



COLORADO

Department of Local Affairs

Division of Housing

HOUSING CHOICE VOUCHER (HCV) AND RENTAL ASSISTANCE PROGRAMS (RAP) ADMINISTRATIVE PLAN

In response to approved Housing Opportunities through Modernization Act (HOTMA) legislation, the DOH Administrative Plan will be updated accordingly in late 2024 to adopt all required changes. Another public hearing will be held in response to these changes.



**COLORADO DEPARTMENT OF LOCAL AFFAIRS
DIVISION OF HOUSING
DIRECTOR – ALISON GEORGE
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Introduction

ABOUT THE REFERENCES CITED IN THE ADMINISTRATIVE PLAN

AUTHORITIES FOR POLICIES IN THE 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 ADMINISTRATIVE PLAN

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

HUD HCV Guidebook

In November 2019 HUD began issuing a new version of the HCV Guidebook chapter-by-chapter. Unlike the previous version of the HCV Guidebook in which chapters were numbered, the new version of the guidebook includes chapter names, but no numbers. As the new version of the guidebook has not yet been fully released, and since the previous version of the guidebook contains guidance not found in the new version, the model policy cites both versions of the guidebook. Therefore, where the HCV Guidebook is cited in the model policy, the citation will make a distinction between the “old” and “new” versions of the guidebook. The “old” version of the guidebook will continue to be cited as *HCV GB* with a chapter/page reference (example: HCV GB, p. 5-4). If HUD has also released a new chapter on the same topic with information that either adds new information or updates existing information from the previous guidebook, the new guidebook will be cited as *New HCV GB* with a chapter title and page reference (example: New HCV GB, *Payment Standards*, p. 11).

Abbreviations

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

Abbreviation	Document
CFR	Code of Federal Regulations
HCV GB	Housing Choice Voucher Program Guidebook (7420.10G), April 2001. Partially Updated Guidebook (2019).
New HCV GB	Housing Choice Voucher Program Guidebook (7420.10G), Various dates of release
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.

Resources and Where to Find Them

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

Document and Location
Code of Federal Regulations – Title 24: Housing and Urban Development https://ecfr.io/Title-24/
Earned Income Disregard FAQ https://www.hud.gov/program_offices/public_indian_housing/phr/about/ao_faq_eid
Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Final Rule http://edocket.access.gpo.gov/2008/pdf/E8-19435.pdf
Enterprise Income Verification (EIV) System, Security Procedures for Upfront Income Verification data https://www.hud.gov/sites/documents/EIVSECGUIDEPHA.PDF
Executive Order 11063 https://www.archives.gov/federal-register/codification/executive-order/11063.html
Federal Register – Housing and Urban Development Department https://www.federalregister.gov/agencies/housing-and-urban-development-department
Housing Choice Voucher Program Guidebook (7420.10G), Updated Chapters https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/guidebook
HUD-50058 Instruction Booklet https://www.hud.gov/sites/documents/FORM50058INSTRUCTBOOKLET.PDF
Joint Statement of the Department of Housing and Urban Development and the Department of Justice, issued May 17, 2004 https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra.pdf
Joint Statement of the Department of Housing and Urban Development and the Department of Justice Reasonable Modifications under the Fair Housing Act, issued March 2008 https://www.hud.gov/sites/documents/reasonable_modifications_mar08.pdf
This website contains information regarding the rights of people with disabilities to housing, including articles, fact sheets, and summaries of cases. http://www.bazelon.org/our-work/mental-health-systems/housing/
Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, published January 22, 2007 https://www.federalregister.gov/documents/2007/01/22/07-217/final-guidance-to-federal-financial-assistance-recipients-regarding-title-vi-prohibition-against
Notice PIH 2010-26 (HA), Nondiscrimination and Accessibility Notice https://www.hud.gov/sites/documents/DOC_8993.PDF
Notice PIH 2018-18, Administrative Guidance for Effective and Mandated Use of the Enterprise Income Verification (EIV) System https://www.hud.gov/sites/documents/PIH2017-12EIVNOTICE.PDF

<p>Notice PIH 2018-2412-10, Verification of Social Security Numbers (SSNs) and Social Security (SS) and Supplemental Security Income (SSI) Benefits; and Effective Use of the Enterprise Income Verification (EIV) System’s Identity Verification Report https://www.hud.gov/sites/dfiles/PIH/documents/PIH-2018-24_EIV_SSN_Notice_FINAL.pdf ; http://portal.hud.gov/huddoc/pih2012-10.pdf</p>
<p>OMB Circular A-133 https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/circulars/A133/a133_revised_2007.pdf</p>
<p>Project-Based Voucher Program; Project-Based Voucher Program Final Rule https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/project http://www.gpo.gov/fdsys/pkg/FR-2005-10-13/pdf/05-20035.pdf</p>
<p>VAWA Final Rule http://www.gpo.gov/fdsys/pkg/FR-2010-10-27/pdf/2010-26914.pdf</p>
<p>VAWA Final Rule – Implementation in HUD Housing Programs https://www.federalregister.gov/documents/2016/11/16/2016-25888/violence-against-women-reauthorization-act-of-2013-implementation-in-hud-housing-programs</p>
<p>Verification Guidance, March 2004 (attachment to Notice PIH 2004-1) https://www.hud.gov/sites/documents/DOC_9084.PDF</p>
<p>PIH Notice 2009-22 Over Subsidization in the Housing Choice Voucher Program http://portal.hud.gov/hudportal/documents/huddoc?id=09-22pihn.doc</p>
<p>Regulations that Prohibit Discrimination Based on Sexual Orientation, Gender Identity (Prohibited in HUD Housing) http://www.gpo.gov/fdsys/pkg/FR-2012-02-03/pdf/2012-2343.pdf https://www.hud.gov/program_offices/fair_housing_equal_opp/housing_discrimination_and_persons_identifying_lgbtq</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 HUD, Voucher Program Guidebook: Moves and Portability (2019) https://www.hud.gov/sites/dfiles/PIH/documents/HCV_Guidebook_Moves_and_Portability.pdf HUD, Housing Choice Voucher Portability Procedures and Corrective Actions, PIH 2008-43 (HA) (Dec. 3, 2008); Final Rule (August 2015) https://www.hud.gov/sites/documents/DOC_8968.PDF https://www.hud.gov/sites/documents/PORTABILITYRULE.PDF</p>
<p>FHEO Library</p>

http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/library

Fair Housing, It's Your Right

[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)

HUD Guidance on Protecting Tenants at Foreclosure Act.

<http://www.gpo.gov/fdsys/pkg/FR-2012-03-15/pdf/2012-6297.pdf>

Additional Statutes and Regulations

American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat.115, 215
(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)

Continuum of Care Permanent Supportive Housing Regulations (24 C.F.R. 578; 24 C.F.R.
582)

https://ecfr.io/Title-24/cfr578_main

<https://ecfr.io/Title-24/pt24.3.582>

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 2018-24 - 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

https://www.hud.gov/sites/dfiles/PIH/documents/PIH-2018-24_EIV_SSN_Notice_FINAL.pdf

Streamlining Administrative Regulations for Public Housing, Housing Choice Voucher, Multifamily Housing, and Community Planning and Development Programs; Final Rule

<https://www.federalregister.gov/documents/2016/03/08/2016-04901/streamlining-administrative-regulations-for-public-housing-housing-choice-voucher-multifamily>

The HUD website is <https://www.hud.gov/>.

Guidebooks, handbooks and other HUD resources may be found at the HUDClips website:

https://www.hud.gov/program_offices/administration/hudclips.

Chapter 1

OVERVIEW OF THE PROGRAM AND PLAN

INTRODUCTION

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

Staffing and Administration

DOH delegates some of the voucher administration 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 Affairs Medical Center (VAMC)
- H. Homeless Service 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 and other rental assistance programs 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 and other rental assistance programs.

Housing Assistance Payment Contract

Contract agency staff are no longer permitted to sign the Housing Assistance Payment (HAP) contract. All HAP contracts must be submitted to DOH for signature within 60 days of the effective date.

1-I.B. PHA MISSION

The Colorado Department of Local Affairs (DOLA) works in partnership with local governments and communities statewide to provide funding for projects and disaster recovery relief. We provide state and federal funding to private housing developers, housing authorities, and local governments to increase the inventory of affordable housing, and work diligently to help our state's most vulnerable population to remove them from homelessness. DOLA also provides expertise through robust technical assistance programs to help with community planning, property taxation, and tax appeals.

The Colorado Division of Housing (DOH) collaborates with local communities to create housing opportunities for Coloradans who face the greatest challenges to accessing affordable, safe, and secure homes.

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 low-income households 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 low-income households and persons with disabilities;
- 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 housing 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 Voucher Program
- B. 5 Year Mainstream and Section 811 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. Project-Based Voucher Assistance (PBV)

- B. Homeownership
- C. Family Unification Program (FUP)
- D. Non-Elderly Disabled Vouchers (NED)
- E. Veteran’s Affairs Supportive Housing (VASH)
- F. Family Self-Sufficiency Program (FSS)
- G. Continuum of Care Permanent Supportive Housing (CoC PSH)
- H. State Housing Voucher (SHV) Program — including Homeless Solutions Program - State Housing Vouchers (HSP-SHV), Recovery-Oriented Housing Program - State Housing Vouchers (ROHP-SHV), and Mental Health - State Housing Vouchers (MH-SHV)
- I. Tenant Based Rental Assistance (TBRA) – including Next Step and Rapid Rehousing Programs
- J. Community Access Team Voucher Program (CATV) – formerly known as Colorado Choice Transitions (CCT)
- K. Section 811 Project Rental Assistance

1-I.D. DOH’S COMMITMENT TO ETHICS AND SERVICE

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 them, 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 them to depart from the faithful and impartial discharge of their 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 VIOLATIONS OF 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.

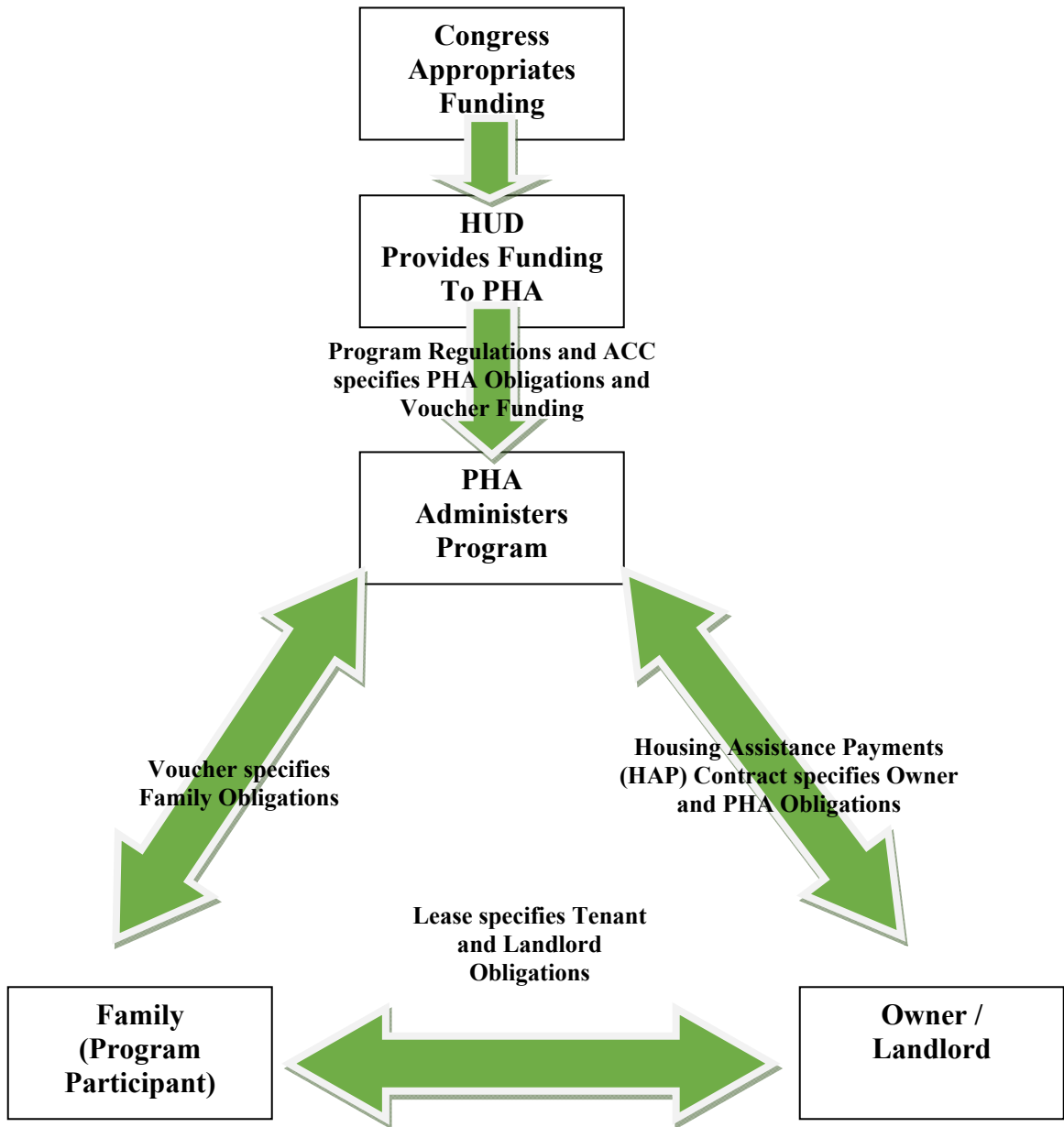
1-II.C THE HCV PARTNERSHIPS

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 partnerships.

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; and
- 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, and 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 (HAP) contract executed with DOH;
- Comply with all applicable fair housing;
- Maintain the housing unit in accordance with Housing Quality Standards (HQS), followed by National Standards for the Physical Inspection of Real Estate (NSPIRE) when effective, and make necessary repairs in a timely manner; and
- 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 income and/or family composition; and
- 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 100: The Fair Housing Act
- 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 HUD-required document. 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 of the voucher term. If DOH decides to allow extensions of the voucher term, the DOH administrative plan must describe how DOH determines whether to grant extensions, and how DOH determines the length of any extension (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, including policies on administering decreases in the payment standard during the HAP contract term (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 (if applicable), the pertinent sections included in the Agency Plan, and a copy provided to HUD.

- DOH will review and update the plan as 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 Orders 11063 and 13988
- 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 and further clarified in Notice PIH 2014-20

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; Executive Order 13988]

- 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
- Subject anyone to sexual harassment
- 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. DOH should 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].

Upon receipt of a housing discrimination complaint, the PHA is required to:

- Provide written notice of the complaint to those alleged and inform the complainant that such notice was made
- Investigate the allegations and provide the complainant and those alleged with findings and either a proposed corrective action or an explanation of why corrective action is not warranted
- Keep records of all complaints, investigations, notices, and corrective actions [Notice PIH 2014-20]
 - Applicants or participants who believe that they have been subject to unlawful discrimination may notify DOH either orally or in writing.
 - Within 10 business days of receiving the complaint, DOH will provide a written notice to those alleged to have violated the rule. DOH will also send a written notice to the complainant informing them that notice was sent to those alleged to have violated the rule, as well as information on how to complete and submit a housing discrimination complaint form to HUD's Office of Fair Housing and Equal Opportunity (FHEO).
 - DOH will attempt to remedy discrimination complaints made against DOH and will conduct an investigation into all allegations of discrimination.
 - Within 10 business days following the conclusion of DOH's investigation, the PHA will provide the complainant and those alleged to have violated the rule with findings and either a proposed corrective action plan or an explanation of why corrective action is not warranted.
 - DOH will keep a record of all complaints, investigations, notices, and corrective actions. (See Chapter 16)

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 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 can be viewed easily from a wheelchair.

2-II.B. DEFINITION OF REASONABLE ACCOMMODATION

A reasonable accommodation is an adjustment made to a rule, policy, practice, or service that allows a person with a disability to have equal access to the HCV program. For example, reasonable accommodations may include making home visits, extending the voucher term, or approving an exception payment standard in order for a participant to lease an accessible unit. 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 individual's disability.
- Higher utility allowance if the individual experiences larger utility costs due to their disability.
- Allowing the addition of 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 they are a person with a disability and need something changed in order to accommodate their 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, the request can be heard orally and written for the individual allowing them to confirm the accuracy.
- 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.
- If the granted accommodation is unit-specific, the request must be re-verified at the time the participant moves into a new unit.

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 specific type of 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 an additional bedroom for medical purposes, a higher payment standard for a unit that meets the needs of their disability, or an extension on their searching voucher.

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]
- Third-party verification should not be obtained from an individual who is directly affiliated with the participant's voucher administration (residential coordinator, housing case manager, etc.). (The VASH Program is exempt from this requirement as the VA Case Manager and/or VA Social Worker are not responsible for voucher administration).
- 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 an interactive dialogue 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.
- If DOH denies a request for an accommodation because there is no relationship, or nexus, found between the disability and the requested accommodation, the notice will inform the family of the right to appeal DOH's decision through an informal review (if applicable) or informal hearing (see Chapter 16).
- 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 enter into an interactive dialogue 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 PHA Plan provides information about self-evaluation, needs assessment, and transition plans.

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.

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

When a participant family's assistance is terminated, the notice of termination must inform them of 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

DOH will offer competent services free of charge to the LEP person.

- DOH will utilize a language line for telephone interpreter services.
- When exercising the option to conduct remote briefings, informal reviews, or hearings, however, DOH will coordinate with a remote interpretation service which, when available, uses video conferencing technology rather than voice-only interpretations.
- 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. DOH, at its discretion, may choose to use the language services even when LEP persons desire to use an interpreter of their choosing. The interpreter may be a family member or friend. If the interpreter chosen by the family is a minor, the PHA will not rely on the minor to serve as the interpreter.

- DOH will analyze 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 and possible, according to its language assistance plan (LAP), 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.

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:

- persons currently engaged in the illegal use of drugs
- persons 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

Nothing in the above section shall be construed to exclude as a qualified individual with a disability an individual who:

- has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;
- is participating in a supervised rehabilitation program and is no longer engaging in such use; or
- is erroneously regarded as engaging in such use, but is not engaging in such use (42 U.S.C. § 12114(b))

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.

While awarded, DOH will assist youth at least 18 years old and not more than 24 years old (have not reached their 25th birthday) who do not have adequate housing.

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

- Identifying and ensuring certification of FUP eligible youth referred by the local coordinated entry system that may be on DOH's waiting list and ensuring that the youth maintain their current position on the waiting list after certification;
- Appropriately placing all FUP eligible youth referred from the public child welfare agencies/local coordinated entry system on the HCV waiting list in order of first come, first served or to administer the vouchers in accordance with applicable program regulations and requirements;
- 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;
- 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 or 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.

Rental Assistance for Non-Elderly Persons with Disabilities

DOH is committed to affirmatively furthering fair housing as it relates to the rental assistance for non-elderly persons with disabilities grant (NED).

Steps DOH 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;
- DOH will not deny persons who qualify 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.
 - Not currently be receiving a duplicative subsidy.
- 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); 24 CFR 5.403; FR Notice 02/03/12; Notice PIH 2014-20]

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 of actual or perceived sexual orientation, gender identity, or marital status, a single person, who may be an elderly person, disabled person, near-elderly person, or any other single person; or a group of persons residing together. Such groups include, 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 the gender with which a person identifies, regardless of the sex assigned to that person at birth and regardless of the person's perceived gender identity. Perceived gender identity means the gender with which a person is perceived to identify based on that person's appearance, behavior, expression, other gender related characteristics, or sex assigned to the individual at birth or identified in documents.

Sexual orientation means one's emotional or physical attraction to the same and/or opposite sex (e.g., homosexuality, heterosexuality, bisexuality, etc.)

- 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; Notice PIH 2017-08]

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.)
- In accordance with Notice PIH 2017-08, for HUD–Veterans Affairs Supportive Housing (HUD–VASH) vouchers, when the veteran is the perpetrator of domestic violence, dating violence, sexual assault, or stalking, the victim must continue to be assisted. Upon termination of the perpetrator’s HUD–VASH voucher, the victim should be given a regular HCV if one is available, and the perpetrator’s HUD–VASH voucher should be used to serve another eligible family. If a regular HCV is not available, the victim will continue to use the HUD–VASH voucher, which must be issued to another eligible family upon the voucher’s turnover.
- If a court determines the disposition of property between members of the assisted family, 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 must 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 the child has been temporarily or permanently removed from the home.
- If the child has been permanently removed from the home, they will also be removed from the subsidized household.
- If the child has been temporarily removed, the appropriate agency must confirm that the goal is family reunification within 6 months. Failure to obtain this confirmation will result in the child's removal from the household.

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.
- DOH will request verification of the family member's permanent absence from a knowledgeable medical professional. If the knowledgeable 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 DOH 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 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)].

Spouses/domestic partners/significant others cannot be considered as a live-in aide. Other relatives may be approved as live-in aides if they meet all of the criteria defining a live-in aide. Because live-in aides are household members and not family members, a relative who serves as a live-in aide would not be considered a remaining member of a tenant family and has no right to the voucher.

- 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, nurse, or licensed social worker, that the live-in aide is essential for the care and well-being of the elderly, near-elderly, or disabled family member.
- The knowledgeable professional cannot be directly affiliated with the management of the housing assistance/voucher assistance.
- For continued approval, the family must submit a Request for Continued Need form annually.
- 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 also be required to declare that they are not the spouse/domestic partner/significant other of the head of household or other family member who requires the live-in aide. The live-in aide will also be required to declare that the subsidized unit is their primary place of residence.
- The live-in aide will not sign the lease, but their 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 state-issued 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/HCV or public housing assistance under the 1937 Act.
 - The person is not eligible per section 3-III.C. of this Administrative Plan – in relation to their criminal background check results.

- DOH 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.

- If the live-in aide is unable to provide the required documents or if the live-in aide fails a criminal background check, the tenant will have 90 days to find a new live-in aide before they would experience a decrease in voucher size.

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 income does not exceed the higher of: (1) 30% of AMI or (2) the federal poverty rate. HUD will make these determinations and the information will be available in the Income Limit Table provided annually.

Area median income is determined by HUD, with adjustments for smaller and larger families. 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; 24 CFR 982.201(b)]
 - 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 selected from a DOH waiting list.

- 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 2018-24]

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, the form HUD-52675 Debts Owed to Public Housing Agencies and Terminations, 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, FR Notice 4/10/06, and FR Notice 9/21/16]

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 their 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 Notice 4/10/06, FR Notice 9/21/16].

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 their parents and the parents' income will not be considered when determining the student's eligibility if 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 their 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:

- The individual is at least 24 years old by December 31 of the award year for which aid is sought
- The individual is an orphan, in foster care, or a ward of the court, or was an orphan, in foster care, or ward of the court at any time when the individual was 13 years of age or older
- The individual is, or was immediately prior to attaining the age of majority, an emancipated minor or in legal guardianship as determined by a court of competent jurisdiction in the individual’s state of legal residence
- The individual is a veteran of the U.S. Armed Forces or is currently serving on active duty in the Armed Forces for other than training purposes
- The individual is a graduate or professional student
- The individual is married
- The individual has one or more legal dependents other than a spouse (for example, dependent children or an elderly dependent parent)
- The individual has been verified during the school year in which the application is submitted as either an unaccompanied youth who is a homeless child or youth, or as unaccompanied, at risk of homelessness, and self-supporting by:
 - A local educational agency homeless liaison
 - The director of a program funded under subtitle B of title IV of the McKinney-Vento Homeless Assistance Act or a designee of the director
 - A financial aid administrator
- The individual is a student for whom a financial aid administrator makes a documented determination of independence by reason of other unusual circumstances

- The individual was not claimed as a dependent by their 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 their parents. This certification must be signed by the individual providing the support and must be submitted even if no assistance is being provided.

If DOH determines that an individual meets the definition of a *vulnerable youth* such a determination is all that is necessary to determine that the person is an *independent student* for the purposes of using only the student's income for determining eligibility for assistance.

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.

Vulnerable Youth

A *vulnerable youth* is an individual who meets the U.S. Department of Education's definition of *independent student* in paragraphs (b), (c), or (h), as adopted in Section II of FR Notice 9/21/16:

- The individual is an orphan, in foster care, or a ward of the court, or was an orphan, in foster care, or ward of the court at any time when the individual was 13 years of age or older
- The individual is, or was immediately prior to attaining the age of majority, an emancipated minor or in legal guardianship as determined by a court of competent jurisdiction in the individual's state of legal residence
- The individual has been verified during the school year in which the application is submitted as either an unaccompanied youth who is a homeless child or youth, or as unaccompanied, at risk of homelessness, and self-supporting by:
 - A local educational agency homeless liaison

- The director of a program funded under subtitle B of title IV of the McKinney-Vento Homeless Assistance Act or a designee of the director
- A financial aid administrator

Determining Student Eligibility

If a student is applying for assistance on their own, apart from their 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 their 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 their 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 their parents and has not had contact with or does not know where to contact their 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.

3-II.F. EIV SYSTEM SEARCHES

[Notice PIH 2018-18; EIV FAQs; EIV System Training 9/30/20]

Existing Tenant Search

Prior to admission to the program, the PHA must search for all household members using the EIV Existing Tenant Search module. The PHA must review the reports for any SSA matches involving another PHA or a multifamily entity and follow up on any issues identified. The PHA must provide the family with a copy of the Existing Tenant Search results if requested. At no time may any family member receive duplicative assistance.

If the tenant is a new admission to the PHA, and a match is identified at a multifamily property, the PHA must report the program admission date to the multifamily property and document the notification in the tenant file. The family must provide documentation of move-out from the assisted unit, as applicable.

- DOH will contact the PHA or owner identified in the report to confirm that the family has moved out of the unit and obtain documentation of current tenancy status, including a form HUD-50058 or 50059, as applicable, showing an end of participation. The PHA will only approve assistance contingent upon the move-out from the currently occupied assisted unit.

Debts Owed to PHAs and Terminations

All adult household members must sign the form HUD-52675 Debts Owed to Public Housing and Terminations. Prior to admission to the program, DOH must search for each adult family member in the Debts Owed to PHAs and Terminations module.

If a current or former tenant disputes the information in the module, the tenant should contact DOH directly in writing to dispute the information and provide any documentation that supports the dispute. If DOH determines that the disputed information is incorrect, DOH will update or delete the record from EIV. Former tenants may dispute debt and termination information for a period of up to three years from the end of participation date in the program.

- DOH will require each adult household member to sign the form HUD-52675 once at the eligibility determination. Any new members added to the household after admission will be required to sign the form HUD-52675 prior to being added to the household.

- DOH will search the Debts Owed to PHAs and Terminations module as part of the eligibility determination for new households and as part of the screening process for any household members added after the household is admitted to the program. If any information on debts or terminations is returned by the search, DOH will determine if this information warrants a denial in accordance with the policies in Part III of this chapter.

Income and Income Validation Tool (IVT) Reports

For each new admission, DOH is required to review the EIV Income and IVT Reports to confirm and validate family reported income within 120 days of the IMS/PIC submission date of the new admission. DOH must print and maintain copies of the EIV Income and IVT reports in the tenant file and resolve any discrepancies with the family within 60 days of the EIV Income or IVT report dates.

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.

While the regulations state that the PHA must prohibit admission for certain types of criminal activity and give the PHA the option to deny for other types of previous criminal history, more recent HUD rules and OGC guidance must also be taken into consideration when determining whether a particular individual's criminal history merits denial of admission.

When considering any denial of admission, PHAs may not use arrest records as the basis for the denial. Further, HUD does not require the adoption of "One Strike" policies and reminds PHAs of their obligation to safeguard the due process rights of applicants and tenants [Notice PIH 2015-19].

HUD's Office of General Counsel issued a memo on April 4, 2016, regarding the application of Fair Housing Act standards to the use of criminal records. This memo states that a PHA violates the Fair Housing Act when their policy or practice has an unjustified discriminatory effect, even when the PHA had no intention to discriminate. Where a policy or practice that restricts admission based on criminal history has a disparate impact on a particular race, national origin, or other protected class, that policy or practice is in violation of the Fair Housing Act if it is not necessary to serve a substantial, legitimate, nondiscriminatory interest of the PHA, or if that interest could be served by another practice that has a less discriminatory effect [OGC Memo 4/4/16].

PHAs who impose blanket prohibitions on any person with any conviction record, no matter when the conviction occurred, what the underlying conduct entailed, or what the convicted person has done since then will be unable to show that such policy or practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest. Even a PHA with a more tailored policy or practice that excludes individuals with only certain types of convictions must still prove that its policy is necessary. To do this, the PHA must show that its policy accurately distinguishes between criminal conduct that indicates a demonstrable risk to resident safety and property and criminal conduct that does not.

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 three 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 three 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 three 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, any record of convictions, arrests, or evictions of household members related to the use of illegal drugs or the abuse of alcohol. A record or records of arrest will not be used as the sole basis of determining reasonable cause. 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, 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; PIH 2015-19; 4/4/16 Guidance from the Office of General Counsel]

HUD permits, but does not require, DOH to deny assistance if DOH determines that any household member is currently engaged in, or has been convicted of, 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 been convicted of any of the following criminal activities, within the past one year, the family will be denied assistance (DOH's decision to deny assistance is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8):

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 one year.

Records of arrests for drug-related or violent criminal activity within the past one year (“preponderance of evidence”), although a record or records of arrest will not be used as the sole basis for the denial or proof that the applicant engaged in disqualifying criminal 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 an automatic review by DOH to determine whether or not to provide assistance:

1. Felony convictions for sexual assault pursuant to Colorado Revised Statutes Title 18, Article 3, Part 4, within the past 10 years;
2. Felony convictions for assault pursuant to Colorado Revised Statutes Title 18, Article 3, Part 2, within the past one year;
3. 5 or more convictions for assault of any kind pursuant to Colorado Revised Statutes Title 18, Article 3, Part 2, within the past 5 years;
4. Felony convictions for arson pursuant to Colorado Revised Statutes Title 18, Article 3, Part 4, or felony convictions for homicide pursuant to Colorado Revised Statutes Title 18, Article 3, Part 1, within the past 10 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:

PHAs are not permitted to deny assistance to a family because the family previously failed to meet its obligations under the Family Self-Sufficiency (FSS) program [24 CFR 984.101(d)].

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 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 owes rent or other amounts to any PHA in connection with Section 8 or other public housing assistance under the 1937 Act, 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.

When denying admission due to family debts as shown in HUD's EIV system, the PHA will provide the family with a copy of the EIV Debt Owed to PHA and Termination report.

If the family wishes to dispute the information in the report, the family must contact the PHA that entered the information in EIV in writing, explaining why EIV information is disputed. The family must also provide a copy of the letter and all applicable verification to the PHA to support the family's claim. The PHA will consider the information provided by the family prior to issuing a notice of denial.

- 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.

- If an applicant or participant's abusive, violent, and/or threatening behavior results in a police report, order of protection (restraining order), or other law enforcement intervention, this documentation will be sufficient for proceeding with denial of admittance or termination.

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.

While DOH has regulatory authority to use criminal conviction records for the purpose of applicant screening for admission, there is no corresponding authority to use these records to check for criminal and illegal drug activity by participants, and therefore, DOH may not use records for this purpose.

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)].

- DOH will use the Dru Sjodin National Sex Offender database to screen applicants for admission and all household member ages 14 and over annually at the time of the family's reexamination. [www.nsopw.gov]

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)].

Automatic Review based on Criminal History Requirements [24 CFR 982.552 (e)]

These additional requirements will result in an automatic review by DOH staff to determine the decision to provide assistance:

1. Felony convictions for sexual assault pursuant to Colorado Revised Statutes Title 18, Article 3, Part 4, within the past 10 years;
2. Felony convictions for assault pursuant to Colorado Revised Statutes Title 18, Article 3, Part 2, within the past one year;
3. 5 or more convictions for assault pursuant to Colorado Revised Statutes Title 18, Article 3, Part 2, of any kind within the past 5 years; or
4. Felony convictions for arson pursuant to Colorado Revised Statutes Title 18, Article 3, Part 4, or felony convictions for homicide Colorado Revised Statutes Title 18, Article 3, Part 1, within the past 10 years.

If an applicant's or household member's criminal record reflects any of the above criminal convictions within the given timeframes, DOH will conduct the reviews in accordance with the following procedures:

1. Notification to applicants: DOH staff will notify applicants requiring a review in writing that their application was subject to further review based on the criminal history of the applicants. This notification will provide the conviction information and a notice explaining the procedures of the review and the timeframe to provide supporting documentation. Applicants will be given 10 business days to provide documentation to support their application and to dispute any conviction information provided in the notification.

2. Documents to support an application. The applicant bears no burden of proof. However, the applicant may provide the following evidence to support their application:

- A positive record while incarcerated (e.g., program participation, low rates of incidents, etc.);
- Completion of a higher education degree or vocational program;
- Steady employment or holding of a position of meaningful responsibility for at least two years;
- Successful completion of established drug rehabilitation program;

- Completion of a restorative justice program;
- Completion of an anger management program; or
- Letters of support from community groups, parole officers, employers, or other responsible parties in a position to vouch for the applicant.

3. Decision-making process and decisions. DOH staff conducting the automatic review will review all relevant information. After DOH staff reviews all the information, the staff will vote to allow or deny assistance. In determining a decision, DOH staff may take into account the following factors:

- Criminal history, including time since most recent conviction, time since release from prison or jail, and number and nature of conviction(s);
- Rehabilitation, including history of drug and alcohol use, substance use treatment participation and completion, and tenure on community supervision;
- Community ties and support, including family ties, household composition, support networks (both who supports the applicant and who the applicant supports), and involvement in community groups; and
- Employment and education history, including current employment, employment stability, and current participation in education or training programs.

DOH staff may consider factors other than those listed above that they deem relevant. If any factors were considered in the decision other than those listed above, DOH staff will specify the factors and explain the factors in the decision-making process. For any denial based on a household member's criminal record, DOH may provide assistance to the remaining household members after excluding the denied family member.

DOH will make its determination on the day of the review unless DOH staff determines additional information is required to make their decision.

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, if requested. 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, if requested. 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' safety or property
- The effects that denial 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 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
- While a record or records of arrest will not be used as the sole basis for denial, an arrest may trigger an investigation to determine whether the applicant actually engaged in disqualifying criminal activity. As part of its investigation, DOH may obtain the police report associated with the arrest and consider the reported circumstances of the arrest. DOH may also consider:
 - Any statements made by witnesses or the applicant not included in the police report
 - Whether criminal charges were filed
 - Whether, if filed, criminal charges were abandoned, dismissed, not prosecuted, or ultimately resulted in an acquittal
 - Any other evidence relevant to determining whether or not the applicant engaged in disqualifying activity
- Evidence of criminal conduct will be considered if it indicates a demonstrable risk to safety and/or property
- 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 the PHA uses a criminal record or sex offender registration information obtained under 24 CFR 5, Subpart J, as the basis of denial of admission, a copy of the record must be made available with an opportunity for the applicant to dispute the accuracy and relevance of the information in the informal review process in accordance with program requirements [24 CFR 5.903(f), 5.905(d), and 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. 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 or as a direct result of the fact 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 VAWA Notice of Occupancy Rights (form HUD-5380) and a domestic violence certification form (HUD-5382) 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, poor rental history, a record of previous damage to an apartment, a prior arrest record) due to adverse factors that would warrant denial under DOH’s policies.
- While DOH is not required to identify whether adverse factors that resulted in the applicant’s denial are a result of domestic violence, dating violence, sexual assault, or stalking, the applicant may inform the PHA that their status as a victim is directly related to the grounds for the denial. The PHA will request that the applicant provide enough information to the PHA to allow the PHA to make an

objectively reasonable determination, based on all circumstances, whether the adverse factor is a direct result of their status as a victim.

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. DOH will request in writing that an applicant wishing to claim protection under VAWA notify DOH within 10 business days.

Documentation

Victim Documentation [24 CFR 5.2007]

- If an applicant claims the protection against denial of assistance that VAWA provides to victims of domestic violence, dating violence, sexual assault, or stalking, 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 their 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 their 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 or contract agency.

- 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 contractor agency will clearly state what, if any, preference they are currently accepting applications for.

Completed applications must be returned to DOH contractor agency by mail, electronically, by fax, or submitted in person or as determined by contract agency 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

DOH will send written notification of the preliminary eligibility determination within 30 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 contract agency's waiting list. Depending on the demand for housing in the contract agency's jurisdiction, and the length of the waiting list, the contract agency'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 contract agency's office during specified dates and business hours defined by the contract agency. Individuals who have a disability, which would prevent them from making an application, may contact the contract agency to make special arrangements/reasonable accommodations to complete their application.

When the application is received, the contract agency 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 and sorted according to preference and then date/time.
2. When the applicant's name reaches the top of the waiting list, the contract agency 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 contract agency 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 requires the PHA to maintain a single waiting list for the HCV program unless it serves more than one county or municipality. Such PHAs are permitted, but not required, to maintain a separate waiting list for each county or municipality served.

- DOH will maintain a separate waiting list for each partner agency serving all 64 counties in Colorado (DOH's jurisdiction). DOH will also maintain a centralized waiting list consisting of each applicant from the individual partner agency lists, sorted by preferences and date/time.

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/HCV, 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 contractor agency 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 contractor agency
- 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 applicant must also inform DOH whenever there is a change in preference. These 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 as needed 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, by email, or by fax. Responses should be postmarked or received by DOH not later than 10 business days from the date of purge 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 Director of the Office of Rental Assistance 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 ACC + additional 10% to assist certain household types
VASH	1,201
Non Elderly Disabled	1,450
Mainstream	575
Family Unification Program	277
FSS	98

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 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.

- **1st Preference:**
 - **Households that include someone experiencing homelessness-**
DOH will use the 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 (currently experiencing domestic violence resulting in a need for housing).**
 - 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 intellectual and/or developmental disabilities.
- **Current Participants in the following DOH subsidy programs:**
 - Permanent Supportive Housing (PSH)
 - Tenant Based Rental Assistance (TBRA)
 - Section 811 Project Rental Assistance (S811 PRA)
 - State Housing Voucher (SHV)
 - Homeless Solutions Program - State Housing Voucher (HSP-SHV)
 - Mental Health - State Housing Voucher (MH-SHV)

- Recovery-Oriented Housing Program - State Housing Voucher (ROHP-SHV)
 - Community Access Team Vouchers (CATV)
 - Rapid Rehousing (RRH)
- **2nd Preference:**
 - **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 percent of the families admitted to the HCV program during DOH’s fiscal year. ELI families are those with annual incomes at or below the federal poverty level or 30 percent of the area median income, whichever number is higher. 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.
- 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, DOH and/or its contractor will notify the family [24 CFR 982.554(a).

- DOH 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 2018-24].

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, they 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, and must complete required forms, provide required signatures, and submit 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]

Notification of Briefing

Prior to issuance of a voucher, 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 in individual face-to-face meetings, through group briefing sessions, or via remote briefing sessions.

- Families will be notified of their eligibility for assistance at the time they are invited to attend a briefing. The notice will be sent by first class mail and will also be sent by email if the family has provided a valid email address to DOH.
- The notice will advise the family of the type of briefing, who is required to be present at the briefing, and the date and time of the briefing. The notice will also inform the family of any additional requirements for in-person or remote briefings as addressed in relevant policy elsewhere in this section.
- 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.

In-Person Briefings

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.

- In-person briefings will generally be conducted in group meetings. At the family's written request, DOH may provide an individual briefing.
- 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 interpretation services in accordance with DOH's LEP plan (See Chapter 2).

Attendance

- Applicants who fail to attend a scheduled in-person 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).

Remote Briefings [Notice PIH 2020-32]

Remote briefings may be conducted over the phone, via video conferencing, or through other virtual platforms.

- DOH has the sole discretion to require that briefings be conducted remotely in case of local, state, or national physical distancing orders, and in cases of inclement weather or natural disaster. If DOH schedules a remote briefing, DOH will conduct a face-to-face briefing upon request of the applicant as a reasonable accommodation for a person with a disability if safety and health concerns can be reasonably addressed.
- In addition, DOH will conduct a briefing remotely upon request of the applicant as a reasonable accommodation for a person with a disability, if an applicant does not have child care or transportation that would enable them to attend the briefing, or if the applicant believes an in-person briefing would create an undue health risk. DOH will consider other reasonable requests for a remote briefing on a case-by-case basis.

Accessibility Requirements for Persons with Disabilities and LEP Individuals

As with in-person briefings, the platform for conducting remote briefings must be accessible and the briefing conducted in accordance with Section 504 and accessibility requirements. This includes ensuring any information, websites, emails, digital notifications, and other virtual platforms are accessible for persons with vision, hearing, and other disabilities. Further, providing effective communication in a digital context may require the use of individualized auxiliary aids or services, such as audio description, captioning, sign language and other types of interpreters, keyboard accessibility, accessible documents, screen reader support, and transcripts. Auxiliary aids or services must be provided in accessible formats, in a timely manner, and in such a way to protect the privacy and independence of the individual.

If no method of conducting a remote briefing is available that appropriately accommodates an individual's disability, DOH may not hold against the individual their inability to participate in the remote briefing, and DOH should consider whether postponing the remote briefing to a later date is appropriate or whether there is a suitable alternative.

Due to the individualized nature of disability, the appropriate auxiliary aid or service necessary, or reasonable accommodation, will depend on the specific circumstances.

Limited English Proficiency (LEP) requirements also apply to remote briefings, including the use of interpretation services and document translation. See Chapter 2 for a more thorough discussion of accessibility and LEP requirements, all of which apply in the context of remote briefings.

Conducting Remote Briefings

DOH must ensure that the lack of technology or inability to use technology for remote briefings does not pose a disadvantage to families that may not be apparent to DOH. DOH must ensure that the family has appropriate technological access in order to fully participate in the remote briefing.

- At least 10 business days prior to scheduling the remote briefing, DOH will provide written notification via first class mail and/or email to families participating in the briefing to advise of technological requirements and to request the family notify DOH of any known barriers. If any family does not respond within five business days, or if the written notification is returned by the post office or the email is rejected, DOH will contact the family by telephone to identify potential technological barriers and to determine which technology resources are accessible to the family. DOH will resolve any barriers using the guidance in Section 6 of Notice PIH 2020-32, including offering the family the opportunity to attend an in-person briefing or have a one-on-one briefing over the phone, as appropriate.
- DOH will conduct remote briefings via a video conferencing platform when available. If applicants are unable to adequately access the video conferencing platform, the briefing will be conducted by telephone conferencing call-in. If the family is unable to adequately access the telephone conferencing call-in, the remote briefing will be postponed, and an in-person alternative or one-on-one briefing over the phone will be provided.
- DOH will provide login information and/or conferencing call-in information and an electronic copy of the briefing packet via email at least five business days before the briefing. DOH will provide a paper copy of the briefing packet upon family request, and may reschedule the briefing to allow adequate time for the family to receive the physical briefing packet.

- DOH will ensure that all electronic information stored or transmitted as part of the briefing meets the requirements for accessibility for persons with disabilities and persons with LEP, and is secure, including ensuring personally identifiable information (PII) is protected.
- DOH will ensure that families who participate in remote briefings have the opportunity to ask questions as part of the briefing.
- If families lose connectivity during any remote briefing or otherwise feel they were unable to access information presented during the briefing, the family may request a one-on-one briefing over the phone or in person with DOH.

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;
- An explanation of how portability works. DOH may not discourage the family from choosing to live anywhere in the DOH jurisdiction or outside the DOH jurisdiction under portability, unless otherwise expressly authorized by statute, regulation, PIH Notice, or court order;
- DOH must inform the family of how portability may affect the family’s assistance through screening, subsidy standards, payment standards, and any other elements of the portability process which may affect the family’s assistance;
- The advantages of areas that do not have a high concentration of low-income families; and

In briefing a family that includes a person with disabilities, PHA must also take steps to ensure effective communication.

Briefing Packet [24 CFR 982.301(b); New HCV GB, *Housing Search and Leasing*, p. 7]

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

- The term of the voucher, voucher suspensions, and DOH’s policies on any extensions 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 and an explanation of how portability works, including information on how portability may affect the family’s assistance through screening, subsidy standards, payment standards, and any other elements of the portability process that may affect the family’s assistance.
- 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.
- Materials (e.g., brochures) on how to select a unit and any additional information on selecting a unit that HUD provides. (e.g., HUD brochure entitled, “A Good Place to Live”)
- Information on federal, state and local equal opportunity laws and a copy of the housing discrimination complaint form, including information on how to complete the form and file a fair housing complaint.
- A list of landlords known to DOH/DOH’s contractors who may be willing to lease a unit to the family or other resources (e.g., newspapers, organizations, online search tools) known to DOH/DOH’s contractors that may assist the family in locating a unit. DOH/DOH’s contractors must ensure that the list of landlords or other resources covers areas outside of poverty or minority concentration.
 - All participants will be provided the following resources where they can search for available units:
 - Zillow Rental
 - Rent Café

- CraigsList
- 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 and any obligations of other special programs if the family is participating in one of those programs.
- 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.
- An explanation of the advantages of moving to an area that does not have a high concentration of low-income families.
- The HUD pamphlet on lead-based paint entitled, “Protect Your Family from Lead in Your Home.”

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 2017-12].

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

- Information on how to fill out and file a housing discrimination complaint form
- The form HUD-5380 domestic violence certification form and the form HUD-5382 notice of occupancy rights, which contains information on VAWA protections for victims of domestic violence, dating violence, sexual assault, and stalking

- “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, 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 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 any 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 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 is expected to share a bedroom with their child.
- Household members of the opposite sex, who are both the age of 3 or younger, 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:

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

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 not directly affiliated with the management of the participant's housing assistance), 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 and confirmed at the time of a scheduled HQS inspection.

DOH will notify the family of its determination within 10 business days of receiving the family's completed 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 AND EXTENSIONS

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
- Extensions beyond 365 days will require the reasonable accommodation verification process to be completed again
- 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)]

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

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 DOH has approved a tenancy, DOH will require the family 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 when the waiting list is open 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.

Summary of Income Included and Excluded by Person	
Live-in aides	Income from all sources is excluded [24 CFR 5.609(c)(5)].
Foster child or foster adult	Income from all sources is excluded [24 CFR 5.609(c)(2)].
Head, spouse, or co-head Other adult family members	All sources of income not specifically excluded by the regulations are included.
Children under 18 years of age	Employment income is excluded [24 CFR 5.609(c)(1)]. All other sources of income, except those specifically excluded by the regulations, are included.
Full-time students 18 years of age or older (not head, spouse, 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 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 knowledgeable medical professional and will use this determination. If the knowledgeable 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 of time. It is designed to lead to a higher level of proficiency, and it enhances the individual’s ability to obtain employment. It may have performance standards to measure proficiency. Training may include, but is not limited to: (1) classroom training in a specific occupational skill, (2) on-the-job training with wages subsidized by the program, or (3) basic education” [expired Notice PIH 98-2, p. 3].

- 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]

- *Effective January 1, 2024, no further EID admissions will be approved as a result of HOTMA legislation. Existing EID participants will be able to utilize their remaining EID clock.*

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 their "baseline income." The family member's baseline income is their income immediately prior to qualifying for the EID. The family member's baseline income remains constant throughout the period that they are participating in the EID.

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

Calculation Method

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 initial 12 months are consecutive.

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

Second 12-Month Exclusion

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 second 12 months are consecutive.

Lifetime Limitation

The EID has a two-year (24-month) lifetime maximum. The two-year eligibility period begins at the same time that the initial exclusion period begins and ends 24 months later. The two-year eligibility period runs for 24 consecutive months without a pause, even if the family member's earned income ends. The one-time eligibility for the EID applies even if the eligible individual begins to receive assistance from another housing agency, if the individual moves between public housing and Section 8 assistance, or if there are breaks in assistance.

- During the 24-month 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 their prequalifying income, when one of the exclusion periods ends, and at the end of the lifetime maximum eligibility period).

Families Receiving EID prior to May 9, 2016

Families who began the EID program prior to May 9, 2016 are grandfathered into the initial EID program. The initial EID program has a four-year (48-month) lifetime maximum. The initial and second 12 months can run cumulative rather than consecutive. The 48-month EID clock starts and stops as employment starts and stops.

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) [RHIIP FAQs]. (For a discussion of lump-sum payments that represent the delayed start of a periodic payment, most of which are counted as income, see sections 6-I.H and 6-I.I.)

Imputing Income from Assets [24 CFR 5.609(b)(3), 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 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. 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 effective date of changes to the passbook rate will be determined at the time of the review.
- The current DOH passbook savings rate is 0.05%.

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 they 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 *HCV 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 checking and savings accounts, 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 minus the balance 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, DOH 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. 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 [24 CFR 5.609(c)(14)].

- 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 their 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 2018-24]

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.H.) [24 CFR 5.609(c)(4)].
- Lump-sums or prospective monthly amounts received as deferred disability benefits from the Department of Veterans Affairs (VA) [24 CFR 5.609(c)(14)].

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 5/20/14]

In 2005, Congress passed a law (for Section 8/HCV programs only) requiring that certain student financial assistance be included in annual income. Prior to that, the full amount of student financial assistance was excluded. 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/HCV assistance on their own—that is, apart from their parents—through the HCV 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 5/20/14, p. 28939].

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

Financial assistance received for tuition and mandatory fees and charges (that are related to a student's field of study, such as lab fees) is fully excluded. The full list of included and excluded fees can be found in Notice PIH 2015-21.

6-I.M. ADDITIONAL EXCLUSIONS FROM ANNUAL INCOME

Other exclusions contained in 24 CFR 5.609(c) and updated by FR Notice 5/20/14 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 5/20/14]. 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.*, for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010.
- (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 Orange*-product liability litigation, M.D.L. No. 381 (E.D.N.Y.)
- (p) Payments received under 38 U.S.C. 1833© to children of Vietnam veterans born with spinal bifida, children of women Vietnam veterans born with certain birth defects, and children of certain Korean service veterans born with spinal bifida
- (q) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721)
- (r) 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)

- (s) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j))
- (t) 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)
- (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) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d))
- (w) 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)
- (x) Any amounts in an “individual development account” as provided by the Assets for Independence Act, as amended in 2002
- (y) Payments made from the proceeds of Indian tribal trust cases as described in Notice PIH 2013-30, “Exclusion from Income of Payments under Recent Tribal Trust Settlements” (25 U.S.C. 117b(a))
- (z) Major disaster and emergency assistance received under the Robert T. Stafford Disaster Relief and Emergency Assistance Act and comparable disaster assistance provided by states, local governments, and disaster assistance organizations
- (aa) Distributions from an ABLE account, and actual or imputed interest on the ABLE account balance

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

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 their 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-II.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

Home care 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 except 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 (see Exhibit 6.2).

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 their 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].

- Child care expense deductions are only eligible for the amount spent on behalf of a child/children who are part of the assisted family’s voucher household

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 their 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 their 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 their 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 a qualified local entity that either subsidizes child care costs or licenses child care providers. Families may present, and DOH will consider, justification for costs that exceed typical costs in the area.

6-II.G. PERMISSIVE DEDUCTION FOR GUARANTEED INCOME PROGRAM

Local and state governments and nonprofits are testing guaranteed income programs (also called universal basic income, basic income guarantee, or unconditional basic income). These guaranteed income programs provide individuals with monthly payments, usually for a defined period. Many potential participants in guaranteed income programs also rely on U.S. Department of Housing and Urban Development (HUD)-assisted housing.

Guaranteed income payments do not have to be counted as annual income:

If the payments end within 12 months. The PHA must exclude guaranteed income pilot payments from annual income if the payments fall in the “nonrecurring income” exclusion at 24 CFR 5.609(b)(24). Under the new regulation, nonrecurring income, which is income that will not be repeated in the coming year, is not counted as annual income. This includes guaranteed income pilot program payments, so long as the payments end within a 12-month period from the date of the family’s income examination.

If another public benefit program from the following list does not count the guaranteed income funds as income. The PHA may accept an annual income determination made by other means tested programs, so long as those determinations were made within the previous 12-month period. The eligible programs are:

- Temporary Assistance for Needy Families (TANF)
- Medicaid
- Supplemental Nutrition Assistance Program (SNAP)
- Earned Income Tax Credit
- Low-Income Housing Tax Credit
- Special Supplemental Nutrition Program for Woman Infants and Children
- Supplemental Security Income
- Other programs administered by HUD
- Other means-tested forms of federal public assistance for which HUD has established a memorandum of understanding or announced in the Federal Register

Guaranteed income would not be counted as monthly adjusted income:

If the PHA chooses to disregard the income for the purposes of monthly adjusted income. PHAs may establish a permissive deduction for guaranteed income payments under the public housing program, HCV program, and Moderate Rehabilitation programs under the new 24 CFR 5.611(b); however, PHAs will not receive additional subsidies to account for reduced tenant rents. Permissive deductions lower a family's adjusted income and reduce their income-based rent.

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 via the Colorado Electronic Benefit Transfer (EBT) card system.

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.

(3) Family income has decreased because of changed family circumstances, including the loss of employment.

(4) A death has occurred in the family.

- In order to qualify under this provision, a family must describe how the death has created a financial hardship (e.g., because of funeral-related expenses or the loss of the family member's income).

(5) The family has experienced other circumstances determined by DOH.

- DOH will review other hardship situations on a case-by-case basis.

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.

Example: Impact of Minimum Rent Exemption			
Assume DOH has established a minimum rent of \$25.			
Family Share – No Hardship		Family Share – With Hardship	
\$0	30% of monthly adjusted income	\$0	30% of monthly adjusted income
\$15	10% of monthly gross income	\$15	10% of monthly gross income
N/A	Welfare rent	N/A	Welfare rent
\$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 a zip code area or 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 DOH changes its payment standard schedule, resulting in a lower payment standard amount, during the term of a HAP contract, DOH is not required to reduce the payment standard used to calculate subsidy for families under HAP contract as long as the HAP contract remains in effect [FR Notice 11/16/16].

However, if DOH does choose to reduce the payment standard for families currently under HAP contract, the initial reduction to the payment standard may not be applied any earlier than the effective date of the family's second regular reexamination following the effective date of the decrease in the payment standard amount. At that point, DOH may either reduce the payment standard to the current amount in effect on DOH's payment standard schedule, or may reduce the payment standard to another amount that is higher than the normally applicable amount on the schedule. DOH may also establish different policies for designated areas within their jurisdiction (e.g., different zip code areas).

In any case, DOH must provide the family with at least 12 months' notice that the payment standard is being reduced before the effective date of the change. DOH's policy on decreases in the payment standard during the term of the HAP contract apply to all families under HAP contract at the time of the effective date of the decrease in payment standard within the designated area.

- If DOH changes its payment standard schedule resulting in a lower payment standard amount, during the term of a HAP contract, DOH will not reduce the payment standard used to calculate subsidy for families under HAP contract as long as the HAP contract remains in effect.
- DOH will not establish different policies for decreases in the payment standard for designated areas within their jurisdiction.

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 (Voucher 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. A family's utility allowance is determined by the size of dwelling unit leased by a family or the voucher unit size for which the family qualifies using PHA subsidy standards, whichever is the lowest of the two [FR Notice 06/25/14]. 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 [HCV GB, p. 18-8].

- 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 260.31¹; and

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

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

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

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

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

¹ Text of 45 CFR 260.31 follows.

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

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

HHS DEFINITION OF
"ASSISTANCE"

45 CFR: GENERAL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

260.31 What does the term "assistance" mean?

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

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

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

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

(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, or any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or 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.]

(18) Financial assistance received for tuition and mandatory fees and charges (that are related to a student's field of study, such as lab fees). The full list of included and excluded fees can be found in Notice PIH 2015-21.

(19) Income of live-in care providers who are being paid "Difficulty of Care" payments as outlined in Colorado Department of Health Care Policy and Financing (HCPF) Operational Memo Number: HCPF OM 20-001.

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 2018-18]

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 2018-18 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 2017-12; Notice PIH 2018-18]

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) and generally must be dated within 60 days of DOH and/or the contractor's request. The documents must not be damaged, altered or in any way illegible.
- Printouts from web pages are considered original documents.
- DOH staff or the contractor staff who views the original document must make a photocopy
- Any family self-certifications must be made in a format acceptable to DOH and must be signed by the family member whose information or status is being verified

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 2017-12; Notice PIH 2018-18]

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 and IVT Reports

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

- DOH contracting agencies will obtain income and IVT reports for annual reexaminations on a monthly basis. Reports will be generated as part of the regular reexamination process.
- Income and IVT 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 and IVT 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 earned income, and to verify and calculate 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 and IVT reports will be retained in participant files with the applicable annual or interim reexamination documents.

- When DOH determines through EIV 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 2018-18].

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 2017-12; Notice PIH 2018-18]

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). At DOH’s discretion, if additional paystubs are needed due to the family’s circumstances (e.g., sporadic income, fluctuating schedule, etc.), DOH may request additional paystubs or a payroll record.

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 email 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 2017-12; Notice PIH 2018-18]

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 2017-122018-18]

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

When HUD requires third-party verification, self-certification or “tenant declaration,” is used as a last resort when the PHA is unable to obtain third-party verification. Self-certification, however, is an acceptable form of verification when:

- A source of income is fully excluded
- Net family assets total \$5,000 or less and the PHA has adopted a policy to accept self-certification at annual recertification, when applicable
- The PHA has adopted a policy to implement streamlined annual recertifications for fixed sources of income (See Chapter 11)

When DOH was required to obtain third-party verification but instead 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 has not adopted a policy to accept self-certification of net family assets totaling \$5,000 or less. DOH requires that participants provide third party verification of all assets annually.
- 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 has not adopted a policy to implement streamlined annual recertifications.
- 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.

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.

Verification of Legal Identity for Adults	Verification of Legal Identity for Children
Certificate of birth, naturalization papers Church issued baptismal certificate Current, valid driver's license or Department of Motor Vehicles identification card U.S. military discharge (DD 214) Current U.S. passport Current government employer identification card with picture Additional Program Requirement: Birth Certificate	Certificate of birth Adoption papers Custody agreement Health and Human Services ID Certified school records 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 must be signed by the family member whose information or status is being verified.

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 themselves to be a participant.

7-II.B. SOCIAL SECURITY NUMBERS
[24 CFR 5.216 and Notice PIH 2018-24]

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 their 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 (e.g., a benefit award letter or Medicare card)
- 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 (e.g., welfare agency documents, military papers, or unemployment insurance documents)

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.

- Once an individual's status is classified as "verified" in HUD's EIV system, DOH will not remove and destroy copies of documentation accepted as evidence of social security numbers.

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 their 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 their parents (see below).

Independent Student

DOH will verify a student's independence from their parents to determine that the student's parents' income is not relevant for determining the student's eligibility by doing all of the following:

- Either reviewing and verifying previous address information to determine whether the student has established a household separate from their 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 the student’s prior year income tax returns to verify the student is independent or verifying the student meets the U.S. Department of Education’s definition of *independent student* (see section 3-II.E)
- 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, except in cases in which DOH determines that the student is a *vulnerable youth* (see section 3-II.E)

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. 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.
- The knowledgeable professional cannot be directly affiliated with the management of the housing assistance/voucher assistance.

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 ensure consistency in the determination of annual Social Security and SSI income, PHAs are required to use EIV-reported Social Security and SSI benefit amounts unless the tenant disputes the EIV-reported amount [Notice PIH 2018-24].

- 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 website at 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 website at www.ssa.gov or ask the family to request one by calling SSA at 1-800-772-1213. Once the participant has received the benefit verification letter they will be required to provide it to 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

- Regardless of whether or not the net family assets are equal to or less than \$5,000, DOH requires 3rd party documentation (e.g. bank statements) from the family to confirm the assets or the amount of income expected to be received from those assets on an annual basis.
- DOH will accept a family's self-declaration of assets equal to or less than \$5,000, and the amount of income expected to be received from those assets at time of reexamination so as not to hold up the completion of the reexamination. The DOH application and reexamination documentation collects this information and can be utilized as a self-declaration provided that the applicant/participant has listed their assets in addition to signing and dating the documentation. The family is required to provide the requested third party documentation to support the self-declaration within 30 days following the effective date of the reexamination.

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 they have given this \$10,000 to their 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 their 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 **[Notice PIH 2015-21]**

Any financial assistance, in excess of amounts received for tuition, fees, and other required charges that a person attending an institution of higher education receives under the Higher Education Act of 1965, from private sources, or from an institution of higher education must be considered income unless the student is over the age of 23 with dependent children 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 their 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, fees, and other required charges.
- 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, does not have a dependent child, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the income of the student's parents must be considered when determining income eligibility, unless the student is determined independent from their parents or a *vulnerable* youth in accordance with DOH policy [24 CFR 5.612, FR 4/10/06, p. 18146, and FR Notice 9/21/16].

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 Expense

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 their 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>All non-citizens claiming eligible status must sign a declaration of eligible immigrant status on a form acceptable to DOH. Except for persons 62 or older, all non-citizens must sign a verification consent form Additional documents are required based upon the person's status.</p>	
<p>Elderly Non-citizens 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>All other Non-citizens 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) Form I-94 Arrival-Departure Record annotated with one of the following:</p> <ul style="list-style-type: none"> • “Admitted as a Refugee Pursuant to Section 207” • “Section 208” or “Asylum” • “Section 243(h)” or “Deportation stayed by Attorney General” • “Paroled Pursuant to Section 221 (d)(5) of the USCIS” 	<p>Form I-94 Arrival-Departure Record with no annotation accompanied by:</p> <ul style="list-style-type: none"> • A final court decision granting asylum (but only if no appeal is taken); • A letter from a USCIS asylum officer granting asylum (if application is filed on or after 10/1/90) or from a USCIS district director granting asylum (application filed before 10/1/90); • A court decision granting withholding of deportation; or • A letter from an asylum officer granting withholding or deportation (if application filed on or after 10/1/90).
<ul style="list-style-type: none"> • Form I-688 Temporary Resident Card annotated “Section 245A” or Section 210”. 	<ul style="list-style-type: none"> • Form I-688B Employment Authorization Card annotated “Provision of Law 274a.12(11)” or “Provision of Law 274a.12”.
<ul style="list-style-type: none"> • A receipt issued by the USCIS indicating that an application for issuance of a replacement document in one of the above listed categories has been made and the applicant’s entitlement to the document has been verified; or • Other acceptable evidence. If other documents are determined by the USCIS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the <i>Federal Register</i> 	

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 once every 24 months during the term of the contract, and at other times as needed, to determine that the unit meets HQS.

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

Former 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 their 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); FR Notice 1/18/17]

HUD requires the PHA to define life-threatening conditions and to notify the owner or the family (whichever is responsible) of the corrections required. A report of life-threatening condition(s) must be inspected within 24 hours of the report. 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
 - A fuel storage vessel, fluid line, valve, or connection that supplies fuel to a HVAC unit is leaking or a strong odor is detected with potential for explosion or fire or that results in a health risk if inhaled
 - Any electrical problem or condition that could result in shock or fire
 - A light fixture is readily accessible, is not securely mounted to the ceiling or wall, and electrical connections or wires are exposed
 - A light fixture is hanging by its wires
 - A light fixture has a missing or broken bulb, and the open socket is readily accessible to the tenant during the day-to-day use of the unit
 - A receptacle (outlet) or switch is missing or broken and electrical connections or wires are exposed
 - An open circuit breaker position is not appropriately blanked off in a panel board, main panel board, or other electrical box that contains circuit breakers or fuses
 - A cover is missing from any electrical device box, panel box, switch gear box, control panel, etc., and there are exposed electrical connections
 - Any nicks, abrasions, or fraying of the insulation that exposes conducting wire
 - Exposed bare wires or electrical connections
 - Any condition that results in openings in electrical panels or electrical control device enclosures
 - Water leaking or ponding near any electrical device
 - Any condition that poses a serious risk of electrocution or fire and poses an immediate life-threatening condition

- Absence of a working heating system when outside temperature is below 60 degrees Fahrenheit
- Utilities not in service, including no running hot water
- Conditions that present the imminent possibility of injury
- Obstacles that prevent safe entrance or exit from the unit
 - Any components that affect the function of the fire escape are missing or damaged
 - Stored items or other barriers restrict or prevent the use of the fire escape in the event of an emergency
 - The building's emergency exit is blocked or impeded, thus limiting the ability of occupants to exit in a fire or other emergency
- Absence of a functioning toilet in the unit
- Absence of, or an inoperable, smoke detector
- Absence of, or an inoperable, required Carbon Monoxide Detector
- Missing, damaged, discharged, overcharged, or expired fire extinguisher (where required)
- Gas/oil-fired water heater or heating, ventilation, or cooling system with missing, damaged, improper, or misaligned chimney venting
 - The chimney or venting system on a fuel-fired water heater is misaligned, negatively pitched, or damaged, which may cause improper or dangerous venting or gases
 - A gas dryer vent is missing, damaged, or is visually determined to be inoperable, or the dryer exhaust is not vented to the outside
 - A fuel-fired space heater is not properly vented or lacks available combustion air
 - A non-vented space heater is present
 - Safety devices on a fuel-fired space heater are missing or damaged
 - The chimney or venting system on a fuel-fired heating, ventilation, or cooling system is misaligned, negatively pitched, or damaged, which may cause improper or dangerous venting of gas
 - Deteriorating paint as defined at 24 CFR 35.110 in a unit built before 1978 that is to be occupied by a family with a child under six years of age if it would prevent the family from moving into the unit

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 ELEVATED BLOOD LEAD LEVEL [24 CFR 35.1225; FR Notice 1/31/17; Notice PIH 2017-13]

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 six years of age, living in an HCV-assisted unit has been identified as having an elevated blood lead level, DOH must complete an environmental investigation of the dwelling unit within 15 calendar days after being notified by a public health department or other medical health care provider. The environmental investigation must be completed in accordance with program requirements, and the result of the environmental investigation 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 environmental investigation 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; 40 CFR 745.227]. 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 elevated blood lead level are discussed in Chapter 16.

8-I.F. VIOLATION OF HQS SPACE STANDARDS [24 CFR 982.403]

A dwelling unit must:

- Provide adequate space and security for the family
- Have at least one bedroom or living/sleeping room for each two persons

A unit that does not meet these HQS space standards is defined as *overcrowded*.

A living room may be used as sleeping (bedroom) space, but no more than two persons may occupy the space [HCV GB p. 10-6]. A bedroom or living/sleeping room must have at least:

- One window
- Two electrical outlets in proper operating condition (permanent overhead or wall-mounted light fixtures may count as one of the required electrical outlets)

If DOH determines that a unit is overcrowded 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.
- *Annual/Biennial Inspections.* HUD requires DOH to inspect each unit under lease at least annually or biennially, depending on PHA policy, 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. A special inspection must be completed within 15 days of the request/report.
- *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 Housing Choice Voucher (HCV) 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 HCV assistance from the Housing Authorities. If your agency owns and manages units and administers the HCV

program under a contract with DOH, the units may only be assisted under the HCV 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.

Inspection Costs [Notice PIH 2016-05]

DOH may not charge the family 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)].

DOH may not charge the owner for the inspection of the unit prior to the initial term of the lease or for a first inspection during assisted occupancy of the unit. However, DOH may charge a reasonable fee to owners for reinspections in two situations: when the owner notifies DOH that a repair has been made but the deficiency has not been corrected, and when the time for repairs has elapsed and the deficiency has not been corrected. Fees may not be imposed for tenant-caused damages, for cases in

which the inspector could not gain access to the unit, or for new deficiencies discovered during a reinspection.

The owner may not pass the cost of a reinspection fee to the family. Reinspection fees must be added to DOH's administrative fee reserves and may only be used for activities related to the provision of tenant-based assistance.

- DOH will not charge a fee for failed reinspections.

Remote Video Inspections (RVIs) [Notice PIH 2020-31]

As an alternative to some or all on-site inspections, DOH may, but is not required to, perform HQS inspections from a remote location using video streaming technology and a proxy at the inspection site. Since there may be some circumstances in which the application of technology provides insufficient information or evidence to allow DOH to make appropriate determinations about whether a condition violates HQS, Notice PIH 2020-31 requires that if a PHA chooses to implement RVIs, DOH should have policies and procedures in place to address such limitations.

- DOH will conduct HQS inspection utilizing RVI on an as-needed basis, following the requirements set forth in Notice PIH 2020-31.

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 authorized adult 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 permitted, but is not required.

8-II.B. INITIAL HQS INSPECTION

[24 CFR 982.401(a)]

Initial Inspections [FR Notice 1/18/17]

The PHA may, but is not required to, approve assisted tenancy and start HAP if the unit fails HQS inspection, but only if the deficiencies identified are non-life-threatening. Further, the PHA may, but is not required to, authorize occupancy if a unit passed an alternative inspection in the last 24 months.

- The unit must pass the HQS inspection on or before the effective date of the HAP contract.
- The PHA will not rely on alternative inspections and will conduct an HQS inspection for each unit prior to executing a HAP contract with the owner.

Timing of Initial Inspections

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 five 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 [Form HUD-52580]

- 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/BIENNIAL HQS INSPECTIONS [24 CFR 982.405 and 982.406; Notice PIH 2016-05]

- Effective January 1, 2015, DOH has implemented the use of biennial inspections. Each unit under HAP contract must be inspected biennially within 24 months of the last full HQS inspection. DOH reserves the right to require annual inspections of any unit or owner at any time.
- DOH Contract Agencies may continue to inspect some or all units annually at their discretion.
- DOH Family Reporting Form includes a Housing Quality Standards Certification giving participants the opportunity to request an inspection be completed. If a participant indicates that they would like their unit inspected, and they are not due for an inspection under the biennial policy, the DOH contractor must conduct an inspection within 15 days.
- DOH will accept the results of inspections performed by HUD or for other housing programs such as HOME or LIHTC.

Scheduling the Inspection

- If an adult 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 five business days of the originally scheduled date. DOH may schedule an inspection more than five 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; 24 CFR 982.405(g)]**

If a participant, owner, or government official reports a life-threatening condition which the owner would be required to repair within 24 hours, the PHA must inspect the unit within 24 hours of notification. If the reported condition is not life-threatening, the PHA must inspect the unit within 15 days of notification.

- 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 24 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/biennial 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/biennial inspection.

8-II.E. QUALITY CONTROL INSPECTIONS **[24 CFR 982.405(b); 24 CFR 985.3€; 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 three months. The selected sample should be drawn to represent a cross section of neighborhoods and the work of a cross section of inspectors.

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 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 five 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 five 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

Except in the case of certain LIHTC- and HOME-assisted units, 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.

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 10 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.

LIHTC- and HOME-Assisted Units [24 CFR 982.507(c)]

For units receiving low-income housing tax credits (LIHTCs) or units assisted under HUD's HOME Investment Partnerships (HOME) Program, a rent comparison with unassisted units is not required if the voucher rent does not exceed the rent for other LIHTC- or HOME-assisted units in the project that are not occupied by families with tenant-based assistance.

For LIHTCs, if the rent requested by the owner does exceed the LIHTC rents for non-voucher families, the PHA must perform a rent comparability study in accordance with program regulations. In such cases, the rent shall not exceed the lesser of: (1) the reasonable rent as determined from the rent comparability study; or (2) the payment standard established by the PHA for the unit size involved.

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 [Notice PIH 2002-22, Notice PIH 2005-20, and Notice PIH 2020-19].

Note: Notice PIH 2020-19, issued August 21, 2020, 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 their 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 the PHA's jurisdiction. Information sources include newspapers, realtors, market surveys, inquiries of owners and other available sources. The data will be maintained by bedroom size and market areas. Market areas may be defined by zip codes, census tract, neighborhood, and identifiable natural or man-made boundaries. The data will be updated on an ongoing basis and rent information that is more than 12 months old will be eliminated from the database.

How Rents Are Determined

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. At initial tenancy;
2. Before any increase in the rent to owner;
3. 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;
4. If directed by HUD; and
5. 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 they are 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 five 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 within 30 days 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.
- Maintain covered housing without deteriorated paint if there is a child under six in the family

For units occupied by elevated blood lead level (lead poisoned) children under six years of age, an environmental investigation must be conducted (paid for by DOH). If lead hazards are identified during the environmental investigation, the owner must complete hazard reduction activities within 30 days.

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 8A

(NSPIRE Chapter – Not Effective until October 1, 2024 or at such time that HUD determines)

NATIONAL STANDARDS FOR THE PHYSICAL INSPECTION OF REAL ESTATE AND RENT REASONABLENESS DETERMINATIONS

[24 CFR 5 Subpart G and Notice PIH 2023-28]

INTRODUCTION

HUD requires that all units occupied by families receiving Housing Choice Voucher (HCV) and Project Based Voucher (PBV) assistance meet HUD's National Standards for the Physical Inspection of Real Estate (NSPIRE) regulations and standards no later than October 1, 2024. The inspection performance standards and procedures for conducting NSPIRE inspections must be included in the administrative plan [Notice PIH 2023-28].

All units must pass an NSPIRE inspection prior to the approval of a lease (with some exceptions) and at least once every 24 months (or 36 months for small rural PHAs) during the term of the HAP contract, and at other times as needed, to determine that the unit meets NSPIRE standards. 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.

Provided they meet certain requirements, HUD permits PHAs to establish some additional local requirements in their administrative plans. The use of the term *NSPIRE* in this plan refers to the combination of both HUD and PHA-established requirements. However, state and local codes, compliance is not part of the determination of whether a unit passes the NSPIRE standards.

This chapter explains HUD and PHA requirements related to physical inspections and rent reasonableness as follows:

Part I. Physical Standards. This part discusses NSPIRE standards required of units occupied by HCV and PBV-assisted families. It also identifies affirmative habitability requirements for all units and life-threatening conditions that must be corrected in 24 hours.

Part II. The Inspection Process. This part describes the types of inspections the PHA will make and the steps that will be taken when units do not meet NSPIRE standards.

Part III. Rent Reasonableness Determinations. This part discusses the policies the PHA will use to make rent reasonableness determinations.

Special NSPIRE requirements for homeownership, manufactured homes, and other special housing types are discussed in Chapter 15 to the extent that they apply in this jurisdiction. Special requirements for the PBV and RAD PBV programs (if applicable) are discussed in Chapters 17 and 18, respectively.

PART I: NSPIRE STANDARDS

NSPIRE standards are published on HUD's NSPIRE website as well as in the NSPIRE Final Rule [FR Notice 5/1/2023].

8-I.A. INSPECTABLE AREAS [24 CFR 5.703(a)(1) and 24 CFR 5.705(a)(2)]

NSPIRE defines the inspectable areas for inspection under the standards as inside, outside and unit. However, the inspection requirement for the HCV and PBV programs only applies to units occupied or to be occupied by HCV or PBV participants and common areas and exterior areas which either service or are associated with such units.

8-I.B. AFFIRMATIVE HABITABILITY REQUIREMENTS [24 CFR 5.703(b), (c), and (d)]

NSPIRE provides for minimum, or affirmative, habitability requirements for each area (unit, inside, outside). These areas must meet these requirements for habitability, which are listed in Exhibit 8-1.

The inside, outside and unit must be free of health and safety hazards that pose a danger to residents. Types of health and safety concerns include, but are not limited to carbon monoxide, electrical hazards, extreme temperature, flammable materials or other fire hazards, garbage and debris, handrail hazards, infestation, lead-based paint, mold, and structural soundness [24 CFR 5.703(e)].

The NSPIRE Smoke Alarm Standard does not require that smoke alarms have a sealed battery; however, upon the effective date of the Public and Federally Assisted Housing Fire Safety Act of 2022 on December 29, 2024, sealed batteries *will* be required.

8-I.C. MODIFICATIONS TO PROVIDE ACCESSIBILITY [24 CFR 100.203; Notice 2003-31; and Notice PIH 2014-02]

Under the Fair Housing Act of 1988 an owner must make reasonable accommodations in rules, policies, practices, or services if necessary for a person with disabilities to use the housing and must not refuse the request of a family that contains a person with a disability to make necessary and reasonable modifications to the unit if such modification is necessary to afford the person with a disability full enjoyment of the premises. Such modifications are at the family’s expense. The owner may, where it is reasonable to do so, require restoration of the unit to its original condition (reasonable wear and tear excepted) 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 NSPIRE 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.

PHA Policy

Any owner that intends to negotiate a restoration agreement or require an escrow account must submit the agreement(s) to the PHA for review.

8-I.D. ADDITIONAL LOCAL REQUIREMENTS [24 CFR 5.705(a)(3) and Notice PIH 2023-28]

The PHA may impose variations to the NSPIRE standards 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 NSPIRE standards and approved variations must be added to the administrative plan.

HUD may approve inspection criteria variations if the variations apply standards in local housing codes or other codes adopted by the PHA or because of local climatic or geographic conditions. Acceptability criteria variations may only be approved by HUD if such variations either meet or exceed the performance requirements or significantly expand affordable housing opportunities for families assisted under the program.

PHA Policy

The PHA has not requested any HUD-approved variations to NSPIRE standards.

8-I.E. LIFE-THREATENING DEFICIENCIES [Notice PIH 2023-28]

HUD previously required the PHA to define life-threatening conditions in the administrative plan. The NSPIRE standards now describe those conditions which are considered life-threatening and must be corrected within 24 hours.

The following are a list of life-threatening deficiencies under NSPIRE:

Inspectable Item	Deficiency
Call-for-Aid System	System is blocked, or pull cord is higher than 6 inches off the floor.
	System does not function properly
Carbon Monoxide Alarm	Carbon monoxide alarm is missing, not installed, or not installed in a proper location.
	Carbon monoxide alarm is obstructed.
	Carbon monoxide alarm does not produce an audio or visual alarm when tested.
Chimney	A visually accessible chimney, flue, or firebox connected to a fireplace or wood-burning appliance is incomplete or damaged such that it may not safely contain fire and convey smoke and combustion gases to the exterior.
	Chimney exhibits signs of structural failure.
Clothes Dryer Exhaust Ventilation	Electric dryer transition duct is detached or missing.
	Gas dryer transition duct is detached or missing.
	Electric dryer exhaust ventilation system has restricted airflow.
	Dryer transition duct is constructed of unsuitable material.
	Gas dryer exhaust ventilation system has restricted airflow.
Dorr – Entry	Entry door is missing.
Door – Fire Labeled	Fire labeled door is missing.
Egress	Obstructed means of egress.
	Sleeping room is located on the third floor or below and has an obstructed rescue opening.
	Fire escape is obstructed.
Electrical – Conductor, Outlet, and Switch	Outlet or switch is damaged.
	Exposed electrical conductor.
	Water is currently in contact with an electrical conductor.

Inspectable Item	Deficiency
Electrical – Service Panel	The overcurrent protection device is damaged.
Exit Sign	Exit sign is damaged, missing, obstructed, or not adequately illuminated.
Fire Escape	Fire extinguisher is damaged or missing.
Fire Extinguisher	Fire extinguisher pressure gauge reads over or under-charged.
	Fire extinguisher service tag is missing, illegible, or expired.
	Fire extinguisher is damaged or missing.
Flammable and Combustible Items	Flammable or combustible item is on or within 3 feet of an appliance that provides heat for thermal comfort or a fuel-burning water heater; OR Improperly stored chemicals.
Guardrail	Guardrail is missing or not installed.
	Guardrail is not functionally adequate.
Heating, Ventilation, and Air Conditioning (HVAC)	The inspection date is on or between October 1 and March 31 and the permanently installed heating source is not working or the permanently installed heating source is working and the interior temperature is below 64 degrees Fahrenheit.
	Unvented space heater that burns gas, oil, or kerosene is present.
	Combustion chamber cover or gas shutoff valve is missing from a fuel burning heating appliance.
	Fuel burning heating system or device exhaust vent is misaligned, blocked, disconnected, improperly connected, damaged, or missing.
Leak – Gas or Oil	Natural gas, propane, or oil leak.
Mold-like Substance	Presence of mold-like substance at extremely high levels is observed visually.
Smoke Alarm	Smoke alarm is not installed where required.
	Smoke alarm is obstructed.
	Smoke alarm does not produce an audio or visual alarm when tested.

Inspectable Item	Deficiency
Sprinkler Assembly	Sprinkler head assembly is encased or obstructed by an item or object that is within 18 inches of the sprinkler head.
	Sprinkler assembly component is damaged, inoperable, or missing and it is detrimental to performance.
	Sprinkler assembly has evidence of corrosion.
	Sprinkler assembly has evidence of foreign material that is detrimental to performance.
Structural System	Structural system exhibits signs of serious failure.
Toilet	Only 1 toilet was installed, and it is missing.
Water Heater	Chimney or flue piping is blocked, misaligned, or missing.
	Gas shutoff valve is damaged, missing, or not installed.

However, PHAs may add additional deficiencies which the PHA considers life-threatening provided they are described in the administrative plan.

PHA Policy

In addition to those listed under the NSPIRE standards, the following are considered life-threatening conditions:

Utilities not in service, including no running hot water

8-I.F. OWNER AND FAMILY RESPONSIBILITIES [24 CFR 982.404]

Family Responsibilities

The family is responsible for correcting the following 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.

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.

PHA Policy

Damages beyond ordinary wear and tear will be considered to be damages which could be assessed against the security deposit under state law or in court practice.

Owner Responsibilities

The owner must maintain the unit in accordance with NSPIRE regulations and standards. The owner is not responsible for a breach of the HQS that is not caused by the owner, and for which the family is responsible (as provided in 24 CFR 982.404(b) and 982.551(c)).

PHA Policy

The owner is responsible for all NSPIRE 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.

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.

If an owner fails to correct life-threatening conditions as required by the PHA, the PHA will enforce the NSPIRE standards in accordance with HUD requirements. See 8-II-G.

8-I.G. LEAD-BASED PAINT

PHAs and owners must comply with the requirements and timelines in 24 CFR Part 35 Subpart M—Tenant-Based Rental Assistance and Subpart H—Project-Based Assistance. PHAs and owners are reminded that any deteriorated paint in target housing, or other lead-based paint hazard identified through a lead-based paint risk assessment or lead-based paint inspection is considered a violation of NSPIRE standards.

For the HCV program, Subpart M applies to units where a child under age six resides or is expected to reside, common areas that service that unit, and exterior painted surfaces associated with that unit or common areas. For project-based programs, Subpart H applies to assisted units and common areas of the property regardless of whether a child under age six resides or is expected to reside in the unit. NSPIRE does not alter any of the lead-based paint requirements in Part 35 for these programs.

Special Requirements for Children with Elevated Blood Lead Level [24 CFR 35.1225; FR Notice 1/13/17; Notice PIH 2017-13]

If a PHA is notified by a public health department or other medical health care provider, or verifies information from a source other than a public health department or medical health care provider, that a child of less than six years of age, living in an HCV-assisted unit has been identified as having an elevated blood lead level, the PHA must complete an environmental investigation of the dwelling unit within 15 calendar days after being notified by a public health department or other medical health care provider. The environmental investigation must be completed in accordance with program requirements, and the result of the environmental investigation 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 environmental investigation report from the PHA, or the evaluation from the public health department, the owner is required to complete the reduction of identified lead-based paint hazards in accordance with the lead-based paint regulations [24 CFR 35.1325 and 35.1330; 40 CFR 745.227]. If the owner does not complete the “hazard reduction” as required, the dwelling unit is in violation of HQS and the PHA will take action in accordance with Section 8-II.G.

PHA reporting requirements, and data collection and record keeping responsibilities related to children with an elevated blood lead level are discussed in Chapter 16.

8-I.H. VIOLATION OF SPACE STANDARDS [24 CFR 5.703(d)(5)]

Units assisted under the HCV or PBV programs must have at least one bedroom or living/sleeping room for each two persons. A living room may be used as sleeping (bedroom) space, but no more than two persons may occupy the space [HCV GB p. 10-6]. Each habitable room must have two working outlets or one working outlet and a permanent light. HUD defines a *habitable room* as a room in a building for living, sleeping, eating, or cooking, but excluding bathrooms, toilet rooms, closets, hallways, storage or utility spaces, and similar areas [FR Notice 5/11/23].

A unit that does not meet these space standards is defined as *overcrowded*.

If the PHA determines that a unit is overcrowded because of an increase in family size or a change in family composition, the PHA must issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the PHA must terminate the HAP contract in accordance with its terms.

PART II: THE INSPECTION PROCESS

8-II.A. OVERVIEW [24 CFR 982.405]

Types of Inspections

The PHA conducts the following types of inspections as needed. Each type of inspection is discussed in the paragraphs that follow.

- *Initial Inspections.* The PHA conducts initial inspections in response to a request from the family to approve a unit for participation in the HCV program.
- *Annual/Biennial Inspections.* HUD requires the PHA to inspect each unit under lease at least annually or biennially (or triennially for small rural PHAs as defined in 24 CFR 982.305(b)(2)), depending on PHA policy, to confirm that the unit still meets NSPIRE standards.
- *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 NSPIRE standards.

Inspection of PHA-Owned Units [24 CFR 982.352(b)]

The PHA must obtain the services of an independent entity to perform all NSPIRE inspections in cases where an HCV family is receiving assistance in a PHA-owned unit. A *PHA-owned unit* is defined as a unit that is owned by the PHA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the PHA). The independent agency must communicate the results of each inspection to the family and the PHA. The independent agency must be approved by HUD and may be the unit of general local government for the PHA jurisdiction (unless the PHA is itself the unit of general local government or an agency of such government).

For information on the inspection of PHA-owned units in the PBV program, see Chapters 17 and 18.

Inspection Costs [Notice PIH 2016-05; 24 CFR 5.705(d)]

The PHA may not charge the family for unit inspections or reinspections [24 CFR 982.405(e)].

In the case of inspections of PHA-owned units, the PHA may compensate the independent agency from ongoing administrative fee for inspections performed. The PHA and the independent agency may not charge the family any fee or charge for the inspection [24 CFR.982.352(b)].

The PHA may not charge the owner for the inspection of the unit prior to the initial term of the lease or for a first inspection during assisted occupancy of the unit. However, the PHA may charge a reasonable fee to owners for reinspections in two situations: when the owner notifies the PHA that a repair has been made but the deficiency has not been corrected, and when the time for repairs has elapsed and the deficiency has not been corrected. Fees may not be imposed for tenant-caused damages, for cases in which the inspector could not gain access to the unit, or for new deficiencies discovered during a reinspection.

The owner may not pass the cost of a reinspection fee to the family. Reinspection fees must be added to the PHA's administrative fee reserves and may only be used for activities related to the provision of tenant-based assistance.

PHA Policy

The PHA will not charge a fee for failed reinspections.

Remote Video Inspections (RVIs) [Notice PIH 2020-31]

As an alternative to some or all on-site inspections, the PHA may, but is not required to, perform NSPIRE inspections from a remote location using video streaming technology and a proxy at the inspection site. Since there may be some circumstances in which the application of technology provides insufficient information or evidence to allow the PHA to make appropriate determinations about whether a condition violates NSPIRE standards, Notice PIH 2020-31 requires that if a PHA chooses to implement RVIs, the PHA should have policies and procedures in place to address such limitations.

PHA Policy

The PHA will not conduct any inspection using RVI.

Notice and Scheduling

The family must allow the PHA to inspect the unit at reasonable times with reasonable notice [24 CFR 982.551(d)].

PHA Policy

Both the family and the owner will be given reasonable notice of all inspections. Except in the case of a life-threatening emergency, reasonable notice is considered to be not less than 48 hours. Inspections may be scheduled between 8:00 a.m. and 7:00 p.m. Generally, inspections will be conducted on business days only. In the case of a life-threatening emergency, the PHA will give as much notice as possible, given the nature of the emergency.

Owner and Family Inspection Attendance

HUD permits the PHA to set policy regarding family and owner presence at the time of inspection [HCV GB p. 10-27].

PHA Policy

When a family occupies the unit at the time of inspection an authorized adult must be present for the inspection. The presence of the owner or the owner's representative is encouraged but is not required.

At initial inspection of a vacant unit, the PHA will inspect the unit in the presence of the owner or owner's representative. The presence of a family representative is permitted but is not required.

8-II.B. INITIAL INSPECTION

Approving Units [FR Notice 1/18/17; Notice PIH 2017-20; and 24 CFR 982.406]

HUD regulations require that units assisted under the HCV program be inspected to determine that the units meet NSPIRE standards before the PHA approves assisted tenancy. However, while the PHA is required to conduct an inspection prior to approving assisted tenancy, PHAs have two options for bringing units under HAP contract (or, in the case of PBV, approving occupancy and the execution of a lease) more quickly. The PHA may, but is not required to approve assisted tenancy and start HAP if the unit:

- Fails the initial inspection, but only if no life-threatening deficiencies are identified.
- Passed an alternative inspection in the last 24 months.

Otherwise, if neither of the above provisions are adopted, the PHA must determine that the unit the family selects meets NSPIRE standards prior to approving tenancy.

PHA Policy

The unit must pass the initial inspection on or before the effective date of the HAP contract.

The PHA will not rely on alternative inspections and will conduct an initial inspection for each unit prior to executing a HAP contract with the owner.

Timing of Initial Inspections [24 CFR 982.395(b)(2)(i)]

HUD requires PHAs with fewer than 1,250 budgeted units to complete the initial inspection, determine whether the unit satisfies NSPIRE standards, and notify the owner and the family of the determination within 15 days of submission of the Request for Tenancy Approval (RTA). 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.

PHA Policy

The PHA will complete the initial inspection, determine whether the unit satisfies NSPIRE standards, and notify the owner and the family of the determination within 15 days of submission of the Request for Tenancy Approval (RTA).

Inspection Results and Reinspections

For new units proposed for the HCV program, life-threatening deficiencies must be resolved before the HAP contract is executed and the family moves into the unit.

PHA Policy

If any deficiencies are identified, the owner will be notified of the deficiencies and be given a time frame to correct them. If requested by the owner, the time frame for correcting the deficiencies may be extended by the PHA for good cause. The PHA will reinspect the unit within five business days of the date the owner notifies the PHA 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 at the time of the reinspection, the PHA will notify the owner and the family that the unit has been rejected and that the family must search for another unit. The PHA may agree to conduct a second reinspection, for good cause, at the request of the family and owner.

Following a failed reinspection, the family may submit a new Request for Tenancy Approval for the same unit 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.

PHA Policy

Utility service must be available for testing at the time of the initial inspection.

Appliances

PHA Policy

If the family is responsible for supplying the stove and/or refrigerator, the PHA will allow the stove and refrigerator to be placed in the unit after the unit has met all other NSPIRE requirements. The required appliances must be in place before the HAP contract is executed by the PHA. The PHA 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/BIENNIAL INSPECTIONS [24 CFR 982.405 and 982.406; Notice PIH 2016-05]

HUD requires the PHA to inspect each unit under HAP contract at least biennially (or triennially for small rural PHAs), to confirm that the unit still meets NSPIRE standards. The inspection may be conducted in conjunction with the family's annual reexamination but also may be conducted separately.

PHA Policy

Each unit under HAP contract must be inspected biennially within 24 months of the last full inspection. The PHA reserves the right to require annual inspections of any unit or owner at any time.

The PHA will not rely on alternative inspection standards.

Scheduling the Inspection

PHA Policy

If an adult cannot be present on the scheduled date, the family should request that the PHA reschedule the inspection. The PHA and family will agree on a new inspection date that generally should take place within five business days of the originally scheduled date. The PHA may schedule an inspection more than five business days after the original date for good cause.

If the family misses the first scheduled appointment without requesting a new inspection date, the PHA will automatically schedule a second inspection. If the family misses two scheduled inspections without PHA approval, the PHA 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 [24 CFR 982.405(g)]

If a participant family or government official reports a life-threatening condition which the owner would be required to repair within 24 hours, the PHA must inspect the unit within 24 hours of notification. If the reported condition is not life-threatening, the PHA must inspect the unit within 15 days of notification.

PHA Policy

During a special inspection, the PHA generally will inspect only those deficiencies that were reported. However, the inspector will record any additional deficiencies that are observed and will require the responsible party to make the necessary repairs.

If the annual/biennial inspection has been scheduled or is due within 90 days of the date the special inspection is scheduled the PHA may elect to conduct a full annual/biennial inspection.

8-II.E. QUALITY CONTROL INSPECTIONS [24 CFR 982.405(b); 24 CFR 985.3(e); HCV GB, p. 10-32]

HUD requires a PHA 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 NSPIRE standards.

The unit sample must include only units that have been inspected within the preceding three months. The selected sample should be drawn to represent a cross section of neighborhoods and the work of a cross section of inspectors.

8-II.F. INSPECTION RESULTS AND REINSPECTIONS FOR UNITS UNDER HAP CONTRACT

Correction Timeframes

Each deficiency is identified in the NPSIRE standards as either life-threatening, severe, moderate, or low.

For units under HAP contract, life-threatening deficiencies must be corrected within 24 hours after notice has been provided. All other non-life-threatening deficiencies (severe and moderate) must be corrected within 30 days (or a PHA-approved extension) after notice has been provided. If low deficiencies are present in a unit, these deficiencies result in a pass and would only be noted by the inspector for informational purposes.

Notification of Corrective Actions

The owner and the family will be notified in writing of the results of all inspections. When an inspection identifies deficiencies, the PHA will determine (1) whether or not the failure is a life-threatening condition and (2) whether the family or owner is responsible.

PHA Policy

When life-threatening deficiencies are identified, the PHA will immediately notify both parties by telephone or email. The notice will specify who is responsible for correcting the violation. The corrective actions must be taken within 24 hours of the PHA's notice.

When failures that are severe or moderate are identified, the PHA will send the owner and the family a written notification of the inspection results within five 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. If low deficiencies are identified, these deficiencies will only be noted for informational purposes.

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 life-threatening deficiencies, the PHA cannot grant an extension to the 24-hour corrective action period. For conditions that are severe or moderate, the PHA may grant an exception to the required time frames for correcting the violation, if the PHA determines that an extension is appropriate.

PHA Policy

Extensions will be granted in cases where the PHA has determined that the owner has made a good faith effort to correct the deficiencies and is unable to for reasons beyond the owner's control. Reasons may include, but are not limited to:

A repair cannot be completed because required parts or services are not available.

A repair cannot be completed because of weather conditions.

A reasonable accommodation is needed because the family includes a person with disabilities.

The length of the extension will be determined on a case-by-case basis, but will not exceed 60 days, except in the case of delays caused by weather conditions. In the case of weather conditions, extensions may be continued until the weather has improved sufficiently to make repairs possible. The necessary repairs must be made within 15 calendar days, once the weather conditions have subsided.

Reinspections

PHA Policy

The PHA will conduct a reinspection immediately following the end of the corrective period, or any PHA approved extension.

The family and owner will be given reasonable notice of the reinspection appointment. If the deficiencies have not been corrected by the time of the reinspection, the PHA will send a notice of abatement to the owner, or in the case of family caused violations, a notice of termination to the family, in accordance with PHA policies. If the PHA is unable to gain entry to the unit in order to conduct the scheduled reinspection, the PHA 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.

The PHA will not accept self-certification of repairs. Photos or other documentation of repairs will not be accepted in lieu of a reinspection.

8-II.G. ENFORCING OWNER COMPLIANCE

If the owner fails to maintain the dwelling unit in accordance with NSPIRE standards, the PHA must take prompt and vigorous action to enforce the owner obligations.

HAP Abatement

If an owner fails to correct deficiencies by the time specified by the PHA, HUD requires the PHA 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 deficiencies that are the family's responsibility.

PHA Policy

The PHA will make all HAP abatements effective the first of the month following the expiration of the PHA specified correction period (including any extension).

The PHA will inspect abated units within five business days of the owner's notification that the work has been completed. Payment will resume effective on the day the unit passes inspection.

During any abatement period the family continues to be responsible for its share of the rent. The owner must not seek payment from the family for abated amounts and may not use the abatement as cause for eviction.

HAP Contract Termination

The PHA must decide how long any abatement period will continue before the HAP contract will be terminated. The PHA should not terminate the contract until the family finds another unit, provided the family does so in a reasonable time [HCV GB p. 10-29] and must give the owner reasonable notice of the termination. The PHA will issue a voucher to permit the family to move to another unit as described in Chapter 10.

PHA Policy

The maximum length of time that HAP may be abated is 90 days. However, if the owner completes corrections and notifies the PHA before the termination date of the HAP contract, the PHA may rescind the termination notice if (1) the family still resides in the unit and wishes to remain in the unit and (2) the unit passes inspection.

Reasonable notice of HAP contract termination by the PHA is 30 days.

8-II.H. ENFORCING FAMILY COMPLIANCE [24 CFR 982.404(b)]

Families are responsible for correcting any deficiencies listed in paragraph 8-I.D. If the family fails to correct a violation within the period allowed by the PHA (and any extensions), the PHA 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

Except in the case of certain LIHTC- and HOME-assisted units, no HAP contract can be approved until the PHA has determined that the rent for the unit is reasonable. The purpose of the rent reasonableness test is to ensure that a fair rent is paid for each unit rented under the HCV program.

HUD regulations define a reasonable rent as one that does not exceed the rent charged for comparable, unassisted units in the same market area. HUD also requires that owners not charge more for assisted units than for comparable units on the premises. This part explains the method used to determine whether a unit's rent is reasonable.

PHA-Owned Units [24 CFR 982.352(b)]

In cases where an HCV family is receiving assistance in a PHA-owned unit, the PHA must obtain the services of an independent entity to determine rent reasonableness in accordance with program requirements, and to assist the family in negotiating the contract rent when the family requests assistance. A PHA-owned unit is defined as a unit that is owned by the PHA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the PHA). The independent agency must communicate the results of the rent reasonableness determination to the family and the PHA. The independent agency must be approved by HUD and may be the unit of general local government for the PHA jurisdiction (unless the PHA is itself the unit of general local government or an agency of such government).

8-III.B. WHEN RENT REASONABLENESS DETERMINATIONS ARE REQUIRED

Owner-Initiated Rent Determinations

The PHA must make a rent reasonableness determination at initial occupancy and whenever the owner requests a rent adjustment.

The owner and family first negotiate the rent for a unit. The PHA (or independent agency in the case of PHA-owned units) will assist the family with the negotiations upon request. At initial occupancy the PHA must determine whether the proposed rent is reasonable before a HAP Contract is signed. The owner must not change the rent during the initial lease term. Subsequent requests for rent adjustments must be consistent with the lease between the owner and the family. Rent increases will not be approved unless any failed items identified by the most recent inspection have been corrected.

PHA Policy

After the initial occupancy period, the owner may request a rent adjustment in accordance with the owner's lease. For rent increase requests after initial lease-up, the PHA may request owners to provide information about the rents charged for other units on the premises, if the premises include more than 4 units. In evaluating the proposed rents in comparison to other units on the premises the PHA will consider unit size and length of tenancy in the other units.

The PHA will determine whether the requested increase is reasonable within 10 business days of receiving the request from the owner. The owner will be notified of the determination in writing.

All rents adjustments will be effective the first of the month following 60 days after the PHA'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 the PHA to make a determination of rent reasonableness (even if the owner has not requested a change) if there is a 10 percent decrease in the fair market rent that goes into effect at least 60 days before the contract anniversary date. HUD also may direct the PHA to make a determination at any other time. The PHA may decide that a new determination of rent reasonableness is needed at any time.

PHA Policy

In addition to the instances described above, the PHA will make a determination of rent reasonableness at any time after the initial occupancy period if: (1) the PHA determines that the initial rent reasonableness determination was in error or (2) the PHA determines that the information provided by the owner about the unit or other units on the same premises was incorrect.

LIHTC and HOME-Assisted Units [24 CFR 982.507(c)]

For units receiving low-income housing tax credits (LIHTCs) or units assisted under HUD's HOME Investment Partnerships (HOME) Program, a rent comparison with unassisted units is not required if the voucher rent does not exceed the rent for other LIHTC- or HOME-assisted units in the project that are not occupied by families with tenant-based assistance.

For LIHTCs, if the rent requested by the owner does exceed the LIHTC rents for non-voucher families, the PHA must perform a rent comparability study in accordance with program regulations. In such cases, the rent shall not exceed the lesser of: (1) the reasonable rent as determined from the rent comparability study; or (2) the payment standard established by the PHA for the unit size involved.

8-III.C. HOW COMPARABILITY IS ESTABLISHED

Factors to Consider

HUD requires PHAs to take into consideration the factors listed below when determining rent comparability. The PHA may use these factors to make upward or downward adjustments to the rents of comparison units when the units are not identical to the HCV-assisted unit.

- Location and age
- Unit size including the number of rooms and square footage of rooms
- The type of unit including construction type (e.g., single family, duplex, garden, low-rise, high-rise)
- The quality of the units including the quality of the original construction, maintenance and improvements made
- Amenities, services, and utilities included in the rent

Units that Must Not Be Used as Comparables

Comparable units must represent unrestricted market rents. Therefore, units that receive some form of federal, state, or local assistance that imposes rent restrictions cannot be considered comparable units. These include units assisted by HUD through any of the following programs: Section 8 project-based assistance, Section 236 and Section 221(d)(3) Below Market Interest Rate (BMIR) projects, HOME or Community Development Block Grant (CDBG) program-assisted units in which the rents are subsidized; units subsidized through federal, state, or local tax credits; units subsidized by the Department of Agriculture rural housing programs, and units that are rent-controlled by local ordinance [Notice PIH 2002-22, Notice PIH 2005-20, and Notice PIH 2020-19].

Note: Notice PIH 2020-19, issued August 21, 2020, provides further guidance on the issue of what constitutes an assisted unit.

Rents Charged for Other Units on the Premises

The Request for Tenancy Approval (HUD-52517) requires owners to provide information, on the form itself, about the rent charged for other unassisted comparable units on the premises if the premises include more than 4 units.

By accepting the PHA payment each month the owner certifies that the rent is not more than the rent charged for comparable unassisted units on the premises. If asked to do so, the owner must give the PHA information regarding rents charged for other units on the premises.

8-III.D. PHA RENT REASONABLENESS METHODOLOGY

How Market Data Is Collected

PHA Policy

The PHA will collect and maintain data on market rents in the PHA's jurisdiction. Information sources include newspapers, realtors, market surveys, inquiries of owners and other available sources. The data will be maintained by bedroom size and market areas. Market areas may be defined by zip codes, census tract, neighborhood, and identifiable natural or man-made boundaries. The data will be updated on an ongoing basis and rent information that is more than 12 months old will be eliminated from the database.

How Rents Are Determined

PHA Policy

The rent for a unit proposed for HCV assistance will be compared to the rent charged for comparable units in the same market area. The PHA will develop a range of prices for comparable units by bedroom size within defined market areas. Units proposed for HCV assistance will be compared to the units within this rent range. Because units may be similar, but not exactly like the unit proposed for HCV assistance, the PHA may make adjustments to the range of prices to account for these differences.

The adjustment must reflect the local market. Not all differences in units require adjustments (e.g., the presence or absence of a garbage disposal may not affect the rent in some market areas).

Adjustments may vary by unit type (e.g., a second bathroom may be more valuable in a three-bedroom unit than in a two-bedroom).

The adjustment must reflect the rental value of the difference—not its construction costs (e.g., it might cost \$20,000 to put on a new roof, but the new roof might not make any difference in what a tenant would be willing to pay because rental units are presumed to have functioning roofs).

When a comparable project offers rent concessions (e.g., first month rent-free, or reduced rent) reported monthly rents will be adjusted accordingly. For example, if a comparable project reports rents of \$500/month but new tenants receive the first month's rent free, the actual rent for the unit would be calculated as follows: $\$500 \times 11 \text{ months} = 5500 / 12 \text{ months} =$ actual monthly rent of \$488.

The PHA will notify the owner of the rent the PHA can approve based upon its analysis of rents for comparable units. The owner may submit information about other comparable units in the market area. The PHA 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 five business days of the PHA's request for information or the owner's request to submit information.

EXHIBIT 8-1: AFFIRMATIVE HABITABILITY REQUIREMENTS

Affirmative Habitability Requirements: Inside
Must include at least 1 battery-operated or hard-wired smoke detector, in proper working condition, on each level of the property.
Must meet or exceed the carbon monoxide detection standards set by the Secretary through <i>Federal Register</i> notification.
Any outlet installed within 6 feet of a water source must be GFCI protected.
Must have a guardrail when there is an elevated walking surface with a drop off of 30 inches or greater measured vertically.
Must have permanently mounted light fixtures in any kitchens and each bathroom.
May not contain unvented space heaters that burn gas, oil or kerosene.

Affirmative Habitability Requirements: Outside
Any outlet installed within 6 feet of a water source must be GFCI-protected.
Must have a guardrail when there is an elevated walking surface with a drop off of 30 inches or greater measured vertically.

Affirmative Habitability Requirements: Unit
Must have hot and cold running water in the bathroom and kitchen, including an adequate source of safe drinking water in the bathroom and kitchen.
Must include its own bathroom or sanitary facility that is in proper operating condition and usable in privacy. It must contain a sink, a bathtub or shower, and an interior flushable toilet.
Must have at least one battery-operated or hard-wired smoke detector, in proper working condition, in the following locations: <ul style="list-style-type: none"> • On each level of the unit AND • Inside each bedroom or sleeping area AND • With 21 feet of any door to a bedroom measured along a path of travel AND • Where a smoke detector is installed outside a bedroom is separated from an adjacent living area by a door, a smoke detector must also be installed in the living area side of the door.
If the unit is occupied by a hearing-impaired person, the smoke detectors must have an alarm system designed for hearing-impaired persons.
Must have a living room and a kitchen area with a sink, cooking appliance, refrigerator, food preparation area and food storage area.
Must have two working outlets or one working outlet and one permanent light fixture within all habitable rooms.
Must have a permanently mounted light fixture in each bathroom and in the kitchen.
Outlets within 6 feet of water source must be GFCI-protected.
Must have permanently installed heating source.
No units may contain unvented space heaters that burn gas, oil or kerosene.
Must have a guard rail when there is an elevated walking surface with a drop off of 30 inches or greater measured vertically.
Must have at least one bedroom or living/sleeping room for each two persons.

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 their 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 family, including information about the tenancy history of the 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, 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, by email, 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 e-mail, by mail, by email, 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, by email, 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.

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.

Some housing agencies that DOH contracts with to administer the Housing Choice Voucher program are the owners and managers of 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 Housing Choice Voucher assistance from the Housing Authorities. If your agency owns and manages units and administers the Housing Choice Voucher program under a contract with DOH, the units may only be assisted under the Housing Choice Voucher 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.
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.

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 lesser of the 1-bedroom payment standard, the payment standard for the entire unit, or the pro-rata payment standard; 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 their 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 (RFTA), 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 into 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 for assisted tenants 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 in the Housing Choice Voucher program.

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, by email, 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 (RFTA), 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 e-mail, by mail, by email, or by fax. DOH will not accept corrections over the phone.

If DOH determines that the tenancy cannot be approved for any reason, the owner and the family will be notified 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 approved, 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]

The Housing Assistance Payment (HAP) contract is a written agreement between DOH and the owner of the dwelling unit. Under the HAP contract, DOH 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 DOH has given approval for the family of the assisted tenancy, the owner and DOH 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 required W-9 form. DOH will ensure that the owner receives a copy of the executed HAP contract.
- As required under VAWA 2013, once the HAP contract and lease have been executed and the family has been admitted to the program, DOH will notify families of their rights under VAWA by providing all families with a copy of the domestic violence certification form (HUD-5382) as well as the VAWA notice of occupancy rights (form HUD-5380).

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:

- If the owner or family request a new lease;
- If there are any changes in the lease requirements governing tenant or owner responsibilities for utilities or appliances;
- If there are changes in lease provisions governing the term of the lease; and
- If the family moves to a new unit, even if the new 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.
- DOH will only allow a “lookback period” of no more than six (6) months to make a correction if it is discovered that the incorrect rent and/or utility allowance amount was used resulting in an incorrect payment.

Flat-Rate Renter’s Insurance Billing

DOH will include the cost of required/mandated renter’s insurance in the unit rent if the specifics of the renter’s insurance are detailed in the lease and not subject to change during the term of the lease.

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 under which an assisted family is allowed to move to a new unit with continued assistance. Permission to move is subject to the restrictions set forth in section 10-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 982.354(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 982.354(d)(1)].
- The lease for the family's unit has been terminated by mutual agreement of the owner and the family [24 CFR 982.354(b)(1)(ii)].
 - 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 982.354(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, sexual assault, or stalking and the move is needed to protect the health or safety of the family or family member [24 CFR 982.354(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 they were imminently threatened by harm from further violence if they remained in the unit [24 CFR 982.354(b)(4), 24 CFR 982.353(b)]. The PHA must adopt an emergency transfer plan as required by regulations at 24 CFR 5.2007(e).
 - If a family requests permission to move with continued assistance or for an external transfer to another covered housing program operated by DOH 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 that the resident request the emergency transfer using form HUD-5383, and 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 may choose to provide a voucher to facilitate an emergency transfer of the victim without first terminating the assistance of the perpetrator.

- Before granting an emergency transfer, DOH will ensure the victim is eligible to receive continued assistance based on the citizenship or immigration status of the victim.
- DOH has adopted an emergency transfer plan, which is included as Exhibit 16-3 to this plan and discusses external transfers to other covered housing programs.
- DOH has terminated the HAP contract for the family’s unit for the owner’s breach [24 CFR 982.354(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 982.354(e)(1)]. However, Notice PIH 2016-09 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; (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; and (d) for portability moves, the receiving PHA is not absorbing the voucher.
- If DOH does not have sufficient funding for continued assistance, but the family must move from their unit (e.g., the unit failed HQS), the family may move to a higher cost

unit if the move is within the DOH's jurisdiction. DOH, however, will not allow the family to move under portability in this situation if the family wishes to move to a higher cost area.

- For both moves within the DOH's jurisdiction and outside under portability, DOH will not deny a move due to insufficient funding if DOH previously approved the move and subsequently experienced a funding shortfall if the family cannot remain in their current unit. DOH will rescind the voucher in this situation if the family will be allowed to remain in their current unit.
- DOH will create a list of families whose moves have been denied due to insufficient funding. DOH will keep the family's request open indefinitely, and 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 982.354(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 982.354(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 2016-09].

- 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 982.354(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. [24 CFR 982.354(d)(2)]. 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, however, will DOH pay two full HAP payments to two different landlords for the same month.

Zero HAP Families Who Wish to Move [24 CFR 982.455]

A participant who is not receiving any subsidy, but whose HAP contract is still in force, may request a voucher to move to a different unit. The PHA must issue a voucher to move unless it has grounds to deny assistance under the program regulations. However, if DOH determines no subsidy would be paid at the new unit, the PHA may refuse to enter into a HAP contract on behalf of the family.

- If a zero HAP family requests to move to a new unit, the family may request a voucher to move. However, if no subsidy will be paid at the unit to which the family requests to move, DOH will not enter into a HAP contract on behalf of the family for the new unit.

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 2016-09].

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.

In administering portability, the initial PHA and the receiving PHA must comply with financial procedures required by HUD, including the use of HUD-required forms [24 CFR 982.355(e)(5)].

PHAs must also comply with billing and payment deadlines. HUD may reduce an administrative fee to an initial or receiving PHA if the PHA does not comply with HUD portability requirements [24 CFR 982.355(e)(7)].

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 provides the family with the contact information for the receiving PHAs that serve the area, and the family selects the receiving PHA. The family must inform the initial PHA which receiving PHA it has selected. If the family prefers not to select the receiving PHA, the initial PHA will select the receiving PHA on behalf of the family (24 CFR 982.255(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. If a PHA intends to deny a family permission to move under portability due to insufficient funding, the PHA must notify HUD within 10 business days of the determination to deny the move [24 CFR 982.355(e)].

- 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. If DOH does deny the move due to insufficient funding, DOH will notify HUD in writing within 10 business days of DOH's determination to deny the move.

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.

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, sexual assault, or stalking and who reasonably believed they were imminently threatened by harm from further violence if they 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;
- 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)(1)]. The family must specify the area to which the family wishes to move [24 CFR 982.355(c)(1)].

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 982.353(d)(1), 24 CFR 982.355(9)]. 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 2016-09].

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)].

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 the PHAs in the jurisdiction to which they wish to move. If there is more than one PHA with jurisdiction over the area to which the family wishes to move, DOH will advise the family that the family selects the receiving PHA and notify the initial PHA of which receiving PHA was selected. DOH will provide the family with contact information for all of the receiving PHAs that serve the area. DOH will not provide any additional information about receiving PHAs in the area. DOH will further inform the family that if the family prefers not to select the receiving PHA, the initial PHA will select the receiving PHA on behalf of the family. In this case, DOH will not provide the family with information for all receiving PHAs in the area.
- DOH will advise the family that they will be under the receiving PHA’s policies and procedures, including screening, subsidy standards, voucher extension policies, and payment standards.

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 120 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 90 days following the expiration date of the initial PHA’s voucher term (including any extensions). (See below under “Initial Billing Deadline” for one exception to this policy.)

Preapproval Contact with the Receiving PHA

Prior to approving a family's request to move under portability, the initial PHA must contact the receiving PHA via email 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 [24 CFR 982.355(c)(3)].

- DOH will use email, 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 via email or other confirmed delivery method to expect the family [24 CFR 982.355(c) (3); 24 CFR 982.355(c)(7)]. The initial PHA must also advise the family how to contact and request assistance from the receiving PHA [24 CFR 982.355(c)(6)].

- Because the portability process is time-sensitive, DOH will notify the receiving PHA by phone, fax, or email 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 2016-09]
- A copy of the family's voucher [Notice PIH 2016-09]
- 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)(7), Notice PIH 2016-09]
- 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)(7), Notice PIH 2016-09]
 - 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 2016-09]

The deadline for submission of initial billing is 90 days following the expiration date of the voucher issued to the family by the initial PHA. In cases where suspension of the voucher delays the initial billing submission, the receiving PHA must notify the initial PHA of delayed billing before the billing deadline and document the delay is due to the suspension. In this case, the initial PHA must extend the billing deadline by 30 days.

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 notify the receiving PHA in writing. The initial PHA may report to HUD the receiving PHA's failure to comply with the deadline.

If the initial PHA will honor the late billing, no action is required.

- The initial PHA's decision as to whether to accept late billing will be based on internal PHA factors, including the initial PHA's leasing or funding status. If DOH has not received an initial billing notice from the receiving PHA within the billing deadline and does not intend to honor the late billing, it will contact the receiving PHA to inform them that it will not honor a late billing submission and will return any subsequent billings that it receives on behalf of the family. In this case, DOH will send the receiving PHA a written confirmation of its decision by mail.
- Among other considerations as to whether to accept late billing will be 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 2016-09]

If the receiving PHA is administering the family's voucher, the receiving PHA bills the initial PHA for housing assistance payments and administrative fees. When reimbursing for administrative fees, the initial PHA must promptly reimburse the receiving PHA for the lesser of 80 percent of the initial PHA ongoing administrative fee or 100 percent of the receiving PHA's ongoing administrative fee for each program under contract on the first day of the month for which the receiving PHA is billing the initial PHA under portability. If the administrative fees are prorated for the HCV program, the proration will apply to the amount of the administrative fee for which the receiving PHA may bill [24 CFR 982.355(e)(2)].

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. If the initial PHA extends the term of the voucher, the receiving PHA's voucher will expire 30 calendar days from the new expiration date of the initial PHA's voucher.

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. The initial PHA must continue paying the receiving PHA based on the last form HUD-50058 received, unless instructed otherwise by HUD. The initial PHA may seek absorption of the vouchers by following steps outlined in Notice PIH 2016-09.

Denial or Termination of Assistance [24 CFR 982.355(c)(17)]

At any time, either the initial PHA or the receiving PHA may make a determination to deny or terminate assistance with the family in accordance with 24 CFR 982.552 and 24 CFR 982.553. (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)]. HUD may determine in certain instances that a PHA is not required to accept incoming portable families, such as a PHA in a declared disaster area. However, the PHA must have approval in writing from HUD before refusing any incoming portable families [24 CFR 982.355(b)].

Administration of the voucher must be in accordance with the receiving PHA's policies. This requirement also applies to policies of Moving to Work agencies. The receiving PHA procedures and preferences for selection among eligible applicants do not apply to the family, and the receiving PHA waiting list is not used [24 CFR 982.355(c)(10)]. The family's unit, or voucher, size is determined in accordance with the subsidy standards of the receiving PHA [24 CFR 982.355(c)(12)], and the receiving PHA's policies on extensions of the voucher term apply [24CFR 982.322(c)(14)].

Responding to Initial PHA's Request [24 CFR 982.355(c)]

The receiving PHA must respond via email or other confirmed delivery method to the initial PHA's inquiry to determine whether the family's voucher will be billed or absorbed [24 CFR 982.355(c)(3)]. 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 without consent of the initial PHA [24 CFR 982.355(c)(4)].

- DOH will use email, when possible, to notify the initial PHA whether it will administer or absorb the family's voucher.

Initial Contact with Family [24 CFR 982.355(c)]

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. The family's failure to comply may result in denial or termination of the receiving PHA's voucher [24 CFR 982.355(c)(8)].

If the voucher issued to the family by the initial PHA has expired, the receiving PHA must contact the initial PHA to determine if it will extend the voucher [24 CFR 982.355(c)(13)]. An informal hearing is not required when a voucher has expired without the family leasing a unit.

The DOH contractor will have the incoming portable family sign all required releases and will run a criminal background check on any new adult family members who were not part of the household prior to portability to ensure that the new member 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 2016-09]. (For more on this topic, see later under "Denial or Termination of Assistance.")

Briefing

HUD requires the receiving PHA to conduct a briefing for an incoming portable family as long as the requirement does not unduly delay the family's search [Notice PIH 2012-42; FR-5453-P-01]. This briefing must include the following:

- the benefits of living in low-poverty census tracts
- other resources (such as newspapers, organizations, and online search tools) known to the PHA that may assist the family in locating a unit, and to provide that the list of landlords or other resources covers areas outside of poverty or minority concentration
 - DOH will provide the family with a briefing packet (as described in Chapter 5) and 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. The DOH contractor will include the family in a regularly scheduled briefing at a later date if one cannot be completed immediately.

Income Eligibility and Reexamination

The receiving PHA does not redetermine eligibility for a portable family that was already receiving assistance in the initial PHA's voucher program [24 CFR 982.355(c)(9)]. If the receiving PHA opts to conduct a new reexamination for a current participant family, the receiving PHA may not delay issuing the family a voucher or otherwise delay approval of a unit [24 CFR 982.355(c)(11)].

- 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(c)(13)]. 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)(15)].

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 2016-09]

- 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 30 calendar days from the expiration of the initial PHA's voucher [24 CFR 982.355(c)(13)]. If the initial PHA extends the term of the voucher, the receiving PHA's voucher may not expire before 30 days from the new expiration date of the initial PHA's voucher [Notice PIH 2016-09].

- The receiving PHA's voucher will expire 30 calendar days from the expiration date of the initial PHA's voucher. If the initial PHA extends the term of the voucher, the receiving PHA's voucher will expired 30 calendar days from the new expiration date of the initial PHA's voucher.

Voucher Extensions [24 CFR 982.355(c)(14), Notice 2016-09]

Once the receiving PHA issues the portable family a voucher, the receiving PHA's policies on extensions of the voucher term apply. The receiving PHA must inform the initial PHA of any extension granted to the term of the voucher. 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).

Voucher Suspensions [24 CFR 982.303, 24 CFR 982.355(c)(15)]

If the family submits a request for tenancy approval during the term of the receiving PHA’s voucher, the PHA must suspend the term of that voucher. The term of the voucher stops from the date that the family submits a request for PHA approval of the tenancy until the date the PHA notifies the family in writing whether the request has been approved or denied [24 CFR 982.4(b)] (see Section 5-II.E).

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)(16)]. The receiving PHA is required to use Part II of form HUD-52665, Family Portability Information, for this purpose [Notice PIH 2016-09]. (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 2016-09]

Administering a Portable Family’s Voucher

Portability Billing [24 CFR 982.355(e)]

To cover assistance for a portable family that was not absorbed, the receiving PHA bills the initial PHA for housing assistance payments and administrative fees. The amount of the housing assistance payment for a portable family in the receiving PHA’s program is determined in the same manner as for other families in the receiving PHA’s program.

The receiving PHA may bill the initial PHA for the lesser of 80 percent of the initial PHA’s ongoing administrative fee or 100 percent of the receiving PHA’s ongoing administrative fee for each program unit under contract on the first day of the month for which the receiving PHA is billing the initial PHA under portability. If the administrative fees are prorated for the HCV program, the proration will apply to the amount of the administrative fee for which the receiving PHA may bill (i.e., the receiving PHA may bill for the lesser of 80 percent of the initial PHA’s prorated ongoing administrative fee or 100 percent of the receiving PHA’s ongoing administrative fee).

If both PHAs agree, the PHAs may negotiate a different amount of reimbursement.

- Unless DOH negotiates a different amount of reimbursement with the initial PHA, DOH will bill the initial PHA the maximum amount of administrative fees allowed, ensuring any administrative fee proration has been properly applied.

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) in time that the notice will be **received** no later than 90 days following the expiration date of the family's voucher issued by the initial PHA [Notice PIH 2016-09]. This deadline may be extended for 30 additional days if the delay is due to suspension of the voucher's term (see Initial Billing Section). 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 email.

- DOH will send its initial billing notice by fax or email, 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 by the deadline, 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 2016-09].

Ongoing Notification Responsibilities [Notice PIH 2016-09, 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.

- DOH will send a copy of the updated HUD-50058 by regular mail no later than 10 business days after the effective date of the reexamination.

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. If the change resulted in a decrease in the monthly billing amount, the initial PHA will offset future monthly payments until the difference is reconciled.

Late Payments [Notice PIH 2016-09]

If the initial PHA fails to make a monthly payment for a portable family by the fifth business day of the month, the receiving PHA must promptly notify the initial PHA in writing of the deficiency. The notice must identify the family, the amount of the billing payment, the date the billing payment was due, and the date the billing payment was received (if it arrived late). The receiving PHA must send a copy of the notification to the Office of Public Housing (OPH) in the HUD area office with jurisdiction over the receiving PHA. If the initial PHA fails to correct the problem by the second month following the notification, the receiving PHA may request by memorandum to the director of the OPH with jurisdiction over the receiving PHA that HUD transfer the unit in question. A copy of the initial notification and any subsequent correspondence between the PHAs on the matter must be attached. The receiving PHA must send a copy of the memorandum to the initial PHA. If the OPH decides to grant the transfer, the billing arrangement on behalf of the family ceases with the transfer, but the initial PHA is still responsible for any outstanding payments due to the receiving PHA.

Overpayments [Notice PIH 2016-09]

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 2016-09.

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)(17)].

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. [HUD-52665; Notice PIH 2016-09]

- 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 DOH has funding available under its annual contributions contract (ACC) [24 CFR 982.355(d) (1), Notice PIH 2016-09].

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, the receiving PHA must send an updated form HUD-52665 to the initial PHA no later than 10 business days following the effective date of the termination of the billing arrangement. [Notice 2016-09]

- 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, but no later than 10 business days following the effective date of the termination of the billing arrangement.

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 [24 CFR 982.355(e)(4)].

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

In State Transfer Process

*This section pertains to the Housing Choice Voucher, Continuum of Care Permanent Supportive Housing**, and State Housing Voucher programs only. (** Continuum of Care Permanent Supportive Housing participants may transfer pending contract agency and budget availability)*

DOH has jurisdiction throughout the state of Colorado. DOH's subsidized housing applicants/participants have the option to move anywhere within the State. If a DOH housing subsidy applicant/participant moves within the state of Colorado, DOH will continue to administer their housing through a partner agency.

The applicant/participant must inform their Agency Residential Coordinator of a request to move within the state at least 30 days prior to moving.

If there are any program violations, a participant conference must be held before transferring to a partner agency.

Step One: Collect documentation from applicant/participant and landlord

1. Residential Coordinator collects the required forms from applicant/participant and landlord:
 - a. 30-day notice or Mutual Rescission of Lease
 - b. In-state Transfer form

Step Two: Review documentation

1. Review required documents for completeness making sure all forms are signed.
2. Contact the family to determine if the city/county and jurisdiction of where the family wants to move is correct.

Step Three: Issuance of Voucher

1. Issue a manual voucher for 120 days to move (not in elite).
2. Process an annual reexamination if one is due within the next 120 days.

Step Four: Approval by DOH

1. Send the Family Request for In-State Transfer form, 30-day notice/mutual rescission of lease, manual voucher, and annual reexamination (if needed) to the appropriate DOH Single Point of Contact (SPOC).
2. DOH will then:
 - a. Review paperwork for completeness.
 - b. Send all documentation to the new partner agency.
 - c. Send approval of Family Request for In-State Transfer to receiving and initial partner agencies.

- d. Send a copy of the voucher to the receiving agency.
 3. Initial Agency will maintain the original file for 5 years and send the following documents to the receiving agency:
 - a. Original application
 - b. All family ID documents (birth certificates, SS card, ID's etc.)
 - c. 30 Day notice to vacate or mutual rescission of lease
 - d. All documents associated with the last effective annual reexamination
 - i. 50058
 - ii. All income, expense and asset verifications
 - iii. All releases (including the HUD 9886)
 - iv. Any approved reasonable accommodations
 - v. Any tenant conferences, violation documentation, etc.
- Both initial and receiving agencies should work together to assist the applicant/participant by setting up appointments for intake and providing necessary information for the transfer of services.
 - Please refer to applicant/participant move procedure. This may require obtaining updated income, asset, and expense verifications.
 - If unreported income is discovered during the In-State Transfer process, the initial agency will be responsible to complete a repayment agreement and tenant conference with the participant.
 - **Receiving agency** tracks the voucher clock and is responsible for granting extensions as necessary.
 - **Receiving agency** will complete the move action.
 - If the applicant/participant does not lease up with the receiving agency within the voucher timeframe, the receiving agency must notify the DOH Single Point of Contact (SPOC).
 - **Initial agency** will then follow the termination process and turns over the voucher to the next person on the initial agency's waiting list.

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. STREAMLINED ANNUAL REEXAMINATIONS [24 CFR 982.516(b); New HCV GB, Reexaminations]

HUD permits PHAs to streamline the income determination process for family members with fixed sources of income. While third-party verification of all income sources must be obtained during the intake process and every three years thereafter, in the intervening years the PHA may determine income from fixed sources by applying a verified cost of living adjustment (COLA) or rate of interest. The PHA may, however, obtain third-party verification of all income, regardless of the source. Further, upon request of the family, the PHA must perform third-party verification of all income sources.

Fixed sources of income include Social Security and SSI benefits, pensions, annuities, disability or death benefits, and other sources of income subject to a COLA or rate of interest. The determination of fixed income may be streamlined even if the family also receives income from other non-fixed sources.

Two streamlining options are available, depending upon the percentage of the family's income that is received from fixed sources. If at least 90 percent of the family's income is from fixed sources, the PHA may streamline the verification of fixed income but is not required to verify non-fixed income amounts. If the family receives less than 90 percent of its income from fixed sources, the PHA may streamline the verification of fixed income and must verify non-fixed income annually.

- DOH will not streamline the annual reexamination process.

11-I.C. 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.
- For vouchers entered into the Homeless Management Information System (HMIS), such as VASH, CoC PSH, and others as determined by DOH, the HMIS annual assessment must be done in coordination with the program enrollment date.

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.D. 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 tenant's unit or other identified reasonable accommodation.

Additionally, HUD recommends that at annual reexaminations PHAs ask whether the tenant, or any member of the tenant's household, is subject to a lifetime sex offender registration requirement in any state [Notice PIH 2012-28].

- At the annual reexamination, the PHA will ask whether the tenant, or any member of the tenant's household, is subject to a lifetime sex offender registration requirement in any state. The PHA will use the Dru Sjodin National Sex Offender database to verify the information provided by the tenant.

If the PHA proposes to terminate assistance based on lifetime sex offender registration information, the PHA must notify the household of the proposed action and must provide the subject of the record and the tenant a copy of the record and an opportunity to dispute the accuracy and relevance of the information prior to termination. [24 CFR 5.903(f) and 5.905(d)]. (See Chapter 12.)

The information provided by the family generally must be verified in accordance with the policies in Chapter 7. Unless the family reports a change, or the 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

If adding a new family member to the unit causes overcrowding according to the housing quality standards (HQS) (see Chapter 8), the PHA must issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the PHA must terminate the HAP contract in accordance with its terms [24 CFR 982.403].

11-I.E. 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 their parents or is considered a *vulnerable youth* 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 their parents or is considered a *vulnerable youth* 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 their own income or the income of their 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 their own income and the income of their parents (if applicable), DOH will process a reexamination in accordance with the policies in this chapter.

11-I.F. 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 prospectively, from the first day of the month following completion of the reexamination processing.

Delays in reexamination processing are considered to be caused by the family if the family fails to provide information requested by 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. In the case where a family composition change results in a subsidy increase, the subsidy size should be increased immediately.

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)].

Although the PHA must verify aspects of program eligibility when any new family member is added, the Streamlining Final Rule removed the requirement that PHAs conduct a reexamination of income whenever a new family member is added. The PHA may state in policy that an income reexamination will be conducted.

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 their disabled, elderly parent needs to live with them, for reasons related to their 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 a new family member is added, family income may include any income of the new family member(s). DOH will conduct an interim reexamination to add the new family member(s), adjust the voucher size (if applicable), and add income (if applicable).

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. When a family reports a change, the PHA may take different actions depending on whether the family reported the change voluntarily, or because it was required to do so.

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 of the first 12-month exclusion period (and percent phase-in period) and the start and conclusion of the second 12-month exclusion period (50 percent phase-in period).
 - *Effective January 1, 2024, no further EID admissions will be approved as a result of HOTMA legislation. Existing EID participants will be able to utilize their remaining EID clock.*
- 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 in cases where the tenant portion increases 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 changes 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 only if the family's household annual income is zero at the time of the increase. Otherwise, all new and/or increased household income will be included at the next scheduled annual reexamination.
- If a new family member is added, family household income must include any income of the new family member(s) if the family's household income is zero at the time of the addition. DOH will conduct an interim reexamination to add the new family member(s), adjust the voucher size (if applicable), and add income (if applicable).
- *Additional and updated interim policy changes will be effective May 1, 2024 following the enactment of the Sections 102 and 104 of the Housing Opportunities through Modernization Act (HOTMA). (Federal Register, Vol. 88, No. 30, Published February 14, 2023).*

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.
- 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 email, 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*, during the term of a HAP contract, the PHA is not required to reduce the payment standard as the HAP contract remains in effect. At the family's *second annual* reexamination, the PHA may, but is not required to, apply the decreased payment standard or may gradually implement the reduced payment standard (See Chapter 6 for the PHA's policy on decreases in the payment standard).
 - If the family moves to a new unit, or a new HAP contract is executed due to changes in the lease (even if the family remains in place) the current payment standard applicable to the family will be used when the new HAP contract is processed.

- Through December 31, 2023, DOH has been approved for a limited waiver stating that if the payment standard amount has *increased*, the increased payment standard may be applied at any time.

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 [HCV GB, p. 18-8].

- 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 reexamination. A family's utility allowance is determined by the size of dwelling unit leased by a family or the voucher unit size for which the family qualifies using PHA subsidy standards, whichever is the lowest of the two [FR Notice 06/25/14]

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 reimbursement will be applied to a Colorado Quest benefits card issued through the Colorado Department of Human Services. Participants will be provided with information on how to apply for this card if they do not currently have one.

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 amount and effective date of the new tenant rent to owner

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).

- The notice to the family will include the annual and adjusted income amounts that were used to calculate the family share of the rent and the housing assistance payment.
- The notice will state the family has the right to request an explanation of how the assistance was calculated and if the family disagrees, they have the right to informal hearing. The notice will include the procedures for requesting an informal hearing.

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 Housing Choice Voucher (HCV) program is to assist low income families in obtaining affordable 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 2018-24]

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 their 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(l)]

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 convictions or eviction of household members related to the use of illegal drugs or abuse of alcohol.
- A record or records of arrest will not be used as the sole basis for the termination or proof that the participant engaged in disqualifying 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.

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 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.
- A record or records of arrest will not be used as the sole basis for the termination or proof that the participant engaged in disqualifying 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), 24 CFR 984.101(d)]**

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 2013 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.

Additionally, per 24 CFR 984.101(d), PHAs are no longer permitted to terminate assistance to a family due to the family’s failure to meet its obligations under the Family Self-Sufficiency (FSS) contract of participation.

- 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 has not reimbursed DOH 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 contract 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

Use of Criminal Conviction Records after Admission [24 CFR 5.903]

The regulation at 24 CFR 5.903 governs a PHA's access to and use of criminal conviction records obtained from a "law enforcement agency" such as the National Crime Information Center (NCIC), police departments, and other law enforcement agencies that hold criminal conviction records. While the regulatory listing of permitted uses for these records includes PHA screening of applicants for admission to the HCV program, it specifically excludes the use of records for lease enforcement and eviction of HCV participants and excludes by omission a PHA's use of records to terminate assistance for participants. While a PHA has regulatory authority to use criminal conviction records for the purpose of applicant screening for admission, there is no corresponding authority to use these records to check for criminal and illegal drug activity by participants, and therefore, PHAs may not use records for this purpose. The limitations, however, do not apply to criminal conviction information searches from non-federal sources (i.e., sources other than the "law enforcement agencies" defined in 24 CFR 5.902(b)). There is no prohibition that bars a PHA from using non-federal sources to conduct criminal background checks of program participants.

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, including the age of the individual at the time of the conduct, as well as the family’s recent history and the likelihood of favorable conduct in the future
- While a record or records of arrest will not be used as the sole basis for termination, an arrest may, however, trigger an investigation to determine whether the participant actually engaged in disqualifying criminal activity. As part of its investigation, the PHA may obtain the police report associated with the arrest and consider the reported circumstances of the arrest. The PHA may also consider:
 - Any statements made by witnesses or the participant not included in the police report
 - Whether criminal charges were filed
 - Whether, if filed, criminal charges were abandoned, dismissed, not prosecuted, or ultimately resulted in an acquittal
 - Any other evidence relevant to determining whether or not the participant engaged in disqualifying activity
- Evidence of criminal conduct will be considered if it indicates a demonstrable risk to safety and/or property
- 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 they were imminently threatened by harm from further violence if they remained in the unit [24 CFR 982.354(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)]

In order to demonstrate an actual and imminent threat, DOH must have objective evidence of words, gestures, actions, or other indicators. 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, sexual assault, or stalking
 - Whether the threat is a physical danger beyond a speculative threat
 - Whether the threat is likely to happen within an immediate time frame
 - 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 they are 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].

If the perpetrator remains in the unit, the PHA continues to pay the owner until the PHA terminates the perpetrator from the program. The PHA must not stop paying HAP until 30 days after the owner bifurcates the lease to evict the perpetrator. The PHA may pay HAP for the full month if the 30-day period will end mid-month [Notice PIH 2017-08].

If the perpetrator is the only participant eligible to receive assistance, the PHA will provide any remaining participant a chance to establish eligibility for the program. If the remaining participant cannot do so, the PHA will provide them with 30 days to establish eligibility for another housing program prior to termination of the HAP contract.

- 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-5382) 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, the PHA will send a written notice of termination to the family and to the owner. The PHA will also send a form HUD-5382 and form HUD-5380 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 it.

- When DOH notifies an owner that a family's assistance will be terminated, DOH will, if appropriate, advise the owner of their 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 5382 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-5382 and form HUD-5380. DOH will request in writing that a family member wishing to claim protection under VAWA notify DOH within 14 business days. DOH will send the termination notice via both certified and regular USPS delivery.

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. This is the case except in certain incidents where the criminal activity directly relates to domestic violence, dating violence, sexual assault, or stalking, and the tenant or an affiliated individual is the victim or threatened victim of the domestic violence, dating violence, sexual assault, or stalking.

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.

If a property is subject to foreclosure, during the term of the lease, the new owner of the property does not have good cause to terminate the tenant's lease, unless the new owner will occupy the unit as their primary residence and has provided the tenant with at least a 90-day notice. In that case, the lease may be terminated effective on the date of sale, although the tenant is still entitled to a 90-day notice to vacate. See Section 13-II.G for a discussion of PHA policies relating to units in foreclosure.

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 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, 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, 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 (within 3 days) 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 (within 10 days) 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; HCV Landlord Strategy Guidebook for PHAs]

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.

If the PHA will be conducting outreach events, the PHA must ensure that notices and communications during outreach events are provided in a manner that is effective for persons with hearing, visual, and other communications-related disabilities. PHAs must also take reasonable steps to ensure meaningful access to programs to persons with limited English proficiency.

- 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, apartment associations, industry investor groups, and real estate brokers associations
 - To the extent practical, partnering with and attending events hosted by other area agencies to deliver information about the HCV program

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.
 - Providing other written information about how the program operates through a landlord handbook, including answers to frequently asked questions.
 - Contacting owners via emails or texts to disseminate information.
- 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 their past history with this or another federal housing program, or because of certain conflicts of interest. Owner qualifications are discussed later in this chapter.

The selected unit must be of a type that is eligible for the program [24 CFR 982.305(a)]. Certain types of dwelling units cannot be assisted under the HCV program. Other types may be assisted under certain conditions. 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:

- Complying 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
- Allowing reasonable modifications to a dwelling unit occupied or to be occupied by a disabled person [24 CFR 100.203]
- Complying with the Violence against Women Reauthorization Act of 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. 8-19 and 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; Form HUD-52641, Section 13]

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

Such “covered individual” may not have any direct or indirect interest in the HAP contract or in any benefits or payments under the contract (including the interest of an immediate family member of such covered individual) while such person is a covered individual or for one year thereafter.

Immediate family member means the spouse, parent (including a stepparent), child (including a stepchild), grandparent, grandchild, sister, or brother (including a stepsister or stepbrother) of any covered individual.

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 their 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/HCV or any other federally assisted housing program for activity engaged in by the tenant, any member of the household, a guest or another person under the control of any member of the household that:
 - (i) Threatens the right to peaceful enjoyment of the premises by other residents;
 - (ii) Threatens the health or safety of other residents, of employees of 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 tenant-based program tenancies except for assistance under the HCV 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].

- All HAP contracts must be submitted to DOH within 60 days of the effective date for signature. Contract agencies are no longer permitted to sign HAP contracts.

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 accepting 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;
 - The required W-9 form;
 - Landlord Obligations form, which includes an ownership certification statement;
 - The effective date of the HAP contract assignment;
 - A written agreement to comply with the terms of the HAP contract; and

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

[Notice PIH 2010-49]

Families receiving HCV assistance are entitled to certain protections set forth under the Protecting Tenants at Foreclosure Act (PTFA). During the term of the lease, the new owner of the property does not have good cause to terminate the tenant's lease, unless the new owner will occupy the unit as their primary residence and has provided the tenant with at least a 90-day notice. In that case, the lease may be terminated effective on the date of sale, although the tenant is still entitled to a 90-day notice to vacate. Further, the new owner assumes interest in the lease between the prior owner and the tenant and to the HAP contract.

Any state or local law that provides longer time periods or other additional protections for tenants also applies.

If a property is in foreclosure, the PHA will make all reasonable efforts to determine the status of the foreclosure and ownership of the property and will continue to make payments to the original owner until ownership legally transfers in accordance with the HAP contract.

The PHA will attempt to obtain a written acknowledgement of the assignment of the HAP contract from the successor in interest. This will include a request for owner information, including 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.

The PHA will inform the tenant that they must continue to pay rent in accordance with the lease, and if the new owner 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.

In the event that the PHA is unable to make HAP payments to the new owner due to an action or inaction by the new owner 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 new owner, the PHA will either use the funds to pay:

The utilities that are the owner's responsibility after taking reasonable steps to notify the owner; except that if the unit has been or will be rendered uninhabitable due to termination or threat of termination of service, prior notice is not required. In the latter case, the PHA shall notify the owner within a reasonable time after making the utility payment; or

For the family's reasonable moving costs, including security deposit costs.

The PHA will 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.

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 2017-12. 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 Director of the Office of Rental Assistance 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 them (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 State Housing Board, 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
- Committing sexual or other harassment, either quid pro quo or hostile environment, based on the protected classes defined in Chapter 2
- Retaliating against any applicant or participant reporting/alleging sexual or other harassment, either quid pro quo or hostile environment, based on the protected classes defined in Chapter 2

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 their 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 regular mail delivery and email delivery (if email is provided) 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]. A single unit cannot be designated as more than one type of special housing. The PHA cannot give preference to households that wish to live in any of these types of housing and cannot require households to select any of these types of housing [New HCV GB, *Special Housing Types*, p. 3].

This chapter consists of the following seven parts. Each part contains a description of the housing type and any special requirements associated with it. Except as modified by this chapter, the general requirements of the HCV program apply to special housing types.

Part I: Single Room Occupancy

Part II: Congregate Housing

Part III: Group Homes

Part IV: Shared Housing

Part V: Cooperative Housing

Part VI: Manufactured Homes (including manufactured home space rental)

Part VII: Homeownership

PART I: SINGLE ROOM OCCUPANCY

[24 CFR 982.602 through 982.605; Form HUD-52641; New HCV GB,
Special Housing Types, p. 4]

15-I.A. OVERVIEW

A single room occupancy (SRO) unit provides living and sleeping space for the exclusive use of the occupant but requires the occupant to share sanitary and/or food preparation facilities with others. More than one person may not occupy an SRO unit. HCV regulations do not limit the number of units in an SRO facility, but the size of a facility may be limited by local ordinances.

When providing HCV assistance in an SRO unit, a separate lease and HAP contract are executed for each assisted person. The standard form of the HAP contract is used (form HUD-52641) with the special housing type specified in Part A of the HAP contract, as follows: “This HAP contract is used for the following special housing type under HUD regulations for the Section 8 voucher program: Single room occupancy (SRO) housing.”

15-I.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP

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 that sanitary facilities, and space and security characteristics must meet local code standards for SRO housing. In the absence of applicable local code standards for SRO housing, the following standards apply:

- *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, large 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 males, 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 to all persons sharing them 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; Form HUD-52641; New HCV GB,
Special Housing Types, p. 6]

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. The standard form of the HAP contract is used (form HUD-52641) with the special housing type specified in Part A of the HAP contract, as follows: “This HAP contract is used for the following special housing type under HUD regulations for the Section 8 voucher program: Congregate housing.”

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 for the assisted family. 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 a refrigerator of appropriate size in the private living area of each resident, a central kitchen and dining facilities located within the premises and accessible to the residents, and food service for the residents, that is not provided by the residents themselves.

The congregate housing must contain adequate facilities and services for the sanitary disposal of food waste and refuse, including facilities for temporary storage where necessary.

The housing quality standards applicable to lead-based paint do not apply unless a child under the age of six is expected to reside in the unit.

PART III: GROUP HOME

[24 CFR 982.610 through 982.614; Form HUD-52641; New HCV GB,
Special Housing Types, p. 8]

15- III.A. OVERVIEW

A group home is a state-approved (licensed, certified, or otherwise approved in writing by the state) 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. The standard form of the HAP contract is used (form HUD-52641) with the special housing type specified in Part A of the HAP contract, as follows: “This HAP contract is used for the following special housing type under HUD regulations for the Section 8 voucher program: Group home.”

15- III.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION

Unless there is a live-in aide, the family unit size (voucher size) for an assisted occupant of a group home must be zero- or one-bedroom. 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 number of persons in the assisted household equals one assisted person plus any PHA-approved live-in aide.

The HAP for an assisted occupant in a group home is the lower of the payment standard minus the TTP or the gross rent minus the TTP.

The utility allowance for an assisted occupant in a group home is the prorata share of the family unit size to the utility allowance for the entire group home.

The rents paid for participants residing in group homes are subject to generally applicable standards for rent reasonableness. The rent for an assisted person must not exceed the prorata portion of the reasonable rent for the group home. In determining reasonable rent, DOH must consider whether

sanitary facilities and facilities for food preparation and service are common facilities or private facilities.

15- III.C. HOUSING QUALITY STANDARDS

The entire unit must comply with HQS requirements described in Chapter 8 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. Doors and windows accessible from outside the unit must be lockable.
- *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 disturbing noises and reverberations, and other hazards to the health, safety, and general welfare of the residents, and should not be subject to serious adverse conditions, such as:
 - Dangerous walks or steps
 - Instability
 - Flooding, poor drainage
 - Septic tank back-ups, sewage hazards
 - Mud slides
 - Abnormal air pollution
 - Smoke or dust
 - Excessive noise
 - Vibrations or vehicular traffic
 - Excessive accumulations of trash
 - Vermin or rodent infestation, and
 - Fire hazards

The housing quality standards applicable to lead-based paint do not apply unless a child under the age of six is expected to reside in the unit.

PART IV: SHARED HOUSING

[24 CFR 982.615 through 982.618; Form HUD-52641; Notice PIH 2021-05;
New HCV GB, *Special Housing Types*, p. 11]

15- IV.A. OVERVIEW

Families in markets with tight rental conditions or with a prevalence of single-family housing may determine a shared housing living arrangement to be a useful way to secure affordable housing. PHAs offering shared housing as a housing solution may also experienced some reduction in the average per-unit-cost (PUC) paid on behalf of assisted families.

Shared housing is a single housing unit occupied by an assisted family and another resident or residents. The unit may be a house or an apartment. 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.

Shared housing may be offered in a number of ways, including for-profit co-living (such as a boarding house, single bedroom with common living room/kitchen/dining room) run by a private company [Notice PIH 2021-05].

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 shared housing is offered as a housing option, HUD encourages PHAs to consider ways in which the families may be assisted in finding shared housing, including for-profit shared housing matching (such as roommates or single-family homes) and online sites that charge a fee for their matching services, or nonprofit shared housing matching services. HUD further encourages PHAs to include information about this housing possibility in the family's voucher briefing.

PHAs should be aware of potential local legal barriers to HCV participants using shared housing, which can create additional obstacles for shared housing:

- Municipalities may have occupancy limits for the number of unrelated persons who may share a housing unit.
- Local zoning codes for single family housing may restrict occupancy in certain areas to households whose family members are related by blood.

PHAs should work with local jurisdictions to find solutions that encourage affordable housing and are consistent with the Fair Housing Act, Title VI, and other federal, state, and local fair housing laws. PHAs should inform HUD if they encounter barriers to shared housing that may conflict with fair housing laws.

When providing HCV assistance in shared housing, a separate lease and HAP contract are executed for each assisted family. The standard form of the HAP contract is used (form HUD-52641) with the special housing type specified in Part A of the HAP contract, as follows: “This HAP contract is used for the following special housing type under HUD regulations for the Section 8 voucher program: Shared housing.”

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 (voucher size) or the prorata share of the payment standard for the shared housing unit size.

The prorata share is calculated by dividing the number of bedrooms available for occupancy by the assisted family in the private, non-shared space by the total number of bedrooms in the unit.

Example: Family holds a two-bedroom voucher.
Shared housing unit size: bedrooms available to assisted family = 2
Total bedrooms in the unit: 3
2 Bedrooms for assisted family
÷ 3 Bedrooms in the unit
.667 pro-rata share
2 BR payment standard: \$1200
3 BR payment standard: \$1695 $\$1695 \times .667$ (pro-rata share) = \$1131 \$1131 is
lower than the \$1200 payment standard for the 2 BR family unit size \$1131 is
the payment standard used to calculate the HAP

The HAP for a family in shared housing is the lower of the payment standard minus the TTP or the gross rent minus the TTP.

The utility allowance for an assisted family living in shared housing is the prorata share of the utility allowance for the shared housing unit.

Example: A family holds a 2-bedroom voucher. The family decides to occupy 3 out of 4 bedrooms available in the unit.

The utility allowance for a 4-bedroom unit equals \$200
The utility allowance for a 2-bedroom unit equals \$100
The prorata share of the utility allowance is \$150 (3/4 of \$200)
The PHA will use the 2-bedroom utility allowance of \$100.

The rents paid for families living in shared housing are subject to generally applicable standards for rent reasonableness. The rent paid to the owner for the assisted family must not exceed the pro-rata portion of the reasonable rent for the shared unit. In determining reasonable rent, DOH may 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 (voucher size). A zero-bedroom or one-bedroom unit may not be used for shared housing.

PART V: COOPERATIVE HOUSING

[24 CFR 982.619; New HCV GB, *Special Housing Types*, p. 14]

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.” The monthly carrying charge includes the member’s share of the cooperative debt service, operating expenses, and necessary payments to cooperative reserve funds. It 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.

The occupancy agreement or lease and other appropriate documents must provide that the monthly carrying charge is subject to Section 8 limitations on rent to owner, and the rent must be reasonable as compared to comparable unassisted units.

When providing HCV assistance in cooperative housing, the standard form of the HAP contract is used with the special housing type specified in Part A of the HAP contract, as follows: “This HAP contract is used for the following special housing type under HUD regulations for the Section 8 voucher program: Cooperative housing.”

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 gross rent (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. The PHA remedies described in 24 CFR 982.404 do not apply. Rather, if the unit and premises are not maintained in accordance with HQS, the PHA may exercise all available remedies regardless of whether the family or cooperative is responsible for the breach of HQS.

No housing assistance payment can be made unless unit meets HQS and the defect is corrected within the period as specified by the PHA and the PHA verifies correction (see Chapter 8).

In addition to regular breaches of HQS, breaches of HQS by the family include failure to perform any maintenance for which the family is responsible in accordance with the terms of the cooperative occupancy agreement [HCV GB].

PART VI: MANUFACTURED HOMES

[24 CFR 982.620 through 982.624; FR Notice 1/18/17; New HCV GB,
Special Housing Types, p. 15;]

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 the PHA must permit it. In this instance program rules are the same as when a family rents any other residential housing, except that there are special HQS requirements as provided in 15-VI.D below.
- (2) A family can purchase a manufactured home under the Housing Choice Voucher Homeownership program.
- (3) 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 as well as certain other housing expenses. PHAs may, but are not required to, provide assistance for such families.

15- VI.B. SPECIAL REQUIREMENTS 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 designated HAP Contract (form HUD-52642) and designated Tenancy Addendum (form HUD 52642-A) for this special housing type.

15- VI.C. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION [FR Notice 1/18/17]

Payment Standards

The PHA payment standard for manufactured homes is determined in accordance with 24 CFR 982.505 and is the payment standard used for the PHA's HCV program. It is based on the applicable FMR for the area in which the manufactured home space is located.

The payment standard for the family is the lower of the family unit size (voucher size) or the payment standard for the number of bedrooms in the manufactured home.

Utility Allowance

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.

If the amount of the monthly assistance payment for a family exceeds the monthly rent for the manufactured home space (including the owner's monthly management and maintenance charges), the PHA may pay the remainder to the family, lender, or utility company.

- The utility allowance schedule used will be the single-family schedule. The allowance will be based on the actual number of bedrooms or the family's voucher size, whichever is less.

Space Rent

The rent for the manufactured home space (including other eligible housing expenses) is the total of:

- The rent charged for the manufactured home space;
- Owner maintenance and management charges for the space;
- The monthly payments made by the family to amortize the cost of purchasing the manufactured home, including any required insurance and property taxes; and
- The applicable allowance for tenant-paid utilities.

Amortization Costs

The monthly payment made by the family to amortize the cost of purchasing the manufactured home is the debt service established at the time of application to a lender for financing the purchase of the manufactured home if monthly payments are still being made. Any increase in debt service due to refinancing after purchase of the home may not be included in the amortization cost. Debt service for set-up charges incurred by a family may be included in the monthly amortization payments made by the family. In addition, set-up charges incurred before the family became an assisted family may be included in the amortization cost if monthly payments are still being made to amortize the charges.

Housing Assistance Payment

The HAP for a manufactured home space under the housing choice voucher program is the lower of the payment standard minus the TTP or the manufactured home space rent (including other eligible housing expenses) minus the TTP.

Rent Reasonableness

Initially, and at least annually thereafter, the PHA must determine that the rent for the manufactured home space is reasonable based on rents for comparable manufactured home spaces. The PHA must consider the location and size of the space, and any services and maintenance to be provided by the owner. By accepting the monthly housing assistance payment, the owner of the manufactured home space certifies that the rent does not exceed rents charged by the owner for comparable unassisted spaces in the same manufactured home park or elsewhere.

If requested by the PHA, the owner must give the PHA information on rents charged by the owner for other manufactured home spaces.

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]

The homeownership program is not currently taking applications.

15-VII.A. OVERVIEW

[24 CFR 982.625]

Effective May 1, 2020, the homeownership program is no longer taking applications for new participants.

~~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, at a minimum, current participants in good standing 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.

The homeownership option is used to assist a family residing in a home purchased and owned by one or more members of the family. A family assisted under this option may be newly admitted or an existing participant in the HCV program. The PHA must have the capacity to operate a successful HCV homeownership program as defined by the regulations.

There are two forms of homeownership assistance described in the regulations: monthly homeownership assistance payments and single down payment assistance grants. However, PHAs may not offer down payment assistance until and unless funding is allocated by Congress. Since this has not yet happened, only monthly homeownership assistance may be offered.

The PHA may choose not to offer homeownership assistance. However, the PHA must offer homeownership assistance if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities. It is the sole responsibility of the PHA to determine whether it is reasonable to implement a homeownership program as a reasonable accommodation. The PHA must determine what is reasonable based on the specific circumstances and individual needs of the person with a disability. The PHA may determine that it is not reasonable to offer homeownership assistance as a reasonable accommodation in cases where the PHA has otherwise opted not to implement a homeownership program.

The PHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

15-VII.B. FAMILY ELIGIBILITY **[24 CFR 982.627]**

If the PHA offers the homeownership option, participation by the family is optional. However, the family must meet all of the requirements listed below before the commencement of homeownership assistance. The PHA may also establish additional initial requirements as long as they are described in the PHA administrative plan.

DOH will not accept a program participant under portability if they are from a PHA within the State of Colorado and do not intend on leaving their current PHA's jurisdiction. DOH will not accept a portability participant solely for the purposes of accessing the homeownership program.

For purposes of the Homeownership program, the following definitions apply:

***Disabled family** means a family whose head (including co-head), spouse, or sole member is a person with a disability. It may include two or more persons with disabilities living together, or one or more persons with disabilities living with one or more live-in aides. (24 CFR § 5.403)*

***Elderly family** means a family whose head (including co-head), spouse, or sole member is a person who is at least 62 years of age. It may include two or more persons who are at least 62 years of age living together, or one or more persons who are at least 62 years of age living with one or more live-in aides. (24 CFR § 5.403)*

- The family must have been admitted to the Housing Choice Voucher program.
- The family must have received DOH Housing Choice Voucher Program assistance in DOH's jurisdiction in which they wish to buy a home for a minimum of one year (12 consecutive months).
- The family must qualify as a first-time homeowner, or may be a cooperative member which is defined as:
 - To qualify as a "first-time homeowner," the assisted family may not include any person with a "present ownership interest" in a residence during the three years before the commencement of homeownership assistance for the family. Cooperative membership shares acquired prior to the commencement of homeownership assistance are exempt from this rule. A single parent or displaced person who, while married or cohabitating, owned a home with their spouse/partner, or resided in a home owned by their spouse/partner, is considered a "first-time homeowner."
 - Other conditions also apply to "first-time homeowner" definition:

- No family member may have a present ownership interest in a second residence while receiving homeownership assistance.
 - If DOH determines that a disabled family requires homeownership assistance as a reasonable accommodation, the first-time homeowner requirement does not apply.
 - DOH will not commence homeownership assistance for a family if any family member has previously received assistance under the homeownership option, and has defaulted on a mortgage securing debt incurred to purchase the home.
- The family must be willing to sign the Statement of Homeowner Obligations and Program Guidelines and be able to comply with the additional special requirements for homeownership assistance as specified in the homeownership handbook and DOH’s administrative plan.
- The family must be in good standing (having no program obligation violations) 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.
- The family must 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 family must meet the Federal minimum income requirement:
 - The family must have a gross annual income equal to the Federal minimum wage multiplied by 2,000 hours based on the income of adult family members who will own the home. The PHA may establish a higher income standard for families.
 - If a family has a minimum income equal to or greater than the Federal minimum wage multiplied by 2,000 hours (\$9.50/hour as of January 1, 2023) but less than the state minimum wage multiplied by 2,000 hours (\$13.65/hour as of January 1, 2023), the family will meet the minimum income requirement if the family can demonstrate it has located a PHA approvable unit and has secured PHA approvable financing for that unit and meets all other program requirements.
- The family must satisfy the employment requirements by demonstrating that one or more adult members of the family who will own the home at commencement of homeownership assistance is currently employed on a full-time basis (the term 'full-time employment' means not less than an average of 30 hours per week); and has been continuously so employed during the year before commencement of homeownership assistance for the family.
- The employment requirement does not apply to elderly and disabled families. In addition, if a family, other than an elderly or disabled family includes a person with disabilities, DOH may grant an exemption from the employment requirement if DOH determines that it is needed as a reasonable accommodation.
- For purposes of program eligibility, welfare assistance payments may only be counted as income in cases where the applicant meets the definition of an elderly or disabled family.
- For elderly/ disabled families, the income must:
 - At a minimum: be at least the monthly Supplemental Security Income (SSI) benefit for an individual living alone (or paying their share of food and housing costs) multiplied by 12 (i.e. \$914 x 12 = \$10,968/ year).
- Down Payment Requirement:
 - The purchasing family is required to invest at least three percent (3%) of the purchase price of the home. This investment can take the form of a down payment, closing costs, or a combination of the two. Of this sum, at least one percent (1%) of the purchase price must come from the family's personal resources.
 - If the family is an FSS graduate, the FSS escrow may be used to meet 50% of the down payment and closing costs contribution requirements established by DOH.

- The buyer may acquire financing through any DOH approved lender. If the home is purchased using FHA mortgage insurance, it is subject to FHA mortgage insurance requirements.
- There is no prohibition against using local/state grants or other subsidized financing in conjunction with the Housing Choice Voucher Homeownership Program. The program can be combined with a variety of mortgage loan products and other HUD programs to assist a potential home buyer in achieving the most favorable interest rate and terms of purchase.
- Minimum Cash Down payment or Equity Requirements:
 - Participants with Disabilities:
 - DOH requires a minimum of a \$750 borrower contribution toward the purchase (down payment, appraisal, inspection, etc.) by participants with disabilities.
 - Families with non-disabled head of household:
 - DOH requires a minimum of \$1,000 borrower contribution toward the purchase (down payment, appraisal, inspection, etc.) by non-disabled participants from the families own assets.
- Unlike the HCV rental program, a family must meet the income requirement only upon initial qualification and entry into 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.
 - DOH has implemented affordability protections into the program to limit how much a family may contribute toward monthly homeownership expenses. To be eligible for the program, a family may only contribute a maximum of 35 percent of Adjusted Income at the time of the initial contract. DOH has implemented this affordability cap as a local option to reduce the risk of default by the family. As part of the home buying process, DOH will review the financing package to determine whether the mortgage is affordable to the family and in making this determination, DOH will consider other family expenses, including food and clothing expenses, childcare, un-reimbursed medical expenses, homeownership expenses, and non-housing debt.
- The family must demonstrate they have a credit score of at least 620 and/or must have good credit from alternative credit sources. Alternative credit is defined as:
 - No negative credit reports from sources other than medical during the past 12 months;
 - Medical collections no more than \$250 per source and \$1000 in aggregate;
 - Payment plans to pay off debt be in effect and current for at least 12 months; and

15-VII.C. SELECTION OF FAMILIES AND APPLICATION PROCESS **[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 the DOH file.

15-VII.D. FAMILY APPLICATION PROCESS

Application Form: An applicant must complete and submit the *Homeownership Application* to DOH for review. The application includes information on income, assets, obligations, and family composition.

Application Attachments

1. Documentation of attendance homeownership education classes that meet FHA guidelines and are HUD approved agencies.
2. A current bank statement verifying a substantial amount saved designated toward the one percent (1%) of personal funds down payment requirement. Applicants must document a three percent (3%) down payment with the mortgage lender prior to closing.
3. For non-disabled families, verification of employment.
4. Provide a signed reference letter from current landlord and previous landlord (if current occupancy is less than one year), stating that the applicant has fully complied with the terms of the lease agreement.
5. If applicable, a verification of disability, if not on file.
6. The applicant must document household composition for all individuals who will reside in the household.

Application Review

Upon receipt of an HCV *Homeownership Application*, the HCV Program Administrator determines whether an applicant meets the eligibility criteria for the program. The application review will include:

1. Evaluation of family composition and HCV rental status.
2. Review of income, savings, and disability documentation.
3. Verification that the applicant is in compliance with all lease provisions using the *Landlord Reference* letter.

4. Evaluation of employment history, if applicable.

All documentation is subject to independent verification by DOH program staff. DOH will review the file for discrepancies or omissions. If, at any time throughout the process, DOH sees a discrepancy in reported income, assets, or family share, he/ shall perform an interim reexamination, resolve whether further action is necessary, and report the outcome to the housing coordinator and the applicant.

If, in the course of a loan application, a loan originator, or other third party, document income not previously reported to DOH, DOH will conduct an interim reexamination of income. Should the reexamination result in a debt or proposed repayment agreement, DOH shall retain sole discretion to withdraw the *Certificate of Eligibility* subject to the outcome of any grievance procedure related to the income discrepancy. The participant family must remain on the HCV program for an additional year, in good standing, before DOH may re-issue a *Certificate of Eligibility*.

The application process should take from one to four weeks for DOH to complete, depending on the length of response time for third-party income verification. Whenever possible, DOH will review and respond to applications within 10 business days of receiving them. 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.

Applications for homeownership are date-stamped. Complete applications – those with all necessary attachments in place – are reviewed in order of date and time received.

Upon successful review, a Certificate of Eligibility sent via US Mail to the participant after a participant is determined eligible and “mortgage ready.” The Certificate contains an estimate of the amount of HAP available to the family. This estimate is useful to the applicant and lender when determining the housing and debt ratios.

Changes in the Payment Standards

The payment standard applicable on the date of closing establishes the baseline payment standard for the unit based on the county where the unit is located and the bedroom size. If the payment standard changes after an offer to purchase has been made, but prior to closing, the payment standard applicable on the date of closing applies. DOH will reissue a revised Certificate of Eligibility effective on the effective date of the new Payment Standard.

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 DOH 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 DOH Contractor may help the family pull a free copy of their credit report at <https://www.annualcreditreport.com/cra/index.jsp> (this does not include the credit score, which is available for an additional charge) or CreditKarma.com

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 PHAs. DOH 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 DOH. This will happen after the family has been approved for a mortgage and has met with a broker to discuss the process.

15-VI.E. HOMEOWNERSHIP COUNSELING [24 CFR 982.630]

Before commencement of homeownership assistance, 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.

- 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 predatory loans; and
- How to maintain your home; and
- While not required, DOH should recommend that the family participate in post-purchase, ongoing homeownership counseling.

15-VII.F. ELIGIBLE UNITS [24 CFR 982.628]

In order for a unit to be eligible, the PHA must determine that the unit satisfies all of the following requirements:

The unit must meet HUD’s “eligible housing” requirements. 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;
- Units not yet under construction (see 24 CFR 982.628);
- 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 may not be any of the following:
 - A public housing or Indian housing unit;
 - A unit receiving Section 8 project-based assistance;
 - A nursing home, board and care home, or facility providing continual psychiatric, medical or nursing services;
 - A college or other school dormitory;
 - On the grounds of penal, reformatory, medical, mental, or similar public or private institutions.
- The unit must be 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).
- DOH is responsible for complying with the authorities listed in 24 CFR 58.6 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.
- 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.
- Families may enter into contracts of sale for units not yet under construction. However, the PHA will not commence homeownership assistance for the family for that unit until:

- Either the responsible entity completes the environmental review as required by 24 CFR part 58 and HUD approved the environmental certification and request for release of funds prior to commencement of construction or HUD performed an environmental review under CFR part 50 and notified the PHA in writing of environmental approval of the site prior to construction commencement; and
- Construction of the unit has been completed and the unit has passed the required HQS inspection and independent inspection as addressed elsewhere in this chapter.
- For PHA-owned units all of the following conditions must be satisfied:
 - DOH informs the family, both orally and in writing, that the family has the right to purchase any eligible unit and a PHA-owned unit is freely selected by the family without PHA pressure or steering;
 - The unit is not ineligible housing;
 - DOH obtains the services of an independent agency to inspect the unit for compliance with HQS, review the independent inspection report, review the contract of sale, determine the reasonableness of the sales price and any PHA provided financing. All of these actions must be completed in accordance with program requirements.

DOH must not approve the unit if DOH has been informed that the seller is debarred, suspended, or subject to a limited denial of participation.

Disapproval of a Seller

In its administrative discretion, the PHA may deny approval of a seller for the same reasons a PHA may disapprove an owner under the regular HCV program [see 24 CFR 982.306(c)].

15-VII.G. 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 (120 days initially with the option of an additional 60-day extension as needed) 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 120-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.

If, after exhausting a search to purchase a home, a family decides to remain in the rental voucher program, DOH 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.

15-VII.H. HOME INSPECTIONS, CONTRACT OF SALE, AND PHA DISAPPROVAL OF SELLER
[24 CFR 982.631]

Home Inspections

DOH may not commence monthly homeownership assistance payments for a family until DOH has inspected the unit and has determined that the unit passes HQS.

An independent professional inspector selected by and paid for by the family must also inspect the unit. The independent inspection must cover major building systems and components, including foundation and structure, housing interior and exterior, and the roofing, plumbing, electrical, and heating systems. The independent inspector must be qualified to report on property conditions, including major building systems and components.

DOH may not require the family to use an independent inspector selected by DOH. The independent inspector may not be a DOH employee or contractor, or other person under control of DOH. However, DOH may establish standards for qualification of inspectors selected by families under the homeownership option.

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.

The *family* shall provide to DOH a copy of the inspector's report, which shall be kept in the family file.

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 biennially 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.

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 [see 24 CFR 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. The issuance of the Certificate of Eligibility does not guarantee that a family has the ability to secure financing for a home purchase. DOH or DOH Contractor may offer the family a list of qualified and/or recommended lenders that meets the criteria established by these guidelines, however, DOH may not require that families acquire financing from one or more specified lenders, thereby restricting the family's ability to secure favorable financing terms. Lenders and DOH will coordinate information regarding sources of income when qualifying a family for a house payment.

Down Payment Requirement

The purchasing family is required to invest at least three percent (3%) of the purchase price of the home. This investment can take the form of a down payment, closing costs, or a combination of the

two. Of this sum, at least one percent (1%) of the purchase price must come from the family's personal resources.

If the family is an FSS graduate, the FSS escrow may be used to meet 50% of the down payment and closing costs contribution requirements established by DOH.

The buyer may acquire financing through any DOH approved lender. If the home is purchased using FHA mortgage insurance, it is subject to FHA mortgage insurance requirements.

There is no prohibition against using local/state grants or other subsidized financing in conjunction with the Housing Choice Voucher Homeownership Program. The program can be combined with a variety of mortgage loan products and other HUD programs to assist a potential home buyer in achieving the most favorable interest rate and terms of purchase.

Securing Financing: Underwriting a Loan

The following underwriting options are suggested under this program. The lender will decide upon the option based upon income and borrower qualifications determined on a case-by-case basis by the lender, and dependent upon the specific loan products utilized.

Option One: Deduct HAP from Principal, Interest, Taxes & Insurance (PITI)

The borrower's HAP is applied directly to the PITI, and the housing debt to income ratio is calculated on the "net housing obligation" of the borrower.

Option Two: Add HAP to Borrower's Income

Calculate total income as a combination of the tax-exempt HAP (grossed up by 25%) and the borrower's income from employment using underwriting ratios specific to the loan product being used.

Option Three: Two Mortgage Approach

Borrower qualifies for the first mortgage (PITI) using only earned income. The HAP is used to pay the full P&I for a second mortgage.

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.

DOH may review lender qualifications and the loan terms before authorizing homeownership assistance.

DOH may disapprove of the 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.

If the purchase of the home is financed with FHA mortgage insurance, such financing is subject to FHA mortgage insurance requirements.

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 HCV 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. DOH 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

DOH Policy for Payment of the HAP to the Family or Lender

- As 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 of family obligations in the form prescribed by HUD [form HUD-52649]. In the statement, 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 must notify DOH if the family defaults on the mortgage used to purchase the home.
- The family must provide the PHA with information on any satisfaction or payment of the mortgage debt.
- 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).

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 365 days after the last assistance payment.

- If a participating family receiving zero assistance experiences a change in circumstances that would result in an assistance payment to the mortgage company, the family must notify DOH of the change and request an interim reexamination before the expiration of the 365-day period.

Homeownership 10 Year Asset Exclusion

Net Income from Family Assets in 11th year of Homeownership (Notice PIH 2012-3 (HA); Issued January 27, 2012)

For the purpose of determining a family's income, homes purchased using the HCV homeownership option are exempt from being counted as an asset for the first ten (10) years after the closing date. Following the 10th year of homeownership in the program, DOH will determine the current market value of the home, the amount of equity the homeowner has in the home, and the cash value of the home, less the expenses to convert to cash, and then will include the amount of income from net cash value of the home in the calculation of annual income of the family. The regulation requires that annual income include either the actual income derived from the net family assets, or a percentage of the value of such assets based on the current passbook savings rate. This income from assets inclusion will take place at the annual reexamination in the eleventh year following the purchase of the home by the participant.

Equity in Real Property

Equity in real property must be included in the total assets of a family. Real Property includes land and real estate owned by the applicant or participant household, but excludes personal property owned by an individual, including equipment, furniture and fixtures. Equity is the estimated current market value of the asset less the unpaid balance on all loans secured by the assets.

- Calculate equity in real property as follows:
 - $\text{Market Value} - \text{Loan (Mortgage)} = \text{Equity}$

Determining Market Value

DOH will determine current market value of the home through the use of an average of the market comparison and assessed value approaches. DOH will collect publicly available market valuation information of the home from at least two entities (such as Zillow.com or Redfin.com). DOH will also collect the publicly available county assessment information on the property from the most recent published data available via the local county assessor's office. Using these three figures, DOH will calculate an average of the three numbers to determine the value of the home.

- $\text{Market value estimate} + \text{market value estimate} + \text{most recent county assessor valuation} = \text{average of the three amounts} = \text{DOH determination of Market Value}$

Determining Loan (Mortgage) Balance

DOH will require the most recent mortgage statement of the home from the participant. The mortgage statement will generally contain information relative to the loan balance and the statement may also include a payoff amount for the loan. DOH will first use the payoff amount for the loan to determine

the balance; however, if DOH only has the loan balance information, this will be used as the definitive loan balance.

- Payoff amount or loan balance listed on most recent mortgage statement = **Loan (Mortgage) balance**

Determining Cash Value of the Asset

DOH must also deduct from the equity the reasonable costs for converting the asset to cash.

- DOH will calculate the net cash value of real property as follows:
 - Market Value – Loan (Mortgage) – Expenses to Convert to Cash = **Net Cash Value**
- If the Net Cash Value is a negative number, DOH will not make an adjustment to net family assets for this asset

Determining Expense to Convert to Cash

Expenses to convert to cash may include costs such as sales commissions, settlement costs, and transfer taxes. Realtor expenses traditionally range approximately 4 to 6 percent of the sales price. Taxes, both transfer taxes and property taxes, and any legal fees associated with the closing and finalizing of homes sale range between approximately 2 to 4 percent of the sales price. Obtaining actual costs is not possible since there is not an actual transaction taking place.

- For purposes of calculating expenses to convert to cash for real property DOH will use the HUD established safe harbor method of 10% of the market value of the home.

Alternative calculation

If the participant family does not agree with the DOH assessed net cash value of the home, the participant family can hire a Certified General Appraiser licensed by the State of Colorado to complete a private appraisal. The participant family must pay for the cost of this appraisal out of pocket. DOH will require that the appraisal is both an exterior and interior inspection of the property and not an exterior inspection only, often called a drive-by. DOH will also require a copy of this appraisal for the participant's file.

Should the amount of the market value of the private appraisal, after being used in the calculation method outlined above, yield a more favorable result for the participant family (i.e. lower annual income amount), DOH will use the private appraisal to determine market value.

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. For more information on the passbook rate, please see Chapter 6 of the DOH Administrative Plan.

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.

The maximum term described above applies to any member of the family who:

- Has an ownership interest in the unit during the time that homeownership payments are made; or
- Is the spouse of any member of the household who has an ownership interest in the unit during the time homeownership payments are made.

In the case of an elderly family, the exception only applies if the family qualifies as an elderly family at the start of homeownership assistance. In the case of a disabled family, the exception applies if at any time during receipt of homeownership assistance the family qualifies as a disabled family.

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.

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-VII.L. 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 365 calendar days after the last homeownership assistance payment has been made 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) must 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 maintenance expenses
- DOH allowance for costs of major repairs and replacements;
- 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.

The PHA does not have the discretion to exclude any of the listed homeownership expenses or to add any additional items.

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 DOH 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 DOH.

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 DOH 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.N. MOVING WITH CONTINUED ASSISTANCE

[24 CFR 982.637]

A family receiving homeownership assistance may move with continued tenant-based assistance or with voucher homeownership assistance.

The PHA must determine that all initial requirements have been satisfied if a family that has received homeownership assistance wants to move with continued homeownership assistance. However, the following do not apply:

- The requirement that a family must be a first-time homeowner is not applicable.
- The requirement for pre-assistance counseling is not applicable. However, the PHA may require that the family complete additional counseling (before or after moving to a new unit with continued homeownership assistance).

Continued tenant-based assistance for a new unit cannot begin so long as any family member holds title to the prior home. However, 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 (or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move), such family or family member may be assisted with continued tenant-based assistance even if they own any title or other interest in the prior home.

DOH may deny permission to move to a new unit with continued voucher assistance:

- If DOH 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-VI.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, with the exception of failure to

meet obligations under the Family Self-Sufficiency program as prohibited under the alternative requirements set forth in FR Notice 12/29/14.

Homeownership assistance for a family automatically terminates 365 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.

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.

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 Elevated Blood Lead Level. This part describes DOH's responsibilities for reporting, data collection, and record keeping relative to children with elevated 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).

In addition, as specified in Notice PIH 2022-18, PHAs may use administrative fee funding for both administrative and “other expenses” needed to employ strategies and undertake activities beyond regular administrative responsibilities to facilitate the successful leasing and use of housing choice vouchers by families, such as through the use of security deposit assistance and landlord recruitment and incentive payments, among other allowable expenses specified in the notice. PHAs are also permitted to use UNP for these expenses [Notice PIH 2022-18].

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.

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 may 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 may 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 may 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.

Effective date of changes to payment standard amounts will be determined at time of update. The PHA will always ensure the payment standards will be within the basic range.

- If DOH has already processed reexaminations that will be effective on or after the effective date of the payment standard change, 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 [24 CFR 982.503(c)(5); Notice PIH 2018-01, FR Notice 9/27/21]

DOH must request HUD approval to establish payment standards that are higher than 120% of the Fair Market Rent. 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.

A non-small area FMR (SAFMR) PHA may establish an exception payment standard for a zip code area of up to and including 110 percent of the SAFMR determined by HUD for that zip code area. Regardless of the level of the exception payment standard compared to the metropolitan area FMRs (MAFMRs), the PHA must send an email to SAFMRs@hud.gov to notify HUD that it has adopted an exception payment standard based on the SAFMR. A PHA that adopts an exception payment standard pursuant to this authority must apply it to the entire ZIP code area, for both its HCV, and if applicable, its PBV program. For the PBV program, this means that the rent to owner may not exceed the new exception payment standard amount, provided the rent is still reasonable. A PHA that adopts an exception payment standard area must revise its briefing materials to make families aware of the exception payment standard and the area that it covers.

In addition, HUD allows PHAs to establish a HUD-Veterans Affairs Supportive Housing (HUD-VASH) exception payment standard. PHAs may go up to but no higher than 120 percent of the FMR or SAFMR specifically for VASH families. PHAs who want to establish a VASH exception payment standard over 120 percent must still request a waiver from HUD (See Section 19-III.E.).

- DOH has adopted payment standards at 120 percent of the FMR and SAFMR for all HUD-VASH participants effective May 1, 2023.

Voluntary Use of Small Area FMRs (SAFMR) [24 CFR 982.503, Notice PIH 2018-01]

PHAs that administer vouchers in a metropolitan area where the adoption of SAFMRs is not required may request approval from HUD to voluntarily adopt SAFMRs. SAFMRs may be voluntarily adopted for one or more zip code areas.

- DOH will not voluntarily adopt the use of SAFMRs except to establish exception payment standards in certain zip code areas at DOH's discretion.

Unit-by-Unit Exceptions [24 CFR 982.503(c) (2)(ii); 24 CFR 982.505 (d); Notice PIH 2010-26; Notice PIH 2013-18]

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 120 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 exceeds 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.
- Calculation Process: Since the family's rent share is capped at 40 percent of monthly adjusted income at initial occupancy when the gross rent exceeds the payment standard, the difference between 40 percent of monthly adjusted income and 30 percent of monthly adjusted income (i.e., 10 percent of monthly adjusted income) is subtracted from the gross rent (contract rent plus utility allowance) to determine the adjusted gross rent. Please note that the 40 percent cap will also be applied to families that need an exception payment standard to remain in their assisted units.

"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 50th, rather than the 40th 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 1st.

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 [24 CFR 982.554(a) and (c)]

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 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.
- If the informal review will be conducted remotely, at the time the PHA notifies the family of the informal review, the family will be informed:
 - Regarding the processes to conduct a remote informal review;
 - That, if needed, DOH will provide technical assistance prior to and during the informal review; and
 - That if the family or any individual witness has any technological, resource, or accessibility barriers preventing them from fully accessing the remote informal review, the family may inform DOH and DOH will assist the family in either resolving the issues or allow the family to participate in an in-person informal review, as appropriate.

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.

Remote Informal Reviews [Notice PIH 2020-32]

There is no requirement that informal reviews be conducted in-person and, as such, HUD allows PHAs to conduct all or a portion of their informal review remotely either over the phone, via video conferencing, or through other virtual platforms. If DOH chooses to conduct remote informal reviews, applicants may still request an in-person informal review, as applicable.

- DOH has the sole discretion to require that informal reviews be conducted remotely in case of local, state, or national physical distancing orders, and in cases of inclement weather or natural disaster.
- In addition, DOH will conduct an informal review remotely upon request of the applicant as a reasonable accommodation for a person with a disability, if an applicant does not have child care or transportation that would enable them to attend the informal review, or if the applicant believes an in-person informal review would create an undue health risk. DOH will consider other reasonable requests for a remote informal review on a case-by-case basis.

Ensuring Accessibility for Persons with Disabilities and LEP Individuals

As with in-person informal reviews, the platform for conducting remote informal reviews must be accessible to persons with disabilities and the informal review must be conducted in accordance with Section 504 and accessibility requirements. This includes ensuring any information, websites, emails, digital notifications, and other virtual platforms are accessible for persons with vision, hearing, and other disabilities. Further, providing effective communication in a digital context may require the use of individualized auxiliary aids or services, such as audio description, captioning, sign language and other types of interpreters, keyboard accessibility, accessible documents, screen reader support, and transcripts. Auxiliary aids or services must be provided in accessible formats, in a timely manner, and in such a way to protect the privacy and independence of the individual. PHAs may never request or require that individuals with disabilities provide their own auxiliary aids or services, including for remote informal hearings.

PHAs are required to make reasonable accommodations in policies, practices, and procedures to ensure persons with disabilities have a full and equal opportunity to participate in and benefit from all aspects of the informal review process. See Chapter 2 for a more detailed discussion of reasonable accommodation requirements.

If no method of conducting a remote informal review is available that appropriately accommodates an individual's disability, DOH may not hold against the individual their inability to participate in the remote informal review, and DOH should consider whether postponing the remote informal review to a later date is appropriate or whether there is a suitable alternative.

Due to the individualized nature of disability, the appropriate auxiliary aid or service necessary, or reasonable accommodation, will depend on the specific circumstances and requirements.

As with in-person reviews, Limited English Proficiency (LEP) requirements also apply to remote informal reviews, including the use of interpretation services and document translation. See Chapter 2 for a more thorough discussion of accessibility and LEP requirements, all of which apply in the context of remote informal reviews.

Conducting Remote Informal Reviews

DOH must ensure that the lack of technology or inability to use technology for remote informal reviews does not pose a disadvantage to families that may not be apparent to DOH. DOH should determine through a survey or other means if these barriers exist prior to conducting the remote informal review and, if the family does not have the proper technology to fully participate, either postpone the informal review or provide an alternative means of access.

As with in-person informal reviews, DOH must provide all materials presented, whether paper or electronic, to the family prior to the remote informal review. The family must also be provided with an accessible means by which to transmit their own evidence.

DOH must ensure that the applicant has the right to hear and be heard. All PHA policies and processes for remote informal reviews must be conducted in accordance with due process requirements and be in compliance with HUD regulations at 24 CFR 982.554 and guidance specified in Notice PIH 2020-32.

- DOH will conduct remote informal reviews via a video conferencing platform, when available. If, after attempting to resolve any barriers, applicants are unable to adequately access the video conferencing platform at any point, or upon applicant request, the informal review will be conducted by telephone conferencing call-in. If the family is unable to adequately access the telephone conferencing call-in at any point, the remote informal review will be postponed, and an in-person alternative will be provided promptly within a reasonable time.
- At least five business days prior to scheduling the remote review, DOH will provide the family with login information and/or conferencing call-in information and an electronic and/or physical copy of all materials being presented via first class mail and/or email. The notice will advise the family of technological requirements for the hearing and request the family notify DOH of any known barriers. DOH will resolve any barriers using the guidance in Section 6 of Notice PIH 2020-32, including offering the family the opportunity to attend an in-person hearing.
- If the informal review is to be conducted remotely, DOH will require the family to provide any documents directly relevant to the informal review at least 24 hours before the scheduled review through the mail, via email, or text. DOH will scan and email copies of these documents to DOH representative the same day.
- Documents will be shared electronically whenever possible.

- DOH will follow up the email with a phone call and/or email to the applicant at least one business day prior to the remote informal review to ensure that the applicant received all information and is comfortable accessing the video conferencing or call-in platform.
- DOH will ensure that all electronic information stored or transmitted with respect to the informal review is secure, including protecting personally identifiable information (PII), and meets the requirements for accessibility for persons with disabilities and persons with LEP.

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 their 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 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 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 to by the regulations.

Remote Informal Hearings [Notice PIH 2020-32]

There is no requirement that informal hearings be conducted in-person, and as such, HUD allows PHAs to conduct all or a portion of their informal hearings remotely either over the phone, via video conferencing, or through other virtual platforms. If DOH chooses to conduct remote informal hearings, applicants may still request an in-person informal hearing, as applicable.

- DOH has the sole discretion to require that informal hearings be conducted remotely in case of local, state, or national physical distancing orders, and in cases of inclement weather or natural disaster.
- In addition, DOH will conduct an informal hearing remotely upon request as a reasonable accommodation for a person with a disability, if a participant does not have child care or transportation that would enable them to attend the informal hearing, or if the participant believes an in-person hearing would create an undue health risk. DOH will consider other reasonable requests for a remote informal hearing on a case-by-case basis.

Ensuring Accessibility for Persons with Disabilities and LEP Individuals

As with in-person informal hearings, the platform for conducting remote informal hearings must be accessible to persons with disabilities and the informal hearings must be conducted in accordance with Section 504 and accessibility requirements. This includes ensuring any information, websites, emails, digital notifications, and other virtual platforms are accessible for persons with vision, hearing, and other disabilities. Further, providing effective communication in a digital context may require the use of individualized auxiliary aids or services, such as audio description, captioning, sign language and other types of interpreters, keyboard accessibility, accessible documents, screen reader support, and transcripts. Auxiliary aids or services must be provided in accessible formats, in a timely manner, and in such a way to protect the privacy and independence of the individual. PHAs may never request or require that individuals with disabilities provide their own auxiliary aids or services, including for remote informal hearings.

PHAs are required to make reasonable accommodations in policies, practices, and procedures to ensure persons with disabilities have a full and equal opportunity to participate in and benefit from all

aspects of the informal hearing process. See Chapter 2 for a more detailed discussion of reasonable accommodation requirements.

If no method of conducting a remote informal hearing is available that appropriately accommodates an individual's disability, the PHA may not hold against the individual their inability to participate in the remote informal hearing, and the PHA should consider whether postponing the remote hearing to a later date is appropriate or whether there is a suitable alternative.

Due to the individualized nature of disability, the appropriate auxiliary aid or service necessary, or reasonable accommodation will depend on the specific circumstances and requirements.

As with in-person reviews, Limited English Proficiency (LEP) requirements also apply to remote informal hearings, including the use of interpretation services and document translation. See Chapter 2 for a more thorough discussion of accessibility and LEP requirements, all of which apply in the context of remote informal hearings.

Conducting Informal Hearings Remotely

DOH must ensure that the lack of technology or inability to use technology for remote informal hearings does not pose a disadvantage to families that may not be apparent to DOH. DOH should determine through a survey or other means if these barriers exist prior to conducting the remote informal hearing and, if the family does not have the proper technology to fully participate, either postpone the informal hearing or provide an alternative means of access.

As with in-person informal hearings, DOH must provide all materials presented, whether paper or electronic, to the family prior to the remote informal hearing. The family must also be provided with an accessible means by which to transmit their own evidence.

DOH's essential responsibility is to ensure informal hearings meet the requirements of due process and comply with HUD regulations. Therefore, all PHA policies and processes for remote informal hearings will be conducted in accordance with due process requirements, and will be in compliance with HUD regulations at 24 CFR 982.555 and the guidance for conducting remote hearings specified in Notice PIH 2020-32.

- DOH will conduct remote informal hearings via a video conferencing platform, when available. If, after attempting to resolve any barriers, participants are unable to adequately access the video conferencing platform at any point, or upon request, the informal hearing will be conducted by telephone conferencing call-in. If the family is unable to adequately access the telephone conferencing call-in at any point, the remote informal hearing will be postponed, and an in-person alternative will be provided promptly within a reasonable time.
- At least five business days prior to scheduling the remote hearing, DOH will provide the family with login information and/or conferencing call-in information and an electronic copy of all materials being presented via first class mail and/or email. The notice will advise the

family of technological requirements for the hearing and request the family notify DOH of any known barriers. DOH will resolve any barriers using the guidance in Section 6 of Notice PIH 2020-32, including offering the family the opportunity to attend an in-person hearing.

- DOH will follow up with a phone call and/or email to the family at least one business day prior to the remote informal hearing to ensure that the family received all information and is comfortable accessing the video conferencing or call-in platform.
- DOH will ensure that all electronic information stored or transmitted with respect to the informal hearing is secure, including protecting personally identifiable information (PII), and meets the requirements for accessibility for persons with disabilities and persons with LEP.

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.
- That the family may request a remote informal hearing.

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.
- If the DOH hearing will be conducted remotely, at the time the notice is sent to the family, the family will be notified:
 - Regarding the processes involved in a remote informal hearing;
 - That DOH will provide technical assistance prior to and during the informal hearing, if needed; and
 - That if the family or any individual witness has any technological, resource, or accessibility barriers, the family may inform DOH and DOH will assist the family in either resolving the issue or allow the family to participate in an in-person hearing, as appropriate.
- 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 within 20 minutes of the scheduled time, and was unable to reschedule the hearing in advance due to the nature of the conflict, the family must contact DOH within 24 hours of the scheduled hearing date, excluding weekends and holidays. DOH will reschedule the hearing only if the family can show good cause for the failure to appear, or if it is needed as a reasonable accommodation for a person with disabilities. If the family cannot show good cause for failure to appear, or a rescheduling is not needed as a reasonable accommodation, DOH’s decision will stand.

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.

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.
- If the hearing will be conducted remotely, DOH will compile a hearing packet, consisting of all documents DOH intends to produce at the informal hearing. DOH will mail copies of the hearing packet to the family, the family's representatives, if any, and the hearing officer at least three days before the scheduled remote informal hearing. The original hearing packet will be in the possession of DOH representative and retained by DOH.
- Documents will be shared electronically whenever possible.

DOH hearing procedures may provide that DOH must be given the opportunity to examine at DOH 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 in-person hearings, DOH will require pre-hearing discovery of family documents directly relevant to the hearing. When a participant requests an informal hearing, DOH will send a letter to the participant scheduling the hearing and informing them that all documents the participant intends to present or utilize at the hearing must be made available to DOH no later than three days prior to the scheduled hearing date.
- If the informal hearing is to be conducted remotely, DOH will require the family to provide any documents directly relevant to the informal hearing at least three days before the scheduled hearing through the mail or via email. DOH will scan and email copies of these documents to the hearing officer and DOH representative the day of the scheduled hearing.
- Documents will be shared electronically whenever possible.

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 based not on a witness' personal knowledge. In and of itself, hearsay evidence carries no weight when making a finding of fact. The hearing officer may include hearsay evidence when considering their decision if it is corroborated by other evidence. Even though hearsay evidence is generally admissible in a hearing, the hearing officer will not base a hearing decision on hearsay alone unless there is clear probative value and credibility of the evidence, and the party seeking the change has met the burden of proof.

If either DOH (or the family, if required in a remote hearing) 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.

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.

Hearing Officer's Decision [24 CFR 982.555(e)(6)]

The person who conducts the hearing must issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family must be based on a preponderance of evidence presented at the hearing.

- In rendering a decision, the hearing officer will consider the following matters:

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 their 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.

Issuance of Decision [24 CFR 982.555(e)(6)]

A copy of the hearing must be furnished promptly to the family.

- The hearing officer will mail a “Notice of Hearing Decision” to DOH and to the participant on the same day. This notice will be sent by first-class mail. The participant will be mailed the original “Notice of Hearing Decision” and a copy of the proof of mailing. A copy of the “Notice of Hearing Decision” will be maintained in DOH’s file.

Effect 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 Executive Director has the authority to determine that DOH is not bound by the decision of the hearing officer because DOH was not required to provide a hearing, the decision exceeded the authority of the hearing officer, the decision conflicted with or contradicted HUD regulations, requirements, or the decision was otherwise contrary to federal, state, or local laws.
- In such a case, the hearing officer will mail a “Notice of Final Decision” to DOH and the participant on the same day. The “Notice of Final Decision” will be sent by first-class mail. A copy of this notice will be maintained in the DOH’s office.

**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 request an interpreter. Upon request, DOH will provide competent interpretation services, free of charge.

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]. If the family breaches an agreement with the PHA to pay amounts owed to a PHA, or amounts paid to an owner by a PHA, the PHA, at its discretion, may offer a family the opportunity to enter an agreement to pay amounts owed to a PHA or amounts paid to an owner by a PHA. The PHA may prescribe the terms of the agreement [24 CFR 982.552(c)(1)(vii)]. 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.

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.
- 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

Family Debts to DOH [HCV GB, Ch. 22, p. 22-12]

Families are required to reimburse the PHA if they were charged less rent than required because the family either underreported or failed to report income. PHAs are required to determine retroactive rent amounts as far back as the PHA has documentation of family unreported income [Notice PIH 2018-18].

- 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.
 - In cases where a DOH Contractor Agency receives information in writing from the family about an income increase but fails to process/submit an action to DOH resulting in an overpayment to the landlord, the Contractor Agency will be responsible to repay 50% of the overpayment debt incurred to DOH.

Refusal to Enter into an Agreement

If the family refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, the PHA must terminate assistance [Notice PIH 2018-18].

- When a family refuses to repay monies owed to DOH, in addition to termination of program assistance, DOH will utilize other available collection alternatives including, but not limited to, the following:

- Collection agencies
- Small claims court
- Civil lawsuit
- State income tax set-off program

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 2018-18 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 percent or more of its monthly adjusted income in rent. Moreover, Notice PIH 2018-18 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 under \$1,000 must be repaid within 12 months.
 - Amounts between \$1,000 and \$1,999 must be repaid within 24 months.
 - Amounts between \$2,000 and \$2,999 must be repaid within 30 months.
 - Amounts between \$3,000 and \$4,999 must be repaid within 36 months.
 - Amounts exceeding \$5,000 – Will result in immediate termination of housing assistance

- The minimum monthly repayment amount is \$25.00.

- 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

All repayment agreements must be in writing, dated, and signed by both the family and the PHA [Notice PIH 2018-18].

- 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 1st day of the month and considered late after the 5th of the month. If the 1st does not fall on a business day, the due date is the close of business on the first business day after the 1st.

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

- Except in the cases of reasonable accommodation, 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 \$5,000.00.

Repayment Agreement Terms

All repayment agreements must be in writing, dated, signed by both the family and the PHA, include the total retroactive rent amount owed, any amount of lump sum payment made at time of execution, if applicable, and the monthly repayment amount. Notice PIH 2018-18 requires certain provisions, at a minimum, 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 DOH 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. Because DOH is a unit of state government, a resolution approving the certification is not required, and the certification must be executed by the Director of the Office of Rental Assistance (who manages the Housing Choice Voucher program).

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.

SEMAP Indicators
<p>Indicator 1: Selection from the waiting list Maximum Score: 15</p> <ul style="list-style-type: none"> • 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 from the waiting list. • 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 samples.
<p>Indicator 2: Rent reasonableness Maximum Score: 20</p> <ul style="list-style-type: none"> • 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 at the required times. • 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.
<p>Indicator 3: Determination of adjusted income</p>

<p>Maximum Score: 20</p> <ul style="list-style-type: none"> • 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. • Points are based on the percent of files that are calculated and verified correctly, according to DOH’s quality control sample.
<p>Indicator 4: Utility allowance schedule Maximum Score: 5</p> <ul style="list-style-type: none"> • This indicator shows whether DOH maintains an up-to-date utility allowance schedule. • Points are based on whether DOH has reviewed the utility allowance schedule and adjusted it when required, according to DOH’s certification.
<p>Indicator 5: HQS quality control inspections Maximum Score: 5</p> <ul style="list-style-type: none"> • 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. • Points are based on whether the required quality control reinspections were completed, according to DOH’s certification.
<p>Indicator 6: HQS enforcement Maximum Score: 10</p> <ul style="list-style-type: none"> • This indicator shows whether, following each HQS inspection of a unit under contract where the unit fails to meet HQS, any cited life-threatening deficiencies are corrected within 24 hours from the inspection and all other deficiencies are corrected within no more than 30 calendar days from the inspection or any PHA-approved extension. • Points are based on whether DOH corrects all HQS deficiencies in accordance with required time frames, according to DOH’s certification.
<p>Indicator 7: Expanding housing opportunities Maximum Points: 5</p> <ul style="list-style-type: none"> • Only applies to PHAs with jurisdiction in metropolitan FMR areas. • 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. • Points are based on whether DOH has adopted and implemented written policies in accordance with SEMAP requirements, according to DOH’s certification.
<p>Indicator 8: FMR limit and payment standards Maximum Points: 5 points</p> <ul style="list-style-type: none"> • 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. • Points are based on whether DOH has appropriately adopted a payment standard

<p>schedule(s), according to DOH’s certification.</p>
<p>Indicator 9: Annual reexaminations Maximum Points: 10</p> <ul style="list-style-type: none"> • This indicator shows whether DOH completes a reexamination for each participating family at least every 12 months. • Points are based on the percent of reexaminations that are less than two months overdue, according to data from PIC.
<p>Indicator 10: Correct tenant rent calculations Maximum Points: 5</p> <ul style="list-style-type: none"> • This indicator shows whether DOH correctly calculates the family’s share of the rent to owner. • Points are based on the percent of correct calculations of family share of the rent, according to data from PIC.
<p>Indicator 11: Pre-contract HQS inspections Maximum Points: 5</p> <ul style="list-style-type: none"> • This indicator shows whether newly leased units pass HQS inspection on or before the effective date of the assisted lease and HAP contract. • Points are based on the percent of newly leased units that passed HQS inspection on or before the effective date of the lease and HAP contract, according to data from PIC.
<p>Indicator 12: Annual HQS inspections Maximum Points: 10</p> <ul style="list-style-type: none"> • This indicator shows whether DOH inspects each unit under contract at least annually. • Points are based on the percent of annual HQS inspections of units under contract that are more than 2 months overdue, according to data from PIC.
<p>Indicator 13: Lease-up Maximum Points: 20</p> <ul style="list-style-type: none"> • This indicator shows whether DOH enters HAP contracts for at least 98 percent of the number of DOH’s baseline voucher units in the ACC for the calendar year ending on or before DOH’s fiscal year, or whether DOH has expended at least 98 percent of its allocated budget authority for the same calendar year. DOH can receive 15 points if 95 to 97 percent of vouchers are leased or budget authority is utilized. • Points are based on utilization of vouchers and HAP expenditures as reported in the voucher management system (VMS) for the most recently completed calendar year.
<p>Indicator 14: Family self-sufficiency (FSS) enrollment and escrow account balances Maximum Points: 10</p> <ul style="list-style-type: none"> • Only applies to PHAs with mandatory FSS programs. • 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. • 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.

Bonus Points

Success Rate of Voucher Holders

Maximum Points: 5

- Only applies to PHAs that have received approval to establish success rate payment standard amounts, and isn't effective until the second full PHA fiscal year following the date of HUD approval of success rate payment standard amounts.
- This indicator shows whether voucher holders were successful in leasing units with voucher assistance.
- Points are based on the percent of families that were issued vouchers, and that became participants in the voucher program.

De-concentration Bonus Indicator

Maximum Points: 5

- Submission of data for this indicator is mandatory for 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 50th percentile.
- Additional points are available to PHAs that have jurisdiction in metropolitan FMR areas and that choose to submit the required data.
- Points are based on whether the data that is submitted meets the requirements for bonus points.

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; 24 CFR 908.101]

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.

The PHA must keep the last three years of the Form HUD-50058 and supporting documentation during the term of each assisted lease, and for a period of at least three years from the end of participation (EOP) date [24 CFR 908.101].

The PHA must maintain Enterprise Income Verification (EIV) system Income Reports in the tenant file for the duration of the tenancy but for a period not to exceed three years from the EOP date [Notice PIH 2018-18]

Notice PIH 2014-20 requires PHAs to keep records of all complaints, investigations, notices, and corrective actions related to violations of the Fair Housing Act or the equal access final rule.

DOH must keep confidential records of all emergency transfer requested by victims of domestic violence, dating violence, sexual assault, and stalking under DOH's Emergency Transfer Plan, as well as the outcomes of such requests, and retain the records for a period of three years [24 CFR 5.2002(e)(12)].

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. RECORD 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. DOH will attempt to obtain written releases whenever possible, but will accept other forms on a case by case basis as a reasonable accommodation.
- 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 ELEVATED BLOOD LEAD LEVEL

16-VII.A. OVERVIEW

DOH has certain responsibilities relative to children with elevated 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); Notice PIH 2017-13]

The owner must report the name and address of a child identified as having an elevated blood lead level to the public health department within five business days of being so notified by any other medical health care professional. The owner must also notify the HUD field office and the HUD Office of Lead Hazard Control and Healthy Homes (OLHCHH) of the child's address within five business days. The PHA may collaborate with the owner on the notification process, such as by agreeing with the owner to provide the required notifications on the owner's behalf.

- Upon notification by the owner, DOH will provide the public health department written notice of the name and address of any child identified as having an elevated blood lead level within five business days.
- Upon notification by the owner, the PHA will notify the HUD field office and the HUD Office of Lead Hazard Control and Healthy Homes (OLHCHH) of the child's address within five business days.

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 elevated blood lead level.

If DOH obtains names and addresses of elevated 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]. If a PHA denies a family a portability move based on insufficient funding, the PHA is required to notify the local HUD office within 10 business days [24 CFR 982.354]. 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 and funding reserves, 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) and Continuum of Care Permanent Supportive Housing programs. If your state or local laws provide greater protection for such victims, those laws apply in conjunction with 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, 42 USC 13925]

As used in VAWA:

- The term *bifurcate* means, with respect to a public housing or HCV 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 or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other

person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

- The term *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 the victim of domestic violence, dating violence, sexual assault, or stalking.
- 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 engage in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.

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 copy of the copy of the notice of occupancy rights under VAWA to housing choice voucher program applicants and participants who are or have been victims of domestic violence, dating violence, sexual assault, or stalking (Form HUD-5380, see Exhibit 16-1)
 - A copy of form HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation (see Exhibit 16-2)
 - A copy of the PHA's emergency transfer plan (Exhibit 16-3)
 - A copy of HUD's Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, Form HUD-5383 (Exhibit 16-4)

- 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, as part of the written briefing packet, and at the time the family is admitted to the program. 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, Sexual Assault, and Stalking.

DOH is not limited to providing VAWA information at the times specified in the above policy. If DOH decides to provide VAWA information to a participant following an incident of domestic violence, Notice PIH 2017-08 cautions against sending the information by mail, since the abuser may be monitoring the mail. The notice recommends that in such cases DOH make alternative delivery arrangements that will not put the victim at risk.

- Whenever the PHA has reason to suspect that providing information about VAWA to a participant might place a victim of domestic violence at risk, it will attempt to deliver the information by hand directly to the victim or by having the victim come to an office or other space that may be safer for the individual, making reasonable accommodations as necessary. For example, the PHA may decide not to send mail regarding VAWA protections to the victim's unit if the PHA believes the perpetrator may have access to the victim's mail, unless requested by the victim.
- When discussing VAWA with the victim, the PHA will take reasonable precautions to ensure that no one can overhear the conversation, such as having conversations in a private room.
- The victim may, but is not required to, designate an attorney, advocate, or other secure contact for communications regarding VAWA protections.

Notification to Owners and Managers

While PHAs are no longer required by regulation to notify owners and managers participating in the HCV program of their rights and obligations under VAWA, the PHA may still choose to inform them.

- DOH will provide owners and managers with information about their rights and obligations under VAWA when they begin their participation in the 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-5382, Certification of Domestic Violence, Dating Violence, and Stalking and Alternate Documentation.

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-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, 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. The form may be filled out and submitted on behalf of the victim.
2. A federal, state, tribal, territorial, or local police report or court record, or an administrative 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; a mental health professional; or a medical 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 be in writing 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. In determining whether to extend the deadline, DOH will consider factors that may contribute to the victim's inability to provide documentation in a timely manner, including cognitive limitations, disabilities, limited English proficiency, absence from the unit, administrative delays, the danger of further violence, and the victim's need to address health or safety issues. In determining whether to extend the deadline, the PHA will consider factors that may contribute to the victim's inability to provide documentation in a timely manner, including cognitive limitations, disabilities, limited English proficiency, absence from the unit, administrative delays, the danger of further violence, and the victim's need to address health or safety issues. Any extension granted by DOH will be in writing.
- Once the victim provides documentation, the PHA will acknowledge receipt of the documentation within 10 business days.

Conflicting Documentation [24 CFR 5.2007(e)]

In cases where the PHA receives conflicting certification documents from two or more members of a household, each claiming to be a victim and naming one or more of the other petitioning household members as the perpetrator, the PHA may determine which is the true victim by requiring each to provide acceptable third-party documentation, as described above (forms 2 and 3). The PHA may also request third-party documentation when submitted documentation contains information that conflicts with existing information already available to the PHA. Individuals have 30 calendar days to return third-party verification to the PHA. If the PHA does not receive third-party documentation, and the PHA will deny or terminate assistance as a result, the PHA must hold separate hearings for the tenants [Notice PIH 2017-08]. The PHA may also request third-party documentation when submitted documentation contains information that conflicts with existing information already available to the PHA. Individuals have 30 calendar days to return third-party verification to the PHA. If the PHA does not receive third-party documentation, and the PHA will deny or terminate assistance as a result, the PHA must hold separate hearings for the tenants [Notice PIH 2017-08].

DOH must honor any court orders issued to protect the victim or to address the distribution of property.

- If presented with conflicting certification documents 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(e) and by following any HUD guidance on how such determinations should be made.
- When requesting third-party documents, the PHA will provide contact information for local domestic violence and legal aid offices. In such cases, applicants or tenants will be given 30 calendar days from the date of the request to provide such documentation.
- If the PHA does not receive third-party documentation within the required timeframe (and any extensions) the PHA will deny VAWA protections and will notify the applicant or tenant in writing of the denial. If, as a result, the applicant or tenant is denied or terminated from the program, the PHA will hold separate hearings for the applicants or tenants. When requesting third-party documents, the PHA will provide contact information for local domestic violence and legal aid offices. In such cases, applicants or tenants will be given 30 calendar days from the date of the request to provide such documentation.
- If the PHA does not receive third-party documentation within the required timeframe (and any extensions) the PHA will deny VAWA protections and will notify the applicant or tenant in writing of the denial. If, as a result, the applicant or tenant is denied or terminated from the program, the PHA will hold separate hearings for the applicants or tenants.

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). HUD recommends documentation in a confidential manner when a verbal statement or other evidence is accepted.

- If DOH accepts an individual’s statement or other corroborating evidence (as determined by the victim) 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.

- 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: NOTICE OF OCCUPANCY RIGHTS UNDER VAWA - FORM HUD-5380

[Insert Name of Housing Provider]

Notice of Occupancy Rights under the Violence Against Women Act²

To all Tenants and Applicants

The Violence Against Women Act (VAWA) provides protections for victims of domestic violence, dating violence, sexual assault, or stalking. VAWA protections are not only available to women, but are available equally to all individuals regardless of sex, gender identity, or sexual orientation.³ The U.S. Department of Housing and Urban Development (HUD) is the federal agency that oversees that the housing choice voucher program is in compliance with VAWA. This notice explains your rights under VAWA. A HUD-approved certification form is attached to this notice. You can fill out this form to show that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking, and that you wish to use your rights under VAWA.”

Protections for Applicants

If you otherwise qualify for assistance under the housing choice voucher program, you cannot be denied admission or denied assistance because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

Protections for Tenants

If you are receiving assistance under the housing choice voucher program, you may not be denied assistance, terminated from participation, or be evicted from your rental housing because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

Also, if you or an affiliated individual of yours is or has been the victim of domestic violence, dating violence, sexual assault, or stalking by a member of your household or any guest, you may not be denied rental assistance or occupancy rights under the housing choice voucher program solely on the basis of criminal activity directly relating to that domestic violence, dating violence, sexual assault, or stalking.

Affiliated individual means your spouse, parent, brother, sister, or child, or a person to whom you stand in the place of a parent or guardian (for example, the affiliated individual is in your care, custody, or control); or any individual, tenant, or lawful occupant living in your household.

Removing the Abuser or Perpetrator from the Household

² Despite the name of this law, VAWA protection is available regardless of sex, gender identity, or sexual orientation.

³ Housing providers cannot discriminate on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD-assisted and HUD-insured housing must be made available to all otherwise eligible individuals regardless of actual or perceived sexual orientation, gender identity, or marital status.

DOH may divide (bifurcate) your lease in order to evict the individual or terminate the assistance of the individual who has engaged in criminal activity (the abuser or perpetrator) directly relating to domestic violence, dating violence, sexual assault, or stalking.

If DOH chooses to remove the abuser or perpetrator, DOH may not take away the rights of eligible tenants to the unit or otherwise punish the remaining tenants. If the evicted abuser or perpetrator was the sole tenant to have established eligibility for assistance under the program, DOH must allow the tenant who is or has been a victim and other household members to remain in the unit for a period of time, in order to establish eligibility under the program or under another HUD housing program covered by VAWA, or, find alternative housing.

In removing the abuser or perpetrator from the household, DOH must follow federal, state, and local eviction procedures. In order to divide a lease, DOH may, but is not required to, ask you for documentation or certification of the incidences of domestic violence, dating violence, sexual assault, or stalking.

Moving to Another Unit

Upon your request, DOH may permit you to move to another unit, subject to the availability of other units, and still keep your assistance. In order to approve a request, DOH may ask you to provide documentation that you are requesting to move because of an incidence of domestic violence, dating violence, sexual assault, or stalking. If the request is a request for emergency transfer, the housing provider may ask you to submit a written request or fill out a form where you certify that you meet the criteria for an emergency transfer under VAWA. The criteria are:

- 1. You are a victim of domestic violence, dating violence, sexual assault, or stalking.** If your housing provider does not already have documentation that you are a victim of domestic violence, dating violence, sexual assault, or stalking, your housing provider may ask you for such documentation, as described in the documentation section below.
- 2. You expressly request the emergency transfer.** Your housing provider may choose to require that you submit a form, or may accept another written or oral request.
- 3. You reasonably believe you are threatened with imminent harm from further violence if you remain in your current unit.** This means you have a reason to fear that if you do not receive a transfer you would suffer violence in the very near future.

OR

You are a victim of sexual assault and the assault occurred on the premises during the 90-calendar-day period before you request a transfer. If you are a victim of sexual assault, then in addition to qualifying for an emergency transfer because you reasonably believe you are threatened with imminent harm from further violence if you remain in your unit, you may qualify for an emergency transfer if the sexual assault occurred on the premises of the property from which you are seeking your transfer, and that assault happened within the 90-calendar-day period before you expressly request the transfer.

DOH will keep confidential requests for emergency transfers by victims of domestic violence, dating violence, sexual assault, or stalking, and the location of any move by such victims and their families.

DOH's emergency transfer plan provides further information on emergency transfers, and DOH must make a copy of its emergency transfer plan available to you if you ask to see it.

Documenting You Are or Have Been a Victim of Domestic Violence, Dating Violence, Sexual Assault or Stalking

DOH can, but is not required to, ask you to provide documentation to "certify" that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking. Such request from DOH must be in writing, and DOH must give you at least 14 business days (Saturdays, Sundays, and federal holidays do not count) from the day you receive the request to provide the documentation. DOH may, but does not have to, extend the deadline for the submission of documentation upon your request.

You can provide one of the following to DOH as documentation. It is your choice which of the following to submit if DOH asks you to provide documentation that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

- A complete HUD-approved certification form given to you by DOH with this notice, that documents an incident of domestic violence, dating violence, sexual assault, or stalking. The form will ask for your name, the date, time, and location of the incident of domestic violence, dating violence, sexual assault, or stalking, and a description of the incident. The certification form provides for including the name of the abuser or perpetrator if the name of the abuser or perpetrator is known and is safe to provide.
- A record of a Federal, State, tribal, territorial, or local law enforcement agency, court, or administrative agency that documents the incident of domestic violence, dating violence, sexual assault, or stalking. Examples of such records include police reports, protective orders, and restraining orders, among others.
- A statement, which you must sign, along with the signature of an employee, agent, or volunteer of a victim service provider, an attorney, a medical professional or a mental health professional (collectively, "professional") from whom you sought assistance in addressing domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse, and with the professional selected by you attesting under penalty of perjury that they believe that the incident or incidents of domestic violence, dating violence, sexual assault, or stalking are grounds for protection.
- Any other statement or evidence that DOH has agreed to accept.

If you fail or refuse to provide one of these documents within the 14 business days, DOH does not have to provide you with the protections contained in this notice.

If DOH receives conflicting evidence that an incident of domestic violence, dating violence, sexual assault, or stalking has been committed (such as certification forms 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 abuser or perpetrator), DOH has the right to request that you provide third-party documentation within thirty 30 calendar days in order to resolve the conflict. If you fail or refuse to provide third-party documentation where there is conflicting evidence, DOH does not have to provide you with the protections contained in this notice.

Confidentiality

DOH must keep confidential any information you provide related to the exercise of your rights under VAWA, including the fact that you are exercising your rights under VAWA.

DOH must not allow any individual administering assistance or other services on behalf of DOH (for example, employees and contractors) to have access to confidential information unless for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law.

DOH must not enter your information into any shared database or disclose your information to any other entity or individual. DOH, however, may disclose the information provided if:

- You give written permission to DOH to release the information on a time limited basis.
- The PHA needs to use the information in an eviction or termination proceeding, such as to evict your abuser or perpetrator or terminate your abuser or perpetrator from assistance under this program.
- A law requires DOH or your landlord to release the information.

VAWA does not limit DOH'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.

Reasons a Tenant Eligible for Occupancy Rights under VAWA May Be Evicted or Assistance May Be Terminated

You can be evicted and your assistance can be terminated for serious or repeated lease violations that are not related to domestic violence, dating violence, sexual assault, or stalking committed against you. However, DOH cannot hold tenants who have been victims of domestic violence, dating violence, sexual assault, or stalking to a more demanding set of rules than it applies to tenants who have not been victims of domestic violence, dating violence, sexual assault, or stalking.

The protections described in this notice might not apply, and you could be evicted and your assistance terminated, if DOH can demonstrate that not evicting you or terminating your assistance would present a real physical danger that:

1. Would occur within an immediate time frame, and
2. Could result in death or serious bodily harm to other tenants or those who work on the property.

If DOH can demonstrate the above, DOH should only terminate your assistance or evict you if there are no other actions that could be taken to reduce or eliminate the threat.

Other Laws

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. You may be entitled to additional housing protections for victims of domestic violence, dating violence, sexual assault, or stalking under other Federal laws, as well as under State and local laws.

Non-Compliance with The Requirements of This Notice

You may report a covered housing provider’s violations of these rights and seek additional assistance, if needed, by contacting or filing a complaint with the HUD Denver Regional Office at 303-672-5440.

For Additional Information

You may view a copy of HUD’s final VAWA rule at: <https://www.gpo.gov/fdsys/pkg/FR-2016-11-16/pdf/2016-25888.pdf>.

Additionally, the PHA must make a copy of HUD’s VAWA regulations available to you if you ask to see them.

For questions regarding VAWA, please contact Colorado Division of Housing – Katherine Helgerson – 303-864-7852.

For help regarding an abusive relationship, you may call the National Domestic Violence Hotline at 1-800-799-7233 or, for persons with hearing impairments, 1-800-787-3224 (TTY).

For tenants who are or have been victims of stalking seeking help may visit the National Center for Victims of Crime’s Stalking Resource Center at <https://www.victimsofcrime.org/our-programs/stalking-resource-center>.

Attachment: Certification form HUD-5382

EXHIBIT 16-2: Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation, Form HUD-5382

**CERTIFICATION OF
DOMESTIC VIOLENCE,
DATING VIOLENCE,
SEXUAL ASSAULT, OR STALKING,
AND ALTERNATE DOCUMENTATION**

**U.S. Department of Housing
and Urban Development**

OMB Approval No. 2577-0286
Exp. 06/30/2017

Purpose of Form: The Violence Against Women Act (“VAWA”) protects applicants, tenants, and program participants in certain HUD programs from being evicted, denied housing assistance, or terminated from housing assistance based on acts of domestic violence, dating violence, sexual assault, or stalking against them. Despite the name of this law, VAWA protection is available to victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation.

Use of This Optional Form: If you are seeking VAWA protections from your housing provider, your housing provider may give you a written request that asks you to submit documentation about the incident or incidents of domestic violence, dating violence, sexual assault, or stalking.

In response to this request, you or someone on your behalf may complete this optional form and submit it to your housing provider, or you may submit one of the following types of third-party documentation:

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

Submission of Documentation: The time period to submit documentation is 14 business days from the date that you receive a written request from your housing provider asking that you provide documentation of the occurrence of domestic violence, dating violence, sexual assault, or stalking. Your housing provider may, but is not required to, extend the time period to submit the documentation, if you request an extension of the time period. If the requested information is not received within 14 business days of when you received the request for the documentation, or any extension of the date provided by your housing provider, your housing provider does not need to grant you any of the VAWA protections. Distribution or issuance of this form does not serve as a written request for certification.

Confidentiality: All information provided to your housing provider concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking shall be kept confidential and such details shall not be entered into any shared database. Employees of your housing provider are not to have access to these details unless to grant or deny VAWA protections to you, and such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

**TO BE COMPLETED BY OR ON BEHALF OF THE VICTIM OF DOMESTIC VIOLENCE,
DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING**

1. Date the written request is received by victim: _____

2. Name of victim: _____

3. Your name (if different from victim's): _____

4. Name(s) of other family member(s) listed on the lease: _____

5. Residence of victim: _____

6. Name of the accused perpetrator (if known and can be safely disclosed): _____

7. Relationship of the accused perpetrator to the victim: _____

8. Date(s) and times(s) of incident(s) (if known): _____

9. Location of incident(s): _____

In your own words, briefly describe the incident(s):

This is to certify that the information provided on this form is true and correct to the best of my knowledge and recollection, and that the individual named above in Item 2 is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

Signature _____ Signed on (Date) _____

Public Reporting Burden: The public reporting burden for this collection of information is estimated to average 1 hour per response. This includes the time for collecting, reviewing, and reporting the data. The information provided is to be used by the housing provider to request certification that the applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking. The information is subject to the confidentiality requirements of VAWA. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid Office of Management and Budget control number.

EXHIBIT 16-3: EMERGENCY TRANSFER PLAN FOR VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, or STALKING (HCV VERSION)

Attachment: Certification form HUD-5382

Division of Housing

Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

Housing Choice Voucher Program

Emergency Transfers

The Division of Housing (DOH) is concerned about the safety of its tenants, and such concern extends to tenants who are victims of domestic violence, dating violence, sexual assault, or stalking. In accordance with the Violence Against Women Act (VAWA),⁴ DOH allows tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to request an emergency transfer from the tenant's current unit to another unit. The ability to request a transfer is available regardless of sex, gender identity, or sexual orientation.⁵ The ability of DOH to honor such request for tenants currently receiving assistance, however, may depend upon a preliminary determination that the tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, and on whether DOH has another dwelling unit that is available and is safe to offer the tenant for temporary or more permanent occupancy.

This plan identifies tenants who are eligible for an emergency transfer, the documentation needed to request an emergency transfer, confidentiality protections, how an emergency transfer may occur, and guidance to tenants on safety and security. This plan is based on a model emergency transfer plan published by the U.S. Department of Housing and Urban Development (HUD), the federal agency that oversees that the **public housing and housing choice voucher (HCV) programs** are in compliance with VAWA.

Eligibility for Emergency Transfers

A tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking, as provided in HUD's regulations at 24 CFR part 5, subpart L, is eligible for an emergency transfer if the tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant remains within the same unit. If the tenant is a victim of sexual assault, the tenant may also be

⁴Despite the name of this law, VAWA protection is available to all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation.

⁵Housing providers cannot discriminate on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD-assisted and HUD-insured housing must be made available to all otherwise eligible individuals regardless of actual or perceived sexual orientation, gender identity, or marital status.

eligible to transfer if the sexual assault occurred on the premises within the 90-calendar- day period preceding a request for an emergency transfer.

A tenant requesting an emergency transfer must expressly request the transfer in accordance with the procedures described in this plan.

Tenants who are not in good standing may still request an emergency transfer if they meet the eligibility requirements in this section.

Emergency Transfer Request Documentation

To request an emergency transfer, the tenant shall notify DOH's management office and submit a written request for a transfer to **any PHA office**. DOH will provide reasonable accommodations to this policy for individuals with disabilities. The tenant's written request for an emergency transfer should include either:

1. A statement expressing that the tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant were to remain in the same dwelling unit assisted under DOH's program; OR
2. A statement that the tenant was a sexual assault victim and that the sexual assault occurred on the premises during the 90-calendar-day period preceding the tenant's request for an emergency transfer.

Confidentiality

DOH will keep confidential any information that the tenant submits in requesting an emergency transfer, and information about the emergency transfer, unless the tenant gives DOH written permission to release the information on a time-limited basis, or disclosure of the information is required by law or required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program. This includes keeping confidential the new location of the dwelling unit of the tenant, if one is provided, from the person or persons that committed an act of domestic violence, dating violence, sexual assault, or stalking against the tenant. See the Notice of Occupancy Rights under the Violence against Women Act for All Tenants for more information about DOH's responsibility to maintain the confidentiality of information related to incidents of domestic violence, dating violence, sexual assault, or stalking.

Emergency Transfer Timing and Availability

DOH cannot guarantee that a transfer request will be approved or how long it will take to process a transfer request. DOH will, however, act as quickly as possible to move a tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking to another unit, subject to availability and safety of a unit. If a tenant reasonably believes a proposed transfer would not be safe, the tenant may request a transfer to a different unit. If a unit is available, the transferred tenant must agree to abide by the terms and conditions that govern occupancy in the unit to which the tenant has been transferred. DOH may be unable to transfer a tenant to a particular unit if the tenant has not or cannot establish eligibility for that unit.

If DOH has no safe and available units for which a tenant who needs an emergency transfer is eligible, DOH will assist the tenant in identifying other housing providers who may have safe and

available units to which the tenant could move. At the tenant's request, DOH will also assist tenants in contacting the local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or stalking that are attached to this plan.

Emergency Transfers: Housing Choice Voucher (HCV) Program

Tenant-based assistance: If you are a participant in the tenant-based HCV program and request an emergency transfer as described in this plan, DOH will assist you to move to a safe unit quickly using your existing voucher assistance. DOH will make exceptions to program regulations restricting moves as required.

At your request, DOH will refer you to organizations that may be able to further assist you.

Project-based assistance: If you are assisted under the project-based voucher (PBV) program, you may request an emergency transfer under the following programs for which you are not required to apply:

- Tenant-based voucher, if available
- Project-based assistance in the same project (if a vacant unit is available and you determine that the vacant unit is safe)
- Project-based assistance in another development owned by DOH

Emergency transfers under VAWA will take priority over waiting list admissions for these types of assistance.

You may also request an emergency transfer under the following programs for which you are required to apply:

- Public housing program
- PBV assistance in another development not owned by DOH

Emergency transfers will not take priority over waiting list admissions for these programs. At your request, DOH will refer you to organizations that may be able to further assist you.

Safety and Security of Tenants

Pending processing of the transfer and the actual transfer, if it is approved and occurs, the tenant is urged to take all reasonable precautions to be safe.

Tenants who are or have been victims of domestic violence are encouraged to contact the National Domestic Violence Hotline at 1-800-799-7233, or a local domestic violence shelter, for assistance in creating a safety plan. For persons with hearing impairments, that hotline can be accessed by calling 1-800-787-3224 (TTY).

Tenants who have been victims of sexual assault may call the Rape, Abuse, and Incest National Network's National Sexual Assault Hotline at 1-800-656-HOPE, or visit the online hotline at: <https://ohl.rainn.org/online/>.

Tenants who are or have been victims of stalking seeking help may visit the National Center for Victims of Crime's Stalking Resource Center at: <https://www.victimsofcrime.org/our-programs/stalking-resource-center>.

Attachment: Local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or stalking.

EXHIBIT 16-4: Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, form HUD-5383

**EMERGENCY TRANSFER
REQUEST FOR CERTAIN
VICTIMS OF DOMESTIC
VIOLENCE, DATING VIOLENCE,
SEXUAL ASSAULT, OR STALKING**

**U.S. Department of Housing
and Urban Development**

OMB Approval No. 2577-0286
Exp. 06/30/2017

Purpose of Form: If you are a victim of domestic violence, dating violence, sexual assault, or stalking, and you are seeking an emergency transfer, you may use this form to request an emergency transfer and certify that you meet the requirements of eligibility for an emergency transfer under the Violence Against Women Act (VAWA). Although the statutory name references women, VAWA rights and protections apply to all victims of domestic violence, dating violence, sexual assault or stalking. Using this form does not necessarily mean that you will receive an emergency transfer. See your housing provider's emergency transfer plan for more information about the availability of emergency transfers.

The requirements you must meet are:

(1) You are a victim of domestic violence, dating violence, sexual assault, or stalking. If your housing provider does not already have documentation that you are a victim of domestic violence, dating violence, sexual assault, or stalking, your housing provider may ask you for such documentation. In response, you may submit Form HUD-5382, or any one of the other types of documentation listed on that Form.

(2) You expressly request the emergency transfer. Submission of this form confirms that you have expressly requested a transfer. Your housing provider may choose to require that you submit this form, or may accept another written or oral request. Please see your housing provider's emergency transfer plan for more details.

(3) You reasonably believe you are threatened with imminent harm from further violence if you remain in your current unit. This means you have a reason to fear that if you do not receive a transfer you would suffer violence in the very near future.

OR

You are a victim of sexual assault and the assault occurred on the premises during the 90-calendar-day period before you request a transfer. If you are a victim of sexual assault, then in addition to qualifying for an emergency transfer because you reasonably believe you are threatened with imminent harm from further violence if you remain in your unit, you may qualify for an emergency transfer if the sexual assault occurred on the premises of the property from which you are seeking your transfer, and that assault happened within the 90-calendar-day period before you submit this form or otherwise expressly request the transfer.

Submission of Documentation: If you have third-party documentation that demonstrates why you are eligible for an emergency transfer, you should submit that documentation to your housing provider if it is safe for you to do so. Examples of third party documentation include, but are not limited to: a letter or other documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other professional from whom you have sought assistance; a current restraining order; a recent court order or other court records; a law enforcement report or records; communication records from the perpetrator of the violence or family members or friends of the perpetrator of the violence, including emails, voicemails, text messages, and social media posts.

Confidentiality: All information provided to your housing provider concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking, and concerning your request for an emergency transfer shall be kept confidential. Such details shall not be entered into any shared database. Employees of your housing provider are not to have access to these details unless to grant or deny VAWA protections or an emergency transfer to you. Such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

TO BE COMPLETED BY OR ON BEHALF OF THE PERSON REQUESTING A TRANSFER

1. Name of victim requesting an emergency transfer: _____

2. Your name (if different from victim's) _____

3. Name(s) of other family member(s) listed on the lease: _____

4. Name(s) of other family member(s) who would transfer with the victim: _____

5. Address of location from which the victim seeks to transfer: _____

6. Address or phone number for contacting the victim: _____

7. Name of the accused perpetrator (if known and can be safely disclosed): _____

8. Relationship of the accused perpetrator to the victim: _____

9. Date(s), Time(s) and location(s) of incident(s): _____

10. Is the person requesting the transfer a victim of a sexual assault that occurred in the past 90 days on the premises of the property from which the victim is seeking a transfer? If yes, skip question 11. If no, fill out question 11. _____

11. Describe why the victim believes they are threatened with imminent harm from further violence if they remain in their current unit.

12. If voluntarily provided, list any third-party documentation you are providing along with this notice:

This is to certify that the information provided on this form is true and correct to the best of my knowledge, and that the individual named above in Item 1 meets the requirement laid out on this form for an emergency transfer. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

Signature _____ Signed on (Date) _____

EXHIBIT 16-5: OWNER NOTIFICATION OF RIGHTS AND OBLIGATIONS (VAWA)

[Insert Name of Housing Provider]

NOTIFICATION OF YOUR RIGHTS AND OBLIGATIONS UNDER THE VIOLENCE AGAINST WOMEN ACT (VAWA)

VAWA provides protections for Section 8 Housing Choice Voucher (HCV) and PBV applicants, tenants, and participants from being denied assistance on the basis or as a direct result of being a victim of domestic violence, dating violence, sexual assault and stalking.

Purpose

Many of VAWA's protections to victims of domestic violence, dating violence, sexual assault and stalking involve action by the public housing agency (PHA), but some situations involve action by owners of assisted housing. The purpose of this notice (herein called "Notice") is to explain your rights and obligations under VAWA, as an owner of housing assisted through the Division of Housing's (DOH) HCV program. Each component of this Notice also provides citations to HUD's applicable regulations.

Denial of Tenancy

Protections for applicants: Owners cannot deny tenancy based on the applicant having been or currently being a victim of domestic violence, dating violence, sexual assault, or stalking. However, the applicant must be otherwise eligible for tenancy. (See 24 Code of Federal Regulations (CFR) 982.452(b)(1).)

Eviction

Protections for HCV participants: Incidents or threats of domestic violence, dating violence, sexual assault, or stalking will not be considered a serious or repeated lease violation by the victim, or good cause to terminate the tenancy of the victim (24 CFR 5.2005(c)). Protection also applies to criminal activity related directly to domestic violence, dating violence, sexual assault, or stalking, conducted by a member of a tenant's household or any guest or other person under the tenant's control, if the tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault, or stalking (24 CFR 5.2005(b)(2)).

Limitations of VAWA protections:

- a. Nothing in the VAWA Final Rule limits the authority of an owner, when notified of a court order, to comply with a court order with respect to (24 CFR 5.2005(d)(1)):
 - 1) The rights of access or control of property, including civil protection orders issued to protect a victim of domestic violence, dating violence, sexual assault, or stalking; or
 - 2) The distribution or possession of property among members of a household in a case.
- b. Nothing in the VAWA Final Rule limits an owner from evicting a victim of domestic violence, dating violence, sexual assault, or stalking for a lease violation that is not premised on an act of domestic violence, dating violence, sexual assault, or stalking, as long as the owner does not subject

the victim to more demanding standards than other tenants when deciding whether to evict. (See 24 CFR 5.2005(d)(2).)

c. Nothing in the VAWA Final Rule limits an owner from evicting a tenant (including the victim of domestic violence, dating violence, sexual assault, or stalking) if the owner can demonstrate an actual and imminent threat to other tenants or those employed at or providing services to the HCV property would be present if the tenant or lawful occupant is not evicted. (See 24 CFR 5.2005(d)(3).)

i. In this context, words, gestures, actions, or other indicators will be considered an “actual and imminent threat” if they meet the following standards: An actual and imminent threat consists of a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include: the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur. (See 24 CFR 5.2003.)

ii. Any eviction due to “actual and imminent threat” should be utilized by an owner only when there are no other actions that could be taken to reduce or eliminate the threat, including, but not limited to, transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence or develop other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat. Restrictions predicated on public safety cannot be based on stereotypes, but must be tailored to particularized concerns about individual residents. (See 24 CFR 5.2005(d)(4).)

Documentation of Domestic Violence, Dating Violence, Sexual Assault, or Stalking

If an applicant or tenant requests VAWA protection based on status as a victim of domestic violence, dating violence, sexual assault, or stalking, the owner has the option to request that the victim document or provide written evidence to demonstrate that the violence occurred. However, nothing in HUD’s regulation requires a covered housing provider to request this documentation. (See 24 CFR 5.2007(b)(3).)

If the owner chooses to request this documentation, the owner must make such request in writing. The individual may satisfy this request by providing any one document type listed under 24 CFR 5.2007(b)(1):

a. Form HUD-55383 (Self-Certification Form); or

b. A document:

1) Signed by an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional or a mental health professional (collectively, “professional”) from whom the victim has sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse:

2) Signed by the applicant or tenant; and

3) That specifies, under penalty of perjury, that the professional believes in the occurrence of the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for protection and remedies under 24 CFR part 5, subpart L, and that the incident

meets the applicable definition of domestic violence, dating violence, sexual assault, or stalking under 24 CFR 5.2003; or

- c. A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or
- d. At the discretion of a covered housing provider, a statement or other evidence provided by the applicant or tenant.

The owner must accept any of the above items (a – c). The owner has discretion to accept a statement or other evidence (d).

The owner is prohibited from requiring third-party documentation of the domestic violence, dating violence, sexual assault, or stalking, unless the submitted documentation contains conflicting information.

If the owner makes a written request for documentation, the owner may require submission of that documentation within 14 business days after the date that the individual received the written request for documentation. (24 CFR 5.2007(a)(2)). The owner may extend this time period at its discretion. During the 14-business day period and any granted extensions of that time, no adverse actions, such as evictions or terminations, can be taken against the individual requesting VAWA protection.

Once a victim provides documentation of domestic violence, dating violence, sexual assault, or stalking, the owner is encouraged to acknowledge receipt of the documentation in a timely manner.

If the applicant or tenant fails to provide documentation that meets the criteria in 24 CFR 5.2007 within 14 business days after receiving the written request for that documentation or within the designated extension period, nothing in VAWA Final Rule may be construed to limit the authority of the covered housing provider to:

- a. Deny admission by the applicant or tenant to the housing or program;
- b. Deny assistance under the covered housing program to the applicant or tenant;
- c. Terminate the participation of the tenant in the covered housing program; or
- d. Evict the tenant, or a lawful occupant that commits a violation of a lease.

An individual's failure to timely provide documentation of domestic violence, dating violence, sexual assault, or stalking does not result in a waiver of the individual's right to challenge the denial of assistance or termination, nor does it preclude the individual's ability to raise an incident of domestic violence, dating violence, sexual assault, or stalking at eviction or termination proceedings.

Moves

A victim of domestic violence, dating violence, sexual assault, or stalking may move in violation of their lease if the move is required to protect their safety. If a move results in the termination of the Housing Assistance Payment Contract, the lease is automatically terminated.

Lease Bifurcation

Owners may choose to bifurcate a lease, or remove a household member from a lease in order to evict, remove, terminate occupancy rights, or terminate assistance to such member who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, or stalking

against an affiliated individual or other individual. (See 24 CFR 5.2009(a).) If an owner chooses to bifurcate the lease, the owner must comply with the reasonable time to establish eligibility under the covered housing program or find alternative housing following lease bifurcation provision in 24 CFR 5.2009(b). VAWA protections, including bifurcation, do not apply to guests or unreported members of a household or anyone else residing in a household who is not a tenant.

Eviction, removal, termination of occupancy rights, or termination of assistance must be effected in accordance with the procedures prescribed by federal, state, or local law for termination of leases. To avoid unnecessary delay in the bifurcation process, HUD recommends that owners seek court-ordered eviction of the perpetrator pursuant to applicable laws. This process results in the underlying lease becoming null and void once the owner regains possession of the unit. The owner would then execute a new lease with the victim.

Evictions Due to “Actual and Imminent Threat” or Violations Not Premised on Abuse

The VAWA Final Rule generally prohibits eviction on the basis or as a direct result of the fact that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant or tenant otherwise qualifies for assistance, participation or occupancy. (See 24 CFR 5.2005.)

However, the VAWA Final Rule does not prohibit an owner from evicting a tenant for any violation not premised on an act of domestic violence, dating violence, sexual assault, or stalking that is in question against the tenant or an affiliated individual of the tenant. Nor does the VAWA Final Rule prohibit an owner from evicting a tenant if the owner can demonstrate an actual and imminent threat to other tenants or those employed at or providing services to property of the owner would be present if that tenant or lawful occupant is not evicted or terminated from assistance. (See 5.2005(d)(2) and (3).)

In order to demonstrate an actual and imminent threat to other tenants or employees at the property, the covered housing provider must have objective evidence of words, gestures, actions, or other indicators that meet the standards in the following definition:

Actual and imminent threat refers to a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include:

- The duration of the risk;
- The nature and severity of the potential harm;
- The likelihood that the potential harm will occur; and
- The length of time before the potential harm would occur.

(See 24 CFR 5.2003 and 5.2005(d)(2).)

Confidentiality

Any information submitted to a covered housing provider under 24 CFR 5.2007, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, or stalking, must be maintained in strict confidence by the covered housing provider. (See 24 CFR 5.2007(c).)

Employees of the owner (or those within their employ, e.g., contractors) must not have access to the information unless explicitly authorized by the owner for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law (e.g., the information is needed by an employee to provide the VAWA protections to the victim).

The owner must not enter this information into any shared database, or disclose this information to any other entity or individual, except to the extent that disclosure is:

- a. Requested or consented to in writing by the individual (victim) in a time-limited release;
- b. Required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program; or
- c. Otherwise required by applicable law.

When communicating with the victim, owners must take precautions to ensure compliance with these confidentiality requirements.

Service Providers

Division of Housing has relationships with local service providers. Division of Housing staff are available to provide referrals to shelters, counselors, and advocates. These resources are also provided in Division of Housing's Administrative Plan, VAWA Notice of Occupancy Rights, and Emergency Transfer Plan. A list of local service providers is attached to this Notice.

Definitions

Actual and imminent threat refers to a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include: the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur.

Affiliated individual, with respect to an individual, means:

- (1) A spouse, parent, brother, sister, or child of that individual, or a person to whom that individual stands in the place of a parent or guardian (for example, the affiliated individual is a person in the care, custody, or control of that individual); or
- (2) Any individual, tenant, or lawful occupant living in the household of that individual.

Bifurcate means to divide a lease as a matter of law, subject to the permissibility of such process under the requirements of the applicable HUD-covered program and State or local law, such that certain tenants or lawful occupants can be evicted or removed and the remaining tenants or lawful occupants can continue to reside in the unit under the same lease requirements or as may be revised depending upon the eligibility for continued occupancy of the remaining tenants and lawful occupants.

Dating violence means violence committed by a person:

- (1) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- (2) Where the existence of such a relationship shall be determined based on a consideration of the following factors:

- (i) The length of the relationship;
- (ii) The type of relationship; and
- (iii) The frequency of interaction between the persons involved in the relationship.

Domestic violence includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction. The term "spouse or intimate partner of the victim" includes a person who is or has been in a social relationship of a romantic or intimate nature with the victim, as determined by the length of the relationship, the type of the relationship, and the frequency of interaction between the persons involved in the relationship.

Sexual assault means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.

Stalking means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- (1) Fear for the person's individual safety or the safety of others; or
- (2) Suffer substantial emotional distress.

VAWA means the Violence Against Women Act of 1994, as amended (42 U.S.C. 13925 and 42 U.S.C. 14043e et seq.).

Attached:

Legal services and the domestic violence resources for the Metro area
Form HUD-5382 Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking
Division of Housing VAWA Notice of Occupancy Rights

Chapter 17

PROJECT-BASED VOUCHERS

INTRODUCTION

This chapter describes HUD regulations and PHA policies related to the project-based voucher (PBV) program in nine parts:

Part I: General Requirements. This part describes general provisions of the PBV program including maximum budget authority requirements, relocation requirements, and equal opportunity requirements.

Part II: PBV Owner Proposals. This part includes policies related to the submission and selection of owner proposals for PBV assistance. It describes the factors 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.

PART I: GENERAL REQUIREMENTS

17-I.A. OVERVIEW

[24 CFR 983.5; FR Notice 1/18/17; Notice PIH 2017-21]

The project-based voucher (PBV) program allows PHAs that already administer a tenant-based voucher program under an annual contributions contract (ACC) with HUD to take up to 20 percent of its authorized units and attach the funding to specific units rather than using it for tenant-based assistance [24 CFR 983.6]. PHAs may only operate a PBV program if doing so is consistent with DOH's Annual Plan, and the goal of deconcentrating poverty and expanding housing and economic opportunities [42 U.S.C. 1437f(o)(13)].

- DOH will operate a project-based voucher program using up to 20 percent of its authorized units for project-based assistance.
- See Exhibit 17-1 for information on projects to which the PHA has attached PBV 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 number of authorized units 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, regardless of whether DOH has vouchers available for project-basing [FR Notice 1/18/17].

Additional Project-Based Units [FR Notice 1/18/17; Notice PIH 2017-21; FR Notice 1/24/22]

DOH may project-base an additional 10 percent of its units above the 20 percent program limit. The units may be distributed among one, all, or a combination of the categories as long as the total number of units does not exceed the 10 percent cap.

For units under a HAP contract that was first executed on or after April 18, 2017, units qualify under this exception if the units:

- Are specifically made available to house individuals and families that meet the definition of homeless under section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302) and contained in the Continuum of Care Interim Rule at 24 CFR 578.3.
- Are specifically made available to house families that are comprised of or include a veteran.
 - *Veteran* means an individual who has served in the United States Armed Forces.
- Provide supportive housing to persons with disabilities or elderly persons as defined in 24 CFR 5.403.

- Are located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year Estimates.

PBV units that house eligible youth receiving FUPY/FYI assistance are also covered by this 10 percent exception authority if the units are under a HAP contract that became effective after December 27, 2020, and if the unit is occupied by an eligible youth receiving FUPY/FYI assistance. FYI TPVs that were awarded under Notice PIH 2019-20 are not part of this exception since PHAs are prohibited from project-basing FYI TPVs. Units added after December 27, 2020, through an amendment of a HAP contract that became effective after December 27, 2020, are eligible for this 10 percent exception authority. In contrast, units added after December 27, 2020, through an amendment of a HAP contract that became effective on or prior to December 27, 2020, are not eligible for this 10 percent exception authority [FR Notice 1/24/22]. See Chapter 19 for policies specific to project-basing FUPY vouchers.

- DOH may project-base up to an additional 10 percent of its authorized units, up to 30 percent, in accordance with HUD regulations and requirements.
- 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.

Units Not Subject to the PBV Program Limitation [FR Notice 1/18/17]

PBV units under the RAD program and HUD-VASH PBV set-aside vouchers do not count toward the 20 percent limitation when PBV assistance is attached to them.

In addition, units that were previously subject to certain federal rent restrictions or were receiving another type of long-term housing subsidy provided by HUD are not subject to the cap. The unit must be covered under a PBV HAP contract that first became effective on or after April 18, 2017.

- DOH will not project-base any units not subject to the 20 percent cap.

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

With certain exceptions, 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], and meets the site selection standards [24 CFR 983.57]. DOH 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(b)]

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. DOH need not conduct another competition.

Units Selected Non-Competitively [FR Notice 1/18/17; Notice PIH 2017-21]

For certain public housing projects where DOH has an ownership interest or control, the PHA may attach PBV assistance non-competitively without following one of the two processes above.

This exception applies when the PHA is engaged in an initiative to improve, develop, or replace a public housing property or site. The public housing units may either currently be in the public housing inventory or may have been removed from the public housing inventory within five years of the date on which the PHA entered into the AHAP or HAP.

If the PHA is planning rehabilitation or new construction on the project, a minimum threshold of \$25,000 per unit in hard costs must be expended.

If the PHA plans to replace public housing by attaching PBV assistance to existing housing in which the PHA has an ownership interest or control, then the \$25,000 per unit minimum threshold does not apply as long as the existing housing substantially complies with HQS.

The PHA must include in the administrative plan what work it plans to do on the property or site and how many PBV units will be added to the site.

- DOH will not attach PBVs to projects owned by DOH as described above.

Solicitation and Selection of PBV Proposals [24 CFR 983.51(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 Proposals for Rehabilitated and Newly Constructed Units (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.

The advertisement will state the number of vouchers available to be project-based, the type of units that will be considered, the submission deadline, and will note how to obtain the full RFP with information on the application and selection process. Advertisements will also contain a statement that participation in the PBV program requires compliance with Fair Housing and Equal Opportunity (FHEO) requirements.

In addition, DOH will post the RFA and proposal submission and rating and ranking procedures on its website.

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.
- In order to promote partially assisted projects, projects where less than 25 percent of the units will be assisted will be rated higher than projects where 25 percent or more of the units will be assisted. In the case of projects for occupancy by the elderly, persons with disabilities or families needing other services, the PHA will rate partially assisted projects on the percentage of units assisted. Projects with the lowest percentage of assisted units will receive the highest score.

PHA Requests for Proposals for Existing Housing Units

The PHA will advertise its request for proposals (RFP) for existing housing in the following newspapers and trade journals.

- 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.

The advertisement will state the number of vouchers available to be project-based, the type of units that will be considered, the submission deadline, and will note how to obtain the full RFP with information on the application and selection process. Advertisements will also contain a statement that participation in the PBV program requires compliance with Fair Housing and Equal Opportunity (FHEO) requirements.

In addition, the PHA will post the notice inviting such proposal submission and the rating and ranking procedures on its website.

Owner proposals will be accepted on a first-come first-served basis and will be evaluated using the following criteria:

- Experience as an owner in the tenant-based voucher program and owner compliance with the owner's obligations under the tenant-based program;
- Extent to which the project furthers the PHA goal of deconcentrating poverty and expanding housing and economic opportunities;
- If applicable, extent to which services for special populations are provided on site or in the immediate area for occupants of the property; and
- Extent to which units are occupied by families that are eligible to participate in the PBV program.

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), 983.59, FR Notice 1/18/17, and Notice PIH 2017-21]

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 the PHA-owned units were appropriately selected based on the selection procedures specified in the PHA administrative plan. This also applies to non-competitive selections. If the PHA selects a proposal for housing that is owned or controlled by the PHA, the PHA must identify the entity that will review the PHA proposal selection process and perform specific functions with respect to rent determinations, the term of the HAP contract, and inspections.

In the case of PHA-owned units, the term of the HAP contract and any HAP contract renewal must be agreed upon by the PHA and a HUD-approved independent entity. In addition, an independent entity must determine the initial rent to owner, the redetermined rent to owner, and reasonable rent. Housing quality standards inspections must also be conducted by an independent entity.

The independent entity that performs these program services may be the unit of general local government for the PHA jurisdiction (unless the PHA is itself the unit of general local government or an agency of such government) or another HUD-approved public or private independent entity.

- DOH will not submit any proposals for project-based housing because DOH does not own or control any housing.

The PHA may only compensate the independent entity from PHA ongoing administrative fee income (including amounts credited to the administrative fee reserve). The PHA may not use other program receipts to compensate the independent entity for its services. The PHA and independent entity 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.

- 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 began after the owner's proposal submission but prior to the execution of the HAP do not subsequently qualify as existing housing. Units that were newly constructed or rehabilitated in violation of program requirements also 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- I.L.D. 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. A member of a cooperative who owns shares in the project assisted under the PBV program is not considered an owner for purposes of participation in the PBV program. Finally, PBV assistance may not be attached to units for which construction or rehabilitation has started after the proposal submission and prior to the execution of an AHAP.

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, Notice PIH 2013-11, and FR Notice 2/28/20]**

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.

HUD requires new construction and rehabilitation housing that will include forms of governmental assistance other than PBVs to undergo a subsidy layering review (SLR) prior to entering into an Agreement to Enter into Housing Assistance Payments Contract (AHAP). Subsidy layering requirements do not apply to existing housing, when PBV is the only governmental assistance, or for projects already subject to a PBV HAP contract, even if the project is recapitalized with outside sources of funding.

When a PHA selects a new construction or rehabilitation project, the PHA must require information regarding all HUD and/or other federal, state, or local governmental assistance to be disclosed by the project owner using Form HUD-2880. Appendix A of FR Notice 2/28/20 contains a list of all required documentation.

Either HUD or a HUD-approved housing credit agency (HCA) in the PHA's jurisdiction performs the subsidy layering review. The PHA must request an SLR through their local HUD Field Office or, if eligible, through a participating HCA.

If the SLR request is submitted to an approved HCA, and the proposed project-based voucher assistance meets HUD subsidy layering requirements, the HCA must submit a certification to HUD and notify the PHA. The PHA may proceed to execute an AHAP at that time if the environmental approval is received.

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, FR Notice 1/18/17, and Notice PIH 2017-21]

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 the greater of 25 units or 25 percent of the number of dwelling units (assisted or unassisted) in the project.

Exceptions to 25 Percent per Project Cap [FR Notice 1/18/17; Notice PIH 2017-21; FR Notice 1/24/22]

As of April 18, 2017, units are not counted against the 25 percent or 25-unit per project cap if:

- The units are exclusively for elderly families
- The units are for households eligible for supportive services available to all families receiving PBV assistance in the project
 - If the project is located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year estimates, the project cap is the greater of 25 units or 40 percent (instead of 25 percent) of the units in the project [FR Notice 7/14/17].

The Housing Opportunity Through Modernization Act of 2016 (HOTMA) eliminated the project cap exemption for projects that serve disabled families and modified the exception for supportive services.

Under the Fostering Stable Housing Opportunities (FSHO) amendments, units exclusively made available to youth receiving FUPY/FYI assistance may be excepted from the project cap for HAP contracts first effective after December 27, 2020. For more information on excepted units for FUPY, see Chapter 19.

Projects where these caps were implemented prior to HOTMA (HAP contracts executed prior to April 18, 2017) or FSHO (contract in effect on or prior to December 27, 2020) may continue to use the former exemptions and may renew their HAP contracts under the old requirements, unless DOH and owner agree to change the conditions of the HAP contract. However, this change may not be made if it would jeopardize an assisted family's eligibility for continued assistance in the project.

Supportive Services

PHAs must include in the DOH 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. As of 4/18/17, the project must make supportive services available to all families receiving PBV assistance in the project, but the family does not actually have to accept and receive supportive services for the exception to apply to the unit, although the family must be eligible to receive the supportive services, although the family must be eligible to receive the supportive services. It is not necessary that the services be provided at or by the project but must be reasonably available to families receiving PBV assistance at the project and designed to help families in the project achieve self-sufficiency or live in the community as independently as possible. A PHA may not require participation in the supportive service as a condition of living in the excepted unit, although such services may be offered.

- Excepted units will be limited to units for elderly families.
- Entities awarded Project-Based Housing Choice Vouchers must enter into a Tenancy Support Service (TSS) Contract if receiving DOH services funding or submit and follow a Supportive Service Agreement. Failure to follow the TSS contract and/or Supportive Services Agreement constitutes a violation of the HAP contract and could jeopardize HAP payments.

Projects not Subject to a Project Cap [FR Notice 1/18/17; Notice PIH 2017-21]

PBV units that were previously subject to certain federal rent restrictions or receiving another type of long-term housing subsidy provided by HUD are exempt from the project cap. In other words, 100 percent of the units in these projects may receive PBV assistance.

- DOH does not have any PBV units that are subject to the per project cap exception.

Promoting Partially-Assisted Projects [24 CFR 983.56(c)]

A PHA may establish local requirements designed to promote PBV assistance in partially assisted projects. A *partially assisted project* is a project in which there are fewer units covered by a HAP contract than residential units [24 CFR 983.3].

A PHA may establish a per-project cap on the number of units that will receive PBV assistance or other project-based assistance in a multifamily project 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-project cap of less than 25 units or 25 percent of units.

- DOH will provide assistance for excepted units. Beyond that, DOH will not impose any further cap on the number of PBV units assisted per project.

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, Choice Neighborhood, 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, and 40 CFR 745.227, 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), FR Notice 1/18/17, and Notice PIH 2017-20]

DOH must inspect each contract unit before execution of the HAP contract. DOH may not provide assistance on behalf of the family until the unit fully complies with HQS, unless DOH has adopted a policy to enter into a HAP contract for units that fail the initial HQS inspection as a result of only non-life-threatening conditions, or if the unit passed an alternative inspection.

- DOH will not provide assistance on behalf of the family 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/Biennial Inspections [24 CFR 983.103(d); FR Notice 6/25/14]

At least once every 24 months 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 inspection requirement. The PHA also has the option in certain mixed finance properties to rely on alternative inspections conducted at least triennially.

- DOH will inspect on an annual basis 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.

If more than 20 percent of the 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 entity 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 entity, 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(b)]. DOH may not enter into an Agreement if commencement of construction or rehabilitation has commenced after proposal submission [24 CFR 983.152(c)]. Construction begins when excavation or site preparation (including clearing of the land) begins for the housing. Rehabilitation begins with the physical commencement of rehabilitation activity on the housing.

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(a)].

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]

The Agreement must be executed promptly after PHA notice of proposal selection to the selected owner. DOH may not enter in to the Agreement if construction or rehabilitation has started after proposal submission. 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 existing housing 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.

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 DOH determines the work has been completed in accordance with the Agreement and that the owner has submitted all required evidence of completion, DOH 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. With the exception of single-family scattered-site projects, a HAP contract shall cover a single project. If multiple projects exist, each project is covered by a separate HAP contract. The HAP contract must be in the form required by HUD [24 CFR 983.202(a)].

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 (elderly and disabled families and families receiving supportive services); 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), unless DOH has adopted a policy to enter into a HAP contract for units that fail the initial HQS inspection as a result of only non-life-threatening conditions. 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 [24 CFR 983.205, FR Notice 1/18/17, and Notice PIH 2017-21]

DOH may enter into a HAP contract with an owner for an initial term of no less than one year and no more than 20 years for each contract unit. The length of the term of the HAP contract for any contract unit may not be less than one year, nor more than 20 years. In the case of PHA-owned units, the term of the HAP contract must be agreed upon by DOH and the independent entity approved by HUD [24 CFR 983.59(b)(2)].

- The term of all PBV HAP contracts will be negotiated with the owner on a case-by-case basis.

At the time of the initial HAP contract term or any time before expiration of the HAP contract, DOH may extend the term of the contract for an additional term of up to 20 years if DOH determines an extension is appropriate to continue providing affordable housing for low-income families. A HAP contract extension may not exceed 20 years. A PHA may provide for multiple extensions; however, in no circumstances may such extensions exceed 20 years, cumulatively. Extensions after the initial extension are allowed at the end of any extension term, provided that not more than 24 months prior to the expiration of the previous extension contract DOH agrees to extend the term, and that such extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities. Extensions after the initial extension term shall not begin prior to the expiration date of the previous extension term. 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. In the case of PHA-owned units, any extension of the term of the HAP contract must be agreed upon by DOH and the independent entity approved by HUD [24 CFR 983.59(b)(2)].

- 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) and FR Notice 1/18/17]

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.

In times of insufficient funding, HUD requires that PHAs first take all cost-saving measures prior to failing to make payments under existing PBV HAP contracts.

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.

Statutory Notice Requirements: Contract Termination or Expiration [24 CFR 983.206; FR Notice 1/18/17, and Notice PIH 2017-21]

Not less than one year before the HAP contract terminates, or if the owner refuses to renew the HAP contract, the owner must notify DOH and assisted tenants of the termination. The notice must be provided in the form prescribed by HUD. If the owner does not give timely notice, the owner must permit the tenants in assisted units to remain in their units for the required notice period with no increase in the tenant portion of their rent, and with no eviction as a result of the owner's inability to collect an increased tenant portion of rent. An owner may renew the terminating contract for a period of time sufficient to give tenants one-year advance notice under such terms as HUD may require.

Upon termination or expiration of the contract, a family living at the property is entitled to receive a tenant-based voucher. Tenant-based assistance would not begin until the owner's required notice period ends. DOH must provide the family with a voucher and the family must also be given the option by DOH and owner to remain in their unit with HCV tenant-based assistance as long as the unit complies with inspection and rent reasonableness requirements. The family must pay their total tenant payment (TTP) and any additional amount if the gross rent exceeds the applicable payment standard. The family has the right to remain in the project as long as the units are used for rental housing and are otherwise eligible for HCV assistance. The owner may not terminate the tenancy of a family that exercises its right to remain except for serious or repeated lease violations or other good cause. Families that receive a tenant-based voucher at the expiration or termination of the PBV HAP contract are not new admissions to DOH HCV tenant-based program and are not subject to income eligibility requirements or any other admission requirements. If the family chooses to remain in their unit with tenant-based assistance, the family may do so regardless of whether the family share would initially exceed 40 percent of the family's adjusted monthly income.

Remedies for HQS Violations [24 CFR 983.208(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 983.207(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 project 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 [FR Notice 1/18/17 and Notice PIH 2017-21]

DOH and owner may amend the HAP contract to add additional PBV contract units in projects that already have a HAP contract without having to fulfill the selection requirements found at 24 CFR 983.51(b) for those additional PBV units, regardless of when the HAP contract was signed. The additional PBV units, however, are still subject to the PBV program cap and individual project caps. Prior to attaching additional units without competition, DOH must submit to the local field office

information outlined in FR Notice 1/18/17. DOH must also detail in the administrative plan their intent to add PBV units and the rationale for adding units to the specific PBV project.

- DOH will consider adding contract units to the HAP contract when DOH determines that additional housing is needed to serve eligible low-income families as long as the addition of units does not exceed allowable program caps. 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 983.207(b) 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 CONTRACT [24 CFR 983.210]

When the owner executes the HAP contract s/he certifies that at such execution and at all times during the term of the HAP contract:

- All contract units are in good condition and the owner is maintaining the premises and contract units in accordance with HQS;
- The owner is providing all services, maintenance, equipment and utilities as agreed to under the HAP contract and the leases;
- Each contract unit for which the owner is receiving HAP, is leased to an eligible family referred by 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 (does not apply to family’s membership in a cooperative); and
- Repair work on the project selected as an existing project that is performed after HAP execution within such post-execution period as specified by HUD may constitute development activity, and if determined to be development activity, the repair work undertaken shall be in compliance with Davis-Bacon wage requirements.

17-V.F. ADDITIONAL HAP REQUIREMENTS

Housing Quality and Design Requirements [24 CFR 983.101(e) and 983.208(a)]

The owner is required to maintain and operate the contract units and premises in accordance with HQS, including performance of ordinary and extraordinary maintenance. The owner must provide all the services, maintenance, equipment, and utilities specified in the HAP contract with 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.

Vacancy Payments [24 CFR 983.352(b)]

At the discretion of DOH, the HAP contract may provide for vacancy payments to the owner for a PHA-determined period of vacancy extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month. The amount of the vacancy payment will be determined by DOH and cannot exceed the monthly rent to owner under the assisted lease, minus any portion of the rental payment received by the owner (including amounts available from the tenant's security deposit).

- DOH will decide on a case-by-case basis if DOH will provide vacancy payments to the owner. The HAP contract with the owner will contain any such agreement, including the amount of the vacancy payment and the period for which the owner will qualify for these payments.

PART VI: SELECTION OF PBV PROGRAM PARTICIPANTS

17- VI.A. OVERVIEW

Many of the provisions of the tenant-based voucher regulations [24 CFR 982] also apply to the PBV program. This includes requirements related to determining eligibility and selecting applicants from the waiting list. Even with these similarities, there are requirements that are unique to the PBV program. This part describes the requirements and policies related to eligibility and admission to the PBV program.

17- VI.B. ELIGIBILITY FOR PBV ASSISTANCE [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]. DOH may also not approve a tenancy if the owner (including a principal or other interested party) of the unit is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless needed as a reasonable accommodation. 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 project-based 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.

DOH may establish a selection preference for families who qualify for voluntary services, including disability-specific services, offered in conjunction with assisted units, provided that preference is consistent with the DOH plan. The PHA may not, however, grant a preference to a person with a specific disability [FR Notice 1/18/17].

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 “excepted units” for elderly families or supportive services, DOH must give preference to such families when referring families to these units [24 CFR 983.261(b); FR Notice 1/18/17].

- DOH will provide a selection preference when required by the regulation (e.g., eligible in-place families, qualifying families for “excepted units,” or 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 983.253(a)(2) and (a) (3)].

Leasing [24 CFR 983.253(a)]

During the term of the HAP contract, the owner must lease contract units to eligible families that are selected and referred by 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 email) within five 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 120th day of the vacancy. The amendment to the HAP contract will be effective the 1st 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 provided by the owner; and
- The amount of any charges for food, furniture, or supportive services.

Tenancy Addendum [24 CFR 983.256(d)]

The tenancy addendum in the lease must state:

- The program tenancy requirements;
- The composition of the household as approved by 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)]

The initial lease term must be for at least one year. The lease must provide for automatic renewal after the initial term of the lease in either successive definitive terms (e.g. month-to-month or year-to-year) or an automatic indefinite extension of the lease term. For automatic indefinite extension of the lease term, the lease terminates if any of the following occur:

- The owner terminates the lease for good cause
- The tenant terminates the lease
- The owner and tenant agree to terminate the lease
- The PHA terminates the HAP contract
- The PHA terminates assistance for the family

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.

Tenant Absence from the Unit [24 CFR 983.256(g) and 982.312(a)]

The lease may specify a maximum period of family absence from the unit that may be 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. PHA termination of assistance actions due to family absence from the unit are subject to 24 CFR 981.312, except that the unit is not terminated from the HAP contract if the family is absent for longer than the maximum period permitted.

Continuation of Housing Assistance Payments [24 CFR 982.258]

Housing assistance payments shall continue until the tenant rent equals the rent to owner. The cessation of housing assistance payments at such point will not affect the family's other rights under its lease, nor will such cessation preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances if such changes occur within 180 days following the date of the last housing assistance payment by the PHA. After the 180-day period, the unit shall be removed from the HAP contract pursuant to 24 CFR 983.211.

- 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 the PHA of the change and request an interim reexamination before the expiration of the 180-day period.

Security Deposits [24 CFR 983.259]

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 983.260]

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 the earlier of the expiration of the term of the family's voucher (including any extension granted by DOH) or the date upon which the family vacates the unit. If the family does not move out of the wrong-sized unit or accessible unit by the expiration of the term of the family's voucher, DOH must remove the unit from the HAP contract.

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 and remove the unit from the HAP contract.

- 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 983.261]

The family may terminate the lease at any time after the first year of occupancy. The family must give advance written notice to the owner in accordance with the lease and provide a copy of such notice to 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.

Before providing notice to terminate the lease, a family must contact DOH to request comparable tenant-based rental assistance if the family wishes to move with continued assistance. If voucher or other comparable tenant-based rental assistance is not immediately available upon termination of the family's lease of a PBV unit, the PHA must give the family priority to receive the next available opportunity for continued tenant-based rental 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.

Emergency Transfers under VAWA [Notice PIH 2017-08]

Except where special consideration is needed for the project-based voucher program, the PHA will follow VAWA policies as outlined in Chapter 16 Part IX of this administrative plan, including using the Emergency Transfer Plan as the basis for PBV transfers under VAWA (Exhibit 16-4).

HUD requires that DOH include policies that address when a victim has been living in a unit for less than a year or when a victim seeks to move sooner than a tenant-based voucher is available.

- When the victim of domestic violence, dating violence, sexual assault, or stalking has lived in the unit for less than one year, DOH will provide several options for continued assistance.
- DOH will first try to transfer the participant to another PBV unit in the same development or transfer to a different development where DOH has PBV units. DOH will expedite the administrative processes in this case in an effort to conduct the transfer as quickly as possible.

- If no units are available for an internal transfer, or if there is reasonable cause to believe that such a transfer would put the victim in jeopardy, the participant may receive continued assistance through an external transfer to either tenant-based rental assistance (HCV) or assistance in DOH's public housing program. Such a decision will be made by DOH based on the availability of tenant-based vouchers and/or vacancies in public housing units. Such families must be selected from the waiting list for the applicable program. DOH has adopted a waiting list preference for victims of domestic violence, dating violence, sexual assault, and stalking in both its HCV and public housing programs in order to expedite this process. See Section 4-III.C. of this administrative plan.
- If a victim wishes to move after a year of occupancy in the unit, but no tenant-based vouchers are available, DOH will offer the participant an internal transfer to another PBV unit in the same development or a transfer to a different development where DOH has PBV units. DOH will expedite the administrative processes in this case in an effort to conduct the transfer as quickly as possible.
- If no units are available for an internal transfer, or if there is reasonable cause to believe that such a transfer would put the victim in jeopardy, the participant may receive continued assistance through an external transfer to DOH's public housing program. DOH has adopted a waiting list preference for victims of domestic violence, dating violence, sexual assault, and stalking as part of the public housing ACOP in order to expedite this process.

17- VII.D. EXCEPTIONS TO THE OCCUPANCY CAP [24 CFR 983.262]

As of April 17, 2018, DOH may not pay housing assistance under a PBV HAP contract for more than the greater of 25 units or 25 percent of the number of dwelling units in a project unless:

- The units are exclusively for elderly families
- The units are for households eligible for supportive services available to all families receiving PBV assistance in the project
- If the project is located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year estimates, the project cap is the greater of 25 units or 40 percent (instead of 25 percent) of the units in the project [FR Notice 7/14/17].

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., a family that does not successfully complete its FSS contract of participation or supportive services requirements, or a family that is no longer elderly or disabled due to a change in family composition where DOH does not exercise discretion to allow the family to remain in the excepted unit), 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.

The PHA may allow a family that initially qualified for occupancy of an excepted unit based on elderly or disabled family status to continue to reside in a unit, where through circumstances beyond the control of the family (e.g., death of the elderly or disabled family member or long-term or permanent hospitalization or nursing care), the elderly or disabled family member no longer resides in the unit. In this case, the unit may continue to be counted as an excepted unit for as long as the family resides in that unit. Once the family vacates the unit, in order to continue as an excepted unit under the HAP contract, the unit must be made available to and occupied by a qualified family.

- DOH will allow families who initially qualified to live in an excepted unit to remain when circumstances change due to circumstances beyond the remaining family member’s control.

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 ten 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)]

For certain tax credit units, the rent limits are determined differently than for other PBV units. Different limits apply to contract units that meet all of the following criteria:

- The contract unit receives a low-income housing tax credit under the Internal Revenue Code of 1986;
- The contract unit is not located in a qualified census tract;
- There are comparable tax credit units of the same bedroom size as the contract unit in the same project, and the comparable tax credit units do not have any form of rental assistance other than the tax credit; and

- The tax credit rent exceeds 110 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.

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 project that also receive the low-income housing tax credit but do not have any additional rental assistance (e.g., tenant-based voucher assistance).

Reasonable Rent [24 CFR 983.301(e) and 983.302(c)(2)]

The PHA must determine reasonable rent in accordance with 24 CFR 983.303. The rent to owner for each contract unit may at no time exceed the reasonable rent, except in cases where the PHA has elected within the HAP contract not to reduce rents below the initial rent to owner and, upon redetermination of the rent to owner, the reasonable rent would result in a rent below the initial rent. However, the rent to owner must be reduced in the following cases:

- To correct errors in calculations in accordance with HUD requirements
- If additional housing assistance has been combined with PBV assistance after the execution of the initial HAP contract and a rent decrease is required pursuant to 24 CFR 983.55
- If a decrease in rent to owner is required based on changes in the allocation of the responsibility for utilities between owner and tenant

If the PHA has not elected within the HAP contract to establish the initial rent to owner as the rent floor, the rent to owner shall not at any time exceed the reasonable rent.

- DOH will elect within the HAP contract not to reduce rents below the initial level, with the exception of circumstances listed in 24 CFR 983.302(c)(2). If, upon redetermination of the rent to owner, the reasonable rent would result in a rent below the initial rent, DOH will use the higher initial rent to owner amount.

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.

Use of Small Area FMRs (SAFMRs) [24 CFR 888.113(h)]

While small area FMRs (SAFMRs) do not apply to PBV projects, PHAs that operate a tenant-based program under SAFMRs may apply SAFMRs to all future PBV HAP contracts. If the PHA adopts this policy, it must apply to all future PBV projects and the PHA's entire jurisdiction. The PHA and owner may not subsequently choose to revert back to use of the FMRs once the SAFMRs have been adopted, even if the PHA subsequently changes its policy.

Further, the PHA may apply SAFMRs to current PBV projects where the notice of owner selection was made on or before the effective date of PHA implementation, provided the owner is willing to mutually agree to doing so and the application is prospective. The PHA and owner may not subsequently choose to revert back to use of the FMRs once the SAFMRs have been adopted, even if the PHA subsequently changes its policy. If rents increase as a result of the use of SAFMRs, the rent increase may not be effective until the first anniversary of the HAP contract.

- DOH will not apply SAFMRs to the DOH's PBV program.

Minimum Rent [24 CFR 5.63]

The minimum rent is waived (\$0) in the DOH Project Based Voucher program.

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 will only allow a "lookback period" of no more than six (6) months to make a correction if it is discovered that the incorrect rent and/or utility allowance amount was used resulting in an incorrect payment.

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, except where the PHA has elected within the HAP contract to not reduce rents below the initial rent under the initial HAP contract.

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.

- 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, except where the PAH has elected within the HAP contract to not reduce rents below the initial rent under the initial HAP contract.

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 project; 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]

To comply with HUD subsidy layering requirements, at the discretion of HUD or its designee, a PHA shall reduce the rent to owner because of other governmental subsidies, including tax credits or tax exemptions, grants, or other subsidized funding.

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.

- If DOH determines that the owner is responsible for a vacancy and, as a result, is not entitled to 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.

- 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.

Hold for Exhibit – 1 per PBV project

Current Project Based Voucher Programs/Properties

<u>PBV Property/Program</u>	<u>Preference(s)</u>	<u>Source of Referral</u>
The Villages	Disabled	
1637 Cedar Dreamlife	Disabled	
Urban Peak	Disabled Youth	
Posada	Disabled Veteran	
4 th Quarter	Disabled; Homeless	VA
AIIM	Disabled and Ex-Offender	AIIM Program
West End Flats	Homeless	
The Suites	Disabled	
Aspinwall	Disabled	
Stout Street Lofts	Homeless	
North Colorado Station	Homeless	
40 West	Disabled Veteran	VA
Guadalupe	Disabled	
Sanderson	Disabled; Homeless	SIB
Cathedral Square-Saint Francis	Homeless	OneHome
Brandon Courtyard	Homeless	
Attention Homes	Homeless Youth	OneHome
The Commons	Homeless	Coordinated Entry
Fitzsimons	Disabled Veteran	VA
Flats at Two Creeks	Disabled Veteran	VA
Freedom Springs	Disabled Veteran	VA
Greenway Flats	Homeless	Coordinated Entry
Journey Home	Homeless	
La Puente	Homeless	
Lake Creek	Homeless	
Lumien	Homeless	
Providence at the Heights	Homeless	Coordinated Entry
Ute Mountain	Homeless	
30 Pearl	Homeless	Coordinated Entry
Espero	Homeless	Coordinated Entry
The Right Place	Homeless	Coordinated Entry
Atlantis	Homeless; Disabled	Coordinated Entry
Legacy Lofts	Homeless	Coordinated Entry

EXHIBIT 17-2: SPECIAL PROVISIONS

[24 CFR Part 972.200; Notice PIH 2019-05; Notice PIH 2019-23]

Special Provisions Applying to TPVs Awarded as Part of a Voluntary Conversion of Public Housing Units in Projects that Include RAD PBV Units

Under certain circumstances, HUD allows small PHAs to reposition a public housing project (or portion of a project) by voluntarily converting units to tenant-based housing choice voucher assistance. In order to preserve affordable housing for residents of the project, the PHA is given priority to receive replacement tenant protection vouchers (TPVs). As part of the voluntary conversion, the PHA has the option to continue to operate it as rental housing. If so, the PHA or subsequent owner must allow existing families to remain in their units using the TPV in the form of tenant-based assistance. In this situation, however, the PHA may choose to project-base these TPVs in the former public housing project. Families must still be provided with the option to remain in their unit using tenant-based assistance. In order for the PHA to project-base the assistance and include these units on the PBV HAP contract, the family must voluntarily consent in writing to PBV assistance following the requirements in Appendix A of Notice PIH 2019-05. If the family fails to consent to PBV assistance and chooses to remain using tenant-based assistance, the family’s unit is excluded from the PBV HAP contract until the family moves out or consents to switching to PBV assistance. In general, all applicable program regulations and guidance for the standard PBV program apply to these units.

The PHA may also convert units in the same former public housing project to the PBV program under the rental assistance demonstration (RAD) program. The RAD statute authorizes HUD to waive certain statutory and regulatory provisions governing the standard PBV program and specify alternative requirements. In order to facilitate the uniform treatment of residents and units at the project, Notice PIH 2019-23 extended some of the alternative requirements to non-RAD PBV units in the converted project (i.e., the TPV units in the project). As such, while PBV TPV units in the converted project generally follow the requirements for the standard PBV program listed in this chapter, where HUD has specified alternative requirements for non-RAD PBV units in the project, PBV TPV units will instead follow the requirements outlined in Chapter 18 of this policy for the RAD PBV program.

RAD Requirements Applicable to Non-RAD units in the Project

Alternative Requirement under RAD as Listed in Notice PIH 2019-23	Standard PBV Policy That Does Not Apply	Applicable Policy in Chapter 18
1.6.A.4. Site Selection – Compliance with PBV Goals	17-II.G. SITE SELECTION STANDARDS applies with the exception of deconcentration of	18-II.F. SITE SELECTION STANDARDS

	poverty and expanding housing and economic opportunity requirements.	
1.6.B.5.d. PBV Site-Specific Utility Allowances	Alternative requirement under RAD. No corresponding policy in Chapter 17.	18-VII.C. UTILITY ALLOWANCES
1.6.C.1. No Rescreening of Tenants upon Conversion	Policies contained in Chapter 3 relating to eligibility do not apply to existing tenants who receive TPVs.	18-V.B. PROHIBITED RESCREENING OF EXISTING TENANTS UPON CONVERSION
1.6.C.2. Right to Return	Alternative requirement under RAD. No corresponding policy in Chapter 17.	18-I.D. RELOCATION REQUIREMENTS
1.6.C.3. Phase-in of Tenant Rent Increases	Alternative requirements under RAD. No corresponding policy in Chapter 17.	18-VIII.D. PHASE-IN OF TENANT RENT INCREASES
1.6.C.4. Family Self Sufficiency (FSS) and Resident Opportunities and Self-Sufficiency Service Coordinator (ROSS-SC) Programs	Not covered in administrative plan.	18-VI.C. PUBLIC HOUSING FSS AND ROSS PARTICIPANTS
1.6.C.5. Resident Participation and Funding	Alternative requirement under RAD. No corresponding policy in Chapter 17.	18-VI.D. RESIDENT PARTICIPATION AND FUNDING
1.6.C.6. Resident Procedural Rights	Policies related to hearings in Chapter 16 apply, with added procedural rights and notice requirements as outlined in Chapter 18.	18-VI.H. RESIDENTS' PROCEDURAL RIGHTS
1.6.C.7. Earned Income Disregard (EID)	Alternative requirements under RAD for in-place residents. New admissions follow policies in Chapter 6.	18-VI.G. EARNED INCOME DISALLOWANCE
1.6.C.8. Jobs Plus	Not covered in	No corresponding policy.

	administrative plan.	
1.6.C.9. When Total Tenant Payment Exceeds Gross Rent	Alternative requirements under RAD for in-place residents. New admissions follow policies in 17-VII.B. LEASE, Continuation of Housing Assistance Payments.	18-VI.B. LEASE, Continuation of Housing Assistance Payments
1.6.C.10. Under-Occupied Unit	Alternative requirements under RAD for in-place residents. New admissions follow 17-VII.C. MOVES, Overcrowded, Under-Occupied, and Accessible Units	18-VI.E. MOVES, Overcrowded, Under-Occupied, and Accessible Units
1.6.D.4. Establishment of Waiting List	Alternative requirements under RAD for initial establishment of the waiting list. Once waiting list is established, follow 17-VI.D. SELECTION FROM THE WAITING LIST	18-V.D. ORGANIZATION OF THE WAITING LIST
1.6.D.10. Initial Certifications and Tenant Rent Calculations	Alternative requirements under RAD for in-place residents. No corresponding policy in Chapter 17.	18-VIII.C. TENANT RENT TO OWNER, Initial Certifications

Note, while Notice PIH 2019-05 states that the PHA must screen families for eligibility for a tenant protection voucher and that families must be below the low-income limit (80 percent of AMI), Notice PIH 2019-23 waives these requirements for residents in projects that include RAD PBV units.

Chapter 18

PROJECT BASED VOUCHERS (PBV) UNDER THE RENTAL ASSISTANCE DEMONSTRATION (RAD) PROGRAM

INTRODUCTION

This chapter describes HUD regulations and PHA policies related to the Project-Based Voucher (PBV) program under the Rental Assistance Demonstration (RAD) program in eight 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 Project Selection. This part describes the cap on assistance at projects receiving PBV assistance, ownership and control, and site selection standards.

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: Housing Assistance Payments Contract. This part discusses HAP contract requirements and policies including the execution and term of the HAP contract.

Part V: Selection of PBV Program Participants. This part describes the requirements and policies governing how the PHA and the owner will select a family to receive PBV assistance.

Part VI: Occupancy. This part discusses occupancy requirements related to the lease and describes under what conditions families are allowed or required to move.

Part VII: Determining Contract Rent. This part describes how the initial rent to owner is determined, and how rent will be redetermined throughout the life of the HAP contract.

Part VIII: Payments to Owner. This part describes the types of payments owners may receive under this program.

PART I: GENERAL REQUIREMENTS

18-I.A. OVERVIEW AND HISTORY OF THE RAD PROGRAM

The Rental Assistance Demonstration (RAD) program was authorized in 2012 in order to assess the effectiveness of converting public housing, moderate rehabilitation properties, and units under the rent supplement and rental assistance payments programs to long-term, project-based Section 8 rental assistance. The program's four primary objectives are to:

- Preserve and improve public and other assisted housing.
- Standardize the administration of the plethora of federally subsidized housing programs and rules. The conversions are intended to promote operating efficiency by using a Section 8 project-based assistance model that has proven successful and effective for over 30 years. In other words, RAD aligns eligible properties more closely with other affordable housing programs.
- Attract private market capital for property renovations. Through the use of this model, properties may be able to leverage private debt and equity to make capital repairs.
- Increase tenant mobility opportunities.

Under the first component, a PHA with public housing units may submit an application to HUD to convert some or all of their public housing units to long-term, project-based Section 8 HAP contracts under either:

- Project-based rental assistance (PBRA) under HUD's Office of Multifamily Housing Programs.
- Project-based vouchers (PBVs) under HUD's Office of Public and Indian Housing (PIH).

This chapter will focus on public housing conversions to the PBV program under RAD. In order to distinguish between requirements for public housing conversion under RAD and PBV units under the standard PBV program, we will refer to the standard PBV program and the RAD PBV program.

18-I.B. APPLICABLE REGULATIONS

On the whole, the regulations for both the standard and RAD PBV programs generally follow the regulations for the tenant-based HCV program found at 24 CFR Part 982. However, important parts of the tenant-based regulations do not apply to the project-based program. 24 CFR Part 983 outlines the sections of 24 CFR Part 982 that are not applicable to the project-based program.

For the RAD PBV program, Congress authorized HUD to waive certain statutory and regulatory provisions or establish alternative requirements from the standard PBV program. These provisions are identified in Notice PIH 2019-23 (issued September 5, 2019). Any non-RAD PBV units located in the covered project are subject to the same waivers and alternative requirements where noted in Notice PIH 2019-23 and in this policy.

Otherwise, all regulatory and statutory requirements for the standard PBV program in 24 CFR Part 983 and Section 8(o)(13) of the Housing Act of 1937, and all applicable standing and subsequent Office of Public and Indian Housing (PIH) notices and guidance, including related handbooks, apply to RAD PBV. This includes environmental review, Davis-Bacon, and fair housing requirements.

RAD is authorized by the Consolidated and Further Continuing Appropriations Act of 2012 (Public Law 112-55, approved November 18, 2011), as amended by the Consolidated Appropriations Act of 2014 (Public Law 113-76, approved January 17, 2014), the Consolidated and Further Continuing Appropriations Act of 2015 (Public Law 113-235, approved December 6, 2014), the Consolidated Appropriations Act of 2016 (Public Law 114-113, approved December 18, 2015), the Consolidated Appropriations Act, 2017 (Public Law 115-31, approved May 5, 2017), and section 237 of Title II, Division L, Transportation, Housing and Urban Development, and Related Agencies, of the Consolidated Appropriations Act, 2018 (Public Law 115-141, approved March 23, 2018) collectively, the “RAD Statute.”

Requirements specific to the RAD program may be found in the following:

- Generally, public housing projects converting assistance under RAD are bound by the terms of the notice in effect at the time of closing.
 - Notice PIH 2019-23 was immediately applicable at the time of closing to all projects converting assistance (notwithstanding execution of a commitment for conversion). Notice PIH 2019-23 was published on September 5, 2019.
 - **Except with respect to changes in the project eligibility and selection criteria, not included in this policy, which are effective after a 30-day comment period.**
 - Notice PIH 2012-32, REV-3 was applicable to projects that were seeking conversion of assistance through RAD, including those where a CHAP had already been issued when it was published January 12, 2017.
 - **Except with respect to changes in the project eligibility and selection criteria, not included in this policy, which were effective after a 30-day comment period.**

- Notice PIH 2012-32, REV-2 was applicable to projects that were seeking conversion of assistance through RAD, including those where a CHAP had already been issued when it was published June 15, 2015.
 - **Except with respect to changes in the project eligibility and selection criteria, not included in this policy, which are effective after a 30-day comment period.**
- RAD Quick Reference Guide for Public Housing Converting to PBV Assistance (6/20)
- RAD Welcome Guide for New Awardees: RAD 1st Component (3/15)
- Notice PIH 2016-17, Rental Assistance Demonstration (RAD) Notice Regarding Fair Housing and Civil Rights Requirements and Relocation Requirements Applicable to RAD First Component – Public Housing Conversions.
 - **This Notice applies to all projects that have applied for RAD conversion but have not yet converted as of November 10, 2016.**
- Notice PIH 2014-17, Relocation Requirements under the RAD Program, Public Housing in the First Component.
 - **This notice may apply to projects that have converted to RAD prior to November 10, 2016, AND who have requested and received approval from HUD to be governed by this notice. See PIH Notice 2016-17, Section 1, Paragraph 1.3 for applicability.**

NOTE: The policies in this chapter follow Notice PIH 2016-17. If your project falls under PIH 2014-17, applicable policies may be found in Section 18-I.D.

- RAD FAQs (<http://www.radresource.net/search.cfm>)
PHA Policy

<u>Project</u>	<u>Closing Date</u>	<u>RAD Notice</u>

In other words, the standard PBV program follows many of the same regulations as the tenant-based HCV program, but not all of them, and the RAD PBV program follows many of the same regulations as the standard PBV program, but not all of them.

MTW agencies are able to apply activities impacting the PBV program that are approved in the MTW Plan to properties converting under RAD, provided they do not conflict with RAD requirements.

18-I.C. TENANT-BASED VS. PROJECT-BASED VOUCHER ASSISTANCE

[24 CFR 983.2]

Much of the tenant-based voucher program regulations also apply to the PBV program. Consequently, many of the PHA policies related to tenant-based assistance also apply to RAD 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.

PHA Policy

Except as otherwise noted in this chapter, or unless specifically prohibited by PBV program regulations, the PHA policies for the tenant-based voucher program contained in this administrative plan also apply to the RAD PBV program and its participants. This chapter is intended to address requirements specific to the RAD PBV program only.

See Exhibit 18-1 for information on projects to which the PHA has attached RAD PBV assistance.

18-I.D. RELOCATION REQUIREMENTS

For projects that apply for conversion of assistance under the First Component of RAD and will convert November 10, 2016 or later, the following applies [Notice PIH 2016-17]:

- In some developments, in-place residents may need to be relocated as a result of properties undergoing repairs, being demolished and rebuilt, or when assistance is transferred from one site to another. RAD program rules prohibit the permanent, involuntary relocation of residents as a result of conversion. Residents that are temporarily relocated retain the right to return to the project once it has been completed. Any non-RAD PBV units located in the same project are also subject to the right to return.
- Relocation assistance provided to residents will vary depending on the length of time relocation is required. Residents must be properly notified in advance of relocation requirements in accordance with RAD program rules and Uniform Relocation Act (URA) requirements, and other requirements which may be applicable such as Section 104(d) of the Housing and Community Development Act of 1974, as amended. Sample informing notices are provided in Appendices 2–5 of Notice PIH 2014-17. A written relocation plan is required if the RAD conversion involves permanent relocation (including a move in connection with a transfer of assistance) or temporary relocation anticipated to last longer than a year. While the PHA is not required to have a written relocation plan for temporary relocation lasting one year or less, HUD strongly encourages PHAs to prepare one. Appendix II of Notice PIH 2016-17 contains recommended contents for a relocation plan.
- In addition, PHAs must undertake a planning process that complies with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), although not

all relocations under RAD will trigger requirements under URA. URA statute and implementing regulations may be found at 49 CFR Part 24. The obligation due to relocating residents under RAD are broader than URA relocation assistance and payments.

- Any residents that may need to be temporarily relocated to facilitate rehabilitation or construction will have a right to return to either: a) a unit at the development once rehabilitation or construction is completed, provided the resident's household is not under-housed; or b) a unit in the development which provides the same major features as the resident's unit in the development prior to the implementation of the RAD conversion.
- Where the transfer of assistance to a new site is warranted and approved, residents of the converting development will have the right to reside in an assisted unit at the new site once rehabilitation or construction is complete.
- If the PHA's proposed plans for conversion would preclude a resident from returning to the development, the resident must be given an opportunity to comment and/or object to such plans. PHAs must alter the project plans to accommodate the resident's right to return to the development if the resident would be precluded from returning to the development.
- Examples of project plans that may preclude a resident from returning to the development include, but are not limited to:
 - **Changes in the development's bedroom distribution that decrease the size of the units, resulting in the resident being under-housed;**
 - **The resident cannot be accommodated in the remaining assisted units due to a reduction in the number of assisted units at the development;**
 - **Income limit eligibility requirements associated with the LIHTC program or another program; and**
 - **Failure to provide a reasonable accommodation, in violation of applicable law, where reasonable accommodation may include installation of accessibility features that are needed by the resident.**
- Residents of a development undergoing conversion that would be precluded from returning to the development may voluntarily accept a PHA or owner's offer to permanently relocate to alternative housing, and thereby waive their right to return to the development after rehabilitation or construction is completed. In this event, the PHA must secure the resident's written consent to a voluntary permanent relocation in lieu of returning to the development. PHAs are prohibited from employing any tactics to pressure residents into relinquishing their right to return or accepting other housing options. Additionally, a PHA may not terminate a resident's lease if the PHA fails to obtain the resident's consent and the resident seeks to exercise the right to return.

- In the case of multi-phase RAD transactions, the resident has a right to return to the development or to other converted phases of the development that are available for occupancy at the time the resident is eligible to exercise their right of return. Generally, the resident’s right to return must be accommodated within the development associated with the resident’s original unit, however, the PHA may treat multiple converted developments on the same site as one for purposes of right to return. Should the PHA seek to have the resident exercise the right to return at a future phase, the PHA must secure the resident’s consent in writing.
- Alternative housing options may involve a variety of housing options, including but not limited to:
 - **Transfers to public housing**
 - **Admission to other affordable housing properties subject to the applicable program rules**
 - **Housing choice voucher (HCV) assistance**
 - **Homeownership programs subject to the applicable program rules**
 - **Other options identified by the PHA**

However, for projects that applied for conversion prior to November 10, 2016, the following applies [Notice PIH 2014-17]:

- In some developments, in-place residents may need to be relocated as a result of properties undergoing repairs, being demolished and rebuilt, or when assistance is transferred from one site to another. RAD program rules prohibit the permanent, involuntary relocation of residents as a result of conversion. Residents that are temporarily relocated retain the right to return to the project once it has been completed.
- Relocation assistance provided to residents will vary depending on the length of time relocation is required. Residents must be properly notified in advance of relocation requirements in accordance with RAD program rules and Uniform Relocation Act (URA) requirements. Sample informing notices are provided in Appendices 2–5 of Notice PIH 2014-17. While the PHA is not required to have a written relocation plan, HUD strongly encourages PHAs to prepare one. Appendix I of Notice PIH 2014-17 contains recommended contents for a relocation plan.
- In addition, PHAs must undertake a planning process that complies with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), although not all relocations under RAD will trigger requirements under URA. URA statute and implementing regulations may be found at 49 CFR Part 24.
- Any residents that may need to be temporarily relocated to facilitate rehabilitation or construction will have a right to return to an assisted unit at the development once rehabilitation or construction is completed. Where the transfer of assistance to a new site is warranted and approved, residents of the converting development will have the right to reside in an assisted unit at the new site once rehabilitation or construction is complete. Residents of a development undergoing conversion of assistance may voluntarily accept a PHA or owner’s offer to

permanently relocate to another assisted unit, and thereby waive their right to return to the development after rehabilitation or construction is completed.

18-I.E. EQUAL OPPORTUNITY REQUIREMENTS [24 CFR 983.8; 24 CFR 5.105; Notice PIH 2016-17]

RAD conversions are governed by the same civil rights authorities that govern HUD-assisted activities in general. These authorities prohibit discrimination and impose affirmative obligations on HUD program participants. PHAs must comply with all applicable fair housing and civil rights laws, including but not limited to the Fair Housing Act, Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973, when conducting relocation planning and providing relocation assistance. For example, persons with disabilities returning to the RAD project may not be turned away or placed on a waiting list due to a lack of accessible units. Their need for an accessible unit must be accommodated. See the *RAD Fair Housing, Civil Rights, and Relocation Notice* [Notice PIH 2016-17] for more information.

PART II: PBV PROJECT SELECTION

18-II.A. OVERVIEW

Unlike in the standard PBV program where the PHA typically selects the property through an owner proposal selection process, projects selected for assistance under RAD PBV are selected in accordance with the provisions in Notice PIH 2019-23. Therefore, 24 CFR 983.51 does not apply since HUD selects RAD properties through a competitive selection process.

18-II.B. OWNERSHIP AND CONTROL [Notice PIH 2019-23]

For projects governed by Notice PIH 2019-23, the following language applies:

- Under the PBV program, the contract administrator and the owner listed on the contract cannot be the same legal entity (i.e., the PHA cannot execute a contract with itself). To avoid this situation, the PHA may either: 1) Transfer the ownership of the project to a nonprofit affiliate or instrumentality of the PHA (including to a “single-purpose entity” that owns nothing other than the property, which will typically be a requirement of a lender or investor), or 2) The PHA can form a related entity that is responsible for management and leasing and can serve as the owner for purposes of the Section 8 HAP contract; in this scenario, the HAP is then executed between the PHA (as the contract administrator) and the PHA’s related entity (as the owner for HAP contract purposes). Note that in the second scenario, both the PHA and the entity serving as the owner for HAP contract purposes will be required to sign the RAD Use Agreement [RAD Resource Desk FAQ 01/24/19].
- Except where permitted to facilitate the use of low-income housing tax credits, during both the initial term and renewal terms of the HAP contract, ownership must be by a public or nonprofit entity. HUD may also allow ownership of the project to be transferred to a tax credit entity controlled by a for-profit entity to facilitate the use of tax credits for the project, but only if HUD determines that the PHA or a nonprofit entity preserves an interest in the profit. The requirement for a public or nonprofit entity, or preservation of an interest by a PHA or nonprofit in a property owned by a tax credit entity controlled by a for-profit entity, is satisfied if a public or nonprofit entity (or entities), directly or through a wholly owned affiliate (1) holds a fee simple interest in the property; (2) is the lessor under a ground lease with the property owner; (3) has the direct or indirect legal authority to direct the financial and legal interest of the property owner with respect to the RAD units, (4) owns 51 percent or more of the general partner interests in a limited partnership or 51 percent or more of the managing member interests in a limited liability company with all powers of a general partner or managing member, as applicable; (5) owns a lesser percentage of the general partner or managing member interests and holds certain control rights as approved by HUD; (6) owns 51 percent or more of all ownership interests in a limited partnership or limited liability company and holds certain control rights as approved by HUD; or (7) demonstrates other ownership and control arrangements approved by HUD.

- Control may be established through the terms of the project owner’s governing documents or through a Control Agreement, provided that in either case amendment of the terms of control requires consent from HUD.

For projects subject to the requirements of Notice PIH 2012-32, REV-3, the following language applies:

- Except where permitted to facilitate the use of low-income housing tax credits, during both the initial term and renewal terms of the HAP contract, ownership must be by a public or nonprofit entity. The requirement for a public or nonprofit entity is satisfied if a public or nonprofit entity (or entities), directly or through a wholly owned affiliate (1) holds a fee simple interest in the property; (2) is the lessor under a ground lease with the property owner; (3) has the direct or indirect legal authority to direct the financial and legal interest of the property owner with respect to the RAD units, (4) owns 51 percent or more of the general partner interests in a limited partnership or 51 percent or more of the managing member interests in a limited liability company with all powers of a general partner or managing member, as applicable; (5) owns a lesser percentage of the general partner or managing member interests and holds certain control rights as approved by HUD; (6) owns 51 percent or more of all ownership interests in a limited partnership or limited liability company and holds certain control rights as approved by HUD; or (7) other ownership and control arrangements approved by HUD.
- If low-income housing tax credits will be used, HUD may allow ownership of the property to be transferred to a tax credit entity controlled by a for-profit entity if HUD determines that the PHA preserves its interest in the property. Preservation of PHA interest in the property includes but is not limited to the following:
 - **The PHA, or an affiliate under its sole control, is the general partner or managing member;**
 - **The PHA retains fee ownership and leases the real estate to the tax credit entity pursuant to a long-term ground lease;**
 - **The PHA retains control over leasing the property and determining program eligibility;**
 - **The PHA enters into a control agreement by which the PHA retains consent rights over certain acts of the project owner and retains certain rights over the project;**
 - **Other means that HUD finds acceptable**

For projects that converted assistance prior to the implementation of Notice PIH 2012-32, REV-3, the following language applies:

- During both the initial term and renewal terms of the HAP contract, ownership must be either of the following:
 - **A public or nonprofit entity that has legal title to the property. The entity must have the legal authority to direct the financial, legal, beneficial, and other interests of the property; or**
 - **A private entity, if the property has low-income tax credits. The PHA must maintain control via a ground lease.**

18-II.C. PHA-OWNED UNITS [24 CFR 983.59, FR Notice 1/18/17, and Notice PIH 2017-21]

If the project is PHA-owned, rent-setting and inspection functions set out in 24 CFR 983.59 must be conducted by an independent entity approved by HUD.

The definition of *ownership or control* provided under Notice PIH 2019-23 (listed above) is used specifically to determine whether a PHA retains control over a project for purposes of HUD's requirement for ownership or control of the covered project under RAD. For purposes of determining whether an independent entity will perform certain functions for the project, the definition of *PHA-owned* under Notice PIH 2017-21 is used. This is the same definition used for standard PBV units. In some cases, a project may meet the RAD definition of *ownership or control* but may not be considered PHA-owned for purposes of requiring an independent entity.

The independent entity that performs the program services may be the unit of general local government for the PHA jurisdiction (unless the PHA is itself the unit of general local government or an agency of such government), or another HUD-approved public or private independent entity.

The PHA may compensate the independent entity from PHA ongoing administrative fee income (including amounts credited to the administrative fee reserve). The PHA may not use other program receipts to compensate the independent entity for its services. The PHA, and the independent entity, may not charge the family any fee for the services provided by the independent entity.

PHA Policy

Not applicable. The units converted to PBV under RAD are not PHA-owned housing.

18-II.D. SUBSIDY LAYERING REQUIREMENTS [Notice PIH 2019-23; Notice PIH 2012-32, REV-3; Notice PIH 2012-32, REV-2]

For projects governed by Notice PIH 2019-23, the following language applies:

- In the case of a PHA that will no longer have ACC units as a result of the pending or simultaneous closing, or have less than 50 units remaining and have initiated procedures to dispose of their final ACC units, there is no restriction on the amount of public housing funds that may be contributed to the covered project or projects though the conversion. However, the PHA must estimate and plan for outstanding liabilities and costs and must follow Notice PIH 2016-23 or successor notice regarding the administrative activities required to terminate the ACC if it has no plans to develop additional public housing.
- In the case where the PHA will continue to maintain other units in its inventory under a public housing ACC, a contribution of operating funds to the covered project that exceeds the average amount the project has held in operating reserves over the past three years will trigger a subsidy layering review under 24 CFR 4.13. Similarly, any contribution of capital funds, including Replacement Housing Factor (RHF) or Demolition Disposition Transitional Funding (DDTF), will trigger a subsidy layering review. Notwithstanding the subsidy layering review, PHAs should be mindful of how the capital funds or operating reserves used in the financing of its RAD properties may impact the physical and financial health of properties that will remain in its public housing inventory.
- Following execution of the HAP contract, PHAs are authorized to use operating and capital funds to make HAP payments for the remainder of the first calendar year in which the HAP contract is effective. Otherwise, a PHA may not contribute public housing program funds to the covered project unless those funds have been identified in the RCC and converted at closing for Section 8 RAD purposes.

For projects governed by Notice PIH 2012-32, REV-3, the following language applies:

- In the case of a PHA that is converting all of its ACC units, there is no restriction on the amount of public housing funds that may be contributed to the covered project at closing; the PHA may convey all program funds to the covered projects. In order to cover the cost of administrative activities required to terminate the ACC, once it no longer has units under the ACC and has no plans to develop additional public housing, the PHA may:
 - **Designate that a reserve associated with the project be available to fund any public housing closeout costs (such as an operating deficit reserve or a specific PHA closeout reserve). Any funds not needed for public housing closeout costs would remain in such reserve or may be transferred to another reserve associated with the project (such as the replacement reserve). Thereafter, these funds may be used at the project pursuant to the authorized use of the applicable reserve; or**
 - **Retain funds under the public housing program for this purpose. However, HUD will recapture any public housing funds that a PHA does not expend for closeout costs.**

- In the case where the PHA will continue to maintain other units in its inventory under a public housing ACC, a contribution of operating funds to the covered project that exceeds the average amount the project has held in operating reserves over the past three years will trigger a subsidy layering review under 24 CFR 4.13. Similarly, any contribution of capital funds, including Replacement Housing Factor (RHF) or Demolition Disposition Transitional Funding (DDTF), will trigger a subsidy layering review. Notwithstanding the subsidy layering review, PHAs should be mindful of how the capital funds or operating reserves used in the financing of its RAD properties may impact the physical and financial health of properties that will remain in its public housing inventory.
- In addition, following execution of the HAP contract, PHAs are authorized to use operating and capital funds to make HAP payments for the remainder of the first calendar year in which the HAP contract is effective. Otherwise, a PHA may not contribute public housing program funds to the covered project unless such funding has been identified in the approved financing plan and included in the approved “sources and uses” attached to the RCC.

For projects governed by the requirements of Notice PIH 2012-32, REV-2, the following language applies:

- In the case of a PHA that is converting all of its ACC units, there is no restriction on the amount of public housing funds that may be contributed to the covered project at closing; the PHA may convey all program funds to the covered project. HUD will recapture any public housing funds that a PHA has not expended once it no longer has units under ACC. In the case where the PHA will continue to maintain other units in its inventory under a public housing ACC, a contribution of operating funds to the covered project that exceeds the average amount the project has held in operating reserves over the past three years will trigger a subsidy layering review under 24 CFR 4.13. Similarly, any contribution of capital funds, including Replacement Housing Factor (RHF) or Demolition Disposition Transitional Funding (DDTF), will trigger a subsidy layering review. Notwithstanding the subsidy layering review, PHAs should be mindful of how the capital funds or operating reserves used in the financing of its RAD properties may impact the physical and financial health of properties that will remain in its public housing inventory.

18-II.E. PBV PERCENTAGE LIMITATION AND UNIT CAP [Notice PIH 2019-23]

PBV Percentage Limitation

Covered projects do not count against the maximum amount of assistance a PHA may utilize for the PBV program, which under the standard PBV program is set at 20 percent of the authorized units allocated to a PHA under the HCV program. To implement this provision, HUD is waiving section 8(o)(13)(B) of the 1937 Act as well as 24 CFR 983.6.

Unit Cap Limitation

When HUD published REV-3 of Notice PIH 2012-32, the cap on the number of assisted units in each project was eliminated. Under the standard PBV program the cap is set at the greater of 25 units or 25 percent of the units in the project. HUD is waiving this requirement, and projects governed by Notice PIH 2019-23 and Notice PIH 2012-32, REV-3 have no cap on the number of units that may receive PBV assistance in a project.

However, for projects that are governed by REV-2 of Notice PIH 2012-32, the cap on the number of PBV units in the project is increased to 50 percent. In these projects, however, provided units met certain exception criteria, the PHA may have converted a larger number of units to RAD PBV. For projects governed by the requirements of Notice PIH 2012-32, REV-2 **only**, the following language applies:

- In general, the PHA may not 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 50 percent of the number of dwelling units (assisted or unassisted) in the project. However, PHAs may exceed the 50 percent limitation when units in the project are occupied by elderly and/or disabled families or families that will receive supportive services. These units are known as “excepted units” and do not count toward the project cap.
- For projects governed by the requirements of Notice PIH 2012-32, REV-2 choosing to include excepted units, additional policy decisions may be required.

PHA Policy

For projects governed by Notice PIH 2012-32, REV-2, the PHA will not provide RAD PBV assistance for any excepted units.

18-II.F. SITE SELECTION STANDARDS [Notice PIH 2019-23; Notice PIH 2016-17]

Site selection requirements set forth in 24 CFR 983.57 apply to RAD PBV, with the exception of 983.57(b)(1) and (c)(2). HUD waives the provisions regarding deconcentration of poverty and expanding housing and economic opportunity for existing housing sites.

To facilitate the uniform treatment of residents and units, any non-RAD PBV units located in the same project are subject to the terms of this provision.

HUD will conduct a front-end civil rights review of the PHA's proposed site in certain circumstances. For RAD PBV conversions that involve new construction located in an area of minority concentration (whether on the existing public housing site or on a new site) HUD will determine whether it meets one of the exceptions that would allow for new construction in an area of minority concentration.

The PHA must ensure that its RAD PBV conversion, including any associated new construction, is consistent with its certification to affirmatively further fair housing and complies with civil rights laws.

18-II.G. ENVIRONMENTAL REVIEW [Notice PIH 2019-23; *Environmental Review Requirements for RAD Conversions*, March 2019]

HUD cannot approve an applicant's financing plan submission unless and until the required environmental review has been completed for the applicant's proposed conversion project and found to meet environmental review requirements. Environmental documents must be submitted no later than the applicant's financing plan. HUD will not issue a RAD Conversion Commitment (RCC) if the project plan does not meet the environmental review requirements described in Attachment 1A of Notice PIH 2019-23. Once an awardee has submitted an application for a specific project, they may not make any choice limiting actions before the completion of the environmental review.

PART III: DWELLING UNITS

18-III.A. OVERVIEW

This part identifies the special housing quality standards that apply to the RAD PBV program, housing accessibility for persons with disabilities, and special procedures for conducting housing quality standards inspections.

18-III.B. HOUSING QUALITY STANDARDS [24 CFR 983.101]

The housing quality standards (HQS) for the tenant-based program generally apply to the PBV program. HQS requirements for shared housing, manufactured home space rental, and the homeownership option do not apply because these housing types are not assisted under the PBV program.

The physical condition standards at 24 CFR 5.703 do not apply to the PBV program.

Lead-based Paint [24 CFR 983.101(c); Notice PIH 2019-23]

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, and 40 CFR 745.227, apply to the PBV program.

18-III.C. HOUSING ACCESSIBILITY FOR PERSONS WITH DISABILITIES [Notice PIH 2016-17]

Federal accessibility requirements apply to all conversions, whether they entail new construction, alternations, or existing facilities. The housing must comply with program accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8. The PHA 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)

18-III.D. INSPECTING UNITS

Initial Inspection [RAD Quick Reference Guide; Notice PIH 2019-23]

Under standard PBV regulations at 24 CFR 983.103(b), a PHA may not enter into a HAP contract until the PHA has determined all units comply with HQS. It is the responsibility of the contract administrator to perform this initial inspection (unless units are PHA-owned). In order to accommodate projects in which repairs are conducted, however, HUD has waived this requirement when units are undergoing rehabilitation. In this case, units must meet HQS by the date indicated in the RAD Conversion Commitment (RCC).

Turnover Inspections [24 CFR 983.103(c), FR Notice 1/18/17, and Notice PIH 2017-20]

Before providing assistance to a new family in a contract unit, the PHA must inspect the unit. The PHA may not provide assistance on behalf of the family until the unit fully complies with HQS.

Annual/Biennial Inspections [24 CFR 983.103(d); FR Notice 6/25/14]

At least once every 24 months during the term of the HAP contract, the PHA 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 inspection requirement.

PHA Policy

The PHA will inspect on an annual basis 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.

If more than 20 percent of the sample of inspected contract units in a building fail the initial inspection, the PHA must reinspect 100 percent of the contract units in the building.

Alternative Inspections [24 CFR 983.103(g); Notice PIH 2016-05]

In the case of mixed-finance properties that are subject to alternative inspections, the PHA may rely upon an alternative inspection conducted at least triennially to demonstrate compliance with inspection requirements.

PHA Policy

The PHA will not rely on alternative inspection standards.

Other Inspections [24 CFR 983.103(e)]

The PHA must inspect contract units whenever needed to determine that the contract units comply with HQS and that the owner is providing maintenance, utilities, and other services in accordance with the HAP contract. The PHA must take into account complaints and any other information coming to its attention in scheduling inspections.

The PHA must conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected an HQS violation, and must conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family violation of HQS.

In conducting PHA supervisory quality control HQS inspections, the PHA should include a representative sample of both tenant-based and project-based units.

Inspecting PHA-Owned Units [24 CFR 983.103(f); Notice PIH 2017-21]

In the case of PHA-owned units, all required inspections must be performed by an independent entity designated by the PHA and approved by HUD. The independent entity must furnish a copy of each inspection report to the PHA and to the HUD field office where the project is located. The PHA must take all necessary actions in response to inspection reports from the independent agency, including exercise of contractual remedies for violation of the HAP contract by the PHA-owner.

PART IV: HOUSING ASSISTANCE PAYMENTS (HAP) CONTRACT

18-IV.A. OVERVIEW [*RAD PBV Quick Reference Guide 6/20*]

Public housing projects converting under RAD do not employ the PBV Agreement to Enter into a Housing Assistance Payments (AHAP) contract. Instead, following the execution of all requirements contained in the Commitment to Enter into a HAP (CHAP) contract and the RAD Conversion Commitment (RCC), a project is converted immediately to the RAD PBV HAP contract following the closing of any construction financing. Owners of public housing projects converted to PBV assistance via RAD enter into a HAP contract with the PHA that will administer the PBV assistance. Units assisted under a RAD PBV HAP contract must be subject to long-term, renewable use and affordability restrictions.

18-IV.B. HAP CONTRACT REQUIREMENTS

Contract Information [*RAD PBV Quick Reference Guide 6/20; Notice PIH 2019-23*]

The RAD PBV program uses the PBV HAP contract for new construction or rehabilitated housing (Form HUD-52530A), as modified by the RAD rider (Form HUD-52621). For closings on or after January 1, 2018, HUD incorporated the RAD rider directly into the standard PBV HAP contract. For closing that occurred prior to January 1, 2018, the RAD rider must be attached to the PBV HAP contract.

The distinction between “existing housing” and “rehabilitated and newly constructed housing” is overridden by RAD requirements. The project must also have an initial RAD use agreement. All public housing RAD conversion properties financed with LIHTC are also required to include an LIHTC rider.

Execution and Effective date of the HAP Contract [*RADBlast! 7/11/16*]

RAD PBV projects do not employ an Agreement to Enter into a Housing Assistance Payments (AHAP) contract like in the standard PBV program. Rather, when the conditions of the CHAP and the RCC are met and the conversion has closed, the PHA executes the HAP contract. Project owners may select the effective date of the HAP contract as the first day of either of the two months following the completed closing.

Term of HAP Contract [*Notice PIH 2019-23*]

The initial term of the HAP contract may not be for less than 15 years and may be for a term of up to 20 years upon request of the owner and with approval of the administering voucher agency. Upon expiration of the initial term of the contract, and upon each renewal term of the contract, the owner must accept each offer to renew the contract, for the prescribed number and mix of units, either on the site of the project subject to the expiring contract or, upon request of the project owner and subject to PHA and HUD approval, at another site through a future transfer of assistance. Contracts are subject

to the terms and conditions applicable at the time of each offer and further subject to the availability of appropriations for each year of each such renewal. To implement this provision, HUD is waiving section 8(o)(13)(F) of The United States Housing Act of 1937, which permits a minimum term of one year, as well as 24 CFR 983.205(a), which governs the contract term.

Agreement to Enter into a HAP (AHAP) Contract [Notice PIH 2019-23]

For public housing conversions to PBV, there will be no agreement to enter into a Housing Assistance Payments (AHAP) contract. Therefore, all regulatory references to the Agreement (AHAP), including regulations under 24 CFR Part 983 Subpart D, are waived. The definitions for proposal selection date, new construction, rehabilitation, and existing housing are not applicable.

Mandatory Contract Renewal [Notice PIH 2019-23]

By statute, upon contract expiration, the agency administering the vouchers will offer, and the PHA will accept, renewal of the contract for the prescribed number and mix of units, either on the site of the project subject to the expiring contract or, upon request of the project owner and subject to PHA and HUD approval, at another site through a future transfer of assistance. The contract is subject to the terms and conditions applicable at the time of renewal and the availability of appropriations each year for such renewal. Consequently 24 CFR 983.205(b), governing the PHA discretion to renew the contract, will not apply.

In the event that the HAP contract is removed due to breach, non-compliance or insufficiency of appropriations, for all units previously covered under the HAP contract, new tenants must have incomes at or below 80 percent of the area median income at the time of admission and rents may not exceed 30 percent of 80 percent of median income for an appropriate size unit for the remainder of the term of the RAD use agreement.

Remedies for HQS Violations [24 CFR 983.208(b)]

The PHA may not make any HAP payment to the owner for a contract unit during any period in which the unit does not comply with HQS. If the PHA determines that a contract unit does not comply with HQS, the PHA 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.

PHA Policy

The PHA will abate and terminate PBV HAP contracts for noncompliance 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.

18-IV.C. AMENDMENTS TO THE HAP CONTRACT

Floating Units [Notice PIH 2019-23]

Upon request of the owner to the voucher agency that will administer the project, HUD will permit assistance to float among units within the project that are the same bedroom size. The unit to which assistance is floated must be comparable to the unit being replaced in quality and amenities.

If the PHA chooses to float units, units are not specifically identified on the HAP contract, rather the HAP contract must specify the number and type of units in the property that are RAD PBV units. The property must maintain the same number and type of RAD units from the time of the initial HAP contract execution forward.

PHA Policy

The PHA will float assistance among unoccupied units within the project. Tracking of the number and type of units at the property, as well as identification of comparable units when assistance is floated, will be maintained by each property.

Reduction in HAP Contract Units [Notice PIH 2019-23]

Project owners are required to make available for occupancy by eligible tenants the number of assisted units under the terms of the HAP contract.

The PHA may not reduce the number of assisted units without written HUD approval. Any HUD approval of a PHA's request to reduce the number of assisted units under contract is subject to conditions that HUD may impose. MTW agencies may not alter this requirement.

If units are removed from the HAP contract because a new admission's TTP comes to equal or exceed the gross rent for the unit and if the project is fully assisted, the PHA must reinstate the unit after the family has vacated the property. If the project is partially assisted, the PHA may substitute a different unit for the unit on the HAP contract in accordance with 24 CFR 983.207, or where the development has "floating" units.

18-IV.D. HAP CONTRACT YEAR AND ANNIVERSARY DATES [24 CFR 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 date for all units under a particular HAP contract.

18-IV.E. OWNER RESPONSIBILITIES UNDER THE HAP CONTRACT [24 CFR 983.210]

When the owner executes the HAP contract, they certify that at such execution and at all times during the term of the HAP contract:

- All contract units are in good condition and the owner is maintaining the premises and contract units in accordance with HQS;
- The owner is providing all services, maintenance, equipment, and utilities as agreed to under the HAP contract and the leases;
- Each contract unit for which the owner is receiving HAP is leased to an eligible family referred by the PHA, 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;
- The family does not own or have any interest in the contract unit (this does not apply to the family's membership in a cooperative); and
- Repair work on the project selected as an existing project that is performed after HAP contract execution within such post-execution period as specified by HUD may constitute development activity, and if determined to be development activity, the repair work undertaken shall be in compliance with Davis-Bacon wage requirements.

18-IV.F. VACANCY PAYMENTS [24 CFR 983.352(b)]

At the discretion of the PHA, the HAP contract may provide for vacancy payments to the owner for a PHA-determined period of vacancy extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month. The amount of the vacancy payment will be determined by the PHA and cannot exceed the monthly rent to owner under the assisted lease, minus any portion of the rental payment received by the owner, including amounts available from the tenant's security deposit.

PHA Policy

The PHA will decide on a case-by-case basis if the PHA will provide vacancy payments to the owner. The HAP contract with the owner will contain any such agreement, including the amount of the vacancy payment and the period for which the owner will qualify for these payments.

PART V: SELECTION OF PBV PROGRAM PARTICIPANTS

18-V.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.

18-V.B. PROHIBITED RESCREENING OF EXISTING TENANTS UPON CONVERSION [Notice PIH 2019-23]

Current households cannot be excluded from occupancy at the covered project based on any rescreening, income eligibility, or income targeting provisions. Consequently, current households will be grandfathered for application of any eligibility criteria to conditions that occurred prior to conversion but will be subject to any ongoing eligibility requirements for actions that occur after conversion. Post-conversion, the tenure of all residents of the covered project is protected pursuant to PBV requirements regarding continued occupancy unless explicitly modified by Notice PIH 2019-23 (e.g., rent phase-in provisions). For example, a unit with a household that was over-income at time of conversion would continue to be treated as an assisted unit. Thus, 24 CFR 982.201, concerning eligibility and targeting, will not apply for current households. Once that remaining household moves out, the unit must be leased to an eligible family. Existing residents at the time of conversion may not be rescreened for citizenship status or have their social security numbers reverified.

Further, so as to facilitate the right to return to the assisted property, this provision must apply to current public housing residents of the converting project that will reside in non-RAD PBV units placed in a project that contain RAD PBV units. Such families and such contract units will otherwise be subject to all requirements of the applicable program, specifically 24 CFR 983 for non-RAD PBV. Any non-RAD PBV units located in the same project are also subject to the right to return.

For the RAD PBV program, *in-place family* means a family who lived in a pre-conversion property at the time assistance was converted from public housing to PBV under RAD.

18-V.C. ELIGIBILITY FOR PBV ASSISTANCE [24 CFR 983.251(a) and (b)]

Applicants for PBV assistance must meet the same eligibility requirements as applicants for the tenant-based voucher program. Applicants must qualify as a family as defined by HUD and the PHA, have income at or below HUD-specified income limits, and qualify on the basis of citizenship or the eligible immigration status of family members [24 CFR 982.201(a) and 24 CFR 983.2(a)]. In addition, an applicant family must provide social security information for family members [24 CFR 5.216 and 5.218] and consent to the PHA's collection and use of family information regarding income, expenses, and family composition [24 CFR 5.230]. The PHA may also not approve a tenancy if the owner (including a principal or other interested party) of the unit is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless needed as a reasonable accommodation. An applicant family must also meet HUD requirements related to current or past criminal activity.

PHA Policy

The PHA will determine an applicant family's eligibility for the RAD PBV program in accordance with the policies in Chapter 3.

18-V.D. ORGANIZATION OF THE WAITING LIST [24 CFR 983.251(c); Notice PIH 2019-23]

The standard PBV regulations at 24 CFR 983.251 set out program requirements related to establishing and maintaining a voucher-wide, PBV program-wide, or site-based waiting list from which residents will be admitted. These provisions will apply unless the project is covered by a remedial order or agreement that specifies the type of waiting list and other waiting list policies. Any non-RAD PBV units located in the same project are also subject to these requirements.

PHA Policy.

The PHA will establish and manage separate waiting lists for individual projects or buildings that are receiving RAD PBV assistance.

For any applicants on the public housing waiting list that are likely to be ineligible for admission to a covered project converting to PBV because the household's TTP is likely to exceed the RAD gross rent, the PHA will consider transferring such household, consistent with program requirements for administration of waiting lists, to the PHA's remaining public housing waiting lists or to another voucher waiting list, in addition to transferring such household to the waiting list for the covered project.

To the extent any wait list relies on the date and time of application, the applicants shall have priority on the wait lists to which their application was transferred in accordance with the date and time of their application to the original waiting list.

The PHA will maintain the project-specific waiting list in accordance with all applicable civil rights and fair housing regulations found at 24 CFR 903.7(b)(2)(ii)-(iv). The PHA will provide applicants full information about each development, including an estimate of the wait time, location, occupancy, number and size of accessible units, and amenities like day care, security, transportation, and training programs at each development with a site-based waiting list. The system for selection will be consistent with all applicable civil rights and fair housing laws and regulations and may not be in conflict with any imposed or pending court order, settlement agreement, or complaint brought by HUD.

The PHA will give priority to participants moving under a VAWA emergency transfer from one PBV development to another in accordance with Section 18-VI.E.

18-V.E. SELECTION FROM THE WAITING LIST [24 CFR 983.251(c)]

After conversion to RAD PBV, applicants who will occupy units with RAD PBV assistance must be selected from the PHA's waiting list. The PHA may establish selection criteria or preferences for occupancy of particular PBV units.

Income Targeting [24 CFR 983.251(c)(6); Notice PIH 2019-23]

At least 75 percent of the families admitted to the PHA's tenant-based and project-based voucher programs during the PHA 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. Families in place at the time of the conversion are exempt from income targeting requirements. New admissions follow standard PBV requirements. Any non-RAD PBV units located in the same project are also subject to these requirements.

Units with Accessibility Features [24 CFR 983.251(c)(7)]

When selecting families to occupy PBV units that have special accessibility features for persons with disabilities, the PHA must first refer families who require such features to the owner.

Preferences [24 CFR 983.251(d); FR Notice 11/24/08; Notice PIH 2019-23]

The PHA 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.

PHA Policy

The PHA will provide a selection preference when required by the regulation (e.g., eligible in-place families, qualifying families for "excepted units," mobility impaired persons for accessible units). The PHA will give priority to participants moving under a VAWA emergency transfer from one PBV development to another in accordance with Section 18-VI.E.

Aside from the above, the PHA will not offer any additional preferences for the PBV program or for particular PBV projects or units.

18-V.F. OFFER OF PBV ASSISTANCE

Refusal of Offer [24 CFR 983.251(e)(3)]

The PHA is prohibited from taking any of the following actions against a family who has applied for, received, or refused an offer of PBV assistance:

- Refusing to list the applicant on the waiting list for tenant-based voucher assistance
- Denying any admission preference for which the applicant qualifies
- Changing the applicant's place on the waiting list based on preference, date, and time of application, or other factors affecting selection under the PHA's selection policy
- Removing the applicant from the tenant-based voucher waiting list

Disapproval by Landlord [24 CFR 983.251(e)(2)]

If a PBV owner rejects a family for admission to the owner's units, such rejection may not affect the family's position on the tenant-based voucher waiting list.

Acceptance of Offer [24 CFR 983.252]

Family Briefing

When a family accepts an offer for PBV assistance, the PHA must give the family an oral briefing. The briefing must include information on how the program works and the responsibilities of the family and owner. In addition to the oral briefing, the PHA must provide a briefing packet that explains how the PHA determines the total tenant payment for a family, the family obligations under the program, and applicable fair housing information.

Persons with Disabilities

If an applicant family's head or spouse is disabled, the PHA must assure effective communication, in accordance with 24 CFR 8.6, in conducting the oral briefing and in providing the written information packet. This may include making alternative formats available (see Chapter 2). In addition, the PHA must have a mechanism for referring a family that includes a member with a mobility impairment to an appropriate accessible PBV unit.

Persons with Limited English Proficiency

The PHA 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).

18-V.G. OWNER SELECTION OF TENANTS [24 CFR 983.253]

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.

Leasing [24 CFR 983.253(a)]

During the term of the HAP contract, the owner must lease contract units to eligible families that are selected and referred by the PHA from the PHA's waiting list. The contract unit leased to the family must be the appropriate size unit for the size of the family, based on the PHA's subsidy standards.

Filling Vacancies [24 CFR 983.254(a)]

The owner must promptly notify the PHA of any vacancy or expected vacancy in a contract unit. After receiving such notice, the PHA must make every reasonable effort to promptly refer a sufficient number of families for the owner to fill such vacancies. The PHA and the owner must make reasonable efforts to minimize the likelihood and length of any vacancy.

PHA Policy

The owner must notify the PHA in writing (mail, fax, or email) within five business days of learning about any vacancy or expected vacancy. The PHA will make every reasonable effort to refer families to the owner within 10 business days of receiving such notice from the owner.

18-V.H. TENANT SCREENING [24 CFR 983.255]

PHA Responsibility

The PHA is not responsible or liable to the owner or any other person for the family's behavior or suitability for tenancy. However, the PHA may opt to screen applicants for family behavior or suitability for tenancy and may deny applicants based on such screening.

PHA Policy

The PHA will not conduct screening to determine a PBV applicant family's suitability for tenancy.

The PHA 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 the PHA) of the family's current landlord and any prior landlords.

In addition, the PHA may offer the owner other information the PHA may have about a family, including information about the tenancy history of family members or about drug trafficking and criminal activity by family members. The PHA must provide applicant families a description of the PHA policy on providing information to owners, and the PHA must give the same types of information to all owners.

The PHA 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(c)].

PHA Policy

The PHA will inform owners of their responsibility to screen prospective tenants, and will provide owners with the required known name and address information, at the time of the turnover HQS inspection or before. The PHA 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
- Compliance with other essential conditions of tenancy

PART VI: OCCUPANCY

18-VI.A. OVERVIEW

After an applicant has been selected from the waiting list, determined eligible by the PHA, referred to an owner, and determined suitable by the owner, the family will sign the lease and occupancy of the unit will begin.

18-VI.B. LEASE [24 CFR 983.256]

The tenant must have legal capacity to enter into 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.

The tenant and the owner must enter into a written lease agreement that is signed by both parties.

The tenancy addendum must include, word-for-word, all provisions required by HUD.

Lease Requirements [24 CFR 983.256(c); Notice PIH 2019-23]

The lease for a PBV unit must specify all of the following information:

- The names of the owner and the tenant;
- The unit rented (address, apartment number, if any, and any other information needed to identify the leased contract unit);
- The term of the lease (initial term and any provision for renewal);
- The amount of the tenant rent to owner, which is subject to change during the term of the lease in accordance with HUD requirements;
- A specification of the services, maintenance, equipment, and utilities that will be provided by the owner;
- The amount of any charges for food, furniture, or supportive services; and
- For any family admitted following conversion, the lease must specify what will happen if the family elects to remain in its unit after increasing its income such that it requires zero HAP. Specifically, the lease must make clear how the tenant rent will be calculated, and it must address the transition to a new lease. The PHA must include resident procedural rights for termination notification and grievance procedures in the owner's lease. These requirements are not part of the regular PBV program but are required under RAD.

Tenancy Addendum [24 CFR 983.256(d)]

The tenancy addendum in the lease must state:

- The program tenancy requirements
- The composition of the household as approved by the PHA (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); *RAD PBV Quick Reference Guide 6/20*]

Leases for residents who will remain in place (i.e., who will not be relocated solely as a result of conversion) must have an effective date that coincides with—and must be signed on or before—the effective date of the RAD PBV HAP contract.

The initial lease term must be for at least one year. The lease must provide for automatic renewal after the initial term of the lease in either successive definitive terms (e.g., month-to-month or year-to-year) or an automatic indefinite extension of the lease term. For automatic indefinite extension of the lease term, the lease terminates if any of the following occur:

- The owner terminates the lease for good cause
- The tenant terminates the lease
- The owner and tenant agree to terminate the lease
- The PHA terminates the HAP contract
- The PHA terminates assistance for the family

Changes in the Lease [24 CFR 983.256(e)]

If the tenant and owner agree to any change in the lease, the change must be in writing, and the owner must immediately give the PHA a copy of all changes.

The owner must notify the PHA in advance of any proposed change in the lease regarding the allocation of tenant and owner responsibilities for utilities. Such changes may only be made if approved by the PHA and in accordance with the terms of the lease relating to its amendment. The PHA must redetermine 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 redetermined 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; Notice PIH 2019-23]

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.

Projects converting from public housing to PBV under RAD have additional procedural rights that do not apply to the standard PBV program. These procedural rights must be included in the owner’s lease as well as the PHA’s administrative plan. In addition to the regulations at 24 CFR 983.257 related to project owner termination of tenancy and eviction (which MTW agencies may not alter) the termination procedure for RAD conversions to PBV will require that PHAs provide adequate written notice of termination of the lease, which may not be less than:

- A reasonable period of time, but not to exceed 30 days:
 - If the health or safety of other tenants, PHA employees, or persons residing in the immediate vicinity of the premises is threatened; or
 - In the event of any drug-related or violent criminal activity or any felony conviction
- Not less than 14 days in the case of nonpayment of rent
- Not less than 30 days in any other case, except that if a state or local law provides for a shorter period of time, such shorter period will apply

These provisions apply to non-RAD PBV units located in the project as well.

Tenant Absence from the Unit [24 CFR 983.256(g) and 982.312(a)]

The lease may specify a maximum period of family absence from the unit that may be 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. PHA termination of assistance actions due to family absence from the unit are subject to 24 CFR 982.312, except that the unit is not terminated from the HAP contract if the family is absent for longer than the maximum period permitted.

Continuation of Housing Assistance Payments [24 CFR 983.258; Notice PIH 2019-23; RAD PBV Quick Reference Guide 6/20]

Current residents living in the property prior to conversion are placed on and remain under the HAP contract when TTP equals or exceeds gross rent. In this case, until such time as the family's TTP falls below the gross rent, the family will pay the owner the lesser of their TTP minus the utility allowance or any applicable maximum rent under the LIHTC program. The family will continue to pay this amount until/if circumstances change and HAP is paid on their behalf. In other words, assistance may subsequently be reinstated if the tenant becomes eligible for assistance. In such cases, the resident is still considered a program participant. All of the family obligations and protections under RAD and standard PBV apply to the resident. Likewise, all requirements with respect to the unit, such as compliance with the HQS requirements, apply as long as the unit is under HAP contract. Any non-RAD PBV units located in the same project are also subject to these requirements.

Unless a waiver is requested and approved, following conversion, 24 CFR 983.53(d) applies, and any new admission referred to the RAD PBV project must be initially eligible for a HAP payment at admission to the program. The PHA may request a waiver from HUD in order to admit otherwise eligible families whose TTP exceeds gross rent and to allow the units those families occupy to remain under the HAP contract even if the PHA has not paid HAP for the family in 180 days.

Further, for any new families admitted after the conversion, assistance will be terminated 180 days after the last housing assistance payment on their behalf. The cessation of housing assistance payments does not affect the family's other rights under its lease, nor does it preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances if such changes occur within the 180-day window. If a family's assistance is terminated as a result of their zero HAP status, the PHA must remove the unit from the HAP contract. If the project is fully assisted, the PHA must reinstate the unit after the family has vacated the property. If the project is partially assisted, the PHA may substitute a different unit for the unit on the HAP contract in accordance with 24 CFR 983.207.

Per the RAD Use Agreement, the owner may charge the family a rent that does not exceed 30 percent of 80 percent of the area median income. If a unit is removed from the RAD PBV HAP contract, then the lease terminates automatically, as stated in the tenancy addendum, as though the RAD PBV HAP contract had been terminated. The tenant must be offered a new lease, which must reflect the new tenant rent. A tenant in this circumstance is no longer a program participant and therefore no longer benefits from any of the rights or protections specific to RAD, or to the PBV program. Should the family subsequently lose employment, the owner may choose to reduce the family's rent, but if the family wishes to be admitted to the HCV/PBV program, then it must be admitted through the waiting list like any other applicant.

PHA Policy

The PHA will not request a waiver from HUD to allow families whose TTP initially exceeds gross rent to occupy units.

If a participating family who was admitted after the RAD conversion receive zero assistance and subsequently experiences a change in circumstances that would result in a HAP payment to the owner, the family must notify the PHA of the change and request an interim reexamination before the expiration of the 180-day period.

Security Deposits [24 CFR 983.259; *RAD PBV Quick Reference Guide 6/20*]

Owners are permitted to recognize security deposit amounts that have been previously provided by tenants who are in-place at the time of the RAD conversion. If a tenant residing in a converting project has not previously provided a security deposit, then the owner may collect a security deposit at the time of initial lease execution. Otherwise the security deposit requirements for standard PBV apply.

The owner may collect a security deposit from the tenant. The PHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.

PHA Policy

The PHA will allow the owner to collect a security deposit amount the owner determines is appropriate.

When the tenant moves out of a contract unit, the owner, subject to state and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid tenant rent, damages to the unit, or other amounts owed by the tenant under the lease.

The owner must give the tenant a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used to reimburse the owner, the owner must promptly refund the full amount of the balance to the tenant.

If the security deposit does not cover the amount owed by the tenant under the lease, the owner may seek to collect the balance from the tenant. The PHA has no liability or responsibility for payment of any amount owed by the family to the owner.

18-VI.C. PUBLIC HOUSING FSS AND ROSS PARTICIPANTS [Notice PIH 2019-23]

Current PH FSS participants will continue to participate in the PHA's FSS program, and PHAs will be allowed to use any PH FSS funds granted previously or pursuant to the current fiscal year (FY) PH FSS notice of funding availability (NOFA) to serve those FSS participants who live in units converted to RAD and who will as a result be moving to the HCV FSS program. A PHA must convert the PH FSS program participants at the covered project to their HCV FSS program. Residents who were converted from the PH FSS program to the HCV FSS program through RAD may not be terminated from the HCV FSS program or have HCV assistance withheld due to the participant's failure to comply with the contract of participation. Consequently, 24 CFR 984.303(b)(5)(iii) does not apply to FSS participants in converted properties.

At the completion of the FSS grant, PHAs should follow the normal closeout procedures outlined in the grant agreement. If the PHA continues to run an FSS program that serves PH and/or HCV participants, the PHA will continue to be eligible (subject to NOFA requirements) to apply for FSS funding.

Current Resident Opportunities and Self-Sufficiency–Service Coordinators (ROSS–SC) program grantees will be able to finish out their current ROSS–SC grants once their housing is converted under RAD. However, once the property is converted, it will no longer be eligible to be counted towards the unit count for future public housing ROSS–SC grants.

At the completion of the ROSS-SC grant, PHAs should follow the normal closeout procedures outlined in the grant agreement. Please note that ROSS-SC grantees may be a nonprofit or local resident association and this consequence of a RAD conversion may impact those entities.

Any non-RAD PBV units located in the same project are also subject to these requirements.

18-VI.D. RESIDENT PARTICIPATION AND FUNDING [Notice PIH 2019-23]

Residents of covered projects converting assistance to PBVs will have the right to establish and operate a resident organization for the purpose of addressing issues related to their living environment and be eligible for resident participation funding.

18-VI.E. MOVES

Overcrowded, Under-Occupied, and Accessible Units [24 CFR 983.260; Notice PIH 2019-23]

All in-place tenants at the time of conversion are eligible to remain in the project. Over-housed families should be moved into appropriately sized units if such units are available in the new or rehabbed project. If appropriately sized units are not available, the existing tenants may continue to be over-housed until an appropriately sized unit becomes available or until the tenant leaves the project. Once the unit turns over, it must be leased to an appropriately sized family. Any non-RAD PBV units located in the same project are also subject to these requirements.

Following conversion, the standard PBV regulations apply. If the PHA determines that a family is occupying a wrong-size unit, based on the PHA's subsidy standards, or a unit with accessibility features that the family does not require, and the unit is needed by a family that does require the features, the PHA must promptly notify the family and the owner of this determination, and the PHA must offer the family the opportunity to receive continued housing assistance in another unit.

PHA Policy

The PHA will notify the family and the owner of the family's need to move based on the occupancy of a wrong-size or accessible unit within 10 business days of the PHA's determination. The PHA 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
- Tenant-based voucher assistance

If the PHA offers the family a tenant-based voucher, the PHA must terminate the housing assistance payments for a wrong-size or accessible unit at the earlier of the expiration of the term of the family's voucher, including any extension granted by the PHA, or the date upon which the family vacates the unit. If the family does not move out of the wrong-size unit or accessible unit by the expiration of the term of the family's voucher, the PHA must remove the unit from the HAP contract.

If the PHA 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 the PHA, or both, the PHA must terminate the housing assistance payments for the unit at the expiration of a reasonable period as determined by the PHA and remove the unit from the HAP contract.

PHA Policy

When the PHA offers a family another form of assistance that is not a tenant-based voucher, the family will be given 30 days from the date of the offer to accept the offer and move out of the PBV unit. If the family does not move out within this 30-day time frame, the PHA will terminate the housing assistance payments at the expiration of this 30-day period.

The PHA may make exceptions to this 30-day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency of a family member.

Family Right to Move [24 CFR 983.261]

The family may terminate the lease at any time after the first year of occupancy. The family must give advance written notice to the owner in accordance with the lease and provide a copy of such notice to the PHA.

Choice Mobility [Notice PIH 2019-23; PRRAC Choice Mobility Implementation Guidance, 8/20]

Family's Right to Choice Mobility

Under RAD PBV, the choice mobility option provides families with the opportunity to move with continued assistance any time after 12 months of occupancy. All residents in converted properties should be aware of their housing mobility rights and of their options in a range of neighborhoods.

PHA Policy

To ensure that residents are fully aware of and understand their rights under choice mobility, the PHA will inform families of their rights under the choice mobility option and the benefits to moving to lower poverty areas, and provide a summary of the steps necessary to exercise this option, at the time the family signs the lease for the RAD PBV unit and during their annual recertification.

Information on choice mobility will be made be accessible to persons with disabilities, ensuring any information, electronic or otherwise, is accessible for persons with vision, hearing, and other disabilities. This information will also be made available in accordance with Limited English Proficiency (LEP) requirements, including document translation and user of interpretation services. See Chapter 2 for a more thorough discussion of accessibility and LEP requirements.

Moving with Continued Assistance under Choice Mobility

If the family wishes to move with continued tenant-based assistance under choice mobility, the family must contact the PHA to request the rental assistance prior to providing notice to terminate the lease. If the family terminates the lease in accordance with lease requirements, the PHA 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 a voucher or other comparable tenant-based assistance is not immediately available, the PHA must give the family priority to receive the next available opportunity for continued tenant-based assistance.

Families are eligible to move with continued assistance under choice mobility after 12 months of occupancy. If the family terminates the assisted lease before the end of the first year, the family relinquishes the opportunity for continued tenant-based assistance.

PHA Policy:

Prior to providing notice to the owner to terminate the lease, the family may submit a written request to the PHA for a choice mobility voucher at any time after completing the 12-month occupancy requirement.

The family will remain eligible to request a choice mobility voucher as long as they continue living at the same covered project. If a family moves from one covered project to another covered project prior to completing their 12-month occupancy requirement, their 12-month clock will reset. The family must wait 12 months from the date of move at the new property before they may request another choice mobility voucher. If a family transfers to a different unit within the same covered project, the 12-month clock does not reset.

The PHA will maintain a combined, agency-wide waiting list for all standard PBV and RAD PBV families wishing to exercise mobility after one year of tenancy. This list will be maintained separately from the tenant-based HCV list. Families on the choice mobility waiting list will be given priority over families on the tenant-based waiting list. The choice mobility waiting list will be organized by date and time of the family's written request to exercise choice mobility. The list will also identify whether families live in standard or RAD PBV units.

The PHA will not subject RAD PBV families applying for choice mobility vouchers to any additional rescreening requirements in order to receive a tenant-based voucher. Families exercising choice mobility will not be required to vacate their units before a lease has been entered into using their tenant-based voucher. At the time the PHA issues a choice mobility voucher, the PHA will notify the family of their right to remain in their unit if they are unable find a rental unit using the tenant-based voucher.

Turnover Cap

If as a result of RAD, the total number of PBV units (including RAD PBV units) administered by the PHA exceeds 20 percent of the PHA's authorized units under its HCV ACC with HUD, the PHA may establish a turnover cap. The PHA is not required to provide more than three-quarters of its turnover vouchers in any single year to the residents of covered projects. If the PHA chooses to establish a turnover cap and the cap is implemented, the PHA must create and maintain a waiting list in the order requests from eligible households were received.

PHA Policy

As a result of RAD, if the total number of PBV units (including RAD PBV units) administered by the PHA exceeds 20 percent of the PHA's authorized units under its HCV ACC with HUD, the PHA will establish a choice mobility cap. The PHA will not provide more than three-quarters of its turnover vouchers in a single year to residents of covered projects.

Families who requested a choice mobility voucher and are denied due to the cap will be given priority the following year when choice mobility vouchers are again issued since the choice mobility list will be organized by the date and time of the family's request.

Emergency Transfers under VAWA [Notice PIH 2017-08]

Except where special consideration is needed for the project-based voucher program, the PHA will follow VAWA policies as outlined in Chapter 16 Part IX of this administrative plan, including using the Emergency Transfer Plan as the basis for PBV transfers under VAWA (Exhibit 16-4).

HUD requires that the PHA include policies that address when a victim has been living in a unit for less than a year or when a victim seeks to move sooner than a tenant-based voucher is available.

PHA Policy

When the victim of domestic violence, dating violence, sexual assault, or stalking has lived in the unit for less than one year, the PHA will provide several options for continued assistance.

The PHA will first try to transfer the participant to another PBV unit in the same development or transfer to a different development where the PHA has PBV units. The PHA will expedite the administrative processes in this case in an effort to conduct the transfer as quickly as possible. If assistance is transferred to another development, the PHA will give priority to the participant on the other development's waiting list.

If no units are available for an internal transfer to a PBV development or if there is reasonable cause to believe that such a transfer would put the victim in jeopardy, the participant may receive continued assistance through an external transfer to either tenant-based rental assistance (HCV) or assistance in the PHA's public housing program. Such a decision will be made by the PHA based on the availability of tenant-based vouchers and/or vacancies in public housing units. Such families must be selected from the waiting list for the applicable program. The PHA has adopted a waiting list preference for victims of domestic violence, dating violence, sexual assault, and stalking in both its HCV and public housing programs in order to expedite this process. See Section 4-III.C. of this administrative plan.

If a victim wishes to move after a year of occupancy in the unit, but no tenant-based vouchers are available, the PHA will offer the participant an internal transfer to another PBV unit in the same development or a transfer to a different development where the PHA has PBV units. The PHA will expedite the administrative processes in this case in an effort to conduct the transfer as quickly as possible.

If no units are available for an internal transfer, or if there is reasonable cause to believe that such a transfer would put the victim in jeopardy, the participant may receive continued assistance through an external transfer to the PHA's public housing program. The PHA has adopted a waiting list preference for victims of domestic violence, dating violence, sexual assault, and stalking as part of the public housing ACOP in order to expedite this process.

18-VI.F. REEXAMINATIONS [*RAD PBV Quick Reference Guide 6/20*]

A family living in a unit converted from public housing to RAD PBV may retain its certification date. Unless a family's annual reexamination is due at the same time as the effective date of the RAD PBV HAP contract, the PHA does not need to recertify tenants at the point of conversion. For each family residing in a unit undergoing conversion of assistance under RAD, the administering PHA will have to submit a form HUD-50058 reflecting the family's admission to the voucher program. The effective date of the new admission will be the same as the effective date of the RAD PBV HAP contract. The form should include the same information previously found on the public housing form 50058, including the next annual reexamination date.

18-VI.G. EARNED INCOME DISALLOWANCE [Notice PIH 2019-23]

Tenants who are employed and are currently receiving the EID exclusion at the time of conversion will continue to receive the EID after conversion, in accordance with regulations at 24 CFR 5.617. Upon the expiration of the EID for such families, the rent adjustment will not be subject to rent phase-in; instead, the rent will automatically rise to the appropriate rent level based upon tenant income at that time. Any non-RAD PBV units located in the same project are also subject to these requirements.

Under the HCV program, the EID exclusion is limited to only persons with disabilities [24 CFR 5.617(b)]. In order to allow all tenants (including non-disabled persons) who are employed and currently receiving the EID at the time of conversion to continue to benefit from this exclusion in the PBV project, the provision in section 5.617(b) limiting EID to only persons with disabilities is waived. The waiver and resulting alternative requirement only applies to tenants receiving the EID at the time of conversion. No other tenant, such as tenants who at one time received the EID but are not receiving the EID exclusion at the time of conversion (e.g., due to loss of employment), tenants that move into the property following conversion, etc., is covered by this waiver.

18-VI.H. RESIDENTS' PROCEDURAL RIGHTS [Notice PIH 2019-23]

HUD is incorporating additional termination notification requirements for public housing projects that convert assistance under RAD to PBV and to non-RAD PBV units located in the same project beyond those for the standard PBV program. In addition to the regulations at 24 CFR 983.257 related to owner termination of tenancy and eviction (which MTW agencies may not alter), the termination procedure for RAD conversions to PBV requires that PHAs provide adequate written notice of termination of the lease, which is:

- A reasonable period of time, but not to exceed 30 days:
 - If the health or safety of other tenants, project owner employees, or persons residing in the immediate vicinity of the premises is threatened; or
 - In the event of any drug-related or violent criminal activity or any felony conviction.
- Not less than 14 days in the case of nonpayment of rent

- Not less than 30 days in any other case, except that if a state or local law provides for a shorter period of time, such shorter period will apply

18-VI.I. INFORMAL REVIEWS AND HEARINGS [Notice PIH 2019-23]

In addition to reasons for an informal hearing listed at 24 CFR 982.555(a)(1)(i)–(v) (See 16-III.C. Informal Hearings for Participants), an opportunity for an informal hearing must be given to residents for any dispute that a resident may have with respect to an owner action in accordance with the individual’s lease or the contract administrator in accordance with RAD PBV requirements that adversely affect the resident’s rights, obligations, welfare, or status.

- For any hearing required under 24 CFR 982.555(a)(1)(i)–(v), the contract administrator will perform the hearing in accordance with Chapter 16 Part III: Informal Reviews and Hearings, as is the current standard in the program.
- For any additional hearings required under RAD, the PHA (as owner) will perform the hearing. An informal hearing will not be required for class grievances or for disputes between residents not involving the PHA (as owner) or contract administrator. This hearing requirement does not apply to and is not intended as a forum for initiating or negotiating policy changes between a group or groups of residents and the PHA (as owner) or contract administrator.

The owner must give residents notice of their ability to request an informal hearing as outlined in 24 CFR 982.555(c)(1) for informal hearings that will address circumstances that fall outside of the scope of 24 CFR 982.555(a)(1)(i)–(v). (See Chapter 16)

The owner must provide an opportunity for an informal hearing before an eviction.

PART VII: DETERMINING CONTRACT RENT

18-VII.A. INITIAL CONTRACT RENTS [Notice PIH 2019-23]

RAD conversions are intended to be cost-neutral, and therefore, should not exceed current public housing funding as adjusted for unit size. Since public housing units do not currently have contract rents, HUD provides an estimate of current contract rents for each PHA's public housing units based on current funding as adjusted by bedroom size. Current funding includes operating subsidy, tenant rents, capital funds, replacement housing factor funds (RHF), and demolition disposition transitional funding (DDTF). The funding may limit the amount of initial rent for a property. A detailed explanation of the determination of current funding may be found in Attachment 1C of Notice PIH 2019-23. Once the current funding amount is calculated, the amount is adjusted by bedroom size to determine the current funding rent. HUD uses the same bedroom adjustment factors as in the metropolitan FMR schedules where the project is located.

PHAs may adjust subsidy (and contract rents) across multiple projects as long as the PHA does not exceed the aggregate subsidy for all of the projects the PHA has submitted for conversion under RAD.

Notwithstanding HUD's calculation of the initial contract rent based on the project's subsidy under the public housing program and any modifications made to the initial contract rent, the initial rents are set at the lower of:

- An amount determined by the PHA, not to exceed 110 percent of the fair market rent (FMR) or the PHA's exception payment standard approved by HUD, or the alternate rent cap in a PHA's MTW agreement minus any utility allowance
- The reasonable rent
- The rent requested by the owner

18-VII.B. ADJUSTING CONTRACT RENTS [Notice PIH 2019-23; *RAD PBV Quick Reference Guide 6/20*; PHA Asset Repositioning “How to Apply OCAF for RAD PBV” Webinar]

RAD PBV contract rents are adjusted differently than contract rents in the standard PBV program. At each annual anniversary of the HAP contract, contract rents will be adjusted only by HUD’s operating cost adjustment factor (OCAF) that is applied to the current contract rent, less the portion of the rent paid for debt service, subject to the availability of appropriations for each year of the contract term. As such, section 8(o)(13)(I) of the 1937 Act, and 24 CFR 983.301 and 983.302, concerning rent determinations, do not apply when adjusting rents. The rent to owner may at no time exceed the reasonable rent charged for comparable unassisted units in the private market, as determined by the contract administrator in accordance with 24 CFR 983.303.

Contract rents may not exceed the reasonable rent (as determined by the PHA that administers the contract or the independent entity, as applicable), with the exception that the contract rent for each unit may not be reduced below the initial contract rent under the initial HAP contract.

However, the rent to owner may fall below the initial contract rent in the following situations:

- To correct errors in calculations in accordance with HUD requirements
- If additional housing assistance has been combined with PBV assistance after the execution of the initial HAP contract and a rent decrease is required pursuant to 983.55 (prohibition of excess public assistance)
- If a decrease in rent to owner is required based on changes in the allocation of responsibility for utilities between the owner and the tenant

The contract rent adjustment will be the lesser of:

- The current contract rent increased by the operating cost adjustment factor (OCAF), which is published annually in the *Federal Register*; or
- The reasonable rent

The administering PHA (or independent entity, if the project is PHA-owned) is responsible for processing rent adjustments at each contract anniversary date in accordance with the prevailing OCAF. The PHA who administers the contract (directly or via an independent entity) must maintain records to demonstrate how OCAF amounts were determined and how rent adjustments were calculated. HUD approval of rent adjustments is not required.

Properties are eligible to receive prior years’ OCAF adjustments for years in which the OCAF was not taken. The OCAF must be applied retroactively if it was missed. The PHA administering the contract (or the independent entity) must make sure that all OCAFs have been applied correctly since the RAD closing and calculate the current rents accordingly, including making sure that the RAD PBV contract rents do not exceed the PBV program caps.

PHA Policy

The owner will request a contract rent adjustment from the PHA who administers the contract within 120 days, but no less than 60 days, prior to the HAP contract anniversary date by submitting a completed OCAF rent adjustment worksheet (Form HUD-9624). The

independent entity will validate the data on the form and determine whether the rent exceeds the reasonable rent charged for comparable unassisted units in the private market, in accordance with 24 CFR 983.303. If rents would be unreasonable following application of the requested OCAF, then the rent will only be increased up to the reasonable rent. The independent entity will notify the PHA who administers the contract in writing of the results of its review of the rent adjustment request. The PHA who administers the contract will retain a copy of the worksheet and any other records necessary to demonstrate how the OCAF was used to make rent adjustments for audit purposes. The approved rent adjustment will go into effect via written notice from the PHA that administers the project to the owner. This notice will constitute an amendment to the rents specified on Exhibit A of the RAD PBV HAP contract. The new rents to owner will take effect on the date of the contract anniversary.

Rent Decrease

Rents must not be reduced below the initial rent except to correct errors, for additional subsidy to the property, or to realign utility responsibilities.

18-VII.C. UTILITY ALLOWANCES [Notice PIH 2019-23; RAD PBV Quick Reference Guide 6/20]

When contract rent amounts are set initially, the amount does not include a utility allowance. In general, the utility allowances that are used on the initial HAP contract at closing are the public housing utility allowances that are in effect prior to conversion. The CHAP must be updated prior to conversion to reflect current public housing utility allowances. At its discretion, a PHA may use the FMRs and utility allowances in effect during the 30-day period immediately before the beginning date of the HAP contract.

After conversion, the PHA that administers the contract must maintain the utility allowance schedule. The PHA may either maintain a utility allowance schedule for tenant-paid utilities in accordance with standard PBV and HCV utility allowance regulations at 24 CFR 983.301(f)(2)(ii) and 24 CFR 982.517, respectively, or the PHA may instead apply site-specific utility allowances. HUD waived the requirement for the standard PBV program that the HCV utility allowance be used. If a site-specific utility allowance is used, the utility allowance is applicable to non-RAD PBV units in the project and is calculated consistent with Notice H 2015-04.

Each family transitions to the new utility allowance at their first recertification following conversion.

PHA Policy

The PHA will use the HCV utility allowance schedule for the RAD PBV developments.

18-VII.D. REASONABLE RENT [24 CFR 983.303]

At the time the initial rent is established and all times during the term of the HAP contract, the rent to owner for a contract unit may not exceed the reasonable rent for the unit as determined by the PHA, except rents must not be reduced below the initial rent except to correct errors, for additional subsidy to the property, or to realign utility responsibilities.

How to Determine Reasonable Rent

The reasonable rent of a unit receiving PBV assistance must be determined by comparison to rent for other comparable unassisted units. When making this determination, the PHA must consider factors that affect market rent. Such factors include the location, quality, size, type and age of the unit, as well as the amenities, housing services maintenance, and utilities to be provided by the owner.

Comparability Analysis

For each unit, the comparability analysis must use at least three comparable units in the private unassisted market. This may include units in the premises or project that is receiving project-based assistance. The analysis must show how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units, and must be retained by the PHA. 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 entity approved by HUD in accordance with PBV program requirements. The independent entity must provide a copy of the determination of reasonable rent for PHA-owned units to the PHA and to the HUD field office where the project is located.

PART VIII: PAYMENTS TO OWNER

18-VIII.A. HOUSING ASSISTANCE PAYMENTS

During the term of the HAP contract, the PHA must make housing assistance payments to the owner in accordance with the terms of the HAP contract. During the term of the HAP contract, payments must be made for each month that a contract unit complies with HQS and is leased to and occupied by an eligible family. The housing assistance payment must be paid to the owner on or about the first day of the month for which payment is due, unless the owner and the PHA agree on a later date.

Except for discretionary vacancy payments, the PHA may not make any housing assistance payment to the owner for any month after the month when the family moves out of the unit (even if household goods or property are left in the unit).

The amount of the housing assistance payment by the PHA 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.

18-VIII.B. VACANCY PAYMENTS [24 CFR 983.352]

If an assisted family moves out of the unit, the owner may keep the housing assistance payment for the calendar month when the family moves out. However, the owner may not keep the payment if the PHA determines that the vacancy is the owner's fault.

PHA Policy

If the PHA determines that the owner is responsible for a vacancy and as a result is not entitled to keep the housing assistance payment, the PHA will notify the landlord of the amount of housing assistance payment that the owner must repay. The PHA will require the owner to repay the amount owed in accordance with the policies in Section 16-IV.B.

At the discretion of the PHA, the HAP contract may provide for vacancy payments to the owner. The PHA may only make vacancy payments if:

- The owner gives the PHA prompt, written notice certifying that the family has vacated the unit and identifies the date when the family moved out (to the best of the owner's knowledge);
- The owner certifies that the vacancy is not the fault of the owner and that the unit was vacant during the period for which payment is claimed;
- The owner certifies that it has taken every reasonable action to minimize the likelihood and length of vacancy; and
- The owner provides any additional information required and requested by the PHA to verify that the owner is entitled to the vacancy payment.

The owner must submit a request for vacancy payments in the form and manner required by the PHA and must provide any information or substantiation required by the PHA to determine the amount of any vacancy payment.

PHA Policy

If an owner's HAP contract calls for vacancy payments to be made, and the owner wishes to receive vacancy payments, the owner must have properly notified the PHA of the vacancy in accordance with the policy in Section 18-V.G. regarding filling vacancies.

In order for a vacancy payment request to be considered, it must be made within 10 business days of the end of the period for which the owner is requesting the vacancy payment. The request must include the required owner certifications and the PHA may require the owner to provide documentation to support the request. If the owner does not provide the information requested by the PHA within 10 business days of the PHA's request, no vacancy payments will be made.

18-VIII.C. TENANT RENT TO OWNER [24 CFR 983.353; Notice PIH 2019-23]

The tenant rent is the portion of the rent to owner paid by the family. The amount of tenant rent is determined by the PHA in accordance with HUD requirements. Any changes in the amount of tenant rent will be effective on the date stated in the PHA notice to the family and owner.

The family is responsible for paying the tenant rent (total tenant payment minus the utility allowance). The amount of the tenant rent determined by the PHA is the maximum amount the owner may charge the family for rental of a contract unit. The tenant rent covers all housing services, maintenance, equipment, and utilities to be provided by the owner. The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by the PHA. The owner must immediately return any excess payment to the tenant.

Initial Certifications [Notice PIH 2019-23]

For the initial certification, the PHA will use the family's public housing tenant rent (reflected on line 10f of the family's most recent 50058) at the date of conversion to calculate HAP and tenant rent for the PBV program. The PHA will use this amount until the effective date of the earlier of the family's first regular or interim recertification following the conversion. At that point, the PHA will use the family's TTP based on the recertification and the applicable utility allowance (HCV or RAD PBV site-based, as applicable) to determine PBV HAP and tenant rent. Any non-RAD PBV units located in the same project are subject to the same requirements.

Tenant and PHA Responsibilities

The family is not responsible for the portion of rent to owner that is covered by the housing assistance payment and the owner may not terminate the tenancy of an assisted family for nonpayment by the PHA.

Likewise, the PHA is responsible only for making the housing assistance payment to the owner in accordance with the HAP contract. The PHA is not responsible for paying tenant rent, or any other claim by the owner, including damage to the unit. The PHA may not use housing assistance payments or other program funds (including administrative fee reserves) to pay any part of the tenant rent or other claim by the owner.

Utility Reimbursements

If the amount of the utility allowance exceeds the total tenant payment, the PHA must pay the amount of such excess to the tenant as a reimbursement for tenant-paid utilities, and the tenant rent to the owner must be zero.

The PHA may pay the utility reimbursement directly to the family or to the utility supplier on behalf of the family. If the PHA chooses to pay the utility supplier directly, the PHA must notify the family of the amount paid to the utility supplier.

PHA Policy

The PHA will make utility reimbursements directly to the family.

18-VIII.D. PHASE-IN OF TENANT RENT INCREASES [Notice PIH 2019-23; PHA Asset Repositioning “Phase-in of Tenant Rents” Webinar]

For in-place tenants, if the amount the tenant would pay for rent and utilities (TTP) would increase by more than the greater of 10 percent or \$25 purely as a result of conversion, the rent increase will be phased in over three years. To implement this provision, HUD is waiving section 3(a)(1) of the 1937 Act, as well as 24 CFR 983.3 (definition of *total tenant payment (TTP)*) only to the extent necessary to allow for the phase-in of tenant rent increases. For families who were on EID at the time of conversion to RAD PBV, upon the expiration of the EID, the rent adjustment is not subject to rent phase-in.

The PHA must communicate this policy in writing to affected residents. Any non-RAD PBV units located in the same covered project are subject to the terms of the phase-in provisions.

PHA Policy

The PHA will use the family’s public housing tenant rent (reflected on line 10f of the family’s most recent 50058) at the date of conversion to calculate the family’s tenant rent in PBV. The PHA will implement a three-year phase-in for in-place families whose TTP increases by more than the greater of 10 percent or \$25 purely as a result of the conversion as follows:

Year 1: Any recertification (interim or annual) performed prior to the second annual recertification after conversion: 33 percent of the difference between the most recently paid TTP and the currently calculated PBV TTP. (If the family was paying flat rent immediately prior to conversion, the PHA will use the flat rent amount to calculate the phase-in for Year 1.)

Year 2: Year 2 annual recertification and any interim recertification: 50 percent of the difference between the most recently paid TTP and the currently calculated PBV TTP

Year 3: Year 3 annual recertification and all subsequent recertifications: Full calculated TTP

Once the standard TTP is equal to or less than the previous TTP, the phase-in ends, and tenants will pay full TTP from that point forward.

If the family’s income falls during the phase-in period such that the currently calculated PBV TTP falls below the amount that would otherwise be the phased-in rent, the family pays the currently calculated PBV TTP and the phase-in ends.

The PHA will communicate the PHA’s phase-in policy in writing to the family at the time the PHA first determines that the family qualifies for a rent phase-in. Any non-RAD PBV units located in the same project are also subject to rent phase-in requirements.

18.VIII.E. 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.

EXHIBIT 18-1: PBV DEVELOPMENT INFORMATION

(Fill out one for each development)

Date: [Enter the date on which this form was completed]

DEVELOPMENT INFORMATION

Development Name: The Forum Apartments

Address: 250 W 14th Avenue; Denver, CO 80202

Owner Information: Forum Apartments LLLP 2111 Champa St Denver, CO 80206

Property Management Company: None

PHA-Owned: No

Mixed-Finance Development: No

HAP CONTRACT

Closing Date: December 20, 2021

List Which RAD Notice Applies to the Project: PIH 2019-23

Effective Date of Contract: January 1, 2022

HOTMA Requirements: Post-HOTMA

Term of HAP Contract: 20 Years

Expiration Date of Contract: January 1, 2042

PBV UNITS

	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	Total
# of Units	100						
Initial Contract Rent	\$1179	\$	\$	\$	\$	\$	

Unit Designation: Fixed

Accessible Units and Features: Units 302 and 402 are accessible for persons with hearing or visual impairment.

Target Population: Individuals currently experiencing homelessness, or at risk of homelessness.
Excepted Units (Notice PIH 2012-32, REV-2 Developments Only): None
Supportive Services: Yes, see Exhibit F of HAP contract
Elderly Units: No
Disabled Units: Yes; Units 303, 403, 503, 603, 703, 803

WAITING LIST AND SELECTION

Waiting List Type: Site-based waiting list
Preferences: Same as HCV; see Chapter 4
Preference Verification: Same as HCV; see Chapter 3
For the PBV program, is the income limit the same as the HCV program? Same as HCV; see Chapter 3

OCCUPANCY

Subsidy Standards: Same as HCV; see Chapter 5 Exhibit E
Vacancy Payments: In accordance with HAP contract Part 1, e, 2 and Section 18-IV.F. within this chapter

Chapter 19

SPECIAL PURPOSE VOUCHERS

INTRODUCTION

Special purpose vouchers are specifically funded by Congress in separate appropriations from regular HCV program funding in order to target specific populations. Special purpose vouchers include vouchers for the following programs:

- Family Unification Program (FUP)
- Foster Youth to Independence (FYI) program
- Veterans Affairs Supportive Housing (VASH)
- Mainstream
- Non-Elderly Disabled (NED)

PHA Policy

The PHA will administer the following types of special purpose vouchers: Family Unification Program (FUP), Veterans Affairs Supportive Housing (VASH), Mainstream, and Non-Elderly Disabled (NED).

This chapter describes HUD regulations and PHA policies for administering special purpose vouchers. The policies outlined in this chapter are organized into five sections, as follows:

Part I: Family Unification Program (FUP)

Part II: Foster Youth to Independence (FYI) program

Part III: Veterans Affairs Supportive Housing (VASH)

Part IV: Mainstream voucher program

Part V: Non-Elderly Disabled (NED) vouchers

Except as addressed by this chapter and as required under federal statute and HUD requirements, the general requirements of the HCV program apply to special purpose vouchers.

PART I: FAMILY UNIFICATION PROGRAM (FUP)

19-I.A. PROGRAM OVERVIEW [Fact Sheet, Housing Choice Voucher Program Family Unification Program (FUP)]

Overview

The Family Unification Program (FUP) was authorized by Congress in 1990 to help preserve and reunify families. PHAs that administer the program provide vouchers to two different populations—FUP families and FUP youth.

Families eligible for FUP are families 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
- The delay in the discharge of the child or children to the family from out-of-home care.

There is no time limitation on FUP family vouchers, and the family retains their voucher as long as they are HCV-eligible. There is no requirement for the provision of supportive services for FUP family vouchers.

Youth eligible for FUP are those who:

- Are at least 18 years old and not more than 24 years of age;
- Have left foster care or will leave foster care within 90 days, in accordance with a transition plan described in section 475(5)(H) of the Social Security Act at age 16 and older; and
- Are homeless or at risk of becoming homeless.

FUP youth vouchers are limited by statute to a period between 36 and 60 months of housing assistance. Supportive services must also be provided to FUP-eligible youth by the Public Child Welfare Agency (PCWA) or by another agency or organization under contract with the PCWA for the period of time defined in the notice or Notice of Funding Availability/Opportunity (NOFA/O) for which funding was made available.

PHA Policy

Supportive services must be provided for 36 months.

PHAs that wish to administer FUP vouchers must apply to HUD by submitting an application under an active Notice of Funding Opportunity (NOFO). While the FUP program is administered in accordance with HCV regulations, the FUP NOFOs issued by HUD provide specific program information and requirements.

In order to administer the program, the Voucher Administrator, on behalf of the PHA, must also form a partnership with a local PCWA who is responsible for determining if the family or youth meets FUP eligibility requirements and referring them to the PHA. Once the referral is received, the PHA is responsible for placing the FUP family or youth on the PHA's waiting list and determining whether they are eligible to receive assistance under the PHA's HCV program.

Assigning Vouchers [FUP FAQs]

The PHA may, but is not required to, assign a specific number or percentage of FUP vouchers for FUP youths and FUP families. Unless the PHA assigns a specific number or percentage of FUP vouchers to a designated FUP population, the PHA must serve any referrals (youths or families) that meet all program eligibility requirements up to the PHA's designated FUP program size.

PHA Policy

The PHA has not designated any specific number or percentage of FUP vouchers for youths or families. The PHA will serve all referrals that meet program eligibility requirements, up to the PHA's FUP voucher allocation.

19-I.B. PUBLIC CHILD WELFARE AGENCY (PCWA)

Families and youth do not apply directly to the Voucher Administrator, on behalf of the PHA, for FUP vouchers. They are instead referred by a PCWA with whom the voucher administrator has entered into a Memorandum of Understanding (MOU). The partnering PCWA initially determines whether the family or youth meets the FUP program eligibility requirements listed in 19-I.C. and 19-I.D. and then refers those families or youths to the voucher administrator.

DOH and HUD strongly encourage voucher administrators and PCWAs to make decisions collaboratively on the administration of the program and to maintain open and continuous communication. The PCWA must have a system for identifying FUP-eligible youth within the agency's caseload and for reviewing referrals from a Continuum of Care (COC) if applicable.

PHA Policy

All organizations administering the FUP program on behalf of the Division of Housing (DOH) are encouraged to enter into an MOU with at least one PCWA, continuum of care, and if applicable, a community based organization providing case management services.

All FUP youth will be matched with a FUP voucher (and FUP organization) through the local Continuum of Care's Coordinated Entry System.

Supportive Services

The PCWA must provide supportive services for the period of time defined in the notice or NOFA/O for which the funding was made available to all FUP-eligible youth regardless of their age. The MOU between the PHA, Voucher Administrator, and the PCWA should identify the period of time in which supportive services will be provided.

PHA Policy

The PCWA or Community Based Organization will provide supportive services for all FUP youth for a period of 36 months.

Supportive services may be provided to FUP-eligible youth by the PCWA or by another agency or organization under agreement or contract with the PCWA, including the PHA. The organization providing the services and resources must be identified in the MOU. The following services must be offered:

- Basic life skills information or counseling on money management, use of credit, housekeeping, proper nutrition or meal preparation, and access to health care (e.g., doctors, medication, and mental and behavioral health services);
- Counseling on compliance with rental lease requirements and with HCV program participant requirements, including assistance or referrals for assistance on security deposits, utility hook-up fees, and utility deposits;
- Post-move counseling – including subsequent-move counseling and landlord/tenant mediation if necessary;
- Providing such assurances to owners of rental property as are reasonable and necessary to assist a FUP-eligible youth to rent a unit with a FUP voucher;
- Job preparation and attainment counseling (where to look and how to apply, dress, grooming, relationships with supervisory personnel, etc.); and
- Educational and career advancement counseling regarding attainment of general equivalency diploma (GED), or attendance or financing of education at a technical school, trade school, or college, including successful work ethic and attitude models.

PHA Policy

Additional supportive services will not be offered.

A FUP-eligible youth cannot be required to participate in these services as condition of receipt of the FUP voucher.

19-I.C. FUP FAMILY VOUCHER ELIGIBILITY CRITERIA

FUP family assistance is reserved for eligible families that the PCWA has certified are a family for whom a 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
- The delay in the discharge of the child or children to the family from out-of-home care.

Lack of adequate housing means the family meets any one of the following conditions:

- Living in substandard housing, which refers to a unit that meets any one of the following conditions:
 - Does not have operable indoor plumbing
 - Does not have a usable flush toilet inside the unit for the exclusive use of a family or youth
 - Does not have a usable bathtub or shower inside the unit for the exclusive use of a family or youth
 - Does not have electricity, or has inadequate or unsafe electrical service
 - Does not have a safe or adequate source of heat
 - Should, but does not, have a kitchen
 - Has been declared unfit for habitation by an agency or unit of government, or in its present condition otherwise endangers the health, safety, or well-being of the family or youth
 - Has one or more critical defects, or a combination of intermediate defects in sufficient number or to the extent that it requires considerable repair or rebuilding. The defects may result from original construction, from continued neglect or lack of repair, or from serious damage to the structure
- Being homeless as defined in 24 CFR 578.3
- Living in a unit where the presence of a household member with certain characteristics (i.e., conviction for certain criminal activities) would result in the imminent placement of the family’s child or children in out-of-home care, or the delay in the discharge of the child or children to the family from out-of-home care
- Living in housing not accessible to the family’s disabled child or children due to the nature of the disability
- Living in an overcrowded unit, which is defined as living in a unit where one of the following conditions has been met:
 - The family is separated from its child or children and the parents are living in an otherwise standard housing unit, but, after the family is reunited, the parents’ housing unit would be overcrowded for the entire family and would be considered substandard;
 - or

- The family is living with its child or children in a unit that is overcrowded for the entire family and this overcrowded condition may result, in addition to other factors, in the imminent placement of its child or children in out-of-home care.
- For purposes of this definition, the determination as to whether the unit is overcrowded is made in accordance with the PHA subsidy standards in Chapter 5, Part III of this policy.

Since HUD does not define *imminent placement*, the partnering PCWA may use its discretion to determine whether the potential out of home placement of the family’s child or children is imminent [FUP FAQs].

19-I.D. FUP YOUTH VOUCHER ELIGIBILITY CRITERIA

While FUP family vouchers operate as regular HCVs after the family is referred from the PCWA, there are several aspects of the FUP youth vouchers that make them distinct from the FUP family vouchers and from regular HCVs.

Eligibility Criteria

A FUP-eligible youth is a youth the PCWA has certified:

- Is at least 18 years old and not more than 24 years of age (has not yet reached their 25th birthday);
 - The FUP youth must be no more than 24 years old at the time the PCWA certifies them as eligible and at the time of HAP contract execution.
- Has left foster care or will leave foster care within 90 days, in accordance with a transition plan described in section 475(5)(H) of the Social Security Act;
 - Foster care placement can include, but is not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and pre-adoptive homes in accordance with 24 CFR 5.576.
- Is homeless or at risk of becoming homeless at age 16 or older;
 - *At risk of being homeless* is fully defined at 24 CFR 576.2.
 - This includes a person that is exiting a publicly funded institution, or system of care (such as a healthcare facility, a mental health facility, foster care or other youth facility, or correction program or institution).
 - Therefore, youth being discharged from an institution may be eligible for a FUP voucher [FUP FAQs].
- Has an annual income at or below 30 percent of area median income; and

- Does not have sufficient resources or support networks (e.g., family, friends, faith-based or other social networks) immediately available to prevent them from moving to a supervised publicly or privately operated shelter designed to provide temporary living arrangements.

19-I.E. ASSISTANCE PERIOD [FR Notice 1/24/22]

Maximum Assistance Period

Although there is no time limit on FUP family vouchers, FUP youth vouchers are limited by statute. Unless the FUP youth meets an exception outlined below, after 36 months of assistance, the FUP youth voucher must be terminated. However, any period of time for which no subsidy (HAP) is being paid on behalf of the youth does not count toward the 36-month limitation.

If the FUP youth does meet the requirements outlined below, the statutory limit on FUP assistance is a total of 60 months of FUP voucher assistance [FR Notice 1/24/22].

Extension of Assistance

FUP youth who first leased or lease a unit after December 27, 2020, may be eligible for an extension of assistance up to 24 months beyond the 36-month time limit (for a total of 60 months of assistance).

While FUP youth cannot be required to participate in the Family Self-Sufficiency (FSS) program as a condition of receipt of assistance, an eligible youth who participates in the FSS program and is in compliance with the applicable terms and conditions of the program is entitled to receive assistance for up to an additional 24 months. A FUP youth must accept an FSS slot if it is offered to them prior to the 36-month mark in order to receive an extension of assistance (unless the youth meets one of the statutory exceptions described below).

Statutory Exceptions

A FUP youth will be entitled to receive an extension of assistance for up to 24 months beyond the 36-month time limit without participating in the PHA’s FSS program if they certify that they meet one of the exceptions below:

- The FUP youth is a parent or other household member responsible for the care of a dependent child under the age of six or for the care of an incapacitated person.

PHA Policy

DOH and the State of Colorado define *incapacitated person* as an individual other than a minor, who is unable to effectively receive or evaluate information or both or make or communicate decisions to such an extent that the individual lacks the ability to satisfy essential requirements for physical health, safety, or self-care, even with appropriate and reasonably available technological assistance. [CO Rev Stat § 15-14-102 \(2016\)](#)

The PHA will apply this exception in a manner that provides extensions of FUP youth assistance to the broadest population possible consistent with the statutory requirements.

The FUP youth will be required to self-certify that they meet this exception on a PHA-provided form. This certification is the only documentation that the FUP youth must submit.

The child or incapacitated person is not required to reside in the household in order for the youth to certify they meet this exception. For example, a child in a joint custody arrangement under the age of six who resides in the household only part-time may qualify the youth for this exception.

- The FUP youth is a person who is regularly and actively participating in a drug addiction or alcohol treatment and rehabilitation program.

PHA Policy

The PHA will define *regular and active participation* in a manner that provides extensions of FUP youth assistance to the broadest population possible consistent with the statutory requirements.

The FUP youth will be required to self-certify that they meet this exception on a PHA-provided form. This certification is the only documentation that the FUP youth must submit.

- The FUP youth is a person who is incapable of complying with the requirement to participate in a FSS program as described above or engage in education, workforce development, or employment activities as described below, as applicable, due to a documented medical condition.

PHA Policy

The PHA will apply this requirement in a manner that provides extensions of FUP youth assistance to the broadest population possible consistent with statutory requirements.

The FUP youth will be required to self-certify that they meet this exception on a PHA-provided form. This certification is the only documentation that the FUP youth must submit.

A FUP youth that meets one of the above exceptions must still be offered an opportunity to enroll in the PHA's FSS program (if it is available to them) and receive any supportive services available to FUP youth. A FUP youth may choose to participate in an FSS program or engage in education, workforce development, or employment activities, even if they meet one of the above statutory exceptions.

Education, Workforce Development, or Employment Activities

If a PHA that carries out an FSS program is unable to offer a FUP youth an FSS slot during their first 36 months of receiving FUP youth assistance, the youth is considered to have been “unable to enroll” in the program and may have their voucher extended by meeting the education, workforce development, or employment criteria described below:

- The youth was engaged in obtaining a recognized postsecondary credential or a secondary school diploma or its recognized equivalent.

PHA Policy

The PHA will use the definitions of *recognized postsecondary credential* and *secondary school diploma or its recognized equivalent* under the Workforce Innovation and Opportunity Act (WIOA). WIOA defines a *recognized postsecondary credential* as a credential consisting of an industry-recognized certificate or certification, a certificate of completion of an apprenticeship, a license recognized by the state involved or federal government, or an associate or baccalaureate degree (29 U.S.C. 3102). Examples of a recognized postsecondary credential include, but are not limited to, an associate’s degree, bachelor’s degree, occupational licensure, or occupational certification (see U.S. Department of Labor, Training and Employment Guidance Letter No. 10–16, Change 1). For the purpose of WIOA, the U.S. Department of Labor defines a *secondary school diploma or its recognized equivalent* as a secondary school diploma (or alternate diploma) that is recognized by a state and that is included for accountability purposes under the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA). A secondary school equivalency certification signifies that a student has completed the requirement for a high school education. Examples of a secondary school diploma or its recognized equivalent include, but are not limited to, obtaining certification of attaining passing scores on a state-recognized high school equivalency test, earning a secondary school diploma or state-recognized equivalent, or obtaining certification of passing a state-recognized competency-based assessment.

- The youth was enrolled in an *institution of higher education*, as such term is defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)) or an institution that meets the definition of a *proprietary institution of higher education* or a *postsecondary vocational institution* under sections 102(b)(1) and (c)(1) of the Higher Education Act of 1965 (20 U.S.C. 1002(b)(1) and (c)(1)), respectively.

PHA Policy

Youth must be enrolled in education activities on at least a half-time basis, as defined by the institution that they attend. However, the PHA may make exceptions to this requirement if the youth is unable to enroll in a sufficient number of classes due to a lack of course offerings by the educational institution where the youth is enrolled.

- The youth was participating in a career pathway, as such term is defined in Section 3 of the Workforce Innovation and Opportunity Act (29 U.S.C. 3102). The term *career pathway* means a combination of rigorous and high-quality education, training, and other services that:
 - Aligns with the skill needs of industries in the economy of the [state](#) or regional economy involved;
 - Prepares an individual to be successful in any of a full range of secondary or postsecondary education options, including apprenticeships registered under the Act of August 16, 1937 (commonly known as the “[National Apprenticeship Act](#)”; [50 Stat. 664](#), chapter 663; [29 U.S.C. 50](#) et seq.) (referred to individually in this Act as an *apprenticeship*, except in [section 3226 of this title](#));
 - Includes counseling to support an individual in achieving the individual’s education and career goals;
 - Includes, as appropriate, education offered concurrently with and in the same context as [workforce preparation activities](#) and training for a specific occupation or occupational cluster;
 - Organizes education, training, and other services to meet the particular needs of an individual in a manner that accelerates the educational and career advancement of the individual to the extent practicable;
 - Enables an individual to attain a [secondary school](#) diploma or its recognized equivalent, and at least one [recognized postsecondary credential](#); and
 - Helps an individual enter or advance within a specific occupation or occupational cluster.
- The youth was employed.

PHA Policy

The PHA will consider the youth to be employed if they work a minimum of 20 hours per week. The PHA may make exceptions to this requirement if the youth’s hours are reduced due to circumstances beyond their control or the youth must temporarily reduce their work hours due to a verified family emergency.

FSS Enrollment at 24 Months

If the FUP youth has not been provided an opportunity to enroll in the FSS program during the first 24 months of FUP assistance, HUD encourages the PHA to remind the youth at the 24-month reexamination of the education, workforce development, and employment requirements described

above so that the youth has enough time to meet these requirements prior to the expiration of the 36-month time period for FUP assistance.

PHA Policy

If the FUP youth has not been provided an opportunity to enroll in the FSS program during the first 24 months of FUP assistance, the PHA will remind the youth at their second regular reexamination of the education, workforce development, and employment requirements described above.

FSS Enrollment Between 36 and 48 Months

If an FSS slot becomes available between the 36-month and 48-month mark:

- The Voucher Administrator must offer the slot to a FUP youth who had their voucher extended based on meeting the education, workforce development, or employment requirement listed above, or one of the statutory exceptions listed above (even if the youth previously declined an FSS slot because they met one of the statutory exceptions).
- The Voucher Administrator must work with the youth to determine whether enrollment in FSS is feasible and in their best interest given any education, workforce development, or employment activities that the youth is engaged in and any statutory exceptions that apply to the youth, as well as the remaining time on their voucher.
- If the FUP youth accepts the FSS slot, the Voucher Administrator must work with the youth to establish Contract of Participation goals and an Individual Training and Services Plan (ITSP) that can be accomplished within the time period left on the voucher.

If the FUP youth is offered an FSS slot prior to the 36-month mark, the youth:

- Will be required to enroll in the FSS program in order to receive an extension of assistance at the end of the 36-month time period (unless they meet one of the statutory exceptions described above).
- Will not be considered to have been “unable to enroll” in the FSS program as described above, and as a result, will not be eligible to receive an extension of assistance based on meeting the education, workforce development, or employment requirements described above.

FSS Enrollment After 48 Months

The PHA may, but is not required to, offer a FUP youth an FSS slot that becomes available between the 48-month mark and the 60-month mark, since the youth will have already received their second and final extension.

PHA Policy

If an FSS slot becomes available between the 48 and 60-month marks, the PHA will not offer the FSS slot to a FUP youth.

Extensions of Assistance

At the 36-month and 48-month reexamination, the PHA must extend FUP youth assistance if the youth is participating in and in compliance with the FSS program as long as the youth is still eligible for the HCV program.

In any case, the FUP youth cannot receive more than a total of 60 months of FUP youth voucher assistance, even if the FSS Contract of Participation time period extends beyond the voucher 60-month mark.

No FSS Program or Unable to Enroll in FSS

If a PHA does not carry out an FSS program or the FUP youth has been unable to enroll in the program during the first 36 months of receiving FUP assistance, the FUP youth is entitled to receive an extension of assistance for up to two successive 12-month periods beyond the 36-month time limit provided that the youth engaged in at least one of the education, workforce development, or employment activities described above for not less than nine months of the 12-month period preceding each extension. In order to meet the nine months out of the preceding 12 months requirement, the youth may have engaged in one of the education, workforce development, or employment activities described above or a combination of these activities.

PHA Policy

Not applicable as DOH currently has an FSS program.

Verification Prior to Annual Reexam

In order to provide an extension of assistance, the PHA must verify compliance with the above requirements at the end of the 36-month time period and the 48-month time periods. The PHA does not need to verify compliance with these requirements at the end of the 60-month time period since the maximum length of assistance is 60 months.

To verify compliance with the education, workforce development, or employment requirement or one of the statutory exceptions, the PHA must provide the FUP youth written notification informing them that they may receive an extension of their FUP assistance and providing instructions on how the youth may demonstrate that they meet one of these conditions. This notification must be provided sufficiently in advance of the end of the 36-month or 48-month time periods, as applicable, to allow the FUP youth to demonstrate that they meet the education, workforce development, or employment requirement, or one of the statutory exceptions, and for the PHA to conduct an annual reexamination prior to the expiration of the FUP assistance.

PHA Policy

The PHA will verify compliance with the education, workforce development, or employment requirement, or one of the statutory exceptions, at the end of the 36-month and 48-month time periods prior to the FUP youth's scheduled annual reexamination. The PHA will not verify compliance at the end of the 60-month time period.

The PHA will provide each FUP youth on the PHA's program with a written notification informing them that they may receive an extension of their FUP assistance if they meet conditions outlined in this chapter and providing them with instructions on how they may demonstrate compliance at least 60 days prior to their scheduled annual reexam date. When necessary, the PHA will provide this notification in a format accessible to FUP youth with disabilities and in a translated format for FUP youth with limited English proficiency in accordance with Chapter 2.

The PHA will use the following verification methods to verify a FUP youth's eligibility for voucher extensions:

To verify compliance with the FSS requirement, the PHA will examine its records to confirm, or obtain confirmation from the PHA's FSS program staff, that the FUP youth participant is in compliance with FSS program requirements and has not been terminated from the FSS program.

To meet the education, workforce development, or employment requirement, the PHA will verify that the FUP youth was engaged in at least one education, workforce development, or employment activity for at least nine months of the 12-month period immediately preceding the end of 36-month or 48-month time period, as applicable.

Due to the timing of when the PHA verifies compliance and conducts the annual reexamination, the FUP youth may have not yet met the nine-month requirement but may be able to demonstrate that they will meet the nine-month requirement as of the end of the 36-month or 48-month time period. In such cases, the FUP/FYI youth will still be considered to have met the requirements.

In order for the FUP youth to meet one of the statutory exceptions described above, the youth must submit a certification to the PHA that they meet one of these exceptions. This certification is the only documentation that the FUP youth must submit in order to demonstrate that they meet one of the statutory exceptions.

A FUP youth who received an extension of voucher assistance at the end of the 36-month time period based on meeting one of the conditions described in this chapter does not have to meet the same conditions when they reach the end of the 48-month time period. The FUP youth may demonstrate that they meet a different condition in order to receive an extension of their assistance.

If the PHA determines that the youth meets one of the statutory conditions, the PHA would then conduct an annual reexamination. If the annual reexamination determines that the youth is still

eligible for the HCV program, the PHA must provide the FUP youth the extension of voucher assistance.

Termination of Assistance for Failure to Meet Conditions

Failure of the FUP youth to meet one of the above conditions will only impact their ability to receive subsequent extensions of assistance. It will not serve as a basis for terminating the FUP assistance prior to the annual reexam.

If the FUP youth does not meet any of the conditions described in this chapter, the youth is subject to the statutory time limit of 36 months or the time limit of any extension that the youth has already received, and the FUP youth voucher must be terminated once the youth reaches this time limit. The calculation of the time limit begins from the date the first HAP contract is signed (for tenant-based vouchers) or from the date the youth entered into the initial lease agreement (for project-based vouchers). The number of months is calculated based on the number of months that HAP subsidy is being paid on behalf of the youth, not the number of months that the youth is in the FUP youth program. Prior to termination, the PHA must offer the FUP youth the opportunity to request an informal hearing, in accordance with Chapter 16.

19-I.F. REFERRALS AND WAITING LIST MANAGEMENT

Referrals

The PCWA must establish and implement a system to identify FUP-eligible families and youths within the agency's caseload and make referrals to the PHA. The PCWA must certify that the FUP applicants they refer to the PHA meet FUP eligibility requirements. The PHA is not required to maintain full documentation that demonstrates the family's or youth's FUP eligibility as determined by the PCWA but should keep the referral or certification from the PCWA.

PHA Policy

As part of the MOU, the PHA and PCWA have identified staff positions to serve as lead FUP liaisons. These positions will be responsible for transmission and acceptance of FUP referrals. The PCWA must commit sufficient staff and resources to ensure eligible families and youths are identified and determined eligible in a timely manner.

When FUP vouchers are available, the PHA liaison responsible for acceptance of referrals will contact the PCWA FUP liaison via email indicating the number of vouchers available and requesting an appropriate number of referrals. No more than 10 business days from the date the PCWA receives this notification, the PCWA liaison will provide the PHA with a list of eligible referrals include the name, address, and contact phone number for each adult

individual who is being referred; a completed release form for each adult family member; and a written certification for each referral indicating the youth or family is FUP-eligible.

The PHA will maintain a copy of the referral or certification from the PCWA in the participant's file along with other eligibility paperwork.

A PHA must serve any referrals (youths or families) that meet all program eligibility requirements. If a PHA determines that it has received a sufficient number of referrals from the PCWA so that the PHA will be able to lease all FUP vouchers awarded, the PHA may request that the PCWA suspend transmission of referrals. If the PHA determines that additional referrals will be needed after it has made such a request, the PHA may request that the PCWA resume transmission of referrals [Notice PIH 2011-52].

Waiting List Placement

A family that is already participating in the regular HCV program cannot be transferred to a FUP voucher.

Once a referral is made, the PHA must compare the list of PCWA referrals to its HCV waiting list to determine if any applicants on the PCWA's referral list are already on the PHA's HCV waiting list. Applicants already on the PHA's HCV waiting list retain the order of their position on the list. Applicants not already on the PHA's HCV waiting list must be placed on the HCV waiting list.

If the PHA's HCV waiting list is closed, the PHA must open its HCV waiting list in order to accept new FUP applicants. If necessary, the PHA may open its waiting list solely for FUP applicants, but this information must be included in the PHA's notice of opening its waiting list (see section 4-II.C., Opening and Closing the Waiting List of this administrative plan).

PHA Policy

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 24 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 25th birthday in order to remain eligible.

All FUP youth will be matched with a FUP voucher (and FUP organization) through the local Continuum of Care's Coordinated Entry System. Once a youth has been matched with a FUP opening, the organization will enter the youth – also referred to as “the applicant” – into the tenant database system (Elite).

All turnover slots will be distributed back to the Coordinated Entry System of origin when available. Once a termination takes place, DOH will determine if funding is available and issue a voucher to the next applicant on the waiting list (FUP Family) or in the Coordinated Entry System queue (FUP Youth).

Waiting List Selection

The PHA selects FUP-eligible families or youths based on the PHA's regular HCV waiting list selection policies in Chapter 4, including any preferences that may apply.

19-I.G. PHA HCV ELIGIBILITY DETERMINATION

Once a FUP-eligible family or youth is selected from the HCV waiting list, the PHA must determine whether the family or youth meets HCV program eligibility requirements. Applicants must be eligible under both FUP family or youth eligibility requirements, as applicable, and HCV eligibility requirements as outlined in Chapter 3 of this policy.

The PCWA may, but is not obligated to, provide information to the PHA on the family's criminal history.

PHA Policy

Subject to privacy laws, the PCWA will provide any available information regarding the applicant's criminal history to the PHA.

The PHA will consider the information in making its eligibility determination in accordance with the PHA's policies in Chapter 3, Part III.

Additional FUP Eligibility Factors [FUP FAQs]

For FUP family vouchers, the family must remain FUP-eligible through lease-up.

- If, after a family is referred by the PCWA but prior to issuing a family FUP voucher, the PHA discovers that the lack of adequate housing is no longer a primary factor for the family not reunifying, the FUP voucher may not be issued to the family.
- Similarly, if the FUP voucher has already been issued before the PHA discovers that the reunification will not happen, but the family has not yet leased up under the voucher, the PHA must not execute the HAP contract, as the family is no longer FUP-eligible.

FUP-eligible youth must be no more than 24 years old both at the time of PCWA certification and at the time of the HAP execution. If a FUP youth is 24 at the time of PCWA certification but will turn 25 before the HAP contract is executed, the youth is no longer eligible for a FUP youth voucher.

PHA Policy

Any applicant that does not meet the eligibility criteria for the HCV program listed in Chapter 3 or any eligibility criteria listed in this section will be notified by the PHA in writing following policies in Section 3-III.F., including stating the reasons the applicant was found ineligible and providing an opportunity for an informal review.

19.I.H. LEASE UP [FR Notice 1/24/22]

Once the PHA determines that the family or youth meets HCV eligibility requirements, the family or youth will be issued a FUP voucher in accordance with PHA policies.

During the family briefing, PHAs must inform the FUP youth of:

- The extension of assistance provisions and requirements;
- The availability of the FSS program and offer them an FSS slot, if available, or offer to place them on the FSS waiting list (provided the PHA has an FSS program); and
- Supportive services available to them, the existence of any other programs or services, and their eligibility for such programs and services. However, participation in supportive services cannot be required as a condition of receiving FUP youth assistance.

PHA Policy

Eligible applicants will be notified by the PHA in writing following policies in Section 3-III.F. of this administrative plan. FUP families will attend a standard HCV briefing in accordance with PHA policies in Part I of Chapter 5 of this administrative plan. FUP youth will be briefed individually. The PHA will provide all aspects of the written and oral briefing as outlined in Part I of Chapter 5 but will also provide an explanation of the required items listed above, as well as discussing supportive services offered by the PCWA.

For both FUP youth and FUP families, vouchers will be issued in accordance with PHA policies in Chapter 5 Part II, except that the PHA will consider one additional 30-day extension beyond the first automatic extension for any reason, not just those listed in the policy in Section 5-II.E.

Once the family or youth locate a unit, the PHA conducts all other processes relating to voucher issuance and administration per HCV program regulations and the PHA's policies (including, but not limited to: HQS inspection, determination of rent reasonableness, etc.).

19-I.I. TERMINATION OF ASSISTANCE

General Requirements

With the exception of terminations of assistance for FUP youth after the statutorily required time period, terminations of FUP assistance are handled in the same way as the regular HCV program. Termination of a FUP voucher must be consistent with regulations for termination in 24 CFR Part 982, Subpart L and be in compliance with PHA policies (Chapter 12).

If the person who qualifies for the FUP voucher passes away, the family retains the FUP voucher. In the case of a FUP-youth voucher, assistance will terminate after the statutorily required time period, even if the FUP-eligible youth is no longer included in the household.

If the person who qualifies for the FUP voucher moves, the remaining family members may keep the FUP voucher based on PHA policy (see administrative plan, Section 3-I.C., Family Breakup and Remaining Member of Tenant Family).

FUP Family Vouchers

If parents lose their parental rights or are separated from their children after voucher lease-up (or their children reach adulthood), the family is still eligible to keep their FUP assistance, as the regulations do not permit HCV termination for a family losing parental rights or the children reaching adulthood. However, the PHA may transfer the assistance of a FUP family voucher holder to regular HCV assistance if there are no longer children in the household.

PHA Policy

The PHA will transfer the assistance of a FUP family voucher holder to regular HCV assistance if there are no longer children in the household and there is no prospect of any minor child being returned to the household.

If the PHA has no regular HCV vouchers available at the time this determination is made, including if no vouchers are available due to lack of funding, the PHA will issue the family the next available regular HCV voucher after those being issued to families residing in PBV units claiming Choice Mobility.

FUP Youth Vouchers

A PHA cannot terminate a FUP youth's assistance for noncompliance with PCWA case management, nor may the PHA terminate assistance for a FUP youth for not accepting services from the PCWA.

The PHA may not transfer the assistance of a FUP youth voucher holder to regular HCV assistance upon the expiration of the statutorily required time period. However, the PHA may issue a regular HCV to FUP youth if they were selected from the waiting list in accordance with PHA policies and may also adopt a preference for FUP youth voucher holders who are being terminated for this reason.

PHA Policy

The PHA will not provide a selection preference on the PHA's HCV waiting list for FUP youth who are terminated due to the time limit on assistance.

Upon the expiration of the statutorily required time period, a FUP youth voucher holder who has children and who lacks adequate housing may qualify for a FUP family voucher provided they are referred by the PCWA as an eligible family and meet the eligibility requirements for the PHA's HCV program.

9-I.J. FUP PORTABILITY

Portability for a FUP family or youth is handled in the same way as for a regular HCV family. A PHA may not restrict or deny portability for a FUP family or youth for reasons other than those specified in the HCV program regulations, as reflected in Chapter 10 of the administrative plan.

A FUP family or youth does not have to port to a jurisdiction that administers FUP.

If the receiving PHA administers the FUP voucher on behalf of the initial PHA, the voucher is still considered a FUP voucher regardless of whether the receiving PHA has a FUP program.

If the receiving PHA absorbs the voucher, the receiving PHA may absorb the incoming port into its FUP program (if it has one) or into its regular HCV program (if the receiving PHA has vouchers available to do so) and the family or youth become regular HCV participants. In either case, when the receiving PHA absorbs the voucher, a FUP voucher becomes available to the initial PHA.

Considerations for FUP Youth Vouchers

If the voucher is a FUP youth voucher and remains such upon lease-up in the receiving PHA's jurisdiction, termination of assistance must still take place once the youth has received assistance for the statutorily required time period. If the receiving PHA is administering the FUP youth voucher on behalf of the initial PHA, the two PHAs must work together to initiate termination upon expiration of the statutorily required time period.

19-I.K. PROJECT-BASING FUP VOUCHERS [Notice PIH 2017-21; FR Notice 1/24/22]

The PHA may project-base FUP vouchers without HUD approval in accordance with Notice PIH 2017-21, FR Notice 1/24/22, and all statutory and regulatory requirements for the PBV program. Project-based FUP vouchers are subject to the PBV program percentage limitation discussed in Section 17-I.A.

The PHA may limit PBVs to one category of FUP-eligible participants (families or youth) or a combination of the two.

While FUP vouchers can be used for either families or youth, a PBV unit may only be counted towards the PHA's 10 percent exception authority under the program cap and the project's income-mixing requirement if the FUP PBV assistance is provided on behalf of an eligible youth. The PHA must amend its administrative plan to include the limitation of these FUP PBV units to eligible youth.

PHA Policy

The PHA will not project-base FUP vouchers. All FUP vouchers will be used to provide tenant-based assistance.

PART II: FOSTER YOUTH TO INDEPENDENCE INITIATIVE

The Colorado Division of Housing does not administer the Foster Youth to Independence Initiative Program as of the effective date of this Administrative Plan. This section is for information only.

19-II.A. PROGRAM OVERVIEW [Notice PIH 2020-28; Notice PIH 2021-26; FR Notice 1/24/22]

The Foster Youth to Independence (FYI) initiative was announced in 2019. The FYI initiative allows PHAs who partner with a Public Child Welfare Agency (PCWA) to request targeted HCVs to serve eligible youth with a history of child welfare involvement that are homeless or at risk of being homeless. Rental assistance and supportive services are provided to qualified youth for a period of between 36 and 60 months.

Funding is available either competitively through an FYI NOFA or noncompetitively on a rolling basis in accordance with the application requirements outlined in Notice PIH 2020-28 or Notice PIH 2021-26, as applicable. Under the noncompetitive process, PHAs are limited to 25 vouchers in a fiscal year with the ability to request additional vouchers for those PHAs with 90 percent or greater utilization or utilization of its FUP and/or FYI vouchers, as applicable. For competitive awards, the number of vouchers is dependent on PHA program size and need.

19-II.B. PARTNERING AGENCIES [Notice PIH 2021-26; FYI Updates and Partnering Opportunities Webinar]

Public Child Welfare Agency (PCWA)

The PHA must enter into a partnership agreement with a PCWA in the PHA's jurisdiction in the form of a Memorandum of Understanding (MOU) or letter of intent. The PCWA is responsible for identifying and referring eligible youth to the PHA and providing or securing a commitment for the provision of supportive services once youth are admitted to the program.

PHA Policy

The PHA will implement a Foster Youth to Independence (FYI) program in partnership with *[insert name(s) of PCWA(s)]*.

The PCWA is responsible for:

- Identifying FYI-eligible youth;
- Developing a system of prioritization based on the level of need of the youth and the appropriateness of intervention;
- Providing a written certification to the PHA that the youth is eligible; and

- Providing or securing supportive services for 36 months.

Continuum of Care (CoC) and Other Partners

HUD strongly encourages PHAs to add other partners into the partnership agreement with the PCWA such as state, local, philanthropic, faith-based organizations, and the CoC, or a CoC recipient it designates.

PHA Policy

In addition to the PCWA, the PHA will implement the FYI program in partnership with *[insert names of any other partners the PHA designates in the partnership agreement]*.

19-II.C. YOUTH ELIGIBILITY CRITERIA [Notice PIH 2021-26; FYI Q&As; FYI FAQs]

The PCWA is responsible for certifying that the youth has prior qualifying foster care involvement. As determined by the PCWA, eligible youth:

- Are at least 18 years of age and not more than 24 years of age (have not yet reached their 25th birthday);
 - Youth must be no more than 24 years of age at the time the PCWA certifies them as eligible and at the time of HAP contract execution.
- Have left foster care or will leave foster care within 90 days, in accordance with a transition plan described in section 475(5)(H) of the Social Security Act;
 - Placements can include, but are not limited to, placements in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, and pre-adoptive homes in accordance with 24 CFR 5.576;
- Are homeless or at risk of becoming homeless at age 16 and older;
 - *At risk of being homeless* is fully defined at 24 CFR 576.2.
 - o This includes a person that is exiting a publicly funded institution, or system of care (such as a healthcare facility, a mental health facility, foster care or other youth facility, or correction program or institution). Therefore, youth being discharged from an institution may be eligible for an FYI voucher [FYI FAQs].

Eligibility is not limited to single persons. For example, pregnant and/or parenting youth are eligible to receive assistance assuming they otherwise meet eligibility requirements.

19-II.D. SUPPORTIVE SERVICES [Notice PIH 2021-26; FYI Updates and Partnering Opportunities Webinar; FYI Q&As]

Supportive services may be provided by the PHA, PCWA or a third party. The PCWA must provide or secure a commitment to provide supportive services for participating youth for the period of time defined in the NOFA/O for which the funding was made available. At a minimum, the following supportive services must be offered:

- Basic life skills information/counseling on money management, use of credit, housekeeping, proper nutrition/meal preparation, and access to health care (e.g., doctors, medication, and mental and behavioral health services);
- Counseling on compliance with rental lease requirements and with HCV program participant requirements, including assistance/referrals for assistance on security deposits, utility hook-up fees, and utility deposits;
- Providing such assurances to owners of rental property as are reasonable and necessary to assist eligible youth to rent a unit with a voucher;
- Job preparation and attainment counseling (where to look/how to apply, dress, grooming, relationships with supervisory personnel, etc.); and
- Educational and career advancement counseling regarding attainment of general equivalency diploma (GED) or attendance/financing of education at a technical school, trade school, or college, including successful work ethic and attitude models.

PHA Policy

Additional supportive services will not be offered.

Since participation in supportive services is optional, but strongly encouraged, an FYI participant may decline supportive service.

19-II.E. REFERRALS AND WAITING LIST MANAGEMENT [Notice PIH 2021-26; FYI Updates and Partnering Opportunities Webinar FYI FAQs]

Referrals

The PCWA is responsible for certifying that the youth has prior qualifying foster care involvement. Once the PCWA sends the PHA the referral certifying the youth is program-eligible, the PHA determines HCV eligibility.

The PCWA must have a system for identifying eligible youth within the agency's caseload and reviewing referrals from other partners, as applicable. The PCWA must also have a system for prioritization of referrals to ensure that youth are prioritized for an FYI voucher based upon their level of need and appropriateness of the intervention.

Referrals may come from other organizations in the community who work with the population, but the PCWA must certify that the youth meets eligibility requirements, unless the PCWA has vested another organization with this authority.

The PHA is not required to maintain full documentation that demonstrates the youth's eligibility as determined by the PCWA but should keep the referral or certification from the PCWA. The PCWA is not required to provide the PHA with HCV eligibility documents.

PHA Policy

The PHA and PCWA have identified staff positions to serve as lead FYI liaisons. These positions will be responsible for transmission and acceptance of referrals. The PCWA must commit sufficient staff and resources to ensure eligible youths are identified, prioritized, and determined eligible in a timely manner.

When vouchers are available, the PHA liaison responsible for acceptance of referrals will contact the PCWA liaison via email indicating the number of vouchers available and requesting an appropriate number of referrals. No more than 10 business days from the date the PCWA receives this notification, the PCWA liaison must provide the PHA with a list of eligible referrals, a completed release form, and a written certification for each referral indicating the referral is eligible. The list will include the name, address, and contact phone number for each adult individual who is being referred.

The PHA will maintain a copy of each certification from the PCWA in the participant's file along with other eligibility paperwork.

Waiting List Placement [Notice PIH 2021-26 and FYI FAQs]

The PHA must use the HCV waiting list for the FYI program. Youth already on the HCV program may not be transferred to an FYI voucher since they are not homeless or at-risk of homelessness.

Once a referral is made, the PHA must compare the list of PCWA referrals to its HCV waiting list to determine if any applicants on the PCWA's referral list are already on the PHA's HCV waiting list. Applicants already on the PHA's HCV waiting list retain the order of their position on the list. Applicants not already on the PHA's HCV waiting list must be placed on the HCV waiting list.

If the PHA's HCV waiting list is closed, the PHA must open its HCV waiting list in order to accept new referrals. The PHA may reopen the waiting list to accept an FYI eligible youth without opening the waiting list for other applicants; however, the requirements at 24 CFR 982.206 for giving public notice when opening and closing the waiting list apply (see section 4-II.C., Opening and Closing the Waiting List of this administrative plan).

PHA Policy

Within 10 business days of receiving the referral from the PCWA, the PHA will review the HCV waiting list and will send the PCWA a list confirming whether or not referrals are on the waiting list.

Referrals who are already on the list will retain their position and the list will be notated to indicate the applicant is FYI-eligible.

For those referrals not already on the waiting list, the PHA will work with the PCWA to ensure they receive and successfully complete a pre-application or application, as applicable. Once the pre-application or application has been completed, the PHA will place the referral on the HCV waiting list with the date and time of the original referral and an indication that the referral is FYI-eligible.

Waiting List Selection

The PHA selects eligible youths based on the PHA's regular HCV waiting list selection policies in Chapter 4, including any preferences that may apply.

19-II.F. PHA HCV ELIGIBILITY DETERMINATION [FYI FAQs]

Once an eligible youth is selected from the HCV waiting list, the PHA must determine whether the youth meets HCV program eligibility requirements. Applicants must be eligible under both FYI eligibility requirements and HCV eligibility requirements as outlined in Chapter 3 of this policy.

The PCWA may, but is not obligated to, provide information to the PHA on the youth's criminal history.

PHA Policy

Subject to privacy laws, the PCWA will provide any available information regarding the applicant's criminal history to the PHA.

The PHA will consider the information in making its eligibility determination in accordance with the PHA's policies in Chapter 3, Part III.

Additional Eligibility Factors

Youth must be no more than 24 years old both at the time of PCWA certification and at the time of the HAP execution. If a youth is 24 at the time of PCWA certification but will turn 25 before the HAP contract is executed, the youth is no longer eligible for a FYI voucher.

PHA Policy

Any applicant that does not meet the eligibility criteria for the HCV program listed in Chapter 3 or any eligibility criteria listed in this section will be notified by the PHA in writing following policies in Section 3-III.F, including stating the reasons the applicant was found ineligible and providing an opportunity for an informal review.

19-II.G. LEASE UP [FR Notice 1/24/22]

Once the PHA determines that the family or youth meets HCV eligibility requirements, the youth will be issued an FYI voucher in accordance with PHA policies.

During the family briefing, PHAs must inform the FYI voucher holder of:

- The extension of assistance provisions and requirements;
- The availability of the FSS program and offer them an FSS slot, if available, or offer to place them on the FSS waiting list (provided the PHA has an FSS program); and
- The supportive services available to them, the existence of any other programs or services, and their eligibility for such programs and services. However, participation in supportive services cannot be required as a condition of receiving FYI assistance.

PHA Policy

Eligible applicants will be notified by the PHA in writing following policies in Section 3-III.F. of this policy. FYI youth will be briefed individually. The PHA will provide all aspects of the written and oral briefing as outlined in Part I of Chapter 5.

Vouchers will be issued in accordance with PHA policies in Chapter 5, Part II, except that the PHA will consider one additional 30-day extension beyond the first automatic extension for any reason, not just those listed in the policy in Section 5-II.E.

Once the youth locates a unit, the PHA conducts all other processes relating to voucher issuance and administration per HCV program regulations and the PHA policy in Chapter 9.

Should a youth fail to use the voucher, the PHA may issue the voucher to another eligible youth if one has been identified [Notice PIH 2021-26].

Turnover [FYI FAQs]

For PHAs awarded FYI Tenant Protection Vouchers (TPVs) under Notice PIH 2019-20 where the recipient of the FYI TPV leaves the program, the PHA may request an FYI voucher under the requirements of Notice PIH 2021-26.

For PHAs awarded FYI vouchers under Notices PIH 2020-28 and PIH 2021-26, where the recipient of the FYI voucher leaves the program, the PHA must continue to use the FYI voucher for eligible youth upon turnover. Where there are more eligible youth than available FYI turnover vouchers, the PHA may request an FYI voucher under the requirements of Notice PIH 2021-26. If another eligible youth is not available, the PHA must notify HUD, and HUD will reduce the PHA's HCV assistance to account for the removal of the FYI assistance from the PHA's HCV baseline.

19-II.H. MAXIMUM ASSISTANCE PERIOD [Notice PIH 2021-26 and FYI FAQs; FR Notice 1/24/22]

Vouchers are limited by statute to a total of between 36 months and 60 months of housing assistance. At the end of the statutory time period, assistance must be terminated. However, any period of time for which no subsidy (HAP) is being paid on behalf of the youth does not count toward the limitation. It is not permissible to reissue another FYI TPV to the same youth upon expiration of their FYI assistance.

Participants do not “age out” of the program. A participant may continue with the program until they have received the period of assistance for which they are eligible. Age limits are only applied for entry into the program.

Extension of Assistance

FYI voucher holders who first leased or lease a unit after December 27, 2020, may be eligible for an extension of assistance up to 24 months beyond the 36-month time limit (for a total of 60 months of assistance).

While FYI voucher holders cannot be required to participate in the Family Self-Sufficiency (FSS) program as a condition of receipt of assistance, an eligible youth who participates in the FSS program and is in compliance with the applicable terms and conditions of the program is entitled to receive assistance for up to an additional 24 months. A FYI voucher holder must accept an FSS slot if it is offered to them prior to the 36-month mark in order to receive an extension of assistance (unless the youth meets one of the statutory exceptions described below).

Statutory Exceptions

FYI voucher holders will be entitled to receive an extension of assistance for up to 24 months beyond the 36-month time limit without participating in the PHA’s FSS program if they certify that they meet one of the exceptions below:

- The FYI voucher holder is a parent or other household member responsible for the care of a dependent child under the age of six or for the care of an incapacitated person.

PHA Policy

The PHA defines *incapacitated person* as **[insert definition under state and local law]**. The PHA will apply this exception in a manner that provides extensions of FYI assistance to the broadest population possible consistent with the statutory requirements.

The FYI voucher holder will be required to self-certify that they meet this exception on a PHA-provided form. This certification is the only documentation that the FYI voucher holder must submit.

The child or incapacitated person is not required to reside in the household in order for the FYI voucher holder to certify they meet this exception. For example, a child in a joint custody

arrangement under the age of six who resides in the household only part time may qualify the FYI voucher holder for this exception.

- The FYI voucher holder is a person who is regularly and actively participating in a drug addiction or alcohol treatment and rehabilitation program.

PHA Policy

The PHA will define *regular and active participation* in a manner that provides extensions of FYI voucher holder assistance to the broadest population possible consistent with the statutory requirements.

The FYI voucher holder will be required to self-certify that they meet this exception on a PHA-provided form. This certification is the only documentation that the FYI voucher holder must submit.

- The FYI voucher holder is a person who is incapable of complying with the requirement to participate in a FSS program as described above or engage in education, workforce development, or employment activities as described below, as applicable, due to a documented medical condition.

PHA Policy

The PHA will apply this requirement in a manner that provides extensions of FYI voucher holder assistance to the broadest population possible consistent with statutory requirements.

The FYI voucher holder will be required to self-certify that they meet this exception on a PHA-provided form. This certification is the only documentation that the FYI voucher holder must submit.

An FYI voucher holder that meets one of the above exceptions must still be offered an opportunity to enroll in the PHA's FSS program (if it is available to them) and receive any supportive services available to FYI voucher holders. An FYI voucher holder may choose to participate in an FSS program or engage in education, workforce development, or employment activities, even if they meet one of the above statutory exceptions.

Education, Workforce Development, or Employment Activities

If a PHA that carries out an FSS program is unable to offer a FYI voucher holder an FSS slot during their first 36 months of receiving FYI assistance, the FYI voucher holder is considered to have been "unable to enroll" in the program and may have their voucher extended by meeting the education, workforce development, or employment criteria described below:

- The FYI voucher holder was engaged in obtaining a recognized postsecondary credential or a secondary school diploma or its recognized equivalent.

PHA Policy

The PHA will use the definitions of *recognized postsecondary credential* and *secondary school diploma or its recognized equivalent* under the Workforce Innovation and Opportunity Act (WIOA). WIOA defines a *recognized postsecondary credential* as a credential consisting of an industry-recognized certificate or certification, a certificate of completion of an apprenticeship, a license recognized by the state involved or federal government, or an associate or baccalaureate degree (29 U.S.C. 3102). Examples of a recognized postsecondary credential include, but are not limited to, an associate’s degree, bachelor’s degree, occupational licensure, or occupational certification (see U.S. Department of Labor, Training and Employment Guidance Letter No. 10–16, Change 1). For the purpose of WIOA, the U.S. Department of Labor defines a *secondary school diploma or its recognized equivalent* as a secondary school diploma (or alternate diploma) that is recognized by a state and that is included for accountability purposes under the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the Every Student Succeeds Act (ESSA). A secondary school equivalency certification signifies that a student has completed the requirement for a high school education. Examples of a secondary school diploma or its recognized equivalent include, but are not limited to, obtaining certification of attaining passing scores on a state-recognized high school equivalency test, earning a secondary school diploma or state-recognized equivalent, or obtaining certification of passing a state-recognized competency-based assessment.

- The FYI voucher holder was enrolled in an *institution of higher education*, as such term is defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a)) or an institution that meets the definition of a *proprietary institution of higher education* or a *postsecondary vocational institution* under sections 102(b)(1) and (c)(1) of the Higher Education Act of 1965 (20 U.S.C. 1002(b)(1) and (c)(1)), respectively.

PHA Policy

The FYI voucher holder must be enrolled in education activities on at least a half-time basis, as defined by the institution which they attend. However, the PHA may make exceptions to this requirement if the FYI voucher holder is unable to enroll in a sufficient number of classes due to a lack of course offerings by the educational institution where they are enrolled.

- The FYI voucher holder was participating in a career pathway, as such term is defined in Section 3 of the Workforce Innovation and Opportunity Act (29 U.S.C. 3102).
- The FYI voucher holder was employed.

PHA Policy

The PHA will consider the FYI voucher holder to be employed if they work a minimum of 20 hours per week. The PHA may make exceptions to this requirement if the FYI voucher holder’s hours are reduced due to circumstances beyond their control or the FYI voucher holder must temporarily reduce their work hours due to a verified family emergency.

FSS Enrollment at 24 Months

If the FYI voucher holder has not been provided an opportunity to enroll in the FSS program during the first 24 months of FYI assistance, HUD encourages the PHA to remind the FYI voucher holder at the 24-month reexamination of the education, workforce development, and employment requirements described above so that they have enough time to meet these requirements prior to the expiration of the 36-month time period for FYI assistance.

PHA Policy

If the FYI voucher holder has not been provided an opportunity to enroll in the FSS program during the first 24 months of FYI assistance, the PHA will remind the FYI voucher holder at their second regular reexam of the education, workforce development, and employment requirements described above.

FSS Enrollment Between 36 and 48 Months

If an FSS slot becomes available between the 36-month and 48-month mark:

- The PHA must offer the slot to an FYI voucher holder who had their voucher extended based on meeting the education, workforce development, or employment requirement listed above, or one of the statutory exceptions listed above (even if the FYI voucher holder previously declined an FSS slot because they met one of the statutory exceptions).
- The PHA must work with the FYI voucher holder to determine whether enrollment in FSS is feasible and in their best interest given any education, workforce development, or employment activities that the FYI voucher holder is engaged in and any statutory exceptions that apply to the FYI voucher holder, as well as the remaining time on their voucher.
- If the FYI voucher holder accepts the FSS slot, the PHA must work with them to establish Contract of Participation goals and an Individual Training and Services Plan (ITSP) that can be accomplished within the time period left on the voucher.

If the FYI voucher holder is offered an FSS slot prior to the 36-month mark, the FYI voucher holder:

- Will be required to enroll in the FSS program in order to receive an extension of assistance at the end of the 36-month time period (unless they meet one of the statutory exceptions described above).
- Will not be considered to have been “unable to enroll” in the FSS program, and as a result, will not be eligible to receive an extension of assistance based on meeting the education, workforce development, or employment requirements described above.

FSS Enrollment After 48 Months

The PHA may, but is not required, to offer an FYI voucher holder an FSS slot that becomes available between the 48-month mark and the 60-month mark, since the FYI voucher holder will have already received their second and final extension.

PHA Policy

If an FSS slot becomes available between the 48 and 60-month marks, the PHA will not offer the FSS slot to an FYI voucher holder.

Extensions of Assistance

At the 36-month and 48-month reexamination, the PHA must extend FYI assistance if the FYI voucher holder is participating in and in compliance with the FSS program as long as the FYI voucher holder is still eligible for the HCV program.

In any case, the FYI voucher holder cannot receive more than a total of 60 months of FYI assistance even if the FSS Contract of Participation time period extends beyond the voucher 60-month mark.

No FSS Program or Unable to Enroll in FSS

If a PHA does not carry out an FSS program or the FYI voucher holder has been unable to enroll in the program during the first 36 months of receiving FYI assistance, the FYI voucher holder is entitled to receive an extension of assistance for up to two successive 12-month periods beyond the 36-month time limit provided that the FYI voucher holder engaged in at least one of the education, workforce development, or employment activities described above for not less than nine months of the 12-month period preceding each extension. In order to meet the nine months out of the preceding 12 months requirement, the FYI voucher holder may have engaged in one of the education, workforce development, or employment activities described above or a combination of these activities.

Verification Prior to Annual Reexam

In order to provide an extension of assistance, the PHA must verify compliance with the above requirements at the end of the 36-month time period and the 48-month time periods. The PHA does not need to verify compliance with these requirements at the end of the 60-month time period since the maximum length of assistance is 60 months.

To verify compliance with the education, workforce development, or employment requirement or one of the statutory exceptions, the PHA must provide the FYI voucher holder written notification informing them that they may receive an extension of their FYI assistance and providing instructions on how the FYI voucher holder may demonstrate that they meet one of these conditions. This notification must be provided sufficiently in advance of the end of the 36-month or 48-month time periods, as applicable, to allow the FYI voucher holder to demonstrate that they meet the education, workforce development, or employment requirement, or one of the statutory exceptions, and for the PHA to conduct an annual reexamination prior to the expiration of the FYI assistance.

PHA Policy

The PHA will verify compliance with the education, workforce development, or employment requirement, or one of the statutory exceptions, at the end of the 36-month and 48-month time

periods prior to the FYI voucher holder's scheduled annual reexamination. The PHA will not verify compliance at the end of the 60-month time period.

The PHA will provide each FYI voucher holder on the PHA's program with a written notification informing them that they may receive an extension of their FYI assistance if they meet conditions outlined in this chapter and providing them with instructions on how they may demonstrate compliance at least 60 days prior to their scheduled annual reexam date. When necessary, the PHA will provide this notification in a format accessible to FYI voucher holders with disabilities and in a translated format for FYI voucher holders with limited English proficiency in accordance with Chapter 2.

The PHA will use the following verification methods to verify an FYI voucher holder's eligibility for voucher extensions:

To verify compliance with the FSS requirement, the PHA will examine its records to confirm, or obtain confirmation from the PHA's FSS program staff, that the FYI participant is in compliance with FSS program requirements and has not been terminated from the FSS program.

To meet the education, workforce development, or employment requirement, the PHA will verify that the FYI voucher holder was engaged in at least one education, workforce development, or employment activity for at least nine months of the 12-month period immediately preceding the end of the 36-month or 48-month time period, as applicable.

Due to the timing of when the PHA verifies compliance and conducts the annual reexamination, the FYI voucher holder may have not yet met the nine-month requirement but may be able to demonstrate that they will meet the nine-month requirement as of the end of the 36-month or 48-month time period. In such cases, the FYI voucher holder will still be considered to have met the requirements.

In order for the FYI voucher holder to meet one of the statutory exceptions described above, the FYI voucher holder must submit a certification to the PHA that they meet one of these exceptions. This certification is the only documentation that the FYI voucher holder must submit in order to demonstrate that they meet one of the statutory exceptions.

An FYI voucher holder who received an extension of voucher assistance at the end of the 36-month time period based on meeting one of the conditions described in this chapter does not have to meet the same conditions when they reach the end of the 48-month time period. The FYI voucher holder may demonstrate that they meet a different condition in order to receive an extension of their assistance.

If the PHA determines that the FYI voucher holder meets one of the statutory conditions, the PHA would then conduct an annual reexamination. If the annual reexamination determines that the FYI

voucher holder is still eligible for the HCV program, the PHA must provide the FYI voucher holder the extension of voucher assistance.

Termination of Assistance for Failure to Meet Conditions

Failure of the FYI voucher holder to meet one of the above conditions will only impact their ability to receive subsequent extensions of assistance. It will not serve as a basis for terminating the FYI assistance prior to the annual reexam.

If the FYI voucher holder does not meet any of the statutory conditions described in in this chapter, the youth is subject to the statutory time limit of 36 months or the time limit of any extension that the youth has already received, and the FYI voucher must be terminated once they reach this time limit. The calculation of the time limit begins from the date the first HAP contract is signed (for tenant-based vouchers) or from the date the FYI voucher holder entered into the initial lease agreement (for project-based vouchers). The number of months is calculated based on the number of months that HAP subsidy is being paid on behalf of the FYI voucher holder, not the number of months that they are in the FYI program. Prior to termination, the PHA must offer the FYI voucher holder the opportunity to request an informal hearing, in accordance with Chapter 16.

19-II.I. TERMINATION OF ASSISTANCE [FYI FAQs]

Termination of a FYI voucher is handled in the same way as with any HCV; therefore, termination of a FYI voucher must be consistent with HCV regulations at 24 CFR Part 982, Subpart L and PHA policies in Chapter 12. Given the statutory time limit that requires FYI vouchers to sunset, a PHA must terminate the youth's assistance once the limit on assistance has expired.

A PHA cannot terminate a FYI youth's assistance for noncompliance with PCWA case management, nor may the PHA terminate assistance for a FYI youth for not accepting services from the PCWA.

The PHA may not transfer the assistance of FYI voucher holders to regular HCV assistance upon the expiration of the limit on assistance. However, the PHA may issue a regular HCV to FYI voucher holders if they were selected from the waiting list in accordance with PHA policies. The PHA may also adopt a waiting list preference for FYI voucher holders who are being terminated for this reason.

PHA Policy

The PHA will not provide a selection preference on the PHA's HCV waiting list for FYI voucher holders who are terminated due to the time limit on assistance.

19-II.J. PORTABILITY [FYI FAQs]

Portability for an FYI youth is handled in the same way as for a regular HCV family. A PHA may not restrict or deny portability for an FYI youth for reasons other than those specified in the HCV program regulations, as reflected in Chapter 10 of the administrative plan.

An FYI youth does not have to port to a jurisdiction that administers FYI vouchers.

If the receiving PHA absorbs the voucher, the PHA may absorb the youth into its regular HCV program if it has vouchers available to do so. If the receiving PHA absorbs the youth into its regular HCV program, that youth becomes a regular HCV participant with none of the limitations of an FYI voucher.

The initial and receiving PHA must work together to initiate termination of assistance upon expiration of the time limit on assistance.

19-II.K. PROJECT-BASING FYI VOUCHERS [FYI FAQs; FR Notice 1/24/22]

The PHA may project-base certain FYI vouchers without HUD approval in accordance with all applicable PBV regulations and PHA policies in Chapter 17. This includes FYI vouchers awarded under Notices PIH 2020-28 and PIH 2021-26. Assistance awarded under Notice PIH 2019-20 is prohibited from being project-based.

PHA Policy

The PHA will not project-base FYI vouchers. All FYI vouchers will be used to provide tenant-based assistance.

PART III: VETERANS AFFAIRS SUPPORTIVE HOUSING (VASH) PROGRAM

19-III.A. OVERVIEW

Since 2008, HCV program funding has provided rental assistance under a supportive housing program for homeless veterans. The Veterans Affairs Supportive Housing (VASH) program combines HCV rental assistance with case management and clinical services provided by the Department of Veterans Affairs (VA) at VA medical centers (VAMCs) and Community-Based Outpatient Clinics (CBOCs), or through a designated service provider (DSP) as approved by the VA Secretary. Eligible families are homeless veterans and their families that agree to participate in VA case management and are referred to the VAMC's partner PHA for HCV assistance. The VAMC or DSP's responsibilities include:

- Screening homeless veterans to determine whether they meet VASH program participation criteria;
- Referring homeless veterans to the PHA;
 - The term *homeless veteran* means a veteran who is homeless (as that term is defined in subsection (a) or (b) of Section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302)). See 38 U.S.C. 2002.
- Providing appropriate treatment and supportive services to potential VASH participants, if needed, prior to PHA issuance of a voucher;
- Providing housing search assistance to VASH participants;
- Identifying the social service and medical needs of VASH participants, and providing or ensuring the provision of regular ongoing case management, outpatient health services, hospitalization, and other supportive services as needed throughout the veterans' participation period; and
- Maintaining records and providing information for evaluation purposes, as required by HUD and the VA.

VASH vouchers are awarded noncompetitively based on geographic need and PHA administrative performance. Eligible PHAs must be located within the jurisdiction of a VAMC and in an area of high need based on data compiled by HUD and the VA. When Congress funds a new allocation of VASH vouchers, HUD invites eligible PHAs to apply for a specified number of vouchers.

Generally, the HUD-VASH program is administered in accordance with regular HCV program requirements. However, HUD is authorized to waive or specify alternative requirements to allow PHAs to effectively deliver and administer VASH assistance. Alternative requirements are established in the HUD-VASH Operating Requirements, which were originally published in the Federal Register on May 6, 2008, and updated September 27, 2021. Unless expressly waived by HUD, all regulatory requirements and HUD directives regarding the HCV program are applicable to

VASH vouchers, including the use of all HUD-required contracts and other forms, and all civil rights and fair housing requirements. In addition, the PHA may request additional statutory or regulatory waivers that it determines are necessary for the effective delivery and administration of the program.

The VASH program is administered in accordance with applicable Fair Housing requirements since civil rights requirements cannot be waived under the program. These include applicable authorities under 24 CFR 5.105(a) and 24 CFR 982.53 including, but not limited to, the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act, and the Age Discrimination Act and all PHA policies as outlined in Chapter 2 of this document.

When HUD-VASH recipients include veterans with disabilities or family members with disabilities, reasonable accommodation requirements in Part II of Chapter 2 of this policy apply.

19-III.B. REFERRALS [FR Notice 9/27/21 and HUD-VASH Qs and As]

VAMC case managers will screen all families in accordance with VA screening criteria and refer eligible families to the PHA for determination of program eligibility and voucher issuance. The PHA has no role in determining or verifying the veteran's eligibility under VA screening criteria, including determining the veteran's homelessness status. The PHA must accept referrals from the partnering VAMC and must maintain written documentation of referrals in VASH tenant files. Upon turnover, VASH vouchers must be issued to eligible veteran families as identified by the VAMC.

PHA Policy

In order to expedite the screening process, the PHA will provide all forms and a list of documents required for the VASH application to the VAMC. Case managers will work with veterans to fill out the forms and compile all documents prior to meeting with the PHA and submitting an application. When feasible, the VAMC case manager should email or fax copies of all documents to the PHA prior to the meeting in order to allow the PHA time to review them and start a file for the veteran.

After the VAMC has given the PHA a complete referral, the PHA will perform an eligibility screening within five business days of receipt of a VAMC referral.

19-III.C. HCV PROGRAM ELIGIBILITY [FR Notice 9/27/21]

Eligible participants are homeless veterans and their families who agree to participate in case management from the VAMC.

- A *VASH Veteran* or *veteran family* refers to either a single veteran or a veteran with a household composed of two or more related persons. It also includes one or more eligible persons living with the veteran who are determined to be important to the veteran's care or well-being.

- A veteran for the purpose of VASH is a person whose length of service meets statutory requirements, and who served in the active military, naval, or air service, was discharged or released under conditions other than dishonorable, and is eligible for VA health care.

Under VASH, PHAs do not have authority to determine family eligibility in accordance with HCV program rules and PHA policies. The only reasons for denial of assistance by the PHA are failure to meet the income eligibility requirements and/or that a family member is subject to a lifetime registration requirement under a state sex offender registration program. Under portability, the receiving PHA must also comply with these VASH screening requirements.

Social Security Numbers

When verifying Social Security numbers (SSNs) for homeless veterans and their family members, an original document issued by a federal or state government agency, which contains the name and SSN of the individual along with other identifying information of the individual, is acceptable in accordance with Section 7-II.B. of this policy.

In the case of the homeless veteran, the PHA must accept the Certificate of Release or Discharge from Active Duty (DD-214) or the VA-verified Application for Health Benefits (10-10EZ) as verification of SSN and cannot require the veteran to provide a Social Security card. A VA-issued identification card may also be used to verify the SSN of a homeless veteran.

Proof of Age

The DD-214 or 10-10EZ must be accepted as proof of age in lieu of birth certificates or other PHA-required documentation as outlined in Section 7-II.C. of this policy. A VA-issued identification card may also be used to verify the age of a homeless veteran.

Photo Identification

A VA-issued identification card must be accepted in lieu of another type of government-issued photo identification. These cards may also serve as verification of SSNs and date of birth, if that information is included on the provided VA-issued identification card.

Income Eligibility

The PHA must determine income eligibility for VASH families in accordance with 24 CFR 982.201 and policies in Section 3-II.A. If the family is over-income based on the most recently published income limits for the family size, the family will be ineligible for HCV assistance.

While income-targeting does not apply to VASH vouchers, the PHA may include the admission of extremely low-income VASH families in its income targeting numbers for the fiscal year in which these families are admitted.

PHA Policy

While income-targeting requirements will not be considered by the PHA when families are referred by the partnering VAMC, the PHA will include any extremely low-income VASH families that are admitted in its income targeting numbers for the fiscal year in which these families are admitted.

Screening

The PHA may not screen any potentially eligible family members or deny assistance for any grounds permitted under 24 CFR 982.552 and 982.553 with one exception: the PHAs is still 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, with the exception of denial for registration as a lifetime sex offender under state law and PHA policies on how sex offender screenings will be conducted, PHA policy in Sections 3-III.B. through 3-III.E. do not apply to VASH. The prohibition against screening families for anything other than lifetime sex offender status applies to all family members, not just the veteran.

If a family member is subject to lifetime registration under a state sex offender registration program, the remaining family members may be served if the family agrees to remove the sex offender from its family composition. This is true unless the family member subject to lifetime registration under a state sex offender registration program is the homeless veteran, in which case the family would be denied admission to the program [New HCV GB, *HUD-VASH*, p. 6].

Denial of Assistance [Notice PIH 2008-37]

Once a veteran is referred by the VAMC, the PHA must either issue a voucher or deny assistance. If the PHA denies assistance, it must provide the family with prompt notice of the decision and a brief statement of the reason for denial in accordance with Section 3-III.F. Like in the standard HCV program, the family must be provided with the opportunity for an informal review in accordance with policies in Section 3-III.F. In addition, a copy of the denial notice must be sent to the VAMC case manager.

19-III.D. CHANGES IN FAMILY COMPOSITION

Adding Family Members [FR Notice 9/27/21]

When adding a family member after the family has been admitted to the program, PHA policies in Section 3-II.B. apply. Other than the birth, adoption, or court-awarded custody of a child, the PHA must approve additional family members and will apply its regular screening criteria in doing so.

Remaining Family Members [HUD-VASH Qs and As]

If the homeless veteran dies while the family is being assisted, the voucher would remain with the remaining members of the tenant family. The PHA may use one of its own regular vouchers, if available, to continue assisting this family and free up a VASH voucher for another VASH-eligible

family. If a regular voucher is not available, the family would continue utilizing the VASH voucher. Once the VASH voucher turns over, however, it must go to a homeless veteran family.

Family Break Up [HUD-VASH Qs and As]

In the case of divorce or separation, since the set-aside of VASH vouchers is for veterans, the voucher must remain with the veteran. This overrides the PHA's policies in Section 3-I.C. on how to determine who remains in the program if a family breaks up.

19-III.E. LEASING [FR Notice 9/27/21]

Waiting List

The PHA does not have the authority to maintain a waiting list or apply local preferences for HUD-VASH vouchers. Policies in Chapter 4 relating to applicant selection from the waiting list, local preferences, special admissions, cross-listing, and opening and closing the waiting list do not apply to VASH vouchers.

Exception Payment Standards

To assist VASH participants in finding affordable housing, especially in competitive markets, HUD allows PHAs to establish a HUD-VASH exception payment standard. PHAs may go up to but no higher than 120 percent of the published area-wide fair market rent (FMR) or small area fair market rent (SAFMR) specifically for VASH families. PHAs who want to establish a VASH exception payment standard over 120 percent must still request a waiver from HUD through the regular waiver process outlined in Notice PIH 2018-16.

PHA Policy

DOH has approved an exception payment standard of 120% of FMR or SAFMR for all HUD-VASH participants.

Voucher Issuance

Unlike the standard HCV program which requires an initial voucher term of at least 60 days, VASH vouchers must have an initial search term of at least 120 days. PHA policies on extensions as outlined in Section 5-II.E. will apply.

PHA Policy

All VASH vouchers will have an initial term of 120 calendar days.

The family must submit a Request for Tenancy Approval and proposed lease within the 120-day period unless the PHA grants an extension.

The PHA must track issuance of HCVs for families referred by the VAMC or DSP in PIC as required in Notice PIH 2011-53.

Initial Lease Term

Unlike in the standard the HCV program, VASH voucher holders may enter into an initial lease that is for less than 12 months. Accordingly, PHA policy in Section 9-I.E., Term of Assisted Tenancy, does not apply.

Ineligible Housing [FR Notice 6/18/14]

Unlike in the standard HCV program, VASH families are permitted to live on the grounds of a VA facility in units developed to house homeless veterans. This applies to both tenant-based assistance and PBV. Therefore, 24 CFR 982.352(a)(5) and 983.53(a)(2), which prohibit units on the physical grounds of a medical, mental, or similar public or private institution, do not apply to VASH for this purpose only. Accordingly, PHA policy in 9-I.D., Ineligible Units, does not apply for this purpose only.

HQS Pre-Inspections

To expedite the leasing process, PHAs may pre-inspect available units that veterans may be interested in leasing in order to maintain a pool of eligible units. If a VASH family selects a unit that passed an HQS inspection (without intervening occupancy) within 45 days of the date of the Request for Tenancy Approval (Form HUD-52517), the unit may be approved if it meets all other conditions under 24 CFR 982.305. However, the veteran must be free to select their unit and cannot be steered to these units.

PHA Policy

To expedite the leasing process, the PHA may pre-inspect available units that veterans may be interested in leasing to maintain a pool of eligible units. If a VASH family selects a unit that passed a HQS pre-inspection (without intervening occupancy) within 45 days of the date of the RTA, the unit may be approved provided that it meets all other conditions under 24 CFR 982.305. The veteran will be free to select their unit.

When a pre-inspected unit is not selected, the PHA will make every effort to fast-track the inspection process, including adjusting the normal inspection schedule for both initial and any required reinspections.

19-III.F. PORTABILITY [FR Notice 9/27/21 and Notice PIH 2011-53]

General Requirements

Portability policies under VASH depend on whether the family wants to move within or outside of the initial VA facility's catchment area (the area in which the VAMC or DSP operates). In all cases,

the initial VA facility must be consulted prior to the move and provide written confirmation that case management will continue to be provided in the family's new location. VASH participant families may only reside in jurisdictions that are accessible to case management services, as determined by case managers at the partnering VAMC or DSP.

Under VASH, applicant families may move under portability even if the family did not have legal residency in the jurisdiction of the initial PHA when they applied. As a result, PHA policies in Section 10-II.B. about nonresident applicants do not apply.

If the family no longer requires case management, there are no portability restrictions. Normal portability rules apply.

Portability within the Initial VAMC or DSP's Catchment Area

A VASH family can move within the VAMC's catchment area as long as case management can still be provided, as determined by the VA. If the initial PHA's partnering VAMC will still provide the case management services, the receiving PHA must process the move in accordance with portability procedures:

- If the receiving PHA has been awarded VASH vouchers, it can choose to either bill the initial PHA or absorb the family if it has a VASH voucher available to do so.
 - If the PHA absorbs the family, the VAMC or DSP providing the initial case management must agree to the absorption and the transfer of case management.
- If the receiving PHA does not administer a VASH program, it must always bill the initial PHA.

Portability Outside of the Initial VAMC or DSP's Catchment Area

If a family wants to move to another jurisdiction where it will not be possible for the initial PHA's partnering VAMC or DSP to provide case management services, the initial VAMC or DSP must first determine that the VASH family could be served by another VAMS or DSP that is participating in the VASH program, and the receiving PHA has an available VASH voucher.

In these cases, the family must be absorbed by the receiving PHA either as a new admission or as a portability move-in, as applicable. Upon absorption, the initial PHA's VASH voucher will be available to lease to a new VASH-eligible family, and the absorbed family will count toward the number of VASH slots awarded to the receiving PHA.

Portability Outside of the Initial VAMC or DSP's Catchment Area under VAWA

Veterans who request to port beyond the catchment area of the VAMC or DSP where they are receiving case management to protect the health or safety of a person who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, and who reasonably believes they are

threatened with imminent harm from further violence by remaining in the unit may port prior to receiving approval from the receiving VAMC or DSP. The initial PHA must follow its emergency transfer plan (see Exhibit 16-3). PHAs may require verbal self-certification or a written request from a participant seeing a move beyond the catchment area of the VAMC or DSP.

The verbal self-certification or written request must include either a statement expressing why the participant reasonably believes that there is a threat of imminent harm from further violence if they were to remain in the same unit or a statement that the tenant was a sexual assault victim and that the sexual assault occurred on the premises during the 90-day period preceding the participants request for the move.

The participant must still port to a PHA that has a VASH program. If the receiving PHA does not have a VASH voucher available to lease, they may bill the initial PHA until a VASH voucher is available, at which point the porting veteran must be absorbed into the receiving PHA's program.

19-III.G. TERMINATION OF ASSISTANCE [FR Notice 9/27/21]

With the exception of terminations for failure to receive case management, HUD has not established any alternative requirements for termination of assistance for VASH participants. However, prior to terminating VASH participants, HUD strongly encourages PHAs to exercise their discretion under 24 CFR 982.552(c)(2) as outlined in Section 12-II.D. of this policy and consider all relevant circumstances of the specific case. This includes granting reasonable accommodations for persons with disabilities, as well as considering the role of the case manager and the impact that ongoing case management services can have on mitigating the conditions that led to the potential termination.

VASH participant families may not be terminated after admission for a circumstance or activities that occurred prior to admission and were known to the PHA but could not be considered at the time of admission due to VASH program requirements. The PHA may terminate the family's assistance only for program violations that occur after the family's admission to the program.

Cessation of Case Management

As a condition of receiving HCV rental assistance, a HUD-VASH-eligible family must receive case management services from the VAMC or DSP. A VASH participant family's assistance must be terminated for failure to participate, without good cause, in case management as verified by the VAMC or DSP.

However, a VAMC or DSP determination that the participant family no longer requires case management is not grounds for termination of voucher or PBV assistance. In such a case, at its option, the PHA may offer the family continued assistance through one of its regular vouchers. If the PHA has no voucher to offer, the family will retain its VASH voucher or PBV unit until such time as the PHA has an available voucher for the family.

VAWA [FR Notice 9/27/21]

When a veteran's family member is receiving protection under VAWA because the veteran is the perpetrator of domestic violence, dating violence, sexual assault, or stalking, the victim must continue to be assisted. Upon termination of the perpetrator's VASH assistance, the victim must be given a regular HCV if one is available, and the perpetrator's VASH voucher must be used to serve another eligible veteran family. If a regular HCV is not available, the perpetrator must be terminated from assistance and the victim will continue to use the VASH voucher.

19-III.H. PROJECT-BASING VASH VOUCHERS

General Requirements [Notice PIH 2017-21 and FR Notice 9/27/21]

PHAs are authorized to project-base their tenant-based VASH vouchers without additional HUD review or approval in accordance with Notice PIH 2017-21 and all PBV program requirements provided that the VAMC will continue to make supportive services available. In addition, since 2010, HUD has awarded VASH vouchers specifically for project-based assistance in the form of PBV HUD-VASH set-aside vouchers. While these vouchers are excluded from the PBV program cap as long as they remain under PBV HAP contract at the designated project, all other VASH vouchers are subject to the PBV program percentage limitation discussed in Section 17-I.A. Note that VASH supportive services only need to be provided to VASH families receiving PBV assistance in the project, not all families receiving PBV assistance in the project. If a VASH family does not require or no longer requires case management, the unit continues to count as an excepted PBV unit as long as the family resides in the unit.

If the PHA project-bases VASH vouchers, the PHA must consult with the partnering VAMC or DSP to ensure approval of the project or projects. PHAs may project-base VASH vouchers in projects alongside other PBV units and may execute a single HAP contract covering both the VASH PBVs and the other PBVs. The PHA must refer only VASH families to PBV units exclusively made available to VASH families and to PBV units funded through a HUD set-aside award.

If a VASH family is referred to the PHA and there is an available PBV unit that is not exclusively made available to VASH families, the PHA may offer to refer the family to the owner if allowable under the selection policy for that project, and the owner and PHA may amend the HAP contract to designate the PBV unit as a VASH PBV unit.

The PHA and owner may agree to amend a PBV HAP contract to redesignate a regular PBV unit as a unit specifically designated for VASH families so long as the PHA first consults with the VAMC or DSP. Additionally, the PHA and owner may agree to amend a PBV HAP contract to redesignate a unit specifically designated for VASH families as a regular PBV unit, so long as the unit is not funded through a VASH PBV set-aside award and is eligible for regular PBV (i.e., the unit is not on the grounds of a medical facility and the unit is eligible under the PHA's program and project caps).

Policies for VASH PBV units will generally follow PHA policies for the standard PBV program as listed in Chapter 17, with the exception of the policies listed below.

Failure to Participate in Case Management [FR Notice 9/27/21]

Upon notification by the VAMC or DSP of the family's failure to participate, without good cause, in case management, the PHA must provide the family a reasonable time period to vacate the unit. The PHA must terminate assistance to the family at the earlier of either the time the family vacates or the expiration of the reasonable time period given to vacate.

PHA Policy

Upon notification by the VAMC or DSP that a VASH PBV family has failed to participate in case management without good cause, the PHA will provide written notice of termination of assistance to the family and the owner within 10 business days. The family will be given 30 days from the date of the notice to move out of the unit.

The PHA 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.

If the family fails to vacate the unit within the established time, the owner may evict the family. If the owner does not evict the family, the PHA must remove the unit from the HAP contract or amend the HAP contract to substitute a different unit in the project if the project is partially assisted. The PHA may add the removed unit to the HAP contract after the ineligible family vacates the property.

Moves [HUD-VASH Qs and As, FR Notice 9/27/21]

When a VASH PBV family is eligible to move from its PBV unit in accordance with Section 17-VIII.C. of this policy, but there is no other comparable tenant-based rental assistance, the following procedures must be implemented:

- If a VASH tenant-based voucher is not available at the time the family wants (and is eligible) to move, the PHA may require a family who still requires case management to wait for a VASH tenant-based voucher for a period not to exceed 180 days;
- If a VASH tenant-based voucher is still not available after that period, the family must be allowed to move with its VASH voucher. Alternatively, the PHA may allow the family to move with its VASH voucher without having to meet this 180-day period. In either case, the PHA is required to replace the assistance in the PBV unit with one of its regular vouchers, unless the PHA and owner agree to temporarily remove the unit from the HAP contract; and
- If a VASH veteran is determined to no longer require case management, the PHA must allow the family to move with the first available tenant-based voucher if not VASH voucher is immediately available and cannot require the family to wait for a VASH voucher to become available.

PART IV: MAINSTREAM VOUCHER PROGRAM

19-IV.A. PROGRAM OVERVIEW [Notice PIH 2020-01]

Mainstream vouchers assist non-elderly persons with disabilities and their families in the form of either project-based or tenant-based voucher assistance.

Aside from separate funding appropriations and serving a specific population, Mainstream vouchers follow the same program requirements as standard vouchers. The PHA does not have special authority to treat families that receive a Mainstream voucher differently from other applicants and participants. For example, the PHA cannot apply different payment standards, establish conditions for allowing portability, or apply different screening criteria to Mainstream families.

The Mainstream voucher program, (previously referred to as the Mainstream 5-Year program or the Section 811 voucher program) was originally authorized under the National Affordable Housing Act of 1990. Mainstream vouchers operated separately from the regular HCV program until the passage of the Frank Melville Supportive Housing Investment Act of 2010. Funding for Mainstream voucher renewals and administrative fees was first made available in 2012. In 2017 and 2019, incremental vouchers were made available for the first time since the Melville Act (in addition to renewals and administrative fees), and PHAs were invited to apply for a competitive award of Mainstream vouchers under the FY17 and FY19 NOFAs. In 2020, Notice PIH 2020-22 provided an opportunity for any PHA administering an HCV program to apply for Mainstream vouchers noncompetitively, while Notice PIH 2020-09 authorized an increase in Mainstream voucher units and budget authority for those PHAs already awarded Mainstream vouchers under the FY17 and FY19 NOFAs.

Funds for Mainstream vouchers may be recaptured and reallocated if the PHA does not comply with all program requirements or fails to maintain a utilization rate of 80 percent for the PHA's Mainstream vouchers.

19-IV.B. ELIGIBLE POPULATION [Notice PIH 2020-01 and Notice PIH 2020-22]

All Mainstream vouchers must be used to serve non-elderly persons with disabilities and their families, defined as any family that includes a person with disabilities who is at least 18 years old and not yet 62 years old as of the effective date of the initial HAP contract. The eligible disabled household member does not need to be the head of household.

The definition of person with disabilities for purposes of Mainstream vouchers is the statutory definition under section 3(b)(3)(E) of the 1937 Act, which is the same as is used for allowances and deductions in the HCV program and is provided in Exhibit 3-1 of this policy.

Existing families receiving Mainstream vouchers, where the eligible family member is now age 62 or older, will not "age out" of the program as long as the family was eligible on the day it was first assisted under a HAP contract.

The PHA may not implement eligibility screening criteria for Mainstream vouchers that is different from that of the regular HCV program.

19-IV.C. PARTNERSHIP AND SUPPORTIVE SERVICES [Notice PIH 2020-01]

PHAs are encouraged but not required to establish formal and informal partnerships with a variety of organizations that assist persons with disabilities to help ensure eligible participants find and maintain stable housing.

PHA Policy

The PHA will implement a Mainstream program, in partnership with current existing partners that include community mental health centers, intellectual and developmental disability agencies, and homeless service providers.

19-IV.D. WAITING LIST ADMINISTRATION

General Waiting List Requirements [Notice PIH 2020-01 and Mainstream Voucher Basics Webinar, 10/15/20]

PHAs must not have a separate waiting list for Mainstream voucher assistance since the PHA is required by the regulations to maintain one waiting list for tenant-based assistance [24 CFR 982.204(f)]. All PHA policies on opening, closing, and updating the waiting list, as well as waiting list preferences in Chapter 4, apply to the Mainstream program.

When the PHA is awarded Mainstream vouchers, these vouchers must be used for new admissions to the PHA's program from the waiting list. The PHA must lease these vouchers by pulling the first Mainstream-eligible family from its tenant-based waiting list. PHAs are not permitted to reassign existing participants to the program in order to make regular tenant-based vouchers available. Further, the PHA may not skip over Mainstream-eligible families on the waiting list because the PHA is serving the required number of Mainstream families.

Upon turnover, vouchers must be provided to Mainstream-eligible families. If a Mainstream turnover voucher becomes available, the PHA must determine if the families at the top of the waiting list qualify under program requirements.

Admission Preferences [Notice PIH 2020-01; FY17 Mainstream NOFA; FY19 Mainstream NOFA]

If the PHA claimed points for a preference in a NOFA application for Mainstream vouchers, the PHA must adopt a preference for at least one of the targeted groups identified in the NOFA.

PHA Policy

The PHA claimed a preference for a targeted group as part of an application for Mainstream vouchers under a NOFA. The PHA will offer the following preference:

- transitioning out of institutional and other segregated settings
- currently experiencing homelessness
- previously experienced homelessness and currently a client in a permanent supportive housing or rapid rehousing program

19-IV.E. PORTABILITY [Notice PIH 2020-01 and Mainstream Voucher Basics Webinar, 10/15/20]

Mainstream voucher participants are eligible for portability under standard portability rules and all PHA policies regarding portability in Chapter 10, Part II apply to Mainstream families.

The following special considerations for Mainstream vouchers apply under portability:

- If the receiving PHA has a Mainstream voucher available, the participant may remain a Mainstream participant.
 - If the receiving PHA chooses to bill the initial PHA, then the voucher will remain a Mainstream voucher.
 - If the receiving PHA chooses to absorb the voucher, the voucher will be considered a regular voucher, or a Mainstream voucher if the receiving PHA has a Mainstream voucher available, and the Mainstream voucher at the initial PHA will be freed up to lease to another Mainstream-eligible family.
- If the receiving PHA does not have a Mainstream voucher available, the participant may receive a regular voucher.

19-IV.F. PROJECT-BASING MAINSTREAM VOUCHERS [FY19 Mainstream Voucher NOFA Q&A]

The PHA may project-base Mainstream vouchers in accordance with all applicable PBV regulations and PHA policies in Chapter 17. PHAs are responsible for ensuring that, in addition to complying with project-based voucher program requirements, the project complies with all applicable federal nondiscrimination and civil rights statutes and requirements. This includes, but is not limited to, Section 504 of the Rehabilitation Act (Section 504), Titles II or III of the Americans with Disabilities (ADA), and the Fair Housing Act and their implementing regulations at 24 CFR Part 8; 28 CFR Parts 35 and 36; and 24 CFR Part 100. Mainstream vouchers are subject to the PBV program percentage limitation discussed in Section 17-I.A.

PART V: NON-ELDERLY DISABLED (NED) VOUCHERS

19-V.A. PROGRAM OVERVIEW [Notice PIH 2013-19]

NED vouchers help non-elderly disabled families lease suitable, accessible, and affordable housing in the private market. Aside from separate funding appropriations and serving a specific population, NED vouchers follow the same program requirements as standard vouchers. The PHA does not have special authority to treat families that receive a NED voucher differently from other applicants and participants.

Some NED vouchers are awarded to PHAs through competitive NOFAs. The NOFA for FY2009 Rental Assistance for NED made incremental funding available for two categories of NED families:

- **Category 1** vouchers enable non-elderly persons or families with disabilities to access affordable housing on the private market.
- **Category 2** vouchers enable non-elderly persons with disabilities currently residing in nursing homes or other healthcare institutions to transition into the community. PHAs with NED Category 2 vouchers were required to partner with a state Medicaid or health agency or the state Money Follows the Person (MFP) Demonstration agency.

Since 1997, HCVs for NED families have been also awarded under various special purpose HCV programs: Rental Assistance for Non-Elderly Persons with Disabilities in Support of Designated Housing Plans (Designated Housing), Rental Assistance for Non-Elderly Persons with Disabilities Related to Certain Types of Section 8 Project-Based Developments (Certain Developments), One-Year Mainstream Housing Opportunities for Persons with Disabilities, and the Project Access Pilot Program (formerly Access Housing 2000).

- **Designated Housing** vouchers enable non-elderly disabled families, who would have been eligible for a public housing unit if occupancy of the unit or entire project had not been restricted to elderly families only through an approved Designated Housing Plan, to receive rental assistance. These vouchers may also assist non-elderly disabled families living in a designated unit/project/building to move from that project if they so choose. The family does not have to be listed on the PHA's voucher waiting list. Instead, they may be admitted to the program as a special admission. Once the impacted families have been served, the PHA may begin issuing these vouchers to non-elderly disabled families from their HCV waiting list. Upon turnover, these vouchers must be issued to non-elderly disabled families from the PHA's HCV waiting list.
- **Certain Developments** vouchers enable non-elderly families having a person with disabilities, who do not currently receive housing assistance in certain developments where owners establish preferences for, or restrict occupancy to, elderly families, to obtain affordable housing. These non-elderly families with a disabled person do not need to be listed on the PHA's HCV waiting list in order to be offered and receive housing choice voucher

rental assistance. It is sufficient that these families' names are on the waiting list for a covered development at the time their names are provided to the PHA by the owner. Once the impacted families have been served, the PHA may begin issuing these vouchers to non-elderly disabled families from their HCV waiting list. Upon turnover, these vouchers must be issued to non-elderly disabled families from the PHA's HCV waiting list.

- **One-Year Mainstream Housing Opportunities for Persons with Disabilities (One-Year Mainstream) vouchers** enable non-elderly disabled families on the PHA's waiting list to receive a voucher. After initial leasing, turnover vouchers must be issued to non-elderly disabled families from the PHA's voucher waiting list.

19-V.B. ELIGIBLE POPULATION

General Requirements [Notice PIH 2013-19]

Only eligible families whose head of household, spouse, or cohead is non-elderly (under age 62) and disabled may receive a NED voucher. Families with only a minor child with a disability are not eligible.

In cases where the qualifying household member now qualifies as elderly due to the passage of time since the family received the NED voucher, existing NED participant families do not "age out," as the family was eligible on the day it was first assisted under a housing assistance payments (HAP) contract.

The definition of person with disabilities for purposes of NED vouchers is the statutory definition under Section 3(b)(3)(E) of the 1937 Act, which is the same as is used for allowances and deductions in the HCV program and is provided in Exhibit 3-1 of this policy.

The PHA may not implement eligibility screening criteria for NED vouchers that is different from that of the regular HCV program.

NED Category 2 [Notice PIH 2013-19 and NED Category 2 FAQs]

In addition to being eligible for the PHA's regular HCV program and a non-elderly person with a disability, in order to receive a Category 2 voucher, the family's head, spouse, cohead, or sole member must be transitioning from a nursing home or other healthcare institution and provided services needed to live independently in the community.

Nursing homes or other healthcare institutions may include intermediate care facilities and specialized institutions that care for those with intellectual disabilities, developmentally disabled, or mentally ill, but do not include board and care facilities (e.g., adult homes, adult day care, adult congregate living).

The PHA cannot limit who can apply to just those persons referred or approved by a Money Follows the Person (MFP) Demonstration agency or state health agency. Other individuals could be placed on

the waiting list if they can show, with confirmation by an independent agency or organization that routinely provides such services (this can be the MFP or partnering agency, but need not be), that the transitioning individual will be provided with all necessary services, including care or case management.

For each Category 2 family, there must be documentation (e.g., a copy of a referral letter from the partnering or referring agency) in the tenant file identifying the institution where the family lived at the time of voucher issuance.

19-V.C. WAITING LIST

General Requirements [Notice PIH 2013-19]

Families must be selected for NED vouchers from the PHA's waiting list in accordance with all applicable regulations and PHA policies in Chapter 4.

Regardless of the number of NED families the PHA is required to serve, the next family on the waiting list must be served. Further, the PHA may not skip over NED-eligible families on the waiting list because the PHA is serving the required number of NED families.

NED Category 2 Referrals [NED Category 2 FAQs]

For NED Category 2 families, the partnering agency may make referrals of eligible families to the PHA for placement on the waiting list. The PHA will then select these families from the waiting list for voucher issuance. Because language in the NOFA established that vouchers awarded under the NOFA must only serve non-elderly disabled families transitioning from institutions, the PHA does not need to establish a preference in order to serve these families ahead of other families on the PHA's waiting list.

PHAs must accept applications from people living outside their jurisdictions or from people being referred from other Medicaid or MFP service agencies in their state.

If the PHA's waiting list is closed, the PHA must reopen its waiting list to accept referrals from its partnering agency. When opening the waiting list, PHAs must advertise in accordance with 24 CFR 982.206 and PHA policies in Section 4-II.C. In addition, the PHA must ensure that individuals living in eligible institutions are aware when the PHA opens its waiting list by reaching out to social service agencies, nursing homes, intermediate care facilities and specialized institutions in the local service area.

Reissuance of Turnover Vouchers [Notice PIH 2013-19]

All NED turnover vouchers must be reissued to the next NED family on the PHA's waiting list with the following exception: A Category 2 voucher must be issued to another Category 2 family upon turnover if a Category 2 family is on the PHA's waiting list. If there are no Category 2 families on the PHA's waiting list, the PHA must contact its partnering agency as well as conduct outreach through

appropriate social service agencies and qualifying institutions to identify potentially eligible individuals. Only after all means of outreach have been taken to reach Category 2 families can the PHA reissue the voucher to another Category 2 NED family on the PHA's waiting list. Any subsequent turnover of that voucher must again be used for a Category 2 family on the PHA's waiting list, and the PHA is under the same obligation to conduct outreach to Category 2 families if no such families are on the PHA's waiting list.

For PHAs that received both Category 1 and Category 2 vouchers, if at any time the PHA is serving fewer Category 2 families than the number of Category 2 HCVs awarded under the NOFA, when a Category 2 family applies to the waiting list and is found eligible, the PHA must issue the next NED voucher to that family. HUD monitors the initial leasing and reissuance of Category 2 HCVs. These vouchers may be recaptured and reassigned if not leased properly and in a timely manner.

All NED vouchers should be affirmatively marketed to a diverse population of NED-eligible families to attract protected classes least likely to apply. If at any time following the turnover of a NED HCV a PHA believes it is not practicable to assist NED families, the PHA must contact HUD.

19-V.D. LEASE UP [Notice PIH 2013-19]

Briefings

In addition to providing families with a disabled person a list of accessible units known to the PHA, HUD encourages, but does not require, PHAs to provide additional resources to NED families as part of the briefing.

PHA Policy

In addition to providing families with a disabled person a list of accessible units known to the PHA, the PHA will provide a list of local supportive service and disability organizations that may provide such assistance as counseling services and funding for moving expenses or security deposits in the briefing packet. These organizations include state protection and advocacy agencies, Centers for Independent Living, state Medicaid agencies, and disability advocacy groups that represent individuals with a variety of disabilities.

Further, if other governmental or non-governmental agencies provide available resources such as housing search counseling, moving expenses, security deposits, and utility deposits, the PHA will include this information in the briefing packet.

The PHA will also offer specialized housing search assistance to families with a disabled person to locate accessible units if requested. Trained PHA staff or a local supportive service or disability organization may be able to provide this service.

Voucher Term

While the PHA is not required to establish different policies for the initial term of the voucher for NED vouchers, HUD has encouraged PHAs with NED vouchers to be generous in establishing reasonable initial search terms and subsequent extensions for families with a disabled person.

PHA Policy

All NED vouchers will have an initial term of 120 calendar days.

The family must submit a Request for Tenancy Approval and proposed lease within the 120-day period unless the PHA grants an extension.

All other PHA policies on extensions and suspension of vouchers in Section 5-II.E. will apply.

Special Housing Types [Notice PIH 2013-19 and NED Category 2 FAQs]

In general, a PHA is not required to permit families to use any of the special housing types and may limit the number of families using such housing. However, the PHA must permit the use of a special housing type if doing so provides a reasonable accommodation so that the program is readily accessible to and usable by a person with disabilities.

Such special housing types include single room occupancy housing, congregate housing, group homes, shared housing, cooperative housing, and manufactured homes when the family owns the home and leases the manufactured home space.

Persons with disabilities transitioning out of institutional settings may choose housing in the community that is in a group or shared environment or where some additional assistance for daily living is provided for them on site. Under HUD regulations, group homes and shared housing are considered special housing types and are not excluded as an eligible housing type in the HCV program. Assisted living facilities are also considered eligible housing under the normal HCV program rules, as long as the costs for meals and other supportive services are not included in the housing assistance payments (HAP) made by the PHA to the owner, and as long as the person does not need continual medical or nursing care.

19-V.E. PORTABILITY [NED Category 2 FAQs]

NED voucher participants are eligible for portability under standard portability rules and all PHA policies regarding portability in Chapter 10, Part II apply to NED families. However, the PHA may, but is not required to, allow applicant NED families to move under portability, even if the family did not have legal residency in the initial PHA's jurisdiction when they applied.

PHA Policy

If neither the head of household nor the spouse or cohead of a NED applicant family had a domicile (legal residence) in the PHA'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.

The PHA will consider exceptions to this policy for purposes of reasonable accommodation (see Chapter 2) or reasons related to domestic violence, dating violence, sexual assault, or stalking.

Chapter 20

CONTINUUM OF CARE (CoC) PERMANENT SUPPORTIVE HOUSING (PSH) Formally known as Shelter Plus Care Program

This section of the Administrative Plan will govern all Continuum of Care (CoC) Permanent Supportive Housing (PSH) vouchers funded through the U.S. Department of Housing and Urban Development (HUD) CoC program and 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. Any policies or procedures not specifically covered by this section are governed by the HCV Administrative Plan and subsequent policy updates 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 for the CoC PSH program to be successful. Additional CoC PSH information, such as grant administration processes and financial management, can be found in the “*Continuum of Care Program Financial and Program Management Policies and Procedures*” document.

PART I: POLICY

1. OVERVIEW

HUD’s CoC PSH program provides non-time limited rental assistance for persons experiencing homelessness. CoC PSH applications must be referred through a regional Coordinated Entry System.

CoCs are HUD-designated regional planning bodies across the United States that promote a community-wide commitment to the goal of ending homelessness. Colorado is outlined geographically by four CoCs: the seven-county Metro Denver Homeless Initiative (MDHI) in the Denver metro region; the one-county Pikes Peak CoC in El Paso County; the 54-county Balance of State CoC, which includes Alamosa, Grand Junction, Pueblo, and Fremont Counties for the DOH PSH CoC program; and the two-county Northern Colorado (NoCO) CoC, represented by Larimer and Weld Counties. Annually, HUD releases a CoC Notice of Funding Opportunity (NOFO), through which CoCs are responsible for submitting the CoC region’s Consolidated Application. DOH CoC PSH funds are applied for and awarded through this competitive annual NOFO process. DOH plays an active role in each CoC by participating in boards, committees, and other partnerships.

The CoC PSH program is administered by DOH’s Office of Homeless Initiatives (OHI). OHI provides leadership on homelessness and housing in partnership with local, state, and federal stakeholders to build, promote, and support collaborative approaches to make homelessness rare, brief, and one-time in Colorado. OHI’s vision is to advance solutions that combine affordable housing with accessible services so no one languishes in homelessness. OHI operates all of its programs using the Housing First¹ philosophy. National research shows that Housing First is highly effective when working with individuals and families experiencing homelessness.

CoC PSH provides non-time limited housing and access to supportive services for persons experiencing homelessness, with a priority for those with disabilities. The program allows for a variety of housing choices and access to a range of supportive services based on the individualized needs of program participants. Additional state, local, and private sources may supplement services or other programmatic costs at a minimum match amount of 25 percent of the grant total.

The CoC PSH program is governed by the following Federal Regulations:

The Homeless Emergency Assistance and Rapid Transition to Housing (HEARTH) Act of 2009²: This Act consolidated and amended 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 was designed to improve administrative efficiency and enhance response coordination and effectiveness in addressing the needs of homeless persons. The homeless eligibility criteria and definition of disability were amended under this Act.

HEARTH Homeless Final Rule (24 CFR Parts 91, 582, and 583)³: The Homeless Final Rule was published in the Federal Register on December 5, 2011, and integrates the regulation for the definition of “homeless,” and the corresponding recordkeeping requirements, for the Emergency Solutions Grants program and the CoC PSH program. This final rule also establishes the regulation for the definition of “developmental disability” and the definition and recordkeeping requirements for “homeless individual with a disability” for the CoC PSH program.

HEARTH Continuum of Care (CoC) Interim Rule (24 CFR Part 578)⁴: This is the primary regulation that governs all CoC programs including DOH’s CoC PSH program. This interim rule focuses on regulatory implementation of the new CoC Program, including the development and planning process for the CoC itself. This rule establishes the regulations for the CoC program, and, through the establishment of such regulations, the funding made available for the CoC program in the statute ensures HUD’s funding can be quickly disbursed, is consistent with the HEARTH Act requirements, and avoids disruption in current CoC activities.

HEARTH Chronically Homeless Final Rule (24 CFR, Part 91 and 578)⁵: This final rule establishes the definition of “chronically homeless” that is used in HUD's CoC Program, and in the Consolidated Submissions for HUD’s Community Planning and Development (CPD) Programs. The final rule also establishes the necessary recordkeeping requirements that correspond to the definition of “chronically homeless” for the CoC Program. The final regulation was published in the Federal Register on December 4, 2015. CoC recipients must comply with the regulations promulgated by this rule as of January 15, 2016.

Notice CPD-14-012: Prioritizing Persons Experiencing Chronic Homelessness in Permanent Supportive Housing and Recordkeeping Requirements for Documenting Chronic Homeless Status⁶: This notice provides guidance regarding the order in which eligible households should be prioritized for CoC-funded PSH and the recordkeeping requirements for establishing Chronic Homelessness verification.

2. ELIGIBILITY

To be eligible for the CoC PSH program the applicant head of household must:

- Meet the HUD homeless definition as it applies to the PSH program. Priority must be given to those who meet the Chronically Homeless definition.⁵
- 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.
- Be referred through a regional Coordinated Assessment (also referred to as Coordinated Entry) System.⁶
- Fall below extremely [low-income limits](#) (defined as 0 – 30% of Area Median Income, or AMI).
- Qualify on the basis of citizenship or the eligible immigrant status of household members.

Eligibility criteria and documentation requirements are explained in detail in the CoC PSH referral packet the applicant and supportive service staff submit to DOH for acceptance into the program.

SCREENING FOR ELIGIBILITY

In line with Housing First, DOH does not require partner agencies to run criminal background checks on the applicant head of household in the CoC PSH program for screening purposes. DOH’s partner agencies may obtain criminal background records and credit history in order to gain an understanding of any potential challenges to securing and maintaining a unit. The partner agency will perform a criminal background check for any person 18 year of age or older included in the initial application or requesting to be added to the household. A National Sex Offender Public Website (NSOPW) check is required for all persons 14-years-of-age or older, not including Head of Household.

DOH may deny the addition of any persons based on the HCV program's criteria for denial. 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 a copy of the record must be made available with an opportunity for the applicant to dispute the accuracy and relevance of the information in the informal review process in accordance with program requirements [24 CFR 5.903(f), 5.905(d), and 24 CFR 982.553(d)].

3. APPLICATIONS, WAITING LIST AND TENANT SELECTION

Unlike HCV, there is not a waiting list for CoC PSH vouchers. DOH enters available CoC PSH vouchers into each regional Coordinated Assessment System.⁷ Voucher Administrating Agencies follow each Coordinated Entry System protocol for informing applicants they have been matched to a housing resource. Persons who are matched to a DOH CoC PSH voucher will complete a referral packet that contains the following documents:

- Referral Cover Sheet
- HMIS Release of Information
- HMIS Intake Form
- Chronic Homeless Verification Form
- Chronic Homeless Documentation Packet
- Verification of Disability
- Declaration of 214 Status
- DOH Authorization for the Release of Information
- Vital Documents (Social Security Card, ID, Birth Certificate) or receipts of requests
- Proof of Income or Zero Income Reporting Form

Completed packets are sent to the DOH team for approval. DOH reviews the application within five business days and either requests more documentation, or approves the application. If the application is approved by DOH, the partner agency will schedule the briefing. Partner agencies are encouraged to include any supportive service staff that assisted with the application, especially in situations where the person's disability might cause misunderstanding of what is covered in the briefing.

NOTIFICATION OF SELECTION

Each CoC has developed a system of selection and notification for persons selected for CoC PSH assistance through the region's Coordinated Entry System. The Coordinated Entry System, supportive service teams, and the voucher management agency will conduct multiple outreach attempts to locate the applicant. If the agency is unable to contact the applicant after reasonable outreach attempts have been made, then another applicant may be selected.

4. BRIEFINGS AND RENTAL ASSISTANCE DOCUMENT ISSUANCE

The CoC PSH briefing is largely in line with the HCV process, covered in this Administrative Plan’s chapter regarding Briefings and Voucher Issuance. A CoC PSH Rental Assistance Document (RAD) is distributed in place of a “voucher” to the applicant during the briefing. The RAD is similar to the HCV program “voucher” and allows the applicant to search for a unit, but does not guarantee admission to the program. When conducting the mandatory applicant briefing, the contract agency is to use the CoC PSH Briefing Packet.

5. SUBSIDY STANDARDS AND CALCULATING FAMILY SHARE

CoC PSH is in line with HCV’s subsidy standards when determining the family RAD unit size, as covered in this Administrative Plan’s chapter regarding Subsidy Standards and Voucher Issuance. However, all CoC PSH participants must lease up in a unit equal to or less than their allocated unit size on the RAD. CoC PSH participants may not be over housed. CoC PSH participants may not pay more in rent than the resident rent portion determined by DOH.

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 this Administrative Plan’s chapter regarding Adjusted Income)
- 10 percent of the family’s monthly gross income (annual income, as defined in this Administrative Plan’s chapter regarding Annual Income, divided by 12)
- The 40 percent rule is not allowed for CoC PSH program. The amount a family pays for rent and utilities (the family share) will never be less than the family’s TTP

Fair Market Rents (FMR)

The CoC PSH program uses the HUD published Fair Market Rents (FMR) rather than the payment standards used in the HCV program (unless Small Area Payment Standards are in place). In areas where the HCV payment standard is higher than the FMR, the HCV payment Standard can be used to establish the maximum rent amount for a unit (or voucher). Current FMR can be found at: <https://www.huduser.gov/portal/datasets/fmr.html>. As with HCV, a unit cannot exceed 120% of HUD’s FMR.

Minimum Rent [24 CFR 5.630]

The DOH CoC PSH program does not have a minimum rent.

6. RENT REASONABLENESS DETERMINATIONS

The rent for a CoC PSH assisted unit may not exceed the reasonable rent for that area. The rent reasonableness certification must be conducted both prior to entry, annually, and with rent increases.

The rent allowed under the Single Room Occupancy (SRO) component may not exceed the HUD FMR limit for that area even if the reasonable rent is found to be higher.

If a participant needs to live in a unit that is above the FMR 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 exceeds the FMR. 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. As with HCV, a unit cannot exceed 120% of HUD's FMR.

7. GENERAL LEASING POLICIES

Term of Assisted Tenancy

The initial term of the assisted dwelling lease must be for at least one year and must be renewable upon expiration [24 CFR 582.315(a)]. The initial lease term is also recorded in the HAP contract.

During the initial term of the lease, the owner may not raise the rent [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)]

CoC PSH grant funds may be used for security deposits in an amount not to exceed two months of rent. For all Security Deposit requests, grantee shall complete a security deposit request form that indicates if DOH is paying the landlord the deposit directly OR if DOH will be reimbursing the grantee for the security deposit paid upfront to the landlord. Supporting documentation is required for all Security Deposit reimbursement requests.

Completion of a security deposit request form is required and is dependent on funding availability. When DOH pays the deposit, the contract agency must make arrangements with the landlord for the return of the deposit to DOH within 30 days after termination of the lease or the surrender and acceptance of the premises, whichever occurs last. This time period may be extended up to sixty days if specified in the lease. If any portion of the security deposit has been deducted the landlord shall provide the tenant, the contract agency, and DOH with a written statement listing the exact reasons for the retention of any portion of the security deposit. DOH may allow for two security deposits per program participant. DOH will, at its discretion, pay an additional security deposit if one of the original security deposits is returned to DOH at the conclusion of the participant's residency, or with a reasonable accommodation, as program funds allow.

Damage Payments [24 CFR 582.105 (f)]

The CoC PSH program can make damage payments directly to a participant's landlord at the end of tenancy. In order to request a damage payment, the landlord shall provide the tenant, the contract agency, and DOH with a written statement and proof of payment documenting the exact costs associated with the damage request. Completion of a Security Deposit / Damage Request Form is required. Damage payments are limited to the equivalent of the amount of one month's rent.

A single damage payment can be requested by a participant throughout the duration of program enrollment. Even if the one damage payment requested does not total one month's rent, no additional damage payments can be requested.

8. MOVING WITH CONTINUED ASSISTANCE

Maximum Flexibility/Moves Between Service Providers/In State Transfers

The participating agencies will make every effort to ensure that every reasonable step is taken to maximize the flexibility of the program and to allow participants to move between CoC PSH participating agencies. In-state transfers will be considered when such movement is in the participant's best interest and as program budgets permit. 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. These moves must be approved and facilitated by the DOH PSH staff using DOH's In State Transfer Process found in the HCV Administrative Plan. These will be considered on a case by case basis.

9. RECALCULATING PARTICIPANT SUBSIDY AMOUNT AND RENT INCREASES

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 increases 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. As mentioned above, PSH requires that rent reasonableness be re-determined annually. Participants are not allowed to pay the difference in rent if the unit is over FMR and is found to not be rent reasonable.

10. TERMINATION OF ASSISTANCE AND TENANCY

Termination Procedures

In the CoC Interim Rule, HUD recommends that terminations from PSH assistance only happen in the most severe cases. Recipients and subrecipients that are providing permanent supportive

housing must exercise judgment and examine all extenuating circumstances in determining when violations are serious enough to warrant termination so that a program participant's assistance is terminated only in the most severe cases.

In keeping with the program, regulations, and guidance provided by HUD, DOH will consider each termination request individually. This may include reviewing the participant's history of program compliance, the impact the termination may have on other household members, and the length of time in between program violations. DOH will evaluate each request on a case by case basis and only in extreme circumstances will move to immediate termination. Adequate supportive services should be provided by contract agencies so that the need for termination is rare. This may include additional outreach to participants who are struggling to stay housed.

Agencies will be asked to provide a timeline which shows the service attempts made to re-engage participants. Agencies are asked to work closely with clinical partners to identify service needs and are expected to provide services in the least restrictive way possible. It is important to note that services are not required for tenancy and non-compliance to treatment does not result in termination. Additionally, termination from services does not disqualify participants from receiving future assistance in the program.

NOTE: The participant must be notified of their 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.

Termination Process for Significant Program Violations

STEP 1: If the participant is provided a copy of lease violations from the landlord or the agency becomes aware of program violations, issue a "warning letter" for minor infractions to the tenant along with a signed copy of the *Statement of Understanding* 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 *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 fourth 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, the agency submits 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 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.

PART II: ADMINISTRATION

1. SUPPORTIVE SERVICES

All program participants are encouraged to engage in supportive services. In cases where the CoC PSH program does not include supportive service funding, the partner agencies that administer the vouchers are expected to make efforts to enroll the participant in services through proactive and creative engagement efforts. Partner agencies will make best efforts to ensure that each participant is linked to services that are appropriate for their circumstance. The type and frequency of supportive services will be determined by the agency based on the needs of each participant. Agencies are asked to work closely with clinical partners to identify service needs and are expected to provide services in the least restrictive way possible.

2. SUPPORTIVE SERVICES MATCH REQUIREMENTS

CoC program regulations (24 CFR, Part 578.73) require that a minimum of 25 percent of cash or in-kind resources are contributed to each grant award. The cash value of the supportive services provided to each project participant is often the primary source of match in DOH's CoC PSH project. Each partner agency is contractually obligated to contribute to the overall match total for the grant annually.

3. HOMELESS MANAGEMENT INFORMATION SYSTEM (HMIS)

Each partner agency is contractually obligated to enter each program participant in the CoC-chosen HMIS database at the time of program entry, interim, exit, and annual certification. Partner agencies are to enter all data within five days of the associated action. Partner agencies will be asked to participate in training provided by the HMIS lead agency in the geographical area connected to the grant.

Annual Progress Reports (APRs) from HMIS are used to report program outcome data to HUD for each grant award. Grantees are required to generate APRs from HMIS and submit to DOH 30 days after the grant year ends. DOH then submits an aggregate APR to HUD within 90 days of the end of the grant period. APRs and other HMIS reporting may be requested periodically by DOH staff to track program progress, monitor timeliness of data entry, and examine data quality.

4. INVOLVING INDIVIDUALS WITH LIVED EXPERIENCES AND EXPERTISE OF HOMELESSNESS

Requirements for DOH

As is described in 24 CFR 578.75(g)(1) and 24 CFR 578.23(c)(3), DOH must involve at least one individual who has experienced or is experiencing homelessness in the CoC program's Board of Directors or other policy-making entity.

Requirements for DOH Subrecipients (i.e., Grantees)

As is described in 24 CFR 578.75(g)(1), subrecipients must involve at least one individual who has experienced or is experiencing homelessness in the Board of Directors or other relevant policy-making entity. DOH expects subrecipients to involve individuals with lived experience of homelessness to the maximum extent practicable through meaningful employment, service provision, and other opportunities.

5. 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 CoC PSH grants annually. The grants are renewed as a part of the HEARTH Consolidated CoC NOFO process.

The grant renewals are completed through a process administered by each local CoC. The Colorado CoCs are:

Continuum of Care	Area Served
Metro Denver Homeless Initiative (CoC #503)	7 County Metro Denver Area
Pikes Peak (CoC #504)	El Paso County

Balance of State (CoC #500)	Remaining 54 Counties Throughout Colorado
Northern Colorado (CoC #505)	Larimer and Weld Counties

The notice for the grant renewals is part of the NOFO issued by HUD. DOH works with each 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 that often includes additional ranking tools that are submitted to the CoC itself. CoCs communicate the needs for information for the grant application by email. DOH attends meetings as required to ensure all necessary information is provided to the grant writer from each CoC to ensure that the renewals are completed.
2. DOH submits an application and/or other requested materials for each grant renewal to each CoC. Each CoC ranks DOH and all other applicants, and includes the ranking when submitting the CoC’s Consolidated Application for the CoC via eSNAPS, a HUD grants software. DOH also completes and submits information electronically through eSNAPS. DOH submits the grant applications electronically at least one week prior to the due date set by HUD. This allows for HUD to process the applications prior to the due date.
3. Notice of grant award is typically published by HUD prior to May 1 of each year, though the timeline changes from year to year.
4. Funding is effective at the end of the previous grant end for each grant.

6. TRAINING AND TECHNICAL ASSISTANCE

OHI staff coordinates with the DOH HCV program staff in providing ongoing training regarding HUD regulations and program policies and procedures. OHI staff provides additional training where the CoC PSH regulations differ from HCV program regulations.

In addition, OHI staff provides daily technical assistance on CoC PSH program rules and participant problems to agency residential coordinators by phone and email.

OHI staff conducts onsite training, file monitoring, and meetings at each agency as needed throughout the year.

¹ <https://www.hudexchange.info/resources/documents/Housing-First-Permanent-Supportive-Housing-Brief.pdf>

² <https://www.hudexchange.info/homelessness-assistance/hearth-act/>

³ <https://govinfo.gov/content/pkg/FR-2015-12-04/pdf/2015-30473.pdf>

⁴ <https://www.hudexchange.info/resource/2033/hearth-coc-program-interim-rule/>

⁵ <https://www.hudexchange.info/resource/4847/hearth-defining-chronically-homeless-final-rule>

⁶ <https://www.hudexchange.info/resource/5108/notice-cpd-16-11-prioritizing-persons-experiencing-chronic-homelessness-and-other-vulnerable-homeless-persons-in-psh/>

⁷ <https://www.hudexchange.info/resource/5208/notice-establishing-additional-requirements-for-a-continuum-of-care-centralized-or-coordinated-assessment-system/>
⁸ <https://www.hudexchange.info/resource/5208/notice-establishing-additional-requirements-for-a-continuum-of-care-centralized-or-coordinated-assessment-system/>

Chapter 21

STATE HOUSING VOUCHER (SHV) PROGRAM

INTRODUCTION

This chapter of the Administrative Plan will govern the State Housing Voucher (SHV) programs administered by the Colorado Department of Local Affairs (DOLA), Division of Housing (DOH). This includes the Mental Health – State Housing Voucher (MH-SHV), Homeless Solutions Program – State Housing Voucher (HSP-SHV), and Recovery-Oriented Housing Program – State Housing Voucher (ROHP-SHV) programs.

The *DOH Housing Choice Voucher Program (HCV) and Rental Assistance Programs (RAP) Administrative Plan* (“Administrative Plan”) acts as the primary plan for all housing assistance programs administered by DOH. Any procedures or policies not specifically covered by this chapter will be governed by the Administrative Plan and subsequent policy updates. DOH may elect to periodically provide additional policy and procedure revisions through ‘action alerts’ as additional guidance is determined necessary for the SHV program to be successful.

Some sections in this chapter refer to additional policies and procedures located in the *State Housing Voucher Program Policies & Procedures*, which is available on the DOLA website.

PROGRAM OVERVIEW

The Mental Health – State Housing Voucher (MH-SHV), Homeless Solutions Program – State Housing Voucher (HSP-SHV), and Recovery-Oriented Housing Program – State Housing Voucher (ROHP-SHV) programs provide long-term rental assistance and access to supportive services for persons with a history of homelessness and their households. The MH-SHV, HSP-SHV, and ROHP-SHV programs allow for a variety of housing choices and connections to a range of community-based supportive services in response to the needs of individuals facing complex barriers to housing stability.

For the purposes of this chapter, a “Project” refers to a DOH allocation of SHVs with an entity or entities (“Project Partner(s)”).

EXCEPTIONS TO THE HOUSING CHOICE VOUCHER ADMINISTRATIVE PLAN

Admission Standards

General Eligibility for the MH-SHV, HSP-SHV, and ROHP-SHV Programs – An Eligible Household for the MH-SHV, HSP-SHV, and ROHP-SHV programs is defined as a household where the head of household meets all of the following eligibility criteria: 1) age 18 or older, 2) history of homelessness, 3) disabling condition, and 4) extremely low-income. Any additional eligibility criteria, as well as prioritization preferences and referral sources, are discussed below for each of the three programs.

Mental Health – State Housing Voucher (MH-SHV) - Launched in partnership with the Colorado Department of Human Services (CDHS) Office of Behavioral Health (OBH) (now Behavioral Health Administration) in 2013, the MH-SHV program is funded through the Colorado General Fund and is focused on serving the populations detailed below.

Priority Category #1 – Eligible households where the head of household is residing in a psychiatric/mental health institute, Acute Treatment Unit, Crisis Stabilization Unit, or withdrawal management facility and is unable to exit or is at risk of exiting to homelessness due to the inaccessibility of stable housing.

Priority Category #2 – Eligible households where the head of household is residing in other institutional settings, including hospitals, assisted living, skilled nursing, nursing homes, medical respite, or correctional or detention facilities, and is unable to exit or is at risk of exiting to homelessness due to the inaccessibility of stable housing.

Priority Category #3 – Eligible households where the head of household is experiencing homelessness with complex barriers to housing stability (including but not limited to a significant mental health or substance use disorder, a history of 72-hour mental health holds, emergency commitments, involuntary commitments, and/or voluntary commitments) and is not connected to care and/or is a high-utilizer of emergency services/systems, putting them at risk of entering an institutional setting as listed in the priority populations described above.

Additional prioritization occurs based on severity of service need (i.e., those who are identified as being in need of long-term supports and services in order to maintain housing) and frequent and/or high utilization of publicly-funded systems as determined by the length and/or frequency of homelessness, incarceration, or hospitalization and/or risk of recidivism to homelessness, incarceration, or hospitalization. Detailed information regarding the selection of households for the MH-SHV program is outlined in each Project's DOH-approved Tenant/Participant Selection Plan (see **Tenant/Participant Selection Plan and Preferences Checklist** section).

There are multiple MH-SHV Projects. Project Partners have historically included Rocky Mountain Human Services' Momentum Program and Transition Specialist Program. MH-SHVs are also awarded and/or allocated to additional Projects through a competitive application process or other DOLA-approved procurement process.

Homeless Solutions Program – State Housing Voucher (HSP-SHV) – The HSP-SHV program was established in 2017 through an annual allocation from Colorado’s Marijuana Tax Cash Fund. The HSP-SHV program focuses on persons with behavioral health needs and frequent and/or high utilization of publicly-funded systems. Additional prioritization occurs based on severity of service need (i.e., those who are identified as being in need of long-term supports and services in order to maintain housing) and frequent and/or high utilization of publicly-funded systems as determined by the length and/or frequency of homelessness, incarceration, or hospitalization and/or risk of recidivism to homelessness, incarceration, or hospitalization. Detailed information regarding the selection of households for the HSP-SHV program is outlined in each Project’s DOH-approved Tenant/Participant Selection Plan (see **Tenant/Participant Selection Plan and Preferences Checklist** section).

There are multiple Project Partners with HSP-SHV. HSP-SHVs are awarded and/or allocated through a competitive application or other DOLA-approved procurement process

Recovery-Oriented Housing Program – State Housing Voucher (ROHP-SHV) – The ROHP-SHV program was established in 2019 through an annual allocation from Colorado’s Marijuana Tax Cash Fund and the Colorado General Fund provided by House Bill 19-1009. The ROHP-SHV program focuses on persons with a mental health disorder, substance use disorder, or co-occurring behavioral health disorder who:

- Are currently transitioning from, or have exited within the past six months, the Colorado Department of Corrections, Colorado Department of Human Services’ Division of Youth Services, a mental health institute, a psychiatric hospital, or a county jail into the community OR
- Are currently experiencing homelessness or are in an unstable housing environment and are transitioning from a residential treatment program or are engaged in Rocky Mountain Human Services’ Transition Specialist Program

Additional prioritization occurs based on severity of service need (i.e., those who are identified as being in need of long-term supports and services in order to maintain housing) and frequent and/or high utilization of publicly-funded systems as determined by the length and/or frequency of homelessness, incarceration, or hospitalization and/or risk of recidivism to homelessness, incarceration, or hospitalization. Detailed information regarding the selection of households for the ROHP-SHV program is outlined in each Project’s DOH-approved Tenant/Participant Selection Plan (see **Tenant/Participant Selection Plan and Preferences Checklist** section).

There are multiple Project Partners with ROHP-SHV. ROHP-SHVs are awarded and/or allocated through a competitive application process or other DOLA-approved procurement process.

Recovery-Oriented Housing, also called “Recovery Housing,” is a housing model that uses substance use-specific services, peer support, and physical design features to support individuals and families on a particular path to recovery from addiction, typically emphasizing abstinence. Further definitions and guidelines around Recovery Housing are articulated in Tenancy Supportive Services (TSS) grant agreements used with some ROHP-SHV Projects.

Referral Packet

All tenant-based and project-based MH-SHV, HSP-SHV, and ROHP-SHV applicants must complete the SHV Referral Packet, which includes the following items:

- SHV Referral Cover Sheet
- SHV Application (Parts 1–7)
- History of Homelessness Form
- Disabling Condition Verification/Documentation (see **Verification of Disabling Condition** below)
- Vital Documents
 - Photo ID (for all household members age 18 or older)
 - Social Security Card (for all household members)
 - Birth Certificate (for all household members)
- Authorization for Release of Information (signed by all household members age 18 or older)
- Proof of Income at or below 30% Area Median Income (Third Party Query System statement, SSI/SSDI award letter, employment pay stubs, etc.) or if the applicant has no income, then complete Zero Income Reporting Form
- Preferences Checklist, if applicable (the specific checklist and whether it is required varies by project; see **Tenant/Participant Selection Plan and Preferences Checklist** below)

Project Partners are responsible for submitting referral packets to DOH or, where applicable, entering the SHV application into the electronic voucher management software Elite. Additional information on the referral process can be found in the *State Housing Voucher Program Policies & Procedures*.

Verification of Lawful Presence & Required Vital Documents

Pursuant to Colorado Revised Statute 24-76.5-103, verification of lawful presence in the United States is not required for receipt of state-funded housing assistance. Therefore, SHV applicants are not required to provide verification of lawful presence in the United States. The SHV program exercises discretion for individuals who, based on their individual circumstances and/or country of origin, lack any of the required Vital Documents listed in the SHV Referral Packet. In cases where the applicant cannot produce the required Vital Documents:

- The applicant, or the case manager working with the applicant, is required to include in the application a note that the listed Vital Documents are not reasonably available to the applicant, and to include other documents that, considered together, establish the applicant's identity and age.
- The applicant's Social Security Card, or Social Security Number provided by other means, is not required as long as the applicant can provide proof of income via another method. Applicants are still strongly encouraged to provide their Social Security Number and Social Security Card if they have one, or are in the process of obtaining one.
- If the applicant is approved for a voucher, DOH shall generate an alternative ID in Elite, the individual entering the application in lieu of entering a TIN/SSN.
- While the SHV program may approve an applicant using alternative forms of identifying documentation (in lieu of the listed required Vital Documents), DOH strongly recommends working to obtain these Vital Documents to the maximum extent possible for at least two reasons:
 - Vital Documents may minimize barriers to housing. For example, property managers and landlords may still require a birth certificate, Social Security card, and photo ID.
 - As noted earlier, Colorado Revised Statute 24-76.5-103 applies to state-funded assistance; the Statute does not apply to federal and other funding sources (e.g., if an SHV household will be residing in a project-based unit and the building is federally-funded, the Statute may not apply).

History of Homelessness

The MH-SHV, HSP-SHV, and ROHP-SHV programs require SHV applicants to have a history of homelessness. The criteria for "history of homelessness" varies by Project and must be DOH-approved. In most cases, the following applicants are prioritized: those who 1) meet the HUD definition of homelessness and/or 2) are leaving a group home, crisis center, hospital, treatment facility, jail, prison, or other institution and would otherwise be homeless upon exit (even if the applicant's stay within that setting was greater than 90 days).

Verification of Disabling Condition

The SHV program requires that applicants have a “disabling condition”, which is defined and verified differently from a “verified disability” (though, for the purposes of income calculation and reporting in Elite, they are considered the same, and the Household Type should still be “Disabled” and the “Handicapped/Disabled” allowance should still be checked).

The SHV program defines a “disabling condition” as a condition that limits an individual’s ability to perform one or more activities of daily living; this could be a physical condition, developmental condition, and/or behavioral health condition (i.e., related to mental health or substance use). The SHV program allows disabling conditions (as opposed to requiring a verified disability)—and a variety of options for providing verification of disabling condition—in order to lower barriers for households within the SHV program’s target population who may have extreme difficulty obtaining verification of disability from a licensed medical professional (e.g., distrust of healthcare providers, lack of connection to the healthcare system after spending time in prison).

The following forms are acceptable for documenting a participant's disabling condition status:

- Med-9 - must be completed by a licensed or knowledgeable professional
- SSDI/SSI/TPQY Statement (within 45 days of paperwork submitted)
- Signed Verification of Disability Status form - must be completed by a licensed or knowledgeable professional
- Signed letter - on social service letterhead confirming disabling condition
- Hospital record stating disability, mental health diagnosis, and/or substance use disorder

Note that the Verification of Disability Status form is the only form of documentation that requires completion by a knowledgeable *medical* professional (i.e., the professional must have a clinical license); all other listed forms of documentation may be completed by a non-medical knowledgeable professional.

Keep in mind that some Projects may use a different term for “disabling condition” in their SHV Referral Packet for purposes of being more trauma-informed, culturally sensitive, and/or developmentally appropriate; however, the disabling condition eligibility criterion is the same across all applicants and must be understood by these Project Partners, regardless of the particular term they choose to use in their SHV Referral Packet.

Tenant/Participant Selection Plan and Preferences Checklist

Each Project has a DOH-approved Tenant Selection Plan (for project-based vouchers) or Participant Selection Plan (for tenant-based vouchers) which outlines general SHV program eligibility criteria, Project-specific eligibility criteria, Project-specific referral sources, and Project-specific prioritization preferences. Tenant Selection Plans for project-based vouchers may also include additional information, such as the property’s background screening criteria and application procedure.

Each Project also has a Preferences Checklist (or similar DOH-approved form) which corresponds to the Project's Tenant/Participant Selection Plan. The Preferences Checklist lists the preference(s) articulated in the Tenant/Participant Selection Plan and requires the referring staff to certify that the referred household meets the preference(s). The Preferences Checklist (or similar form) must be included in the submitted SHV Referral Packet file. If a Project is not sure they have a Tenant/Participant Selection Plan and/or Preferences Checklist, they should contact the SHV Program Manager.

In addition to published Tenant/Participant Selection Plans, DOH may, on a case-by-case basis, identify additional referral sources and preferences for the State Housing Voucher program..

Background Check

The MH-SHV, HSP-SHV, and ROHP-SHV programs do not have restrictions based on criminal activity and do not require a background check for applicants. However, any new adult members, including live-in aides, requesting to be added to an existing participant's household who are not included in the initial application will be subject to a Colorado Criminal Background Investigation. The results of this investigation must be shared with the head of household.

Security Deposits

The MH-SHV, HSP-SHV, and ROHP-SHV programs can pay security deposits directly to the landlord of a participant with a tenant-based voucher. The SHV program does not pay security deposits for participants with project-based vouchers. DOH expects project-based/single-site supportive housing developments to reduce barriers to program entry, such as establishing security deposit policies/requirements.

Security deposits are limited to the equivalent of twice the amount of one month's rent. Completion of a Security Deposit / Damage Request Form is required and is dependent on funding availability. When DOH pays the security deposit, the voucher administering contract agency must make arrangements with the landlord for the return of the deposit to DOH within 30 days after termination of the lease or the surrender and acceptance of the premises, whichever occurs last. This time period may be extended up to 60 days if specified in the lease. If any portion of the security deposit has been deducted, the landlord shall provide the tenant, the voucher administering contract agency, and DOH with a written statement and proof of payment documenting the exact costs associated with the retention of any portion of the security deposit.

Please refer to the *State Housing Voucher Program Policies & Procedures* for procedures on requesting security deposits.

Damage Payments

The MH-SHV, HSP-SHV, and ROHP-SHV programs can make damage payments directly to a participant's landlord in addition to the Security Deposit retention request. When damages are incurred that would result in a Housing Quality Standards (HQS) fail or are considered serious damage outside of the Security Deposit retainment, and both the landlord and tenant agree the damages are tenant-caused, the landlord can request damage payment to pay for repairs. Damage payments are limited to the equivalent of up to one month's rent and can be requested during and/or at the end of tenancy.

Completion of a Security Deposit / Damage Request Form is required and is dependent on funding availability. In order to request a damage payment, the landlord shall provide the tenant, the voucher administering contract agency, and DOH with a written statement and proof of payment documenting the exact costs associated with the damage request. Damage payments can be requested during each new period of tenancy (i.e., every time a program participant leases up at a new unit).

Please refer to the *State Housing Voucher Program Policies & Procedures* for procedures on requesting damage payments.

Case Management and Supportive Services

Each MH-SHV, HSP-SHV, and ROHP-SHV Project Partner must ensure that adequate supportive services are available for participants to access and conduct an ongoing assessment of the housing assistance and supportive services required to ensure the housing stability of the participant. Each Project Partner should work with participants to connect them with community-based services, including, but not limited to, Community Mental Health Centers. Enrollment in behavioral health services is not a condition of tenancy for the MH-SHV, HSP-SHV, and ROHP-SHV programs. SHV Project Partners should coordinate with voucher administering contract agencies as necessary (including regular case conferencing as appropriate) to effectively serve SHV participants.

Briefing Packet and Rental Assistance Document

A Rental Assistance Document (RAD) is distributed in place of a "voucher" to the applicant during the tenant briefing. The RAD is similar to the HCV program "voucher" and allows the applicant to search for a unit. When conducting the mandatory applicant tenant briefing, the voucher administering contract agency is to use the SHV Briefing Packet.

Voucher Extensions Due to Institutionalization

Individuals who have been issued a voucher/RAD who become incarcerated or hospitalized can have their voucher/RAD extended up to 120 days depending on sentencing, convictions or length of hospital stay. Documentation must be provided to DOH.

Minimum Rent

The MH-SHV, HSP-SHV, and ROHP-SHV programs do not have a minimum required rent. Program participants typically pay 30 percent of their monthly adjusted income to rent.

Participants may rent a unit with a gross rent that exceeds the DOH payment standard, at the time of admission or a move to a new unit, so long as they do not pay more than 40 percent of their adjusted monthly income toward their share of the gross rent.

Repayment Agreements

The MH-SHV, HSP-SHV, and ROHP-SHV programs do not ask participants for repayment of unpaid rent, and therefore the programs do not do repayment agreements.

Leasing

MH-SHV, HSP-SHV, and ROHP-SHV participants may rent a unit that is larger than the number of bedrooms they were issued and that is reflected on their voucher/RAD so long as the unit is below the payment standard of the voucher issued. Initial lease term must be at least six months. If a participant wishes to enter into a lease shorter than six months, a Reasonable Accommodation request must be received and approved by DOH.

Homeless Management Information System (HMIS)

HMIS data entry is required for Project Partners to whom DOH has awarded Tenancy Supportive Services (TSS) funding to be used to serve households with MH-SHV, HSP-SHV, or ROHP-SHV, whether tenant-based or project-based. For MH-SHV, HSP-SHV, and ROHP-SHV Project Partners who have not been awarded TSS funding, HMIS is strongly encouraged. Please see the *State Housing Voucher Program Policies & Procedures* for more detailed information on HMIS utilization.

Waiting List

DOH does not use the waiting lists function in Elite the same way that other DOH voucher programs do. When SHV Project Partners have an available voucher/unit, they follow their DOH-approved Tenant/Participant Selection Plan to select households for the voucher. Once the household's application is approved, they are added to the appropriate waitlist in Elite and DOH draws them from the waitlist and issues the voucher.

Portability

As the MH-SHV, HSP-SHV, and ROHP-SHV programs are funded through Colorado State revenue, participants cannot port their voucher/RAD outside of Colorado.

In-State Transfers

If participants with a tenant-based MH-SHV, HSP-SHV, or ROHP-SHV voucher/RAD wish to move to another geographic area within Colorado where their voucher/RAD will be administered by another Public Housing Agency (PHA) or Community Mental Health Center, they can do so after securing a mutual rescission of lease and DOH's in-state transfer documentation. Participants with a tenant-based MH-SHV, HSP-SHV, or ROHP-SHV voucher/RAD have the ability to move and, if necessary, change their voucher administering contract agency. Transfers are subject to DOH voucher administering contract agency

capacity. Project Partners should follow best practices for engaging the participant around the participant's decision to move, especially if the participant is moving to an area outside of the Project Partners' jurisdiction. Please refer to the *State Housing Voucher Program Policies & Procedures* for detailed guidance for service providers (which may include voucher administering contract agencies) working with SHV in-state transfers.

Program Transfers

In extenuating circumstances and depending on budget availability, DOH may transfer a household from another DOH-funded tenant-based voucher to an MH-SHV, HSP-SHV, ROHP-SHV, and vice versa, or may transfer households between these SHV programs. DOH will not transfer anyone between fundamentally different voucher programs (e.g., federally-funded voucher program to a state-funded voucher) without (1) providing information on the differences between the programs, and (2) obtaining their express written permission.

Program Termination

Voucher administering contract agencies must exercise judgment and examine all extenuating circumstances in determining when violations are serious enough to warrant termination, so that a participant's assistance is terminated only in the most severe cases. Eviction does not result in termination from the program unless the subsidy in question is a project-based voucher. Reaching a certain number of tenant conferences does not automatically constitute program termination.

For termination of a participant's MH-SHV, HSP-SHV, or ROHP-SHV voucher/RAD, the Project Partner must use DOH's termination procedures outlined in the Continuum of Care Permanent Supportive Housing (CoC PSH) process for termination (see CoC PSH chapter in this Administrative Plan).

Project-Based Vouchers

Project-based HSP-SHV are awarded to applicant entities through a competitive application process. Policies for project-based HSP-SHV follow those of project-based HCV, with the following exceptions:

- Project-based HSP-SHV follow the guidelines outlined in the executed HAP contract.
- Tenant Selection Plans (see **Tenant/Participant Selection Plan and Preferences Checklist**) for project-based HSP-SHV are articulated in the executed HAP contract.
- Project-based HSP-SHV residents are eligible to request a conversion to tenant-based HSP-SHV after one year of tenancy based on availability. Availability of tenant-based HSP-SHV for that project. Conversion availability is determined by HSP budget and the capacity of the voucher administering contract agency.
- Project-based HSP-SHV can be used for shared housing subject to DOH approval.

- Properties utilizing project-based HSP-SHV do not need to pass an Environmental Review process, but may be subject to a site inspection. Environmental Reviews may be required by other funding sources or regulations related to the property.
- Project-based HSP-SHV units must pass an annual Housing Quality Standards (HQS) inspection.
- Entities awarded project-based HSP-SHV must enter into a Tenancy Supportive Services (TSS) grant agreement if receiving DOH services funding or submit and follow a Supportive Services Agreement. Failure to follow the TSS agreement and/or Supportive Services Agreement constitutes a violation of the HAP contract and jeopardizes HSP-SHV HAP payments.

FLEX Program

Colorado House Bill 2022-1389 established the Financial Literacy and Exchange (FLEX) program within DOH. FLEX is available only to interested eligible households participating in state-funded housing voucher programs, including the SHV programs described in this chapter. FLEX is based on the federal Family Self-Sufficiency (FSS) program.

FLEX is designed to support individuals' and households' long-term economic well-being. Participants in FLEX identify personal goals (e.g., employment training, covering the cost of car repair, higher education), participate in case management and financial coaching, and build savings in the form of an escrow-like savings account (managed by DOH) that increases as their earnings increase. Upon successful completion of the program, FLEX participants can access the funds for their own use.

- DOH expects voucher administering contract agencies who are administering the FLEX program to review and adhere to the FLEX Policies and Procedures, available on the DOLA website.

Chapter 22

COMMUNITY ACCESS TEAM VOUCHER PROGRAM

GENERAL DESCRIPTION OF THE PROGRAM

The Community Access Team Voucher (CAT-V) Program provides housing and supportive services on a long-term basis for persons with a disability who are leaving institutions, or persons in jeopardy of becoming institutionalized due to their disability. The CAT-V 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-reach institutionalized persons. CAT-V originated as a partnership with the Department of Health Care Policy and Finance (HCPF), the State of Colorado's Medicaid program administrator. HCPF's Money Follows the Person initiative (MFP) is a program to help Colorado Medicaid members, or persons Medicaid eligible, transition out of institutional settings and into home and community-based settings.

EXCEPTIONS TO THE HOUSING CHOICE VOUCHER ADMINISTRATIVE PLAN

An eligible applicant is:

- 1) at least 18 years of age
- 2) extremely low income (30% of Area Median Income (AMI))
- 3) a person who meets the HUD definition of a disability who can benefit from supportive services in connection with housing; and receives Home and Community Based (HCBS) Medicaid services or State Plan services, or are eligible for such services.
- 4) Applicants must also meet one of the priority categories identified as follows:

Priority Category 1 – Participants must be eligible for Medicaid's Home and Community Based Services (HCBS) waiver and for Medicaid's Transition Services Benefit. Medicaid provides its participants with transition coordination and intensive case management services to ensure successful transitions out of institutions (such as nursing homes) and into independent community living settings. DOH accepts applications for housing vouchers from CAT-V participants on an on-going basis, as long as funding allows, with no wait for a voucher once the application is complete.

Priority Category 2 – Individuals who are eligible and applying for a Medicaid HCBS waiver and are moving out of an institution, but not participating in Transition Services.

Priority Category 3 – CAT-V funded Project-Based Voucher residents who are under-housed are eligible to request a Tenant-Based CAT-V Voucher. DOH will determine the availability of a tenant-based CAT-V Voucher based on these priorities, program budget, and voucher administrator capacity. Participants must be in good standing in the program and with their PBV landlord to be deemed eligible for the transfer.

Priority Category 4 – People who are at risk of being institutionalized because they 1) have a disability and are enrolled in (or eligible and applying for) a Medicaid HCBS waiver, and 2) are Chronically Homeless, as defined in section 401(2) of the McKinney-Vento Homeless Assistance Act, 42 U.S.C. 11360, as an individual or family that is homeless and resides in a place not meant for human habitation, a safe haven, or in an emergency shelter, and has been homeless and residing in such a place for at least 1 year or on at least four separate occasions in the last 3 years. The statutory definition also requires that the individual or family has a head of household with a diagnosable substance use disorder, serious mental illness, developmental disability, post-traumatic stress disorder, cognitive impairments resulting from a brain injury, or chronic physical illness or disability.

Priority Category 5 – People who are at risk of being institutionalized because they 1) have a disability and are enrolled in (or eligible and applying for) a Medicaid HCBS waiver, and 2) are homeless or at risk of being homeless. The definition of "homeless" includes: (1) people who resided in a shelter or place not meant for human habitation and who are exiting an institution where they temporarily resided; (2) people who are losing their housing in 14 days and lack support networks or resources to obtain housing; (3) people who have moved from place to place and are likely to continue to do so because of disability or other barriers; and (4) people who are victims of domestic violence and sexual assault.

Applications and Waiting List

Unlike HCV, there is not a waiting list for CAT-V vouchers. DOH receives applications directly from Transition Services programs or from the voucher administrator for a CAT-V funded Project-Based Voucher program. The application packet contains the following documents:

- Certification of Eligibility (for Transition Services, to be considered Priority 1)
- Community Access Team Voucher Application
- Verification of Disability Status
- DOH Release of Information

- Proof of income or Zero Income Reporting Form
- Vital Documents (Social Security Card, ID, and Birth Certificate, if applicable), or receipts for requests for vital documents

Forms: Grantee will be required to use CAT-V program specific forms.

Security Deposits: The CAT-V Program can pay security deposits directly to a participant's landlord. Completion of a Security Deposit Request Form is required and is dependent on funding availability. When DOH pays the deposit, the contract agency must make arrangements with the landlord for the return of the deposit to DOH within 30 days after termination of the lease or the surrender and acceptance of the premises, whichever occurs last. This time period may be extended up to 60 days if specified in the lease. If the landlord has retained any portion of the security deposit, then the landlord shall provide the tenant, the contract agency, and DOH with a written statement and proof of payment documenting the exact costs associated with the retention. Security Deposits are limited to the equivalent of twice the amount of one month's rent. Participants may request security deposits for each new period of tenancy pending the return of the previous security deposit to DOH.

Lease Terms: Initial occupancy agreement must have a term of at least one year. After the initial year, the lease term may be any length.

Criminal Background Checks: The CAT-V Program does not have restrictions based on criminal activity and does not require a background check for applicants. However, if the voucher holder requests to add any new adult members including live-in aides to their household, the new household members will be subject to a Colorado Criminal Background Investigation and the standards outlined in the Administrative Plan.

Case Management & Supportive Services: Priority 1 participants have Intensive Case Management from Medicaid's Transition Services for approximately one year after the exit the institution. For others, case management is not required, but may be available from the area's Center for Independent Living or other local support service providers. Residents are not required to participate in services.

Minimum Rent: The CAT-V program does not have a minimum required rent.

Portability: As funding for the CAT-V program is from the State of Colorado, participants cannot port their voucher outside of Colorado. If participants with a tenant-based CAT-V voucher wish to move to another geographic area of Colorado, they must first submit an in-state voucher request to DOH. DOH will review the request and verify that the receiving DOH contract agency has the capacity to administer the voucher. Participants must wait to move until DOH has approved their request and until their lease expires (or they secure a mutual rescission of lease from their landlord).

Program Termination: The DOH contract agency may terminate assistance to a participant who violates CAT-V program requirements or conditions of occupancy. The DOH contract agency must exercise judgment and examine all extenuating circumstances in determining when violations are serious enough to warrant termination, so that they terminate a participant's assistance only in the most severe cases. Eviction does not automatically require termination.

DOH's termination procedures are outlined in 12-II.D of the Administrative Plan, except that the maximum number of program violations allowed is four (4). The DOH contract agency may process the resident for termination upon a fifth serious program violation.

Chapter 23

SECTION 811 PROJECT BASED RENTAL ASSISTANCE

Section 811 Project Rental Assistance (S811 PRA) provides housing and supportive services on a long-term basis for persons with a disability who are leaving institutions, or persons in jeopardy of becoming institutionalized due to their disability. DOH awards S811 PRA contracts to properties through a competitive Request for Application (RFA) process.

EXCEPTIONS TO THE HOUSING CHOICE VOUCHER ADMINISTRATIVE PLAN

Properties are eligible to apply for S811 PRA through DOH's Request for Applications (RFA) for the Creation of Supportive Housing, available at <https://cdola.colorado.gov/open-request-applications-rfa>. Each property will execute a Rental Assistance Contract (RAC) with the State, on forms prescribed by HUD.

Resident Eligibility, Priorities, Referrals, Applications and Waiting Lists – please see DOH's Tenant Selection Plan for a description of these criteria and processes. Each property will also have its own DOH-approved Tenant Selection Plan.

Security Deposits: The S811 PRA Program does not provide security deposits to a participant's landlord. The participant is responsible to pay \$50 toward the security deposit, or their Total Tenant Portion (TTP) whichever is greater.

Damage Payments: Damage deposits are not available to participants of the S811 PRA Program.

Lease Terms: Initial occupancy agreement for a term of at least one year, automatically renewable upon expiration, except on prior notice. S811 PRA does not allow month to month leases. Properties must use the prescribed lease "HUD-92236-PRA" for this program.

Subsidy Standards/ Bedroom Size: Residents must lease a unit of equal or lesser size than that listed on the voucher, or request a reasonable accommodation for a larger unit. If they choose a smaller unit, DOH will base their subsidy on the smaller size voucher and utility amounts.

Inspections: S811 PRA units must be inspected for compliance with both Uniform Physical Conditions Standards (UPCS) and Housing Quality Standards (HQS), prior to occupancy and biennially after that.

HMIS: Residents referred to DOH from Coordinated Entry will be entered into HMIS.

Case Management and Supportive Services: Each S811 PRA Property must ensure that adequate supportive services are available for residents, but may not require residents to participate in services.

Earned Income Disregard/Disallowance (EID): Unlike project-based HCV, EID is available for S811 PRA residents.

Minimum Rent: The S811 PRA Program does not have a minimum required rent.

Payment Standard: S811 PRA requires the use of Fair Market Rents at the time a property leases its first S811 PRA units, unless DOH approves a higher rent based on a third-party market study for the property. DOH will adjust rents annually from the date of each property's Rental Assistance Contract according to the Operating Cost Adjustment Factor (OCAF) for Colorado, as published in the Federal Register.

Verification of Disability: All S811 PRA residents must meet the HUD definition of disability (see Chapter 3), and must document their disability according to the policies provided in Chapter 7.

Building Transfers: S811 PRA residents in good standing may transfer if another S811 PRA unit is available that matches their current bedroom allotment. Residents may also request a transfer to a larger unit based on an increase of family size, or other reasonable accommodation.

Portability: As all S811 PRA programs are state-specific and buildings are pre-approved, residents cannot port or transfer their assistance to another state, town, or agency. Transferring to another unit or program outside of DOH's S811 PRA program will result in the participant relinquishing housing assistance through DOH's S811 PRA Program.

Tenant Based Vouchers: The S811 PRA program does not allow residents to request tenant-based vouchers after one year of residency. Only residents who are also eligible for the CAT-V program may apply for a tenant-based voucher from that program. See the CAT-V chapter for a description of the application and transfer processes.

Program Termination: Eviction will result in termination from the S811 PRA program. DOH may terminate assistance to a participant who violates S811 PRA program requirements or conditions of occupancy. DOH must exercise judgment and examine all extenuating circumstances in determining when violations are serious enough to warrant termination, so that DOH terminates a participant's assistance only in the most severe cases.

DOH's termination procedures are outlined in 12-II.D of the Administrative Plan, except that the maximum number of program violations allowed is four (4). DOH may process the resident for termination upon a fifth serious program violation.

Chapter 24

RAPID RE-HOUSING (RRH) PROGRAM

This section of the Administrative Plan will govern all Rapid Re-Housing (RRH) programs administered by the Colorado Department of Local Affairs (DOLA), Division of Housing (DOH). The DOH Housing Choice Voucher Program (HCV) and Rental Assistance Programs (RAP) Administrative Plan acts as the primary plan for all housing assistance programs administered by DOH. Any procedures or policies not specifically covered by this section will be governed by the HCV Administrative Plan and subsequent policy updates. DOH may elect to periodically provide additional policy and procedure revisions through ‘action alerts’ as additional guidance is determined necessary for the RRH programs to be successful.

Part I: POLICY

1. RRH General Program Description and Overview

RRH is a housing intervention that helps individuals and families experiencing homelessness to quickly exit homelessness and maintain stable housing. RRH provides short- to medium-term assistance, such as housing identification, move-in assistance, temporary rent subsidies, housing-focused case management, and other services. The length and type of RRH assistance is tailored to each participating household. Although RRH assistance is time-limited, the household does not have to leave the unit when the assistance ends. In general, eligible households for DOH RRH programs must include a head of household at least 18 years old.

Housing First is central to RRH. Housing First is a proven model that prioritizes housing and voluntary services. Under Housing First, assistance is offered without preconditions (i.e., households can access programs without being required to meet preconditions, such as employment, sobriety, absence of justice involvement, and behavioral expectations). Multiple principles complement Housing First, such as trauma-informed approaches and participant choice.

Additionally, it is best practice for RRH assistance to be provided through a progressive engagement model. Progressive engagement models start with smaller amounts of assistance to participants as opposed to offering the maximum amount. The services and assistance amounts are tailored to the household and can increase or decrease over the course of participation in order to support the participant and keep them housed.

Standards: The DOH RRH programs use a compilation of standards outlined by the National Alliance to End Homelessness (NAEH), Continuums of Care (CoCs), Emergency Solutions Grant (ESG), Supportive Services for Veteran Families (SSVF), and/or other standards.

2. Exceptions to the Housing Choice Voucher Administrative Plan

Homeless Management Information System (HMIS): HMIS use is mandatory for DOH RRH grantees. Grantees must ensure that their RRH projects are appropriately set-up in HMIS and must comply with the local Continuum of Care’s HMIS standards.

Housing Quality Standards (HQS) and Habitability Standards: RRH units are not required to meet HQS. Instead, RRH units must meet HUD's Habitability Standards at 24 CFR 576.403(c).

Verification of Lawful Presence: Pursuant to Colorado Revised Statute 24-76.5-103, verification of lawful presence in the United States is not required for receipt of state-funded housing assistance. Individuals and families inquiring about or accessing state-funded RRH programs are not required to provide verification of lawful presence. RRH programs may exercise discretion when reviewing required eligibility documentation for household members who may lack required documentation due to their country of origin and/or other circumstances.

Background Check: The RRH programs do not have restrictions based on criminal activity and do not require a background check for applicants and household members.

Security Deposits: In general, the RRH programs can pay a maximum of one security deposit for eligible participant during a two-year period. However, DOH may use discretion to allow for two security deposits per participant, due to a participant's extenuating circumstances. When making a determination about a second deposit, DOH will consider whether the previous deposit has been returned and the extent to which the second deposit is necessary to ensure permanent housing is secured. Security deposits cannot exceed more than two times of the total monthly rent.

Rental Arrears, Moving Costs, and Other Eligible Expenses: In addition to providing security deposits, the RRH programs can allow for other eligible expenses, including but not limited to rental arrears, moving costs, and other activities. Organizations administering RRH should review their grant agreements for a list of eligible expenses and how to administer them.

Fair Market Rents (FMR): The RRH programs are not required to meet Fair Market Rents (FMR), so long as (a) the funding source does not require FMR and (b) the rents comply with the rent reasonableness requirements described in this Administrative Plan.

Case Management and Supportive Services: Each DOH RRH grantee must ensure that adequate supportive services are available for RRH participants.

Re-Certifications: Each DOH RRH grantee must conduct a re-certification every 90 days to assess a household's ongoing eligibility, housing stability, and the need for on-going assistance.

Minimum Rent: The RRH programs do not have a minimum required rent for the participating household. DOH RRH grantees are required to follow a Progressive Engagement approach when determining individual portions of rent. Determining individual portions of rent must occur regularly and must be based on the participant's individualized plan. The determinations must occur at least every three months (i.e., monthly rent determination may occur every month, every two months, or every three months). As noted above, a formal re-certification must also be conducted every 90 days to assess on-going eligibility and future assistance.

Program Termination: DOH RRH grantees must exercise judgment and examine all extenuating circumstances in determining when violations are serious enough to warrant termination, so that a participant's assistance is terminated only in the most severe cases. Eviction does not result in termination from the program.

Part II: DOH RRH Current Programs

1. Colorado Rapid Re-Housing for Re-Entry (COR3)

A. General Description of the Program:

The Homeless Solutions Program (HSP) Rapid Re-Housing Re-Entry Program, also known as Colorado Rapid Re-Housing for Re-Entry (COR3), aims to end the cycle of homelessness and incarceration by connecting individuals who would be exiting or have already exited incarceration into homelessness to affordable, supportive housing.

B. Eligible Participants/Unique Population Details:

COR3 is prioritized for individuals experiencing homelessness who have been involved in the criminal justice system, with a preference for those who have behavioral health conditions, are frequent or high-costs consumers of various public systems, and have long histories of homelessness or would be homeless upon release from a correctional setting. Specifically, COR3 seeks to address the problem of persons cycling between homelessness and incarceration. Program eligibility includes:

1. Individual who meets Category 1 of the homeless definition by HUD, which states an individual or family who lacks a fixed, regular, and adequate nighttime residence as listed below.
 - Has a primary nighttime residence that is public or private place not meant for human habitation;
 - Is living in a publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state and local government programs); or
 - Is exiting an institution, such as jail or prison, where s/he resided for any period of time and who resided in an emergency shelter, place not meant for human habitation, or transitional housing before entering that institution.
2. Must have criminal justice system involvement within the last two years and have at least one behavioral health condition, which includes substance use disorders; alcohol and drug addiction; and serious psychological distress, suicide, and mental disorders, confirmed by a knowledgeable professional.

C. Unique Program Parameters:

The COR3 program includes elements of outreach and referral, intake and assessment, case management, service delivery, housing, therapy, recovery, and discharge. Foundational service models and practices underlying this program design include High Intensity Treatment (HIT), Critical Time Intervention (CIT), Housing

First, Motivational Interviewing, Progressive Engagement, and Trauma Informed Care.

D. Eligible Expenses:

Eligible expenses include a variety of RRH activities, ranging from rental assistance (up to 24 months, in three month increments), rental arrears (one-time), supportive services, financial assistance, emergency housing stability when other resources are not available, and other expenses that help participants gain and maintain housing stability. Eligible expenses are listed within each grant agreement; the grant agreement governs what is and is not eligible, depending on the program and grant. Within all DOH RRH programs, RRH grantees (including subgrantees) must not make payments directly to program participants; payments can only be made to third parties, such as landlords or utility companies.

2. Next Step 2-Gen Rapid Re-Housing

A. General Description of the Program:

The Next Step 2-Gen Rapid Re-Housing (Next Step 2-Gen RRH) program helps students and their families exit homelessness, secure stable housing, and achieve academic and other success. Next Step 2-Gen RRH provides rent subsidies and other assistance to families with school-aged children and unaccompanied students 18 years of age or older who are experiencing homelessness. Next Step 2-Gen RRH is built upon a collaboration among school districts, supportive service agencies, and housing providers. McKinney-Vento Liaisons within participating school districts identify and refer students and their families to a housing and services partner. The Liaisons and housing and services partner work together to (a) quickly connect families to housing using two-generational – “2-Gen” – and RRH models, (b) ensure students who are experiencing homelessness do not struggle with education, by providing housing stability to the student, as well as the family, and (c) deliver housing-focused services and link students and their caregivers to other opportunities.

B. Eligible Participants/Unique Population Details:

To be eligible for Next Step 2-Gen RRH, households must (a) be identified as eligible for McKinney-Vento services, (b) be at or below 30% Average Median Income (AMI) at time of program enrollment, and (c) have school-aged children OR be an unaccompanied student who is 18 years or older.

C. Eligible Expenses:

Eligible expenses include a variety of RRH activities, ranging from rental assistance (up to 24 months, in three month increments), rental arrears (one-time), supportive services, financial assistance, emergency housing stability when other resources are not available, and other expenses that help participants gain and maintain housing stability. Eligible expenses are listed within each grant agreement; the grant agreement governs what is and is not eligible, depending on the program and grant. Within all DOH RRH programs, RRH grantees (including subgrantees) must not

make payments directly to program participants; payments can only be made to third parties, such as landlords or utility companies.

3. Youth Rapid Re-Housing

A. General Description of the Program:

The Youth RRH program utilizes the above RRH program overview to deliver short-to medium-term financial assistance to support youth head of households (18 to 25 years old) in exiting homelessness. The Youth RRH program also incorporates two separate models of housing support: State Housing Vouchers and Host Homes. Eligible Participants/Unique Population Details:

B. Eligible Participants/Unique Population Details:

The Youth RRH program is to be prioritized for youth head of households (18 to 25 years old) who are experiencing homelessness. There is a preference for those who have behavioral health conditions; are frequent or high-costs consumers of various public systems, particularly the criminal justice system or foster care system; and have long histories of homelessness or would be homeless upon release from a state-funded system (e.g., Department of Youth Services (DYS) or Department of Human Services (DHS)).

C. Unique Program Parameters

The Youth RRH program aims to end the cycle of homelessness by connecting youth to affordable, supportive housing. Grantees are required to implement housing identification, move-in and rental assistance, and case management.

D. Eligible Expenses:

Eligible expenses include a variety of RRH activities, ranging from rental assistance (up to 24 months, in three month increments), rental arrears (one-time), supportive services, financial assistance, emergency housing stability when other resources are not available, and other expenses that help participants gain and maintain housing stability. Eligible expenses are listed within each grant agreement; the grant agreement governs what is and is not eligible, depending on the program and grant. Within all DOH RRH programs, RRH grantees (including subgrantees) must not make payments directly to program participants; payments can only be made to third parties, such as landlords or utility companies.

4. Emergency Solutions Grants Program

A. General Description of the Program:

DOH’s Emergency Solutions Grants (ESG) program aims to (a) end homelessness by connecting those experiencing or at-risk of homelessness to the appropriate resources as quickly as possible with few, if any, barriers, (b) increase the number and quality of housing resources for individuals and families experiencing homelessness, (c) operate emergency shelter facilities, prioritizing shelters that are low barrier and housing-focused, and (d) provide essential social services for those living outdoors, staying in emergency shelter, at-risk of homelessness, or in rental assistance programs. ESG funds may be used for RRH under 24 CFR Part 576. DOH’s ESG RRH requirements and guidelines are not included in this Administrative Plan. DOH maintains a separate official document – “ESG Policies and Procedures” – which outlines the federal and state ESG eligible expenses, eligibility for services, and other program requirements and expectations.

Temporary Policy Supplement:
EMERGENCY HOUSING VOUCHERS (EHVs)

INTRODUCTION

On March 11, 2021, President Biden signed the American Rescue Plan Act of 2021 (ARP) (P.L. 117-2). Section 3202 of the ARP appropriated \$5 billion for the creation, administration, and renewal of new incremental emergency housing vouchers (EHVs) and other eligible expenses related to COVID-19.

On May 5, 2021, HUD issued Notice PIH 2021-15, which described HUD's process for allocating approximately 70,000 EHVs to eligible PHAs and set forth the operating requirements for PHAs who administer them. Based on criteria outlined in the notice, HUD notified eligible PHAs of the number of EHVs allocated to their agency, and PHAs were able to accept or decline the invitation to participate in the program.

PHAs may not project-base EHVs; EHVs are exclusively tenant-based assistance.

All applicable nondiscrimination and equal opportunity requirements apply to the EHV program, including requirements that the PHA grant reasonable accommodations to persons with disabilities, effectively communicate with persons with disabilities, and ensure meaningful access for persons with limited English proficiency (LEP).

This chapter describes HUD regulations and PHA policies for administering EHVs. The policies outlined in this chapter are organized into seven sections, as follows:

Part I: Funding

Part II: Partnering Agencies

Part III: Waiting List Management

Part IV: Family Eligibility

Part V: Housing Search and Leasing

Part VI: Use of Funds, Reporting, and Financial Records

Except as addressed by this chapter and as required under federal statute and HUD requirements, the general requirements of the HCV program apply to EHVs.

PART I: FUNDING

TPS-I.A. FUNDING OVERVIEW

The American Rescue Plan Act of 2021 (ARP) provides administrative fees and funding for the costs of administering emergency housing vouchers (EHVs) and other eligible expenses defined in Notice PIH 2021-15. These fees may only be used for EHV administration and other eligible expenses and must not be used for or applied to other PHA programs or vouchers. The PHA must maintain separate financial records from its regular HCV funding for all EHV funding.

Housing Assistance Payments (HAP) Funding

ARP funding obligated to the PHA as housing assistance payments (HAP) funding may only be used for eligible EHV HAP expenses (i.e., rental assistance payments). EHV HAP funding may not be used for EHV administrative expenses or for the eligible uses under the EHV services fee.

The initial funding term will expire December 31, 2022. HUD will provide renewal funding to the PHA for the EHVs on a calendar year (CY) basis commencing with CY 2023. The renewal funding allocation will be based on the PHA's actual EHV HAP costs in leasing, similar to the renewal process for the regular HCV program. EHV renewal funding is not part of the annual HCV renewal funding formula; EHVs are renewed separately from the regular HCV program. All renewal funding for the duration of the EHV program has been appropriated as part of the ARP funding.

Administrative Fee and Funding

The following four types of fees and funding are allocated as part of the EHV program:

- **Preliminary fees** support immediate start-up costs that the PHA will incur in implementing alternative requirements under EHV, such as outreach and coordination with partnering agencies:
 - \$400 per EHV allocated to the PHA, once the consolidated annual contributions contract (CACC) is amended.
 - This fee may be used for any eligible administrative expenses related to EHVs.
 - The fee may also be used to pay for any eligible activities under EHV service fees (TPS-I.B).

- **Placement fees/expedited issuance reporting fees** will support initial lease-up costs and the added cost and effort required to expedite leasing of EHV's:
 - \$100 for each EHV initially leased, if the PHA reports the voucher issuance date in Public Housing Information Center–Next Generation (PIC–NG) system within 14 days of voucher issuance or the date the system becomes available for reporting.
 - Placement fees:
 - o \$500 for each EHV family placed under a HAP contract effective within four months of the effective date of the ACC funding increment; or
 - o \$250 for each EHV family placed under a HAP contract effective after four months but less than six months after the effective date of the ACC funding increment.
 - o HUD will determine placement fees in the event of multiple EHV allocations and funding increment effective dates.
 - Placement/expedited issuance fees only apply to the initial leasing of the voucher; they are not paid for family moves or to turnover vouchers.
- **Ongoing administrative fees**, which are calculated in the same way as the standard HCV program:
 - PHAs are allocated administrative fees using the full column A administrative fee amount for each EHV under contract as of the first day of each month.
 - Ongoing EHV administrative fees may be subject to proration in future years, based on available EHV funding.
- **Services fees**, which are a one-time fee to support PHAs' efforts to implement and operate an effective EHV services program in its jurisdiction (TPS-I.B):
 - The fee is allocated once the PHA's CACC is amended to reflect EHV funding.
 - The amount allocated is \$3,500 for each EHV allocated.

TPS-I.B. SERVICE FEES

Services fee funding must be initially used for defined eligible uses and not for other administrative expenses of operating the EHV program. Service fees fall into four categories:

- Housing search assistance
- Security deposit/utility deposit/rental application/holding fee uses
- Owner-related uses
- Other eligible uses such as moving expenses or tenant-readiness services

The PHA must establish the eligible uses and the parameters and requirements for service fees in the PHA's administrative plan.

PHA Policy

The eligible uses for service fees include:

Housing search assistance, which may include activities such as, but not limited to, helping a family identify and visit potentially available units during their housing search, helping to find a unit that meets the household's disability-related needs, providing transportation and directions, assisting with the completion of rental applications and PHA forms, and helping to expedite the EHV leasing process for the family.

Application fees/non-refundable administrative or processing fees/refundable application deposit assistance. The PHA may choose to assist the family with some or all these expenses.

Holding fees are fees an owner requests that are rolled into the security deposit after an application is accepted but before a lease is signed. The PHA may cover part or all of the holding fee for units where the fee is required by the owner after a tenant's application has been accepted but before the lease signing. The PHA and owner must agree how the holding fee gets rolled into the deposit, and under what conditions the fee will be returned. In general, owners need to accept responsibility for making needed repairs to a unit required by the initial housing quality standards (HQS) inspections and can only keep the holding fee if the client is at fault for not entering into a lease.

Security deposit assistance. The amount of the security deposit assistance may not exceed the lesser of two months' rent to owner, the maximum security deposit allowed under applicable state and/or local law, or the actual security deposit required by the owner. The PHA may pay the security deposit assistance directly to the owner or may pay the assistance to the family. If paid to the family, the PHA will require documentation that the family paid the security deposit.

Utility deposit assistance/utility arrears. The PHA may provide utility deposit assistance for some or all of the family's utility deposit expenses. Assistance can be provided for deposits (including connection fees) required for the utilities to be supplied by the tenant under the lease. The PHA may pay the utility deposit assistance directly to the utility company or may pay the assistance to the family. If paid to the family, the PHA will require documentation the family paid the utility deposit. The PHA will require the utility supplier or family to return the utility deposit assistance to the PHA at such time the deposit is returned by the utility supplier (less any amounts retained by the utility supplier). In addition, some families may have large balances with gas, electric, water, sewer, or trash companies that will make it difficult if not impossible to establish services for tenant-supplied utilities. The PHA may also provide the family with assistance to help address these utility arrears to facilitate leasing. Utility deposit assistance returned to the PHA will be used for either services fee eligible uses or other EHV administrative costs, as required by HUD.

Owner recruitment and outreach for EHV's. The PHA may use the service fee funding to conduct owner recruitment and outreach specifically for EHV's. In addition to traditional owner recruitment and outreach, activities may include conducting pre-inspections or otherwise expediting the inspection process, providing enhanced customer service, and offering owner incentive and/or retention payments.

Owner incentive and/or retention payments. The PHA may make incentive or retention payments to owners that agree to initially lease their unit to an EHV family and/or renew the lease of an EHV family.

Payments will be made as a single payment at the beginning of the assisted lease term (or lease renewal if a retention payment). Owner incentive and retentions payments are not housing assistance payments, are not part of the rent to owner, and are not taken into consideration when determining whether the rent for the unit is reasonable.

Moving expenses (including move-in fees and deposits). The PHA may provide assistance for some or all of the family's reasonable moving expenses when they initially lease a unit with the EHV. The PHA will not provide moving expenses assistance for subsequent moves unless the family is required to move for reasons other than something the family did or failed to do (e.g., the PHA is terminating the HAP contract because the owner did not fulfill the owner responsibilities under the HAP contract or the owner is refusing to offer the family the opportunity to enter a new lease after the initial lease term, as opposed to the family choosing to terminate the tenancy in order to move to another unit), or a family has to move due to domestic violence, dating violence, sexual assault, or stalking.

Tenant-readiness services. The PHA may use fees to help create a customized plan to address or mitigate barriers that individual families may face in renting a unit with an EHV, such as negative credit, lack of credit, negative rental or utility history, or to connect the family to other community resources (including COVID-related resources) that can assist with rental arrears.

Essential household items. The PHA may use services fee funding to assist the family with some or all of the costs of acquiring essential household items such as tableware, cooking equipment, beds or bedding, and essential sanitary products such as soap and toiletries.

Renter's insurance if required by the lease. The PHA may choose to assist the family with some or all this cost.

Any services fee assistance that is returned to the PHA after its initial or subsequent use may only be applied to the eligible services fee uses defined in Notice PIH 2021-15 (or subsequent notice) or other EHV administrative costs. Any amounts not expended for these eligible uses when the PHA's EHV program ends must be remitted to HUD.

PART II: PARTNERING AGENCIES

TPS-II.A. CONTINUUM OF CARE (CoC)

PHAs that accept an allocation of EHV are required to enter into a Memorandum of Understanding (MOU) with the Continuum of Care (CoC) to establish a partnership for the administration of EHV.

PHA Policy

The PHA has entered into an MOU with the following Continuum of Care (CoC) organizations (See Exhibit TPS-1 for a copy of the MOU):

- Metro Denver Homeless Initiative (MDHI)
- Colorado Balance of State Continuum of Care (CO BoS CoC)
- Northern Colorado Continuum of Care (NoCO CoC)
- Pikes Peak Continuum of Care (PPCoC)

TPS-II.B. OTHER PARTNERING ORGANIZATIONS

The PHA may, but is not required to, partner with other organizations trusted by persons experiencing homelessness, such as victim services providers (VSPs) and other community partners. If the PHA chooses to partner with such agencies, the PHA must either enter into an MOU with the partnering agency or the partnering agency may be added to the MOU between the PHA and CoC.

PHA Policy

Not Applicable

TPS-II.C. REFERRALS

CoC and Partnering Agency Referrals

The primary responsibility of the CoC under the MOU with the PHA is to make direct referrals of qualifying individuals and families to the PHA. The PHA must generally refer a family that is seeking EHV assistance directly from the PHA to the CoC or other referring agency for initial intake, assessment, and possible referral for EHV assistance. Partner CoCs are responsible for determining whether the family qualifies under one of the four eligibility categories for EHV. The CoC or other direct referral partner must provide supporting documentation to the PHA of the referring agency's verification that the family meets one of the four eligible categories for EHV assistance.

PHA Policy

The CoC or partnering agency must establish and implement a system to identify EHV-eligible individuals and families within the agency's caseload and make referrals to the PHA. The CoC or other partnering agency must certify that the EHV applicants they refer to the PHA meet at least one of the four EHV eligibility criteria. The PHA will maintain a copy of the referral or certification from the CoC or other partnering agency in the participant's file along with other eligibility paperwork. Homeless service providers may, but are not required to, use the certification form found in Exhibit TPS-2 of this chapter. Victim services providers may, but are not required to, use the certification form found in Exhibit TPS-3 of this chapter when identifying eligible families who qualify as victims of human trafficking.

As part of the MOU, the PHA and CoC or other partnering agency will identify staff positions to serve as lead EHV liaisons. These positions will be responsible for transmission and acceptance of referrals. The CoC or partnering agency must commit sufficient staff and resources to ensure eligible individuals and families are identified and determined eligible in a timely manner.

The PHA liaison responsible for acceptance of referrals will contact the CoC or partnering agency liaison via email indicating the number of vouchers available and requesting an appropriate number of referrals. No more than five business days from the date the CoC or partnering agency receives this notification, the CoC or partnering agency liaison will provide the PHA with a list of eligible referrals including the name, address, and contact phone number for each adult individual who is being referred; a completed release form for each adult family member; and a written certification for each referral indicating they are EHV-eligible.

Offers of Assistance with CoC Referral

The PHA may make an EHV available without a referral from the CoC or other partnering organization in order to facilitate an emergency transfer under VAWA in accordance with the PHA's Emergency Transfer Plan (ETP) in Chapter 16.

The PHA must also take direct referrals from outside the CoC if:

- The CoC does not have a sufficient number of eligible families to refer to the PHA; or
- The CoC does not identify families that may be eligible for EHV assistance because they are fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking or human trafficking.

If at any time the PHA is not receiving enough referrals or is not receiving referrals in a timely manner from the CoC or other partner referral agencies (or the PHA and CoC cannot identify any such alternative referral partner agencies), HUD may permit the PHA on a temporary or permanent basis to take EHV applications directly from applicants and admit eligible families to the EHV program in lieu of or in addition to direct referrals in those circumstances.

PART III: WAITING LIST MANAGEMENT

TPS-III. A. HCV WAITING LIST

The regulation that requires the PHA to admit applicants as waiting list admissions or special admissions in accordance with admission policies in Chapter 4 does not apply to PHAs operating the EHV program. Direct referrals are not added to the PHA's HCV waiting list.

The PHA must inform families on the HCV waiting list of the availability of EHV's by, at a minimum, either by posting the information to their website or providing public notice in their respective communities in accordance with the requirements listed in Notice PIH 2021-15.

PHA Policy

The PHA will post information about the EHV program for families on the PHA's HCV waiting list on their website. The notice will:

Describe the eligible populations to which EHV's are limited

Clearly state that the availability of these EHV's is managed through a direct referral process

Advise the family to contact the CoC (or any other PHA referral partner, if applicable) if the family believes they may be eligible for EHV assistance

The PHA will ensure effective communication with persons with disabilities, including those with vision, hearing, and other communication-related disabilities in accordance with Chapter 2. The PHA will also take reasonable steps to ensure meaningful access for persons with limited English proficiency (LEP) in accordance with Chapter 2.

TPS-III.B. EHV WAITING LIST

The HCV regulations requiring the PHA to operate a single waiting list for admission to the HCV program do not apply to PHAs operating the EHV program. Instead, when the number of applicants referred by the CoC or partnering agency exceeds the EHV's available, the PHA must maintain a separate waiting list for EHV referrals, both at initial leasing and for any turnover vouchers that may be issued prior to September 30, 2023.

Further, the EHV waiting list is not subject to PHA policies in Chapter 4 regarding opening and closing the HCV waiting list. The PHA will work directly with its CoC and other referral agency partners to manage the number of referrals and the size of the EHV waiting list.

TPS-III.C. PREFERENCES

HCV Waiting List Preferences

If local preferences are established by the PHA for HCV, they do not apply to EHV. However, if the PHA has a homeless preference or a VAWA preference for the HCV waiting list, the PHA must adopt additional policies related to EHV in accordance with Notice PIH 2021-15.

PHA Policy

The PHA must refer any applicant on the waiting list that indicated they qualified for this preference to the CoC or the applicable partnering referral agency. The CoC or partnering referral agency will determine if the family is eligible (based on the qualifying definition for EHV assistance for those fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking, or human trafficking or another eligible category as applicable) for an EHV.

The PHA must refer any applicant on the waiting list that indicated they qualified for the homeless preference to the CoC. The CoC will determine whether the family is eligible for an EHV (based on the qualifying definition for EHV assistance for homelessness or another eligible category as applicable). The CoC will also determine if the family is eligible for other homeless assistance through the CE system.

EHV Waiting List Preferences

With the exception of a residency preference, the PHA may choose, in coordination with the CoC and other referral partners, to establish separate local preferences for EHV. The PHA may, however, choose to not establish any local preferences for the EHV waiting list.

PHA Policy

No local preferences have been established for the EHV waiting list. However, additional prioritization should be given to the following:

Extremely low-income individuals/households where the head of household is an adult over the age of 18 experiencing homelessness, with multiple barriers to housing stability, including but not limited to: a disabling condition, disabilities, or special needs.

Additional prioritization should occur based on severity of service need (i.e. - in need of long term supports and services in order to maintain housing), frequency/high utilization of publicly funded systems, and length or frequency of literal homelessness and risk of recidivism to homelessness, incarceration, or hospitalization.

PART IV: FAMILY ELIGIBILITY

TPS-IV.A. OVERVIEW

The CoC or referring agency determines whether the individual or family meets any one of the four eligibility criteria described in Notice PIH 2021-15 and then refers the family to the PHA. The PHA determines that the family meets other eligibility criteria for the HCV program, as modified for the EHV program and outlined below.

TPS-IV.B. REFERRING AGENCY DETERMINATION OF ELIGIBILITY

In order to be eligible for an EHV, an individual or family must meet one of four eligibility criteria:

- Homeless as defined in 24 CFR 578.3;
- At risk of homelessness as defined in 24 CFR 578.3;
- Fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking (as defined in Notice PIH 2021-15), or human trafficking (as defined in the 22 U.S.C. Section 7102); or
- Recently homeless and for whom providing rental assistance will prevent the family's homelessness or having high risk of housing instability as determined by the CoC or its designee in accordance with the definition in Notice PIH 2021-15.

As applicable, the CoC or referring agency must provide documentation to the PHA of the referring agency's verification that the family meets one of the four eligible categories for EHV assistance. The PHA must retain this documentation as part of the family's file.

TPS-IV.C. PHA SCREENING

Overview

HUD waived 24 CFR 982.552 and 982.553 in part for the EHV applicants and established alternative requirement for mandatory and permissive prohibitions of admissions. Except where applicable, PHA policies regarding denials in Chapter 3 of this policy do not apply to screening individuals and families for eligibility for an EHV. Instead, the EHV alternative requirement listed in this section will apply to all EHV applicants.

The mandatory and permissive prohibitions listed in Notice PIH 2021-15 and in this chapter, however, apply only when screening the individual or family for eligibility for an EHV. When adding a family member after the family has been placed under a HAP contract with EHV assistance, the regulations at 24 CFR 982.551(h)(2) apply. Other than the birth, adoption, or court-awarded custody of a child, the PHA must approve additional family members and may apply its regular HCV screening criteria in Chapter 3 in doing so.

Mandatory Denials

Under alternative requirements for the EHV program, mandatory denials for EHV applicants include:

- 24 CFR 982.553(a)(1)(ii)(C), which prohibits admission if any household member has ever been convicted of drug-related criminal activity for manufacture or production of methamphetamine on the premises of federally assisted housing.
- 24 CFR 982.553(a)(2)(i), which prohibits admission to the program if any member of the household is subject to a lifetime registration requirement under a state sex offender registration program.

The PHA must deny admission to the program if any member of the family fails to sign and submit consent forms for obtaining information as required by 24 CFR 982.552(b)(3) but should notify the family of the limited EHV grounds for denial of admission first.

PHA Policy

While the PHA will deny admission to the program if any adult member (or head of household or spouse, regardless of age) fails to sign and submit consent forms, the PHA will first notify the family of the limited EHV grounds for denial of admission as part of the notice of denial that will be mailed to the family.

Permissive Denial

Notice PIH 2021-15 lists permissive prohibitions for which the PHA may, but is not required to, deny admission to EHV families. The notice also lists prohibitions that, while allowable under the HCV program, may not be used to deny assistance for EHV families.

If the PHA intends to establish permissive prohibition policies for EHV applicants, the PHA must first consult with its CoC partner to understand the impact that the proposed prohibitions may have on referrals and must take the CoC's recommendations into consideration.

PHA Policy

In consultation with the CoC, the PHA will apply permissive prohibition to the screening of EHV applicants. Determinations using permissive prohibitions will be made based on an individualized assessment of relevant mitigating information in accordance with policies in Section 3-III.E.

The PHA will establish the following permissive prohibitions:

If the PHA determines that any household member is currently engaged in, or has engaged in within the previous 12 months:

Violent criminal activity

If the family engaged in or threatened abusive or violent behavior toward PHA personnel within the previous 12 months.

The PHA will also deny assistance to household members already receiving assistance from another program in accordance with Section 9.h. of Notice PIH 2021-15.

Prohibitions based on criminal activity for the eligible EHV populations regarding drug possession will be considered apart from criminal activity against persons (i.e., violent criminal activity).

In compliance with PIH 2021-15, the PHA **will not** deny an EHV applicant admission regardless of whether:

Any member of the family has been evicted from federally assisted housing in the last five years;

A PHA has ever terminated assistance under the program for any member of the family;

The family currently owes rent or other amounts to the PHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act;

The family has not reimbursed any 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;

The family breached an agreement with the PHA to pay amounts owed to a PHA, or amounts paid to an owner by a PHA;

The family would otherwise be prohibited admission under alcohol abuse standards established by the PHA in accordance with 24 CFR 982.553(a)(3);

The PHA determines that any household member is currently engaged in or has engaged in during a reasonable time before the admission, drug-related criminal activity.

TPS-IV.D. INCOME VERIFICATION AT ADMISSION

Self-Certification at Admission

The requirement to obtain third-party verification of income in accordance with Notice PIH 2018-18 does not apply to the EHV program applicants at admission, and alternatively, PHAs may consider self-certification the highest form of income verification at admission. As such, PHA policies related to the verification of income in Section 7-I.B. do not apply to EHV families at admission. Instead, applicants must submit an affidavit attesting to their reported income, assets, expenses, and other factors that would affect an income eligibility determination.

Additionally, applicants may provide third-party documentation that represents the applicant's income within the 60-day period prior to admission or voucher issuance but is not dated within 60 days of the PHA's request.

PHA Policy

Any documents used for verification must be the original (not photocopies) and dated within the 60-day period prior to admission. The documents must not be damaged, altered, or in any way illegible.

Printouts from webpages are considered original documents.

Any family self-certifications must be made in a format acceptable to the PHA and must be signed by the family member whose information or status is being verified.

The PHA will incorporate additional procedures to remind families of the obligation to provide true and complete information in accordance with Chapter 14. The PHA will address any material discrepancies (i.e., unreported income or a substantial difference in reported income) that may arise later. The PHA may, but is not required to, offer the family a repayment agreement in accordance with Chapter 16. If the family fails to repay the excess subsidy, the PHA will terminate the family's assistance in accordance with the policies in Chapter 12.

Recently Conducted Income Determinations

PHAs may accept income calculations and verifications from third-party providers or from an examination that the PHA conducted on behalf of the family for another subsidized housing program in lieu of conducting an initial examination of income as long as:

- The income was calculated in accordance with rules outlined at 24 CFR Part 5 and within the last six months; and
- The family certifies there has been no change in income or family composition in the interim.

PHA Policy

The PHA will accept income calculations and verifications from third-party providers provided they meet the criteria outlined above.

The family certification must be made in a format acceptable to the PHA and must be signed by all adult family members whose information or status is being verified.

At the time of the family's annual reexamination the PHA must conduct the annual reexamination of income as outlined at 24 CFR 982.516 and PHA policies in Chapter 11.

EIV Income Validation

Once HUD makes the EIV data available to PHAs under this waiver and alternative requirement, the PHA must:

- Review the EIV Income and Income Validation Tool (IVT) reports to confirm and validate family-reported income within 90 days of the PIC submission date;
- Print and maintain copies of the EIV Income and IVT Reports in the tenant file; and
- Resolve any income discrepancy with the family within 60 days of the EIV Income or IVT Report dates.

Prior to admission, PHAs must continue to use HUD's EIV system to search for all household members using the Existing Tenant Search in accordance with PHA policies in Chapter 3.

If a PHA later determines that an ineligible family received assistance, the PHA must take steps to terminate that family from the program in accordance with Chapter 12.

TPS-IV.E. SOCIAL SECURITY NUMBER AND CITIZENSHIP STATUS VERIFICATION

For the EHV program, the PHA is not required to obtain and verify SSN documentation and documentation evidencing eligible noncitizen status before admitting the family to the EHV program. Instead, PHAs may adopt policies to admit EHV applicants who are unable to provide the required SSN or citizenship documentation during the initial eligibility determination. As an alternative requirement, such individuals must provide the required documentation within 180 days of admission to be eligible for continued assistance, pending verification, unless the PHA provides an extension based on evidence from the family or confirmation from the CoC or other partnering agency that the family has made a good-faith effort to obtain the documentation.

If a PHA determines that an ineligible family received assistance, the PHA must take steps to terminate that family from the program.

PHA Policy

The PHA will admit EHV applicants who are unable to provide the required SSN or citizenship documentation during the initial eligibility determination. These individuals must provide the required documentation in accordance with policies in Chapter 7 within 180 days of admission. The PHA may provide an additional 60-day extension based on evidence from the family or confirmation from the CoC or other partnering agency that the family has made a good-faith effort to obtain the documentation.

If the PHA determines that an ineligible family received assistance, the PHA will take steps to terminate that family from the program in accordance with policies in Chapter 12.

TPS-IV.F. AGE AND DISABILITY VERIFICATION

PHAs may accept self-certification of date of birth and disability status if a higher level of verification is not immediately available. If self-certification is used, the PHA must obtain a higher level of verification within 90 days of admission or verify the information in EIV.

If a PHA determines that an ineligible family received assistance, the PHA must take steps to terminate that family from the program.

PHA Policy

The PHA will accept self-certification of date of birth and disability status if a higher form of verification is not immediately available. The certification must be made in a format acceptable to the PHA and must be signed by the family member whose information or status is being verified. If self-certification is accepted, within 90 days of admission, the PHA will verify the information in EIV or through other third-party verification if the information is not available in EIV. The PHA will note the family's file that self-certification was used as initial verification and include an EIV printout or other third-party verification confirming the applicant's date of birth and/or disability status.

If the PHA determines that an ineligible family received assistance, the PHA will take steps to terminate that family from the program in accordance with policies in Chapter 12.

TPS-IV.G. INCOME TARGETING

The PHA must determine income eligibility for EHV families in accordance with 24 CFR 982.201 and PHA policy in Chapter 3; however, income targeting requirements do not apply for EHV families. The PHA may still choose to include the admission of extremely low-income EHV families in its income targeting numbers for the fiscal year in which these families are admitted.

PHA Policy

The PHA will not include the admission of extremely low-income EHV families in its income targeting numbers for the fiscal year in which these families are admitted.

PART V: HOUSING SEARCH AND LEASING

TPS-V.A. INITIAL VOUCHER TERM

Unlike the standard HCV program, which requires an initial voucher term of at least 60 days, EHV vouchers must have an initial search term of at least 120 days. PHA policies on extensions as outlined in Section 5-II.E. will apply.

PHA Policy

All EHV's will have an initial term of 120 calendar days.

The family must submit a Request for Tenancy Approval and proposed lease within the 120-day period unless the PHA grants an extension.

TPS-V.B. HOUSING SEARCH ASSISTANCE

The PHA must ensure housing search assistance is made available to EHV families during their initial housing search. The housing search assistance may be provided directly by the PHA or through the CoC or another partnering agency or entity.

At a minimum, housing search assistance must:

- Help individual families identify potentially available units during their housing search, including physically accessible units with features for family members with disabilities, as well as units in low-poverty neighborhoods;
- Provide transportation assistance and directions to potential units;
- Conduct owner outreach;
- Assist with the completion of rental applications and PHA forms; and
- Help expedite the EHV leasing process for the family

PHA Policy

As identified in the MOU between the PHA and CoC, the following housing search assistance will be provided to each EHV family:

The PHA will:

Conduct owner outreach in accordance with policies in Chapter 13

Provide directions to potential units as part of the EHV briefing packet

Expedite the EHV leasing process for the family to the extent practicable and in accordance with policies in this chapter

At least every 30 days, conduct proactive check-ins via email and telephone with families who are searching with an EHV and remind them of their voucher expiration date

Assign a dedicated landlord liaison for EHV voucher families

The CoC and/or PHA partner agency will:

Help families identify potentially available units during their housing search, including physically accessible units with features for family members with disabilities, as well as units in low-poverty neighborhoods

Assist the family with the completion of rental applications and PHA forms

TPS-V.C. HQS PRE-INSPECTIONS

To expedite the leasing process, PHAs may pre-inspect available units that EHV families may be interested in leasing in order to maintain a pool of eligible units.

PHA Policy

The PHA will not pre-inspect units for the EHV program.

TPS-V.D. INITIAL LEASE TERM

Unlike in the standard the HCV program, EHV voucher holders may enter into an initial lease that is for less than 12 months, regardless of the PHA policy in Section 9-I.E., Term of Assisted Tenancy.

TPS-V.E. PORTABILITY

The normal HCV portability procedures and requirements outlined in Chapter 10 generally apply to EHV. Exceptions are addressed below.

Nonresident Applicants

Under EHV, applicant families may move under portability even if the family did not have legal residency in the jurisdiction of the initial PHA when they applied, regardless of PHA policy in Section 10-II.B.

Billing and Absorption

A receiving PHA cannot refuse to assist an incoming EHV family, regardless of whether the PHA administers EHV under its own ACC.

- If the EHV family moves under portability to another PHA that administers EHV under its own ACC:
 - The receiving PHA may only absorb the incoming EHV family with an EHV (assuming it has an EHV voucher available to do so).
 - If the PHA does not have an EHV available to absorb the family, it must bill the initial PHA. The receiving PHA must allow the family to lease the unit with EHV assistance and may not absorb the family with a regular HCV when the family leases the unit.
 - Regardless of whether the receiving PHA absorbs or bills the initial PHA for the family's EHV assistance, the EHV administration of the voucher is in accordance with the receiving PHA's EHV policies.
- If the EHV family moves under portability to another PHA that does not administer EHV under its own ACC, the receiving PHA may absorb the family into its regular HCV program or may bill the initial PHA.

Family Briefing

In addition to the applicable family briefing requirements at 24 CFR 982.301(a)(2) as to how portability works and how portability may affect the family's assistance, the initial PHA must inform the family how portability may impact the special EHV services and assistance that may be available to the family.

The initial PHA is required to help facilitate the family's portability move to the receiving PHA and inform the family of this requirement in writing, taking reasonable steps to ensure meaningful access for persons with limited English proficiency (LEP).

PHA Policy

In addition to following PHA policy on briefings in Chapter 5, as part of the briefing packet for EHV families, the PHA will include a written notice that the PHA will assist the family with moves under portability.

For limited English proficient (LEP) applicants, the PHA will provide interpretation services in accordance with the PHA's LEP plan (See Chapter 2).

Coordination of Services

If the portability move is in connection with the EHV family's initial lease-up, the receiving PHA and the initial PHA must consult and coordinate on the EHV services and assistance that will be made available to the family.

PHA Policy

For EHV families who are exercising portability, when the PHA contacts the receiving PHA in accordance with Section 10-II.B. Preapproval Contact with Receiving PHA, the PHA will consult and coordinate with the receiving PHA to ensure there is no duplication of EHV services and assistance, and ensure the receiving PHA is aware of the maximum amount of services fee funding that the initial PHA may provide to the receiving PHA on behalf of the family.

Services Fee

Standard portability billing arrangements apply for HAP and ongoing administrative fees for EHV families.

For service fees funding, the amount of the service fee provided by the initial PHA may not exceed the lesser of the actual cost of the services and assistance provided to the family by the receiving PHA or \$1,750, unless the initial PHA and receiving PHA mutually agree to change the \$1,750 cap. Service fees are paid as follows:

- If the receiving PHA, in consultation and coordination with the initial PHA, will provide eligible services or assistance to the incoming EHV family, the receiving PHA may be compensated for those costs by the initial PHA, regardless of whether the receiving PHA bills or absorbs.
- If the receiving PHA administers EHV's, the receiving PHA may use its own services fee and may be reimbursed by the initial PHA, or the initial PHA may provide the services funding upfront to the receiving PHA for those fees and assistance.
- If the receiving PHA does not administer EHV's, the initial PHA must provide the services funding upfront to the receiving PHA. Any amounts provided to the receiving PHA that are not used for services or assistance on behalf of the EHV family must promptly be returned by the receiving PHA to the initial PHA.

Placement Fee/Issuance Reporting Fee

If the portability lease-up qualifies for the placement fee/issuance reporting fee, the receiving PHA receives the full amount of the placement component of the placement fee/issuing reporting fee. The receiving PHA is eligible for the placement fee regardless of whether the receiving PHA bills the initial PHA or absorbs the family into its own program at initial lease-up. The initial PHA qualifies for the issuance reporting component of the placement fee/issuance reporting fee, as applicable.

TPS-V.F. PAYMENT STANDARDS

Payment Standard Schedule

For the EHV program, HUD has waived the regulation requiring a single payment standard for each unit size. Instead, the PHA may, but is not required to, establish separate higher payment standards for EHV. Lower EHV payment standards are not permitted. If the PHA is increasing the regular HCV payment standard, the PHA must also increase the EHV payment standard if it would be otherwise lower than the new regular HCV payment standard. The separate EHV payment standard must comply with all other HCV requirements with the exception of the alternative requirements discussed below.

Further, if the PHA chooses to establish higher payments standards for EHV, HUD has provided other regulatory waivers:

- Defining the “basic range” for payment standards as between 90 and 120 percent of the published Fair Market Rent (FMR) for the unit size (rather than 90 to 110 percent).
- Allowing a PHA that is not in a designated Small Area FMR (SAFMR) area or has not opted to voluntarily implement SAFMRs to establish exception payment standards for a ZIP code area above the basic range for the metropolitan FMR based on the HUD published SAFMRs. The PHA may establish an exception payment standard up to 120 percent (as opposed to 110 percent) of the HUD published Small Area FMR for that ZIP code area. The exception payment standard must apply to the entire ZIP code area.
 - The PHA must notify HUD if it establishes an EHV exception payment standard based on the SAFMR.

PHA Policy

The PHA will automatically approve EHV payment standards up to 120% of the published FMR in response to statewide housing market challenges.

The minimum rent for the EHV program is \$0.00.

Rent Reasonableness

All rent reasonableness requirements apply to EHV units, regardless of whether the PHA has established an alternative or exception EHV payment standard.

Increases in Payment Standards

The requirement that the PHA apply increased payment standards at the family’s first regular recertification on or after the effective date of the increase does not apply to EHV. The PHA may, but is not required to, establish an alternative policy on when to apply the increased payment standard, provided the increased payment standard is used to calculate the HAP no later than the effective date of the family’s first regular reexamination following the change.

PHA Policy

The PHA will not establish an alternative policy for increases in the payment standard. PHA policy in Section 11-III.B. governing increases in payment standards will apply to EHV.

TPS-V.G. TERMINATION OF VOUCHERS

After September 30, 2023, a PHA may not reissue EHV's when assistance for an EHV-assisted family ends. This means that when an EHV participant (a family that is receiving rental assistance under a HAP contract) leaves the program for any reason, the PHA may not reissue that EHV to another family unless it does so no later than September 30, 2023.

If an applicant family that was issued the EHV is unsuccessful in finding a unit and the EHV expires after September 30, 2023, the EHV may not be reissued to another family.

All EHV's under lease on or after October 1, 2023, may not under any circumstances be reissued to another family when the participant leaves the program for any reason.

An EHV that has never been issued to a family may be initially issued and leased after September 30, 2023, since this prohibition only applies to EHV's that are being reissued upon turnover after assistance to a family has ended. However, HUD may direct PHAs administering EHV's to cease leasing any unleased EHV's if such action is determined necessary by HUD to ensure there will be sufficient funding available to continue to cover the HAP needs of currently assisted EHV families.

PART VI: USE OF FUNDS, REPORTING, AND FINANCIAL RECORDS

EHV funds allocated to the PHA for HAP (both funding for the initial allocation and HAP renewal funding) may only be used for eligible EHV HAP purposes. EHV HAP funding obligated to the PHA may not be used for EHV administrative expenses or the other EHV eligible expenses under this notice. Likewise, EHV administrative fees and funding obligated to the PHA are to be used for those purposes and must not be used for HAP.

The appropriated funds for EHV are separate from the regular HCV program and may not be used for the regular HCV program but may only be expended for EHV eligible purposes. EHV HAP funds may not roll into the regular HCV restricted net position (RNP) and must be tracked and accounted for separately as EHV RNP. EHV administrative fees and funding for other eligible expenses permitted by Notice PIH 2021-15 may only be used in support of the EHV and cannot be used for regular HCVs. EHV funding may not be used for the repayment of debts or any amounts owed to HUD by HUD program participants including, but not limited to, those resulting from Office of Inspector General (OIG), Quality Assurance Division (QAD), or other monitoring review findings.

The PHA must comply with EHV reporting requirements in the Voucher Management System (VMS) and Financial Data Schedule (FDS) as outlined in Notice PIH 2021-15.

The PHA must maintain complete and accurate accounts and other records for the program and provide HUD and the Comptroller General of the United States full and free access to all accounts and records that are pertinent the administration of the EHV in accordance with the HCV program requirements at 24 CFR 982.158.

Exhibit TPS-1: MEMORANDUM OF UNDERSTANDING (MOU)

Attachment 2 of Notice PIH 2021-15 - Sample MOU Template

Memorandum of Understanding

[** This sample document demonstrates the Memorandum of Understanding requirements for the administration Emergency Housing Voucher. Unless otherwise noted, all elements are required. **]

This Memorandum of Understanding (MOU) has been created and entered into on
[** Insert execution date. **].

[PHA Name and Address]

[CoC Name and Address]

- I. Introduction and Goals (the following elements, listed in a. – c., are required elements of the MOU):
- a. PHA and CoC’s commitment to administering the EHV’s in accordance with all program requirements.
 - b. PHA goals and standards of success in administering the program.
 - c. Identification of staff position at the PHA and CoC who will serve as the lead EHV liaisons.

Lead HCV Liaison:

[Name and title of PHA staff position]

*Responsibilities of the PHA EHV liaison [**Optional**].*

[Name and title of CoC staff position]

*Responsibilities of the CoC EHV liaison [**Optional**].*

- II. Define the populations eligible for EHV assistance to be referred by CoC.

III. Services to be provided to eligible EHV families

1. List the services to be provided to assist individuals and families have success in the program and who will provide them.

*[**The following services are listed for example purposes. **]*

1. Partnering service providers will support individuals and families in completing applications and obtaining necessary supporting documentation to support referrals and applications for assistance; while aiding households in addressing barriers.
2. Partnering service providers will support PHAs in ensuring appointment notifications to eligible individuals and families and will assist eligible households in getting to meetings with the PHA.
3. PHAs will establish windows of time for EHV applicants to complete intake interviews for EHV.
4. Partnering service providers will provide housing search assistance for eligible individuals and families.
5. Partnering service providers will provide counseling on compliance with rental lease requirements.
6. Partnering service providers will assess individuals and families who may require referrals for assistance on security deposits, utility hook-up fees, and utility deposits.
7. Partnering service providers will assess and refer individuals and families to benefits and supportive services, where applicable.

IV. PHA Roles and Responsibilities

*[**The following responsibilities are listed for example purposes. **]*

1. Coordinate and consult with the CoC in developing the services and assistance to be offered under the EHV services fee.
2. Accept direct referrals for eligible individuals and families through the CoC Coordinated Entry System.
3. Commit a sufficient number of staff and necessary resources to ensure that the application, certification, and voucher issuance processes are completed in a timely manner.
4. Commit a sufficient number of staff and resources to ensure that inspections of units are completed in a timely manner.
5. Designate a staff to serve as the lead EHV liaison.
6. Comply with the provisions of this MOU.

V. CoC Roles and Responsibilities

*[**The following responsibilities are listed for example purposes. **]*

1. Designate and maintain a lead EHV liaison to communicate with the PHA.
2. Refer eligible individuals and families to PHA using the community's coordinated entry system.
3. Support eligible individuals and households in completing and applying for supportive documentation to accompany admissions application to the PHA (i.e. self-certifications, birth certificate, social security card, etc.).
4. Attend EHV participant briefings when needed.
5. Assess all households referred for EHV for mainstream benefits and supportive services available to support eligible individuals and families through their transition.
6. Identify and provide supportive services to EHV families. (While EHV participants are not required to participate in services, the CoC should assure that services are available and accessible.)
7. Comply with the provisions of this MOU.

VI. Third Party Entity Roles Responsibilities

*[**The following responsibilities are listed for example purposes. **]*

1. Describe how the State, local, philanthropic, faith-based organizations, Victim Service Providers or CoC recipients it designates will fulfill each of the following responsibilities:
 - a. Outline resource and/or service being provided in support of the community's EHV Program. Commit a sufficient number of staff and necessary resources to ensure that the application, certification and voucher issuance processes are completed in a timely manner.
 - b. Comply with the provisions of this MOU. VII. Program Evaluation

The PHA, and CoC or designated CoC recipient agree to cooperate with HUD, provide requested data to HUD or HUD-approved contractor delegated the responsibility of program evaluation protocols established by HUD or HUD-approved contractor, including possible random assignment procedures.

[Signed and dated by the official representatives of the PHA, CoC, CoC Contractor organization (if applicable), and third-party entities (if applicable).]

Signed by

Executive Director, PHA

Date

CoC Executive Director

Date

Exhibit TPS-2: HOMELESS PROVIDER'S CERTIFICATION

Attachment 3 of Notice PIH 2021-15 Example of a Homeless Provider's Certification

Emergency Housing Voucher (EHV)

HOMELESS CERTIFICATION

EHV Applicant Name: _____

Household without dependent children (complete one form for each adult in the household)

Household with dependent children (complete one form for household)

Number of persons in the household: ____

This is to certify that the above named individual or household meets the following criteria based on the check mark, other indicated information, and signature indicating their current living situation-

Check only one box and complete only that section

Living Situation: place not meant for human habitation (e.g., cars, parks, abandoned buildings, streets/sidewalks)

The person(s) named above is/are currently living in (or, if currently in hospital or other institution, was living in immediately prior to hospital/institution admission) a public or private place not designed for, or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus station, airport, or camp ground.

Description of current living situation:

Homeless Street Outreach Program

Name: _____

This certifying agency must be recognized by the local Continuum of Care (CoC) as an agency that has a program designed to serve persons living on the street or other places not meant for human habitation. Examples may be street outreach workers, day shelters, soup kitchens, Health Care for the Homeless sites, etc.

Authorized Agency Representative Signature: _____

Date: _____

Living Situation: Emergency Shelter

The person(s) named above is/are currently living in (or, if currently in hospital or other institution, was living in immediately prior to hospital/institution admission) a supervised publicly or privately operated shelter as follows:

Emergency Shelter Program Name: _____

This emergency shelter must appear on the CoC's Housing Inventory Chart submitted as part of the most recent CoC Homeless Assistance application to HUD or otherwise be recognized by the CoC as part of the CoC inventory (e.g., newly established Emergency Shelter).

Authorized Agency Representative Signature: _____ Date
: _____

Living Situation: Recently Homeless

The person(s) named above is/are currently receiving financial and supportive services for persons who are homeless. Loss of such assistance would result in a return to homelessness (ex. Households in Rapid Rehousing Programs, residents of Permanent Supportive Housing Programs participating in Moving On, etc.)

Authorized Agency Representative Signature: _____

This referring agency must appear on the CoC's Housing Inventory Chart submitted as part of the most recent CoC Homeless Assistance application to HUD or otherwise be recognized by the CoC as part of the CoC inventory.

Immediately prior to entering the household's current living situation, the person(s) named above was/were residing in:

emergency shelter OR a place unfit for human habitation

Authorized Agency Representative Signature: _____
Date: _____

Exhibit TPS-3: EXAMPLE OF A VICTIM SERVICES PROVIDER’S CERTIFICATION

Attachment 4 of Notice PIH 2021-15: Example of a Victim Services Provider’s Certification

Emergency Housing Voucher (EHV)

SAMPLE HUMAN TRAFFICKING CERTIFICATION

Purpose of Form:

The Victims of Trafficking and Violence Protection Act of 2000 provides assistance to victims of trafficking making housing, educational health care, job training and other Federally-funded social service programs available to assist victims in rebuilding their lives.

Use of This Optional Form:

In response to this request, the service provider may complete this form and submit it to the Public Housing Agency (PHA) to certify eligibility for EHV assistance.

Confidentiality: All information provided to the service provider concerning the incident(s) of human trafficking shall be kept confidential and such details shall not be entered into any shared database. Employees of the PHA will not have access to these details, and such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

TO BE COMPLETED ON BEHALF OF HUMAN TRAFFICKING SURVIVOR

EHV Applicant Name: _____

This is to certify that the above named individual or household meets the definition for persons who are fleeing or attempting to flee human trafficking under section 107(b) of the Trafficking Victims Protection Act of 2000.

Immediately prior to entering the household’s current living situation, the person(s) named above was/were residing in:

This is to certify that the information provided on this form is true and correct to the best of my knowledge and recollection, and that the individual(s) named above is/has been a victim of human trafficking. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

Authorized Agency Representative Signature: _____ **Date:** _____

GLOSSARY
ACRONYMS USED IN DIVISION OF HOUSING PROGRAMS

AAF	Annual adjustment factor (published by HUD in the Federal Register and used to compute annual rent adjustments)
ACC	Annual contributions contract
ADA	Americans with Disabilities Act of 1990
AIDS	Acquired immune deficiency syndrome
BR	Bedroom
CDBG	Community Development Block Grant (Program)
CFR	Code of Federal Regulations (published federal rules that define and implement laws; commonly referred to as “the regulations”)
CPI	Consumer price index (published monthly by the Department of Labor as an inflation indicator)
EID	Earned income disallowance
EIV	Enterprise Income Verification
FDIC	Federal Deposit Insurance Corporation
FHA	Federal Housing Administration (HUD Office of Housing)
FHEO	Fair Housing and Equal Opportunity (HUD Office of)
FICA	Federal Insurance Contributions Act (established Social Security taxes)
FMR	Fair market rent
FR	Federal Register
FSS	Family Self-Sufficiency (Program)
FY	Fiscal year
FYE	Fiscal year end
GAO	Government Accountability Office
GR	Gross rent

HA	Housing authority or housing agency
HAP	Housing assistance payment
HCV	Housing choice voucher
HQS	Housing quality standards
HUD	Department of Housing and Urban Development
HUDCLIPS	HUD Client Information and Policy System
IPA	Independent public accountant
IRA	Individual retirement account
IRS	Internal Revenue Service
IVT	Income Validation Tool
JTPA	Job Training Partnership Act
LBP	Lead-based paint
LEP	Limited English proficiency
MSA	Metropolitan statistical area (established by the U.S. Census Bureau)
MTCS	Multi-Family Tenant Characteristics System (now the Form HUD-50058 submodule of the PIC system)
MTW	Moving to Work
NOFA	Notice of funding availability
OGC	HUD's Office of General Counsel
OIG	HUD's Office of Inspector General
OMB	Office of Management and Budget
PASS	Plan for Achieve Self-Support
PHA	Public housing agency
PIC	PIH Information Center

PIH	(HUD Office of) Public and Indian Housing
PS	Payment standard
QC	Quality control
REAC	(HUD) Real Estate Assessment Center
RFP	Request for proposals
RFTA	Request for tenancy approval
RIGI	Regional inspector general for investigation (handles fraud and program abuse matters for HUD at the regional office level)
SEMAP	Section 8 Management Assessment Program
SRO	Single room occupancy
SSA	Social Security Administration
SSI	Supplemental security income
SWICA	State wage information collection agency
TANF	Temporary assistance for needy families
TPV	Tenant Protection Vouchers
TR	Tenant rent
TTP	Total tenant payment
UA	Utility allowance
UFAS	Uniform Federal Accessibility Standards
UIV	Upfront Income Verification
URP	Utility reimbursement payment
VAWA	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.

Affiliated individual. With respect to an individual, spouse, parent, brother, sister, or child of that individual, or an individual to whom that individual stands in loco parentis (in the place of a parent), or any individual, tenant, or lawful occupant living in the household of that individual

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. Happening once a year.

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.

Biennial. Happening every two years.

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 their 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. 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.

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. See also *family*.

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 the federal poverty level or 30 percent of the median income for the area, whichever number is higher. Area median income is determined by HUD, with adjustments for smaller and larger families. HUD may establish income ceilings higher or lower than 30 percent of median income if HUD finds such variations are necessary due to unusually high or low family incomes. See 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, regardless of actual or perceived sexual orientation, gender identity, or marital status, and can be further defined in PHA policy.

- A family with or without children (the temporary absence of a child from the home due to placement in foster care is not considered in determining family composition and family size)
- An elderly family or a near-elderly family
- A displaced family
- The remaining member of a tenant family
- A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a tenant family.

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 within its jurisdiction to promote self-sufficiency among participating families, including the coordination of supportive services to these families (24 CFR 984.103).

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). See CFR 5.603.

Funding increment. Each commitment of budget authority by HUD to a PHA under the consolidated annual contributions contract for DOH program.

Gender Identity. Actual or perceived gender-related characteristics.

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.

Imputed asset. Asset disposed of for less than Fair Market Value during two years preceding examination or reexamination.

Imputed asset 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 their representative or the managing agent or their 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.

Living/sleeping room. A living room may be used as sleeping (bedroom) space, but no more than two persons may occupy the space. A bedroom or living/sleeping room must have at least one window and two electrical outlets in proper operating condition. See HCV GB p. 10-6 and 24 CFR 982.401.

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.

Overcrowded. A unit that does not meet the following HQS space standards: (1) Provide adequate space and security for the family; and (2) Have at least one bedroom or living/sleeping room for each two persons.

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 voucher 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)).

Sexual orientation. Homosexuality, heterosexuality or bisexuality.

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.

Small rural public housing agency (PHA). Section 38 defines the term “small public housing agency” as a public housing agency “for which the sum of the number of public housing dwelling units administered by the agency and the number of vouchers under section 8(o) administered by the agency is 550 or fewer” and “that predominantly operates in a rural area, as described in section 1026.35(b)(2)(iv)(A) of title 12, Code of Federal Regulations.” After consideration of the public comments discussed above, HUD is interpreting “predominantly operates in a rural area” to mean a small PHA that:

- (1) Has a primary administrative building with a physical address in a rural area as described in 12 CFR 1026.35(b)(2)(iv)(A); or
- (2) more than 50 percent of its combined public housing units and voucher units under section 8(o) are in rural areas as described in 12 CFR 1026.35(b)(2)(iv)(A). HUD also clarifies that voucher units under section 8(o) include those in the tenant-based Housing Choice Voucher (HCV) program and the Project-Based Voucher (PBV) program.

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. The term on the family's voucher stops from the date the family submits a request for PHA approval of tenancy, until the date the PHA notifies the family in writing whether the request has been approved or denied. This practice is also called "tolling".

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.

Utilities. Water, electricity, gas, other heating, refrigeration, cooking fuels, trash collection, and sewage services. Telephone service is not included.

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.

Veteran. A person who has served in the active military or naval service of the United States at any time and who shall have been discharged or released therefrom under conditions other than dishonorable.

Violence Against Women Reauthorization Act (VAWA) of 2013. Prohibits denying admission to the program to an otherwise qualified applicant or terminating assistance on the basis that the applicant or program participant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.

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. A list of families organized according to HUD regulations and PHA policy who are waiting for a voucher or a unit to become available.

Waiting list admission. An admission from the PHA waiting list.

Welfare assistance. Income assistance from federal or state welfare programs, including assistance provided under TANF and general assistance. Does not include assistance directed solely to meeting housing expenses, nor programs that provide health care, child care or other services for working families. For the FSS program (24 CFR 984.103), *welfare assistance* includes only cash maintenance payments designed to meet a family's ongoing basic needs. Does not include nonrecurring short term benefits designed to address individual crisis situations, work subsidies, supportive services such as child care and transportation provided to families who are employed, refundable earned income tax credits, contributions to and distributions from Individual Development Accounts under TANF, services such as counseling, case management, peer support, child care information and referral, financial empowerment, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support, amounts solely directed to meeting housing expenses, amounts for health care, Supplemental Nutrition Assistance Program (SNAP) and emergency rental and utilities assistance, SSI, SSDI, or social security, and child-only or non-needy TANF grants made to or on behalf of a dependent child solely on the basis of the child's need and not the need of the child's current non-parental caretaker.

¹ <https://www.hudexchange.info/resources/documents/Housing-First-Permanent-Supportive-Housing-Brief.pdf>

² <https://www.hudexchange.info/homelessness-assistance/hearth-act/>

³ <https://govinfo.gov/content/pkg/FR-2015-12-04/pdf/2015-30473.pdf>

⁴ <https://www.hudexchange.info/resource/2033/hearth-coc-program-interim-rule/>

⁵ <https://www.hudexchange.info/resource/5108/notice-cpd-16-11-prioritizing-persons-experiencing-chronic-homelessness-and-other-vulnerable-homeless-persons-in-psh/>

⁶ <https://www.hudexchange.info/resource/5208/notice-establishing-additional-requirements-for-a-continuum-of-care-centralized-or-coordinated-assessment-system/>

⁷ <https://www.hudexchange.info/resource/5208/notice-establishing-additional-requirements-for-a-continuum-of-care-centralized-or-coordinated-assessment-system/>