether the HABC has reviewed the utility allowance schedule and adjusted it when required, according to the HABC's certification.

Indicator 5: HQS quality control inspections**Maximum Score: 5**

- This indicator shows whether a HABC supervisor reinspects a sample of units under contract during the HABC fiscal year, which meets the minimum sample size requirements for quality control of HQS inspections.
- Points are based on whether the required quality control reinspections were completed, according to the HABC'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 HABC-approved extension.
- Points are based on whether the HABC corrects all HQS deficiencies in accordance with required time frames, according to the HABC's certification.

Indicator 7: Expanding housing opportunities**Maximum Points: 5**

- Applies to HABC since jurisdiction is in a metropolitan FMR area.
- This indicator shows whether the HABC 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 HABC'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 HABC has adopted and implemented written policies in accordance with SEMAP requirements, according to the HABC's certification.

Indicator 8: FMR limit and payment standards**Maximum Points: 5 points**

- This indicator shows whether the HABC has adopted a payment standard schedule that establishes payment standard amounts by unit size for each FMR area in the HABC's jurisdiction, that are within the basic range of 90 to 110 percent of the published FMR.
- Points are based on whether the HABC has appropriately adopted a payment standard schedule(s), according to the HABC's certification.

Indicator 9: Annual reexaminations**Maximum Points: 10**

- This indicator shows whether the HABC 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 HABC 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 HABC inspects each unit under contract at least biennially.
- 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 HABC 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 HABC fiscal year, or the percent of allocated budget authority that has been expended by the HABC, according to data from the HABC'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 HABCs with mandatory FSS programs.
- This indicator shows whether the HABC 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 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.

Deconcentration Bonus Indicator**Maximum Points: 5**

- Submission of data for this indicator is mandatory for a PHA 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 HABC 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 bonus points.

Ch. 16 Section 6: RECORD KEEPING

16.6.A. OVERVIEW

The HABC 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 HABC must ensure that all applicant and participant files are maintained in a way that protects an individual's privacy rights.

16.6.B. RECORD RETENTION [24 CFR 982.158]

During the term of each assisted lease, and for at least three years thereafter, the HABC must keep:

- A copy of the executed lease;
- The HAP contract; and
- The application from the family.

In addition, the HABC 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 HABC budget and financial statements for the program;
- Records to document the basis for HABC 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.

16.6.C. ELECTRONIC RECORDS MANAGEMENT

The State of New Jersey, by virtue of [Public Law 1994, Chapter 140](#), allows the replacement of public records with digital images. More specifically, housing documents such as inspection reports, recertification packages, tenant files, applicant background checks, income certifications, birth certificates, eviction notices, etc.

Digital records will be kept with DRS Imaging Services. DRS will provide the HABC with initial scanning services and hard document conversion to online file storage with secure access. Access to the database where the tenant files are stored will be limited to the staff assigned to handle the case files.

Electronic Signatures

The HABC will implement the optional use of electronic signatures on program documents as permitted by law.

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 HABC may release the information collected.

Upfront Income Verification (UIV) Records

HABC accesses UIV data through HUD's Enterprise Income Verification (EIV) System and is 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*.

Prior to utilizing HUD's EIV system, the HABC has adopted and has implemented EIV security procedures required by HUD.

Criminal Records

The HABC may only disclose the criminal conviction records to officers or employees of the HABC, or to authorized representatives of the HABC who have a job-related need to have access to the information [24 CFR 5.903(e)].

The HABC must establish and implement a system of records management that ensures that any criminal record received by the HABC 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 HABC

action without institution of a challenge or final disposition of any such litigation [24 CFR 5.903(g)].

The HABC must establish and implement a system of records management that ensures that any sex offender registration information received by the HABC 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 HABC action without institution of a challenge or final disposition of any such litigation. This requirement does not apply to information that is public information, or is obtained by a HABC other than under 24 CFR 5.905.

Medical/Disability Records

HABC is not permitted to inquire about the nature or extent of a person's disability. The HABC may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the HABC receives a verification document that provides such information, the HABC should not place this information in the tenant file. The HABC should destroy the document.

Documentation of Domestic Violence, Dating Violence, or Stalking

For requirements and HABC policies related to management of documentation obtained from victims of domestic violence, dating violence, sexual assault, or stalking, see section 16.9.E.

Ch. 16 Section 7: REPORTING AND RECORD KEEPING FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL

16.7.A. OVERVIEW

The HABC has certain responsibilities relative to children with environmental intervention blood lead levels that are receiving HCV assistance. The notification, verification, and hazard reduction requirements are discussed in Chapter 8. This part deals with the reporting requirements, and data collection and record keeping responsibilities that the HABC is subject to.

16.7.B. REPORTING REQUIREMENT [24 CFR 35.1225(e)]

The HABC must report the name and address of a child identified as having an environmental intervention blood lead level to the public health department within 5 business days of being so notified by any other medical health care professional.

The HABC will provide the public health department written notice of the name and address of any child identified as having an environmental intervention blood lead level.

Ch. 16 Section 8: DETERMINATION OF INSUFFICIENT FUNDING

16.8.A. OVERVIEW

The HCV regulations allow HABC 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 HABC's ability to issue vouchers to families on the waiting list. This part discusses the methodology the HABC will use to determine whether or not the HABC has sufficient funding to issue vouchers, approve moves, and to continue subsidizing all families currently under a HAP contract.

16.8.B. METHODOLOGY

The HABC 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 HABC'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 HABC 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 HABC cannot support the cost of the proposed subsidy commitment (voucher issuance or move) based on the funding analysis, the HABC will be considered to have insufficient funding.

If the HABC determines there is insufficient funding, prior to terminating any HAP contracts, the HABC will determine if any other actions can be taken to reduce program costs (see Chapter 12.1.E). If after implementing all reasonable cost cutting measures there is not enough funding available to provide continued assistance for current participants, the HABC will terminate HAP contracts. Prior to terminating any HAP contracts, the HABC will inform the local HUD field office and its financial analyst at the Financial Management Center. The HABC will terminate the minimum number needed in order to reduce HAP costs to a level within the HABC's annual budget authority.

If the HABC must terminate HAP contracts due to insufficient funding, the HABC will do so in accordance with the following criteria and instructions:

- Terminations will be determined by lottery.
- Terminations will continue in this manner until all budgetary limitations are satisfied.
- Families comprising the required number of special purpose vouchers, including nonelderly disabled (NED), HUD-Veteran's Affairs Supportive Housing (HUD-VASH), and family unification program (FUP) will be the last to be terminated.
- Project Based Vouchers will not be included in the lottery.

The HABC will make every effort to notify those families affected immediately and in writing. The HABC will provide a maximum of ninety-day notice of a termination and a minimum of thirty-day notice. The HABC will make every effort to provide the maximum notification time.

Should funding become available HABC will reinstate those terminated from the program in the same chronologic manner, with the first household terminated being the first to be re-instated, except that NED, MS5, HUD-VASH and FUP families must be issued vouchers first until the PHA is assisting its required number of special purpose vouchers.

Ch. 16 Section 9: VIOLENCE AGAINST WOMEN ACT (VAWA): NOTIFICATION, DOCUMENTATION, CONFIDENTIALITY

16.9.A. OVERVIEW

The Violence against Women Act and Department of Justice Reauthorization Act 2005 (VAWA) as amended provides protections for victims of domestic violence, dating violence, sexual assault, and stalking who are applicants or recipients of federally subsidized rental assistance under the United States Housing Act of 1937. If New Jersey state or local laws provide greater protection for such victims, those laws take precedence over VAWA.

Notwithstanding the title of the statute, protections are not limited to women but cover victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation.

Consistent with the nondiscrimination and equal opportunity requirements at 24 CFR 5.105(a), victims cannot be discriminated against on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD programs must also be operated consistently with HUD's Equal Access Rule at §5.105(a)(2), which requires that HUD-assisted and HUD-insured housing are made available to all otherwise eligible individuals and families regardless of actual or perceived sexual orientation, gender identity, or marital status

When there is conflict between the regulations of this section and the program-specific regulations, the program-specific regulations govern. Where assistance is provided under more than one covered housing program and there is a conflict between VAWA protections or remedies under those programs, the individual seeking the VAWA protections or remedies may choose to use the protections or remedies under any or all of those programs, as long as the protections or remedies would be feasible and permissible under each of the program statutes.

16.9.B. DEFINITIONS [24 CFR 5.2003]

As used in VAWA:

Actual and imminent threat refers to a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include: The duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur.

Affiliated individual with respect to an individual means:

1. A spouse, parent, brother, sister, or child of that individual, or a person to whom that individual stands in the place of a parent or guardian; or
2. Any individual, tenant, or lawful occupant living in the household of that individual.

Bifurcate means to divide a lease as a matter of law, subject to the permissibility of such process under the requirements of the applicable HUD-covered program and State or local law, such that certain tenants or lawful occupants can be evicted or removed and the remaining tenants or lawful occupants can continue to reside in the unit under the same lease requirements or as may be revised depending upon the eligibility for continued occupancy of the remaining tenants and lawful occupants.

Dating violence means violence committed by a person:

1. Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
2. Where the existence of such a relationship shall be determined based on a consideration of the following factors:
 - a. The length of the relationship;
 - b. The type of relationship; and
 - c. The frequency of interaction between the persons involved in the relationship.

Domestic violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner 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 or intimate partner, 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 "spouse or intimate partner of the victim" includes a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length and type of the relationship and the frequency of interaction.

Perpetrator means a person who commits an act of domestic violence, dating violence, sexual assault, or stalking against a victim.

Sexual assault means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.

Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

1. Fear for the person's individual safety or the safety of others; or
2. Suffer substantial emotional distress.

16.9.C. NOTIFICATION [24 CFR 5.2005(a)]

The HABC will post the following information regarding VAWA in its offices and on its Web site. It will also make the information readily available to anyone who requests it.

- A summary of the rights and protections provided by VAWA to housing choice voucher program applicants and participants who are or have been victims of domestic violence, dating violence, sexual assault, or stalking.

- The definitions of domestic violence, dating violence, sexual assault and stalking provided in VAWA.
- An explanation of the documentation that the HABC may require from an individual who claims the protections provided by VAWA.
- A copy of the HUD-approved certification form.
- A statement of the HABC’s confidentiality requirements and limitations.
- The Domestic Violence Hot Line: 1-800-572-7233 or 201-336-7575
- Contact information for local victim advocacy groups or service providers

The HABC shall provide participants with the Notice of Occupancy Rights (Form HUD 5380) at the time of voucher issuance and in conjunction with the annual recertification process. Applicants and property owners will also be provided with informational material concerning rights and obligations of occupancy created under VAWA, and the specific protections afforded victims of domestic violence, dating violence, sexual assault, or stalking.

16.9.D. ADMISSIONS AND SCREEING

Non-denial of assistance – The HABC will not deny admission to any person that is or has been a victim of domestic, dating violence, sexual assault, or stalking, provided that such person is otherwise qualified for such admission.

Mitigation of Disqualifying Information- When so requested in writing by an applicant for assistance whose history includes incidents in which the applicant was a victim of domestic violence, the HABC, may but shall not be obligated to, take such information into account in mitigation of potentially disqualifying information, such as poor credit history or previous damage to a dwelling. If requested by an applicant to take such mitigating information into account, the HABC shall be entitled to conduct such inquiries as are reasonably necessary to verify the claimed history of domestic violence and its probable relevance to the potentially disqualifying information. The HABC will not disregard or mitigate potentially disqualifying information if the applicant household includes a perpetrator of a previous incident(s) of domestic violence.

16.9.E. TERMINATION OF TENANCY OR ASSISTANCE

VAWA Protections

Under VAWA, residents and participants of federally subsidized rental assistance under the United States Housing Act of 1937 have the following specific protections, which will be observed by the HABC:

1. Applicants may not be denied assistance and participants may not have assistance terminated for factors resulting from the fact that the applicant or participant is or has been a victim of a VAWA crime.
2. An incident or incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking will not be considered to be a “serious or repeated” violation

of the lease by the victim or threatened victim of that violence and will not be good cause for terminating the tenancy or occupancy rights of the victim of that violence.

3. In addition to the foregoing, tenancy or assistance will not be terminated by the HABC as a result of criminal activity, if that criminal activity is directly related to domestic violence, dating violence, sexual assault, or stalking engaged by a member of the assisted household, a guest, or another person under the tenant's control, and the tenant or an immediate family member is the victim or threatened victim of this criminal activity. However, the protection against termination of tenancy or assistance described in this paragraph is subject to the following limitations:
 - a. Nothing contained in this paragraph shall limit any otherwise available authority of the HABC or a property owner to terminate tenancy, evict or terminate assistance, as the case may be, for any violation of a lease or program requirement not premised on the act or acts of domestic violence, dating violence, sexual assault, or stalking in question against the tenant or a member of the tenant's household. However, in taking any such action neither the HABC nor a property owner may apply a more demanding standard to the victim of domestic violence, dating violence, sexual assault, or stalking than that applied to other tenants.
 - b. Nothing contained in this paragraph shall be construed to limit the authority of the PHA or property owner to evict or terminate from assistance any tenant or lawful applicant if the owner or PHA, as the case may be, can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property, if the tenant is not evicted or terminated from assistance.

Removal of Perpetrator

Further notwithstanding anything under *VAWA Protections* or Federal, State or local law to the contrary, the PHA or property owner, as the case may be, may bifurcate a lease, or remove a household member from a lease, without regard to whether a household member is a signatory to a lease, in order to evict, remove, terminate occupancy rights, or terminate assistance to any individual who is a tenant or lawful occupant and who engages in acts of physical violence against family members or others. Such action against the perpetrator of such physical violence may be taken without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also the tenant or a lawful occupant. Such eviction, removal, termination of occupancy rights, or termination of assistance shall be effected in accordance with the procedures prescribed by law applicable to terminations of tenancy and evictions by the PHA. Leases used for all housing operated by HABC and, at the option of HCV owners or managers, leases for dwelling units occupied by families assisted with HCV administered by the HABC, shall contain provisions setting forth the substance of this paragraph.

If a housing provider bifurcates a lease under VAWA, any remaining tenants without established program eligibility must be given either the maximum time permitted by program statute to establish eligibility, or find alternative housing. If no statutory prohibition exists, at least 90 calendar days from the date of bifurcation or until expiration of the lease, depending on the program, must be provided.

16.9.F. DOCUMENTATION [24 CFR 5.2007]

If an applicant or tenant represents to the HABC that the individual is a victim of domestic violence, dating violence, sexual assault, or stalking entitled to the protections or remedies permitted under VAWA the HABC may request, in writing, that the individual making the claim submit the below documentation. The individual may satisfy the HABC's request by providing any one of the following forms of documentation [24 CFR 5.2007(b)]:

- (1) A written certification, on a form approved by the U.S. Department of Housing and Urban Development (HUD), certifying that the individual is a victim of domestic violence, dating violence, sexual assault, or stalking; and that the incident(s) in question are bona fide incidents of actual or threatened abuse meeting the requirements of the applicable definition(s) of VAWA crime set forth in this policy. The incident(s) in question must be described in reasonable detail as required in the HUD-approved form, and the completed certification must include the name of perpetrator; or
- (2) Documentation signed by the victim **and** by a victim service provider, an attorney, or medical or a mental health professional from whom the victim has sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse, described in such documentation. The professional must sign and attest under penalty of perjury (28 U.S.C. 1746) that the professional believes that the incident(s) in of domestic violence, dating violence, sexual assault, or stalking have occurred, meet the definitions of 24 CFR 5.2003 and are ground for protection and remedies under VAWA; or
- (3) A record of Federal, State, tribal, territorial, or local law enforcement agency, court, or administrative agency describing the incident(s).

The Executive Director or his/her designee may, with respect to any specific case, waive the above stated requirements for verification and provide the benefits of this policy based on the victim's self-certification or other corroborating evidence. Waiver in a particular instance(s) shall not operate as precedent for, or create any right to, waiver in any other case(s), regardless of similarity in circumstances.

Any request for documentation of domestic violence, dating violence, sexual assault or stalking will specify a deadline of 14 business days following receipt of the request, will describe the three forms of acceptable documentation, will provide explicit instructions on where and to whom the documentation must be submitted, and will state the consequences for failure to submit the documentation or request an extension in writing by the deadline. The HABC may, in its discretion, extend the deadline for 10 business days. Any extension granted by the HABC will be in writing.

Conflicting Documentation

If presented with conflicting information from members of the same household each claiming to be a victim and naming one or more of the other petitioning household members as the perpetrator, the HABC will require the submission of third-party documentation to document the occurrences of a VAWA crime within 30 calendar days of the date of the request for the third-party documentation.

Failure to Provide Documentation

In order to deny relief for protection under VAWA, a HABC must provide the individual requesting relief with a written request for documentation of abuse. If the individual fails to provide the documentation within the requested time, the HABC may deny relief for protection under VAWA.

16.9.G. CONFIDENTIALITY [24 CFR 5.2007]

All information provided to the HABC (including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking) in connection with a survivor's self-certification or other form of verification required under this policy, or provided in lieu of such verification where a waiver of verification is granted, shall be retained in confidence and shall neither be entered in any shared database nor provided to any related entity, except where disclosure is:

- (a) Requested or consented to by the individual in writing;
- (b) Required for use in eviction proceeding or connection with termination of HCV assistance, as permitted in VAWA; or
- (c) Otherwise required by law.

All applicants and tenants shall be notified in writing concerning their right to confidentiality and the limits on such rights. All information pertaining to the fact that an individual is a victim or domestic violence, dating violence, sexual assault, or stalking shall be maintained securely by the HABC.

16.9.H. EMERGENCY TRANSERS TO NEW RESIDENCE [24 CFR 5.2005(e)]

Application for Emergency Transfer

In situations that involve significant risk of violent harm to an individual as a result of previous incidents or threats of domestic violence, dating violence, sexual assault, or stalking, the HABC will, in an approved unit size is available at a location that may reduce the risk of harm, approve transfer by a program participant to a different unit in order to reduce the level of risk to the individual. A tenant who requests transfer must attest in such application that the requested transfer is necessary to protect the health or safety of the tenant or another member(s) of the household who is or was a victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believes that the tenant or other household member will be imminently threatened by harm from further violence if the individual remains in the present dwelling unit.

Action on Applications for Transfer

The HABC will act promptly upon such application. Requests for emergency transfers must comply with the applicable requirements of the Emergency Transfer Plan (see Exhibit 16-1.)

No Right to Transfer

The HABC will make every effort to accommodate requests for transfer when suitable alternative vacant units are available and the circumstances warrant such action. However,

except with respect to portability of HCV assistance as provided in *Portability* below the decision to grant or refuse to grant a transfer shall lie within the sole discretion of the PHA, and this policy does not create any right on the part of an applicant to be granted a transfer.

Family Rent Obligations

If a family occupying HABC owned housing moves before the expiration of the lease term to protect the health or safety of a household member, the family will remain liable for the rent during the remainder of the lease term unless released by the PHA. In cases where the PHA determines that the family's decision to move was reasonable under the circumstances, the HABC may wholly or partially waive rent payments and any rent owed shall be reduced by the amounts of rent collected for the remaining lease term from a tenant subsequently occupying the unit.

Portability

A HCV tenant will not be denied portability to a unit located in another jurisdiction (regardless of the term of the tenant's existing lease has not expired, or the family has not occupied the unit for 12 months) so long as the tenant has complied with all other requirements of the HCV program and has moved from the unit in order to protect the health or safety of an individual member of the household who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believes there is a threat of imminent harm from further violence if the tenant remains within the same dwelling unit that the tenant is currently occupying.

CH. 16: EXHIBITS

EXHIBIT 16-1: EMERGENCY TRANSFER PLAN

The Housing Authority of Bergen County (HABC) is concerned about the safety of tenants under its subsidized programs, and such concerns extends to tenants under such programs who are victims of domestic violence, dating violence, sexual assault, or stalking. In accord with the Violence Against Women Act, HABC allows its program participants who are victims of VAWA crimes to request emergency transfer from their current dwelling unit to another PHA owned housing unit or HCV assisted rental unit. The ability to request a transfer is available regardless of sex, gender identity, or sexual orientation. The ability of the HABC to honor such request for PHA owned property residents and HCV recipients may depend upon a preliminary determination that the tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, and on whether the HABC has another dwelling unit that is available and is safe to offer the tenant for temporary or permanent occupancy.

This plan identifies program recipients who are eligible for emergency transfer, the documentation needed to request an emergency transfer, confidentiality protections, how an emergency transfer may occur, and guidance to program recipients on safety and security. This plan is based on a model emergency transfer plan published by the U.S. Department of HUD.

Eligibility for Emergency Transfer

A program participant who is a victim of domestic violence, dating violence, sexual assault, or stalking, as provided in HUD's regulations at 24 CFR part 5, subpart L is eligible for an emergency transfer if: The tenant reasonably believes that there is a threat of imminent harm from further violence in the individual remains within the same dwelling unit. If the program participant is a victim of sexual assault, they may also be eligible if the sexual assault occurred on the premises during the 90 calendar-day period preceding a request for an emergency transfer.

A program participant requesting an emergency transfer must expressly request the transfer in accordance with the procedures described in this plan. Program participants who are not in good standing with the HABC may still request an emergency transfer if they meet the eligibility requirements set forth in this plan.

Emergency Transfer Request Documentation

To request an emergency transfer, the program participant shall notify the HABC management office and submit a written request for a transfer. The HABC will provide reasonable accommodation to this policy for individuals with disabilities in accordance with the HABC policies on reasonable accommodations.

The written request for an emergency transfer should include either:

1. A statement expressing that the program participant reasonably believes that there is a threat of imminent harm from further violence if the tenant remains within the same dwelling unit that the tenant is currently occupying; or
2. A statement that the tenant was a sexual assault victim and that the sexual assault occurred on the premises during the 90-calendar day period preceding the date of the request for transfer.

Confidentiality

The HABC will keep confidential any information submitted in request with an emergency transfer, and information about the emergency transfer, unless the individual gives the HABC written permission to release the information on a limited basis or disclosure of the information is required by law or required for use in an eviction preceding or in connection with termination of assistance from the covered program. This includes keeping confidential the location of the new dwelling unit of the victim, if one is provided, from the perpetrator that committed an act of domestic violence, dating violence, sexual assault, or stalking against the recipient. See the Notice of Occupancy Rights under the Violence Against Women Act for All Tenants for more information about the PHA's responsibility to maintain the confidentiality of information related to incidents of domestic violence, dating violence, sexual assault, or stalking.

Emergency Transfer Timing and Availability

The HABC cannot guarantee that a transfer request will be approved or how long it will take to process a transfer request. The HABC will, however, act as quickly as possible to move a program participant who is a victim of domestic violence, dating violence, sexual assault, or stalking to another unit, subject to availability and safety of a unit. If a program participant reasonably believes a proposed transfer would not be safe, the participant may request a transfer to a different unit.

If a unit is available, the transferred participant must agree to abide by the terms and conditions that govern occupancy in the unit to which the tenant has been transferred. The HABC may be unable to transfer a participant to a particular unit if the participant has not or cannot establish eligibility for that unit.

If the HABC has no safe and available units for which the participant is eligible, the HABC will assist the participant in identifying other housing providers who may have safe and available units to which the participant could move. On request, the HABC will also assist participants in contacting local and state organizations offering assistance to a victim of domestic violence, dating violence, sexual assault, or stalking.

Safety and Security of Tenants

Pending processing of the transfer and actual transfer, if it is approved and occurs, the participant is urged to take all reasonable precautions to be safe.

Chapter 17: PROJECT-BASED VOUCHERS

INTRODUCTION

This chapter describes HUD regulations and HABC policies related to the project-based voucher (PBV) program in nine parts:

Section 1: General Requirements. This part describes general provisions of the PBV program including maximum budget authority requirements, relocation requirements, and equal opportunity requirements.

Section 2: PBV Owner Proposals. This part includes policies related to the submission and selection of owner proposals for PBV assistance. It describes the factors the HABC 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.

Section 3: Dwelling Units. This part describes requirements related to housing quality standards, the type and frequency of inspections, and housing accessibility for persons with disabilities.

Section 4: 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.

Section 5: 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 HABC's discretion.

Section 6: Selection of PBV Program Participants. This part describes the requirements and policies governing how the HABC and the owner will select a family to receive PBV assistance.

Section 7: 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.

Section 8: 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.

Section 9: Payments to Owner. This part describes the types of payments owners may receive under this program.

Ch. 17 Section 1: GENERAL REQUIREMENTS

17.1.A. OVERVIEW [24 CFR 983.5]

The project-based voucher (PBV) program allows housing authorities that already administer a tenant-based voucher program under an annual contributions contract (ACC) with HUD to take up to 20 percent of its voucher program budget authority and attach the funding to specific units rather than using it for tenant-based assistance [24 CFR 983.6]. HABC may only operate a PBV program if doing so is consistent with the HABC's Annual Plan, and the goal of deconcentrating poverty and expanding housing and economic opportunities [42 U.S.C. 1437f(o)(13)].

The HABC operates a project-based voucher program. The HABC may use up to 20 percent of its budget authority for project-based assistance.

PBV assistance may be attached to existing housing or newly constructed or rehabilitated housing [24 CFR 983.52]. The HABC 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]. However, 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 HABC is not required to reduce the number of these units if the amount of budget authority is subsequently reduced.

17.1.B. TENANT-BASED VS. PROJECT-BASED VOUCHER ASSISTANCE [24 CFR 983.2]

Much of the tenant-based voucher program regulations also apply to the PBV program. Consequently, many of the HABC policies related to tenant-based assistance also apply to PBV assistance. The provisions of the tenant-based voucher regulations that do not apply to the PBV program are listed at 24 CFR 983.2.

Except as otherwise noted in this chapter, or unless specifically prohibited by PBV program regulations, the HABC policies for the tenant-based voucher program contained in this administrative plan also apply to the PBV program and its participants.

17.1.C. RELOCATION REQUIREMENTS [24 CFR 983.7]

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.

The cost of required relocation assistance may be paid with funds provided by the owner, local public funds, or funds available from other sources. HABC may not use voucher program funds to cover relocation costs, except that HABC 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 HABC to ensure the owner complies with these requirements.

17.1.D. EQUAL OPPORTUNITY REQUIREMENTS [24 CFR 983.8]

The HABC must comply with all equal opportunity requirements under federal law and regulations in its implementation of the PBV program. This includes the requirements and authorities cited at 24 CFR 5.105(a). In addition, the HABC must comply with the HABC Plan certification on civil rights and affirmatively furthering fair housing, submitted in accordance with 24 CFR 903.7(o).

17.1.E. INTENT TO PROJECT BASE [24 CFR 983.6(d)]

In order to improve oversight and monitoring of the statutory 20 percent limitation requirement, the Final Rule Implementing Changes Pursuant to the Housing and Economic Recovery Act (HERA) of 2008 79 Fed. Reg. 36146 (June 25, 2014) effective July 25, 2014, requires the PHA to provide advance notice to the HUD field office of its intent to project-base vouchers. In addition to notifying the HUD field office of its intent, the PHA must submit some basic information to the HUD field office for review. The information is designed to demonstrate that the PHA has sufficient BA available to carry-out its planned project-basing activity while remaining in compliance with the 20 percent cap.

The PHA submits:

- The total amount of annual budget authority;
- The percentage of annual budget authority available to be project-based; and
- The total amount of annual budget authority the PHA is planning to project-base pursuant to the selection and the number of units that such budget authority will support.

The information should be submitted to HUD no later than 14 calendar days prior to the date that the PHA intends to issue the Request for Proposals or make a selection based on a previous competition in accordance with 24 CFR §983.51(b). The PHA submits the required information electronically to the HUD field office by sending an email to: pbvsubmission@hud.gov. The PHA must also copy the relevant local HUD Office of Public Housing (PH) Director on its email submission.

The subject line of the e-mail must include the PHA number (e.g., PA195). The body of the email must clearly identify each of the three submission items. The email must also identify the PHA representative that the HUD field office should contact if HUD has any questions regarding the PHA submission, and the contact information for that PHA representative. A suggested format and an example email are provided as Attachment A in Notice PIH-2015-05(HA). HUD will reply to the PHA's email promptly to notify the PHA if:

- HUD determines the PHA is unable to proceed with its plans to project-base because the 20 percent limitation will be exceeded;
- If there is a material error in the PHA's calculations;
- If there is a need for additional information or any other issue with the PHA's submission that must be addressed; or
- If the 20 percent limit is not exceeded (this acknowledgement does not imply any other HUD approval).

The information that the PHA is required to submit under 24 CFR §983.6(d) is a simplified calculation that uses the PHA's annual budget authority (ABA) to demonstrate the PHA has sufficient budget authority to fulfill its PBV plans and remain under the 20 percent limit.

Ch. 17 Section 2: PBV OWNER PROPOSALS

17.2.A. OVERVIEW

The HABC must describe the procedures for owner submission of PBV proposals and for HABC selection of PBV proposals [24 CFR 983.51]. Before selecting a PBV proposal, the HABC 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 project [24 CFR 983.56, FR Notice 11/24/08], and meets the site selection standards [24 CFR 983.57]. The HABC may not commit PBVs until or unless it has followed the proposal selection requirements defined in 24 CFR 983.51 [Notice PIH 2011-54].

17.2.B. OWNER PROPOSAL SELECTION PROCEDURES [24 CFR 983.51(b)]

The HABC must select PBV proposals in accordance with the selection procedures in this HABC administrative plan. The HABC will select PBV proposals by either of the following methods.

- HABC request for PBV Proposals. The HABC may solicit proposals by using a request for proposals to select proposals on a competitive basis in response to an HABC request. The HABC 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 HABC 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(c)]

HABC procedures for selecting PBV proposals must be designed and actually operated to provide broad public notice of the opportunity to offer PBV proposals for consideration by the HABC. The public notice procedures may include publication of the public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice. The public notice of the HABC request for PBV proposals must specify the submission deadline. Detailed application and selection information must be provided at the request of interested parties.

HABC Request for Proposals for Rehabilitated and Newly Constructed Units

The HABC will advertise its request for proposals (RFP) for rehabilitated and newly constructed housing in the *Record*, a newspaper of general circulation.

In addition, the HABC will post the RFP and proposal submission and rating and ranking procedures on its web site.

The HABC will publish its advertisement in the newspaper at least 30 days before proposal due date. The advertisement will specify the number of units the HABC estimates that it will be able to assist under the funding the HABC is making available. Proposals will be due in the HABC office by close of business 30 calendar days from the date of the last publication.

In order for the proposal to be considered, the owner must submit the proposal to the HABC 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 HABC will rate and rank proposals for rehabilitated and newly constructed housing using the following criteria:

Owner/Developer experience and capability to build or rehabilitate housing as identified in the RFP;

Extent to which the project furthers the HABC goal of deconcentrating 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 HABC will rate partially assisted projects on the percent of units assisted. Projects with the lowest percent of assisted units will receive the highest score.

HABC Requests for Proposals for Existing Housing Units

The HABC will advertise its request for proposals (RFP) for existing housing in the *Record* newspaper.

In addition, the HABC will post the notice inviting such proposal submission and the rating and ranking procedures on its web site.

The HABC will periodically publish its advertisement in the *Record* newspaper mentioned above for at least one day thirty (30) days before proposals are due. The advertisement will specify the number of units the HABC estimates that it will be able to assist under the funding the HABC is making available.

The HABC will rate and rank proposals for existing housing 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 HABC goal of deconcentrating 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.

HABC Selection of Proposals Subject to a Previous Competition under a Federal, State, or Local Housing Assistance Program

The HABC will accept proposals for PBV assistance 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 on an ongoing basis.

The HABC may periodically advertise that it is accepting proposals. HABC will advertise in the *Record* newspaper.

In addition to, or in place of advertising, the HABC 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.

The HABC will rate, rank and evaluate each proposal on its merits using the following factors:

- Extent to which the project furthers the HABC goal of deconcentrating 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.

HABC-owned Units [24 CFR 983.51(e) and 983.59]

In accordance with 24 CFR §983.3, PHA-owned, for purposes of the PBV program means that the PHA or its officers, employees, or agents or in an entity that holds any such direct or indirect interest in the building, including, but not limited to an interest as:

- Titleholder
- Lessee
- A stockholder
- A member, or general or limited partner,
- A member of a limited liability corporation.

If a PHA, its officers, employees or agents possess any interest in the building, the PBV project or building is considered PHA-owned and must comply with all statutory, regulatory, and any other HUD requirements governing PHA-owned units.

An HABC-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 HABC-owned units were appropriately selected based on the selection procedures specified in the HABC administrative plan. If the HABC selects a proposal for housing that is owned or controlled by the HABC, the HABC must identify the entity that will review the HABC proposal

selection process and perform specific functions with respect to rent determinations and inspections. The independent entity that performs these program services may be the unit of general local government for the PHA jurisdiction (unless the PHA is itself the unit of general local government or an agency of such government) or another HUD- approved public or private independent entity.

In the case of HABC-owned units, housing quality standards inspections and determination of reasonable rent must be conducted by an independent entity.

The HABC may submit a proposal for project-based housing that is owned or controlled by the HABC. If the proposal for HABC-owned housing is selected, the HABC will use an independent application review panel appointed by the Executive Director to review, evaluate, rank and select proposals for the PBV program. The HABC will obtain HUD approval of the U.S. Department of Housing and Urban Development (HUD) Office of Public and Indian Housing Newark Field Office prior to selecting the proposal for HABC-owned housing.

The HABC may only compensate the independent entity from HABC ongoing administrative fee income (including amounts credited to the administrative fee reserve). The HABC may not use other program receipts to compensate the independent entity for their services. The HABC and independent entity may not charge the family any fee for the services provided by the independent entity.

HABC Notice of Owner Selection [24 CFR 983.51(d)]

Within 10 business days of the HABC making the selection, the HABC will notify the selected owner in writing of the owner's selection for the PBV program. The HABC 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 HABC will publish its notice for selection of PBV proposals for two consecutive days in the same newspaper the HABC used to solicit the proposals. The announcement will include the name of the owner that was selected for the PBV program. The HABC will also post the notice of owner selection on its electronic web site.

The HABC will make available to any interested party its rating and ranking sheets and documents that identify the HABC 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 HABC will not make available sensitive owner information that is privileged, such as financial statements and similar information about the owner.

The HABC will make these documents available for review at the HABC during normal business hours. The cost for reproduction of allowable documents will be \$.25 per page.

17.2.C. HOUSING TYPE [24 CFR 983.52]

The HABC 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. A housing unit is considered an existing unit for purposes of the PBV program, if, at the time of notice of HABC 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 HABC must decide what housing type, new construction, rehabilitation, or existing housing, will be used to develop project-based housing. The HABC choice of housing type must be reflected in its solicitation for proposals.

17.2.D. PROHIBITION OF ASSISTANCE FOR CERTAIN UNITS

Ineligible Housing Types [24 CFR 983.53]

The HABC 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; and transitional housing. In addition, the HABC may not attach or pay PBV assistance for a unit occupied by an owner and the HABC 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.

Subsidized Housing [24 CFR 983.54]

A HABC 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 Section 8 assistance;
- A unit subsidized with any governmental rent subsidy;
- A unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing;
- A unit subsidized with Section 236 rental assistance payments (except that a HABC 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 HABC in accordance with HUD requirements.

17.2.E. SUBSIDY LAYERING REQUIREMENTS

[24 CFR 983.55, FR Notice 11/24/08, and FR Notice 7/9/10]

The HABC may provide PBV assistance only in accordance with HUD subsidy layering regulations [24 CFR 4.13] and other requirements.

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 HABC must submit the necessary documentation to HUD for a subsidy layering review. Except in cases of HAP contracts for existing structures, or if such reviews have been conducted by the applicable state and local agencies (defined by HUD as qualified housing credit agencies, or HCAs), the HABC 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. However, in order to satisfy applicable requirements, HCAs must conduct subsidy layering reviews in compliance with the guidelines set forth in the *Federal Register* notice published July 9, 2010.

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.

17.2.F. CAP ON NUMBER OF PBV UNITS IN EACH PROJECT

25 Percent per Project Cap [24 CFR 983.56(a), FR Notice 11/24/08]

In general, the HABC may not select a proposal to provide PBV assistance for units in a project or enter into an agreement to enter into a HAP or a HAP contract to provide PBV assistance for units in a project, if the total number of dwelling units in the project that will receive PBV assistance during the term of the PBV HAP contract is more than 25 percent of the number of dwelling units (assisted or unassisted) in the project.

Exceptions to 25 Percent per Project Cap [24 CFR 983.56(b), FR Notice 11/24/08]

Exceptions are allowed and PBV units are not counted against the 25 percent per project 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 disabled families or families receiving supportive services (also known as *qualifying families*).

HABC will not require families living in excepted units to receive supportive services. Therefore, excepted units will be limited to units in single-family buildings and those made available for elderly or disabled families.

Promoting Partially-Assisted Buildings [24 CFR 983.56(c)]

HABC 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].

HABC 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. HABC may also determine not to provide PBV assistance for excepted units, or the HABC may establish a per-building cap of less than 25 percent.

As a policy, the HABC will not provide assistance for excepted units. Beyond that, the HABC will not impose any further cap on the number of PBV units assisted per building.

17.2.G. SITE SELECTION STANDARDS

Compliance with PBV Goals, Civil Rights Requirements, and HQS Site Standards [24 CFR 983.57(b)]

The HABC 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 HABC has determined that PBV assistance for housing at the selected site is consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities. The standard for deconcentrating poverty and expanding housing and economic opportunities must be consistent with the HABC Plan under 24 CFR 903 and the HABC administrative plan.

In addition, prior to selecting a proposal, the HABC 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 HABC goal to select sites for PBV housing that provide for deconcentrating poverty and expanding housing and economic opportunities. In complying with this goal the HABC will limit approval of sites for PBV housing in census tracts that have poverty concentrations of 20 percent or less.

However, the HABC will grant exceptions to the 20 percent standard where the HABC determines that the PBV assistance will complement other local redevelopment activities designed to deconcentrate 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.

Existing and Rehabilitated Housing Site and Neighborhood Standards [24 CFR 983.57(d)]

The HABC 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 HABC 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.

17.2.H. ENVIRONMENTAL REVIEW [24 CFR 983.58]

The HABC activities under the PBV program are subject to HUD environmental regulations in 24 CFR parts 50 and 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 HABC 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 HABC may not enter into an agreement to enter into a HAP contract or a HAP contract with an owner, and the HABC, 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 HABC must supply all available, relevant information necessary for the responsible entity to perform any required environmental review for any site. The HABC 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.

Ch. 17 Section 3: DWELLING UNITS

17.3.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.

17.3.B. HOUSING QUALITY STANDARDS [24 CFR 983.101]

The housing quality standards (HQS) for the tenant-based program, including those for special housing types, generally apply to the PBV program. HQS requirements for shared 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.

17.3.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 HABC 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.

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)

17.3.D. INSPECTING UNITS

Pre-selection Inspection [24 CFR 983.103(a)]

The HABC must examine the proposed site before the proposal selection date. If the units to be assisted already exist, the HABC 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. However, the HABC may not execute the HAP contract until the units fully comply with HQS.

Pre-HAP Contract Inspections [24 CFR 983.103(b)]

The HABC must inspect each contract unit before execution of the HAP contract. The HABC 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 HABC must inspect the unit. The HABC may not provide assistance on behalf of the family until the unit fully complies with HQS.

Biennial Inspections [24 CFR 983.103(d)]

At least biennially during the term of the HAP contract, the HABC 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 biennial inspection requirement.

If more than 20 percent of the biennial sample of inspected contract units in a building fails the initial inspection, the HABC must re-inspect 100 percent of the contract units in the building.

Other Inspections [24 CFR 983.103(e)]

The HABC 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 HABC must take into account complaints and any other information coming to its attention in scheduling inspections.

The HABC 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 HABC supervisory quality control HQS inspections, the HABC should include a representative sample of both tenant-based and project-based units.

Inspecting HABC-owned Units [24 CFR 983.103(f)]

In the case of HABC-owned units, the inspections must be performed by an independent agency designated by the HABC and approved by HUD. The independent entity must furnish a copy of each inspection report to the HABC and to the HUD field office where the project is located. The HABC 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 HABC-owner.

Ch. 17 Section 4: REHABILITATED AND NEWLY CONSTRUCTED UNITS

17.4.A. OVERVIEW [24 CFR 983.151]

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. 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.

17.4.B. AGREEMENT TO ENTER INTO HAP CONTRACT

In order to offer PBV assistance in rehabilitated or newly constructed units, the HABC 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 HABC agrees that upon timely completion of such development in accordance with the terms of the Agreement, the HABC 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 HABC, 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, FR Notice 11/24/08]

The Agreement must be executed promptly after HABC notice of proposal selection to the selected owner. Generally, the HABC may not enter into the Agreement with the owner until the subsidy layering review is completed. Likewise, the HABC may not enter into the Agreement until the environmental review is completed and the HABC has received environmental approval. However, the HABC does not need to conduct a subsidy layering review in the case of a HAP contract for an existing structure or if the applicable state or local agency has conducted such a review. Similarly, environmental reviews are not required for existing structures unless otherwise required by law or regulation.

The HABC will enter into the Agreement with the owner within 10 business days of receiving both environmental approval and notice that subsidy layering requirements have been met, and before construction or rehabilitation work is started.

17.4.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 HABC must monitor compliance with labor standards.

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.

17.4.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 HABC in the form and manner required by the HABC:

- 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.

At the HABC's discretion, the Agreement may specify additional documentation that must be submitted by the owner as evidence of housing completion.

The HABC 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 HABC will specify any additional documentation requirements in the Agreement to enter into HAP contract.

HABC Acceptance of Completed Units [24 CFR 983.156]

Upon notice from the owner that the housing is completed, the HABC 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 HABC 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 HABC must not enter into the HAP contract.

If the HABC determines the work has been completed in accordance with the Agreement and that the owner has submitted all required evidence of completion, the HABC must submit the HAP contract for execution by the owner and must then execute the HAP contract.

Ch. 17 Section 5: HOUSING ASSISTANCE PAYMENTS CONTRACT (HAP)

17.5.A. OVERVIEW

The HABC 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].

17.5.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 project that will exceed the 25 percent per project 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 HABC may not enter into a HAP contract until each contract unit has been inspected and the HABC has determined that the unit complies with the Housing Quality Standards (HQS). For existing housing, the HAP contract must be executed promptly after the HABC selects the owner proposal and inspects the housing units. For newly constructed or rehabilitated housing the HAP contract must be executed after the HABC 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.

For existing housing, the HAP contract will be executed within 10 business days of the HABC determining that all units pass HQS.

For rehabilitated or newly constructed housing, the HAP contract will be executed within 10 business days of the HABC determining that the units have been completed in accordance with the agreement to enter into HAP, all units meet HQS, and the owner has submitted all required evidence of completion.

Term of HAP Contract [FR Notice 11/24/08]

The HABC may enter into a HAP contract with an owner for an initial term of no less than one year and no more than 15 years.

The term of all PBV HAP contracts will be negotiated with the owner on a case-by-case basis.

At any time before expiration of the HAP contract, the HABC may extend the term of the contract for an additional term of up to 15 years if the HABC determines an extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities. 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 HABC 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 deconcentrating poverty and expanding housing opportunities; and
- Whether the funding could be used more appropriately for tenant-based assistance.

Termination by HABC [24 CFR 983.205(c)]

The HAP contract must provide that the term of the HABC's contractual commitment is subject to the availability of sufficient appropriated funding as determined by HUD or by the HABC 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 HABC 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 HABC. In this case, families living in the contract units must be offered tenant-based assistance.

Term for HABC-owned Units [24 CFR 983.59]

The term of the HAP contract and any HAP contract renewal for PHA-owned units must be agreed upon by the PHA and the independent entity approved by HUD. Any costs associated with implementing this requirement must be paid for by the PHA.

Remedies for HQS Violations [24 CFR 983.208(b)]

The HABC 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 HABC determines that a contract does not comply with HQS, the HABC 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 HABC 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.

17.5.C. AMENDMENTS TO THE HAP CONTRACT

Substitution of Contract Units [24 CFR 983.207(a)]

At the HABC'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 HABC must inspect the proposed unit and determine the reasonable rent for the unit.

Addition of Contract Units [24 CFR 983.207(b)]

At the HABC's discretion and subject to the restrictions on the number of dwelling units that can receive PBV assistance per building and on the overall size of the HABC's PBV program, a HAP contract may be amended during the three-year period following the execution date of the HAP contract to add additional PBV units in the same building. This type of amendment is subject to all PBV program requirements except that a new PBV proposal is not required.

The HABC will consider adding contract units to the HAP contract when the HABC 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.

17.5.D. HAP CONTRACT YEAR, ANNIVERSARY AND EXPIRATION DATES [24 CFR 983.207(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.

17.5.E. OWNER RESPONSIBILITIES UNDER THE HAP [24 CFR 983.210]

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:

- 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 HABC, 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 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.

17.5.F. ADDITIONAL HAP REQUIREMENTS

Housing Quality and Design Requirements [24 CFR 983.101(e) and 983.208(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 HABC 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 HABC 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 HABC will identify the need for any special features on a case-by-case basis depending on the intended occupancy of the PBV project. The HABC 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 HABC, the HAP contract may provide for vacancy payments to the owner for a HABC-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 HABC 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 HABC will decide on a case-by-case basis if the HABC 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.

Ch. 17 Section 6: SELECTION OF PBV PROGRAM PARTICIPANTS

17.6.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.

17.6.B. ELIGIBILITY FOR PBV ASSISTANCE [24 CFR 983.251(a) and (b)]

The HABC may select families for the PBV program from those who are participants in the HABC's tenant-based voucher program and from those who have applied for admission to the voucher program. 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 HABC, 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 HABC'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 HABC 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 HABC 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 HABC's waiting list. Once the family's continued eligibility is determined (the HABC 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 HABC 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.

17.6.C. ORGANIZATION OF THE WAITING LIST [24 CFR 983.251(c)]

The HABC may establish a separate waiting list for PBV units or it may use the same waiting list for both tenant-based and PBV assistance. The HABC may also merge the PBV waiting list with a waiting list for other assisted housing programs offered by the HABC. If the HABC chooses to offer a separate waiting list for PBV assistance, the HABC must offer to place applicants who are listed on the tenant-based waiting list on the waiting list for PBV assistance.

If a HABC decides to establish a separate PBV waiting list, the HABC may use a single waiting list for the HABC's whole PBV program, or it may establish separate waiting lists for PBV units in particular projects or buildings or for sets of such units.

The HABC will establish and manage separate waiting lists for individual projects or buildings that are receiving PBV assistance.

17.6.D. SELECTION FROM THE WAITING LIST [24 CFR 983.251(c)]

Applicants who will occupy units with PBV assistance must be selected from the HABC's waiting list. The HABC may establish selection criteria or preferences for occupancy of particular PBV units. The HABC may place families referred by the PBV owner on its PBV waiting list.

Income Targeting [24 CFR 983.251(c)(6)]

At least 75 percent of the families admitted to the HABC's tenant-based and project-based voucher programs during the HABC 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 HABC must first refer families who require such features to the owner.

Preferences [24 CFR 983.251(d), FR Notice 11/24/08]

The HABC 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. The HABC must provide an absolute selection preference for eligible in-place families as described in Section 17-VI.B. above.

Although the HABC is prohibited from granting preferences to persons with a specific disability, the HABC if requested by the project owner will 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 are not being required to accept the services offered as a condition of occupancy.

If the HABC has projects with more than 25 percent of the units receiving project-based assistance because those projects include “excepted units” (units specifically made available for elderly or disabled families, or families receiving supportive services), the HABC must give preference to such families when referring families to these units [24 CFR 983.261(b)].

17.6.E. OFFER OF PBV ASSISTANCE

Refusal of Offer [24 CFR 983.251(e)(3)]

The HABC 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 HABC’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.

Acceptance of Offer [24 CFR 983.252]

Family Briefing

When a family accepts an offer for PBV assistance, the HABC 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 HABC must provide a briefing packet that explains how the HABC 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 HABC 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 HABC 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 HABC 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).

17.6.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. An owner must promptly notify in writing any rejected applicant of the grounds for any rejection [24 CFR 983.253(a)(2) and (a)(3)].

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 HABC from the HABC'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 HABC's subsidy standards.

Filling Vacancies [24 CFR 983.254(a)]

The owner must promptly notify the HABC of any vacancy or expected vacancy in a contract unit. After receiving such notice, the HABC must make every reasonable effort to promptly refer a sufficient number of families for the owner to fill such vacancies. The HABC and the owner must make reasonable efforts to minimize the likelihood and length of any vacancy.

The owner must notify the HABC in writing (mail, fax, or e-mail) within 5 business days of learning about any vacancy or expected vacancy.

The HABC will make every reasonable effort to refer families to the owner within 10 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 or more days since owner notice of the vacancy, the HABC may give notice to the owner amending the HAP contract to reduce the number of contract units by subtracting the number of contract units (according to the bedroom size) that have been vacant for this period.

If any contract units have been vacant for 120 days, the HABC will 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 HABC will provide the notice to the owner within 10 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 HABC's notice.

17.6.G. TENANT SCREENING [24 CFR 983.255]

HABC Responsibility

The HABC is not responsible or liable to the owner or any other person for the family's behavior or suitability for tenancy.

The HABC will perform credit checks and tenancy history searches on all applicants. Applicants credit rating and tenancy history will be collected for statistical information only. The HABC will not deny assistance based on a credit report or tenancy history.

The HABC will inform owners of their responsibility to screen prospective tenants, and will provide owners with the required known name and address information, at the time of the turnover HQS inspection or before. The HABC will not conduct screening to determine a PBV applicant family's suitability for tenancy.

The HABC will provide the owner with an applicant family's current and prior address (as shown in HABC records) and the name and address (if known by the HABC) of the family's current landlord and any prior landlords.

In addition, the HABC may offer the owner other information the HABC may have about a family, including information about the tenancy history of family members or about drug trafficking and criminal activity by family members. The HABC must provide applicant families a description of the HABC policy on providing information to owners, and the HABC must give the same types of information to all owners.

The HABC may not disclose to the owner any confidential information provided in response to a request for documentation of domestic violence, dating violence, or stalking except at the written request or with the written consent of the individual providing the documentation [24 CFR 5.2007(a)(4)].

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.

Ch. 17 Section 7: OCCUPANCY

17.7.A. OVERVIEW

After an applicant has been selected from the waiting list, determined eligible by the HABC, referred to an owner and determined suitable by the owner, the family will sign the lease and occupancy of the unit will begin.

17.7.B. LEASE [24 CFR 983.256]

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.

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 a HABC model lease.

The HABC may review the owner's lease form to determine if the lease complies with state and local law. If the HABC determines that the lease does not comply with state or local law, the HABC may decline to approve the tenancy.

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 provide 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 HABC (the names of family members and any HABC-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 HABC 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 HABC a copy of all changes.

The owner must notify the HABC 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 HABC and in accordance with the terms of the lease relating to its amendment. The HABC 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 Requirement [24 CFR 983.257(c), FR Notice 11/24/08]

If a family is living in a project-based unit that is excluded from the 25 percent per project cap on project-basing because of participation in a supportive services program (e.g., Family Self-Sufficiency), 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 HABC 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 983.259]

The owner may collect a security deposit from the tenant. The HABC prohibits owners from collecting security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.

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 HABC has no liability or responsibility for payment of any amount owed by the family to the owner.

17.7.C. PHA UNITS- SMOKE FREE POLICY

To insure the safety of residents, improve the quality of air, reduce overall maintenance costs in all properties owned and/or managed by the HABC, all residential buildings shall be smoke free. Smoking is not permitted in any area of the buildings, including apartments. Smoking is only permitted in specifically designated areas. All tenants, employees and guests must abide by the following rules and regulations.

Smoking - engaging in an act that generates Smoke, such as, for example: possessing a lighted pipe, a lighted hookah pipe, a lighted cigar, an operating electronic cigarette or a lighted cigarette of any kind; including but not limited to, tobacco smoke, electronic cigarette vapors, marijuana smoke, and smoking any other products, legal or illegal. “

Tobacco Product - any substance containing tobacco leaf, and any product of formulation of matter containing biologically active amounts of nicotine that is manufactured, sold, offered for sale, or otherwise distributed with the expectation that the product or matter will be introduced into the human body, but does not include any cessation product specifically approved by the United States Food and Drug Administration for use in treating nicotine or tobacco dependence. Addiction to nicotine or smoking is not a disability.

Electronic Cigarette - a device used to simulate the experience of smoking, having a cartridge with a heater that vaporizes liquid nicotine instead of burning tobacco.

1. **Effective on October 1, 2018**, smoking is not permitted within 25 feet of a Housing Authority of Bergen County property or in any of the buildings, including resident apartments. All current residents, all employees, all guests, all service personnel, and all new residents of the Housing Authority of Bergen County will be prohibited from smoking anywhere in and around the building, including all common area and grounds but not limited to within the resident apartments, hallways, stairways, elevators, common areas and rooms, entrance ways, and parking lots. Failure of any resident or their guests and/or service personnel to follow the smoke-free policy will be considered a lease violation. Residents are responsible for the actions of their guests and service personnel.
2. "No Smoking" signs will be posted outside and inside of the building.
3. Smoking outside the building shall be permitted only when the smoker is at least 25 feet from the building(s) so that secondhand tobacco smoke will not enter the buildings, nor will residents and guests have to walk through secondhand tobacco smoke to enter or leave the buildings. Persons smoking in these areas are responsible for not littering the grounds with cigarette butts or other tobacco products.
4. If a resident, employee, or guests smells tobacco smoke within 25 feet of the building, they are to report this to the appropriate Housing Authority office. Management will seek the source of the smoke and take appropriate action. A resident may be charged for any damage to the property as a result of their smoking. A violation of the lease will be documented in accordance with the "No Smoking Enforcement Policy" (Attachment 1).
5. Tenants will be given two copies of the amendment and a copy of the "No Smoking Enforcement Policy" (Attachment 1). New tenants will be issued these documents at their lease signing and existing tenants will have this completed during their next recertification meeting. After review, the tenant will sign both copies of this Amendment and return one to the Housing Authority of Bergen County's management office. The copy will be placed in the tenant's file.
6. Upon adoption of this policy, all tenants presently living in a Housing Authority property will be given two copies of this amendment and a copy of the "No Smoking Enforcement Policy" (Attachment 1). After review, the tenant will sign both copies of this Amendment and return one to the Housing Authority of Bergen County's management office for placement in the tenant's file.

After determining that a tenant has violated the no smoking policy the following steps will be taken;

- STEP 1: Warning – A Regional Property Manager will provide a written warning notice detailing the violation to the resident. The notice will provide the tenant 7 days to address and correct the violation. Should the tenant continue violating the No Smoking Policy after 7 days, the Housing Authority will proceed to STEP 2.
- STEP 2: Notice to Cease - The tenant will be issued a Notice to Cease by the Housing Authority's

legal counsel. The Notice to Cease will be the final warning for the tenant before an eviction notice is issued. The Notice to Cease will cite the previous letter created by the Regional Property Manager.

STEP 3: Notice to Quit – Should the resident continue to violate the No Smoking Policy after the above 2 warnings, the Housing Authority of Bergen County will request a Notice to Quit from their legal counsel.

17.7.D. MOVES

Overcrowded, Under-Occupied, and Accessible Units [24 CFR 983.260]

If the HABC determines that a family is occupying a wrong size unit, based on the HABC's subsidy standards, or a unit with accessibility features that the family does not require, and the unit is needed by a family that does require the features, the HABC must promptly notify the family and the owner of this determination, and the HABC must offer the family the opportunity to receive continued housing assistance in another unit.

The HABC 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 10 business days of the HABC's determination. The HABC 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 (if an appropriate unit is available); and
- Tenant-based voucher assistance.

If the HABC offers the family a tenant-based voucher, the HABC 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 the HABC).

If the HABC offers the family a tenant-based voucher, and the family does not accept the offer, does not move out of the PBV unit within a reasonable time as determined by the HABC, or both, the HABC must terminate the housing assistance payments for the unit at the expiration of a reasonable period as determined by the HABC.

When the HABC 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 HABC will terminate the housing assistance payments at the expiration of this 30-day period.

The HABC 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 983.261]

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 HABC. If the family wishes to move with continued tenant-based assistance, the family must contact the HABC 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 HABC is required to offer the family the opportunity for continued tenant-based assistance, in the form either assistance under the voucher program or other comparable tenant-based rental assistance. If voucher is not immediately available upon termination of the family's lease in the PBV unit, the HABC must give the family priority to receive the next available opportunity for continued tenant-based assistance. Availability of a tenant-based voucher is dependent upon funding levels.

If the family terminates the assisted lease before the end of the first year, the family relinquishes the opportunity for continued tenant-based assistance.

17.7.E. EXCEPTIONS TO THE OCCUPANCY CAP

[24 CFR 983.261, FR Notice 11/24/08]

The HABC may not pay housing assistance under a PBV HAP contract for more than 25 percent of the number of dwelling units in a project unless the units are [24 CFR 983.56]:

- In a single-family building; or
- Specifically made available for elderly or disabled families;

HABC does not require families living in excepted units to receive supportive services. Therefore, excepted units are limited to units in single-family buildings and those made available for elderly or disabled families.

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 25 percent per project cap exception (e.g., 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 HABC, and the HABC 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.

When the HABC determines that a family no longer meets the criteria for a "qualifying family" in connection with the 25 percent per project cap exception, the HABC will provide written notice to the family and owner within 10 business days of making the determination. The family will be given 30 days from the date of the notice to move out of the PBV unit. If the family does not move out within this 30-day time from the HABC will terminate the housing assistance payments at the expiration of this 30 day period.

The HABC 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.

The HABC may refer other eligible families to the excepted units. However, if there are no eligible families on the wait list and the owner does not refer eligible families to the HABC and the unit remains vacant in excess of 120 days, the HABC will amend the HAP contract to reduce the total number of units under contract.

Ch. 17 Section 8: DETERMINING RENT TO OWNER

17.8.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.

17.8.B. RENT LIMITS [24 CFR 983.301]

Except for certain tax credit units (discussed below), the rent to owner must not exceed the lowest of the following amounts:

- An amount determined by the HABC, 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), FR Notice 11/24/08]

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 a HABC-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.

However, HABCs are permitted to use the higher Section 8 rent for a tax credit unit if the tax credit rent is less than the amount that would be permitted under Section 8. In these cases, Section 8 rent reasonableness requirements must continue to be met.

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 HABC 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 HABC must use the most recently published FMR and the utility allowance schedule in effect at the time of redetermination. At its discretion, the HABC 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 HABC 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 HABC 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 HABC 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 HABC 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 HABC determines it is necessary due to HABC budgetary constraints.

Redetermination of Rent [24 CFR 983.302]

The HABC 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 HABC, it must be requested at 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 HABC. The HABC 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).

An owner's request for a rent increase must be submitted to the HABC 60 days prior to the anniversary date of the HAP contract and must include the new rent amount the owner is proposing.

The HABC 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.

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 HABC to the owner specifying the amount of the re-determined rent. The HABC 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 HABC will provide the owner with at least 30 days written notice of any change in the amount of rent to owner.

HABC-owned Units [24 CFR 983.301 through 983.305]

For HABC-owned PBV units, the independent entity must establish the initial contract rents using the method prescribed by PBV program requirements. The PHA must use the rent to owner established by the independent entity. The independent entity must re-determine rent to owner in accordance with 24 CFR §983.303 when any of the following occur:

- i. Annual anniversary- If the owner requests a rent increase at the annual anniversary date of the HAP contract, the HUD-approved independent entity must perform the annual redetermination of rent to owner in accordance with program regulations.
- ii. Five percent decrease- Whenever 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 in effect one year before the contract anniversary;
- iii. Change in utility allocation- Whenever the PHA approves a change in the allocation of responsibility for utilities between the PHA-owner and family;
- iv. Substitution of Contract Unit- Whenever the HAP contract is amended to substitute a different contract unit in the same building or project; and
- v. Changes- Whenever there is any other change that may substantially affect the reasonable rent.

Over Income Households

Beginning January 1, 2019 should a household's income exceed 120 percent of the area median income (AMI) for two consecutive years, the HABC will terminate the household's tenancy within 6 months of the second income determination. After one year of exceeding 120 percent of the AMI, the HABC must notify the household that their income exceeds 120 percent of the AMI. The HABC will also inform the household that should they continue to exceed 120 percent of the AMI during the following year's income determination their tenancy will be terminated within 6 months of that second income determination. Should a household, at any time, during this two-year period report income changes that results in their income falling below 120 percent of AMI the two-year period would reset. A new two-year clock would be started should the household's income ever exceeds 120 percent of AMI again.

Example: Household is under review for a recertification effective May 2019 and has been determined to exceed 120 percent of AMI. During this household's May 2020 recertification, if the family continues to exceed 120 percent of the AMI, the family will be notified in writing that should their income exceed 120 percent of AMI for another year their tenancy will be terminated. During this household's May 2021 recertification, if the family continues to exceed 120 percent of the AMI, the family will be provided final notice that their tenancy will be terminated within 6 months.

17.8.C. REASONABLE RENT [24 CFR 983.303]

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 HABC.

When Rent Reasonable Determinations are Required

The HABC 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 HABC 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 HABC 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 HABC. The comparability analysis may be performed by HABC 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.

HABC-owned Units

For HABC-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 HABC-owned units to the HABC 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 HABC may require the owner to submit information on rents charged by the owner for other units in the premises or elsewhere.

17.8.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, a HABC may reduce the initial rent to owner because of other governmental subsidies, including grants and 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;
- 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.

Ch. 17 Section 9: PAYMENTS TO OWNER

17.9.A. HOUSING ASSISTANCE PAYMENTS [24 CFR 983.351]

During the term of the HAP contract, the HABC must make housing assistance payments to the owner in accordance with the terms of the HAP contract. 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 HABC agree on a later date.

Except for discretionary vacancy payments, the HABC 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 HABC 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.

17.9.B. VACANCY PAYMENTS [24 CFR 983.352]

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 HABC determines that the vacancy is the owner's fault.

If the HABC determines that the owner is responsible for a vacancy and, as a result, is not entitled to keep the housing assistance payment, the HABC will notify the landlord of the amount of housing assistance payment that the owner must repay. The HABC will require the owner to repay the amount owed in accordance with the policies in Section 16-IV.B.

At the discretion of the HABC, the HAP contract may provide for vacancy payments to the owner. The HABC may only make vacancy payments if:

- The owner gives the HABC 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 HABC 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 HABC and must provide any information or substantiation required by the HABC 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 HABC 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 10 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 HABC may require the owner to provide documentation to support the request. If the owner does not provide the information requested by the HABC within 10 business days of the HABC's request, no vacancy payments will be made.

17.9.C. TENANT RENT TO OWNER [24 CFR 983.353]

The tenant rent is the portion of the rent to owner paid by the family. The amount of tenant rent is determined by the HABC in accordance with HUD requirements. Any changes in the amount of tenant rent will be effective on the date stated in the HABC notice to the family and owner.

The family is responsible for paying the tenant rent (total tenant payment minus the utility allowance). The amount of the tenant rent determined by the HABC 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 HABC. The owner must immediately return any excess payment to the tenant.

Tenant and HABC 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 HABC.

Likewise, the HABC is responsible only for making the housing assistance payment to the owner in accordance with the HAP contract. The HABC is not responsible for paying tenant rent, or any other claim by the owner, including damage to the unit. The HABC 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 HABC 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 HABC may pay the utility reimbursement directly to the family or to the utility supplier on behalf of the family. The HABC will make utility reimbursements to the family.

17.9.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.

Chapter 18: FAMILY SELF SUFFICIENCY

INTRODUCTION

This chapter explains the Family Self Sufficiency (FSS) program. When a family is determined to be eligible for the program and the family's obligations under the program. FSS referrals are accepted through partnership with Bergen County One Stop Career Center.

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

Section 1: Obligations under FSS. This part details the PHA program requirements and participant requirements under HUD regulations. It details when a PHA is allowed to release FSS credits, withhold services and terminate program participation. It outlines the HUD requirements on reporting.

Section 2: Partnership with Bergen County One Stop Career Center. This part discusses the partnership between the HABC and the Bergen County One Stop Career Center (BCOSCC). It details how referrals will be selected by the BCOSCC committee. It also outlines the services provided by BCOSCC and additional requirements imposed as part of the partnership.

Ch. 18 Section 1: OBLIGATIONS UNDER FSS

18.1.A. OVERVIEW

The purpose of the Family Self Sufficiency (FSS) program is to promote the development of local strategies to coordinate the use of public housing assistance and housing assistance under the Section 8 rental certificate and rental voucher programs with public and private resources, to enable families eligible to receive assistance under these programs to achieve economic independence and self-sufficiency.

The purpose of this part is to implement the policies and procedures applicable to the operation of the FSS program, as established under section 23 of the 1937 Act (42 U.S.C. 1437u), under HUD's rental voucher, rental certificate and public housing programs.

The objective of the FSS program is to reduce the dependency of low-income families on welfare assistance and on Section 8, public, or any Federal, State, or local rent or homeownership subsidies. Under the FSS program, low-income families are provided opportunities for education, job training, counseling, and other forms of social service assistance, while living in assisted housing, so that they may obtain the education, employment, and business and social skills necessary to achieve self-sufficiency, as defined in CFR §984.103.

18.1.B. DEFINITIONS [24 CFR §984.103]

Certification means a written assertion based on supporting evidence, provided by the FSS family or the PHA, as may be required under this part, and which:

(1) Shall be maintained by the PHA in the case of the family's certification, or by HUD in the case of the PHA's certification;

(2) Shall be made available for inspection by HUD, the PHA, and the public, as appropriate; and

(3) Shall be deemed to be accurate for purposes of this part, unless the Secretary or the PHA, as applicable, determines otherwise after inspecting the evidence and providing due notice and opportunity for comment.

Contract of participation means a contract in a form approved by HUD, entered into between a participating family and a PHA operating an FSS program that sets forth the terms and conditions governing participation in the FSS program. The contract of participation includes all individual training and services plans entered into between the PHA and all members of the family who will participate in the FSS program, and which plans are attached to the contract of participation as exhibits. For additional detail, see §984.303 of this subpart A.

Earned income means income or earnings included in annual income from wages, tips, salaries, other employee compensation, and self-employment. Earned income does not include any pension or annuity, transfer payments, any cash or in-kind benefits, or funds deposited in

or accrued interest on the FSS escrow account established by a PHA on behalf of a participating family.

Effective date of contract of participation means the first day of the month following the month in which the FSS family and the PHA entered into the contract of participation.

Eligible families means:

(1) For the public housing FSS program, current residents of public housing. Eligible families also include current residents of public housing who are participants in local public housing self-sufficiency programs; and

(2) For Section 8 FSS program, current Section 8 rental certificate or rental voucher program participants, including participants in the Project Self-Sufficiency or Operation Bootstrap or other local self-sufficiency programs.

Enrollment means the date that the FSS family entered into the contract of participation with the PHA.

Family Self-Sufficiency program or FSS program means the program established by a PHA within its jurisdiction to promote self-sufficiency among participating families, including the provision of supportive services to these families, as authorized by section 23 of the 1937 Act.

FSS account means the FSS escrow account authorized by section 23 of the 1937 Act, and as provided by §984.305 of this subpart A.

FSS credit means the amount credited by the PHA to the participating family's FSS account.

FSS family or participating family means a family that resides in public housing or receives assistance under the rental certificate or rental voucher programs, and that elects to participate in the FSS program, and whose designated head of the family has signed the contract of participation.

FSS related service program means any program, publicly or privately sponsored, that offers the kinds of supportive services described in the definition of “supportive services” set forth in this §984.103.

FSS slots refer to the total number of public housing units or the total number of rental certificates or rental vouchers that comprise the minimum size of a PHA's respective public housing FSS program or Section 8 FSS program.

FY means Federal Fiscal Year (starting with October 1, and ending September 30, and designated by the calendar year in which it ends).

Head of FSS family means the adult member of the FSS family who is the head of the household for purposes of determining income eligibility and rent.

Housing subsidies means assistance to meet the costs and expenses of temporary shelter, rental housing or homeownership, including rent, mortgage or utility payments.

Individual training and services plan means a written plan that is prepared for the head of the FSS family, and each adult member of the FSS family who elects to participate in the FSS program, by the PHA in consultation with the family member, and which sets forth:

(1) The supportive services to be provided to the family member;

(2) The activities to be completed by that family member; and

(3) The agreed upon completion dates for the services and activities. Each individual training and services plan must be signed by the PHA and the participating family member, and is attached to, and incorporated as part of the contract of participation. An individual training and services plan must be prepared for the head of the FSS family.

JOBS Program means the Job Opportunities and Basic Skills Training Program authorized under part F of title IV of the Social Security Act (42 U.S.C. 402(a)(19)).

JTPA means the Job Training Partnership Act (29 U.S.C. 1579(a)).

Low-income family. As defined in part 5 of this title.

Program Coordinating Committee or PCC is the committee described in §984.202 of this part.

Self-sufficiency means that an FSS family is no longer receiving Section 8, public or Indian housing assistance, or any Federal, State, or local rent or homeownership subsidies or welfare assistance. Achievement of self-sufficiency, although an FSS program objective, is not a condition for receipt of the FSS account funds. (See §984.305 of this part.)

Supportive services means those appropriate services that a PHA will make available, or cause to be made available to an FSS family under a contract of participation, and may include:

(1) Child care—child care of a type that provides sufficient hours of operation and serves an appropriate range of ages;

(2) Transportation—transportation necessary to enable a participating family to receive available services, or to commute to their places of employment;

(3) Education—remedial education; education for completion of secondary or post secondary schooling;

(4) Employment—job training, preparation, and counseling; job development and placement; and follow-up assistance after job placement and completion of the contract of participation;

(5) Personal welfare—substance/alcohol abuse treatment and counseling;

(6) Household skills and management—training in homemaking and parenting skills; household management; and money management;

(7) Counseling—counseling in the areas of:

(i) The responsibilities of homeownership;

(ii) Opportunities available for affordable rental and homeownership in the private housing market, including information on an individual's rights under the Fair Housing Act; and

(iii) Money management; and

(8) Other services—any other services and resources, including case management, reasonable accommodations for individuals with disabilities, that the PHA may determine to be appropriate in assisting FSS families to achieve economic independence and self-sufficiency.

Welfare assistance means (for purposes of the FSS program only) income assistance from Federal or State welfare programs, and includes only cash maintenance payments designed to meet a family's ongoing basic needs. Welfare assistance does not include:

(1) Nonrecurrent, short-term benefits that:

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

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

(iii) Will not extend beyond four months.

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

(3) Supportive services such as child care and transportation provided to families who are employed;

(4) Refundable earned income tax credits;

(5) Contributions to, and distributions from, Individual Development Accounts under TANF;

(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;

(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;

(8) Amounts solely directed to meeting housing expenses;

(9) Amounts for health care;

(10) Food stamps and emergency rental and utilities assistance; and

(11) SSI, SSDI, or Social Security.

18.1.C. REQUIREMENTS [24 CFR §984.104]

An FSS program established under this part shall be operated in conformity with:

(a) The regulations of this part, and for a Section 8 FSS program, the rental certificate and rental voucher regulations, codified in 24 CFR parts 882, 887, and 982 respectively, and for a public housing FSS program, the applicable public housing regulations, including the regulations in 24 CFR parts 913, 960, and 966;

(b) An Action Plan, as described in §984.201, and provide comprehensive supportive services as defined in §984.103; and

(c) An FSS program established under this part shall be operated in compliance with the nondiscrimination and equal opportunity requirements set forth in 24 CFR part 5, with the exception of Executive Orders 11246, 11625, 12432, and 12138.

18.1.D. ACTION PLAN [24 CFR §984.201]

A PHA must have a HUD-approved Action Plan that complies with the requirements of section §984.201 before the PHA implements an FSS program, whether the FSS program is a mandatory or voluntary program.

The Action Plan shall be developed by the PHA in consultation with the chief executive officer of the applicable unit of general local government, and the Program Coordinating Committee. Following HUD's initial approval of the Action Plan, no further approval of the Action Plan is required unless the PHA proposes to make policy changes to the Action Plan or increase the

size of a voluntary program; or HUD requires other changes. The PHA must submit any changes to the Action Plan to HUD for approval.

The Action Plan shall describe the policies and procedures of the PHA for operation of a local FSS program, and shall contain, at a minimum, the following information:

(1) *Family demographics.* A description of the number, size, characteristics, and other demographics (including racial and ethnic data), and the supportive service needs of the families expected to participate in the FSS program;

(2) *Estimate of participating families.* A description of the number of eligible FSS families who can reasonably be expected to receive supportive services under the FSS program, based on available and anticipated Federal, tribal, State, local, and private resources;

(3) *Eligible families from other self-sufficiency program.* If applicable, the number of families, by program type, who are participating in Operation Bootstrap, Project Self-Sufficiency, or any other local self-sufficiency program who are expected to agree to execute an FSS contract of participation.

(4) *FSS family selection procedures.* A statement indicating the procedures to be utilized to select families for participation in the FSS program, subject to the requirements governing the selection of FSS families, set forth in §984.203. This statement must include a description of how the PHA's selection procedures ensure that families will be selected without regard to race, color, religion, sex, handicap, familial status, or national origin.

(5) *Incentives to encourage participation—a description of the incentives that the PHA intends to offer eligible families to encourage their participation in the FSS program (incentives plan).* The incentives plan shall provide for the establishment of the FSS account in accordance with the requirements set forth in §984.305, and other incentives, if any, designed by the PHA. The incentives plan shall be part of the Action Plan.

(6) *Outreach efforts.* A description of:

(i) The PHA's efforts, including notification and outreach efforts, to recruit FSS participants from among eligible families; and

(ii) The PHA's actions to be taken to assure that both minority and non-minority groups are informed about the FSS program, and how the PHA will make this information known.

(7) *FSS activities and supportive services.* A description of the activities and supportive services to be provided by both public and private resources to FSS families, and identification of the public and private resources which are expected to provide the supportive services.

(8) *Method for identification of family support needs.* A description of how the FSS program will identify the needs and deliver the services and activities according to the needs of the FSS families;

(9) *Program termination; withholding of services; and available grievance procedures.* A description of the PHA's policies concerning: terminating participation in the FSS program, withholding of supportive services, or terminating or withholding Section 8 assistance, on the basis of a family's failure to comply with the requirements of the contract of participation; and the grievance and hearing procedures available for FSS families.

(10) *Assurances of non-interference with rights of non-participating families.* An assurance that a family's election not to participate in the FSS program will not affect the family's admission to public housing or to the Section 8 program or the family's right to occupancy in accordance with its lease.

(11) *Timetable for program implementation.* A timetable for implementation of the FSS program, as provided in §984.301(a)(1), including the schedule for filling FSS slots with eligible FSS families, as provided in §984.301;

(12) *Certification of coordination.* A certification that development of the services and activities under the FSS program has been coordinated with the JOBS Program; the programs provided under the JTPA; and any other relevant employment, child care, transportation, training, and education programs (e.g., Job Training for the Homeless Demonstration program) in the applicable area, and that implementation will continue to be coordinated, in order to avoid duplication of services and activities; and

(13) *Optional additional information.* Such other information that would help HUD determine the soundness of the PHA's proposed FSS program.

18.1.E. PROGRAM COODRINATING COMMITTEE (PCC) [24 CFR §984.202]

Each participating PHA must establish a PCC whose functions will be to assist the PHA in securing commitments of public and private resources for the operation of the FSS program within the PHA's jurisdiction, including assistance in developing the Action Plan and in implementing the program.

The PCC must consist of representatives of the PHA, and of residents assisted under the section 8 rental certificate or rental voucher program or under HUD's public or Indian housing programs. The PHA may, in consultation with the chief executive officer of the unit or general local government served by the PHA, utilize and existing entity as the PCC if membership of the existing entity consists or will consist of the individuals identified above.

18.1.F. FSS FAMILY SELECTION PROCEDURES [24 CFR §984.203]

FSS selection without preference. For those FSS slots for which the PHA chooses not to exercise the selection preference provided in paragraph (a) of this section, the FSS slots must be filled with eligible families in accordance with an objective selection system, such as a lottery, the length of time living in subsidized housing, or the date the family expressed an interest in participating in the FSS program. The objective system to be used by the PHA must be described in the PHA's Action Plan.

(c) *Motivation as a selection factor*—(1) *General.* a PHA may screen families for interest, and motivation to participate in the FSS program, provided that the factors utilized by the PHA are those which solely measure the family's interest, and motivation to participate in the FSS program.

(2) *Permissible motivational screening factors.* Permitted motivational factors include requiring attendance at FSS orientation sessions or preselection interviews, and assigning certain tasks which indicate the family's willingness to undertake the obligations which may be imposed by the FSS contract of participation. However, any tasks assigned shall be those which may be readily accomplishable by the family, based on the family members' educational level, and disabilities, if any. Reasonable accommodations must be made for individuals with mobility, manual, sensory, speech impairments, mental or developmental disabilities.

(3) *Prohibited motivational screening factors.* Prohibited motivational screening factors include the family's educational level, educational or standardized motivational test results, previous job history or job performance, credit rating, marital status, number of children, or other factors, such as sensory or manual skills, and any factors which may result in discriminatory practices or treatment toward individuals with disabilities or minority or non-minority groups.

18.1.G. CONTRACT OF PARTICIPATION [24 CFR §984.303]

Each family that is selected to participate in an FSS program must enter into a contract of participation with the HABC. The contract of participation shall be signed by the head of the FSS family.

The contract of participation, which incorporates the individual training and services plan(s), shall be in the form prescribed by HUD, and shall set forth the principal terms and conditions governing participation in the FSS program, including the rights and responsibilities of the FSS family and of the PHA, the services to be provided to, and the activities to be completed by, the head of the FSS family and each adult member of the family who elects to participate in the program.

Interim goals. The individual training and services plan, incorporated in the contract of participation, shall establish specific interim and final goals by which the PHA, and the family,

may measure the family's progress toward fulfilling its obligations under the contract of participation, and becoming self-sufficient. For each participating FSS family that is a recipient of welfare assistance, the PHA must establish as an interim goal that the family become independent from welfare assistance and remain independent from welfare assistance at least one year before the expiration of the term of the contract of participation, including any extension thereof.

Compliance with lease terms. The contract of participation shall provide that one of the obligations of the FSS family is to comply with the terms and conditions of the respective public housing lease or Section 8-assisted lease.

Employment obligation—(i) Head of family's obligation. The head of the FSS family shall be required under the contract of participation to seek and maintain suitable employment during the term of the contract and any extension thereof. Although other members of the FSS family may seek and maintain employment during the term of the contract, only the head of the FSS family is required to seek and maintain suitable employment.

(ii) *Seek employment.* The obligation to seek employment means that the head of the FSS family has applied for employment, attended job interviews, and has otherwise followed through on employment opportunities.

(iii) *Determination of suitable employment.* A determination of suitable employment shall be made by the PHA based on the skills, education, and job training of the individual that has been designated the head of the FSS family, and based on the available job opportunities within the jurisdiction served by the PHA.

The contract of participation shall specify that if the FSS family fails to comply, without good cause, with the terms and conditions of the contract of participation, which includes compliance with the public housing lease or the Section 8-assisted lease, the PHA may:

(i) Withhold the supportive services;

(ii) Terminate the family's participation in the FSS program; or

(iii) For the Section 8 FSS program, terminate or withhold the family's Section 8 assistance, except in the case where the only basis for noncompliance with the contract of participation is noncompliance with the lease, or failure to become independent from welfare assistance. However, failure to become independent from welfare assistance because of failure of the head of household to meet the employment obligation described in paragraph (a)(4) of this section, or failure of the FSS family to meet any other obligation under the contract of participation, except the interim goal concerning welfare assistance, is grounds for the PHA to terminate or withhold Section 8 assistance.

The contract of participation shall provide that each FSS family will be required to fulfill those obligations to which the participating family has committed itself under the contract of participation no later than 5 years after the effective date of the contract.

The PHA shall, in writing, extend the term of the contract of participation for a period not to exceed two years for any FSS family that requests, in writing, an extension of the contract, provided that the PHA finds that good cause exists for granting the extension. The family's written request for an extension must include a description of the need for the extension. As used in this paragraph (d), "good cause" means circumstances beyond the control of the FSS family, as determined by the PHA, such as a serious illness or involuntary loss of employment. Extension of the contract of participation will entitle the FSS family to continue to have amounts credited to the family's FSS account in accordance with §984.304.

If a social service agency fails to deliver the supportive services pledged under an FSS family member's individual training and services plan, the PHA shall make a good faith effort to obtain these services from another agency. If the PHA is unable to obtain the services from another agency, the PHA shall reassess the family member's needs, and determine whether other available services would achieve the same purpose. If other available services would not achieve the same purpose, the PHA shall determine whether the unavailable services are integral to the FSS family's advancement or progress toward self-sufficiency. If the unavailable services are:

(i) Determined not to be integral to the FSS family's advancement toward self-sufficiency, the PHA shall revise the individual training and services plan to delete these services, and modify the contract of participation to remove any obligation on the part of the FSS family to accept the unavailable services, in accordance with paragraph (f) of this section; or

(ii) Determined to be integral to the FSS family's advancement toward self-sufficiency (which may be the case if the affected family member is the head of the FSS family), the PHA shall declare the contract of participation null and void. Nullification of the contract of participation on the basis of unavailability of supportive services shall not be grounds for termination of Section 8 assistance.

The PHA and the FSS family may mutually agree to modify the contract of participation. The contract of participation may be modified in writing with respect to the individual training and services plans, the contract term in accordance with paragraph (d) of this section, and designation of the head of the family.

The contract of participation is considered to be completed, and a family's participation in the FSS program is considered to be concluded when one of the following occurs:

(1) The FSS family has fulfilled all of its obligations under the contract of participation on or before the expiration of the contract term, including any extension thereof; or

(2) 30 percent of the monthly adjusted income of the FSS family equals or exceeds the published existing housing fair market rent for the size of the unit for which the FSS family qualifies based on the PHA's occupancy standards. The contract of participation will be considered completed and the family's participation in the FSS program concluded on this basis even though the contract term, including any extension thereof, has not expired, and the family members who have individual training and services plans have not completed all the activities set forth in their plans.

The contract of participation is automatically terminated if the family's Section 8 assistance is terminated in accordance with HUD requirements. The contract of participation may be terminated before the expiration of the contract term, and any extension thereof, by:

(1) Mutual consent of the parties;

(2) The failure of the FSS family to meet its obligations under the contract of participation without good cause, including in the Section 8 FSS program the failure to comply with the contract requirements because the family has moved outside the jurisdiction of the PHA;

(3) The family's withdrawal from the FSS program;

(4) Such other act as is deemed inconsistent with the purpose of the FSS program; or

(5) Operation of law.

The PHA may terminate or withhold Section 8 housing assistance, the supportive services, and the FSS family's participation in the FSS program, if the PHA determines, in accordance with the hearing procedures provided in 24 CFR 982.555 that the FSS family has failed to comply without good cause with the requirements of the contract of participation as provided in paragraph (b)(5) of section §982.303.

18.1.H. FSS ACCOUNT [24 CFR §984.305]

The PHA shall deposit the FSS account funds of all families participating in the PHA's FSS program into a single depository account. The PHA must deposit the FSS account funds in one or more of the HUD-approved investments.

Accounting records. The total of the combined FSS account funds will be supported in the PHA accounting records by a subsidiary ledger showing the balance applicable to each FSS family. During the term of the contract of participation, the PHA shall credit periodically, but not less than annually, to each family's FSS account, the amount of the FSS credit determined in accordance with paragraph (b) of this section.

Proration of investment income. The investment income for funds in the FSS account will be prorated and credited to each family's FSS account based on the balance in each family's FSS account at the end of the period for which the investment income is credited.

Reduction of amounts due by FSS family. If the FSS family has not paid the family contribution towards rent, or other amounts, if any, due under the public housing or section 8-assisted lease, the balance in the family's FSS account shall be reduced by that amount (as reported by the owner to the PHA in the Section 8 FSS program) before prorating the interest income. If the FSS family has fraudulently under-reported income, the amount credited to the FSS account will be based on the income amounts originally reported by the FSS family.

Each PHA will be required to make a report, at least once annually, to each FSS family on the status of the family's FSS account. At a minimum, the report will include:

- (i) The balance at the beginning of the reporting period;
- (ii) The amount of the family's rent payment that was credited to the FSS account, during the reporting period;
- (iii) Any deductions made from the account for amounts due the PHA before interest is distributed;
- (iv) The amount of interest earned on the account during the year; and
- (v) The total in the account at the end of the reporting period.

For purposes of determining the FSS credit, "family rent" is for the rental voucher program, 30 percent of adjusted monthly income. The FSS credit shall be computed as follows:

- (i) For FSS families who are very low-income families, the FSS credit shall be the amount which is the lesser of:
 - a. Thirty percent of current monthly adjusted income less the family rent, which is obtained by disregarding any increases in earned income (as defined in §984.103) from the effective date of the contract of participation; or
 - b. The current family rent less the family rent at the time of the effective date of the contract of participation.
- (ii) For FSS families who are low-income families but not very low-income families, the FSS credit shall be the amount determined according to paragraph (b)(1)(i) of this section, but which shall not exceed the amount computed for 50 percent of median income.

FSS families who are not low-income families shall not be entitled to any FSS credit.

The PHA shall not make any additional credits to the FSS family's FSS account when the FSS family has completed the contract of participation, as defined in §984.303(g), or when the contract of participation is terminated or otherwise nullified.

Disbursement of FSS account funds—The amount in an FSS account, in excess of any amount owed to the PHA by the FSS family shall be paid to the head of the FSS family when the contract of participation has been completed as provided in §984.303(g), and if, at the time of contract completion, the head of the FSS family submits to the PHA a certification, as defined in §984.103, that, to the best of his or her knowledge and belief, no member of the FSS family is a recipient of welfare assistance.

If the PHA determines that the FSS family has fulfilled its obligations under the contract of participation before the expiration of the contract term, and the head of the FSS family submits a certification that, to the best of his or her knowledge, no member of the FSS family is a recipient of welfare assistance, the amount in the family's FSS account, in excess of any amount owed to the PHA by the FSS family shall be paid to the head of the FSS family.

If the PHA determines that the FSS family has fulfilled certain interim goals established in the contract of participation and needs a portion of the FSS account funds for purposes consistent with the contract of participation, such as completion of higher education (i.e., college, graduate school), or job training, or to meet start-up expenses involved in creation of a small business, the PHA may, at the PHA's sole option, disburse a portion of the funds from the family's FSS account to assist the family meet those expenses.

Verification of family certification. Before disbursement of the FSS account funds to the family, the PHA may verify that the FSS family is no longer a recipient of welfare assistance by requesting copies of any documents which may indicate whether the family is receiving any welfare assistance, and contacting welfare agencies.

Succession to FSS account. If the head of the FSS family ceases to reside with other family members in the public housing or the Section 8-assisted unit, the remaining members of the FSS family, after consultation with the PHA, shall have the right to designate another family member to receive the funds.

Forfeiture of FSS account funds—Amounts in the FSS account shall be forfeited upon the occurrence of the following:

(i) The contract of participation is terminated, as provided in §984.303(e) or §984.303(h);
or

(ii) The contract of participation is completed by the family, as provided in §984.303(g), but the FSS family is receiving welfare assistance at the time of expiration of the term of the contract of participation, including any extension thereof.

FSS account funds forfeited by the FSS family will be treated as program receipts for payment of program expenses under the PHA budget for the applicable Section 8 program, and shall be used in accordance with HUD requirements governing the use of program receipts.

18.1.I. REPORTING [24 CFR §984.401]

Each PHA that carries out an FSS program under this part shall submit to HUD, in the form prescribed by HUD, a report regarding its FSS program. The report shall include the following information:

- (a) A description of the activities carried out under the program;
- (b) A description of the effectiveness of the program in assisting families to achieve economic independence and self-sufficiency;
- (c) A description of the effectiveness of the program in coordinating resources of communities to assist families to achieve economic independence and self-sufficiency; and
- (d) Any recommendations by the PHA or the appropriate local program coordinating committee for legislative or administrative action that would improve the FSS program and ensure the effectiveness of the program.

Ch. 18 Section 2: PARTNERSHIP WITH BERGEN COUNTY ONE STOP CAREER CENTER

18.2.A. BACKGROUND

All individuals receiving Temporary Assistance Needy Families (TANF) are assigned to the Bergen County One Stop Career Center (BCOSCC), for the G-Jobs program. An individual receiving TANF is assigned to the BCOSCC for three different reasons. The first reason, the individual has just applied to open their TANF case, second reason, they have completed 12 months in the program and third reason, for non-compliance with the TANF program requirements resulting in sanctioning. When assigned to the BCOSCC the individual attends a 30-day program, G-Jobs, where child care arrangements are made, a job readiness survey is completed, Tabe tested for academic levels, program requirements are explained, and training is provided covering job readiness/employability skills.

It is understood that the Family Self Sufficiency (FSS) program would not provide services to everyone receiving TANF. The proposed program is to support the individual who indicates verbally and by their actions they have a desire to return to employment. It would be the responsibility of the BCOSCC to select and then refer an individual to the Housing Authority of Bergen County (HABC). Once referred the HABC would interview the individual to determine if they would qualify for a Housing Choice Voucher (HCV). If it is determine the individual is qualified then the HABC would issue a HCV voucher with FSS participation for the individual once their TANF TRA is terminated.

The issuance of the HCV voucher will be tied to the family's participation on the FSS program. The FSS program has a maximum time of 5 years during which the HABC is provided a match in Tenant Rent paid by HUD to set aside for the participant to receive upon their successful completion of the program. The funds may be used for education, down payment on a home, or starting a business. The initial entry on to the program will determine the base Tenant Rent. As a participant's income increases their Tenant Rent increases. The increases in Tenant Rent from the base Tenant Rent will be matched and saved in an escrow account to be released to the participant with interest.

The desired outcome of this proposed partnership in programs is to assist an individual with the transition from TANF enrollment to financial independence allowing the person to terminate all government support programs.

18.2.B. PARTICIPANT SELECTION

The individual must prove their ability to comply with the requirement of the TANF program to be referred to the HABC for a HCV voucher with FSS participation.

Below is the TANF compliance criteria applying to eligibility:

- In their first or second year of TANF benefits

- Never received a sanction for non-compliance
- Obtained a Tabe test score of 11 or higher
- Have a minimum of 60 days of CWEP compliance
- Completed occupational training and if necessary pass the licensing examination.
- Obtain employment in an occupation that has the potential hourly wage of \$21.00, per hour or higher.
- No Med1 exemption from participation within the past year
- No criminal record
- Current hours of employed and hourly wage received will result in the closure of the individuals TANF claim
- TANF TRA must be stopped before the start of this program
- The individual will have to meet with a panel of BCOSCC employees and obtain a recommendation to the HCV- FSS program

The individual selected for this program must be work ready and able to comply with an employer's expectations.

Below is the HCV FSS eligibility criteria:

- The HABC must have HCV vouchers available at the time of referral
- The participant family must meet income qualifications in accordance with the HCV program
- The participant family must be determined eligible for the FSS program demonstrating willingness to improve financial status through education, employment, etc. The participant must have clear goals for their future and steps to achieve these goals, including use of the FSS funds made available. The participant must be willing to comply with all program requirements.

Client Exclusion

- Any individual who is under a current sanction or was sanctioned in the past would not be eligible for this program.
- An individual who is within 1 year of the termination of their TANF TRA as a result of the five year limit
- An individual who is under a Med 1 or has had a Med 1 in the past 12 months
- An individual claiming domestic violence exclusion from compliance (BCOSCC)
- An individual who has accumulated a pattern of absences from their assign CWEP

The HABC may deny a referred client upon review of their application and/or interview for their participation on the FSS program.

18.2.C. PROGRAM DESIGN

The goal of this program is to support individuals providing them the opportunity to become fiscally independent allowing them to transition from government support. With this goal in mind the HCV voucher, if possible, must have a cancellation clause as well as a maximum time limit.

Reason for cancelling the housing voucher:

- An individual loses their job and becomes eligible for a TRA from TANF.
- An individual reaches the five year time limit of the HABC HCV- FSS program participation.
- An individual does not comply with program requirements at any time during their participation on the HCV and FSS programs.

The desired goal of this program is to provide an individual a path to transition from government support to financial independence. To ensure the program is supporting individuals desiring to take this transitional step it is necessary to have the ability to cancel a housing voucher as well as establishing a maximum time limit for the voucher.

An individual who is enrolled in TANF and obtains employment is able to continue their Medicaid coverage for up to two years. If the individual enrolled in the program requires childcare the Office for Children has indicated the individual will be eligible for two years to qualify for assistance in paying for the cost of childcare based on the individual's income level. With these two support programs continuing the individual will have the ability to obtain the experience needed resulting in wage increases and availability to secure employer provided health insurance allowing for a smooth transition from both programs.

When an individual is assigned to the G-JOB program at the BCOSCC the counselors responsible for the G-JOB program will begin screening individuals to identify potential candidates for this program. When a potential candidate is identified the counselors will interview the individual to determine the person's desire to return to work. Once an individual is identified as a potential candidate the counselor will advise the individual's To Work Case Manager that upon the successful completion of a minimum of 60 days in a CWEP the individual will attend training leading to an industry recognized credential. During the last month of training the individual will be connected with the Work First New Jersey (WFNJ), On the Job Training (OJT) case manager. The OJT Case Manager and To Work Case Manager will work together to assist the individual in obtaining employment. Upon employment of the individual's To Work Case Manager will notify the BCOSCC TANF Case Manager of the employment so there is a coordinated transition from a TANF TRA to a housing voucher.

The BCOSCC will track the individual for 1 year after employment. This tracking is required for program reporting of outcomes.

The HABC will track the participant's progress towards their goals with follow up at a minimum of every six months during their participation on the HCV FSS program. The HABC will assist in the participant achieving their goals to the extent of making appropriate referrals and connecting the participant with available services in Bergen County should the participant request or demonstrate a need for.

Chapter 19: HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS (HOPWA)

INTRODUCTION

The Housing Opportunities for Persons with AIDS (HOPWA) program, managed by HUD's Office of HIV/AIDS Housing, was established to provide housing assistance and supportive services for low-income persons with HIV/AIDS and their families. HOPWA enables eligible persons with HIV/AIDS and their families to secure, decent, safe, and sanitary housing in the private rental market by subsidizing a portion of the household's monthly rent.

The HABC is a sub-recipient of the grant administered by the City of Paterson Department of Human Services, Ryan White Grants Division. The HABC works with New Jersey Buddies and the Ryan White Grants Division in administering the funds. The HABC processes the eligibility reviews, leasing, Housing Quality Standard inspections, and annual reexaminations to determine monthly tenant rent and subsidy amounts.

The HABC will apply its policies in this administrative plan to this program where regulations overlap. This chapter will identify the areas that are specific to the HOPWA program and describes HUD regulations and HABC policies related to these topic areas as follows:

Section 1: Overview and definitions. HUD regulations specify the eligible activities funded under HOPWA grant and the responsibilities of grantees and sub-grantees. This section includes information on fair housing, non-discrimination, and VAWA.

Section 2: Housing Quality Standards and Subsidy Determinations. Housing Quality Standards are used to ensure that participants are in secure, decent, safe, and sanitary housing. Once annual income has been established HUD regulations require the HABC to subtract mandatory deductions for which a family qualifies. The requirements for calculating adjusted income are found in this section.

Section 3: Termination of Subsidy. This part describes the statutory formula for calculating total tenant payment (TTP), the use of utility allowances, and the methodology for determining HABC subsidy and required family payment.

Section 4: Other Program Requirements. This part describes HUD regulations on confidentiality, recordkeeping, cooperation, and conflict of interest.

Ch. 19 Section 1: OVERVIEW AND DEFINITIONS

19.1.A. OVERVIEW

The City of Paterson is approved for a HOPWA grant funded through their formula program. Eligible applicants include metropolitan statistical areas with more than 500,000 people and at least 1,500 cumulative AIDS cases and States with more than 1,500 cumulative AIDS cases outside of eligible metropolitan statistical areas. Awards are contingent upon the submission and approval by HUD or a jurisdiction's Consolidated Plan.

The grant funds Bergen – Passaic Ryan White Grants Division. The HABC is a sub-recipient.

19.1.B. DEFINITIONS [24 CFR 574.3]

Acquired immunodeficiency syndrome (AIDS) or related diseases means the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome, including infection with the human immunodeficiency virus (HIV).

Eligible person means a person with acquired immunodeficiency syndrome or related diseases who is a low-income individual, as defined in this section, and the person's family. A person with AIDS or related diseases or a family member regardless of income is eligible to receive housing information services, as described in §574.300(b)(1). Any person living in proximity to a community residence is eligible to participate in that residence's community outreach and educational activities regarding AIDS or related diseases, as provided in §574.300(b)(9).

Family is defined in 24 CFR 5.403 and includes one or more eligible persons living with another person or persons, regardless of actual or perceived sexual orientation, gender identity, or marital status, who are determined to be important to the eligible person or person's care or well-being, and the surviving member or members of any family described in this definition who were living in a unit assisted under the HOPWA program with the person with AIDS at the time of his or her death.

Low-income individual has the meaning given it in section 853(3) of the AIDS Housing Opportunity Act (42 U.S.C. 12902).

19.1.C. ELIGIBLE ACTIVITIES [24 CFR 574.300]

Subject to applicable requirements, HOPWA funds may be used to assist all forms of housing designed to prevent homelessness including emergency housing, shared housing arrangements, apartments, single room occupancy (SRO) dwellings, and community residences. Appropriate supportive services, must be provided as part of any HOPWA assisted housing, but HOPWA funds may also be used to provide services independently of any housing activity.

Approved activities applicable to the HABC include tenant-based rental assistance, including assistance for shared housing arrangements and administrative expenses.

19.1.D. GENERAL STANDARDS FOR ELIGIBLE HOUSING ACTIVITIES [24 CFR 574.310]

All grantees using grant funds to provide housing must adhere to the following standards:

1. The grantee shall ensure that qualified service providers in the area make available appropriate supportive services to the individuals assisted with housing under this subpart. Supportive services are described in §574.300(b)(7). For any individual with acquired immunodeficiency syndrome or a related disease who requires more intensive care than can be provided in housing assisted under this subpart, the grantee shall provide for locating a care provider who can appropriately care for the individual and for referring the individual to the care provider.
2. The grantee shall ensure that grant funds will not be used to make payments for health services for any item or service to the extent that payment has been made, or can reasonably be expected to be made, with respect to that item or service:
 - a. Under any State compensation program, under an insurance policy, or under any Federal or State health benefits program; or
 - b. By an entity that provides health services on a prepaid basis.

19.1.E. NONDISCRIMINATION AND EQUAL OPPORTUNITY [34 CFR 574.603]

Within the population eligible for this program, the nondiscrimination and equal opportunity requirements set forth in 24 CFR part 5 apply.

Protections for victims of domestic violence, dating violence, sexual assault, and stalking [24 CFR 574.604]

The Violence Against Women Act (VAWA) requirements set forth in 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), apply to housing assisted with HOPWA grant funds for tenant-based rental assistance.

If a tenant seeks VAWA protections, the tenant must submit such request through the project sponsor (or the grantee if the grantee is directly administering HOPWA assistance). The project sponsor will work with the housing owner or manager to facilitate protections on the tenant's behalf. Project sponsors must follow the documentation specifications, outlined in Chapter 16.9 and 24 CFR 5.2007. The project sponsor (or the grantee if the grantee is directly administering HOPWA assistance) is also responsible for determining on a case-by-case basis whether to provide new tenant-based rental assistance to a remaining tenant if lease bifurcation or an emergency transfer results in division of the household.

The grantee or project sponsor is responsible for ensuring that the housing or facility owner or manager, as applicable, develops and uses a VAWA lease term/addendum to incorporate all requirements that apply to the housing or facility owner or manager under 24 CFR part 5, subpart L, including the prohibited bases for eviction under 24 CFR 5.2005(b), the provisions regarding construction of lease terms and terms of assistance under 24 CFR 5.2005(c), and the confidentiality of documentation submitted by tenants requesting emergency transfers and of each tenant's housing location consistent with 24 CFR 5.2007(c). The VAWA lease term/addendum must also provide that the tenant may terminate the lease without penalty if a determination is made that the tenant has met the conditions for an emergency transfer under 24 CFR 5.2005(e). The grantee or project sponsor is responsible for ensuring that the housing or facility owner, or manager, as applicable, adds the VAWA lease term/addendum to the leases for all HOPWA-assisted units and the leases for all eligible persons receiving HOPWA tenant-based rental assistance.

Remaining participants following bifurcation of a lease or eviction as a result of domestic violence, dating violence, sexual assault, or stalking [24 CFR 574.460]

When a covered housing provider exercises the option to bifurcate a lease, as provided in 24 CFR 5.2009(a), in order to evict, remove, terminate occupancy rights, or terminate assistance to a person with AIDS or related diseases that receives rental assistance or resides in rental housing assisted under the HOPWA program for engaging in criminal activity directly relating to domestic violence, dating violence, sexual assault or stalking, the covered housing provider shall provide the remaining persons residing in the unit a reasonable grace period to establish eligibility to receive HOPWA assistance or find alternative housing. The grantee or project sponsor shall set the reasonable grace period, which shall be no less than 90 calendar days, and not more than one year, from the date of the bifurcation of the lease. Housing assistance and supportive services under the HOPWA program shall continue for the remaining persons residing in the unit during the grace period. The grantee or project sponsor shall notify the remaining persons residing in the unit of the duration of the reasonable grace period and may assist them with information on other available housing programs and with moving expenses.

The HABC will follow its policies on VAWA outlined in Chapter 16.9.

Ch. 19 Section 2: HOUSING QUALITY STANDARDS AND SUBSIDY DETERMINATIONS

19.2.A. HOUSING QUALITY STANDARDS

All housing assisted under 24 CFR 574.300(b) (3), (4), (5), and (8) must meet the applicable housing quality standards outlined below.

1. *State and local requirements.* Each recipient of assistance under this part must provide safe and sanitary housing that is in compliance with all applicable State and local housing codes, licensing requirements, and any other requirements in the jurisdiction in which the housing is located regarding the condition of the structure and the operation of the housing.
2. *Habitability standards.* Except for such variations as are proposed by the locality and approved by HUD, recipients must meet the following requirements:
 - a. *Structure and materials.* The structures must be structurally sound so as not to pose any threat to the health and safety of the occupants and so as to protect the residents from hazards.
 - b. *Access.* The housing must be accessible and capable of being utilized without unauthorized use of other private properties. Structures must provide alternate means of egress in case of fire.
 - c. *Space and security.* Each resident must be afforded adequate space and security for themselves and their belongings. An acceptable place to sleep must be provided for each resident.
 - d. *Interior air quality.* Every room or space must be provided with natural or mechanical ventilation. Structures must be free of pollutants in the air at levels that threaten the health of residents.
 - e. *Water supply.* The water supply must be free from contamination at levels that threaten the health of individuals.
 - f. *Thermal environment.* The housing must have adequate heating and/or cooling facilities in proper operating condition.
 - g. *Illumination and electricity.* The housing must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of residents. Sufficient electrical sources must be provided to permit use of essential electrical appliance while assuring safety from fire.
 - h. *Food preparation and refuse disposal.* All food preparation areas must contain suitable space and equipment to store, prepare, and serve food in a sanitary manner.
 - i. *Sanitary condition.* The housing and any equipment must be maintained in sanitary condition.

The HABC will apply the HQS standards found in Chapter 8.1.

19.2.B. RESIDENT RENT PAYMENT

Except for persons in short-term supported housing, each person receiving rental assistance under this program or residing in any rental housing assisted under this program must pay as rent, including utilities, an amount which is the higher of:

1. 30 percent of the family's monthly adjusted income (adjustment factors include the age of the individual, medical expenses, size of family and child care expenses and are described in detail in Chapter 6 and 24 CFR 5.609). The calculation of the family's monthly adjusted income must include the expense deductions, and for eligible persons, the calculation of monthly adjusted income also must include the disallowance of earned income, if applicable;
2. 10 percent of the family's monthly gross income; or
3. If the family is receiving payments for welfare assistance from a public agency and a part of the payments, adjusted in accordance with the family's actual housing costs, is specifically designated by the agency to meet the family's housing costs, the portion of the payment that is designated for housing costs.

19.2.C. ADDITIONAL STANDARDS FOR RENTAL ASSISTANCE [24 CFR 574.320]

If grant funds are used to provide rental assistance, the following additional standards apply:

1. *Maximum subsidy.* The amount of grant funds used to pay monthly assistance for an eligible person may not exceed the difference between:
 - a. The lower of the rent standard or reasonable rent for the unit; and
 - b. The resident's rent payment calculated under §574.310(d).
2. *Rent standard.* The rent standard shall be established by the grantee and shall be no more than the published section 8 fair market rent (FMR) or the HUD-approved community-wide exception rent for the unit size. However, on a unit by unit basis, the grantee may increase that amount by up to 10 percent for up to 20 percent of the units assisted.
3. *Rent reasonableness.* The rent charged for a unit must be reasonable in relation to rents currently being charged for comparable units in the private unassisted market and must not be in excess of rents currently being charged by the owner for comparable unassisted units.

With respect to shared housing arrangements, the rent charged for an assisted family or individual shall be in relation to the size of the private space for that assisted family or individual in comparison to other private space in the shared unit, excluding common space. An assisted family or individual may be assigned a pro rata portion based on the ratio derived by dividing the number of bedrooms in their private space by the number of bedrooms in the unit. Participation in shared housing arrangements shall be voluntary.

Ch. 19 Section 3: TERMINATION OF SUBSIDY

19.3.A. TERMINATION OF ASSISTANCE

Surviving family members. With respect to the surviving member or members of a family who were living in a unit assisted under the HOPWA program with the person with AIDS at the time of his or her death, housing assistance and supportive services under the HOPWA program shall continue for a grace period following the death of the person with AIDS. The grantee or project sponsor shall establish a reasonable grace period for continued participation by a surviving family member, but that period may not exceed one year from the death of the family member with AIDS. The grantee or project sponsor shall notify the family of the duration of their grace period and may assist the family with information on other available housing programs and with moving expenses.

Violation of requirements. Assistance to participants who reside in housing programs assisted under this part may be terminated if the participant violates program requirements or conditions of occupancy, subject to the VAWA protections, in 24 CFR 5.2005(b) and 24 CFR 5.2005(c) and throughout this administrative plan. See Chapter 12 for more information on terminations. Grantees must ensure that supportive services are provided, so that a participant's assistance is terminated only in the most severe cases.

Procedure. In terminating assistance to any program participant for violation of requirements, grantees must provide a formal process that recognizes the rights of individuals receiving assistance to due process of law. The HABC will follow the process for informal reviews and informal hearings outlined in Chapter 16.3.

Ch. 19 Section 4: OTHER PROGRAM REQUIREMENTS

19.4.A. CONFIDENTIALITY [24 CFR 574.440]

The grantee shall agree, and shall ensure that each project sponsor agrees, to ensure the confidentiality of the name of any individual assisted under this part and any other information regarding individuals receiving assistance.

19.4.B. RECORDKEEPING [24 CFR 574.530]

Each grantee must ensure that records are maintained for a 4-year period to document compliance with the provisions of this part. Grantees must maintain the following:

- a) Current and accurate data on the race and ethnicity of program participants.
- b) Documentation related to the formula grantee's Assessment of Fair Housing, as described in 24 CFR 5.168.
- c) Data on emergency transfers requested under 24 CFR 5.2005(e), pertaining to victims of domestic violence, dating violence, sexual assault, or stalking, including data on the outcomes of such requests.

19.4.C. FINANCIAL REQUIREMENTS

Financial records [24 CFR 574.450]

The grantee shall agree, and shall ensure that each project sponsor agrees, to maintain and make available to HUD for inspection financial records sufficient, in HUD's determination, to ensure proper accounting and disbursing of amounts received from a grant under this part.

Deobligation of funds [24 CFR 574.540]

HUD may deobligate all or a portion of the amounts approved for eligible activities if such amounts are not expended in a timely manner, or the proposed activity for which funding was approved is not provided in accordance with the approved application or action plan and the requirements of this regulation. HUD may deobligate any amount of grant funds that have not been expended within a three-year period from the date of the signing of the grant agreement. The grant agreement may set forth other circumstances under which funds may be deobligated or sanctions imposed.

19.4.D. COOPERATION

Capacity [24 CFR 574.410]

The grantee shall ensure that any project sponsor with which the grantee contracts to carry out an activity under this part has the capacity and capability to effectively administer the activity.

Cooperation [24 CFR 574.420]

The grantee shall agree, and shall ensure that each project sponsor agrees, to cooperate and coordinate in providing assistance under this part with the agencies of the relevant State and local governments responsible for services in the area served by the grantee for eligible persons and other public and private organizations and agencies providing services for such eligible persons.

A grantee that is a city receiving a formula allocation for an EMSA shall coordinate with other units of general local government located within the metropolitan statistical area to address needs within that area.

The HABC works in coordination with the City of Paterson – Ryan White Grants Division and New Jersey Buddies.

19.4.E. CONFLICT OF INTEREST [24 CFR 574.625]

In addition to the conflict of interest requirements in 2 CFR 200.318 (for recipients and subrecipients that are not States), no person who is an employee, agent, consultant, officer, or elected or appointed official of the grantee or project sponsor and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom he or she has family or business ties, during his or her tenure or for one year thereafter.

Exceptions: Upon the written request of the recipient, HUD may grant an exception to the provisions of this section when it determines that the exception will serve to further the purposes of the HOPWA program and the effective and efficient administration of the recipient's program or project. An exception may be considered only after the recipient has provided the following:

- (1) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and
- (2) An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law.

Factors to be considered for exceptions. In determining whether to grant a requested exception after the recipient has satisfactorily met the requirements of the above section, HUD will consider the cumulative effect of the following factors, where applicable:

- (1) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;
- (2) Whether the person affected is a member of a group or class of eligible persons and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;
- (3) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted activity in question;
- (4) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (a) of this section;
- (5) Whether undue hardship will result either to the recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
- (6) Any other relevant considerations.

**CONTINUUM OF CARE RENTAL
ASSISTANCE PROGRAM POLICIES AND
PROCEDURES**

Housing Authority of Bergen County
One Bergen Plaza – 2nd Floor
Hackensack, NJ 07601

September 2016

COC CH.1: STATEMENT OF POLICIES AND OBJECTIVES

A. INTRODUCTION

The Housing Authority of Bergen County (HABC) Continuum of Care Rental Assistance (CoC) Program was created to enable hard to house homeless individuals and families in Bergen County to obtain permanent stable housing. The program provides rental assistance to eligible households accompanied by a range of supportive services funded through partner agencies to assist households in maintaining their permanent residence.

Administration of HABC's CoC Program and the functions and responsibilities of the Housing Authority of Bergen County staff shall be in compliance with HABC's Personnel Policy, the Department of Housing and Urban Development's (HUD) Continuum of Care Regulations, and all applicable Federal, State, and local fair housing laws.

B. PROGRAM OBJECTIVES

The main goal of the Housing Authority of Bergen County's CoC Program is to provide both affordable housing and a full range of services to homeless individuals with a disabling condition. Targeted disabilities are those who are mentally ill, have chronic alcohol and drug problems, and/or have HIV/AIDS or related disorders and their families.

The following program objectives support this strategic goal:

- Provide rental assistance for hard-to-house homeless persons with disabilities
- Provide appropriate case management services to all households served within the program
- Connect households with outside supportive services to better enhance their ability to maintain stable housing

C. FAIR HOUSING AND EQUAL OPPORTUNITY POLICY

The Housing Authority of Bergen County complies fully with all Federal, State, and local anti-discrimination laws and administers its programs in accordance with the rules and regulations governing Fair Housing and Equal Opportunity in providing housing assistance and employment opportunities.

HABC shall not deny any family or individual the opportunity to apply for or receive assistance under the CoC Program on the basis of race, color, sex, religion, creed, national or ethnic origin, nationality, ancestry, age, family or marital status, civil union status, domestic partnership status, disability, affectional or sexual orientation, gender identity or expression, or source of lawful income used for rental or payments.

Except as otherwise provided in HUD Regulations, no household with a disability shall be denied program benefits or excluded from program participation or otherwise subjected to discrimination. If HABC's facilities are inaccessible to or unusable by persons with disabilities, HABC will make every reasonable effort to accommodate.

D. PRIVACY RIGHTS

All information relating to a participant or applicant household is confidential. HABC's policy regarding release of information is in accordance with Federal, State, and local laws, which may restrict the release of household information. HABC staff will not discuss household information contained in its files unless there is a business reason to do so. Inappropriate discussion of household information or improper disclosure of household information by staff will result in disciplinary action.

E. JURISDICTION

The jurisdiction of the Housing Authority of Bergen County Continuum of Care Rental Assistance Program is the County of Bergen, New Jersey.

COC CH. 2: PROGRAM SPONSOR AGENCIES

A. INTRODUCTION

In order for adequate supportive services to be available to households in the program, the Housing Authority of Bergen County partners with sponsor agencies throughout the community that are responsible for providing and connecting participants with the appropriate services. This chapter will discuss the criteria of a sponsor agency as well as the responsibilities and procedures of that sponsor agency.

B. SPONSOR AGENCY RELATIONSHIP WITH HABC

To provide the services required of the Continuum of Care Program, the Housing Authority of Bergen County contracts with sponsor agencies in the community. Participating sponsor agencies may be contracted or may request to participate in order to provide housing to current clients. For any agency to be involved with the CoC Program, agencies must be able to demonstrate the capacity to provide the case management services required of the program.

Once the agency is deemed appropriate by the HABC, the HABC and the sponsor agency will sign a Memorandum of Understanding (MOU). This MOU will be effective for a period of one year and identifies the responsibilities of both the Housing Authority of Bergen County and the sponsor agency that are required when executing the Continuum of Care Rental Assistance Program. Once the MOU is signed the sponsor agency can begin the referral process for CoC Vouchers.

Either the HABC or sponsor agency may terminate this MOU at any time, with or without cause, 90 days prior with written notice without penalties or liabilities, upon identification and commitment of another sponsor agency.

C. SCHEDULE OF RESPONSIBILITIES

To ensure proper management of the CoC Program the designated parties will carry out the following responsibilities:

Sponsor Agency Responsibilities:

Perform the following housing related functions:

1. Assist household in collecting all necessary verification documentation to complete eligibility packet for acceptance into CoC Program.
2. Attend any eligibility or voucher issue meeting between the household and the Housing Authority of Bergen County.
3. Once household obtains a voucher, work with them to identify an appropriate housing unit within the County and complete the required Voucher Issue Packet.
4. Assist residents in understanding their rights and responsibilities under a tenant lease/sublease arrangement. This includes the explanation of the evictions and appeal process.

Perform the following support service functions:

1. Provide coordination of case management services, which may include:
 - a. Mental health, physical counseling and services
 - b. Rehabilitation, vocational employment assistance
 - c. General health and dental services
 - d. Income support, entitlements and benefits. Best practices and SOAR training will be prioritized and tracked
 - e. Substance abuse (alcohol, drugs) treatment
2. Conduct an initial needs assessment and develop an individual service plan for each person with special needs. This assessment will be conducted on an annual basis and updates to the service plan will occur as the level of need changes for the household. Provide annual disability certification for program participants.
3. Refer residents, when needed or upon request, to treatment services or other needed social services.
4. Provide crisis intervention as needed and when requested by the landlord or provide consultation in the management of disputes or differences between residents and property management.
5. Consistent with household's rights and principals, as well as the principals of Supportive Housing, it is understood that referrals and other services will be made available to all of the residents with special needs. The sponsor agency will take no action in making referrals or providing services without the agreement of the household except when it appears, in their judgment, necessary to do so to protect the individual or other from serious harm.

Provide the following administrative services:

1. Administer master leases and disperse tenant rental payments, when applicable.
2. Submit service-tracking forms to show service match at least quarterly to the HABC.
3. Submit service plan and updates to service plan when they take place.
4. Keep all records regarding program support services as required by Federal and State regulations and those of other funding sources.

Housing Authority of Bergen County Responsibilities:

1. Develop screening criteria and tenant selection process and documentation.
2. Provide and approve eligibility and voucher issue applications to qualified applicants for CoC vouchers.
3. Complete tenant rent calculations and re-certifications on an annual basis or as requested by the tenant in the event of a change in income.

4. Conduct unit inspections prior to signing of new leases and on an annual basis.
5. Disburse monthly subsidy rental payments to landlord.
6. Administer the Continuum of Care Rental Assistance Voucher.
7. Enter all new client information into the Homeless Management Information System.
8. Collect all documentation demonstrating the service match for rental assistance provided.
9. Complete and submit all program reports and applications as required by the U.S. Department of Housing and Urban Development.
10. Monitor program and sponsor agency performance and compliance with HUD regulations.

HABC and Sponsor Agency Shared Responsibilities:

1. Work collaboratively to maintain referrals to fill housing openings when they occur in the program.
2. Work collaboratively to solve administrative issues related to CoC voucher recipients.
3. Report client level information in the Homeless Management Information System as required.

D. MONITORING PROGRAM PERFORMANCE

The Housing Authority of Bergen County will be responsible for monitoring program performance of the Continuum of Care Rental Assistance Program. In order to ensure the CoC Program is performing to the standards set forth by HUD and the Bergen County CoC, HABC will perform the following activities:

1. Enter new participant information into the HMIS within 2 days of them entering the program as well as updating the information annually, and as needed.
2. Document and keep track of draw down amounts for rental assistance provided for program participants.
3. Collect service tracking forms and other necessary documentation from sponsor agencies to ensure appropriate supportive services match is being provided.
4. Maintain and update annually, participant's documentation of income and household composition.
5. Complete and submit necessary reports as mandated and requested by HUD and the Bergen County CoC.
6. Obtain important client level feedback or concerns about how the CoC Program is functioning

and possible improvements that could be made to the program.

Any issues or concerns found during the program monitoring process will be addressed and resolved in conjunction with the program sponsor agency. If an issue continues to occur or cannot be resolved, HABC will work to identify a more appropriate sponsor agency for the program participants involved.

COC CH. 3: ELIGIBILITY FOR ADMISSION

A. INTRODUCTION

This chapter defines the basic criteria for admission to the Continuum of Care Rental Assistance Program. The Housing Authority of Bergen County strives for objectivity and consistency in applying these criteria to evaluate the eligibility of household who apply. HABC staff will review all eligibility information provided with regard to factors defined in this chapter. Households will be provided the opportunity to explain their circumstances, furnish additional information, if needed, and receive an explanation of the basis for any decision made by HABC and the sponsor agency pertaining to their eligibility.

B. ELIGIBILITY FACTORS

To be considered eligible for participation, an applicant must meet HUD's criteria, as well as any permissible additional criteria established by HABC or the sponsor agency. HUD's eligibility criteria are:

1. A person must be literally homeless
2. At least one member of the household must have a targeted disabling condition

C. ELIGIBILITY FACTOR 1: HOMELESSNESS

In order to be eligible, the applicant must qualify as homeless. A person is considered homeless when he/she resides in one of the four places described below:

1. Place not meant for human habitation, such as a car, park, sidewalk, or abandoned building
2. An emergency shelter
3. Transitional housing for homeless persons who originally came from the streets or emergency shelter
4. A HUD-defined Safe Haven

If a person is currently in a jail or institution and has been there for less 90 days and immediately preceding the institution they were in one of the four categories listed above, he/she continues to qualify as coming from one of these categories.

If a program has specified that they will target chronically homeless individuals, the individual must:

1. Have a disabling condition AND
2. Live either in a place not meant for habitation, a safe haven, or in an emergency shelter AND
3. Have been living in a place not meant for habitation, a safe haven, or in an emergency shelter continuously for at least 12 months OR on at least 4 separate occasions in the last 3 years, where the combined occasions total a length of time of at least 12 months.

A chronically homeless family is one where the head of household meets the definition of chronically

homeless, whether the whole family was with the head of household at all times or not.

A chronically homeless individual can be currently residing in an institutional care facility if the individual has been living in the facility for fewer than 90 days and had been living in a place not meant for human habitation, a safe haven, or in an emergency shelter immediately before entering the institutional care facility.

Each period separating the occasions must include at least 7 nights of living in a situation other than a place not meant for human habitation, in an emergency shelter, or in a safe haven.

Stays in institutions of fewer than 90 days do not constitute a break and count towards the total time the individual is considered homeless.

D. ELIGIBILITY FACTOR 2: DISABLED

Persons with disabilities means a household composed of one or more persons in which at least one has a disability. Eligible homeless CoC households must also have one of the program targeted disabling conditions.

A person shall be considered to have a disability if he or she has a disability that:

- Is expected to be long-continuing or of indefinite duration;
- Substantially impedes the individual's ability to live independently

- Could be improved by the provision of more suitable housing conditions; and

- Is a physical, mental, or emotional impairment, including impairments caused by alcohol or drug abuse, post-traumatic stress disorder, or brain injury.

A person will also be considered to have a disability if he or she has a developmental disability, which is a severe and chronic disability that:

- Is attributable to a mental or physical impairment or combination of mental and physical impairments;

- Is manifested before the person attains age 22;

- Is likely to continue indefinitely

- Results in substantial function limitations in three or more of the following areas of major life activity:
 - Self-care
 - Receptive and expressive language
 - Learning
 - Mobility
 - Self-direction
 - Capacity for independent living
 - Economic self sufficiency

- Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services that are of lifelong or extended duration

A person will also be considered to have a disability if he or she has acquired immunodeficiency syndrome (AIDS) or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome, including infections with the human immunodeficiency virus (HIV).

It is the responsibility of the sponsor agency in conjunction with the applying program participant to gather documentation to show both homelessness and disability eligibility. If a person does not meet both eligibility factors they will not qualify for the Continuum of Care Rental Assistance Program.

COC CH. 4: APPLYING FOR ADMISSION

A. INTRODUCTION

Program applicants are either referred as a guest of the Bergen County Housing, Health and Human Services Center (BCHHH), or through direct agency referral. This chapter will detail the application process for both entrance options into the program and the process for eligibility determination.

B. REFERRALS THROUGH THE BERGEN COUNTY HOUSING, HEALTH AND HUMAN SERVICES CENTER

The Bergen County Housing, Health and Human Service Center (BCHHH) serves as a one stop for homeless individuals to receive information, case management, health, human services, and financial assistance. The BCHHH is also the main source of emergency shelter for homeless individuals in Bergen County. Because of the Center's desire to find appropriate permanent housing for all shelter guests, assessments and documentation collection begins upon sheltering. Through this assessment and collection process, guests that appear to be eligible for the Continuum of Care Rental Assistance Program are identified.

Every month, the HABC Program Director, the BCHHH Director, BCHHH Coordinator for Program Services, BCHHH Assisted Housing Specialists and caseworkers from the contracted sponsor agencies meet to discuss the clients that are currently enrolled and staying at the Center. At these meetings, the Center will identify clients they feel may be appropriate for the CoC program. If an appropriate voucher is available in the HABC Continuum of Care Program, the identified household will be referred to one of the contracted sponsor agencies to start the application process.

Once the sponsor agency is identified, they will be responsible to conduct an individual intake assessment on the household. If the sponsor agency performs the intake and feels they have the ability to provide the necessary services required for the household, the BCHHH Assisted Housing will schedule an eligibility and income interview with the applicant and the caseworker from the connected sponsor agency.

If the agency does not feel that they have the ability to serve the household, the HABC in conjunction with The Center will work to identify a more appropriate sponsor agency for that household. No household will be accepted into the Continuum of Care Rental Assistance Program without connection to a sponsor agency.

C. REFERRALS THROUGH INDIVIDUAL AGENCIES

If an agency in the community has confirmed that they will be participating and providing services for the HABC CoC Program, they have the ability to refer clients they feel are eligible and appropriate for the CoC voucher that are not currently a BCHHH shelter guest. In order to get the referral process and accepted, the agency must contact the HABC Program Director directly to provide basic details on the household to see if an appropriate voucher is available. If the HABC Program Director feels there may be a voucher open and available, the client's homelessness and disability documentation are sent to the BCHHH Assisted Housing Specialist, who will then schedule an eligibility and income interview with both the applying participant as well as their caseworker from the referring sponsor agency.

D. ELIGIBILITY AND INCOME INTERVIEW

The main purpose of the eligibility and income interview is to collect and confirm all necessary information relating to the household's homeless and disability eligibility, household composition, household income, citizenship status, as well as basic demographic information. The BCHHH Assisted Housing Specialist will review all information and questions when the applying applicant and the caseworker. If additional information is needed, the caseworker and applicant will have the ability to provide additional documentation and explanation in order to complete the eligibility packet.

E. ELIGIBILITY DETERMINATION

Verification

Information provided by the applicant will be verified, using the verification procedures described in Chapter 5. All pertinent information will be verified before final eligibility determination is made and confirmed by HABC staff.

Final Determination and Notification of Eligibility

After the verification process is complete, the BCHHH Assisted Housing Specialist will make a final determination of the applicant's eligibility for the Continuum of Care Rental Assistance Program. Upon this determination, the household's file will go under supervisory review to confirm and verify eligibility determination. Confirmation will be made by the Center's Director, HABC Assisted Housing Supervisor, and HABC Program Director, who will also determine the appropriate voucher size for the household. Once this confirmation and determination are made, the case is assigned to the HABC Assisted Housing Specialist to lease up the voucher with the approved household. The BCHHH Assisted Housing Specialist will notify the household of their eligibility determination and schedule a voucher issuance meeting (see Chapter 8: Voucher Issuance, Unit and Lease Approval).

COC CH. 5: VERIFICATION PROCEDURES

A. INTRODUCTION

HUD regulations govern calculation of Total Tenant Payment as determined by HABC. Applicants and program participants must furnish proof of their statements whenever required by the HABC, and the information they provide must be true and complete. HABC's verification requirements are designed to maintain program integrity. This chapter explains HABC's procedures and standards for verification of homelessness, disability, income, assets, allowable deductions, household status, and household composition. HABC will ensure that proper authorization from the household is always obtained before making verification inquiries.

B. METHODS OF VERIFICATION

HABC will verify information through both reviews of application and third-party documents, as well as self-certification, when necessary.

Review of Documents

HABC will utilize documents provided by the household or Third Party as the primary source of verification only if the documents provide complete information. All such documents will be photocopied and retained in the applicant file.

HABC will accept the documents outlined in this Chapter from the household, provided there is no evidence of tampering and that the documents contain sufficient information.

HABC will accept electronic/faxed documents.

Self-Certification/Self-Declaration

Self-certification or "tenant declaration" is used as a last resort when the HABC is unable to obtain third-party verification.

When the HABC relies on a tenant declaration for verification of income, assets, or expenses, the household's file must be documented to explain why third-party verification was not available.

When information cannot be verified by a third-party or by review of documents, household members will be required to submit self-certifications attesting to the accuracy of the information they have provided to the HABC.

The HABC may require a household to certify that a member does not receive a particular type of income or benefit.

The self-certification must be made in a format acceptable to the HABC and must be signed by the household member whose information or status is being verified. All self-certifications must be signed in the presence of a HABC representative or HABC notary public.

C. RELEASE OF INFORMATION

The household will be required to sign specific authorization forms when information is needed that is not covered by the documents provided in the application. Each member requested to consent to the release of information will be required to review and sign appropriate forms. Copies will be

provided upon request.

Household refusal to cooperate with the HUD prescribed verification system may result in denial of admission or termination of assistance because it is a household obligation to supply any information requested by the HABC or HUD.

D. ITEMS REQUIRING VERIFICATION

Initial Eligibility

- Homelessness status of household
- Disability status of members of the household
- All income not specifically excluded by the regulations
- Zero-income status of household
- Full-time student status including high school students who are 18 or over
- Current assets, including assets disposed of for less than fair market value in the preceding two years
- U.S. citizenship or eligible immigrant status
- Social Security numbers for all household members who have been issued a number
- Familial/marital status when needed for head or spouse definition
- Documentation for need to have a live-in aide
- Insurance/ownership/RE taxes/water and sewage/tax form ID of property owner
- Medical requests

Recertification

- Childcare expenses when childcare allows an adult household member to be employed, to seek employment, or to further his/her education
- Total medical expenses of all household members in households whose head or spouse is elderly or disabled
- Disability assistance expenses to include only those costs associated with attendant care or auxiliary apparatus that allow an adult household member to be employed

E. VERIFICATION OF HOMELESSNESS

All households will need to provide HABC with sufficient documentation demonstrating their current homeless situation. The following documents will be accepted:

- A written letter from an emergency shelter or transitional housing program stating the dates of the household's enrollment in the program (HMIS printout that displays dates of enrollment will be accepted)
- Written observation by an outreach worker that the household was literally homeless (on the streets, living in car, etc.)
- Certification by the household seeking assistance stating that he/she was living on the streets, with appropriate support documentation as necessary
- For households exiting an institution in less than 90 days, a letter from the institution stating the dates the household was a resident in the institution

Verification should give HABC a full understanding of the household's homelessness experience. For program vouchers in which the eligibility criteria requires the person to be chronically homeless, the verification documents should demonstrate either a full year of homelessness or 4 episodes of homelessness over a 3 year time frame.

F. VERIFICATION OF DISABILITY

The following documentation will be accepted as proof of a person's disability:

- Written verification of the disability from a professional licensed by the state to diagnose and treat the disability and his/her certification that the disability is expected to be long-continuing or of indefinite duration and substantially impedes the household's ability to live independently.
- Written verification from the Social Security Administration.
- Disability award letter.
- Intake staff recorded observation of disability that, no later than 45 days of the application for assistance, is confirmed and accompanied by evidence from a professional licensed by the state to diagnose and treat the disability.
- Other documentation approved by HUD.

G. VERIFICATION OF INCOME

All forms of income will be verified to ensure the information that was provided is complete and accurate.

Employment Income

Acceptable methods for verifying employment income include, in this order:

- Employment verification form completed by the employer
- to 6 consecutive check stubs or earning statements indicating the employee's gross pay, frequency of pay or year to date earnings

- W-2 forms plus income tax return forms
- Income tax returns signed by the household for verification of self-employment income or income from tips and other gratuities

Social Security, Pension, Supplementary Security Income (SSI) and Disability Income

Acceptable methods of verification include, in this order:

- Computer report electronically obtained through the Tenant Assessment Sub-System (TASS) or a hard copy
- Benefit verification form completed by agency providing the benefits
- Award or benefit notification letters provided by the providing agency

Unemployment Compensation

Acceptable methods of verification include, in this order:

- Verification form completed by the unemployment compensation agency
- Computer printouts from unemployment office stating payment dates and amounts

Welfare Payments or General Assistance

Acceptable methods of verification include, in this order:

- Computer printout completed by payment provider.
- Written statement from payment provider indicating the amount of grant/payment, start date of payments, and anticipated changes in payment in the next 12 months.
- Computer-generated Notice of Action.

Alimony of Child Support Payments

Acceptable methods of verification include, in this order:

- Copy of separation or settlement agreement or a divorce decree stating amount and type of support and payment schedules
- Notarized letter from person paying the support
- Probation office print out indicating the amount, frequency and history of payments
- Copy of the latest check and/or payment stub from a court trustee. HABC must record the date, amount, and number of the check
- Household's self-certification of amount received, and the likelihood of support payments being received in the future, or self-certification that support payments are not being received
- If payments are irregular, copy of separation or settlement agreement or divorce decree stating the amount and type of support and payment schedules and one of the following:
 - Statement from agency responsible for enforcing payments demonstrating that the household has filed for enforcement
 - Welfare notice of action showing amounts received by the welfare agency for child support; or

- Written statement from an attorney certifying that a collection or enforcement action has been filed.

Net Income from a Business

Acceptable methods of verification include, in this order:

- IRS Form 1040, including:
 - Schedule C (Small Business);
 - Schedule E (Rental Property Income); and
 - Schedule F (Farm Income)
- Documents such as manifests, appointment books, cashbooks, bank statements, and receipts. These documents will be used as a guide for the prior six months (or lesser period if not in business for six months) to project income for the next 12 months.
- Credit report or loan application

The household will be advised to maintain these documents in the future if they are not available.

Recurring Gifts

The household must furnish a notarized letter from the provider or self-certification, which contains the following information:

- Name of gift provider;
- Value of gift;
- Regularity (dates) of gift; and
- Purpose of gift

Zero Income Status

All members 18 years of age or older claiming to have no income will be required to execute verification forms to determine that all forms of income such as unemployment benefits, TANF, SSI, etc. are not being received by the household. Zero income packets are completed for each household claiming no income. Recertification is required every 3 months for households with zero income status.

HABC may request information from the IRS. HABC may check records of other departments in the jurisdiction that have information about income sources of applicants and participants.

Full-Time Student Status

Full-time student status may be verified through:

- Written verification from the registrar's office or other school official.
- School records indicating enrollment to be considered a full-time student by the educational institution.

H. VERIFICATION OF INCOME FROM ASSETS

Checking and Savings Account Interest Dividends

May be verified through:

- Account statements, passbooks, and certificates of deposit, all showing interest rates.
- Broker's statements showing value of stocks or bonds and the earnings credited the

household. Earnings can be obtained from current newspaper quotations or oral broker's verification.

- IRS Form 1099 from the financial institution, provided that HABC adjusts the information to project earnings expected for the next 12 months.

Interest Income from Mortgages or Similar Arrangements

Will be verified by:

- Letter from an accountant, attorney, real estate broker, the buyer, or a financial institution stating interest due for next 12 months. (A copy of the check paid by the buyer to the household is not sufficient, unless a breakdown of interest and principal is shown)
- Amortization schedule showing interest for the 12 months following the effective date of the certification or recertification

Net Rental Income from Property Owned by Household

Will be verified by:

- IRS Form 1040 with Schedule E (Rental Income)
- Copies of latest rent receipts, leases or other documentation of rent amounts
- Documentation of allowable operating expenses of the property: tax statements, insurance invoice, bills for reasonable maintenance and utilities, and bank statements or amortization schedules showing monthly interest expense
- Lessee's written statement verifying rent payments to the household and household's self-certification as to net income realized

I. VERIFICATION OF ASSETS

HABC will require the necessary information to determine the current cash value of the asset. (The current cash value is the next amount the household would receive if the asset were converted to cash).

Household Assets

Household assets may be verified using:

- Verification forms, letters, or documents from a financial institution or broker.
- Passbooks, checking account statements, certifications of deposit bonds, or financial statements completed by a financial institution or broker.
- Quotes from a stock broker or realty agency as to net amount household would receive if they liquidated securities or real estate.
- Real estate tax statements if appropriate current market value can be reduced from assessment.
- Real estate tax statements if the appropriate current market value can be reduced from assessment.

- Financial statements for business assets.
- Copies of closing documents showing the selling price and the distribution of the sales proceeds.
- Appraisals of personal property held as an investment.
- Household's self-certification describing assets or cash held at the household's home or in safe deposit boxes.

Assets Disposed of for Less than Fair Market Value

HABC will obtain the household's certification as to whether any member has disposed of assets for less than fair market value during the two years preceding the effective date of the certification or recertification.

If the household certifies that they have disposed of assets for less than fair market value, the verification or certification must show:

- All assets disposed of for less than fair market value;
- Date assets were disposed of;
- Amount the household received; and
- Market value of the assets at the time of disposition.

J. VERIFICATION OF ALLOWABLE DEDUCTIONS FROM INCOME

Childcare Expenses

Verification of childcare expenses should include:

- Written verification from the person who receives the payments. If the childcare provider is an individual, a statement of the amount the individual is charging the household for the service. Verifications must specify the name of the childcare provider, address, telephone number, Social Security number, names of children cared for, number of hours cared for and the specific hours of care, rate of pay, and typical yearly amount paid, including school and vacation periods
- Household certification as to whether any of the childcare payments have been or will be paid or reimbursed by outside sources

Medical Expenses

Households who claim medical expenses or expenses to assist a person(s) with a disability or handicap will be required to submit a certification as to whether or not any expense payments have been, or will be, reimbursed by an outside source. All expense claims will be verified by one or more of the methods listed below:

- Written verification by a doctor, hospital or clinic personnel, dentist, pharmacist, of
 - The anticipated medical costs to be incurred by the household and regular payments due on medical bills; and
 - The extent to which those expenses will be reimbursed by insurance or a government

agency

- Written confirmation by the insurance company or employer of health insurance premiums to be paid by the household
- Written confirmation from the Social Security Administration indicating the amount of Medicare premiums to be paid by the household over the next 12 months. A computer printout will be accepted.

Attendant Care

Verification of attendant care should include:

- Reliable, knowledgeable professional's certification that the assistance of an attendant is necessary as a medical expense and a projection of the number of hours the care is needed for calculation purposes
- Attendant's written confirmation of hours of care provided and amount and frequency of payments received from the household or agency (or copies of canceled checks the household used to make those payments) or paycheck stubs from the agency providing the services
- Receipts, canceled checks, or pay stubs that verify medical costs and insurance expenses likely to be incurred in the next 12 months
- Copies of payment agreements or most recent invoice that verify payments made on outstanding medical bills that will continue over all or part of the next 12 months
- Receipts or other record of medical expenses incurred during the past 12 months that can be used to anticipate future medical expenses. HABC may use this approach for "general medical expenses" such as non-prescription drugs and regular visits to doctors or dentists, but not for one-time, nonrecurring expenses from the previous year
- HABC will use mileage at the IRS rate, or cab, bus fare, or other public transportation directly related to medical treatment.

Assistance to Persons with Disabilities

Verification should include:

- Written certification from a reliable, knowledgeable professional must be provided attesting that the person with disabilities requires the services of an attendant and/or the use of auxiliary apparatus to permit him/her to be employed or to function sufficiently, independently to enable another household member to be employed
- The household must certify as to whether it receives reimbursement for any of the expenses of disability assistance and the amount of any reimbursement received
- For expenses related to attendant care, HABC will require the attendant's written certification of amount received from the household, frequency of receipt, and hours of care provided
- If the attendant's certification cannot be obtained, the household may provide self-certification and copies of canceled checks that the household used to make payments

- Costs may be verified using receipts for purchases or proof of monthly payments and maintenance expenses for auxiliary apparatus
- In the case where the person with disabilities or handicaps is employed, statement from the employer that the auxiliary apparatus is necessary for employment will be required

K. VERIFICATION OF OTHER NON-FINANCIAL FACTORS

Verification of Legal Identity

To pursue program usage, HABC requires verification of identify for all household members using one or more of the following:

- Current, valid Driver's License (Photo Only)
- U.S. Military Discharge (DD 214)
- U.S. Passport
- Department of Motor Vehicles Identification Card (Photo Only)
- Certificate of Birth, Naturalization papers
- Church-issued Baptismal Certificate
- Voter's Registration
- Adoption papers
- Custody agreement
- School records

If a document submitted by a household is illegible or otherwise questionable, more than one of these documents may be required.

Marital Status

Verification should include:

- To verify marriage, a copy of a marriage certificate may be used
- To verify a separation, a copy of court-ordered maintenance or other records may be submitted
- To verify a divorce, a household member may provide a certified copy of the divorce decree, signed by a Court Officer

Familial Relationships

Self-certification will normally be considered sufficient verification of household relationships. In cases where reasonable doubt exists, the household may be asked to provide verification as follows:

- To verify relationship, official identification showing names or birth certificates
- To verify guardianship:

- Court-ordered assignment
- Verification from social services agency

Examples of a stable household relationship include joint bank accounts or other shared financial transactions, leases or other evidence of prior cohabitation, and credit reports showing relationship.

Change of Household Composition

The HABC may verify changes in household composition (either reported or unreported) through letters, telephone calls, utility records, inspection, landlords, neighbors, school or Department of Motor Vehicles records, and other sources.

- Legal papers documenting a spouse instituted a divorce action/ legal separation.
- Order of protection/restraining order obtained by one household member against another.
- Proof of another home address, such as utility bills, canceled rent check, driver's license, or lease or rental agreement.
- Statements from other agencies such as social services.
- If the adult household member is incarcerated, a document from the Court/prison stating how long the member will be incarcerated.

Citizenship/Eligible Immigrant Status

To be eligible for assistance, household members must be U.S. citizens or eligible immigrants. Members who are neither may elect not to contend their status. Eligible immigrants must fall into one of the categories specified by the regulations and must have their status verified by Immigration and Naturalization Services (INS). Each household member must declare his/her status once. Assistance cannot be delayed, denied, or terminated while verification of status is pending except that assistance to applicants may be delayed while the HABC hearing is pending.

- Citizens or Nationals of the United States: Signed declaration under penalty of perjury. HABC will not require citizens to provide documentation of citizenship
- Eligible Immigrants who were participants and 62 or over on June 19, 1995: Signed declaration of eligible immigration status and proof of age
- Non-citizens with eligible immigration status: Signed declaration of status and verification consent form and submission of original immigration documents to HABC, which are to be copied and returned to the household. HABC will verify the status through the INS SAVE system. If this primary verification fails to verify status, HABC must request within ten days that the INS conduct a manual search.

Ineligible household members who do not claim to be citizens or eligible immigrants must be listed on a statement of ineligible household members signed by the head of household or spouse.

Noncitizen students on student visas are ineligible members even though they are in the country lawfully. They must provide their student visa but their status will not be verified and they do not sign a declaration but are listed on the statement of ineligible members.

If an applicant or participant household member fails to sign required declarations and consent forms or provide documents, as required, they must be listed as an ineligible member. If the entire household fails to provide and sign as required, the household must be denied or terminated for failure to provide required information.

Social Security Numbers

Social Security numbers must be provided as a condition of eligibility for all household members if they have been issued a number. Verification of Social Security numbers will be done through a Social Security Card issued by the Social Security Administration. If a household member cannot provide a Social Security Card, only the documents listed below showing his or her Social Security number may be used for verification.

The HABC must accept the following documentation as acceptable evidence of the social security number:

- An original SSN card issued by the Social Security Administration (SSA)
- An original SSA-issued document, which contains the name and SSN of the individual
- An original document issued by a federal, state, or local government agency, which contains the name and SSN of the individual

The HABC may only reject documentation of an SSN provided by an applicant or participant if the document is not an original document, if the original document has been altered, mutilated, or is not legible, or if the document appears to be forged.

The HABC will explain to the applicant or participant the reasons the document is not acceptable and request that the individual obtain and submit acceptable documentation of the SSN to the HABC within 90 days.

New household members will be required to provide their Social Security Card or provide the substitute documentation described above together with their certification that the substitute information provided is complete and accurate. This information is to be provided at the time the change in household composition is reported to HABC.

If an applicant or participant is able to disclose the Social Security Number but cannot meet the documentation requirements, the applicant or participant must sign a certification to that effect provided by HABC. The applicant/participant or household member will have an additional 30 days to provide proof of the Social Security Number. If they fail to provide this documentation, the household's assistance will be terminated.

If a household member has not been issued a number, the household member will be required to sign a certification to that effect.

COC CH. 6: DENIAL OF ASSISTANCE

A. INTRODUCTION

This chapter describes when the Housing Authority of Bergen County may deny approval for program assistance. If denial is based upon behavior resulting from a disability, the HABC will delay the denial in order to determine if there is a feasible, reasonable accommodation that would mitigate the behavior resulting from the disability.

B. GROUNDS FOR DENYING ASSISTANCE

Mandatory Denial of Assistance

- HABC will deny assistance to applicant if:
 - The household does not meet the eligibility requirements described in Chapter 3 of this document
 - Any member of the household fails to sign and submit to HUD or HABC required consent forms for obtaining information
 - Any household member has committed fraud in any Federal housing program or any public housing assistance program
 - Any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine
 - No members of the household are U.S. citizens or eligible immigrants
 - The household has engaged in or threatened abusive or violent behavior toward HABC personnel
 - “Abusive or violent behavior towards HABC personnel” includes verbal as well as physical abuse or violence. Use of expletives that are generally considered insulting, racial epithets, or other language, written or oral, that is customarily used to insult or intimidate, may be cause for denial.
 - “Threatening” refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.
 - Actual physical abuse or violence will always be cause for denial of assistance.

Housing Authority of Bergen County Discretion

In deciding whether to deny assistance because of actions or the failure to act by members of the household, HABC has discretion to consider all of the circumstances in each case, including the seriousness of the case, the extent of participation or culpability of individual household members, and the length of time since the violation occurred. HABC may also review the household’s more recent record of compliance and consider the effects of denial of assistance on other household members who were not involved in the action or failure to act.

HABC may impose, as a condition of continued assistance for other household members, a requirement that household members who participated in or were culpable for the action or failure to act will not reside in the unit. HABC may permit the other members of the household to continue

in the program.

Additionally, in determining whether to deny admission or continued participation for illegal use of drugs or alcohol abuse by a household member, the HABC may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program. For this purpose, the HABC may require the applicant or tenant to participate in such program or submit evidence of the household members current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of having been successfully rehabilitated.

C. PROCEDURE FOR DENIAL

Any household that is deemed ineligible or is mandatorily denied admission or continued participation based on the criteria above will receive written notification of their denial from the Housing Authority of Bergen County. This letter will detail the reasons for denial or termination of assistance. If the household can provide additional documentation further explaining or disproving the cause for denial, the household may request in writing an informal hearing regarding the decision within 10 days of the rendered decision. The Housing Authority will consider any additional documentation provided by the household and make a final determination based on the hearing. No additional documentation will be accepted after this final determination is made.

COC CH. 7: SUBSIDY STANDARDS

A. INTRODUCTION

HUD guidelines require that the Housing Authority of Bergen County establish subsidy standards for the determination of voucher bedroom size, and that such standards provide for a minimum commitment of subsidy while avoiding overcrowding. The standards used must be within the minimum unit size requirements of HUD's Housing Quality Standards (HQS). This chapter explains the subsidy standards used to determine voucher size for various sized households when they are selected for the program, as well as HABC's procedures when a household's size changes, or a household selects an apartment size that is different from the approved voucher.

B. DETERMINING VOUCHER SIZE

HABC's subsidy standards for determining voucher size shall be applied in a manner consistent with Fair Housing guidelines.

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

The following requirements apply when the HABC determines household unit size:

- The subsidy standards must provide for the smallest number of bedrooms needed to house a household 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 households 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 household in determining the household unit size.
- A household that consists of a pregnant woman (with no other persons) must be treated as a two-person household.
- Any live-in aide (approved by the HABC 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 household unit size.
- Unless a live-in aide resides with a household, the household unit size for any household consisting of a single person must be either a zero- or a one-bedroom unit, as determined under the HABC subsidy standards.

The HABC considers the living room a bedroom/sleeping room and will assign one bedroom for each two persons within the household, except in the following circumstances:

- Persons of the opposite sex (other than spouses, and children under age 8) will be allocated separate bedrooms.
- Live-in aides will be allocated a separate bedroom.

Guidelines for Determining Voucher Size:

<u>Voucher Size</u>	<u>Minimum Persons</u>	<u>Maximum Persons</u>
Efficiency	1	1
1 Bedroom	1	4
2 Bedroom	2	6
3 Bedroom	3	8
4 Bedroom	4	10

Generally, HQS allows two persons per bedroom or sleeping room and permit maximum occupancy levels as shown in the table above. HQS allows living space (other than kitchen and bathroom) to be utilized as a sleeping room, providing it meets minimum footage and lighting. The sleeping room may be counted as a bedroom for the purposes of determining voucher subsidy standards.

C. EXCEPTION/CHANGE TO SUBSIDY STANDARDS

The only exception that may occur to a subsidy standard is when the household composition changes once the household is already receiving a CoC voucher.

If the household composition changes, the HABC and sponsor agency will work to accommodate that household into a unit size that fits their needs and the standards set by HUD and Fair Housing guidelines. This can be done by either increasing the unit size through extra funding available in that program or by transferring the household to another CoC voucher that can better accommodate the unit size the household needs.

COC CH. 8: VOUCHER ISSUANCE, UNIT AND LEASE APPROVAL

A. INTRODUCTION

Once a household has been deemed eligible for HABC's Continuum of Care Rental Assistance Program, a voucher issuance meeting is scheduled. This meeting goes over how to find an appropriate unit in the community and what information and documentation is needed to get a unit and a lease approved for move in. This chapter will detail the voucher issuance meeting as well as the process to get a unit and lease approved for the CoC Program.

B. VOUCHER ISSUANCE

Voucher Packet

After a household is determined to be eligible for the Continuum of Care Rental Assistance Program, the Assisted Housing Specialist creates a voucher packet for the approved household. This voucher packet includes information regarding the voucher, including voucher number, voucher expiration date, and income information with possible rent calculation based on the income documentation that was previously verified.

In addition to basic voucher and income information, the voucher packet includes two types of documents: informational documents and required documents for unit and lease approval. The information documents are designed to assist households and sponsor agencies in their housing search.

Documents included for informational purposes include:

- Instructions for the voucher holder
- Participant responsibilities
- Hints for housing search
- Realtors and Landlord list
- Handbook of Counseling and Referral Agencies
- Information on possible Lead Hazards within Units
- Utility allowance worksheet
- HQS Inspection guidelines for the landlord
- Documents included for completion to obtain unit/lease approval:
 - Housing search information sheet
 - Request for Tenancy approval document that details the size, type, location and utilities included or not included in the rent for a specific unit within the community
 - Form 1099 for the landlord to complete

- Rent reasonableness survey
- Disclosure of Lead-based Paint and Lead-based Paint Hazards
- A letter to the landlord outlining HABC’s process as well as requesting the following:
 - Copy of current Certificate of Occupancy
 - Copy of current Certificate of Continued Occupancy
 - State of Inspection card
 - Fire Inspection Certificate
 - A copy of the proposed lease agreement

All voucher packets expire in 60 days from the date of issuance. If in these 60 days the household and sponsor agency has not identified a potential unit, the household must request an extension in writing to HABC. HABC may grant a household’s request for one or more extensions of the initial term at its discretion.

Voucher Issuance Meeting

Once the voucher packet has been created for the household, the Intake and Eligibility worker will schedule another meeting with the household and sponsor agency caseworker. During this meeting they will discuss all of the documents within the packet as well as moving forward with the process. Once this meeting has occurred, the household and sponsor agency can begin the housing unit search within the community.

C. UNIT AND LEASE APPROVAL PROCESS

In order for a household to request approval for an identified unit in the community, the HABC Assisted Housing Specialist must receive all of the completed documents required from the voucher packet. Once all documents are submitted, the Assisted Housing Specialist will review and verify:

- That the unit is affordable and reasonable based on rent reasonableness (see Chapter 11)
- The landlord is appropriate for the CoC Program
- The lease is appropriate for the CoC Program

Any areas of concern, missing documentation, or additional information needed will be collected from the landlord or household prior to unit approval.

Once all unit specifications are approved by the Assisted Housing Specialist, they will order an initial inspection to take place for the requested unit (see Chapter 9: Housing Quality Standards and Inspections).

After receiving confirmation that the unit has passed initial inspection, the household may move forward with signing the lease and moving into the approved unit. Households will be able to sign into a lease and move into a unit on the 1st and 15th of each month.

In addition to the household signing the lease, the Assisted Housing Specialist will also finalize the rent calculation (Total Tenant Payment) and utility allowance for the tenant (see Ch10).

COC CH. 9: HOUSING QUALITY STANDARDS AND INSPECTIONS

A. INTRODUCTION

Housing Quality Standards (HQS) are the HUD minimum quality standards for tenant-based programs. HQS standards are required both at initial occupancy and during the term of the lease. HQS standards apply to the building and premises, as well as the unit. Newly leased units must pass the HQS inspection before the beginning date of the assisted lease. HABC will inspect each unit under contract at least annually.

The Housing Authority of Bergen County may enhance HQS standards, provided that by doing so, HABC does not overly restrict the number of units available for lease under the program. The use of the term "HQS" in the Policies and Procedures refers to the combination of both HUD and HABC requirements. This chapter describes HABC's procedures for performing HQS and other types of inspections and standards for the timeliness of repairs. It also explains the responsibilities of the landlord and household and the consequences of non-compliance with HQS requirements, including lead based paint requirements, for both households and landlords.

B. GUIDELINES/TYPES OF INSPECTIONS

Efforts will be made at all times to encourage landlords to provide housing above HQS minimum standards.

All utilities must be in service at the initial inspection. If the utilities are not in service at the time of inspection, the Inspector will notify the tenant or landlord (whoever is responsible for the utilities) to have the utilities turned on. The Inspector must return to certify that the utilities are on.

The stove must be present when the unit is inspected. There are four types of inspections the HABC will perform:

1. Initial/Move-in
2. Annual
3. Special/Compliant
4. Move-out/Vacate

Inspectors conducting unit inspections must note on the inspection checklist all items receiving a rating of pass, fail or incomplete. The Inspector will make clear notes regarding the nature of all failed or incomplete items. For the unit to receive a pass rating, no fail or incomplete items can be noted on the inspection checklist.

Improvements that have occurred since the previous inspection, additional amenities or services, and changes in type of or responsibility for utilities should be noted and reported to the appropriate HABC staff. The Inspector will also record improvements or items that should be brought to the attention of the landlord or tenant that are not HQS deficiencies. Data collected from the checklist regarding the number of inspections, re-inspections, and passed, failed, or inconclusive items will be recorded on a productivity report.

Initial/Move-In Inspection

The initial/move-in inspection is conducted to:

- Determine if the unit and property meet HQS, as defined in this Plan.
- Document the current condition of the unit to assist in future evaluations to determine whether the condition of the unit exceeds normal wear and tear.
- Document the information to be used for determination of rent-reasonableness.

HABC will conduct the initial inspection within a reasonable time after receiving the unit information for the household. Every effort will be made to conduct the inspection within 15 days of receiving this information.

Time is suspended for any period during which the unit is not ready for inspection.

If the unit fails the initial HQS inspection, the household and landlord will be advised to notify HABC once repairs are completed. The landlord will be given up to 30 days to correct deficiencies identified depending on the amount and complexity of work to be done.

The landlord will be allowed up to two re-inspections for repair work to be completed.

If the time period given by the Inspector to correct the repairs has elapsed, or the maximum number of failed re-inspections has occurred, the household must select another unit.

Annual Inspections

The HABC conducts HQS inspections at least annually, as required by HUD.

The landlord must correct HQS deficiencies that cause a unit to fail, unless the tenant is responsible for the deficiency.

The household must allow the HABC to inspect the unit at reasonable times within reasonable notice. Reasonable times to conduct an inspection are on business days only between the hours of 9:00 a.m. and 4:00 p.m. Exceptions may apply. HABC will notify the household in writing at least seven days prior to the annual inspections.

The household and the landlord are notified of the date and time of the inspection appointment by mail. If the household is unable to be present, they must reschedule the appointment so that the inspection is completed within ten days. It is the landlord's responsibility to ensure compliance of this requirement.

When the inspection has been completed, the landlord and the household will be informed in writing of any items that failed to meet HQS standards and must be repaired or replaced. The landlord must notify the HABC when the repairs have been completed and to reschedule the re-inspection.

Re-inspection

If the landlord or tenant is not available for the re-inspection appointment, a card will be left at the unit, and the landlord or tenant is responsible to call for another appointment.

If the Inspector is unable to gain access to the unit for the re-inspection, payments are abated as of the first day of the month following the re-inspection. Payments cannot begin again until the

Inspector is able to enter the unit and determine that the unit meets HQS standards.

Time Standards for Repairs

Emergency items that endanger the household's health or safety must be corrected within 24 hours of notification.

For non-emergency items, repairs must be made within 30 days.

Special/Complaint Inspections

If at any time the household, landlord, agency, or third party requests a special inspection, HABC will conduct an inspection. HABC will inspect only the items that were reported, but if the Inspector notices additional deficiencies that would cause the unit to fail HQS, the responsible party will be required to make the necessary repairs.

Move-Out/Vacate Inspections

A move-out inspection will be performed at the landlord's request and if determined necessary by HABC.

C. EMERGENCY REPAIR ITEMS

Emergency repair items must be corrected by the landlord or tenant (whoever is responsible) within 24 hours of notice by the Housing Inspector. Items considered to be of an emergency nature include but are not limited to the following:

- Lack of security for the unit
- Waterlogged ceiling in imminent danger of falling
- Major plumbing leaks or flooding
- Natural gas leak or fumes
- Electrical problem that could result in shock or fire
- Inadequate heat between October 15 and April 15
- Utilities not in service
- No running water
- Broken glass where someone could be injured
- Obstacle that prevents tenant's entrance or exit
- Lack of functioning toilet

In those cases where there is leaking gas or potential fire or other threat to public safety, and the responsible party cannot be notified or it is impossible to effect the repair, proper authorities will be notified by HABC.

If the emergency repair item(s) are not corrected in the time period required by HABC, and the landlord is responsible, the payment will be abated and the lease may be terminated.

If the emergency repair item(s) are not corrected in the time period required by the HABC, and it is an HQS breach that is a household obligation, HABC will terminate the assistance to the household and the landlord's payment will not be abated for the month following breach of HQS.

D. DETERMINATION OF RESPONSIBILITY

The household is responsible for breaches of HQS caused by:

- Tenant-paid utilities not in service
- Failure to provide or maintain household-supplied appliances
- Damages to the unit or premises caused by a household member or guest beyond normal wear and tear, as defined in Chapter 15.

The landlord is responsible for all other HQS violations.

The landlord is responsible for eliminating vermin infestation, even if caused by the household's living habits. However, if such infestation is serious and repeated, it may be considered a lease violation and the landlord may evict for serious or repeated violation of the lease. HABC may terminate the household's assistance on that basis.

The Inspector will make the determination of landlord or household responsibility during the inspection. The landlord or tenant may appeal this determination through an information hearing within fourteen (14) days of the inspection.

If the household is responsible but the landlord carries out the repairs, the landlord will be encouraged to bill the household for the cost of the repairs and the household's file will be noted.

E. CONSEQUENCES IF LANDLORD IS RESPONSIBLE-NON-EMERGENCY ITEMS

When it has been determined that a unit on the program fails to meet HQS, and the landlord is responsible for completing the necessary repair(s), HABC will conduct a re-inspection to ensure repairs are completed within the time period specified by HABC. If repairs are not completed within the time period specified, the assistance payment to the landlord will be abated.

Abatement

A Notice of Abatement will be sent to the landlord, and the abatement will be effective on the first day of the month following the date of the failed re-inspection.

The HABC will inspect abated units within seven days of the landlord's notification that the work has been completed.

If the landlord makes repairs during the abatement period, payment will resume on the day the unit passes inspection.

The household will be notified of the re-inspection date.

No retroactive payments will be made to the landlord for the period of time while the rent was abated and the unit did not comply with HQS.

Termination of Lease

If the landlord is responsible for repairs, and fails to correct all the deficiencies cited prior to the re-inspection, the landlord will be sent a Notice of Abatement and a Proposed Notice of Termination. The abatement will remain in effect until repairs are completed or the lease is terminated.

If repairs are completed the landlord or the tenant must notify HABC and request an inspection before the effective termination date. If the unit is in compliance with HQS, the termination will be rescinded by HABC if the tenant chooses to remain in the unit. Only one HQS inspection will be conducted after the termination notice is issued.

F. CONSEQUENCES IF HOUSEHOLD IS RESPONSIBLE

If non-emergency violations of HQS are determined to be the responsibility of the household, HABC will require the household to make any repair(s) or corrections within 30 days. If the repair(s) or correction(s) are not made in this time period, HABC will terminate assistance to the household. The landlord's rent will not be abated for items that are the household's responsibility.

G. SPECIAL REQUIREMENTS FOR LEAD-BASED PAINT IDENTIFICATION AND REDUCTION

Note: these special requirements only apply to dwellings built before January 1, 1978 and occupied or to be occupied by assisted households with one or more children under the age of six years.

Disclosure Requirements

Landlords or landlord's agencies must disclose any knowledge of lead-based paint or lead-based paint hazards to prospective residents prior to lease execution. HABC will keep a copy of the signed disclosure notice in the tenant file. The landlord must also provide the prospective household with a copy of Protect Your Family from Lead in Your Home or another EPA-approved document.

Stabilization of Deteriorated Surfaces

If a HABC housing inspector identifies deteriorated paint surfaces during a unit inspection, the landlord must perform stabilization of the surface. HABC will notify the landlord of this requirement. Stabilization must occur before commencement of an assisted tenancy or, for a currently assisted unit, within 30 days of notification to the landlord.

If the amount of deteriorated paint is below the HUD minimum level, the landlord must correct the deficiency by:

- Performing paint stabilization, and
- Notifying the occupants of any paint stabilization activities within 15 calendar days of completion

If the amount of deteriorated paint is above the HUD minimum level, the following actions must be taken to correct the deficiency:

- Landlord arranges for and completes stabilization activities, using trained staff and employing acceptable methods for preparing the surface to be treated
- Landlord protects the occupants and their belongings from contamination
- HABC arranges and pays for clearance activities, which must be performed by licensed or certified professionals who have received EPA or state-approved training
- Landlord notifies the occupants within 15 calendar days of the stabilization activity and provides the results of the clearance examination
- Landlord executes and submits to HABC the Lead-Based Paint Landlord's Certification

A landlord's failure to comply with paint stabilization requirements, regardless of the amount of deteriorated surface, will result in disapproval of tenancy, abatement of payment to landlord, or termination of the lease.

Requirements for Children with Environmental Intervention Blood Lead Level

If HABC receives and verifies information regarding an "environmental intervention blood level child" (child under age six with concentrated levels of lead in his/her blood), HABC must arrange for a risk assessment of the unit and common areas. A person trained and certified by the EPA or another state-approved agency must complete the risk assessment. A risk assessment is not needed if the public health department has already conducted an evaluation between the date the child's blood was sampled and the receipt of notification of the child's condition. HABC will provide the completed risk assessment report to the landlord.

The landlord must complete reduction of identified lead-based paint hazards within 30 days. The landlord must also notify the building residents of the results of the risk assessment within 15 days of the receipt from HABC of the report.

Hazard reduction is considered complete when a clearance examination has been completed and the report indicates that all hazards identified by the risk assessment have been treated, or the public health department certifies that the hazard reduction is complete. Clearance activities will be arranged and paid for by HABC and must be performed by a licensed or certified professional who has received EPA or state-approved training. The landlord must notify building residents of all hazard reduction activities within 15 days of completion of such activities.

The landlord must signal compliance by executing and submitting to HABC the Lead-Based Paint Landlord's Certification.

A landlord's failure to comply with hazard reduction activities within 30 days of the notification constitutes violation of HQS and results in abatement of payment and ultimately cancellation of the contract for occupied units, or refusal to execute a lease if the unit is vacant. In either case, the unit may not be reoccupied by another assisted household, regardless of the ages of the children in the household, until the landlord complies with the risk assessment findings.

Ongoing Maintenance

In addition to visual assessments performed by HABC inspectors, landlords must conduct a visual assessment for deteriorated paint and failure of any hazard reduction measures. This assessment

must occur at unit turnover and every 12 months of continued occupancy. Landlords must correct deteriorated paint and any failed lead hazard reduction measure identified by the landlord or by landlord staff. In addition, landlords must provide written notice to each assisted household requesting that the household notify the landlord of deteriorated paint. The notice must include the name, address, and phone number of the person responsible for accepting the assisted household's compliant.

Lead-Based Paint Data Collection and Record Keeping

To carry out its responsibility for matching HABC and Public Health Records, HABC staff will establish a clear line of information exchange and record keeping with staff at the Public Health Department.

Quarterly, the HABC will attempt to obtain, from the Local Public Health Department having jurisdiction in the same area of the PHA, the names and addresses of children under age 6 with an identified environmental intervention blood lead level. The HABC will match information received from the Local Health Department with information about program households. If a match occurs, the HABC will follow all procedures for notifying landlords and conducting risk assessments according to the risk assessment guidelines in the HUD Rental Assistance Voucher Guidebook.

Quarterly, the HABC will report a list of addresses or units occupied by children under age 6, receiving assistance to the Local Public Health Department, unless the Health Department indicates that such a report is not necessary.

Staff will be trained about the requirements for Lead-Based Paint so inspection activities are done properly and questions from landlords about processes and requirements can be adequately addressed.

The HABC is responsible for informing landlords of Lead-Based Paint Regulations especially those related to prohibited and safe work practices, tenant protection during lead-based paint activities, and notification requirements, including regulations and requirements that went into effect on September 15, 2000. The HABC will also keep property landlords aware of information about HQS and other requirements through mailing, landlord workshops or community meetings.

Risk assessors and Public Health Departments conducting risk assessments involving environmental intervention blood lead level children will issue a report on any needed corrections and appropriate methods to correct lead hazards. The HABC will notify property landlords of the deadline for completing the corrections.

HABC will also develop a tracking report to monitor known environmental intervention blood level children until the age of six. Information about the child's condition will be entered into a database.

Units that have been certified clear of lead paint hazards may be placed on a list of available units in affirmatively marketed to households with children under six.

COC CH. 10: FACTORS RELATED TO TOTAL TENANT PAYMENT DETERMINATION

A. INTRODUCTION

The Housing Authority of Bergen County will use the methods as set forth in these Policies and Procedures to verify and determine the household income at admission and reexamination is correct. The accurate calculation of Annual Income and Adjusted Income will ensure that households are not paying more or less money for rent than their obligation under the regulations.

This chapter defines the allowable expenses and deductions to be subtracted from Annual Income and how the presence or absence of household members may affect the Total Tenant Payment (TTP). Income and TTP are calculated in accordance with Federal Regulations and further instructions set forth in HUD Notices, Memoranda, and Addenda. The rent calculation worksheet provided by HUD and used by HABC to calculate the TTP includes a formula for the calculation of TTP which is specific and not subject to interpretation. HABC's policies in this chapter address those areas that allow HABC discretion to define terms and to develop standards in order to assure consistent application of the various factors that relate to the determination of TTP.

B. INCOME

Definitions

Income includes all amounts that are received on behalf of the household. For the purposes of calculating TTP, HUD defines what is to be included and what is to be excluded as income in the Federal Regulations. In accordance with this definition, all income that is not specifically excluded in the regulations is counted.

Annual Income is defined as the gross income anticipated to be received by the household during the 12 months after certification or recertification. Annual income is the amount of income prior to any HUD allowable expenses or deductions and does not include income that has been excluded by HUD.

Averaging Income

When Annual income cannot be anticipated for a full twelve months, HABC may:

- Average known sources of income to compute an annual income, or
- Annualize current income

The method used depends on the regularity, source and type of income.

If there are bonuses or overtime pay which the employer cannot anticipate for the next 12 months, bonuses and overtime received the previous year will be used unless the employer certifies that these payments are expected to be different in the coming year.

If, by averaging, an estimate can be made for those households whose income fluctuates from month to month, this estimate will be used so as to reduce the number of interim adjustments.

C. INCOME OF TEMPORARILY AND PERMANENTLY ABSENT HOUSEHOLD MEMBERS

Temporarily Versus Permanently Absent

HABC must compute all applicable income of every household member who is on the lease,

including those who are temporarily absent.

If the spouse is absent and in the military service, all military pay and allowances (except hazardous duty pay when exposed to hostile fire and any other exceptions to military pay HUD may define) is counted as income.

Income of persons permanently absent will not be counted. Any member of the household will be considered permanently absent if he/she is away from the apartment for two consecutive months or sixty days during the lease period except as otherwise noted in this chapter.

It is the responsibility of the head or co-head of household or spouse to report changes in household composition. The HABC will evaluate absences from the unit using the above policy guidelines.

The household will be required to notify the HABC in writing within thirty (30) days when an adult household member moves out. The notice must contain a certification by the household as to whether the adult is temporarily or permanently absent.

If the household member will be permanently absent from the unit, the household must provide verification of the person's new address.

If an adult child goes into the military and leaves the household, they will be considered permanently absent.

If a member of the household is subject to a court order that restricts him/her from the home for more than two months, the person will be considered permanently absent.

Absence of Entire Household

These policy guidelines address situations when the household is absent from the unit but has not moved out of the unit. In cases where the household has moved out of the unit, HABC will terminate assistance in accordance with appropriate termination procedures contained in this document.

Households are required to notify both HABC and the landlord before they move out of a unit and to provide information about any household absence from the unit. Households must notify HABC and the landlord if they are going to be absent from the apartment for more than 30 consecutive days.

HUD regulations required HABC to terminate assistance if the entire household is absent from the apartment for a period of more than 90 consecutive calendar days. "Absence" means that no household member on the lease is residing in the apartment.

In order to determine if the household is absent from the apartment, HABC may: write letters to the household at the unit, telephone the household at the unit, interview neighbors and verify if utilities are in service.

Absence Due to Medical Reasons

If any household member leaves the household to enter a facility such as a hospital, nursing home, or rehabilitation center, HABC will seek advice from a reliable qualified source as to the likelihood and timing of their return. If the verification indicates that the household member will be permanently confined to a nursing home, the household member will be considered permanently absent. If the verification indicates that the household member will return in less than 90 consecutive days, the

household member will be considered temporarily absent.

If the person who is determined to be permanently absent is the sole member of the household, assistance will be terminated in accordance with the HABC's "Absence of the Entire Household" policy.

Absence Due to Incarceration

If any member of the household is incarcerated for more than 90 consecutive days, he/she will be considered permanently absent.

Absence of Children Due to Placement in Foster Care

If the household includes a child or children temporarily absent from the home due to placement in foster care, the HABC will determine from the appropriate agency when the child/children will be returned to the home.

If the time period is to be greater than six months from the date of removal of the child/children, the voucher size will be reduced. If all children are removed from the home permanently, the voucher size will be reduced in accordance with the HABC' subsidy standards.

Absence Due to Full-Time Student Status

A full-time student (other than head or co-head of household or spouse) who attends school away from home, but lives with the household during school recesses may, at the household's choice, be considered either temporarily or permanently absent.

If the household decides that the member is permanently absent, income of that member will not be included in the total household income, the member will not be included on the lease, and the member will not be included for a determination of voucher size.

Minors and college students, who were part of the household but now live away from home during the school year and no longer on the lease, may visit for up to 180 days per year without being considered a member of the household. If the household decides that the member is temporarily absent, any income earned by the full-time student up to \$480 a year will be counted as household income.

Visitors

Any adult not included in the Lease, may be considered to be living in the unit as an unauthorized household member.

The burden of proof that the individual is a visitor rests on the household. In the absence of such proof, the individual will be considered an unauthorized member of the household and the HABC will terminate assistance since prior approval was not requested or received for the addition.

Absence of evidence of any other address will be considered verification that the visitor is a member of the household. Statement from neighbors and/or the landlord will also be considered in making the determination. Use of the unit address as the visitor's current residence for any purpose that is not explicitly temporary shall be construed as permanent residence.

In a joint custody arrangement, if the minor is in the household less than 180 days per year, the minor will be considered to be an eligible visitor and not a household member.

D. INCOME OF PERSONS PERMANENTLY CONFINED TO A NURSING HOME

If a household member is permanently confined to a hospital or nursing home and there is a household member left in the household, the HABC will calculate income as follows and will use the income figure which would result in a lower payment by the household:

- Exclude the income of the person permanently confined to the nursing home and give the household no deduction for medical expenses of the confined household member, or
- Include the income and deductions of the member if his/her income goes to a household member

E. REGULAR CONTRIBUTIONS AND GIFTS

Regular contributions and gifts received from persons outside the household are counted as income for calculation of the Total Tenant Payment.

Any contribution or gift received every month or more frequently will be considered a “regular” contribution or gift, unless the amount is less than \$300 per year. This includes rent and utility payments made on behalf of the household and other cash and non-cash contributions provided on a regular basis. It does not include casual contributions or sporadic gifts (See Chapter 5: Verification Procedures, for further definition).

If the household’s expenses exceed its known income, the HABC will question the household about contributions and gifts.

F. ALIMONY AND CHILD SUPPORT

Regular alimony and child support payments are counted as income for calculation of Total Tenant Payment.

If the amount of child support or alimony received is less than the amount awarded by the court, the HABC must use the amount awarded by the court unless the household can verify that they are not receiving the full amount. HABC will accept as verification that the household is receiving an amount less than the award if:

- HABC receives verification from the agency responsible for enforcement or collection
- The household furnishes documentation of child support or alimony collection action filed through a child support enforcement/collection agency, or has filed an enforcement or collection action through an attorney.

It is the household’s responsibility to supply a certified copy of the divorce decree.

G. ASSETS AND INCOME FROM ASSETS

When net household assets are \$5,000 or less, the actual income earned from assets is added to annual income. When net household assets exceed \$5,000, the amount added to annual income as

income from assets will be the greater of:

- Actual income from assets, or
- The amount that results from multiplying net household assets by the passbook rate established by the HUD Field Office for Bergen County

The value of household assets is the case value of the asset to the household. The cash value is determined by subtracting from the current market value any expense that would be incurred to turn the asset into cash.

Lump-Sum Receipts

Lump-sum additions to household 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, are not included in income but may be included in assets.

Lump-sum payments caused by delays in processing periodic payments (unemployment or welfare assistance) are counted as income. Lump-sum payments from Social Security or SSI are excluded from income, but may be considered an asset. Deferred period payments, which have accumulated due to a dispute, will be treated as the same as periodic payments, which are deferred due to delays in processing.

When HABC is unable to verify income due to delays in processing a change to unemployment or welfare benefits, HABC will not process an interim decrease to reflect lost income until the new payment can be verified. When the household receives a lump-sum payment to cover the period of the delay and the amount of on-going period payments can be verified, HABC will conduct an interim recertification. A revised rent will be calculated based on 12 months of the periodic payment and will be effective retroactively to the date the unemployment or welfare assistance became effective.

The household's attorney fees may be deducted from lump-sum payments when computing annual income if the attorney's efforts have recovered a lump-sum compensation, and the recovery paid to the household does not include an additional amount in full satisfactory of the attorney fees.

Contribution to Retirement Funds

Contributions to company retirement/pension funds are handled as follows:

- While an individual is employed, HABC will count as an asset on the amount the household can withdraw without retiring or terminating employment
- After retirement or termination of employment, HABC will count any amount the employee elects to receive as a lump-sum

Assets Disposed of for Less Than Fair Market Value

HABC must count assets disposed of for less than fair market value during the two years preceding certification or recertification. HABC will count the difference between the market value and the actual payment received in calculating total assets.

Assets disposed of a result of foreclosure, bankruptcy, divorce, or separation are not considered to be assets disposed of for less than fair market value.

The HABC's minimum threshold for counting assets disposed of for less than Fair Market value is

\$10,000. If the total value of assets disposed of within a one-year period is less than \$10,000, they will not be considered an asset.

H. ADJUSTED INCOME

Adjusted Income is defined as Annual Income minus any HUD allowable deductions.

HUD has five allowable deductions from Annual Income:

1. Dependence allowance: \$480 each for household members who are minors (other than the head or spouse or co-head) and for household members who are 18 years or older and full-time students or disabled.
2. Reasonable childcare expenses: Deducted for the care of children under 13 when childcare is necessary to allow an adult member to work, attend school, or actively seek employment.
3. Elderly/disabled allowance: \$400 per household for households who head or spouse is 62 or over or disabled.
4. Allowable medical expenses: Unreimbursed medical expenses, which exceed three percent of Annual Income, may be deducted for all household members of an eligible elderly/disabled household.
5. Allowable Disability Assistance Expenses: Unreimbursed medical expenses, which exceed three percent of Annual income, which are for attendant care or auxiliary apparatus for persons with disabilities, may be deducted when the expenditure enables the individual or an adult household member to work. If a household has both Disability Assistance and Medical Expenses, the three percent of Annual Income is applied only once and always to the Disability Assistance expense first.

Childcare Expenses

Reasonable childcare expenses for children under 13 years of age may be deducted from annual income if they enable an adult to work, attend school full time, or actively seek employment.

In the case of a child attending private school, only after-hours care can be counted as childcare expenses.

Childcare expenses cannot be allowed as a deduction if there is an adult household member capable of caring for the child who can provide the childcare. Examples of those adult members who would be considered unable to care for the child include:

- The abuser in a documented child abuse situation, or
- A person with disabilities or handicaps, or an older person unable to take care of a small child, as verified by reliable, knowledgeable professions, such as a doctor, social worker, or case worker.
- The maximum childcare expenses allowed is based on the following guidelines:
- Childcare to work: Childcare expenses allowed must be less than the amount earned by the

person enabled to work. The person enabled to work will be the adult member of the household who earns the least amount of income from working.

- Childcare for school: The number of hours claimed for childcare may not exceed the number of hours the household member is attending school (including one-hour travel time to and from school).

I. UTILITY ALLOWANCE AND UTILITY REIMBURSEMENT PAYMENTS

HABC will maintain an up-to-date utility allowance schedule. The Utility Allowance is intended to help defray the cost of utilities not included in the rent and is subtracted from the Total Tenant Payment to establish the household's rent to the landlord. The allowance is 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.

HABC will review and revise the utility allowance schedule annually. Revised utility allowances will be applied in a participant household's rent calculation at its next reexamination.

Where the utility allowance exceeds the household's Total Tenant Payment, HABC will provide a utility reimbursement payment for the household each month.

COC CH. 11: LANDLORD RENTS, REASONABLENESS, AND PAYMENT STANDARDS

A. INTRODUCTION

In order for landlords and units to participate and continue to participate in the Continuum of Care Rental Assistance Program, the Housing Authority is responsible for ensuring that the rents charged by community landlords are reasonable based upon objective comparables in the rental market. HABC will not approve the lease or execute payments until it has been determined that the unit meets the minimum HQS and that the rent is reasonable. HABC will determine rent reasonableness at initial lease-up, before any increases in rent to landlord and at other times as described in this section. HABC will provide the landlord with information concerning rent adjustments. This chapter explains HABC's procedures for determination of rent reasonableness, payments to landlords, adjustments to the Payment Standards, and rent adjustments.

B. LANDLORD PAYMENT

The payment to the landlord, called the Rental Assistance Payment, is the payment standard minus the total tenant payment.

The voucher size issued to the household is based on the HABC's subsidy standards. The payment standards for the household is based on the lesser of the Fair Market Rent (including utilities) for the voucher size issued and the rent reasonableness for the unit selected. The rental assistance payment may never exceed the Fair Market Rent or the rent charged by the landlord.

C. RENT REASONABLENESS DETERMINATIONS

To identify rent reasonableness HABC will determine and document on a case-by-case basis that the approved rent:

- Is reasonable in comparison to rent for other comparable, unassisted units in the market, and
- Does not exceed rents currently charged by the same landlord for an equivalent assisted or unassisted unit in the same building or complex

This data will be collected by the household and sponsor agency during the completion of the voucher issue packet through inquiries of landlords, newspapers, realtors, professional associations and other available sources.

The market areas for rent reasonableness are indicated by zip code and census tract within HABC's jurisdiction. Subject units within a defined housing market area will be compared to similar units within the same area.

The following items will be used for rent reasonableness documentation:

- Size (number of bedrooms/square footage)
- Location
- Quality
- Amenities (bathrooms, dishwasher, air conditioning, etc.)
- Housing Services
- Age of Unit
- Unit Type
- Utilities
- Maintenance

At least two comparables of unassisted units will be used for each rent determination. All comparables must be based on the rent that the unit would command if leased in the current market. Leased in the current market means that the unit has been leased within the last 360 days.

HABC will not approve a lease until HABC determines that the initial rent to landlord is a reasonable rent. HABC will re-determine rent reasonableness whenever a landlord requests any increase in the rent for a CoC voucher unit. HABC must also re-determine rent reasonableness if there is a five percent decrease in the published FMR in effect 60 days before the lease anniversary (for the unit size rent by the household) as compared with the FMR in effect one year before the lease anniversary.

HABC must also re-determine rent reasonableness if directed by HUD and based on a need identified by HABC's auditing system. HABC may elect to re-determine rent reasonableness at any other time. At all times during the assisted tenancy, the rent to landlord may not exceed the reasonable rent as more recently determined or re-determined by HABC.

D. PAYMENT STANDARDS

The Payment Standard is used to calculate the rental assistance payment for a household. The payment standard is set by HABC at the Fair Market Rent (including utilities) or rent reasonableness amount calculated, whichever is the lesser. HABC reviews the appropriateness of the payment standard annually when the FMR is published. In determining whether a change is needed, HABC will ensure that the payment standard is at the FMR or appropriate rent reasonableness amount.

HABC needs to ensure that the amount being charged for the unit does not exceed the Fair Market Rent. This number must include utilities. If a unit does not include utilities in the rent, a utility allowance should be used. If the rent for the unit and utility allowance combined exceeds the Fair Market Rent, HABC in conjunction with the household and sponsor agency need to negotiate with the landlord to lower the rent or include utilities in order to move forward with the rental assistance

voucher. If a compromise cannot be found, the household will need to find a new unit.

Adjustments to Payment Standards

The HABC will review the payment standard annually to determine whether an adjustment should be made for some or all unit sizes. The payment standards will be reviewed according to HUD's requirements and this policy. If this increase is warranted, the payment standard will be adjusted within the current Fair Market Rent or the determined rent reasonableness amount. In a volatile market, it is HABC's discretion as to whether to make the change immediately or to wait until the time of an annual review.

Even if payment standards do increase the Tenant's Total Payment Amount will not exceed 30% of their annual income.

E. PAYMENT PROCESSING PROCEDURE

Once the payment standard is determined, the Assisted Housing Specialist will complete the Tenant Total Payment Amount using the rent calculation worksheet designed by HUD for use with the Continuum of Care Programs. This Tenant Total Payment Amount then is reviewed by the Assisted Housing Department Supervisor to ensure the calculation matches the lease and income documentation that was reported by the household.

Once this verification is complete, the landlord payment amount is sent to the Housing Authority of Bergen County's Subsidy Payment Control Specialist. This specialist is responsible for making the monthly payments to the landlords. After monthly payments are made out to the landlords in the Continuum of Care Programs, the Subsidy Payment Control Specialist will submit a payment amount form to the Accounting Manager who is responsible to do the drawdown out of the HUD specified LOCCS system. A copy of the LOCCS request is kept in the file to confirm and verify the amount paid out by HABC and the amount drawn down out of LOCCS system.

Adjustment to Landlord Payments

Any adjustments to the Tenant Total Payment Amount or Payment Standard that affects the amount of rent that should be paid to the landlord will be submitted to the Assisted Housing Specialist. This Specialist will then work to verify and update the Tenant Total Payment Amount. Once this amount has been verified it will go through the same process as the initial landlord payment.

COC CH. 12: RECERTIFICATION

A. INTRODUCTION

In accordance with HUD requirements, HABC will reexamine the income, household composition and inspection of all households at least annually. Households will be provided accurate annual and interim rent adjustments. Recertification's and interim examinations will be processed in a manner that ensures households are given reasonable notice of rent increases. All annual activities will be coordinated in accordance with HUD regulation. It is a HUD requirement that households report all changes in household composition, but HABC decides what other changes must be reported and the procedures for reporting them. This chapter defines HABC's policy for conducting annual recertification and coordinating annual activities. It also explains the interim reporting requirements for households and the standards for timely reporting.

B. ANNUAL ACTIVITIES

There are two activities the HABC must conduct on an annual basis. These activities will be coordinated whenever possible:

- Recertification of household composition and income
- HQS inspection, as described in Chapter 11

C. ANNUAL RECERTIFICATION

Households are required to be recertified at least annually. The recertifications will be coordinated between the sponsor agencies and the household. During the recertification the sponsor agency and household will work to collect all necessary documentation to establish the household composition and income.

Similar to the initial application, the sponsor agency or household will submit all recertification documents to HABC for review. HABC will approve the documentation received from the household and will provide the sponsor agency and household a new TTP based on the income information provided in the recertification. A change in utility allowance will also be taken into consideration when updating the TTP for the household.

Copies of all recertification documents will be maintained in client files to establish backup documentation for updated TPP.

When households move to another dwelling unit the anniversary date for the recertification will be changed to the new lease-up date.

D. REPORTING INTERIM CHANGES

The HABC requires that households report interim changes to the HABC within 30 days of when the change occurs. Any information document or signature needed from the household, which is needed to verify the change, must be provided within 30 days of the change.

If the change is not reported within the required time period, or if the household fails to provide documentation or signatures, it will be considered untimely reporting.

Changes in Income and Assets

HABC will conduct interim reexaminations when households have an increase or decrease in income.

Participants must report increases or decreases in income and other changes, which would change the amount of the Total Tenant Payment. The HABC would be responsible for calculating the change of the TTP for the next monthly rent payment.

Change in Household Composition

HUD requires program participants to report all changes in household composition to the HABC between annual reexaminations. This includes additions due to marriage, birth, adoption, and court-awarded custody. All changes in household composition must be reported within 30 days of the occurrence. The household must obtain HABC's and the landlord's written approval prior to all other additions to the household.

HABC will approve additions to the household in the following cases:

- Addition by marriage/or marital-type relation
- Addition of a minor who is a member of the nuclear household who had been living elsewhere
- Addition of a HABC approved live-in attendant
- Additional due to birth, adoption or court-awarded custody

If any new household member is added, household income must include any income of the new household member. HABC will conduct a reexamination to determine such additional income and will make the appropriate adjustments in the rental assistance payment and household unit size.

If a change requires a larger size unit due to overcrowding, HABC will follow the guidelines presented in Chapter 7, Subsidy Standards.

The U.S. citizenship/eligible immigrant status of additional household members must be declared and verified as required at the first interim or regular recertification after the new member moves into the unit.

HABC may deny a household's request to add additional household members who are:

- Persons who have been evicted from public housing
- Persons who have previously violated a household obligation

- Persons who have been part of a household whose assistance has been terminated under the Continuum of Care Program
- Persons who have been convicted of manufacturing methamphetamine
- Persons who commit fraud, bribery or any other corrupt or criminal act in connection with any federal housing program
- Persons who have engaged in or threatened abusive or violent behavior toward HABC personnel
- Any other HUD allowed reason

HABC may also deny a household's request to add additional household members, if the addition will cause the unit to be overcrowded.

Households are required to notify HABC within 30 days if any household member leaves the assisted household. When the household notifies HABC, it must furnish the following information:

- The date the household member moved out
- Documentation of the new address of the household member; or
- Court documents verifying divorce, separation or new custody arrangements

Other Interim Reporting Issues

An interim reexamination does not affect the date of the annual recertification.

Any changes reported by participants other than those listed in this section will be noted in the file by the staff person but will not be processed between regularly scheduled annual recertifications.

In instances where fraud is suspected, an interim recertification of the household may be required.

COC CH. 13: MOVES WITH CONTINUED ASSISTANCE

A. INTRODUCTION

HUD regulations permit households to move with continued assistance to another unit within the HABC's jurisdiction. The regulation also allows the HABC the discretion to develop policies, which define any limitations or restrictions on moves. This chapter defines the procedures for moves and the policies for restriction and limitations on moves.

B. ALLOWABLE MOVES

A household may move to a new unit if:

- The assisted lease for the old unit has terminated because the HABC has terminated the lease for the landlord breach, or the lease was terminated by mutual agreement of the landlord and the household.
- The landlord has given the household a notice to vacate, or has commenced an action to evict the tenant, or has obtained a court judgement or other process allowing the landlord to evict the household (unless assistance to the household will be terminated).
- The household has given proper notice of lease termination (if the household has a right to terminate the lease on notice to landlord).

C. RESTRICTIONS ON MOVES

HABC may deny permission to move if:

- The household has violated a Household Obligation
- The household owes HABC money

The Program Director may make exceptions to these restrictions on a case-by-case basis to minimize hardship to the household.

D. PROCEDURE FOR MOVES

Notice Requirements

HABC emphasizes the household's responsibility to give the landlord and HABC proper written notice of any intent to move.

The household must give the landlord the required number of days written notice of intent to vacate and must give a copy of the vacate notice to HABC simultaneously.

HABC and the sponsor agency will work with the household to identify a more suitable unit. The approval process for the unit will be treated as any new unit approval process (see Chapter 8: Voucher Issuance, Unit and Lease Approval).

COC CH. 14: LEASE TERMINATIONS

A. INTRODUCTION

Throughout the Continuum of Care Rental Assistance Program there can be a variety of reasons why a lease termination may occur. This chapter describes the circumstances under which the lease can be terminated by the tenant and the landlord, and the policies and procedures for such terminations.

B. LEASE TERMINATION BY THE LANDLORD: EVICTIONS

If the landlord wishes to terminate the lease, the landlord is required to evict, using the notice procedures in the HUD regulations and New Jersey law. The landlord must provide HABC with a copy of the eviction notice.

The landlord must provide the tenant a written notice specifying the grounds for termination of tenancy, at or before the commencement of the eviction action. The notice may be included in, or may be combined with, any landlord eviction notice to the tenant.

During the term of the lease the landlord may only evict for the following reasons:

- Serious or repeated violation of the terms and conditions of the lease
- Violation of Federal, State or local law related to occupancy of the unit or use of the premises
- Criminal activity by the tenant, any member of the household, a guest or another person under the tenant's control that threatens the health, safety or right to peaceful enjoyment of the premises by the other residents, or persons residing in the immediate vicinity of the premises
- Any drug-related or violent criminal activity on or near the premises
- Tenant history of disturbance of neighbors, destruction of property, or behavior resulting in damage to the premises
- Other good cause, after the first year of the lease, including business or economic reason for regaining possession of the unit; landlords desire to reposes the unit for personal use; or tenant's refusal to accept offer of new lease

HABC requires that the landlord specify the section of the lease that has been violated and cite some or all of the ways in which the tenant has violated that section as documentation.

If the household has begun eviction and the household continues to reside in the unit, the HABC must continue to make rental assistance payments to the landlord until the landlord has obtained a court judgement or other process allowing the landlord to evict the tenant. If the landlord does not pursue eviction for lease violation, the HABC will abate the rental assistance payment.

If HABC and the sponsor agency do not feel the eviction is enough to terminate the household from the CoC program, the household will be given a change to find a new unit in the community with the assistance of the sponsor agency. The unit approval process will occur in the same way as the initial unit approval (see Chapter 8: Voucher Issuance, Unit and Lease Approval).

C. LEASE TERMINATION BY THE HOUSEHOLD: HOUSEHOLD VACATES

If a household leaves a unit that is currently receiving a rental assistance payment, HABC may continue to pay one additional month of rent for the vacated unit. After the additional month is over, if HABC has not identified another household to move in to the unit, no additional rental assistance will be made to the landlord.

COC CH. 15: TERMINATION OF ASSISTANCE

A. INTRODUCTION

HABC and the sponsor agency may terminate assistance for a household because of the household's action or failure to act. HABC will provide households with a written description of the Household Obligations under the program, the grounds under which HABC or the sponsor agency can terminate assistance, and HABC's informal hearing procedures. This chapter describes when the HABC is required to terminate assistance and HABC's policies regarding the grounds for termination of assistance.

B. GROUNDS FOR TERMINATING ASSISTANCE

HABC may terminate assistance for any of the following reasons:

- Any member of the household fails to sign and submit to HUD or HABC required consent forms for obtaining information
- The household has not reimbursed any program for amounts paid to a landlord for rent, damages to the unit, or other amounts owned by the household
- Any household member has committed fraud in any federal housing program or any public housing assistance program
- The household breaches an agreement with HABC to pay amounts owed to HABC or amounts paid to a landlord by HABC
- The household has engaged in or threatened abusive or violent behavior toward HABC personnel
 - "Abusive or violent behavior towards HABC personnel" includes verbal as well as physical abuse or violence. Use of expletives that are generally considered insulting, racial epithets, or other language, written or oral, that is customarily used to insult or intimidate, may be cause for termination.
 - "Threatening" refers to oral or written threats or physical gestures that communicate an intent to abuse or commit violence
 - Actual physical abuse or violence will always be cause for termination of assistance
- Any household member that has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine
- Has committed fraud in any government sponsored program
- The household has not followed through with household obligations

C. HOUSEHOLD OBLIGATIONS

- The household must supply any information that the HABC or HUD determines is necessary in the administration of the program, including submission of required evidence of citizenship or eligible immigration status
- The household must supply any information requested by the HABC or HUD for use in a regularly scheduled reexamination or interim reexamination of household income and composition in accordance with HUD requirements
- The household must disclose and verify Social Security Numbers, and must sign and submit consent forms for obtaining information
- All information supplied by the household must be true and complete
- The household is responsible for an HQS breach caused by the household
- The household must allow the HABC to inspect the unit at reasonable times and after reasonable notice
- The household may not commit any serious or repeated violation of the lease
- The household must notify the landlord and, at the same time, notify the HABC before the household moves out of the unit and terminates the lease on notice to the landlord. Notice must be given in writing to the landlord and the HABC and approved pursuant to the lease
- The household must promptly give the HABC a copy of any landlord eviction notice
- The composition of the assisted household residing in the unit must be approved by the HABC. The household must promptly inform the HABC of the birth, adoption or court-awarded custody of a child. The household must request HABC approval to add any other household member as an occupant of the unit
- The household must promptly notify the HABC if any household member no longer resides in the unit
- If HABC has given approval, a foster child or a live-in aide may reside in the unit. If the household does not request approval or HABC approval is denied, the household may not allow a foster child or live-in aide to reside with the assisted household
- The household must not sublease or let the unit
- The household must not assign the lease or transfer the unit

- The household must supply any information or certification requested by the HABC to verify that the household is living in the unit, or relating to household absence from the unit, including any HABC-requested information or certification on the purposes of household absences. The household must cooperate with HABC for this purpose. The household must promptly notify HABC of absence from the unit
- The members of the household must not commit fraud, bribery or any other corrupt or criminal act in connection with the program
- The members of the household may not engage in drug-related criminal activity or violence criminal activity

D. TERMINATION PROCESS

In any case where the HABC and sponsor agency decides to terminate assistance to the household, the HABC must give the household written notice, which states:

- Reason for the proposed termination
- Effective date of the proposed termination
- Household's right, if they disagree, to request an information hearing to be held before termination of assistance
- Day by which a request for an information hearing must be received by HABC

HABC will simultaneously provide written notice of the rental assistance termination to the landlord so that it will coincide with the termination of assistance. The notice to the landlord will not include any details regarding the reason for termination of assistance.

All decisions on termination of assistance will be made on a case-by-case basis and in conjunction with the sponsor agency to ensure these households have the best chance at maintaining their housing.

COC CH. 16: COMPLAINTS AND APPEALS

A. INTRODUCTION

There are many instances in which a household may need to make a complaint, an appeal, or may need assistance resolving an issue between the household and the landlord. This chapter describes the policies, procedures and standards to be used when households need assistance with any of the above-mentioned actions.

B. COMPLAINTS TO THE SPONSOR AGENCY

The household should first contact the sponsor agency if they have any of the following issues or complaints:

- Basic and initial problems with the landlord
- Household issues
- Disagreement with the services they are receiving

If after working with the sponsor agency and the issue or complaint involves the landlord or their rental assistance, both the tenant and the sponsor agency should contact the HABC.

C. COMPLAINTS TO HABC

If a persistent problem begins to occur with the landlord or there is an issue that cannot be resolved by the sponsor agency and the household, it should be brought to the attention of HABC. All complaints will be documented. HABC will consider the complaint and come up with the appropriate action necessary to address the issue at hand.

D. INFORMAL HEARING PROCEDURES

HABC must provide participants with the opportunity for an Information Hearing for decision related to any of the following HABC determinations:

- Household's annual or adjusted income and rental assistance payment
- Appropriate utility allowance used from schedule
- Household is over housed in current unit and request for exception is denied
- Termination of assistance for any reason

Notification of Hearing

It is HABC's objective to resolve disputes at the lowest level possible, and to make every effort to avoid the most severe remedies. However, if this is not possible, the HABC will ensure that participants will receive all the protections and rights afforded by the law and the regulations.

When the HABC receives a request for an informal hearing, a hearing shall be scheduled within 14 days. The notification of hearing will contain:

- Date and time of hearing

- Location where the hearing will be held
- Household's right to bring evidence, witnesses, legal or other representation at the household's expense
- Right to view any documents or evidence in the possession of HABC and upon which HABC based the proposed action and, at the household's expense, to obtain a copy of such documents prior to the hearing. Requests for such documents or evidence must be received no later than 2 days before the hearing.
- Notice to the household that the HABC will request a copy of any documents or evidence the household will use at the hearing.

Hearing Procedures

If a household does not appear at a scheduled hearing and has not rescheduled the hearing in advance, the household must contact the HABC within 24 hours, excluding weekends and holidays. The HABC will reschedule the hearing only if the household can show good cause for the failure to appear.

Households have the right to:

- Present written and oral objections to HABC's determination
- Present any information or witnesses pertinent to the issue of the hearing
- Request that HABC staff be available or present at the hearing to answer questions pertinent to the case
- Be represented by legal counsel, advocate, or other designated representative at their own expense

If the household requests copies of documents relevant to the hearing, the HABC will make the copies for the household and assess a charge of ten cents per copy. In no case will the household be allowed to remove the file from the HABC's office.

In addition to other rights contained in this chapter, HABC has the right to:

- Present evidence and any information pertinent to the issue of the hearing
- Be notified if the household intends to be represented by legal counsel, advocate, or another party
- Examine and copy any documents to be used by the household prior to the hearing
- Have its attorney present
- Have staff persons and other witnesses familiar with the case present

The informal hearing shall be conducted by the Hearing Officer who is neither the person who made or approved the decision and not a subordinate of that person.

The hearing shall concern only the issues for which the household has received the opportunity for hearing. Evidence presented at the hearing may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

The Hearing Officer may ask the household for additional information and/or might adjourn the hearing in order to reconvene at a later date, before reaching a decision.

If the household misses an appointment or deadline ordered by the Hearing Officer, the action of the HABC shall take effect and another hearing will not be granted.

The Hearing Officer will determine whether the action, inaction or decision of the HABC is legal in accordance with HUD regulations and these Policies and Procedures based upon the evidence and testimony provided at the hearing. Factual determinations relating to the individual circumstances of the household will be based on the preponderance of the evidence presented at the hearing.

A notice of the Hearing Findings shall be provided in writing to the HABC and the household within 14 days and shall include:

- Clear summary of the decision and reasons for the decision
- If the decision involves money owed, the amount owed
- Date the decision goes into effect

All requests for a hearing, supporting documentation, and a copy of the final decision will be retained in the household's file.

GLOSSARY

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)
EID	Earned income disallowance
EIV	Enterprise Income Verification
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
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 (Form HUD-50058 of PIC)
MTW	Moving to Work
NED	Non-Elderly Disabled
NOFA	Notice of funding availability
OIG	HUD's Office of Inspector General
OMB	Office of Management and Budget
PBV	Project Based Voucher
PHA	Public housing agency
PIC	PIH Information Center
PIH	(HUD Office of) Public and Indian Housing
PS	Payment standard
QC	Quality control
QHWRA	Quality Housing & Work Responsibility Act of 1998 (Public Housing Reform Act)
RAD	Rental Assistance Demonstration
REAC	(HUD) Real Estate Assessment Center
RFP	Request for proposals
RFTA	Request for tenancy approval
RIGI	Regional inspector general for investigation
SEMAP	Section 8 Management Assessment Program
SRO	Single room occupancy
SSA	Social Security Administration
SSI	Supplemental security income
TANF	Temporary assistance for needy families
TPV	Tenant protection vouchers
TR	Tenant rent
TTP	Total tenant payment
UA	Utility allowance
UIV	Upfront income verification
URP	Utility reimbursement payment
VAWA	Violence Against Women Reauthorization Act of 2005

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 persons with disabilities.
- Adjusted income.** Annual income, less allowable HUD deductions and allowances.
- Administrative fee.** Fee paid by HUD to the PHA for administration of the program. See §982.152.
- Administrative plan.** The plan that describes PHA policies for administration of the tenant-based programs. The Administrative Plan and any revisions must be approved by the PHA's board and included as a supporting document to the PHA Plan. See §982.54.
- 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 a PHA under which HUD agrees to provide funding for a program under the 1937 Act, and the PHA agrees to comply with HUD requirements for the program.
- 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 24 CFR 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.
- Bifurcate.** With respect to a public housing or Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members' lease and occupancy rights can remain intact.
- Budget authority.** An amount authorized and appropriated by the Congress for payment to PHAs under the program. For each funding increment in a PHA program, budget authority is the

maximum amount that may be paid by HUD to the PHA over the ACC term of the funding increment.

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.

Cohead. An individual in the household who is equally responsible for the lease with the head of household. A family may have a cohead or spouse but not both. A cohead never qualifies as a dependent. The cohead must have legal capacity to enter into a lease.

Common space. In shared housing, the space available for use by the assisted family and other occupants of the unit.

Computer match. The automated comparison of databases containing records about individuals.

Confirmatory review. An on-site review performed by HUD to verify the management performance of a PHA.

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 24 CFR 982.606–609.

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 authority. The maximum annual payment by HUD to a PHA 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 24 CFR 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.

Dependent child. In the context of the student eligibility restrictions, a dependent child of a student enrolled in an institution of higher education. The dependent child must also meet the definition of *dependent* as specified above.

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, cohead, spouse, or sole member is a person with disabilities; two or more persons with disabilities living together; or one or more persons with disabilities living with one or more live-in aides.

Disabled person. See *person with disabilities*.

Disallowance. Exclusion from annual income.

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 24 CFR 5.603(c).

Elderly family. A family whose head, cohead, spouse, or sole member is a person who is at least 62 years of age; two or more persons who are at least 62 years of age living together; or one or more persons who are at least 62 years of age living with one or more live-in aides.

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 1937 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 as evidence of citizenship or eligible immigration status. (See 24 CFR 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. (See 24 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. 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 a PHA 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 24 CFR 982.515(a).

Family unit size. The appropriate number of bedrooms for a family, as determined by the PHA under the PHA subsidy standards.

Federal agency. A department of the executive branch of the Federal Government.

Foster child care payment. A payment to eligible households by state, local, or private agencies appointed by the state to administer payments for the care of foster children.

Full-time student. A person who is attending school or vocational training on a full-time basis (carrying a subject load that is considered full-time for day students under the standards and practices of the educational institution attended). (See 24 CFR 5.603)

Funding increment. Each commitment of budget authority by HUD to a PHA under the consolidated annual contributions contract for the PHA 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 24 CFR 982.610–614.)

Handicap. Any condition or characteristic that renders a person an individual with handicaps. (See *person with disabilities*.)

HAP contract. The housing assistance payments contract. A written contract between the PHA and an owner for the purpose of providing housing assistance payments to the owner on behalf of an eligible family.

Head of household. The adult member of the family who is the head of the household for purposes of determining income eligibility and rent.

Household. A household includes additional people other than the family who, with the PHA's permission, live in an assisted unit, such as live-in aides, foster children, and foster adults.

Housing assistance payment. The monthly assistance payment by a PHA, which includes: (1) A payment to the owner for rent to the owner under the family's lease; and (2) An additional payment to the family if the total assistance payment exceeds the rent to owner.

Housing agency (HA). See *public housing agency*.

Housing quality standards (HQS). The HUD minimum quality standards for housing assisted under the voucher program.

HUD. The U.S. Department of Housing and Urban Development.

Immediate family member. A spouse, parent, brother, 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. An asset disposed of for less than fair market value during the two years preceding examination or reexamination.

Imputed income. The HUD passbook rate multiplied by the total cash value of assets. The calculation is 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. See *person with disabilities*.

Initial PHA. In portability, the term refers to both: (1) A PHA that originally selected a family that later decides to move out of the jurisdiction of the selecting PHA; and (2) A PHA that absorbed a family that later decides to move out of the jurisdiction of the absorbing PHA.

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.

Institution of higher education. An institution of higher education as defined in 20 U.S.C. 1001 and 1002. See Exhibit 3-2 in this Administrative Plan.

Jurisdiction. The area in which the PHA 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 PHA.

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 PHA to select among applicant families.

Low-Income Family. A family whose income does not exceed 80 percent 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 percent 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 24 CFR 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 24 CFR 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 percent of annual income.

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 PHA and approved by HUD.

PHA's quality control sample. An annual sample of files or records drawn in an unbiased manner and reviewed by a PHA supervisor (or by another qualified person other than the person who performed the original work) to determine if the work documented in the files or records conforms to program requirements. For minimum sample size see CFR 985.3.

Participant (participant family). A family that has been admitted to the PHA program and is currently assisted in the program. The family becomes a participant on the effective date of the first HAP contract executed by the PHA for the family (first day of initial lease term).

Payment standard. The maximum monthly assistance payment for a family assisted in the voucher program (before deducting the total tenant payment by the family).

Person with disabilities. *For the purposes of program eligibility.* A person who has a disability as defined under the Social Security Act or Developmental Disabilities Care Act, or a person who has a physical or mental impairment expected to be of long and indefinite duration and whose ability to live independently is substantially impeded by that impairment but could be improved by more suitable housing conditions. This includes persons with AIDS or conditions arising from AIDS but excludes persons whose disability is based solely on drug or alcohol dependence. *For the purposes of reasonable accommodation.* A person with a physical or mental impairment that substantially limits one or more major life activities, a person regarded as having such an impairment, or a person with a record of such an impairment.

Portability. Renting a dwelling unit with a Section 8 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.

Previously unemployed. With regard to the earned income disallowance, a person with disabilities who has earned, in the 12 months previous to employment, no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage.

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.

Qualified family (under the earned income disallowance). A family participating in an applicable assisted housing program or receiving HCV assistance:

- 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;
- 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

- 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.

Qualified census tract. With regard to certain tax credit units, any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 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.

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.

Reasonable accommodation. A change, exception, or adjustment to a rule, policy, practice, or service to allow a person with disabilities to fully access the PHA's programs or services.

Receiving PHA. In portability: A PHA that receives a family selected for participation in the tenant-based program of another PHA. The receiving PHA issues a voucher and provides program assistance to the family.

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 the tenant family. The person left in assisted housing who may or may not normally qualify for assistance on their own circumstances (i.e., an elderly spouse dies, leaving widow age 47 who is not disabled).

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. A PHA preference for admission of families that reside anywhere in a specified area, including families with a member who works or has been hired to work in the area (See *residency preference area*).

Residency preference area. The specified area where families must reside to qualify for a residency preference.

Responsible entity. For the public housing and the Section 8 tenant-based assistance, project-based certificate assistance, and moderate rehabilitation programs, the responsible entity means the PHA administering the program under an ACC with HUD. For all other Section 8 programs, the responsible entity means the Section 8 owner.

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. The collective term for the HUD programs to which the restrictions imposed by Section 214 apply. These programs are set forth in 24 CFR 5.500.

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 24 CFR 982.615–982.618.)

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 24 CFR 982.602–982.605.)

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 PHA 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 a PHA 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 tenancy approval. If the PHA decides to allow extensions or suspensions of the voucher term, the PHA administrative plan must describe how the PHA determines whether to grant extensions or suspensions, and how the PHA determines the length of any extension or suspension. This practice is also called *tolling*.

Tax credit rent. With regard to certain tax credit units, the rent charged for comparable units of the same bedroom size in the building that also receive the low-income housing tax credit but do not have any additional rental assistance (e.g., tenant-based voucher assistance).

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 a PHA or HUD of the monthly cost of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.

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.

Very low-income family. A low-income family whose annual income does not exceed 50 percent 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 percent 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 a PHA to a family selected for admission to the housing choice voucher program. This document describes the program and the procedures for PHA approval of a unit selected by the family. The voucher also states obligations of the family under the program.

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 PHA 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.