

**THE COLORADO DEPARTMENT OF LOCAL AFFAIRS**

**DIVISION OF HOUSING**

**HOUSING CHOICE VOUCHER PROGRAM  
ADMINISTRATIVE PLAN**



**COLORADO DEPARTMENT OF LOCAL AFFAIRS  
DIVISION OF HOUSING  
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## Table of Contents

<i>Chapter 1</i> .....	<i>19</i>
<b><i>OVERVIEW OF THE PROGRAM AND PLAN</i></b> .....	<b><i>19</i></b>
<b>PART I: Division of Housing (DOH)</b> .....	<b>20</b>
1-I.A. ORGANIZATION AND STRUCTURE OF DOH.....	20
<b>Staffing and Administration</b> .....	<b>20</b>
1-I.B. PHA MISSION.....	21
1-I.C. DOH’S PROGRAMS .....	21
1-I.D. DOH’S COMMITMENT TO ETHICS AND SERVICE (Code of Conduct) .....	22
1-1.E Code of Conduct .....	23
1-I.F. Disciplinary Remedies for Violation of DOH Code of Ethics and Code of Conduct	24
<b>PART II: THE HOUSING CHOICE VOUCHER (HCV) PROGRAM</b> .....	<b>25</b>
1- II.A. OVERVIEW AND HISTORY OF THE PROGRAM.....	25
1-II.B. HCV PROGRAM BASICS.....	26
1-II.C THE HCV PARTNERSHIPS.....	26
1-II.D. APPLICABLE REGULATIONS .....	30
<b>PART III: THE HCV ADMINISTRATIVE PLAN</b> .....	<b>31</b>
1-III.A. OVERVIEW AND PURPOSE OF THE PLAN .....	31
1-III.B. CONTENTS OF THE PLAN [24 CFR 982.54] .....	31
1-III.C. ORGANIZATION OF THE PLAN.....	33
1-III.D. UPDATING AND REVISING THE PLAN .....	33
<i>Chapter 2</i> .....	<i>34</i>
<b><i>FAIR HOUSING AND EQUAL OPPORTUNITY</i></b> .....	<b><i>34</i></b>
<b>PART I: NONDISCRIMINATION</b> .....	<b>35</b>
2-I.A. OVERVIEW.....	35
2-I.B. NONDISCRIMINATION .....	35
<b>PART II: POLICIES RELATED TO PERSONS WITH DISABILITIES</b> .....	<b>38</b>
2-II.A. OVERVIEW .....	38
2-II.B. Definition of Reasonable Accommodation .....	38
2-II.C. Request for an Accommodation.....	39
2-II.D. Verification of Disability .....	40
2-II.F. Program Accessibility for Persons with Hearing or Vision Impairments .....	42
2-II.G. Physical Accessibility .....	42
2-II.H. Denial or Termination of Assistance .....	43
<b>PART III: IMPROVING ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY (LEP)</b> .....	<b>44</b>
2-III.A. OVERVIEW .....	44
2-III.C. WRITTEN TRANSLATION.....	45
2-III.D. IMPLEMENTATION PLAN .....	45

<b>Chapter 3</b> .....	<b>52</b>
<b>ELIGIBILITY</b> .....	<b>52</b>
<b>PART I: DEFINITIONS OF FAMILY AND HOUSEHOLD MEMBERS</b> .....	<b>53</b>
3-I.A. OVERVIEW .....	53
3-I.C. FAMILY BREAK-UP AND REMAINING MEMBER OF TENANT FAMILY.....	53
3-I.D. HEAD OF HOUSEHOLD [24 CFR 5.504(b)] .....	54
3-I.E. SPOUSE, CO-HEAD, AND OTHER ADULT .....	55
3-I.F. DEPENDENT [24 CFR 5.603].....	55
3-I.G. FULL-TIME STUDENT [24 CFR 5.603; HCV GB, p. 5-29] .....	56
3-I.I. PERSONS WITH DISABILITIES AND DISABLED FAMILY [24 CFR 5.403, FR Notice 02/03/12] .....	56
3-I.J. GUESTS [24 CFR 5.100] .....	57
3-I.K. FOSTER CHILDREN AND FOSTER ADULTS.....	57
3-I.L. ABSENT FAMILY MEMBERS .....	58
3-I.M. LIVE-IN AIDE .....	59
<b>PART II: BASIC ELIGIBILITY CRITERIA</b> .....	<b>61</b>
3-II.A. INCOME ELIGIBILITY AND TARGETING.....	61
3-II.B. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS [24 CFR 5, Subpart E] 62	
3-II.C. SOCIAL SECURITY NUMBERS [24 CFR 5.216 and 5.218, Notice PIH 2012- 10] .....	64
3-II.D. FAMILY CONSENT TO RELEASE OF INFORMATION [24 CFR 5.230, HCV GB, p. 5-13].....	65
3-II.E. STUDENTS ENROLLED IN INSTITUTIONS OF HIGHER EDUCATION [24 CFR 5.612 and FR Notice 4/10/06] .....	65
<b>PART III: DENIAL OF ASSISTANCE</b> .....	<b>69</b>
3-III.A. OVERVIEW .....	69
3-III.B. MANDATORY DENIAL OF ASSISTANCE [24 CFR 982.553(a)].....	70
3-III.C. OTHER PERMITTED REASONS FOR DENIAL OF ASSISTANCE .....	71
Criminal History Requirements [24 CFR 982.552 (e)] .....	71
Previous Behavior in Assisted Housing [24 CFR 982.552(c)] .....	72
3-III.D. SCREENING.....	73
3-III.E. CRITERIA FOR DECIDING TO DENY ASSISTANCE.....	74
3-III.F. NOTICE OF ELIGIBILITY OR DENIAL .....	76
3-III.G. PROHIBITION AGAINST DENIAL OF ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT AND STALKING .....	77
<b>Chapter 4</b> .....	<b>88</b>
<b>APPLICATIONS, WAITING LIST AND TENANT SELECTION</b> .....	<b>88</b>
<b>PART I: THE APPLICATION PROCESS</b> .....	<b>89</b>
4-I.A. OVERVIEW.....	89
4-I.B. APPLYING FOR ASSISTANCE [HCV GB, pp. 4-11 – 4-16, Notice PIH 2009-36]89	
4-I.C. ACCESSIBILITY OF THE APPLICATION PROCESS .....	90
4-I.D. PLACEMENT ON THE WAITING LIST .....	90

<b>PART II: MANAGING THE WAITING LIST.....</b>	<b>92</b>
4-II.A. OVERVIEW .....	92
4-II.B. ORGANIZATION OF THE WAITING LIST [24 CFR 982.204 and 205].....	92
4-II.C. OPENING AND CLOSING THE WAITING LIST [24 CFR 982.206] .....	93
4-II.D. FAMILY OUTREACH [HCV GB, pp. 4-2 to 4-4] .....	93
4-II.E. REPORTING CHANGES IN FAMILY CIRCUMSTANCES.....	94
4-II.F. UPDATING THE WAITING LIST [24 CFR 982.204].....	94
<b>PART III: SELECTION FOR HCV ASSISTANCE.....</b>	<b>96</b>
4-III.A. OVERVIEW .....	96
4-III.B. SELECTION AND HCV FUNDING SOURCES.....	96
4-III.C. SELECTION METHOD.....	97
4-III.D. NOTIFICATION OF SELECTION .....	99
4-III.E. THE APPLICATION INTERVIEW.....	100
4-III.F. COMPLETING THE APPLICATION PROCESS .....	101
<b>Chapter 5 .....</b>	<b>102</b>
<b>BRIEFINGS AND VOUCHER ISSUANCE.....</b>	<b>102</b>
<b>PART I: BRIEFINGS AND FAMILY OBLIGATIONS .....</b>	<b>103</b>
5-I.A. OVERVIEW.....	103
5-I.B. BRIEFING [24 CFR 982.301] .....	103
5-I.C. FAMILY OBLIGATIONS .....	106
<b>PART II: SUBSIDY STANDARDS AND VOUCHER ISSUANCE .....</b>	<b>110</b>
5-II.A. OVERVIEW .....	110
5-II.B. DETERMINING FAMILY UNIT (VOUCHER) SIZE [24 CFR 982.402].....	110
5-II.C. EXCEPTIONS TO SUBSIDY STANDARDS .....	111
5-II.D. VOUCHER ISSUANCE [24 CFR 982.302].....	112
5-II.E. VOUCHER TERM, EXTENSIONS, AND SUSPENSIONS .....	113
<b>Chapter 6 .....</b>	<b>115</b>
<b>INCOME AND SUBSIDY DETERMINATIONS.....</b>	<b>115</b>
<b>PART I: ANNUAL INCOME .....</b>	<b>116</b>
6-I.A. OVERVIEW.....	116
6-I.B. HOUSEHOLD COMPOSITION AND INCOME.....	116
6-I.C. ANTICIPATING ANNUAL INCOME .....	120
6-I.E. EARNED INCOME DISALLOWANCE FOR PERSONS WITH DISABILITIES [24 CFR 5.617] .....	125
6-I.F. BUSINESS INCOME [24 CFR 5.609(b)(2)] .....	127
<b>Withdrawal of Cash or Assets from a Business .....</b>	<b>128</b>
6-I.G. ASSETS [24 CFR 5.609(b)(3) and 24 CFR 5.603(b)] .....	128
6-I.H. PERIODIC PAYMENTS .....	135
6-I.I. PAYMENTS IN LIEU OF EARNINGS .....	137
6-I.J. WELFARE ASSISTANCE .....	137
6-I.K. PERIODIC AND DETERMINABLE ALLOWANCES [24 CFR 5.609(b)(7)].....	138
6-I.L. STUDENT FINANCIAL ASSISTANCE [24 CFR 5.609(b)(9) and FR 12/14/12].	139

6-I.M. ADDITIONAL EXCLUSIONS FROM ANNUAL INCOME.....	140
<b>PART II: ADJUSTED INCOME.....</b>	<b>143</b>
6-II.A. INTRODUCTION .....	143
6-II.B. DEPENDENT DEDUCTION .....	144
6-II.C. ELDERLY OR DISABLED FAMILY DEDUCTION.....	144
6-II.D. MEDICAL EXPENSES DEDUCTION [24 CFR 5.611(a)(3)(i)] .....	144
6-II.E. DISABILITY ASSISTANCE EXPENSES DEDUCTION [24 CFR 5.603(b) and 24 CFR 5.611(a)(3)(ii)].....	146
6-II.F. CHILD CARE EXPENSE DEDUCTION.....	149
<b>PART III: CALCULATING FAMILY SHARE AND PHA SUBSIDY .....</b>	<b>152</b>
6-III.A. OVERVIEW OF RENT AND SUBSIDY CALCULATIONS .....	152
6-III.B. FINANCIAL HARDSHIPS AFFECTING MINIMUM RENT [24 CFR 5.630] ..	153
6-III.C. APPLYING PAYMENT STANDARDS [24 CFR 982.505] .....	156
6-III.D. APPLYING UTILITY ALLOWANCES [24 CFR 982.517].....	158
6-III.E. PRORATED ASSISTANCE FOR MIXED FAMILIES [24 CFR 5.520].....	158
<i>Chapter 7 .....</i>	<i>170</i>
<b>VERIFICATION.....</b>	<b>170</b>
<b>PART I: GENERAL VERIFICATION REQUIREMENTS .....</b>	<b>171</b>
7-I.A. FAMILY CONSENT TO RELEASE OF INFORMATION [24 CFR 982.516 AND 982.551, 24 CFR 5.230].....	171
7-I.B. OVERVIEW OF VERIFICATION REQUIREMENTS .....	171
7-I.C. UP-FRONT INCOME VERIFICATION (EIV & UIV) .....	173
7-I.D. THIRD-PARTY WRITTEN AND ORAL VERIFICATION.....	175
7-I.E. SELF-CERTIFICATION.....	177
<b>Part II: Verifying Family Information .....</b>	<b>178</b>
7-II.A. VERIFICATION OF LEGAL IDENTITY .....	178
7-II.B. SOCIAL SECURITY NUMBERS [24 CFR 5.216 and Notice PIH 2012-10] .....	178
7-II.C. DOCUMENTATION OF AGE .....	180
7-II.D. FAMILY RELATIONSHIPS .....	180
7-II.E. VERIFICATION OF STUDENT STATUS.....	181
7-II.F. DOCUMENTATION OF DISABILITY.....	183
7-II.G. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS [24 CFR 5.508].....	184
7-II.H. VERIFICATION OF PREFERENCE STATUS .....	185
<b>PART III: Verifying Income and Assets .....</b>	<b>186</b>
7-III.A. EARNED INCOME .....	186
7-III.B. BUSINESS AND SELF EMPLOYMENT INCOME .....	186
7-III.C. PERIODIC PAYMENTS AND PAYMENTS IN LIEU OF EARNINGS.....	187
7-III.D. ALIMONY OR CHILD SUPPORT .....	187
7-III.E. ASSETS AND INCOME FROM ASSETS .....	188
7-III.F. NET INCOME FROM RENTAL PROPERTY.....	189
7-III.G. RETIREMENT ACCOUNTS .....	189
7-III.H. INCOME FROM EXCLUDED SOURCES.....	189
7-III.I. ZERO ANNUAL INCOME STATUS.....	190

7-III.J. STUDENT FINANCIAL ASSISTANCE.....	190
7-III.K. PARENTAL INCOME OF STUDENTS SUBJECT TO ELIGIBILITY RESTRICTIONS .....	191
<b>PART IV: VERIFYING MANDATORY DEDUCTIONS .....</b>	<b>192</b>
7-IV.A. DEPENDENT AND ELDERLY/DISABLED HOUSEHOLD DEDUCTIONS..	192
7-IV.B. MEDICAL EXPENSE DEDUCTION .....	192
7-IV.C. DISABILITY ASSISTANCE EXPENSES .....	194
7-IV.D. CHILD CARE EXPENSES .....	195
<b>Chapter 8.....</b>	<b>199</b>
<b><i>HOUSING QUALITY STANDARDS AND RENT REASONABLENESS DETERMINATIONS.....</i></b>	<b>199</b>
<b>PART I: PHYSICAL STANDARDS .....</b>	<b>200</b>
8-I.A. GENERAL HUD REQUIREMENTS.....	200
8-I.B. ADDITIONAL LOCAL REQUIREMENTS .....	201
<b><i>Carbon Monoxide (CO) Detectors.....</i></b>	<b>201</b>
8-I.C. LIFE-THREATENING CONDITIONS [24 CFR 982.404(a)] .....	204
8-I.D. OWNER AND FAMILY RESPONSIBILITIES [24 CFR 982.404] .....	204
8-I.E. SPECIAL REQUIREMENTS FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL [24 CFR 35.1225].....	205
8-I.F. VIOLATION OF HQS SPACE STANDARDS [24 CFR 982.403].....	205
<b>PART II: THE INSPECTION PROCESS .....</b>	<b>206</b>
8-II.A. OVERVIEW [24 CFR 982.405] .....	206
8-II.B. INITIAL HQS INSPECTION [24 CFR 982.401(a)] .....	208
8-II.C. ANNUAL HQS INSPECTIONS [24 CFR 982.405(a)].....	209
8-II.D. SPECIAL INSPECTIONS [HCV GB, p. 10-30].....	210
8-II.E. QUALITY CONTROL INSPECTIONS [24 CFR 982.405(b); HCV GB, p. 10-32] .....	210
8-II.F. INSPECTION RESULTS AND REINSPECTIONS FOR UNITS UNDER HAP CONTRACT .....	210
8-II.G. ENFORCING OWNER COMPLIANCE .....	212
8-II.H. ENFORCING FAMILY COMPLIANCE WITH HQS [24 CFR 982.404(b)] .....	212
<b>PART III: RENT REASONABLENESS [24 CFR 982.507] .....</b>	<b>213</b>
8-III.A. OVERVIEW .....	213
8-III.B. WHEN RENT REASONABLENESS DETERMINATIONS ARE REQUIRED	213
8-III.C. HOW COMPARABILITY IS ESTABLISHED.....	214
8-III.D. PHA RENT REASONABLENESS METHODOLOGY.....	217
<b>Chapter 9 .....</b>	<b>223</b>
<b><i>GENERAL LEASING POLICIES.....</i></b>	<b>223</b>
9-I.A. TENANT SCREENING.....	224
9-I.B. REQUESTING TENANCY APPROVAL [Form HUD-52517].....	224
9-I.C. OWNER PARTICIPATION .....	226
9-I.D. ELIGIBLE UNITS .....	227

Assisted Living Facilities.....	228
9-I.E. LEASE AND TENANCY ADDENDUM.....	230
<b>PHA Review of Lease.....</b>	<b>234</b>
9-I.F. TENANCY APPROVAL [24 CFR 982.305] .....	234
9-I.G. HAP CONTRACT EXECUTION [24 CFR 982.305] .....	235
9-I.H. CHANGES IN LEASE OR RENT [24 CFR 982.308] .....	236
<b>Chapter 10 .....</b>	<b>237</b>
<b>MOVING WITH CONTINUED ASSISTANCE AND PORTABILITY.....</b>	<b>237</b>
<b>PART I: MOVING WITH CONTINUED ASSISTANCE .....</b>	<b>238</b>
10-I.A. ALLOWABLE MOVES .....	238
10-I.B. RESTRICTIONS ON MOVES .....	239
<b>PART II: PORTABILITY .....</b>	<b>242</b>
10-II.A. OVERVIEW .....	242
10-II.B. INITIAL PHA ROLE.....	242
10-II.C. RECEIVING PHA ROLE.....	247
10- III.D. IN-STATE TRANSFERS.....	253
<b>Chapter 11 .....</b>	<b>255</b>
<b>REEXAMINATIONS.....</b>	<b>255</b>
<b>PART I: ANNUAL REEXAMINATIONS [24 CFR 982.516] .....</b>	<b>256</b>
11-I.A. OVERVIEW.....	256
11-I.B. SCHEDULING ANNUAL REEXAMINATIONS .....	256
11-I.C. CONDUCTING ANNUAL REEXAMINATIONS .....	257
11-I.D. DETERMINING ONGOING ELIGIBILITY OF CERTAIN STUDENTS [24 CFR 982.552(b) (5)].....	258
11-I.E. EFFECTIVE DATES .....	258
<b>PART II: INTERIM REEXAMINATIONS [24 CFR 982.516].....</b>	<b>260</b>
11-II.A. OVERVIEW .....	260
11-II.B. CHANGES IN FAMILY AND HOUSEHOLD COMPOSITION .....	260
11-II.C. CHANGES AFFECTING INCOME OR EXPENSES .....	263
<b>Required Reporting.....</b>	<b>264</b>
11-II.D. PROCESSING THE INTERIM REEXAMINATION .....	265
<b>PART III: RECALCULATING FAMILY SHARE AND SUBSIDY AMOUNT .....</b>	<b>267</b>
11-III.A. OVERVIEW .....	267
11-III.B. CHANGES IN PAYMENT STANDARDS AND UTILITY ALLOWANCES ..	267
11-III.C. NOTIFICATION OF NEW FAMILY SHARE AND HAP AMOUNT .....	269
11-III.D. DISCREPANCIES .....	269
<b>Chapter 12 .....</b>	<b>270</b>
<b>TERMINATION OF ASSISTANCE AND TENANCY .....</b>	<b>270</b>
<b>PART I: GROUNDS FOR TERMINATION OF ASSISTANCE .....</b>	<b>271</b>
12-I.A. OVERVIEW.....	271

12-I.B. FAMILY NO LONGER REQUIRES ASSISTANCE [24 CFR 982.455].....	271
12-I.C. FAMILY CHOOSES TO TERMINATE ASSISTANCE .....	271
12-I.D. MANDATORY TERMINATION OF ASSISTANCE .....	272
12-I.E. MANDATORY POLICIES AND OTHER AUTHORIZED TERMINATIONS ..	274
<b>PART II: APPROACH TO TERMINATION OF ASSISTANCE .....</b>	<b>279</b>
12-II.A. OVERVIEW .....	279
12-II.B. METHOD OF TERMINATION [24 CFR 982.552(a)(3)].....	279
12-II.C. ALTERNATIVES TO TERMINATION OF ASSISTANCE .....	279
12-II.D. CRITERIA FOR DECIDING TO TERMINATE ASSISTANCE .....	280
<b>PART III: TERMINATION OF TENANCY BY THE OWNER .....</b>	<b>286</b>
12-III.A. OVERVIEW .....	286
12-III.B. GROUNDS FOR OWNER TERMINATION OF TENANCY [24 CFR 982.310, 24 CFR 5.2005 (c) and Form HUD-52641-A, Tenancy Addendum] .....	286
12-III.C. EVICTION [24 CFR 982.310(e) and (f) and Form HUD-52641-A, Tenancy Addendum] .....	288
12-III.D. DECIDING WHETHER TO TERMINATE TENANCY [24 CFR 982.310(h), 24 CFR 982.310(h)(4)] .....	288
12-III.E. EFFECT OF TENANCY TERMINATION ON THE FAMILY’S ASSISTANCE .....	289
<b>Chapter 13 .....</b>	<b>293</b>
<b>OWNERS.....</b>	<b>293</b>
<b>PART I. OWNERS IN THE HCV PROGRAM .....</b>	<b>294</b>
13-I.A. OWNER RECRUITMENT AND RETENTION [HCV GB, pp. 2-4 to 2-6] .....	294
13-I.B. BASIC HCV PROGRAM REQUIREMENTS .....	295
The PHA and the owner must execute a Housing Assistance Payment (HAP) Contract (Form HUD-52641). The HAP contract format is prescribed by HUD. See chapter 9 for a discussion of the HUD requirements for execution of the HAP contract.....	296
13-I.C. OWNER RESPONSIBILITIES [24 CFR 982.452,] .....	296
13-I.D. OWNER QUALIFICATIONS .....	297
13-I.E. NON-DISCRIMINATION [HAP Contract – Form HUD-52641] .....	300
<b>PART II HAP CONTRACTS.....</b>	<b>301</b>
13-II.A. OVERVIEW .....	301
13-II.B. HAP CONTRACT CONTENTS .....	301
13-II.C. HAP CONTRACT PAYMENTS.....	302
13-II.D. BREACH OF HAP CONTRACT [24 CFR 982.453].....	304
13-II.E. HAP CONTRACT TERM AND TERMINATIONS.....	305
13-II.F. CHANGE IN OWNERSHIP / ASSIGNMENT OF THE HAP CONTRACT [HUD-52641].....	307
13-II.G. FORECLOSURE [HUD-52641 and Notice PIH 2010-49] .....	308
<b>Chapter 14 .....</b>	<b>310</b>
<b>PROGRAM INTEGRITY .....</b>	<b>310</b>



<b>PART I: PREVENTING, DETECTING, AND INVESTIGATING ERRORS AND PROGRAM ABUSE.....</b>	<b>311</b>
14-I.A. PREVENTING ERRORS AND PROGRAM ABUSE.....	311
14-I.B. DETECTING ERRORS AND PROGRAM ABUSE.....	312
<b>PART II: CORRECTIVE MEASURES AND PENALTIES .....</b>	<b>315</b>
14-II.A. SUBSIDY UNDER- OR OVERPAYMENTS .....	315
14-II.B. FAMILY-CAUSED ERRORS AND PROGRAM ABUSE .....	315
14-II.C. OWNER-CAUSED ERROR OR PROGRAM ABUSE .....	317
14-II.D. DOH-CAUSED ERRORS OR PROGRAM ABUSE.....	318
14-II.E. CRIMINAL PROSECUTION.....	319
14-II.F . FRAUD AND PROGRAM ABUSE RECOVERIES .....	319
The Tenant Conference.....	320
<b>Chapter 15 .....</b>	<b>321</b>
<b><i>SPECIAL HOUSING TYPES &amp; SPECIAL PROGRAMS .....</i></b>	<b><i>321</i></b>
<b>PART I: SINGLE ROOM OCCUPANCY .....</b>	<b>322</b>
15-I.A. OVERVIEW.....	322
15-I.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION .....	322
15-I.C. HOUSING QUALITY STANDARDS (HQS).....	322
<b>PART II: CONGREGATE HOUSING .....</b>	<b>324</b>
15- II.A. OVERVIEW .....	324
All standard HQS requirements apply. There are no additional HQS requirements .....	324
15- II.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION .....	324
15- II.C. HOUSING QUALITY STANDARDS .....	324
<b>PART III: GROUP HOME .....</b>	<b>325</b>
15- III.A. OVERVIEW .....	325
15- III.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION .....	325
15- III.C. HOUSING QUALITY STANDARDS.....	326
<b>The housing quality standards applicable to lead-based paint do not apply. PART IV: SHARED HOUSING .....</b>	<b>327</b>
15- IV.A. OVERVIEW.....	327
15- IV.B. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION .....	327
15- IV.C. HOUSING QUALITY STANDARDS.....	327
<b>PART V: COOPERATIVE HOUSING.....</b>	<b>329</b>
15-V.A. OVERVIEW .....	329
15-V.B. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION .....	329
15-V.C. HOUSING QUALITY STANDARDS.....	329
<b>PART VI: MANUFACTURED HOMES .....</b>	<b>330</b>
15- VI.A. OVERVIEW .....	330

15- VI.B. SPECIAL POLICIES FOR MANUFACTURED HOME OWNERS WHO LEASE A SPACE.....	330
15- VI.C. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION .....	330
15- VI.D. HOUSING QUALITY STANDARDS .....	331
<b>PART VII: HOMEOWNERSHIP.....</b>	<b>332</b>
15-VII.A. OVERVIEW [24 CFR 982.625] .....	332
15-VII.B. FAMILY ELIGIBILITY [24 CFR 982.627].....	332
15-VII.C. SELECTION OF FAMILIES [24 CFR 982.626] .....	336
15-VII.D. ELIGIBLE UNITS [24 CFR 982.628].....	336
15-VII.E. ADDITIONAL PHA REQUIREMENTS FOR SEARCH AND PURCHASE [24 CFR 982.629].....	337
15-VII.F. FAMILY APPLICATION PROCESS .....	338
15-VII.G. HOMEOWNERSHIP COUNCELING [24 CFR 982.630] .....	340
15-VII.H. HOME INSPECTIONS, CONTRACT OF SALE, AND PHA DISAPPROVAL OF SELLER [24 CFR 982.631].....	341
15-VII.I. FINANCING [24 CFR 982.632] .....	342
15-VII.J. CONTINUED ASSISTANCE REQUIREMENTS; FAMILY OBLIGATIONS [24 CFR 982.633].....	346
15-VII.K. MAXIMUM TERM OF HOMEOWNER ASSISTANCE [24 CFR 982.634] ..	346
15-VII.L. HOMEOWNERSHIP ASSISTANCE PAYMENTS AND HOMEOWNERSHIP EXPENSES [24 CFR 982.635].....	347
15-VII.M. PORTABILITY [24 CFR 982.636, 982.637, 982.353(b) and (c), 982.552, 982.553] .....	349
15-VII.M. MOVING WITH CONTINUED ASSISTANCE [24 CFR 982.637] .....	349
15-VII.O. DENIAL OR TERMINATION OF ASSISTANCE [24 CFR 982.638] .....	349
<b>PART VIII: FAMILY UNIFICATION PROGRAM (FUP).....</b>	<b>351</b>
Program Eligibility.....	351
Waiting List .....	351
FUP Youth 18 Month Agreement.....	352
<b>PART IX: Veterans Affairs Supportive Housing (VASH).....</b>	<b>353</b>
<b>VASH II.....</b>	<b>353</b>
Outreach, Referrals, and Waiting List .....	353
Denial of Applicants .....	354
Voucher Term .....	354
Case Management Requirements.....	354
<b>Chapter 16.....</b>	<b>356</b>
<b>PROGRAM ADMINISTRATION.....</b>	<b>356</b>
16-II.A. OVERVIEW .....	358
16-II.B. PAYMENT STANDARDS [24 CFR 982.503; HCV GB, Chapter 7].....	358
16-II.C. UTILITY ALLOWANCES [24 CFR 982.517] .....	361
<b>PART III: INFORMAL REVIEWS AND HEARINGS .....</b>	<b>363</b>
16-III.A. OVERVIEW .....	363

16-III.B. INFORMAL REVIEWS .....	363
16-III.C. INFORMAL HEARINGS FOR PARTICIPANTS [24 CFR 982.555] .....	365
16-III.D. HEARING AND APPEAL PROVISIONS FOR NON-CITIZENS [24 CFR 5.514] .....	372
<b>PART IV: OWNER OR FAMILY DEBTS TO DOH.....</b>	<b>376</b>
16-IV.A. OVERVIEW .....	376
16-IV.B. REPAYMENT POLICY .....	376
<b>PART V: SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP) .....</b>	<b>380</b>
16-V.A. OVERVIEW .....	380
16-V.B. SEMAP CERTIFICATION [24 CFR 985.101] .....	380
16-V.C. SEMAP INDICATORS [24 CFR 985.3 and form HUD-52648] .....	381
<b>PART VI: RECORD KEEPING.....</b>	<b>385</b>
16-VI.A. OVERVIEW .....	385
16-VI.B. RECORD RETENTION [24 CFR 982.158] .....	385
16-VI.C. RECORDS MANAGEMENT INCLUDING PRIVACY/CONFIDENTIALITY .....	386
<b>PART VII: REPORTING AND RECORD KEEPING FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL.....</b>	<b>388</b>
16-VII.A. OVERVIEW .....	388
16-VII.B. REPORTING REQUIREMENT [24 CFR 35.1225(e)] .....	388
16-VII.C. DATA COLLECTION AND RECORD KEEPING [24 CFR 35.1225(f)].....	388
<b>PART VIII: DETERMINATION OF INSUFFICIENT FUNDING.....</b>	<b>389</b>
16-VIII.A. OVERVIEW .....	389
16-VIII.B. METHODOLOGY .....	389
<b><i>PART IX: VIOLENCE AGAINST WOMEN ACT (VAWA): NOTIFICATION, DOCUMENTATION, CONFIDENTIALITY.....</i></b>	<b><i>390</i></b>
16-IX.A. OVERVIEW .....	390
16-IX.B. DEFINITIONS [24 CFR 5.2003] .....	390
16-IX.C. NOTIFICATION [24 CFR 5.2005(a)] .....	391
16-IX.D. DOCUMENTATION [24 CFR 5.2007].....	392
16-IX.E. CONFIDENTIALITY [24 CFR 5.2007(b)(4)] .....	394
<b><i>PROJECT-BASED VOUCHERS .....</i></b>	<b><i>401</i></b>
<b>PART I: GENERAL REQUIREMENTS.....</b>	<b>401</b>
17-I.A. OVERVIEW [24 CFR 983.5] .....	402
17-I.B. TENANT-BASED VS. PROJECT-BASED VOUCHER ASSISTANCE [24 CFR 983.2] .....	403
17-I.C. RELOCATION REQUIREMENTS [24 CFR 983.7].....	403
17-I.D. EQUAL OPPORTUNITY REQUIREMENTS [24 CFR 983.8].....	403
<b>PART II: PBV OWNER PROPOSALS .....</b>	<b>404</b>
17- II.A. OVERVIEW .....	404
17- II.B. OWNER PROPOSAL SELECTION PROCEDURES [24 CFR 983.51].....	404
17- II.C. HOUSING TYPE [24 CFR 983.52].....	408
17- II.D. PROHIBITION OF ASSISTANCE FOR CERTAIN UNITS .....	408

17- II.E. SUBSIDY LAYERING REQUIREMENTS [24 CFR 983.55, FR Notice 11/24/08, and FR Notice 7/9/10].....	409
17- II.F. CAP ON NUMBER OF PBV UNITS IN EACH PROJECT .....	409
17- II.G. SITE SELECTION STANDARDS .....	411
17- II.H. ENVIRONMENTAL REVIEW [24 CFR 983.58] .....	413
<b>PART III: DWELLING UNITS.....</b>	<b>414</b>
17- III.A. OVERVIEW .....	414
17- III.B. HOUSING QUALITY STANDARDS [24 CFR 983.101].....	414
17- III.C. HOUSING ACCESSIBILITY FOR PERSONS WITH DISABILITIES.....	414
17- III.D. INSPECTING UNITS .....	414
<b>PART IV: REHABILITATED AND NEWLY CONSTRUCTED UNITS .....</b>	<b>416</b>
17- IV.A. OVERVIEW [24 CFR 983.151].....	416
17- IV.B. AGREEMENT TO ENTER INTO HAP CONTRACT .....	416
17- IV.C. CONDUCT OF DEVELOPMENT WORK .....	417
17- IV.D. COMPLETION OF HOUSING .....	418
<b>PART V: HOUSING ASSISTANCE PAYMENTS CONTRACT (HAP).....</b>	<b>419</b>
17-V.A. OVERVIEW .....	419
17-V.B. HAP CONTRACT REQUIREMENTS .....	419
17-V.C. AMENDMENTS TO THE HAP CONTRACT .....	421
17-V.D. HAP CONTRACT YEAR, ANNIVERSARY AND EXPIRATION DATES [24 CFR 983.206(c) and 983.302(e)] .....	422
17-V.E. OWNER RESPONSIBILITIES UNDER THE HAP [24 CFR 983.209] .....	422
17-V.F. ADDITIONAL HAP REQUIREMENTS .....	423
<b>PART VI: SELECTION OF PBV PROGRAM PARTICIPANTS.....</b>	<b>424</b>
17- VI.A. OVERVIEW .....	424
17- VI.B. ELIGIBILITY FOR PBV ASSISTANCE [24 CFR 983.251(a) and (b)].....	424
17- VI.C. ORGANIZATION OF THE WAITING LIST [24 CFR 983.251(c)] .....	425
17- VI.D. SELECTION FROM THE WAITING LIST [24 CFR 983.251(c)].....	425
17- VI.E. OFFER OF PBV ASSISTANCE .....	426
17- VI.F. OWNER SELECTION OF TENANTS .....	427
17- VI.G. TENANT SCREENING [24 CFR 983.255] .....	428
<b>PART VII: OCCUPANCY .....</b>	<b>430</b>
17- VII.A. OVERVIEW .....	430
17- VII.B. LEASE [24 CFR 983.256] .....	430
17- VII.C. MOVES.....	432
17- VII.D. EXCEPTIONS TO THE OCCUPANCY CAP [24 CFR 983.261, FR Notice 11/24/08].....	434
<b>PART VIII: DETERMINING RENT TO OWNER.....</b>	<b>435</b>
17- VIII.A. OVERVIEW .....	435
17- VIII.B. RENT LIMITS [24 CFR 983.301].....	435
17- VIII.C. REASONABLE RENT [24 CFR 983.303].....	439
17- VIII.D. EFFECT OF OTHER SUBSIDY AND RENT CONTROL .....	440
<b>PART IX: PAYMENTS TO OWNER.....</b>	<b>441</b>

17- IX.A. HOUSING ASSISTANCE PAYMENTS [24 CFR 983.351] .....	441
17- IX.B. VACANCY PAYMENTS [24 CFR 983.352].....	441
17- IX.C. TENANT RENT TO OWNER [24 CFR 983.353].....	442
17- IX.D. OTHER FEES AND CHARGES [24 CFR 983.354].....	443
<b>Chapter 18</b> .....	<b>444</b>
<b>PERMANENT SUPPORTIVE HOUSING (PSH)</b> .....	<b>444</b>
<b>Part I: Policy</b> .....	<b>444</b>
OVERVIEW .....	444
2. ELIGIBILITY .....	445
CHRONICALLY HOMELESS.— .....	447
3. APPLICATIONS, WAITING LIST AND TENANT SELECTION.....	448
4. RENTAL ASSISTANCE DOCUMENT ISSUANCE .....	450
5. CALCULATING FAMILY SHARE AND SUBSIDY .....	451
6. RENT REASONABLENESS DETERMINATIONS.....	451
7. GENERAL LEASING POLICIES .....	452
8. MOVING WITH CONTINUED ASSISTANCE .....	452
9. REXAMINATIONS RECALCUTATING PARTICIPANT SHARE AND SUBSIDY AMOUNT .....	454
10. TERMINATION OF ASSISTANCE AND TENANCY .....	454
<b>Part II: Administration of the Permanent Supportive Housing</b> .....	<b>458</b>
OUTREACH:.....	458
MATCH REPORTS: .....	458
CASE MANAGMENT: – Required for all participants.....	459
PERMANENT SUPPORTIVE HOUSING ADVISORY COMMITTEE: .....	459
HMIS.....	459
BUDGET FOR SUBSIDIES .....	460
ADMINISTRATIVE FEES:.....	460
GRANT RENEWAL APPLICATIONS.....	460
ANNUAL PROGRESS REPORTS .....	461
AGENCY PARTNERSHIPS .....	462
MOVES BETWEEN AGENCIES.....	462
TRAINING AND TECHNICAL ASSISTANCE.....	463
FUNDING PROCESS .....	463
• FORMS SPECIFIC TO PSH COHMIS Program Specific Intake Form .....	463
• Homeless Verification .....	463
<b>Part III Differences between HCV and PSH Program: Quick Reference Table</b> .....	<b>464</b>
<b>GLOSSARY</b> .....	<b>466</b>

## **Introduction**

### **ABOUT THE REFERENCES CITED IN THE MODEL ADMINISTRATIVE PLAN**

#### **AUTHORITIES FOR POLICIES IN THE MODEL ADMINISTRATIVE PLAN**

The authority for PHA policies is derived from many sources. Primary among these sources are federal statutes, federal regulations and guidance issued by HUD. State law also directs PHA policy. State law must be followed where such law exists and does not conflict with federal regulations. Industry practice may also be used to develop policy as long as it does not conflict with federal requirements or prohibitions.

#### **HUD**

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

HUD also provides guidance to PHAs through other means such as HUD published guidebooks, expired HUD notices, and expired handbooks. Basing PHA policy on HUD guidance is optional, as long as PHA 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, PHA reliance on HUD guidance provides the PHA with a “safe harbor.”

Material posted 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 in various aspects of the program.

#### **State Law**

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

#### **Industry Practice**

Where no law or HUD authority exists on a particular subject, industry practice may support PHA policy. Industry practice refers to a way of doing things or a policy that has been adopted by a majority of PHAs.

### **RESOURCES CITED IN THE MODEL ADMINISTRATIVE PLAN**

The model 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 model 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 model administrative plan or that may be helpful to you.

## Abbreviations

Throughout the model administrative plan, abbreviations are used to designate certain documents in citations. The following is a table of abbreviations of documents cited in the model 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 DOH or referenced in the model administrative plan, and the online location of each.

Document and Location
Code of Federal Regulations <a href="http://www.gpoaccess.gov/cfr/index.html">http://www.gpoaccess.gov/cfr/index.html</a>
Earned Income Disregard FAQ <a href="http://www.hud.gov/offices/pih/phr/about/ao_faq_eid.cfm">www.hud.gov/offices/pih/phr/about/ao_faq_eid.cfm</a>
Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Final Rule <a href="http://edocket.access.gpo.gov/2008/pdf/E8-19435.pdf">http://edocket.access.gpo.gov/2008/pdf/E8-19435.pdf</a>
Enterprise Income Verification (EIV) System, Security Procedures for Upfront Income Verification data <a href="http://www.hud.gov/offices/pih/programs/ph/rhiip/docs/eivsecguidepha.pdf">http://www.hud.gov/offices/pih/programs/ph/rhiip/docs/eivsecguidepha.pdf</a>
Executive Order 11063 <a href="http://www.hud.gov/offices/fheo/FHLaws/EXO11063.cfm">http://www.hud.gov/offices/fheo/FHLaws/EXO11063.cfm</a>

<p>Federal Register  <a href="http://www.access.gpo.gov/su_docs/aces/fr-cont.html">http://www.access.gpo.gov/su_docs/aces/fr-cont.html</a></p>
<p>General Income and Rent Determination FAQs  <a href="http://www.hud.gov/offices/pih/programs/ph/rhiip/faq_gird.cfm">www.hud.gov/offices/pih/programs/ph/rhiip/faq_gird.cfm</a></p>
<p>Housing Choice Voucher Program Guidebook (7420.10G), April 2001  <a href="http://www.hud.gov/offices/pih/programs/hcv/forms/guidebook.cfm">www.hud.gov/offices/pih/programs/hcv/forms/guidebook.cfm</a></p>
<p>HUD-50058 Instruction Booklet  <a href="http://www.hud.gov/offices/pih/systems/pic/50058/pubs/ib/form50058ib.pdf">http://www.hud.gov/offices/pih/systems/pic/50058/pubs/ib/form50058ib.pdf</a></p>
<p>Reasonable Accommodations under the Fair Housing Act -Joint Statement of the Department of Housing and Urban Development and the Department of Justice, issued May 17, 2004  <a href="http://www.hud.gov/offices/fheo/library/huddojstatement.pdf">http://www.hud.gov/offices/fheo/library/huddojstatement.pdf</a></p>
<p>Joint Statement of the Department Of Housing And Urban Development and the Department Of Justice Reasonable Modifications under the Fair Housing Act   <a href="http://www.hud.gov/offices/fheo/disabilities/reasonable_modifications_mar08.pdf">http://www.hud.gov/offices/fheo/disabilities/reasonable_modifications_mar08.pdf</a></p>
<p>This website contains information regarding the rights of people with disabilities to housing, including articles, fact sheets, and summaries of cases.   <a href="http://bazelon.org/Where-We-Stand/Community-Integration/Housing/Housing-Policy-Documents.aspx">http://bazelon.org/Where-We-Stand/Community-Integration/Housing/Housing-Policy-Documents.aspx</a></p>
<p>Notice of Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Affecting Limited English Proficient Persons, published December 19, 2003  <a href="http://www.hudclips.org/sub_nonhud/cgi/pdf/31267.pdf">http://www.hudclips.org/sub_nonhud/cgi/pdf/31267.pdf</a></p>
<p>Notice PIH 2010-3, Verification of Social Security Numbers (SSNs) and Supplemental Security Income (SSI) Benefits  <a href="http://www.hud.gov/offices/pih/publications/notices/10/pih2010-3.pdf">http://www.hud.gov/offices/pih/publications/notices/10/pih2010-3.pdf</a></p>
<p>Notice PIH 2010-19, Administrative Guidance for Effective and Mandated Use of the Enterprise Income Verification (EIV) System  <a href="http://www.hud.gov/offices/pih/publications/notices/10/pih2010-19.pdf">http://www.hud.gov/offices/pih/publications/notices/10/pih2010-19.pdf</a></p>
<p>Notice PIH 2010-26 (HA), Nondiscrimination and Accessibility Notice for persons with Disabilities  <a href="http://www.hud.gov/offices/pih/publications/notices/10/pih2010-26.pdf">http://www.hud.gov/offices/pih/publications/notices/10/pih2010-26.pdf</a></p>
<p>OMB Circular A-133  <a href="http://www.whitehouse.gov/omb/circulars/a133_compliance_supplement_2010">http://www.whitehouse.gov/omb/circulars/a133_compliance_supplement_2010</a></p>



<p>Project-Based Voucher Program; Final Rule  <a href="http://www.hudclips.org/sub_nonhud/cgi/pdf/20035.pdf">http://www.hudclips.org/sub_nonhud/cgi/pdf/20035.pdf</a></p>
<p>Rental Housing Integrity Improvement Program (RHIP) Frequently Asked Questions.  <a href="http://www.hud.gov/offices/pih/programs/ph/rhiip/faq.cfm">www.hud.gov/offices/pih/programs/ph/rhiip/faq.cfm</a></p>
<p>VAWA Final Rule  <a href="http://www.gpo.gov/fdsys/pkg/FR-2010-10-27/pdf/2010-26914.pdf">http://www.gpo.gov/fdsys/pkg/FR-2010-10-27/pdf/2010-26914.pdf</a></p>
<p>Verification FAQ  <a href="http://www.hud.gov/offices/pih/programs/ph/rhiip/faq_verif.cfm">www.hud.gov/offices/pih/programs/ph/rhiip/faq_verif.cfm</a></p>
<p>Verification Guidance, March 2004 (attachment to Notice PIH 2004-1)  <a href="http://www.hud.gov/offices/pih/publications/notices/04/verifguidance.pdf">http://www.hud.gov/offices/pih/publications/notices/04/verifguidance.pdf</a></p>
<p>PIH Notice 2009-22 Over Subsidization in the Housing Choice Voucher Program  <a href="http://portal.hud.gov/hudportal/documents/huddoc?id=09-22pihn.doc">http://portal.hud.gov/hudportal/documents/huddoc?id=09-22pihn.doc</a></p>
<p>Regulations that Prohibit Discrimination Based on Sexual Orientation, Gender Identity Now Prohibited in HUD Housing  <a href="http://www.gpo.gov/fdsys/pkg/FR-2012-02-03/pdf/2012-2343.pdf">http://www.gpo.gov/fdsys/pkg/FR-2012-02-03/pdf/2012-2343.pdf</a></p>
<p>Statutes and Regulations  42 U.S.C. § 1437f(r) Portability  24 C.F.R. Part 982 Subpart H—Where a Family Can Live and Move  <a href="http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&amp;sid=053036907a5acc6...">http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&amp;sid=053036907a5acc6...</a></p> <p>HUD, Voucher Program Guidebook: Housing Choice, 7420.10G (April 2001), Chapter 2, Expanding Housing Opportunities and Mobility  <a href="http://www.hud.gov/utilities/intercept.cfm?/offices/adm/hudclips/guidebo...">http://www.hud.gov/utilities/intercept.cfm?/offices/adm/hudclips/guidebo...</a></p> <p>HUD, Housing Choice Voucher Portability Procedures and Corrective Actions, PIH 2008-43 (HA) (Dec. 3, 2008)  <a href="http://www.hud.gov/offices/adm/hudclips/notices/pih/files/08-43PIHN.doc">http://www.hud.gov/offices/adm/hudclips/notices/pih/files/08-43PIHN.doc</a></p> <p>FHEO Library  <a href="http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/library">http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/library</a></p> <p>Fair Housing, It's Your Right  <a href="http://portal.hud.gov:80/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/FH_Laws/yourrights">http://portal.hud.gov:80/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/FH_Laws/yourrights</a></p>
<p>HUD Guidance on Protecting Tenants at Foreclosure Act.  <a href="http://www.gpo.gov/fdsys/pkg/FR-2012-03-15/pdf/2012-6297.pdf">http://www.gpo.gov/fdsys/pkg/FR-2012-03-15/pdf/2012-6297.pdf</a></p>
<p>Additional Statutes and Regulations  American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat.115, 215</p>

(February 17, 2009)

<http://www.nhlp.org/files/01%20ARRA%20Comm%20Dev%20Fund%20section.pdf>

Department of Housing and Community Development, Community Planning and Development, Community Development Fund, requires that owners of units purchased with NSP funds not discriminate against voucher holders.

24 C.F.R. § 982.53(d) (federal law does not preempt local source of income laws)

PIH Notice 2001-2 (HA) (January 18, 2001)

Prohibition of Discrimination Against Families with Housing Choice Vouchers by Owners of Low-Income Housing Tax Credit and HOME Developments

Low-Income Housing Tax Credit: Internal Rev. Code, 26 U.S.C.A. § 42(h)(6)(B)(iv) and 26 C.F.R. § 1.42-5(c)(1)(xi)

HOME Program: 42 U.S.C. § 12745(a)(1)(D)

Mark-to-Market projects:

Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRAA), Pub. L. No. 105-65, Title V, § 514(e)(9), 111 Stat. 1343, 1394 (Oct. 27, 1997), § 1437f note, and 24 C.F.R.

Multifamily projects purchased from HUD:

12 U.S.C.A. § 1701z-12 and 24 C.F.R. §§ 290.19 and 290.39

Rental rehab and HODAG:

42 U.S.C.A. § 1437o note, §§ 1437o(c)(2)(G)(i) & (d)(4)(D)(i) and 24 C.F.R § 511.11(d)(iii) & § 850.151(c)

Right of tenants in HUD-subsidized and HUD-assisted projects to receive tenant-based rental subsidies:

12 U.S.C.A. § 1715z-1b(b)(2)

PIH 2011-68, Issued: Dec. 16, 2011

<http://portal.hud.gov/huddoc/11-68pihn.doc>

PIH 2012-10

Verification of Social Security Numbers (SSNs), Social Security (SS) and Supplemental Security Income (SSI) Benefits; and Effective Use of the Enterprise Income Verification (EIV) System's Identity Verification Report

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: <http://www.hud.gov/offices/adm/hudclips/>.

## Chapter 1

### OVERVIEW OF THE PROGRAM AND PLAN

#### INTRODUCTION

DOH receives its funding for the Housing Choice Voucher (HCV) program from the Department of Housing and Urban Development. DOH is not a federal department or agency. A public housing agency (PHA) is a governmental or public body, created and authorized by state law to develop and operate housing and housing programs for low-income families. DOH enters into an Annual Contributions Contract with HUD to administer the program requirements on behalf of HUD. DOH 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 DOH and its programs with emphasis on the HCV program. It also contains information about the purpose, intent and use of the plan and guide.

There are three parts to this chapter:

Part I: The Public Housing Agency (PHA). This part includes a description of DOH, its jurisdiction, its programs, and its mission and intent.

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

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

## *PART I: Division of Housing (DOH)*

### **1-I.A. ORGANIZATION AND STRUCTURE OF DOH**

The Section 8 tenant-based Housing Choice Voucher (HCV) assistance program is funded by the federal government and administered by the Colorado Department of Local Affairs (DOLA), for the jurisdiction of The State of Colorado.

#### ***Staffing and Administration***

DOH delegates some of the administrative responsibility to contractors that provide housing services to applicants and participants of the Housing Choice Voucher Program. These agencies include:

- A. Public Housing Authorities
- B. Community Mental Health Centers
- C. Community Centered Boards or their contract service agencies
- D. Single Entry Point agencies
- E. Independent Living Centers
- F. Office of Youth Services or their contract agencies
- G. Veterans Administration Medical Center in Denver
- H. Homeless Providers
- I. Others

The above agencies will hereby be referred to in the remainder of this document as contractors. DOH enters into a contract with these contractors that outline each party's responsibilities.

Contractors employ housing coordinators who assist applicants and participants through the necessary Housing Choice Voucher Program documentation and regulations to help them acquire and maintain units that conform to Housing Choice Voucher Program regulations. Each contractor must take the necessary steps to assure that housing coordinators receive adequate training in the administration of the Housing Choice Voucher Program.

#### **Housing Assistance Payment Contract**

The contractor will sign the Housing Assistance Payment Contract. The appropriate staff person, designated in writing by the Contractor's CEO, will execute the contract on behalf of the PHA.

If the Contractor is the owner or property manager of the property, then the HAP Contract must be signed by the Division of Housing to avoid a conflict of interest.

### **1-I.B. PHA MISSION**

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

The mission of DOH's Housing Choice Voucher Program is to:

- A. Administer a mechanism for identifying and providing affordable, decent, safe and sanitary housing for persons with low income individuals and persons with disabilities
- B. Monitor implementation of HUD/DOH's policies and procedures;
- C. Provide technical assistance and training in emerging issues related to housing for the low income disabled and others;
- D. Communicate to the public a positive, visible image of low-income families, persons with disabilities, and other special needs populations in order to open doors to possibilities and opportunities for them.

### **1-I.C. DOH'S PROGRAMS**

The following programs are included under this administrative plan:

DOH operates the following Housing Choice Voucher Program subsidy programs through the federal Department of Housing and Urban Development (HUD). These programs are:

- A. Housing Choice Vouchers
- B. 5 Year Mainstream Housing Choice Voucher Program

DOH follows HUD regulations in the administration of these Housing Choice Voucher programs. This administrative plan addresses all local discretionary program functions in the Housing Choice Voucher Program.

DOH also administers sub-programs, other federal programs and state funded programs that use this administrative plan. These include:

- A. Shelter Plus Care
- B. Project-Based Assistance
- C. Homeownership
- D. Welfare to Work Program
- E. Family Unification Program
- F. Project Access
- G. Non Elderly Disabled Vouchers
- H. VASH
- I. Family Self-Sufficiency Program
- J. State Housing Voucher Program

### **1-I.D. DOH'S COMMITMENT TO ETHICS AND SERVICE (Code of Conduct)**

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

- Comply with the conflict of interest requirements of the HCV program cited in 24 CFR 982.161.
- (a) Neither DOH nor any of its contractors or subcontractors may enter into any contract or arrangement in connection with the tenant-based programs in which any of the following classes of persons has any interest, direct or indirect, during tenure or for one year thereafter:
- 1) Any present or former members or officer of DOH (except a participant commissioner);
  - 2) Any employee of DOH, or any contractor, subcontractor or agent of DOH, who formulates policy or who influences decisions with respect to the programs;
  - 3) Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the programs; or
  - 4) Any member of the Congress of the United States.
- (b) Any member of the classes described in paragraph (a) of this section must disclose their interest or prospective interest to DOH and HUD.
- (c) The conflict of interest prohibition under this section may be waived by the HUD field office for good cause.
- Prohibit the solicitation or acceptance of gifts or gratuities in excess of a nominal value by an officer or employee of the housing agency or any contractor, subcontractor, or agent of DOH.
  - Administer applicable federal and state laws and regulations to achieve high ratings in performance 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 needs.
  - Promote fair housing and the equal 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 DOH'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 DOH's support systems and a high level of commitment to our employees and their development.

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

### **1-1.E Code of Conduct**

- Serve the public with respect, concern, courtesy, and responsiveness;
- Demonstrate the highest standards of personal integrity, truthfulness and honesty and, through personal conduct, inspire public confidence and trust in government;
- Not use public office to bestow any preferential benefit on anyone personally related to him or her, nor bestow any preferential benefit on anyone based upon any business or social relationship;
- Not disclose or use or allow others to use confidential information acquired by virtue of state employment for private gain;
- Not accept any compensation, gift, payment of expenses, or any other thing of value if it would influence him or her to depart from the faithful and impartial discharge of his or her duties;
- Not accept any compensation, gift, payment of expenses, or any other thing of value if it is a reward for official action taken;
- Not engage in outside employment unless: (1) the outside employment is disclosed to and approved by the employee's immediate supervisor, appointing authority, and the Executive Director of DOLA; (2) the outside employment does not interfere with the performance of State duties, and; (3) the outside employment is not conducted during State time or using State resources;
- Not use State time, property, equipment, or supplies for private gain;
- Not knowingly engage in any activity or business which creates a conflict of interest or has an adverse effect on the confidence of the public in the integrity of government;

- Carry out all duties as a public servant by exposing corruption or impropriety in government whenever discovered;
- Support equal access and employment opportunities in State government for all citizens of the State of Colorado; and
- Comply at all times with: Standards set forth in Article XXIX, a voter-approved amendment (Amendment 41) to the Colorado Constitution; Advice and guidance on ethics issues arising under Amendment XXIX and other standards of conduct and reporting requirements as provided by law issued by the Independent Ethics Commission established in Article 18.5 of Title 24 of the Colorado Revised Statutes; and Article 18 of Title 24 of the Colorado Revised Statutes, “Standards of Conduct”.

### **1-I.F. Disciplinary Remedies for Violation of DOH Code of Ethics and Code of Conduct**

DOH shall adhere to this Code of Conduct and shall sanction and/or terminate any officer, employee, agent or contractor for violations consistent with applicable state or local law.

In addition, DOH may impose any one or more of the following:

- Oral or written warnings or reprimands;
- Suspension for a specified period of time;
- Termination of employment; or
- Dismissal from the official or agency position.

The value of anything received by an employee or a non-employee in breach of the ethical standards shall be recoverable by DOH either by confiscating the items or by charging the violator for any and all gratuities received.

When DOH determines that program abuse by a PHA staff member has occurred and the abuse results in a financial loss that meets or exceeds the threshold for prosecution under local or state law, DOH will refer the matter to the appropriate entity for prosecution.



## ***PART II: THE HOUSING CHOICE VOUCHER (HCV) PROGRAM***

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

The intent of this section is to provide the public, contractors 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 reader to better 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. Assuming that the housing met certain basic physical standards of quality (“housing quality standards”) and was within certain HUD-established rent limitations (“fair market rents”), the family would be able to receive rental assistance in the housing unit. Family contribution to rent was generally set at 30 percent of the family’s adjusted income, with the remainder of the rent paid by the program.

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

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

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

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

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

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

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

### **1-II.B. HCV PROGRAM BASICS**

The purpose of the HCV program is to provide rental assistance to eligible families. The rules and regulations of the HCV program are determined by the U.S. Department of Housing and Urban Development. The Division of Housing (DOH) is afforded choices in the operation of the program, which are included in DOH's administrative plan.

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

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

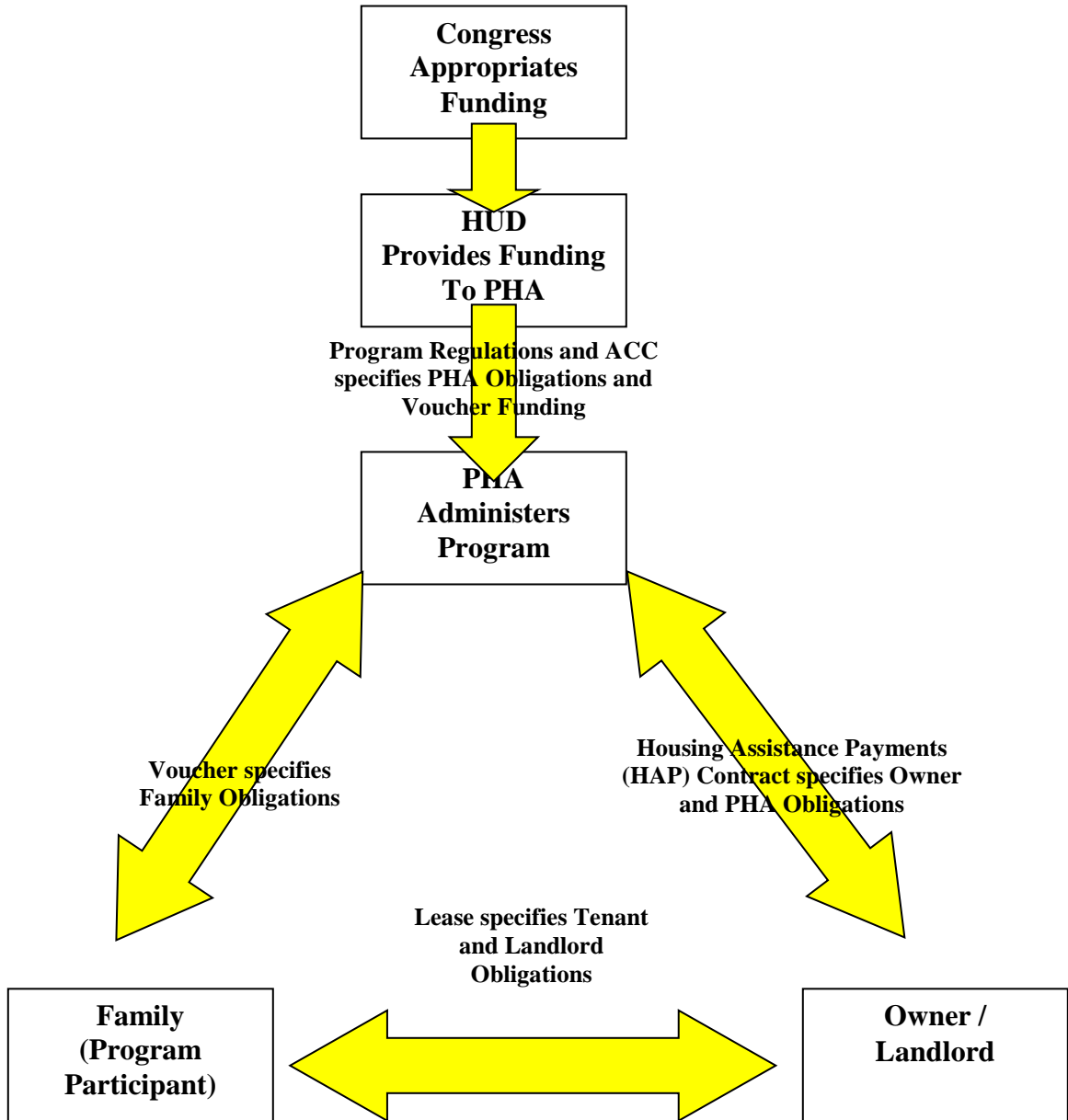
### **1-II.C THE HCV PARTNERSHIPS**

To administer the HCV program, DOH enters into a contractual relationship with HUD (Consolidated Annual Contributions Contract). DOH 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, DOH, 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 PHAs;
- Provide technical assistance to PHAs on interpreting and applying HCV program requirements;
- Monitor PHA compliance with HCV program requirements and PHA performance in program administration.

## **What Does DOH Do?**

DOH administers the HCV program under contract with HUD and has the following major responsibilities, many of which are delegated to contractors and outlined in the Statement of Work:

- Establish local policies to administer the program;
- Review applications from interested applicants to determine whether they are eligible for the program;
- Maintain a waiting list and select families for admission;
- Issue voucher to eligible families and provide information on how to lease a unit;
- 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;
- Recertify families for continued eligibility under the program;
- Ensure that owners and families comply with their contractual obligations;
- 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, DOH'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 suitability as renters.
  - DOH 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 DOH;
- Comply with all applicable fair housing laws and do not discriminate against anyone;
- Maintain the housing unit in accordance with Housing Quality Standards (HQS) and make 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 DOH with complete and accurate information, determined by DOH to be necessary for administration of the program;
- Make their best and most timely efforts to locate qualified and suitable housing ;
- Attend all appointments scheduled by DOH;
- Allow DOH 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 DOH 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 DOH of any changes in family composition;
- Not commit fraud, bribery, or any other corrupt or criminal act in connection with any housing programs.

## **1-II.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)

## ***PART III: THE HCV ADMINISTRATIVE PLAN***

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

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

This administrative plan is set forth to define DOH's local policies for operation of the housing programs in accordance with federal laws and regulations. All issues related to the HCV program not addressed in this document are governed by: federal regulations, HUD handbooks and guidebooks, notices and/or 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.

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

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

### **1-III.B. CONTENTS OF THE PLAN [24 CFR 982.54]**

The HUD regulations at 24 CFR 982.54 define the policies that must be included in the administrative plan. They are as follows:

- Selection and admission of applicants from DOH waiting list, including any PHA admission preferences, procedures for removing applicant names from the waiting list, and procedures for closing and reopening DOH waiting list (Chapter 4);
- Issuing or denying vouchers, including PHA policy governing the voucher term and any extensions or suspensions of the voucher term. 'Suspension' means stopping the clock on the term of a family's voucher after the family submits a request for approval of the tenancy. If DOH decides to allow extensions or suspensions of the voucher term, DOH administrative plan must describe how DOH determines whether to grant extensions or suspensions, and how DOH determines the length of any extension or suspension (Chapter 5);
- Any special rules for use of available funds when HUD provides funding to DOH for a special purpose (e.g., desegregation), including funding for specified families or a specified category of families (Chapter 4);

- Occupancy policies, including definition of what group of persons may qualify as a 'family', definition of when a family is considered to be 'continuously assisted'; standards for denying admission or terminating assistance based on criminal activity or alcohol abuse in accordance with 982.553 (Chapters 3 and 12);
- Encouraging participation by owners of suitable units located outside areas of low income or minority concentration (Chapter 13);
- Assisting a family that claims that illegal discrimination has prevented the family from leasing a suitable unit (Chapter 2);
- Providing information about a family to prospective owners (Chapters 3 and 9);
- Disapproval of owners (Chapter 13);
- Subsidy standards (Chapter 5);
- Family absence from the dwelling unit (Chapter 12);
- How to determine who remains in the program if a family breaks up (Chapter 3);
- Informal review procedures for applicants (Chapter 16);
- Informal hearing procedures for participants (Chapter 16);
- The process for establishing and revising voucher payment standards (Chapter 16);
- The method of determining that rent to owner is a reasonable rent (initially and during the term of a HAP contract) (Chapter 8);
- Special policies concerning special housing types in the program (e.g., use of shared housing) (Chapter 15);
- Policies concerning payment by a family to DOH of amounts the family owes. (Chapter 16);
- Interim redeterminations of family income and composition (Chapter 11);
- Restrictions, if any, on the number of moves by a participant family (Chapter 10);
- Approval by the board of commissioners or other authorized officials to charge the administrative fee reserve (Chapter 16);
- Procedural guidelines and performance standards for conducting required housing quality standards inspections (Chapter 8); and
- PHA screening of applicants for family behavior or suitability for tenancy (Chapter 3).

### **Mandatory vs. Discretionary Policy**

HUD makes a distinction between:

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



HUD expects PHAs to adopt local policies and procedures that are consistent with mandatory policies in areas where HUD gives the PHA discretion. DOH's administrative plan is the foundation of those policies and procedures. HUD's directions require PHAs to make policy choices that provide sufficient guidance to staff and ensure consistency to program applicants and participants.

Creating policies based upon HUD guidance is not mandatory, but 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, but PHAs should carefully think through those decisions.

### **1-III.C. ORGANIZATION OF THE PLAN**

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

### **1-III.D. UPDATING AND REVISING THE PLAN**

DOH 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, the pertinent sections included in the Agency Plan, and a copy provided to HUD.

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

## Chapter 2

### FAIR HOUSING AND EQUAL OPPORTUNITY

#### INTRODUCTION

*This chapter explains the laws and HUD regulations requiring DOH 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 DOH's housing choice voucher (HCV) operations.*

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

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

Part II: Policies Related to Persons with Disabilities. This part discusses the rules and policies of the housing choice voucher program related to reasonable accommodation for persons with disabilities. These rules and policies are based on the Fair Housing Act (42 U.S.C. §§ 3601 – 3619, and 24 C.F.R parts 100.1 through 125.501) and Section 504 of the Rehabilitation Act of 1973, and incorporate guidance from the Joint Statement of The Department of Housing and Urban Development and the Department of Justice (DOJ), issued May 17, 2004.

Part III: Prohibition of Discrimination Against Limited English Proficiency Persons. This part details the obligations of DOH 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*.

## ***PART I: NONDISCRIMINATION***

### **2-I.A. OVERVIEW**

Federal laws require DOH to treat all applicants and participants equally, providing the same opportunity to access services, regardless of family characteristics and background. Federal law prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, age, familial status, and disability. . In addition, HUD regulations provide for additional protections regarding sexual orientation, gender identity, and marital status. DOH 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, Pub.L.No.93-112. 87 Stat. 355, (§ 504,codified at 29 U.S.C. § 794(a))
- 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 2013 (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.

### **2-I.B. NONDISCRIMINATION**

Federal regulations prohibit discrimination against certain protected classes and other groups of people. State and local requirements, as well as DOH policies, can prohibit discrimination based on other factors.

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

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

DOH will not discriminate on the basis of marital status, gender identity, or sexual orientation.  
[FR Notice 02/03/12]

- DOH does not identify any additional protected classes.

DOH 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**

DOH must take steps to ensure that families and owners are fully aware of all applicable civil rights laws. As part of the briefing process, DOH 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.

### **Discrimination Complaints**

If an applicant or participant believes that DOH or an owner has discriminated against any family member, the family should advise DOH. HUD requires DOH to make every reasonable attempt to determine whether the applicant or participant's assertions have merit and take any warranted corrective action. In addition, DOH 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 may notify DOH either orally or in writing.
- DOH will attempt to remedy discrimination complaints made against DOH.
- DOH will provide a copy of a discrimination complaint form to the complainant and provide them with information on how to complete and submit the form to HUD's Office of Fair Housing and Equal Opportunity (FHEO).

## ***PART II: POLICIES RELATED TO PERSONS WITH DISABILITIES***

### **2-II.A. OVERVIEW**

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

DOH must ensure that persons with disabilities have full access to DOH's programs and services. This responsibility begins with the first contact by an interested family and continues through every aspect of the program.

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

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

A specific name and phone number of designated staff will be provided to process requests for accommodation.

DOH will display posters and other housing information and signage in locations throughout the PHA's office in such a manner that is easily readable from a wheelchair.

### **2-II.B. Definition of Reasonable Accommodation**

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

What is a Reasonable Accommodation? A reasonable accommodation is a change in a rule, policy, practice, or service that may be necessary to allow a person with a disability the equal opportunity to use and enjoy a dwelling. Failure to provide a reasonable accommodation may be construed as discrimination.

Federal regulations stipulate that requests for accommodations will be considered reasonable if they do not create an "undue financial and administrative burden" for DOH, 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, DOH will 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.
- Allowing an individual with a disability to rent from a relative.
- Allow the use of Special Housing Types including, single room occupancy, congregate housing, shared housing, group homes etc.
- Allowing a larger unit size for a live-in aide or for other reasons related to the individuals disability.
- Higher utility allowance if the individual experiences larger utility costs due to their disability.
- Live-in Aide- A PHA must approve a live-in aide as a reasonable accommodation.
- Using higher payment standards (either within the acceptable range or with HUD approval of a payment standard outside DOH range) if DOH 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 DOH staff.

### **2-II.C. Request for an Accommodation**

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

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

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

There are a number of components to requesting a reasonable accommodation: initial requests, verification, reasonableness, and the interactive process.

Initial Requests: Once a tenant tells a housing provider that she is disabled and needs something changed in order to accommodate her disability, the provider is obligated to begin the reasonable accommodation process.

- A request may be oral or written. However, the best practice is to request the accommodation in writing, so that there is a clear record of the request. If a participant is unable to write, the request can be heard orally and written for the individual allowing them to confirm the accuracy. All requests should include the following elements:
- A certification of continued need for a reasonable accommodation must be made annually. Third party verification of the continued need will not be required if the family certifies that the accommodation is still required.

### **Disability**

The request needs to demonstrate that the tenant has a disability that could be accommodated by the specific request. It does NOT need to state the name of the disability. A housing provider cannot ask about the diagnosis, treatment, or the nature or extent of the disability.

### **Accommodation**

The request should state specifically what accommodation the tenant is seeking. For example, this section might request a designated parking area, a cosigner for the lease, or that rent is accepted at a later date in the month.

### **Nexus**

This portion is vital. The request must state how the accommodation is related to the person's disability and how it will help the tenant access or remain in the housing program.

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 DOH 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].

## **2-II.D. Verification of Disability**

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

Before providing an accommodation, DOH 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 DOH's programs and services.

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

If a family indicates that an accommodation is required for a disability that is not obvious or otherwise known to DOH, DOH 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, DOH 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 peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may provide verification of a disability [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act]
- DOH must request only information that is necessary to evaluate the disability-related need for the accommodation. DOH will not inquire about the nature or extent of any disability.
- Medical records will not be accepted or retained in the participant file.
- In the event that DOH does receive confidential information about a person's specific diagnosis, treatment, or the nature or severity of the disability, DOH will dispose of it. In place of the information, DOH 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-II.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].

DOH 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 DOH, or fundamentally alter the nature of DOH'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 DOH'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 making a determination whether to approve the request, DOH 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 DOH may verify the need for the requested accommodation.

- After a request for an accommodation is presented, DOH will respond, in writing, within 10 business days.
- Before DOH 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 DOH's operations), DOH must meet with the participant to discuss 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 DOH believes that the family has failed to identify a reasonable alternative accommodation after interactive discussion and negotiation, DOH 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-II.F. Program Accessibility for Persons with Hearing or Vision Impairments**

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

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

- To meet the needs of persons with hearing impairments, TTD/TTY (text telephone display / teletype) communication will be available.
- To meet the needs of persons with vision impairments, large-print and audio versions of key program documents will be made available upon request. When visual aids are used in public meetings or presentations, or in meetings with DOH staff, one-on-one assistance will be provided upon request.
- Additional examples of alternative forms of communication are sign language interpretation; having material explained orally by staff; or having a third party representative (a friend, relative or advocate, named by the applicant) to receive, interpret and explain housing materials and be present at all meetings.

#### **2-II.G. Physical Accessibility**

*DOH 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

DOH'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 DOH's responsibilities with regard to physical accessibility.
- Notice PIH 2010-26 summarizes information about pertinent laws and implementing regulations related to non-discrimination and accessibility in federally-funded housing programs.

The design, construction, or alteration of DOH 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, DOH will include a current list of available accessible units known to DOH and will assist the family in locating an available accessible unit, if necessary.

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

## **2-II.H. Denial or Termination of Assistance**

DOH'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 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 DOH's informal hearing process and their right to request a hearing and reasonable accommodation.

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

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

### **2-III.A. OVERVIEW**

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

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

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

In order to determine the level of access needed by LEP persons, DOH will balance the following four factors: (1) the number or proportion of LEP persons eligible to be served or likely to be encountered by the Housing Choice Voucher program; (2) the frequency with which LEP persons come into contact with the program; (3) the nature and importance of the program, activity, or service provided by the program to people's lives; and (4) the resources available to DOH and costs. Balancing these four factors will ensure meaningful access by LEP persons to critical services while not imposing undue burdens on DOH.

### **2-III.B. ORAL INTERPRETATION**

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

- DOH 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, DOH will train and hire bilingual staff to be available to act as interpreters and translators, will pool resources with other PHAs, and will standardize documents. Where feasible and possible, DOH 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 DOH. The interpreter may be a family member or friend.

### **2-III.C. WRITTEN TRANSLATION**

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

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

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

### **2-III.D. IMPLEMENTATION PLAN**

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

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

- If it is determined that DOH serves very few LEP persons, and DOH has very limited resources, DOH will not develop a written LEP plan, but will consider alternative ways to articulate in a reasonable manner a plan for providing meaningful access. Entities having significant contact with LEP persons, such as schools, grassroots and faith-based organizations, community groups, and groups working with new immigrants will be contacted for input into the process.
- If DOH determines it is appropriate to develop a written LEP plan, the following five steps will be taken: (1) Identifying LEP individuals who need language assistance; (2) identifying language assistance measures; (3) training staff; (4) providing notice to LEP persons; and (5) monitoring and updating the LEP plan.

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

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

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

The phrase “physical or mental impairment” includes:

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

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

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

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

The definition of a person with disabilities does not include:

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

The above definition of disability determines whether an applicant or participant is entitled to any of the protections of federal disability civil rights laws. Thus, a person who does not meet

this disability is not entitled to a reasonable accommodation under federal civil rights and fair housing laws and regulations.

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

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

## **EXHIBIT 2-2: Furthering Fair Housing**

### **Family Unification Program**

DOH is committed to affirmatively furthering fair housing as it relates to the Family Unification Program grant.

If awarded, DOH will assist youth at least 18 years old and not more than 21 years old (have not reached his/her 22<sup>nd</sup> birthday) who do not have adequate housing.

Steps DOH will take in order to affirmatively further fair housing are:

- Identifying and ensuring certification of FUP eligible youth that may be on DOH's waiting list and ensuring that the youth maintain their original position on the waiting list after certification;
- Appropriately placing all FUP eligible youth referred from the public child welfare agencies on the HCV waiting list in order of first come, first served;
- Informing applicants on how to file a fair housing complaint, including the provision of the toll-free number for the Housing Discrimination Hotline: 1-800-669-9777;
- When requested, assist program applicants and participants gain access to supportive services available within the community, but not require eligible individuals to accept supportive services as a condition of continued participation in the program;
- Assist in identifying public and private funding sources to assist participants with disabilities in covering the costs of structural alterations and other accessibility features that are needed as accommodations for their disabilities;
- DOH will not deny persons who qualify for a HCV under this program other housing opportunities, or otherwise restrict access to DOH programs to eligible applicants who choose not to participate;
- Provide housing search assistance;
- In accordance with rent reasonable requirements, approve higher rents to owners that provide accessible units with structural modifications for persons with disabilities; and
- Provide technical assistance, through referrals to local fair housing and equal opportunity offices, to owners interested in making reasonable accommodations or units accessible to persons with disabilities.



## **Certain Developments Grant**

The PHA is committed to affirmatively furthering fair housing as it relates to the rental assistance for non-elderly persons with disabilities grant or as it will be referred to from here on, the Certain Developments grant.

If awarded, the PHA will assist non-elderly disabled households that are not currently receiving housing assistance in certain HUD-assisted properties due to the owner's establishment of preferences or restrictions for occupancy to elderly families.

Steps the PHA will take in order to affirmatively further fair housing are:

- Identify and contact all non-elderly disabled households that were affected by the preferences, or restricted occupancy by elderly households only in Certain Developments;
- Inform individuals how to file a fair housing complaint including the provision of the toll free number for the Housing Discrimination Hotline: 1-800-669-9777;
- When requested, assist program applicants and participants gain access to supportive services available within the community, but not require eligible individuals to accept supportive services as a condition of continued participation in the program;
- Assist in identifying public and private funding sources to assist participants with disabilities in covering the costs of structural alterations and other accessibility features that are needed as accommodations for their disabilities;
- the PHA will not deny persons who qualify for a HCV under this program other housing opportunities, or otherwise restrict access to PHA programs to eligible applicants who choose not to participate;
- Provide housing search assistance;
- In accordance with rent reasonableness requirements, approve higher rents to owners that provide accessible units with structural modifications for persons with disabilities; and
- Provide technical assistance, through referrals to local fair housing and equal opportunity offices, to owners interested in making reasonable accommodations or units accessible to persons with disabilities.

## **2009 Rental Assistance for Non-Elderly Persons with Disabilities**

The PHA is committed to affirmatively furthering fair housing as it relates to the 2009 rental assistance for non-elderly persons with disabilities grant.

If awarded, the PHA will assist non-elderly disabled households that are not currently receiving housing assistance.

Steps the PHA will take in order to affirmatively further fair housing are:

- Identify and contact all eligible non-elderly disabled households.
- Inform individuals how to file a fair housing complaint including the provision of the toll free number for the Housing Discrimination Hotline: 1-800-669-9777 or by contacting the Federal Information Relay Service at 1-800-887-8339;
- When requested, assist program applicants and participants gain access to supportive services available within the community, but not require eligible individuals to accept supportive services as a condition of continued participation in the program;
- Assist in identifying public and private funding sources to assist participants with disabilities in covering the costs of structural alterations and other accessibility features that are needed as accommodations for their disabilities;
- the PHA will not deny persons who qualify for a HCV under this program other housing opportunities, or otherwise restrict access to PHA programs to eligible applicants who choose not to participate;
- Provide housing search assistance when requested;
- In accordance with rent reasonableness requirements, approve higher rents to owners that provide accessible units with structural modifications for persons with disabilities; and
- Provide technical assistance, through referrals to local fair housing and equal opportunity offices, to owners interested in making reasonable accommodations or units accessible to persons with disabilities.
- Comply with the affirmatively furthering fair housing requirements of 24 CFR Section 903.7 (o) by:
  1. The PHA will confirm with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d-4), the Fair Housing Act (42 U.S.C. 3601-19), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and title II of the Americans with

Disabilities Act of 1990 (42 U.S.C. 12101 et seq.). The PHA must also certify that it will affirmatively further fair housing.

2. The certification is applicable to both the 5-Year Plan and the Annual Plan.
3. A PHA shall be considered in compliance with the certification requirement to affirmatively further fair housing if the PHA fulfills the requirements of Sec. 903.2(b) and:
  - a. Examines its programs or proposed programs;
  - b. Identifies any impediments to fair housing choice within those programs;
  - c. Addresses those impediments in a reasonable fashion in view of the resources available;
  - d. Works with local jurisdictions to implement any of the jurisdiction's initiatives to affirmatively further fair housing that require the PHA's involvement; and
  - e. Maintains records reflecting these analyses and actions.

## Chapter 3

### ELIGIBILITY

#### INTRODUCTION

DOH 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 DOH to confirm eligibility and determine the level of the family's assistance.

To be eligible for the HCV program:

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

This chapter contains three parts:

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

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

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

## ***PART I: DEFINITIONS OF FAMILY AND HOUSEHOLD MEMBERS***

### **3-I.A. OVERVIEW**

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

### **3-I.B. FAMILY AND HOUSEHOLD [24 CFR 982.201(c), HUD-50058 IB, p. 13; FR Notice 02/03/12]**

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. A family may be a single person or a group of persons. *Family* as defined by HUD includes, but is not limited to the following, regardless 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; or a group of persons residing together. 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 near-elderly family, a disabled family, a displaced family, or the remaining member of a tenant family. DOH has the discretion to determine if any other group of persons qualifies as a family.

*Gender Identity* means actual or perceived gender characteristics.

*Sexual orientation* means homosexuality, heterosexuality, or bisexuality.

- A family also includes two or more individuals who are not related by blood, marriage, adoption, or other operation of law 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 notify DOH if the family's composition changes.

#### **Household**

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

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

#### **Family Break-up [24 CFR 982.315]**

Except under the following conditions, DOH 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, sexual assault or stalking, DOH must ensure that the victim retains assistance. (For documentation requirements and policies related to domestic violence, dating violence, sexual assault and stalking, see section 16-IX.D of this plan.)
- If a court determines the disposition of property between members of the assisted family in a divorce or separation decree, DOH 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 participant family breaks up into two otherwise eligible families while receiving assistance, only one of the new families will continue to be assisted.
  - In the absence of a judicial decision or an agreement among the original family members, DOH will determine which family will retain their placement on the waiting list or continue to receive assistance. In making its determination, DOH 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

### **Remaining Member of a Tenant Family [24 CFR 5.403]**

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

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

### **3-I.D. HEAD OF HOUSEHOLD [24 CFR 5.504(b)]**

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

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

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

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

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

*Spouse* means the marriage partner of the head of household.

- A *marriage partner* includes the partner in a "common law" marriage as defined in state law. The term "spouse" does not apply to friends, roommates, or significant others who are not marriage partners. A minor who is emancipated under state law may be designated as a spouse.

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

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

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

### **3-I.F. DEPENDENT [24 CFR 5.603]**

A *dependent* is a family member who is under 18 years of age or a person of any age who is a person with a disability or a full-time student, except that the following persons can never be dependents: the head of household, spouse, co-head, foster children/adults and live-in aides. Identifying each dependent in the family is important because each dependent qualifies the family for a dependent allowance 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 51 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, DOH will make the determination based on available documents such as court orders, school records or an IRS return showing which family has claimed the child for income tax purposes.

### **3-I.G. FULL-TIME STUDENT [24 CFR 5.603; HCV GB, p. 5-29]**

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

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

### **3-I.H. ELDERLY AND NEAR-ELDERLY PERSONS, AND ELDERLY FAMILY [24 CFR 5.100 and 5.403, FR Notice 02/03/12]**

#### **Elderly Persons**

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

#### **Near-Elderly Persons**

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

#### **Elderly Family**

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

### **3-I.I. PERSONS WITH DISABILITIES AND DISABLED FAMILY [24 CFR 5.403, FR Notice 02/03/12]**

#### **Persons with Disabilities**

Under the HCV program, special rules apply to persons with disabilities and to any family whose head, spouse, or co-head is a person with disabilities. The technical definitions of individual with handicaps and persons with disabilities are provided in 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, DOH must make all aspects of the HCV program accessible to persons with disabilities and consider reasonable accommodations requested based upon a person's disability.

#### **Disabled Family**

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



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

### **3-I.J. GUESTS [24 CFR 5.100]**

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

- A guest can be in the assisted unit per the time constraints outlined in the lease.
- 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-I.K. FOSTER CHILDREN AND FOSTER ADULTS**

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

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

Foster children and foster adults who are living with an applicant or who have been approved by DOH to live with a participant family are considered household members but not family members. The income of foster children/adults is not counted in family annual income, and foster children/adults do not qualify for a dependent deduction [24 CFR 5.603; 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.

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

### **3-I.L. ABSENT FAMILY MEMBERS**

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

#### **Definitions of Temporarily and Permanently Absent**

- Generally an individual who is or is expected to be absent from the assisted unit for 120 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 120 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 DOH 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, DOH 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. Cases will be reviewed every 6 months to ensure that the child is still expected to be returned to the home.

#### **Absent Head, Spouse, or Co-head**

- An employed head, spouse, or co-head absent from the unit more than 120 consecutive days due to employment will continue to be considered a family member.

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

- An individual who is confined to a nursing home or hospital on a temporary basis will be able to be away from their subsidized unit for a maximum of 180 days.

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

#### PHA Policy

- The PHA will request verification of the family member's permanent absence from a responsible medical professional. If the responsible medical professional cannot provide a determination, the person will be considered temporarily absent. If the family certifies that the family member is confined on a permanent basis, they may present, and the PHA will consider, any additional documentation or evidence.

### **Return of Permanently Absent Family Members**

- The family must request DOH approval for the return of any adult family members that DOH has determined to be permanently absent. DOH may not allow the return to the household if the individual has been absent for more than one year. The individual is subject to the eligibility and screening requirements discussed elsewhere in this chapter.

### **3-I.M. LIVE-IN AIDE**

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

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

The income of the aide is not considered in income calculations [24 CFR 5.609(b)]. Relatives may be approved as live-in aides if they meet all of the criteria defining a live-in aide. Spouses cannot be considered a live-in aide. Because live-in aides are not family members, a relative who serves as a live-in aide 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 to approve a live-in aide annually. However, DOH will not require the re-verification of the need for a live-in aide 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.
- The live-in aide will not sign the lease, but his/her name and relationship to the tenant must be listed on the HAP Contract. 24- Hour rotating staff will only be considered as live-in aides as a reasonable accommodation.
  - The live-in aide must provide a valid Colorado photo identification card, releases as requested by DOH and pass a criminal background check.
  - DOH will not approve a particular person as a live-in aide, and may withdraw such approval if [24 CFR 982.316(b)]:
    - The person commits fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
    - The person commits drug-related criminal activity or violent criminal activity; or
    - The person currently owes rent or other amounts to DOH or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.
    - The person is unable to pass DOH's background check.
  - The PHA will notify the family of its decision in writing within 10 business days of receiving a request for a live-in aide, including all required documentation related to the request,. The family may request an exception to the 10 business days in the case of health and/or safety. DOH will do its best to expedite requests when received.

## ***PART II: BASIC ELIGIBILITY CRITERIA***

### **3-II.A. INCOME ELIGIBILITY AND TARGETING**

#### **Income Limits**

HUD establishes income limits for all areas of the country and publishes them annually in the *Federal Register*. They are based upon estimates of median family income with adjustments for family size. The income limits are used to determine eligibility for the program and for income targeting purposes as discussed in this section.

#### **Definitions of the Income Limits [24 CFR 5.603(b)]**

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

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

*Extremely low-income family.* A family whose annual income does not exceed 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. Income eligibility is determined by comparing the annual income of an applicant to the applicable income limit for their family size. In order to be income eligible, an applicant 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]
  - DOH 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 DOH.
- A low-income family that qualifies for voucher assistance as a non-purchasing household living in HOPE 1 (public housing homeownership), HOPE 2 (multifamily housing homeownership) developments, or other HUD-assisted multifamily homeownership programs covered by 24 CFR 248.173

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

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

- DOH has not established any additional categories of eligible low-income families.

### **Using Income Limits for Targeting [24 CFR 982.201]**

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

Families continuously assisted under the 1937 Housing Act and families living in eligible low-income housing that are displaced as a result of prepayment of a mortgage or voluntary termination of a mortgage insurance contract are not counted for income targeting purposes.

### **3-II.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 non-citizens that have eligible immigration status. At least one family member must be a citizen, national, or non-citizen with eligible immigration status in order for the family to qualify for any level of assistance.

All applicant families must be notified of the requirement to submit evidence of their citizenship status when they apply.

#### **Declaration [24 CFR 5.508]**

HUD requires each family member to declare whether the individual is a citizen, a national, or an eligible non-citizen, 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 non-citizens. For citizens, nationals and eligible non-citizens the declaration must be signed personally by the head, spouse, co-head, and any other family member 18 or older, and by a parent or guardian for minors. The family must identify in writing any family members who elect not to contend their immigration status (see Ineligible Non-citizens below).

- Family members declaring citizenship or other eligible immigration status must complete the Declaration of 214. This declaration is only required to be completed once at new admission or during additions to households.

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

In general, citizens and nationals are required to submit only a signed declaration as verification of their status. However, HUD regulations permit the PHA 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 PHA receives information indicating that an individual's declaration may not be accurate.

### **Eligible Non-citizens**

In addition to providing a signed declaration, those declaring eligible non-citizen status must sign a verification consent form and cooperate with DOH efforts to verify their immigration status as described in Chapter 7. The documentation required for establishing eligible non-citizen 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 Non-citizens***

Those non-citizens who do not wish to contend their immigration status are required to have their names listed on a non-contending family members listing, signed by the head, spouse, or co-head (regardless of citizenship status), indicating their ineligible immigration status. DOH 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 non-citizen students is prohibited [24 CFR 5.522]. This prohibition extends to the non-citizen spouse of a non-citizen student as well as to minor children who accompany or follow to join the non-citizen student. Such prohibition does not extend to the citizen spouse of a non-citizen student or to the children of the citizen spouse and non-citizen 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 non-citizen. 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)]**

DOH 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 DOH 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 DOH in accordance with program requirements [24 CFR 5.512(a)].

- DOH will not provide assistance to a family before the verification of at least one family member.
- When DOH determines that an applicant family does not include any citizens, nationals, or eligible non-citizens, 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 DOH. The informal hearing with DOH 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, DOH 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, DOH 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.

- DOH will verify the citizenship status of applicants at the time other eligibility factors are determined.

### **3-II.C. SOCIAL SECURITY NUMBERS [24 CFR 5.216 and 5.218, Notice PIH 2012-10]**

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



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

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

If a new member is added to the family, the new member's SSN documentation must be submitted before the individual can be added.

DOH 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-II.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 co-head, regardless of age, to sign form HUD-9886, Authorization for the Release of Information/Privacy Act Notice, and other consent forms as needed to collect information relevant to the family's eligibility and level of assistance. In addition, DOH will require applicants and participants to sign various releases of information. Chapter 7 provides detailed information concerning the consent forms and verification requirements.

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

### **3-II.E. STUDENTS ENROLLED IN INSTITUTIONS OF HIGHER EDUCATION [24 CFR 5.612 and FR Notice 4/10/06]**

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

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

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

### **Definitions**

In determining whether and how the new eligibility restrictions apply to a student, DOH 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***

DOH 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 student is a participant in the Family Unification Program (FUP) for Youth. If the student is not a participant in the Youth FUP program, the following four criteria must be 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

- Be an orphan, in foster care, or a ward of the court, at any time when the student was 13 years of age or older
- Be an emancipated minor or is in legal guardianship as determined by the court in their state of legal residence
- Be verified as an unaccompanied youth who is homeless or at risk of homelessness and self-supporting
- 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.

DOH will verify that a student meets the above criteria in accordance with the policies in Section 7-II.E.

### ***Institution of Higher Education***

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

### ***Parents***

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

### ***Veteran***

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

### **Determining Student Eligibility**

If a student is applying for assistance on his/her own, apart from his/her parents, DOH 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, DOH 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, DOH will:

Follow its usual policies in determining whether the student individually and the student's "family" collectively are eligible for the program

Determine whether the student is independent from his/her parents in accordance with the definition of *independent student* in this section

Follow the policies below, if applicable, in determining whether the student's parents are income eligible for the program

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

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

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

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

## ***PART III: DENIAL OF ASSISTANCE***

### **3-III.A. OVERVIEW**

A family that does not meet the eligibility criteria discussed in Parts I and II, must be denied assistance. In this section we will discuss other situations and circumstances in which denial of assistance is mandatory for the PHA, and those in which denial of assistance is optional for the PHA.

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

Denial of assistance includes any of the following:

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

#### **Prohibited Reasons for Denial of Program Assistance [24 CFR 982.202(b), 24 CFR 5.2005(b)]**

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

- Age, disability, race, color, religion, sex, or national origin. (See Chapter 2 for additional information about fair housing and equal opportunity requirements.)
- Where a family lives prior to admission to the program
- Where the family will live with assistance under the program. Although eligibility is not affected by where the family will live, there may be restrictions on the family's ability to move outside DOH'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 the family includes children
- Whether a family decides to participate in a family self-sufficiency program
- Whether or not a qualified applicant is or has been a victim of domestic violence, dating violence, sexual assault or stalking if the applicant is otherwise qualified for assistance  
(See section 3-III.G.)

### **3-III.B. MANDATORY DENIAL OF ASSISTANCE [24 CFR 982.553(a)]**

HUD requires DOH 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, DOH to admit an otherwise-eligible family if the household member has completed a PHA-approved drug rehabilitation program or the circumstances which led to eviction no longer exist (e.g., the person involved in the criminal activity no longer lives in the household).
  - DOH will admit an otherwise-eligible family who was evicted from federally-assisted housing within the past 3 years for drug-related criminal activity, if DOH is able to verify that the household member who engaged in the criminal activity has completed a supervised drug rehabilitation program approved by DOH, or the person who committed the crime, is no longer living in the household.
- DOH determines that any household member is currently engaged in the use of illegal drugs.
  - *Currently engaged in* is defined as any current use of illegal drugs during the previous six months, unless the applicant is currently enrolled in and fully compliant with treatment.
  - DOH 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, DOH will consider all credible evidence, including but not limited to, local law enforcement agency involvement, any record of convictions, arrests, or evictions of household members related to the use of illegal drugs or the abuse of alcohol. A conviction will be given more weight than an arrest. DOH 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 in any location, not just federally assisted housing, and the family will be denied assistance.
- Any household member is currently required to register under as a life time sex offender under a State registration requirement, the family will be denied assistance.

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

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

#### **Criminal Activity [24 CFR 982.553]**

HUD permits, but does not require, DOH to deny assistance if DOH 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, management staff, and persons performing contract administration functions or other responsibilities on behalf of the PHA (including a PHA employee or a PHA contractor, subcontractor, or agent).

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

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

Any conviction for drug-related or violent criminal activity within the past 5 years.

Any arrests 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.

A conviction for drug-related or violent criminal activity will be given more weight than an arrest for such activity.

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

#### **Criminal History Requirements [24 CFR 982.552 (e)]**

These additional requirements will result in denial of assistance:

1. Sexual assault within the last 10 years;
2. Felony assault within five years;
3. 5 or more assaults of any kind within the past 10 years;
4. Arson or homicide within 10 years;
5. Any other frequent and repeated crimes of any kind that indicate habitual criminal behavior in the last 5 years.

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

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

DOH **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.

DOH **will** deny assistance to an applicant family if:

- The family does not provide information that DOH or HUD determines is necessary in the administration of the program.
- The family does not provide complete and true information to DOH.
- Any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.
- The family owes rent or other amounts to any PHA in connection with the HCV, 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 PHA for amounts paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease, 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 DOH, 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 DOH personnel.

#### ***Abusive or violent behavior towards DOH or other housing 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, DOH will consider the factors discussed in Section 3-III.E. Upon consideration of such factors, DOH may, on a case-by-case basis, decide not to deny assistance.

### **3-III.D. SCREENING**

#### **Screening for Eligibility**

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

- DOH will perform a criminal background check through local law enforcement for every adult household member.
- DOH will perform a Department of Justice, Dru Sjodin National Sex Offender Database inquiry for all household members over the age of 14. [ [www.nsopr.gov](http://www.nsopr.gov) ]

DOH 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)].

- The PHA will use the Dru Sjodin National Sex Offender database to screen applicants for admission.

Additionally, PHAs must ask whether the applicant, or any member of the applicant's household, is subject to a lifetime registered sex offender registration requirement in any state [Notice PIH 2012-28].

If DOH proposes to deny assistance based on a criminal record or on lifetime sex offender registration information, DOH must notify the household of the proposed action and must provide the subject of the record and the applicant a copy of the record, if requested, 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]**

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

- DOH will not conduct additional screening to determine an applicant family's suitability for tenancy.

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

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

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

- DOH 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. DOH will not provide any additional information to the owner, such as tenancy history, or criminal history, etc.

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

#### **Evidence [24 CFR 982.553(c)]**

- DOH 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 DOH to consider all relevant circumstances when deciding whether to deny assistance based on a family's past history except in the situations for which denial of assistance is mandatory (see Section 3-III.B).

DOH 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, sexual assault or stalking
- The length of time since the violation occurred, the family's recent history and the likelihood of favorable conduct in the future
- In the case of drug or alcohol abuse, whether the culpable household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully

DOH 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)]**

Should the PHA's screening process reveal that an applicant's household includes an individual subject to state lifetime registered sex offender registration; the PHA must offer the family the opportunity to remove the ineligible family member from the household. If the family is unwilling to remove that individual from the household, the PHA must deny admission to the family [Notice PIH 2012-28].

For other criminal activity, DOH may permit the family to exclude the culpable family members as a condition of eligibility. [24 CFR 982.552(c)(2)(ii)].

- As a condition of receiving assistance, a family may agree to remove the culpable family member from the application. In such instances, the head of household must certify that the family member will not be permitted to visit, stay as a guest, or reside in the assisted unit.
- After admission to the program, the family must present evidence of the former family member's current address upon DOH request.

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

If the family includes a person with disabilities, DOH'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, DOH will determine

whether the behavior is related to the stated disability. If so, upon the family's request, DOH will determine whether admitting the family as a reasonable accommodation is appropriate. DOH will only consider accommodations that can reasonably be expected to address the behavior that is the basis of the proposed denial of assistance. See Chapter 2 for a discussion of reasonable accommodation.

### **3-III.F. NOTICE OF ELIGIBILITY OR DENIAL**

If the family is eligible for assistance, DOH will notify the family in writing and schedule a tenant briefing, as discussed in Chapter 5.

If DOH 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 DOH 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 be made available, if requested, with an opportunity for the applicant to dispute the accuracy and relevance of the information. In addition, a copy of the record must be provided to the subject of the record if requested [24 CFR 5.903(f) and 5.905(d)]. DOH 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 DOH 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 if requested. The family will be given 10 business days to dispute the accuracy and relevance of the information. If the family does not contact DOH to dispute the information within that 10-day period, DOH will proceed with the 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 non-citizens are contained in Section 3-II.B.

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

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

The Violence against Women Act of 2013 (VAWA) and the HUD regulation at 24 CFR 5.2005(b) prohibit PHAs from denying an applicant admission to the HCV program “on the basis that the applicant is or has been a victim of domestic violence, dating violence, sexual assault or stalking, if the applicant otherwise qualifies for assistance or admission.”

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

#### **Notification**

VAWA 2013 expanded notification requirements to include the obligation for PHAs to provide applicants who are denied assistance with a notice of rights and the form HUD-50066 at the time the applicant is denied.

DOH 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 DOH’s policies. Therefore, if DOH makes a determination to deny assistance to an applicant family, DOH will include in its notice of denial the VAWA information described in section 16-IX.C of this plan as well as including a copy of the form HUD-50066. The PHA will request that an applicant wishing to claim protection under VAWA notify DOH within 10 business days.

#### **Documentation**

##### ***Victim Documentation [24 CFR 5.2007]***

##### **PHA Policy**

If an applicant claims the protection against denial of assistance that VAWA provides to victims of domestic violence, dating violence, sexual assault or stalking, DOH will request in writing that the applicant provide documentation supporting the claim in accordance with section 16-IX.D 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:

- A signed statement (1) requesting that the perpetrator be removed from the application and (2) certifying that the perpetrator will not be permitted to visit or to stay as a guest in the assisted unit

- Documentation that the perpetrator has successfully completed, or is successfully undergoing, rehabilitation or treatment. The documentation must be signed by an employee or agent of a domestic violence service provider or by a medical or other knowledgeable professional from whom the perpetrator has sought or is receiving assistance in addressing the abuse. The signer must attest under penalty of perjury to his or her belief that the rehabilitation was successfully completed or is progressing successfully. The victim and perpetrator must also sign or attest to the documentation.

## 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.

- (2) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.
- (3) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.
- (4) *Is regarded as having an impairment* means:
  - (a) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by a recipient as constituting such a limitation;
  - (b) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or
  - (c) Has none of the impairments defined in paragraph (1) of this section but is treated by a recipient as having such an impairment.

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

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

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

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

- (a) Institution of higher education. For purposes of this chapter, other than subchapter IV and part C of subchapter I of chapter 34 of Title 42, the term “institution of higher education” means an educational institution in any State that
- (1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;
  - (2) Is legally authorized within such State to provide a program of education beyond secondary education;
  - (3) Provides an educational program for which the institution awards a bachelor’s degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree;
  - (4) Is a public or other nonprofit institution; and
  - (5) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted pre-accreditation status by such an agency or association that has been recognized by the Secretary for the granting of pre-accreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.
- (b) Additional institutions included. For purposes of this chapter, other than subchapter IV and part C of subchapter I of chapter 34 of Title 42, the term “institution of higher education” also includes—
- (1) Any school that provides not less than a 1-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provision of paragraphs (1), (2), (4), and (5) of subsection (a) of this section; and
  - (2) A public or nonprofit private educational institution in any State that, in lieu of the requirement in subsection (a)(1) of this section, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.

- (c) List of accrediting agencies. For purposes of this section and section 1002 of this title, the Secretary shall publish a list of nationally recognized accrediting agencies or associations that the Secretary determines, pursuant to subpart 2 of part G of subchapter IV of this chapter, to be reliable authority as to the quality of the education or training offered.

*Definition of ‘‘Institution of Higher Education’’ From 20 U.S.C. 1002*

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

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

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

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

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

- (2) Institutions outside the United States

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

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

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

- (bb) At least 60 percent of the individuals who were students or graduates of the graduate medical school outside the United States or Canada (both nationals of the United States and others) taking the examinations administered by the Educational Commission for Foreign Medical Graduates received a passing score in the year preceding the year for which a student is seeking a loan under part B of subchapter IV of this chapter; or
- (II) The institution has a clinical training program that was approved by a State as of January 1, 1992; or
  - (ii) In the case of a veterinary school located outside the United States that does not meet the requirements of section 1001(a)(4) of this title, the institution's students complete their clinical training at an approved veterinary school located in the United States.

(B) Advisory panel

- (i) In general. For the purpose of qualifying as an institution under paragraph (1)(C) of this subsection, the Secretary shall establish an advisory panel of medical experts that shall—
  - (I) Evaluate the standards of accreditation applied to applicant foreign medical schools; and
  - (II) Determine the comparability of those standards to standards for accreditation applied to United States medical schools.
- (ii) Special rule if the accreditation standards described in clause (i) are determined not to be comparable, the foreign medical school shall be required to meet the requirements of section 1001 of this title.

(C) Failure to release information. The failure of an institution outside the United States to provide, release, or authorize release to the Secretary of such information as may be required by subparagraph (A) shall render such institution ineligible for the purpose of part B of subchapter IV of this chapter.

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

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

- (A) Offers more than 50 percent of such institution's courses by correspondence, unless the institution is an institution that meets the definition in section 2471 (4)(C) of this title;
  - (B) Enrolls 50 percent or more of the institution's students in correspondence courses, unless the institution is an institution that meets the definition in such section, except that the Secretary, at the request of such institution, may waive the applicability of this subparagraph to such institution for good cause, as determined by the Secretary in the case of an institution of higher education that provides a 2-or 4-year program of instruction (or both) for which the institution awards an associate or baccalaureate degree, respectively;
  - (C) Has a student enrollment in which more than 25 percent of the students are incarcerated, except that the Secretary may waive the limitation contained in this subparagraph for a nonprofit institution that provides a 2-or 4-year program of instruction (or both) for which the institution awards a bachelor's degree, or an associate's degree or a postsecondary diploma, respectively; or
  - (D) Has a student enrollment in which more than 50 percent of the students do not have a secondary school diploma or its recognized equivalent, and does not provide a 2-or 4-year program of instruction (or both) for which the institution awards a bachelor's degree or an associate's degree, respectively, except that the Secretary may waive the limitation contained in this subparagraph if a nonprofit institution demonstrates to the satisfaction of the Secretary that the institution exceeds such limitation because the institution serves, through contracts with Federal, State, or local government agencies, significant numbers of students who do not have a secondary school diploma or its recognized equivalent.
- (4) Limitations based on management. An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if—
- (A) The institution, or an affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management or policies of the institution, has filed for bankruptcy, except that this paragraph shall not apply to a nonprofit institution, the primary function of which is to provide health care educational services (or an affiliate of such an institution that has the power, by contract or ownership interest, to direct or cause the direction of the institution's management or policies) that files for bankruptcy under chapter 11 of title 11 between July 1, 1998, and December 1, 1998; or
  - (B) The institution, the institution's owner, or the institution's chief executive officer has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, or has been judicially determined to have

committed fraud involving funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.

(5) Certification. The Secretary shall certify an institution's qualification as an institution of higher education in accordance with the requirements of subpart 3 of part G of subchapter IV of this chapter.

(6) Loss of eligibility. An institution of higher education shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution is removed from eligibility for funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 as a result of an action pursuant to part G of subchapter IV of this chapter.

(b) Proprietary institution of higher education

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

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

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

(C) Does not meet the requirement of paragraph (4) of section 1001 (a) of this title;

(D) Is accredited by a nationally recognized accrediting agency or association recognized by the Secretary pursuant to part G of subchapter IV of this chapter;

(E) Has been in existence for at least 2 years; and

(F) Has at least 10 percent of the school's revenues from sources that are not derived from funds provided under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, as determined in accordance with regulations prescribed by the Secretary.

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

(c) Postsecondary vocational institution.

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

- (A) Provides an eligible program of training to prepare students for gainful employment in a recognized occupation;
  - (B) Meets the requirements of paragraphs (1), (2), (4), and (5) of section 1001 (a) of this title; and
  - (C) Has been in existence for at least 2 years.
- (2) Additional institutions. The term “postsecondary vocational institution” also includes an educational institution in any State that, in lieu of the requirement in paragraph (1) of section 1001 (a) of this title, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.

## Chapter 4

### APPLICATIONS, WAITING LIST AND TENANT SELECTION

#### INTRODUCTION

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

DOH is required to adopt clear policies and procedures for accepting applications, placing families on the waiting list, and selecting families from the waiting list, and must follow these policies and procedures 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 DOH that justify their selection. Examples of this are the selection of families for income targeting and the selection of families that qualify for targeted funding.

HUD regulations require that all families have an equal opportunity to apply for and receive housing assistance, and that DOH 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 DOH will be in compliance with all relevant fair housing requirements, as described in Chapter 2.

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

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

Part II: Managing the Waiting List. This part presents the policies that govern how DOH'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 DOH will use to keep the waiting list current.

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



## ***PART I: THE APPLICATION PROCESS***

### **4-I.A. OVERVIEW**

This part describes DOH policies for making applications available, accepting applications, making preliminary determinations of eligibility, and the placement of applicants on the waiting list. This part also describes DOH's obligation to ensure the accessibility of the application process to elderly persons, people with disabilities, and people with limited English proficiency (LEP).

### **4-I.B. APPLYING FOR ASSISTANCE [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 DOH 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 DOH. DOH must include Form HUD-92006, Supplement to Application for Federally Assisted Housing, as part of its application.

DOH contractors will give at least 30-days advanced notice of the re-opening of the waiting list by public notice in a newspaper of general circulation, and also by placing a public posting at the contractor agencies.

The list will remain open for a time period long enough to achieve a waiting list adequate to cover projected turnover and new allocations of vouchers for a period between 12-24 months, as determined by DOH Director or designated staff.

- A two-step process will be used when it is expected that a family will not be selected from the waiting list for at least 60 days from the date of application. Under the two-step application process, DOH initially will require families to complete a pre-application providing 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 all of the information necessary to establish family eligibility and level of assistance when the family is selected from the waiting list.
- As the second phase of this process, an applicant who has reached the top of the waiting list must complete a full application and provide the following additional items which will be used to verify eligibility:
  - Verification of Income Sources;
  - Verification of Social Security number;
  - Verify Citizenship/eligible immigration status;
  - Sign all consent for release of information forms;
  - Provide a copy of a federal or state issued picture ID card,
  - Provide a copy of a birth certificate.

Families wishing to apply for the Housing Choice Voucher Program will be required to complete a pre-application for housing assistance at their contracting agency. Applications will be

accepted during regular business hours and during times when the waiting list is open. Agencies will be responsible for posting in a conspicuous place the status of their waiting list.

DOH has the right to open the waiting list for all individuals or only for a particular preference group. As part of any waiting list opening, DOH will clearly state what if any preference they are currently accepting applications from.

Completed applications must be returned to DOH by mail, or submitted in person during normal business hours when the list is open. Applications must be complete in order to be accepted by DOH for processing.

#### **4-I.C. ACCESSIBILITY OF THE APPLICATION PROCESS**

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

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

##### **Limited English Proficiency**

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

#### **4-I.D. PLACEMENT ON THE WAITING LIST**

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

written notification via certified mail of the ineligibility determination within 30 business days of receiving a complete application. The notice will specify the reasons for ineligibility, and will inform the family of its right to request an informal review and explain the process for doing so (see Chapter 16).

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

The DOH will send written notification of the preliminary eligibility determination within 30 business days of receiving a complete application.

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.

Once received, applications are placed on a Contractor's waiting list. Depending on the demand for housing in the Contractor's jurisdiction, and the length of the waiting list, the Contractor's waiting list may be open or closed to enrollment. Any family requesting an application for Voucher rental assistance will be given the opportunity to apply for admission if the waiting list is open. If the waiting list is open, applications may be mailed or delivered to the Contractor's office during specified dates and business hours defined by the Contractor. Individuals who have a disability, which would prevent them from making an application, may contact the Contractor to make special arrangements/reasonable accommodations to complete their application.

When the application is received, the Contractor must review the application for completeness, then date, time-stamp, and initial the document. The application and waiting list follow this general procedure:

1. Eligible applicants will be placed on the waiting list.
2. When the applicant's name reaches the top of the waiting list, the Contractor will contact the applicant to arrange a time to meet, take a personal declaration from the applicant, and verify the information provided on the application and personal declaration.
3. If the applicant passes the verification process, and is deemed eligible, the Contractor will contact the applicant for the Housing Voucher briefing, and the applicant will then begin their housing search.

## ***PART II: MANAGING THE WAITING LIST***

### **4-II.A. OVERVIEW**

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

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

### **4-II.B. ORGANIZATION OF THE WAITING LIST [24 CFR 982.204 and 205]**

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

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

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

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

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

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

- DOH will not merge the HCV waiting list with the waiting list for any other program.

#### **4-II.C. OPENING AND CLOSING THE WAITING LIST [24 CFR 982.206]**

##### **Closing the Waiting List**

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

- DOH 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 DOH has particular preferences or funding criteria that require a specific category of family, DOH 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 DOH and/or its contractor publishes a notice in local newspapers of general circulation, minority media, and other suitable media outlets. The notice must comply with HUD fair housing requirements and must specify who may apply, and where and when applications will be received.

- DOH will announce the reopening of the waiting list at least 30 days prior to the date applications will first be accepted. If the list is only being reopened for certain categories of families, this information will be contained in the notice.
- DOH will give public notice by publishing the relevant information in suitable media outlets.

#### **4-II.D. FAMILY OUTREACH [HCV GB, pp. 4-2 to 4-4]**

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

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

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

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

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

- Submitting press releases to local newspapers, including minority newspapers
- Developing informational materials and flyers to distribute to other agencies
- Providing application forms to other public and private agencies that serve the low income population
- Developing partnerships with other organizations that serve similar populations, including agencies that provide services for persons with disabilities
  - DOH will monitor the characteristics of the population being served and the characteristics of the population as a whole in DOH's jurisdiction. Targeted outreach efforts will be undertaken if a comparison suggests that certain populations are being underserved.

#### **4-II.E. REPORTING CHANGES IN FAMILY CIRCUMSTANCES**

- While the family is on the waiting list, the family must immediately (within 10-days) inform DOH of changes in contact information, including current residence, mailing address, and phone number. The changes must be submitted in writing whenever possible. Reasonable Accommodations may be granted on a case-by-case basis.

#### **4-II.F. UPDATING THE WAITING LIST [24 CFR 982.204]**

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

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

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

- The waiting list will be updated and purged at least annually to ensure that all applicants and applicant information is current and timely.

To update the waiting list, DOH and/or its contractor may conduct a purge by sending an update request via 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 DOH 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 letter must state that the applicant family has the right to an informal review.

- The family's response must be in writing and may be delivered in person, by mail, or by fax. Responses should be postmarked or received by DOH not later than 10 business days from the date of DOH 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. 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 DOH HCV Manager may reinstate the family if it is determined that the lack of response was due to PHA error, or to circumstances beyond the family's control.

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

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

The family may also remove itself from the waiting list at any time. This request must be in writing.

If a family is removed from the waiting list because DOH has determined the family is not eligible for assistance, a notice will be sent to the family's address of record as well as to any alternate address provided on the initial application. The notice will state the reasons the family was removed from the waiting list and will inform the family how to request an informal review regarding DOH's decision (see Chapter 16) [24 CFR 982.201(f)].

### ***PART III: SELECTION FOR HCV ASSISTANCE***

#### **4-III.A. OVERVIEW**

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

The order in which families are selected from the waiting list depends on the selection method chosen by DOH and is impacted in part by any selection preferences for which the family qualifies. The availability of targeted funding also may affect the order in which families are selected from the waiting list.

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

#### **4-III.B. SELECTION AND HCV FUNDING SOURCES**

##### **Special Admissions [24 CFR 982.203]**

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

##### **Targeted Funding [24 CFR 982.204(e)]**

HUD may award a PHA funding for a specified category of families on the waiting list. DOH must use this funding only to assist the families within the specified category. In order to assist families within a targeted funding category, the PHA may skip families that do not qualify within the targeted funding category. Within this category of families, the order in which such families are assisted is determined according to the policies provided in Section 4-III.C.

DOH administers the following types of targeted funding. The voucher set aside listed is the minimum number of individuals served in each category:

Targeted Funding Programs	Number of Set Aside Vouchers
Project-Based Assistance Program	Up to 20% of ABA
VASH	596
Non Elderly Disabled	1,450
Welfare to Work	100
Project Access	60
Family Unification Program	277



## Regular HCV Funding

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

### 4-III.C. SELECTION METHOD

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

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

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

#### Waiting List - Order of Selection

DOH has established 4 local preferences, and gives priority to serving families that meet these criteria. Families will be given one preference point for each of the categories below for which they qualify and can verify.

- 1<sup>st</sup> Preference:
  - **Households that include someone experiencing homelessness-**  
DOH will use the HEARTH definition for literally homeless.
    - Sleeping in a place not designed for or used as a regular sleeping accommodation, including a car, park, abandoned building, bus or train station, airport, camping ground, etc.
    - Living in a shelter designed to provide temporary living arrangements (including emergency shelter, congregate shelters, transitional housing, hotels and motels paid for by charitable organizations or by government programs)
    - Exiting an institution where they:
      - resided for ≤ 90 days AND
      - were residing in an emergency shelter or place not meant for human habitation immediately prior to entering the institution
  - **Households that include a person who is a person with a disability**
    - "Any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having such an impairment."

- **Households that include victims of domestic violence**
  - Domestic violence means an act or threatened act of violence upon a person with whom the actor is or has been involved in an intimate relationship. Domestic violence also includes any other crime against a person or against property or any municipal ordinance violation against a person or against property, when used as a method of coercion, control, punishment, intimidation, or revenge directed against a person with whom the actor is or has been involved in an intimate relationship.

Colorado law defines "Intimate relationship" as the following:

- Intimate relationship means a relationship between spouses, former spouses, past or present unmarried couples, or persons who are both the parents of the same child regardless of whether the persons have been married or have lived together at any time.

- **Non Elderly Disabled households transitioning from nursing homes and other approved institutional settings into independent, community-based living.**
  - Institutional settings include mental health institutes, nursing homes, and institutions for individuals with developmental disabilities.

➤ 2<sup>nd</sup> :

- Date and Time

For Example: If an applicant family can verify that it meets one or more of the preference categories above, they will be given one point for each preference that they qualify for and ranked first by points than by date and time. If another applicant family does not meet one of the preference categories above, they will be ranked using only date and time after all preference qualified applicants are ranked.

DOH also gives equal weight of one point to all preferences. DOH has compounding preferences, which means that having more than one preference will result in the family being assisted before a family that qualifies for only one preference.

### **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 DOH's fiscal year. ELI families are those with annual incomes at or below 30% of the area median income. To ensure this requirement is met, a PHA may skip non-ELI families on the waiting list in order to select an ELI family.

Low income families admitted to the program that are "continuously assisted" under the 1937 Housing Act [24 CFR 982.4(b)], as well as low-income or moderate-income families admitted to

the program that are displaced as a result of the prepayment of the mortgage or voluntary termination of an insurance contract on eligible low-income housing, are not counted for income targeting purposes [24 CFR 982.201(b)(2)(v)].

- DOH will monitor progress in meeting the income targeting 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 PHA system of preferences may select families based on local preferences according to the date and time of application or by a random selection process (lottery) [24 CFR 982.207(c)]. If a PHA does not have enough funding to assist the family at the top of the waiting list, it 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)].

- DOH applicant families will be selected first by preference and secondly by date and time of application.
- Applicant families, who applied to Supportive Housing and Homeless Program in 2009, will continue to be selected from the waiting list in numerical order based on the number that they were randomly assigned at the time the applications were placed on the waiting list.
- Families that qualify for a specified category of program funding (targeted funding) may be selected from the waiting list ahead of higher placed families that do not qualify for the targeted funding. However, within any targeted funding category, applicants will be selected in order based first using preference points and secondly date and time.

### **4-III.D. NOTIFICATION OF SELECTION**

When a family has been selected from the waiting list, the DOH and/or its contractor will notify the family by first class mail that they have been selected. 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
- All documents that must be provided at the interview including information about what constitutes acceptable documentation

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

#### 4-III.E. THE APPLICATION INTERVIEW

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

Assistance cannot be provided to the family until all SSN documentation requirements are met. However, if DOH determines that an applicant family is otherwise eligible to participate in the program, the family may retain its place on the waiting list for a period of time determined by DOH [Notice PIH 2012-10].

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 an eligibility interview.
- The head of household and the spouse/co-head will be strongly encouraged to attend the interview together. However, either the head of household or the spouse/co-head may attend the interview on behalf of the family. Verification of information pertaining to adult members of the household not present at the interview will not begin until signed release forms are returned to DOH.
- The family must provide verification that they qualified for each preference they claimed on their application. If verification cannot be provided, the preference point will be removed and the family will be re-ranked based on the preferences they can verify.
- The head of household or spouse/co-head must provide acceptable 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 at the time of the interview, he or she will be required to provide it within 10 business days.
- Pending disclosure and documentation of social security numbers, DOH will allow the family to retain its place on the waiting list for **30-days**. If not all household members have disclosed their SSNs at the next time DOH is issuing vouchers, DOH 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, DOH 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 eligible non-citizen 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 limited English proficient (LEP) applicants, DOH will provide translation services in accordance with DOH's LEP plan.
- If the family is unable to attend a scheduled interview, the family should contact DOH and/or the contractor in advance of the interview to schedule a new appointment. In all circumstances, if a family does not attend a scheduled interview, DOH and/or the contractor will send another notification letter with a new interview appointment time. Applicants who fail to attend two scheduled interviews without PHA approval will be denied assistance based on the family's failure to supply information needed to determine eligibility. A notice of denial will be issued in accordance with policies contained in Chapter 3.

#### **4-III.F. COMPLETING THE APPLICATION PROCESS**

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

- If DOH determines that the family is ineligible, DOH 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. DOH will notify the family in writing that it has been returned to the waiting list, and will specify the reasons for it.
- If DOH determines that the family is eligible to receive assistance, DOH will then proceed with the family 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, DOH 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 the HUD-required documents and other information the family needs to know in order to lease a unit under the program. Once the family is fully informed of the program's requirements, DOH issues the family a voucher. The voucher includes the unit size for which the family qualifies based on DOH's subsidy standards, as well as the issue and expiration date of the voucher. The voucher is the document that authorizes the family to begin its search for a unit, and limits the amount of time the family has to successfully locate an acceptable unit.

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

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

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

## ***PART I: BRIEFINGS AND FAMILY OBLIGATIONS***

### **5-I.A. OVERVIEW**

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

### **5-I.B. BRIEFING [24 CFR 982.301]**

DOH 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, DOH 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 both group and in one-on-one meetings.
- All adult family members are required to attend the briefing.
- Families that attend group briefings and still need individual assistance will be referred to an appropriate PHA and or contractor staff person.
- Briefings will be conducted in English. For limited English proficient (LEP) applicants, DOH will provide translation services upon request (See Chapter 2).

### **Notification and Attendance**

- Families will be notified of their eligibility for assistance at the time they are invited to attend a briefing. The notice will state that all adult individuals are 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 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 be scheduled for another briefing. DOH will notify the family of the date and time of the second scheduled briefing. Applicants who fail to attend two scheduled briefings, without prior PHA 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 DOH's jurisdiction;
- For families eligible under portability, an explanation of portability. DOH 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 DOH's policies on any extensions or suspensions of the term. If DOH 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 DOH determines the payment standard for a family, how DOH determines total tenant payment for a family, and information on the payment standard and utility allowance schedule.
- An explanation of how DOH 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 DOH 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 DOH policy on providing information about families to prospective owners.
- DOH 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. All tenants will be provided the web address of [Coloradohousingsearch.com](http://Coloradohousingsearch.com) where they can search for accessible units.
- Notice that if the family includes a person with disabilities, the family may request a list of available accessible units known to DOH.
- The family obligations under the program.
- The grounds on which DOH may terminate assistance for a participant family because of family action or failure to act.
- PHA informal hearing procedures including when DOH is required to offer a participant family the opportunity for an informal hearing, and how to request the hearing.

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

- Maps showing areas with housing opportunities outside areas of poverty or minority concentration, both within its jurisdiction and its neighboring jurisdiction
- Information about the characteristics of these areas including job opportunities, schools, transportation and other services
- An explanation of how portability works.

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

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

DOH will provide the following additional materials in the briefing packet:

- Information on how to fill out and file a housing discrimination complaint form
- Information about the protections afforded by the Violence against Women Act of 2013 (VAWA) to victims of domestic violence, dating violence, sexual assault and stalking (see section 16-IX.C)
- Information about the protections afforded by the Protecting Tenants at Foreclosure Act (PTFA) (see section 13-II.G)
- “Is Fraud Worth It?” (Form HUD-1141-OIG), which explains the types of actions a family must avoid and the penalties for program abuse
- “What You Should Know about EIV,” a guide to the Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH 2010-19

### **5-I.C. FAMILY OBLIGATIONS**

Obligations of the family are described in the Housing Choice Voucher (HCV) regulations and on the voucher itself. These obligations include responsibilities the family is required to fulfill, as well as prohibited actions. DOH 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, the family obligations require the family to respond to a request or to notify DOH of a change in income or family composition, within 10 business days.
- When a family is required to provide notice to DOH, the notice must be in writing.

#### **Family Obligations [24 CFR 982.551]**

The family obligations of the voucher are listed as follow:

- The family must supply any information that DOH 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 DOH 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.
- The family must allow DOH 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.
  - DOH 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, police reports, and affidavits from the owner, neighbors, or other credible parties with direct knowledge.
  - Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, disturbance of neighbors, and 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 DOH 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 DOH and/or the contractor at the same time the owner is notified.
- The family must promptly give DOH 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 DOH. The family must promptly notify DOH in writing of the birth, adoption, or court-awarded custody of a child. The family must request PHA approval to add any other family member as an occupant of the unit.
  - The request to add a family member must be submitted in writing and approved prior to the person moving into the unit. DOH will determine eligibility of the new member in accordance with the policies in Chapter 3.
- The family must promptly notify DOH in writing if any family member no longer lives in the unit.
- If DOH has given approval, a foster child or a live-in aide may reside in the unit. DOH has the discretion to adopt reasonable policies concerning residency by a foster child or a live-in aide, and to define when PHA consent may be given or denied. For policies related to the request and approval/disapproval of foster children, foster adults, and live-in aides, see Chapter 3 (Sections I.K and I.M), and Chapter 11 (Section II.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 DOH to verify that the family is living in the unit or information related to family absence from the unit.
- The family must promptly notify DOH 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 DOH 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 PHA policies related to drug-related and violent criminal activity.

- Members of the household must not engage in abuse of alcohol in a way that threatens the health, safety or right to peaceful enjoyment of the other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for a discussion of HUD and PHA policies related to alcohol abuse.
- An assisted family or member of the family must not receive HCV program assistance while receiving another housing subsidy, for the same unit or a different unit under any other federal, state or local housing assistance program.
- A family must not receive HCV program assistance while residing in a unit owned by a parent, child, grandparent, grandchild, sister or brother of any member of the family, unless DOH 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]

## ***PART II: SUBSIDY STANDARDS AND VOUCHER ISSUANCE***

### **5-II.A. OVERVIEW**

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

### **5-II.B. DETERMINING FAMILY UNIT (VOUCHER) SIZE [24 CFR 982.402]**

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

The following requirements apply when DOH determines family unit size:

- The subsidy standards must provide for the smallest number of bedrooms needed to house a family without overcrowding.
- The subsidy standards must be consistent with space requirements under the housing quality standards.
- The subsidy standards must be applied consistently for all families of like size and composition.
- A child who is temporarily away (6-months) 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.
- For subsidy standards, an adult is an individual who is 18 years old.
- Any live-in aide (approved by DOH 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 DOH subsidy standards.

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

- Generally, persons of different generations, persons of the opposite sex (other than spouses or co-heads), and unrelated adults (except for same-sex domestic partners) should be allocated a separate bedroom. “Different generations” means the difference between a parent and a grandparent, a parent and a child, etc. “Different generations” does not refer to siblings of significantly different ages.
- A single parent with a child under the age of 3 will be issued a 1-bedroom voucher and expected to share a bedroom with their child.
- Household members of the opposite sex who are both under the age of 4 will be expected to share a bedroom.
- Live-in aides will be allocated a maximum of one bedroom. No additional bedrooms will be provided for additional family members of the live-in aide.
- Single person families will be allocated one bedroom.
- Foster children will be considered when determining bedroom size upon third party verification of placement.

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

<b>Voucher Size</b>	<b>Persons in Household (Minimum – Maximum)</b>
0 Bedrooms	1-2
1 Bedroom	1-2
2 Bedrooms	2-4
3 Bedrooms	3-6
4 Bedrooms	4-8
5 Bedrooms	6-10

**5-II.C. EXCEPTIONS TO SUBSIDY STANDARDS**

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

- A need for an additional bedroom for medical equipment
- A need for a separate bedroom for reasons related to a family member’s disability, medical or health condition

For a single person who is not elderly, disabled, or a remaining family member, an exception cannot override the regulatory limit of a zero or one bedroom [24 CFR 982.402(b)(8)].

- DOH will consider granting an exception as a reasonable accommodation for an individual with a disability. The family must, whenever possible, request any exception to the subsidy standards in writing.

The request must explain the need or justification for a larger family unit size, and must include appropriate documentation. Requests based on health-related reasons must be verified by a knowledgeable professional source (e.g., doctor or health professional), unless the disability and the disability-related request for accommodation is readily apparent or otherwise known. The family's continued need for an additional bedroom due to special medical equipment must be re-verified at annual reexamination.

DOH 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-II.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 contractor will submit a 50058 Issuance of Voucher action to DOH and issue a Housing Choice Voucher, form HUD-52646. This chapter deals only with voucher issuance for applicants. For voucher issuance associated with moves of program participants, please refer to Chapter 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 DOH has determined the family to be eligible for the program, and that DOH expects to have money available to subsidize the family if the family finds an approvable unit. However, DOH 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 DOH's housing choice voucher program [Voucher, form HUD-52646]

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

- Vouchers will be issued to eligible applicants immediately following the mandatory briefing.

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

- Prior to issuing any vouchers, DOH will determine whether it has sufficient funding in accordance with the policies in Part VIII of Chapter 16.



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

If DOH makes an error in determining the bedroom size designation, the family will be issued a voucher of the appropriate size at their next annual review.

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

### **Voucher Term [24 CFR 982.303]**

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

- The initial voucher term will be 120 calendar days.
- The family must submit a Request for Tenancy Approval and proposed lease within the 120-day period unless DOH grants an extension.

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

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

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

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

- Extensions beyond 120 days will only be approved in the following circumstances:
  - It is necessary as a reasonable accommodation for a person with disabilities.
  - It is necessary due to reasons beyond the family's control, as determined by DOH. Following is a list of extenuating circumstances that DOH may consider in making its decision. The presence of these circumstances does not guarantee that an extension will be granted:
    - Serious illness or death in the family
    - Other family emergency
    - Obstacles due to employment
    - Whether the family has already submitted requests for tenancy approval that were not approved by DOH

- Whether family size or other special circumstances make it difficult to find a suitable unit.

- DOH will not grant an extension when the request is solely due to incarceration.

Any request for an additional extension will only be granted as a reasonable accommodation for an individual with a disability. This request must include the reason(s) an additional extension is necessary. DOH may require the family to provide documentation to support the request or obtain verification from a qualified third party.

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

DOH 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 written notice of its decision.

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

At its discretion, DOH may adopt a policy to suspend the Housing Choice Voucher term if the family has submitted a Request for Tenancy Approval (RFTA) during the voucher term. “Suspension” means stopping the clock on a family’s voucher term from the time a family submits the RFTA until the time DOH approves or denies the request [24 CFR 982.4]. DOH’s determination not to suspend a voucher term is not subject to informal review [24 CFR 982.554(c) (4)].

- When a request for tenancy approval and proposed lease is received by DOH, the term of the voucher will not be suspended while DOH processes the request.

### **Expiration of Voucher Term**

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

- If an applicant family’s voucher term or extension expires before the family has submitted a Request for Tenancy Approval (RFTA), DOH will require the family to reapply for assistance. If a RFTA that was submitted prior to the expiration date of the voucher is subsequently disapproved by DOH (after the voucher term has expired), the family will be required to reapply for assistance.
- Within 10 business days after the expiration of the voucher term or any extension, DOH will notify the family in writing that the voucher term has expired and that the family must reapply in order to be placed on the waiting list.

## Chapter 6

### INCOME AND SUBSIDY DETERMINATIONS

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

#### INTRODUCTION

A family's income determines eligibility for assistance and is also used to calculate the family's payment and DOH's subsidy. DOH will use the policies and methods described in this chapter to ensure that only eligible families receive assistance and that no family pays more or less than its obligation under the regulations.

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

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

## ***PART I: ANNUAL INCOME***

### **6-I.A. OVERVIEW**

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

5.609 Annual income.

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

- (1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or
- (2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and
- (3) Which are not specifically excluded in paragraph [5.609(c)]
- (4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

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

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

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

### **6-I.B. HOUSEHOLD COMPOSITION AND INCOME**

Income received by all family members must be counted unless specifically excluded by the regulations. It is the responsibility of the head of household to report, in writing, changes in family composition or family income. Participants are required to report all changes in income and family composition to their contractor and/or DOH within 10-business days of receiving notification of the change. The rules on which sources of income are counted vary somewhat by

family member. The chart below summarizes how family composition affects income determinations.

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

### **Temporarily and Permanently 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 120 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 120 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 DOH 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 as a result of placement in foster care are considered members of the family [24 CFR 5.403].

- If a child has been placed in foster care, DOH 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.

## **Absence of Entire Family**

These policy guidelines address situations when the family is absent from the unit, but has not moved out of the unit. In cases where the family has moved out of the unit, DOH will terminate assistance in accordance with appropriate termination procedures contained in this Plan. Families are required both to notify DOH before they move out of a unit and to give DOH information about any family absence from the unit.

Families may be absent for brief periods of time. Families must notify DOH at least 30 days before leaving the unit or no more than 10 days after leaving the unit if they are going to be absent from the unit for more than 30 consecutive days. Families leaving their unit under duress may have up to 30 days after leaving the unit to notify DOH.

If the entire family is absent from the assisted unit for more than 120 consecutive days or if DOH otherwise determines that the unit has been vacated or abandoned, the unit will be considered to be vacated and the assistance will be terminated.

If it is determined that the family is absent from the unit, DOH may continue assistance payments for four months (120-days) or in the case of an approved request for reasonable accommodation, a maximum of six months, not to exceed 180 days. DOH will request written verification from the family to determine if they will be paying rent while absent from the unit, or if they will be permanently absent from the unit. "Absent" means that no family member is residing in the unit.

- HUD regulations require DOH to terminate assistance if the entire family is absent from the unit for a period of more than 180 consecutive calendar days.

In order to determine if the family is absent from the unit, DOH may investigate the situation by taking action, including, but not limited to, the following:

1. Write letters to the family at the unit;
2. Telephone the family at the unit;
3. Interview neighbors;
4. Verify if utilities are in service; and
5. Check with the post office.

A person with a disability may request an extension of time as an accommodation, provided that the extension does not go beyond the HUD-allowed 180 consecutive calendar days' limit.

### ***Absent Head, Spouse, or Co-head***

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

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

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

- DOH will request verification from a responsible medical professional and will use this determination. If the responsible medical professional cannot provide a determination, the person generally will be considered temporarily absent. The family may present evidence that the family member is confined on a permanent basis and request that the person not be considered a family member.
- When an individual who has been counted as a family member is determined permanently absent, the family is eligible for the medical expense deduction only if the remaining head, spouse, or co-head qualify as an elderly person or a person with disabilities.

### **Joint Custody of Dependents**

Dependents that are subject to a joint custody arrangement will be considered a member of the family, if they live with the applicant or participant family 51 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, DOH will make the determination based on available documents such as court orders, school records or an IRS return showing which family has claimed the child for income tax purposes.

### **Visitors/Unauthorized Adults in Unit**

Any adult not included on HUD Form 50058 who has been in the unit more than the authorized visitor days per the lease, without DOH approval, will be considered to be living in the unit as an unauthorized household member.

Absence of evidence of any other address may be considered verification that the visitor is a member of the household.

Statements from neighbors and/or the landlord will 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.

The burden of proof that the individual is a visitor rests on the family. In the absence of such proof, the individual will be considered an unauthorized member of the household and DOH may terminate assistance, since prior approval was not requested for the addition.

Minors and college students who were part of the family but who now live away from home during the school year and are no longer on the lease may visit for up to 150 days per year without being considered a member of the household.

In a joint custody arrangement, if the minor is in the household less than 186 days per year, the minor will be considered to be an eligible visitor and not a family member.

### **Caretakers for a Child**

The approval of a caretaker is at the owner and PHA's discretion and subject to the owner and PHA screening criteria. If neither a parent nor a designated guardian remains in a household receiving HCV assistance, DOH will take the following actions.

- (1) If a responsible agency has determined that another adult is to be brought into the assisted unit to care for a child for an indefinite period, the designated caretaker will not be considered a family member until a determination of custody or legal guardianship is made.
- (2) If a caretaker has assumed responsibility for a child without the involvement of a responsible agency or formal assignment of custody or legal guardianship, the caretaker will be treated as a visitor for 90 days. After the 90 days has elapsed, the caretaker will be considered a family member unless information is provided that would confirm that the caretaker's role is temporary. In such cases DOH will extend the caretaker's status as an eligible visitor.
- (3) At any time that custody or guardianship legally has been awarded to a caretaker, the housing choice voucher will be transferred to the caretaker.
- (4) During any period that a caretaker is considered a visitor, the income of the caretaker is not counted in annual income and the caretaker does not qualify the family for any deductions from income.

### **6-I.C. ANTICIPATING ANNUAL INCOME**

DOH 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**



DOH generally will use current circumstances to determine anticipated income for the coming 12-month period. HUD authorizes DOH 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)]
- DOH believes that past income is the best available indicator of expected future income [24 CFR 5.609(d)]

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

HUD allows PHAs to use tenant-provided documents (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 DOH 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, DOH will use current tenant-provided documents to project annual income. When the tenant provided documents are pay stubs, DOH will make every effort to obtain a minimum of two current and consecutive pay stubs dated within the last 60 days.

DOH 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 DOH determines additional information is needed.

In such cases, DOH 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 DOH annualized projected income.

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

Any time current circumstances are not used to project annual income, a clear rationale for the decision will be documented in the file. In all such cases the family may present information and

documentation to DOH to show why the historic pattern does not represent the family's anticipated income.

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

If DOH 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 DOH 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 DOH 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 DOH'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 PHA's are not to use EIV quarterly wages to project annual income.

## **6-I.D. EARNED INCOME**

### **Types of Earned Income Included in Annual Income**

#### ***Wages and Related Compensation***

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

- For persons who regularly receive bonuses or commissions, DOH will verify and then average amounts received for the two years preceding admission or reexamination. If only a one-year history is available, DOH will use the prior year amounts. In either case the family may provide, and DOH 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, DOH 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, the income of an individual who works occasionally, as a handyman would be considered sporadic if future work could not be anticipated and no historic, stable pattern of income existed.

#### ***Children's Earnings***

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

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

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

#### ***Income of a Live-in Aide***

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

#### ***Income Earned under Certain Federal Programs***

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

- Payments to volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058)

- Awards under the federal work-study program (20 U.S.C. 1087 uu)
- Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f))
- Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d))
- Allowances, earnings, and payments to participants in programs funded under the Workforce Investment Act of 1998 (29 U.S.C. 2931)

### ***Resident Service Stipend***

Amounts received under a resident service stipend are not included in annual income. A resident service stipend is a modest amount (not to exceed \$200 per individual per month) received by a resident for performing a service for DOH or the 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 DOH's governing board. No resident may receive more than one such stipend during the same period of time [24 CFR 5.600(c) (8)(iv)].

### ***State and Local Employment Training Programs***

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

- DOH 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].
- DOH 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, DOH 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 DOH'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-I.E below.

## **6-I.E. EARNED INCOME DISALLOWANCE FOR PERSONS WITH DISABILITIES [24 CFR 5.617]**

The earned income disallowance (EID) encourages people with disabilities to enter the work force by not including the full value of increases in earned income for a period of time. The full text of 24 CFR 5.617 is included as Exhibit 6-4 at the end of this chapter. Eligibility criteria and limitations on the disallowance are summarized below.

### **Eligibility**

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

- Employment of a family member who is a person with disabilities and who was previously unemployed for one or more years prior to employment. *Previously unemployed* includes a person who annually has earned not more than the minimum wage applicable to the community multiplied by 500 hours. The applicable minimum wage is the federal minimum wage unless there is a higher state or local minimum wage.

- Increased earnings by a family member who is a person with disabilities and whose earnings increase during participation in an economic self-sufficiency or job-training program. A self-sufficiency program includes a program designed to encourage, assist, train, or facilitate the economic independence of HUD-assisted families or to provide work to such families [24 CFR 5.603(b)].
- New employment or increased earnings by a family member who is a person with disabilities and who has received benefits or services under Temporary Assistance for Needy Families (TANF) or any other state program funded under Part A of Title IV of the Social Security Act within the past six months. If the benefits are received in the form of monthly maintenance, there is no minimum amount. If the benefits or services are received in a form other than monthly maintenance, such as one-time payments, wage subsidies, or transportation assistance, the total amount received over the six-month period must be at least \$500.

### **Calculation of the Disallowance**

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

- DOH defines *prior income*, or *prequalifying income*, as the family member's last certified income prior to qualifying for the EID.

The family member's prior, or prequalifying, income remains constant (as a baseline) throughout the period that he or she is participating in the EID.

### ***Initial 12-Month Exclusion***

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

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

### ***Second 12-Month Exclusion and Phase-In***

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

### ***Lifetime Limitation***

The EID has a four-year (48-month) lifetime maximum. The four-year eligibility period begins at the same time that the initial exclusion period begins and ends 48 months later. The one-time eligibility for the EID applies even if the eligible individual begins to receive assistance from another housing agency, if the individual moves between public housing and Section 8 assistance, or if there are breaks in assistance.

- During the 48-month eligibility period, DOH 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-I.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, DOH will use current applicable Internal Revenue Service (IRS) rules for determining allowable business expenses [see IRS Publication 535], unless a topic is addressed by HUD regulations or guidance as described below.

#### **Business Expansion**

HUD regulations do not permit DOH 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 DOH 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 DOH 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 DOH 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, DOH will not count as income any withdrawals from the business up to the amount of this loan until the loan has been repaid. Investments do not include the value of labor contributed to the business without compensation.

### **Co-owned Businesses**

If a business is co-owned with someone outside the family, the family must document the share of the business it owns. If the family's share of the income is lower than its share of ownership, the family must document the reasons for the difference.

## **6-I.G. ASSETS [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 DOH 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, DOH must determine the value of the asset in order to compute income from the asset. Therefore, for each asset type, this section discusses:

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



Exhibit 6-1 provides the regulatory requirements for calculating income from assets [24 CFR 5.609(b)(3)], and Exhibit 6-3 provides the regulatory definition of *net family assets*. This section begins with a discussion of general policies related to assets and then provides HUD rules and PHA policies related to each type of asset.

## **General Policies**

### ***Income from Assets***

DOH 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 DOH 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) DOH 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, DOH 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 DOH 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 DOH to make a distinction between an asset's market value and its cash value.

- The market value of an asset is its worth in the market (e.g., the amount a buyer would pay for real estate or the total value of 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) [RHIP FAQs]. (For a discussion of lump-sum payments that represent the delayed start of a periodic payment, most of which are counted as income, see sections 6-I.H and 6-I.I.)

### ***Imputing Income from Assets [24 CFR 5.609(b)(3), Notice PIH 2012-29]***

When net family assets are \$5,000 or less, DOH 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, DOH 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 PHA-established passbook savings rate.

- The PHA will initially set the imputed asset passbook rate at the national rate established by the Federal Deposit Insurance Corporation (FDIC).
- The PHA will review the passbook rate annually, in December of each year. The rate will not be adjusted unless the current PHA rate is no longer within 0.75 percent of the national rate. If it is no longer within 0.75 percent of the national rate, the passbook rate will be set at the current national rate.
- The current DOH passbook savings rate is 0%.

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

It may or may not be necessary for DOH 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 investment plan is not counted as income until the family has received payments equal to the amount the family member deposited into the retirement investment plan.

### ***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, DOH 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, DOH will prorate the asset according to the percentage of ownership. If no percentage is specified or provided for by state or local law, DOH 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 DOH to count as a current asset any business or family asset that was disposed of for less than fair market value during the two years prior to the effective date of the examination/reexamination, except as noted below.

### ***Minimum Threshold***

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

- DOH will not include the value of assets disposed of for less than fair market value unless the cumulative fair market value of all assets disposed of during the past two years exceeds the gross amount received for the assets by more than \$1,000.
- When the two-year period expires, the income assigned to the disposed asset(s) also expires. If the two-year period ends between annual reexaminations, the family may request an interim recertification to eliminate consideration of the asset(s).
- Assets placed by the family in non-revocable trusts are considered assets disposed of for less than fair market value except when the assets placed in trust were received through settlements or judgments.

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

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

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

### ***Foreclosure or Bankruptcy***

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

### ***Family Declaration***

Families must sign a declaration form at initial certification and each annual recertification identifying all assets that have been disposed of for less than fair market value or declaring that no assets have been disposed of for less than fair market value.

- DOH may verify the value of the assets disposed of if other information available to DOH 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, DOH will use the current balance.
- In determining the value of a savings account, DOH will use the current balance.
- In determining the anticipated income from an interest-bearing checking or savings account, DOH will multiply the current 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, DOH 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), DOH 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 PHA will determine market value by examining recent sales of at least three properties in the surrounding or similar neighborhood that possess comparable factors that affect market value.

The PHA 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 PHA 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 CFR 5.603(b)]
- The value of a home currently being purchased with assistance under the HCV program Homeownership Option for the first 10 years after the purchase date of the home [24 CFR 5.603(b), 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 PHA 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 PHA 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 DOH determines that the family receives no income from the property and is unable to sell or otherwise convert the asset to cash.

### ***Trusts***

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

### ***Revocable Trusts***

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

### ***Non-revocable Trusts***

In cases where a trust is not revocable by, or under the control of, any member of a family, the value of the trust fund is not considered an asset [24 CFR 5.603(b)(2)]. However, any income distributed to the family from such a trust will be counted when determining annual income under 5.609. (Periodic payments are covered in section 6-I.H. Lump-sum receipts are discussed earlier in this section.)

### ***Retirement Accounts***

#### ***Company Retirement/Pension Accounts***

In order to correctly include or exclude as an asset any amount held in a company retirement or pension account by an employed person, DOH must know whether the money is accessible before retirement [HCV GB, p. 5-26].

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

After a family member retires or terminates employment, any amount distributed to the family member is counted as a periodic payment or a lump-sum receipt, as appropriate [HCV GB, p. 5-26], except to the extent that it represents funds invested in the account by the family member.

(For more on periodic payments, see section 6-I.H.) The balance in the account is counted as an asset only if it remains accessible to the family member.

### ***IRA, Keogh, and Similar Retirement Savings Accounts***

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

### ***Personal Property***

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

- In determining the value of personal property held as an investment, DOH will use the family's estimate of the value. DOH may obtain an appraisal to confirm the value of the asset if there is reason to believe that the family's estimated value is off by \$50 or more. The family must cooperate with the appraiser, but cannot be charged any costs related to the appraisal.
- Generally, personal property held as an investment generates no income until it is disposed of. If regular income is generated (e.g., income from renting the personal property), the amount that is expected to be earned in the coming year is counted as actual income from the asset.

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

- Necessary personal property consists of 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-I.H. PERIODIC PAYMENTS**

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

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

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

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

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

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

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

DOH 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, DOH 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].

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



- Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home [24 CFR 5.609(c)(16)]
- Amounts received under the Low-Income Home Energy Assistance Program (42 U.S.C. 1626(c)) [24 CFR 5.609(c)(17)]
- Amounts received under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q) [24 CFR 5.609(c)(17)]
- Earned Income Tax Credit (EITC) refund payments (26 U.S.C. 32(j)) [24 CFR 5.609(c)(17)]. *Note:* EITC may be paid periodically if the family elects to receive the amount due as part of payroll payments from an employer.
- Lump sums received as a result of delays in processing Social Security and SSI payments (see section 6-I.J.) [24 CFR 5.609(b)(4)].
- Lump-sums or prospective monthly amounts received as deferred disability benefits from the Department of Veterans Affairs (VA) [FR Notice 11/24/08].

### **6-I.I. PAYMENTS IN LIEU OF EARNINGS**

Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay, are counted as income [24 CFR 5.609(b)(5)] if they are received either in the form of periodic payments or in the form of a lump-sum amount or prospective monthly amounts for the delayed start of a periodic payment. If they are received in a one-time lump sum (as a settlement, for instance), they are treated as lump-sum receipts [24 CFR 5.609(c)(3)]. (See also the discussion of periodic payments in section 6-I.H and the discussion of lump-sum receipts in section 6-I.G.)

### **6-I.J. WELFARE ASSISTANCE**

#### **Overview**

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

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

DOH 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 PHA must include in annual income “imputed” welfare income. The PHA must request that the welfare agency provide the reason for the reduction of benefits and the amount of the reduction of benefits. The imputed welfare income is the amount that the benefits were reduced as a result of the sanction.

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

## **6-I.K. PERIODIC AND DETERMINABLE ALLOWANCES [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**

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

- DOH will count court-awarded amounts for alimony and child support unless DOH 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**

DOH must count as income regular monetary and non-monetary 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.
- Non-monetary contributions will be valued at the cost of purchasing the items, as determined by DOH. For contributions that may vary from month to month (e.g., utility payments), DOH will include an average amount based upon past history.

### **6-I.L. STUDENT FINANCIAL ASSISTANCE [24 CFR 5.609(b)(9) and FR 12/14/12]**

In 2005, Congress passed a law (for section 8 programs only) requiring that certain student financial assistance be included in annual income. Prior to that, the full amount of student financial assistance was excluded. For some students, the full exclusion still applies.

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

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

- They are enrolled in an institution of higher education, as defined under the Higher Education Act (HEA) of 1965.
- They are seeking or receiving Section 8 assistance on their own—that is, apart from their parents—through the HCV program, the project-based certificate program, the project-based voucher program, or the moderate rehabilitation program.
- They are under 24 years of age **OR** they have no dependent children.

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

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

- *Assistance under the Higher Education Act of 1965* includes Pell Grants, Federal Supplement Educational Opportunity Grants, Academic Achievement Incentive Scholarships, and 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 will include any other fees and charges required by the institution for enrollment [FR 12/14/12, p. 74497].

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

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

- Students residing with parents who are seeking or receiving Section 8 assistance
- Students who are enrolled in an educational institution that does **not** meet the 1965 HEA definition of *institution of higher education*
- Students who are over 23 **AND** have at least one dependent child, as defined in Section 3-II.E
- Students who are receiving financial assistance through a governmental program not authorized under the 1965 HEA.

#### **6-I.M. ADDITIONAL EXCLUSIONS FROM ANNUAL INCOME**

Other exclusions contained in 24 CFR 5.609(c) and updated by FR Notice 12/14/12 that have not been discussed earlier in this chapter include the following:

- Reimbursement of medical expenses [24 CFR 5.609(c)(4)]
- Amounts received by participants in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred and which are made solely to allow participation in a specific program [24 CFR 5.609(c)(8)(iii)]
- Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS) [(24 CFR 5.609(c)(8)(ii)]
- Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era [24 CFR 5.609(c)(10)]
- Adoption assistance payments in excess of \$480 per adopted child [24 CFR 5.609(c)(12)]
- Refunds or rebates on property taxes paid on the dwelling unit [24 CFR 5.609(c)(15)]
- Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home [24 CFR 5.609(c)(16)]
- Amounts specifically excluded by any other federal statute [24 CFR 5.609(c)(17), FR Notice 12/14/12]. HUD publishes an updated list of these exclusions periodically. It includes:
  - (a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 (b))
  - (b) Benefits under Section 1780 of the School Lunch Act and Child Nutrition Act of 1966, including WIC
  - (c) Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058)
  - (d) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c))
  - (e) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e)
  - (f) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f))
  - (g) Payments received under programs funded in whole or in part under the Workforce Investment Act of 1998 (29 U.S.C. 2931)
  - (h) Deferred disability benefits from the Department of Veterans Affairs, whether received as a lump sum or in monthly prospective amounts
  - (i) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, 90 Stat. 2503-04)
  - (j) Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b))
  - (k) A lump sum or periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the United States District Court case entitled *Elouise Cobell et al. v. Ken Salazar et al*

- (l) The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408)
- (m) Benefits under the Indian Veterans Housing Opportunity Act of 2010 (only applies to Native American housing programs)
- (n) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f))
- (o) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in *In Re Agent-product liability litigation*, M.D.L. No. 381 (E.D.N.Y.)
- (p) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721)
- (q) 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)
- (r) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j))
- (s) 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)
- (t) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d))
- (u) Amounts of scholarships funded under Title IV of the Higher Education Act of 1965j, including awards under federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu). For Section 8 programs, the exception found in § 237 of Public Law 109–249 applies and requires that the amount of financial assistance in excess of tuition and mandatory fees shall be considered income in accordance with the provisions codified at 24 CFR 5.609(b)(9), except for those persons with disabilities as defined by 42 U.S.C. 1437a(b)(3)(E) (Pub. L. 109–249) (See Section 6-I.L. for exceptions.)
- (v) 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)

## ***PART II: ADJUSTED INCOME***

### **6-II.A. INTRODUCTION**

#### **Overview**

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

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

- (1) \$480 for each dependent;
- (2) \$400 for any elderly family or disabled family;
- (3) The sum of the following, to the extent the sum exceeds three percent of annual income:
  - (i) Unreimbursed medical expenses of any elderly family or disabled family;
  - (ii) Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with disabilities, to the extent necessary to enable any member of the family (including the member who is a person with disabilities) to be employed. This deduction may not exceed the earned income received by family members who are 18 years of age or older and who are able to work because of such attendant care or auxiliary apparatus; and
- (4) Any reasonable child care expenses necessary to enable a member of the family to be employed 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, DOH will use current circumstances to anticipate expenses. When possible, for costs that are expected to fluctuate during the year (e.g., child care during school and non-school periods and cyclical medical expenses), DOH will estimate costs based on historic data and known future costs.
- If a family has an accumulated debt for medical or disability assistance expenses, DOH 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. DOH may require the family to provide documentation of payments made in the preceding year.

### 6-II.B. DEPENDENT DEDUCTION

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

### 6-II.C. ELDERLY OR DISABLED FAMILY DEDUCTION

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

### 6-II.D. MEDICAL EXPENSES DEDUCTION [24 CFR 5.611(a)(3)(i)]

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

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

#### Definition of *Medical Expenses*

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

1. The most current IRS Publication 502, *Medical and Dental Expenses*, will be used as a reference to determine the costs that qualify as medical expenses.
2. Any items requested as a medical expense that are not specifically listed as approved expenses in IRS Publication 502 will need to be verified medically necessary by a **medical professional annually or indicated by the medical professional that the expenses are expected to be indefinite. If determined indefinite, annual verification will not be necessary.**

Summary of Allowable Medical Expenses from IRS Publication 502	
Services of medical professionals	Substance abuse treatment programs
Surgery and medical procedures that are	Psychiatric treatment



necessary, legal, noncosmetic Services of medical facilities Hospitalization, long-term care, and in-home nursing services Prescription medicines and insulin. Improvements to housing directly related to medical needs (e.g., ramps for a wheel chair, handrails)	Ambulance services and some costs of transportation related to medical expenses The cost and care of necessary equipment related to a medical condition (e.g., eyeglasses/lenses, hearing aids, crutches, and artificial teeth) Cost and continuing care of necessary service animals Medical insurance premiums or the cost of a health maintenance organization (HMO)
<p><b>Note:</b> This chart provides a summary of eligible medical expenses only. Detailed information is provided in IRS Publication 502. Medical expenses are considered only to the extent they are not reimbursed by insurance or some other source.</p>	

### DOH Policy on Calculating Medical Expenses

All participants will be encouraged to keep copies, records and/or receipts illustrating proof of payment for all unreimbursed out of pocket medical expenses since his/her last annual reexamination. During the reexamination interview/meeting, the residential coordinator will review the out of pocket medical expenses and determine which of the following calculation methods will best reflect anticipated medical expenses for the upcoming reexamination period.

**1. *On-going medical expenses that are easily anticipated:*** (prescriptions, co-pays and regular payments on a medical bill, etc.)

DOH will use current circumstances to anticipate medical expenses whenever possible. This is done by looking at the total costs of the last 4 months of expenses to determine if this is a true reflection and can be used to anticipate future out of pocket medical expenses. Once it is determined that the last 4 months is the best indicator of future expenses, this 4 month total will be multiplied by 3 to get an annual figure.

Additionally, one-time payments such as: eye glasses, dental procedures, etc., can be added to the above calculation to ensure the participant is getting the appropriate medical deduction for all unreimbursed out of pocket medical expenses.

**2. *For costs that are expected to fluctuate during the year, or one-time only expenses:***

As a reasonable accommodation, DOH will estimate costs based on historic data for expenses that are not easily anticipated. For these situations, the unreimbursed out of

pocket medical expenses will be calculated using the actual expenses within the last 12 months.

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

1. This policy applies only to families in which the head, spouse, or co-head is 62 or older or is a person with disabilities.
2. When expenses anticipated by a family could be defined as either medical or disability assistance expenses, DOH will consider them medical expenses unless it is clear that the expenses are incurred exclusively to enable a person with disabilities to work.

### **6-III.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, DOH 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 DOH determines that the disability assistance expenses enable more than one family member to work, the expenses will be capped by the sum of the family members’ incomes.

## **Eligible Disability Expenses**

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

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

### ***Eligible Auxiliary Apparatus***

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

### ***Eligible Attendant Care***

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

- Attendant care includes, but is not limited to, reasonable costs for home medical care, nursing services, in-home or center-based care services, interpreters for persons with hearing impairments, and readers for persons with visual disabilities.
- Attendant care expenses will be included for the period that the person enabled to work is employed plus reasonable transportation time. The cost of general housekeeping and personal services is not an eligible attendant care expense. However, if the person enabled to work is the person with disabilities, personal services necessary to enable the person with disabilities to work are eligible.
- If the care attendant also provides other services to the family, DOH 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.

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

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

- This policy applies only to families in which the head or spouse is 62 or older or is a person with disabilities.
- When expenses anticipated by a family could be defined as either medical or disability assistance expenses, DOH will consider them medical expenses unless it is clear that the expenses are incurred exclusively to enable a person with disabilities to work.

## **Home Care Allowance**

Homecare allowance funds will be excluded from income. These funds will be classified as; *amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member.*

If the family contracts out to a separate entity outside of the home the calculation will be handled as follows:

- List the Home Care Allowance amount as income on the 50058 for the tenant receiving the benefit and then exclude the full amount.

If the family is paying the Home Care Allowance to a family member residing in the unit, the calculation will be handled as follows:

- List the Home Care Allowance amount for the tenant receiving the income on the 50058 then exclude the full amount.
- List the Home Care Allowance as income for the individual in the family who is providing the service. This income will be counted when calculating the rent amount for the family.

## **6-II.F. CHILD CARE EXPENSE DEDUCTION**

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

### **Clarifying the Meaning of *Child* for This Deduction**

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

### **Qualifying for the Deduction**

#### ***Determining Who Is Enabled to Pursue an Eligible Activity***

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

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

DOH 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, DOH 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. DOH 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, DOH will prorate the costs and allow only that portion of the expenses that is attributable to child care for eligible activities. For example, if the care provider also cares for a child with disabilities who is 13 or older, the cost of care will be prorated. Unless otherwise specified by the child care provider, the calculation will be based upon the number of hours spent in each activity and/or the number of persons under care.

### ***Necessary and Reasonable Costs***

Child care expenses will be considered necessary if: (1) a family adequately explains how the care enables a family member to work, actively seek employment, or further his or her education, and (2) the family certifies, and the child care provider verifies, that the expenses are not paid or reimbursed by any other source.

- Child care expenses will be considered for the time required for the eligible activity plus reasonable transportation time. For child care that enables a family member to go to school, the time allowed may include not more than one study hour for each hour spent in class.
- To establish the reasonableness of child care costs, DOH will use the schedule of child care costs from the local welfare agency. Families may present, and DOH will consider, justification for costs that exceed typical costs in the area.

## ***PART III: CALCULATING FAMILY SHARE AND PHA SUBSIDY***

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

#### **TTP Formula [24 CFR 5.628]**

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

- 30 percent of the family's monthly adjusted income (adjusted income is defined in Part II)
- 10 percent of the family's monthly gross income (annual income, as defined in Part I, divided by 12)
- The welfare rent (in as-paid states only)
- The minimum rent between 0-\$50 set by DOH. (DOH's minimum rent is \$25)

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

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

#### ***Welfare Rent [24 CFR 5.628]***

- Welfare rent does not apply in this locality.

#### ***Minimum Rent [24 CFR 5.630]***

- The minimum rent for this locality is \$25.00.
- The minimum rent will automatically be waived for VASH participants with zero income.

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



### **PHA Subsidy [24 CFR 982.505(b)]**

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

- DOH will make utility reimbursements directly to the family.

## **6-III.B. FINANCIAL HARDSHIPS AFFECTING MINIMUM RENT [24 CFR 5.630]**

### **Overview**

If DOH establishes a minimum rent greater than zero, DOH 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 DOH 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 non-citizen 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.
- (4) Family income has decreased because of changed family circumstances, including the loss of employment.
- (4) A death has occurred in the family.
  - In order to qualify under this provision, a family must describe how the death has created a financial hardship (e.g., because of funeral-related expenses or the loss of the family member’s income).
- (5) The family has experienced other circumstances determined by DOH.
  - DOH has not established any additional hardship criteria.

**Implementation of Hardship Exemption**

***Determination of Hardship***

When a family requests a financial hardship exemption, DOH must suspend the minimum rent requirement beginning the first of the month following the family’s request. DOH then determines whether the financial hardship exists and whether the hardship is temporary or long-term.

- DOH 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.

<b>Example: Impact of Minimum Rent Exemption</b>			
Assume DOH has established a minimum rent of \$35.			
<b>Family Share – No Hardship</b>		<b>Family Share – With Hardship</b>	
\$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
\$25	Minimum rent	\$25	Minimum rent
Minimum rent applies. TTP = \$25		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.

- DOH will make the determination of hardship within 30- calendar days.

### ***No Financial Hardship***

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

- DOH will require the family to repay the suspended amount within 30 calendar days of DOH's notice that a hardship exemption has not been granted.

### ***Temporary Hardship***

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

- DOH will enter into a repayment agreement in accordance with the procedures found in Chapter 16 of this plan.

### ***Long-Term Hardship***

If DOH determines that the financial hardship is long-term, DOH must exempt the family from the minimum rent requirement for so long as the hardship continues. The exemption will apply from the first of the month following the family's request until the end of the qualifying hardship. When the financial hardship has been determined to be long-term, the family is not required to repay the minimum rent.

- The hardship period ends when any of the following circumstances apply:
  - (1) At an interim or annual reexamination, the family's calculated TTP is greater than the minimum rent.
  - (2) For hardship conditions based on loss of income, the hardship condition will continue to be recognized until new sources of income are received that are at least equal to the amount lost. For example, if a hardship is approved because a family no longer receives a \$60/month child support payment, the hardship will continue to exist until the family receives at

least \$60/month in income from another source or once again begins to receive the child support.

- (3) For hardship conditions based upon hardship-related expenses, the minimum rent exemption will continue to be recognized until the cumulative amount exempted is equal to the expense incurred.

### **6-III.C. APPLYING PAYMENT STANDARDS [24 CFR 982.505]**

#### **Overview**

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

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

DOH 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, DOH 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 DOH 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. DOH will determine the payment standard for the family as follows:

**Step 1:** At the first regular reexamination following the decrease in the payment standard, DOH 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:** DOH 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 DOH at the first regular reexamination following the decrease in the payment standard will be the higher of these two payment standards. DOH 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 DOH 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, DOH is allowed to establish a higher payment standard for the family within the basic range.

- DOH will approve a payment standard of not more than 120 percent of the FMR without HUD approval if required as a reasonable accommodation for a family that includes a person with disabilities and has passed a rent reasonableness determination.

## **6-III.D. APPLYING UTILITY ALLOWANCES [24 CFR 982.517]**

### **Overview**

DOH-established utility allowance schedule is used in determining family share and PHA subsidy. DOH must use the appropriate utility allowance for the size of dwelling unit actually leased by a family rather than the voucher unit size for which the family qualifies using PHA subsidy standards. See Chapter 5 for information on DOH's subsidy standards.

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

### **Reasonable Accommodation**

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

The family must request the higher allowance and provide DOH 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 Contractor must use DOH's current utility allowance schedule [24 CFR 982.517(d) (2)].

- Revised utility allowances will be applied to a family's rent and subsidy calculations at the first annual reexamination that is effective after the allowance is adopted.

## **6-III.E. PRORATED ASSISTANCE FOR MIXED FAMILIES [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. DOH must prorate the assistance provided to a mixed family. DOH 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 DOH subsidy for a family is calculated at \$500 and two of four family members are ineligible, DOH subsidy would be reduced to \$250.

**EXHIBIT 6-1: ANNUAL INCOME INCLUSIONS**

**24 CFR 5.609**

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

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

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

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

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

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

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided in paragraph (c)(3) of this section);

(6) Welfare assistance payments.

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

(A) Qualify as assistance under the TANF program definition at 45 CFR 260.31<sup>1</sup>; 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)

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<sup>1</sup> 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.

<p style="text-align: center;"><b>HHS DEFINITION OF "ASSISTANCE"</b></p>
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**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) Non-recurrent, short-term benefits that:

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

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

(iii) Will not extend beyond four months.

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

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

(4) Refundable earned income tax credits;

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

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

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

**EXHIBIT 6-2: ANNUAL INCOME EXCLUSIONS**

**24 CFR 5.609**

*(c) Annual income does not include the following:*

- (1) Income from employment of children (including foster children) under the age of 18 years;
- (2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);
- (3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (b)(5) of this section);
- (4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
- (5) Income of a live-in aide, as defined in Sec. 5.403;
- (6) Subject to paragraph (b)(9) of this section, the full amount of student financial assistance paid directly to the student or to the educational institution;
- (7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;

- (8) (i) Amounts received under training programs funded by HUD;
- (ii) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);
- (iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;
- (iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for DOH 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 DOH's governing board. No resident may receive more than one such stipend during the same period of time;
- (v) Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals

and objectives, and are excluded only for the period during which the family member participates in the employment-training program;

(9) Temporary, nonrecurring or sporadic income (including gifts);

(10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;

(11) Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse);

(12) Adoption assistance payments in excess of \$480 per adopted child;

(13) [Reserved]

(14) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts.

(15) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;

(16) Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(17) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the Federal Register and distributed to PHAs and housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary. [See Section 6-I.M. for a list of benefits that qualify for this exclusion.]

**EXHIBIT 6-3: TREATMENT OF FAMILY ASSETS**

**24 CFR 5.603(b) Net Family Assets**(1) Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded.

(2) In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining annual income under Sec. 5.609.

(3) In determining net family assets, PHAs or owners, as applicable, shall include the

value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefore. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

(4) For purposes of determining annual income under Sec. 5.609, the term "net family assets" does not include the value of a home currently being purchased with assistance under part 982, subpart M of this title. This exclusion is limited to the first 10 years after the purchase date of the home.

## **EXHIBIT 6-4: EARNED INCOME DISALLOWANCE FOR PERSONS WITH DISABILITIES**

### **24 CFR 5.617 Self-sufficiency incentives for persons with disabilities—Disallowance of increase in annual income.**

*(a) Applicable programs.* The disallowance of increase in annual income provided by this section is applicable only to the following programs: HOME Investment Partnerships Program (24 CFR part 92); Housing Opportunities for Persons with AIDS (24 CFR part 574); Supportive Housing Program (24 CFR part 583); and the Housing Choice Voucher Program (24 CFR part 982).

*(b) Definitions.* The following definitions apply for purposes of this section.

*Disallowance* is an exclusion from annual income.

*Previously unemployed* includes a person with disabilities who has earned, in the twelve months previous to employment, no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage.

*Qualified family.* A family residing in housing assisted under one of the programs listed in paragraph (a) of this section or receiving tenant-based rental assistance under one of the programs listed in paragraph (a) of this section.

(1) Whose annual income increases as a result of employment of a family member who is a person with disabilities and who was previously unemployed for one or more years prior to employment;

(2) Whose annual income increases as a result of increased earnings by a family member who is a person with disabilities during participation in any economic self-sufficiency or other job training program; or

(3) Whose annual income increases, as a result of new employment or increased earnings of a family member who is a person with disabilities, during or within six months after receiving assistance, benefits or services under any state program for temporary assistance for needy families funded under Part A of Title IV of the Social Security Act, as determined by the responsible entity in consultation with the local agencies administering temporary assistance for needy families (TANF) and Welfare-to-Work (WTW) programs. The TANF program is not limited to monthly income maintenance, but also includes such benefits and services as one-time payments, wage subsidies and transportation assistance-- provided that the total amount over a six-month period is at least \$500.

*(c) Disallowance of increase in annual income—*

(1) Initial twelve month exclusion. During the cumulative twelve month period beginning on the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the responsible entity must exclude from annual income (as defined in the regulations governing the applicable program listed in paragraph (a) of this section) of a qualified family any increase in income of the family member who is a person with disabilities as a result of employment over prior income of that family member.

(2) Second twelve-month exclusion and phase-in. During the second cumulative twelve month period after the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the responsible entity must exclude from annual income of a qualified family fifty percent of any increase in income of such family member as a result of employment over income of that family member prior to the beginning of such employment.

(3) Maximum four year disallowance. The disallowance of increased income of an individual family member who is a person with disabilities as provided in paragraph (c)(1) or (c)(2) is limited to a lifetime 48 month period. The disallowance only applies for a maximum of twelve months for disallowance under paragraph (c)(1) and a maximum of twelve months for disallowance under paragraph (c)(2), during the 48 month period starting from the initial exclusion under paragraph (c)(1) of this section.

*(d) Inapplicability to admission.* The disallowance of increases in income as a result of employment of persons with disabilities under this section does not apply for purposes of admission to the program (including the determination of income eligibility or any income targeting that may be applicable).

**EXHIBIT 6-5: THE EFFECT OF WELFARE BENEFIT REDUCTION**

**24 CFR 5.615**

**Public housing program and Section 8 tenant-based assistance program: How welfare benefit reduction affects family income.**

*(a) Applicability.* This section applies to covered families who reside in public housing (part 960 of this title) or receive Section 8 tenant-based assistance (part 982 of this title).

*(b) Definitions.* The following definitions apply for purposes of this section:

*Covered families.* Families who receive welfare assistance or other public assistance benefits ("welfare benefits") from a State or other public agency ("welfare agency") under a program for which Federal, State, or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance.

*Economic self-sufficiency program.* See definition at Sec. 5.603. result of a specified welfare benefit reduction, that is nonetheless included in the family's annual income for purposes of determining rent.

*Specified welfare benefits 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 DOH 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 DOH, the welfare agency will inform DOH 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 DOH of any subsequent changes in the term or amount of such specified welfare benefit reduction. DOH 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 DOH's interim or regular reexamination of family income and composition, during the term of the welfare benefits reduction (as specified in information provided to DOH 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) DOH may not include imputed welfare income in annual income if the family was not an assisted resident at the time of sanction.

*(d) Review of PHA decision.*

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

(2) Section 8 participants. 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 DOH 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 DOH denies the family's request to modify such amount, DOH shall give the family written notice of such denial, with a brief explanation of the basis for DOH determination of the amount of imputed welfare income. Such notice shall also state that if the family does not agree with DOH determination, the family may request an informal hearing on the determination under DOH hearing procedure.

*(e) PHA relation with welfare agency.*

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



(2) DOH 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 DOH. However, DOH 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. DOH shall be entitled to rely on the welfare agency notice to DOH of the welfare agency's determination of a specified welfare benefits reduction.

## **Chapter 7**

### **VERIFICATION**

[24 CFR 982.516, 24 CFR 982.551, 24 CFR 5.230, Notice PIH 2010-19]

#### **INTRODUCTION**

DOH must verify all information that is used to establish the family's eligibility and level of assistance and is required to obtain written authorization from the family in order to collect the information. Applicants and program participants must cooperate with the verification process as a condition of receiving assistance. DOH must not pass on the cost of verification to the family.

DOH will follow the verification guidance provided by HUD in Notice PIH 2010-19 and any subsequent guidance issued by HUD. This chapter summarizes those requirements and provides supplementary PHA policies.

Part I describes the general verification process. Part II provides more detailed requirements related to family information. Part III provides information on income and assets, and Part IV covers mandatory deductions.

Verification policies, rules and procedures will be modified as needed to accommodate persons with disabilities. All information obtained through the verification process will be handled in accordance with the records management policies of DOH.

## ***PART I: 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 DOH or HUD determines is necessary to the administration of the program and must consent to PHA verification of that information [24 CFR 982.551].

#### **Consent Forms**

It is required that all adult applicants and participants sign form HUD-9886, Authorization for Release of Information. The purpose of form HUD-9886 is to facilitate automated data collection and computer matching from specific sources and provides the family's consent only for the specific purposes listed on the form. HUD and DOH 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, DOH will deny admission to applicants and terminate assistance of participants. The family may request an informal review (applicants) or informal hearing (participants) in accordance with PHA procedures.

### **7-I.B. OVERVIEW OF VERIFICATION REQUIREMENTS**

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

HUD mandates the use of the EIV system and offers administrative guidance on the use of other methods to verify family information and specifies the circumstances in which each method will be used. In general HUD requires DOH to use the most reliable form of verification that is available and to document the reasons when DOH uses a lesser form of verification.

- In order of priority, the forms of verification that DOH will use are:
  - Up-front Income Verification (UIV) using HUD's Enterprise Income Verification (EIV) system
  - Up-front Income Verification (UIV) using a non-HUD system
  - Written Third Party Verification (may be provided by applicant or participant)
  - Written Third-party Verification Form

- Oral Third-party Verification
- Self-Certification

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

### **Requirements for Acceptable Documents**

- Any documents used for verification must be the original (not photocopies). The documents must not be damaged, altered or in any way illegible.
- All verification documents used for action (reexaminations, new admissions etc.) must be dated within 60 days of the interview or 120 calendar days of the effective date of the action.
- The documents used for eligibility determinations must be dated within 60 calendar days of the voucher issuance date.
- Print-outs from Web pages are considered original documents.
- DOH staff or the contractor staff who views the original document must make a photocopy, annotate the copy with the name of the person who provided the document and the date the original was viewed, and sign the copy.
- Any family self-certifications must be made in a format acceptable to DOH and must be signed in the presence of DOH representative or contractor staff whenever possible.

### **File Documentation**

DOH 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 DOH has followed all of the verification policies set forth in this plan. The record should be sufficient to enable a staff member or HUD reviewer to understand the process followed and conclusions reached.

- DOH 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 DOH is unable to obtain third-party verification, DOH will document in the family file the reason that third-party verification was not available [24 CFR 982.516(a)(2); Notice PIH 2010-19]

### **7-I.C. UP-FRONT INCOME VERIFICATION (EIV & UIV)**

24 CFR 5.233 Requires all PHA to use EIV in its entirety. Up-front income verification (UIV) refers to DOH'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 DOH.

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 DOH has independently verified the UIV information and the family has been generated an opportunity to contest any adverse findings through the informal review/hearing process of DOH.

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

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

PHAs must use HUD's EIV system in its entirety as a third-party source to verify tenant employment and income information during mandatory reexaminations or recertifications of family composition and income in accordance with 24 CFR 5.236 and administrative guidance issued by HUD. The EIV system contains data showing earned income, unemployment benefits, social security benefits, and SSI benefits for participant families. 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.

- DOH will obtain income reports for annual reexaminations on a monthly basis.
- 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-I.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-I.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 DOH 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 Identity Verification***

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

PHAs are required to use EIV's *Identity Verification Report* on a monthly basis to improve the availability of income information in EIV [Notice PIH 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.

- DOH will identify participants whose identity verification has failed by reviewing EIV's *Identity Verification Report* on a monthly basis.
- DOH will attempt to resolve the PIC/SSA discrepancies by obtaining appropriate documentation from the participant. When DOH determines that discrepancies exist due to PHA 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 PHAs to utilize other upfront verification sources.

- DOH will inform all applicants and participants of its use of the following UIV resources during the admission and reexamination process:
  - HUD's EIV system
  - The Colorado Department of Labor and Employment
  - The Colorado Benefits Management System
  - The Work Number
  - The Family Support Registry

## **7-I.D. THIRD-PARTY WRITTEN AND ORAL VERIFICATION**

HUD's current verification hierarchy defines two types of written third-party verification. The more preferable form, "written third-party verification," consists of an original document generated by a third-party source, which may be received directly from a third-party source or provided to DOH by the family. If written third-party verification is not available, DOH 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.

DOH is required to obtain, at minimum, two current and consecutive pay stubs for determining annual income from wages.

DOH 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 by the family must be dated within 60 days of DOH request date.
- If DOH determines that third-party documents provided by the family are not acceptable, DOH will explain the reason to the family and request additional documentation.
- As verification of earned income, DOH will request at minimum, the last 2 current and consecutive pay stubs (dated within 60-days).

### **Written Third-Party Verification Form**

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

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

- DOH 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 DOH.

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

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

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

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

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

- In collecting third-party oral verification, PHA staff will record in the family's file the name and title of the person contacted, the date and time of the conversation (or attempt), the telephone number used, and the facts provided.
- When any source responds verbally to the initial written request for verification DOH 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.

- If the family cannot provide original documents, DOH will pay the service charge required to obtain third-party verification, unless it is not cost effective in which case a self-certification will be acceptable as the only means of verification. The cost of verification will not be passed on to the family.
- The cost of postage and envelopes to obtain third-party verification of income, assets, and expenses is not an unreasonable cost [VG, p. 18].

### ***Primary Documents***



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

### ***Imputed Assets***

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

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

### **7-I.E. SELF-CERTIFICATION**

Self-certification, or “tenant declaration,” is used as a last resort when DOH is unable to obtain third-party verification.

When DOH 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.

#### DOH Policy

- When information cannot be verified by a third party or by review of documents, family members will be required to submit self-certifications attesting to the accuracy of the information they have provided to DOH.
- DOH 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 DOH and must be signed by the family member whose information or status is being verified. All self-certifications must be signed in the presence of a PHA representative whenever possible.

***Part II: Verifying Family Information***

**7-II.A. VERIFICATION OF LEGAL IDENTITY**

DOH will require families to furnish verification of legal identity for each household member.

<b>Verification of Legal Identity for Adults</b>	<b>Verification of Legal Identity for Children</b>
Certificate of birth, naturalization papers	Certificate of birth
Church issued baptismal certificate	Adoption papers
Current, valid driver's license or Department of Motor Vehicles identification card	Custody agreement
U.S. military discharge (DD 214)	Health and Human Services ID
Current U.S. passport	Certified school records
Current employer identification card	
Additional Program Requirement: Birth Certificate	Additional Program Requirement: Birth Certificate

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

If none of these documents can be provided and at the PHA’s discretion, a third party who knows the person may attest to the person’s identity. The certification must be provided in a format acceptable to the PHA and be signed in the presence of a PHA representative or PHA notary public.

Legal identity will be verified for all applicants at the time of eligibility determination and in cases where the PHA has reason to doubt the identity of a person representing him or herself to be a participant.

**7-II.B. SOCIAL SECURITY NUMBERS [24 CFR 5.216 and Notice PIH 2012-10]**

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

Note that an individual who previously declared to have eligible immigration status may not change his or her declaration for the purpose of avoiding 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.

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

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

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

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

- DOH 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 DOH within 90 days.

In the case of Moderate Rehabilitation Single Room Occupancy (SRO) individuals, the required documentation must be provided within 90 calendar days from the date of admission into the program. DOH must grant one additional 90-day extension if it determines that the applicant's failure to comply was due to circumstances that were beyond the applicant's control and could not have been reasonably foreseen.

- DOH will grant one additional 90-day extension if needed for reasons 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 the individual fails to comply with SSN disclosure and documentation requirements upon expiration of the provided time period, DOH will terminate the individual's assistance.

When a participant requests to add a new household member who is at least 6 years of age, or who is under the age of 6 and has an SSN, the participant must provide the complete and accurate SSN assigned to each new member at the time of reexamination or recertification, in addition to the documentation required to verify it. DOH 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. A 90-day extension will be granted if DOH determines that the participant's failure to comply was due to unforeseen circumstances and was outside of the participant's control. During the period DOH is awaiting documentation of the SSN, the child will be counted as part of the assisted household.

- DOH will grant one additional 90-day extension if needed for reasons 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.

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

DOH 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 PHA 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-II.C. DOCUMENTATION OF AGE**

A birth certificate or other official record of birth is the preferred form of age verification for all family members. For elderly family members an original document that provides evidence of the receipt of social security retirement benefits is acceptable.

- If an official record of birth or evidence of social security retirement benefits cannot be provided, DOH will require the family to submit other documents that support the reported age of the family member (e.g., school records, driver's license if birth year is recorded) and to provide a self-certification.

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

### **7-II.D. FAMILY RELATIONSHIPS**

Applicants and program participants are required to identify the relationship of each household member to the head of household. Definitions of the primary household relationships are provided in the Eligibility chapter.

- Family relationships are verified only to the extent necessary to determine a family's eligibility and level of assistance. Certification by the head of household normally is sufficient verification of family relationships.

### **Marriage**

Certification by the head of household is normally sufficient verification. If DOH has reasonable doubts about a marital relationship, DOH 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 DOH has reasonable doubts about a separation or divorce, DOH will require the family to provide documentation of the divorce, or separation.

- A certified copy of a divorce decree, signed by a court officer, is required to document that a couple is divorced.
- A copy of a court-ordered maintenance or other court record is required to document a separation.
- If no court document is available, documentation from a community-based agency will be accepted.

### **Absence of Adult Member**

If an adult member who was formerly a member of the household is reported to be permanently absent, the family may be required to provide evidence to support that the person is no longer a member of the household within 10 business days of the request (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-II.E. VERIFICATION OF STUDENT STATUS**

### **General Requirements**

- DOH requires families to provide information about the student status of all students who are 18 years of age or older. This information will be verified only if:

- The family reports full-time student status for an adult other than the head, spouse, or co-head.
- The family reports child care expenses to enable a family member to further his or her education.
- The family includes a student enrolled in an *institution of higher education*.

### **Restrictions on Assistance to Students Enrolled in Institutions of Higher Education**

This section applies only to students who are seeking assistance on their own, separately from their parents. It does not apply to students residing with parents who are seeking or receiving HCV assistance.

- In accordance with the verification hierarchy described in Section 7-1.B, DOH will determine whether the student is exempt from the restrictions in 24 CFR 5.612 by verifying any one of the following exemption criteria:
  - FUP youth participant.
  - The student is enrolled at an educational institution that does not meet the definition of *institution of higher education* in the Higher Education Act of 1965 (see Section Exhibit 3-2).
  - The student is at least 24 years old.
  - The student is a veteran, as defined in Section 3-II.E.
  - The student is married.
  - The student has at least one dependent child, as defined in Section 3-II.E.
  - The student is a person with disabilities, as defined in Section 3-II.E, and was receiving assistance prior to November 30, 2005.

If DOH cannot verify at least one of these exemption criteria, DOH 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, DOH will then proceed to verify either the student's parents' income eligibility (see Section 7-III.J) or the student's independence from his/her parents (see below).

#### ***Independent Student***

DOH will verify a student's independence from his/her parents to determine that the student's parents' income is not relevant for determining the student's eligibility by doing all of the following:

Either reviewing or verifying previous address information to determine whether the student has established a household separate from his/her parents for at least one year or reviewing and verifying documentation relevant to determining whether the student meets the U.S. Department of Education's definition of *independent student* (see Section 3-II.E)

Reviewing prior year income tax returns to verify whether a parent has claimed the student as a dependent

Requesting and obtaining written certification directly from the student's parents identifying the amount of support they will be providing to the student, even if the amount of support is \$0.

### **7-II.F. DOCUMENTATION OF DISABILITY**

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

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, DOH will attempt to obtain information about disability benefits through the HUD Enterprise Income Verification (EIV) system when it is available. If documentation from HUD's EIV System is not available, DOH 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), DOH 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](http://www.ssa.gov). Once the applicant or participant receives the benefit verification letter they will be required to provide it to DOH.

### **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 Chapter 3 for the HUD definition of disability. The knowledgeable professional will verify whether the family member does or does not meet the HUD definition.

## **7-II.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 Chapter 3. This verifications chapter discusses HUD and PHA verification requirements related to citizenship status.

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



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

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

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

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

## ***Eligible Immigrants***

### ***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 non-citizens varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, age, and the date on which the family began receiving HUD-funded assistance. Exhibit 7-1 at the end of this chapter summarizes documents family members must provide.

### ***PHA Verification*** [HCV GB, pp. 5-3 and 5-7]

For family members age 62 or older who claim to be eligible immigrants, proof of age is required in the manner described in 7-II.C. of this plan. No further verification of eligible immigration status is required under HUD regulations. These individuals will need to still comply with Colorado HB 06S-1023.

For family members under the age of 62 who claim to be eligible immigrants, DOH must verify immigration status with the United States Citizenship and Immigration Services (USCIS). DOH will follow all USCIS protocols for verification of eligible immigration status.

## **7-II.H. VERIFICATION OF PREFERENCE STATUS**

DOH must verify any preferences claimed by an applicant that determined placement on the waiting list. Refer to HUD's Hierarchy of Verification.

- DOH will offer a preference to any family that has been terminated from its HCV program due to insufficient program funding. DOH will verify this preference using DOH's termination records.
- Please refer to waiting list preferences and verification of such preferences.

### ***PART III: Verifying Income and Assets***

Chapter 6, Part I of this plan describes in detail the types of income that are included and excluded and how assets and income from assets are handled. Any assets and income reported by the family must be verified. This part provides PHA policies that supplement the general verification procedures specified in Part I of this chapter.

#### **7-III.A. EARNED INCOME**

##### **Tips**

- Unless tip income is included in a family member's W-2 by the employer, persons who work in industries where tips are standard will be required to sign a certified estimate of tips received for the prior year and tips anticipated to be received in the coming year.

##### **Wages**

For wages other than tips, the family must provide originals of the two most current, consecutive pay stubs

#### **7-III.B. BUSINESS AND SELF EMPLOYMENT INCOME**

Business owners and self-employed persons will be required to provide:

- An audited financial statement for the previous fiscal year if an audit was conducted. If an audit was not conducted, a statement of income and expenses must be submitted and the business owner or self-employed person must certify to its accuracy.
- All schedules completed for filing federal and local taxes in the preceding year.
- If accelerated depreciation was used on the tax return or financial statement, an accountant's calculation of depreciation expense, computed using straight-line depreciation rules.

DOH 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 DOH may request documents that support submitted financial statements such as manifests, appointment books, cash books, or bank statements.

If a family member has been self-employed less than three (3) months, the PHA will accept the family member's certified estimate of income and schedule an interim reexamination in three (3) months. If the family member has been self-employed for three (3) to twelve (12) months the

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

### **7-III.C. PERIODIC PAYMENTS AND PAYMENTS IN LIEU OF EARNINGS**

#### **Social Security/SSI Benefits**

To verify the SS/SSI benefits of applicants, DOH 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), DOH will help the applicant request a benefit verification letter from SSA's Web site at [www.ssa.gov](http://www.ssa.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 DOH.

To verify the SS/SSI benefits of participants, DOH 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, DOH 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) DOH will help the participant request a benefit verification letter from SSA's Web site at [www.ssa.gov](http://www.ssa.gov) or ask the family to request one by calling SSA at 1-800-772. -Once the participant has received the benefit verification letter they will be required to provide it to DOH.

### **7-III.D. ALIMONY OR CHILD SUPPORT**

The methods DOH will use to verify alimony and child support payments differ depending on whether the family declares that it receives regular payments.

If the family declares that it *receives regular payments*, verification will be obtained in the following order of priority;

1. Copies of the receipts and/or payment stubs for the 60-days prior to DOH's request.
2. Third-party verification form from the state or local child support enforcement agency.
3. Third-party verification from the person paying the support.

Family's self-certification of amount 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-III.E. ASSETS AND INCOME FROM ASSETS**

Families with assets are required to report all assets annually. The amount of interest earned on those assets is included as income used to calculate the tenant's rent obligation. Where the family has net family assets in excess of \$5,000, the PHA must obtain supporting documentation (e.g. bank statements) from the family to confirm the assets.

#### **Verification of Assets of less than \$5000**

- Where the family has net family assets equal to or less than \$5,000, the PHA does not need to request supporting documentation (e.g. bank statements) from the family to confirm the assets or the amount of income expected to be received from those assets.
- DOH will accept a family's self-declaration of assets of less than \$5,000, and the amount of income expected to be received from those assets. The DOH application and reexamination documentation.

#### **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. DOH needs to verify only those certifications that warrant documentation [HCV GB, p. 5-28].

DOH will verify the value of assets disposed of only if:

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

### **7-III.F. NET INCOME FROM RENTAL PROPERTY**

The family must provide:

- A current executed lease for the property that shows the rental amount or certification from the current tenant
- A self-certification from the family members engaged in the rental of property providing an estimate of expenses for the coming year and the most recent IRS Form 1040 with Schedule E (Rental Income). If schedule E was not prepared, DOH will require the family members involved in the rental of property to provide a self-certification of income and expenses for the previous year and may request documentation to support the statement including: tax statements, insurance invoices, bills for reasonable maintenance and utilities, and bank statements or amortization schedules showing monthly interest expense.

### **7-III.G. RETIREMENT ACCOUNTS**

DOH will accept written third-party documentation supplied by the family as evidence of the status of retirement accounts.

The type of original documents that will be accepted depends upon the family member's retirement status.

- *Before* retirement, DOH 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, DOH 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, DOH will accept an original document from the entity holding the account dated no earlier than 12 months before that reflects any distributions of the account balance, any lump sums taken and any regular payments.

### **7-III.H. INCOME FROM EXCLUDED SOURCES**

A detailed discussion of excluded income is provided in Chapter 6, Part I.

HUD guidance on verification of excluded income draws a distinction between income which is fully excluded and income which is only partially excluded.

For fully excluded income, the PHA is **not** required to follow the verification hierarchy, document why third-party verification is not available, or report the income on the 50058. Fully

excluded income is defined as income that is entirely excluded from the annual income determination (for example, food stamps, earned income of a minor, or foster care funds) [Notice PIH 2013-04].

PHAs may accept a family's signed application or reexamination form as self-certification of fully excluded income. They do not have to require additional documentation. However, if there is any doubt that a source of income qualifies for full exclusion; PHAs have the option of requiring additional verification.

- For partially excluded income, the PHA is required to follow the verification hierarchy and all applicable regulations, and to report the income on the 50058. Partially excluded income is defined as income where only a certain portion of what is reported by the family qualifies to be excluded and the remainder is included in annual income (for example, the income of an adult full-time student, or income excluded under the earned income disallowance).
- The PHA will accept the family's self-certification as verification of fully excluded income. The PHA may request additional documentation if necessary to document the income source.
- The PHA will verify the source and amount of partially excluded income as described in Part 1 of this chapter.

### **7-III.I. ZERO ANNUAL INCOME STATUS**

DOH will check UIV sources and/or request information from third-party sources to verify that certain forms of income such as unemployment benefits, TANF, SS, SSI, and earnings are not being received by families claiming to have zero annual income.

- Any individual who is 18-years old and older and claiming zero income will be required to complete a Zero Income Reporting Form at each annual reexamination. This form must be submitted to DOH and/or the contractor at the time of the reexamination.

### **7-III.J. STUDENT FINANCIAL ASSISTANCE**

Any financial assistance, in excess of amounts received for tuition, that a person attending an institution of higher education receives under the Higher Education Act of 1965, from private sources, or from an institution of higher education must be considered income unless the student is over the age of 23 with dependent children or is residing with parents who are seeking or receiving HCV assistance [24 CFR 5.609(b) (9) and FR 4/10/06].

For students over the age of 23 with dependent children or students residing with parents who are seeking or receiving HCV assistance, the full amount of student financial assistance is excluded

from annual income [24 CFR 5.609(c)(6)]. The full amount of student financial assistance is also excluded for students attending schools that do not qualify as institutions of higher education (as defined in Exhibit 3-2). Excluded amounts are verified only if, without verification, DOH would not be able to determine whether or to what extent the income is to be excluded (see Section 7-III.H).

- For a student subject to having a portion of his/her student financial assistance included in annual income in accordance with 24 CFR 5.609(b)(9), DOH will request written third-party verification of both the source and the amount. Family-provided documents from the educational institution attended by the student as well as documents generated by any other person or entity providing such assistance, as reported by the student.
- In addition, DOH will request written verification of the student's tuition amount.
- If DOH is unable to obtain third-party written verification of the requested information, DOH will pursue other forms of verification following the verification hierarchy in Section 7-I.B.

#### **7-III.K. PARENTAL INCOME OF STUDENTS SUBJECT TO ELIGIBILITY RESTRICTIONS**

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, and does not have a dependent child, the income of the student's parents must be considered when determining income eligibility, unless the student is determined independent from his or her parents in accordance with PHA policy [24 CFR 5.612 and FR 4/10/06, p. 18146].

This provision does not apply to students residing with parents who are seeking or receiving HCV assistance. It is limited to students who are seeking or receiving assistance on their own, separately from their parents.

- If DOH is required to determine the income eligibility of a student's parents, DOH will request an income declaration and certification of income from the appropriate parent(s) (as determined in Section 3-II.E). DOH will send the request directly to the parents, who will be required to certify their income under penalty of perjury. The parents will be required to submit the information directly to DOH. The required information must be submitted (postmarked) within 10 business days of the date of DOH's request or within any extended timeframe approved by DOH.
- DOH reserves the right to request and review supporting documentation at any time if it questions the declaration or certification. Supporting documentation may include, but is not limited to, Internal Revenue Service (IRS) tax returns, consecutive and original pay stubs, bank statements, pension benefit statements, benefit award letters, and other official and authentic documents from a federal, state, or local agency.

## ***PART IV: VERIFYING MANDATORY DEDUCTIONS***

### **7-IV.A. DEPENDENT AND ELDERLY/DISABLED HOUSEHOLD DEDUCTIONS**

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

#### **Dependent Deduction**

See Chapter 6 (6-II.B.) for a full discussion of this deduction. DOH must verify that:

- Any person under the age of 18 for whom the dependent deduction is claimed is not the head, spouse, or co-head of the family and is not a foster child
- Any person age 18 or older for whom the dependent deduction is claimed is not a foster adult or live-in aide, and is a person with a disability or a full time student

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

See Eligibility chapter for a definition of elderly and disabled families and Chapter 6 (6-II.C.) for a discussion of the deduction. DOH must verify that the head, spouse, or co-head is 62 years of age or older or a person with disabilities.

### **7-IV.B. MEDICAL EXPENSE DEDUCTION**

Policies related to medical expenses are found in 6-II.D. The amount of the deduction will be verified following the standard verification procedures described in Part I.

Amount of Expenses:

Medical expenses will be verified through:

- Written third-party documents provided by the family, such as pharmacy printouts or receipts
- DOH will make a best effort to determine what expenses from the past are likely to continue to occur in the future. DOH will also accept evidence of monthly payments or total payments that will be due for medical expenses during the upcoming 12 months. Expenses must already have been realized
- 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, DOH 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.

### **Medical Supplies not authorized under IRS Publication 502**

In order for DOH to deduct any medical expense not approved in IRS Publication 502, it must verify that a medical professional has declared them necessary. This verification can be through a valid prescription, or some other form of third party verification that is dated within 365-days of the request. Any request for a medical expense not approved in IRS Publication 502, must be provided annually.

### **Eligible Household**

The medical expense deduction is permitted only for households in which the head, spouse, or co-head is at least 62, or a person with disabilities. DOH must verify that the family meets the definition of an elderly or disabled family provided in the Eligibility chapter and as described in Chapter 7 (7-IV.A.) of this plan.

### **Qualified Expenses**

To be eligible for the medical expenses deduction, the costs must qualify as medical expenses. See Chapter 6 (6-II.D.) for DOH'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. If expenses are verified through a third party, the third party must certify that the expenses are not paid or reimbursed from any other source.

## **Expenses Incurred in Past Years**

When anticipated costs are related to on-going payment of medical bills incurred in past years, DOH will verify:

1. The anticipated repayment schedule
2. The amounts paid in the past, and
3. Whether the amounts to be repaid have been deducted from the family's annual income in past years

## **7-IV.C. DISABILITY ASSISTANCE EXPENSES**

Policies related to disability assistance expenses are found in 6-II.E. The amount of the deduction will be verified following the standard verification procedures described in Part I.

### **Amount of Expense**

#### ***Attendant Care***

DOH will accept written third-party documents provided by the family.

If family-provided documents are not available, DOH 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.

If third-party verification is not possible, written family certification of estimated apparatus costs for the upcoming 12 months.

In addition, DOH must verify that:

- The family member for whom the expense is incurred is a person with disabilities (as described in 7-II.F above).
- The expense permits a family member, or members, to work (as described in 6-II.E.).
- The expense is not reimbursed from another source (as described in 6-II.E.).

### **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. DOH will verify that the expense is incurred for a person with disabilities (See 7-II.F.).

### **Family Member(s) Permitted to Work**

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

- DOH 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-II.E.). This documentation may be provided by the family
- If third-party verification has been attempted and is either unavailable or proves unsuccessful, the family must certify that the disability assistance expense frees a family member, or members (including the family member receiving the assistance), to work.

### **Unreimbursed Expenses**

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

- The family will be required to certify that attendant care or auxiliary apparatus expenses are not paid by or reimbursed to the family from any source.

### **7-IV.D. CHILD CARE EXPENSES**

Policies related to child care expenses are found in Chapter 6 (6-II.F). The amount of the deduction will be verified following the standard verification procedures described in Part I of this chapter. In addition, DOH must verify that:

1. The child is eligible for care (12 or younger).
2. The costs claimed are not reimbursed.
3. The costs enable a family member to work, actively seek work, or further their education.
4. The costs are for an allowable type of child care.
5. 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. DOH will verify that the child being cared for (including foster children) is under the age of 13 (See 7-II.C.).

### **Unreimbursed Expense**

To be eligible for the child care deduction, the costs must not be reimbursed by another source.

- The family (and the care provider) 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**

DOH 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*

- DOH 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 DOH will use documentation from a state or local agency that monitors work-related requirements (e.g., welfare or unemployment). In such cases DOH will request family-provided verification from the agency of the member's job seeking efforts to date, and require the family to submit to DOH any reports provided to the other agency.
- In the event third-party verification is not available, DOH will provide the family with a form on which the family member must record job search efforts. DOH will review this information at each subsequent reexamination for which this deduction is claimed.

### *Furthering Education*

- DOH request third-party documentation to verify that the person permitted to further his or her education by the child care is enrolled and provides information about the timing of classes for which the person is registered. The documentation may be provided by the family.

### *Gainful Employment*

- DOH 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.

- DOH will verify that the type of child care selected by the family is allowable, as described in Chapter 6 (6-II.F).
- DOH 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).
- DOH 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 DOH'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, DOH will request additional documentation, as required, to support a determination that the higher cost is appropriate.

**EXHIBIT 7-1: SUMMARY OF DOCUMENTATION REQUIREMENTS  
FOR NON-CITIZENS [HCV GB, pp. 5-9 and 5-10]**

<p><b>All non-citizens</b> claiming eligible status must sign a declaration of eligible immigrant status on a form acceptable to DOH.</p> <p>Except for persons 62 or older, all non-citizens must sign a verification consent form</p> <p>Additional documents are required based upon the person's status.</p>	
<p><b>Elderly Non-citizens</b></p> <p>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>	
<p><b>All other Non-citizens</b></p> <p>Non-citizens that claim eligible immigration status also must present the applicable USCIS document. Acceptable USCIS documents are listed below.</p>	
<p>Form I-551 Alien Registration Receipt Card (for permanent resident aliens)</p> <p>Form I-94 Arrival-Departure Record annotated with one of the following:</p> <ul style="list-style-type: none"> <li>• “Admitted as a Refugee Pursuant to Section 207”</li> <li>• “Section 208” or “Asylum”</li> <li>• “Section 243(h)” or “Deportation stayed by Attorney General”</li> <li>• “Paroled Pursuant to Section 221 (d)(5) of the USCIS”</li> </ul>	<p>Form I-94 Arrival-Departure Record with no annotation accompanied by:</p> <ul style="list-style-type: none"> <li>• A final court decision granting asylum (but only if no appeal is taken);</li> <li>• 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);</li> <li>• A court decision granting withholding of deportation; or</li> <li>• A letter from an asylum officer granting withholding or deportation (if application filed on or after 10/1/90).</li> </ul>
<ul style="list-style-type: none"> <li>• Form I-688 Temporary Resident Card annotated “Section 245A” or Section 210”.</li> </ul>	<ul style="list-style-type: none"> <li>• Form I-688B Employment Authorization Card annotated “Provision of Law 274a.12(11)” or “Provision of Law 274a.12”.</li> </ul>
<ul style="list-style-type: none"> <li>• 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</li> <li>• 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></li> </ul>	

## Chapter 8

### HOUSING QUALITY STANDARDS AND RENT REASONABLENESS DETERMINATIONS

[24 CFR 982 Subparts I and 24 CFR 982.507]

#### INTRODUCTION

HUD requires that all units occupied by families receiving Housing Choice Voucher (HCV) assistance meet HUD's Housing Quality Standards (HQS) and permits DOH to establish additional requirements. The use of the term "HQS" in this plan refers to the combination of both HUD and PHA-established requirements. All units must pass an HQS inspection prior to the approval of a lease and at least annually during the term of the contract.

HUD also requires PHAs to determine that rents for units under the program are reasonable when compared to comparable unassisted units in the market area.

This chapter explains HUD and PHA requirements related to housing quality and rent reasonableness as follows:

Part I. Physical Standards. This part discusses the physical standards required of units occupied by HCV-assisted families and identifies decisions about the acceptability of the unit that may be made by the family based upon the family's preference. It also identifies life-threatening conditions that must be addressed on an expedited basis.

Part II. The Inspection Process. This part describes the types of inspections DOH will make and the steps that will be taken when units do not meet HQS.

Part III. Rent Reasonableness Determinations. This part discusses the policies DOH will use to make rent reasonableness determinations.

Special HQS requirements for homeownership, manufactured homes, and other special housing types are discussed in Chapter 15 to the extent that they apply in this jurisdiction.

## ***PART I: PHYSICAL STANDARDS***

### **8-I.A. GENERAL HUD REQUIREMENTS**

#### **HUD Performance and Acceptability Standards**

HUD's performance and acceptability standards for HCV-assisted housing are provided in 24 CFR 982.401. These standards cover the following areas:

- Sanitary facilities
- Food preparation and refuse disposal
- Space and Security
- Thermal Environment
- Illumination and electricity
- Structure and materials
- Interior Air Quality
- Water Supply
- Lead-based paint
- Access
- Site and neighborhood
- Sanitary condition
- Smoke Detectors

A summary of HUD performance criteria is provided in 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 PHA to enforce minimum HQS but also recognizes that certain judgments about the acceptability of the unit are left to the family. For example, the PHA must ensure that the unit contains the required sanitary facilities, but the family decides whether the cosmetic



appearance 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.

### **8-I.B. ADDITIONAL LOCAL REQUIREMENTS**

The PHA may impose variations to the HQS as long as the additional criteria are not likely to adversely affect the health or safety of participant families or severely restrict housing choices for families. HUD approval is required for variations to the HQS. HUD approval is not required if the variations are clarifications of HUD's acceptability criteria or performance standards [24 CFR 982.401(a)(4)].

#### **Thermal Environment [HCV GB p.10-7]**

DOH must define a "healthy living environment" for the local climate. This may be done by establishing a temperature that the heating system must be capable of maintaining, that is appropriate for the local climate.

- The heating system must be capable of maintaining an interior temperature of 65 degrees Fahrenheit between October 1 and May 1.

#### **Carbon Monoxide (CO) Detectors**

Governor Bill Ritter signed into law Colorado House Bill 1091 requiring the installation of carbon monoxide alarms in residential properties. This bill is called the Lofgren and Johnson Families Carbon Monoxide Safety Act and it takes effect on July 1, 2009.

#### **What does the law do?**

- This law requires homeowners and owners of rental property to install carbon monoxide alarms near the bedrooms (or other room lawfully used for sleeping purposes) in every home that is heated with natural gas or propane, has a gas appliance, has a fireplace, or has an attached garage.
- **This requirement applies to every home that is sold, remodeled, repaired, or leased to a new tenant after July 1, 2009.**

### **What type of home does this law apply to?**

This law applies to single-family homes, multi-family homes (including condominiums), homes that are owned by the residents and homes used for rental purposes that have either a gas or propane heater or appliance, a fireplace, or an attached garage.

### **How does this law affect owners of rental property after July 1, 2009?**

- For any home, or single family unit in a multi-family dwelling, used for rental purposes, this law requires that an operational carbon monoxide alarm be installed within 15 feet of the entrance to each bedroom (or other room lawfully used for sleeping purposes), or in any location otherwise specified by a state or local building code.
- For all existing tenants and prior to the commencement of a new tenant, the owner is required to:
  - Replace any carbon monoxide alarm that was stolen, removed, found missing, or is not operational prior to the new tenant moving in.
  - Ensure that any necessary batteries are provided to the new tenant at the beginning of his or her tenancy.
  - Replace any carbon monoxide alarm that has been stolen, removed, missing, or found non-operational during the tenant's occupancy so long as the tenant notifies the owner, or the owner's authorized agent, in writing.
  - Fix any deficiency in a carbon monoxide alarm so long as the tenant notifies the owner, or the owner's authorized agent, in writing.
  - Other than the above listed requirements, the owner is not responsible for the maintenance, repair, or replacement for the carbon monoxide alarm and/or required batteries.

### **How does this law affect tenants after July 1, 2009?**

- The tenant is required to:
  - Keep, test, and maintain all carbon monoxide alarms in good repair
  - Notify the owner, or the owner's authorized agent, in writing if the batteries of any carbon monoxide alarm need to be replaced

- Notify the owner, or the owner's authorized agent, in writing if any carbon monoxide alarm is stolen, removed, missing, or non-operational
  - Notify the owner, or the owner's authorized agent, in writing of any deficiency in any carbon monoxide alarm that the tenant cannot correct
- No person shall remove batteries from, or render inoperable, a carbon monoxide alarm except as part of the inspection, maintenance, repair, or replacement process.

### **Clarifications of HUD Requirements**

As permitted by HUD, DOH 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. Severely damaged or deteriorated sashes must be replaced.

Windows must be weather-stripped as needed to ensure a weather-tight seal.

Window screens must not present a cutting hazard (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.

#### ***Floors***

Any loose or warped boards that present a tripping hazard must be resecured and made level. If they cannot be leveled, they must be replaced.

#### ***Toilets***

All severely 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-I.C. LIFE-THREATENING CONDITIONS [24 CFR 982.404(a)]**

HUD requires the PHA 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 PHA notification.

- The following are considered life-threatening conditions:
  - Any condition that jeopardizes the security of the unit
  - Major plumbing leaks or flooding, waterlogged ceiling or floor in imminent danger of falling
  - Natural or LP gas or fuel oil leaks
  - Any electrical problem or condition that could result in shock or fire
  - Absence of a working heating system when outside temperature is below 60 degrees Fahrenheit
  - Utilities not in service, including no running hot water
  - Conditions that present the imminent possibility of injury
  - Absence of a functioning toilet in the unit
  - Absence of, or an inoperable smoke detector
  - Absence of, or an inoperable required Carbon Monoxide Detector

If an owner fails to correct life-threatening conditions as required by the PHA, the PHA will enforce the HQS in accordance with HUD requirements. See 8-II-G.

If a family fails to correct a family-caused life-threatening condition as required by the PHA, the PHA will enforce the family obligations. See 8-II.H.

The owner will be required to repair an inoperable smoke detector unless the PHA 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-I.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 appliances owned by the family
- Damage to the unit or premises caused by a household member or guest beyond normal wear and tear that results in a breach of the HQS. "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-I.E. SPECIAL REQUIREMENTS FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL [24 CFR 35.1225]**

If DOH 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, DOH 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 DOH, 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 DOH will take action in accordance with Section 8-II.G.

PHA 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-I.F. VIOLATION OF HQS SPACE STANDARDS [24 CFR 982.403]**

If DOH determines that a unit does not meet the HQS space standards because of an increase in family size or a change in family composition, DOH must issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, DOH must terminate the HAP contract in accordance with its terms.

## ***PART II: THE INSPECTION PROCESS***

### **8-II.A. OVERVIEW [24 CFR 982.405]**

#### **Types of Inspections**

DOH conducts the following types of inspections as needed. Each type of inspection is discussed in the paragraphs that follow.

- *Initial Inspections.* DOH conducts initial inspections in response to a request from the family to approve a unit for participation in the HCV program. The unit must pass the HQS inspection before the effective date of the HAP Contract.
- *Annual Inspections.* HUD requires DOH to inspect each unit under lease at least annually to confirm that the unit still meets HQS. The inspection may be conducted in conjunction with the family's annual reexamination but also may be conducted separately.
- *Special Inspections.* A special inspection may be requested by the owner, the family, or a third party as a result of problems identified with a unit between annual inspections.
- *Quality Control Inspections.* HUD requires that a sample of units be inspected by a supervisor or other qualified individual to evaluate the work of the inspector(s) and to ensure that inspections are performed in compliance with the HQS.

#### **Inspection of PHA-Owned Units [24 CFR 982.352(b)]**

DOH must obtain the services of an independent entity to perform all HQS inspections in cases where an HCV family is receiving assistance in DOH-owned unit. DOH-owned unit is defined as a unit that is owned by DOH that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by DOH). The independent agency must communicate the results of each inspection to the family and DOH. The independent agency must be approved by HUD, and may be the unit of general local government for DOH jurisdiction (unless DOH is itself the unit of general local government or an agency of such government).

#### **Housing Agency Owned Units (units owned by an agency that administers the Section 8 Program)**

Many Housing Agencies that DOH contracts out to administer the Section 8 Program are the owners and managers of the properties. The tax credit partnership assigns all ownership rights to the Housing Authorities.

There are usually several residents that live at these properties who are receiving Section 8 Voucher assistance from the Housing Authorities. If your agency owns and manages units and

administers the Section 8 program under a contract with DOH, the units may only be assisted under the Section 8 program if all the following conditions are satisfied:

1. Your agency 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 units owned by your agency can be freely selected by the family, without pressure or steering.
2. During assisted occupancy, the family may not benefit from any form of housing subsidy that is prohibited.
3. Your agency must obtain the services of an independent entity to perform the following the functions as required under the program rules:
  - (a) To determine rent reasonableness in accordance with §982.507. The independent agency shall communicate the rent reasonableness determination to the family and to your agency by completing the rent reasonable form.
  - (b) To assist the family to negotiate the rent to owner in accordance with §982.506.
  - (c) To inspect the unit for compliance with the HQS in accordance with §982.305(a) and §982. The independent agency shall communicate the results of each such inspection to the family and your agency by completing the Housing Quality Standards form.
4. The independent agency used to perform these functions must be approved by DOH. The independent agency may be the unit of general local government for your jurisdiction (unless DOH is itself the unit of general local government or an agency of such government), or may be another DOH approved independent agency. You must submit to DOH a copy of the MOU for approval.
5. Your agency may compensate the independent agency from your ongoing administrative fee income for the services performed by the independent agency. You and the independent agency may not charge the family any fee or charge for the services provided by the independent agency.
6. Your agency must send the HAP contract for these assisted units to DOH for approval and signature.

### **Inspection Costs**

DOH may not charge the family or owner for unit inspections or reinspections [24 CFR 982.405(e)]. In the case of inspections of PHA-owned units, DOH may compensate the independent agency from ongoing administrative fee for inspections performed. DOH 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 DOH to inspect the unit at reasonable times with reasonable notice [24 CFR 982.551(d)].

- Both the family and the owner will be given reasonable notice of all inspections. Except in the case of a life threatening emergency, reasonable notice is considered to be not less than 48 hours. Inspections may be scheduled between 8:00 a.m. and 7:00 p.m. Generally inspections will be conducted on business days only. In the case of a life threatening emergency, DOH will give as much notice as possible, given the nature of the emergency.

## **Owner and Family Inspection Attendance**

HUD permits DOH 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, DOH will inspect the unit in the presence of the owner or owner's representative whenever possible. The presence of a family representative is also preferred, but is not required.

## **8-II.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 PHAs with fewer than 1,250 budgeted units to complete the initial inspection, determine whether the unit satisfies HQS, and notify the owner and the family of the determination within 15 days of submission of the Request for Tenancy Approval (RFTA). For PHAs with 1,250 or more budgeted units, to the extent practicable such inspection and determination must be completed within 15 days. The 15-day period is suspended for any period during which the unit is not available for inspection [982.305(b)(2)].

- To the extent practical, DOH will complete the initial inspection, determine whether the unit satisfies HQS, and notify the owner and the family of the determination within 15 days of submission of the Request for Tenancy Approval (RFTA).
- In cases where DOH is not able to complete the inspection within 15-days, the file will be documented as to the reason it was not practical.

## **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 (24-hours or 30-days). If requested by the owner, the time frame for correcting the deficiencies may be extended by DOH for good cause. DOH will re-inspect the unit within 5 business days of the date the owner notifies DOH that the required corrections have been made.

If the time period for correcting the deficiencies (or any PHA-approved extension) has elapsed, or the unit fails HQS at the time of the re-inspection, DOH will notify the owner and the family that the unit has been rejected and that the family must search for another unit. DOH 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 after the owner has made repairs, if they are unable to locate another suitable 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, DOH will allow the utilities to be placed in service after the unit has met all other HQS requirements. DOH will re-inspect the unit to confirm that utilities are operational before the HAP contract is executed by DOH.

### **Appliances**

- If the family is responsible for supplying the stove and/or refrigerator, DOH 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 DOH. DOH 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-II.C. ANNUAL HQS INSPECTIONS [24 CFR 982.405(a)]**

### **Scheduling the Inspection**

Each unit under HAP contract must be inspected within 12 months of the last full HQS inspection.

- If an adult family member cannot be present on the scheduled date, the family should request that DOH reschedule the inspection. DOH and family will agree on a new inspection date that generally should take place within 5 business days of the originally scheduled date. DOH 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, DOH will automatically schedule a second inspection. If the family misses two scheduled inspections without PHA approval, DOH will consider the family to have violated its obligation to make the unit available for

inspection. This may result in termination of the family's assistance in accordance with Chapter 12.

#### **8-II.D. SPECIAL INSPECTIONS [HCV GB, p. 10-30]**

DOH will conduct a special inspection if the owner, family, or another source reports HQS violations in the unit.

- Special inspections will occur within 10-days of receipt of the verbal or written request for a special inspection. In the event of a possible life threatening HQS violation, the inspection will occur within 48 hours.
- During a special inspection, DOH 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 DOH may elect to conduct a full annual inspection.

#### **8-II.E. QUALITY CONTROL INSPECTIONS [24 CFR 982.405(b); HCV GB, p. 10-32]**

HUD requires DOH 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 may include (1) each type of inspection (initial, annual, and special), (2) inspections completed by each inspector, and (3) units from a cross-section of neighborhoods.

#### **8-II.F. INSPECTION RESULTS AND REINSPECTIONS FOR UNITS UNDER HAP CONTRACT**

##### **Notification of Corrective Actions**

The owner and the family will be notified in writing of the results of all inspections. When an inspection identifies HQS failures, DOH will determine (1) whether or not the failure is a life threatening condition and (2) whether the family or owner is responsible.

- When life-threatening conditions are identified, DOH will immediately notify both parties by telephone, facsimile, or email. The notice will specify who is responsible for correcting the violation. The corrective actions must be taken within 24 hours of DOH's notice.
- When failures that are not life-threatening is identified, DOH will send the owner and the family a written notification of the inspection results within 5 business days of the inspection. The written notice will specify who is responsible for correcting the violation, and the time frame within which the failure must be corrected. Generally not more than 30 days will be allowed for the correction.

- The notice of inspection results will inform the owner that if life-threatening conditions are not corrected within 24 hours, and non-life threatening conditions are not corrected within the specified time frame (or any PHA-approved extension), the owner's HAP will be abated in accordance with PHA policy (see 8-II.G.). Likewise, in the case of family caused deficiencies, the notice will inform the family that if corrections are not made within the specified time frame (or any PHA-approved extension, if applicable) the family's assistance will be terminated in accordance with PHA policy (see Chapter 12).

## **Extensions**

For conditions that are life-threatening, DOH cannot grant an extension to the 24 hour corrective action period. For conditions that are not life-threatening, DOH may grant an exception to the required time frames for correcting the violation, if DOH determines that an extension is appropriate [24 CFR 982.404].

- Extensions will be granted in cases where DOH 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, Extensions may be granted for 30-days at a time but will not exceed 60 days total, 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.

## **Reinspections**

- DOH requires a physical reinspection on any initial inspection that fails HQS.
- DOH does not require a physical reinspection on annual or special inspection re-inspection to determine that corrections have been made. Rather than physically reinspect, landlords may submit receipts and/or work orders and sign a certification that the corrections have been made.
- The family and owner will be given reasonable notice of the re-inspection appointment. If the deficiencies have not been corrected by the time of abatement, DOH will send a notice of HAP contract termination to the owner and tenant, in accordance with PHA policies. If DOH is unable to gain entry to the unit in order to conduct the scheduled re-inspection, DOH will consider the family to have violated its obligation to make the unit available for inspection. This may result in termination of the family's assistance in accordance with Chapter 12.

## **8-II.G. ENFORCING OWNER COMPLIANCE**

If the owner fails to maintain the dwelling unit in accordance with HQS, DOH 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 DOH, HUD requires DOH to abate housing assistance payments no later than the first of the month following the specified correction period (including any approved extension) [24 CFR 985.3(f)]. No retroactive payments will be made to the owner for the period of time the rent was abated. Owner rents are not abated as a result of HQS failures that are the family's responsibility.

- DOH will make all HAP abatements effective the first of the month following the expiration of DOH specified correction period (including any extension).
- DOH will inspect abated units within 10 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**

DOH must decide how long any abatement period will continue before the HAP contract will be terminated. DOH 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. DOH will issue a voucher to permit the family to move to another unit as described in Chapter 10.

- The maximum length of time that HAP may be abated is 30 days. However, if the owner completes corrections and notifies DOH before the termination date of the HAP contract, DOH 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 DOH is 30 days.

## **8-II.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 DOH (and any extensions), DOH 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.

### ***PART III: RENT REASONABLENESS [24 CFR 982.507]***

#### **8-III.A. OVERVIEW**

No HAP contract can be approved until DOH has determined that the rent for the unit is reasonable. The purpose of the rent reasonableness test is to ensure that a fair rent is paid for each unit rented under the HCV program.

HUD regulations define a reasonable rent as one that does not exceed the rent charged for comparable, unassisted units in the same market area. HUD also requires that owners not charge more for assisted units than for comparable units on the premises. This part explains the method used to determine whether a unit's rent is reasonable.

#### **PHA-Owned Units [24 CFR 982.352(b)]**

Your agency must obtain the services of an independent entity to perform the following the functions as required under the program rules:

- a. To determine rent reasonableness in accordance with §982.507. The independent agency shall communicate the rent reasonableness determination to the family and to your agency by completing the rent reasonable form.
  - b. To assist the family to negotiate the rent to owner in accordance with §982.506.
  - c. To inspect the unit for compliance with the HQS in accordance with §982.305(a) and §982. The independent agency shall communicate the results of each such inspection to the family and your agency by completing the Housing Quality Standards form.
1. The independent agency used to perform these functions must be approved by DOH. The independent agency may be the unit of general local government for your jurisdiction (unless DOH is itself the unit of general local government or an agency of such government), or may be another DOH approved independent agency. You must submit to DOH a copy of the MOU for approval.
  2. Your agency may compensate the independent agency from your ongoing administrative fee income for the services performed by the independent agency. You and the independent agency may not charge the family any fee or charge for the services provided by the independent agency.
  3. Your agency must send the HAP contract for these assisted units to DOH for approval and signature.

#### **8-III.B. WHEN RENT REASONABLENESS DETERMINATIONS ARE REQUIRED**

##### **Owner-Initiated Rent Determinations**

DOH 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. DOH (or independent agency in the case of PHA-owned units) will assist the family with the negotiations upon request. At initial occupancy DOH 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 in accordance with the owner's lease. For rent increase requests after initial lease-up, DOH 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 DOH will consider unit size and length of tenancy in the other units.
- DOH 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 DOH's receipt of the owner's request or on the date specified by the owner, whichever is later.

### **PHA- and HUD-Initiated Rent Reasonableness Determinations**

HUD requires DOH 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 DOH to make a determination at any other time. DOH may decide that a new determination of rent reasonableness is needed at any time.

- In addition to the instances described above, DOH will make a determination of rent reasonableness at any time after the initial occupancy period if: (1) DOH determines that the initial rent reasonableness determination was in error or (2) DOH determines that the information provided by the owner about the unit or other units on the same premises was incorrect.

## **8-III.C. HOW COMPARABILITY IS ESTABLISHED**

### **Factors to Consider**

HUD requires PHAs to take into consideration the factors listed below when determining rent comparability. DOH may use these factors to make upward or downward adjustments to the rents of comparison units when the units are not identical to the HCV-assisted unit.

- Location and age
- Unit size including the number of rooms and square footage of rooms

- The type of unit including construction type (e.g., single family, duplex, garden, low-rise, high-rise)
- The quality of the units including the quality of the original construction, maintenance and improvements made.
- Amenities, services, and utilities included in the rent

### **Units that Must not be Used as Comparables**

Comparable units must represent unrestricted market rents. Therefore, units that receive some form of federal, state, or local assistance that imposes rent restrictions cannot be considered comparable units. These include units assisted by HUD through any of the following programs: Section 8 project-based assistance, Section 236 and Section 221(d)(3) Below Market Interest Rate (BMIR) projects, HOME or Community Development Block Grant (CDBG) program-assisted units in which the rents are subsidized; units subsidized through federal, state, or local tax credits; units subsidized by the Department of Agriculture rural housing programs, and units that are rent-controlled by local ordinance.

*Note:* Notice PIH 2010-18, issued May 10, 2010, and 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 DOH 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 DOH information regarding rents charged for other units on the premises.

### **Assisted Units on the Premises**

As noted in HUD Notice PIH 2009-51, in determining rent reasonableness, DOH must ensure that the rents paid for HCV assisted units do not exceed the rents for comparable units that are not assisted under a Federal, State, or local government program. Units for which the owner has simply decided of his or her own volition to charge rents that are below what other tenants are charged and what the market might actually bear are not assisted units for purposes of rent reasonableness determinations. Rents for these particular units in the property must be considered to establish if an HCV rent to owner is reasonable.

However, in addition to units assisted under a Federal, State or local government program, the following units are also considered to be assisted units on the premises and would not be taken into consideration for rent reasonableness determinations:

(A) Units where the rents and/or rent increases are controlled or restricted by law or a court order, so long as the law or court order does not also apply to voucher participants. DOH is responsible for verifying the existence and applicability of the law or court order prior to excluding the units from the rent reasonableness determination.

(B) In cases of a property undergoing a Housing Conversion Action, units occupied by tenants on the date of the eligibility event who do not receive vouchers are considered assisted if the owner chooses to continue below market rents to those families by offering lower rents or other rent concessions to the impacted families. If the owner of such a property intends to charge lower rents to the non-voucher tenants living in the property at the time of conversion, the owner must provide written notice to DOH and a list of the covered families, a description of the concession, the duration of the lower rents or concessions, the units in which the families are residing, and copies of the families' leases.

Owners of multifamily properties that underwent a Housing Conversion Action prior to the issuance of this Notice may also provide such a notice to DOH at the time of a subsequent rent increase for voucher families, identifying families that resided in the property on the date of the eligibility event that did not receive a voucher. The owner must provide the same information and documentation that is required for new conversion actions, including evidence that the covered families resided in the property on the date of the eligibility event. DOH, upon verifying the information submitted by the owner, must then exclude those units from future rent reasonableness determinations for the duration of the lower rents or concessions.

### **Rent to Owners in subsidized projects under the Housing Choice Voucher (HCV) Program**

According to Notice PIH-2011-1, owners of units subsidized by an insured or non-insured Section 236 project, Section 202 project, Section 221(d)(3) below market interest rate (BMIR) project, or a Section 515 project of the Rural Development Program, receive lower mortgage interest rates or other subsidies in order to maintain the affordability of the units at a below market rate. As such, the rent to owner should be set at the subsidized rental rate, rather than the market rent for the area. This guidance is intended to remind PHAs of the manner in which the rent to owner is determined when an HCV participant leases a unit in a subsidized property.

As noted in 24 C.F.R.982.521, when a family leases a unit under the HCV program in an insured or non-insured Section 236 project, Section 202 project, Section 221(d)(3) below market interest rate (BMIR) project, or a Section 515 project of the Rural Development Program, the rent to owner must equal the rent set by the respective subsidy program. In order to confirm the subsidized rental rate for Sections 236, 202, 221(d)(3) BMIR or Section 515 projects, contact your local Multifamily HUB.

The federally subsidized projects discussed above may, in some circumstances, contain units that also receive the benefit of a State, local, or federal housing subsidy (e.g., Section 8 project-based housing assistance payments contracts). Such units are ineligible units under the HCV program. In accordance with program regulations at 24 C.F.R. 982.352 (c), a HCV family may not receive the benefit of tenant-based assistance under the HCV program for a unit in which there is any other duplicative federal, State or local housing subsidy.



## **8-III.D. PHA RENT REASONABLENESS METHODOLOGY**

### **How Market Data Is Collected**

- DOH will collect and maintain data on market rents in DOH's jurisdiction. Information sources include newspapers, realtors, market surveys, inquiries of owners and other available sources.

### **How Rents Are Determined**

DOH 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. DOH will not approve a lease until DOH determines that the initial rent to owner is a reasonable rent.

DOH must re-determine the reasonable rent:

1. Before any increase in the rent to owner;
2. If there is a 5 percent decrease in the published FMR in effect 60 days before the contract anniversary (for the unit size rented by the family) as compared with the FMR in effect one year before the contract anniversary;
3. If directed by HUD; and
4. Based on a need identified by DOH's auditing system.

DOH may elect to re-determine rent reasonableness at any other time.

At all times during the assisted tenancy, the rent to owner may not exceed the reasonable rent as most recently determined or re-determined by DOH.

The owner will be advised that by accepting each monthly housing assistance payment he or she is certifying that the rent to owner is not more than rent charged by the owner for comparable unassisted units in the premises.

If requested, the owner must give DOH information on rents charged by the owner for other units in the premises or elsewhere. The data for other unassisted units will be gathered from market surveys.

The market areas for rent reasonableness are census tracts/neighborhoods within DOH's jurisdiction. Subject units within a defined housing market area will be compared to similar units within the same area.

DOH bases its rent reasonableness determinations on the following:

1. The state, city, real estate agents, or banks;

2. Classified ads, multiple listings, etc.; and
3. Owner -provided rent rolls of comparable units, confirmed by DOH.

DOH shall take the following unit characteristics into account in making rent reasonable determinations:

1. Size (number of bedrooms/square footage);
2. Location;
3. Quality and condition of the unit;
4. Amenities (number of bathrooms, washer/dryers, on site services, etc.);
5. Housing services;
6. Age of unit;
7. Unit type;
8. Maintenance; and
9. Utilities.

### **Change in Rent [CFR 982.308(g)]**

The owner is required to notify DOH, in writing, at least 60 days before any change in the amount of rent to owner is scheduled to go into effect. Any requested change in rent to owner will be subject to rent reasonableness requirements [24 CFR 982.507].

DOH will notify the owner of the rent DOH can approve based upon its analysis of rents for comparable units. The owner may submit information about other comparable units in the market area. DOH 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 DOH's request for information or the owner's request to submit information.

## **EXHIBIT 8-1: OVERVIEW OF HUD HOUSING QUALITY STANDARDS**

Note: This document provides an overview of HQS. For more detailed information see the following documents:

- 24 CFR 982.401, Housing Quality Standards (HQS)
- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (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 less than 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 DOH
- 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 DOH). 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 (3/01) 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 or absence of storm doors and windows and other energy conservation items are acceptable.
- *Illumination and Electricity.* The family may determine whether the location and the number of outlets and fixtures (over and above those required to meet HQS standards) are acceptable or if the amount of electrical service is adequate for the use of appliances, computers, or stereo equipment.
  - *Structure and Materials.* Families may determine whether minor defects, such as lack of paint, or worn flooring or carpeting will affect the livability of the unit.
- *Indoor Air.* Families may determine whether window and door screens, filters, fans, or other devices for proper ventilation are adequate to meet the family's needs. However, if screens are present they must be in good condition.
- *Sanitary Conditions.* The family determines whether the sanitary conditions in the unit, including minor infestations, are acceptable.
- *Neighborhood conditions.* Families may determine whether neighborhood conditions such as the presence of drug activity, commercial enterprises, and convenience to shopping will affect the livability of the unit.

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.

In order for DOH to assist a family in a particular dwelling unit, or execute a Housing Assistance Payments (HAP) contract with the owner of a dwelling unit, the local contractor 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 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 DOH, with no conflicts of interest [24 CFR 982.306]
- For families initially leasing a unit only: Where the gross rent of the unit exceeds the applicable payment standard for the family, the share of rent to be paid by the family cannot exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]

## **9-I.A. TENANT SCREENING**

DOH 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)].

DOH may elect to screen applicants for family behavior or suitability for tenancy. See Chapter 3 for a discussion of DOH's policies with regard to screening applicant families for program eligibility [24 CFR 982.307(a) (1)].

The owner is responsible for screening and selection of the family to occupy the owner's unit. At or before PHA approval of the tenancy, DOH must inform the owner that screening and selection for tenancy is the responsibility of the owner [24 CFR 982.307(a) (2)]. DOH must also inform the owner or manager of his/her rights and obligations under the Violence against Women Act of 2013 (VAWA) [24 CFR 5.2005(a) (2)].

If requested, DOH must provide the owner with the family's current and prior address (as shown in DOH records); and the name and address (if known to DOH) of the landlord at the family's current and prior address. [24 CFR 982.307 (b) (1)]. In the case of VAWA or other legal protections the address information will not be provided.

DOH is permitted, but not required, to offer the owner other information in DOH's possession about the tenancy history or drug trafficking of family members [24 CFR 982.307(b) (2)].

DOH's policy on providing information to the owner must be included in the family's briefing packet [24 CFR 982.307(b) (3)].

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

- DOH will not screen applicants for family behavior or suitability for tenancy.
- DOH will not provide additional screening information to the owner.
- DOH will not provide any additional information in its possession about the family's tenancy.

## **9-I.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 DOH to approve the assisted tenancy in the selected unit.

The owner and the family must submit two documents to DOH:

- Completed Request for Tenancy Approval (RFTA) – Form HUD-52517



- Copy of the proposed lease 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 DOH 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 DOH 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) must be submitted as hard copies, in-person, by mail, or by fax.
- The family may not submit, and DOH will not process, more than one (1) RFTA at a time.

When the family submits the RFTA, DOH 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, DOH will notify the family and the owner of the deficiencies.
- Missing information and/or missing documents will only be accepted as hard copies, in-person, by mail, or by fax. DOH will not accept missing information over the phone.

When the family submits the RFTA and proposed lease, DOH 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, DOH will notify the family and the owner of the discrepancies.
- Corrections to the terms of the RFTA and/or the proposed lease will only be accepted as hard copies, in-person, by mail or by fax. Because of the time

sensitive nature of the tenancy approval process, DOH will attempt to communicate with the owner and family by phone, fax, or email.

Because of the time sensitive nature of the tenancy approval process, the PHA will attempt to communicate with the owner and family by phone, fax, or email. The PHA will use mail when the parties cannot be reached by phone, fax, or email.

### **Rent Concessions**

The Housing Choice Voucher Program allows an owner to propose a rent concession to a tenant as an incentive to rent the unit. Owners are required to inform DOH of the proposed rent concession on the Request for Tenancy Approval form and in the proposed lease. DOH will review these documents to ensure that the rent concession meets DOH standards. DOH will approve or deny rent concessions using the following guidelines:

#### Acceptable Concessions

- Concessions that provide tenants with a set dollar amount off of their monthly rent for the entire term of the lease.
- Concessions that state if the tenant is late one month paying rent, the tenant is charged a late fee in the amount of the rent concession for that specific month.
- Concessions that state if the tenant does not fulfill the entire term of lease, the tenant will have to pay back the concession.

#### Unacceptable Rent Concessions

- Concessions that give the tenant a lower rate for only part of the lease term.
- Concessions that keep the rent at a fixed amount until a late payment has been made.
- Concessions that offer a free first month of rent to the tenant.
- Concessions that waive the pro-rated amount when a tenant moves in.

DOH will deny the lease if it contains an unacceptable rent concession. In these instances, DOH will attempt to negotiate an approvable concession with the landlord. If the owner is unwilling to negotiate, DOH will deny the tenant's request to reside in the unit.

### **9-I.C. OWNER PARTICIPATION**

DOH does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where DOH may deny approval of an assisted tenancy based on past owner behavior, conflict of interest, or other owner-related issues. There are also criteria for

which the PHA must disapprove an owner. No owner has a right to participate in the HCV program [24 CFR 982.306(e)]

See Chapter 13 for a full discussion of owner qualification to participate in the HCV program.

### **9-I.D. ELIGIBLE UNITS**

There are a number of criteria that a dwelling unit must meet in order to be eligible for assistance under the voucher program. Generally, a voucher-holder family may choose any available rental dwelling unit on the market in DOH's jurisdiction. This includes the dwelling unit they are currently occupying.

#### **Ineligible Units [24 CFR 982.352(a)]**

DOH may not assist a unit under the voucher program if the unit is a public housing or Indian housing unit; a unit receiving project-based assistance under section 8 of the 1937 Act (42 U.S.C. 1437f); nursing homes, board and care homes, or facilities providing continual psychiatric, medical, or nursing services; college or other school dormitories; units on the grounds of penal, reformatory, medical, mental, and similar public or private institutions; a unit occupied by its owner or by a person with any interest in the unit.

#### **PHA-Owned Units [24 CFR 982.352(b)]**

Otherwise eligible units that are owned or substantially controlled by DOH issuing the voucher may also be leased in the voucher program. In order for a DOH-owned unit to be leased under the voucher program, the unit must not be ineligible housing and DOH 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 DOH-owned unit without any pressure or steering by DOH.

Many Housing Agencies that DOH contracts out to administer the Section 8 Program are the owners and managers of the properties. The tax credit partnership assigns all ownership rights to the Housing Authorities.

There are usually several residents that live at these properties who are receiving Section 8 Voucher assistance from the Housing Authorities. If your agency owns and manages units and administers the Section 8 program under a contract with DOH, the units may only be assisted under the Section 8 program if all the following conditions are satisfied:

1. Your agency 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 units owned by your agency can be freely selected by the family, without pressure or steering.
2. During assisted occupancy, the family may not benefit from any form of housing subsidy that is prohibited.
3. Your agency must obtain the services of an independent entity to perform the following the functions as required under the program rules:

- (a) To determine rent reasonableness in accordance with §982.507. The independent agency shall communicate the rent reasonableness determination to the family and to your agency by completing the rent reasonable form.
  - (b) To assist the family to negotiate the rent to owner in accordance with §982.506.
  - (c) To inspect the unit for compliance with the HQS in accordance with §982.305(a) and §982. The independent agency shall communicate the results of each such inspection to the family and your agency by completing the Housing Quality Standards form.
4. The independent agency used to perform these functions must be approved by DOH. The independent agency may be the unit of general local government for your jurisdiction (unless DOH is itself the unit of general local government or an agency of such government), or may be another DOH approved independent agency. You must submit to DOH a copy of the MOU for approval.
  5. Your agency may compensate the independent agency from your ongoing administrative fee income for the services performed by the independent agency. You and the independent agency may not charge the family any fee or charge for the services provided by the independent agency.
  6. Your agency must send the HAP contract for these assisted units to DOH for approval and signature.

### **Assisted Living Facilities**

Any participant requesting to use their voucher in an assisted living facility will be issued a 1-bedroom voucher. The first step is to determine what is considered rent/room. The rent/room rate is determined by taking the total paid for room and board minus the food stamp allowance. On the 50058 the payment standard will be the 1-bedroom and the gross rent will be the rent/room rate calculated above.

- In order for an Assisted Living Facility to be approved, the participant must have his or her own bedroom. No Assisted Living Facilities where a participant is required to share a bedroom will be approved.
- When completing the Request for Tenancy Approval use the calculated rent/room rate in the proposed rent field.
- When completing the Rent Reasonableness Form, use the calculated rent/room rate as the monthly rental amount.

DOH will also approve leases for the following housing types:

1. Single-family dwellings
2. Apartments
3. Manufactured housing
4. Manufactured home space rentals

## 5. Lease-purchase agreements

### **Special Housing Types [24 CFR 982 Subpart M]**

HUD regulations permit, but do not generally require, DOH 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 DOH has chosen to allow.

The regulations do require DOH to permit use of any special housing type if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

### **Duplicative Assistance [24 CFR 982.352(c)]**

A family may not receive the benefit of HCV tenant-based assistance while receiving the benefit of any of the following forms of other housing subsidy, for the same unit or for a different unit:

- Public or Indian housing assistance;
- Other Section 8 assistance (including other tenant-based assistance);
- Assistance under former Section 23 of the United States Housing Act of 1937 (before amendment by the Housing and Community Development Act of 1974);
- Section 101 rent supplements;
- Section 236 rental assistance payments;
- Tenant-based assistance under the HOME Program;
- Rental assistance payments under Section 521 of the Housing Act of 1949 (a program of the Rural Development Administration);
- Any local or State rent subsidy;
- Section 202 supportive housing for the elderly;
- Section 811 supportive housing for persons with disabilities; (11) Section 202 projects for non-elderly persons with disabilities (Section 162 assistance); or
- Any other duplicative federal, State, or local housing subsidy, as determined by HUD. For this purpose, 'housing subsidy' does not include the housing component of a welfare payment, a social security payment received by the family, or a rent reduction because of a tax credit.

### **Housing Quality Standards (HQS) [24 CFR 982.305 and 24 CFR 982.401]**

In order to be eligible, the dwelling unit must be in decent, safe and sanitary condition. This determination is made using HUD's Housing Quality Standards (HQS) and/or equivalent state or local standards approved by HUD. See Chapter 8 for a full discussion of the HQS standards, as well as the process for HQS inspection at initial lease-up.

### **Unit Size**

In order to be eligible, the dwelling unit must be appropriate for the number of persons in the household. A family must be allowed to lease an otherwise acceptable dwelling unit with fewer bedrooms than the number of bedrooms stated on the voucher issued to the family, provided the unit meets the applicable HQS space requirements [24 CFR 982.402(d)]. The family must be allowed to lease an otherwise acceptable dwelling unit with more bedrooms than the number of bedrooms stated on the voucher issued to the family as long as it meets affordability requirements. See Chapter 5 for a full discussion of subsidy standards.

### **Rent Reasonableness [24 CFR 982.305 and 24 CFR 982.507]**

In order to be eligible, the dwelling unit must have a reasonable rent. The rent must be reasonable in relation to comparable unassisted units in the area and must not be in excess of rents charged by the owner for comparable, unassisted units on the premises. See Chapter 8 for a full discussion of rent reasonableness and the rent reasonableness determination process.

### **Rent Burden [24 CFR 982.508]**

Where a family is initially leasing a unit, the family share cannot exceed 40 percent of the family's adjusted monthly income. The term "family share" refers to the amount the family pays toward rent and utilities. The gross rent for the unit minus the total housing assistance payment (HAP) for the unit equals the family share. See Chapter 6 for a discussion of calculation of gross rent, the use of payment standards, and calculation of family income, family share of rent and HAP.

## **9-I.E. LEASE AND TENANCY ADDENDUM**

The family and the owner must execute a written dwelling lease agreement for the assisted unit. This written lease is a contract between the tenant family and the owner; DOH 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 for the assisted tenants is in such standard form.

All provisions in the HUD-required Tenancy Addendum must be added word-for-word to the owner's standard lease form. The Tenancy Addendum includes the HUD requirements for the tenancy. Because it is a part of the lease, the tenant shall have the right to enforce the Tenancy Addendum against the owner. If there is a conflict between the owner's lease and the Tenancy Addendum, the terms of the Tenancy Addendum shall prevail over any other provisions of the lease.

- DOH 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 DOH to approve a shorter initial lease term if certain conditions are met.

- DOH allows a minimum 6 month lease. Terms less than 6 months requires a request for an exception as outlined below.

Exception requests as a result of industry/market conditions and/or requests for reasonable accommodations will be evaluated on a case by case basis.

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 stated in the dwelling lease if they exist.

DOH 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. DOH may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants. However, if DOH chooses to do so, language to this effect must be added to Part A of the HAP contract [Form HUD-52641].

- DOH will allow the owner to collect any security deposit amount the owner determines is appropriate. Therefore, no modifications to the HAP contract will be necessary.
- DOH does not provide security deposit assistance.

### **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 as approved by the PHA and minus DOH'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)].

- DOH permits owners and families to execute separate, non-lease agreements for services, appliances (other than range and refrigerator) and other items that are not included in the lease.
- Any items, appliances, or other services that are customarily provided to unassisted families as part of the dwelling lease with those families, or are permanently installed in the dwelling unit must be included in the dwelling lease for the assisted family (such as air conditioning, dishwasher or garage). These items, appliances or services cannot be placed under a separate non-lease agreement between the owner and family. Side payments for additional rent, or for items, appliances or services customarily provided (such as air conditioning, dishwasher or garage) to unassisted families as part of the dwelling lease for those families, are prohibited.
- Any items, appliances, or other services that are not customarily provided to unassisted families as part of the dwelling lease with those families, are not permanently installed in the dwelling unit and where the family has the sole option of not utilizing the item, appliance or service, may be included in a separate non-lease agreement between the owner and the family.
- The family is not liable and cannot be held responsible under the terms of the assisted dwelling lease for any charges pursuant to a separate non-lease agreement between the owner and the family. Non-payment of any charges pursuant to a



separate non-lease agreement between the owner and the family cannot be a cause for eviction or termination of tenancy under the terms of the assisted dwelling lease.

- Separate non-lease agreements that involve additional items, appliances or other services may be considered amenities offered by the owner and may be taken into consideration when determining the reasonableness of the rent for the property.
- For single-family houses, DOH will not accept separate agreements for additional charges for garages, basements, or other structures or amenities located on the property.
- If the family and owner have come to a written agreement on the amount of allowable charges for a specific item, so long as those charges are reasonable and not a substitute for higher rent, they will be allowed. All agreements for special items or services must be attached to the lease approved by DOH. If agreements are entered into at a later date, they must be approved by DOH and attached to the lease.
- Separate agreements for optional additional charges will not be used in the calculation of a tenant's affordability limit, but may be used in the calculation of reasonable rent for the property.

## PHA Review of Lease

DOH will review the dwelling lease for compliance with all applicable requirements.

- If the dwelling lease is incomplete or incorrect, DOH 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.
- Because the initial leasing process is time-sensitive, DOH will attempt to communicate with the owner and family by phone, fax, or email. DOH will use mail when the parties can't be reached by phone, fax, or email.

DOH is permitted, but is not required, to review the lease to determine if the lease complies with State and local law and is permitted to decline to approve the tenancy if DOH determines that the lease does not comply with State or local law [24 CFR 982.308(c)]

- DOH will not review the owner's lease for compliance with state/local law.

### 9-I.F. TENANCY APPROVAL [24 CFR 982.305]

After receiving the family's Request for Tenancy Approval, with proposed dwelling lease, DOH must promptly notify the family and owner whether the assisted tenancy is approved.

Prior to approving the assisted tenancy and execution of a HAP contract, DOH must ensure that all required actions and determinations, discussed in Part I of this chapter have been completed.

These actions include ensuring that the unit is eligible; the unit has been inspected by DOH 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 DOH, 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)].

DOH 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 DOH, DOH 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. DOH will not accept corrections over the phone.

If the PHA determines that the tenancy cannot be approved for any reason, the owner and the family will be notified in writing and given the opportunity to address any reasons for

disapproval. The PHA will instruct the owner and family of the steps that are necessary to obtain approval of 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 or rent reasonableness, DOH will attempt to negotiate the rent with the owner. If a new, approvable rent is negotiated, the tenancy will be approved. If the owner is not willing to negotiate an approvable rent, the family must continue to search for eligible housing within the timeframe of the issued voucher.

### **9-I.G. HAP CONTRACT EXECUTION [24 CFR 982.305]**

HAP contract is a written agreement between the PHA and the owner of the dwelling unit. Under the HAP contract, the PHA agrees to make housing assistance payments to the owner on behalf of the family, and the owner agrees to comply with all program requirements as stated in the HAP contract.

The HAP contract form is prescribed by HUD.

If the PHA has given approval for the family of the assisted tenancy, the owner and the PHA must 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)].

DOH is permitted to execute a HAP contract even if the funding currently available does not extend for the full term of the HAP contract.

DOH 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.

DOH 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, DOH 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 DOH 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 DOH. DOH will ensure that both the owner and the assisted family receive copies of the dwelling lease.
- The owner and DOH will execute the HAP contract. DOH will not execute the HAP contract until the owner has submitted The State of Colorado's form W-9. DOH will ensure that the owner receives a copy of the executed HAP contract.

See Chapter 13 for a discussion of the HAP contract and contract provisions.

### **9-I.H. CHANGES IN LEASE OR RENT [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 DOH a copy of such changes. The lease, including any changes, must remain in accordance with the requirements of this chapter.

Generally, PHA approval of tenancy and execution of a new HAP contract are not required for changes in the lease. However, under certain circumstances, the execution of a new lease and HAP contract are required. 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 proposed changes. A new tenancy must then be approved in accordance with this chapter.

Where the owner is changing the amount of the rent to the owner, the owner must notify DOH at least 60 days before any such changes go into effect [24 CFR 982.308(g)(4)]. DOH 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 terminate the tenancy 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, DOH will determine whether the requested increase is reasonable within 10 business days of receiving the request from the owner.
- Rent increases will go into effect on the first of the month following the 60 day period after the owner notifies DOH 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 housing choice is a hallmark of the housing choice voucher (HCV) program. In general, HUD regulations impose few restrictions on where families may live or move with HCV assistance. This chapter sets forth HUD regulations and PHA policies governing moves within or outside DOH's jurisdiction in two parts:

Part I: Moving with Continued Assistance. This part covers the general rules that apply to all moves by a family assisted under DOH's HCV program, whether the family moves to another unit within DOH's jurisdiction or to a unit outside DOH's jurisdiction under portability.

Part II: Portability. This part covers the special rules that apply to moves by a family under portability, whether the family moves out of or into DOH's jurisdiction. This part also covers the special responsibilities that DOH has under portability regulations and procedures.

## ***PART I: MOVING WITH CONTINUED ASSISTANCE***

### **10-I.A. ALLOWABLE MOVES**

HUD lists six regulatory conditions and the statutory condition under VAWA in which an assisted family is allowed to move to a new unit with continued assistance. Permission to move is subject to the restrictions set forth in section 10-I.B.

- The family has a right to terminate the lease on notice to the owner (for the owner's breach or otherwise) and has given a notice of termination to the owner in accordance with the lease [24 CFR 982.314(b)(3)]. If the family terminates the lease on notice to the owner, the family must give DOH a copy of the notice at the same time [24 CFR 982.314(d)(1)].
- 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 must give DOH a copy of the termination agreement.
- The owner has given the family a notice to vacate, has commenced an action to evict the family, or has obtained a court judgment or other process allowing the owner to evict the family [24 CFR 982.314(b)(2)]. The family must give DOH a copy of any owner eviction notice [24 CFR 982.551(g)].
- 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 [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 DOH, 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)].
  - If a family requests permission to move with continued assistance based on a claim that the move is necessary to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault or stalking, DOH will request documentation in accordance with section 16-IX.D of this plan.
  - DOH 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 DOH will document the waiver in the family's file.
- DOH has terminated the assisted lease for the family's unit for the owner's breach [24 CFR 982.314(b)(1)(i)].
- DOH 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,

DOH must issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for the family, DOH 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 DOH gives notice to the owner. [24 CFR 982.403(a) and (c)]

## **10-I.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)]. HUD specifies two conditions under which DOH may deny a family permission to move and two ways in which DOH may restrict moves by a family.

### **Denial of Moves**

HUD regulations permit DOH to deny a family permission to move under the following conditions:

#### ***Insufficient Funding***

DOH may deny a family permission to move either within or outside DOH's jurisdiction if DOH does not have sufficient funding for continued assistance [24 CFR 982.314(e)(1)]. However, Notice PIH 2012-42 significantly restricts the ability of PHAs to deny permission to move due to insufficient funding and places further requirements on PHAs regarding moves denied due to lack of funding. The requirements found in this notice are mandatory.

- DOH will deny a family permission to move on grounds that DOH does not have sufficient funding for continued assistance if (a) the move is initiated by the family, not the owner or DOH; (b) DOH can demonstrate that the move will, in fact, result in higher subsidy costs; and (c) DOH 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.
- DOH 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. DOH 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).
- DOH 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***

DOH 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 DOH has grounds for denying or terminating a family's assistance, DOH 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 PHA to prohibit any elective move by a participant family during the family's initial lease term. They also permit the PHA to prohibit more than one elective move by a participant family during any 12-month period. 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, sexual assault 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.) In addition, the PHA may not establish a policy permitting moves only at reexamination [Notice PIH 2012-42].

- DOH does not place any restrictions on elective moves.

## **10-I.C. MOVING PROCESS**

### **Notification**

If a family wishes to move to a new unit, the family must notify DOH 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 DOH's jurisdiction under portability, the notice to DOH must specify the area where the family wishes to move. Upon receipt of a family's notification that it wishes to move, DOH will determine whether the move is approvable in accordance with the regulations and policies set forth in sections 10-I.A and 10-I.B. [24 CFR 982.314(d)(2), Notice PIH 2012-42]. The notices must be in writing [24 CFR 982.5].

### **Reexamination of Family Income and Composition**

- For families approved to move to a new unit within DOH's jurisdiction, DOH will perform a new annual reexamination in accordance with the policies set forth in Chapter 11 of this plan.
- For families moving into or families approved to move out of DOH's jurisdiction under portability, DOH will follow the policies set forth in Part II of this chapter.

### **Voucher Issuance and Briefing**

For families approved to move to a new unit within DOH's jurisdiction, DOH will issue a new voucher to move. No briefing is required for these families. DOH 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 DOH approves. Otherwise, the family will lose its assistance.



For families moving into or families approved to move out of DOH's jurisdiction under portability, DOH 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, DOH 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. Under no circumstances will DOH pay two full HAP payments to two different landlords for the same month.

## ***PART II: PORTABILITY***

### **10-II.A. OVERVIEW**

Within the limitations of the regulations and this plan, a participant family or an applicant family that has been issued a voucher has the right to use tenant-based voucher assistance to lease a unit anywhere in the United States providing that the unit is located within the jurisdiction of DOH administering a tenant-based voucher program [24 CFR 982.353(b)]. The process by which a family obtains a voucher from one PHA and uses it to lease a unit in the jurisdiction of another PHA is known as portability. The PHA that issues the voucher is called the **initial PHA**. The PHA that has jurisdiction in the area to which the family wants to move 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 provides all housing services for the family and 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 with its own program funds, and the initial PHA has no further relationship with the family. The initial PHA must contact the receiving PHA via email or other confirmed delivery method to determine whether the receiving PHA will administer or absorb the initial PHA's voucher. Based on the receiving PHA's response, the initial PHA must determine whether they will approve or deny the portability request [Notice PIH 2012-42].

The same PHA PHAs commonly act as both the initial and receiving PHA because families may move into or out of their jurisdiction under portability. Each role involves different responsibilities. The PHA will follow the rules and policies in section 10-II.B when it is acting as the initial PHA for a family. It will follow the rules and policies in section 10-II.C when it is acting as the receiving PHA for a family.

### **10-II.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 DOH's jurisdiction under portability. HUD regulations and PHA policy determine whether a family qualifies.

#### ***Applicant Families***

Under HUD regulations, most applicant families qualify to lease a unit outside DOH's jurisdiction under portability. However, HUD gives DOH 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 DOH lacks sufficient funding or has grounds for denying assistance to the family, the initial PHA will follow the policies established in section 10-I.B of this chapter.

In addition, DOH 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/co-head of an applicant family had a domicile (legal residence) in DOH's jurisdiction at the time that the family's initial application for assistance was submitted, the family must lease a unit within the initial PHA's jurisdiction for at least 12 months before requesting portability.
- DOH will consider exceptions to this policy for purposes of reasonable accommodation (see Chapter 2) or reason related to domestic violence, dating violence, sexual assault 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 2013 (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)].

- DOH will determine whether a participant family may move out of DOH's jurisdiction with continued assistance in accordance with the regulations and policies set forth here and in sections 10-I.A and 10-I.B of this chapter. DOH will notify the family of its determination in accordance with the approval policy set forth in section 10-I.C of this chapter.

In order to be eligible for portability, the participant must have:

- Repaid claims to the tenant's current landlord, contractor, and/or DOH;
- Not exercised portability more than once in a 12-month period; and

- Given current landlord a 30-day written notice of their desire to move or obtained a Mutual Rescission of Lease with both family and landlord's signatures.
- Provided DOH with notice of their desire to port.

## **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 2012-42].

The initial PHA is responsible for determining whether the family is income eligible in the area to which the family wishes to move [24 CFR 982.355(c) (1)]. If the applicant family is not income eligible in that area, DOH must inform the family that it may not move there and receive voucher assistance [Notice PIH 2012-42].

### ***Participant Families***

The income eligibility of a participant family is not re-determined if the family moves to a new jurisdiction under portability [24 CFR 982.353(d) (2), 24 CFR 982.355(c)(1)].

## **Reexamination of Family Income and Composition**

No new reexamination of family income and composition is required for an applicant family.

- For a participant family approved to move out of its jurisdiction under portability, DOH generally will conduct a reexamination of family income and composition only if the family's annual reexamination must be completed on or before the initial billing deadline specified on form HUD-52665, Family Portability Information.
- DOH 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 DOH to provide information on portability to all applicant families that qualify to lease a unit outside DOH'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 DOH's jurisdiction under portability. However, DOH 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). DOH will provide the name, address, and phone of the contact for DOH in the jurisdiction to which they wish to move. DOH will advise the family that they

will be under the RHA'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, DOH will follow the regulations and procedures set forth in Chapter 5. A new voucher is not required for portability purposes.

- For participating families approved to move under portability, DOH will issue a new voucher within 10 business days of DOH's approval to move.
- The initial term of the voucher will be 60 days.

### **Voucher Extensions and Expiration**

DOH will approve **no** extensions to a voucher issued to an applicant or participant family porting out of DOH's jurisdiction except under the following circumstances: (a) the initial term of the voucher will expire before the portable family will be issued a voucher by the receiving PHA, (b) the family decides to return to the initial PHA's jurisdiction and search for a unit there, or (c) the family decides to search for a unit in a third PHA's jurisdiction. In such cases, the policies on voucher extensions set forth in Chapter 5, section 5-II.E, of this plan will apply, including the requirement that the family apply for an extension in writing prior to the expiration of the initial voucher term.

To receive or continue receiving assistance under the initial PHA's voucher program, a family that moves to another PHA's jurisdiction under portability must be under HAP contract in the receiving PHA's jurisdiction within 60 days following the expiration date of the 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 2012-42].

- DOH will use e-mail, when possible, to contact the receiving PHA regarding whether the receiving PHA will administer or absorb the family's voucher.

### **Initial Notification with 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 2012-42]. 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, DOH will notify the receiving PHA by phone, fax, or e-mail to expect the family. The initial PHA will also ask the receiving PHA to provide any information the family may need upon arrival,

including the name, fax, email address and telephone number of the staff person responsible for business with incoming portable families and procedures related to appointments for voucher issuance. DOH will pass this information along to the family. DOH will also ask for the name, address, telephone number, fax and email of the person responsible for processing the billing information.

### **Sending Documentation to the Receiving PHA**

The initial PHA is required to send the receiving PHA the following documents:

- Form HUD-52665, Family Portability Information, with Part I filled out [Notice PIH 2012-42]
- A copy of the family's voucher [Notice PIH 2012-42]
- A copy of the family's most recent form HUD-50058, Family Report, or, if necessary in the case of an applicant family, family and income information in a format similar to that of form HUD-50058 [24 CFR 982.355(c)(4), Notice PIH 2012-42]
- Copies of the income verifications backing up the form HUD-50058, including a copy of the family's current EIV data [24 CFR 982.355(c)(4), Notice PIH 2012-42]
  - In addition to these documents, DOH will provide the following information, if available, to the receiving PHA:
    - 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

DOH will notify the family in writing regarding any information provided to the receiving PHA [HCV GB, p. 13-3].

### **Initial Billing Deadline [Notice PIH 2012-42]**

When the initial PHA sends form HUD-52665 to the receiving PHA, it specifies in Part I the deadline by which it must receive the initial billing notice from the receiving PHA. This deadline is 60 days following the expiration date of the voucher issued to the family by the initial PHA. If the initial PHA does not receive a billing notice 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 DOH 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 DOH reports that the family is not yet under HAP contract, DOH 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. DOH will send the receiving PHA a written confirmation of its decision by mail.

- DOH will allow an exception to this policy if the family includes a person with disabilities and the late billing is a result of a reasonable accommodation granted to the family by the receiving PHA.

### **Monthly Billing Payments [24 CFR 982.355(e), Notice PIH 2012-42]**

If the receiving PHA is administering the family's voucher, the initial PHA is responsible for making billing payments in a timely manner. The first billing amount is due within 30 calendar days after the initial PHA receives Part II of form HUD-52665 from the receiving PHA. Subsequent payments must be **received** by the receiving PHA no later than the fifth business day of each month. The payments must be provided in a form and manner that the receiving PHA is able and willing to accept.

The initial PHA may not terminate or delay making payments under existing portability billing arrangements as a result of over leasing or funding shortfalls. DOH 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.

- The initial PHA will utilize direct deposit to ensure that the payment is received by the deadline unless the receiving PHA notifies the initial PHA that direct deposit is not acceptable to them.

### **Annual Updates of Form HUD-50058**

If the initial PHA is being billed on behalf of a portable family, it should receive an updated form HUD-50058 each year from the receiving PHA. 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 PHA policies on denial and termination, see Chapters 3 and 12, respectively.)

## **10-II.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 2012-42].

- DOH will use e-mail, when possible, to notify the initial PHA whether it will administer or absorb the family's voucher.

### **Initial Contact with Family**

When a family moves into DOH's jurisdiction under portability, the family is responsible for promptly contacting DOH and complying with DOH'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 2012-42].

The DOH contractor will have the incoming portable family sign all required releases and will run a criminal background check on all adult family members to ensure that the incoming family meets DOH's criminal background criteria. The same criteria applied to new admissions will be applied to incoming portable families.

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 2012-42 ]. (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 as long as the requirement does not unduly delay the family's search [Notice PIH 2012-42].

- DOH will not require the family to attend a briefing. DOH will provide the family with a briefing packet (as described in Chapter 5) and, in an individual briefing, will orally inform the family about DOH's payment and subsidy standards, procedures for requesting approval of a unit, the unit inspection process, and the leasing process. DOH 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 2012-42, 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)].

- For any family moving into its jurisdiction under portability, DOH will conduct a new reexamination of family income and composition. However, DOH will not delay issuing the family a voucher for this reason. Nor will DOH delay approving a unit for the family until the reexamination process is complete unless the family is an applicant and DOH cannot otherwise confirm that the family is income eligible for admission to the program in the area where the unit is located.
- In conducting its own reexamination, DOH will rely upon any verification provided by the initial PHA to the extent that they (a) accurately reflect the family's current circumstances and (b) were obtained within the last 120 days. Any new information may be verified by documents provided by the family and adjusted, if necessary, when third party verification is received.

### **Voucher Issuance**

When a family moves into its jurisdiction under portability, the receiving PHA is required to issue the family a voucher [24 CFR 982.355(b) (6)]. The family must submit a request for tenancy approval to the receiving PHA during the term of the receiving PHA's voucher [24 CFR 982.355(c) (6)].

### ***Timing of Voucher Issuance***

HUD expects the receiving PHA to issue the voucher within two weeks after receiving the family's paperwork from the initial PHA if the information is in order, the family has contacted the receiving PHA, and the family complies with the receiving PHA's procedures [Notice PIH 2012-42].

- When a family ports into its jurisdiction, DOH 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 DOH's procedures. DOH will update the family's information when verification has been completed.

### ***Voucher Term***

The term of the receiving PHA's voucher may not expire before the term of the initial PHA's voucher [24 CFR 982.355(c) (6)].

- 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 2012-42]***

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.

- DOH generally will not extend the term of the voucher that it issues to an incoming portable family unless DOH plans to absorb the family into its own program, in which case it will follow the policies on voucher extension set forth in section 5-II.E.
- DOH 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 2012-42]. (For more on this topic and the deadline for notification, see below under "Administering a Portable Family's Voucher.")

If an incoming portable family ultimately decides not to lease in the jurisdiction of the 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 2012-42]

### **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 60 days following the expiration date of the family's voucher issued by the initial PHA [Notice PIH 2012-42]. 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.

- DOH will send its initial billing notice by fax or e-mail, if necessary, to meet the billing deadline but will also send the notice by regular mail.

If the receiving PHA fails to send the initial billing within 10 business days following the date the HAP contract is executed, it is required to absorb the family into its own program unless (a)

the initial PHA is willing to accept the late submission or (b) HUD requires the initial PHA to honor the late submission (e.g., because the receiving PHA is over leased) [Notice PIH 2012-42].

***Ongoing Notification Responsibilities [Notice PIH 2012-42, 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.

**Change in Billing Amount.** The receiving PHA is required to notify the initial PHA, using form HUD-52665, of any change in the billing amount for the family as a result of:

- A change in the HAP amount (because of a reexamination, a change in the applicable payment standard, a move to another unit, etc.)
- An abatement or subsequent resumption of the HAP payments
- Termination of the HAP contract
- Payment of a damage/vacancy loss claim for the family
- Termination of the family from the program

The timing of the notice of the change in the billing amount should correspond with the notification to the owner and the family in order to provide the initial PHA with advance notice of the change. Under no circumstances should the notification be later than 10 business days following the effective date of the change in the billing amount. If the receiving PHA fails to send Form HUD-52665 within 10 days of effective date of billing changes, the initial PHA is not responsible for any increase prior to notification.

***Late Payments [Notice PIH 2012-42]***

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 DOHs 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 2012-42]***

In all cases where the receiving PHA has received billing payments for billing arrangements no longer in effect, the receiving PHA is responsible for returning the full amount of the overpayment (including the portion provided for administrative fees) to the initial PHA.

In the event that HUD determines billing payments have continued for at least three months because the receiving PHA failed to notify the initial PHA that the billing arrangement was terminated, the receiving PHA must take the following steps:

- Return the full amount of the overpayment, including the portion provided for administrative fees, to the initial PHA.
- Once full payment has been returned, notify the Office of Public Housing in the HUD area office with jurisdiction over the receiving PHA of the date and the amount of reimbursement to the initial PHA.

At HUD's discretion, the receiving PHA will be subject to the sanctions spelled out in Notice PIH 2012-42.

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

At any time, the receiving PHA may make a determination to deny or terminate assistance to a portable family for family action or inaction [24 CFR 982.355(c)(9), 24 CFR 982.355(c)(10)].

In the case of a termination, DOH 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 2012-42]

- If DOH elects to deny or terminate assistance for a portable family, DOH will notify the initial PHA within 10 business days after the informal review or hearing if the denial or termination is upheld. DOH 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 receiving PHA 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 DOH executes a HAP contract on behalf of the family or at any time thereafter providing that (a) DOH 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 2012-42].

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 2012-42]

- If DOH decides to absorb a portable family upon the execution of a HAP contract on behalf of the family, DOH 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 DOH 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 receiving PHA's voucher program [24 CFR 982.355(d)], and the receiving PHA becomes the initial PHA in any subsequent moves by the family under portability.

### **10- III.D. IN-STATE TRANSFERS**

This is when households move from one DOH contractor to another DOH contractor. When a household moves out of your area and to another DOH Contractor, this is treated as a recertification with move.

All program participants who are moving, but remaining in the State of Colorado, will be treated as an in-state transfer. All in state transfers will be transferred to an existing DOH contractor. The contractor agrees that when an in-state transfer occurs, that the voucher will become part of the receiving DOH contractor's allocation and that the original contractor's allocation will be decreased.

In-state transfers apply only to current PHA tenants who wish to move to another part of Colorado, therefore needing another DOH contractor to administer their housing. DOH must receive the Family Request for In-State Transfer form a minimum of 30 days prior to the expected move. The time is necessary so that arrangements may be made by DOH between the two contractor agencies. Once DOH receives the request, approval or denial will be granted and both the initial agency and the receiving agency will be notified of DOH's decision. Approvals will be granted unless the applicant or participant:

1. Fails to submit the portability request in a timely manner;
2. Moves without giving proper notice;
3. Breaches a family obligation;
4. Does not follow through with requirements set by the receiving agency; or
5. Moves before all arrangements have been made between the two participating agencies.

## **In-State Transfer Process**

1. Initial agency completes the following with participant and provides to DOH Contract Manager at least 30 days prior to effective date of transfer:

- Request for In-State Transfer (ISF) Form
- 30-Day Notice to Vacate or Mutual Rescission of Lease
- Manual voucher issued for 60 days (do not issue through Elite)

2. DOH Contract Manager identifies a receiving agency and, upon approval, sends an e-mail to the initial agency, the receiving agency, and the DOH Contract Manager for the receiving agency regarding the in-state transfer.

Attached to that e-mail will be:

- Completed and signed IST form (including the contact information for both agencies)
- Completed and signed voucher
- EIV, DOLE, CBMS, and FSR (DOH will run these updated reports)

3. Initial DOH Contract Manager changes the caseworker, puts future payments on hold, moves participant out of their current unit, and issues the voucher in Elite using the new increment.

4. Upon receiving approval of the in-state transfer, the initial agency will fax or scan the following to the receiving agency (initial agency will maintain the original file for 3 years):

- Original application
- All family ID documents (birth certificates, social security cards, IDs, etc.)
- 30-day notice to vacate or mutual rescission of lease
- All documents associated with the last effective annual reexamination
- 50058
- All income, expense, and asset verifications
- All releases (including the HUD 9886)
- Any approved reasonable accommodations
- Any tenant conferences, violation documentation, etc.

5. Receiving agency will complete the move action (which makes it extremely important that they receive the in-state transfer request at least 30 days in advance of the transfer

## Chapter 11

### REEXAMINATIONS

#### INTRODUCTION

DOH 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 PHA policies concerning reexaminations are presented in three parts:

Part I: Annual Reexaminations. This part discusses the process for conducting annual reexaminations.

Part II: Interim Reexaminations. This part details the requirements for families to report changes in family income and composition between annual reexaminations.

Part III: Recalculating Family Share and Subsidy Amount. This part discusses the recalculation of family share and subsidy amounts based on the results of annual and interim reexaminations.

Policies governing reasonable accommodation, family privacy, required family cooperation, and program abuse, as described elsewhere in this plan, apply to both annual and interim reexaminations.

## ***PART I: ANNUAL REEXAMINATIONS [24 CFR 982.516]***

### **11-I.A. OVERVIEW**

DOH must conduct a reexamination of family income and composition at least annually. This includes gathering and verifying current information about family composition, income, and expenses. Based on this updated information, the family's income and rent must be recalculated. This part discusses the schedule for annual reexaminations, the information to be collected and verified, and annual reexamination effective dates.

### **11-I.B. SCHEDULING ANNUAL REEXAMINATIONS**

DOH 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].

- Per procedures described in DOH Procedures Manual, DOH will advise participants by letter approximately 120 days before the effective date of the participants' annual reexamination of the participant's responsibility to complete the reexamination in a timely manner. Subsequent letters will be sent by DOH and by residential coordinators in the event that participants have failed to complete the required paperwork, or if there is documentation missing.
- DOH will begin the annual reexamination process 120 days in advance of its scheduled effective date. Generally, DOH 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 admission into the program.
- If the family moves to a new unit, DOH will perform a new annual reexamination.
- DOH 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**

DOH is required to obtain the information needed to conduct annual reexaminations. How that information will be collected is left to the discretion of DOH. However, PHAs should give tenants who were not provided the opportunity the option to complete Form HUD-92006 at this time [Notice PIH 2009-36].

- Families are required to participate in an annual reexamination process, which requires the participation of the head of household, spouse, or co-head and all household members 18 years of age or older. If this process poses a hardship because of a family member's disability, the family should contact DOH to request a reasonable accommodation (see Chapter 2).
- Notification of annual reexamination will be sent by first-class mail. In addition, the notification will inform the family of the information and documentation that must be submitted to complete the annual reexamination process.



- If the family is unable to attend a scheduled interview, the family should contact the PHA in advance of the interview to schedule a new appointment. If a family does not attend the scheduled interview, the PHA will send a second notification with a new interview date and appointment time.
- If a family fails to attend two scheduled interviews without PHA approval, or if the notice is returned by the post office with no forwarding address, a notice of termination (see Chapter 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 PHA must execute a certification attesting to the role and the assistance provided by any such third party.

### **11-I.C. CONDUCTING ANNUAL REEXAMINATIONS**

As part of the annual reexamination process, families are required to provide updated information to DOH 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 or provide it via US Mail. The required information will include a DOH-designated reexamination form (Family Reporting Form), an Authorization for the Release of Information/Privacy Act Notice, as well as supporting documents or forms 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 period (plus any extensions), the family may be sent a notice of termination (See Chapter 12).
- Any participant who is a person with a disability may request the reexamination appointment be conducted at the tenants unit or other identified reasonable accommodation.

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 PHA 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
- Citizenship or immigration status

#### **11-I.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 PHA policy, the income of the student's parents will not be considered in determining the student's ongoing eligibility.

Students who reside with parents in an HCV assisted unit are not subject to this provision. It is limited to students who are receiving assistance on their own, separately from their parents.

- During the annual reexamination process, DOH will determine the ongoing eligibility of each student who is subject to the eligibility restrictions in 24 CFR 5.612 by reviewing the student's individual income as well as the income of the student's parents. If the student has been determined "independent" from his/her parents based on the policies in Sections 3-II.E and 7-II.E, the parents' income will not be reviewed.
- If the student is no longer income eligible based on his/her own income or the income of his/her parents, the student's assistance will be terminated in accordance with the policies in Section 12-I.D.
- If the student continues to be income eligible based on his/her own income and the income of his/her parents (if applicable), DOH will process a reexamination in accordance with the policies in this chapter.

#### **11-I.E. EFFECTIVE DATES**

DOH 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 family's anniversary date.
- If a family moves to a new unit, the increase will take effect on the effective date of the new lease and HAP contract, and no 30-day notice is required.
- If DOH 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 DOH, 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 DOH 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 DOH.
- If the family causes a delay in processing the annual reexamination, *decreases* in the family share of the rent will be applied at the family's anniversary date.

Delays in reexamination processing are considered to be caused by the family if the family fails to provide information requested by DOH by the date specified, and this delay prevents DOH from completing the reexamination as scheduled.

## ***PART II: INTERIM REEXAMINATIONS [24 CFR 982.516]***

### **11-II.A. OVERVIEW**

Family circumstances may change between annual reexaminations. HUD and DOH policies dictate what kinds of information about changes in family circumstances must be reported, and under what circumstances DOH must process interim reexaminations to reflect those changes. HUD regulations also permit DOH 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. DOH must complete the interim reexamination within a reasonable time after the family's request.

This part includes HUD and DOH policies describing what changes families are required to report, what changes families may choose to report, and how DOH will process both DOH- and family-initiated interim reexaminations.

### **11-II.B. CHANGES IN FAMILY AND HOUSEHOLD COMPOSITION**

The family is required to report all changes in family composition. The PHA must adopt policies prescribing when and under what conditions the family must report changes in income and housing composition. However, due to family obligations under the program, the PHA has limited discretion in this area.

- DOH will conduct interim reexaminations to account for any changes in household composition that occur between annual reexaminations.

#### **New Family Members Not Requiring PHA Approval**

The addition of a family member as a result of birth, adoption, or court-awarded custody does not require DOH approval. However, the family is required to promptly notify DOH of the addition [24 CFR 982.551(h) (2)].

- The family must inform DOH of the birth, adoption or court-awarded custody of a child within 10 business days.
- The family is required to provide any documentation requested by DOH including, but not limited to, birth certificates and social security cards. For all required documentation, see Chapters 3, 6, and 7.

## **New Family and Household Members Requiring Approval**

With the exception of children who join the family as a result of birth, adoption, or court-awarded custody, a family must request PHA approval to add a new family member [24 CFR 982.551(h)(2)] or other household member (live-in aide or foster child) [24 CFR 982.551(h)(4)]. When any new family member is added, DOH 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), DOH must issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, DOH must terminate the family's HAP contract in accordance with its terms [24 CFR 982.403].

- Families must request DOH 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 14 consecutive days, 30 cumulative days, within a 12-month period or per the time constraints of the lease, whichever is less, no longer qualifies as a "guest." Requests must be made in writing and approved by DOH prior to the individual moving into the unit.
- DOH will not approve the addition of a new family or household member unless the individual meets DOH's eligibility criteria (see Chapter 3) and documentation requirements (see Chapter 7, Part III).
- DOH will not approve the addition of a foster child or foster adult if it will cause a violation of HQS space standards.
- If DOH determines an individual meets DOH's eligibility criteria and documentation requirements, DOH 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 DOH determines that an individual does not meet DOH's eligibility criteria or documentation requirements, DOH 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.
- DOH will make its determination within 10 business days of receiving all information required to verify the individual's eligibility.

Family additions are at DOH's discretion. Related adults may be added to a household only as a reasonable accommodation for the head of household or the head of household's dependent(s). See chapter 2 part 2 for information regarding Reasonable Accommodation. DOH may consider the addition of related adults when the household can demonstrate that it is necessary and reasonable for them to provide medical/life activities care for the proposed addition(s). Example: A head of household demonstrates that her disabled, elderly mother needs to come and live with her, for reasons related to her disability and has no other means of obtaining affordable and safe housing.

- DOH will allow the addition of a spouse or co-head (boyfriend, girlfriend, marriage partner etc.) if it does not result in an additional bedroom assuming the individual meets all eligibility criteria outlines in Chapter 3.
  - If this addition includes dependents, adjustments to the subsidy standards will be made in accordance with DOH's subsidy standards.
- If an adult who was previously on the household's lease leaves the household but wishes to return within one year of leaving, DOH will consider reinstating this adult to the household subject to an acceptable background check.

If they are found to be eligible and do pass the screening criteria, DOH will grant approval to add their name to the lease. At the same time, the family's annual income will be recalculated taking into account the income and circumstances of the new family member.

If any new family member is added, family income must include any income of the new family member or additions to family income as a result of the new member addition. DOH will conduct an interim re-examination to review such additional income and will make the appropriate adjustments in the Housing Assistance Payment and family unit size.

Two adults residing in the same unit as roommates are considered shared housing and the rent should be calculated accordingly. (See Section on Shared housing.)

When there are two adults in the family (not roommates), the family must designate who the head of household shall be. Signatures on the lease and the voucher evidence this designation.

### **Departure of a Family or Household Member**

Families must promptly notify DOH 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], DOH 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 DOH 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 DOH within 10 business days.
- If DOH determines the family is over-housed, DOH will notify the family in writing that their subsidy will decrease at their next annual reexamination.

If a family member leaves the unit for more than 30 days in a calendar year, except for medical circumstances, they will be considered to have left the family. This change must be reported in writing to DOH and/or the Contractor immediately. DOH will then reevaluate the eligible voucher size for the family.

A child who is “temporarily away” (up to six months) from the home because of placement in foster care is considered a member of the family. At the end of the six-month period, verification of the out-of-home placement will require documentation from the court or social service agency that states the placement is extended in order for the family to continue to include the dependent as a family member. If the required documentation is not received at 6-months, the family will be considered over-housed and their voucher size will be reduced if applicable, at the next annual reexamination.

In circumstances of a family break-up, DOH will make a determination of which family member will retain the voucher, taking into consideration the following factors:

1. To whom the voucher was issued.
2. The interest of minor children or of ill, elderly, or disabled family members.
3. Whether the assistance should remain with the family members remaining in the unit.
4. Whether family members were forced to leave the unit as a result of actual or threatened physical violence by a spouse or other member(s) of the household.

If a court determines the disposition of property between members of the assisted family in a divorce or separation under a settlement of judicial decree, DOH will be bound by the court’s determination of which family members continue to receive assistance in the program.

Because of the number of possible different circumstances in which a determination will have to be made, DOH will make determinations on a case-by-case basis.

DOH will issue a determination within 10 business days of the request for a determination. The family member requesting the determination may request an informal hearing.

### **11-II.C. CHANGES AFFECTING INCOME OR EXPENSES**

Interim reexaminations can be scheduled either because DOH has reason to believe that changes in income or expenses may have occurred, or because the family reports a change.

## **DOH-Initiated Interim Reexaminations**

DOH-initiated interim reexaminations are those that are scheduled based on circumstances or criteria defined by DOH. They are not scheduled because of changes reported by the family.

DOH will conduct interim reexaminations in each of the following instances:

- For families receiving the Earned Income Disallowance (EID), DOH will conduct an interim reexamination at the start and conclusion of the second 12-month exclusion period (50 percent phase-in period).
- For families where the annual income cannot be projected with any reasonable degree of accuracy, an interim re-exam will be required to be completed every 90 days unless DOH used the averaging method of annual income calculation.
- If at the time of the annual reexamination, tenant declarations were used on a provisional basis due to the lack of third-party verification, and third-party verification becomes available, DOH will conduct an interim reexamination.
- DOH may conduct an interim reexamination at any time in order to correct an error in a previous reexamination. The family will be given a 30 day notice and will not be charged rent retroactively for DOH error.
- For families whose rent has been based on false or incomplete information, there will be an interim reexamination completed to determine if termination or repayment procedures should be initiated.

## **Family-Initiated Interim Reexaminations**

DOH 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 DOH 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, including new employment, benefits, pensions etc., in writing within 10 business days of the family's notification of the change.



- DOH will conduct an interim reexamination to recalculate the new family share of rent and new subsidy amount when the increase in income is in excess of **\$250.00 per month**.
- DOH will conduct an interim reexamination for any adult family member who reported zero income at the family's last review and is now receiving some form of income.
- If any new family member is added, family income must include any income of the new family member or additions to family income as a result of the new member addition. DOH will conduct an interim re-examination to review such additional income and will make the appropriate adjustments in the Housing Assistance Payment and family unit size.

### ***Optional Reporting***

The family may request an interim reexamination any time the family has experienced a change in circumstances since the last determination [24 CFR 982.516(b) (2)]. DOH must process the request if the family reports a change that will result in a reduced family income [HCV GB, p. 12-9].

If a family reports a decrease in income from the loss of welfare benefits due to fraud or non-compliance with a welfare agency requirement to participate in an economic self-sufficiency program, the family's share of the rent will not be reduced [24 CFR 5.615]. For more information regarding the requirement to impute welfare income see Chapter 6.

- If a family reports a change that it was not required to report and that would result in an increase in the family share of the rent, DOH will note the information in the tenant file, but will not conduct an interim reexamination.
- If a family reports a change that it was not required to report and that would result in a decrease in the family share of rent, DOH will conduct an interim reexamination. See Section 11-II.D.
- Families may report changes in income or expenses at any time.

## **11-II.D. PROCESSING THE INTERIM REEXAMINATION**

### **Method of Reporting**

- The family must notify DOH of changes in writing. If the family provides oral notice, DOH will require, when possible, that the family submit the changes in writing.

- Generally, the family will not be required to attend an interview for an interim reexamination. However, if DOH determines that an interview is warranted, the family may be required to attend.
- Based on the type of change reported, DOH 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 DOH. This time frame may be extended for good cause with DOH approval. DOH will accept required documentation by mail, by fax, or in person.

### **Effective Dates**

DOH 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 and to the landlord.
- 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 until after the date the change would have become effective, the change will be made retroactively.

## **PART III: RECALCULATING FAMILY SHARE AND SUBSIDY AMOUNT**

### **11-III.A. OVERVIEW**

After gathering and verifying required information for an annual or interim reexamination, DOH 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 outlines policies that affect these calculations during a reexamination.

### **11-III.B. CHANGES IN PAYMENT STANDARDS AND UTILITY ALLOWANCES**

In order to calculate the family share of the rent and HAP amount correctly, changes in payment standards, subsidy standards, or utility allowances may need to be updated and included in DOH'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 the 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 DOH changes its payment standards or the family's situation changes, new payment standards are applied at the following times:

- If DOH'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, 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 voucher size that would apply to a family during the HAP contract term, either due to a change in family composition, or a change in DOH's subsidy standards (see Chapter 5), the new family voucher 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 voucher 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 DOH'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, DOH must use the utility allowances in effect at the time the new lease and HAP contract are executed.

At reexamination, DOH must use DOH 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.

The same utility allowance schedule is used for all tenant-based programs.

The utility allowance is intended to cover the cost of utilities not included in the rent. 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. Allowances are not based on an individual family's actual energy consumption.

DOH's utility allowance schedules, and the utility allowance for an individual family, must include the utilities and services that are necessary in the locality to provide housing that complies with the Housing Quality Standards.

DOH will not provide any allowance for non-essential utility costs, such as costs of cable or satellite television. DOH also will not include an allowance for air conditioning except as a reasonable accommodation for a person with a disability. It is DOH's belief that no jurisdiction within the state has such a climate that qualifies as an area where an air conditioning allowance is necessary.

DOH will review the utility allowance schedule annually. If the review determines that a utility rate has changed by 10 percent or more since the last revision of the utility allowance schedule, the schedule will be revised to reflect the new rate. Revised utility allowances will be applied in a participant family's rent calculation at their next re-examination. The utility allowance is based on the actual unit size selected.

Where families provide their own range and refrigerator, DOH will establish an allowance adequate for the family to purchase or rent a range or refrigerator, even if the family already owns either appliance. Allowances for ranges and refrigerators will be based on the lesser of the cost of leasing or purchasing the appropriate appliance over a 12-month period.

Where the calculation on HUD Form 50058 results in a utility reimbursement payment due the family [24 CFR 982.514(b)], DOH will provide a utility reimbursement payment for the family each month. The check will be made out to and sent directly to the tenant.

If the landlord reports a flat fee for specific utilities the flat monthly fee should be added to the monthly rent amount rather than giving the family a utility allowance for that utility. For example, if the complex charges a flat fee of \$10.00 a month for water and \$500.00 for rent change the rent figure to \$510.00 and provide no utility allowance for water to the family.

### **Flat-Rate Utility Billing for Multi-Unit Buildings**

DOH will replace the utility allowance for water/sewer and/or garbage in multi-unit buildings with the flat rate fees actually charged to tenants for these services by the owner, if the specifics of the flat rate are detailed in the lease and not subject to change during the term of the lease.

### **11-III.C. NOTIFICATION OF NEW FAMILY SHARE AND HAP AMOUNT**

DOH must notify the owner and family of any changes in the amount of the HAP payment [HUD-52641, HAP Contract]. A 30-day notice should be given to both the landlord and the participant whenever possible. 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 family must be given an opportunity for an informal hearing regarding DOH's determination of their annual or adjusted income, and the use of such income to compute the housing assistance payment [24 CFR 982.555(a)(1) (i)] (see Chapter 16).

### **11-III.D. DISCREPANCIES**

During an annual or interim reexamination, DOH may discover that information previously reported by the family was in error, or that the family intentionally misrepresented information. In addition, DOH may discover errors made by DOH. 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 mandatory and optional grounds for which a PHA can terminate a family's assistance. They also specify the circumstances under which an owner may terminate the tenancy of an assisted family. This chapter describes the policies that govern mandatory and optional terminations of assistance, and termination of tenancy by the owner. It is presented in three parts:

Part I: Grounds for Termination of Assistance. This part describes the various circumstances under which assistance under the program can be terminated by the family or by the PHA.

Part II: Approach to Termination of Assistance. This part describes the policies and the process that the PHA will use in evaluating decisions on whether to terminate assistance due to actions or inactions of the family where termination is an option. It specifies the alternatives that the PHA may consider in lieu of termination, the criteria the PHA will use when deciding what action to take, and the steps the PHA must take when terminating a family's assistance.

Part III: Termination of Tenancy by the Owner. This part describes the HUD policies that govern the owner's right to terminate an assisted tenancy.

## ***PART I: GROUNDS FOR TERMINATION OF ASSISTANCE***

### **12-I.A. OVERVIEW**

HUD requires the PHA to terminate assistance for certain actions and inactions of the family and when the family no longer requires assistance due to increases in family income. HUD permits the PHA to terminate assistance for certain other actions or inactions of the family. In addition, a family may decide to withdraw from the program and terminate their HCV assistance at any time by notifying the PHA.

### **12-I.B. FAMILY NO LONGER REQUIRES ASSISTANCE [24 CFR 982.455]**

As a family's income increases, the amount of the housing assistance payment decreases. If the amount of assistance provided by DOH is reduced to zero the family's assistance terminates automatically 180 days after the last HAP payment.

- If a participating family receiving zero assistance experiences a change in circumstances that would result in a HAP payment to the owner, the family must notify DOH of the change and request an interim reexamination before the expiration of the 180-day period.
- A participating family who is not receiving any subsidy, but whose HAP contract is still in force, may request a voucher to move to a different unit.
- DOH must issue a voucher to move unless it has grounds to deny issuance under the program regulations. However, if DOH determines that no subsidy would be paid at the new unit, DOH may refuse to enter into a HAP contract on behalf of the family. Because the purpose of the Section 8 Housing Choice Voucher (HCV) program is to assist low income families obtain decent housing by paying a rent subsidy, if no subsidy is needed, there is no requirement that DOH enter into a HAP contract on behalf of that family.

### **12-I.C. FAMILY CHOOSES TO TERMINATE ASSISTANCE**

The family may request that DOH terminate housing assistance payments on behalf of the family at any time.

- The request to terminate assistance should be made in writing and signed by the head of household, and spouse, or co-head if applicable. Before terminating the family's assistance, the PHA will follow the notice requirements in Section 12-II.F.

## **12-I.D. MANDATORY TERMINATION OF ASSISTANCE**

HUD requires DOH to terminate assistance in the following circumstances.

### **Eviction [24 CFR 982.552(b) (2), 24 CFR 5.205(c) (1)]**

DOH 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-II.E, incidents of actual or threatened domestic violence, dating violence, sexual assault or stalking may not be construed as serious or repeated violations of the lease by the victim or threatened victim of such violence or stalking.

- 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 DOH will determine whether the family has committed serious or repeated violations of the lease based on available evidence and may terminate assistance or take any of the alternative measures described in section 12-II.C. In making its decision, DOH will consider the factors described in sections 12-II.D and 12-II.E. Upon consideration of such factors, DOH may, on a case-by-case basis, choose not to terminate assistance.
- *Serious and repeated lease violations* will include, but are not 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 or not the reason for the eviction was the fault of the tenant or guests.

### **Failure to Provide Consent [24 CFR 982.552(b) (3)]**

DOH must terminate assistance if any family member fails to sign and submit any consent form they are required to sign for a regular or interim 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)]**

DOH 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 DOH, 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 non-citizens 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]**

DOH 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 DOH 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, DOH 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 DOH determined the family to be noncompliant.

- DOH 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)]**

DOH 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.

### **Lifetime Registered Sex Offenders [Notice PIH 2012-28]**

Should a PHA discover that a member of an assisted household was subject to a lifetime registration requirement at admission and was erroneously admitted after June 25, 2001, the PHA must immediately terminate assistance for the household member.

In this situation, the PHA must offer the family the opportunity to remove the ineligible family member from the household. If the family is unwilling to remove that individual from the household, the PHA must terminate assistance for the household.

## **Failure of Students to Meet Ongoing Eligibility Requirements [24 CFR 982.552(b)(5) and FR 4/10/06]**

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, does not have dependent children, and is not residing with his/her parents in an HCV assisted household, DOH 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 PHA policies, or must be given the opportunity to lease in place if the terminated ineligible student members elect to move out of the assisted unit.

## **Death of the Sole Family Member [24 CFR 982.311(d) and Notice PIH 2010-9]**

DOH must immediately terminate program assistance for deceased single member households. According to PIH Notice 2010-50, "Public Housing Agencies are required to immediately terminate program assistance for deceased single member households, which will result in termination of the HAP contract and HAP payment to the owner. The owner is not entitled to HAP for any month following the month in which the death occurred".

## **12-I.E. MANDATORY POLICIES AND OTHER AUTHORIZED TERMINATIONS**

### **Mandatory Policies [24 CFR 982.553(b) and 982.551(I)]**

HUD requires DOH to establish policies that permit DOH to terminate assistance if DOH 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, Marijuana and Alcohol Abuse***

- Marijuana- The legalization of marijuana in the State of Colorado directly conflicts with the HUD definition of a controlled substance in Section 102 of the Controlled Substances Act. The conflicting State and Federal law presents a challenge to administer a federally funded Housing Choice Voucher Program. As

a result, DOH will apply the following standards when considering if a participant's housing should be terminated due to the abuse of marijuana that results in:

- Violation of the lease
  - HQS breach caused by the family
  - Verbal or written law enforcement report of criminal activity.
- DOH 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.
- DOH 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.

- DOH will consider all credible evidence, including but not limited to, any record of arrests, convictions, or eviction of household members related to the use of illegal drugs or abuse of alcohol.
- In making its decision to terminate assistance, DOH will consider alternatives as described in Sections 12-II.D and 12-II.E. and other factors described in Section 12-II.D. Upon consideration of such alternatives and factors, DOH 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.

- DOH 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.
- DOH will consider all credible evidence, including but not limited to, any record of arrests and/or convictions of household members related to drug-related or violent criminal activity, and any eviction or notice to evict based on drug-related or violent criminal activity.
- In making its decision to terminate assistance, DOH will consider alternatives as described in Sections 12-II.D and 12-II.E. and other factors described in Section 12-II.D. Upon consideration of such alternatives and factors, DOH 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 5.2002 (c)]**

HUD permits DOH to terminate assistance under a number of other circumstances. It is left to the discretion of DOH whether such circumstances in general warrant consideration for the termination of assistance. As discussed further in section 12-II.E, the Violence against Women Act of 2005 explicitly prohibits PHAs from considering incidents of, or criminal activity directly related to, domestic violence, dating violence, sexual assault or stalking as reasons for terminating the assistance of a victim of such abuse.

- DOH **will not** terminate a family's assistance because of the family's failure to meet its obligations under the Family Self-Sufficiency program.
- DOH **will** terminate a family's assistance if:
  - The family has failed to comply with any family obligations under the program. See Exhibit 12-1 for a listing of family obligations and related PHA policies.
  - Any family member is required to register as sex offender under Colorado Law or under any other states law.
  - Any family member has been evicted from federally-assisted housing in the last three years.
  - 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 DOH 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 DOH.

- A family member has engaged in or threatened violent or abusive behavior toward PHA personnel.

***Abusive or violent behavior towards PHA personnel*** includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior. This policy also covers staff at the contractor agencies.

***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, DOH will consider alternatives as described in Section 12-II.C and other factors described in Sections 12-II.D and 12-II.E. Upon consideration of such alternatives and factors, DOH 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. DOH 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.

- DOH will approve absences from the unit for up to 120-days. Absences will only be granted up to 180-days in the case of a reasonable accommodation.
- If 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]***

DOH may terminate HAP contracts if DOH determines, in accordance with HUD requirements, that funding under the consolidated ACC is insufficient to support continued assistance for families in the program.

DOH will determine whether there is sufficient funding to pay for currently assisted families according to the policies in Part VIII of Chapter 16. If DOH determines there is a shortage of funding, prior to terminating any HAP contracts, DOH will determine if any other actions can be taken to reduce program costs.

In the event that the PHA decides to stop issuing vouchers as a result of a funding shortfall, and the PHA is not assisting the required number of special purpose vouchers (NED families, HUD-Veterans Affairs Supportive Housing (VASH) families, and family unification program (FUP) families), when the PHA resumes issuing vouchers, the PHA will issue vouchers first to the special purpose voucher families on its waiting list until it has reached the required number of special purpose vouchers, when applicable.

If after implementing all reasonable cost cutting measures there is not enough funding available to provide continued assistance for current participants, DOH will terminate HAP contracts as a last resort.

Prior to terminating any HAP contracts, DOH will inform the local HUD field office. DOH will terminate the minimum number needed in order to reduce HAP costs to a level within DOH's annual budget authority.

If DOH must terminate HAP contracts due to insufficient funding, DOH will do so in accordance with the following criteria and instructions:

- 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.
- DOH will first recall any active vouchers on the street searching.

DOH will terminate HAP contracts starting with Category 1 families. DOH will only move to the next category when there are no families remaining in the current category and more HAP contracts terminations are necessary.

Category 1: Families who have committed program fraud or abuse within the past 6 months.

Within each group below, DOH will terminate HAP contracts according to the date DOH first notified the family of the debt, starting with the most recent. If more than one family received notice on the same day, DOH will rank the notices for that date using a random method.

- First, DOH will terminate families who owe DOH money, but are not yet under a repayment agreement
- Second, DOH will terminate families who owe DOH money, are under repayment agreement, but have made at least one late payment.
- Third, DOH will terminate families who owe DOH money, are under repayment agreement, and have made all payments in accordance with the repayment agreement.

Category 2: Families who committed program fraud or abuse 6-12 months ago.

## ***PART II: APPROACH TO TERMINATION OF ASSISTANCE***

### **12-II.A. OVERVIEW**

DOH is required by regulation to terminate a family's assistance for certain actions or inactions of the family. For other types of actions or inactions of the family, the regulations give DOH the authority to either terminate the family's assistance or to take another action. This part discusses the various actions DOH may choose to take when it has discretion, and outlines the criteria DOH will use to make its decision about whether or not to terminate assistance. It also specifies the requirements for the notification to the family of the PHA's intent to terminate assistance.

### **12-II.B. METHOD OF TERMINATION [24 CFR 982.552(a)(3)]**

Termination of assistance for a participant may include any or all of the following:

- Terminating housing assistance payments under a current HAP contract,
- Refusing to enter into a new HAP contract or approve a lease, or
- Refusing to process a request for or to provide assistance under portability procedures.

### **12-II.C. ALTERNATIVES TO TERMINATION OF ASSISTANCE**

#### **Change in Household Composition**

As a condition of continued assistance, DOH 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 PHA request.

#### **Repayment of Family Debts**

- If a family owes amounts to DOH, as a condition of continued assistance, DOH will require the family to repay the full amount or to enter into a repayment agreement, within 30 days of receiving notice from DOH of the amount owed. See Chapter 16 for policies on repayment agreements.

## 12-II.D. CRITERIA FOR DECIDING TO TERMINATE ASSISTANCE

### Evidence

For criminal activity, HUD permits DOH 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)].

- DOH 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)]

DOH is permitted, but not required, to consider all relevant circumstances when determining whether a family's assistance should be terminated.

DOH 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 to act
- The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities or (as discussed further in section 12-II.E) a victim of domestic violence, dating violence, sexual assault or stalking
- The length of time since the violation occurred, the family's recent history and the likelihood of favorable conduct in the future
- In the case of drug or alcohol abuse, whether the culpable household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully
- DOH 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, DOH'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, DOH will determine whether the behavior is related to the disability. If so, upon the family's request, DOH will determine whether alternative measures are appropriate as a reasonable accommodation. DOH 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.

### **DOH Termination Procedures**

In deciding whether to deny or terminate assistance because of action or failure to act by members of the family, the PHA has discretion to consider all of the circumstances in each case, including the seriousness of the case. The PHA will use its discretion in reviewing the extent of participation or culpability of individual family members and the length of time since the violation occurred. The PHA will in less serious cases use the tenant conference process to ensure the participant is given every opportunity to be successful. This process involves meeting with a program participant after a minor lease or program violation to document the violation and to have the participant acknowledge the violation. After the three program violations, the participants file will be processed for termination upon a fourth program violation.

The PHA does reserve the right to evaluate each case individually and proceed straight to termination when warranted. The PHA may also review the family's more recent history and record of compliance and the effects that denial or termination of assistance may have on other family members who were not involved in the action or failure to act.

The PHA may impose, as a condition of continued assistance for other family members, a requirement that family members who participated in, or were culpable for the action or failure to act, will not reside in the unit. The PHA may permit the other members of a family to continue in the program.

## **12-II.E. TERMINATIONS RELATED TO DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT OR STALKING**

This section describes the protections against termination of assistance that the Violence against Women Act of 2013 (VAWA) provides for victims of domestic violence, dating violence, sexual assault and stalking. For general VAWA requirements, key VAWA definitions, and PHA policies pertaining to notification, documentation, and confidentiality, see section 16-IX of this plan.

### **VAWA Protections against Termination**

VAWA provides four specific protections against termination of HCV assistance for victims of domestic violence, dating violence, sexual assault or stalking. (*Note:* The second, third, and fourth protections also apply to terminations of tenancy or occupancy by owners participating in the HCV program, as do the limitations discussed under the next heading.)

First, VAWA provides that a PHA may not terminate assistance to a family that moves out of an assisted unit in violation of the lease, with or without prior notification to DOH, 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 affiliated individual or other individual is the actual or threatened victim of the domestic violence, dating violence, sexual assault or stalking [24 CFR 5.2005(c) (2)].

Fourth, it gives PHAs 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 PHA to terminate the assistance of a victim of abuse for reasons unrelated to domestic violence, dating violence, sexual assault or stalking so long as DOH 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 PHA to terminate the assistance of a victim of domestic violence, dating violence, sexual assault or stalking if DOH 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 PHA to terminate the victim's assistance "only when there are no other actions that could be taken to reduce or eliminate the threat" [24 CFR 5.2005(d)(3)].

- 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, DOH 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, 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 DOH'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, DOH will request that the individual provide documentation supporting the claim in accordance with the policies in section 16-IX.D of this plan.
- DOH 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 DOH 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 DOH 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 DOH 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 DOH 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].

- DOH will terminate assistance to a family member if DOH determines that the family member has committed criminal acts of physical violence against other family members or others. This action will not affect the assistance of the remaining, non-culpable family members.
- In making its decision, DOH will consider all credible evidence, including, but not limited to, a signed certification (form HUD-50066) or other documentation of abuse submitted to DOH by the victim in accordance with this section and section 16-IX.D. DOH will also consider the factors in section 12-II.D. Upon such consideration, DOH may, on a case-by-case basis, choose not to terminate the assistance of the culpable family member.
- If DOH 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-II.F. TERMINATION NOTICE**

HUD regulations require PHAs 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, DOH will send a written notice of termination to the family and to the owner. The PHA will also send a form HUD-50066 to the family with the termination notice. 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 PHA policies, or the circumstances surrounding the termination require.

- When DOH notifies an owner that a family's assistance will be terminated, DOH 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 DOH sends to the family must meet the additional HUD and PHA notice requirements discussed in section 16-III.C of this plan. VAWA 2013 expands notification requirements to require PHA's to provide notice of VAWA rights and the HUD 50066 form when a PHA terminates a household's housing benefits.

- Whenever DOH decides to terminate a family's assistance because of the family's action or failure to act, DOH will include in its termination notice the VAWA information described in section 16-IX.C of this plan and a form HUD-50066. The PHA will request that a family member wishing to claim protection under VAWA notify DOH within 10 business days.

Still other notice requirements apply in two situations:

- If a criminal record is the basis of a family's termination, the PHA must provide a copy of the record to the subject of the record and the tenant so that they have an opportunity to dispute the accuracy and relevance of the record [24 CFR 982.553(d)(2)].
- If immigration status is the basis of a family's termination, as discussed in section 12-I.D, the special notice requirements in section 16-III.D must be followed.

## ***PART III: TERMINATION OF TENANCY BY THE OWNER***

### **12-III.A. OVERVIEW**

Termination of an assisted tenancy is a matter between the owner and the family; DOH is not directly involved. However, the owner is under some constraints when terminating an assisted tenancy. Termination of tenancy for certain reasons will also result in termination of assistance as discussed in this section.

### **12-III.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, sexual assault or stalking and the victim is protected from eviction by the Violence against Women Act of 2013 (see section 12-II.E). A serious lease violation includes failure to pay rent or other amounts due under the lease. However, DOH's failure to make a HAP payment to the owner is not a violation of the lease between the family and the owner.

#### **Violation of Federal, State, or Local Law**

The owner is permitted to terminate the tenancy if a family member violates federal, state, or local law that imposes obligations in connection with the occupancy or use of the premises.

#### **Criminal Activity or Alcohol Abuse**

The owner may terminate tenancy during the term of the lease if any *covered person*, meaning any member of the household, a guest or another person under the tenant's control commits any of the following types of criminal activity (for applicable definitions see 24 CFR 5.100):

- Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents (including property management staff residing on the premises);
- Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of their residences by, persons residing in the immediate vicinity of the premises;
- Any violent criminal activity on or near the premises; or
- Any drug-related criminal activity on or near the premises.

However, in the case of criminal activity directly related to domestic violence, dating violence, sexual assault or stalking, if the tenant or an affiliated individual is the victim, the criminal activity may not be construed as cause for terminating the victim's tenancy (see section 12-II.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.

### ***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-II.G.

### **12-III.C. EVICTION [24 CFR 982.310(e) and (f) and Form HUD-52641-A, Tenancy Addendum]**

The owner must give the tenant a written notice that specifies the grounds for termination of tenancy during the term of the lease. The tenancy does not terminate before the owner has given this notice, and the notice must be given at or before commencement of the eviction action.

The notice of grounds may be included in, or may be combined with, any owner eviction notice to the tenant.

Owner eviction notice means a notice to vacate, or a complaint or other initial pleading used under state or local law to commence an eviction action. The owner may only evict the tenant from the unit by instituting a court action. The owner must give DOH a copy of any eviction notice at the same time the owner notifies the family. The family is also required to give DOH a copy of any eviction notice (see Chapter 5).

- If the eviction action is finalized in court, the owner must provide DOH with documentation related to the eviction, including notice of the eviction date, as soon as possible, but no later than 5 business days following the court-ordered eviction.

### **12-III.D. DECIDING WHETHER TO TERMINATE TENANCY [24 CFR 982.310(h), 24 CFR 982.310(h)(4)]**

An owner who has grounds to terminate a tenancy is not required to do so, and may consider all of the circumstances relevant to a particular case before making a decision. These might include:

- The nature of the offending action
- The seriousness of the offending action;
- The effect on the community of the termination, or of the owner's failure to terminate the tenancy;
- The extent of participation by the leaseholder in the offending action;
- The effect of termination of tenancy on household members not involved in the offending activity;
- The demand for assisted housing by families who will adhere to lease responsibilities;
- The extent to which the leaseholder has shown personal responsibility and taken all reasonable steps to prevent or mitigate the offending action;
- The effect of the owner's action on the integrity of the program.

The owner may require a family to exclude a household member in order to continue to reside in the assisted unit, where that household member has participated in or been culpable for action or failure to act that warrants termination.



In determining whether to terminate tenancy for illegal use of drugs or alcohol abuse by a household member who is no longer engaged in such behavior, the owner may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully (42 U.S.C. 13661). For this purpose, the owner may require the tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

The owner's termination of tenancy actions must be consistent with the fair housing and equal opportunity provisions in 24 CFR 5.105.

An owner's decision to terminate tenancy for incidents related to domestic violence, dating violence, sexual assault or stalking is limited by the Violence against Women Act of 2013 (VAWA) and the conforming regulations in 24 CFR Part 5, Subpart L. (See 12-II.E.)

#### **12-III.E. EFFECT OF TENANCY TERMINATION ON THE FAMILY'S ASSISTANCE**

If a termination is not due to a serious or repeated violation of the lease, and if DOH has no other grounds for termination of assistance, DOH may issue a new voucher so that the family can move with continued assistance (see Chapter 10).

## **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 DOH 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 DOH 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 DOH 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.
  - DOH 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, and 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, sexual assault 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 DOH 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 DOH at the same time the owner is notified.
- The family must promptly give DOH 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 DOH. The family must promptly notify DOH in writing of the birth, adoption, or court-awarded custody of a child. The family must request PHA approval to add any other family member as an occupant of the unit.
  - The request to add a family member must be submitted in writing and approved prior to the person moving into the unit. DOH will determine eligibility of the new member in accordance with the policies in Chapter 3.
- The family must promptly notify DOH in writing if any family member no longer lives in the unit.
- If DOH has given approval, a foster child or a live-in aide may reside in the unit. DOH has the discretion to adopt reasonable policies concerning residency by a foster child or a live-in aide, and to define when PHA consent may be given or denied. For policies related to the request and approval/disapproval of foster children, foster adults, and live-in aides, see Chapter 3 (Sections I.K and I.M), and Chapter 11 (Section II.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 DOH to verify that the family is living in the unit or information related to family absence from the unit.
- The family must promptly notify DOH 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 DOH 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 PHA policies related to drug-related and violent criminal activity.
- Members of the household must not engage in abuse of alcohol in a way that threatens the health, safety or right to peaceful enjoyment of the other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for a discussion of HUD and PHA policies related to alcohol abuse.
- An assisted family or member of the family must not receive HCV program assistance while receiving another housing subsidy, for the same unit or a different unit under any other federal, state or local housing assistance program.
- A family must not receive HCV program assistance while residing in a unit owned by a parent, child, grandparent, grandchild, sister or brother of any member of the family, unless DOH 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 major 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.

The chapter is organized in two parts:

Part I: Owners in the HCV Program. This part discusses the role of an owner in DOH’s HCV program and highlights key owner rights and responsibilities.

Part II: HAP Contracts. This part explains provisions of the HAP contract and the relationship between DOH and the owner as expressed in the HAP contract.

For detailed information about HCV program responsibilities and processes, including PHA policies in key areas, owners will need to refer to several other chapters in this plan. Where appropriate, Chapter 13 will reference the other chapters.

## ***PART I. OWNERS IN THE HCV PROGRAM***

### **13-I.A. OWNER RECRUITMENT AND RETENTION [HCV GB, pp. 2-4 to 2-6]**

#### **Recruitment**

PHAs are responsible for ensuring that very low income families have access to all types and ranges of affordable housing in DOH's jurisdiction, particularly housing outside areas of poverty or minority concentration. A critical element in fulfilling this responsibility is for DOH to ensure that a sufficient number of owners, representing all types and ranges of affordable housing in DOH's jurisdiction, are willing to participate in the HCV program.

To accomplish this objective, PHAs must identify and recruit new owners to participate in the program.

- DOH will conduct owner outreach to ensure that owners are familiar with the program and its advantages. DOH will actively recruit property owners with property located outside areas of poverty and minority concentration. These outreach strategies will include:
  - Distributing printed material about the program to property owners and managers
  - Contacting property owners and managers by phone or in-person
  - Holding owner recruitment/information meetings as needed
  - 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, DOH must also provide the kind of customer service that will encourage participating owners to remain active in the program.

- All PHA activities that may affect an owner's ability to lease a unit will be processed as rapidly as possible, in order to minimize vacancy losses for owners.
- DOH will provide owners with a handbook that explains the program, including HUD and PHA policies and procedures, in easy-to-understand language.
- DOH will give special attention to helping new owners succeed through activities such as:
  - Providing the owner with a designated PHA contact person.

- Coordinating inspection and leasing activities between DOH, the owner, and the family.
  - Initiating telephone contact with the owner to explain the inspection process, and providing an inspection booklet and other resource materials about HUD housing quality standards.
- Additional services may be undertaken on an as-needed basis, and as resources permit.

### **13-I.B. BASIC HCV PROGRAM REQUIREMENTS**

HUD requires DOH to assist families in their housing search by providing the family with a list of landlords or other parties known to DOH who may be willing to lease a unit to the family, or to help the family find a unit. Although DOH cannot maintain a list of owners that are pre-qualified to participate in the program, owners may indicate to DOH 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 DOH. DOH 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 unassisted tenant. DOH 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 DOH, this document is the first step in the process of obtaining approval for the family to receive the financial assistance it will need in order to occupy the unit. 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 requirements for the approval of an assisted tenancy.

The owner must be qualified to participate in the program [24 CFR 982.306]. Some owners are precluded from participating in the program, or from renting to a particular family, either because of his or her past history with this or another federal housing program, or because of certain conflicts of interest. Owner qualifications are discussed later in this chapter.

The selected unit must be of a type that is eligible for the program [24 CFR 982.305(a)]. Certain types of dwelling units cannot be assisted under the HCV program. Other types may be assisted under certain conditions. 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)]. DOH will inspect the owner's dwelling unit at least annually to ensure that the unit continues to meet HQS requirements. See chapter 8 for a discussion of the HQS standards and policies for HQS inspections at initial lease-up and throughout the family's tenancy.

DOH must determine that the proposed rent for 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, if the gross rent exceeds the applicable payment standard, DOH must ensure that the family share 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. The HUD Tenancy Addendum includes the HUD requirements governing the tenancy and must be added word-for-word to the owner's lease. See chapter 9 for a discussion of the dwelling lease and tenancy addendum, including lease terms and provisions.

The PHA and the owner must execute a Housing Assistance Payment (HAP) Contract (Form HUD-52641). The HAP contract format is prescribed by HUD. See chapter 9 for a discussion of the HUD requirements for execution of the HAP contract

### **13-I.C. OWNER RESPONSIBILITIES [24 CFR 982.452,]**

The basic owner responsibilities in the HCV program are outlined in the regulations as follows:

- Compliance with all of the owner's obligations under the housing assistance payments (HAP) contract and the lease
- Performing all management and rental functions for the assisted unit, including selecting a voucher-holder to lease the unit, and deciding if the family is suitable for tenancy of the unit
- Maintaining the unit in accordance with the Housing Quality Standards (HQS), including performance of ordinary and extraordinary maintenance
- Complying with equal opportunity requirements
- Preparing and furnishing to DOH information required under the HAP contract
- Collecting the security deposit, the tenant rent, and any charges for unit damage by the family



- Enforcing tenant obligations under the dwelling lease
- Paying for utilities and services that are not the responsibility of the family as specified in the lease
- Allow reasonable modifications to a dwelling unit occupied or to be occupied by a disabled person [24 CFR 100.203]
- Comply with the Violence Against Women Reauthorization Act of 2013 (VAWA) when screening and terminating tenants.
- Complying with the Violence against Women Reauthorization Act of 2013 (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-I.D. OWNER QUALIFICATIONS**

DOH does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where DOH may deny approval of an assisted tenancy based on past owner behavior, conflict of interest, or other owner-related issues. No owner has a right to participate in the HCV program [24 CFR 982.306(e)].

#### **Owners Barred from Participation [24 CFR 982.306(a) and (b)]**

DOH must not approve the assisted tenancy if DOH 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 DOH 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]**

DOH must not approve a tenancy if the owner is the parent, child, grandparent, grandchild, sister, or brother of any member of the family. DOH may make an exception as a reasonable accommodation for a family member with a disability. The owner is required to certify that no such relationship exists. This restriction applies at the time that the family receives assistance under the HCV program for occupancy of a particular unit.

#### **Conflict of Interest [24 CFR 982.161; HCV GB p. 8-19]**

DOH 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 DOH (except a participant commissioner)
- Any employee of DOH, or any contractor, subcontractor or agent of DOH, 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. DOH must submit a waiver request to the appropriate HUD Field Office for determination.

Any waiver request submitted by DOH must include the following [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, DOH, or both parties may conduct this analysis. Where appropriate, an opinion by the state's attorney general should be obtained;
- Opinion by the local HUD office as to whether there would be an appearance of impropriety if the waiver were granted;
- Statement regarding alternative existing housing available for lease under the HCV program or other assisted housing if the waiver is denied;
- If the case involves a hardship for a particular family, statement of the circumstances and discussion of possible alternatives;
- If the case involves a public official or member of the governing body, explanation of his/her duties under state or local law, including reference to any responsibilities involving the HCV program;
- If the case involves employment of a family member by DOH or assistance under the HCV program for an eligible PHA employee, explanation of the responsibilities and duties of the position, including any related to the HCV program;
- If the case involves an investment on the part of a member, officer, or employee of DOH, description of the nature of the investment, including disclosure/divestiture plans.

Where DOH has requested a conflict of interest waiver, DOH 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 PHA will consider certain factors such as consistency of the waiver 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 DOH to disapprove a request for tenancy for various actions and inactions of the owner.

If DOH 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].

- DOH will refuse to approve a request for tenancy if DOH 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: (i) Threatens the right to peaceful enjoyment of the premises by other residents; (ii) Threatens the health or safety of other residents, of employees of DOH, or of owner employees or other persons engaged in management of the housing; (iii) Threatens the health or safety of, or the right to peaceful enjoyment of their residences, by persons residing in the immediate vicinity of the premises; or (iv) Is drug-related criminal activity or violent criminal activity;
  - The owner has a history or practice of renting units that fail to meet state or local housing codes; or
  - The owner has not paid state or local real estate taxes, fines, or assessment.

In considering whether to disapprove owners for any of the discretionary reasons listed above, DOH 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, DOH may, on a case-by-case basis, choose to approve an owner.

### **Legal Ownership of Unit**

The following represents PHA policy on legal ownership of a dwelling unit to be assisted under the HCV program.

- DOH will only enter into a contractual relationship with the legal owner of a qualified unit. DOH will assume legal ownership until given a reason not to. At that point, DOH will require acceptable documentation of legal ownership.

### **13-I.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 DOH.

The owner must cooperate with DOH and with HUD in conducting any equal opportunity compliance reviews and complaint investigations in connection with the HCV program and the HAP contract with DOH.

See Chapter 2 for a more thorough discussion of Fair Housing and Equal Opportunity requirements in the HCV program.

## ***PART II HAP CONTRACTS***

### **13-II.A. OVERVIEW**

The HAP contract represents a written agreement between DOH 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 DOH's obligations. Under the HAP contract, DOH agrees to make housing assistance payments to the owner on behalf of the family approved by the PHA to occupy the 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 use their assistance to lease the space for the manufactured home. See chapter 15 for a discussion of any special housing types included in DOH's HCV program.

When the PHA has determined that the unit meets program requirements and the tenancy is approvable, DOH and the owner must execute the HAP contract. See chapter 9 for a discussion of the leasing process, including provisions for execution of the HAP contract.

### **13-II.B. HAP CONTRACT CONTENTS**

The HAP contract format is required by HUD, specifically Housing Assistance Payment (HAP) Contract, Form HUD-52641.

The HAP contract contains three parts.

Part A of the contract includes basic contract information: the names of the tenant and all household members, the address of the contract unit, start and end dates of initial lease term, the amount of initial monthly rent to owner, the amount of initial housing assistance payment, the utilities and appliances to be supplied by owner and tenant, and the signatures of the PHA representative and owner [HCV Guidebook, pp. 11-10 and 11-11].

In general, the HAP contract cannot be modified. However, PHAs do have the discretion to add language to Part A of the HAP contract which prohibits the owner from collecting a security deposit in excess of private market practices or in excess of amounts charged to unassisted tenants. PHA policy on the amount of security deposit an owner may collect is found in Chapter 9.

In addition, PHAs also have the discretion to add language to Part A of the HAP contract that defines when the housing assistance payment by the PHA is deemed received by the owner (e.g., upon mailing by the PHA or actual receipt by the owner).

- DOH has not adopted a policy that defines when the housing assistance payment by DOH 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 includes:

- Lease of Contract Unit
- Maintenance, Utilities, and Other Services
- Term of HAP Contract
- Provision and Payment of Utilities and Appliances
- Rent to Owner: Reasonable Rent
- PHA Payment to Owner
- Prohibition of Discrimination
- Owner's Breach of HAP Contract
- PHA and HUD Access to Premises and Owner's Records
- Exclusion of Third Party Rights
- Conflict of Interest
- Assignment of the HAP Contract
- Written Notices
- Entire Agreement Interpretation

Part C of the contract includes the Tenancy Addendum (Form HUD-52641-A). The addendum sets forth the tenancy requirements for the program and the composition of the household, as approved by DOH. The tenant has the right to enforce the Tenancy Addendum against the owner. The terms of the Tenancy Addendum prevail over any other provisions of the lease.

### **13-II.C. HAP CONTRACT PAYMENTS**

#### **General**

During the term of the HAP contract, and subject to the provisions of the HAP contract, DOH 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. DOH 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 DOH is credited toward the monthly rent to owner under the family's lease. The total of the rent paid by the tenant and the HAP payment is equal to the rent to owner as specified in the lease.

The family is not responsible for payment of the HAP payment, and DOH 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 DOH, the excess amount must be returned immediately. If DOH determines that the owner is not entitled to all or a portion of the HAP, DOH 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 DOH, 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)]**

DOH 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 late penalties if DOH 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; 3) the owner charges the assisted family for late payment of the family's share of the rent; and 4) the late fees charged do not exceed \$50.

DOH is not required to pay a late payment penalty if HUD determines that the payment is late for reasons beyond DOH's control. In addition, late payment penalties are not required if DOH 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)]**

DOH must continue making housing assistance payments to the owner in accordance with the HAP contract as long as the tenant continues to occupy the unit and the HAP contract is not violated.

HAP payments terminate when the HAP contract terminates or when the tenancy is terminated in accordance with the terms of the lease.

If the owner has initiated eviction proceedings against the family and the family continues to reside in the unit, DOH 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 DOH when the owner has initiated eviction proceedings against the family and the family continues to reside in the unit.
- The owner must inform DOH when the owner has obtained a court judgment or other process allowing the owner to evict the tenant, and provide DOH 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, DOH will continue to make HAP payments to the owner until the family actually moves from the unit or until the family is physically evicted from the unit, whichever is earlier. The owner must inform DOH of the date when the family actually moves from the unit or the family is physically evicted from the unit.

### **13-II.D. BREACH OF HAP CONTRACT [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 regulation for the applicable program; or if the owner has committed fraud, bribery or any other corrupt or criminal act in connection with the mortgage or loan
- If the owner has engaged in drug-related criminal activity
- If the owner has committed any violent criminal activity

If DOH determines that a breach of the HAP contract has occurred, it may exercise any of its rights and remedies under the HAP contract.

DOH 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 of the HAP contract. DOH may also obtain additional relief by judicial order or action.

DOH 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. DOH must provide the owner with written notice of any reduction in housing assistance payments or the termination of the HAP contract.

- Before DOH invokes a remedy against an owner, DOH will evaluate all information and documents available to determine if the contract has been breached.
- If relevant, DOH 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, DOH will consider all of the relevant factors including the seriousness of the breach, the effect on the family, the owner's record of compliance and the number and seriousness of any prior HAP contract violations.

### **13-II.E. HAP CONTRACT TERM AND TERMINATIONS**

The term of the HAP contract runs concurrently with the term of the dwelling lease [24 CFR 982.451(a)(2)], beginning on the first day of the initial term of the lease and terminating on the last day of the term of the lease, including any lease term extensions.

The HAP contract and the housing assistance payments made under the HAP contract terminate if [HCV Guidebook pp.11-4 and 11-5, pg. 15-3]:

- The owner or the family terminates the lease;

- The lease expires;
- DOH terminates the HAP contract;
- DOH 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 DOH made the last housing assistance payment to the owner;
- The family is absent from the unit for longer than the maximum period permitted by DOH;
- The Annual Contributions Contract (ACC) between DOH and HUD expires
- DOH elects to terminate the HAP contract.
- DOH may elect to terminate the HAP contract in each of the following situations:
  - Available program funding is not sufficient to support continued assistance for families in the program [24 CFR 982.454];
  - The unit does not meet HQS size requirements due to change in family composition [24 CFR 982.403] – see chapter 8;
  - The unit does not meet HQS [24 CFR 982.404] – see chapter 8;
  - The family breaks up [HUD Form 52641] – see chapter 3;
  - The owner breaches the HAP contract [24 CFR 982.453(b)] – see Section 13-II.D.

If DOH terminates the HAP contract, DOH 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 DOH gives written notice to the owner. The owner is not entitled to any housing assistance payment after this period, and must return to DOH any housing assistance payment received after this period.

If the family moves from the assisted unit into a new unit, even if the new unit is in the same building or complex as the assisted unit, the HAP contract for the assisted unit terminates. A new HAP contract would be required [HCV GB, p. 11-17].

When the family moves from an assisted unit into a new unit, the term of the HAP contract for the new unit may begin in the same month in which the family moves out of its old unit. This is not considered a duplicative subsidy [HCV GB, p. 8-22].

### **13-II.F. CHANGE IN OWNERSHIP / ASSIGNMENT OF THE HAP CONTRACT [HUD-52641]**

The HAP contract cannot be assigned to a new owner without the prior written consent of DOH.

An owner under a HAP contract must notify DOH in writing prior to a change in the legal ownership of the unit. The owner must supply all information as requested by DOH.

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 DOH finds acceptable. The new owner must provide DOH 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-I.D. of this chapter.
- DOH 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 10 business days of receiving the owner's request, DOH will inform the current owner in writing whether the assignment may take place.
- The new owner must provide a written certification to DOH 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 State of Colorado substitute 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
  - A certification 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, DOH 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, DOH will process the leasing in accordance with the policies in chapter 9.

### **13-II.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 PHA 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 PHA 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 in the event that the PHA is unable to make HAP payments to the successor in interest due 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 PHA should also refer the tenant, as needed, to the local legal aid office in order 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.)

PHAs are 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 PHA will provide all HCV applicants that have been issued a voucher with information regarding the PTFA at admission (see Section 5-I.B) and to participant heads of household at annual reexamination.
- The PHA will provide information regarding the PTFA to prospective owners when they begin their participation in the HCV program and to current HCV owners one time with the monthly HAP.

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-III.B for a discussion of foreclosure as it pertains to owner termination of tenancy.

## Chapter 14

### PROGRAM INTEGRITY

#### INTRODUCTION

DOH is committed to ensuring that subsidy funds made available to DOH are spent in accordance with HUD requirements.

This chapter covers HUD and DOH policies designed to prevent, detect, investigate and resolve instances of program abuse or fraud. It also describes the actions that will be taken in the case of unintentional errors and omissions.

Part I: Preventing, Detecting, and Investigating Errors and Program Abuse. This part presents DOH policies related to preventing, detecting, and investigating errors and program abuse.

Part II: Corrective Measures and Penalties. This part describes the corrective measures DOH must and may take when errors or program abuses are found.

**PART I: PREVENTING, DETECTING, AND  
INVESTIGATING ERRORS AND PROGRAM ABUSE**

**14-I.A. PREVENTING ERRORS AND PROGRAM ABUSE**

HUD created the Enterprise Income Verification (EIV) system to provide PHAs with a powerful tool for preventing errors and detecting program abuse. PHAs are required to use the EIV system in its entirety in accordance with HUD administrative guidance [24 CFR 5.233]. PHAs are further required to:

- Provide applicants and participants with form HUD-52675, “Debts Owed to PHAs and Terminations”
- Require all adult members of an applicant or participant family to acknowledge receipt of form HUD-52675 by signing a copy of the form for retention in the family file
  - To ensure that DOH’s HCV program is administered according to the highest ethical and legal standards, DOH will employ a variety of techniques to ensure that both errors and intentional program abuse are rare.
    - DOH will discuss program compliance and integrity issues during the voucher briefing sessions described in Chapter 5.
    - DOH 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.
    - DOH 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, DOH will require the head of each household to acknowledge receipt of the guide by signing a copy for retention in the family file.
    - DOH will place a warning statement about the penalties for fraud (as described in 18 U.S.C. 1001 and 1010) on key PHA forms and form letters that request information from a family or owner.
    - DOH staff will be required to review and explain the contents of all HUD- and DOH-required forms prior to requesting family member signatures.
    - At every regular reexamination, PHA staff will explain any changes in HUD regulations or PHA policy that affect program participants.
    - DOH will provide first-time owners (or their agents) with a briefing packet which includes information on HAP contract requirements.

- The PHA will provide owners with ongoing information about the program, with an emphasis on actions and situations to avoid.
- DOH will provide each PHA employee with the necessary training on program rules and the organization's standards of conduct and ethics.

For purposes of this chapter the term *error* refers to an unintentional error or omission. *Program abuse or fraud* refers to a single act or pattern of actions that constitute a false statement, omission, or concealment of a substantial fact, made with the intent to deceive or mislead.

#### **14-I.B. DETECTING ERRORS AND PROGRAM ABUSE**

In addition to taking steps to prevent errors and program abuse, DOH 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 DOH 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, DOH will employ a variety of methods to detect errors and program abuse.
  - DOH routinely will use HUD and other non-HUD sources of up-front income verification. This includes The Work Number, CBMS, Family Support Registry and any other private or public databases available to the PHA.
  - 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.
  - DOH will compare family-reported income and expenditures to detect possible unreported income.

##### **Independent Audits and HUD Monitoring**

OMB Circular A-133 requires all PHA's 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 DOH activities and notifies DOH of errors and potential cases of program abuse.

- DOH will use the results reported in any IPA or HUD monitoring reports to identify potential program abuses as well as to assess the effectiveness of DOH's error detection and abuse prevention efforts.



## **Individual Reporting of Possible Errors and Program Abuse**

- DOH will encourage staff, program participants, and the public to report possible program abuse.

## **14-I.C. INVESTIGATING ERRORS AND PROGRAM ABUSE**

### **When DOH Will Investigate**

- DOH will review all referrals, specific allegations, complaints, and tips from any source including other agencies, companies, and individuals, to determine if they warrant investigation. In order for DOH 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.
- DOH will investigate when inconsistent or contradictory information is detected through file reviews and the verification process.

### **Consent to Release of Information [24 CFR 982.516]**

DOH may investigate possible instances of error or abuse using all available DOH and public records. If necessary, DOH will require HCV families to sign consent forms for the release of additional information.

### **Investigation of Allegations of Abuse and Fraud**

If DOH determines that an allegation or referral warrants investigation, either the staff person who is responsible for the file or a person designated by the Section 8 Manager shall conduct the investigation.

The steps taken will depend upon the nature of the allegation and may include, but not be limited to, the items listed below. In all cases, written authorization from the program participant shall be received as needed for the release of information.

#### Employers and Ex-Employers

Employers or ex-employers may be contacted to verify wages which may have been previously undisclosed or misreported.

#### Neighbors/Witnesses

Neighbors and/or other witnesses may be interviewed who are believed to have direct or indirect knowledge of facts pertaining to DOH's review.

#### Other Agencies

Investigators, caseworkers or representatives of other benefit agencies may be contacted.

### Public Records

If relevant, DOH will review of public court records. Examples of public records which may be reviewed include: real estate, marriage, and divorce, uniform commercial code financing statements, voter registration, judgments, court or police records, state wage records, utility records and postal records.

### Interviews with Heads of Household or Family Members

The investigator will discuss the allegation (or details thereof) with the head of household or family member.

### **Analysis and Findings**

DOH 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 DOH will determine (1) whether an error or program abuse has occurred, (2) whether any amount of money is owed DOH, 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 DOH 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, DOH 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, DOH 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**

- DOH 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 DOH determined the error or program abuses, (3) the remedies to be employed, and (4) the family's right to appeal the results through the informal review or hearing process, if applicable (see Chapter 16).

## ***PART II: CORRECTIVE MEASURES AND PENALTIES***

### **14-II.A. SUBSIDY 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, DOH must promptly correct the HAP, family share, and any utility reimbursement.

- Increases in the family share will be implemented on the first of the month following a written 30 day 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 DOH or DOH is required to make retroactive subsidy payments to the owner or family depends upon which party is responsible for the incorrect subsidy payment and whether the action taken was an error or program abuse. Policies regarding reimbursement are discussed in the three sections that follow.

### **14-II.B. FAMILY-CAUSED ERRORS AND PROGRAM ABUSE**

Family obligations and general administrative requirements for participating in the program are discussed throughout this plan. This section deals specifically with errors and program abuse by family members.

An incorrect subsidy determination caused by a family generally would be the result of incorrect reporting of family composition, income, assets, or expenses, but also would include instances in which the family knowingly allows DOH to use incorrect information provided by a third party.

#### **Family Reimbursement to DOH [HCV GB pp. 22-12 to 22-13]**

- In the case of family-caused errors or program abuse due to willful intent, the family will be required to repay any excess subsidy received. DOH 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, DOH will terminate the family's assistance in accordance with the policies in Chapter 12.

Any of the following circumstances will be considered adequate to demonstrate willful intent:

1. An admission by the participant of the misrepresentation;
2. That the act was done repeatedly;
3. If a false name or Social Security Number were used;

4. If there were admissions to others of the illegal action or omission;
5. That the participant omitted material facts which were known to him/her (e.g., employment of self or other household member);
6. That the participant falsified, forged or altered documents; or,
7. That the participant uttered and certified to statements at any stage of the application process or participation in the voucher program, which were later proven to be false.

### **DOH Reimbursement to Family [HCV GB p. 22-12]**

DOH will not reimburse the family for any underpayment of assistance when the underpayment is caused by the family.

### **Prohibited Actions**

An applicant or participant in the HCV program must not knowingly:

- Make a false statement to DOH [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 DOH for rent, security deposit, and additional services
- Offering bribes or illegal gratuities to DOH Board of Commissioners, employees, contractors, or other DOH 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 DOH 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

DOH 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 DOH may, at its discretion, impose any of the following remedies.

- DOH must require the family to repay excess subsidy amounts paid by DOH, as described earlier in this section.
- DOH 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).
- DOH may deny or terminate the family's assistance following the policies set forth in Chapter 3 and Chapter 12 respectively.
- DOH may refer the family for state or federal criminal prosecution as described in section 14-II.E.

### **14-II.C. OWNER-CAUSED ERROR OR PROGRAM ABUSE**

Owner requirements that are part of the regular process of offering, leasing, and maintaining a unit (e.g., HQS compliance, fair housing) are addressed in the appropriate chapters of this plan. This section focuses on errors and program abuse by owners.

An incorrect subsidy determination caused by an owner generally would be the result of an incorrect owner statement about the characteristics of the assisted unit (e.g., the number of bedrooms, which utilities are paid by the family). It also includes accepting duplicate housing assistance payments for the same unit in the same month, or after a family no longer resides in the unit.

#### **Owner Reimbursement to DOH**

In all cases of overpayment of subsidy caused by the owner, the owner must repay to DOH any excess subsidy received. DOH may recover overpaid amounts by withholding housing assistance payments due for subsequent months, or if the debt is large, DOH 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, DOH will require the owner to repay the amount owed in accordance with the policies in Section 16-IV.B.

#### **Prohibited Owner Actions**

An owner participating in the HCV program must not:

- Make any false statement to DOH [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 DOH
- 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 DOH Board of Commissioners, employees, contractors, or other DOH representatives
- Offering payments or other incentives to an HCV family as an inducement for the family to make false or misleading statements to DOH
- Residing in the unit with an assisted family

### **Remedies and Penalties**

When DOH determines that the owner has committed program abuse, DOH 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 DOH programs.
- Refer the case to state or federal officials for criminal prosecution as described in section 14-II.E.

### **14-II.D. DOH-CAUSED ERRORS OR PROGRAM ABUSE**

The responsibilities and expectations of DOH staff with respect to normal program administration are discussed throughout this plan. This section specifically addresses actions of DOH staff member that are considered errors or program abuse related to the HCV program. Additional standards of conduct may be provided in DOH personnel policy.

DOH-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 DOH**

Neither a family nor an owner is required to repay an overpayment of subsidy if the error or program abuse is caused by DOH staff [HCV GB. 22-12].

#### **DOH Reimbursement to Family or Owner**

DOH 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 DOH's administrative fee reserves [HCV GB p. 22-12].

#### **Prohibited Activities**

Any of the following will be considered evidence of program abuse by DOH 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 DOH
- Disclosing confidential or proprietary information to outside parties
- Gaining profit as a result of insider knowledge of DOH activities, policies, or practices
- Misappropriating or misusing HCV funds
- Destroying, concealing, removing, or inappropriately using any records related to the HCV program
- Committing any other corrupt or criminal act in connection with any federal housing program

#### **14-II.E. CRIMINAL PROSECUTION**

When DOH determines that program abuse by an owner, family, or DOH staff member has occurred and the amount of overpaid subsidy meets or exceeds the threshold for prosecution under local or state law, DOH will refer the matter to the appropriate entity for prosecution. When the amount of overpaid assistance meets or exceeds the federal threshold, the case will also be referred to the HUD Office of Inspector General (OIG).

Other criminal violations related to the HCV program will be referred to the appropriate local, state, or federal entity.

#### **14-II.F. FRAUD AND PROGRAM ABUSE RECOVERIES**

DOH may retain a portion of program fraud losses that DOH recovers from a family or owner through litigation, court order, or a repayment agreement [24 CFR 982.163].

DOH 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 DOH to retain the greater of:

- 50 percent of the amount it actually collects from a judgment, litigation (including settlement of a lawsuit) or an administrative repayment agreement, or
- Reasonable and necessary costs that DOH 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 DOH related to the collection, these costs must be deducted from the amount retained by DOH.

### **The Tenant Conference**

When the PHA has established that material misrepresentation(s) have occurred, a tenant conference may be scheduled at the PHA's discretion to discuss the allegations with the family representative. The tenant conference can be held by the PHA or by the contractor agency depending on the severity of the offense.

The conference may, in the PHA's discretion, take place prior to any proposed action. The purpose of the conference is to review the information and evidence available with the participant, and to provide the participant an opportunity to explain any findings which conflict with representations in the participant's file. Any documents or mitigating circumstances presented by the participant will be taken into consideration by the PHA. The participant will be given 10 business days to furnish any mitigating evidence.

A secondary purpose of the case conference is to assist the PHA in determining the course of action most appropriate for the case. Prior to the final determination of the proposed action, the PHA will consider:

1. The duration of the violation and number of false statements;
2. The family's ability to understand the rules;
3. The family's willingness to cooperate, and to accept responsibility for his or her actions;
4. The family's past history; and
5. Whether or not criminal intent has been established.

### **Post-Case Conference Notification to Participant of Proposed Action**

The PHA will notify the family by certified mail of the proposed action no later than 30 days after the tenant conference.



## Chapter 15

### SPECIAL HOUSING TYPES & SPECIAL PROGRAMS

[24 CFR 982 Subpart M]

#### INTRODUCTION

DOH may permit a family to use any of the special housing types discussed in this chapter. However, DOH is not required to permit families receiving assistance in its jurisdiction to use these housing types, except that PHAs must permit use of any special housing type if needed as a reasonable accommodation for a person with a disability. DOH 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 permitted to use any special housing types needed as a reasonable accommodation so that the program is readily accessible to a person with disabilities.

Special housing types include single room occupancy (SRO), congregate housing, group homes, shared housing, cooperative housing, manufactured homes where the family owns the home and leases the space, and homeownership [24 CFR 982.601].

This chapter consists of the following seven parts. Each part contains a description of the housing type and any special requirements associated with it. Except as modified by this chapter, the general requirements of the HCV program apply to special housing types.

Part I: Single Room Occupancy

Part II: Congregate Housing

Part III: Group Homes

Part IV: Shared Housing

Part V: Cooperative Housing

Part VI: Manufactured Homes (including manufactured home space rental)

Part VII: Homeownership

Part VIII: Family Unification Program (FUP)

Part IX: Veterans Affairs Supportive Housing (VASH)

## **PART I: SINGLE ROOM OCCUPANCY**

[24 CFR 982.602 through 982.605]

### **15-I.A. OVERVIEW**

Single room occupancy (SRO) units provides living and sleeping space for the exclusive use of the occupant but requires the occupant to share sanitary and/or food preparation facilities with others. More than one person may not occupy an SRO unit. HCV regulations do not limit the number of units in an SRO facility, but the size of a facility may be limited by local ordinances.

When providing HCV assistance in an SRO unit, a separate lease and HAP contract are executed for each assisted person, and the standard form of the HAP contract is used.

### **15-I.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION**

The payment standard for SRO housing is 75 percent of the zero-bedroom payment standard amount on DOH's payment standard schedule.

The utility allowance for an assisted person residing in SRO housing is 75 percent of the zero-bedroom utility allowance.

The HAP for an assisted occupant in an SRO facility is the lower of the SRO payment standard amount minus the TTP or the gross rent for the unit minus the TTP.

### **15-I.C. HOUSING QUALITY STANDARDS (HQS)**

HQS requirements described in Chapter 8 apply to SRO housing except as modified below.

- *Access:* Access doors to the SRO unit must have working locks for privacy. The occupant must be able to access the unit without going through any other unit. Each unit must have immediate access to two or more approved means of exit from the building, appropriately marked and leading to safe and open space at ground level. The SRO unit must also have any other means of exit required by State or local law.
- *Fire Safety:* All SRO facilities must have a sprinkler system that protects major spaces. "Major spaces" are defined as hallways, common areas, and any other areas specified in local fire, building, or safety codes. SROs must also have hard-wired smoke detectors, and any other fire and safety equipment required by state or local law.
- Sanitary facilities and space and security standards must meet local code requirements for SRO housing. In the absence of local code standards the requirements discussed below apply [24 CFR 982.605].
- *Sanitary Facilities:* At least one flush toilet that can be used in privacy, a lavatory basin, and a bathtub or shower in proper operating condition must be provided for each six persons (or fewer) residing in the SRO facility. If the SRO units are leased only to men,

flush urinals may be substituted for up to one half of the required number of toilets. Sanitary facilities must be reasonably accessible from a common hall or passageway, and may not be located more than one floor above or below the SRO unit. They may not be located below grade unless the SRO units are located on that level.

- *Space and Security:* An SRO unit must contain at least 110 square feet of floor space, and at least four square feet of closet space with an unobstructed height of at least five feet, for use by the occupant. If the closet space is less than four square feet, the habitable floor space in the SRO unit must be increased by the amount of the deficiency. Exterior doors and windows accessible from outside the SRO unit must be lockable.

Because no children live in SRO housing, the housing quality standards applicable to lead-based paint do not apply.

## ***PART II: CONGREGATE HOUSING***

[24 CFR 982.606 through 982.609]

### **15- II.A. OVERVIEW**

Congregate housing is intended for use by elderly persons or persons with disabilities. A congregate housing facility contains a shared central kitchen and dining area and a private living area for the individual household that includes at least a living room, bedroom and bathroom. Food service for residents must be provided.

If approved by DOH, a family member or live-in aide may reside with the elderly person or person with disabilities. DOH 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 (see Chapter 3).

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.

#### **HQS requirements**

All standard HQS requirements apply. There are no additional HQS requirements

### **15- II.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION**

The payment standard for an individual unit in a congregate housing facility is based on the number of rooms in the private living area. If there is only one room in the unit (not including the bathroom or the kitchen, if a kitchen is provided), DOH must use the payment standard for a zero-bedroom unit. If the unit has two or more rooms (other than the bathroom and the kitchen), DOH must use the one-bedroom payment standard.

The HAP for an assisted occupant in a congregate housing facility is the lower of the applicable payment standard minus the TTP or the gross rent for the unit minus the TTP.

The gross rent for the unit for the purpose of calculating HCV assistance is the shelter portion (including utilities) of the resident's monthly housing expense only. The residents' costs for food service should not be included in the rent for a congregate housing unit.

### **15- II.C. HOUSING QUALITY STANDARDS**

HQS requirements as described in Chapter 8 apply to congregate housing except for the requirements stated below.

Congregate housing must have (1) a refrigerator of appropriate size in the private living area of each resident; (2) a central kitchen and dining facilities located within the premises and accessible to the residents, and (3) food service for the residents, that is not provided by the residents themselves.

The housing quality standards applicable to lead-based paint do not apply.

### ***PART III: GROUP HOME***

[24 CFR 982.610 through 982.614 and HCV GB p. 7-4]

#### **15- III.A. OVERVIEW**

A group home is a state-licensed facility intended for occupancy by elderly persons and/or persons with disabilities. Except for live-in aides, all persons living in a group home, whether assisted or not, must be elderly persons or persons with disabilities. Persons living in a group home must not require continuous medical or nursing care.

A group home consists of bedrooms for residents, which can be shared by no more than two people, and a living room, kitchen, dining area, bathroom, and other appropriate social, recreational, or community space that may be shared with other residents.

No more than 12 persons may reside in a group home including assisted and unassisted residents and any live-in aides.

If approved by DOH, a live-in aide may live in the group home with a person with disabilities (see Chapter 3). DOH must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in a group home, a separate lease and HAP contract is executed for each assisted family, and the standard form of the HAP contract is used.

#### **15- III.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION**

Unless there is a live-in aide, the family unit size for an assisted occupant of a group home must be zero- or one-bedroom, depending on DOH's subsidy standard. If there is a live-in aide, the aide must be counted in determining the household's unit size.

The payment standard used to calculate the HAP is the lower of the payment standard for the family unit size or the pro-rata share of the payment standard for the group home size. The pro-rata share is calculated by dividing the number of persons in the assisted household by the number of persons (assisted and unassisted) living in the group home.

The HAP for an assisted occupant in a group home is the lower of the payment standard minus the TTP or the gross rent minus the TTP.

The utility allowance for an assisted occupant in a group home is the pro-rata share of the utility allowance for the group home.

The rents paid for participants residing in group homes are subject to generally applicable standards for rent reasonableness. The rent for an assisted person must not exceed the pro-rata portion of the reasonable rent for the group home. In determining reasonable rent, DOH should consider whether sanitary facilities and facilities for food preparation and service are common facilities or private facilities.

## 15- III.C. HOUSING QUALITY STANDARDS

HQS requirements described in Chapter 8 apply to group homes except for the requirements stated below.

- *Sanitary Facilities:* A group home must have at least one bathroom in the facility, with a flush toilet that can be used in privacy, a fixed basin with hot and cold running water, and a shower or bathtub with hot and cold running water. A group home may contain private or common bathrooms. However, no more than four residents can be required to share a bathroom.
- *Food Preparation and Service:* Group home units must contain a kitchen and dining area with adequate space to store, prepare, and serve food. The facilities for food preparation and service may be private or may be shared by the residents. The kitchen must contain a range, an oven, a refrigerator, and a sink with hot and cold running water. The sink must drain into an approvable public or private disposal system.
- *Space and Security:* Group homes must contain at least one bedroom of appropriate size for every two people, and a living room, kitchen, dining area, bathroom, and other appropriate social, recreational, or community space that may be shared with other residents.
- *Structure and Material:* To avoid any threat to the health and safety of the residents, group homes must be structurally sound. Elevators must be in good condition. Group homes must be accessible to and usable by residents with disabilities.
- *Site and Neighborhood:* Group homes must be located in a residential setting. The site and neighborhood should be reasonably free from hazards to the health, safety, and general welfare of the residents, and should not be subject to serious adverse conditions, such as:
  - Dangerous walks or steps
  - Instability
  - Flooding, poor drainage
  - Septic tank back-ups
  - Sewage hazards
  - Mud slides
  - Abnormal air pollution
  - Smoke or dust
  - Excessive noise
  - Vibrations or vehicular traffic
  - Excessive accumulations of trash
  - Vermin or rodent infestation, and
  - Fire hazards.

## ***PART IV: SHARED HOUSING***

[24 CFR 982.615 through 982.618]

### **15- IV.A. OVERVIEW**

Shared housing is a single housing unit occupied by an assisted family and another resident or residents. The shared unit consists of both common space for use by the occupants of the unit and separate private space for each assisted family.

An assisted family may share a unit with other persons assisted under the HCV program or with other unassisted persons. The owner of a shared housing unit may reside in the unit, but housing assistance may not be paid on behalf of the owner. The resident owner may not be related by blood or marriage to the assisted family.

If approved by DOH, a live-in aide may reside with the family to care for a person with disabilities. DOH 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 (see Chapter 3).

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.

DOH does not approve shared housing contracts for owners who have a family relationship with the participant. (i.e. parents, boyfriend/girlfriend, ex-husband/wife, in-laws etc).

### **15- IV.B. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION**

The payment standard for a family in shared housing is the lower of the payment standard for the family unit size or the pro-rata share of the payment standard for the shared housing unit size.

The pro-rata share is calculated by dividing the number of bedrooms available for occupancy by the assisted family in the private space by the total number of bedrooms in the unit.

The HAP for a family in shared housing is the lower of the payment standard minus the TTP or the gross rent minus the TTP. The utility allowance for an assisted family living in shared housing is the pro-rata share of the utility allowance for the shared housing unit.

The rents paid for families living in shared housing are subject to generally applicable standards for rent reasonableness. The rent paid to the owner for the assisted family must not exceed the pro-rata portion of the reasonable rent for the shared unit. In determining reasonable rent, DOH should consider whether sanitary and food preparation areas are private or shared.

### **15- IV.C. HOUSING QUALITY STANDARDS**

DOH 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 zero-bedroom or one-bedroom unit may not be used for shared housing.



## ***PART V: COOPERATIVE HOUSING***

[24 CFR 982.619]

### **15-V.A. OVERVIEW**

This part applies to rental assistance for a cooperative member residing in cooperative housing. It does not apply to assistance for a cooperative member who has purchased membership under the HCV homeownership option, or to rental assistance for a family that leases a cooperative housing unit from a cooperative member.

A cooperative is a form of ownership (nonprofit corporation or association) in which the residents purchase memberships in the ownership entity. Rather than being charged “rent” a cooperative member is charged a “carrying charge.”

When providing HCV assistance in cooperative housing, the standard form of the HAP contract is used.

### **15-V.B. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION**

The payment standard and utility allowance are determined according to regular HCV program requirements.

The HAP for a cooperative housing unit is the lower of the payment standard minus the TTP or the monthly carrying charge for the unit, plus any utility allowance, minus the TTP. The monthly carrying charge includes the member’s share of the cooperative debt service, operating expenses, and necessary payments to cooperative reserve funds. The carrying charge does not include down payments or other payments to purchase the cooperative unit or to amortize a loan made to the family for this purpose.

### **15-V.C. HOUSING QUALITY STANDARDS**

All standard HQS requirements apply to cooperative housing units. There are no additional HQS requirements.

## ***PART VI: MANUFACTURED HOMES***

[24 CFR 982.620 through 982.624]

### **15- VI.A. OVERVIEW**

A manufactured home is a manufactured structure, transportable in one or more parts that is built on a permanent chassis, and designed for use as a principal place of residence. HCV-assisted families may occupy manufactured homes in two different ways.

(1) A family can choose to rent a manufactured home already installed on a space and DOH must permit it. In this instance program rules are the same as when a family rents any other residential housing, except that there are special HQS requirements as provided in 15-VI.D below.

(2) HUD also permits an otherwise eligible family that owns a manufactured home to rent a space for the manufactured home and receive HCV assistance with the rent for the space. PHAs may, but are not required to, provide assistance for such families.

### **15- VI.B. SPECIAL POLICIES FOR MANUFACTURED HOME OWNERS WHO LEASE A SPACE**

#### **Family Income**

In determining the annual income of families leasing manufactured home spaces, the value of the family's equity in the manufactured home in which the family resides is not counted as a family asset.

#### **Lease and HAP Contract**

There is a separate Tenancy Addendum (Form 52642-a) and separate HAP Contract (Form 52642) for this special housing type.

### **15- VI.C. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION**

#### **Payment Standards**

The FMR for a manufactured home space is generally 40 percent of the published FMR for a two-bedroom unit or, where approved by HUD, the 40th percentile of the rental distribution of manufactured home spaces for the FMR area. DOH may establish a payment standard for manufactured home spaces that is between 90-110 percent of the FMR for manufactured home spaces.

#### **Utility Allowance**

DOH must establish utility allowances for manufactured home space rental. For the first 12 months of the initial lease term only, the allowance must include an amount for a utility hook-up charge if the family actually incurred a hook-up charge because of a move. This allowance will not be given to a family that leases in place. Utility allowances for manufactured home space must not include the costs of digging a well or installing a septic system.

- The utility allowance schedule used will be the single family schedule. The allowance will be based on the actual number of bedrooms.

### **Space Rent**

The space rent is the sum of the rent to the owner for the manufactured home space, any charges for maintenance and management provided by the owner, and the utility allowance for tenant-paid utilities.

### **Housing Assistance Payment**

The HAP for a manufactured home space under the housing choice voucher program is the lower of the payment standard minus the TTP or the (gross) manufactured home space rent minus the TTP.

### **Rent Reasonableness**

Initially, and annually thereafter DOH must determine that the rent for the manufactured home space is reasonable based on rents for comparable manufactured home spaces. DOH 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 a manufactured home park or elsewhere.

## **15- VI.D. HOUSING QUALITY STANDARDS**

Under either type of occupancy described in 15-VI.A above, the manufactured home must meet all HQS performance requirements and acceptability criteria discussed in Chapter 8 of this plan. In addition, the following requirement applies:

### ***Manufactured Home Tie-Down***

A manufactured home must be placed on the site in a stable manner, and must be free from hazards such as sliding or wind damage. The home must be securely anchored by a tie-down device that distributes and transfers the loads imposed by the unit to appropriate ground anchors to resist overturning and sliding.

## ***PART VII: HOMEOWNERSHIP***

[24 CFR 982.625 through 982.643]

### **15-VII.A. OVERVIEW [24 CFR 982.625]**

DOH is offering the homeownership program to DOH's eligible participants who are interested in purchasing their own homes and who meet the program requirements as specified in this plan. This Special Housing option is offered in the spirit of providing multiple choices, in a continuum of care, to the low-income people with disabilities and eligible non-disabled families who are current participants in DOH's Housing Choice Voucher rental assistance program. Families wishing to exercise portability in order to participate in DOH's homeownership program are not eligible for the program.

DOH's homeownership program is completely voluntary and provides participants freedom of choice. At no time will DOH directly or indirectly reduce a voucher family's opportunity to select among available units by limiting the use of homeownership vouchers to particular units, neighborhoods, developers or lenders.

This program builds on what was learned in DOH and Colorado Housing Assistance Corporation (CHAC) HOPE 3-homeownership program and from other homeownership programs for people with low incomes. The goal of the program is to expand homeownership opportunities to DOH's Housing Choice Voucher Program participants by assisting them in transitioning from rental to homeownership using the Housing Choice Voucher Program.

### **15-VII.B. FAMILY ELIGIBILITY [24 CFR 982.627]**

DOH will not accept a program participant under portability if they are from a PHA within the State of Colorado and are not anticipating leaving their current PHA's jurisdiction. DOH will not accept a portability participant solely for the purposes of accessing the homeownership program.

The family must meet all of the requirements listed below before the commencement of homeownership assistance. Participants must maintain compliance with all family obligations and meet all additional eligibility criteria as specified in this guidebook. All civil rights laws applicable to the Rental Program are applicable to the Homeownership Program. The family must:

- Meet the general requirements for participation in DOH's Housing Choice Voucher Program.
- Have received DOH Housing Choice Voucher Program assistance in the county in which they wish to buy a home for a minimum of one year (12 consecutive months).

- This program is for first-time homebuyers with Housing Choice Voucher Program assistance. The family must be a “first time home buyer”,
  - Which excludes a person with any ownership interest in a residence within three years prior to applying for homeownership;
  - A first time homebuyer is defined by HUD as any person who has not owned a “present ownership interest” in the residence of any family member in the last three years.
  - The household may not include any person who had an ownership interest in the last three years, with the exception of ownership in a cooperative unit or a lease-to-own program.
  - A first time home buyer may be a person who has had an ownership interest in a previous residence, but is now a displaced homemaker or has been displaced due to domestic violence.
  
- Be willing to sign the statement of homeowner obligations and program guidelines, and must be able to comply with the additional special requirements for homeownership assistance, as specified in this handbook and DOH’s administrative plan.
  
- Be in good standing, not have violated any program obligations during the period under which the participant’s housing was subsidized by DOH’s Housing Choice Voucher Program. Examples of reasons for denial may include but are not limited to:
  - The family has failed to comply with any family obligations under the program. See Exhibit 12-1 for a listing of family obligations and related PHA policies.
  - Any family member has been evicted from federally assisted housing in the last five years.
  - Any 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 DOH paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease.
  - The family has breached the terms of a repayment agreement entered into with the PHA.

- A family member has engaged in or threatened violent or abusive behavior toward PHA personnel.

### **Consideration of Circumstances.**

In determining whether to deny admission to the DOH Housing Choice Voucher Homeownership Program because of action or failure to act by members of the family, DOH may consider all relevant circumstances such as the seriousness of the case, the extent of participation or culpability of individual family members, mitigating circumstances related to the disability of a family member, and the effects of denial or termination of assistance on other family members who were not involved in the action or failure.

- Provide a reference letter from current landlord and previous landlord, stating that the applicant has fully complied with the terms of the lease agreement. The applicant can provide a statement from the referring agency certifying that the applicant has fully complied with the lease agreement if he or she is unable to acquire one of the reference letters.
- Unlike the HCV Rental Program, a family must meet the income requirement only upon initial qualification for the Homeownership Program to determine eligibility for a homeownership voucher. A family's income may increase at future re-certifications, as may their portion of the tenant payment, but they still may be considered eligible to receive assistance.
- To qualify for the Homeownership Program, the family must demonstrate they have sufficient income to pay their portion of the homeownership expenses not covered by the HAP subsidy.
- Meet the following employment requirements:
  - A family with a non-disabled head of household
    - One or more adult members of the family who will have an ownership interest in the unit;
      - 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 income 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 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, DOH may grant an exemption from the employment



### **15-VII.C. SELECTION OF FAMILIES [24 CFR 982.626]**

All applicants to DOH HCV Homeownership Program must meet all eligibility criteria prior to admission to the program. DOH will review the application and supporting documentation in DOH file. The HA will admit the applicant to the HCV Homeownership Program once it is confirmed that that applicant meets all eligibility criteria. When the HA Contractor has determined the family has met all of the eligibility criteria, the Contractor will submit the HCV file for approval and Eligibility Letter from DOH. DOH will issue the family a Statement of Eligibility letter. This document states the amount of HAP the family will be given and how much of the tenant portion the family can pay toward a house. The family shall present this document to the lender, who will use it to determine how much of a mortgage the family can afford.

### **15-VII.D. ELIGIBLE UNITS [24 CFR 982.628]**

#### **ELIGIBLE HOMES**

The family may purchase following types of housing, granted they pass HQS inspection:

- Single-family homes;
- Townhomes, duplexes and condominiums;
  
- Modular/ manufactured units, where the family will not own fee title to the real property.
  - However, the family must have the right to occupy the site for a period of at least forty years and the home must have a permanent foundation. For more info, see §982.628(b);
  
- Units under construction at the time of sale.
  - The unit only needs to be under construction at the time the family enters into the contract of sale and not at the time the HA determines eligibility;
  
- Land lease units;
  
- Cooperative membership,
  - Where assistance is paid on behalf of a cooperative member, but there is no requirement that the cooperative enter into any agreement or direct relationship with the HA that provides assistance for the cooperative member.
  - The cooperative agreement defines the division of maintenance obligations between the member and the cooperative entity;



- Self-Help housing;
 

In order for a unit to be eligible, DOH must determine that the unit satisfies all of 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 may be new construction, 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 DOH and by a licensed 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.

**15-VII.E. ADDITIONAL PHA 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. A family has 180 days from the time DOH issues a homeownership certificate to the family in which to find a home, secure financing, and close on the purchase. If the family hasn’t closed within this time frame, the family may make a written request to DOH to extend the certification of eligibility for a new 60-day search period. If the family still hasn’t closed within the extended time frame, the family may request re-certification of eligibility by submitting a new Application for Housing Choice Voucher Program Homeownership Assistance form to DOH. If the family income or composition changes during the certified search period, the service agency housing coordinator will provide DOH with updated HUD form 50058 information and verify this information for the contractor’s file.

DOH may rescind the homeownership program for this family if it fails to execute the closing within this time frame. The family would not lose its rental assistance if it fails to find a home within the certified search period.

## **15-VII.F. FAMILY APPLICATION PROCESS**

### **Application & statement of homebuyer obligations**

As soon as a family decides to consider purchasing a home using the Section 8 Homeownership Program, they should make an appointment with their HA contractor to fill out an application and determine eligibility. The application should include the timeline that the contractor and family create. It should include the milestones a family will need to achieve in order to demonstrate they are ready for the responsibility of homeownership and maintenance. The timeline should be customized to include milestones such as:

- Attending homebuyer education;
- Reviewing credit report and credit repair;
- Creating a household budget;
- Attending home repair classes;
- Qualifying for down payment assistance;
- Finding a lender and qualifying for a mortgage;
- Finding a broker and locating a home;
- Reviewing home inspection report and negotiating repairs and;
- Closing on the home;

The timeline should also take into consideration amount of time properties take to sell on the market (i.e. 180-240 days). As long as all requirements are being met, and it remains reasonable for all parties, the timeline may be extended for up to 60 days. During that time, the family's rental voucher is still valid.

If, after exhausting a search to purchase a home, a family decides to remain in the rental voucher program, the HA may keep the family in the rental program. Failure to purchase a home in the required timeframe shall not prohibit a family from remaining in the rental program or from reapplying for homeownership at a later date.

The application process should take from one to four weeks for the HA Contractor to complete, depending on the length of response time for third-party income verification. This application is not the loan application. The loan application will be conducted by the lender and may have additional criteria that the family must meet.

### **Credit repair**

In order to qualify for a loan with favorable terms, the applicant family must have a credit rating that demonstrates they are able to take on additional debt and pay their bills on time. The HA Contractor should work with the family early on to determine the status of a family's credit score and help the family take any steps they need to repair their credit. This involves:

- paying off outstanding debts;
- arranging payment plans to become current, and;
- clearing up any disputed matters on their credit report;
  - This step may take anywhere from a month up to a year, and the family should not proceed until other outstanding debts are paid down.
  - The HA Contractor may help the family pull a free copy of their credit report at <https://www.annualcreditreport.com/cra/index.jsp> or CreditKarma.com
  - This does not include the credit score, which is available for an additional charge.

### **Finding a Realtor**

It is the family's responsibility to find a realtor/ broker who will show them properties and help navigate the offer, inspection and closing process.

Many brokers can come recommended from lenders and HAs. The HA Contractor may also disapprove certain brokers and not permit a family to use them based on items such as violation of fair housing laws.

### **Finding a Home**

It is the responsibility of the family to find a home to purchase according to the timeline set by the family and the HA Contractor. This will happen after the family has been approved for a mortgage and has met with a broker to discuss the process. Families should consider the following factors:

- Price

- Size of home
- Type of house (condo, single family)
- Location to amenities (jobs, schools, social services, transportation)

The HA Contractor agency may choose to disapprove a seller for the same reason provided in the HCV Rental Program, according to 24 CFR § 982.303 (a) for the following reasons:

- Committing fraud; bribery;
- Committing any other corrupt or criminal acts in connection with any Federal housing program;
- Engaging in drug-related or violent criminal activity;
- Non-compliance with HUD's housing quality standards;
- Failure to meet State or local housing codes; and
- Failure to pay State or local real estate taxes, fines, or assessments.

The HA is responsible for complying with the authorities listed in §58.6 of this title requiring the purchaser to obtain and maintain flood insurance for units in special flood hazard areas, prohibiting assistance for acquiring units in the coastal barriers resource system, and requiring notification to the purchaser of units in airport runway clear zones and airfield clear zones.

#### **15-VII.G. HOMEOWNERSHIP COUNCELING [24 CFR 982.630]**

All homebuyers must attend homeownership education classes that meet FHA guidelines and are HUD approved agencies. HUD suggests the following topics for DOH-required pre-assistance counseling: Prior to searching for a home

- 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 DOH 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 **Pre-purchase homebuyer counseling**
- How to maintain your home; While not required, HA Contractors should recommend that the family participate in post-purchase, ongoing homeownership counseling

## **15-VII.H. HOME INSPECTIONS, CONTRACT OF SALE, AND PHA DISAPPROVAL OF SELLER [24 CFR 982.631]**

### **Home Inspections**

Once the family has has an executed contract on the house, the family must hire a licensed independent professional inspector selected by and paid for by the family to 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.

DOH may not require the family to use an independent inspector selected by DOH. The contractor may provide recommendations and/or establish professional standards for home inspectors. The independent inspector will not be a PHA employee or contractor, or other person under control of DOH.

The family shall provide the HA Contractor a copy of the inspector's report, which shall be kept in the family file. The contractor and the family must discuss the findings of this inspection before the family can proceed. If the inspection reveals potential or current problems with major systems, the HA Contractor needs to discuss the costs of repair/replacement with the family. This should also be discussed with the broker if the family wishes to negotiate a lower asking price or request that repairs be made prior to closing. DOH 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.

DOH's trained local housing coordinators will conduct the HQS inspection. Because of the supportive service nature of this program, coordinators must conduct unit inspections at least annually while the family is receiving homeownership assistance. In the event of HQS failure, the coordinator will work with the family to correct the issues that caused the unit to fail HQS inspection.

## **Contract of Sale**

Before commencement of monthly homeownership assistance payments, 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 DOH 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.
- At the HA Contractors administrative discretion, DOH may deny approval of a seller.

## **Disapproval of a Seller**

- In its administrative discretion, DOH may deny approval of a seller for the same reasons provided for disapproval of an owner in §982.306(c);

## **15-VII.I. FINANCING [24 CFR 982.632]**

It is the responsibility of the family to secure its own financing for the home purchase. DOH will not directly or indirectly reduce housing choice for a family and a family may choose any lender it wishes. DOH Contractor may offer the family a list of qualified and/or recommended lenders that meets the criteria established by these guidelines. Although the family must select a lender themselves, many lenders can do a preliminary pre-qualification over the phone or online.

Lenders and DOH will coordinate information regarding sources of income when qualifying a family for a house payment.

The Contractor may also disapprove certain lenders based on items such as debarred/ suspended license status, predatory lending practices or violation of fair housing laws. HA Contractors should be informed of which underwriting standards are being used to qualify a family.

There is no prohibition against using local or state community Development Block Grants (CDBG) or other subsidized financing in conjunction with the Housing Choice Voucher Homeownership Program.

## **Securing Financing: Underwriting a Loan**

When qualifying a family for a loan, the lender will consider the amounts of the HAP, the tenant portion and other sources of funds that would be applied toward the down payment, closing costs

and monthly payment. The lender should also consider the length of the loan term and the length of the HAP subsidy

The HAP may be paid for a maximum of fifteen (15) years if the mortgage has a term of at least twenty (20) years. If the mortgage term is less than twenty (20) years, the maximum HAP term is ten (10) years. The HA may not establish shorter or longer terms.

There is no minimum or maximum term for disabled and elderly families; the HAP may be paid through the term of the loan. To qualify as an elderly family, the head or co-head of household would need to be elderly (age 62+) at the time the Homeownership HAP would begin.

If the purchase of the home is financed with FHA mortgage insurance, such financing is subject to FHA mortgage insurance requirements.

DOH will review seller financing on a case-by-case basis. DOH requires a maximum loan to value consistent with FHA guidelines and allows balloon payments in accordance with CHFA Home Access program requirements.

The HA Contractor may review lender qualifications and the loan terms before authorizing homeownership assistance.

DOH may disapprove proposed financing, refinancing or other debt if DOH determines that the debt is unaffordable, or the loan terms do not meet DOH's qualifications. In making this determination, DOH may take into account other family expenses, such as childcare, unreimbursed medical expenses, homeownership expenses, and other family expenses as determined by DOH.

Non-occupant co-signers are permitted to sign on behalf of the borrower. Un-related co-borrowers are also permitted, but they must be considered part of the homeowner's household, have an owner's interest in the home, and must reside in the home.

### **Finding Down payment Assistance**

The minimum down payment must be the lesser of \$3,000 or 3% of the purchase price. Of that amount, the family must have a minimum of \$1,000 of their own funds for a down payment. The remainder of the required amount may come from family, friends, or down payment assistance programs.

If a family is participating in an Individual Development Account (IDA) Program, this account may be used as the family's contribution toward the down payment.

It is also recommended that families who are enrolled in the FSS Program use their FSS escrow account for their down payment.

There are agencies that offer down payment assistance (DPA) to first time homebuyers. A local DPA agency may offer the following services:

- first time homebuyer counseling classes,
- recommended referrals of lenders and brokers
- financial counseling on understanding DPA plans

It is strongly advisable that the Section 8 contracting agency create a working relationship with local DPA agencies for the benefit of the families served. See Addendum B for a list of these agencies.

### **Underwriting Section 8 Homeownership Loans for Persons with Disabilities**

- DOH utilizes a “mortgage-offset” model for underwriting loans for its disabled voucher homeownership program participants. This allows the borrower to qualify for a higher first mortgage. The borrowers would then qualify on the remaining payment after the Housing Choice Voucher Program is applied. Originating lenders will use this method of underwriting FHA loans for disabled participants only.
- Disabled homebuyers under this program may also choose to use a CHFA approved private mortgage insurer, to underwrite their Section 8 homeownership loans. This mortgage insurer may utilize the mortgage-offset method of underwriting these loans.
- In addition, disabled homebuyers under this program may also purchase their homes by securing a conventional uninsured mortgage loan. Underwriting for this type of loan will employ the mortgage-offset method as well.

### **Underwriting Section 8 Homeownership Loans for Non-disabled Families**

- Those non-disabled borrowers who require a FHA-insured loan are subject to the FHA underwriting guidelines. Under these guidelines, the monthly Housing Choice Voucher Program subsidy is treated as income in determining the homebuyer’s qualifying ratios. The amount of the subsidy may be “grossed up” by 25% and added to the borrowers’ income from employment and/or other sources in calculating the qualifying ratios.
- Non-disabled homebuyers under this program may also use the CHFA approved private mortgage insurer, and thus utilize the mortgage-offset method of underwriting their loans.
- In addition, non-disabled families who purchase their homes using a conventional uninsured mortgage loan will also utilize the mortgage-offset model of underwriting.

### **Servicing the Loan**



- Using Electronic Funds Transfer (EFT) DOH will send the HAP directly to the lender, the company servicing the loan (i.e. CHFA), or to an account set up for the sole purpose of paying the mortgage. In the latter case, the family must agree to allow the lender to withdraw the mortgage amount electronically (using EFT) by a specific date each month. CDOH will not be responsible for any late fees or incomplete payment, including the July payment, which may be late due to the beginning of the State's fiscal year.

#### **Payment Method for Participants with Disabilities (Home Access Loans)**

- DOH will make the assistance payment directly to CHFA in the form of an Electronic Funds Transfer (EFT) for disabled families utilizing Home Access loans. DOH and CHFA strongly encourages the homeowner to allow CHFA to electronically withdraw the amount of the homeowner's mortgage payment from the family's account each month.

#### **Payment Method for Non-disabled Participants (Mortgage Revenue Bond First Step and Taxable Home Opener Loans)**

- DOH will make the assistance payment in the form of a hard copy check made payable to CHFA in care of the borrower or by Electric Funds Transfer (EFT).
- Non-occupant Co-signers and Unrelated Co-borrowers
- Non-occupant co-signers are permitted to add strength and stability to the borrower. Unrelated co-borrowers are permitted if they are part of the assisted household (one family); the home must be their primary residence.

#### **DOH Policy for Payment of the HAP to the Family or Lender**

- Since Housing Choice Voucher Program funding is subject to annual appropriations, DOH cannot guarantee that assistance will be available for the term of the loan.
- DOH pays the monthly homeownership assistance payment on behalf of the family that is equal to the lower of a) the payment standard minus the total tenant payment; or b) the family's monthly homeownership expenses minus the total tenant payment. This housing assistance payment will be made as outlined in the "Finance and Purchasing Requirements" section of this plan.
- The family becomes obligated for the whole mortgage payment in event of termination of assistance.
- In regard to loans secured through the United States Department of Agriculture/Rural Development, USDA/RD will access the participant's portion corresponding to this mortgage debt from the participant's bank account. This portion will be in addition to the participant's CHFA mortgage payment.

### **15-VII.J. 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, DOH may not continue homeownership assistance after the month when the family moves out. The family or lender is not required to refund to DOH 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 DOH or HUD as specified in 24 CFR 982.551(b). The family must further supply any information required by DOH or HUD concerning mortgage financing or refinancing, sale or transfer of any interest in the home, or homeownership expenses.
- The family must notify DOH before moving out of the home.
- The family may not become foster parents if adding another person to their household would create a need for additional space.
- The family must notify DOH 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-VII.K. MAXIMUM TERM OF HOMEOWNER ASSISTANCE [24 CFR 982.634]**

Except in the case of a family that qualifies as an elderly or disabled family, 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

- 10 years, if the mortgage term is shorter. .

There is a lifetime limit on homeownership voucher assistance. The maximum term described above applies to all members of the family whether the family has remained in one unit or moved from one homeownership unit to another or received assistance from different PHAs. The term limit applies to the total time period during which assistance was received. The term is based on term of the family's initial mortgage 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).

#### **15-VIII. 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, DOH 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 payment standard for a family is the greater of (i) The payment standard as determined at the commencement of homeownership assistance for occupancy of the home, or (ii) The payment standard at the most recent regular reexamination of family income and composition since the commencement of homeownership assistance for occupancy of the home.

DOH may pay the homeownership assistance payments directly to the family, or at DOH's discretion, to a lender on behalf of the family. If the assistance payment exceeds the amount due to the lender, DOH 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 PHA may grant relief from this requirement in those cases where automatic termination would result in extreme hardship for the family.

#### **Homeownership Expenses and Allowances**

DOH must adopt policies for determining the amount of homeownership expenses to be allowed by DOH in accordance with HUD requirements.

Homeownership expenses (not including cooperatives) only include amounts allowed by DOH 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;
- DOH allowance for costs of major repairs and replacements combined with DOH allowance for maintenance expenses;
- DOH 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 DOH 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 DOH 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;
- DOH allowance for maintenance expenses;
- DOH allowance for costs of major repairs and replacements;
- DOH 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 DOH 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-VII.M. 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 PHA policies, a family may exercise portability if the receiving PHA is administering a voucher homeownership program and accepting new homeownership families. The receiving PHA may absorb the family into its voucher program, or bill the initial PHA.

The family must attend the briefing and counseling sessions required by the receiving PHA. The receiving PHA will determine whether the financing for, and the physical condition of the unit, are acceptable. The receiving PHA must promptly notify the initial PHA if the family has purchased an eligible unit under the program, or if the family is unable to purchase a home within the maximum time established by DOH.

**15-VII.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.

DOH may deny permission to move to a new unit with continued voucher assistance:

- If the PHA has insufficient funding to provide continued assistance.
- In accordance with 24 CFR 982.638, regarding denial or termination of assistance.
- In accordance with DOH's policy regarding number of moves within a 12-month period.

DOH must deny the family permission to move to a new unit with continued voucher rental assistance if:

- The family defaulted on an FHA-insured mortgage; and
- The family fails to demonstrate that the family has conveyed, or will convey, title to the home, as required by HUD, to HUD or HUD's designee; and the family has moved, or will move, from the home within the period established or approved by HUD.

**15-VII.O. DENIAL OR TERMINATION OF ASSISTANCE [24 CFR 982.638]**

At any time, DOH 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).

DOH 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.

DOH 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.

**Items Not Covered:** Any procedures or policies not specifically covered by this Housing Choice Voucher Homeownership Administrative Plan will be governed by DOH, HCVP Administrative Plan and/or the HCV Homeownership Program Final Rule (24 CFR 982.630-643) and any and all other rules, regulations, and guidelines provided by HUD.

## ***PART VIII: FAMILY UNIFICATION PROGRAM (FUP)***

### **Program Eligibility**

FUP is a program under which vouchers are provided to eligible families and youth. The terms “FUP-eligible family” and “FUP-eligible youth” mean:

- A FUP-eligible family is a family that the public child welfare agency (PCWA) has certified as a family for whom the lack of adequate housing is a primary factor in the imminent placement of the family’s child, or children, in out-of-home care, or in the delay of discharge of a child, or children, to the family from out-of-home care, and that DOH has determined is eligible for a HCV.
- A FUP-eligible youth is a youth that the PCWA has certified to be at least 18 years old and not more than 21 years old (has not reached his/her 22<sup>nd</sup> birthday) who left foster care at age 16 or older and who does not have adequate housing, and that DOH has determined is eligible for a HCV. A FUP voucher issued to such a youth may only be used to provide housing assistance for the youth for a maximum of 18 months.

Lack of Adequate Housing means:

- A family or youth is living in substandard or dilapidated housing; or
- A family or youth is homeless; or
- A family or youth is displaced by domestic violence; or
- A family or youth is living in an overcrowded unit; or
- A family or youth is living in housing not accessible to its disabled child or children due to the nature of the disability.

### **Waiting List**

DOH will accept families and youths certified by the PCWA as eligible for the FUP program. DOH will determine if families with children, or youths age 18 through 21 referred by the PCWA are eligible for HCV assistance and place eligible families/youths on the FUP waiting list. FUP eligible youth applicants must be drawn from FUP waiting list by DOH before their 22<sup>nd</sup> birthday in order to remain eligible.

DOH will maintain individual FUP waiting lists for each participating contractor . To place an applicant’s name on the waiting list, the local service agencies must complete a pre-application with the applicant and submit to DOH for data entry directly into the tenant data base system (TDS) waiting list module. TDS will automatically rank all applicants on the agency waiting list by the time and date of application. Initial allocation issuance will be made from the centralized FUP waiting list.

All turnover slots will be distributed back to the point of origin. Once a termination takes place, DOH will determine if funding is available and issue a voucher to the next applicant on the originating agency's waiting list.

### **FUP Youth 18 Month Agreement**

Each FUP eligible youth applicant will be required to sign the FUP 18 month agreement prior to leasing a unit under the program. This agreement states to the participant that their Housing Choice Voucher Program voucher has a maximum time period of 18 months. By signing the agreement, the participant agrees that voucher rental assistance will end at the end of the 18-month time period.

At annual reexamination, the participant will once again be reminded of the maximum 18 month time period. When only 60 days remain on the voucher a letter will be sent to both the participant and the landlord via certified mail stating that rental assistance will cease. This letter will also explain the tenant's responsibility for payment of the full contract rent at the time of expiration.



## ***PART IX: Veterans Affairs Supportive Housing (VASH)***

### ***VASH I***

#### **Outreach**

The VA enlists the efforts of many community providers to serve the homeless veteran population. The VAMC's first line of contact with homeless veterans is its well-established outreach in Denver's lower downtown. In addition to literally meeting homeless veterans on the street, VAMC team members have built strong cooperative relationships with numerous area community programs serving the homeless. Regular, daily presence at these sites provides contact with a large pool of homeless veterans.

#### **Special Eligibility**

Individuals eligible for participation in VASH I grant must be a homeless veteran with chronic mental illness and/or substance abuse.

#### **Waiting List**

The program's waiting list is an important tool. Applicants judged appropriate for residential care are placed on the list chronologically, by VA established priorities. Various strategies for staying in touch with prospective participants are used in order to use this device effectively.

With the exception of the above statements, all other provisions of the Housing Choice Voucher Program apply.

### ***VASH II***

Generally, the HUD-VASH HCV program will be administered in accordance with regular HCV program requirements (24 CFR Section 982). However, the Act allows HUD to waive or specify alternative requirements for any provision of any statute or regulation that HUD administers in connection with this program in order to effectively deliver and administer HUD-VASH voucher assistance. The HUD-VASH Operating Requirements (including the waivers and alternative requirements from HCV program rules) were published in the Federal Register on May 6, 2008.

#### **Outreach, Referrals, and Waiting List**

The VAMC will refer HUD-VASH eligible families to DOH for the issuance of vouchers. Written documentation of these referrals must be maintained in the tenant file at DOH. Therefore, DOH will not have the authority to maintain a waiting list or apply local preferences for HUD-VASH vouchers. Accordingly, section 8(o)(6)(A) of the USHA of 1937, 42 U.S.C. 1437f(o)(6)(A), in regard to preferences, has been waived to provide for the effective

administration of the program. In addition, 24 CFR 982.202, 982.204, and 982.207, relating to applicant selection from the waiting list and local preferences, are also waived. Sections 982.203, 982.205, and 982.206 regarding special admissions, cross listing of the waiting list, and opening and closing the waiting list do not apply to the HUD–VASH program. The VAMC will screen all families in accordance with its screening criteria. By agreeing to administer the HUD– VASH program, DOH is relinquishing its authority to determine the eligibility of families in accordance with regular HCV program rules and PHA policies.

### **Denial of Applicants**

Specifically, under the HUD–VASH program, PHAs will not have the authority to screen potentially eligible families or deny assistance for any grounds permitted under 24 CFR 982.552 (broad denial for violations of HCV program requirements) and 982.553 (specific denial for criminals and alcohol abusers), with one exception. PHAs will still be required to prohibit admission if any member of the household is subject to a lifetime registration requirement under a state sex offender registration program. Accordingly, the Department is exercising its authority to waive 42 U.S.C. 1437d(s); 42 U.S.C. 13661(a), (b), and (c); and 24 CFR Sections 982.552 and 982.553, with the exception of 982.553(a)(2)(i), which requires denial of admission to certain registered sex offenders.

### **Voucher Term**

Recognizing the challenges that HUD– VASH participants may face with their housing search, HUD–VASH vouchers must have an initial search term of at least 120 days. Therefore, § 982.303(a), which states that the initial search term must be at least 60 days, shall not apply, since the initial term must be at least 120 days.

DOH will grant one 60-day extension to participants in the VASH II program upon written request. No further extensions will be approved. The total search time will be for a maximum of 180 days.

### **Minimum Rent for the VASH Program:**

DOH will automatically waive the minimum rent for veterans who have zero income without needing to request a hardship. All other income determinations/verifications of the Housing Choice Voucher Program will apply.

### **Case Management Requirements**

The VAMC responsibilities include: (1) The screening of homeless veterans to determine whether they meet the HUD–VASH program participation criteria established by the VA national office; (2) providing appropriate treatment and supportive services to potential HUD–VASH program participants, if needed, prior to PHA issuance of rental vouchers; (3) providing housing search assistance to HUD–VASH participants with rental vouchers; (4) identifying the social service and medical needs of HUD–VASH participants and providing, or ensuring the provision of, regular ongoing case management, outpatient health services, hospitalization, and other supportive services as needed throughout this initiative; and (5) maintaining records and providing information for evaluation purposes, as required by HUD and the VA. As a condition

of HCV rental assistance, a HUD–VASH eligible family must receive the case management services noted above from the VAMC. Therefore, a HUD–VASH participant family’s HCV assistance must be terminated for failure to participate, without good cause, in case management as verified by the VAMC. However, a VAMC determination that the participant family no longer requires case management is not grounds for termination of assistance. In such case, and at its option, DOH may offer the family continued HCV assistance through one of its regular vouchers, to free up the HUD–VASH voucher for another eligible family referred by the VAMC.

With the exception of the above statements, all other provisions of the Housing Choice Voucher Program apply.

## 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 eight parts as described below:

Part I: Administrative Fee Reserve. This part describes DOH's policies with regard to oversight of expenditures from its administrative fee reserve.

Part II: Setting Program Standards and Schedules. This part describes what payment standards are, and how they are updated, as well as how utility allowances are established and revised.

Part III: Informal Reviews and Hearings. This part outlines the requirements and procedures for informal reviews and hearings, and for informal hearings regarding citizenship status.

Part IV: Owner or Family Debts to DOH. This part describes policies for recovery of monies that DOH has overpaid on behalf of families, or to owners, and describes the circumstances under which DOH will offer repayment agreements to owners and families. Also discussed are the consequences for failure to make payments in accordance with a repayment agreement.

Part V: Section 8 Management Assessment Program (SEMAP). This part describes what the SEMAP scores represent, how they are established, and how those scores affect a PHA.

Part VI: Record-Keeping. All aspects of the program involve certain types of record-keeping. This part outlines the privacy rights of applicants and participants and record retention policies DOH will follow.

Part VII: Reporting and Record Keeping for Children with Environmental Intervention Blood Lead Level. This part describes DOH's responsibilities for reporting, data collection, and record keeping relative to children with environmental intervention blood lead levels that are less than six years of age, and are receiving HCV assistance.

Part VIII: Determination of Insufficient Funding. This part describes DOH'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.

Part IX: 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, sexual assault and stalking; and maintaining the confidentiality of information obtained from victims.

***PART I: ADMINISTRATIVE FEE RESERVE [24 CFR 982.155]***

The PHA will maintain administrative fee reserves, or unrestricted net assets (UNA) for the program to pay program administrative expenses in excess of administrative fees paid by HUD for a PHA fiscal year. HUD appropriations acts beginning with FFY 2004 have specified that administrative fee funding may be used only for activities related to the provision of HCV assistance, including related development activities. Notice PIH 2012-9 cites two examples of related development activities: unit modification for accessibility purposes and development of project-based voucher units. The notice makes clear that other activities may also qualify as related development activities. Administrative fees that remain in the UNA account from funding provided prior to 2004 may be used for “other housing purposes permitted by state and local law,” in accordance with 24 CFR 982.155(b)(1).

If a PHA has not adequately administered its HCV program, HUD may prohibit use of funds in the UNA Account and may direct the PHA to use funds in that account to improve administration of the program, for HCV HAP expenses, or to reimburse ineligible expenses in accordance with the regulation at 24 CFR 982.155(b)(3).

HUD requires the PHA Board of Commissioners or other authorized officials to establish the maximum amount that may be charged against the UNA account without specific approval.

PHA Policy

- Expenditures from the UNA account will be made in accordance with all applicable federal requirements.

## ***PART II: SETTING PROGRAM STANDARDS AND SCHEDULES***

### **16-II.A. OVERVIEW**

Although many of the program's requirements are established centrally by HUD, the HCV program's regulations recognize that some flexibility is required to allow DOH to adapt the program to local conditions. This part discusses how DOH establishes and updates certain schedules and standards that are used to administer the program locally. Details about how these schedules are applied to individual families are provided in other chapters. The schedules and standards discussed here include:

- ***Payment Standards***, which dictate the maximum subsidy a family can receive (application of the payment standards is discussed in Chapter 6); and
- ***Utility Allowances***, which specify how a family's payment should be adjusted to account for tenant-paid utilities (application of utility allowances is discussed in Chapter 6).
  - Copies of the payment standard and utility allowance schedules are available for review in DOH's offices during normal business hours and on DOH's web site.
  - 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.
  - DOH 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.

Establishing and updating the PHA passbook rate, which is used to calculate imputed income from assets, is covered in Chapter 6.

### **16-II.B. PAYMENT STANDARDS [24 CFR 982.503; HCV GB, Chapter 7]**

The payment standard sets the maximum subsidy payment a family can receive from DOH 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.

DOH must establish a payment standard schedule that establishes payment standard amounts for each FMR area within DOH's jurisdiction, and for each unit size within each of the FMR areas. For each unit size, DOH 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, DOH 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, DOH must update its payment standards if the standards are no longer within the basic range [24 CFR 982.503(b)]. HUD may require DOH to make further adjustments if it determines that rent burdens for assisted families in DOH's jurisdiction are unacceptably high 24 CFR 982.503(g)].

DOH will review the appropriateness of the payment standards on an annual basis when the new FMR is published, and at other times as determined necessary. In addition to ensuring the payment standards are always within the "basic range" DOH will consider the following factors when determining whether an adjustment should be made to the payment standard schedule:

**Funding Availability:** DOH 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. DOH will compare the number of families who could be served under revised payment standard amounts with the number assisted under current payment standard amounts.

**Rent Burden of Participating Families:** Rent burden will be determined by identifying the percentage of families, for each unit size, that are paying more than 30 percent of their monthly adjusted income as the family share. When 40 percent or more of families, for any given unit size, are paying more than 30 percent of adjusted monthly income as the family share, DOH will consider increasing the payment standard. In evaluating rent burdens, DOH will not include families renting a larger unit than their family unit size.

**Quality of Units Selected:** DOH 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:** DOH 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:** DOH 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:** DOH 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.

Changes to payment standard amounts will be effective on December 1<sup>st</sup> of every year unless, based on the proposed FMRs, it appears that one or more of DOH's current payment standard amounts will be outside the basic range when the final FMRs are published. In that case, DOH's payment standards will be effective October 1<sup>st</sup> instead of December 1<sup>st</sup>.

- If DOH has already processed reexaminations that will be effective on or after October 1<sup>st</sup>, and the effective date of the payment standards is on or after the effective date of the new standards, DOH will make retroactive adjustments to any such reexaminations if the new payment standard amount is higher than the one used by DOH at the time the reexamination was originally processed.

### **Exception Payment Standards [982.503(c)]**

DOH 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 DOH'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 DOH's payment standard schedule.

When needed as a reasonable accommodation, DOH may make an exception to the payment standard without HUD approval if the exception amount does not exceed 110 percent of the applicable FMR for the unit size [HCV GB 7-9]. DOH may request HUD approval for an exception to the payment standard for a particular family if the required amount falls between 110 and 120 percent of the FMR.

- A family that requires a reasonable accommodation may request a higher payment standard at the time the Request for Tenancy Approval (RFTA) is submitted. The family must document the need for the exception. In order to approve an exception, or request an exception from HUD, DOH must determine that:
  - There is a shortage of affordable units that would be appropriate for the family;



- The family's TTP would otherwise exceed 40 percent of adjusted monthly income; and
- The rent for the unit is reasonable.

### **"Success Rate" Payment Standard Amounts [24 CFR 982.503(e)]**

If a substantial percentage of families have difficulty finding a suitable unit, DOH may request a “success rate payment standard” that applies to the entire jurisdiction. If approved by HUD, a success rate payment standard allows DOH to set its payment standards at 90-110 percent of a higher FMR (the 50<sup>th</sup>, rather than the 40<sup>th</sup> percentile FMR). To support the request, DOH 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;
- DOH had established payment standards for all unit sizes, and for the entire jurisdiction, at 110 percent of the published FMR; and
- DOH 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, DOH may choose to adjust the payment standard for only some unit sizes in all, or a designated part, of DOH’s jurisdiction within the FMR area.

### **Decreases in the Payment Standard below the Basic Range [24 CFR 982.503(d)]**

DOH must request HUD approval to establish a payment standard amount that is lower than the basic range. At HUD’s sole discretion, HUD may approve establishment of a payment standard lower than the basic range. HUD will not approve a lower payment standard if the family share for more than 40 percent of program participants exceeds 30 percent of adjusted monthly income.

### **16-II.C. UTILITY ALLOWANCES [24 CFR 982.517]**

A PHA-established utility allowance schedule is used in determining family share and PHA subsidy. DOH 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, DOH must use normal patterns of consumption for the community as a whole, and current utility rates.

The utility allowance must include the utilities and services that are necessary in the locality to provide housing that complies with housing quality standards. Costs for telephone, cable/satellite television, and internet services are not included in the utility allowance schedule.

In the utility allowance schedule, DOH 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 DOH 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 majority of housing units in DOH's jurisdiction does not include central air-conditioning and is not wired for tenant-installed air conditioners. Therefore, DOH has not included an allowance for air-conditioning in its utility allowance schedules.

### **Reasonable Accommodation**

HCV program regulations require a PHA to approve a utility allowance amount higher than shown on DOH'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, DOH will approve an allowance for air-conditioning, even if DOH 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**

DOH 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.

- Annual utility allowance review and subsequent changes will take effect on December 1<sup>st</sup>.

DOH must maintain information supporting its annual review of utility allowance and any revisions made in its utility allowance schedule.

## ***PART III: INFORMAL REVIEWS AND HEARINGS***

### **16-III.A. OVERVIEW**

Both applicants and participants have the right to disagree with, and appeal, certain decisions of the PHA that may adversely affect them. PHA decisions that may be appealed by applicants and participants are discussed in this section.

The process for applicant appeals of PHA decisions is called the “informal review.” For participants (or applicants denied admission because of citizenship issues), the appeal process is called an “informal hearing.” PHAs are required to include informal review procedures for applicants and informal hearing procedures for participants in their administrative plans [24 CFR 982.54(d)(12) and (13)].

### **16-III.B. INFORMAL REVIEWS**

Informal reviews are provided for program applicants. An applicant is someone who has applied for admission to the program, but is not yet a participant in the program. Informal reviews are intended to provide a “minimum hearing requirement” [24 CFR 982.554], and need not be as elaborate as the informal hearing requirements. (Federal Register Volume 60, No. 127, p 36490).

#### **Decisions Subject to Informal Review**

DOH 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 DOH 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 DOH
- General policy issues or class grievances
- A determination of the family unit size under DOH subsidy standards
- A PHA determination not to approve an extension or suspension of a voucher term
- A Public Housing Agency (PHA) determination not to grant approval of the tenancy
- A PHA determination that the unit is not in compliance with the Housing Quality Standards Inspection (HQS)
- A PHA determination that the unit is not in accordance with the HQS due to family size or composition

- DOH will only offer an informal review to applicants for whom assistance is being denied. Denial of assistance includes: denying listing on DOH 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)]**

DOH must give an applicant prompt notice of a decision denying assistance. The notice must contain a brief statement of the reasons for DOH's decision, and must also state that the applicant may request an informal review of the decision. The notice must describe how to obtain the informal review. Reasonable accommodation and VAWA language must also be a part of the notice.

### **Scheduling an Informal Review**

- A request for an informal review must be made in writing and delivered to DOH 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 DOH's denial of assistance.
- DOH 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 DOH.

### **Informal Review Decision [24 CFR 982.554(b)]**

DOH must notify the applicant of DOH's final decision, including a brief statement of the reasons for the final decision.

In rendering a decision, DOH will evaluate the following matters:

- Whether or not the grounds for denial were stated factually in the notice to the family.
- The validity of the 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. DOH 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, DOH will uphold the decision to deny assistance.
- If the facts prove the grounds for denial, and the denial is discretionary, DOH will consider the recommendation (but may not adhere to the recommendation) of the person conducting the informal review in making the final decision whether to deny assistance.

DOH 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-III.C. INFORMAL HEARINGS FOR PARTICIPANTS [24 CFR 982.555]**

DOH must offer an informal hearing for certain PHA determinations relating to the individual circumstances of a participant family. A participant is defined as a family that has been admitted to DOH's HCV program and is currently assisted in the program. The purpose of the informal hearing is to consider whether DOH's decisions related to the family's circumstances are in accordance with the law, HUD regulations and PHA policies.

DOH 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 DOH 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 DOH utility allowance schedule
- A determination of the family unit size under DOH's subsidy standards
- A determination that a certificate/voucher program family is residing in a unit with a larger number of bedrooms than appropriate for the family unit size under DOH's subsidy standards, or DOH's determination to deny the family's request for exception to the standards
- A determination to terminate assistance for a participant family because of the family's actions or failure to act
- A determination to terminate assistance because the participant has been absent from the assisted unit for longer than the maximum period permitted under PHA policy and HUD rules
- A determination to terminate a family's Family Self Sufficiency contract, withhold supportive services, or propose forfeiture of the family's escrow account [24 CFR 984.303(i)]

**Circumstances for which an informal hearing is not required are as follows:**

- Discretionary administrative determinations by DOH
- General policy issues or class grievances
- Establishment of DOH schedule of utility allowances for families in the program
- A PHA determination not to approve an extension or suspension of a voucher term
- A PHA determination not to approve a unit or tenancy
- A PHA determination that a unit selected by the applicant is not in compliance with the HQS
- A PHA determination that the unit is not in accordance with HQS because of family size
- A determination by DOH to exercise or not to exercise any right or remedy against an owner under a HAP contract

- DOH will only offer participants the opportunity for an informal hearing when required by the regulations.

**Informal Hearing Procedures**

***Notice to the Family* [24 CFR 982.555(c)]**

When DOH makes a decision that is subject to informal hearing procedures, DOH 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, DOH 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 DOH'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 DOH 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 DOH
  - A brief statement of the reasons for the decision including the regulatory reference
  - The date the proposed action will take place
  - A statement of the family's right to an explanation of the basis for DOH's decision
  - A statement that if the family does not agree with the decision the family may request an informal hearing of the decision
  - Reasonable accommodation and VAWA language.
  - A deadline for the family to request the informal hearing
  - A copy of DOH's hearing procedures will also be available upon request

### ***Scheduling an Informal Hearing [24 CFR 982.555(d)]***

When an informal hearing is required, DOH must proceed with the hearing in a reasonably expeditious manner.

- A request for an informal hearing must be made in writing and delivered to DOH 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 DOH's decision or notice to terminate assistance.
- DOH must schedule and send written notice of the informal hearing to the family within 10 business days of the family's request for a hearing.
- 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 72 hours prior to the hearing. Good cause is defined as an unavoidable conflict, which seriously affects the health, safety or welfare of the family. Please refer to Chapter 2 for

information on how to request a reasonable accommodation. Requests to reschedule a hearing must in writing prior to the hearing date. At its discretion, DOH may request documentation of the “good cause” prior to rescheduling the hearing.

- If the family does not appear at the time stated in the letter of notification, DOH will not reschedule the hearing unless needed as a reasonable accommodation for a person with a disability.

### ***Pre-Hearing Right to Discovery [24 CFR 982.555(e)]***

Participants and DOH are permitted pre-hearing discovery rights. The family must be given the opportunity to examine before the hearing any PHA documents that are directly relevant to the hearing. The family must be allowed to copy any such documents at their own expense. If DOH does not make the document available for examination on request of the family, DOH may not rely on the document at the hearing.

The PHA hearing procedures may provide that the PHA must be given the opportunity to examine at the PHA offices before the hearing, any family documents that are directly relevant to the hearing. DOH must be allowed to copy any such document at DOH’s expense. If the family does not make the document available for examination on request of DOH, 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 \$.10 per page. The family must request discovery of PHA documents no later than 12:00 p.m. three business days prior to the scheduled hearing date.
- DOH must be given an opportunity to examine at DOH offices before the hearing any family documents that are directly relevant to the hearing. Whenever a participant requests an informal hearing, DOH will automatically mail a letter to the participant scheduling the hearing and informing them that all documents that the participant intends to present or utilize at the hearing must be provided to DOH. The participant must make the documents available no later than 12:00 pm three business days prior to the scheduled hearing date.

### ***Participants 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 DOH, 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 PHA representative(s) and any witnesses for DOH
- The participant and any witnesses for the participant
- The participant's counsel or other representative
- Any other person approved by DOH 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 DOH'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.
- All informal hearings will be limited to 45-minutes.

### ***Evidence [24 CFR 982.555(e)(5)]***

DOH 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 DOH. 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 DOH 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:

**PHA Notice to the Family:** The hearing officer will determine if the reasons for DOH's decision are factually stated in the Notice.

**Discovery:** The hearing officer will determine if DOH and the family were given the opportunity to examine any relevant documents in accordance with PHA policy.

**PHA Evidence to Support DOH's Decision:** The evidence consists of the facts presented. Evidence is not conclusion and it is not argument. The hearing officer will evaluate the facts to determine if they support DOH's conclusion.

**Validity of Grounds for Termination of Assistance (when applicable):** The hearing officer will determine if the termination of assistance is for one of the grounds specified in the HUD regulations and PHA policies. If the grounds for termination are not specified in the regulations or in compliance with PHA policies, then the decision of DOH will be overturned.

The hearing officer will issue a written decision to the family and DOH no later than 10 business days after the hearing. The report will contain the following information:

**Hearing information:**

Name of the participant;  
Date, time and place of the hearing;  
Name of the hearing officer;  
Name of DOH representative; and  
Name of family representative (if any).

**Background:** A brief, impartial statement of the reason for the hearing.

**Summary of the Evidence:** The hearing officer will summarize the testimony of each witness and identify any documents that a witness produced in support of his/her testimony and that are admitted into evidence.

**Findings of Fact:** The hearing officer will include all findings of fact, based on a preponderance of the evidence. *Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

**Conclusions:** The hearing officer will render a conclusion derived from the facts that were found to be true by a preponderance of the evidence. The conclusion will result in a determination of whether these facts uphold DOH's decision.

**Order:** The hearing report will include a statement of whether DOH's decision is upheld or overturned. If it is overturned, the hearing officer will instruct DOH to change the decision in accordance with the hearing officer's determination. In the case of termination of assistance, the hearing officer will instruct DOH to restore the participant's program status.

***Procedures for Rehearing or Further Hearing***

- The hearing officer may ask the family for additional information and/or might adjourn the hearing in order to reconvene at a later date, before reaching a decision. If the family misses an appointment or deadline ordered by the hearing

officer, the action of DOH will take effect and another hearing will not be granted.

***PHA Notice of Final Decision [24 CFR 982.555(f)]***

DOH is not bound by the decision of the hearing officer for matters in which DOH 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 DOH determines it is not bound by the hearing officer's decision in accordance with HUD regulations, DOH must promptly notify the family of the determination and the reason for the determination.

- The PHA will mail a "Notice of Final Decision" including the hearing officer's report to the participant and/or their representative. This notice will be sent by first-class mail, postage pre-paid. The participant will be mailed the original "Notice of Final Decision". A copy of the "Notice of Final Decision" will be maintained in the PHA's file.

**16-III.D. HEARING AND APPEAL PROVISIONS FOR NON-CITIZENS [24 CFR 5.514]**

Denial or termination of assistance based on immigration status is subject to special hearing and notice rules. Applicants who are denied assistance due to immigration status are entitled to an informal hearing, not an informal review.

Assistance to a family may not be delayed, denied, or terminated on the basis of immigration status at any time prior to a decision under the United States Citizenship and Immigration Services (USCIS) appeal process. Assistance to a family may not be terminated or denied while DOH 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 DOH's informal hearing process, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

**Notice of Denial or Termination of Assistance [24 CFR 5.514(d)]**

The notice of denial or termination of assistance for non-citizens 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].
- 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.
- The family has a right to request an informal hearing with DOH 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 DOH receives notification that the USCIS secondary verification failed to confirm eligible immigration status, DOH 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 DOH with a copy of the written request for appeal and the proof of mailing.

- DOH 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 DOH 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 DOH, of its decision. When the USCIS notifies DOH of the decision, DOH must notify the family of its right to request an informal hearing.

- DOH 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 DOH provide a hearing. The request for a hearing must be made either within 30 days of receipt of DOH 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***

DOH must provide an informal hearing before an impartial individual, other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision. (See Section 16-III.C. for a listing of positions that serve as informal hearing officers).

### ***Evidence***

The family 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 DOH 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 \$.10 per page. The family must request discovery of PHA documents no later than 12:00 p.m. three 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 DOH, and to confront and cross-examine all witnesses on whose testimony or information DOH 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 DOH, as may be agreed upon by the two parties.

### ***Recording of the Hearing***

The family is entitled to have the hearing recorded by audiotape. DOH will not provide a transcript of an audio taped hearing. DOH reserves the right to record any informal hearing via audiotape.

### ***Hearing Decision***

DOH must provide the family with a written final decision, based solely on the facts presented at the hearing, within 10 business 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 DOH provide a hearing. The request for a hearing must be made either within 30 days of receipt of DOH 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)]**

DOH must retain for a minimum of 5 years the following documents that may have been submitted to DOH by the family, or provided to DOH as part of the USCIS appeal or DOH informal hearing process:

- The application for assistance
- The form completed by the family for income reexamination
- Photocopies of any original documents, including original USCIS documents
- The signed verification consent form
- The USCIS verification results
- The request for a USCIS appeal
- The final USCIS determination
- The request for an informal hearing
- The final informal hearing decision

## ***PART IV: OWNER OR FAMILY DEBTS TO DOH***

### **16-IV.A. OVERVIEW**

DOH is required to include in the administrative plan, policies concerning repayment by a family of amounts owed to DOH [24 CFR 982.54]. This part describes DOH's policies for recovery of monies owed to DOH by families or owners.

- When an action or inaction of an owner or participant results in the overpayment of housing assistance, DOH holds the owner or participant liable to return any overpayments to DOH.
- DOH 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 DOH, DOH will utilize other available collection alternatives including, but not limited to, the following:
  - Collection agencies
  - Small claims court
  - Civil law suit
  - State income tax set-off program

### **16-IV.B. REPAYMENT POLICY**

#### **Owner Debts to DOH**

- Any amount due to DOH by an owner must be repaid by the owner within 30 days of DOH determination of the debt.
- If the owner fails to repay the debt within the required time frame and is entitled to future HAP payments, DOH 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 DOH may, in its sole discretion offer to enter into a repayment agreement on terms prescribed by DOH.
- If the owner refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, DOH may ban the owner from future participation in the program and pursue other modes of collection.



## **Family Debts to DOH**

- Any amount owed to DOH by an HCV family must be repaid by the family. DOH 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, DOH 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 DOH 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**

#### ***Down Payment Requirement***

- Families will not be required to make a down payment on the amount owed prior to entering into a repayment agreement with DOH.

#### ***Payment Thresholds***

Notice PIH 2010-19 recommends that the total amount that a family must pay each month—the family’s monthly share of rent plus the monthly debt repayment amount—should not exceed 40 percent of the family’s monthly adjusted income. However, a family may already be paying 40 per cent or more of its monthly adjusted income in rent. Moreover, Notice PIH 2010-19 acknowledges that PHAs have the discretion to establish “thresholds and policies” for repayment agreements with families [24 CFR 982.552(c) (1)(vii)].

- DOH has established the following thresholds for repayment of debts: Except in the cases of reasonable accommodation, the following will apply:
  - Amounts between \$3,000 and the Federal or State threshold for criminal prosecution must be repaid within 36 months.
  - Amounts between \$2,000 and \$2,999 must be repaid within 30 months.
  - Amounts between \$1,000 and \$1,999 must be repaid within 24 months.
  - Amounts under \$1,000 must be repaid within 12 months.

- If a family can provide evidence satisfactory to DOH that the threshold applicable to the family's debt would impose an undue hardship, DOH may, in its sole discretion, determine that a lower monthly payment amount is reasonable. In making its determination, DOH will consider all relevant information, including the following:
  - The amount owed by the family to DOH
  - 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 less than 24 CFR 982.515
  - The family's history of meeting its financial responsibilities

### ***Execution of the Agreement***

- Any repayment agreement between DOH and a family must be signed and dated by DOH and by the head of household, spouse/co-head (if applicable)

### ***Due Dates***

- All payments are due by the close of business on the 1<sup>st</sup> day of the month and considered late after the 5<sup>th</sup> of the month. If the 1<sup>st</sup> does not fall on a business day, the due date is the close of business on the first business day after the 1<sup>st</sup>.

### ***Late or Missed Payments***

- If the family misses two payments, the repayment agreement it will be considered in default and DOH will terminate assistance upon written notification to the family.
- If a family falls more than 2 months behind and receives 2 termination notices for unexcused late payments in a 12-month period, the repayment agreement will be considered in default, and DOH will terminate assistance upon written notification to the family.

### ***No Offer of Repayment Agreement***

- DOH generally will not enter into a repayment agreement with a family if there is already a repayment agreement in place with the family or if the amount owed by the family exceeds the federal or state threshold for criminal prosecution.

## **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
- PHA may terminate assistance because of a family's action or failure to act  
A statement clarifying that each month the family not only must pay to DOH 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

## ***PART V: SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP)***

### **16-V.A. OVERVIEW**

The Section 8 Management Assessment Program (SEMAP) is a tool that allows HUD to measure PHA performance in key areas to ensure program integrity and accountability. SEMAP scores translate into a rating for each PHA as high performing, standard, or troubled. Scores on individual SEMAP indicators, as well as overall SEMAP ratings, can affect DOH 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, DOH that is 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-V.B. SEMAP CERTIFICATION [24 CFR 985.101]**

DOH 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 PHA governing official and signed by DOH executive director. If DOH 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.

PHAs with less than 250 voucher units are only required to be assessed every other PHA fiscal year. HUD will assess such PHAs annually if DOH elects to have its performance assessed on an annual basis; or is designated as “troubled” [24 CFR 985.105].

Failure of a PHA to submit its SEMAP certification within the required time frame will result in an overall performance rating of “troubled.”

A PHA’s SEMAP certification is subject to HUD verification by an on-site confirmatory review at any time.

Upon receipt of DOH’s SEMAP certification, HUD will rate DOH’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. DOH or the Independent Auditor must select an unbiased sample that provides an adequate representation of the types of information to be assessed, in accordance with SEMAP requirements [24 CFR 985.2].

If the HUD verification method for the indicator relies on data in the Form-50058 module (formerly known as MTCS) in the PIH Information Center (PIC), and HUD determines that those data are insufficient to verify DOH's certification on the indicator due to DOH's failure to adequately report family data, HUD will assign a zero rating for the indicator [24 CFR 985.3].

### 16-V.C. SEMAP INDICATORS [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.

A PHA that expends less than \$300,000 in Federal awards and whose Section 8 programs are not audited by an independent auditor, is not to be rated under SEMAP indicators 1-7.

<b>SEMAP Indicators</b>
<p><b>Indicator 1: Selection from the waiting list</b>  <b>Maximum Score: 15</b></p> <ul style="list-style-type: none"> <li>• This indicator shows whether DOH has written policies in its administrative plan for selecting applicants from the waiting list and whether DOH follows these policies when selecting applicants for admission from the waiting list.</li> <li>• Points are based on the percent of families that are selected from the waiting list in accordance with DOH's written policies, according to DOH's quality control sample.</li> </ul>
<p><b>Indicator 2: Rent reasonableness</b>  <b>Maximum Score: 20</b></p> <ul style="list-style-type: none"> <li>• This indicator shows whether DOH 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</li> <li>• Points are based on the percent of units for which DOH follows its written method to determine reasonable rent and has documented its determination that the rent to owner is reasonable, according to DOH's quality control sample.</li> </ul>
<p><b>Indicator 3: Determination of adjusted income</b>  <b>Maximum Score: 20</b></p> <ul style="list-style-type: none"> <li>• This indicator measures whether DOH 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.</li> <li>• Points are based on the percent of files that are calculated and verified correctly,</li> </ul>

<p>according to DOH's quality control sample.</p>
<p><b>Indicator 4: Utility allowance schedule</b>  <b>Maximum Score: 5</b></p> <ul style="list-style-type: none"> <li>• This indicator shows whether DOH maintains an up-to-date utility allowance schedule.</li> <li>• Points are based on whether DOH has reviewed the utility allowance schedule and adjusted it when required, according to DOH's certification.</li> </ul>
<p><b>Indicator 5: HQS quality control inspections</b>  <b>Maximum Score: 5</b></p> <ul style="list-style-type: none"> <li>• This indicator shows whether a PHA supervisor reinspects a sample of units under contract during DOH fiscal year, which meets the minimum sample size requirements for quality control of HQS inspections.</li> <li>• Points are based on whether the required quality control reinspections were completed, according to DOH's certification.</li> </ul>
<p><b>Indicator 6: HQS enforcement</b>  <b>Maximum Score: 10</b></p> <ul style="list-style-type: none"> <li>• This indicator shows whether, following each HQS inspection of a unit under contract where the unit fails to meet HQS, any cited life-threatening deficiencies are corrected within 24 hours from the inspection and all other deficiencies are corrected within no more than 30 calendar days from the inspection or any PHA-approved extension.</li> <li>• Points are based on whether DOH corrects all HQS deficiencies in accordance with required time frames, according to DOH's certification.</li> </ul>
<p><b>Indicator 7: Expanding housing opportunities</b>  <b>Maximum Points: 5</b></p> <ul style="list-style-type: none"> <li>• Only applies to PHAs with jurisdiction in metropolitan FMR areas.</li> <li>• This indicator shows whether DOH 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 DOH'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.</li> <li>• Points are based on whether DOH has adopted and implemented written policies in accordance with SEMAP requirements, according to DOH's certification.</li> </ul>
<p><b>Indicator 8: FMR limit and payment standards</b>  <b>Maximum Points: 5 points</b></p> <ul style="list-style-type: none"> <li>• This indicator shows whether DOH has adopted a payment standard schedule that establishes payment standard amounts by unit size for each FMR area in DOH's jurisdiction, that are within the basic range of 90 to 110 percent of the published FMR.</li> <li>• Points are based on whether DOH has appropriately adopted a payment standard schedule(s), according to DOH's certification.</li> </ul>
<p><b>Indicator 9: Annual reexaminations</b>  <b>Maximum Points: 10</b></p> <ul style="list-style-type: none"> <li>• This indicator shows whether DOH completes a reexamination for each participating family at least every 12 months.</li> <li>• Points are based on the percent of reexaminations that are more than 2 months overdue,</li> </ul>

<p>according to data from PIC.</p>
<p><b>Indicator 10: Correct tenant rent calculations</b>  <b>Maximum Points: 5</b></p> <ul style="list-style-type: none"> <li>• This indicator shows whether DOH correctly calculates the family’s share of the rent to owner.</li> <li>• Points are based on the percent of correct calculations of family share of the rent, according to data from PIC.</li> </ul>
<p><b>Indicator 11: Pre-contract HQS inspections</b>  <b>Maximum Points: 5</b></p> <ul style="list-style-type: none"> <li>• This indicator shows whether newly leased units pass HQS inspection on or before the effective date of the assisted lease and HAP contract.</li> <li>• 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.</li> </ul>
<p><b>Indicator 12: Annual HQS inspections</b>  <b>Maximum Points: 10</b></p> <ul style="list-style-type: none"> <li>• This indicator shows whether DOH inspects each unit under contract at least annually.</li> <li>• 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.</li> </ul>
<p><b>Indicator 13: Lease-up</b>  <b>Maximum Points: 20 points</b></p> <ul style="list-style-type: none"> <li>• This indicator shows whether DOH enters HAP contracts for the number of units or funding reserved under ACC for at least one year.</li> <li>• Points are based on the percent of units leased during the last completed PHA fiscal year, or the percent of allocated budget authority that has been expended by DOH, according to data from DOH’s last year-end operating statement that is recorded in HUD’s accounting system.</li> </ul>
<p><b>Indicator 14: Family self-sufficiency (FSS) enrollment and escrow account balances</b>  <b>Maximum Points: 10</b></p> <ul style="list-style-type: none"> <li>• Only applies to PHAs with mandatory FSS programs.</li> <li>• This indicator shows whether DOH 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.</li> <li>• 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.</li> </ul>

**Bonus Points**

<p><b>Success Rate of Voucher Holders</b>  <b>Maximum Points: 5</b></p> <ul style="list-style-type: none"> <li>• Only applies to PHAs that have received approval to establish success rate payment standard amounts, and isn’t effective until the second full PHA fiscal year following the</li> </ul>
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date of HUD approval of success rate payment standard amounts.

- This indicator shows whether voucher holders were successful in leasing units with voucher assistance.
- Points are based on the percent of families that were issued vouchers, and that became participants in the voucher program.

**De-concentration Bonus Indicator**

**Maximum Points: 5**

- Submission of data for this indicator is mandatory for 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 PHA fiscal year following initial use of payment standard amounts based on the FMRs set at the 50<sup>th</sup> 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.



## **PART VI: RECORD KEEPING**

### **16-VI.A. OVERVIEW**

DOH must maintain complete and accurate accounts and other records for the program in accordance with HUD and the State of Colorado record retention requirements. Records must be kept 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, DOH must ensure that all applicant and participant files are maintained in a way that protects an individual's privacy rights.

### **16-VI.B. RECORD RETENTION [24 CFR 982.158]**

During the term of each assisted lease, and for at least five years thereafter, DOH must keep:

- A copy of the executed lease;
- The HAP contract; and
- The application from the family.

In addition, DOH must keep the following records for at least five years:

- Records that provide income, racial, ethnic, gender, and disability status data on program applicants and participants;
- An application from each ineligible family and notice that the applicant is not eligible;
- HUD-required reports;
- Unit inspection reports;
- Lead-based paint records as required by 24 CFR 35, Subpart B.
- Accounts and other records supporting PHA budget and financial statements for the program;
- Records to document the basis for PHA determination that rent to owner is a reasonable rent (initially and during the term of a HAP contract); and
- Other records specified by HUD.

If an informal hearing to establish a family's citizenship status is held, longer retention requirements apply for some types of documents. For specific requirements, see Section 16-III.D., Retention of Documents.

## **16-VI.C. RECORDS MANAGEMENT INCLUDING PRIVACY/CONFIDENTIALITY**

DOH must maintain applicant and participant files and information in accordance with the regulatory requirements described below.

- All applicant and participant information will be kept in a secure location and access will be limited to authorized PHA staff.
- PHA staff will not discuss personal family information unless there is a business reason to do so. Inappropriate discussion of family information or improper disclosure of family information by staff will result in disciplinary action.

### **Privacy Act Requirements [24 CFR 5.212 and Form-9886]**

The collection, maintenance, use, and dissemination of social security numbers (SSN), employer identification numbers (EIN), any information derived from these numbers, and income information of applicants and participants must be conducted, to the extent applicable, in compliance with the Privacy Act of 1974, and all other provisions of Federal, State, and local law.

Applicants and participants, including all adults in the household, are required to sign a consent form, HUD-9886, Authorization for Release of Information. This form incorporates the Federal Privacy Act Statement and describes how the information collected using the form may be used, and under what conditions HUD or DOH may release the information collected.

### **Upfront Income Verification (UIV) Records**

DOH has access to 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, DOH will adopt and implement EIV security procedures required by HUD.

### **Criminal Records**

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

DOH must establish and implement a system of records management that ensures that any criminal record received by DOH from a law enforcement agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge without institution of a challenge or final disposition of any such litigation [24 CFR 5.903(g)].

DOH must establish and implement a system of records management that ensures that any sex offender registration information received by DOH 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 DOH action without institution of a challenge or final disposition of any such litigation. However, a record of the screening, including the type of screening and the date performed must be retained [Notice PIH 2012-28]. This requirement does not apply to information that is public information, or is obtained by a PHA other than under 24 CFR 5.905.

- DOH will establish a second tenant file for any criminal records that are necessary to be maintained. This file will be kept in a separate location where only authorized staff will have access.

### **Medical/Disability Records**

PHAs are not permitted to inquire about the nature or extent of a person's disability. DOH may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If DOH receives a verification document that provides such information, DOH should not place this information in the tenant file. DOH should destroy the document.

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

For requirements and PHA policies related to management of documentation obtained from victims of domestic violence, dating violence, sexual assault or stalking, see section 16-IX.E.

## **PART VII: REPORTING AND RECORD KEEPING FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL**

### **16-VII.A. OVERVIEW**

DOH 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 DOH is subject to.

### **16-VII.B. REPORTING REQUIREMENT [24 CFR 35.1225(e)]**

DOH 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.

- DOH 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.

### **16-VII.C. DATA COLLECTION AND RECORD KEEPING [24 CFR 35.1225(f)]**

DOH must attempt to obtain from the public health department(s) with a similar area of jurisdiction, the names and/or addresses of children less than 6 years old with an identified environmental intervention blood lead level.

If DOH obtains names and addresses of environmental intervention blood lead level children from the public health department(s), DOH must match this information with the names and addresses of families receiving HCV assistance, unless the public health department performs such a procedure. If a match occurs, DOH must carry out the notification, verification, and hazard reduction requirements discussed in Chapter 8, and the reporting requirement discussed above.

At least quarterly, DOH must also report an updated list of the addresses of units receiving assistance under the HCV program to the same public health department(s), unless the public health department(s) states that it does not wish to receive such a report.

- The public health department(s) has stated they **do not** wish to receive a report of an updated list of the addresses of units receiving assistance under the HCV program, on a quarterly basis due to their inability to fund the process needed to compare the data. Therefore, DOH is not providing such a report.

## **PART VIII: DETERMINATION OF INSUFFICIENT FUNDING**

### **16-VIII.A. OVERVIEW**

The HCV regulations allow DOH 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 DOH's ability to issue vouchers to families on the waiting list. This part discusses the methodology DOH will use to determine whether or not DOH has sufficient funding to issue vouchers, approve moves, and to continue subsidizing all families currently under a HAP contract.

### **16-VIII.B. METHODOLOGY**

DOH 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 DOH'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, DOH 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 DOH cannot support the cost of the proposed subsidy commitment (voucher issuance or move) based on the funding analysis, DOH will be considered to have insufficient funding.

## **PART IX: VIOLENCE AGAINST WOMEN ACT (VAWA): NOTIFICATION, DOCUMENTATION, CONFIDENTIALITY**

### **16-IX.A. OVERVIEW**

The Violence against Women Act of 2013 (VAWA) provides special protections for victims of domestic violence, dating violence, sexual assault and stalking who are applying for or receiving assistance under the housing choice voucher (HCV) program. If your state or local laws provide greater protection for such victims, those laws take precedence over VAWA.

In addition to definitions of key terms used in VAWA, this part contains general VAWA requirements and PHA policies in three areas: notification, documentation, and confidentiality. Specific VAWA requirements and PHA policies are located primarily in the following sections: 3-I.C, “Family Breakup and Remaining Member of Tenant Family”; 3-III.G, “Prohibition against Denial of Assistance to Victims of Domestic Violence, Dating Violence, and Stalking”; 10-I.A, “Allowable Moves”; 10-I.B, “Restrictions on Moves”; 12-II.E, “Terminations Related to Domestic Violence, Dating Violence, or Stalking”; and 12-II.F, “Termination Notice.”

### **16-IX.B. DEFINITIONS [24 CFR 5.2003]**

As used in VAWA:

- The term bifurcate means, with respect to a public housing or Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members’ lease and occupancy rights are allowed to remain intact.
- The term dating violence means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - The length of the relationship
  - The type of relationship
  - The frequency of interaction between the persons involved in the relationship
- The term *domestic violence* includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.
- The term affiliated individual means, with respect to a person:
  - A spouse, parent, brother or sister, or child of that individual, or an individual to whom that individual stands in the position or place of a parent; or

Any other individual, tenant or lawful occupant living in the household of that individual.

- The term sexual assault means:

Any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks the capacity to consent.

- The term stalking means:

To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate; or

To place under surveillance with the intent to kill, injure, harass, or intimidate another person; and

In the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (1) that person, (2) a member of the immediate family of that person, or (3) the spouse or intimate partner of that person.

#### **16-IX.C. NOTIFICATION [24 CFR 5.2005(a)]**

##### Notification to Public

DOH adopts the following policy to help ensure that all actual and potential beneficiaries of its HCV program are aware of their rights under VAWA.

DOH 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, or stalking (see sample notices in Exhibits 16-1 and 16-2)

The definitions of domestic violence, dating violence, sexual assault and stalking provided in VAWA (included in Exhibits 16-1 and 16-2)

An explanation of the documentation that DOH may require from an individual who claims the protections provided by VAWA (included in Exhibits 16-1 and 16-2)

A copy of form HUD-50066, Certification of Domestic Violence, Dating Violence, or Stalking

A statement of DOH's obligation to keep confidential any information that it receives from a victim unless (a) DOH has the victim's written permission to release the information, (b) it needs to use the information in an eviction proceeding, or (c) it is compelled by law to release the information (included in Exhibits 16-1 and 16-2)

The National Domestic Violence Hot Line: 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY) (included in Exhibits 16-1 and 16-2)

Contact information for local victim advocacy groups or service providers

### **Notification to Program Applicants and Participants [24 CFR 5.2005(a)(1)]**

PHAs are required to inform program applicants and participants of their rights under VAWA, including their right to confidentiality and the limits thereof, when they are denied assistance, when they are admitted to the program, and when they are notified of an eviction or termination of housing benefits.

DOH will provide all applicants with information about VAWA at the time they request an application for housing assistance. DOH will also include information about VAWA in all notices of denial of assistance (see section 3-III.G).

DOH will provide all participants with information about VAWA at the time of admission (see section 5-I.B) and at annual reexamination. DOH will also include information about VAWA in notices of termination of assistance, as provided in section 12-II.F.

The VAWA information provided to applicants and participants will consist of the notice in Exhibit 16-1 and a copy of form HUD-50066, Certification of Domestic Violence, Dating Violence, and Stalking.

### **Notification to Owners and Managers [24 CFR 5.2005(a)(2)]**

PHAs are required to notify owners and managers participating in the HCV program of their rights and obligations under VAWA.

DOH will provide owners and managers with information about their rights and obligations under VAWA when they begin their participation in the HCV program and at least annually thereafter.

The VAWA information provided to owners will consist of the notice in Exhibit 16-2 and a copy of form HUD-50066, Certification of Domestic Violence, Dating Violence, and Stalking.

### **16-IX.D. DOCUMENTATION [24 CFR 5.2007]**

A PHA presented with a claim for initial or continued assistance based on status as a victim of domestic violence, dating violence, stalking, sexual assault, or criminal activity related to any of



these forms of abuse may—but is not required to—request that the individual making the claim document the abuse. Any request for documentation must be in writing, and the individual must be allowed at least 14 business days after receipt of the request to submit the documentation. DOH may extend this time period at its discretion. [24 CFR 5.2007(a)]

The individual may satisfy DOH’s request by providing any one of the following three forms of documentation [24 CFR 5.2007(b)]:

1. A completed and signed HUD-approved certification form (HUD-50066, Certification of Domestic Violence, Dating Violence, or Stalking), which must include the name of the perpetrator only if the name of the perpetrator is safe to provide and is known to the victim
2. A federal, state, tribal, territorial, or local police report or court record
3. Documentation signed by a person who has assisted the victim in addressing domestic violence, dating violence, sexual assault or stalking, or the effects of such abuse. This person may be an employee, agent, or volunteer of a victim service provider; an attorney; or a medical professional. Acceptable documentation also includes a record of an administrative agency, and documentation from a mental health professional. The person signing the documentation must attest under penalty of perjury to the person’s belief that the incidents in question are bona fide incidents of abuse. The victim must also sign the documentation.

DOH may not require third-party documentation (forms 2 and 3) in addition to certification (form 1), except as specified below under “Conflicting Documentation,” nor may it require certification in addition to third-party documentation [VAWA final rule].

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.

DOH may, in its discretion, extend the deadline for 10 business days. Any extension granted by DOH will be in writing.

### **Conflicting Documentation [24 CFR 5.2007(e)]**

In cases where DOH receives conflicting certification documents from two or more members of a household, each claiming to be a victim and naming one or more of the other petitioning household members as the perpetrator, DOH may determine which is the true victim by requiring each to provide acceptable third-party documentation, as described above (forms 2 and 3).

DOH must honor any court orders issued to protect the victim or to address the distribution of property.

If presented with conflicting certification documents (two or more forms HUD-50066) from members of the same household, DOH will attempt to determine which is the true victim by requiring each of them to provide third-party documentation in accordance with 24 CFR 5.2007(b)(2) or (3) and by following any HUD guidance on how such determinations should be made.

#### **Discretion to Require No Formal Documentation [24 CFR 5.2007(d)]**

DOH has the discretion to provide benefits to an individual based solely on the individual's statement or other corroborating evidence—i.e., without requiring formal documentation of abuse in accordance with 24 CFR 5.2007(b).

##### PHA Policy

If DOH accepts an individual's statement or other corroborating evidence of domestic violence, dating violence, sexual assault or stalking, DOH will document acceptance of the statement or evidence in the individual's file.

#### **Failure to Provide Documentation [24 CFR 5.2007(c)]**

In order to deny relief for protection under VAWA, a PHA must provide the individual requesting relief with a written request for documentation of abuse. If the individual fails to provide the documentation within 14 business days from the date of receipt, or such longer time as DOH may allow, DOH may deny relief for protection under VAWA.

#### **16-IX.E. CONFIDENTIALITY [24 CFR 5.2007(b)(4)]**

All information provided to DOH regarding domestic violence, dating violence, sexual assault or stalking, including the fact that an individual is a victim of such violence or stalking, must be retained in confidence. This means that DOH (1) may not enter the information into any shared database, (2) may not allow employees or others to access the information unless they are explicitly authorized to do so and have a need to know the information for purposes of their work, and (3) may not provide the information to any other entity or individual, except to the extent that the disclosure is (a) requested or consented to by the individual in writing, (b) required for use in an eviction proceeding, or (c) otherwise required by applicable law.

##### PHA Policy

If disclosure is required for use in an eviction proceeding or is otherwise required by applicable law, DOH will inform the victim before disclosure occurs so that safety risks can be identified and addressed.

## **EXHIBIT 16-1: SAMPLE NOTICE TO HOUSING CHOICE VOUCHER APPLICANTS AND TENANTS REGARDING THE VIOLENCE AGAINST WOMEN ACT (VAWA)**

A federal law that went into effect in 2013 protects individuals who are victims of domestic violence, dating violence, sexual assault or stalking. The name of the law is the Violence against Women Act, or “VAWA.” This notice explains your rights under VAWA.

### **Protections for Victims**

If you are eligible for a Section 8 voucher, the housing authority cannot deny you rental assistance solely because you are a victim of domestic violence, dating violence, sexual assault or stalking.

If you are the victim of domestic violence, dating violence, sexual assault or stalking, you cannot be terminated from the Section 8 program or evicted based on acts or threats of violence committed against you. Also, criminal acts directly related to the domestic violence, dating violence, sexual assault or stalking that are caused by a member of your household or a guest can't be the reason for evicting you or terminating your rental assistance if you were the victim of the abuse.

### **Reasons You Can Be Evicted**

You can be evicted and your rental assistance can be terminated if the housing authority or your landlord can show there is an *actual* and *imminent* (immediate) threat to other tenants or employees at the property if you remain in your housing. Also, you can be evicted and your rental assistance can be terminated for serious or repeated lease violations that are not related to the domestic violence, dating violence, sexual assault or stalking committed against you. The housing authority and your landlord cannot hold you to a more demanding set of rules than it applies to tenants who are not victims.

### **Removing the Abuser from the Household**

Your landlord may split (bifurcate) the lease to evict a tenant who has committed criminal acts of violence against family members or others, while allowing the victim and other household members to stay in the assisted unit. Also, the housing authority can terminate the abuser's Section 8 rental assistance while allowing you to continue to receive assistance. If the landlord or housing authority chooses to remove the abuser, it may not take away the remaining tenants' rights to the unit or otherwise punish the remaining tenants. In removing the abuser from the household, your landlord must follow federal, state, and local eviction procedures.

### **Moving to Protect Your Safety**

The housing authority may permit you to move and still keep your rental assistance, even if your current lease has not yet expired. The housing authority may require that you be current on your rent or other obligations in the housing choice voucher program. The housing authority may ask you to provide proof that you are moving because of incidences of abuse.

### **Proving That You Are a Victim of Domestic Violence, Dating Violence, or Stalking**

The housing authority and your landlord can ask you to prove or “certify” that you are a victim of domestic violence, dating violence, sexual assault or stalking. The housing authority or your landlord must give you at least 14 business days (i.e. Saturdays, Sundays, and holidays do not count) to provide this proof. The housing authority and your landlord are free to extend the deadline.

There are three ways you can prove that you are a victim:

- Complete the certification form given to you by the housing authority or your landlord. The form will ask for your name, the name of your abuser, the abuser’s relationship to you, the date, time, and location of the incident of violence, and a description of the violence. You are only required to provide the name of the abuser if it is safe to provide and you know their name.
- Provide a statement from a victim service provider, attorney, or medical professional who has helped you address incidents of domestic violence, dating violence, sexual assault or stalking. The professional must state that he or she believes that the incidents of abuse are real. Both you and the professional must sign the statement, and both of you must state that you are signing “under penalty of perjury.”
- Provide a police or court record, such as a protective order.

If you fail to provide one of these documents within the required time, the landlord may evict you, and the housing authority may terminate your rental assistance.

### **Confidentiality**

The housing authority and your landlord must keep confidential any information you provide about the violence against you, unless:

- You give written permission to the housing authority or your landlord to release the information.
- Your landlord needs to use the information in an eviction proceeding, such as to evict your abuser.
- A law requires the housing authority or your landlord to release the information.

If release of the information would put your safety at risk, you should inform the housing authority and your landlord.

### **VAWA and Other Laws**

VAWA does not limit the housing authority’s or your landlord’s duty to honor court orders about access to or control of the property. This includes orders issued to protect a victim and orders dividing property among household members in cases where a family breaks up.

VAWA does not replace any federal, state, or local law that provides greater protection for victims of domestic violence, dating violence, sexual assault or stalking.

### **For Additional Information**

If you have any questions regarding VAWA, please contact Susan Niner at 303-866-4944.

For help and advice on escaping an abusive relationship, call the National Domestic Violence Hotline at 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY).

## Definitions

For purposes of determining whether a tenant may be covered by VAWA, the following list of definitions applies:

VAWA defines *domestic violence* to include felony or misdemeanor crimes of violence committed by any of the following:

- A current or former spouse of the victim
- A person with whom the victim shares a child in common
- A person who is cohabitating with or has cohabitated with the victim as a spouse
- A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies
- Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction

VAWA defines *dating violence* as violence committed by a person (1) who is or has been in a social relationship of a romantic or intimate nature with the victim AND (2) where the existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship
- The type of relationship
- The frequency of interaction between the persons involved in the relationship

VAWA defines *stalking* as (A)(i) to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person OR (ii) to place under surveillance with the intent to kill, injure, harass, or intimidate another person AND (B) in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (i) that person, (ii) a member of the immediate family of that person, or (iii) the spouse or intimate partner of that person.

VAWA defines sexual assault as “any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent” (42 U.S.C. 13925(a)).

## **EXHIBIT 16-2: SAMPLE NOTICE TO HOUSING CHOICE VOUCHER OWNERS AND MANAGERS REGARDING THE VIOLENCE AGAINST WOMEN ACT (VAWA)**

A federal law that went into effect in 2013 protects individuals who are victims of domestic violence, dating violence, sexual assault and stalking. The name of the law is the Violence against Women Act, or “VAWA.” This notice explains your obligations under VAWA.

### **Protections for Victims**

You cannot refuse to rent to an applicant solely because he or she is a victim of domestic violence, dating violence, sexual assault or stalking.

You cannot evict a tenant who is the victim of domestic violence, dating violence, sexual assault or stalking based on acts or threats of violence committed against the victim. Also, criminal acts directly related to the domestic violence, dating violence, sexual assault or stalking that are caused by a household member or guest cannot be cause for evicting the victim of the abuse.

### **Permissible Evictions**

You can evict a victim of domestic violence, dating violence, sexual assault or stalking if you can demonstrate that there is an *actual and imminent* (immediate) threat to other tenants or employees at the property if the victim is not evicted. Also, you may evict a victim for serious or repeated lease violations that are not related to the domestic violence, dating violence, sexual assault or stalking. You cannot hold a victim of domestic violence, dating violence, sexual assault or stalking to a more demanding standard than you hold tenants who are not victims.

### **Removing the Abuser from the Household**

You may bifurcate, (split) the lease to evict a tenant who has committed criminal acts of violence against family members or others, while allowing the victim and other household members to stay in the unit. If you choose to remove the abuser, you may not take away the remaining tenants’ rights to the unit or otherwise punish the remaining tenants. In removing the abuser from the household, you must follow federal, state, and local eviction procedures.

### **Certification of Domestic Violence, Dating Violence, Sexual Assault or Stalking**

If a tenant asserts VAWA’s protections, you can ask the tenant to certify that he or she is a victim of domestic violence, dating violence, sexual assault or stalking. You are not required to demand official documentation and may rely upon the victim’s statement alone. If you choose to request certification, you must do so in writing and give the tenant at least 14 business days to provide documentation. You are free to extend this deadline. A tenant can certify that he or she is a victim by providing any one of the following three documents:

- A HUD-approved certification form, the most recent form is HUD-50066. This form is available at the housing authority, or online at <http://www.hud.gov/offices/adm/hudclips/forms/hud5.cfm>
- A statement from a victim service provider, attorney, or medical professional who has helped the victim address incidents of domestic violence, dating violence, sexual assault or stalking. The professional must state that he or she believes that the

incidents of abuse are real. Both the victim and the professional must sign the statement under penalty of perjury.

- A police or court record, such as a protective order.

If the tenant fails to provide one of these documents within 14 business days, you may evict the tenant if authorized by otherwise applicable law and lease provisions.

### **Confidentiality**

You must keep confidential any information a tenant provides to certify that he or she is a victim of domestic violence, dating violence, sexual assault or stalking. You cannot enter the information into a shared database or reveal it to outside entities unless:

- The tenant provides written permission releasing the information.
- The information is required for use in an eviction proceeding, such as to evict the abuser.
- Release of the information is otherwise required by law.

The victim should inform you if the release of the information would put his or her safety at risk.

### **VAWA and Other Laws**

VAWA does not limit your obligation to honor court orders regarding access to or control of the property. This includes orders issued to protect the victim and orders dividing property among household members in cases where a family breaks up.

VAWA does not replace any federal, state, or local law that provides greater protection for victims of domestic violence, dating violence, sexual assault or stalking.

### **Additional Information**

- If you have any questions regarding VAWA, please contact **Susan Niner**.
- HUD Notice PIH 2006-42 contains detailed information regarding VAWA's certification requirements. The notice is available at:  
<http://www.hud.gov/offices/adm/hudclips/notices/pih/06pihnotices.cfm>
- For a discussion of VAWA's housing provisions, see the preamble to the final VAWA rule, which is available at: <http://www.gpo.gov/fdsys/pkg/FR-2010-10-27/pdf/2010-26914.pdf>.

### **Definitions**

For purposes of determining whether a tenant may be covered by VAWA, the following list of definitions applies:

VAWA defines *domestic violence* to include felony or misdemeanor crimes of violence committed by any of the following:

- A current or former spouse of the victim
- A person with whom the victim shares a child in common

- A person who is cohabitating with or has cohabitated with the victim as a spouse
- A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies
- Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction

VAWA defines *dating violence* as violence committed by a person (1) who is or has been in a social relationship of a romantic or intimate nature with the victim AND (2) where the existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship
- The type of relationship
- The frequency of interaction between the persons involved in the relationship

VAWA defines *stalking* as (A)(i) to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person OR (ii) to place under surveillance with the intent to kill, injure, harass, or intimidate another person AND (B) in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (i) that person, (ii) a member of the immediate family of that person, or (iii) the spouse or intimate partner of that person. VAWA defines sexual assault as “any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent” (42 U.S.C. 13925(a)).



**PROJECT-BASED VOUCHERS**  
***PART I: GENERAL REQUIREMENTS***

**INTRODUCTION**

This chapter describes HUD regulations and PHA policies related to the project-based voucher (PBV) program in nine parts:

Part I: General Requirements. This part describes general provisions of the PBV program including maximum budget authority requirements, relocation requirements, and equal opportunity requirements.

Part II: PBV Owner Proposals. This part includes policies related to the submission and selection of owner proposals for PBV assistance. It describes the factors DOH will consider when selecting proposals, the type of housing that is eligible to receive PBV assistance, the cap on assistance at projects receiving PBV assistance, subsidy layering requirements, site selection standards, and environmental review requirements.

Part III: Dwelling Units. This part describes requirements related to housing quality standards, the type and frequency of inspections, and housing accessibility for persons with disabilities.

Part IV: Rehabilitated and Newly Constructed Units. This part describes requirements and policies related to the development and completion of rehabilitated and newly constructed housing units that will be receiving PBV assistance.

Part V: Housing Assistance Payments Contract. This part discusses HAP contract requirements and policies including the execution, term, and termination of the HAP contract. In addition, it describes how the HAP contract may be amended and identifies provisions that may be added to the HAP contract at DOH's discretion.

Part VI: Selection of PBV Program Participants. This part describes the requirements and policies governing how DOH and the owner will select a family to receive PBV assistance.

Part VII: Occupancy. This part discusses occupancy requirements related to the lease, and describes under what conditions families are allowed or required to move. In addition, exceptions to the occupancy cap (which limits PBV assistance to 25 percent of the units in any project) are also discussed.

Part VIII: Determining Rent to Owner. This part describes how the initial rent to owner is determined, and how rent will be redetermined throughout the life of the HAP contract. Rent reasonableness requirements are also discussed.

Part IX: Payments to Owner. This part describes the types of payments owners may receive under this program.

## 17-I.A. OVERVIEW [24 CFR 983.5]

The Department of Housing and Urban Development Project Based Voucher (PBV) Program regulations allow DOH (DOH) to use a portion of its existing budget authority to attach up to 20% of its Housing Choice Voucher Program (HCVP) funding to specific units in buildings. DOH has chosen to implement this option because PBV provides housing that is stable and permanent, and which offers consumers close accessibility to supportive services. The populations for which DOH provides housing subsidy can benefit from this type of housing when there is a need for additional supervision or when their rental history is such that they may not be able to rent in the community without improving their record.

- DOH will operate a project-based voucher program using 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]. If PBV units are already selected for project-based assistance either under an agreement to enter into HAP Contract (Agreement) or a HAP contract, DOH is not required to reduce the number of these units if the amount of budget authority is subsequently reduced. However, DOH 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].

The objectives of this program are as follows:

- A. To expand housing options for low-income individuals and families with special needs.
- B. To preserve affordable housing, for low-income individuals and families with special needs that are at risk of being eliminated due to lack of a funding source.
- C. To increase the supply of affordable housing for individuals and families who are chronically homeless. Chronic homelessness refers to an unaccompanied homeless individual with a disabling condition who has either been continuously homeless for a year or more **OR** has had at least four (4) episodes of homelessness in the past three (3) years. To be considered chronically homeless, persons must have been sleeping in a place not meant for human habitation (e.g., living on the streets) and/or in an emergency shelter during that time
- D. To increase the supply of affordable, accessible housing for persons with disabilities.

At its sole discretion, DOH may expand its PBV program. At that time DOH will announce the availability of additional vouchers for the program and invite owners of residential properties to apply. This notice, called a Request for Applications (RFA), will describe application procedures, scoring criteria, number of vouchers available, geographic area to be served, and population to be served.

### **17-I.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 DOH 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, DOH policies for the tenant-based voucher program contained in this administrative plan also apply to the PBV program and its participants.

### **17-I.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. PHAs may not use voucher program funds to cover relocation costs, except that PHAs may use their administrative fee reserve to pay for relocation expenses after all other program administrative expenses are satisfied, and provided that payment of the relocation benefits is consistent with state and local law. Use of the administrative fee for these purposes must also be consistent with other legal and regulatory requirements, including the requirement in 24 CFR 982.155 and other official HUD issuances.

The acquisition of real property for a PBV project is subject to the URA and 49 CFR part 24 subpart B. It is the responsibility of DOH to ensure the owner complies with these requirements.

### **17-I.D. EQUAL OPPORTUNITY REQUIREMENTS [24 CFR 983.8]**

DOH 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, DOH must comply with DOH Plan certification on civil rights and affirmatively furthering fair housing, submitted in accordance with 24 CFR 903.7(o).

## ***PART II: PBV OWNER PROPOSALS***

### **17- II.A. OVERVIEW**

DOH must describe the procedures for owner submission of PBV proposals and for PHA selection of PBV proposals [24 CFR 983.51]. Before selecting a PBV proposal, DOH 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 PHA 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- II.B. OWNER PROPOSAL SELECTION PROCEDURES [24 CFR 983.51]**

DOH must select PBV proposals in accordance with the selection procedures in DOH administrative plan. DOH must select PBV proposals by either of the following two methods.

- PHA request for PBV Proposals. DOH may solicit proposals by using a request for application to select proposals on a competitive basis in response to DOH request. DOH 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.
- DOH may select proposal that were previously selected based on a competition. This may include selection of a proposal for housing assisted under a federal, state, or local government housing assistance program that was subject to a competition in accordance with the requirements of the applicable program, community development program, or supportive services program that requires competitive selection of proposals (e.g., HOME, and units for which competitively awarded LIHTCs have been provided), where the proposal has been selected in accordance with such program's competitive selection requirements within three years of the PBV proposal selection date, and the earlier competitive selection proposal did not involve any consideration that the project would receive PBV assistance.

### **Solicitation and Selection of PBV Proposals [24 CFR 983.51(b) and (c)]**

PHA 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 DOH. 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 DOH request for PBV proposals must specify the submission deadline. Detailed application and selection information must be provided at the request of interested parties.

#### PHA Request for Applications

DOH will advertise its request for applications (RFA) for existing, rehabilitated and newly constructed housing using one or more of the following:

- Post on the DOH website
- Announce using the DOH blog
- Use Housing Colorado's list serve or other trade organizations
- Denver Post
- Local newspaper should DOH decide to limit the RFA to a specific geographic area.

In addition, DOH will post the RFA and proposal submission and rating and ranking procedures on its electronic web site.

In order for the proposal to be considered, the owner must submit the proposal to DOH by the published deadline date, and the proposal must respond to all requirements as outlined in the RFA. Incomplete proposals will not be reviewed.

DOH will rate and rank proposals using the following criteria:

- Owner experience and capability to build or rehabilitate housing as identified in the RFP;
- Extent to which the project furthers DOH goal of de-concentrating poverty and expanding housing and economic opportunities;
- If applicable, the extent to which services for special populations are provided on site or in the immediate area for occupants of the property; and
- Projects targeting at risk populations.
- Extent to which local PHA's are also matching units
- Extent to which units are occupied by families that are eligible to participate in the PBV program.

#### PHA Selection of Proposals Subject to a Previous Competition under a Federal, State, or Local Housing Assistance Program

DOH 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.

DOH will advertise that it is accepting proposals using one or more of the following:

- Post on the DOH website
- Announce using the DOH blog
- Use Housing Colorado’s list serve or other trade organizations
- Denver Post
- Local newspaper should DOH decide to limit the RFA to a specific geographic area.

In addition to, or in place of advertising, DOH may also directly contact specific owners that have already been selected for Federal, state, or local housing assistance based on a previously held competition, to inform them of available PBV assistance.

Proposals will be reviewed on a first-come first-served basis. DOH will evaluate each proposal on its merits using the following factors:

- Extent to which the project furthers DOH goal of de-concentrating poverty and expanding housing and economic opportunities;
- If applicable, the extent to which services for special populations are provided on site or in the immediate area for occupants of the property; and
- Projects targeting at risk populations
- Extent to which local PHA’s are also matching units
- Extent to which units are occupied by families that are eligible to participate in the PBV program.
- Extent to which the proposal complements other local activities such as the redevelopment of a public housing site under the HOPE VI program, the HOME program, CDBG activities, other development activities in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community.

**PHA-Owned Units [24 CFR 983.51(e) and 983.59]**

A PHA-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 DOH-owned units were appropriately selected based on the selection procedures specified in DOH administrative plan. If DOH selects a proposal for housing that is owned or controlled by DOH, DOH must identify the entity that will review DOH proposal selection process and perform specific functions with respect to rent determinations and inspections.

In the case of PHA-owned units, the initial contract rent must be approved by an independent entity based on an appraisal by a licensed, state-certified appraiser. In addition, housing quality standards inspections must be conducted by an independent entity.

The independent entity that performs these program services may be the unit of general local government for DOH jurisdiction (unless DOH is itself the unit of general local government or an agency of such government) or another HUD-approved public or private independent entity.

PHA Policy

DOH will not submit any proposals for project-based housing because DOH does not own or control any housing.

DOH may only compensate the independent entity and appraiser from PHA ongoing administrative fee income (including amounts credited to the administrative fee reserve). DOH may not use other program receipts to compensate the independent entity and appraiser for their services. DOH, independent entity, and appraiser may not charge the family any fee for the appraisal or the services provided by the independent entity.

**PHA Notice of Owner Selection [24 CFR 983.51(d)]**

DOH must give prompt written notice to the party that submitted a selected proposal and must also give prompt public notice of such selection. Public notice procedures may include publication of public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice.

PHA Policy

Within 10 business days of DOH making the selection, DOH will notify the selected owner in writing of the owner's selection for the PBV program. DOH 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, DOH will publish its notice for selection of PBV proposals using the same means it used to solicit for proposals. The announcement will include the name of the owner that was selected for the PBV program. DOH will also post the notice of owner selection on its electronic web site.

DOH will make available to any interested party its rating and ranking sheets and documents that identify DOH's 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. DOH will not make available sensitive owner information that is privileged, such as financial statements and similar information about the owner.

DOH will make these documents available for review at DOH during normal business hours. The cost for reproduction of allowable documents will be \$.25 per page.

## **17- ILC. HOUSING TYPE [24 CFR 983.52]**

DOH 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 PHA selection, the units substantially comply with HQS. Units for which new construction or rehabilitation was started in accordance with PBV program requirements do not qualify as existing housing.

DOH must decide what housing type, new construction, rehabilitation, or existing housing, will be used to develop project-based housing. DOH choice of housing type must be reflected in its solicitation for proposals.

## **17- ILD. PROHIBITION OF ASSISTANCE FOR CERTAIN UNITS**

### **Ineligible Housing Types [24 CFR 983.53]**

DOH 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, DOH may not attach or pay PBV assistance for a unit occupied by an owner and DOH 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 PHA 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 PHA may attach assistance to a unit subsidized with Section 236 interest reduction payments);



- A Section 202 project for non-elderly with disabilities;
- Section 811 project-based supportive housing for persons with disabilities;
- Section 202 supportive housing for the elderly;
- A Section 101 rent supplement project;
- A unit subsidized with any form of tenant-based rental assistance;
- A unit with any other duplicative federal, state, or local housing subsidy, as determined by HUD or DOH in accordance with HUD requirements.

**17- II.E. SUBSIDY LAYERING REQUIREMENTS [24 CFR 983.55, FR Notice 11/24/08, and FR Notice 7/9/10]**

DOH 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.

DOH 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), DOH 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- II.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, DOH 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*).

PHAs must include in the PHA administrative plan the type of services offered to families for a project to qualify for the exception and the extent to which such services will be provided. It is not necessary that the services be provided at or by the project, if they are approved services. To qualify, a family must have at least one member receiving at least one qualifying supportive service. A PHA may not require participation in medical or disability-related services other than drug and alcohol treatment in the case of current abusers as a condition of living in an excepted unit, although such services may be offered.

Services for excepted units could include:

- Case management services
- Employment
- Education
- Probation
- Drug and alcohol treatment in the case of current abusers

The service plan will define the type, level and intensity of the services provided the PBV participant in an excepted unit.

If a family at the time of initial tenancy is receiving, and while the resident of an excepted unit has received, FSS supportive services or any other supportive services as defined in DOH administrative plan, and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit.

DOH must monitor the excepted family's continued receipt of supportive services and take appropriate action regarding those families that fail without good cause to complete their supportive services requirement. DOH will review the provision of supportive services at the time of annual re-exam or during the process of termination from the program.

### **Promoting Partially-Assisted Buildings [24 CFR 983.56(c)]**

A PHA 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].

A PHA 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. A PHA may also determine not to provide PBV assistance for excepted units, or DOH may establish a per-building cap of less than 25 percent.

- DOH will provide assistance for excepted units. Beyond that, DOH will not impose any further cap on the number of PBV units assisted per building.

## **17- II.G. SITE SELECTION STANDARDS**

### **Compliance with PBV Goals, Civil Rights Requirements, and HQS Site Standards [24 CFR 983.57(b)]**

DOH 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 DOH has determined that PBV assistance for housing at the selected site is consistent with the goal of de-concentrating poverty and expanding housing and economic opportunities. The standard for de-concentrating poverty and expanding housing and economic opportunities must be consistent with DOH Plan under 24 CFR 903 and DOH administrative plan.

In addition, prior to selecting a proposal, DOH 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 DOH goal to select sites for PBV housing that provide for de-concentrating poverty and expanding housing and economic opportunities. In complying with this goal DOH will limit approval of sites for PBV housing in census tracts that have poverty concentrations of 20 percent or less.
- However, DOH will grant exceptions to the 20 percent standard where DOH determines that the PBV assistance will complement other local redevelopment activities designed to de-concentrate poverty and expand housing and economic opportunities in census tracts with poverty concentrations greater than 20 percent, such as sites in:
  - A census tract in which the proposed PBV development will be located in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community;

- A census tract where the concentration of assisted units will be or has decreased as a result of public housing demolition and HOPE VI redevelopment;
- A census tract in which the proposed PBV development will be located is undergoing significant revitalization as a result of state, local, or federal dollars invested in the area;
- A census tract where new market rate units are being developed where such market rate units will positively impact the poverty rate in the area;
- A census tract where there has been an overall decline in the poverty rate within the past five years; or
- A census tract where there are meaningful opportunities for educational and economic advancement.

### **Existing and Rehabilitated Housing Site and Neighborhood Standards [24 CFR 983.57(d)]**

DOH 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 DOH determines that sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority

concentration or that the project is necessary to meet overriding housing needs that cannot be met in that housing market area;

- The site must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.
- The site must promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons;
- The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate;
- The housing must be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units; and
- Except for housing designed for elderly persons, the housing must be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

#### **17- II.H. ENVIRONMENTAL REVIEW [24 CFR 983.58]**

DOH 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.). DOH 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.

DOH may not enter into an agreement to enter into a HAP contract or a HAP contract with an owner, and DOH, 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.

DOH must supply all available, relevant information necessary for the responsible entity to perform any required environmental review for any site. DOH must require the owner to carry out mitigating measures required by the responsible entity (or HUD, if applicable) as a result of the environmental review.

## **PART III: DWELLING UNITS**

### **17- III.A. OVERVIEW**

This part identifies the special housing quality standards that apply to the PBV program, housing accessibility for persons with disabilities, and special procedures for conducting housing quality standards inspections.

### **17- III.B. HOUSING QUALITY STANDARDS [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 does not apply to the PBV program.

### **Lead-based Paint [24 CFR 983.101(c)]**

The lead-based paint requirements for the tenant-based voucher program do not apply to the PBV program. Instead, The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR part 35, subparts A, B, H, and R, apply to the PBV program.

### **17- III.C. HOUSING ACCESSIBILITY FOR PERSONS WITH DISABILITIES**

The housing must comply with program accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8. DOH 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- III.D. INSPECTING UNITS**

#### **Pre-selection Inspection [24 CFR 983.103(a)]**

DOH must examine the proposed site before the proposal selection date. If the units to be assisted already exist, DOH 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, DOH may not execute the HAP contract until the units fully comply with HQS.

### **Pre-HAP Contract Inspections [24 CFR 983.103(b)]**

DOH must inspect each contract unit before execution of the HAP contract. DOH 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, DOH must inspect the unit. DOH may not provide assistance on behalf of the family until the unit fully complies with HQS.

### **Annual Inspections [24 CFR 983.103(d)]**

At least annually during the term of the HAP contract, DOH must inspect a random sample, consisting of at least 20 percent of the contract units in each building to determine if the contract units and the premises are maintained in accordance with HQS. Turnover inspections are not counted toward meeting this annual inspection requirement.

If more than 20 percent of the annual sample of inspected contract units in a building fails the initial inspection, DOH must re-inspect 100 percent of the contract units in the building.

### **Other Inspections [24 CFR 983.103(e)]**

DOH 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. DOH must take into account complaints and any other information coming to its attention in scheduling inspections.

DOH must conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected an HQS violation, and must conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family violation of HQS.

In conducting PHA supervisory quality control HQS inspections, DOH should include a representative sample of both tenant-based and project-based units.

### **Inspecting PHA-Owned Units [24 CFR 983.103(f)]**

In the case of PHA-owned units, the inspections must be performed by an independent agency designated by DOH and approved by HUD. The independent entity must furnish a copy of each inspection report to DOH and to the HUD field office where the project is located. DOH 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 DOH-owner.

## **PART IV: REHABILITATED AND NEWLY CONSTRUCTED UNITS**

### **17- IV.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- IV.B. AGREEMENT TO ENTER INTO HAP CONTRACT**

In order to offer PBV assistance in rehabilitated or newly constructed units, DOH 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 DOH agrees that upon timely completion of such development in accordance with the terms of the Agreement, DOH 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 DOH, 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 PHA notice of proposal selection to the selected owner. Generally, DOH may not enter into the Agreement with the owner until the subsidy layering review is completed. Likewise, DOH may not enter into the Agreement until the environmental review is completed and DOH has received environmental approval. However, DOH 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.

- DOH 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 are started.

### **17- IV.C. CONDUCT OF DEVELOPMENT WORK**

#### **Labor Standards [24 CFR 983.154(b)]**

If an Agreement covers the development of nine or more contract units (whether or not completed in stages), the owner and the owner's contractors and subcontractors must pay Davis-Bacon wages to laborers and mechanics employed in the development of housing. The HUD-prescribed form of the Agreement will include the labor standards clauses required by HUD, such as those involving Davis-Bacon wage rates.

The owner, contractors, and subcontractors must also comply with the Contract Work Hours and Safety Standards Act, Department of Labor regulations in 29 CFR part 5, and other applicable federal labor relations laws and regulations. DOH 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- IV.D. COMPLETION OF HOUSING**

The Agreement must specify the deadlines for completion of the housing, and the owner must develop and complete the housing in accordance with these deadlines. The Agreement must also specify the deadline for submission by the owner of the required evidence of completion.

### **Evidence of Completion [24 CFR 983.155(b)]**

At a minimum, the owner must submit the following evidence of completion to DOH in the form and manner required by DOH:

- 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 DOH's discretion, the Agreement may specify additional documentation that must be submitted by the owner as evidence of housing completion.

- DOH 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. DOH will specify any additional documentation requirements in the Agreement to enter into HAP contract.

### **PHA Acceptance of Completed Units [24 CFR 983.156]**

Upon notice from the owner that the housing is completed, DOH 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. DOH 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, DOH must not enter into the HAP contract.

If the PHA determines the work has been completed in accordance with the Agreement and that the owner has submitted all required evidence of completion, the PHA must submit the HAP contract for execution by the owner and must then execute the HAP contract.

## ***PART V: HOUSING ASSISTANCE PAYMENTS CONTRACT (HAP)***

### **17-V.A. OVERVIEW**

DOH must enter into a HAP contract with an owner for units that are receiving PBV assistance. The purpose of the HAP contract is to provide housing assistance payments for eligible families. Housing assistance is paid for contract units leased and occupied by eligible families during the HAP contract term. The HAP contract must be in the form required by HUD [24 CFR 983.202].

### **17-V.B. HAP CONTRACT REQUIREMENTS**

#### **Contract Information [24 CFR 983.203]**

The HAP contract must specify the following information:

- The total number of contract units by number of bedrooms;
- The project's name, street address, city or county, state and zip code, block and lot number (if known), and any other information necessary to clearly identify the site and the building;
- The number of contract units in each building, the location of each contract unit, the area of each contract unit, and the number of bedrooms and bathrooms in each contract unit;
- Services, maintenance, and equipment to be supplied by the owner and included in the rent to owner;
- Utilities available to the contract units, including a specification of utility services to be paid by the owner (included in rent) and utility services to be paid by the tenant;
- Features provided to comply with program accessibility requirements of Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8;
- The HAP contract term;
- The number of units in any 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]**

DOH may not enter into a HAP contract until each contract unit has been inspected and DOH has determined that the unit complies with the Housing Quality Standards (HQS). For existing housing, the HAP contract must be executed promptly after DOH selects the owner proposal and inspects the housing units. For newly constructed or rehabilitated housing the HAP contract must

be executed after DOH 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 DOH determining that all units pass HQS.
- For rehabilitated or newly constructed housing, the HAP contract will be executed within 10 business days of DOH 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]**

DOH 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, DOH may extend the term of the contract for an additional term of up to 15 years if DOH 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, DOH 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 PHA [24 CFR 983.205(c)]***

The HAP contract must provide that the term of DOH's contractual commitment is subject to the availability of sufficient appropriated funding as determined by HUD or by DOH 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, DOH 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 DOH. In this case, families living in the contract units must be offered tenant-based assistance.

**Remedies for HQS Violations [24 CFR 983.207(b)]**

DOH 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 DOH determines that a contract does not comply with HQS, DOH 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.

- DOH will abate and terminate PBV HAP contracts for non-compliance with HQS in accordance with the policies used in the tenant-based voucher program. These policies are contained in Section 8-II.G., Enforcing Owner Compliance.

**17-V.C. AMENDMENTS TO THE HAP CONTRACT**

**Substitution of Contract Units [24 CFR 983.206(a)]**

At DOH'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, DOH must inspect the proposed unit and determine the reasonable rent for the unit.

**Addition of Contract Units [24 CFR 983.206(b)]**

At DOH'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 DOH'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.

- DOH will consider adding contract units to the HAP contract when DOH determines that additional housing is needed to serve eligible low-income families. Circumstances may include, but are not limited to:

The local housing inventory is reduced due to a disaster (either due to loss of housing units, or an influx of displaced families); and

Voucher holders are having difficulty finding units that meet program requirements.

#### **17-V.D. HAP CONTRACT YEAR, ANNIVERSARY AND EXPIRATION DATES [24 CFR 983.206(c) and 983.302(e)]**

The HAP contract year is the period of 12 calendar months preceding each annual anniversary of the HAP contract during the HAP contract term. The initial contract year is calculated from the first day of the first calendar month of the HAP contract term.

The annual anniversary of the HAP contract is the first day of the first calendar month after the end of the preceding contract year.

There is a single annual anniversary and expiration date for all units under a particular HAP contract, even in cases where contract units are placed under the HAP contract in stages (on different dates) or units are added by amendment. The anniversary and expiration dates for all units coincide with the dates for the contract units that were originally placed under contract.

#### **17-V.E. OWNER RESPONSIBILITIES UNDER THE HAP [24 CFR 983.209]**

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 DOH, 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-V.F. ADDITIONAL HAP REQUIREMENTS**

### **Housing Quality and Design Requirements [24 CFR 983.101(e) and 983.207(a)]**

The owner is required to maintain and operate the contract units and premises in accordance with HQS, including performance of ordinary and extraordinary maintenance. The owner must provide all the services, maintenance, equipment, and utilities specified in the HAP contract with DOH 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.

DOH 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.

- DOH will identify the need for any special features on a case-by-case basis depending on the intended occupancy of the PBV project. DOH 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.

## **PART VI: SELECTION OF PBV PROGRAM PARTICIPANTS**

### **17- VI.A. OVERVIEW**

Many of the provisions of the tenant-based voucher regulations [24 CFR 982] also apply to the PBV program. This includes requirements related to determining eligibility and selecting applicants from the waiting list. Even with these similarities, there are requirements that are unique to the PBV program. This part describes the requirements and policies related to eligibility and admission to the PBV program.

### **17- VI.B. ELIGIBILITY FOR PBV ASSISTANCE [24 CFR 983.251(a) and (b)]**

DOH may select families for the PBV program from those who are participants in DOH'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 DOH, 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 DOH'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 PBV program targets low-income individuals and families whose head of household has a disability, and low-income homeless families including those with background issues that affect rental success, such as evictions and credit history. The program is designed to provide housing with available supportive services to assist the target population in living independently. All participants must meet HUD/DOH eligibility requirements. DOH 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 DOH 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 DOH's waiting list. Once the family's continued eligibility is determined (DOH 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 DOH must refer these families to the project owner for an appropriately sized PBV unit in the project. Admission of eligible in-place families is not subject to income targeting requirements.

This regulatory protection from displacement does not apply to families that are not eligible to participate in the program on the proposal selection date.

#### **17- VI.C. ORGANIZATION OF THE WAITING LIST [24 CFR 983.251(c)]**

DOH may establish a separate waiting list for PBV units or it may use the same waiting list for both tenant-based and PBV assistance. DOH may also merge the PBV waiting list with a waiting list for other assisted housing programs offered by DOH. If DOH chooses to offer a separate waiting list for PBV assistance, DOH must offer to place applicants who are listed on the tenant-based waiting list on the waiting list for PBV assistance.

If a PHA decides to establish a separate PBV waiting list, DOH may use a single waiting list for DOH'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.

- DOH will establish and manage separate waiting lists for individual projects or buildings that are receiving PBV assistance.

#### **17- VI.D. SELECTION FROM THE WAITING LIST [24 CFR 983.251(c)]**

Applicants who will occupy units with PBV assistance must be selected from DOH's waiting list. DOH may establish selection criteria or preferences for occupancy of particular PBV units. DOH may place families referred by the PBV owner on its PBV waiting list.

#### **Income Targeting [24 CFR 983.2516)]**

At least 75 percent of the families admitted to DOH's tenant-based and project-based voucher programs during DOH 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, DOH must first refer families who require such features to the owner.

## **Preferences [24 CFR 983.251(d), FR Notice 11/24/08]**

DOH 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. DOH must provide an absolute selection preference for eligible in-place families as described in Section 17-VI.B, above.

Although DOH is prohibited from granting preferences to persons with a specific disability, DOH may give preference to disabled families who need services offered at a particular project or site if the preference is limited to families (including individuals):

- With disabilities that significantly interfere with their ability to obtain and maintain themselves in housing;
- Who, without appropriate supportive services, will not be able to obtain or maintain themselves in housing; and
- For whom such services cannot be provided in a non-segregated setting.

In advertising such a project, the owner may advertise the project as offering services for a particular type of disability; however, the project must be open to all otherwise eligible disabled persons who may benefit from services provided in the project. In these projects, disabled residents may not be required to accept the particular services offered as a condition of occupancy.

If DOH 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), DOH must give preference to such families when referring families to these units [24 CFR 983.261(b)].

- DOH will provide a selection preference when required by the regulation (e.g., eligible in-place families, qualifying families for “excepted units,” mobility impaired persons for accessible units). DOH will not offer any additional preferences for the PBV program or for particular PBV projects or units.

## **17- VI.E. OFFER OF PBV ASSISTANCE**

### **Refusal of Offer [24 CFR 983.251(e)(3)]**

DOH 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 DOH'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, DOH 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, DOH must provide a briefing packet that explains how DOH 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, DOH 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, DOH must have a mechanism for referring a family that includes a member with mobility impairment to an appropriate accessible PBV unit.

#### ***Persons with Limited English Proficiency***

DOH should take reasonable steps to assure meaningful access by persons with limited English proficiency in accordance with Title VI of the Civil Rights Act of 1964 and Executive Order 13166 (see Chapter 2).

## **17- VI.F. OWNER SELECTION OF TENANTS**

The owner is responsible for developing written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant's ability to fulfill their obligations under the lease. An owner must promptly notify in writing any rejected applicant of the grounds for any rejection [24 CFR 983.(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 DOH's Contractor from DOH's waiting list. The contract unit leased to the family must be the appropriate size unit for the size of the family, based on DOH's subsidy standards.

### **Filling Vacancies [24 CFR 983.254(a)]**

The owner must promptly notify DOH of any vacancy or expected vacancy in a contract unit. After receiving such notice, DOH must make every reasonable effort to promptly refer a sufficient number of families for the owner to fill such vacancies. DOH and the owner must make reasonable efforts to minimize the likelihood and length of any vacancy.

- The owner must notify DOH in writing (mail, fax, or e-mail) within 5 business days of learning about any vacancy or expected vacancy. DOH 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, DOH 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, DOH may give notice to the owner that the HAP contract will be amended to reduce the number of contract units that have been vacant for this period. DOH will provide the notice to the owner within 10 business days of the 120<sup>th</sup> day of the vacancy. The amendment to the HAP contract will be effective the 1<sup>st</sup> day of the month following the date of DOH's notice.

## **17- VI.G. TENANT SCREENING [24 CFR 983.255]**

### **PHA Responsibility**

DOH is not responsible or liable to the owner or any other person for the family's behavior or suitability for tenancy. However, DOH may opt to screen applicants for family behavior or suitability for tenancy and may deny applicants based on such screening.

- DOH will not conduct screening to determine a PBV applicant family's suitability for tenancy.

DOH must provide the owner with an applicant family's current and prior address (as shown in PHA records) and the name and address (if known by DOH) of the family's current landlord and any prior landlords.

In addition, DOH may offer the owner other information DOH may have about a family, including information about the tenancy history of family members or about drug trafficking and criminal activity by family members. DOH must provide applicant families a description of DOH policy on providing information to owners, and DOH must give the same types of information to all owners.

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

- DOH 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. DOH will not provide any additional information to the owner, such as tenancy history, criminal history, etc.

### **Owner Responsibility**

The owner is responsible for screening and selection of the family to occupy the owner's unit. When screening families the owner may consider a family's background with respect to the following factors:

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

## **PART VII: OCCUPANCY**

### **17- VII.A. OVERVIEW**

After an applicant has been selected from the waiting list, determined eligible by DOH, referred to an owner and determined suitable by the owner, the family will sign the lease and occupancy of the unit will begin.

### **17- VII.B. LEASE [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 PHA model lease.

DOH may review the owner's lease form to determine if the lease complies with state and local law. If DOH determines that the lease does not comply with state or local law, DOH may decline to approve the tenancy.

- DOH will not review the owner's lease for compliance with state or local law.

#### **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 DOH (the names of family members and any PHA-approved live-in aide);
- All provisions in the HUD-required tenancy addendum must be included in the lease. The terms of the tenancy addendum prevail over other provisions of the lease.

### **Initial Term and Lease Renewal [24 CFR 983.256(f) and 983.257(b)]**

The initial lease term must be for at least one year. Upon expiration of the lease, an owner may renew the lease, refuse to renew the lease for “good cause,” or refuse to renew the lease without good cause. If the owner refuses to renew the lease without good cause, DOH 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 DOH a copy of all changes.

The owner must notify DOH 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 DOH and in accordance with the terms of the lease relating to its amendment. DOH 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 excepted 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 PHA policy. According to program requirements, the family's assistance must be terminated if they are absent from the unit for more than 180 consecutive days.

**Security Deposits [24 CFR 983.258]**

The owner may collect a security deposit from the tenant. DOH may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.

- DOH will allow the owner to collect a security deposit amount the owner determines is appropriate.

When the tenant moves out of a contract unit, the owner, subject to state and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid tenant rent, damages to the unit, or other amounts owed by the tenant under the lease.

The owner must give the tenant a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used to reimburse the owner, the owner must promptly refund the full amount of the balance to the tenant.

If the security deposit does not cover the amount owed by the tenant under the lease, the owner may seek to collect the balance from the tenant. DOH has no liability or responsibility for payment of any amount owed by the family to the owner.

**17- VII.C. MOVES**

**Overcrowded, Under-Occupied, and Accessible Units [24 CFR 983.259]**

If DOH determines that a family is occupying a wrong size unit, based on DOH'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, DOH must promptly notify the family and the



owner of this determination, and DOH must offer the family the opportunity to receive continued housing assistance in another unit.

- DOH 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 DOH's determination. DOH will offer the family the following types of continued assistance in the following order, based on the availability of assistance:
  - PBV assistance in the same building or project;
  - PBV assistance in another project; and
  - Tenant-based voucher assistance

If DOH offers the family a tenant-based voucher, DOH 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 DOH).

If DOH offers the family another form of assistance that is not a tenant-based voucher, and the family does not accept the offer, does not move out of the PBV unit within a reasonable time as determined by DOH, or both, DOH must terminate the housing assistance payments for the unit at the expiration of a reasonable period as determined by DOH.

- When DOH 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, DOH will terminate the housing assistance payments at the expiration of this 30-day period.
- DOH may make exceptions to this 30-day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency of a family member.

### **Family Right to Move [24 CFR 983.260]**

The family may terminate the lease at any time after the first year of occupancy. The family must give advance written notice to the owner in accordance with the lease and provide a copy of such notice to DOH. If the family wishes to move with continued tenant-based assistance, the family must contact DOH to request the rental assistance prior to providing notice to terminate the lease.

If the family terminates the lease in accordance with these requirements, DOH is required to offer the family the opportunity for continued tenant-based assistance, in the form of a voucher or other comparable tenant-based rental assistance. If voucher or other comparable tenant-based assistance is not immediately available upon termination of the family's lease in the PBV unit, DOH must give the family priority to receive the next available opportunity for continued tenant-based assistance.

If the family terminates the assisted lease before the end of the first year, the family relinquishes the opportunity for continued tenant-based assistance.

**17- VII.D. EXCEPTIONS TO THE OCCUPANCY CAP [24 CFR 983.261, FR Notice 11/24/08]**

DOH 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;
- Specifically made available for elderly or disabled families; or
- Specifically made available for families receiving supportive services as defined by DOH. At least one member must be receiving at least one qualifying supportive service.

If a family at the time of initial tenancy is receiving and while the resident of an excepted unit has received Family Self-Sufficiency (FSS) supportive services or any other service as defined by DOH and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit.

A family (or remaining members of a family) residing in an excepted unit that no longer meets the criteria for a “qualifying family” in connection with the 25 percent per project cap exception (e.g., the family does not successfully complete supportive services requirements, or due to a change in family composition the family is no longer elderly or disabled), must vacate the unit within a reasonable period of time established by DOH, and DOH must cease paying housing assistance payments on behalf of the non-qualifying family.

If the family fails to vacate the unit within the established time, the unit must be removed from the HAP contract unless the project is partially assisted, and it is possible for the HAP contract to be amended to substitute a different unit in the building in accordance with program requirements; or the owner terminates the lease and evicts the family. The housing assistance payments for a family residing in an excepted unit that is not in compliance with its family obligations to comply with supportive services requirements must be terminated by DOH.

## ***PART VIII: DETERMINING RENT TO OWNER***

### **17- VIII.A. OVERVIEW**

The amount of the initial rent to an owner of units receiving PBV assistance is established at the beginning of the HAP contract term. Although for rehabilitated or newly constructed housing, the agreement to enter into HAP Contract (Agreement) states the estimated amount of the initial rent to owner, the actual amount of the initial rent to owner is established at the beginning of the HAP contract term.

During the term of the HAP contract, the rent to owner is re-determined at the owner's request in accordance with program requirements, and at such time that there is a five percent or greater decrease in the published FMR.

### **17- VIII.B. RENT LIMITS [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 DOH, 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 PHA-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:

- An amount determined by DOH, 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.

However, PHAs 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, DOH 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, DOH must use the most recently published FMR and the utility allowance schedule in effect at the time of redetermination. At its discretion, DOH 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, DOH 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, DOH 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. DOH 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, DOH 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 DOH determines it is necessary due to PHA budgetary constraints.

### **Redetermination of Rent [24 CFR 983.302]**

DOH 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 DOH, 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 DOH. DOH 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 DOH 60 days prior to the anniversary date of the HAP contract, and must include the new rent amount the owner is proposing.

DOH 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 DOH to the owner specifying the amount of the re-determined rent. DOH 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.

PHA Policy

DOH will provide the owner with at least 30 days written notice of any change in the amount of rent to owner.

**PHA-Owned Units [24 CFR 983.301(g)]**

For PHA-owned PBV units, the initial rent to owner and the annual redetermination of rent at the anniversary of the HAP contract are determined by the independent entity approved by HUD. DOH must use the rent to owner established by the independent entity.

## **17- VIII.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 DOH.

### **When Rent Reasonable Determinations Are Required?**

DOH 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;
- DOH 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, DOH 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 DOH. The comparability analysis may be performed by PHA staff or by another qualified person or entity. Those who conduct these analyses or are involved in determining the housing assistance payment based on the analyses may not have any direct or indirect interest in the property.

#### **PHA-Owned Units**

For PHA-owned units, the amount of the reasonable rent must be determined by an independent agency approved by HUD in accordance with PBV program requirements. The independent entity must provide a copy of the determination of reasonable rent for PHA-owned units to DOH 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, DOH may require the owner to submit information on rents charged by the owner for other units in the premises or elsewhere.

## **17- VIII.D. EFFECT OF OTHER SUBSIDY AND RENT CONTROL**

In addition to the rent limits discussed in Section 17-VIII.B above, other restrictions may limit the amount of rent to owner in a PBV unit. In addition, certain types of subsidized housing are not even eligible to receive PBV assistance (see Section 17-II.D).

### **Other Subsidy [24 CFR 983.304]**

At its discretion, a PHA 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.



## ***PART IX: PAYMENTS TO OWNER***

### **17- IX.A. HOUSING ASSISTANCE PAYMENTS [24 CFR 983.351]**

During the term of the HAP contract, DOH 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 DOH agree on a later date.

Except for discretionary vacancy payments, DOH 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 DOH is the rent to owner minus the tenant rent (total tenant payment minus the utility allowance).

In order to receive housing assistance payments, the owner must comply with all provisions of the HAP contract. Unless the owner complies with all provisions of the HAP contract, the owner does not have a right to receive housing assistance payments.

### **17- IX.B. VACANCY PAYMENTS [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 DOH determines that the vacancy is the owner's fault.

#### PHA Policy

If DOH determines that the owner is responsible for a vacancy and, as a result, is not entitled to the keep the housing assistance payment, DOH will notify the landlord of the amount of housing assistance payment that the owner must repay. DOH will require the owner to repay the amount owed in accordance with the policies in Section 16-IV.B.

At the discretion of DOH, the HAP contract may provide for vacancy payments to the owner. DOH may only make vacancy payments if an owner's HAP contract calls for vacancy payments to be made. If the contract allows for vacancies, the following will apply:

- The owner gives DOH 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 DOH 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 DOH and must provide any information or substantiation required by DOH 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 DOH 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 DOH may require the owner to provide documentation to support the request. If the owner does not provide the information requested by DOH within 10 business days of DOH's request, no vacancy payments will be made.

### **17- IX.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 DOH in accordance with HUD requirements. Any changes in the amount of tenant rent will be effective on the date stated in DOH 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 DOH 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 DOH. The owner must immediately return any excess payment to the tenant.

#### **Tenant and PHA Responsibilities**

The family is not responsible for the portion of rent to owner that is covered by the housing assistance payment and the owner may not terminate the tenancy of an assisted family for nonpayment by DOH.

Likewise, DOH is responsible only for making the housing assistance payment to the owner in accordance with the HAP contract. DOH is not responsible for paying tenant rent, or any other claim by the owner, including damage to the unit. DOH 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, DOH 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.

DOH may pay the utility reimbursement directly to the family or to the utility supplier on behalf of the family. If DOH chooses to pay the utility supplier directly, DOH must notify the family of the amount paid to the utility supplier.

### PHA Policy

DOH will make utility reimbursements directly to the family.

## **17- IX.D. OTHER FEES AND CHARGES [24 CFR 983.354]**

### **Meals and Supportive Services**

With the exception of PBV assistance in assisted living developments, the owner may not require the tenant to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy.

In assisted living developments receiving PBV assistance, the owner may charge for meals or supportive services. These charges may not be included in the rent to owner, nor may the value of meals and supportive services be included in the calculation of the reasonable rent. However, non-payment of such charges is grounds for termination of the lease by the owner in an assisted living development.

### **Other Charges by Owner**

The owner may not charge extra amounts for items customarily included in rent in the locality or provided at no additional cost to unsubsidized tenants in the premises.

## Chapter 18

### **PERMANENT SUPPORTIVE HOUSING (PSH) Formally known as the Shelter Plus Care Program**

This section of the Administrative Plan will govern all PSH programs administered by the Colorado Department of Local Affairs (DOLA), Division of Housing (DOH). The DOH Housing Choice Voucher Program (HCV) Administrative Plan acts as the primary plan for all housing assistance programs administered by DOH. Policies listed here are specific to PSH. The primary purpose of this plan is to outline what is different and unique to DOH's PSH program operations (.).

#### *Part I: Policy*

#### **OVERVIEW**

The Colorado Department of Local Affairs (DOLA), Division of Housing (DOH) Shelter Plus Care Program (S+C) provides rental assistance for hard-to-serve homeless persons with disabilities in connection with supportive services funded from sources outside the program.

Since 1992, HUD has awarded Shelter Plus Care (PSH) funds to state and local governments and public housing agencies (PHAs) to serve a population that has been traditionally hard to reach - homeless persons with disabilities such as serious mental illness, chronic substance abuse, and/or AIDS and related diseases. The PSH program was built on the premise that housing and services need to be connected in order to ensure the stability of housing for this population.

DOH administers three Permanent Support Housing (PSH) grants, formally known as Shelter Plus Care. The HEARTH Act of 2009 consolidates and amends three separate homeless assistance programs carried out under title IV of the McKinney- Vento Homeless Assistance Act (42 U.S.C. 11371 et seq.) (McKinney-Vento Act) into a single grant program that is designed to improve administrative efficiency and enhance response coordination and effectiveness in addressing the needs of homeless persons.

The single Continuum of Care program established by the HEARTH Act consolidates the following programs: The Supportive Housing Program, the Shelter Plus Care program, and the Moderate Rehabilitation/Single Room Occupancy program. McKinney-Vento Act Title IV- Housing Assistance Subtitle A - Comprehensive Homeless Assistance Plan (42USC Sec. 11361)

The homeless eligibility criteria and definition of disability are amended under the HEARTH Act of 2009. HUD requires that each grant prioritize the chronically homeless for these funds and expects 100% of turnover vouchers to be used for the chronically homeless. The final rule, published in the Federal Register on December 5, 2011, integrates the regulation for the

definition of “homeless,” and the corresponding recordkeeping requirements, for the Emergency Solutions Grants program, the Shelter Plus Care program, and the Supportive Housing Program. This final rule also establishes the regulation for the definition “developmental disability” and the definition and recordkeeping requirements for “homeless individual with a disability” for the Shelter Plus Care program and the Supportive Housing Program. [24 CFR Parts 91, 582, and 583]

PSH is a HUD funded program designed to provide housing and supportive services on a long-term basis for homeless persons with disabilities, (primarily those with serious mental illness, chronic problems with alcohol and/or drugs, and acquired immunodeficiency syndrome (AIDS) or related diseases, and their families who are living in places not intended for human habitation (e.g., streets) or in emergency shelters. The program allows for a variety of housing choices, and a range of supportive services funded by other sources, in response to the needs of the hard-to-serve homeless population with disabilities. Other Federal, State, or local sources, as well as various private sources may fund the supportive services provided to participants. Any procedures or policies not specifically covered by this section will be governed by the HCV Administrative Plan and the Shelter Plus Care Final Regulations (24 CFR 582) Subtitle F - Shelter Plus Care Program (42USC Sec. 11403) and any and all other rules, regulations, and guidelines provided by HUD. DOH may elect to periodically provide additional policy and procedure revisions through ‘action alerts’ as additional guidance is provided by HUD and/or as determined necessary.

## **2. ELIGIBILITY**

To be eligible for the PSH program the applicant must:

- Meet the HUD homeless definition as it applies to the PSH program. Priority will be given to those who meet the Chronic Homeless definition.
- Must be a person with a disability. The program is designed to serve those with serious mental illness, chronic problems with alcohol and/or drugs, and those with AIDS or related diseases;
- Must work with one of the agencies that have partnered with DOH to administer the PSH program to develop and comply with a service/treatment plan;
- Must agree to live within the service area boundaries of the service agency.
- Must meet the HUD specified low and extremely low income limits
- Qualify on the basis of citizenship or the eligible immigrant status of household members.

### **HOMELESS DEFINITION**

HOMELESS DEFINITION HAS 4 CATEGORIES:

#### **Category 1.) Literally homeless individuals/families**

An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:

Sleeping in a place not designed for or ordinarily used as a regular sleeping accommodation, including:

- A car
- A park
- An abandoned building
- A bus or train station
- An airport
- A camping ground
- Living in a shelter designated to provide temporary living arrangements, including:
  - Congregate shelters
  - Transitional housing
  - Hotels and motels paid for by charitable organizations or federal/state/local government programs
  - Exiting an institution (e.g., jail, hospital) where they resided for 90 days or less AND were residing in emergency shelter or place not meant for human habitation immediately before entering institution.

**Category 2.) Individuals/families who will imminently (within 14 days) lose their primary nighttime residence with no subsequent residence, resources or support networks**

**Category 3.) Unaccompanied youth under 25 or families with children and youth who do not otherwise qualify as homeless, but who meet homeless definition under another federal statute; AND**

- have not had lease, ownership interest, or occupancy agreement in permanent housing at any time during last 60 days; AND
- have experienced two or more moves during the last 60 days; AND
- Can be expected to continue in such status for an extended period of time because of:
  - chronic disabilities, OR
  - chronic physical health or mental health conditions, OR
  - substance addiction, OR
  - histories of domestic violence or childhood abuse (including neglect) OR
  - presence of a child or youth with a disability, OR
  - two or more barriers to employment

**Category 4) Individuals/families fleeing or attempting to flee domestic violence, dating violence, sexual assault, stalking, or other dangerous or life threatening conditions related to violence, who have no identified subsequent residence; AND lack the resources and support networks needed to obtain other permanent housing.**

**CHRONICALLY HOMELESS.—**

(A) IN GENERAL.—The term `chronically homeless' means, with respect to an individual or family, that the individual or family—

(i) is homeless and lives or resides in a place not meant for human habitation, a safe haven, or in an emergency shelter;

(ii) has been homeless and living or residing in a place not meant for human habitation, a safe haven, or in an emergency shelter continuously for at least 1 year or on at least 4 separate occasions in the last 3 years; and

(iii) has an adult head of household (or a minor head of household if no adult is present in the household) with a diagnosable substance use disorder, serious mental illness, developmental disability (as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act of 2000 (42 U.S.C. 15002)), post traumatic stress disorder, cognitive impairments resulting from a brain injury, or chronic physical illness or disability, including the co-occurrence of 2 or more of those conditions.

**DEFINITION OF DOCUMENTATION OF DISABILITY**

Persons with disabilities are defined as:

"Persons with disabilities" — a household composed of one or more persons at least one of whom is an adult who has a disability.

1. A person shall be considered to have a disability if such person has a physical, mental, or emotional impairment which is expected to be of long-continued and indefinite duration; substantially impedes his or her ability to live independently; and is of such nature that such ability could be improved by more suitable housing conditions.
2. A person will also be considered to have a disability if he or she has a developmental disability, which is a severe, chronic disability that
  - (i) Is attributable to a mental or physical impairment or combination of mental and physical impairments;
  - (ii) Is manifested before the person attains age 22;
  - (iii) Is likely to continue indefinitely;

- (iv) Results in substantial functional limitations in three or more of the following areas of major life activity;
  - (A) Self-care
  - (B) Receptive and expressive language;
  - (C) Learning;
  - (D) Mobility;
  - (E) Self-direction;
  - (F) Capacity for independent living; and
  - (G) Economic self-sufficiency; and
- (v) 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 and are individually planned and coordinated.

Eligible disabilities for the PSH Program include serious mental illness, chronic problems with alcohol and/or drugs, and acquired immunodeficiency syndrome (AIDS) or related diseases. Key to the definition is determining that the impairment is of long-continued and indefinite duration AND **substantially impedes** the person's ability to live independently. For example, drug or alcohol abuse or an HIV/AIDS condition that does not substantially impede a person's ability to live independently **does not** qualify as a disability in the PSH Program. Written documentation that a person's disability meets the program definition must come from a knowledgeable professional. "Self-certification" is unacceptable.

### **SCREENING FOR ELIGIBILITY**

DOH and its partner agencies are authorized to obtain criminal conviction records from law enforcement agencies to screen applicants for admission to the PSH program. DOH does not perform a criminal background check on any applicant head of household. The partner agency will perform a criminal background check for any adult requesting to be added to the household. DOH will deny the addition of any persons who are engaging in or have engaged in certain criminal activities. In order to obtain access to the records DOH must require every applicant family to submit a consent form signed by each adult household member [24 CFR 5.903].

If DOH proposes to deny assistance based on a criminal record or on lifetime sex offender registration information, DOH must notify the household of the proposed action and must provide the subject of the record and the applicant a copy of the record if requested 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)].

### **3. APPLICATIONS, WAITING LIST AND TENANT SELECTION**

Any applicant that wishes to receive PSH assistance must apply for admission to the program. HUD permits DOH to determine the format and content of PSH applications, as well as how



such applications will be made available to interested applicants and how applications will be accepted by DOH.

DOH PSH Staff accepts applications from partner agencies when there is an opening. The agency is responsible for pre-screening applicants to ensure that they meet initial eligibility criteria and to maintain a waiting list for the PSH program. DOH PSH staff will review applications submitted and make final decision about eligibility into the PSH program.

## **WAITING LIST MANAGEMENT**

### **Organizing the Wait List**

Each agency will be required to enter all PSH applicants onto the PSH waiting list in ELITE and will maintain all documentation required for participants of the program. All agencies will use a preference, date and time process. Preferences may be given to applicants meeting HUD's chronic homeless definition and those with PSH targeted disabilities. DOH will require agencies to utilize the DOH ELITE system to maintain PSH waiting lists. Once an applicant is drawn from the waiting list, the DOH PSH application, homeless verification, and disability verification must be submitted to the DOH PSH Staff for approval. Once approved, the DOH PSH Program Staff will notify the agency. The agency will print the Rental Assistance Document (RAD) from ELITE to distribute to the applicant during the mandatory applicant briefing. The RAD is similar to a Housing Choice Voucher Program 'voucher' and allows the applicant to search for a unit, but does not guarantee admission to the program.

### **Updating the Wait List**

Agencies are responsible for maintaining current information on their applicants at all times. Once every six months, DOH recommends agencies purge their waiting list. Applicants may be removed from the waiting list for failure to respond within a reasonable time, applicant request for removal, repeated failure to show up for scheduled appointments, and/or the applicant no longer meets the eligibility criteria for the PSH program.

### **Selection for PSH**

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

The order in which applicants receive assistance from the waiting list will be by weighted preferences, then date and time and will be approved by DOH. The agency must maintain a clear record of all information required to verify that the participant is selected according to DOH's selection policies.

### **Notification of Selection**

When an applicant has been selected from the waiting list, the agency will send the application to DOH PSH Staff for approval. If the applicant is approved, the agency will ensure the following steps are completed.

The agency will notify the applicant by first class mail when they are selected from the waiting list. The agency will also notify the therapist or case manager of record for the applicant. The notice will inform the applicant 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
  - Documents to verify the legal identity of all household members (including children), including information about what constitutes acceptable documentation
  - Verification of income and expenses
- Other documents and information that should be brought to the interview

If a notification letter is returned to the agency with no forwarding address, the agency will conduct outreach in an attempt to locate the applicant. If the agency is unable to contact the applicant after reasonable outreach attempts have been made, the applicant will be removed from the waiting list. A notice of denial will be sent to the applicants address of record, as well as to any known alternate address.

### **Completing the Application Process**

The agency must verify all information provided by the applicant. Based on verified information, the local service provider must make a final determination of eligibility.

- If the agency determines that the applicant is ineligible, the agency 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 participant of its right to request an informal review.
- If the agency determines that the participant is eligible to receive assistance, the agency will then proceed with the participant briefing.

## **4. RENTAL ASSISTANCE DOCUMENT ISSUANCE**

**Determining Participant Bedroom Size and Subsidy Standards:** *All* PSH participants must lease up in a unit equal to or lesser than their allocated unit size on the Rental Assistance

Document. PSH participants may not be over housed. PSH participants may not pay more in rent than the resident rent portion determined by DOH .

## **5. CALCULATING FAMILY SHARE AND SUBSIDY**

### **Total Tenant Payment and Family Share (TTP Formula) [24 CFR 5.628]**

Participants must pay rent in accordance with section 3(a) of the Housing Act of 1937. Each participant must pay the highest of:

- 30 percent of the family's monthly adjusted income (adjusted income is defined in Part II)
- 10 percent of the family's monthly gross income (annual income, as defined in Part I, divided by 12)
- The 40 % rule is not allowed for PSH Program. The amount that a family pays for rent and utilities (the family share) will never be less than the family's TTP.

### **Fair Market Rents**

The PSH program uses the HUD published Fair Market Rents rather than the payment standards used in the Housing Choice Voucher Program.

### **Minimum Rent [24 CFR 5.630]**

The DOH PSH Program does not have a minimum rent when the income is 0

## **6. RENT REASONABLENESS DETERMINATIONS**

### **When Rent Reasonableness Determinations are Required:**

The rent for an PSH assisted unit may not exceed the reasonable rent for that area. The rent allowed under the SRO component may not exceed the HUD FMR limit for that area even if the reasonable rent is found to be higher.

Keep in mind that leasing units at rents higher than the FMR may cause problems down the line since the original PSH grant amounts are calculated by multiplying the number of units to be assisted by the FMR, not the "reasonable rent." Agencies should use the current approved Fair Market Rent.

If a participant needs to live in a unit that is above the Fair Market Rent, but is rent reasonable, the agency must submit to DOH the rent reasonableness form along with a written explanation of why a unit within the payment standards was not available and/or why the tenant needs to live in a particular location which is above the Fair Market Rent. The following must be taken into account: location, size, type, quality, amenities, facilities, and management and maintenance of

each unit. DOH will determine whether or not to approve the unit and whether or not the grant funds are sufficient to support the increased per unit cost.

## **7. GENERAL LEASING POLICIES**

### **Term of Assisted Tenancy**

The initial term of the assisted dwelling lease must be for at least one month and must be renewable upon expiration [24 CFR 582.315(a)]. The initial lease term is also stated in the HAP contract.

- The HUD program regulations permit DOH to approve a shorter initial lease term if certain conditions are met.

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.

### **Security Deposit [24 CFR 582.105 (a)]**

All participants are expected to pay the full security deposit requested from the landlord. It is also anticipated that each program participant will make every effort to obtain the required security deposit funds. Participants will be encouraged to access community resources for deposit assistance. If the participant is unable to locate security deposit funds after requesting them from community resources, they may make a one-time request from DOH. DOH will only pay for ONE security deposit during the course of program participation per tenant not to exceed one month's rent as program funds allow. DOH will, at its discretion pay an additional security deposit if the original security deposit is returned to DOH at the conclusion of the participant's residency with a landlord. When DOH pays the deposit, the agency must make arrangements with the landlord for the return of the deposit to DOH when the tenancy ends.

### **Rent Increases**

As long as the unit is rent reasonable the participant may continue to rent the unit until their next annual re-exam. If the rent increases above the Fair Market Rent, a request for a reasonable accommodation would need to be submitted and approved by DOH to continue to reside in the units. Participants are not allowed to pay the difference in rent if the unit is over FMR.

## **8. MOVING WITH CONTINUED ASSISTANCE**

### **Maximum Flexibility/Moves Between Service Providers**

The participating agencies will make every effort to assure that every reasonable step is taken to maximize the flexibility of the program and to allow participants to move between DOH PSH participating agencies when such movement is in the participant's best interests and desires and as program funds allow. When a participant moves from one service agency to another, the receiving agency will absorb the allocation and provide the supportive services match for that allocation. The transferring agency may elect to reduce its program size by the size of the transferred allocation. These moves must be approved and facilitated by the DOH Permanent Supportive Housing Staff.

This applies only to current DOH PSH participants who wish to move to an eligible unit in the jurisdiction of a local service agency that provides services for a DOH PSH program. DOH must receive the requested documentation a minimum of 60 days prior to the expected move. The time is necessary so that arrangements may be made by DOH between the two participating agencies. Once DOH receives the request, approval or denial will be granted and both the initial agency and the receiving agency will be notified of DOH's decision. Approvals will be granted unless the applicant or participant:

- Fails to submit the move request in a timely manner;
- Moves without giving proper notice;
- Breaches a participant obligation;
- Does not follow through with requirements set by the receiving agency; or
- Moves before all arrangements have been made between the two participating agencies.

A RAD will be issued by the initial agency to the participant and sent to the receiving agency and also to DOH.

Upon receiving approval of the transfer, the initial agency will fax or scan the following to the receiving agency (initial agency will maintain the original file for 3 years):

- Original application
- All family ID documents (birth certificates, social security cards, IDs, etc.)
- 30-day notice to vacate or mutual rescission of lease
- All documents associated with the last effective annual reexamination
  - 50058
  - All income, expense, and asset verifications
  - All releases (including the HUD 9886)
  - Any approved reasonable accommodations

- Any tenant conferences, violation documentation, etc.

Both agencies will assist the tenant by setting up appointments for intake or providing necessary information for the transfer of services. The receiving agency will assist the tenant in their housing search, perform the HQS inspection, and complete all necessary paperwork required by DOH.

## **9. REXAMINATIONS RECALCUTATING PARTICIPANT SHARE AND SUBSIDY AMOUNT**

### **Subsidy Standards [24 CFR 982.505(c) (4)]**

If there is a change in the participant RAD size that would apply to a participant during the HAP contract term, either due to a change in household composition, or a change in DOH's subsidy standards, the new participant RAD size must be used to determine the FMR amount for the participant at the participant's *first annual* reexamination following the change in participant RAD size.

### **Rent Increases**

Rent increase resulting in the gross rent being over the FMR: As long as the unit is rent reasonable the participant may continue to rent the unit until their next annual re-exam. At the time of the rent increase, a request for a reasonable accommodation would need to be submitted and approved by DOH to continue to reside in the units. Participants are not allowed to pay the difference in rent if the unit is over FMR.

## **10. TERMINATION OF ASSISTANCE AND TENANCY**

### **Termination Procedures**

In deciding whether to deny or terminate assistance because of action or failure to act by members of the household, DOH has discretion to consider all of the circumstances in each case, including the seriousness of the case. DOH will use its discretion in reviewing the extent of participation or culpability of individual household members and the length of time since the violation occurred. DOH will use the process below to ensure the participant is given every chance to succeed. DOH does however reserve the right to evaluate each case individually and proceed straight to termination when warranted. DOH may also review the household's more recent history and record of compliance and the effects that denial or termination of assistance may have on other household members who were not involved in the action or failure to act.

DOH 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. DOH may permit the other members of a household to continue in the program.

Termination Process (please note, there will be additional steps to the termination process for non-compliance with treatment, see the process below)

### **Termination Process for Significant Program Violations**

**STEP 1:** Participant is provided a copy of lease violations from the landlord or the agency becomes aware of program violations, issue an *Agency Notice or Warning Letter for minor infractions* to the tenant along with a signed copy of the *Statement of Understanding* to the letter reminding the participant of program obligations. Participant is requested to contact the residential coordinator to discuss the program violations.

**STEP 2:** If the participant does not follow-up with residential coordinator or if the participant commits more violations, case management outreach is arranged. If participant does not respond to case management outreach and does not contact the residential coordinator, schedule a tenant conference using the *Agency/Tenant Conference* letter provided. All adult household members should be required to attend the meeting.

**STEP 3:** At the tenant conference, review the violations with the participant. Review the contents of the *Statement of Understanding*. Request that the participant sign a *Meeting Acknowledgement* letter verifying their understanding of the discussion in the conference.

If the participant does not show for the tenant conference, document the situation, arrange for additional case management or other outreach and proceed to Step 4.

**STEP 4:** If the participant continues to have lease/program violations or fails to show for the conference, the residential coordinator contacts DOH staff and discusses options. The agency will offer the participant at least four (4) tenant conferences to discuss the program violations.

**STEP 5:** At the 4<sup>th</sup> tenant conference, agency will request that the participant sign a warning letter informing them that future violations will result in termination of housing assistance.

**STEP 6:** If the participant continues to commit violations or fails to show for the tenant conference, after four (4) tenant conferences that include either program violations and/or treatment non-compliant, the agencies submit a request for termination to . This includes a timeline along with all violation notices, Statements of Understanding, and meeting acknowledgements signed at the previous meetings. This timeline should document a

history of the violations committed along with the dates in which the events occurred. The timeline should also contain information regarding the agency's attempts at resolving the issues and any supporting documentation.

**STEP 7:** DOH will review the request for termination and DOH will issue a termination letter if approved. The participant will have 10 days to request an informal hearing. If they do not request an informal hearing, termination will occur as scheduled.

**STEP 8:** If the participant requests an informal hearing, the agency will schedule a meeting with the participant and a hearing officer from another agency. The hearing officer will make a decision regarding the status of the participant's housing.

### **Termination Process for PSH for Treatment Non-Compliance**

**STEP 1:** If a participant misses 2 consecutive scheduled treatment/case management/housing appointments the case manager/therapist will attempt to contact the participant by phone and/or mail. If the therapist is unable to contact the participant and/or the participant fails to contact the therapist or reengage in treatment a case management outreach will be arranged.

**STEP 2:** If there is still no contact the therapist will notify the participant's residential coordinator.

**STEP 3:** At that time the housing coordinator will send out an *Agency Infraction Letter* to the participant informing them to contact the residential coordinator within 10 days to discuss their non-compliance with treatment.

**STEP 4:** If the participant responds to the letter, the residential coordinator will meet with the participant to discuss the lack of follow through with treatment (preferably involving the therapist or case manager). Then return to Step 1. The residential coordinator should also determine if there is any link between the participant's non-compliance with treatment and other behaviors (Is the participant paying their rent/utilities? Any police contact?) The housing coordinator will also arrange another case management outreach attempt.

**STEP 5:** If there is still no contact with their housing coordinator or therapist, a 2<sup>nd</sup> letter will be sent out setting up another agency tenant conference.

**STEP 6:** If the participant attends the agency tenant conference a concrete plan should be put in place to assist the participant in complying with the requirements of the PSH Program. Then return to Step 1. Move on to Step 7 if the participant fails to comply with the agreement set out in the agency tenant conference the 2<sup>nd</sup> time.



**STEP 7:** If the participant fails to attend the meeting or contact their residential coordinator a letter will be sent to the participant setting up a meeting at the client's home. After a minimum of 2 unsuccessful outreach attempts by the residential coordinator and/or the participant's therapist or outreach worker a letter will be sent to the participant scheduling another tenant conference.

**STEP 8:** If the participant attends the tenant conference a concrete plan should be put in place to assist the participant in complying with the requirements of the DOH Program.

**STEP 9:** If the participant fails to attend the tenant conference and after four (4) tenant conferences that include either program violations and/or treatment non-compliant, the agencies submit a request for termination to DOH. This includes a timeline along with all violation notices, Statements of Understanding, and meeting acknowledgements signed at the previous meetings. This timeline should document a history of the violations committed along with the dates in which the events occurred. The timeline should also contain information regarding the agency's attempts at resolving the issues and any supporting documentation.

**STEP 10:** If DOH approves the termination, the DOH staff will send a termination letter to the participant, the participant's landlord and the residential coordinator. The participant will have 10 days to request an informal hearing. If they do not request an informal hearing, termination will occur as scheduled.

**STEP 11:** If the participant requests an informal hearing, the agency will schedule a meeting with the participant and a hearing officer from another agency. The hearing officer will make a decision regarding the status of the participant's housing.

**STEP 12:** The DOH staff will exit the participant from Elite and the residential coordinator will exit the participant from HMIS on the date of termination.

NOTE: DOH will consider all relevant circumstances when considering whether to terminate a participant's assistance.

#### **TERMINATION OF ASSISTANCE BY AGENCY:**

The agency may not close a PSH tenant from services before proceeding through the termination process. The agency must notify DOH of their intent to close before closing the tenant.

Assistance may be terminated if a participant violates conditions of occupancy. HUD PSH program regulations, however, recommend that agencies be as lenient as possible, so that assistance is terminated for only the most serious rule violations. Adequate supportive services should be provided so that the need for termination is rare. Even termination should not necessarily eliminate contact. Ideally, agencies should be trying to bring the homeless person back into the program.

Even if the participants are terminated, they may reapply for assistance under the DOH PSH program as long as they meet all eligibility criteria.

In addition, a participant may decide to stop receiving PSH assistance at any time by notifying DOH.

**NOTE:** The participant will be notified of his/her right to request a reasonable accommodation at every step of the termination process. DOH staff will review all reasonable accommodation requests it receives and work with the agency to develop an appropriate response.

## *Part II: Administration of the Permanent Supportive Housing*

### **OUTREACH:**

DOH's partner agencies will perform extensive community outreach to homeless persons with special needs. Examples of outreach include:

- Conducting outreach to known areas where homeless persons congregate, such as under bridges, in abandoned building, in parks, etc.;
- Conducting outreach to community homeless shelters;
- Providing outreach to other community based organizations which serve the homeless persons with special needs;
- Providing outreach and referrals of homeless persons from human service agency intake workers (i.e. therapists, case managers, social workers);
- Posting of public notices on community bulletin boards at service agency and other facilities, providing information about the Permanent Supportive Housing Program and instructions for referral to this program;
- Providing outreach to County Departments of Human/Social Services; and
- Conducting outreach to faith based organizations.

### **MATCH REPORTS:**

All participating agencies will calculate and document services provided to PSH participants to meet these matching service dollars requirement of this grant. The agency will provide DOH with annual reports documenting the supportive services match provided by the agency and any other service providers in the community. The match reports will contain information relevant to services and in-kind match provided as the service provider's contribution to the project. Match reports are due to DOH no later than one month after the end of each grant's operating year. The agency must maintain individual match records on every PSH program participant and must submit the summary report to DOH.

## **CASE MANAGMENT: – Required for all participants**

**Supportive Services:** All agencies will ensure that a participant in the program is linked to services and has an active service and/or treatment plan in place. This service and/or treatment plan will be the document used to establish treatment compliance. The types and frequency of supportive services will be determined by the Grantee. Examples include:

- Individual therapy;
- Brief therapy;
- Group therapy;
- Substance abuse groups;
- Living skills training;
- Health care;
- Medication monitoring;
- Medical services- medication evaluations and medication shots;
- Vocational rehabilitation services; and
- Case management; The frequency of case management services will be determined by the Grantee and outlined in the service/treatment plan.

**Residential Services:** At a minimum, the following residential services will be provided by the agency:

- Eligibility Determination and Maintain Program Lease-up: Recruiting participants, determining eligibility, and providing appropriate documentation of eligibility, verification of income and other necessary items;
- Housing Quality Inspections;
- Income and Rent Reasonableness Determination and Calculation;
- Record Keeping/Reporting.

**PERMANENT SUPPORTIVE HOUSING ADVISORY COMMITTEE:** The Advisory Committee assists with proposed policy review, program enhancement, and development of best practices. Not less than one or more than three representatives from a service agency (totaling one vote) will participate on the Advisory Committee, which will be chaired by the DOH PSH staff.

The purpose of the Advisory Committee is to provide feedback on policy decisions and to provide a forum for training, networking, problem-solving, and on-going evaluation of the project. The Advisory Committee will meet not less than twice per year and is currently scheduled to meet quarterly.

**HMIS** must be current within 5 days of intake, exit, and service provision.

**BUDGET FOR SUBSIDIES** – must serve up to the original HUD award, and able to serve additional participants as each grant budget allows.

**ADMINISTRATIVE FEES:** Up to seven percent (7%) of the grant award may be used to pay the costs of administering the housing project per HUD. All agencies will receive a percentage of that administrative fee (up to 3.5% of the grant award) for administrative activities based on the contract between DOH and the agency. Administrative fees are generally paid out to agencies on a monthly basis.

Administrative activities include examining participant income, expenses and family composition, providing housing information and assistance, inspecting units for compliance with HQS, and receiving new participants. Costs of administering supportive services, preparing the grant application, auditing, and reporting, are **not** eligible for administrative funding.

**GRANT RENEWAL APPLICATIONS**

HUD originally funded all Shelter Plus Care grants for five years. At the end of that five-year period, DOH is required to renew all PSH grants annually. The grants are renewed as a part of the HEARTH Consolidated Continuum of Care NOFA process.

<b>Grant</b>	<b>Agency Partners</b>	<b>Continuum of Care</b>
Metro Combined (SC04)	ADMHN, Aurora MHC, CCH, CRC, JCMH, MHP, MHCD	Metro Denver Homeless Initiative
Colorado Springs Combined (SC05)	Aspen Pointe	Homeward Pikes Peak, El Paso County
Balance of State (SC09)	NRBH, SLVMHC, Touchstone Behavioral Health, MindSprings	Balance of State

The grant renewals are completed through a process administered by each local Continuum of Care (CoC). The Continuums of Care are:

<b>Continuum of Care</b>	<b>Area Served</b>	<b>Administering Body</b>
Metro Denver Homeless Initiative	7 County Metro Denver Area	MDHI Board
Homeward Pikes Peak, El Paso County	El Paso County	Homeward Pikes Peak Board
Balance of State	State of Colorado outside of El Paso County and the 7 County Metro Denver Area	Colorado Coalition for the Homeless

The notice for the grant renewals is part of the Super Notice of Funding Availability (SuperNOFA) issued by HUD. DOH works with each Continuum of Care (CoC) to submit the applications for renewal. In general, the process is:

1. DOH works with each CoC to ensure that the applications are completed as needed. Each CoC has a slightly different application process. All three CoCs communicate the needs for information for the grant application by email. DOH will attend meetings as required to ensure all necessary information is provided to the grant writer from each CoC to ensure that the PSH renewals are completed.
2. DOH submits an application for each grant renewal to each the CoC. The grants are also completed and submitted electronically through ESNAPS, the HUD grants software.
3. DOH submits the grant applications electronically at least one week prior to the due date set by HUD. This will allow for HUD to process the applications prior to the due date.
4. Notice of grant award is usually published by HUD prior to May 1<sup>st</sup>.
5. Funding is effective at the end of the grant year for each grant.

## **ANNUAL PROGRESS REPORTS**

DOH must ensure that Annual Progress Reports (APRs) are submitted on all PSH grants and that all grants are renewed so that funding can continue for the program. HUD requires that data for the APRs be entered into the ESNAPS system. This is HUD’s data management system for homeless grants.

The agency will provide the DOH staff with annual reports on the progress of the program using the local HMIS system. DOH will use the information provided by the agencies to complete the Annual Progress Report. The APRs are due within ninety (90) days following the end of the operating year of the project.

APRs are due annually:

<b>Grant</b>	<b>Agency Partners</b>	<b>APR Due Date</b>
Metro Combined (SC04)	ADMHN, Aurora MHC, CCH, CRC, JCMH, MHP, MHCD	7/29
Colorado Springs Combined (SC05)	Aspen Pointe	7/29
Balance of State (SC09)	NRBH, SLVMHC, Touchstone	7/29

The Colorado Coalition for the Homeless (CCH) administers the HMIS system for the Metro Denver Homeless Initiative in Metro Denver and the Balance of State Continuums of Care for rural Colorado. Pikes Peak United Way administers the HMIS system for Homeward Pikes Peak in Colorado Springs. DOH requests that each agency provide DOH with an APR data report each quarter to be reviewed for data quality. DOH will work with the agency and the HMIS administrator to get problems resolved if there are any problems acquiring this report or with the data in the report.

## **AGENCY PARTNERSHIPS**

DOH partners with agencies who assist with housing, ensure that appropriate services are provided, maintain data in the HMIS system, and provide information for the grant renewal applications.

The following agencies work in conjunction with DOH to administer the Permanent Supporting Housing aka Shelter Plus Care program:

- Arapahoe/Douglas Mental Health Network
  
- Aurora Mental Health Center
  
- Colorado Coalition for the Homeless
  
- Community Reach Center
  
- Jefferson Center for Mental Health
  
- TouchStone Behavioral Health, Mental Health Partners
  
- Mental Health Center of Denver
  
- Aspen Point, Colorado Springs
  
- North Range Behavioral Health Center
  
- San Luis Valley Comprehensive Community Mental Health Center
  
- Mind Springs Mental Health

## **MOVES BETWEEN AGENCIES**

The Permanent Supportive Housing regulations do not require DOH to allow participants to transfer their subsidy to other geographic locations. However, the participating service provider agencies will make every effort to assure that every reasonable step is taken to maximize the flexibility of the program and to allow participants to move between DOH PSH participating agencies when such movement is in the participant's best interests and desires

and as program funds allow. Requests to move between agencies and geographic regions must be approved by DOH. See the moving process above

## **TRAINING AND TECHNICAL ASSISTANCE**

DOH PSH staff coordinates with the DOH HCV program staff in providing ongoing training regarding HUD regulations. PSH staff provides additional training where the PSH regulations differ from HCV program regulations.

In addition DOH PSH staff provides daily technical assistance on program rules and participant problems to agency residential coordinators by phone and email.

DOH PSH staff does onsite training and file monitoring at the agencies as needed and schedule meetings with agencies throughout the year.

## **FUNDING PROCESS**

Funding for new PSH projects is awarded competitively through HUD's Continuum of Care process to eligible applicants: States, units of local government and public housing authorities (PHAs). Successful applicants become "grantees" once the PSH grant agreement is fully executed.

HUD publishes an annual Notice of Funding Availability (NOFA) in the Federal Register announcing the combined competition for three homeless assistance programs: Shelter Plus Care, the Supportive Housing Program and the Section 8 Moderate Rehabilitation Single Room Occupancy (SRO) Program for Homeless Individuals. The total amount allocated to any one of these programs is not determined in advance but depends upon the type of applications received and the competitive ranking of the projects.

Following review of the Continuum of Care applications, HUD selects projects for funding based upon the criteria found in the NOFA. Successful applicants will receive a Letter of Conditional Award. The letter outlines any conditions the PSH applicant must meet before the grant can be executed and program activities can begin. The grant agreement must be signed by both the applicant and HUD. The term of the grant begins as of the date that HUD signs the agreement.

- **FORMS SPECIFIC TO PSH COHMIS Program Specific Intake Form**
- **Homeless Verification**
  - S+C Verification of Current Homeless Situation
  - Rental Assistance Document
  - PSH Housing Worksheet

- PSH Statement of Understanding
- PSH HAP Contract
- HMIS Intake and Exit

***Part III Differences between HCV and PSH Program: Quick Reference Table***

	<b>Housing Choice Voucher</b>	<b>Permanent Supportive Housing</b>
Waiting List	Individual Lists at Agency in ELITE	Each agency will keep a waitlist in Elite
Eligible Participants	Meet DOH wait list preferences criteria of eligibility	Meet DOH wait list preferences criteria of eligibility; in addition an individual or family must meet HUD's PSH homeless and/or chronically homeless definition.
Subsidy Standards/Bedroom Size	May lease a larger unit than bedroom size listed on voucher.	Must lease a unit of equal or lesser size to the bedroom size listed on the Rental Assistance Document.
Lease Term	At least six months.	Initial occupancy agreement for a term of at least one month, automatically renewable upon expiration, except on prior notice.
Housing Quality Standards	Inspection required prior to occupancy and annually.	Inspection required prior to occupancy and annually.
Security Deposit	Landlord sets. No assistance available from HCV.	Landlord sets. If participant exhausts all other options for assistance, DOH can pay one time for client (up to one month's rent only). The landlord is required to sign a security deposit form. This form requires the landlord to return the security deposit to DOH unless he/she is legally allowed to keep it.
CBI Background Check	Required for all family members 18+.	Not required for applicants Any new adult members including live-in aides requesting to be added to an existing participant's household will be subject to a CBI Background Check.
Payment Standard/ Fair Market Rent (FMR)-Initial lease up	May rent a unit over payment standard in area as long as the unit is rent reasonable and the family TTP does not exceed 40%.	Not allowed to rent a unit over the FMR unless a request for a reasonable accommodation has been submitted to and approved by DOH and unit is rent reasonable.
Rent increase resulting in the gross rent being over the FMR	As long as the unit is rent reasonable the participant may continue to rent the unit even if the participant's TTP violates the 40% rule.	As long as the unit is rent reasonable the participant may continue to rent the unit until their next annual re-exam. At that time a request for a reasonable accommodation would need to be submitted and approved by DOH to continue to reside in the unit.
Minimum Rent	\$25 minimum TTP	No minimum TTP
Homeownership	May apply after one year on HCV program.	Not allowed



	<b>Housing Choice Voucher</b>	<b>Permanent Supportive Housing</b>
Termination	Assistance may be terminated for failure to comply with conditions of occupancy. HUD HCV guidelines and DOH HCV admin plan detail when DOH must and/or may terminate assistance.	Assistance may be terminated for failure to comply with conditions of occupancy. HUD PSH program regulations recommend that grantees be as lenient as possible, so that assistance is terminated for only the most serious rule violations.
Participant Involvement	Required on Resident Advisory Board .	Required on advisory committee.
Outreach	Minimal	Active outreach required.
Match Requirement	Not required	Supportive services provided by partner agencies must be 25% of total to rental assistance.  Match reports detailing relevant services and in-kind match provided are required annually.
Case Management	Not required	Required
Annual Progress Reports	Not required	Due to HUD within 90 days of termination of the grant year. DOH requests data for the APR within thirty days following the end of the operating year of the project.
Grant Applications	Not required	Due annually.
HMIS data entry	Not required	Must be current within 5 days of intake, exit, and service provision.
Budget for Subsidies	Can only serve the number of clients that you have dollars allocated.	Must serve up to the original HUD award, and able to serve additional participants as each grants budget allows.
Administrative Fees	Calculated on number of units under lease each month.	7% award split between DOH and service agency; admin amount is part of total PSH award.
Forms	*HCV Application *Voucher *DOH Family Reporting 50058 *HCV Statement of Understanding *HCV HAP Contract *N/A	*PSH Application *Rental Assistance Document *PSH Housing Worksheet  *PSH Statement of Understanding *PSH HAP Contract *HMIS Intake/Exit Form
Violence Against Women Act	All aspects of the Violence Against Women’s Act apply to HCV.	Violence Against Women’s Act applies to Permanent Supportive Housing.

## *GLOSSARY*

### **ACRONYMS USED IN SUBSIDIZED HOUSING**

<b>AAF</b>	Annual adjustment factor (published by HUD in the Federal Register and used to compute annual rent adjustments)
<b>ACC</b>	Annual contributions contract
<b>ADA</b>	Americans with Disabilities Act of 1990
<b>BR</b>	Bedroom
<b>CDBG</b>	Community Development Block Grant (Program)
<b>CFR</b>	Code of Federal Regulations (published federal rules that define and implement laws; commonly referred to as “the regulations”)
<b>CPI</b>	Consumer price index (published monthly by the Department of Labor as an inflation indicator)
<b>EID</b>	Earned income disallowance
<b>EIV</b>	Enterprise Income Verification
<b>FDIC</b>	Federal Deposit Insurance Corporation
<b>FHA</b>	Federal Housing Administration
<b>FICA</b>	Federal Insurance Contributions Act (established Social Security taxes)
<b>FMR</b>	Fair market rent
<b>FR</b>	Federal Register
<b>FSS</b>	Family Self-Sufficiency (Program)
<b>FY</b>	Fiscal year
<b>FYE</b>	Fiscal year end
<b>GAO</b>	Government Accountability Office
<b>GR</b>	Gross rent

<b>HAP</b>	Housing assistance payment
<b>HCV</b>	Housing choice voucher
<b>HQS</b>	Housing quality standards
<b>HUD</b>	Department of Housing and Urban Development
<b>HUDCLIPS</b>	HUD Client Information and Policy System
<b>IPA</b>	Independent public accountant
<b>IRA</b>	Individual Retirement Account
<b>IRS</b>	Internal Revenue Service
<b>JTPA</b>	Job Training Partnership Act
<b>LBP</b>	Lead-based paint
<b>MSA</b>	Metropolitan statistical area (established by the U.S. Census Bureau)
<b>MTCS</b>	Multi-family Tenant Characteristics System (now the Form HUD-50058 submodule of the PIC system)
<b>MTW</b>	<b>Moving to Work</b>
<b>NOFA</b>	<b>Notice of funding availability</b>
<b>OIG</b>	<b>HUD's Office of Inspector General</b>
<b>OMB</b>	Office of Management and Budget
<b>PASS</b>	Plan for Achieving Self-Support
<b>PHA</b>	Public housing agency
<b>PIC</b>	PIH Information Center
<b>PIH</b>	(HUD Office of) Public and Indian Housing
<b>PS</b>	Payment standard

<b>QC</b>	Quality control
<b>QHWRA</b>	Quality Housing and Work Responsibility Act of 1998 (also known as the Public Housing Reform Act)
<b>REAC</b>	(HUD) Real Estate Assessment Center
<b>RFP</b>	Request for proposals
<b>RFTA</b>	Request for tenancy approval
<b>RIGI</b>	Regional inspector general for investigation (handles fraud and program abuse matters for HUD at the regional office level)
<b>SEMAP</b>	Section 8 Management Assessment Program
<b>SRO</b>	Single room occupancy
<b>SSA</b>	Social Security Administration
<b>SSI</b>	Supplemental security income
<b>TANF</b>	Temporary assistance for needy families
<b>TPV</b>	Tenant Protection Vouchers
<b>TR</b>	Tenant rent
<b>TTP</b>	Total tenant payment
<b>UA</b>	Utility allowance
<b>UIV</b>	Upfront Income Verification
<b>URP</b>	Utility reimbursement payment
<b>VAWA</b>	Violence Against Women Reauthorization Act of 2013

## **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.

**Adjusted Annual Income.** Same as Adjusted Income.

**Administrative fee.** Fee paid by HUD to DOH 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 DOH's board and included as a supporting document to DOH 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 DOH agrees to comply with HUD requirements for the program.

**Annual income.** The anticipated total income of an eligible family from all sources for the 12-month period following the date of determination of income, computed in accordance with the regulations.

**Applicant (applicant family).** A family that has applied for admission to a program but is not yet a participant in the program.

**Area exception rent.** An amount that exceeds the published FMR. See §982.504(b).

**"As-paid" states.** States where the welfare agency adjusts the shelter and utility component of the welfare grant in accordance with actual housing costs.

**Assets.** (See net family assets.)

**Auxiliary aids.** Services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities receiving federal financial assistance.

**Bifurcate.** With respect to a public housing or Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members' lease and occupancy rights are allowed to remain intact.

**Budget authority.** An amount authorized and appropriated by the Congress for payment to HAS under the program. For each funding increment in a PHA program, budget authority is the maximum amount that may be paid by HUD to DOH 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 data bases 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 to §982.609.

**Contiguous MSA.** In portability (under subpart H of part 982): An MSA that shares a common boundary with the MSA in which the jurisdiction of the initial PHA is located.

**Continuously assisted.** An applicant is continuously assisted under the 1937 Act if the family is already receiving assistance under any 1937 Housing Act program when the family is admitted to the voucher program.

**Contract 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; or two or more persons with disabilities living together; or one or more persons with disabilities living with one or more live-in aides.

**Disabled person.** See person with disabilities.

**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 §5.603(c).

**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 to evidence citizenship or eligible immigration status. (See §5.508(b).)

**Extremely low-income family.** A family whose annual income does not exceed 30 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish income ceilings higher or lower than 30 percent of median income if HUD finds such variations are necessary due to unusually high or low family incomes. (CFR 5.603)

**Facility.** All or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other real or personal property or interest in the property.

**Fair Housing Act** means Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988

**Fair market rent (FMR).** The rent, including the cost of utilities (except telephone), as established by HUD for units of varying sizes (by number of bedrooms), that must be paid in the housing market area to rent privately owned, existing, decent, safe and sanitary rental housing of modest (non-luxury) nature with suitable amenities. See periodic publications in the Federal Register in accordance with 24 CFR part 888.



**Family.** Includes but is not limited to the following, and can be further defined in PHA policy.

- A family with or without children (the temporary absence of a child from the home due to placement in foster care is not considered in determining family composition and family size)
- An elderly family or a near-elderly family
- A displaced family
- The remaining member of a tenant family
- A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a tenant family.

**Family rent to owner.** In the voucher program, the portion of rent to owner paid by the family.

**Family self-sufficiency program (FSS program).** The program established by 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 DOH under DOH subsidy standards.

**Federal agency.** A department of the executive branch of the Federal Government.

**Foster Child Care Payment.** Payment to eligible households by state, local, or private agencies appointed by the State, to administer payments for the care of foster children.

**Full-time Student.** A person who is attending school or vocational training on a full-time basis (carrying a subject load that is considered full-time for day students under the standards and practices of the educational institution attended). (CFR 5.603)

**Funding increment.** Each commitment of budget authority by HUD to a PHA under the consolidated annual contributions contract for DOH program.

**Gross rent.** The sum of the rent to owner plus any utility allowance.

**Group home.** A dwelling unit that is licensed by a State as a group home for the exclusive residential use of two to twelve persons who are elderly or persons with disabilities (including any live-in aide). A special housing type: see §982.610 to §982.614.

**Handicap.** Any condition or characteristic that renders a person an individual with handicaps. See 24CFR 8.3.

**Handicap Assistance Expense.** See “Disability Assistance Expense.”

**HAP contract.** Housing assistance payments contract. (Contract). A written contract between DOH and an owner for the purpose of providing housing assistance payments to the owner on behalf of an eligible family.

**Head of household.** The adult member of the family who is the head of the household for purposes of determining income eligibility and rent.

**Housing assistance payment.** The monthly assistance payment by 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).** A State, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) authorized to engage in or assist in the development or operation of low-income housing. (“PHA” and “HA” mean the same thing.)

**Housing Quality Standards.** The HUD minimum quality standards for housing assisted under the voucher program.

**HUD.** The Department of Housing and Urban Development.

**Immediate family member.** A spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in the position or place of a parent; or any other person living in the household of that person and related to that person by blood and marriage.

**Imputed Asset.** Asset disposed of for less than Fair Market Value during two years preceding examination or reexamination.

**Imputed Income.** PHA passbook rate multiplied by the total cash value of assets. Calculation used when net family assets exceed \$5,000.

**Imputed welfare income.** An amount of annual income that is not actually received by a family as a result of a specified welfare benefit reduction, but is included in the family’s annual income and therefore reflected in the family’s rental contribution.

**Income.** Income from all sources of each member of the household, as determined in accordance with criteria established by HUD.

**Income For Eligibility.** Annual Income.

**Income information** means information relating to an individual's income, including:

- All employment income information known to current or previous employers or other income sources
- All information about wages, as defined in the State's unemployment compensation law, including any Social Security Number; name of the employee; quarterly wages of the employee; and the name, full address, telephone number, and, when known, Employer Identification Number of an employer reporting wages under a State unemployment compensation law
- Whether an individual is receiving, has received, or has applied for unemployment compensation, and the amount and the period received
- Unearned IRS income and self-employment, wages and retirement income
- Wage, social security, and supplemental security income data obtained from the Social Security Administration.

**Individual with handicaps.** Any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment.

**Initial PHA.** In portability, the term refers to both: (1) 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.

**Jurisdiction.** The area in which DOH 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 DOH.

**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 DOH to select among applicant families.

**Low Income Family.** A family whose income does not exceed 80% of the median income for the area as determined by HUD with adjustments for smaller or larger families, except that HUD may establish income limits higher or lower than 80% for areas with unusually high or low incomes.

**Manufactured home.** A manufactured structure that is built on a permanent chassis, is designed for use as a principal place of residence, and meets the HQS. A special housing type: see §982.620 and §982.621.

**Manufactured home space.** In manufactured home space rental: A space leased by an owner to a family. A manufactured home owned and occupied by the family is located on the space. See §982.622 to §982.624.

**Medical expenses.** Medical expenses, including medical insurance premiums, that are anticipated during the period for which annual income is computed, and that are not covered by insurance. (A deduction for elderly or disabled families only.) These allowances are given when calculating adjusted income for medical expenses in excess of 3% of annual income.

**Merger Date.** October 1, 1999.

**Minor.** A member of the family household other than the family head or spouse, who is under 18 years of age.

**Mixed family.** A family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

**Monthly adjusted income.** One twelfth of adjusted income.

**Monthly income.** One twelfth of annual income.

**Mutual housing.** Included in the definition of “cooperative.”

**National.** A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

**Near-elderly family.** A family whose head, spouse, or sole member is a person who is at least 50 years of age but below the age of 62; or two or more persons, who are at least 50 years of age but below the age of 62, living together; or one or more persons who are at least 50 years of age but below the age of 62 living with one or more live-in aides.

**Net family assets.** (1) Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded.

- In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining annual income under §5.609.
- In determining net family assets, PHAs or owners, as applicable, shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefore. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

**Non-citizen.** 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 DOH 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 DOH program and is currently assisted in the program. The family becomes a participant on the effective date of the first HAP contract executed by DOH for the family (first day of initial lease term).

**Payment standard.** The maximum monthly assistance payment for a family assisted in the voucher program (before deducting the total tenant payment by the family).

**Persons With Disabilities.** A person who has a disability as defined in 42 U.S.C. 423 or a developmental disability as defined in 42 U.S.C. 6001. Also includes a person who is determined, under HUD regulations, to have a physical or mental impairment that is expected to be of long-continued and indefinite duration, substantially impedes the ability to live independently, and is of such a nature that the ability to live independently could be improved by more suitable housing conditions. For purposes of reasonable accommodation and program accessibility for persons with disabilities, means and “individual with handicaps” as defined in 24 CFR 8.3. Definition does not exclude persons who have AIDS or conditions arising from AIDS, but does not include a person whose disability is based solely on drug or alcohol dependence (for low-income housing eligibility purposes). See “Individual with handicaps”

**Portability.** Renting a dwelling unit with 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.

**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 Section 8 program, the “processing entity” is the “responsible entity.”

**Project owner.** The person or entity that owns the housing project containing the assisted dwelling unit.

**Public Assistance.** Welfare or other payments to families or individuals, based on need, which are made under programs funded, separately or jointly, by Federal, state, or local governments.

**Public Housing Agency (PHA).** Any State, county, municipality, or other governmental entity or public body, or agency or instrumentality of these entities, that is authorized to engage or assist in the development or operation of low-income housing under the 1937 Act.

**Reasonable rent.** A rent to owner that is not more than rent charged: (1) For comparable units in the private unassisted market; and (2) For comparable unassisted units in the premises.

**Receiving PHA.** In portability: 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 Tenant Family.** Person left in assisted housing who may or may not normally qualify for assistance on own circumstances (i.e., an elderly spouse dies, leaving widow age 47 who is not disabled).

**Rent to owner.** The total monthly rent payable to the owner under the lease for the unit (also known as contract rent). Rent to owner covers payment for any housing services, maintenance and utilities that the owner is required to provide and pay for.

**Residency Preference.** 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 (“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 DOH administering the program under an ACC with HUD. For all other Section 8 programs, the responsible entity means the Section 8 owner.

**Secretary.** The Secretary of Housing and Urban Development.

**Section 8.** Section 8 of the United States Housing Act of 1937.

**Section 8 covered programs.** All HUD programs which assist housing under Section 8 of the 1937 Act, including Section 8 assisted housing for which loans are made under section 202 of the Housing Act of 1959.

**Section 214.** Section 214 of the Housing and Community Development Act of 1980, as amended

**Section 214 covered programs** is the collective term for the HUD programs to which the restrictions imposed by Section 214 apply. These programs are set forth in §5.500.

**Security Deposit.** A dollar amount (maximum set according to the regulations) which can be used for unpaid rent or damages to the owner upon termination of the lease.

**Set-up charges.** In a manufactured home space rental: Charges payable by the family for assembling, skirting and anchoring the manufactured home.

**Sexual Assault.** Any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent (42 U.S.C. 13925(a)).

**Shared housing.** A unit occupied by two or more families. The unit consists of both common space for shared use by the occupants of the unit and separate private space for each assisted family. A special housing type: see §982.615 to §982.618.

**Single Person.** A person living alone or intending to live alone.

**Single room occupancy housing (SRO).** A unit that contains no sanitary facilities or food preparation facilities, or contains either, but not both, types of facilities. A special housing type: see §982.602 to §982.605.

**Social Security Number (SSN).** The nine-digit number that is assigned to a person by the Social Security Administration and that identifies the record of the person's earnings reported to the Social Security Administration. The term does not include a number with a letter as a suffix that is used to identify an auxiliary beneficiary.

**Special admission.** Admission of an applicant that is not on DOH 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 approval of the tenancy. If DOH decides to allow extensions or suspensions of the voucher term, DOH administrative plan must describe how DOH determines whether to grant extensions or suspensions, and how DOH determines the length of any extension or suspension. This practice is also called "tolling".

**Tenancy Addendum.** For the Housing Choice Voucher Program, the lease language required by HUD in the lease between the tenant and the owner.

**Tenant.** The person or persons (other than a live-in aide) who executes the lease as lessee of the dwelling unit.

**Tenant rent to owner.** See “Family rent to owner”.

**Term of Lease.** The amount of time a tenant agrees in writing to live in a dwelling unit.

**Total Tenant Payment (TTP).** The total amount the HUD rent formula requires the tenant to pay toward rent and utilities.

**Unit.** Residential space for the private use of a family. The size of a unit is based on the number of bedrooms contained within the unit and generally ranges from zero (0) bedrooms to six (6) bedrooms.

**Utility allowance.** If the cost of utilities (except telephone) and other housing services for an assisted unit is not included in the tenant rent but is the responsibility of the family occupying the unit, an amount equal to the estimate made or approved by 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.

**Vacancy Loss Payments.** (*Applies only to pre-10/2/95 HAP Contracts in the Rental Certificate Program*). When a family vacates its unit in violation of its lease, the owner is eligible for 80% of the contract rent for a vacancy period of up to one additional month, (beyond the month in which the vacancy occurred) if s/he notifies DOH as soon as s/he learns of the vacancy, makes an effort to advertise the unit, and does not reject any eligible applicant except for good cause.

**Very Low Income Family.** A low-income family whose annual income does not exceed 50% of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 50% of the median income for the area on the basis of its finding that such variations are necessary because of unusually high or low family incomes. This is the income limit for the housing choice voucher program.

**Violent criminal activity.** Any illegal criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person or property of another.

**Voucher (Housing Choice Voucher).** A document issued by 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 DOH waiting list.



***Welfare assistance.*** Income assistance from Federal or State welfare programs, including assistance provided under TANF and general assistance. Does not include assistance directed solely to meeting housing expenses, nor programs that provide health care, child care or other services for working families. FOR THE FSS PROGRAM (984.103(b)), “welfare assistance” includes only cash maintenance payments from Federal or State programs designed to meet a family’s ongoing basic needs, but does not include food stamps, emergency rental and utilities assistance, SSI, SSDI, or Social Security.

***Welfare-to-work (WTW) family.*** A family assisted by a PHA with Voucher funding awarded to DOH under the HUD welfare-to-work voucher program (including any renewal of such WTW funding for the same purpose).