

**Housing Authority of the County of Alameda (HACA)**  
**Housing Choice Voucher Program**

Current as of: November 14, 2018

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## GLOSSARY

## **Introduction**

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

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

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

#### **HUD**

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

HUD also provides guidance to PHAs through other means such as HUD-published guidebooks, expired HUD notices, and expired handbooks. Basing PHA policy on HUD guidance is optional, as long as PHA policies comply with federal law, federal regulations and mandatory policy. Because HUD has already determined that the guidance it provides is consistent with mandatory policies, PHA reliance on HUD guidance provides the PHA with a “safe harbor.”

Material posted on the HUD website can provide further clarification of HUD policies. For example, FAQs on the HUD website can provide direction on the application of federal regulations in various aspects of the program.

#### **State Law**

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

#### **Industry Practice**

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

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

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

## Abbreviations

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

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

## Resources and Where to Find Them

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

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

Federal Register <a href="http://www.access.gpo.gov/su_docs/aces/fr-cont.html">http://www.access.gpo.gov/su_docs/aces/fr-cont.html</a>
General Income and Rent Determination FAQs <a href="http://www.hud.gov/offices/pih/programs/ph/rhiip/faq_gird.cfm">www.hud.gov/offices/pih/programs/ph/rhiip/faq_gird.cfm</a>
Housing Choice Voucher Program Guidebook (7420.10G), April 2001 <a href="http://www.hud.gov/offices/pih/programs/hcv/forms/guidebook.cfm">www.hud.gov/offices/pih/programs/hcv/forms/guidebook.cfm</a>
HUD-50058 Instruction Booklet <a href="http://portal.hud.gov/hudportal/documents/huddoc?id=50058i.pdf">http://portal.hud.gov/hudportal/documents/huddoc?id=50058i.pdf</a>
Joint Statement of the Department of Housing and Urban Development and the Department of Justice, issued May 17, 2004 <a href="http://www.hud.gov/offices/fheo/library/hud DOJstatement.pdf">http://www.hud.gov/offices/fheo/library/hud DOJstatement.pdf</a>
Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, published January 22, 2007 <a href="http://www.hud.gov/offices/fheo/promotingfh/FederalRegistepublishedguidance.pdf">http://www.hud.gov/offices/fheo/promotingfh/FederalRegistepublishedguidance.pdf</a>
Notice PIH 2012-10, Verification of Social Security Numbers (SSNs) and Supplemental Security Income (SSI) Benefits; and Effective Use of the Enterprise Income Verification (EIV) System's Identity Verification Report <a href="http://portal.hud.gov/huddoc/pih2012-10.pdf">http://portal.hud.gov/huddoc/pih2012-10.pdf</a>
Notice PIH 2017-12, Administrative Guidance for Effective and Mandated Use of the Enterprise Income Verification (EIV) System <a href="https://www.hud.gov/sites/documents/PIH2017-12EIVNOTICE.PDF">https://www.hud.gov/sites/documents/PIH2017-12EIVNOTICE.PDF</a>
Notice PIH 2010-26 (HA), Nondiscrimination and Accessibility Notice <a href="http://www.hud.gov/offices/pih/publications/notices/10/pih2010-26.pdf">http://www.hud.gov/offices/pih/publications/notices/10/pih2010-26.pdf</a>
OMB Circular A-133 <a href="http://www.whitehouse.gov/omb/circulars/a133_compliance_supplement_2010">http://www.whitehouse.gov/omb/circulars/a133_compliance_supplement_2010</a>
Project-Based Voucher Program; Final Rule <a href="http://www.gpo.gov/fdsys/pkg/FR-2005-10-13/pdf/05-20035.pdf">http://www.gpo.gov/fdsys/pkg/FR-2005-10-13/pdf/05-20035.pdf</a>

Rental Housing Integrity Improvement Program (RHIIP) Frequently Asked Questions. <a href="http://www.hud.gov/offices/pih/programs/ph/rhiip/faq.cfm">www.hud.gov/offices/pih/programs/ph/rhiip/faq.cfm</a>
VAWA Final Rule <a href="http://www.gpo.gov/fdsys/pkg/FR-2010-10-27/pdf/2010-26914.pdf">http://www.gpo.gov/fdsys/pkg/FR-2010-10-27/pdf/2010-26914.pdf</a>
Verification FAQ <a href="http://www.hud.gov/offices/pih/programs/ph/rhiip/faq_verif.cfm">www.hud.gov/offices/pih/programs/ph/rhiip/faq_verif.cfm</a>
Verification Guidance, March 2004 (attachment to Notice PIH 2004-1) <a href="http://www.hud.gov/offices/pih/publications/notices/04/verifguidance.pdf">http://www.hud.gov/offices/pih/publications/notices/04/verifguidance.pdf</a>

The HUD Web site is <http://portal.hud.gov/hudportal/HUD>.

Guidebooks, handbooks and other HUD resources may be found at the HUDClips Web site:  
[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/administration/hudclips](http://portal.hud.gov/hudportal/HUD?src=/program_offices/administration/hudclips).

## **Chapter 1**

# **OVERVIEW OF THE HOUSING CHOICE VOUCHER PROGRAM AND THIS ADMINISTRATIVE PLAN**

## **INTRODUCTION**

The Housing Authority of the County of Alameda (HACA) receives its funding for the Housing Choice Voucher (HCV) Program from the U.S. Department of Housing and Urban Development (HUD). HACA is not a federal department or agency. Like all public housing agencies (PHAs), HACA is a governmental or public body, created and authorized by state law to develop and operate housing and housing programs for low-income families. HACA enters into an Annual Contributions Contract (ACC) with HUD to administer the HCV program. HACA must ensure compliance with federal laws, regulations and notices and must establish policies and procedures to clarify federal requirements and to ensure consistency in program operation.

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

There are three parts to this chapter:

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

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

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

## **PART I: THE HOUSING AUTHORITY OF THE COUNTY OF ALAMEDA (HACA)**

### **1-I.A. OVERVIEW**

This overview explains HACA's creation and authorization, the general structure of the organization, and the relationships among the HACA Governing Board, the HACA Housing Commission and staff.

## **1-I.B. ORGANIZATION AND STRUCTURE OF HACA**

The Section 8 tenant-based HCV program is funded by HUD and administered by HACA for the following jurisdictions within Alameda County:

Incorporated Cities:

Albany  
Dublin  
Emeryville  
Fremont  
Hayward  
Newark  
Pleasanton  
San Leandro  
Union City

All Unincorporated Areas of Alameda County, including, but not limited to:

Ashland (unincorporated Hayward)  
Castro Valley  
Cherryland (unincorporated Hayward)  
Livermore Valley (unincorporated Livermore)  
San Lorenzo  
Sunol

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

HACA's Board of Commissioners, called the Governing Board, is the Alameda County Board of Supervisors with the addition of two public housing tenants appointed by the Alameda County Board of Supervisors. The HACA Governing Board has delegated almost all of its duties to an appointed Housing Commission.

The Housing Commission is composed of a representative from each city in HACA's jurisdiction, a representative from one of the unincorporated areas of the County, and two public housing residents. The Board of Supervisors makes all appointments to the HACA Housing Commission from nominees submitted by the city council of each city in HACA's jurisdiction and, as to the representative from the unincorporated areas and the two public housing residents, from nominees submitted by HACA's Executive Director.

Formal actions of HACA are taken through written resolutions or formalized recordings of votes, adopted by the HACA Board of Commissioners or, as appropriate, the HACA Housing Commission, and entered into the official records of HACA.

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

### **1-I.C. HACA MISSION**

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

#### HACA Policy

HACA's mission is to deliver housing, housing assistance and related services to low-income:

- Elderly persons and persons with verifiable disabilities, in order to enable them to live as independently as possible within their economic resources, and
- Persons who are not elderly or do not have verifiable disabilities, for as limited a time as necessary in order to enable them to become self-sufficient and economically independent.

During the period of their assistance by HACA, these participants are expected to avail themselves, as necessary, of those supportive family services, education, training, and job development activities needed for them to achieve self-sufficiency and economic independence.

## **1-I.D. HACA'S PROGRAMS**

The following programs are included under this Administrative Plan:

### HACA Policy

HACA's Administrative Plan is applicable to the operation of the Housing Choice Voucher program.

## **1-I.E. HACA'S COMMITMENT TO ETHICS AND SERVICE**

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

- 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 participants served.
- Provide decent, safe, and sanitary housing – in compliance with the HCV program's 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 that address educational, socio-economic, recreational and other human services 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 that 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 HACA'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 HACA's support systems and a high level of commitment to our employees and their development.

HACA 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-I.F. HACA CODE OF CONDUCT**

### Conflicts of Interest

1. No employee, officer or agent of HACA shall participate in selection, or in the award or administration of a contract supported by U.S. Federal funds if a conflict of interest would be involved. Such a conflict would arise when (i) the employee, officer, or agent, (ii) any member of his/her immediate family, (iii) his/her partner, or (iv) an organization which employs, or is about to employ, any of the above, has a financial or other interest in the firm selected for award.
2. An employee, officer or agent of HACA shall be careful to ensure that s/he is involved in no apparent or potential violations of this provision.

### Gifts

1. HACA's officers, employees, or agents will neither solicit nor accept gratuities, favors, or any other thing of monetary value from contractors, potential contractors, or parties to sub-agreements. Depending upon the circumstances, exceptions to this provision may be granted only in situations where the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value.
2. An employee, officer or agent of HACA shall be careful to ensure that s/he is involved in no apparent or potential violations of this provision.

### Administration

1. Any employee, officer or agent of HACA should report violations of this Code of Conduct to his/her supervisor, or to the Executive Director.
2. There will be no retaliation against any party who makes a good faith complaint concerning violations of this Code of Conduct, regardless of whether or not it is ultimately determined that such violation has in fact occurred. Nor will there be any retaliation against any party who provides information in the course of an investigation into alleged violations of this Code of Conduct.
3. All supervisors have a responsibility to be sensitive to and deal with violations of this Code of Conduct. This responsibility includes monitoring all relevant work activities and contacting a higher level supervisor or the Executive Director if it is reasonably believed that a violation of the Code of Conduct has occurred. Any such report shall be investigated regardless of whether a formal complaint has been made.

### Discipline

1. Any employee, officer or agent of HACA determined to have committed a violation of this Code of Conduct shall be subject to disciplinary action, up to and including termination.

### Dissemination

1. Any employee, officer or agent of HACA shall be informed of this Code of Conduct when this Code is adopted, and/or when s/he is initially retained by HACA and on an annual basis thereafter.

## **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 and staff with information related to the overall operation of the HCV program. There have been many changes to the program since its inception in 1974 and a brief history of it will assist in its understanding.

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 25 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 25 percent of adjusted income. Consequently, depending on the actual rental cost of the unit selected, a family might pay more or less than 25 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 its 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 Program are determined by HUD, based on laws adopted by Congress.. HACA is afforded choices in the operation of the Program, which are included in HACA's Administrative Plan, a document approved by the HACA Housing Commission.

The HCV Program provides mobility to eligible families who may search for suitable housing anywhere in HACA's jurisdiction and may also be eligible to move under portability to the jurisdictions of other PHAs.

When a family is determined to be eligible for the Program and funding is available, HACA issues the family a Housing Choice Voucher. When the family finds a suitable housing unit and funding is available, HACA enters into a contract with the owner and the family enters into a lease with the owner. Each party makes its respective payment to the owner so that the owner receives full rent.

While the family is determined to be eligible for the Program by HACA, the owner has the responsibility to approve the family as a suitable renter. HACA makes payments to the owner as long as the family is eligible and the housing unit continues to qualify under the Program.

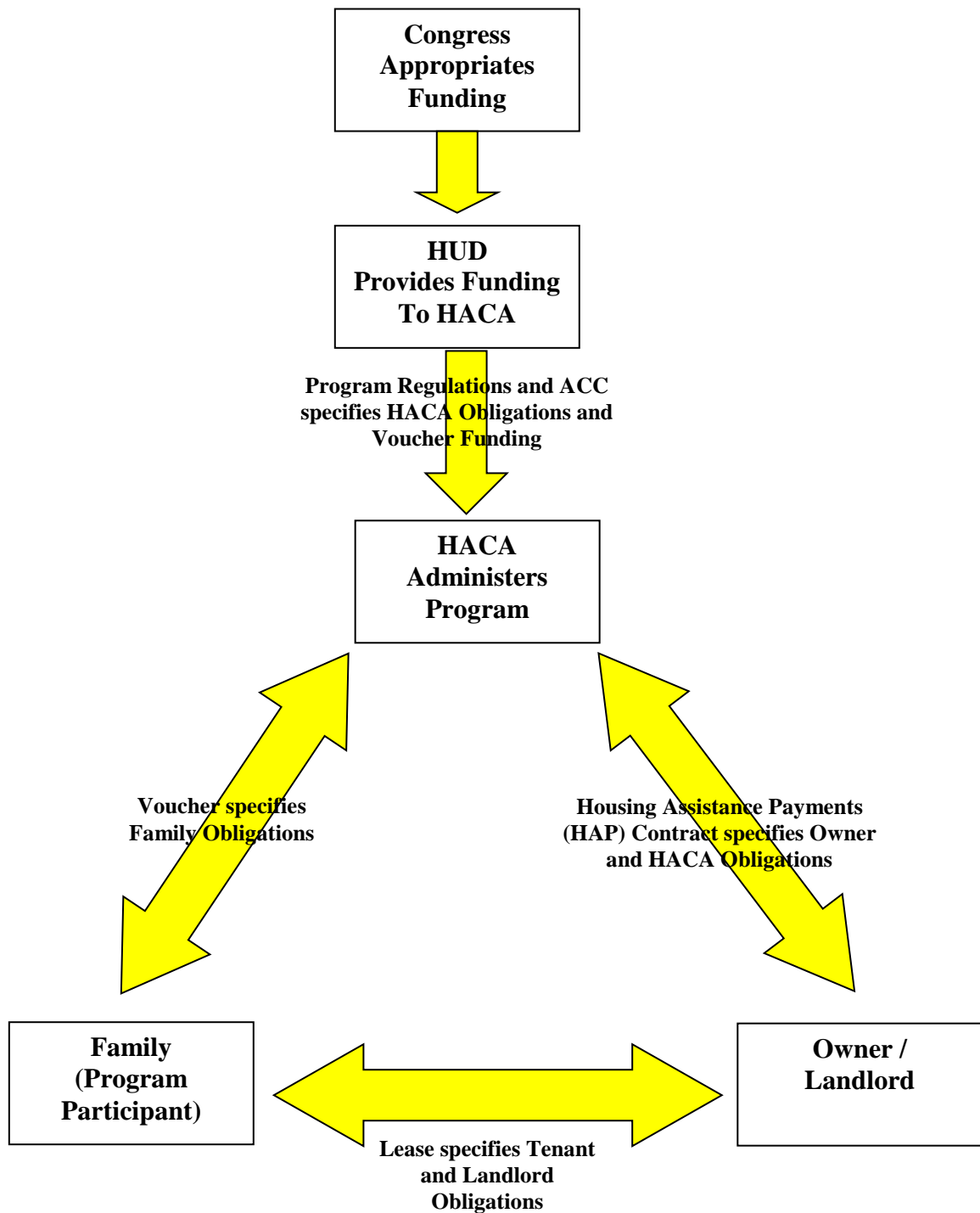
## **1-II.C. THE HCV PARTNERSHIPS**

To administer the HCV Program, HACA enters into a contractual relationship with HUD (Consolidated Annual Contributions Contract). HACA also enters into contractual relationships with the assisted family and the landlord of the housing unit.

For the HCV Program to work successfully, all the parties – HUD, HACA, the owner, and the participating family – have important roles to play. The roles and responsibilities of all parties are defined in federal regulations and in legal documents that parties execute to participate in the Program.

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

## The HCV Relationships:



## **What Does HUD Do?**

HUD has the following major responsibilities:

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

## **What Does HACA Do?**

HACA administers the HCV Program under contract with HUD and has the following major responsibilities:

- 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 vouchers 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 program rules;
- Provide families and owners with prompt, professional service; and
- Comply with all fair housing and equal opportunity requirements, HUD regulations and requirements, the Annual Contributions Contract, HUD-approved applications for funding, HACA's Administrative Plan, and other applicable federal, state and local laws.

## **What Does the Owner Do?**

The owner leases the unit and has the following major responsibilities:

- Screen families who apply for tenancy, to determine suitability as renters
  - HACA can provide some information to the owner, but the primary responsibility for tenant screening rests with the owner.
  - The owner should consider family background factors such as rent and bill-paying history, history of caring for property, respecting the rights of others to peaceful enjoyment of the property, compliance with essential conditions of tenancy, whether the family is engaging in drug-related criminal activity or other criminal activity that might threaten others.
- Comply with the terms of the Housing Assistance Payments contract executed with HACA;
- Comply with all applicable fair housing laws;
- Maintain the housing unit in accordance with HUD's Housing Quality Standards (HQS) 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 HACA with complete and accurate information, determined by HACA 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 HACA;
- Allow HACA to inspect their 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 HACA and the owner before moving or terminating the lease;
- Use the assisted unit only for a 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 HACA of any changes in family composition;
- Not commit fraud, bribery, or any other corrupt or criminal act in connection with any housing programs.

## **1-II.D. APPLICABLE REGULATIONS**

Applicable regulations include:

- 24 CFR Part 5: General Program Requirements
- 24 CFR Part 8: Nondiscrimination
- 24 CFR Part 35: Lead-Based Paint
- 24 CFR Part 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)
- GOV § 12900: California's Fair Employment and Housing Act
- Cal.Civ.Code § 51: California's Unruh Civil Rights Act
- Cal.Civ.Code § 54: California's Disabled Persons Act

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

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

The Administrative Plan is required by HUD. The purpose of the Administrative Plan is to establish policies for carrying out the HCV Program in a manner consistent with HUD requirements and local goals and objectives contained in HACA's Agency Plan. The Administrative Plan is a supporting document to HACA Agency Plan, and is available for public review as required by CFR 24 Part 903.

This Administrative Plan is set forth to define HACA'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 such federal regulations, HUD handbooks and guidebooks, notices and other applicable law. The policies in this Administrative Plan have been designed to ensure compliance with the consolidated ACC and all HUD-approved applications for program funding.

HACA 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 HACA staff shall be in compliance with HACA'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]**

HUD regulations contain a list of what must be included in the Administrative Plan, namely:

- Selection and admission of applicants from the HACA waiting list, including any HACA admission preferences, procedures for removing applicant names from the waiting list, and procedures for closing and reopening HACA waiting list (Chapter 4);
- Issuing or denying vouchers, including HACA's policy governing the voucher term and any extensions of the voucher term. If HACA decides to allow extensions of the voucher term, HACA's Administrative Plan must describe how HACA determines whether to grant extensions, and how HACA determines the length of any extension (Chapter 5);
- Any special rules for use of available funds when HUD provides funding to HACA for a special purpose (e.g., relocation), 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 HACA of amounts the family owes HACA (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
- HACA 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. HACA'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.

### **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**

HACA will revise this Administrative Plan as needed to comply with changes in HUD regulations. The original plan and any changes must be consistent with the HACA Agency Plan, approved by the HACA Housing Commission, and a copy provided to HUD.

#### HACA Policy

HACA will review and update its Admin Plan at least once a year, and more often if needed, to reflect changes in regulations, HACA 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 PHAs to affirmatively further civil rights and fair housing in all federally-assisted housing programs. The letter and spirit of these laws are implemented through consistent policy and processes. The responsibility to further nondiscrimination pertains to all areas of the PHA's housing choice voucher (HCV) operations.

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

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

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

Part III: Prohibition of Discrimination Against Limited English Proficiency Persons. This part details the obligations of a PHA 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 PHAs 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. The California Fair Employment and Housing Act prohibits discrimination in housing on these same bases, as well as gender, gender identity, gender expression, sexual orientation, marital status, ancestry, source of income, and genetic information. In addition, HUD regulations provide for additional protections regarding sexual orientation, gender identity, and marital status. A PHA will comply fully with all federal, state, and local nondiscrimination laws, and with rules and regulations governing fair housing and equal opportunity in housing and employment, including:

- Title VI of the Civil Rights Act of 1964
- Title VIII of the Civil Rights Act of 1968 (as amended by the Community Development Act of 1974 and the Fair Housing Amendments Act of 1988)
- Executive Order 11063
- Section 504 of the Rehabilitation Act of 1973
- The Age Discrimination Act of 1975
- Title II of the Americans with Disabilities Act (to the extent that it applies, otherwise Section 504 and the Fair Housing Amendments govern)
- California's Fair Employment and Housing Act, Gov't Code Sec. 12900 *et seq.*
- California's Unruh Civil Rights Act, California Civil Code Sec.51
- California's Disabled Persons Act, California Civil Code Sec 54.
- 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](#)
- Violence Against Women Reauthorization Act of 2013 (VAWA)

When more than one civil rights law applies to a situation, the laws will be read and applied together.

Any applicable state laws or local ordinances and any legislation protecting individual rights of tenants, applicants, or staff that may subsequently be enacted 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 PHA policies, can prohibit discrimination based on other factors.

A PHA shall not discriminate because of race, color, sex (includes, but is not limited to, pregnancy, childbirth, or medical conditions related to pregnancy or childbirth, as well as gender identity and gender expression), religion, marital or familial status, age, disability, medical condition, genetic information, ancestry, source of income, sexual orientation, 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.

A PHA will not use any of these factors to:

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

## **Providing Information to Families and Owners**

A PHA must take steps to ensure that families and owners are fully aware of all applicable civil rights laws. As part of the briefing process, the PHA 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 any family member has been discriminated against by a PHA or an owner, the family should advise the PHA. HUD requires the PHA to make every reasonable attempt to determine whether the applicant's or participant's assertions have merit and take any warranted corrective action. In addition, the PHA 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 to have unlawfully discriminated and inform the complainant that such notice was made;
- Investigate the allegations and provide the complainant and those alleged to have unlawfully discriminated with findings and either a proposed corrective action or an explanation of why corrective action is not warranted; and
- Keep records of all complaints, investigations, notices, and corrective actions [Notice PIH 2014-20].

### HACA Policy

Applicants or participants who believe that they have been subject to unlawful discrimination may notify HACA either orally or in writing.

Within 10 business days of receiving the complaint, HACA will provide a written notice to those alleged to have unlawfully discriminated. HACA will also send a written notice to the complainant informing him/her that notice was sent to those alleged to have unlawfully discriminated, 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).

HACA will attempt to remedy discrimination complaints made against HACA and will conduct an investigation into all allegations of unlawful discrimination. Within 10 business days following the conclusion of HACA's investigation, HACA will provide the complainant and those alleged to have unlawfully discriminated with findings and either a proposed corrective action plan or an explanation of why corrective action is not warranted. HACA will keep a record of all complaints, investigations, notices, and corrective actions. (See Chapter 16.) HACA will provide a copy of a discrimination complaint form to the complainant and provide the complainant with information on how to complete and submit the form to HUD's Office of Fair Housing and Equal Opportunity (FHEO).

Discrimination complaints may also be filed with California's Department of Fair Employment and Housing at [www.dfeh.ca.gov](http://www.dfeh.ca.gov).

## **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.

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

#### HACA Policy

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

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

HACA will display posters and other housing information and signage in locations throughout HACA's office in such a manner as to be easily readable 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 dwelling unit.

Federal regulations stipulate that requests for accommodations will be considered reasonable if they do not create an "undue financial and administrative burden" for the PHA, 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, a PHA 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
- Using higher payment standards (either within the acceptable range or with HUD approval of a payment standard outside the PHA range) if the PHA 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 PHA 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.

### HACA Policy

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

## **2-II.D. VERIFICATION OF DISABILITY**

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

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

If a person's disability is obvious or otherwise known to the PHA, 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 the PHA, the PHA must verify that the person meets the definition of a person with a disability, and that the limitations imposed by the disability require the requested accommodation.

When verifying a disability, the PHA 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]
- The PHA must request only information that is necessary to evaluate the disability-related need for the accommodation. The PHA will not inquire about the nature or extent of any disability.
- Medical records will not be accepted or retained in the participant file.

**2-II.E. APPROVAL/DENIAL OF A REQUESTED ACCOMMODATION** [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].

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

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

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

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

HACA Policy

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

If HACA 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 HACA's operations), HACA will discuss with the family whether an alternative accommodation could effectively address the family's disability-related needs without a fundamental alteration to the HCV program and without imposing an undue financial and administrative burden.

If HACA believes that the family has failed to identify a reasonable alternative accommodation after interactive discussion and negotiation, HACA 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 a PHA to ensure that persons with disabilities related to hearing and vision have reasonable access to the PHA's programs and services [24 CFR 8.6].

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

### HACA Policy

To meet the needs of persons with hearing impairments, TTD/TTY (text telephone display / teletype), California Relay Service, video relay service and email communication will be available.

To meet the needs of persons with vision impairments, large-print or 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 HACA 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; having material interpreted by HACA staff or a tele-interpreter service; 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**

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

- Notice PIH 2006-13
- 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

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

- This plan describes the key policies that govern the PHA's responsibilities with regard to physical accessibility.
- Notice PIH 2006-13 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 PHA facilities must conform to the Uniform Federal Accessibility Standards (UFAS). Newly-constructed facilities must be designed to be readily accessible to and usable by persons with disabilities. Alterations to existing facilities must be accessible to the maximum extent feasible, defined as not imposing an undue financial and administrative burden on the operations of the HCV program.

When issuing a voucher to a family that includes an individual with disabilities, the PHA will include a current list of available accessible units known to HACA and will assist the family in locating an available accessible unit, if necessary.

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

## **2-II.H. DENIAL OR TERMINATION OF ASSISTANCE**

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

When applicants with disabilities are denied assistance, the notice of denial must inform them of the PHA'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 the PHA's informal hearing process and their right to request an informal hearing and reasonable accommodation.

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

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

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

The PHA will offer competent interpretation services free of charge, upon request, to the LEP person.

### HACA Policy

HACA will provide interpretation services by utilizing bilingual staff and/or contracting for telephone interpreter services.

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 HACA. The interpreter may be a family member or friend.

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

Where feasible and possible, HACA 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.

### HACA Policy

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

HACA will provide written translations of vital documents into Cantonese, Farsi, Spanish and Vietnamese, as HACA's budget allows. HACA will provide oral translation where reasonable for LEP applicants and participants who speak other languages.

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

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

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

### HACA Policy

HACA has developed a written Language Action plan (LAP), which includes the following five steps: (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 a PHA) as constituting such a limitation; has none of the impairments defined in this section but is treated by a public entity as having such an impairment; or has a physical or mental impairment that substantially limits one or more major life activities, only as a result of the attitudes of others toward that impairment.

The definition of a person with disabilities does not include:

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

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

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

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

**EXHIBIT 2-2: REASONABLE STEPS HACA WILL TAKE TO AFFIRMATIVELY FURTHER FAIR HOUSING IN ITS HOUSING CHOICE VOUCHER (HCV) FAMILY SELF-SUFFICIENCY PROGRAM (FSS) AND FAMILY UNIFICATION PROGRAM (FUP)**

HACA will take the following reasonable steps to affirmatively further fair housing in its Housing Choice Voucher FSS, and FUP Programs:

1. Advertise widely in the community for new position(s) created as a result of program funding awarded to HACA by HUD.
2. Market the program to all eligible persons, including persons with disabilities and persons with limited English proficiency.
3. Make buildings and communications that facilitate applications and service delivery accessible to persons with disabilities.
4. Provide referrals to fair housing agencies such as Eden Council for Hope & Opportunity (ECHO).
5. Inform participants as to how to file a fair housing complaint, including providing the toll-free number for the Housing Discrimination Hotline: 1-800-669-9777.
6. Recruit landlords and service providers in areas that expand housing choice for program participants in order to meet its goals of homeownership and housing mobility.
7. As to the FUP Program:
  - a. Identify and ensure certification of FUP eligible families and youth that may be on the HACA waiting list and ensure that the family or youth maintain their original position on the waiting list after certification; and
  - b. Appropriately place all FUP eligible families and youth referred by the Alameda County Social Services Agency on the HCV waiting list in order of first come, first served.

HACA will maintain records of the steps listed above and their impact by:

1. Reviewing recruitment records for any new position(s) as set forth in Item 1 above.
2. Recording and monitoring the race, ethnicity, familial status, disability status and limited English proficiency status of program participants.

### **EXHIBIT 2-3: REASONABLE STEPS HACA WILL TAKE TO AFFIRMATIVELY FURTHER FAIR HOUSING IN ITS HOUSING CHOICE VOUCHER (HCV) RENTAL ASSISTANCE PROGRAM FOR NON-ELDERLY PERSONS WITH DISABILITIES PROGRAM**

HACA will take the following reasonable steps to affirmatively further fair housing in its Housing Choice Voucher Rental Assistance for Non-Elderly Persons With Disabilities Program (a.k.a. Money Follows the Person or MFP Program):

1. Offer applicants/participants the opportunity to complete the Supplement to the Application for Federal Assisted Housing (HUD-92006) in which the applicant/participant can name a person for HACA to contact in the event issues arise during the application process or program participation.
2. Inform affected applicants how to file a fair housing complaint by (see Section 2-I.B Non Discrimination, Discrimination Complaints and Section 5-I.B Briefing, Briefing Packet):
  - c. Providing the toll free number for the Housing Discrimination Hotline: 1-800-669-9777 and the Federal Information Relay Service: 1-800-887-8339,
  - d. Providing HUD's "Are You a Victim of Discrimination?" brochure which includes a Housing Discrimination Complaint form and contact information for the Department of Housing and Urban Development's California Office of Fair Housing, and
  - e. Upon request, providing fair housing material in alternative formats for participants with disabilities (see Section 2-II.F Program Accessibility for Persons with Hearing or Vision Impairments).
3. Market the program to all eligible persons, including persons with disabilities and persons with limited English proficiency (see Section 4-II.D Family Outreach).
4. Comply with state laws prohibiting discrimination in housing based upon sexual orientation or gender identity and lawful source of income.
5. Make buildings and communications that facilitate applications and service delivery accessible to persons with disabilities.
6. Provide referrals to fair housing agencies such as Eden Council for Hope & Opportunity (ECHO).
7. Recruit landlords and service providers in areas that expand housing choice to program participants to meet goals of homeownership and housing mobility.
8. Not deny other housing opportunities to persons who qualify for a HCV under this program, or otherwise restrict access to HACA programs to eligible applicants who choose not to participate in accordance with the policies in HACA's Administrative Plan, by announcements on HACA's website, Wait List Information Line, postings in HACA's lobby and via public notice.
9. Provide upon request the adopted written procedures for addressing requests for reasonable accommodations for people with disabilities (see Part II).
10. Notify applicants and participants in writing if they require any type of accommodations at the time of application, reexamination, and on notices of adverse action by HACA (see Section 2-II.A Policies Related to Persons with Disabilities Overview).

11. Assure that people with disabilities have access to all HACA's programs and services through the use of a "CCT Participant" selection preference (see Section 4-III.C Selection Method).
12. Maintain protocols for effective communication with people with disabilities in applications and recertification of eligibility by permitting applications and reexaminations to be completed by mail or conducting home visits (see Section 2-II.B. Definition of Reasonable Accommodation, Types of Reasonable Accommodations).
13. Provide a participant with disabilities a list of accessible units that may be rented with HCV assistance and assist the family in locating an available accessible unit, if necessary, such as a referral to 211 for an evaluation of which Homelessness Prevention and Rapid Re-housing Program (HPRP) programs the participant may be eligible for (see Section 2-II.3G Physical Accessibility and [www.endhomelessness.org/.../2609\\_file Alameda County HPRP Community Profile.pdf](http://www.endhomelessness.org/.../2609_file_Alameda_County_HPRP_Community_Profile.pdf)).
14. Provide time extensions for locating a unit when necessary due to lack of availability of accessible units or special challenges of the family in seeking a unit (see Section 2-II.B Definition of Reasonable Accommodation, Types of Reasonable Accommodations).
15. Use higher payment standards (either within the acceptable range or with HUD approval of a payment standard outside HACA range) if HACA determines this is necessary to enable a person with disabilities to obtain a suitable housing unit (see Section 2-II.B Definition of Reasonable Accommodation, Types of Reasonable Accommodations).
16. Provide a utility allowance amount higher than shown on HACA's utility allowance schedule if a higher allowance is needed as a reasonable accommodation for a family member with a disability (see Section 6-III.D Applying Utility Allowances).
17. Provide an additional bedroom as a reasonable accommodation for a family member with a disability for medical equipment (see Section 5-II.C Exceptions to Subsidy Standards) or a live-in aide (see Section 3-I.M Live-In Aide).
18. Inform applicants about HACA's written Section 504 Grievance Procedures, which includes the contact information of HACA's designated Section 504 Coordinator.

HACA will maintain records of the steps listed above and their impact by:

1. Recording and monitoring the race, ethnicity, familial status, disability status and limited English proficiency status of program participants.

## Chapter 3

### ELIGIBILITY

#### INTRODUCTION

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

To be eligible for the HCV program:

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

This chapter contains three parts:

Part I: Definitions of Family and Household Members. This part contains HUD and HACA 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 HACA 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); 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. *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 group includes, but is not limited to a family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family), an elderly family, a near-elderly family, a disabled family, a displaced family, or the remaining member of a tenant family. HACA has the discretion to determine if any other group of persons qualifies as a family.

*Gender Identity* means actual or perceived gender characteristics.

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

#### **HACA Policy**

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 HACA if the family's composition changes.

#### **Household**

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

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

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

Except under the following conditions, the PHA 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, the PHA 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, HACA is bound by the court's determination of which family members continue to receive assistance.

#### HACA Policy

When a family on the waiting list breaks up into two otherwise eligible families, only one of the new families may retain the original application date. Other former family members may make a new application with a new application date if the waiting list is open.

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

In the absence of a judicial decision, or an agreement among the original family members, HACA will determine which family will retain its placement on the waiting list, or will continue to receive assistance. In making its determination, HACA 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.

#### HACA Policy

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, COHEAD, AND OTHER ADULT**

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

*Spouse* and *Co-head* are defined in the *Glossary*.

#### HACA Policy

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.

#### HACA Policy

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**

##### HACA Policy

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 183 or more days per year, not necessarily consecutively (51%).

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, HACA will make the determination based on available documents such as court orders, or an IRS return showing which family has claimed the child for income tax purposes.

### **3-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 time commitment or subject load that is needed to be full-time is defined by the educational institution.

Identifying each FTS is important because: (1) each family member that is an FTS, other than the head, spouse, or 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, HACA must make all aspects of the HCV program accessible to persons with disabilities and consider reasonable accommodations requested based upon a person's disability.

#### **Disabled Family**

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

Even though persons with drug or alcohol dependencies are considered persons with disabilities, this does not prevent HACA 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-day* is one calendar day per guest. For example, 3 separate guests who have each stayed with a family two days each at different times, have stayed 6 *guest-days*. ( $3 \times 2 = 6$ )

#### **HACA Policy**

A family may incur no more than 30 guest-days during any 12-month period.

Children who are subject to a joint custody arrangement or for whom a family has visitation privileges, that are not included as a family member because they live outside of the assisted household 183 or more days per year, not necessarily consecutively, are not subject to the time limitations of guests or guest-days 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 the PHA to live with a participant family are considered household members but not family members. The income of foster children/adults, including California Kinship Guardian Assistant Payments (Kin-GAP)\_per PIH 2008-40, 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].

#### HACA Policy

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 HACA subsidy standards.

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**

##### HACA Policy

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

#### **Absent Students**

##### HACA Policy

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 HACA 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.

#### HACA Policy

If a child has been placed in foster care, HACA 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. If the child is receiving other federal rent subsidy, the child will be removed from the HACA-assisted household until s/he is no longer receiving the other federal rent subsidy.

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

#### HACA Policy

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 unless s/he is receiving other federal rent subsidy.

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

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

#### HACA Policy

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

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

#### HACA Policy

The family must request HACA approval for the return to the assisted unit of any adult family member that HACA previously determined to be permanently absent. The family must notify HACA in writing within 10 days of the return of any minor that HACA has determined to be permanently absent. 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]. This definition applies to a specific person [PIH 2008-20].

The PHA 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 PHA may not approve an unidentified live-in aide, nor a larger unit than the family qualifies for under the PHA's subsidy standards for an unidentified live-in aide.

Occasional, intermittent, multiple or rotating care givers do not meet the definition of a live-in aide since 24 CFR Section 982.402(b)(7) implies live-in aides must reside with a family permanently for the family unit size to be adjusted in accordance with the subsidy standards established by the PHA. Therefore, an additional bedroom should not be approved.

Regardless, a family may always request a reasonable accommodation to permit program participation by individuals with disabilities. A family's composition or circumstances may warrant the provision of an additional bedroom to permit disability-related overnight care and allow the family equal use and enjoyment of the unit. Such limited exceptions to the established subsidy standards are permitted under 24 CFR Section 982.402(b)(8).

The PHA must consider requests for an exception to the established subsidy standards on a case-by-case basis and provide an exception, where necessary, as a reasonable accommodation. The PHA shall document the justification for all granted exceptions.

HACA 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 a live-in aide is not counted in the calculation of annual income for the family [24 CFR 5.609(b)]. Relatives may be approved as live-in aides if they meet all of the criteria defining a live-in aide. Because live-in aides are not *family* members, a relative who serves as a live-in aide would not be considered a remaining member of a tenant family.

#### HACA Policy

The live-in aide, and any family members of the live-in aide, must be identified by the family and approved by HACA.

A family's request for a live-in aide must be made in accordance with HACA's Request for Reasonable Accommodation policies (2.II.C). Written verification will be required from a reliable, knowledgeable professional, such as a doctor, social worker, or case worker, that the live-in aide is essential for the care and well-being of the elderly, near-elderly, or disabled family member. For continued approval, the family must submit a new request-subject to HACA verification every two years.

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.

HACA 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 HACA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.

HACA 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.

## **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 very low-income family whose annual income does not exceed the higher of the Federal poverty level or 30 percent of the median income for the area.

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 the applicant's 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]

#### HACA Policy

HACA will consider a family to be continuously assisted if the family was leasing a unit under any 1937 Housing Act program at the time it was selected from HACA's 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 the PHA to establish additional categories of low-income families that may be determined eligible. The additional categories must be consistent with the PHA plan and the consolidated plans for local governments within the PHA's jurisdiction.

#### HACA Policy

HACA 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 HACA's program during a HACA fiscal year must be extremely low-income families. HUD may approve exceptions to this requirement if HACA 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), noncitizens that have eligible immigration status, or VAWA self-petitioners. At least one family member must be a citizen, national, noncitizen with eligible immigration status, or a VAWA self-petitioner in order for the family to qualify for any level of assistance.

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

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

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

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

Citizens and nationals are required to submit a signed declaration as verification of their status. HUD regulations also require PHAs to obtain verification of the declaration by requiring documentation of their status as set forth in Chapter 7.

#### **HACA Policy**

Family members who declare citizenship or national status will be required to provide documentation of their status as set forth in Chapter 7.

#### ***Eligible Noncitizens and VAWA Self-Petitioners***

In addition to providing a signed declaration, those declaring status as an eligible noncitizen or VAWA self-petitioner, must sign a verification consent form. The PHA must obtain verification of the declaration by requiring documentation of their status as described in Chapter 7. The documentation required for establishing eligible noncitizen or VAWA self-petitioner status varies depending upon factors such as the conditions under which eligible immigration status has been granted, the person's age, and the date on which the family began receiving HUD-funded assistance.

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

### ***Ineligible Noncitizens***

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

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

### **Mixed Families**

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

### **Ineligible Families [24 CFR 5.514(d), (e), and (f)]**

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

#### **HACA Policy**

HACA will not provide assistance to a family before the verification of at least one family member.

When HACA determines that an applicant family does not include any citizens, nationals, or eligible noncitizens, following the verification process, the family will be sent a written notice within 10 business days of the determination.

The notice will explain the reasons for the denial of assistance, that the family may be eligible for proration of assistance, and will advise the family of its right to request an appeal to the United States Citizenship and Immigration Services (USCIS), or to request an informal hearing with HACA. The informal hearing with HACA 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, HACA 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, HACA 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.

#### **HACA Policy**

HACA 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 PIH2012-10]**

The applicant and all members of the applicant's household (including Live-In Aides and foster children/adults) must disclose the complete and accurate social security number (SSN) assigned to each household member, and the documentation necessary to verify each SSN. If a child under age 6 has been added to an applicant family within 6 months prior to voucher issuance, an otherwise eligible family may be admitted to the program and must disclose and document the child's SSN within 90 days of the effective date of the initial HAP contract. A detailed discussion of acceptable documentation is provided in Chapter 7-II.B.

*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.

HACA must deny assistance to an applicant family if it does not meet the SSN disclosure, and documentation requirements contained in 24 CFR 5.216 (see Chapter 12-I.D).

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

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

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

### **3-II.E. STUDENTS ENROLLED IN INSTITUTIONS OF HIGHER EDUCATION [24 CFR 5.612 and FR Notice 4/10/06, 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, and does not have a dependent child, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the student's eligibility must be examined along with the income eligibility of the student's parents. In these cases, both the student and the student's parents must be income eligible for the student to receive HCV assistance. If, however, a student in these circumstances is determined independent from his/her parents in accordance with HACA 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, HACA 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***

### HACA Policy

HACA will consider a student “independent” from his or her parents and the parents’ income will not be considered when determining the student’s eligibility if the following four criteria are all met:

The individual is of legal contract age under state law.

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

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

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 his/her parents pursuant to IRS regulations, as demonstrated on the parents' most recent tax forms.

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

If the PHA 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.

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

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

HACA 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***

### HACA Policy

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).

## ***Person with Disabilities***

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

## ***Veteran***

### HACA Policy

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***

### HACA Policy

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 his/her own, apart from his/her parents, HACA 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, HACA must ensure that: (1) the student is individually eligible for the program, (2) either the student is independent from his/her parents or the student's parents are income eligible for the program, and (3) the "family" with which the student is applying is collectively eligible for the program.

#### HACA Policy

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

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

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

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

If HACA determines that the student, the student's parents (if applicable), or the student's "family" is not eligible, HACA 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***

##### HACA Policy

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

If the student's parents are married and living together, HACA will obtain a joint income declaration and certification of joint income from the parents.

If the student's parent is widowed or single, HACA will obtain an income declaration and certification of income from that parent.

If the student's parents are divorced or separated, HACA will obtain an income declaration and certification of income from each parent.

If the student has been living with one of his/her parents and has not had contact with or does not know where to contact his/her other parent, HACA 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. HACA 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, HACA will use the income limits for the jurisdiction in which the parents live.

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

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

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

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

Denial of assistance includes any of the following:

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

#### **Prohibited Reasons for Denial of Program Assistance [24 CFR 982.202(b), 24 CFR Part 5, Subpart L]**

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 HACA's jurisdiction (See Chapter 10, Portability.)
- Whether members of the family are unwed parents, recipients of public assistance, or children born out of wedlock
- Whether the family includes children
- Whether a family decides to participate in a family self-sufficiency program
- Whether or not a qualified applicant has been a victim of domestic violence, dating violence, sexual assault, or stalking if the applicant is otherwise qualified for assistance (See section 3-III.G.)

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

HUD requires PHAs to deny assistance in the following cases:

- Any member of the household has been evicted from federally-assisted housing in the last 3 years for drug-related criminal activity.

HUD permits, but does not require, PHAs 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).

#### HACA Policy

HACA will not admit an otherwise-eligible family who was evicted from federally-assisted housing within the past 3 years for drug-related criminal activity. However, HACA may admit the household if HACA determines:

- That the evicted household member who engaged in the criminal activity has successfully completed a supervised drug rehabilitation program approved by HACA; or
  - That the circumstances leading to eviction no longer exist (for example, the criminal household member has died or is imprisoned).
- The PHA determines that any household member is currently engaged in the use of illegal drugs.

#### HACA Policy

*Currently engaged in* is defined as any use of illegal drugs during the previous six months.

- The PHA 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.

#### HACA Policy

In determining reasonable cause, HACA 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 conviction will be given more weight than an arrest. HACA will also consider evidence from treatment providers or community-based organizations providing services to household members.

- Any household member has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine on the premises of federally assisted housing.
- Any household member is subject to a lifetime registration requirement under a state sex offender registration program.
- The applicant does not meet the applicable SSN disclosure, documentation, and verification requirements as specified in 24 CFR 5.216 outlined in Chapter 7II-B.

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

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

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

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

##### HACA Policy

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

*Drug-related criminal activity*, defined by HUD as the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug [24 CFR 5.100].

*Violent criminal activity*, defined by HUD as any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage [24 CFR 5.100].

Criminal activity that may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity; or

Criminal activity that may threaten the health or safety of property owners management staff, and persons performing contract administration functions or other responsibilities on behalf of HACA (including a HACA employee or a HACA contractor, subcontractor, or agent).

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

Any conviction not expunged for drug-related or violent criminal activity within the past 5 years.

Records of arrests for drug-related or violent criminal activity within the past 5 years, although a record of arrest(s) will not be used as the basis for the denial or proof that the applicant engaged in disqualifying criminal activity.

Any record of eviction from public or privately-owned housing as a result of criminal activity within the past 5 years.

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

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

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

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

Per the alternative requirements listed in the *Federal Register* notice dated December 29, 2014, PHAs are no longer permitted to deny assistance to a family because the family previously failed to meet its obligations under the Family Self-Sufficiency (FSS) program [FR Notice 12/29/14].

### HACA Policy

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

The family does not provide information that HACA or HUD determines is necessary in the administration of the program.

The family does not provide complete and true information to HACA.

Any family member has been evicted from federally-assisted housing in the last five years.

Any PHA has ever terminated assistance under the program for any member of the family.

Any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.

The family 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 assisted.

If the family has not reimbursed any PHA for amounts the PHA paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease, unless the family repays the full amount of the debt prior to being assisted.

The family has breached the terms of a repayment agreement entered into with HACA, unless the family repays the full amount of the debt covered in the repayment agreement prior to being assisted.

A family member has engaged in or threatened violent or abusive behavior toward HACA personnel.

*Abusive or violent behavior towards HACA personnel* includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.

*Threatening* refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.

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

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

#### **Screening for Eligibility**

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

##### HACA Policy

HACA will perform a criminal background check for every adult household member.

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

##### HACA Policy

HACA will use the Dru Sjodin National Sex Offender database to screen applicants for admission.

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

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

#### **Screening for Suitability as a Tenant [24 CFR 982.307]**

The PHA 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.

##### HACA Policy

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

The owner is responsible for screening and selection of the family to occupy the owner's unit. The PHA 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 the PHA to provide prospective owners with the family's current and prior address (as shown in PHA records) and the name and address (if known) of the owner at the family's current and prior addresses. HUD permits the PHA 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 request by the PHA 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)].

#### HACA Policy

HACA will inform owners of their responsibility to screen prospective tenants, and will, upon request, provide owners with the required known name and address information, at the time of the initial HQS inspection or before. HACA 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)]**

##### HACA Policy

HACA 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 PHAs 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).

##### HACA Policy

HACA will consider the following facts and circumstances 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, , 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

As evidence of the likelihood of favorable conduct in the future, HACA will consider all of the following: Evidence of employment, education, successful completion of the CHOICES or FACT programs sponsored by Alameda County Behavioral Health Care Services, participation in a work training program, participation in a counseling program, involvement in a community group, a certificate of rehabilitation from the state, and letters of support from parole or probation, case workers, clergy, or community leaders.

While a record of arrest(s) will not be used as the basis for denial, an arrest may, however, trigger an investigation to determine whether the applicant 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 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

HACA 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**

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

#### HACA Policy

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 other than as required or permitted by a court visitation order.

After admission to the program, the family must present evidence of the former family member's current address upon HACA request.

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

If the family includes a person with disabilities, HACA's decision concerning denial of admission is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.

#### HACA Policy

If the family indicates that the behavior of a family member with a disability is the reason for the proposed denial of assistance, HACA will determine whether the behavior is related to the stated disability. If so, upon the family's request, HACA will determine whether admitting the family as a reasonable accommodation is appropriate. HACA 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, HACA will so notify the family when it extends the invitation to attend the voucher briefing appointment, as discussed in Chapter 5.

If HACA 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.

#### **HACA Policy**

The family will be notified of a decision to deny assistance in writing within 10 business days of the determination. The notice will include contact information for Bay Area Legal Aid.

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

#### **HACA Policy**

If, based on a criminal record or sex offender registration information, an applicant family appears to be ineligible, HACA will notify the family in writing of the proposed denial and provide a copy of the record to the subject of the record and, with signed authorization from the subject, a copy to the applicant. The family will be given 10 business days to dispute the accuracy and relevance of the information. If the family does not contact HACA to dispute the information within that 10-day period, HACA will proceed with issuing the notice of denial of admission. A family that does not exercise its right to dispute the accuracy of the information prior to issuance of the official denial letter will still be given the opportunity to do so as part of the informal review process.

Notice requirements related to denying assistance to noncitizens are contained in Section 3-II.B.

Notice policies related to denying admission to applicants who may be victims of domestic violence, dating violence, 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 [[24 CFR Part 5, Subpart L]**

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.

##### HACA Policy

HACA 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 HACA’s policies.

While HACA 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 HACA that their status as a victim is directly related to the grounds for the denial. If so informed, HACA will request that the applicant provide enough information to HACA to allow HACA to make an objectively reasonable determination, based on all circumstances, whether the adverse factor is a direct result of their status as a victim.

HACA 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-5382. HACA will request in writing that an applicant wishing to claim protection under VAWA notify HACA within 14 business days.

#### **Documentation**

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

##### HACA Policy

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

##### ***Perpetrator Documentation***

##### HACA Policy

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

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

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

## EXHIBIT 3-1: DETAILED DEFINITIONS RELATED TO DISABILITIES

### Person with Disabilities [24 CFR 5.403]

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

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

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

In the case of an individual who has attained the age of 55 and is blind (within the meaning of “blindness” as defined in section 416(i)(1) of this title), inability by reason of such blindness to engage in substantial gainful activity, requiring skills or ability comparable to those of any gainful activity in which he has previously engaged with some regularity and over a substantial period of time.
- Has a developmental disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act of 2000 [42 U.S.C.15002(8)], which defines developmental disability in functional terms as follows:

#### (A) In General

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

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

## **(B) Infants and Young Children**

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

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

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

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

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

### **Individual with Handicaps [24 CFR 8.3]**

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

(1) Physical or mental impairment includes:

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

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

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

(4) *Is regarded as having an impairment* means:

- (a) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by a recipient as constituting such a limitation;
- (b) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or
- (c) Has none of the impairments defined in paragraph (1) of this section but is treated by a recipient as having such an impairment.

<p style="text-align: center;"><b>EXHIBIT 3-2: DEFINITION OF INSTITUTION OF HIGHER EDUCATION</b> <b>[20 U.S.C. 1001 and 1002]</b></p>
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**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 the PHA with the information needed to determine the family's eligibility. HUD requires the PHA to place all families that apply for assistance on a waiting list. When HCV assistance becomes available, the PHA 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.

The PHA 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 the PHA 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 the PHA affirmatively further fair housing goals in the administration of the program [24 CFR 982.53, HCV GB p. 4-1]. Adherence to the selection policies described in this chapter ensures that the PHA 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 the PHA will handle the applications it receives.

Part II: Managing the Waiting List. This part presents the policies that govern how the PHA's waiting list is structured, when it is opened and closed, and how the public is notified of the opportunity to apply for assistance. It also discusses the process the PHA will use to keep the waiting list current.

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

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

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

This part describes the PHA 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 the PHA'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 the PHA to determine the format and content of HCV applications, as well how such applications will be made available to interested families and how applications will be accepted by the PHA. The PHA must include Form HUD-92006, Supplement to Application for Federally Assisted Housing, as part of the PHA's application.

#### HACA Policy

HACA may use a one- or two-step application process. In a one-step process, the family must provide all of the information necessary to establish family eligibility and level of assistance at application. A one-step process may be used when it is expected that a family will be selected from the waiting list within 120 days of the date of application.

HACA will, typically, use a two-step application process. Under the two-step application process, HACA, initially, will require families to provide only the information needed by HACA to make an initial assessment of the family's eligibility for assistance and its self-certified preference category eligibility (as applicable). Depending on its self-certified preference category eligibility, a family initially determined to be eligible will be placed on the waiting list or in an applicant lottery pool. Those families placed in an applicant lottery pool will be selected by lottery from the applicant lottery pool for placement on the waiting list. Because of limited assistance, not all families in the applicant lottery pool will be selected for 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.

When HACA provides public notice that it is accepting applications for housing assistance, the application will be available on-line, at any time of day or night. The applicant may complete the application from any computer with internet access (e.g. home, public library, community-based organization, mobile telephone, etc.). If the applicant requires assistance with completing the application, resources for assistance will be listed in waiting list opening announcements.

Completed applications must be submitted to HACA in the method explained in waiting list opening announcements. Applications must be complete in order to be accepted by HACA for processing. If an application is incomplete, HACA will attempt to notify the family of the additional information required.

For Project-Based Voucher (PBV) projects where the owner of the project is accepting applications for units at the project, HACA may utilize the owner's waiting list as

HACA's PBV waiting list for the project so long as the owner's wait list was opened in accordance with this section with the possible exception of applications being available on-line, or by using a process acceptable to HACA. HACA may choose to conduct a lottery of the owner's waiting list because of limited housing assistance.

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

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

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

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

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

###### HACA Policy

If HACA 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, HACA will send written notification of the ineligibility determination within 10 business days of making the determination. 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**

###### HACA Policy

HACA will inform the applicant of the preliminary eligibility determination within 10 business days of making the determination.

Placement on the waiting list does not indicate that the family is, in fact, eligible for assistance. A final determination of eligibility will be made when the family is selected from the waiting list.

Applicants will be placed on the waiting list according to any preference(s) for which they self-certify (if applicable), and, as applicable, either a randomly assigned applicant lottery pool tiebreaker date, or the date and time their complete application is received by HACA.

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

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

The PHA 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]**

The PHA's HCV waiting list must be organized in such a manner to allow the PHA 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;
- 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.

#### HACA Policy

HACA will maintain a single waiting list for the Section 8 HCV program because it does not serve more than one county.

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

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

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

#### HACA Policy

HACA will not merge the Section 8 HCV waiting list with the waiting list for any other program HACA operates. Selection for each program is subject to federal regulations

and the requirements for each individual program. HACA maintains the following waiting lists in addition to the Section 8 HCV waiting list:

<b><u>Project</u></b>	<b><u>City</u></b>	<b><u>Program</u></b>
21165 Garden	Hayward	Moderate Rehabilitation (MR)
Estrella Vista	Emeryville	Project-Based Voucher (PBV)
432 Berry	Hayward	Moderate Rehabilitation
502 Berry	Hayward	Moderate Rehabilitation
Atherton Units	Hayward	Moderate Rehabilitation
Carlow Court	Dublin	Project-Based Voucher
CCT East Bay	Hayward	Project-Based Voucher
Dyer St	Union City	Project-Based Voucher
Eden Commons	San Leandro	Project-Based Voucher
Emery Glen	Emeryville	Project-Based Voucher
Flanders House	San Leandro	Project-Based Voucher
Grove Way	Castro Valley	Moderate Rehabilitation
Howard Collins Bridgeway	Fremont	Project-Based Voucher
Kottinger Gardens	Pleasanton	Project-Based Voucher
Lorenzo Creek	Castro Valley	Project-Based Voucher
Magnolia Terrace	Emeryville	Project-Based Voucher
Main Street Village	Fremont	Project-Based Voucher
Maple Square Apartments	Fremont	Project-Based Voucher
Mayten Manor	Hayward	Project-Based Voucher
Mission Court	Fremont	Project-Based Voucher
Mission View	Union City	Project-Based Voucher
MR Owner Referral	All	Moderate Rehabilitation
Nidus Court	Union City	Project-Based Voucher
Peppertree Village	Hayward	Project-Based Voucher
PBV Owner Referral	All	Project-Based Voucher
Rotary Bridgeway East	Fremont	Project-Based Voucher
La Vereda	San Leandro	Project-Based Voucher
Station Center	Union City	Project-Based Voucher
Stevenson Terrace	Fremont	Project-Based Voucher
Third Street Apartments	Hayward	Project-Based Voucher
Triangle Court	Emeryville	Moderate Rehabilitation
Union City Units (58 Scattered)	Union City	Project-Based Voucher
Wexford Way	Dublin	Project-Based Voucher
NED	All	Non-Elderly Disabled Vouchers

#### 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, the PHA may elect to continue to accept applications only from certain categories of families that meet particular preferences or funding criteria.

##### HACA Policy

The waiting list is open to the extent necessary to assist an otherwise eligible category of applicants that is eligible as set forth by a HUD award of funding to HACA, and/or a HUD designation of assistance, for a targeted category of Section 8 eligible families.

Except as set forth in the following paragraphs, HACA may close the waiting list at its discretion if it has enough eligible applicants to use the housing assistance resources it has been allotted. Where HACA has particular preferences or funding criteria that require a specific category of family, HACA may elect to continue to accept applications from these applicants while closing the waiting list to others.

The HCV waiting list is always open to an otherwise eligible applicant who:

- is a *Shortfall Terminated Family*;
- is a *Shortfall Recalled Family*;
- is a *Displaced family*, or *Displaced family—HACA-owned or HACA-managed housing* as set forth in the *Glossary*;
- is eligible as set forth by a HUD award of funding to HACA for a targeted category of Section 8 eligible families (see Section 4-III.B. Targeted Funding);
- is a participant of the CHOICES, FACT or MHSA programs sponsored by Alameda County Behavioral Health Care Services (BHCS) who, as determined by BHCS, is in good standing; is nearing the end of his or her participation; and will soon graduate from the program;
- is a *PBV In-Place Family* living in a Project-Based Voucher contract unit as set forth in Section 17-VI.B;
- is a family that includes at least one household member who is a person with a disability and is a MediCal recipient who has resided in an institution for at least 90 days and is transitioning into the community as confirmed by HUD's Non-Elderly Disabled (NED) Lead Organization;
- is a waiting list applicant for Project-Based Voucher projects where the owner has accepted applications for units at the project, as described in 4-I.B above and as announced by HACA during the project's waiting list opening;
- is referred by an owner of a particular Project-Based Voucher development in instances when HACA has failed to provide sufficient eligible families from its waiting list to fill a vacancy in the development within 30 days of the owner's notification to HACA of the vacancy; or

- is referred by an owner of a particular Moderate Rehabilitation development in instances when HACA has failed to provide sufficient eligible families from its waiting list to fill a vacancy in the development within 30 days of the owner's notification to HACA of the vacancy.

The NED, CCT CalTrans, Eden Commons and Flanders House waiting lists are always open to an otherwise eligible applicant who qualifies for the CCT Participant preference.

For new Project-Based Voucher (PBV) projects, the waiting list is always open to an otherwise eligible applicant who is a *PBV In-Place Family* living in a Project-Based Voucher contract unit as set forth in Section 17-VI.B.

### **Reopening the Waiting List**

If the waiting list has been closed, it cannot be reopened until the PHA 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.

#### HACA Policy

HACA will announce the reopening of the waiting list at least 10 business days prior to the date applications will first be accepted. If the list is only being reopened for certain categories of families, this information will be contained in the notice.

HACA will give public notice by publishing the relevant information:

- on the HACA website, [www.haca.net](http://www.haca.net);
- through public notices and advertisements in the Local or Public Notice Sections of newspapers that serve its jurisdiction;
- in appropriate foreign language publications;
- by sending notices to:
  - community service providers in HACA's service area;
  - City housing departments;
  - housing authorities in the Bay Area;
  - the Alameda County Board of Supervisors and County Administrator; and
  - federal elected officials from HACA's service area;
- on a recorded voice mailbox; and
- in HACA's office.

HACA will attempt to coordinate with a representative selection of social service agencies that serve persons with disabilities, elderly and Limited English Proficiency populations in order to ensure equal access for these populations. Through these agencies, applicants will be able to access translation services, assistance with completion of their application and other specialized services.

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

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

Because HUD requires the PHA to admit a specified percentage of extremely low-income families to the program (see Chapter 4, Part III), the PHA 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. These include:

- 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

##### HACA Policy

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

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

##### HACA Policy

While the family is on the waiting list, it is its responsibility to update its application with changes in preferences and contact information, including current residence, mailing address, and phone number.

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

HUD requires the PHA 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 the PHA determines that the family did not respond because of the family member's disability, the PHA must reinstate the applicant family to their former position on the waiting list [24 CFR 982.204(c)(2)].

##### HACA Policy

The waiting list will be updated as often as is necessary, generally every other year, to ensure that all applicants and applicant information is current and timely.

To update the waiting list, HACA will send an update request via first class mail or email to families on the waiting list to determine whether the family continues to be interested in, and to qualify for, the program and preferences. Update requests may be sent to each family on the waiting list or in smaller batches, as is needed or is manageable. This update request will be sent to the last address or email address that HACA has on record for the family. The update request will provide a deadline by which the family must respond and will state that failure to respond will result in the applicant's name being removed from the waiting list. If the applicant has submitted an update to his/her application within the previous six months HACA may, or may not, send an update request as the applicant's information is current.

The family's response to the update request must be submitted on-line (if available), or by mail, fax or hand delivered if on-line submission is not available. Responses must be postmarked or received by HACA on or before the due date indicated in the update request.

If the family fails to respond by the due date and does not require a reasonable accommodation, the family will be removed from the waiting list without further notice.

If the update request is returned by the post office with no forwarding address, the applicant will be removed from the waiting list without further notice.

If the update request is returned by the post office with a forwarding address, the update request 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, HACA may approve reinstatement of the family if it determines the lack of response was due to HACA error, or to circumstances beyond the family's control.

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

#### HACA Policy

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

If an applicant family is removed from the waiting list because HACA has determined the family is not eligible for assistance or requests in writing to be removed from the waiting list, a notice will be sent to the family's address of record. The notice will state the reasons the family was removed from the waiting list and will inform the family how to request an informal review regarding HACA'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 the PHA 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.

The PHA must maintain a clear record of all information required to verify that the family is selected from the waiting list according to the PHA'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-designated families living in specified types of units (e.g., a family that is displaced by demolition or disposition of public housing; a non-purchasing family residing in a HOPE 1 or 2 project). In these cases, the PHA 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. The PHA 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, and/or designate assistance, for a specified category of families on the waiting list. The PHA 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.

#### HACA Policy

For any specified category of families for which HUD may award funding to HACA, and/or designate assistance for, HACA will select the applicant for assistance in the following order:

- If set forth by the HUD funding award, in that order;
- If not set forth by the HUD funding award, in the order of first come, first served.

Categories of Families for which HUD Has Designated Assistance or Awarded Funding to HACA, or for which HUD May Award Funding to HACA in Response to an Application From HACA, include, but are not limited to:

- **HUD Office of Policy Development and Research, Impact of Housing and Services Interventions on Homeless Families Study**  
For up to a maximum of 10 permanent vouchers that HACA has agreed to

dedicate to the study, the waiting list is always open to an otherwise eligible homeless applicant referred to HACA by the research project.

- **Rental Assistance for Non-Elderly Disabled (NED) Families Transitioning from MediCal Funded Facilities**

HACA has executed an MOU dated June 17, 2010, with East Bay Innovations, the applicable Lead Organization (LO). HACA, upon receipt of the LO's list of families or individuals eligible for NED, will compare the names with those of families already on HACA's HCV waiting list. Any family on HACA's HCV waiting list that matches with the LO's list will be assisted in order of their position on the HCV waiting list in accordance with HACA admission policies. Any family certified by the LO as eligible and not on the HCV waiting list will be placed on the HCV waiting list when it is open. If HACA has closed the HCV waiting list, it will reopen the waiting list to accept a NED applicant family who is not currently on the HCV waiting list when the estimated waiting period for housing assistance for applicants on the list is less than 24 months for the most current applicants.

- **Veterans Affairs Supportive Housing (VASH)**

HACA does not maintain a waiting list or apply preferences/priority for this program in accordance with Federal Register Vol. 73, No. 88, May 6, 2008 (Docket No. FR-5213-N-01), as participants are referred for assistance directly from the Veterans Administration.

- **Mainstream Voucher Program**

HACA will utilize its HCV waiting list for this program. If HACA has closed its HCV waiting list, it will reopen the waiting list to accept Mainstream applicant families when the estimated waiting period for housing assistance for applicants on the list is less than 24 months for the most current applicants.

## **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 the PHA will use [24 CFR 982.202(d)].

##### **Local Preferences [24 CFR 982.207; HCV p. 4-16; CA Health & Safety Code Section 34322.2(a) and (b)]**

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 the PHA to establish other local preferences, at its discretion. Any local preferences established must be consistent with the PHA plan and the consolidated plan, and must be based on local housing needs and priorities that can be documented by generally accepted data sources.

##### HACA Policy

##### **Section 8 Housing Choice Voucher Program (HCV)**

HACA applies the following preferences and priority:

- Shortfall Terminated (250 points): Participants of HACA's HCV program that were terminated due to insufficient funding.
- Shortfall Recalled (130 points): Applicants on HACA's HCV waiting list who received a voucher but had not yet utilized the voucher when it was recalled and were returned to the waiting list due to insufficient funding.
- CHOICES or FACT Graduates (40 points): Participants of the CHOICES or FACT programs sponsored by the Alameda County Behavioral Health Care Services Agency (BHCS), who, as determined by BHCS, are in good standing; are nearing the end of their participation; will soon graduate from the program; and, have been referred to HACA by BHCS. Applicants may not receive both the CHOICES or FACT Graduates preference and the MHSA Graduates preference.
- Displaced-HACA (50 points): *Displaced family—HACA-owned or HACA-managed housing* as set forth in the *Glossary*.
- Displaced-Other (10 points): *Displaced family* as set forth in the *Glossary*.
- MHSA Graduates(40 points): Participants of the State of California Mental Health Services Act (MHSA) shelter and services program sponsored by the Alameda County Behavioral Health Care Services Agency (BHCS), who, as determined by BHCS, are in good standing; are nearing the end of their participation; will soon graduate from the program; and, have been referred to HACA by BHCS.
- Homeless (20 points): Individual applicants or applicant families that verifiably lack housing, including one whose primary residence during the night is a supervised public or private facility that provides temporary living accommodations; an individual who is a resident in transitional housing; or an individual who has as a primary residence a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings as

confirmed by the applicant's local homeless service organization or consortia of organizations.

- Limited Preference for Non-Elderly Disabled Homeless Individuals and/or Families (25 points): HACA has set aside Mainstream vouchers targeted for this population. Individuals and/or families that meet the Mainstream definition of Homeless as defined in the glossary under *Homeless-Mainstream* as confirmed by the applicant's local homeless service organization or consortia of organizations or HACA's Mainstream program partners. In addition, the household must be composed of one or more persons with disabilities who are between the ages of 18 and 61 (non-elderly). The household may include additional household members who are not non-elderly persons with disabilities. A household where the sole member is an emancipated minor is not an eligible household. Persons receiving this preference who upon verification are found not to qualify for the preference as set forth above will lose the preference points and if they were admitted to the waiting list when only applications for this preference were being taken they will be removed from the waiting list.
- Limited Preference for Non-Elderly Disabled Homeless Individuals and/or Families Referred by Homeless Service Organization (25 points): HACA has set aside Mainstream vouchers targeted for this population. Individuals and/or families referred by the applicant's local homeless service organization or consortia of organizations that meet the mainstream definition of Homeless as defined in the glossary under *Homeless-Mainstream*. In addition, the household must be composed of one or more persons with disabilities who are between the ages of 18 and 61 (non-elderly). The household may include additional household members who are not non-elderly persons with disabilities. A household where the sole member is an emancipated minor is not an eligible household. Persons receiving this preference who upon verification are found not to qualify for the preference as set forth above will lose the preference points and if they were admitted to the waiting list when only applications for this preference were being taken they will be removed from the waiting list.
- Limited Preference for Non-Elderly Disabled Individuals and/or Families At Risk of Becoming Homeless (25 points): HACA has set aside Mainstream vouchers targeted for this population. Individuals and/or families that meet the Mainstream definition of At Risk of Becoming Homeless as defined in the glossary under *At Risk of Becoming Homeless-Mainstream* as confirmed by the applicant's local homeless service organization or consortia of organizations or HACA's Mainstream program partners. In addition, the household must be composed of one or more persons with disabilities who are between the ages of 18 and 61 (non-elderly). The household may include additional household members who are not non-elderly persons with disabilities. A household where the sole member is an emancipated minor is not an eligible household. Persons receiving this preference who upon verification are found not to qualify for the preference as set forth above will lose the preference points and if they were admitted to the waiting list when only applications for this preference were being taken they will be removed from the waiting list.

- Limited Preference for Non-Elderly Disabled Individuals and/or Families At Risk of Becoming Homeless Referred by Homeless Service Organization (25 points): HACA has set aside Mainstream vouchers targeted for this population. Individuals and/or families referred by the applicant's local homeless service organization or consortia of organizations that meet the mainstream definition of At Risk of Becoming Homeless as defined in the glossary under *At Risk of Becoming Homeless-Mainstream*. In addition, the household must be composed of one or more persons with disabilities who are between the ages of 18 and 61 (non-elderly). The household may include additional household members who are not non-elderly persons with disabilities. A household where the sole member is an emancipated minor is not an eligible household. Persons receiving this preference who upon verification are found not to qualify for the preference as set forth above will lose the preference points and if they were admitted to the waiting list when only applications for this preference were being taken they will be removed from the waiting list.
- Limited Preference for Non-Elderly Disabled Individuals and/or Families who are CCT Participants (25 points): HACA has set aside Mainstream vouchers targeted for this population. Individuals and/or families that include at least one household member who is a person with a disability and a MediCal recipient who has resided in an institution for at least 90 days and is transitioning into the community as confirmed by the Non-Elderly Disabled (NED) program Lead Organization. In addition, the household must be composed of one or more persons with disabilities who are between the ages of 18 and 61 (non-elderly). The household may include additional household members who are not non-elderly persons with disabilities. A household where the sole member is an emancipated minor is not an eligible household. Persons receiving this preference who upon verification are found not to qualify for the preference as set forth above will lose the preference points and if they were admitted to the waiting list when only applications for this preference were being taken they will be removed from the waiting list.
- Limited Preference for Non-Elderly Disabled Individuals and/or Families who are at Serious Risk of Institutionalization (25 points): HACA has set aside Mainstream vouchers targeted for this population. Individuals and/or families that include an individual with a disability who as a result of a public entity's failure to provide community services or its cut to such services will likely cause a decline in health, safety, or welfare that would lead to the individual's eventual placement in an institution as confirmed by the NED program Lead Organization. This includes individuals experiencing lack of access to supportive services for independent living, long waiting lists for or lack of access to housing combined with community based services, individuals currently living under poor housing conditions (including a rent burden of 60% or more) or homeless with barriers to geographic mobility, and/or currently living alone but requiring supportive services for independent living. In addition, the household must be composed of one or more persons with disabilities who are between the ages of 18 and 61 (non-elderly). The household may include additional household members who are not

non-elderly persons with disabilities. A household where the sole member is an emancipated minor is not an eligible household. Persons receiving this preference who upon verification are found not to qualify for the preference as set forth above will lose the preference points and if they were admitted to the waiting list when only applications for this preference were being taken they will be removed from the waiting list.

- Limited Preference for Non-Elderly Disabled Individuals and/or Families who are at Serious Risk of Institutionalization Referred by the NED program Lead Organization or Alameda County Care Connect or its equivalent in other jurisdictions (25 points): HACA has set aside Mainstream vouchers targeted for this population. Individuals and/or families referred by the NED program Lead Organization that include an individual with a disability who as a result of a public entity's failure to provide community services or its cut to such services will likely cause a decline in health, safety, or welfare that would lead to the individual's eventual placement in an institution. This includes individuals experiencing lack of access to supportive services for independent living, long waiting lists for or lack of access to housing combined with community based services, individuals currently living under poor housing conditions (including a rent burden of 60% or more) or homeless with barriers to geographic mobility, and/or currently living alone but requiring supportive services for independent living. In addition, the household must be composed of one or more persons with disabilities who are between the ages of 18 and 61 (non-elderly). The household may include additional household members who are not non-elderly persons with disabilities. A household where the sole member is an emancipated minor is not an eligible household. Persons receiving this preference who upon verification are found not to qualify for the preference as set forth above will lose the preference points and if they were admitted to the waiting list when only applications for this preference were being taken they will be removed from the waiting list.
- Limited Preference for Individuals and/or Families Who Have Successfully Participated in or are a Current Participant in a Supportive Housing Program for Disabled Homeless Persons (25 points): HACA has set aside five Housing Choice Vouchers annually for this limited preference.

This preference is only available to individuals or families with disabilities who have successfully participated in or are a current participant in good standing in a supportive housing program for disabled homeless person(s). Persons receiving this preference who upon verification are found not to qualify for the preference as set forth below will lose the preference points and if they were admitted to the waiting list when only applications for this preference were being taken they will be removed from the waiting list. If the applicant was placed on the waiting list while applications for all preferences were being accepted the applicant's points will be adjusted and the application will remain on the waiting list.

In order to qualify for this preference the applicant must be able to supply the

name and address of the supportive housing program. The applicant must attach the following documents to the application in order to qualify for this preference:

- A verification of homeless status and supportive housing participation.

Once the applicant is pulled from the waiting list for processing of eligibility, HACA will contact the supportive housing provider to verify that the program provides the following type of housing services. If the supportive housing program does not meet the criteria listed below the applicant is not eligible for the preference and the application will be withdrawn from the waiting list.

The supportive housing program must be one that is safe and provide well-designed housing that is:

- Affordable to people coming out of homelessness, and
- Independent, with each tenant in their own apartment, holding their own lease, and responsible for paying their own rent, and
- Permanent, a tenant can stay as long as they pay their rent and comply with the terms of their lease.

HACA will contact the supportive housing provider to verify that the program provides the following supportive services. If the program does not meet the criteria listed below the applicant is not eligible for the preference.

Supportive services are provided by staff trained in working with people who are homeless and people with disabilities. The supportive services must be:

- Designed to maximize independence, and
- Flexible and responsive to tenant needs, and
- Available as and when needed, and
- Accessible where the tenant lives.

HACA will contact the supportive housing provider to verify that the applicant was homeless prior to entering the supportive housing program and that the person has a disability, as defined by HUD. If the program does not provide verification of homeless status and disability prior to entering the supportive housing program the applicant is not eligible for the preference and the application will be withdrawn from the waiting list.

To be classified as homeless, the applicant must meet HUD's definition of homeless.

HACA will contact the supportive housing provider to verify that the applicant is no longer in need of case management services in order to maintain an independent housing situation. If the program does not provide this verification the applicant is not eligible for the preference and the application will be withdrawn from the waiting list.

- Veteran (1 point): Priority will be given to veterans or servicepersons as set forth in the *Glossary* within each preference category.

HACA will select applicants from its waiting list for HCV assistance in the following order:

1. Applicants for Targeted Funding as set forth in Section 4-III.B above
2. Shortfall Terminated families
3. Shortfall Recalled families
4. CHOICES, FACT or MHSA Program Graduates
5. Prior to assisting further applicants on the waiting list, HACA will assist currently housed Project-Based Voucher holders who have priority to receive the next available opportunity for continued tenant-based assistance as outlined in Section 17VII.C.
6. Applicants for the Limited Preference for Individuals and/or Families “Moving Up” from Permanent Supportive Housing
7. HACA will select remaining applicants on the waiting list.

Note #1: HACA will limit the number of applicants that may qualify for the Displaced-Other and Homeless preferences such that no more than five applicants from these preferences will be selected in any calendar month.

Note #2: For CHOICES, FACT, or MHSA Program Graduates:

- a. HACA will conduct a lottery of MHSA, CHOICES and FACT Program graduates referred by BHCS and assist applicants in order of ascending lottery “tiebreaker” number (that is, applicants with a lower lottery “tiebreaker” number are selected before applicants with a higher one) except that veterans or servicepersons as set forth in the *Glossary* will be assisted before applicants who are not veterans or servicepersons.
- b. HACA will limit the number of applicants that may qualify for this preference such that no more than 75 applicants of the combined MHSA, CHOICES and FACT graduates from this preference will be selected annually.

Preference points are aggregated to produce the total preference points for each applicant. Applicants with the same total preference points will then be sorted by the method in which they were selected to be placed on the waiting list (i.e., date and time of application or order of random selection).

### **Section 8 Project-Based Voucher Program (PBV)**

HACA selectively applies the following preferences and priorities as set forth in the individual waiting lists listed below:

- In-Place Family (400 points): A PBV In-Place Family living in a PBV contract unit as set forth in Section 17-VI.B.
- Displaced-Emeryville (2 points): Qualified households who have been displaced as a result of the City of Emeryville’s or City of Emeryville Redevelopment Agency’s public projects or the City’s code enforcement activities.

- Displaced-HACA (50 points): *Displaced family—HACA-owned or HACA-managed housing* as set forth in the *Glossary*.
- Displaced-Other (10 points): *Displaced family* as set forth in the *Glossary*.
- Homeless (20 points): Individual applicants or applicant families that verifiably lack housing, including one whose primary residence during the night is a supervised public or private facility that provides temporary living accommodations; an individual who is a resident in transitional housing; or an individual who has as a primary residence a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings as confirmed by the applicant's local homeless service organization or consortia of organizations.
- CCT Participant (20 points): Families that include at least one household member who is a person with a disability and a MediCal recipient who has resided in an institution for at least 90 days and is transitioning into the community as confirmed by the Non-Elderly Disabled (NED) program Lead Organization.
- Voluntary Supportive Services (8 points): *Voluntary Supportive Services* families as set forth in the *Glossary*.
- Extremely Low-Income (30 points): Families whose annual income does not exceed the higher of, by family size, 1) the federal poverty level applicable to the family; or 2) 30% of area median income (AMI), as determined by HUD.
- Veteran (1 point): Priority will be given to veterans or servicepersons as set forth in the *Glossary* within each preference category.

Preference points are aggregated to produce the total preference points for each applicant. Applicants with the same total preference points will then be sorted by the method in which they were selected to be placed on the waiting list (i.e., date and time of application or order of random selection).

Except for applicants referred by an owner participating in HACA's PBV Program in instances when HACA failed to provide sufficient eligible families from the waiting list to fill a vacancy within 30 days of the owner's notification to HACA of the vacancy, HACA will select as follows:

## ***WAITING LISTS***

### ***Carlow Court***

At least one household member must be age 62 or older to qualify.

#### 50% AMI Units

Displaced-Other

Veteran

#### 30% AMI Units

Displaced-Other

Extremely Low-Income

Veteran

***Wexford Way***

50% AMI Units

Displaced-Other

Veteran

30% AMI Units

Displaced-Other

Extremely Low-Income

Veteran

***Rotary Bridgeway East***

At least one household member must be eligible for Voluntary Supportive Services offered by the project.

Displaced-Other

Voluntary Supportive Services

Homeless

Veteran

***Lorenzo Creek***

At least one household member must be eligible for Voluntary Supportive Services offered by the project.

Displaced-Other

Voluntary Supportive Services

Homeless

Veteran

***Magnolia Terrace***

At least one household member must be a person with a disability in order to qualify.

Note: This project's funding for supportive services is targeted to serve persons with developmental disabilities.

Displaced-Emeryville

Displaced-Other

Voluntary Supportive Services

Veteran

***Main Street Village***

At least one household member must be eligible for Voluntary Supportive Services offered by the project and at least one household member must be homeless as defined in Preferences (above) for the Section 8 PBV program in order to qualify.

Homeless Units

Displaced-Other  
Homeless  
Voluntary Supportive Services  
Veteran

Homeless and Disabled Units

In addition to the other requirements above for this project, at least one household member must be a person with a disability.

Displaced-Other  
Homeless  
Voluntary Supportive Services  
Veteran

***Maple Square***

Displaced-Other  
Veteran

***Mayten Manor***

At least one household member must be age 62 or older or a person with a disability in order to qualify.

Displaced-Other  
Veteran

***Peppertree Village***

Displaced-Other  
Veteran

***Station Center***

Displaced-Other  
Veteran

***Third Street Apartments***

At least one household member must be homeless as defined in Preferences (above) for the Section 8 PBV program in order to qualify.

Displaced-Other  
Homeless

Veteran

***Union City Units (58 Scattered)***

Displaced-HACA

Displaced-Other

Veteran

***Nidus Court***

At least one household member must be age 62 or older to qualify.

Displaced-HACA

Displaced-Other

Veteran

***Dyer Street***

At least one household member must be age 62 or older to qualify.

Displaced-HACA

Displaced-Other

Veteran

***Howard Collins Bridgeway***

Displaced-Other

Veteran

***Eden Commons***

At least one household member must be a person with a disability, as well as, a MediCal recipient who has resided in an institution for at least 90 days and is transitioning into the community.

Displaced-Other

CCT Participant

Veteran

***Flanders House***

At least one household member must be a person with a disability, as well as, a MediCal recipient who has resided in an institution for at least 90 days and is transitioning into the community.

Displaced-Other

CCT Participant

Veteran

***Emery Glen***

At least one household member must be eligible for Voluntary Supportive Services offered by the project.

Displaced-HACA

Displaced-Other

Voluntary Supportive Services

Veteran

### ***Mission View***

At least one household member must be eligible for Voluntary Supportive Services offered by the project.

Displaced-HACA

Displaced-Other

Voluntary Supportive Services

Veteran

### ***Kottinger Gardens***

At least one household member must be age 62 or older to qualify.

Displaced-Other

Veteran

### ***CCT East Bay***

At least one household member must be a person with a disability, as well as, a MediCal recipient who has resided in an institution for at least 90 days and is transitioning into the community.

Displaced-Other

CCT Participant

Veteran

### ***Estrella Vista***

#### **Units for Persons with Disabilities**

At least one household member must be a person with a disability to qualify.

Displaced-Other

Veteran

#### **Remaining Units**

Displaced-Other

Veteran

### ***Mission Court***

At least one household member must be age 62 or older to qualify.

50% AMI Units

Displaced-Other

Veteran

30% AMI Units

Displaced-Other

Extremely Low-Income

Veteran

***Stevenson Terrace***

At least one household member must be age 62 or older to qualify.

Displaced-Other

Veteran

***La Vereda***

At least one household member must be age 62 or older to qualify. All other household members must be age 45 or older (unless they are a spouse, cohabitant, person providing primary physical or economic support to the senior citizen, or are a person with a disability who is a child or grandchild of the senior citizen, and who must live with the senior citizen because of the disability or illness).

50% AMI Units

Displaced-Other

Veteran

30% AMI Units

Displaced-Other

Extremely Low-Income

Veteran

***PBV Owner Referral***

HACA will select applicants referred by an owner participating in HACA's PBV Program in instances when HACA fails to provide sufficient eligible families from the waiting list to fill a vacancy within 30 days of the owner's notification to HACA of the vacancy in the order of first come, first served, except that veterans or servicepersons as set forth in the *Glossary* will be selected in the order of first come, first served before applicants who are not veterans or servicepersons.

**Section 8 Moderate Rehabilitation Program (Mod Rehab)**

HACA applies the following preferences and priorities as set forth in the individual waiting lists listed below:

- Displaced-HACA (50 points): *Displaced family*—HACA-owned or HACA-managed housing as set forth in the *Glossary*.
- Displaced-Other (10 points): *Displaced family* as set forth in the *Glossary*. HACA will select no more than 5 applicants per calendar month from this category (a.k.a. Displaced-Other).
- Veteran (1 point): Priority will be given to veterans or servicepersons as set forth in the *Glossary* within each preference category.

Preference points are aggregated to produce the total preference points for each applicant. Applicants with the same total preference points will then be sorted by the method in which they were selected to be placed on the waiting list (i.e., date and time of application or order of random selection).

Except for applicants referred by an owner participating in HACA's Moderate Rehabilitation Program in instances when HACA failed to provide sufficient eligible families from the waiting list to fill a vacancy within 30 days of the owner's notification to HACA of the vacancy, HACA will select applicants as follows:

## ***WAITING LISTS***

### ***Moderate Rehabilitation-Atherton Units***

At least one household member must be a person with disabilities to qualify.

Displaced-HACA

Displaced-Other

Veteran

### ***Moderate Rehabilitation-Other***

Displaced-HACA

Displaced-Other

Veteran

### ***Moderate Rehabilitation Owner Referral***

HACA will select applicants referred by an owner participating in HACA's Moderate Rehabilitation Program in instances when HACA fails to provide sufficient eligible families from the waiting list to fill a vacancy within 30 days of the owner's notification to HACA of the vacancy in the order of first come, first served, except that veterans or servicepersons as set forth in the *Glossary* will be selected in the order of first come, first served before applicants who are not veterans or servicepersons.

## **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 HACA's fiscal year. ELI families are those with annual incomes at or below the higher of the federal poverty level or 30 percent of the area

median income. To ensure this requirement is met, a PHA may skip non-ELI families on the waiting list in order to select an ELI family.

Low income families admitted to the program that are “continuously assisted” under the 1937 Housing Act [24 CFR 982.4(b)], as well as low-income or moderate-income families admitted to the program that are displaced as a result of the prepayment of a 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)].

#### HACA Policy

HACA 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)].

### HACA Policy

For families placed on a waiting list, under HACA's system of preferences, HACA will select families with the highest number of preference points and then by the date and time of application or order of random selection as specified in the notice of waiting list opening. Families will be selected from the waiting list based on the targeted funding or selection preference(s) for which they qualify, and in accordance with HACA's hierarchy of preferences, if applicable. Based on the pre-determined methodology at the time of application, within each targeted funding or aggregate preference total, families will either be selected from the waiting list on a first-come, first served basis according to the date and time their complete application is received by HACA or by their randomly selected order at the time of application.

Documentation will be maintained by HACA as to whether families on the list qualify for and are interested in targeted funding. If a higher placed family on the waiting list is not qualified or not interested in targeted funding, there will be a notation maintained so that HACA does not have to ask higher placed families each time targeted selections are made.

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

When a family has been selected from the waiting list, the PHA must notify the family [24 CFR 982.554(a)].

##### HACA Policy

HACA will notify the family by first class mail when it is selected from the waiting list. For the Section 8 HCV program the notice will inform the family of the following:

Date, time, and location of the scheduled application interview (in-person, by telephone, or by mail), including any procedures for rescheduling the interview

Who is required to attend the interview if the interview is to be conducted in-person or by telephone

All documents that must be provided at, or before, the interview, including information about what constitutes acceptable documentation

For the PBV or Mod Rehab programs the notice will inform the family of the following:

Where the upcoming vacancy is located

How to contact the property manager in order to determine if the family is interested in renting the unit

The date by which the family's completed application must be received by the property manager

If a notification letter is returned to HACA with no forwarding address, the family will be removed from all of the waiting lists the family is on. A notice of denial (see Chapter 3) will be sent to the family's address of record.

For site-based waiting lists (i.e. PBV or Mod Rehab), applicants will be removed from the waiting list if they are non-responsive to or refuse two offers of a unit for sites housed under the waiting list. Exceptions will be considered on a case by case basis by the Executive Director or their designee for various reasons to include: lease commitment issues, sequestered jurors, medical emergencies that prevent moving at that time, or death of a family member. All requests for exceptions must be made in writing.

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

HUD recommends that the PHA 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 the PHA 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 the PHA [Notice PIH2012-10].

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

## HACA Policy

Families selected from the waiting list are required to participate in an eligibility interview (in-person, by telephone, or by mail).

If an in-person or telephone interview is required, 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 HACA.

The head of household or spouse/co-head must provide acceptable documentation of legal identity. (Chapter 7 provides a discussion of proper documentation of legal identity.) If the family representative does not provide the required documentation at the time of the interview, he or she will be required to provide it within 10 business days.

Pending disclosure and documentation of SSNs, HACA will allow the family to retain its place on the waiting list for a period of 90 calendar days. If the family is unable to disclose and provide evidence of the SSN within 90 calendar days, HACA will grant the family an additional 90-day period to comply with the SSN disclosure and documentation requirement if HACA determines the family was unable to comply with the requirements due to circumstances that could not have reasonably been foreseen and were outside the control of the family.

HACA must deny the eligibility of an applicant if s/he (including each member of the household required to disclose his/her SSN) does not disclose a SSN and provide documentation of such SSN within the above time period. If not all household members have disclosed their SSNs at the next time HACA is issuing vouchers, HACA will issue a voucher to the next eligible applicant family on the waiting list.

The family must provide the information necessary to establish the family's eligibility and determine the appropriate level of assistance, as well as complete required forms, provide required signatures, and submit required documentation. If any materials are missing, HACA 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 noncitizen status). If the family is unable to obtain the information or materials within the required time frame, the family may request an extension. If the required documents and information are not provided within the required time frame (plus any extensions), the family will be sent a notice of denial (See Chapter 3).

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

Interviews will be conducted in English. For limited English proficient (LEP) applicants, HACA will provide translation services in accordance with HACA's LEP plan.

If the family is unable to attend a scheduled interview, the family must contact HACA in advance of the interview to schedule a new appointment in accordance with HACA's appointment policy. A family who fails to comply with HACA's reasonable attempts to determine their eligibility will be denied assistance. A notice of denial will be issued in accordance with policies contained in Chapter 3.

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

The PHA must verify all information provided by the family (see Chapter 7). Based on verified information, the PHA 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.

##### HACA Policy

If HACA determines that the family is ineligible, HACA 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 the waiting list. HACA will notify the family in writing that it has been returned to the waiting list, and will specify the reasons for it.

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

## **Chapter 5**

### **BRIEFINGS AND VOUCHER ISSUANCE**

#### **INTRODUCTION**

This chapter explains the briefing and voucher issuance process. When a family is determined to be eligible for the Housing Choice Voucher (HCV) program, the PHA 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, HACA issues the family a voucher. The voucher includes the unit size for which the family qualifies based on the PHA's subsidy standards, as well as the dates of issuance and expiration 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 the 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 HACA'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 the PHA to conduct mandatory briefings for applicant families who qualify for a voucher. The briefing provides a broad description of owner and family responsibilities, explains the PHA'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]**

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

### HACA Policy

Briefings will be conducted in individual or group meetings.

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

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

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

## **Notification and Attendance**

### HACA Policy

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

If the notice is returned by the post office with no forwarding address, the applicant will be denied and their name will not be placed back on the waiting list. If the notice is returned by the post office with a forwarding address, the notice will be re-sent to the address indicated.

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

### **Oral Briefing [24 CFR 982.301(a)]**

Each briefing must provide information on the following subjects:

- How the Housing Choice Voucher program works;
- Family and owner responsibilities;
- Where the family can lease a unit, including renting a unit inside or outside the PHA's jurisdiction;
- An explanation of how portability works. The PHA may not discourage the family from choosing to live anywhere in the PHA jurisdiction or outside the PHA jurisdiction under portability, unless otherwise expressly authorized by statute, regulation, PIH Notice, or court order;
- A description of how portability may affect the family's assistance through screening, subsidy standards, voucher extension of the RHA's voucher, 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
- For families receiving welfare-to-work vouchers, a description of any local obligations of a welfare-to-work family and an explanation that failure to meet the obligations is grounds for denial of admission or termination of assistance.

#### HACA Policy

When HACA-owned units are available for lease, HACA will inform the family during the oral briefing that the family has the right to select any eligible unit available for lease, and is not obligated to choose a HACA-owned unit.

## **Briefing Packet [24 CFR 982.301(b)]**

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

- The term of the voucher, voucher suspensions, and HACA's policies on any extensions of the term. If HACA 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 HACA determines the payment standard for a family, how HACA determines total tenant payment for a family, and information on the payment standard and utility allowance schedule.
- An explanation of how HACA 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 HACA policy on providing information about families to prospective owners.
- HACA 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.
- Information on federal, state and local equal opportunity laws and a copy of the housing discrimination complaint form.
- A list of landlords known to the PHA who may be willing to lease a unit to the family or other resources (e.g., newspapers, organizations, online search tools) known to the PHA that may assist the family in locating a unit. PHAs must ensure that the list of landlords or other resources covers areas outside of poverty or minority concentration.
- Notice that if the family includes a person with disabilities, the family may request a list of available accessible units known to HACA.
- The family obligations under the program, including any obligations of a welfare-to-work family.
- The grounds on which HACA may terminate assistance for a participant family because of family action or failure to act.
- HACA informal hearing procedures including when HACA 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.

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

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

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

In addition to items required by the regulations, PHAs may wish to include supplemental materials to help explain the program to both participants and owners [HCV GB p. 8-7, Notice PIH 2017-12].

#### HACA Policy

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

When HACA-owned units are available for lease, a written statement that the family has the right to select any eligible unit available for lease, and is not obligated to choose a HACA-owned unit

Information on how to fill out and file a housing discrimination complaint form

The form HUD-5382 domestic violence certification form and the form HUD-5380 notice of occupancy rights, which contain information on VAWA protections for victims of domestic violence, dating violence, sexual assault, and stalking

“Is Fraud Worth It?” (form HUD-11401141-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 2017-12

The HUD pamphlet on lead-based paint entitled *Protect Your Family from Lead in Your Home*

## **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. HACA 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**

#### HACA Policy

Unless otherwise noted below, when family obligations require the family to respond to a request or notify HACA of a change, notifying HACA of the request or change within 10 business days is considered prompt notice.

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

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

The family obligations of the voucher are listed as follows:

- The family must supply any information that HACA 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 HACA 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.

#### HACA Policy

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

- The family must allow HACA 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.

#### HACA Policy

HACA 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, 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 HACA and the owner before moving out of the unit or terminating the lease.

#### HACA Policy

The family must comply with lease requirements regarding written notice to the owner. The family must provide written notice to HACA at the same time the owner is notified.

- The family must promptly give HACA 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 HACA. The family must promptly notify HACA in writing of the birth, adoption, or court-awarded custody of a child. The family must request HACA approval to add any other family member as an occupant of the unit.

#### HACA Policy

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

- The family must promptly notify HACA in writing if any family member no longer lives in the unit.

- If HACA has given approval, a foster child or a live-in aide may reside in the unit. HACA has the discretion to adopt reasonable policies concerning residency by a foster child or a live-in aide, and to define when HACA 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.

#### HACA Policy

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 HACA to verify that the family is living in the unit or information related to family absence from the unit.

- The family must promptly notify HACA when the family is absent from the unit.

#### HACA Policy

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 HACA 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 HACA 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 HACA 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 HACA 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**

PHAs must establish subsidy standards that determine the number of bedrooms needed for families of different sizes and compositions. This part presents the policies that will be used to determine the family unit size (also known as the voucher size) a particular family should receive, and the policies that govern making exceptions to those standards. PHAs also must establish policies related to the issuance of the voucher, 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, HACA determines the appropriate number of bedrooms under HACA 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 HACA determines family unit size:

- The subsidy standards must provide for the smallest number of bedrooms needed to house a family without overcrowding.
- The subsidy standards must be consistent with space requirements under the housing quality standards.
- The subsidy standards must be applied consistently for all families of like size and composition.
- A child who is temporarily away from the home because of placement in foster care is considered a member of the family in determining the family unit size.
- A family that consists of a pregnant woman (with no other persons) must be treated as a two-person family.
- Any live-in aide (approved by HACA 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 HACA subsidy standards.

### HACA Policy

As set forth in the table below, HACA will allocate one bedroom for each two persons in the household, except that HACA will allocate a single bedroom to each:

A single person family;

The head of household and any spouse/significant other/boyfriend or girlfriend;  
and

A live-in aide and up to one additional family member of the live-in aide, both of which must be identified by the family and approved by HACA as set forth in Section 3-I.M.

### **Voucher Size Persons in Household**

	(Minimum – Maximum)
1 Bedroom	1-2
2 Bedrooms	2-4
3 Bedrooms	3-6
4 Bedrooms	4-8
5 Bedrooms	6-10

For Project-Based Voucher projects of one to four units targeted to families with children, HACA, at its sole discretion, will allow a maximum subsidy standard of two persons per bedroom or sleeping room (includes living room).

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

In determining family unit size for a particular family, HACA may grant an exception to its established subsidy standards if HACA determines that the exception is justified by the 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)].

### HACA Policy

HACA will consider granting an exception as a reasonable accommodation for a person with disabilities.

The family must request any exception to the subsidy standards in writing. The request must explain the need or justification for a larger or smaller family unit size, and must include appropriate documentation. Requests based on health-related reasons must be verified by a knowledgeable professional source (e.g., doctor or health professional), unless the disability and the disability-related request for accommodation is readily apparent or otherwise known. The family's use of an additional bedroom for storage of special medical equipment will be verified as part of the annual or biennial inspection..

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

In addition, for project-based voucher participants currently living in a project-based unit where a change in family size has caused the family to be under-housed, HACA will follow the policy at 17-VII.C. In the case where the family receives a tenant-based voucher for continued assistance, and where the family's tenant-based voucher expires because the family cannot locate a suitable unit, the family will be allowed to remain in their current project-based unit using the 2+1 rule-that is, two people per bedroom plus one additional person for the dwelling unit. Acceptable documentation indicating the family could not locate a suitable unit includes a listing of units inquired on or applied for, or a client statement.

## **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, HACA issues 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 HACA has determined the family to be eligible for the program, and that HACA expects to have money available to subsidize the family if the family finds an approvable unit. However, HACA 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 HACA's housing choice voucher program [Voucher, form HUD-52646]

A voucher can be issued to an applicant family only after HACA 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].

### HACA Policy

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

HACA 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, HACA must wait until it has adequate funds before it calls another family from the list [HCV GB p. 8-10].

### HACA Policy

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

If HACA determines that there is insufficient funding after a voucher has been issued, HACA may rescind the voucher and place the affected family back on the waiting list as set forth in Chapter 12-I.E.

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

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

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

#### HACA Policy

The initial voucher term will be 180 calendar days.

The family must submit a Request for Tenancy Approval and proposed lease within the 180-day period unless HACA grants an extension.

### **Extensions of Voucher Term [24 CFR 982.303(b), Notice 2012-42]**

The PHA 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 the PHA can approve. Discretionary policies related to extension and expiration of search time must be described in the PHA'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 the PHA's decision to approve or deny an extension. The PHA'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)].

#### HACA Policy

HACA will approve a voucher extension for a period reasonable for the purpose only in the following circumstances:

As a reasonable accommodation for a person with disabilities.

When warranted by reasons beyond the family's control, as determined by HACA, such as

- Serious illness or death of an immediate family member (as defined in the Glossary); or
- Incapacitation of the head of household (due to an accident or illness requiring hospitalization or restricting mobility);

VASH Vouchers: Upon written request from the Veterans Administration when it finds that a family's search for a unit is being hindered by a lack of availability of units or special challenges of the family.

Any request for an extension must be made in writing before the family's voucher expires and include the reason(s) an extension is necessary. HACA may require the family to provide documentation to support the request or obtain verification from a qualified third party.

HACA will provide the family written notice of its decision on an extension request within 10 business days of the date the request is received.

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

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

**Expiration of Voucher Term**

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

## 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 HACA's subsidy. HACA 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 HACA 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 HACA policies for calculating annual income are found in Part I.
- Part II: Adjusted Income. Once annual income has been established HUD regulations require HACA to subtract from annual income any of five mandatory deductions for which a family qualifies. These requirements and HACA policies for calculating adjusted income are found in Part II.
- Part III: Calculating Family Share and HACA Subsidy. This part describes the statutory formula for calculating total tenant payment (TTP), the use of utility allowances, and the methodology for determining HACA 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(a))
- Calculating Net Family Assets from Equity in Real Property (Exhibit 6-3(b))
- Earned Income Disallowance for Persons with Disabilities (Exhibit 6-4)
- The Effect of Welfare Benefit Reduction (Exhibit 6-5)

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

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

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

Summary of Income Included and Excluded by Person	
Live-in aides	Income from all sources is excluded [24 CFR 5.609(c)(5)].
Foster child or foster adult	Income from all sources is excluded (includes California Kinship Guardian Assistant payments (Kin-GAP) [24 CFR 5.609(c)(2)]).
Head, spouse, or cohead 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 cohead)	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 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].

#### HACA Policy

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

#### *Absent Students*

#### HACA Policy

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 HACA 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].

#### HACA Policy

If a child has been placed in foster care, HACA 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 removed from the home, the child will be counted as a family member unless s/he is receiving other Federal rental subsidy.

### ***Absent Head, Spouse, or Cohead***

#### HACA Policy

An employed head, spouse, or cohead absent from the unit more than 180 consecutive days due to employment will continue to be considered a family member unless s/he is receiving other federal rental subsidy.

### **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].

#### HACA Policy

HACA will request verification from a responsible medical professional and will use this determination. If the responsible medical professional cannot provide a determination, the person generally will be considered temporarily absent. The family may present evidence that the family member is confined on a permanent basis and request that the person not be considered a family member.

When an individual who has been counted as a family member is determined permanently absent, the family is eligible for the medical expense deduction only if the remaining head, spouse, or cohead qualifies as an elderly person or a person with disabilities.

### **Joint Custody of Dependents**

#### HACA Policy

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 at least 183 days (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, HACA will make the determination based on available documents such as court orders, or an IRS return showing which family has claimed the child for income tax purposes.

## **Caretakers for a Child**

### HACA Policy

The approval of a caretaker is at the owner and PHA's discretion and subject to the owner and PHA's screening criteria. If neither a parent nor a designated guardian remains in a household receiving HCV assistance, HACA 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 180 days. After the 180 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 HACA 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. DETERMINING ANNUAL INCOME**

PHAs are required to count all annual income set forth in 24 CFR 5.609. Policies related to using past income and anticipating annual income are provided below.

### **Basis for Determining Annual Income**

In determining annual income, PHAs may choose to use either actual past income or projected future income [Notice PIH 2013-3 (HA)]. If the PHA uses projected future income to determine annual income, the PHA, generally, will use current circumstances to determine anticipated income for the coming 12-month period. HUD authorizes PHAs to use other than current circumstances to anticipate income when:

- An imminent change in circumstances is expected [HCV GB, p. 5-17]
- The family reports little to no income [24 CFR 5.609(a)(2)(ii)(A)]
- The PHA is unable to determine annual income due to fluctuations in income (e.g., seasonal or cyclic income) [24 CFR 5.609(a)(2)(ii)(B)]

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)].

In using projected future income, 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 the PHA does not determine it is necessary to obtain additional third-party data.

In using actual past income, PHAs determine annual income based on past actual income received or earned within the last 12 months.

In using actual past income, PHAs must use the most recent 12 months of income information available in EIV. Because this EIV report will give actual earnings data verified by a third party, the program participant is no longer required to provide third party documentation (e.g., paystubs, payroll summary report, unemployment monetary benefit notice). PHAs must continue to verify income from sources not available in EIV. However, PHAs must use the same time period for both wage and non-wage income.

In using actual past income, if there has been a change in circumstances for a tenant, or a tenant disputes the EIV-reported income information and is unable to provide acceptable documentation to resolve the dispute, the PHA must request written third-party verification.

### **HACA Policy**

In determining annual income, HACA will use actual past income.

If there is no income information available in EIV, HACA will determine annual income based on past actual income received or earned within the last 12 months.

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

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

If EIV or other UIV data is not available,

If the family disputes the accuracy of the EIV employer data, and/or

If the PHA determines additional information is needed.

In such cases, HACA 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 HACA annualized projected income.

When HACA cannot readily anticipate income based upon current circumstances (e.g., in the case of seasonal employment, unstable working hours, or suspected fraud), HACA may average past actual income received or earned within the last 12 months before the determination date to calculate annual income. HACA may also request the family to provide documentation of current income. If the family can provide acceptable documentation dated either within the 60-day period preceding the determination date or the 60-day period following the request date, HACA may use this documentation to calculate annual income.

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

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

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

**Example:** An employer reports that a full-time employee who has been receiving \$6/hour will begin to receive \$6.25/hour in the eighth week after the effective date of the reexamination. In such a case HACA would calculate annual income as follows: (\$6/hour × 40 hours × 7 weeks) + (\$6.25 × 40 hours × 45 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 HACA 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

HACA's policy in Chapter 11 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.

EIV quarterly wages will not be used to project annual income at an annual or interim reexamination.

### **Projecting Income**

In HUD's EIV webcast of January 2008, HUD made clear that PHAs 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)].

#### **HACA Policy**

For persons who regularly receive bonuses or commissions, HACA will verify and then average amounts received for the two years preceding admission or reexamination. If only a one-year history is available, HACA will use the prior year amounts. In either case the family may provide, and HACA 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, HACA 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].

#### **HACA Policy**

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 cohead) are not counted [24 CFR 5.609(c)(11)]. To be considered "full-time," a student must be considered "full-time" by an educational institution with a degree or certificate program [HCV GB, p. 5-29].

#### ***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 HACA 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 HACA'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)].

#### **HACA Policy**

HACA defines *training program* as “a learning process with goals and objectives, generally having a variety of components, and taking place in a series of sessions over a period to time. It is designed to lead to a higher level of proficiency, and it enhances the individual's ability to obtain employment. It may have performance standards to measure proficiency. Training may include, but is not limited to: (1) classroom training in a specific occupational skill, (2) on-the-job training with wages subsidized by the program, or (3) basic education” [expired Notice PIH 98-2, p. 3].

HACA 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, HACA 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 HACA'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.

#### **HACA Policy**

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; Streamlining Final Rule (SFR) Federal Register 3/8/16]**

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

### **Eligibility**

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

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

## **Calculation of the Disallowance**

Calculation of the earned income disallowance for an eligible member of a qualified family begins with a comparison of the member's current income with his or her "baseline income." The family member's baseline income is his or her income immediately prior to qualifying for the EID. The family member's baseline income remains constant throughout the period that he or she is participating in the EID. While qualification for the disallowance is the same for all families, calculation of the disallowance will differ depending on when the family member qualified for the EID. Participants qualifying prior to May 9, 2016, will have the disallowance calculated under the "Original Calculation Method" described below which requires a maximum lifetime disallowance period of up to 48 consecutive months. Participants qualifying on or after May 9, 2016, will be subject to the "Revised Calculation Method" Which shortens the lifetime disallowance period to 24 consecutive months.

Under both the original and new methods, the EID eligibility criteria, the benefit amount, the single lifetime eligibility requirement and the ability of the applicable family member to stop and restart employment during the eligibility period are the same.

### **Original 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 12 months are cumulative and need not be consecutive.

##### HACA Policy

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

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

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

#### ***Lifetime Limitation***

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

##### HACA Policy

During the 48-month eligibility period, HACA will schedule and conduct an interim reexamination each time there is a change in the family member's annual income that affects or is affected by the EID (e.g., when the family member's income falls to a level at or below his/her prequalifying income, when one of the exclusion periods ends, and at the end of the lifetime maximum eligibility period).

## **Revised Calculation Method**

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

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

#### **HACA Policy**

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 exclusion period of 12 consecutive months, the PHA must exclude at least 50 percent of any increase in income attributable to employment or increased earnings.

#### **HACA Policy**

During the second 12-month exclusion period, the PHA will exclude 100 percent of any increase in income attributable to new employment or increased earnings.

### ***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. During the 24-month period, an individual remains eligible for EID even if they begin to receive assistance from a different housing agency, move between public housing and Section 8 assistance, or have breaks in assistance.

## **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].

#### HACA Policy

To determine business expenses that may be deducted from gross income, HACA 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 HACA to deduct from gross income expenses for business expansion.

#### HACA Policy

*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 HACA to deduct from gross income the amortization of capital indebtedness.

#### HACA Policy

*Capital indebtedness* is defined as the principal portion of the payment on a capital asset such as land, buildings, and machinery. This means HACA 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 HACA 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.

### HACA Policy

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, HACA 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**

### HACA Policy

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); 24 CFR 5.603(b) and PIH 2013-3]**

### **Overview**

There is no asset limitation for participation in the HCV program. However, HUD requires that HACA include in annual income the anticipated “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, HACA 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(a) 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 HACA policies related to each type of asset.

Optional policies for family self-certification of assets are found in Chapter 7.

### **General Policies**

#### ***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 equal to or less than \$5,000, HACA will accept the family’s declaration of the amount of assets of less than \$5,000, and the amount of income expected to be received from those assets. Where the family has net family assets in excess \$5000, HACA, generally, will use current circumstances to determine the anticipated income from the asset. As is true for all sources of income, HUD authorizes HACA 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) HACA 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, HACA can take into consideration past rental income along with the prospects of obtaining a new tenant.

#### **HACA Policy**

Where the family has net family assets equal to or less than \$5,000, HACA will accept the family’s declaration of the amount of assets of less than \$5,000, and the amount of income expected to be received from those assets. Where the family has net family assets in excess \$5,000, HACA, generally, will use current circumstances to determine the anticipated income from the asset. HACA will 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) HACA believes that past income is the best indicator of anticipated income.

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 HACA 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 HACA 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.

### **HACA Policy**

Where the family has net family assets equal to or less than \$5,000, HACA will accept the family's declaration of the value of those assets. Where the family has net family assets in excess \$5,000, HACA, generally, will use current circumstances to determine the value of an asset. HACA will use other than current circumstances to anticipate value when (1) an imminent change in circumstances is expected, or (2) HACA believes that past value is the best indicator of current value.

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

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, HACA 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, HACA 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 an average passbook savings rate as determined by the PHA. The PHA must review its passbook rate annually to ensure that it remains within 0.75 percent of the national average.

### **HACA Policy**

The PHA will initially set the imputed asset passbook rate at the national rate established by the Federal Deposit Insurance Corporation (FDIC).

The PHA will review the passbook rate annually, in December of each year. The rate will not be adjusted unless the current PHA rate is no longer within 0.75 percent of the national rate. If it is no longer within 0.75 percent of the national rate, the passbook rate will be set at the current national rate.

Changes to the passbook rate will take effect on February 1 following the December review.

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

It may or may not be necessary for HACA 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."

#### **HACA Policy**

If an asset is owned by more than one person and any family member has unrestricted access to the asset, HACA will count the full value of the asset. A family member has unrestricted access to an asset when he or she can legally dispose of the asset without the consent of any of the other owners.

If an asset is owned by more than one person, including a family member, but the family member does not have unrestricted access to the asset, HACA will prorate the asset according to the percentage of ownership. If no percentage is specified or provided for by state or local law, HACA 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 HACA 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 HACA to set a threshold below which assets disposed of for less than fair market value will not be counted [HCV GB, p. 5-27].

#### HACA Policy

HACA 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 \$10,000.

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

Assets placed by the family in nonrevocable 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.

#### HACA Policy

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***

#### HACA Policy

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. HACA may verify the value of the assets disposed of if other information available to HACA 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.

#### HACA Policy

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

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

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

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

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

#### HACA Policy

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

### ***Equity in Real Property or Other Capital Investments***

Equity (net 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 it and reasonable costs (such as broker fees) that would be incurred in selling it [HCV GB, p. 5-25].

#### HACA Policy

In determining the equity, HACA 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.

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

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

- Equity accounts in HUD homeownership programs [24 CFR 5.603(b)]
- The value of a home currently being purchased with assistance under the HCV program Homeownership Option for the first 10 years after the purchase date of the home [24 CFR 5.603(b) , Notice PIH 2012-3]
- Equity in owner-occupied cooperatives and manufactured homes in which the family lives [HCV GB, p. 5-25]
- Equity in real property when a family member's main occupation is real estate [HCV GB, p. 5-25]. This real estate is considered a business asset, and income related to this asset will be calculated as described in section 6-I.F.
- Interests in Indian Trust lands [24 CFR 5.603(b)]
- Real property and capital assets that are part of an active business or farming operation [HCV GB, p. 5-25]

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

#### HACA Policy

For the purposes of calculating expenses to convert to cash for real property, HACA 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 outright or subject to a mortgage or deed of trust 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.

#### HACA Policy

HACA determines the net cash value of real property as set forth in Exhibit 6-3(b). 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 HACA determines that the family receives no income from the asset and is unable to sell or otherwise convert it 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.

#### *Nonrevocable Trusts*

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

#### ***Retirement Accounts***

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

In order to correctly include or exclude as an asset any amount held in a company retirement or pension account by an employed person, HACA 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].

##### HACA Policy

In determining the value of personal property held as an investment, HACA will use the family's estimate of the value. HACA 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)].

##### HACA Policy

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)].

#### HACA Policy

When a delayed-start payment is received and reported during the period in which HACA is processing an annual reexamination, HACA will adjust the family share and HACA subsidy prospectively.

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

HACA must make a special calculation of annual income when the Social Security Administration (SSA) overpays an individual, resulting in a withholding or deduction from his or her benefit amount until the overpayment is paid in full. The amount and duration of the withholding will vary depending on the amount of the overpayment and the percent of the benefit rate withheld. Regardless of the amount withheld or the length of the withholding period, HACA must use the reduced benefit amount after deducting only the amount of the overpayment withholding from the gross benefit amount [Notice PIH2012-10].

## Periodic Payments Excluded from Annual Income

- Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the assisted family, who are unable to live alone) [24 CFR 5.609(c)(2)]. Kinship guardianship assistance payments (Kin-GAP) and other similar guardianship payments are treated the same as foster care payments and are likewise excluded from annual income [Notice PIH 2008-30].

### HACA Policy

HACA will exclude payments for the care of foster children and foster adults, including California Kinship Guardian Assistant Payments (Kin-GAP) per PIH 2008-40 only if the care is provided through an official arrangement with a local welfare agency [HCV GB, p. 5-18].

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

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

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

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

### **Overview**

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

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

HACA 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, HACA must include in annual income “imputed” welfare income. HACA 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**

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

#### HACA Policy

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

HACA must count as income regular monetary and nonmonetary contributions or gifts from persons not residing with an assisted family [24 CFR 5.609(b)(7)]. Temporary, nonrecurring, or sporadic income and gifts are not counted [24 CFR 5.609(c)(9)].

#### HACA Policy

Examples of regular contributions include: (1) regular payment of a family's bills (e.g., utilities, telephone, rent, credit cards, and car payments), (2) cash or other liquid assets provided to any family member on a regular basis, and (3) "in-kind" contributions such as groceries and clothing provided to a family on a regular basis.

Nonmonetary contributions will be valued at the cost of purchasing the items, as determined by HACA. For contributions that may vary from month to month (e.g., utility payments), HACA will include an average amount based upon past history.

## **6-I.L. STUDENT FINANCIAL ASSISTANCE [24 CFR 5.609(b)(9) ); Notice PIH 2015-21]**

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

### **Student Financial Assistance Included in Annual Income [24 CFR 5.609(b)(9);FR 4/10/06; Notice PIH 2015-21]**

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

- They are enrolled in an institution of higher education, as defined under the Higher Education Act (HEA) of 1965.
- They are seeking or receiving Section 8 assistance on their own—that is, apart from their parents—through the HCV program, the project-based 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, HACA will use the definitions of *dependent child*, *institution of higher education*, and *parents* in Section 3-II.E, along with the following definitions [FR 4/10/06, pp. 18148-18150]:

- *Assistance under the Higher Education Act of 1965* includes Pell Grants, Federal Supplement Educational Opportunity Grants, Academic Achievement Incentive Scholarships, State Assistance under the Leveraging Educational Assistance Partnership Program, the Robert G. Byrd Honors Scholarship Program, and Federal Work Study programs.
- *Assistance from private sources* means assistance from nongovernmental sources, including parents, guardians, and other persons not residing with the student in an HCV assisted unit.
- *Tuition and fees* are defined in the same manner in which the Department of Education defines *tuition and fees* [Notice PIH 2015-21].
  - This is the amount of tuition and required fees covering a full academic year most frequently charged to students.
  - The amount represents what a typical student would be charged and may not be the same for all students at an institution.
  - If tuition is charged on a per-credit-hour basis, the average full-time credit hour load for an academic year is used to estimate average tuition.
  - Required fees include all fixed-sum charges that are required of a large proportion of all students. Examples include, but are not limited to, writing and science lab fees and fees specific to the student's major or program (i.e., nursing program).

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

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

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

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

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

Other exclusions contained in 24 CFR 5.609(c) 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(c) 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) (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) (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



## **PART II: ADJUSTED INCOME**

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

#### **Overview**

HUD regulations require HACA 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 [HACA] must deduct the following amounts from annual income:

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

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

#### **Anticipating Expenses**

##### HACA Policy

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

If a family has an accumulated debt for medical or disability assistance expenses, HACA 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. HACA 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 cohead who is under the age of 18 or who is 18 or older and is a person with disabilities or a full-time student. Foster children, foster adults, and live-in aides are never considered dependents [24 CFR 5.603(b)].

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

## 6-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 cohead is at least 62 or is a person with disabilities. If a family is eligible for a medical expense deduction, the medical expenses of all family members are counted [VG, p. 28].

### 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.”

#### HACA Policy

The most current IRS Publication 502, *Medical and Dental Expenses*, will be used as a reference to to determine the costs that qualify as medical expenses except that non-prescription medicines will be allowable medical expenses.

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

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

### HACA Policy

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

When expenses anticipated by a family could be defined as either medical or disability assistance expenses, HACA 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.

#### HACA Policy

The family must identify the family members enabled to work as a result of the disability assistance expenses. In evaluating the family’s request, HACA 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 HACA 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 HACA to further define and describe auxiliary apparatus [VG, p. 30].

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

#### HACA Policy

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.

#### **HACA Policy**

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, HACA 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.

#### **HACA Policy**

HACA determines the reasonableness of the expenses based on typical costs of care or apparatus in the locality on a case by case basis. A family may present, and HACA 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***

#### **HACA Policy**

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

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

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

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

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

### **Qualifying for the Deduction**

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

##### HACA Policy

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, HACA 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***

##### HACA Policy

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 HACA.

#### ***Furthering Education***

##### HACA Policy

If the child care expense being claimed is to enable a family member to further his or her education, the member must be enrolled in school (academic or vocational) or participating in a formal training program. The family member is not required to be a full-time student, but the time spent in educational activities must be commensurate with the child care claimed.

## ***Being Gainfully Employed***

### **HACA Policy**

If the child care expense being claimed is to enable a family member to be gainfully employed, the family must provide evidence of the family member's employment during the time that child care is being provided. Gainful employment is any legal work activity (full- or part-time) for which a family member is compensated.

## **Earned Income Limit on Child Care Expense Deduction**

When a family member looks for work or furthers his or her education, there is no cap on the amount that may be deducted for child care – although the care must still be necessary and reasonable. However, when child care enables a family member to work, the deduction is capped by “the amount of employment income that is included in annual income” [24 CFR 5.603(b)].

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

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

HACA 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].

### **HACA Policy**

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, HACA will limit allowable child care expenses to the earned income of the lowest-paid member.

## **Eligible Child Care Expenses**

The type of care to be provided is determined by the assisted family. HACA 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***

### **HACA Policy**

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, HACA will prorate the costs and allow only that portion of the expenses that is attributable to child care for eligible activities. For example, if the care provider also cares for a child with disabilities who is 13 or older, the cost of care will be prorated. Unless otherwise specified by the child care provider, the calculation will be based upon the number of hours spent in each activity and/or the number of persons under care.

### ***Necessary and Reasonable Costs***

Child care expenses will be considered necessary if: (1) a family adequately explains how the care enables a family member to work, actively seek employment, or further his or her education, and (2) the family certifies, and the child care provider verifies, that the expenses are not paid or reimbursed by any other source.

#### **HACA Policy**

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

## **PART III: CALCULATING FAMILY SHARE AND HACA SUBSIDY**

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

#### **TTP Formula [24 CFR 5.628]**

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

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

HACA 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]***

##### HACA Policy

Welfare rent does not apply in this locality.

#### ***Minimum Rent [24 CFR 5.630]***

##### HACA Policy

The minimum rent for this locality is \$50.

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

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

### **HACA Subsidy [24 CFR 982.505(b)]**

HACA 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) ); 982.514(c)]**

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

#### HACA Policy

HACA will make utility reimbursements to the family.

The PHA may make all utility reimbursement payments to qualifying families on a monthly basis or may make quarterly payments when the monthly reimbursement amount is \$15.00 or less. Reimbursements must be made once per calendar-year quarter and must be prorated if the family leaves the program in advance of its next quarterly reimbursement. The PHA must also adopt hardship policies for families for whom receiving quarterly reimbursement would create a financial hardship.

#### HACA Policy

HACA will issue all utility reimbursements monthly.

## **6-III.B. FINANCIAL HARDSHIPS AFFECTING MINIMUM RENT [24 CFR 5.630]**

### **Overview**

If HACA establishes a minimum rent greater than zero, HACA 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 HACA determines that a hardship exists, the family share is the highest of the remaining components of the family's calculated TTP.

### **HUD-Defined Financial Hardship**

Financial hardship includes the following situations:

- (1) The family has lost eligibility for or is awaiting an eligibility determination for a federal, state, or local assistance program. This includes a family member who is a noncitizen lawfully admitted for permanent residence under the Immigration and Nationality Act who would be entitled to public benefits but for Title IV of the Personal Responsibility and Work Opportunity Act of 1996.

#### HACA Policy

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.

#### HACA Policy

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.

HACA Policy

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 HACA.

HACA Policy

HACA has not established any additional hardship criteria.

## Implementation of Hardship Exemption

### *Determination of Hardship*

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

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

#### HACA Policy

HACA defines temporary hardship as a hardship expected to last 90 days or less. Long-term hardship is defined as a hardship expected to last more than 90 days.

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

<b>Example: Impact of Minimum Rent Exemption</b>	
Assume HACA has established a minimum rent of \$35.	
<b>Family Share – No Hardship</b>	<b>Family Share – With Hardship</b>
\$0 30% of monthly adjusted income	\$0 30% of monthly adjusted income
\$15 10% of monthly gross income	\$15 10% of monthly gross income
N/A Welfare rent	N/A Welfare rent
\$35 Minimum rent	\$35 Minimum rent
Minimum rent applies. TTP = \$35	Hardship exemption granted. TTP = \$15

#### HACA Policy

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.

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

### ***No Financial Hardship***

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

#### **HACA Policy**

HACA will require the family to repay the suspended amount within 30 calendar days of HACA's notice that a hardship exemption has not been granted.

### ***Temporary Hardship***

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

#### **HACA Policy**

HACA will enter into a repayment agreement in accordance with the procedures found in Chapter 16 of this plan.

### ***Long-Term Hardship***

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

#### **HACA Policy**

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; 982.503(b)]**

#### **Overview**

HACA's schedule of payment standards is used to calculate housing assistance payments for HCV families. This section covers the application of HACA's payment standards. The establishment and revision of HACA'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 HACA'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 HACA 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, HACA must use the appropriate payment standard for the exception area.

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

#### ***Decreases***

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

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

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

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

### ***Increases***

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

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

### ***Changes in Family Unit Size***

Irrespective of any increase or decrease in the payment standard, if the family unit size increases or decreases during the HAP contract term, the new family unit size must be used to determine the payment standard for the family beginning at the family's first regular reexamination following the change in family unit size.

### ***Reasonable Accommodation***

If a family requires a higher payment standard as a reasonable accommodation for a family member who is a person with disabilities, HACA is allowed to establish a higher payment standard for the family of not more than 120 percent of the published FMR.

## **6-III.D. APPLYING UTILITY ALLOWANCES [24 CFR 982.517]**

### **Overview**

A HACA-established utility allowance schedule is used in determining family share and HACA subsidy. A family's utility allowance is determined by the lower of the size of dwelling unit actually leased by a family or the voucher unit size for which the family qualifies using HACA subsidy standards.

See Chapter 5 for information on HACA's subsidy standards.

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

### **Reasonable Accommodation**

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

The family must request the higher allowance and provide HACA 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, HACA must use HACA current utility allowance schedule [HCV GB, p. 18-8].

#### HACA Policy

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. HACA must prorate the assistance provided to a mixed family. HACA 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 HACA subsidy for a family is calculated at \$500 and two of four family members are ineligible, HACA subsidy would be reduced to \$250.



## EXHIBIT 6-1: ANNUAL INCOME INCLUSIONS

### 24 CFR 5.609

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

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

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

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

- (3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;
- (4) The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in paragraph (c)(14) of this section);
- (5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided in paragraph (c)(3) of this section);

(6) Welfare assistance payments.

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

(A) Qualify as assistance under the TANF program definition at 45 CFR 260.31<sup>1</sup>; and

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

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

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

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

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

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

(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).

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<sup>1</sup> Text of 45 CFR 260.31 follows.

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

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

- (i) Are designed to deal with a specific crisis situation or episode of need;
- (ii) Are not intended to meet recurrent or ongoing needs; and
- (iii) Will not extend beyond four months.

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

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

(4) Refundable earned income tax credits;

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

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

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

<b>EXHIBIT 6-2: ANNUAL INCOME EXCLUSIONS<sup>2</sup></b>
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**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 HACA 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 HACA's governing board. No resident may receive more than one such stipend during the same period of time;
  - (v) Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program;
- (9) Temporary, nonrecurring or sporadic income (including gifts);
- (10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;

- (11) Earnings in excess of \$480 for each full-time student 18 years old or older (excluding the head of household and spouse);
- (12) Adoption assistance payments in excess of \$480 per adopted child;
- (13) [Reserved]
- (14) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts, or any deferred Department of Veterans Affairs disability benefits that are received in a lump sum amount or in prospective monthly amounts.
- (15) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;
- (16) Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or
- (17) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the Federal Register and distributed to HACAs and housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary. The following benefits qualify for this exclusion:
- a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 (b));
  - b) Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058);
  - c) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c));
  - d) Income derived from certain sub-marginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);
  - e) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));
  - f) Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b)); (effective July 1, 2000, references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998 (29 U.S.C. 2931);
  - g) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub.L- 94-540, 90 Stat. 2503-04);
  - h) The first \$2000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first \$2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408);
  - i) Amounts of scholarships funded under title IV of the Higher Education Act of 1965 (20 U.S.C. 1070), including awards under federal work-study program or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu). For section 8 programs only (42 U.S.C. 1437f),

any financial assistance in excess of amounts received by an individual for tuition and any other required fees and charges under

the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), from private sources, or an institution of higher

education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall not be considered income to that

individual if the individual is over the age of 23 with dependent children (Pub. L. 109–115, section 327) (as amended);;

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

k) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in In Re Agent-product liability litigation, M.D.L. No. 381 (E.D.N.Y.);

l) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721);

m) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q);

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

o) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433);

p) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d));

q) Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran (38 U.S.C. 1805);

r) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602);

s) Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931);

t) Any amount received under the Richard B. Russell School Lunch Act (42 U.S.C. 1760(e)) and the Child

Nutrition Act of 1966 (42 U.S.C.1780(b)), including reduced-price lunches and food under the Special

Supplemental Food Program for Women, Infants, and Children (WIC);

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

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

- w) Compensation received by or on behalf of a veteran for service-connected disability, death, dependency, or indemnity compensation as provided by an amendment by the Indian Veterans Housing Opportunity Act of 2010 (Pub. L. 111–269; 25 U.S.C. 4103(9)) to the definition of income applicable to programs authorized under the Native American Housing Assistance and Self-Determination Act (NAHASDA) (25 U.S.C. 4101 et seq.) and administered by the Office of Native American Programs;
- x) A lump sum or a periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the case entitled *Elouise Cobell et al. v. Ken Salazar et al.*, 816 F.Supp.2d 10 (Oct. 5, 2011 D.D.C.), for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010 (Pub. L. 111–291);
- y) Any amounts in an “individual development account” as provided by the Assets for Independence Act, as amended in 2002 (Pub. L. 107–110, 42 U.S.C. 604(h)(4)); (xxv) Per capita payments made from the proceeds of Indian Tribal Trust Cases as described in PIH Notice 2013–30 “Exclusion from Income of Payments under Recent Tribal Trust Settlements” (25 U.S.C. 117b(a)); and
- z) Major disaster and emergency assistance received by individuals and families under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Pub. L. 93–288, as amended) and comparable disaster assistance provided by States, local governments, and disaster assistance organizations (42 U.S.C. 155(d)).



## **EXHIBIT 6-3(a): 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 6-3(b): CALCULATING NET FAMILY ASSETS FROM EQUITY IN REAL PROPERTY

The method for calculating income from assets applies to income from all net family assets, which for families in the eleventh year of their participation in the homeownership option, will include income from equity from the home they purchased with homeownership assistance.

### **Equity in Real Property**

Equity in real property, other than the types of assets excepted in 6-I.G Assets – *Equity in Real Property of Other Capital Investments*, must be included in the total assets of a family. Real Property includes land and real estate owned by the applicant or participant household, and land and real estate on which it holds a mortgage or deed of trust. It 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 asset and reasonable costs (such as broker fees) that would be incurred in selling the asset.

HACA will calculate equity in real property as follows:

Market Value - Loan (Mortgage) and reasonable costs that would be incurred in selling the asset = Equity

### *Determining Market Value*

Market value is the price a buyer would pay to a seller for a property in its present condition. A number of factors may affect a residential property's market value, some examples of factors include, home condition, lot size, size and number of rooms, construction quality, how quickly homes in the area are selling, and location. On a case-by-case basis, HACA will use either the following two methods—sales comparison or assessed valuation—to determine market value on a case-by-case basis.

**Sales Comparison:** The comparison approach involves examining recent sales of **at least three** properties in the surrounding (or similar) neighborhood that possess comparable factors that affect market value. HACA will use Web sites such as trulia.com and redfin.com to do the comparison.

**Assessed Valuation:** As an alternative, HACA will use the most recent tax assessor's determination of market value obtained by reviewing the local assessment roll or the owner's most recent property tax liability bill.

### *Loan (Mortgage) Balance*

The monthly mortgage statement of the participant will usually contain information relative to the loan balance remaining on the mortgage. The statement may also include a payoff amount for the loan, which refers to the amount of money, including any prepayment penalty, which it will take to pay a loan off in full. The payoff amount will differ from the loan balance because the payoff amount often changes on a daily basis, depending on how the interest is compounded. HACA will first try to use the payoff amount for the loan, if that information is available. However, if HACA only has loan balance information, HACA may deduct that amount from the market value.

### **Cash Value of the Asset**

HACA will also deduct from the equity the reasonable costs for converting the asset to cash.

HACA will calculate the net cash value of real property as follows:

Equity - Expenses to Convert to Cash = Net Cash Value

or, incorporating the Equity formula from above:

Market Value – Loan (Mortgage) - Expenses to Convert to Cash = Net Cash Value

If the Net Cash Value is a negative number, HACA will not make an adjustment to net family assets for this asset.

#### *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. Some mortgages may also contain a prepayment penalty, which could be deducted from the proceeds of the sale of the home. Obtaining actual costs is not possible since there is not an actual transaction taking place. Therefore, for purposes of calculating expenses to convert to cash for real property, HACA will utilize the HUD safe harbor of up to 10 percent of the market value of the home.

## EXHIBIT 6-4: EARNED INCOME DISALLOWANCE FOR PERSONS WITH DISABILITIES

### 24 CFR 5.617 Self-sufficiency incentives for persons with disabilities—Disallowance of increase in annual income.

#### *(a) Applicable programs.*

The disallowance of earned income provided by this section is applicable only to the following programs: HOME Investment Partnerships Program (24

CFR part 92); Housing Opportunities for Persons with AIDS (24 CFR part 574); Supportive Housing Program (24 CFR part 583); and the Housing Choice Voucher Program (24 CFR part 982).

*(b) Definitions.* The following definitions apply for purposes of this section.

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

*Disallowance.* Exclusion from annual income.

*Previously unemployed* includes a person with disabilities who has earned, in the twelve months previous to employment, no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage.

*Qualified family.* A family residing in housing assisted under one of the programs listed in paragraph (a) of this section or receiving tenant-based rental assistance under one of the programs listed in paragraph (a) of this section.

(1) Whose annual income increases as a result of employment of a family member who is a person with disabilities and who was previously unemployed for one or more years prior to employment;

(2) Whose annual income increases as a result of increased earnings by a family member who is a person with disabilities during

participation in any economic self-sufficiency or other job training program; or

(3) Whose annual income increases, as a result of new employment or increased earnings of a family member who is a person with disabilities, during or within six months after receiving assistance, benefits or services under any state program for temporary assistance for needy families funded under Part A of Title IV of the Social Security Act, as determined by the responsible entity in consultation with the local agencies administering temporary assistance for needy families (TANF) and Welfare-to-Work (WTW) programs. The TANF program is not limited to monthly income maintenance, but also includes such benefits and services as one-time payments, wage subsidies and transportation assistance-- provided that the total amount over a six-month period is at least \$500.

#### *(c) Disallowance of increase in annual income—*

(1) *Initial twelve month exclusion.* During the 12-month period beginning on the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the responsible entity must exclude from annual income (as defined in the regulations governing the applicable program listed in paragraph (a) of this section) of a qualified family any increase in income of the family member who is a person with disabilities as a result of employment over prior income of that family member.

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

(3) *Maximum 2-year disallowance.* The disallowance of increased income of an individual family member who is a person with disabilities as provided in paragraph (c)(1) or (c)(2) of this section is limited to a lifetime 24-month period. The disallowance applies for a maximum of 12 months for disallowance under paragraph (c)(1) of this section and a maximum of 12 months for disallowance under paragraph (c)(2) of this section, during the 24-month period starting from the initial exclusion under paragraph (c)(1) of this section.

(4) *Effect of changes on currently participating families.* Families eligible for and participating in the disallowance of earned income under this section prior to *May 9, 2016* will continue to be governed by this section in effect as it existed immediately prior to that date (see 24 CFR parts 0 to 199, revised as of April 1, 2016). *(d) Inapplicability to admission.* The disallowance of increases in income as a result of employment of persons with disabilities under this section does not apply for purposes of admission to the program (including the determination of income eligibility or any income targeting that may be applicable).

## EXHIBIT 6-5: THE EFFECT OF WELFARE BENEFIT REDUCTION

### 24 CFR 5.615

#### **Public housing program and Section 8 tenant-based assistance program: How welfare benefit reduction affects family income.**

*(a) Applicability.* This section applies to covered families who reside in public housing (part 960 of this title) or receive Section 8 tenant-based assistance (part 982 of this title).

*(b) Definitions.* The following definitions apply for purposes of this section:

*Covered families.* Families who receive welfare assistance or other public assistance benefits ("welfare benefits") from a State or other public agency ("welfare agency") under a program for which Federal, State, or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance.

*Economic self-sufficiency program.* See definition at Sec. 5.603.

*Imputed welfare income.* The amount of annual income not actually received by a family, as a result of a specified welfare benefit reduction, that is nonetheless included in the family's annual income for purposes of determining rent.

*Specified welfare benefit reduction.*

(1) A reduction of welfare benefits by the welfare agency, in whole or in part, for a family member, as determined by the welfare agency, because of fraud by a family member in connection with the welfare program; or because of welfare agency sanction against a family member for noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

(2) "Specified welfare benefit reduction" does not include a reduction or termination of welfare benefits by the welfare agency:

- (i) at expiration of a lifetime or other time limit on the payment of welfare benefits;
- (ii) because a family member is not able to obtain employment, even though the family

member has complied with welfare agency economic self-sufficiency or work activities requirements; or

(iii) because a family member has not complied with other welfare agency requirements.

*(c) Imputed welfare income.*

(1) A family's annual income includes the amount of imputed welfare income (because of a specified welfare benefits reduction, as specified in notice to HACA 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 HACA, the welfare agency will inform HACA 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 HACA of any subsequent changes in the term or amount of such specified welfare benefit reduction. HACA 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 HACA's interim or regular reexamination of family income and composition, during the term of the welfare benefits reduction (as specified in information provided to HACA 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) HACA 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 HACA decision.*

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

(2) Section 8 participant. A participant in the Section 8 tenant-based assistance program may request an informal hearing, in accordance with Sec. 982.555 of this title, to review HACA 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 HACA denies the family's request to modify such amount, HACA shall give the family written notice of such denial, with a brief explanation of the basis for HACA determination of the amount of imputed welfare income. Such notice shall also state that if the family does not agree with HACA determination, the family may request an informal hearing on the determination under HACA hearing procedure.

*(e) HACA relation with welfare agency.*

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

(2) HACA 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 HACA. However, HACA 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. HACA shall be entitled to rely on the welfare agency notice to HACA 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 2017-12]

#### **INTRODUCTION**

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

The PHA will follow the verification guidance provided by HUD in Notices PIH 2017-12, PIH 2013-03 (HA), PIH 2013-04 (HA) and any subsequent guidance issued by HUD. This chapter summarizes those requirements and provides supplementary HACA policies.

Part I describes the general verification process. Part II describes more detailed requirements related to family information. Part III provides information on income and assets; Part IV on 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 HACA.

#### **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 HACA or HUD determines is necessary to the administration of the program and must consent to HACA 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 HACA 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, HACA 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 HACA procedures.

## **7-I.B. OVERVIEW OF VERIFICATION REQUIREMENTS**

### **HUD's Verification Hierarchy [Notice PIH 2017-12]**

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 PHAs to use the most reliable form of verification that is available and to document the reasons when the PHA uses a lesser form of verification.

In order of priority, the forms of verification that HACA 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**

#### HACA Policy

Any documents used for verification must be the original (not photocopies) and generally must be dated either within the 60-day period preceding the reexamination or HACA's request date. The documents must not be damaged, altered or in any way illegible.

Print-outs from Web pages are considered original documents.

HACA staff member who views the original document must make a photocopy, annotate the copy with the name of the person who provided the document and the date the original was viewed, and sign the copy.

Any family self-certifications must be made in a format acceptable to HACA.

### **File Documentation**

PHAs must document in the file how the figures used in income and rent calculations were determined. All verification attempts, information obtained, and decisions reached during the verification process will be recorded in the family's file in sufficient detail to demonstrate that the PHA 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.

### HACA Policy

HACA will document, in the family file, the following:

- Reported family annual income
- Value of assets of \$5,000 or more and a participant's declaration of the amount of assets of less than \$5,000
- Expenses related to deductions from annual income
- Other factors influencing adjusted income

When HACA is attempting to obtain and use 3rd party verification but is unable to do so, HACA 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]

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

Up-front income verification (UIV) refers to a PHA's use of the verification tools available from independent sources that maintain computerized information about earnings and benefits.

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

See Chapter 6 for the PHA's policy on the use of UIV/EIV to determine 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 HACA's use of HUD's EIV system.

#### ***EIV Income Reports***

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

##### **HACA Policy**

HACA will obtain income reports for annual reexaminations on a monthly basis. Reports will be generated as part of the regular reexamination process.

Income reports may be used in the calculation of annual income, as described in Chapter 6-I.C. Income reports may also be used to meet the regulatory requirement for third party verification, as described above. Policies for resolving discrepancies between income reports and family-provided information will be resolved as described in Chapter 6-I.C. and in this chapter.

Income reports will be used in interim reexaminations to identify any discrepancies between reported income and income shown in the EIV system, and as necessary to verify 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 reports will be retained in participant files with the applicable annual or interim reexamination documents.

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

#### ***EIV Identity Verification***

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

PHAs are required to use EIV's *Identity Verification Report* on a monthly basis to improve the availability of income information in EIV [Notice PIH 2017-12].

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

#### HACA Policy

HACA will identify participants whose identity verification has failed by reviewing EIV's *Identity Verification Report* on a monthly basis.

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

#### **Upfront Income Verification Using Other Than HUD's Enterprise Income Verification (EIV) System (Optional)**

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

#### HACA Policy

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

HUD's EIV system

CalWIN (California Work Opportunity and Responsibility to Kids Information Network)

The Work Number

The California Employment Development Department (EDD) computer matching system

Published cost of living adjustments for elderly families and disabled families when 100 percent of the family's income consists of fixed income. Fixed income includes income from:

1. Social Security payments to include Supplemental Security Income (SSI) and Supplemental Security Disability Insurance (SSDI);
2. Federal, State, local, and private pension plans; and

3. Other periodic payments received from annuities, insurance policies, retirement funds, disability or death benefits, and other similar types of periodic receipts that are of substantially the same amounts from year to year.

## **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 the PHA by the family. If written third-party verification is not available, the PHA 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]**

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

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

The PHA is required to obtain, at minimum, two current and consecutive pay stubs for determining annual income from wages.

The PHA 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.

#### HACA Policy

Third-party documents provided by the family must be dated within 60 days of HACA's request date.

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

As verification of earned income, HACA will require the family to provide the two most current, consecutive pay stubs.

### **Written Third-Party Verification Form**

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

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

#### HACA Policy

HACA 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 HACA.

#### **Oral Third-Party Verification [Notice PIH 2017-12]**

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.

#### HACA Policy

In collecting third-party oral verification, HACA 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 HACA 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 2017-12]**

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.

#### HACA Policy

If the family cannot provide original documents, HACA 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 data from HUD's EIV System, or legal documents, such as a birth certificate or other legal documentation of birth, are the primary source.

### ***Imputed Assets***

HUD permits HACA 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].

### **HACA Policy**

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

### ***Value of Assets and Asset Income [24 CFR 982.516(a)]***

For families with net assets totaling \$5,000 or less, the PHA may accept the family's declaration of asset value and anticipated asset income. However, the PHA is required to obtain third-party verification of all assets regardless of the amount during the intake process and at least every three years thereafter.

### **PHA Policy**

For families with net assets totaling \$5,000 or less, the PHA will accept the family's self-certification of the value of family assets and anticipated asset income when applicable. The family's declaration must show each asset and the amount of income expected from that asset. All family members 18 years of age and older must sign the family's declaration.

The PHA will use third-party documentation for assets as part of the intake process, whenever a family member is added to verify the individual's assets, and every three years thereafter.

## 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 the PHA 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.

### HACA Policy

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

HACA 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 HACA 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**

#### HACA Policy

HACA will require families to furnish verification of legal identity for each household member.

<b>Verification of Legal Identity for Adults</b>	<b>Verification of Legal Identity for Children</b>
Certificate of birth, naturalization papers 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 employer identification card	Certificate of birth Adoption papers Custody agreement Health and Human Services ID Certified School records Current U.S. passport

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 HACA'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 HACA.

Legal identity will be verified for all applicants at the time of eligibility determination and in cases where the PHA has reason to doubt the identity of a person representing him or herself to be a participant..

## **7-II.B. SOCIAL SECURITY NUMBERS [24 CFR 5.216, Notice PIH2012-10]**

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

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

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

An original SSN card issued by the Social Security Administration (SSA)

An original SSA-issued document, which contains the name and SSN of the individual

An original document issued by a federal, state, or local government agency, which contains the name and SSN of the individual.

The PHA 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, or is illegible, or appears to be forged.

### HACA Policy

HACA will explain to the applicant or participant the reasons the document is not acceptable and request that the individual obtain and submit acceptable documentation of the SSN to the PHA within 90 days.

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. The PHA 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.

### HACA Policy

HACA 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, HACA will terminate the individual's assistance.

If an applicant family includes a child under 6 years of age who joined the household within the 6 months prior to the date of voucher issuance, an otherwise eligible family may be admitted to the program and the family must provide documentation of the child's SSN within 90 days of the effective date of the initial HAP contract. A 90-day extension will be granted if the PHA determines that the participant's failure to comply was due to unforeseen circumstances and was outside of the participant's control.

#### PHA Policy

The PHA will grant one additional 90-day extension if needed for reasons beyond the applicant's control, such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency.

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. The PHA 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 the PHA determines that the participant's failure to comply was due to unforeseen circumstances and was outside of the participant's control. During the period the PHA is awaiting documentation of the SSN, the child will be counted as part of the assisted household.

#### HACA Policy

HACA 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.

#### HACA Policy

HACA 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," HACA 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.

#### HACA Policy

Once an individual's status is classified as "verified" in HUD's EIV system, HACA will 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.

### HACA Policy

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

### HACA Policy

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**

### HACA Policy

Certification by the head of household is normally sufficient verification. If HACA has reasonable doubts about a marital relationship, HACA 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**

### HACA Policy

Certification by the head of household is normally sufficient verification. If HACA has reasonable doubts about a separation or divorce, HACA 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**

### HACA Policy

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

## **Foster Children and Foster Adults**

### HACA Policy

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**

#### HACA Policy

HACA requires families to provide information about the student status of all students who are 18 years of age or older. This information will be verified only if:

The family reports full-time student status for an adult other than the head, spouse, or co-head.

The family reports child care expenses to enable a family member to further his or her education.

The family includes a student enrolled in an *institution of higher education*.

### **Restrictions on Assistance to Students Enrolled in Institutions of Higher Education**

This section applies only to students who are seeking assistance on their own, separately from their parents. It does not apply to students residing with parents who are seeking or receiving HCV assistance.

#### HACA Policy

In accordance with the verification hierarchy described in Section 7-1.B, HACA will determine whether the student is exempt from the restrictions in 24 CFR 5.612 by verifying any one of the following exemption criteria:

The student is enrolled at an educational institution that does not meet the definition of *institution of higher education* in the Higher Education Act of 1965 (see Section Exhibit 3-2).

The student is at least 24 years old.

The student is a veteran, as defined in Section 3-II.E.

The student is married.

The student has at least one dependent child, as defined in Section 3-II.E.

The student is a person with disabilities, as defined in Section 3-II.E, and was receiving assistance prior to November 30, 2005.

If HACA cannot verify at least one of these exemption criteria, HACA 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, HACA will then proceed to verify either the student's parents' income eligibility (see Section 7-III.J) or the student's independence from his/her parents (see below).

### ***Independent Student***

#### HACA Policy

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

Either reviewing and verifying previous address information to determine whether the student has established a household separate from his/her parents for at least one year or reviewing and verifying documentation relevant to determining whether the student meets the U.S. Department of Education's definition of *independent student* (see Section 3-II.E)

Reviewing 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 the PHA determines that the student is a *vulnerable youth* (see section 3-II.E)

## **7-II.F. DOCUMENTATION OF DISABILITY**

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

#### HACA Policy

For family members claiming disability who receive disability benefits from the SSA, HACA will attempt to obtain information about disability benefits through the HUD Enterprise Income Verification (EIV) system. If documentation from HUD's EIV System is not available, HACA 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), HACA will ask the family to request a benefit verification letter by either calling SSA at 1-800-772-1213, or by requesting it from [www.ssa.gov](http://www.ssa.gov). Once the applicant or participant receives the benefit verification letter they will be required to provide it to HACA.

### **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.

#### HACA Policy

For family members claiming disability who do not receive disability benefits from the SSA, a knowledgeable professional must provide third-party verification that the family member meets the HUD definition of disability. See the Eligibility chapter for the HUD definition of disability. The knowledgeable professional will verify whether the family member does or does not meet the HUD definition.

## **7-II.G. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS [24 CFR 5.508]**

### **Overview**

Housing assistance is not available to persons who are not citizens, nationals, eligible immigrants, or VAWA self-petitioners. 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 HACA verification requirements related to citizenship status.

The family must provide evidence that each family member, regardless of age, is a U.S. citizen, a U.S. national, an eligible noncitizen, or a VAWA self-petitioner, 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.

PHAs must obtain verification of the declaration by requiring presentation of a U.S. birth certificate, United States passport, Employment Authorization card, Temporary resident card, or other appropriate documentation, as provided by Section 214 of the Housing and Community Development Act of 1980, as amended.

#### HACA Policy

Family members who claim U.S. citizenship or national status will be required to provide a U.S. birth certificate, United States passport, Employment Authorization card, Temporary resident card, or other appropriate documentation, as provided by Section 214 of the Housing and Community Development Act of 1980, as amended..

### **Eligible Immigrants and VAWA Self-Petitioners**

#### ***Documents Required***

All family members claiming status as an eligible immigrant or VAWA self-petitioner must declare their status in the same manner as U.S. citizens and nationals.

PHAs must obtain verification of the declaration by requiring presentation of appropriate documentation, as provided by Section 214 of the Housing and Community Development Act of 1980, as amended.

#### HACA Policy

Family members who claim status as an eligible immigrant or VAWA self-petitioner will be required to provide Section 214 documents listed in 24 CFR Section 5.508(b)(1) and referred to in Section 5.510. Exhibit 7-2 at the end of this chapter summarizes documents family members must provide.

## **7-II.H. VERIFICATION OF PREFERENCE STATUS**

HACA must verify any preferences claimed by an applicant that determined placement on the waiting list.

### HACA Policy

HACA will offer a preference to any family that has been terminated from its HCV program due to insufficient program funding. HACA will verify this preference using HACA's termination records.

## **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 in excess of \$5,000 and income reported by the family, other than fully excluded income, must be verified. This part provides HACA policies that supplement the general verification procedures specified in Part I of this chapter.

### **7-III.A. EARNED INCOME**

#### **Tips**

##### HACA Policy

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**

##### PHA Policy

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**

##### HACA Policy

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.

HACA 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 HACA may request documents that support submitted financial statements such as manifests, appointment books, cash books, or bank statements.

### **7-III.C. PERIODIC PAYMENTS AND PAYMENTS IN LIEU OF EARNINGS**

For policies governing streamlined income determinations for fixed sources of income, please see Chapter 11.

#### **Social Security/SSI/SSDI Benefits**

##### HACA Policy

To verify the SS/SSI benefits of applicants, HACA 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), HACA will ask the family to request a benefit verification letter from SSA's Web site at [www.ssa.gov](http://www.ssa.gov) or by calling SSA at 1-800-772-1213. Once the applicant has received the benefit verification letter, s/he will be required to provide it to HACA.

To verify the SS/SSI benefits of participants, HACA 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, HACA 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) HACA will ask the family to request a benefit verification letter from SSA's Web site at [www.ssa.gov](http://www.ssa.gov) or 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 HACA.

For elderly and disabled families where 100 percent of the family's income consists of fixed income, HACA will recalculate family incomes by applying any published cost of living adjustments to the previously verified income amount (PIH 2013-3).

#### **Federal, State, local and Private Pension Plans and other Periodic Payments (PIH 2013-3)**

##### HACA Policy

For elderly and disabled families where 100 percent of the family's income consists of fixed income, HACA will recalculate family incomes by applying any published cost of living adjustments to the previously verified income amount. Fixed income includes income from Federal, State, local, and private pension plans and other periodic payments received from annuities, insurance policies, retirement funds, disability or death benefits, and other similar types of periodic receipts that are of substantially the same amounts from year to year.

### **7-III.D. ALIMONY OR CHILD SUPPORT**

#### HACA Policy

The methods the PHA 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:

Copies of the receipts and/or payment stubs for the 60 days prior to PHA request

Third-party verification form from the state or local child support enforcement agency

Third-party verification form from the person paying the support

Family's self-certification of amount received.

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**

### **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. HACA needs to verify only those certifications that warrant documentation [HCV GB, p. 5-28].

#### HACA Policy

HACA will verify the value of assets disposed of only if:

HACA 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 HACA verified this amount. Now the person reports that she has given this \$10,000 to her son. HACA has a reasonable estimate of the value of the asset; therefore, reverification of the value of the asset is not necessary.

Example 2: A family member has disposed of its 1/4 share of real property located in a desirable area and has valued her share at approximately \$5,000. Based upon market conditions, this declaration does not seem realistic. Therefore, HACA will verify the value of this asset.

### **7-III.F. NET INCOME FROM RENTAL PROPERTY**

#### HACA Policy

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, HACA 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**

#### HACA Policy

HACA will accept written third-party documents supplied by the family as evidence of the status of retirement accounts.

The type of original document that will be accepted depends upon the family member's retirement status.

*Before* retirement, HACA 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, HACA 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, HACA 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).

#### HACA Policy

HACA 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**

#### HACA Policy

HACA 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.

### **7-III.J. STUDENT FINANCIAL ASSISTANCE**

Any financial assistance, in excess of amounts received for tuition, that a person attending an institution of higher education receives under the Higher Education Act of 1965, from private sources, or from an institution of higher education must be considered income unless the student is over the age of 23 with dependent children or is residing with parents who are seeking or receiving HCV assistance [24 CFR 5.609(b)(9) and FR 4/10/06].

For students over the age of 23 with dependent children or students residing with parents who are seeking or receiving HCV assistance, the full amount of student financial assistance is excluded from annual income [24 CFR 5.609(c)(6)]. The full amount of student financial assistance is also excluded for students attending schools that do not qualify as institutions of higher education (as defined in Exhibit 3-2). Excluded amounts are verified only if, without verification, HACA would not be able to determine whether or to what extent the income is to be excluded (see Section 7-III.H).

#### HACA Policy

For a student subject to having a portion of his/her student financial assistance included in annual income in accordance with 24 CFR 5.609(b)(9), HACA will request written third-party verification of both the source and the amount. Family-provided documents will be requested 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, HACA will request written verification of the student's tuition amount.

If HACA is unable to obtain third-party written verification of the requested information, HACA 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 his or her parents or a *vulnerable youth* in accordance with HACA Policy [24 CFR 5.612, FR Notice 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.

#### HACA Policy

If HACA is required to determine the income eligibility of a student's parents, HACA will request an income declaration and certification of income from the appropriate parent(s) (as determined in Section 3-II.E). HACA will send the request directly to the parents, who will be required to certify to their income under penalty of perjury. The parents will be required to submit the information directly to HACA. The required information must be submitted (postmarked) within 10 business days of the date of HACA's request or within any extended timeframe approved by HACA.

HACA 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 HACA 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. HACA 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. HACA 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**

#### HACA Policy

Medical expenses will be verified through:

Written third-party documents provided by the family, such as pharmacy printouts or receipts.

HACA will make a best effort to determine what expenses from the past are likely to continue to occur in the future. HACA will also accept evidence of monthly payments or total payments that will be due for medical expenses during the upcoming 12 months.

Written third-party verification forms, if the family is unable to provide acceptable documentation.

If third-party or document review is not possible, written family certification as to costs anticipated to be incurred during the upcoming 12 months

In addition, HACA must verify that:

- The household is eligible for the deduction.
- The costs to be deducted are qualified medical expenses.
- The expenses are not paid for or reimbursed by any other source.
- Costs incurred in past years are counted only once.

### **Eligible Household**

The medical expense deduction is permitted only for households in which the head, spouse, or co-head is at least 62, or a person with disabilities. HACA 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 HACA'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.

#### HACA Policy

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**

#### HACA Policy

When anticipated costs are related to on-going payment of medical bills incurred in past years, HACA will verify:

- The anticipated repayment schedule

- The amounts paid in the past, and

- Whether the amounts to be repaid have been deducted from the family's annual income in past years

## **7-IV.C. DISABILITY ASSISTANCE EXPENSES**

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***

##### HACA Policy

HACA will accept written third-party documents provided by the family.

If family-provided documents are not available, HACA 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***

##### HACA Policy

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, HACA 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. HACA will verify that the expense is incurred for a person with disabilities (See 7-II.F.).

### **Family Member(s) Permitted to Work**

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

#### HACA Policy

HACA 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 and document review verification has been attempted and is either unavailable or proves unsuccessful, the family must certify that the disability assistance expense frees a family member, or members (possibly including the family member receiving the assistance), to work.

### **Unreimbursed Expenses**

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

#### HACA Policy

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, HACA must verify that:

- The child is eligible for care (12 or younger).
- The costs claimed are not reimbursed.
- The costs enable a family member to work, actively seek work, or further their education.
- The costs are for an allowable type of child care.
- The costs are reasonable.

##### **Eligible Child**

To be eligible for the child care deduction, the costs must be incurred for the care of a child under the age of 13. HACA 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.

##### HACA Policy

The family and the care provider will be required to certify that the child care expenses are not reimbursed to the family from, or paid by, any source.

##### **Pursuing an Eligible Activity**

HACA 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.

##### HACA Policy

##### *Information to be Gathered*

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

In the event third-party verification is not available, HACA will provide the family with a form on which the family member must record job search efforts. HACA will review this information at each subsequent reexamination for which this deduction is claimed.

#### *Furthering Education*

HACA will request third-party documentation to verify that the person permitted to further his or her education by the child care is enrolled and provide information about the timing of classes for which the person is registered. The documentation may be provided by the family.

#### *Gainful Employment*

HACA 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.

#### HACA Policy

HACA will verify that the type of child care selected by the family is allowable, as described in Chapter 6 (6-II.F).

HACA 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).

HACA 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.

#### HACA Policy

The actual costs the family incurs will be compared with HACA'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, HACA will request additional documentation, as required, to support a determination that the higher cost is appropriate.



**EXHIBIT 7-1: SUMMARY OF DOCUMENTATION REQUIREMENTS  
FOR NONCITIZENS [HCV GB, pp. 5-9 and 5-10]**

- **All** noncitizens claiming eligible status must sign a declaration of eligible immigrant status on a form acceptable to HACA.
- All noncitizens must sign a verification consent form
- Additional documents are required to document status.

- All noncitizens that claim eligible immigration status also must present the applicable USCIS document. Acceptable USCIS documents are listed below.

- Form I-551 Alien Registration Receipt Card (for permanent resident aliens)
- Form I-94 Arrival-Departure Record annotated with one of the following:
  - “Admitted as a Refugee Pursuant to Section 207”
  - “Section 208” or “Asylum”
  - “Section 243(h)” or “Deportation stayed by Attorney General”
  - “Paroled Pursuant to Section 221 (d)(5) of the USCIS”

- Form I-94 Arrival-Departure Record with no annotation accompanied by:
  - A final court decision granting asylum (but only if no appeal is taken);
  - A letter from a USCIS asylum officer granting asylum (if application is filed on or after 10/1/90) or from a USCIS district director granting asylum (application filed before 10/1/90);
  - A court decision granting withholding of deportation; or
  - A letter from an asylum officer granting withholding or deportation (if application filed on or after 10/1/90).

- Form I-688 Temporary Resident Card annotated “Section 245A” or Section 210”.

Form I-688B Employment Authorization Card annotated “Provision of Law 274a. 12(11)” or “Provision of Law 274a.12”.

- A receipt issued by the USCIS indicating that the noncitizen has submitted Form I-360 to the US Citizenship and Immigration Service Vermont Service Center (which is the only Service Center in the country that receives and processes VAWA self-petitions) to establish the relationship with the abuser, the status of the abusive spouse as a U.S. citizen or lawful permanent resident, and that physical or mental abuse by the U.S. citizen or lawful permanent resident has taken place against the spouse or their children.
- A receipt issued by the USCIS indicating that an application for issuance of a replacement document in one of the above listed categories has been made and the applicant’s entitlement to the document has been verified; or
- Other acceptable evidence. If other documents are determined by the USCIS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the *Federal Register*

<p align="center"><b>EXHIBIT 7-2: COST EFFECTIVENESS OF OBTAINING THIRD-PARTY VERIFICATION OF ASSETS (7-I.D. THIRD-PARTY WRITTEN AND ORAL VERIFICATION – Certain Assets and Expenses)</b></p>
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This calculation demonstrates that an asset of \$10,000 would add between \$11.00 and \$30.00 per year to the TTP, assuming an indirect rate of 1% (passbook rate as of July 1, 2009 is .33%, passbook rate as of April 1, 2010 is .24%). It is not cost effective for the Housing Authority of the County of Alameda to obtain third-party verification on assets of less than \$10,000 per family member.

It has been determined approximately one-half hour of an Eligibility Technician's time is required to process third-party verification on a family member's assets, including receipt of documents from the family member, mailing third-party verification, receipt of third-party verification, reviewing third-party verification and utilizing third-party verification to determine income calculation. This calculation does not include auxiliary staff time needed to open and scan mail or operational costs such as postage, envelopes, printed documents, etc.

The following examples demonstrate the cost to the Housing Authority to require and process third-party verification of assets as compared to the effect the asset income has on the Total Tenant Payment (TTP).

Eligibility Technician Wage/Hour – Step 3 (As of June 12, 2009)	\$ 24.83
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Benefit Rate – 50% (\$24.83 X 50%)	\$ 12.42
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Total Eligibility Technician Hourly Cost (\$24.83 + \$12.42)	\$ 37.25
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Total Eligibility Technician Cost – ½ - Hour (\$37.25 / 2)	\$ 18.63
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**EXAMPLE 1**

Demonstrates that an asset of \$10,000 adds \$30.00 per year to the TTP.

Total Assets	\$10,000.00
Average Interest Rate	1%
Asset Income	\$ 100.00

Effect of Annual Asset Income on TTP:

Monthly Asset Income (\$100.00 / 12)	\$	8.33
30% of Asset Income Added for TTP Calculation (\$8.33 X 30%)	\$	2.50
Annual Asset Income Counted in TTP Calculation (\$2.50 X 12 months)	\$	30.00

**EXAMPLE 2**

Demonstrates that an asset of \$10,000 adds \$11/yr using the HUD imputed interest rate of .33%.

Total Assets	\$10,000.00
HUD Imputed Rate	.37%
Asset Income (\$10,000.00 X .37%)	\$ 37.00

Effect of Annual Asset Income on TTP

Monthly Asset Income (\$37.00 / 12)	\$	3.08
30% of Asset Income Added for TTP Calculation (\$3.08 X 30%)	\$	0.92
Annual Asset Income Counted in TTP Calculation (\$0.92 X 12 months)	\$	11.00

**EXAMPLE 3**

Demonstrates that an asset of \$10,000 adds \$7/yr using the HUD imputed interest rate of .24%.

Total Assets	\$10,000.00
HUD Imputed Rate	.24%
Asset Income (\$10,000.00 X .24%)	\$ 24.00

Effect of Annual Asset Income on TTP

Monthly Asset Income ( $\$24.00 / 12$ )	\$	2.00
30% of Asset Income Added for TTP Calculation ( $\$2.00 \times 30\%$ )	\$	0.60
Annual Asset Income Counted in TTP Calculation ( $\$0.60 \times 12$ months)	\$	7.00

## Chapter 8

### HOUSING QUALITY STANDARDS AND RENT REASONABLENESS DETERMINATIONS

[24 CFR 982 Subpart I and 24 CFR 982.507]

#### INTRODUCTION

HUD requires that all units occupied by families receiving Housing Choice Voucher (HCV) assistance meet HUD's Housing Quality Standards (HQS) and permits the PHA 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 the PHA will make and the steps that will be taken when units do not meet HQS.

Part III. Rent Reasonableness Determinations. This part discusses the policies the PHA 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.

### HACA Policy

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

### **8-I.B. ADDITIONAL LOCAL REQUIREMENTS**

The PHA may impose variations for 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]**

The PHA 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.

##### HACA Policy

The heating system must be capable of maintaining an interior temperature of 65 degrees Fahrenheit between October 1 and May 1.

## **Clarifications of HUD Requirements**

### **HACA Policy**

As permitted by HUD, HACA has adopted the following specific requirements that elaborate on HUD standards.

#### ***Walls***

In areas where plaster or drywall is sagging, severely cracked, or otherwise damaged, it must be repaired or replaced.

#### ***Windows***

Window sashes must be in good condition, solid and intact, and properly fitted to the window frame. Damaged or deteriorated sashes must be replaced.

Windows must be weather-stripped as needed to ensure a weather-tight seal.

Window screens must be in good condition (applies only if screens are present).

#### ***Doors***

All exterior doors must be weather-tight to avoid any air or water infiltration, be lockable, have no holes, have all trim intact, and have a threshold.

All interior doors must have no holes, have all trim intact, and be openable without the use of a key.

#### ***Floors***

All wood floors must be sanded to a smooth surface and sealed. Any loose or warped boards must be resecured and made level. If they cannot be leveled, they must be replaced.

All floors must be in a finished state. Raw wood or unsealed concrete is not permitted.

All floors should have some type of base shoe, trim, or sealing for a "finished look." Vinyl base shoe is permitted.

#### ***Sinks***

All sinks and commode water lines must have shut off valves, unless faucets are wall mounted.

All sinks must have functioning stoppers.

#### ***Toilets***

All worn or cracked toilet seats and tank lids must be replaced and toilet tank lid must fit properly.

#### ***Security***

If window security bars or security screens are present on emergency exit windows, they must be equipped with a quick release system. The owner is

responsible for ensuring that the family is instructed on the use of the quick release system.

### **8-I.C. LIFE--THREATENING CONDITIONS [24 CFR 982.404(a)]**

HUD requires the PHA to define life threatening conditions and to notify the owner or the family (whichever is responsible) of the corrections required. The responsible party must correct life--threatening conditions within 24 hours of PHA notification.

#### HACA Policy

The following are considered life--threatening conditions:

- Any condition that jeopardizes the security of the unit

- Major plumbing leaks or flooding, waterlogged ceiling or floor in imminent danger of falling

- Natural- or LP-gas or fuel oil leaks

- Any electrical problem or condition that could result in shock or fire

- Absence of a working heating system when outside temperature is below 60 degrees Fahrenheit.

- Utilities not in service, including no running hot water

- Conditions that present the imminent possibility of injury

- Obstacles that prevent safe entrance or exit from the unit

- Absence of a functioning toilet in the unit

- Inoperable smoke detectors

If an owner fails to correct life threatening conditions as required by HACA, HACA 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 HACA, HACA will enforce the family obligations. See 8-II.H.

The owner will be required to repair an inoperable smoke detector unless HACA 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 1/13/17; 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]. 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.F. VIOLATION OF HQS SPACE STANDARDS [24 CFR 982.401, 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 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. The unit must pass the HQS inspection on or before the effective date of the HAP Contract.
- *Annual/Biennial Inspections.* HUD requires the PHA 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.
- *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)]**

The PHA must obtain the services of an independent entity to perform all HQS 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).

#### **Inspection Costs [Notice PIH 2016-05]**

The PHA may not charge the family for unit inspections or re-inspections [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.

HACA Policy

HACA will not charge a fee for failed reinspections.

## **Notice and Scheduling**

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

### HACA Policy

The family will be given reasonable notice of all inspections. Except in the case of a life threatening emergency:

- Reasonable notice is considered to be not less than 48 hours.
- Inspections will be conducted during normal business hours.

In the case of a life threatening emergency, HACA 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].

### HACA Policy

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

At initial inspection of a vacant unit, HACA 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 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.

#### HACA Policy

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

HACA 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 (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 [982.305(b)(2)].

#### HACA Policy

HACA 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 (RTA).

### **Inspection Results and Re-inspections**

#### HACA Policy

If any HQS violations are identified, the owner will be notified of the deficiencies and be given a time frame to correct them. If requested by the owner, the time frame for correcting the deficiencies may be extended by HACA for good cause. HACA will re-inspect the unit within 5 business days of the date the owner notifies HACA that the required corrections have been made.

If the time period for correcting the deficiencies (or any HACA-approved extension) has elapsed, or the unit fails HQS at the time of the re-inspection, HACA will notify the owner and the family that the unit has been rejected and that the family must search for another unit. HACA 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 provided their voucher has not expired.

## **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.

### HACA Policy

If utility service is not available for testing at the time of the initial inspection, HACA will allow the utilities to be placed in service after the unit has met all other HQS requirements. HACA will re-inspect the unit to confirm that utilities are operational before the HAP contract is executed by HACA.

## **Appliances**

### HACA Policy [Form HUD-52580]

If the family is responsible for supplying the stove and/or refrigerator, HACA 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 HACA. HACA will re-inspect the unit to confirm that appliances are in place and operational before the HAP contract is executed by HACA.

## **8-II.C. ANNUAL AND BIENNIAL HQS INSPECTIONS [24 CFR 982.405 and 982.406; Notice PIH 2016-05]**

### **Scheduling the Inspection**

Each Housing Choice Voucher unit under HAP contract must be inspected within 24 months of the last full HQS inspection.

#### HACA Policy

Each unit under HAP contract must be inspected within 24 months of the last full HQS inspection.

HACA will accept the results of inspections performed by HUD or for other housing programs such as HOME or LIHTC.

If an adult family member cannot be present on the scheduled date, the family should request that HACA reschedule the inspection. HACA and family will agree on a new inspection date that generally should take place within 30 business days of the originally-scheduled date. HACA may schedule an inspection more than 30 business days after the original date for good cause.

If the family misses the first scheduled appointment without requesting a new inspection date, HACA will automatically schedule a second inspection. If the family misses two scheduled inspections without HACA approval, HACA 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 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.

#### HACA Policy

During a special inspection, HACA 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. Life-threatening deficiencies must be corrected within 24 hours and inspected within 24 hours of the correction. HACA will inspect non-life-threatening deficiencies within 15 days of when HACA received the complaint. Non-life-threatening deficiencies must be corrected within 30 days and inspected within 15 days of the correction.

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

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

HUD requires 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 HQS.

The unit sample must include only units that have been inspected within the preceding 3 months. The selected sample will include (1) each type of inspection (initial, annual, and special), (2) inspections completed by each inspector, and (3) units from a cross-section of neighborhoods.

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

### **Notification of Corrective Actions**

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

#### HACA Policy

When failures that are not life-threatening are identified, HACA will send the owner and the family a written notification of the inspection results within 5 business days of the inspection. The written notice will specify who is responsible for correcting the violation, and the time frame within which the failure must be corrected. Generally not more than 30 days will be allowed for the correction.

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

The notice of inspection results will inform the owner that if the owner is the responsible party and life-threatening conditions are not corrected within 24 hours, and non-life-threatening conditions are not corrected within the specified time frame (or any HACA-approved extension), the owner's HAP will be abated in accordance with HACA policy (see 8-II.G.). Likewise, in the case of family caused deficiencies, 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 HACA-approved extension) the family's assistance will be terminated in accordance with HACA policy (see Chapter 12).

## **Extensions**

For conditions that are life-threatening, the PHA cannot grant an extension to the 24 hour corrective action period. For conditions that are not life-threatening, the PHA may grant a written exception to the required time frames for correcting the violation, if the PHA determines that an extension is appropriate [24 CFR 982.404].

### HACA Policy

Requests for extensions must be in writing. HACA will grant written extensions in cases where HACA has determined that the owner or tenant has made a good faith effort to correct the deficiencies and is unable to for reasons beyond the responsible party'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 granting of a written extension and its length 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.

## **Verification of Corrective Actions**

### HACA Policy

HACA will verify the completion of corrective actions immediately following the end of the corrective period, or any PHA approved extension. At HACA's sole discretion, verification will be by either written self-certification of both the owner and the family or by HACA reinspection.

Any HACA-authorized written self-certification will be by means of HACA's self-certification form. HACA will verify the self-certified completion of corrective actions at the next on-site inspection. Failure of the owner and family to submit the signed HACA self-certification form by the HACA-specified due date will result in reinspection of the corrective actions by HACA.

The family will be given reasonable notice of any reinspection appointment. If the deficiencies have not been corrected by the time of the reinspection, HACA 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 HACA policies. If HACA is unable to gain entry to the unit in order to conduct the scheduled reinspection, HACA 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, the PHA must take prompt and vigorous action to enforce the owner obligations.

### **HAP Abatement**

If an owner fails to correct HQS deficiencies by the time specified by the 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 HQS failures that are the family's responsibility.

#### HACA Policy

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

HACA will inspect abated units within 5 business days of the owner's notification that the work has been completed. Payment will resume effective on the day the unit passes inspection.

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

### **HAP Contract Termination**

The 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.

#### HACA Policy

The maximum length of time that a HAP may be abated is 90 days. However, if the owner completes corrections and notifies HACA before the termination date of the HAP contract, HACA 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 HACA 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 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. Additionally, for units assisted by low-income housing tax credits (LIHTCs), where the rent requested by the owner exceeds the tax credit rents for non-voucher families, the rent shall not exceed the lesser of the (1) reasonable rent as determined pursuant to a rent comparability study; and (2) the payment standard established by HACA for the unit size involved. 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 HQS inspection have been corrected.

#### HACA 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, HACA may request owners 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 HACA will consider unit size and length of tenancy in the other units.

For a unit receiving low-income housing tax credits (LIHTCs) pursuant to section 42 of the Internal Revenue code of 1986, if the rent requested by the owner exceeds the LIHTC rents for non-voucher families, the rent shall not exceed the lesser of the: (i) reasonable rent or (ii) the payment standard established by HACA for the unit size involved.

HACA 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 HACA'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.

#### HACA Policy

In addition to the instances described above, HACA will make a determination of rent reasonableness at any time after the initial occupancy period if: (1) HACA determines that the initial rent reasonableness determination was in error or (2) HACA 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.

**Note:** Notice PIH2011-46, issued August 17, 2011, provides further guidance on the issue of what constitutes an assisted unit.

#### **Rents Charged for Other Units on the Premises**

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

By accepting the 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**

#### HACA Policy

HACA will collect and maintain data on market rents in HACA'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**

#### HACA 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. HACA 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, HACA 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:  $\$500 \times 11 \text{ months} = 5500/12 \text{ months} = \text{actual monthly rent of } \$488$ .

For a unit receiving low-income housing tax credits (LIHTCs) pursuant to section 42 of the Internal Revenue code of 1986, if the rent requested by the owner exceeds the LIHTC rents for non-voucher families, the rent shall not exceed the lesser of the: (i) reasonable rent or (ii) the payment standard established by HACA for the unit size involved.

HACA will notify the owner of the rent HACA can approve based upon its analysis of rents for comparable units. The owner may submit information about other comparable units in the market area. HACA will confirm the accuracy of the information provided and consider this additional information when making rent determinations. The owner

must submit any additional information within 5 business days of HACA'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 openable window or other adequate ventilation. Any sleeping room must have at least one window. If a window was designed to be opened, it must be in proper working order.

## **Water Supply**

The dwelling unit must be served by an approved public or private water supply that is sanitary and free from contamination. Plumbing fixtures and pipes must be free of leaks and threats to health and safety.

## **Lead-Based Paint**

Lead-based paint requirements apply to dwelling units built prior to 1978 that are occupied or can be occupied by families with children under six years of age, excluding zero bedroom dwellings. Owners must:

- Disclose known lead-based paint hazards to prospective tenants before the lease is signed,
- provide all prospective families with "Protect Your Family from Lead in Your Home",
- Stabilize deteriorated painted surfaces and conduct hazard reduction activities within 30 days when identified by the PHA
- 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 the PHA). 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 Heath/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.

<b>EXHIBIT 8-2: SUMMARY OF TENANT PREFERENCE AREAS RELATED TO HOUSING QUALITY</b>
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Note: This document provides an overview of unit and site characteristics and conditions for which the family determines acceptability. For more detailed information see the following documents:

- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (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 of absence of storm doors and windows and other energy conservation items are acceptable.
- *Illumination and Electricity.* The family may determine whether the location and the number of outlets and fixtures (over and above those required to meet HQS standards) are acceptable or if the amount of electrical service is adequate for the use of appliances, computers, or stereo equipment.

- (6) *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.
- (7) *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.
- (8) *Sanitary Conditions*. The family determines whether the sanitary conditions in the unit, including minor infestations, are acceptable.
- (9) *Neighborhood conditions*. Families may determine whether neighborhood conditions such as the presence of drug activity, commercial enterprises, and convenience to shopping will affect the livability of the unit.

Families have no discretion with respect to lead-based paint standards and smoke detectors.

## **Chapter 9**

### **GENERAL LEASING POLICIES**

#### **INTRODUCTION**

Chapter 9 covers the lease-up process from the family's submission of a Request for Tenancy Approval to execution of the HAP contract.

In order for HACA to assist a family in a particular dwelling unit, or execute a Housing Assistance Payments (HAP) contract with the owner of a dwelling unit, HACA must determine that all the following program requirements are met:

- The unit itself must qualify as an eligible unit [24 CFR 982.305(a)]
- The unit must be inspected by HACA 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 HACA, 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**

HACA 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)].

HACA may elect to screen applicants for family behavior or suitability for tenancy. See Chapter 3 for a discussion of HACA'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 HACA approval of the tenancy, HACA must inform the owner that screening and selection for tenancy is the responsibility of the owner [24 CFR 982.307(a)(2)]. HACA must also inform the owner or manager of his/her rights and obligations under the Violence against Women Act of 2013 (VAWA) [24 CFR 5.2005(a)(2)].

HACA must provide the owner with the family's current and prior address (as shown in HACA records); and the name and address (if known to HACA) of the landlord at the family's current and prior address. [24 CFR 982.307 (b)(1)].

HACA is permitted, but not required, to offer the owner other information in HACA's possession about the tenancy history or drug trafficking of family members [24 CFR 982.307(b)(2)].

HACA's policy on providing information to the owner must be included in the family's briefing packet [24 CFR 982.307(b)(3)].

HACA may not disclose to the owner any confidential information provided by the family in response to a HACA 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)].

### **HACA Policy**

HACA will not screen applicants for family behavior or suitability for tenancy.

HACA will not provide additional screening information to the owner.

### **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 HACA to approve the assisted tenancy in the selected unit.

The owner and the family must submit two documents to HACA:

- Completed Request for Tenancy Approval (RTA) – Form HUD-52517
- Copy of the proposed lease, including the HUD-prescribed Tenancy Addendum – Form HUD-52641-A

The RTA 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 HACA 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 HACA 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.

The RTA must be submitted no later than the expiration date stated on the voucher. [HCV GB p.8-15].

#### HACA Policy

The RTA must be signed by both the family and the owner.

The owner may submit the RTA on behalf of the family.

Completed RTA must be submitted as hard copies, in-person, by mail, by email, or, with approval of the Unit Manager, by fax followed by the original copy.

The family may not submit, and HACA will not process, more than one (1) RTA at a time.

When the family submits the RTA HACA will review the RTA for completeness.

If the RTA is incomplete (including lack of signature by family, owner, or both), HACA will notify the family and the owner of the deficiencies.

Missing information and/or missing documents will only be accepted as hard copies, in-person, by mail, by email, or, with approval of the Unit Manager, by fax followed by the original copy. HACA will accept missing information over the phone if subsequently confirmed in writing.

Because of the time sensitive nature of the tenancy approval process, HACA will attempt to communicate with the owner and family by phone, fax, or email. HACA will use mail when the parties can not be reached by phone, fax, or email.

#### **9-I.C. OWNER PARTICIPATION**

HACA does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where HACA 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 HACA's jurisdiction. This includes the dwelling unit they are currently occupying.

### **Ineligible Units [24 CFR 982.352(a)]**

HACA 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.

### **HACA-Owned Units [24 CFR 982.352(b)]**

Otherwise eligible units that are owned or substantially controlled by the PHA (HACA) issuing the voucher may also be leased in the voucher program. In order for a HACA-owned unit to be leased under the voucher program, the unit must not be ineligible housing and HACA 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 HACA-owned unit without any pressure or steering by HACA.

#### HACA Policy

HACA has eligible HACA-owned units available for leasing under the voucher program.

HACA will inform the family of this housing at the time of briefing. HACA will also inform the family, both orally and in writing, that the family has the right to select any eligible unit available for lease and that the family is free to select a HACA-owned unit without any pressure or steering by HACA.

### **Special Housing Types [24 CFR 982 Subpart M]**

HUD regulations permit, but do not generally require, HACA 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 HACA has chosen to allow.

The regulations do require HACA 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.

#### HACA Policy

HACA will not assist families or allow the addition of household members if HACA determines that any person(s) or family would thereby receive duplicate assistance.

### **Housing Quality Standards (HQS) [24 CFR 982.305 and 24 CFR 982.401]**

In order to be eligible, the dwelling unit must be in decent, safe and sanitary condition. This determination is made using HUD's Housing Quality Standards (HQS) and/or equivalent state or local standards approved by HUD. See Chapter 8 for a full discussion of the HQS standards, as well as the process for HQS inspection at initial lease-up.

## **Unit Size**

In order to be eligible, the dwelling unit must be appropriate for the number of persons in the household. A family must be allowed to lease an otherwise acceptable dwelling unit with fewer bedrooms than the number of bedrooms stated on the voucher issued to the family, provided the unit meets the applicable HQS space requirements [24 CFR 982.402(d)]. The family must be allowed to lease an otherwise acceptable dwelling unit with more bedrooms than the number of bedrooms stated on the voucher issued to the family. See Chapter 5 for a full discussion of subsidy standards.

## **Rent Reasonableness [24 CFR 982.305 and 24 CFR 982.507]**

In order to be eligible, the dwelling unit must have a reasonable rent. The rent must be reasonable in relation to comparable unassisted units in the area and must not be in excess of rents charged by the owner for comparable, unassisted units on the premises. See Chapter 8 for a full discussion of rent reasonableness and the rent reasonableness determination process.

## **Rent Burden [24 CFR 982.508]**

Where a family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the family, the 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.

## **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; HACA is not a party to this contract.

The tenant must have legal capacity to enter a lease under State and local law. 'Legal capacity' means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner [24 CFR 982.308(a)]

### **Lease Form and Tenancy Addendum [24 CFR 982.308]**

If the owner uses a standard lease form for rental to unassisted tenants in the locality or the premises, the lease must be in such standard form. If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease. The HAP contract prescribed by HUD contains the owner's certification that if the owner uses a standard lease form for rental to unassisted tenants, the lease for the assisted tenants is in such standard form.

All provisions in the HUD-required Tenancy Addendum must be added word-for-word to the owner's standard lease form. The Tenancy Addendum includes the HUD requirements for tenancy. Because it is 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.

#### HACA Policy

HACA will have a model lease available for owners who do not use a standard lease form for their unassisted tenants. The model lease contains the HUD-prescribed tenancy addendum. The HUD-prescribed tenancy addendum is available in English, Arabic, Cambodian, Chinese, Creole, French, Hmong, Korean, Russian, Spanish and Vietnamese.

### **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 HACA to approve a shorter initial lease term if certain conditions are met.

### HACA Policy

HACA accepts month-to-month through one-year lease terms. Lease terms presented by owners must be consistent with their usual and customary business practices, generally accepted practices in the community and California law.

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.

HACA 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. HACA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants. However, if HACA chooses to do so, language to this effect must be added to Part A of the HAP contract [Form HUD-52641].

### HACA Policy

The owner may collect a security deposit from the tenant in accord with State and local law and in an amount not in excess of amounts charged in private market practice and not in excess of amounts charged by the owner to unassisted tenants.

### **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 HACA minus HACA'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)].

#### HACA Policy

HACA 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.

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.

## **HACA Review of Lease**

HACA will review the dwelling lease for compliance with all applicable requirements.

### HACA Policy

If the dwelling lease is incomplete or incorrect, HACA 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, with approval of the Unit Manager, by fax followed by the original copy. HACA will accept missing and corrected information over the phone if subsequently confirmed in writing.

Because the initial leasing process is time-sensitive, HACA will attempt to communicate with the owner and family by phone, fax, or email. HACA will use mail when the parties can't be reached by phone, fax, or email.

HACA 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 HACA determines that the lease does not comply with State or local law [24 CFR 982.308(c)]

### HACA Policy

HACA will not review the owner's lease for compliance with state/local law.

### **9-I.F. TENANCY APPROVAL [24 CFR 982.305]**

After receiving the family's Request for Tenancy Approval, with proposed dwelling lease, HACA 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, HACA 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 HACA 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 HACA, 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)].

#### HACA Policy

HACA will complete its determination within 10 business days of receiving all required information.

If the tenancy is not approvable due to rent affordability (including rent burden and rent reasonableness), the tenant may 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 including any suspension (tolling) period.

If the terms of the RTA/proposed lease are changed for any reason, including but not limited to negotiation with HACA, HACA will obtain the owner/tenant agreement and document the change on the RTA/proposed lease and initial and date the change.

Corrections to the RTA/proposed lease will only be accepted as hard copies, in-person, by mail, by email, or, with approval of the Unit Manager, by fax followed by the original copy. HACA will accept corrections over the phone if subsequently confirmed in writing.

If HACA determines that the tenancy cannot be approved for any reason, the owner and the family will be notified in writing and given the opportunity to address any reasons for disapproval. HACA will instruct the owner and family of the steps that are necessary to obtain approval of the tenancy.

Where the tenancy is not approvable because the unit is not approvable, the family must continue to search for eligible housing within the timeframe of the issued voucher.

### **9-I.G. HAP CONTRACT EXECUTION [24 CFR 982.305]**

The HAP contract is a written agreement between HACA and the owner of the dwelling unit. Under the HAP contract, HACA 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 HACA has given approval for the family of the assisted tenancy, the owner and HACA 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)].

HACA is permitted to execute a HAP contract even if the funding currently available does not extend for the full term of the HAP contract.

HACA 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.

HACA 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, HACA 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 HACA may not pay any housing assistance payment to the owner.

#### **HACA Policy**

HACA will offer owners who have not previously participated in the HCV program information regarding HAP contract requirements and the Tenancy Addendum. HACA may waive this requirement on a case-by-case basis, if it determines that the owner is sufficiently familiar with the requirements and responsibilities under the HCV program.

The owner and the assisted family will execute the dwelling lease and the owner must provide a copy to HACA. HACA will ensure that both the owner and the assisted family receive copies of the dwelling lease.

The owner and HACA will execute the HAP contract. HACA will not execute the HAP contract until the owner has submitted IRS form W-9. HACA will ensure that the owner receives a copy of the executed HAP contract.

See Chapter 13 for a discussion of the HAP contract and contract provisions.

### **9-I.H. CHANGES IN LEASE OR RENT [24 CFR 982.308]**

If the tenant and the owner agree to any changes in the lease, such changes must be in writing, and the owner must immediately give HACA a copy of such changes. The lease, including any changes, must remain in accordance with the requirements of this chapter.

Generally, HACA approval of tenancy and execution of a new HAP contract are not required for changes in the lease. However, under certain circumstances, the execution of a new lease and HAP contract are required. These circumstances include:

- Changes in lease requirements governing tenant or owner responsibilities for utilities or appliances
- Changes in lease provisions governing the term of the lease
- The family moves to a new unit, even if the unit is in the same building or complex

In these cases, if the HCV assistance is to continue, the family must submit a new Request for Tenancy Approval (RTA) 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 owner, the owner must notify HACA at least 60 days before any such changes go into effect [24 CFR 982.308(g)(4)]. HACA 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)].

#### **HACA Policy**

Where the owner is requesting a rent increase, HACA will determine whether the requested increase is reasonable. The owner will be notified of the determination in writing.

Rent increases will go into effect on the first of the month following the 60 day period after the owner notifies HACA of the rent change or on the date specified by the owner, whichever is later.

## Chapter 10

### MOVING WITH CONTINUED ASSISTANCE AND PORTABILITY

#### INTRODUCTION

Freedom of housing choice is a hallmark of the housing choice voucher (HCV) program. In general, HUD regulations impose few restrictions on where families may live or move with HCV assistance. This chapter sets forth HUD regulations and HACA policies governing moves within or outside the HACA's jurisdiction in two parts:

Part I: Moving with Continued Assistance. This part covers the general rules that apply to all moves by a family assisted under the HACA's HCV program, whether the family moves to another unit within the HACA's jurisdiction or to a unit outside the HACA'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 HACA's jurisdiction. This part also covers the special responsibilities that HACA has under portability regulations and procedures.

#### PART I: MOVING WITH CONTINUED ASSISTANCE

##### 10-I.A. ALLOWABLE MOVES

HUD lists six regulatory conditions in which an assisted family is allowed to move to a new unit with continued assistance. Permission to move is subject to the restrictions set forth in section 10-I.B.

- The family has a right to terminate the lease on notice to the owner (for the owner's breach or otherwise) and has given a notice of termination to the owner in accordance with the lease [24 CFR 982.354(b)(3)]. If the family terminates the lease on notice to the owner, the family must give HACA 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)].

##### HACA Policy

If the family and the owner mutually agree to terminate the lease for the family's unit, the family must give HACA 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 HACA 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 HACA, if the family or family member who is the victim reasonably believed that he or she was imminently threatened by harm from further violence if he or she remained in the unit [24 CFR 982.354(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).

### HACA Policy

If a family requests permission to move with continued assistance based on a claim that the move is necessary to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking, HACA will request that the resident request the emergency transfer using form HUD-5383, and HACA will request documentation in accordance with section 16-IX.D of this plan.

HACA 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 HACA will document the waiver in the family's file.

HACA 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, HACA will ensure the victim is eligible to receive continued assistance based on the citizenship or immigration status of the victim.

HACA has adopted an emergency transfer plan, which is included as Exhibit 16-3 to this plan.

- HACA has terminated the HAP contract for the family's unit for the owner's breach [24 CFR 982.354(b)(1)(i)].
- HACA 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, HACA must issue the family a new voucher, and the family and HACA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for the family, HACA 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 HACA 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 a PHA may deny a family permission to move and two ways in which a PHA may restrict moves by a family.

### **Denial of Moves**

HUD regulations permit HACA to deny a family permission to move under the following conditions:

#### ***Insufficient Funding***

The PHA may deny a family permission to move either within or outside the PHA's jurisdiction if the PHA 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.

#### **HACA Policy**

HACA will deny a family permission to move on grounds that HACA does not have sufficient funding for continued assistance if (a) the move is initiated by the family, not the owner or HACA; (b) HACA can demonstrate that the move will, in fact, result in higher subsidy costs (c) HACA 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 HACA 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 HACA's jurisdiction. HACA, 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 HACA's jurisdiction and outside under portability, HACA will not deny a move due to insufficient funding if HACA previously approved the move and subsequently experienced a funding shortfall if the family cannot remain in their current unit. HACA will rescind the voucher in this situation if the family will be allowed to remain in their current unit.

HACA will create a list of families whose moves have been denied due to insufficient funding. HACA 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. HACA 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).

HACA 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***

HACA has grounds for denying or terminating the family's assistance [24 CFR 982.354(e)(2)]. VAWA allows exceptions to these grounds for denial or termination of assistance for families who are otherwise in compliance with program obligations, but have moved to protect the health or safety of an individual who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, and who reasonably believed he or she was imminently threatened by harm from further violence if they remained in the unit. [Pub.L. 109-162]

#### **HACA Policy**

If HACA has grounds for denying or terminating a family's assistance, HACA 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. Refer to sections 3-III.G and 12-II.E for VAWA provisions.

### **Restrictions on Elective Moves [24 CFR 982.354(c)]**

HUD regulations permit HACA to prohibit any elective move by a participant family during the family's initial lease term. They also permit HACA 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].

#### **HACA Policy**

HACA will not deny a family permission to make an elective move during the family's initial lease term provided the family and owner agree to the lease termination in writing. This policy applies to moves within HACA's jurisdiction, and, except during the first 12 months after a nonresident applicant has been admitted to the program, to moves outside of HACA's jurisdiction under portability.

HACA will consider exceptions to these policies for the following reasons: to protect the health or safety of a family member (e.g., lead-based paint hazards, domestic violence, witness protection programs), to accommodate a change in family circumstances (e.g., new employment, school attendance in a distant area), or to address an emergency situation over which a family has no control.

In addition, HACA will allow exceptions to these policies for purposes of reasonable accommodation of a family member who is a person with disabilities (see Chapter 2).

## **10-I.C. MOVING PROCESS**

### **Notification**

If a family wishes to move to a new unit, the family must notify HACA 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 HACA's jurisdiction under portability, the notice to HACA 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].

### **Approval**

#### HACA Policy

Upon receipt of a family's notification that it wishes to move, HACA will determine whether the move is approvable in accordance with the regulations and policies set forth in sections 10-I.A and 10-I.B. Within 10 business days following receipt of the family's notification, HACA will either issue the family a voucher or notify it in writing of its determination that the move is not approvable.

### **Reexamination of Family Income and Composition**

#### HACA Policy

For families approved to move to a new unit within HACA's jurisdiction, HACA will perform a new annual reexamination, if required, in accordance with the policies set forth in Chapter 11 of this plan.

For families moving into or families approved to move out of the HACA's jurisdiction under portability, HACA will follow the policies set forth in Part II of this chapter.

### **Voucher Issuance and Briefing**

#### HACA Policy

For families approved to move to a new unit within HACA's jurisdiction, HACA will issue a new voucher within 10 business days of the family's notification that it wishes to move.

For families who move without notifying HACA, the issue date of the voucher will be the date HACA determines the family moved out of the assisted unit.

For families who do not execute an issued voucher, the issue date of the voucher will be the date HACA determines the family moved out of the assisted unit.

No briefing is required for any of the above families. HACA 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 HACA approves. Otherwise, the family will lose its assistance.

For families moving into or families approved to move out of HACA's jurisdiction under portability, HACA 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, HACA 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.

#### HACA Policy

HACA does not allow the owner to keep the housing assistance payment for the remainder of the month when the family moves out of the unit. Housing assistance payments end the date HACA determines the family has vacated the unit. Amounts overpaid to the owner must be returned to HACA.

## PART II: PORTABILITY

### 10-II.A. OVERVIEW

Within the limitations of the regulations and this plan, a participant family or an applicant family that has been issued a voucher has the right to use tenant-based voucher assistance to lease a unit anywhere in the United States providing that the unit is located within the jurisdiction of a PHA administering a tenant-based voucher program [24 CFR 982.353(b)]. The process by which a family obtains a voucher from one PHA and uses it to lease a unit in the jurisdiction of another PHA is known as portability. The 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 it 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 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 the HACA'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 the HACA's jurisdiction under portability. However, HUD gives HACA 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)].

#### **HACA Policy**

In determining whether or not to deny an applicant family permission to move under portability because HACA lacks sufficient funding or has grounds for denying assistance to the family, HACA will follow the policies established in section 10-I.B of this chapter. If HACA does deny the move due to insufficient funding, HACA will notify HUD in writing within 10 business days of HACA's determination to deny the move.

In addition, HACA 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)].

#### **HACA Policy**

With the exception of CHOICES or FACT Programs Graduates as described in Section 4-III.C., Local Preferences - Section 8 Housing Choice Voucher Program (HCV), if neither the head of household nor the spouse/cohead of an applicant family had a domicile (legal residence) in the HACA's jurisdiction at the time the family was selected from the waiting list for determination of eligibility for the program, the family must lease a unit within HACA's jurisdiction for at least 12 months before requesting portability.

HACA 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.

### ***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 an individual who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if they remained in the unit [24 CFR 982.353(b)].

#### **HACA Policy**

HACA will determine whether a participant family may move out of HACA'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. HACA will notify the family of its determination in accordance with the approval policy set forth in section 10-I.C of this chapter.

### **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, the PHA 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.

#### **HACA Policy**

For a participant family approved to move out of its jurisdiction under portability, HACA 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.

HACA 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 HACA to provide information on portability to all applicant families that qualify to lease a unit outside HACA's jurisdiction under the portability procedures. Therefore, no special briefing is required for these families.

### HACA Policy

No formal briefing will be required for a participant family wishing to move outside of HACA's jurisdiction under portability. However, HACA 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).

HACA will provide the name, address, and phone of the portability contact person for the PHA in the jurisdiction to which the family wishes to move. If there is more than one PHA with jurisdiction over the area to which the family wishes to move, HACA will advise the family that the family selects the receiving PHA and notify the initial PHA of which receiving PHA was selected. HACA will provide the family with contact information for all of the receiving PHAs that serve the area. HACA will not provide any additional information about receiving PHAs in the area. HACA will further inform the family that if the family prefers not to select the receiving PHA, HACA will select the receiving PHA on behalf of the family. In this case, HACA will not provide the family with information for all receiving PHAs in the area.

HACA will advise the family that it will be under the receiving PHA's policies and procedures, including screening, subsidy standards, voucher extension of the receiving PHA's voucher, 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, HACA will follow the regulations and procedures set forth in Chapter 5.

### HACA Policy

For participating families approved to move under portability, HACA will issue a new voucher within 10 business days of the later of; the family's notification that it wishes to move, or if a reexamination is required, the completion date of the reexamination.

The initial term of the voucher will be 180 days.

## **Voucher Extensions and Expiration**

### HACA Policy

For HACA applicants, HACA participants and billed portability participants who have indicated they will remain in HACA's jurisdiction (as applicable), HACA will approve a voucher extension only in the following circumstances:

It is necessary as a reasonable accommodation for a person with disabilities.

It is necessary because the family (a) decides to return to HACA's jurisdiction and search for a unit here, or (b) decides to search for a unit in a third PHA's jurisdiction. HACA will consider a 30 day extension in these instances.

It is necessary due to reasons beyond the family's control, as determined by HACA.

Following is a list of reasons beyond the family's control that HACA 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 emergency (such as an accident or hospitalization or death)

Upon the written request of the receiving PHA, HACA will consider a 30 day extension to allow for completion of the transfer process. If the receiving PHA refuses to provide a written request but it can be documented that the request has been made to the receiving housing authority, HACA will consider this criteria met and will consider the extension.

Any request for an extension must be made in writing before the family's voucher expires and include the reason(s) an extension is necessary. HACA may require the family to provide documentation to support the request or obtain verification from a qualified third party.

HACA 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.

To receive or continue receiving assistance under HACA's voucher program, a family that moves to another PHA's jurisdiction under portability must be under HAP contract in the receiving PHA's jurisdiction within 90 days following the expiration date of the initial PHA's voucher term (including any extensions). (See below under "Initial Billing Deadline" for one exception to this policy.)

### **Preapproval Contact with the Receiving PHA**

Prior to approving a family's request to move under portability, the initial PHA must contact the receiving PHA via e-mail or other confirmed delivery method to determine whether the receiving PHA will administer or absorb the family's voucher. Based on the receiving PHA's response, the initial PHA must determine whether it will approve or deny the move [24 CFR 982.3-55(c)(3)].

#### HACA Policy

HACA will use e-mail, when possible, to contact the receiving PHA regarding whether the receiving PHA will administer or absorb the family's voucher.

### **Initial Notification to 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)].

#### HACA Policy

Because the portability process is time-sensitive, HACA will notify the receiving PHA by phone, fax, or e-mail to expect the family. HACA will also ask the receiving PHA to provide any information the family may need upon arrival, including the name, fax, email and telephone number of the staff person responsible for business with incoming portable families and procedures related to appointments for voucher issuance. HACA will pass this information along to the family. HACA 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)(74), 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)(74), Notice PIH 2016-09]

#### HACA Policy

In addition to these documents, HACA 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

HACA 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.

### **HACA Policy**

If HACA has not received an initial billing notice from the receiving PHA within the billing deadline, 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. Within 10 business days, HACA will send the receiving PHA a written confirmation of its decision by mail.

HACA will not inform the receiving PHA that it will not honor a late billing submission 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 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 [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 overleasing or funding shortfalls. The PHA 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.

#### **HACA Policy**

When available, HACA will utilize direct deposit to ensure that the payment is received by the deadline unless the receiving PHA notifies HACA 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)(9)]**

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 receiving PHA's voucher term apply [24 CFR 982.355(c)(14)].

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

The receiving PHA must respond via e-mail or other confirmed delivery method to the initial PHA's inquiry to determine whether the family's voucher will be billed or absorbed [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)].

#### HACA Policy

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

### **Initial Contact with Family**

When a family moves into the PHA's jurisdiction under portability, the family is responsible for promptly contacting the PHA and complying with the PHA'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.

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 if it is an applicant or an informal hearing if it is a participant. [Notice PIH 2016-09]. (For more on this topic, see "Denial or Termination of Assistance.")

## **Briefing**

HUD allows the receiving PHA to require a briefing for an incoming portable family as long as the requirement does not unduly delay the family's search [Notice PIH 2016-09].

### HACA Policy

HACA will require the family to attend an individual or group portability orientation. Individual orientations will be provided at HACA's discretion in such cases as an accommodation for a disabled family, or a family porting in from a distant PHA. HACA will provide the family with an orientation packet and will orally inform the family about HACA's payment and subsidy standards, procedures for requesting approval of a unit, the unit inspection process, and the leasing process.

## **Income Eligibility and Reexamination**

The receiving PHA does not re-determine 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)].

### HACA Policy

HACA will not conduct a new reexamination of family income and composition for families moving into its jurisdiction under portability.

## **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 HUD-52665 and supporting documentation 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].

### HACA Policy

When a family ports into its jurisdiction, HACA will issue the family a voucher based on the paperwork provided by the initial PHA unless the family's paperwork from the initial PHA is incomplete, the family's voucher from the initial PHA has expired or the family does not comply with the HACA's procedures.

HACA will conduct a criminal background check on all adult household members. HACA will not delay issuing the family a voucher or otherwise delay approval of a unit until this process is completed. However, HACA may take subsequent action (e.g. terminating the family's participation in the program due to criminal background or failing to disclose necessary information) against the family based on the results.

## ***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].

#### HACA Policy

HACA'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, HACA's voucher will expire 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.

#### HACA Policy

Except as a reasonable accommodation to a person with disabilities (see Chapter 2), HACA generally will not extend the term of the voucher that it issues to an incoming portable family unless HACA plans to absorb the family into its own program, in which case it will follow its policies on voucher extension set forth in section 5-II.E.

#### ***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.

#### **HACA Policy**

Unless the PHA negotiates a different amount of reimbursement with the initial PHA, the PHA 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 e-mail.

#### **HACA Policy**

HACA will send its initial billing notice by fax or e-mail, if necessary, to meet the billing deadline but will also send the notice by regular mail.

If the receiving PHA fails to send the initial billing 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.

### HACA Policy

HACA 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, the PHA should provide adequate notice of the effective date to the initial PHA to avoid having to return a payment. In no event should the receiving PHA fail to notify the initial PHA later than 10 business days following the effective date of the termination of the billing arrangement. [HUD-52665; Notice PIH 2016-09]

#### **HACA Policy**

If HACA elects to deny or terminate assistance for a portable family, HACA will notify the initial PHA within 10 business days after the informal review or hearing if the denial or termination is upheld. HACA 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. HACA will furnish the initial PHA with a copy of the review or hearing decision.

### **Absorbing a Portable Family**

The receiving PHA may absorb an incoming portable family into its own program when the PHA executes a HAP contract on behalf of the family or at any time thereafter providing that the PHA 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 PIH 2016-09]

#### **HACA Policy**

If HACA decides to absorb a portable family upon the execution of a HAP contract on behalf of the family, HACA 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 HACA 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)].

## Chapter 11

### REEXAMINATIONS

#### INTRODUCTION

The PHA 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 HACA 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, Notices PIH 2013-03 (HA), PIH 2013-04 (HA)]**

##### **11-I.A. OVERVIEW**

PHAs 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.

PHAs may opt to conduct a streamlined reexamination of income for elderly families and disabled families when 100 percent of the family's income consists of fixed income. In a streamlined reexamination, PHAs will recalculate family incomes by applying any published cost of living adjustments to the previously verified income amount.

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)]**

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 and may choose whether to verify non-fixed income amounts in years where no fixed-income review is required. 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.

#### HACA Policy

HACA will streamline the annual income determination process by applying the verified COLA or interest rate to fixed-income sources. HACA will document in the file how the determination that a source of income was fixed was made.

If a family member with a fixed source of income is added, HACA will use third-party verification of all income amounts for that family member.

If verification of the COLA or rate of interest is not available, HACA will obtain third-party verification of income amounts.

Third-party verification of fixed sources of income will be obtained during the intake process and at least once every three years thereafter.

Third-party verification of non-fixed income will be obtained annually regardless of the percentage of family income received from fixed sources.

## **11-I.C. SCHEDULING ANNUAL REEXAMINATIONS**

The PHA 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].

### HACA Policy

HACA will begin the annual reexamination process 90 to 120 days in advance of its scheduled effective date. Generally, HACA will schedule annual reexamination effective dates to coincide with the family's anniversary date.

*Anniversary date* is 12 months from the effective date of the latter of the family's initial (admission) examination or last annual reexamination.

Annually, HACA will perform a reexamination to be effective no later than twelve months from the anniversary date. HACA may schedule an annual reexamination for completion prior to the anniversary date for administrative purposes.

## **Notification of and Participation in the Annual Reexamination Process**

The PHA is required to obtain the information needed to conduct annual reexaminations. How that information will be collected is left to the discretion of the PHA. However, the PHA should give tenants who were not previously provided the opportunity to complete Form HUD-92006, the opportunity to do so at this time [Notice PIH 2009-36].

### HACA Policy

Families generally are required to participate in an annual reexamination by mail. Home visits will be conducted if HACA determines they are necessary in order to complete the annual reexamination process.

Annual reexamination packets will be sent by first-class mail. The packet will inform the family of the information and documentation that must be returned. Any additional documents needed by HACA to complete the process may be requested by mail or the family may be required to attend an in-person interview.

If the family is unable to attend a scheduled interview, the family should contact HACA in advance of the interview to schedule a new appointment. If a family does not attend the scheduled interview, HACA will send a second notification with a new interview date and appointment time.

If a family fails to attend two scheduled interviews without HACA 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 HACA 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 the PHA regarding the family's income, expenses, and composition [24 CFR 982.551(b)].

### HACA Policy

Families will be asked to submit by mail all required information (as described in the reexamination packet). The required information will include a HACA-designated reexamination form (Personal Declaration), an Authorization for the Release of Information/Privacy Act Notice, HACA Authorization to Release, as well as supporting documents or forms related to the family's income, expenses, and family composition.

If the family is unable to provide the information or materials requested by the packet due date, 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 will be sent a notice of termination (See Chapter 12).

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].

### HACA Policy

At the annual reexamination, HACA 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. HACA will use the Dru Sjodin National Sex Offender database to verify the information provided by the tenant. If HACA proposes to terminate assistance based on lifetime sex offender registration information, HACA 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
- A person's disability status
- Citizenship or immigration status

If adding a new PHA approved 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 the 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 his or her parents or is considered a *vulnerable youth* in accordance with the 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.

### HACA Policy

During the annual reexamination process, HACA will determine the ongoing eligibility of each student who is subject to the eligibility restrictions in 24 CFR 5.612 by reviewing the student's individual income as well as the income of the student's parents. If the student has been determined "independent" from his/her parents 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 his/her own income or the income of his/her parents, the student's assistance will be terminated in accordance with the policies in Section 12-I.D.

If the student continues to be income eligible based on his/her own income and the income of his/her parents (if applicable), HACA will process a reexamination in accordance with the policies in this chapter.

## 11-I.F. EFFECTIVE DATES

The PHA must establish policies concerning the effective date of changes that result from an annual reexamination [24 CFR 982.516].

### HACA Policy

In general, an *increase* in the family share of the rent that results from an annual reexamination will take effect on the family's anniversary date, and the family will be notified at least 30 days in advance.

If less than 30 days remain before the scheduled effective date, the increase will take effect on the first of the month following the end of the 30-day notice period.

If 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 HACA 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 HACA, 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 HACA 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 HACA.

If the family causes a delay in processing the annual reexamination, *decreases* in the family share of the rent will be applied prospectively, from the first day of the month following completion of the reexamination processing.

Delays in reexamination processing are considered to be caused by the family if the family fails to provide information requested by the PHA by the date specified, and this delay prevents the PHA 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 the PHA policies dictate what kinds of information about changes in family circumstances must be reported, and under what circumstances The PHA must process interim reexaminations to reflect those changes. HUD regulations also permit HACA to conduct interim reexaminations of income or family composition at any time. When an interim reexamination is conducted, only those factors that have changed are verified and adjusted [HCV GB, p. 12-10].

In addition to specifying what information the family must report, HUD regulations permit the family to request an interim determination if other aspects of the family's income or composition changes. The PHA must complete the interim reexamination within a reasonable time after the family's request.

This part includes HUD and PHA policies describing what changes families are required to report, what changes families may choose to report, and how the PHA will process both PHA- 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 family composition. However, due to family obligations under the program, The PHA has limited discretion in this area.

#### HACA Policy

HACA will conduct interim reexaminations to account for any changes in household composition that occur between annual reexaminations.

#### **New Family Members Not Requiring HACA Approval**

The addition of a family member as a result of birth, adoption, or court-awarded custody does not require PHA approval. However, the family is required to promptly notify the PHA of the addition [24 CFR 982.551(h)(2)].

#### HACA Policy

The family must inform HACA of the birth, adoption or court-awarded custody of a child within 10 business days. Upon HACA's receipt of the required documentation, children who join the family as a result of birth, adoption, or court-awarded custody will be added to the family.

## **New Family and Household Members Requiring HACA Approval**

With the exception of children who join the family as a result of birth, adoption, or court-awarded custody, a family must request PHA approval to add a new family member [24 CFR 982.551(h)(2)] or other household member (live-in aide or foster child) [24 CFR 982.551(h)(4)].

When any new family member is added, the PHA must make appropriate adjustments in the family share of the rent and the HAP payment at the effective date of either the annual or interim reexamination [24 CFR 982.516(e)(2)].

If a change in family size causes a violation of the PHA subsidy standards (see Chapter 5), 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 family's HAP contract in accordance with its terms [24 CFR 982.403].

### HACA Policy

Except for the addition of a family member as a result of birth, adoption, or court-awarded custody, families must request HACA approval to add any other new family or household member. Requests must be made in writing and approved by HACA prior to the individual moving into the unit.

Additions to the family or household are at HACA's discretion and will not be unreasonably denied.

HACA will not approve the addition of a new family or household member unless the individual meets HACA's eligibility criteria (see Chapter 3) and documentation requirements (see Chapter 7, Part II), and will not receive duplicate assistance.

Except for elderly persons or persons with a disability, HACA will not approve the addition of a family member if it will cause a violation of HACA subsidy standards (see Chapter 5).

If, as set forth in Part VIII of Chapter 16, HACA determines that it lacks adequate funds to continue subsidizing all current participants, in accordance with HUD requirements, HACA will not approve the addition of a new family member if it will cause a violation of HACA subsidy standards.

When HACA's approval of a new family or household member does not cause a violation of HACA's subsidy standards, and the family intends to remain in place, HACA will require the landlord's written approval of the added family or household member. If the landlord fails to provide that written approval, the family will be issued a new voucher and required to move before adding the family or household member.

When HACA's approval of a new family or household member will cause overcrowding according to HACA subsidy standards, the family will be issued a new voucher with an additional bedroom and will be required to move.

If HACA determines that an individual does not meet HACA's eligibility criteria or documentation requirements, HACA 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.

HACA will make its determination within 10 business days of receiving all information required to verify the individual's eligibility.

### **Departure of a Family or Household Member**

Families must promptly notify the PHA if any family member no longer lives in the unit [24 CFR 982.551(h)(3)]. Because household members are considered when determining the family unit (voucher) size [24 CFR 982.402], the PHA also needs to know when any live-in aide, foster child, or foster adult ceases to reside in the unit.

#### HACA Policy

If a household member ceases to reside in the unit, the family must inform HACA 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 HACA within 10 business days.

## **11-II.C. CHANGES AFFECTING INCOME OR EXPENSES**

Interim reexaminations can be scheduled either because the PHA has reason to believe that changes in income or expenses may have occurred, or because the family reports a change. When a family reports a change, the PHA may take different actions depending on whether the family reported the change voluntarily, or because it was required to do so.

### **PHA-Initiated Interim Reexaminations**

PHA-initiated interim reexaminations are those that are scheduled based on circumstances or criteria defined by the PHA. They are not scheduled because of changes reported by the family.

#### HACA Policy

HACA may conduct interim reexaminations in each of the following instances:

For families receiving the Earned Income Disallowance (EID), HACA may conduct an interim reexamination at the start and conclusion of the 24-month eligibility period

If the family has reported zero or unstable income, HACA may conduct an interim reexamination every 3 months as long as the family continues to report that they have no income.

If at the time of the annual reexamination, it is not feasible to anticipate a level of income for the next 12 months (e.g. seasonal or cyclic income), the HACA may schedule an interim reexamination to coincide with the end of the period for which it is feasible to project income.

If at the time of the annual reexamination, tenant declarations were used on a provisional basis due to the lack of third-party verification, and third-party verification becomes available, HACA will conduct an interim reexamination.

HACA may conduct an interim reexamination at any time in order to correct an error in a previous reexamination, or to investigate a tenant fraud complaint.

HACA will conduct an interim reexamination if the family's approval to enroll in the FSS program is contingent upon the interim reexamination.

## **Family-Initiated Interim Reexaminations**

the PHA must adopt policies prescribing when and under what conditions the family must report changes in family income or expenses [24 CFR 982.516(c)]. In addition, HUD regulations require that the family be permitted to obtain an interim reexamination any time the family has experienced a change in circumstances since the last determination [24 CFR 982.516(b)(2)].

### ***Required Reporting***

HUD regulations give the PHA the freedom to determine the circumstances under which families will be required to report changes affecting income.

#### HACA Policy

The following are required to report all increases in earned income, including new employment and changes in full-time student status within 10 business days of the date the change takes effect:

- Families whose share of the rent has been reduced as a result of a family-initiated interim reexamination;
- Families receiving the earned income disallowance (EID). HACA will only conduct an interim reexamination when the EID family's share of rent will change as a result of the increase;
- Families participating in the Family Self-Sufficiency (FSS) program;
- Family members who have signed and completed an Affidavit of Zero or Unstable Income and in doing so acknowledge their responsibility to report; and
- Family members who have agreed, in writing, to report changes in their status from full-time to less than full-time student.

All other families are not required to report changes in income. If they do so, HACA will note the information in the tenant file, but will not conduct an interim reexamination except as noted above in HACA-Initiated Interim Reexaminations.

### ***Optional Reporting***

The family may request an interim reexamination any time the family has experienced a change in circumstances since the last determination [24 CFR 982.516(b)(2)]. the PHA 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.

#### HACA Policy

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, HACA 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, HACA will conduct an interim reexamination. See Section 11-II.D. for effective dates.

HACA will complete an interim reexamination if a family's approval to enroll in the FSS program is contingent upon the interim reexamination.

HACA will complete an interim reexamination for participants in HACA's FSS program with an increase in earned income.

## **11-II.D. PROCESSING THE INTERIM REEXAMINATION**

### **Method of Reporting**

#### HACA Policy

The family must notify HACA of changes in writing except as a reasonable accommodation for person with disabilities.

Generally, the family will not be required to attend an interview for an interim reexamination. However, if HACA determines that an interview is warranted, the family may be required to attend.

Based on the type of change reported, HACA 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 HACA. This time frame may be extended for good cause with HACA approval. HACA will accept required documentation by mail, by email, by fax, or in person.

### **Effective Dates**

the PHA 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].

#### HACA Policy

In cases where HACA determines an interim reexamination is warranted and the family share of the rent is to *increase*:

The increase generally will be effective on the first of the month following 30 days' notice to the family.

If a family fails to report a change within the required time frames, or fails to provide all required information within the required time frames, the increase will be applied retroactively, to the date it would have been effective had the information been provided on a timely basis. The family will be responsible for any overpaid subsidy and may be offered a repayment agreement in accordance with the policies in Chapter 16.

If the family share of the rent is to *decrease*:

The decrease will be effective on the first day of the month following the month in which the change was reported and all required documentation was submitted. In cases where the change cannot be verified 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, the PHA must recalculate the family share of the rent and the subsidy amount, and notify the family and owner of the changes [24 CFR 982.516(d)(2), HCV 12-6 and 12-10]. While the basic policies that govern these calculations are provided in Chapter 6, this part lays out policies that affect these calculations during a reexamination.

### **11-III.B. CHANGES IN PAYMENT STANDARDS AND UTILITY ALLOWANCES**

In order to calculate the family share of the rent and HAP amount correctly, changes in payment standards, subsidy standards, or utility allowances may need to be updated and included in the PHA's calculations.

Specific policies governing how subsidy standards, payment standards, and utility allowances are applied are discussed below.

#### **Payment Standards [24 CFR 982.505]**

The family share of the rent and HAP calculations must use the correct payment standard for the family, taking into consideration the family unit size, the size of unit, and the area in which the unit is located [HCV GB, p. 12-5]. See Chapter 6 for information on how to select the appropriate payment standard.

When the PHA changes its payment standards or the family's situation changes, new payment standards are applied at the following times:

- If the PHA'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 applicable payment standard in effect will be used when the new HAP contract is processed.

### **Subsidy Standards [24 CFR 982.505(c)(4)]**

If there is a change in the family unit size that would apply to a family during the HAP contract term, either due to a change in family composition, or a change in the PHA's subsidy standards (see Chapter 5), the new family unit size must be used to determine the payment standard amount for the family at the family's *first annual* reexamination following the change in family unit size.

### **Utility Allowances [24 CFR 982.517(d)]**

The family share of the rent and HAP calculations must reflect any changes in the family's utility arrangement with the owner, or in the PHA's utility allowance schedule [HCV GB, p. 12-5]. Chapter 16 discusses how utility allowance schedules are established.

When there are changes in the utility arrangement with the owner, the PHA must use the utility allowances in effect at the time the new lease and HAP contract are executed.

At reexamination, the PHA must use the current PHA utility allowance schedule [HCV GB, p. 18-8].

#### HACA Policy

Revised utility allowances will be applied to a family's rent and subsidy calculations at the first annual reexamination after the allowance is adopted.

### **11-III.C. NOTIFICATION OF NEW FAMILY SHARE AND HAP AMOUNT**

the PHA must notify the owner and family of any changes in the amount of the HAP payment [HUD-52641, HAP Contract]. The notice must include the following information [HCV GB, p. 12-6]:

- The amount and effective date of the new HAP payment
- The amount and effective date of the new family share of the rent
- The amount and effective date of the new tenant rent to owner

The family must be given an opportunity for an informal hearing regarding the PHA'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).

#### HACA Policy

The notice to the family will include the annual and adjusted income amounts that were used to calculate the family share of the rent and the housing assistance payment. The notice also will state the procedures for requesting an informal hearing.

### **11-III.D. DISCREPANCIES**

During an annual or interim reexamination, the PHA may discover that information previously reported by the family was in error, or that the family intentionally misrepresented information. In addition, the PHA may discover errors made by the PHA. When errors resulting in the overpayment or underpayment of subsidy are discovered, corrections will be made in accordance with the policies in Chapter 13.

## Chapter 12

### TERMINATION OF ASSISTANCE AND TENANCY

HUD regulations specify the mandatory and optional grounds for which HACA can terminate a family's assistance. They also specify the circumstances under which an owner may terminate the tenancy of an assisted family, and those under which a victim of domestic violence, sexual assault, or stalking may terminate the tenancy. This chapter describes the policies that govern mandatory and optional terminations of assistance, and termination of tenancy by the owner or by a victim of domestic violence, sexual assault, or stalking. It is presented in four 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 HACA may consider in lieu of termination, the criteria HACA will use when deciding what action to take, and the steps HACA 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 IV: Termination of Tenancy by a Victim. This part describes the HUD policies that govern the right of a victim of domestic violence, sexual assault, or stalking to terminate an assisted tenancy.

### PART I: GROUNDS FOR TERMINATION OF ASSISTANCE

#### 12-I.A. OVERVIEW

HUD requires HACA to terminate assistance for certain actions and inactions of the family and when the family no longer requires assistance due to increased family income. HUD permits HACA 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 its HCV assistance at any time by notifying HACA.

#### 12-I.B. FAMILY NO LONGER REQUIRES ASSISTANCE [24 CFR 982.455]

As a family's income increases, the housing assistance payment decreases. If the amount assistance provided by HACA is reduced to zero, the family's assistance terminates automatically 180 days after the last HAP payment.

##### HACA Policy

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 HACA in writing of the change and request an interim reexamination before the expiration of the 180-day period.

## **12-I.C. FAMILY CHOOSES TO TERMINATE ASSISTANCE**

The family may request that HACA terminate housing assistance payments on behalf of the family at any time.

### HACA Policy

The request to terminate assistance must be made in writing and signed by the head of household and, if applicable, the spouse or co-head. Before terminating the family's assistance, HACA will follow the notice requirements in Section 12-II.F.

## **12-I.D. MANDATORY TERMINATION OF ASSISTANCE**

HUD requires HACA to terminate assistance in the following circumstances.

### **Eviction [24 CFR 982.552(b)(2), 24 CFR 5.2005(c)(1), 24 CFR 5.2005(d)]**

HACA 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 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.

### HACA Policy

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. However, HACA 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, HACA will consider the factors described in Sections 12-II.D and 12-II.E. Upon consideration of such alternatives and factors, HACA may, on a case-by-case basis, choose not to terminate assistance.

Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises and criminal activity. Generally, the criteria to be used is whether the reason for the eviction was through no fault of the tenant or guests.

### **Failure to Provide Consent [24 CFR 982.552(b)(3)]**

HACA must terminate assistance if any family member fails to sign and submit any consent form they are required to sign for an annual 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)]**

HACA 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 HACA, has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit.

For (3) above, such termination must be for a period of at least 24 months. This does not apply to ineligible noncitizens already in the household where the family's assistance has been prorated. See Chapter 7 for a complete discussion of documentation requirements.

### **Failure to Disclose and Document Social Security Numbers [24 CFR 5.218(c), Notice PIH 2012-10]**

HACA must terminate assistance of a participant and the participant's household, 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 HACA 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, HACA 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 HACA determined the family to be noncompliant.

#### **PHA Policy**

HACA 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)]**

HACA 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, is not residing with his/her parents in an HCV assisted household, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, HACA 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 HACA policies, or must be given the opportunity to lease in place if the terminated ineligible student members elect to move out of the assisted unit.

### **Death of the Sole Family Member [24 CFR 982.311(d) and Notice PIH 2010-9]**

The PHA must immediately terminate program assistance for deceased single member households.

## **12-I.E. MANDATORY POLICIES AND OTHER AUTHORIZED TERMINATIONS**

### **Mandatory Policies [24 CFR 982.553(b) and 982.551(l)]**

HUD requires HACA to establish policies that permit HACA to terminate assistance if HACA determines that:

- Any household member is currently engaged in any illegal use of a drug, or has a pattern of illegal drug use that interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents
- Any household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents
- Any household member has violated the family's obligation not to engage in any drug-related criminal activity
- Any household member has violated the family's obligation not to engage in violent criminal activity

### ***Use of Illegal Drugs and Alcohol Abuse***

#### **HACA Policy**

HACA 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.

HACA 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 twelve months.

HACA will consider all credible evidence, including but not limited to, any record of arrests, convictions, or eviction of household members related to the use of illegal drugs or abuse of alcohol.

A record of arrest(s) will not be used as the basis for termination or proof that the participant engaged in disqualifying criminal activity. In making its decision to terminate assistance, HACA will consider alternatives as described in Section 12-II.C and other factors described in Section 12-II.D and 12-II.E. Upon consideration of such alternatives and factors, HACA 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.

**HACA Policy**

HACA 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.

HACA will consider all credible evidence, including but not limited to, any record of arrests and/or convictions of household members related to drug-related or violent criminal activity, and any eviction or notice to evict based on drug-related or violent criminal activity.

In making its decision to terminate assistance, HACA will consider alternatives as described in Section 12-II.C and other factors described in Section 12-II.D and 12-II.E. Upon consideration of such alternatives and factors, HACA may, on a case-by-case basis, choose not to terminate assistance.

## **Other Authorized Reasons for Termination of Assistance** **[24 CFR 982.552(c), 24 CFR 5.2005(c)(1)]**

HUD permits HACA to terminate assistance under a number of other circumstances. It is left to the discretion of HACA whether such circumstances in general warrant consideration for the termination of assistance. As discussed further in section 12-II.E, The Violence Against Women Reauthorization Act of 2013 explicitly prohibits PHAs from considering incidents or actual threatened domestic violence, dating violence, sexual assault, or stalking as reasons for terminating the assistance of a victim of such violence.

Additionally, per the alternative requirements listed in the *Federal Register* notice dated December 29, 2014, 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 [FR Notice 12/29/14].

### HACA Policy

HACA **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 HACA policies.

Any family member has been evicted from federally-assisted housing in the last five years.

Any PHA has ever terminated assistance under the program for any member of the family.

Any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.

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

The family has not reimbursed any PHA for amounts the PHA paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease.

The family has breached the terms of a repayment agreement entered into with the PHA.

A family member has engaged in or threatened violent or abusive behavior toward HACA personnel.

*Abusive or violent behavior towards HACA personnel* includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.

*Threatening* refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.

In making its decision to terminate assistance, HACA will consider alternatives as described in Section 12-II.C and other factors described in Section 12-II.D and

Section 12-II.E. Upon consideration of such alternatives and factors, HACA 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. HACA 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.

#### **HACA Policy**

A family is considered absent when no member of the family is residing in its unit. HACA may use utility bills, statements from neighbors and landlords, visits to the unit, postal records, letters and any other appropriate methods to determine whether the family or one or more family members is absent.

A family member absent from the assisted unit as a result of being enrolled as a student at an institution of higher education, as defined under section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002), continues to be a family member unless and until the student establishes a separate household.

A family must notify HACA in writing, as soon as is reasonably practical, of the absence from the unit (for example, because of travel, hospitalization, imprisonment, etc.) of the entire family, or one or more family members, including a child or children placed in a foster home or otherwise removed from the home by governmental action as follows:

- Before the absence begins if a family knows or believes that the absence will be for more than a total of 30 days (irrespective of whether the days are consecutive or not) per consecutive 12 month period; or
- Upon the occurrence if, as a result of a change in circumstances, an anticipated absence from the unit of a total of 30 or fewer days per consecutive 12 month period becomes an absence of more than 30 days.

HACA will determine, on a case by case basis, whether adequate notice was given.

HACA will terminate the housing assistance of a family that, or family member who, HACA, in its sole discretion, determines is absent from the assisted unit for 30 or more days per 12 month period without verifiable good cause (for example, long-term hospitalization).

When HACA terminates the housing assistance of a family or family member for absence from the unit, the family or family member will ordinarily be terminated from the Section 8 Housing Choice Voucher Program.

When HACA terminates the housing assistance of a family for absence from the unit, and the family can provide a reasonable target date for its return, HACA, at its sole discretion, may allow the family to remain in the program even if its housing assistance payment has ceased. The family will be issued a new voucher, which will then be suspended for the appropriate period of time.

In cases where some members of the family will be absent for more than 30 days per year while others remain in the unit, HACA may, at its sole discretion, recertify the remaining members. This may result in a smaller unit bedroom count size for the remaining members.

In cases where the adult member(s) of a household are absent, while minors remain in the unit, HACA will follow the dictates of State and local law and the following policy.

If the only remaining member(s) of an assisted family is/are (a) minor(s) (due, for example, to a custodial parent's death or absence from the unit as defined above, HACA may, at its sole discretion, allocate the former voucher holder's Section 8 Housing Choice Voucher assistance to a person who was not previously part of the assisted family but who has gained legal custody of the minor(s) (such as a formerly non-custodial parent or grandparent).

If HACA does not so allocate the former voucher holder's assistance, HACA will notify the minor(s) residing in the unit that the HAP contract has automatically terminated upon the death, or absence of the sole assisted family member of majority age, and that HAP payments are being terminated.

Per Public and Indian Housing Notice 2003-5, a suitable guardian will be allowed to move into the assisted unit on a temporary basis to care for any dependent(s) that a military person deployed to the Persian Gulf Region leaves in the unit. Income of the guardian temporarily living in the unit solely for this purpose will not be counted in determining family income.

Whenever a family member is activated by the Federal Government's activation of Reserve or National Guard personnel; and, as a result:

- The family finds it necessary for another adult to temporarily move into a unit solely to serve as a temporary guardian for children residing in the unit the presence of the temporary guardian must be approved by the landlord and the income received by the temporary guardian will not be counted in determining family income. If the temporary guardian is determined to be ineligible for the program due to a criminal background, the family will be given a reasonable time, generally 30 days, to find a replacement temporary guardian.
- If all members of the family are temporarily absent from the unit provided the family can return to the unit within 30 days of the conclusion of the active duty service; and the family is not absent from the unit for more than 180 days, the family can retain control of the unit by paying the required rent. If the length of service extends beyond 180 days, HACA will seek a waiver of the 180 day limit from HUD. If

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.E.

### ***Insufficient Funding [24 CFR 982.454]***

HACA may terminate HAP contracts if HACA determines, in accordance with HUD requirements, that funding under the consolidated ACC is insufficient to support continued assistance for families in the program.

### **HACA Policy**

HACA will determine whether there is sufficient funding to pay for currently assisted families according to the policies in Part VIII of Chapter 16. If HACA determines there is a shortage of funding, prior to terminating any HAP contracts, HACA will determine if

other actions can be taken to reduce program costs. If after implementing all reasonable cost cutting measures there is not enough funding available to provide continued assistance for current participants, HACA will terminate HAP contracts as a last resort. Prior to terminating any HAP contracts, HACA will inform the local HUD field office. HACA will terminate the minimum number needed in order to reduce HAP costs to a level within HACA's annual budget authority.

If HACA must recall vouchers or terminate HAP contracts due to insufficient funding, HACA will do so as described in steps 1 through 8 below. The Project-Based Voucher Program, and the Moderate Rehabilitation Program are excluded from participation in these voucher reductions.

**Order of Voucher Terminations due to Insufficient Funds:**

1. HACA will recall those vouchers issued to applicants from the Section 8 Housing Choice Voucher waiting list who received a voucher but have not yet utilized it, provided that:
  - a. the applicant is not a HUD-VASH, NED, or FUP family;
  - b. the applicant does not qualify for the HACA "Displaced Families—HACA-owned or HACA-managed housing" selection preference; or
  - c. the applicant's voucher is not a "Preservation" or "Enhanced" voucher as set forth in the United States Housing Act of 1937(as amended).
2. In the event that HACA determines that funding remains insufficient after HACA has recalled the vouchers described immediately above, HACA will conduct a lottery to terminate the assistance of non-elderly, non-disabled single member families provided that:
  - a. the family is not a HUD-VASH, NED, or FUP family;
  - b. the family was not selected for assistance as a result of receiving the HACA "Displaced Families—HACA-owned or HACA-managed housing" selection preference; or
  - c. the applicant's voucher is not a "Preservation" or "Enhanced" voucher as set forth in the United States Housing Act of 1937(as amended).
3. In the event that HACA determines that funding remains insufficient after HACA has terminated the vouchers described immediately above, HACA will conduct a lottery to terminate the assistance of non-elderly, non-disabled families with no children under the age of 18 provided that:
  - a. the family is not a HUD-VASH, NED, or FUP family;
  - b. the family was not selected for assistance as a result of receiving the HACA "Displaced Families—HACA-owned or HACA-managed housing" selection preference; or
  - c. the applicant's voucher is not a "Preservation" or "Enhanced" voucher as set forth in the United States Housing Act of 1937(as amended).

4. In the event that HACA determines that funding remains insufficient after HACA has terminated the vouchers described immediately above, HACA will conduct a lottery to terminate the assistance of non-elderly, non-disabled families with children under the age of 18 provided that:
  - a. the family is not a HUD-VASH, NED, or FUP family;
  - b. the family was not selected for assistance as a result of receiving the HACA “Displaced Families—HACA-owned or HACA-managed housing” selection preference; or
  - c. the applicant’s voucher is not a “Preservation” or “Enhanced” voucher as set forth in the United States Housing Act of 1937(as amended).
5. In the event that HACA determines that funding remains insufficient after HACA has terminated the vouchers described immediately above, HACA will conduct a lottery to terminate the assistance of elderly and disabled families provided that:
  - a. the family is not a HUD-VASH, NED, or FUP family;
  - b. the family was not selected for assistance as a result of receiving the HACA “Displaced Families—HACA-owned or HACA-managed housing” selection preference; or
  - c. the applicant’s voucher is not a “Preservation” or “Enhanced” voucher as set forth in the United States Housing Act of 1937(as amended).
6. In the event that HACA determines that funding remains insufficient after HACA has terminated the vouchers described immediately above, HACA will conduct a lottery to terminate the assistance of families with “Preservation” or “Enhanced” vouchers as set forth in the United States Housing Act of 1937 (as amended).
7. In the event that HACA determines that funding remains insufficient after HACA has terminated the vouchers described immediately above, HACA will conduct a lottery to terminate the assistance of families who were selected for assistance as a result of receiving the HACA “Displaced Families—HACA-owned or HACA-managed housing” selection preference.
8. In the event that HACA determines that funding remains insufficient after HACA has terminated the vouchers described immediately above, HACA will conduct a lottery to terminate the assistance of HUD-VASH, NED, and FUP families.

Families who have had their HAP contract terminated, or voucher recalled, will be placed at the top of the waiting list to await the next available voucher, in the reverse order that their voucher has been recalled or terminated..

## **PART II: APPROACH TO TERMINATION OF ASSISTANCE**

### **12-II.A. OVERVIEW**

HACA is required by regulation to terminate a family's assistance for certain actions or inactions of the family. For other actions or inactions, the regulations give HACA the authority to either terminate the family's assistance or to take another action. This part discusses the various actions HACA may choose to take when it has discretion, and outlines the criteria HACA 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, HACA 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)].

##### HACA Policy

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 HACA request.

#### **Repayment of Family Debts**

##### HACA Policy

If a family owes amounts to HACA, as a condition of continued assistance, HACA will require the family to repay the full amount or to enter into a repayment agreement in compliance with the policies as outlined in Chapter 16 for policies on repayment agreements.

## **12-II.D. CRITERIA FOR DECIDING TO TERMINATE ASSISTANCE**

### **Evidence**

For criminal activity, HUD permits HACA 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)].

#### HACA Policy

HACA will use the concept of the preponderance of the evidence as the standard for making all termination decisions.

*Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence

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

HACA is permitted, but not required, to consider all relevant circumstances when determining whether a family's assistance should be terminated.

#### HACA Policy

HACA will consider the following facts and circumstances when making its decision to terminate assistance:

- The seriousness of the case, especially with respect to how it would affect other residents' safety or property

- 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 of arrest(s) will not be used as the 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, HACA may obtain the police report associated with the arrest and consider the reported circumstances of the arrest. HACA 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

HACA 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, HACA's decision to terminate the family's assistance is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.

HACA Policy

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

## **12-II.E. 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. So 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 the PHA, if the move occurred to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the unit [24 CFR 982.354(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 an 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 the PHA 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 the PHA 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, the PHA 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)].

### HACA Policy

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, HACA will consider the following, and any other relevant, factors:

Whether the threat is toward an employee or tenant other than the victim of domestic violence, dating violence, sexual assault, or stalking

Whether the threat is a physical danger beyond a speculative threat

Whether the threat is likely to happen within a short period of time

Whether the threat to other tenants or employees can be eliminated in some other way, such as by helping the victim relocate to a confidential location or seeking a legal remedy to prevent the perpetrator from acting on the threat

If the participant wishes to contest HACA's determination that he or she is an actual and imminent threat to other tenants or employees, the participant may do so as part of the informal hearing.

## **Documentation of Abuse [24 CFR 5.2007]**

### HACA Policy

When a participant facing assistance termination of assistance for reasons related to domestic violence, dating violence, sexual assault, or stalking claims protection under VAWA, HACA will request that the individual provide documentation supporting the claim in accordance with the policies in section 16-IX.D of this plan.

HACA 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 HACA will document the waiver in the individual's file.

### **Terminating the Assistance of a Domestic Violence Perpetrator**

Although VAWA provides protection against termination for victims of domestic violence, it does not provide such protection for perpetrators. VAWA gives HACA 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 HACA 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 HACA 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.

### HACA Policy

HACA will terminate assistance to a family member if HACA determines that the family member has committed criminal acts of physical violence against other family members or others. This action will not affect the assistance of the remaining, nonculpable family members.

In making its decision, HACA will consider all credible evidence, including, but not limited to, a signed certification (form HUD-5382) or other documentation of abuse submitted to HACA by the victim in accordance with this section and section 16-IX.D. HACA will also consider the factors in section 12-II.D. Upon such consideration, HACA may, on a case-by-case basis, choose not to terminate the assistance of the culpable family member.

If HACA 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.

### **HACA Confidentiality Requirements**

All information provided to HACA regarding domestic violence, dating violence, or stalking, including the fact that an individual is a victim of such violence or stalking, must be retained in confidence and may neither be entered into any shared data base nor provided to any related entity, except to the extent that the disclosure (a) is requested or consented to by the individual in writing, (b) is required for use in an eviction proceeding, or (c) is otherwise required by applicable law.

#### **HACA Policy**

If disclosure is required for use in an eviction proceeding or is otherwise required by applicable law, HACA will inform the victim before disclosure occurs so that safety risks can be identified and addressed.

## **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.

### HACA Policy

Whenever a family's assistance will be terminated, HACA 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 HACA policies, or the circumstances surrounding the termination require.

When HACA notifies an owner that a family's assistance will be terminated, HACA will, if appropriate, advise the owner of his/her right to offer the family a separate, unassisted lease.

If a family whose assistance is being terminated is entitled to an informal hearing, the notice of termination that the PHA 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 PHAs to provide notice of VAWA rights and the HUD 5382 form when a PHA terminates a household's housing benefits.

### HACA Policy

Whenever HACA decides to terminate a family's assistance because of the family's action or failure to act, HACA 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. HACA will request in writing that a family member wishing to claim protection under VAWA notify HACA within 14 business days.

Still other notice requirements apply in two situations:

- If a criminal record is the basis of a family's termination, the PHA must provide a copy of the record to the subject of the record and the tenant so that they have an opportunity to dispute the accuracy and relevance 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.

### **Notice of Termination Based on Citizenship Status [24 CFR 5.514 (c) and (d)]**

HACA must terminate assistance if (1) a family fails to submit required documentation within the required timeframe concerning any family member's citizenship or eligible immigration status; (2) evidence of citizenship and eligible immigration status is submitted timely, but USCIS (United States Citizenship and Immigration Service) primary and secondary verification does not verify eligible immigration status of a family; or (3) HACA determines that a family member has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit. For (3) above, such termination must be for a period of at least 24 months.

The notice of termination must advise the family of the reasons their assistance is being terminated, that they may be eligible for proration of assistance, the criteria and procedures for obtaining relief under the provisions for preservation of families, that they have the right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal, and that they have the right to request an informal hearing with HACA either upon completion of the USCIS appeal or in lieu of the USCIS appeal. Informal hearing procedures are contained in Chapter 16.

#### HACA Policy

The notice to terminate will be sent to the family and the owner at least 30 calendar days prior to the effective date of the termination.

### **12-II.G. HOW TERMINATION OF ASSISTANCE AFFECTS THE HAP CONTRACT AND LEASE**

When the family's assistance is terminated, the lease and HAP contract terminate automatically [Form HUD-52641].

The owner may offer the family a separate unassisted lease [HCV GB, p. 15-8].

## **PART III: TERMINATION OF TENANCY BY THE OWNER**

### **12-III.A. OVERVIEW**

Termination of an assisted tenancy is a matter between the owner and the family; HACA is not a party to the lease and, therefore, 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 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 2005 (see section 12-II.E). A serious lease violation includes failure to pay rent or other amounts due under the lease. However, HACA'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 they have engaged in the criminal activity, regardless of arrest or conviction and without satisfying the standard of proof used for a criminal conviction,.

### **Other Good Cause**

During the initial lease term, the owner may not terminate the tenancy for “other good cause” unless the owner is terminating the tenancy because of something the family did or failed to do. During the initial lease term or during any extension term, other good cause includes the disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises.

After the initial lease term, “other good cause” for termination of tenancy by the owner includes:

- Failure by the family to accept the offer of a new lease or revision;
- The owner's desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit; or
- A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, or desire to lease the unit at a higher rent).

After the initial lease term, the owner may give the family notice at any time, in accordance with the terms of the lease.

Note that “other good cause” does **not** include vacating a property that has been foreclosed upon during the lease term prior to the sale of that property. However, the new owner of the property may terminate the tenancy effective on the date of transfer of the unit if the owner will occupy the unit as a primary residence and has provided the tenant a notice to vacate at least 90 days before the effective date of such notice [Notice PIH 2010-49]. Further information on the protections afforded to tenants in the event of foreclosure can be found in Section 13-II.G.

### **12-III.C. EVICTION [24 CFR 982.310(e) and (f) and Form HUD-52641-A, Tenancy Addendum]**

The owner must give the tenant a written notice that specifies the grounds for termination of tenancy during the term of the lease. The tenancy does not terminate before the owner has given this notice, and the notice must be given at or before commencement of the eviction action.

The notice of grounds may be included in, or may be combined with, any owner eviction notice to the tenant.

Owner eviction notice means a notice to vacate, or a complaint or other initial pleading used under state or local law to commence an eviction action. The owner may only evict the tenant from the unit by instituting a court action. The owner must give HACA a copy of any eviction notice at the same time the owner notifies the family. The family is also required to give HACA a copy of any eviction notice (see Chapter 5).

#### **HACA Policy**

If the eviction action is finalized in court, the owner must provide HACA with documentation related to the eviction, including notice of the eviction date and any judgment, 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 Section 12-II.E.)

#### **12-III.E. EFFECT OF TENANCY TERMINATION ON THE FAMILY'S ASSISTANCE**

If a termination is not due to a serious or repeated violation of the lease, and if HACA has no other grounds for termination of assistance, HACA may issue a new voucher so that the family can move with continued assistance (see Chapter 10).

## **PART IV: TERMINATION OF TENANCY BY A VICTIM**

### **12-IV.A. OVERVIEW**

Termination of an assisted tenancy is a matter between the owner and the family; HACA is not a party to the lease termination. In terminating an assisted tenancy, the family is constrained by state law as set forth in Section 12-IV.B, below.

### **12-IV.B. GROUNDS FOR VICTIM TERMINATION OF TENANCY [State of California A.B. 2052, State of California Civil Code §1946.7]**

During the term of the lease, the family is not permitted to terminate the tenancy except that, if a tenant or a household member was a victim of domestic violence, sexual assault, or stalking, the tenant may break a lease to escape further violence by the abuser. The victim is responsible for rent for up to 30 days after notifying the landlord that he or she is ending the rental agreement, but not afterwards.

#### **California's Early Lease Termination Law**

The early lease termination law, which went into effect September 27, 2008, allows a person who has a temporary restraining order, emergency protective order, or a police report, to end their lease without owing additional rent beyond 30 days after notifying the landlord that he or she is ending the rental agreement. This law was created to protect victims of domestic violence, sexual assault, and stalking. It applies to both private and subsidized housing.

#### **The Law's Purpose**

In most cases, if a tenant moves from an apartment before the lease ends, the tenant can be held responsible for all the rent that would be owed until the lease expires. The new law allows victims of domestic violence, sexual assault, or stalking to terminate the lease early, leave the unit, and no longer be required to pay rent. The victim is responsible for rent for up to 30 days after notifying the landlord that he or she is ending the rental agreement, but not afterwards. The victim is free to move out anytime after giving the landlord the 30-day notice. If the victim leaves, and the landlord re-rents the unit within 30 days after the victim gave the notice, the landlord must prorate the victim's rent.

#### **How the Lease Termination Law Works**

To use this law, a tenant must notify the landlord in writing that he or she is a victim of domestic violence, sexual assault, or stalking, and is ending the rental agreement. Under the law, the tenant must give the landlord at least 30 days' notice before the rental agreement terminates. The tenant must attach to the notice either: (1) a restraining order; (2) an emergency protective order, or (3) a copy of a police report showing that he or she was the victim of domestic violence, sexual assault, or stalking. The restraining order, emergency protective order, or police report must have been issued no more than 60 days before the tenant's request to end the rental agreement.

If there are other members of the household on the lease who are not members of the victim's family, they remain obligated under the lease, even after the victim moves out. They must continue to pay the full amount of rent due under the lease, including any share of the rent that the victim was paying.

## **The Security Deposit**

The security deposit is treated the same way as if the victim had used the standard procedure for ending a tenancy. The deposit must be returned to the victim within 21 days after the rental agreement ends. The landlord may deduct money from the deposit for unpaid rent, damages beyond ordinary wear and tear, and reasonable cleaning charges.

## 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 HACA 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 HACA 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.

### HACA Policy

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

- The family must allow HACA 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.

### HACA Policy

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

Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, 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. 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 HACA and the owner before moving out of the unit or terminating the lease.

### HACA Policy

The family must comply with lease requirements regarding written notice to the owner. The family must provide written notice to HACA at the same time the owner is notified.

- The family must promptly give HACA 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 HACA. The family must promptly notify HACA in writing of the birth, adoption, or court-awarded custody of a child. The family must request HACA approval to add any other family member as an occupant of the unit.

#### HACA Policy

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

- The family must promptly notify HACA in writing if any family member no longer lives in the unit.
- If HACA has given approval, a foster child or a live-in aide may reside in the unit. HACA has the discretion to adopt reasonable policies concerning residency by a foster child or a live-in aide, and to define when HACA 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.

#### HACA Policy

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 HACA to verify that the family is living in the unit or information related to family absence from the unit.
- The family must promptly notify HACA when the family is absent from the unit.

#### HACA Policy

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 HACA 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 HACA 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 HACA 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 HACA 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 HACA’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 HACA and the owner as expressed in the HAP contract.

For detailed information about HCV Program responsibilities and processes, including HACA policies in key areas, owners will need to refer to several other chapters in this Administrative Plan. Where appropriate, Chapter 13 will reference the other chapters.

## **PART I. OWNERS IN THE HCV PROGRAM**

### **13-I.A. OWNER RECRUITMENT AND RETENTION [HCV GB, pp. 2-4 to 2-6]**

#### **Recruitment**

PHAs are responsible for ensuring that very low income families have access to all types and ranges of affordable housing in their jurisdiction, particularly housing outside areas of poverty or minority concentration. A critical element in fulfilling this responsibility is for the PHA to ensure that a sufficient number of owners, representing all types and ranges of affordable housing in the PHA's jurisdiction, are willing to participate in the HCV Program.

#### HACA Policy

HACA will promote the advantages of the Section 8 HCV Program to owners through its website, [www.haca.net](http://www.haca.net), and by other means, such as by disseminating printed promotional materials and working with owner associations, to ensure that owners are familiar with the program and its advantages.

HACA's Section 8 HCV Program owner promotional strategies will be monitored for effectiveness, and adapted accordingly.

## **Retention**

In addition to recruiting owners to participate in the HCV Program, HACA will also provide a proactive and responsive level of customer service that will encourage participating owners to remain active in the program.

### HACA Policy

All HACA 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.

HACA's website provides owners with information that explains the HCV Program, including HUD and HACA policies and procedures, in easy-to-understand language.

HACA will give special attention to helping new owners succeed through activities such as:

- Providing the owner with a designated HACA contact person.

- Coordinating inspection and leasing activities between HACA, the owner, and the family.

- Initiating telephone contact with the owner to explain the inspection process, and providing resource materials about HUD housing quality standards.

- Providing other written information about how the program operates, including answers to frequently asked questions.

As resources permit, additional owner services may be provided on an as-needed basis.

### **13-I.B. BASIC HCV PROGRAM REQUIREMENTS**

HUD requires the PHA to assist families in their housing search by providing the family with a list of landlords or other parties known to the PHA who may be willing to lease a unit to the family, or to help the family find a unit. Owners may indicate to the PHA 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)].

#### **HACA Policy**

HACA will maintain a rental listing directory on its website of available units whose owners are willing to lease a unit to an eligible HCV family. This listing will also be made available in hard copy.

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. HACA 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 will jointly complete a Request for Tenancy Approval (RTA, 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 HACA, 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 RTA 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. detail on unit eligibility policies and process.

The selected unit must meet HUD's Housing Quality Standards (HQS). HACA 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.

HACA 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, HACA 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.

HACA 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 the PHA 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**

HACA does not formally approve an owner to participate in the HCV Program. However, there are a number of criteria upon which HACA 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)]**

HACA must not approve the assisted tenancy if HACA 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 HACA not to approve a tenancy request if a court or administrative agency has determined that the owner violated the Fair Housing Act or other federal equal opportunity requirements, or if such an action is pending.

#### **Leasing to Relatives [24 CFR 982.306(d), HCV GB p. 11-2]**

HACA must not approve a tenancy if the owner is the parent, child, grandparent, grandchild, sister, or brother of any member of the family. HACA may make an exception as a reasonable accommodation for a family member with a disability. The owner is required to certify that no such relationship exists. This restriction applies at the time that the family receives assistance under the HCV Program for occupancy of a particular unit. Current contracts on behalf of owners and families that are related may continue, but any new leases or contracts for these families may not be approved.

#### **Conflict of Interest [24 CFR 982.161; HCV GB p. 8-19]**

HACA 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 HACA (except a participant commissioner)
- Any employee of HACA, or any contractor, subcontractor or agent of HACA, who formulates policy or who influences decisions with respect to the programs
- Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the programs
- Any member of the Congress of the United States

HUD may waive the conflict of interest requirements, except for members of Congress, for good cause. HACA must submit a waiver request to the appropriate HUD Field Office for determination.

Any waiver request submitted by HACA 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, HACA, or both parties may conduct this analysis. Where appropriate, an opinion by the state's attorney general should be obtained;
- Opinion by the local HUD office as to whether there would be an appearance of impropriety if the waiver were granted;
- Statement regarding alternative existing housing available for lease under the HCV Program or other assisted housing if the waiver is denied;
- If the case involves a hardship for a particular family, statement of the circumstances and discussion of possible alternatives;
- If the case involves a public official or member of the governing body, explanation of his/her duties under state or local law, including reference to any responsibilities involving the HCV Program;
- If the case involves employment of a family member by HACA or assistance under the HCV Program for an eligible HACA 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 HACA, description of the nature of the investment, including disclosure/divestiture plans.

Where HACA has requested a conflict of interest waiver, HACA may not execute the HAP contract until HUD has made a decision on the waiver request.

#### HACA Policy

In considering whether to request a conflict of interest waiver from HUD, HACA 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 HACA to disapprove a request for tenancy for various actions and inactions of the owner.

If HACA 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].

### HACA Policy

HACA will refuse to approve a request for tenancy if HACA becomes aware that any of the following are true:

- The owner has violated obligations under a HAP contract under Section 8 of the 1937 Act (42 U.S.C. 1437f);

- The owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;

- The owner has engaged in any drug-related criminal activity or any violent criminal activity;

- The owner has a history or practice of non-compliance with the HQS for units leased under the tenant-based programs, or with applicable housing standards for units leased with project-based Section 8 assistance or leased under any other federal housing program;

- The owner has a history or practice of failing to terminate tenancy of tenants of units assisted under Section 8 or any other federally assisted housing program for activity engaged in by the tenant, any member of the household, a guest or another person under the control of any member of the household that: (i) Threatens the right to peaceful enjoyment of the premises by other residents; (ii) Threatens the health or safety of other residents, of employees of HACA, 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, HACA 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, HACA may, on a case-by-case basis, choose to approve an owner.

## **Legal Ownership of Unit**

The following represents HACA policy on legal ownership of a dwelling unit to be assisted under the HCV Program.

### HACA Policy

HACA will only enter into a contractual relationship with the legal owner of a qualified unit. No tenancy will be approved without acceptable documentation of legal ownership (e.g., deed of trust, proof of taxes for most recent year).

## **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 HACA.

The owner must cooperate with HACA and with HUD in conducting any equal opportunity compliance reviews and complaint investigations in connection with the HCV Program and the HAP contract with HACA.

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 HACA 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 HACA's obligations. Under the HAP contract, HACA agrees to make housing assistance payments to the owner on behalf of the family approved by the PHA to occupy the unit.

The HAP contract is used for all HCV Program tenancies except for assistance under the Section 8 homeownership program, and assistance to families that own a manufactured home and use their assistance to lease the space for the manufactured home. See chapter 15 for a discussion of any special housing types included in HACA's HCV Program.

When the HACA has determined that the unit meets program requirements and the tenancy is approvable, HACA 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, the start and end dates of the 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, respectively, by owner and tenant, and the signatures of the HACA representative and owner [HCV Guidebook, pp 11-10 and 11-11].

In general, the HAP contract cannot be modified. However, PHAs do have the discretion to add language to Part A of the HAP contract which prohibits the owner from collecting a security deposit in excess of private market practices or in excess of amounts charged to unassisted tenants. HACA policy on the amount of security deposit an owner may collect is found in Chapter 9.

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).

#### HACA Policy

HACA has not adopted a policy that defines when the housing assistance payment by HACA is deemed received by the owner. Therefore, no modifications to the HAP contract will be necessary.

Part B is the body of the contract. It describes in detail program requirements affecting the owner and owner roles and responsibilities under the HCV Program. Most of the requirements contained in Part B of the HAP contract are outlined elsewhere in this plan. Topics addressed in Part B include:

- Lease of Contract Unit
- Maintenance, Utilities, and Other Services
- Term of HAP Contract
- Provision and Payment of Utilities and Appliances
- Rent to Owner: Reasonable Rent
- PHA Payment to Owner
- Prohibition of Discrimination
- Owner's Breach of HAP Contract
- PHA and HUD Access to Premises and Owner's Records
- Exclusion of Third Party Rights
- Conflict of Interest
- Assignment of the HAP Contract
- Written Notices
- Entire Agreement Interpretation

Part C of the contract includes the Tenancy Addendum (Form HUD-52641-A). The Addendum sets forth the tenancy requirements for the program and the composition of the household, as approved by the PHA. 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, HACA 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. HACA 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 HACA 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 HACA is not responsible for payment of the family share of rent.

The family's share of the rent cannot be more than the rent to 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 HACA, the excess amount must be returned immediately. If HACA determines that the owner is not entitled to all or a portion of the HAP, HACA may deduct the amount of overpayment from any amounts due to the owner, including amounts due under any other Section 8 HCV contract. See Chapter 16 for additional detail on owner reimbursement of HAP overpayments.

### **Owner Certification of Compliance**

Unless the owner complies with all provisions of the HAP contract, the owner is not entitled to receive housing assistance payments under the HAP contract [HAP Contract – Form HUD-52641].

By endorsing the monthly check from HACA, 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)]**

HACA 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 HACA fails to make the HAP payment on time.

Penalties for late HAP payments can only be imposed if 1) the penalties are in accordance with generally accepted local rental market practices and law governing penalties for late payment by tenants; 2) it is the owner's normal business practice to charge late payment penalties for both assisted and unassisted families; and 3) the owner charges the assisted family for late payment of the family's share of the rent.

HACA is not required to pay a late payment penalty if HUD determines that the payment is late for reasons beyond HACA's control. In addition, late payment penalties are not required if HACA 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)]**

HACA 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.

#### HACA Policy

The owner is not entitled to any housing assistance payment after the HAP contract terminates, and must return to HACA any housing assistance payment received for any period after the HAP contract terminates.

If the owner has initiated eviction proceedings against the family and the family continues to reside in the unit, HACA 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.

#### HACA Policy

The owner must inform HACA when the owner has initiated eviction proceedings against the family and the family continues to reside in the unit.

The owner must inform HACA when the owner has obtained a court judgment or other process allowing the owner to evict the tenant, and provide HACA 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, HACA 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 HACA 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 HACA determines that a breach of the HAP contract has occurred, it may exercise any of its rights and remedies under the HAP contract.

HACA 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. HACA may also obtain additional relief by judicial order or action.

HACA 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. HACA must provide the owner with written notice of any reduction in housing assistance payments or the termination of the HAP contract.

#### HACA Policy

Before HACA invokes a remedy against an owner, HACA will evaluate all information and documents available to determine if the contract has been breached.

If relevant, HACA 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, HACA 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;
- HACA terminates the HAP contract;
- HACA terminates assistance for the family;
- The family moves from the assisted unit;
- 180 calendar days have elapsed since HACA made the last housing assistance payment to the owner;
- The family is absent from the unit for longer than the maximum period permitted by HACA;
- The Annual Contributions Contract (ACC) between HACA and HUD expires
- HACA elects to terminate the HAP contract.

#### HACA Policy

HACA 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 HACA terminates the HAP contract, HACA 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].

#### HACA Policy

In all cases, the HAP contract terminates the date listed in HACA's written notice to the owner. The owner is not entitled to any housing assistance payment after this period, and must return to HACA 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]**

Except when ownership is transferred through foreclosure, the HAP contract cannot be assigned to a new owner without the prior written consent of HACA. When ownership is transferred through foreclosure, the existing HAP contract remains in force and the new owner is obligated under it even if assignment has not been executed.

An owner under a HAP contract must notify HACA in writing prior to a change in the legal ownership of the unit. The owner must supply all information as requested by HACA.

Prior to HACA's approval of assignment of the HAP contract 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 HACA finds acceptable. The new owner must provide HACA with a copy of the executed agreement.

#### HACA Policy

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.

HACA 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, HACA will inform the current owner in writing whether the assignment may take place.

The new owner must provide a written certification to HACA that includes:

- A copy of the escrow statement or other document showing the transfer of title and recorded deed;
- A copy of the owner's IRS Form W-9, Request for Taxpayer Identification Number and Certification, or the social security number of the new owner;
- The effective date of the HAP contract assignment;
- A written agreement to comply with the terms of the HAP contract; and
- A certification that the new owner is not a prohibited relative.

If the new owner does not agree to an assignment of the HAP contract, or fails to provide the necessary documents, HACA 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, HACA will process the leasing in accordance with the policies in Chapter 9.

## **Chapter 14**

### **PROGRAM INTEGRITY**

#### **INTRODUCTION**

HACA is committed to ensuring that subsidy funds made available to HACA are spent in accordance with HUD requirements.

This chapter covers HUD and HACA 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 HACA's policies related to preventing, detecting, and investigating errors and program abuse.

Part II: Corrective Measures and Penalties. This part describes the corrective measures HACA 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

#### HACA Policy

To ensure that HACA’s HCV program is administered according to the highest ethical and legal standards, HACA will employ a variety of techniques to ensure that both errors and intentional program abuse are rare.

HACA will discuss program compliance and integrity issues during the voucher briefing sessions described in Chapter 5.

HACA 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.

HACA 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.

HACA will place a warning statement about the penalties for fraud (as described in 18 U.S.C. 1001 and 1010) on key HACA forms and form letters that request information from a family or owner.

HACA staff will be required to review and explain the contents of all HUD- and HACA-required forms, upon participant request, prior to requesting family member signatures.

At every regular reexamination, HACA staff will explain any changes in HUD regulations or HACA policy that affect program participants.

HACA will offer first-time owners (or their agents) information regarding HAP contract requirements.

HACA will provide owners with ongoing information about the program, with an emphasis on actions and situations to avoid.

HACA will provide each HACA 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 substantive fact, made with the intent to deceive or mislead and that results in payment of Section 8 program funds in violation of Section 8 program requirements.

## **14-I.B. DETECTING ERRORS AND PROGRAM ABUSE**

In addition to taking steps to prevent errors and program abuse, HACA 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 HACA 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).

#### HACA Policy

In addition to the SEMAP quality control requirements, HACA will employ a variety of methods to detect errors and program abuse.

HACA will routinely use HUD and available non-HUD sources of up-front income verification. This includes The Work Number 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.

HACA will compare family-reported income and expenditures to detect possible unreported income.

### **Independent Audits and HUD Monitoring**

OMB Circular A-133 requires all PHAs that expend \$500,000 or more in federal awards annually to have an independent audit conducted by an independent public accountant (IPA). In addition, HUD conducts periodic on-site and automated monitoring of HACA activities and notifies HACA of errors and potential cases of program abuse.

#### HACA Policy

HACA will use the results reported in any independent audit or HUD monitoring report to identify potential program abuses as well as to assess the effectiveness of HACA's error detection and abuse prevention efforts.

### **Individual Reporting of Possible Errors and Program Abuse**

#### HACA Policy

HACA will encourage staff, program participants, and the public to report possible program abuse.

## **14-I.C. INVESTIGATING ERRORS AND PROGRAM ABUSE**

### **When HACA Will Investigate**

#### HACA Policy

HACA will review all referrals, specific allegations, complaints, and tips from any source including EIV, other agencies, companies, and individuals, to determine if they warrant investigation. In order for HACA 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.

HACA will investigate when inconsistent or contradictory information is detected through file reviews and the verification process.

HACA employs a full time Fraud Investigator to provide expertise and coordinate with staff and law enforcement in investigations.

### **Consent to Release of Information [24 CFR 982.516]**

HACA may investigate possible instances of error or abuse using all available HACA and public records. If necessary, HACA will require HCV families to sign consent forms for the release of additional information.

### **Analysis and Findings**

#### HACA Policy

HACA 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 HACA will determine (1) whether an error or program abuse has occurred, (2) whether any amount of money is owed HACA, 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 HACA will enforce other corrective actions and penalties depends upon the nature of the error or program abuse.

### HACA Policy

In the case of family-caused errors or program abuse, HACA 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, HACA 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 program participants.

## **Notice and Appeals**

### HACA Policy

HACA 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 HACA 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, HACA must promptly correct the HAP, family share, and any utility reimbursement prospectively.

##### HACA Policy

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 HACA or HACA 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 HACA to use incorrect information provided by a third party.

### **Family Reimbursement to HACA [HCV GB pp. 22-12 to 22-13]**

#### HAAC Policy

In the case of family-caused errors or program abuse, the family will be required to repay any excess subsidy received. HACA 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, HACA will terminate the family's assistance in accordance with the policies in Chapter 12.

### **HACA Reimbursement to Family [HCV GB p. 22-12]**

#### HACA Policy

HACA will not reimburse the family for any underpayment of assistance when the underpayment clearly is caused by the family.

## **Prohibited Actions**

An applicant or participant in the HCV program must not knowingly:

- Make a false statement to HACA [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)].

### HACA Policy

Any of the following will be considered evidence of family program abuse or fraud:

Payment to the owner in excess of amounts authorized by HACA

Offering bribes or illegal gratuities to members of the HACA Governing Board, the HACA Housing Commission, employees, contractors, or other HACA representatives

Offering payments or other incentives to the owner or a third party as an inducement for the owner or third party to make false or misleading statements to HACA on the family's behalf

Use of a false name or the use of falsified, forged, or altered documents, including but not limited to, (a) falsified social security number(s)

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

HACA 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 HACA may, at its discretion, impose any of the following remedies.

- HACA may require the family to repay excess subsidy amounts paid by HACA, as described earlier in this section.
- HACA 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).
- HACA may deny or terminate the family's assistance following the policies set forth in Chapter 3 and Chapter 12 respectively.
- HACA 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 the PHA**

In all cases of overpayment of subsidy caused by the owner, the owner must repay to the PHA any excess subsidy received. The PHA may recover overpaid amounts by withholding housing assistance payments due for subsequent months, or if the debt is large, the PHA may allow the owner to pay in installments over a period of time [HCV GB p. 22-13].

#### HACA Policy

In cases where the owner has received excess subsidy, HACA 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 HACA [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:

#### HACA Policy

Any of the following will be considered evidence of owner program abuse or fraud:

Charging the family rent above or below the amount specified by HACA

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 or refusing to reimburse HACA in a timely manner when HACA brings an overpayment to the owner's attention

Knowingly accepting incorrect or excess housing assistance payments or refusing to reimburse HACA in a timely manner when HACA brings an incorrect or excess housing assistance payment to the owner's attention

Offering bribes or illegal gratuities to members of the HACA Governing Board, the HACA Housing Commission, employees, contractors, or other HACA representatives

Offering payments or other incentives to an HCV family as an inducement for the family to make false or misleading statements to HACA

Residing in the unit with an assisted family

Allowing unauthorized persons to live in the assisted unit

## **Remedies and Penalties**

When HACA determines that the owner has committed program abuse, HACA 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 HACA programs.
- Refer the case to state or federal officials for criminal prosecution as described in section 14-II.E.

#### **14-II.D. PHA-CAUSED ERRORS OR PROGRAM ABUSE**

The responsibilities and expectations of the PHA staff with respect to normal program administration are discussed throughout this plan. This section specifically addresses actions of a PHA staff member that are considered errors or program abuse related to the HCV program. Additional standards of conduct may be provided in the PHA personnel policy.

PHA-caused incorrect subsidy determinations include (1) failing to correctly apply HCV rules regarding family composition, income, assets, and expenses, (2) assigning the incorrect voucher size to a family, and (3) errors in calculation.

##### **Repayment to the PHA**

Neither a family nor an owner is required to repay an overpayment of subsidy if the error or program abuse is caused by PHA staff [HCV GB. 22-12].

##### **PHA Reimbursement to Family or Owner**

The PHA must reimburse a family for any underpayment of subsidy, regardless of whether the underpayment was the result of staff-caused error or staff or owner program abuse. Funds for this reimbursement must come from the PHA's administrative fee reserves [HCV GB p. 22-12].

##### **Prohibited Activities**

###### HACA Policy

Any of the following will be considered evidence of program abuse or fraud by PHA staff:

- Failing to comply with any HCV program requirements for personal gain

- Failing to comply with any HCV program requirements as a result of a conflict of interest relationship with any applicant, participant, or owner

- Seeking or accepting anything of material value from applicants, participating families, vendors, owners, contractors, or other persons who provide services or materials to the PHA subject to HACA's gift policy (Addendum 14-1)

- Disclosing confidential or proprietary information to outside parties subject to HACA's confidentiality policy (Addendum 14-2)

- Gaining profit as a result of insider knowledge of PHA 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**

### HACA Policy

When HACA determines that program abuse by an owner, family, or HACA staff member has occurred and the amount of overpaid subsidy meets or exceeds the threshold for prosecution under local or state law, HACA 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**

HACA may retain a portion of program fraud losses that HACA recovers from a family or owner through litigation, court order, or a repayment agreement [24 CFR 982.163].

HACA 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 HACA 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 HACA 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 HACA related to the collection, these costs must be deducted from the amount retained by HACA.

## **EXHIBIT 14-1: HACA GIFT POLICY & PROCEDURE**

### **I. PURPOSE**

The purpose of this Gift Policy is to establish a clear set of expectations regarding the receipt of gifts from program participants or members of the public.

### **II. POLICY**

Many of our participants and owners offer gifts as a way of saying ‘thank you’ for the Housing Authority’s rental assistance and/or because of kindness and service from an employee. Acceptance of a personal gift, however, may leave the gift giver with the impression that a special relationship has been established or with the expectation of reciprocity from the employee in terms of special treatment. For that reason, the Housing Authority generally requires employees to decline gifts of all types from program participants, owners or members of the public. Declining the receipt of gifts should be done politely by informing the gift giver that Housing Authority employees are not permitted to accept gifts. If the person insists on giving the gift or sends it to the office, the following procedure should be followed:

### **III. PROCEDURE**

#### **A. Food or Beverage Gifts**

Thank the gift giver and explain that the food/beverage will be shared with all Housing Authority staff. Acceptance of alcoholic beverages is not allowed under any circumstances. Additionally, employees shall not receive gifts of food or beverages on a regular basis from the same person (i.e., more than a couple of times a year).

#### **B. Gifts with an Estimated Value of Under \$20.00**

Employees should first decline the gift. If the gift giver refuses to take back the gift, employees should thank the gift giver and explain that the gift will be donated to a non-profit organization.

#### **C. Gifts with an Estimated Value of Over \$20.00**

Employees should first decline the gift. If the gift giver refuses to take back the gift, employees should thank the gift giver and immediately notify their manager of the receipt of the gift. The manager will inform the gift giver in writing that the item will be donated to a non-profit organization.

#### **D. Monetary Gifts Such as Cash, Gift Cards, Checks, Money Orders, Etc.**

Employees should first decline the gift. If the gift giver refuses to take back the gift, employees should thank the gift giver and immediately report the gift to the employee's manager. The manager will make a copy of the gift and then return the gift with a letter explaining that such gifts cannot be accepted by Housing Authority employees.

#### **IV. DISSEMINATION OF POLICY**

All employees shall receive a copy of this Policy when they are hired. The Policy may be updated from time to time and redistributed with a form for the employee to sign and return, acknowledging that the employee has received, read, and understands this Policy.

*rev. Gift Policy & Procedure – 2004; 2006;  
12/20/17*

## **Exhibit 14-2: HACA Confidentiality Policy**

### **THE NATURE AND HANDLING OF CONFIDENTIAL INFORMATION**

A significant amount of data, documents, and personal information is routinely collected in the operation of the various programs administered by the Housing Authority of the County of Alameda (hereinafter "HACA" or "agency"). The agency values the security of information and the privacy rights of employees, employment applicants, program participants and program applicants. In addition, privacy rights are protected by State and federal laws, including the Privacy Act. The intent of this Confidentiality Policy is to highlight the areas in our jobs where we should be aware of confidentiality and show how, as staff of HACA, we have an important role in understanding and upholding these standards. All of us are responsible for ensuring that the confidential information we have is not deliberately or inadvertently released to people not authorized to see the information.

### **COMMUNICATION WITH EMPLOYEES, EMPLOYMENT APPLICANTS, PROGRAM PARTICIPANTS OR PROGRAM APPLICANTS**

All conversations with employment applicants, program participants and program applicants should be conducted in a private area. Interviews and/or short meetings are not to be conducted at the front counter, the lobby or other public areas; they should be held in the privacy of the interview rooms or private offices only.

The interview rooms must be accessed directly from the lobby door only; no clients are permitted in the main office unless escorted by a HACA employee. Home visits are to be conducted in as private a location as possible within the home. It is the responsibility of staff to be aware of the surroundings and honor the privacy of our clients at all times.

No data that contains personal information on employees, employment applicants, program participants, program applicants or participant household members that have received our assistance in the past can be removed from our systems and taken away from HACA's office in any format. This includes, but is not limited to, attaching it to an email or copying it on to a laptop, compact disk, thumb drive or any type of storage device that would enable someone to view personal information away from the HACA office. If you believe you need to have access to the personal information away from the HACA office you must prepare a written justification as to why the information is needed, what it will be used for and what procedures will be taken to safeguard the data and destroy it once it is used. The Executive Director or her designee must approve the justification.

### **INFORMATION DESIGNATED AS "CONFIDENTIAL"**

The following information is designated as confidential (list is not all-inclusive):

- Income information
- Social Security numbers
- Date of birth
- EIV data
- EDD data and reports
- Medical records and information
- Police reports
- Credit reports
- HUD disclosure forms

- HACA's internal information forms
- Information relating to one's disability
- Fingerprint records
- DMV records
- Employment applications and related information

Confidential and personal information may not be discussed with anyone outside the agency except as shown below and may be discussed within the agency only on a "need to know" basis. Confidential information should not be discussed in public areas of the office, where other staff or the public may overhear.

Employees also have a responsibility to avoid unnecessary disclosure of non-confidential, but nonetheless personal, information about program participants. This includes but is not limited to:

- Personal information observed during a routine visit to or inspection of a housing unit.
- One's status as participant or resident in one of HACA's programs or complexes.
- Personal information that a staff member is privy to due to their work.

The use and release of confidential information is limited as follows:

- You should use confidential information only as needed to perform your legitimate duties.
- You cannot divulge, copy, or release confidential information without the express permission of the participant/applicant or unless the participant/applicant and/or another human being is in immediate physical danger.
- You are to discuss confidential information with other staff only in the context of your professional duties.
- You are obligated to disclose information that could present a clear and present danger to another individual.

#### **RELEASE OF PARTICIPANT/APPLICANT INFORMATION TO AGENCIES OR INDIVIDUALS OUTSIDE HACA**

Except for the agencies listed below, and except for law enforcement agencies that request information in the appropriate format, the release of information will not be permitted unless the participant/applicant has signed a specific release of information form for the person or agency and specified the information that can be released to that person or agency.

- Courts, including information required under a valid subpoena.
- U.S. Department of Housing and Urban Development, including its contractors and Office of Inspector General.
- Insurance third party administrators such as HARRP.
- HACA's auditor.

Information released to the above agencies should be reviewed by a supervisor prior to such release and must consist only of information specifically relevant to the request.

#### **USE OF EMPLOYEE, EMPLOYMENT APPLICANT, PROGRAM PARTICIPANT OR PROGRAM APPLICANT INFORMATION FOR MARKETING PURPOSES**

No information that pertains to any employee, employment applicant, program participant or program applicant, including the name, is to be released for marketing purposes without the prior written consent of the party. The consent form must include the specific information that will be used.

### **RELEASE OF EMPLOYEE, PROGRAM PARTICIPANT OR PROGRAM APPLICANT INFORMATION TO THE PARTICIPANT/INDIVIDUAL**

Employees may obtain access to their Personnel Files by contacting their Department Manager or Director during normal business hours.

A program participant or program applicant may request copies of information maintained in their personal file by filling out a request for release of information. The participant/applicant will be allowed to review the tenant information portion of the file and request copies. The cost of copies is \$.10 per page.

### **FILES**

Files contain confidential and personal information including income, Social Security numbers, etc., which could be used for identity theft. It is our job as staff of HACA to protect people's privacy at all times. All EIV reports will be stored electronically in an encrypted data base managed by HACA's Information Technology Services department. Hard copies of all EIV reports with confidential data will be destroyed.

### **RETENTION OF PARTICIPANT INFORMATION**

Current information related to the verification of income, assets, family composition and banking obtained to determine eligibility and the level of benefits shall be retained as long as the participant is active and for the time required by HUD following the closing of the participant file. If there is a program violation under investigation or if a program violation had been upheld, the file must be retained for a period of not less than three years following the period of statute of limitations for a fraud claim.

Police reports or other documentation of violent and/or drug related criminal activity are to be retained in a file separate from the participant's tenant record and kept in a locked area, consistent with agency procedures. This information is to be destroyed after it has served the purpose for which it was obtained.

### **PROGRAM STAFF**

Where appropriate, staff will review the purpose of the "Release of Information – HUD form 9886", explaining to the family what type of information will be released and to what agencies that information will be disclosed.

### **MAINTENANCE AND HOUSING INSPECTION STAFF**

Information that a staff person obtains while in the residence of a participant or applicant can only be disclosed to authorize the HACA staff for business related purposes.

All staff must report to their immediate supervisor any illegal activities, dangerous situations, or health and safety issues or conditions that are observed.

### **REPORTING IMPROPER DISCLOSURES**

Security violations may include the disclosure of private data as well as attempts to access unauthorized data and the sharing of User IDs and passwords. Upon the discovery of a possible improper disclosure of UIV information or another security violation by an employee or any other person, the individual making the observation or receiving the information shall contact their Department Manager or Director. The Department Manager or Director shall immediately document all improper disclosures in writing providing details including who was involved, what was disclosed, how the disclosure occurred, and where and when it occurred. Within 24 hours of the discovery of the security violation, the following contacts shall be made:

- The Department Manager or Director shall contact and provide the Executive Director with the written documentation;
- If the security violation concerns EIV, the Executive Director shall provide the HUD Field Office Public Housing Director with the written documentation;
- If the security violation concerns EDD, the Executive Director shall provide the EDD Information Security Office with the written documentation.

HACA will implement any immediately identifiable steps for preventing or diminishing the likelihood of any future unauthorized disclosure.

Within 30 days of the discovery of the security violation, HACA will assess any feedback obtained from either HUD or EDD, as appropriate, in response to the security violation. If HACA determines that additional corrective actions are warranted, HACA will implement them in a timely manner.

#### **SUMMARY**

HACA believes in protecting the personal information of the people that we serve. Not only is this a matter of respect, it is a requirement of local and federal privacy laws. It is your responsibility to understand and protect the privacy rights of the people that you serve. If you are unclear on any part of this policy, please ask your supervisor for more information.

Please be aware that you will be held accountable for compliance with this policy, it will be part of your personnel review and could lead to disciplinary action if not followed. In addition, civil and criminal penalties including a felony conviction and a fine of up to \$5,000 and/or imprisonment for up to five years, can apply for violation of the federal Privacy Act.

Thank you for your work in respecting the rights of the employees, employment applicants, program participants and program applicants that we work with.

I have read and understand my obligation to comply with this Confidentiality Policy

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

***TM:bz Y/GENERAL/PUBLICFORMS/Confidentiality Policy Form  
11/07***

## **Chapter 15**

### **SPECIAL HOUSING TYPES**

[24 CFR 982 Subpart M]

#### **INTRODUCTION**

PHAs may permit a family to use any of the special housing types discussed in this chapter. However, the PHA 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. HACA 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.

#### HACA Policy

Families will be able to utilize the following special housing types:

Single Room Occupancy

Congregate Housing

Group Homes

Shared Housing

Cooperative Housing

Manufactured Homes (including manufactured home space rental)

Homeownership (FSS participants only)

Only families that are newly admitted or existing participants in the HCV FSS program will be permitted to use Homeownership unless use is needed as a reasonable accommodation so that the program is readily accessible to a person with disabilities.

Special housing types include single room occupancy (SRO), congregate housing, group homes, shared housing, cooperative housing, manufactured homes where the family owns the home and leases the space, and homeownership [24 CFR 982.601].

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

Part I: Single Room Occupancy

Part II: Congregate Housing

Part III: Group Homes

Part IV: Shared Housing

Part V: Cooperative Housing

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

Part VII: Homeownership

## **PART I: SINGLE ROOM OCCUPANCY**

[24 CFR 982.602 through 982.605]

### **15-I.A. OVERVIEW**

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

When providing HCV assistance in an SRO unit, a separate lease and HAP contract are executed for each assisted person, and the standard form of the HAP contract is used.

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

The payment standard for SRO housing is 75 percent of the 0-bedroom payment standard amount on HACA's payment standard schedule.

The utility allowance for an assisted person residing in SRO housing is 75 percent of the zero bedroom utility allowance.

The HAP for an assisted occupant in an SRO facility is the lower of the SRO payment standard amount minus the TTP or the gross rent for the unit minus the TTP.

### **15-I.C. HOUSING QUALITY STANDARDS (HQS)**

HQS requirements described in Chapter 8 apply to SRO housing except as modified below.

- *Access:* Access doors to the SRO unit must have working locks for privacy. The occupant must be able to access the unit without going through any other unit. Each unit must have immediate access to two or more approved means of exit from the building, appropriately marked and leading to safe and open space at ground level. The SRO unit must also have any other means of exit required by State or local law.
- *Fire Safety:* All SRO facilities must have a sprinkler system that protects major spaces. "Major spaces" are defined as hallways, common areas, and any other areas specified in local fire, building, or safety codes. SROs must also have hard-wired smoke detectors, and any other fire and safety equipment required by state or local law.

Sanitary facilities and space and security standards must meet local code requirements for SRO housing. In the absence of local code standards the requirements discussed below apply [24 CFR 982.605].

- *Sanitary Facilities:* At least one flush toilet that can be used in privacy, a lavatory basin, and a bathtub or shower in proper operating condition must be provided for each six persons (or fewer) residing in the SRO facility. If the SRO units are leased only to men, flush urinals may be substituted for up to one half of the required number of toilets. Sanitary facilities must be reasonably accessible from a common hall or passageway, and may not be located more than one floor above or below the SRO unit. They may not be located below grade unless the SRO units are located on that level.
- *Space and Security:* An SRO unit must contain at least 110 square feet of floor space, and at least four square feet of closet space with an unobstructed height of at least five feet, for use by the occupant. If the closet space is less than four square feet, the habitable floor space in the SRO unit must be increased by the amount of the deficiency. Exterior doors and windows accessible from outside the SRO unit must be lockable.

Because no children live in SRO housing, the housing quality standards applicable to lead-based paint do not apply.

## **PART II: CONGREGATE HOUSING**

[24 CFR 982.606 through 982.609]

### **15-II.A. OVERVIEW**

Congregate housing is intended for use by elderly persons or persons with disabilities. A congregate housing facility contains a shared central kitchen and dining area and a private living area for the individual household that includes at least a living room, bedroom and bathroom. Food service for residents must be provided.

If approved by HACA, a family member or live-in aide may reside with the elderly person or person with disabilities. HACA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in congregate housing, a separate lease and HAP contract are executed for each assisted family, and the standard form of the HAP contract is used.

## **15-II.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION**

The payment standard for an individual unit in a congregate housing facility is based on the number of rooms in the private living area. If there is only one room in the unit (not including the bathroom or the kitchen, if a kitchen is provided), HACA must use the payment standard for a 0-bedroom unit. If the unit has two or more rooms (other than the bathroom and the kitchen), HACA must use the 1-bedroom payment standard.

The HAP for an assisted occupant in a congregate housing facility is the lower of the applicable payment standard minus the TTP or the gross rent for the unit minus the TTP.

The gross rent for the unit for the purpose of calculating HCV assistance is the shelter portion (including utilities) of the resident's monthly housing expense only. The residents' costs for food service should not be included in the rent for a congregate housing unit.

## **15-II.C. HOUSING QUALITY STANDARDS**

HQS requirements as described in Chapter 8 apply to congregate housing except for the requirements stated below.

Congregate housing must have (1) a refrigerator of appropriate size in the private living area of each resident; (2) a central kitchen and dining facilities located within the premises and accessible to the residents, and (3) food service for the residents, that is not provided by the residents themselves.

The housing quality standards applicable to lead-based paint do not apply.

## **PART III: GROUP HOME**

[24 CFR 982.610 through 982.614 and HCV GB p. 7-4]

### **15-III.A. OVERVIEW**

A group home is a state-licensed facility intended for occupancy by elderly persons and/or persons with disabilities. Except for live-in aides, all persons living in a group home, whether assisted or not, must be elderly persons or persons with disabilities. Persons living in a group home must not require continuous medical or nursing care.

A group home consists of bedrooms for residents, which can be shared by no more than two people, and a living room, kitchen, dining area, bathroom, and other appropriate social, recreational, or community space that may be shared with other residents.

No more than 12 persons may reside in a group home including assisted and unassisted residents and any live-in aides.

If approved by HACA, a live-in aide may live in the group home with a person with disabilities. HACA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in a group home, a separate lease and HAP contract is executed for each assisted family, and the standard form of the HAP contract is used.

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

Unless there is a live-in aide, the family unit size for an assisted occupant of a group home must be 0-bedroom, depending on HACA's subsidy standard. If there is a live-in aide, the aide must be counted in determining the household's unit size.

The payment standard used to calculate the HAP is the lower of the payment standard for the family unit size or the prorata share of the payment standard for the group home size. The prorata share is calculated by dividing the number of persons in the assisted household by the number of persons (assisted and unassisted) living in the group home.

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

The utility allowance for an assisted occupant in a group home is the prorata share of the utility allowance for the group home.

The rents paid for participants residing in group homes are subject to generally applicable standards for rent reasonableness. The rent for an assisted person must not exceed the prorata portion of the reasonable rent for the group home. In determining reasonable rent, HACA should consider whether sanitary facilities and facilities for food preparation and service are common facilities or private facilities.

### 15-III.C. HOUSING QUALITY STANDARDS

HQS requirements described in Chapter 8 apply to group homes except for the requirements stated below.

- *Sanitary Facilities:* A group home must have at least one bathroom in the facility, with a flush toilet that can be used in privacy, a fixed basin with hot and cold running water, and a shower or bathtub with hot and cold running water. A group home may contain private or common bathrooms. However, no more than four residents can be required to share a bathroom.
- *Food Preparation and Service:* Group home units must contain a kitchen and dining area with adequate space to store, prepare, and serve food. The facilities for food preparation and service may be private or may be shared by the residents. The kitchen must contain a range, an oven, a refrigerator, and a sink with hot and cold running water. The sink must drain into an approvable public or private disposal system.
- *Space and Security:* Group homes must contain at least one bedroom of appropriate size for every two people, and a living room, kitchen, dining area, bathroom, and other appropriate social, recreational, or community space that may be shared with other residents.
- *Structure and Material:* To avoid any threat to the health and safety of the residents, group homes must be structurally sound. Elevators must be in good condition. Group homes must be accessible to and usable by residents with disabilities.
- *Site and Neighborhood:* Group homes must be located in a residential setting. The site and neighborhood should be reasonably free from hazards to the health, safety, and general welfare of the residents, and should not be subject to serious adverse conditions, such as:
  - Dangerous walks or steps
  - Instability
  - Flooding, poor drainage
  - Septic tank back-ups
  - Sewage hazards
  - Mud slides
  - Abnormal air pollution
  - Smoke or dust
  - Excessive noise
  - Vibrations or vehicular traffic
  - Excessive accumulations of trash
  - Vermin or rodent infestation, and
  - Fire hazards.

The housing quality standards applicable to lead-based paint do not apply.

## **PART IV: SHARED HOUSING**

[24 CFR 982.615 through 982.618]

### **15-IV.A. OVERVIEW**

Shared housing is a single housing unit occupied by an assisted family and another resident or residents. The shared unit consists of both common space for use by the occupants of the unit and separate private space for each assisted family.

An assisted family may share a unit with other persons assisted under the HCV program or with other unassisted persons. The owner of a shared housing unit may reside in the unit, but housing assistance may not be paid on behalf of the owner. The resident owner may not be related by blood or marriage to the assisted family.

If approved by HACA, a live-in aide may reside with the family to care for a person with disabilities. HACA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in shared housing, a separate lease and HAP contract are executed for each assisted family, and the standard form of the HAP contract is used.

### **15-IV.B. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION**

The payment standard for a family in shared housing is the lower of the payment standard for the family unit size or the prorata share of the payment standard for the shared housing unit size.

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

The HAP for a family in shared housing is the lower of the payment standard minus the TTP or the gross rent minus the TTP. The utility allowance for an assisted family living in shared housing is the lower of the utility allowance for the family unit size (voucher size) or 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 ( $\frac{3}{4}$  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, HACA should consider whether sanitary and food preparation areas are private or shared.

### **15-IV.C. HOUSING QUALITY STANDARDS**

HACA may not give approval to reside in shared housing unless the entire unit, including the portion of the unit available for use by the assisted family under its lease, meets the housing quality standards.

HQS requirements described in Chapter 8 apply to shared housing except for the requirements stated below.

- *Facilities Available for the Family:* Facilities available to the assisted family, whether shared or private, must include a living room, a bathroom, and food preparation and refuse disposal facilities.
- *Space and Security:* The entire unit must provide adequate space and security for all assisted and unassisted residents. The private space for each assisted family must contain at least one bedroom for each two persons in the family. The number of bedrooms in the private space of an assisted family must not be less than the family unit size. A 0-bedroom or 1-bedroom unit may not be used for shared housing.

## **PART V: COOPERATIVE HOUSING**

[24 CFR 982.619]

### **15-V.A. OVERVIEW**

This part applies to rental assistance for a cooperative member residing in cooperative housing. It does not apply to assistance for a cooperative member who has purchased membership under the HCV homeownership option, or to rental assistance for a family that leases a cooperative housing unit from a cooperative member.

A cooperative is a form of ownership (nonprofit corporation or association) in which the residents purchase memberships in the ownership entity. Rather than being charged “rent” a cooperative member is charged a “carrying charge.”

When providing HCV assistance in cooperative housing, the standard form of the HAP contract is used.

### **15-V.B. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION**

The payment standard and utility allowance are determined according to regular HCV program requirements.

The HAP for a cooperative housing unit is the lower of the payment standard minus the TTP or the monthly carrying charge for the unit, plus any utility allowance, minus the TTP. The monthly carrying charge includes the member’s share of the cooperative debt service, operating expenses, and necessary payments to cooperative reserve funds. The carrying charge does not include down payments or other payments to purchase the cooperative unit or to amortize a loan made to the family for this purpose.

### **15-V.C. HOUSING QUALITY STANDARDS**

All standard HQS requirements apply to cooperative housing units. There are no additional HQS requirements.

## **PART VI: MANUFACTURED HOMES**

[24 CFR 982.620 through 982.624; FR Notice 1/18/17]

### **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 HACA must permit it. In this instance program rules are the same as when a family rents any other residential housing, except that there are special HQS requirements as provided in 15-VI.D below.

(2) HUD also permits an otherwise eligible family that owns a manufactured home to rent a space for the manufactured home and receive HCV assistance with the rent for the space as well as certain other housing expenses. PHAs may, but are not required to, provide assistance for such families.

#### HACA Policy

HACA will provide HCV assistance to an otherwise eligible family that owns a manufactured home to rent a space for the manufactured home. A manufactured home must have the applicable HUD or HCD labels and/or insignias and/or certificates affixed to the exterior of the home. At HACA's discretion, the owner must provide verifiable proof of ownership.

### **15-VI.B. SPECIAL POLICIES FOR MANUFACTURED HOME OWNERS WHO LEASE A SPACE**

#### **Family Income**

In determining the annual income of families leasing manufactured home spaces, the value of the family's equity in the manufactured home in which the family resides is not counted as a family asset.

#### **Lease and HAP Contract**

There is a separate Tenancy Addendum (Form 52642-a) and separate HAP Contract (Form 52642) for this special housing type.

## **15-VI.C. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION** **[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**

HACA 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.

### **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 annually thereafter HACA must determine that the rent for the manufactured home space is reasonable based on rents for comparable manufactured home spaces. HACA must consider the location and size of the space, and any services and maintenance to be provided by the owner. By accepting the monthly HAP check, the owner certifies that the rent does not exceed rents charged by the owner for comparable unassisted spaces in the manufactured home park or elsewhere.

## **15-VI.D. HOUSING QUALITY STANDARDS**

Under either type of occupancy described in 15-VI.A above, the manufactured home must meet all HQS performance requirements and acceptability criteria discussed in Chapter 8 of this plan. In addition, the following requirement applies:

### ***Manufactured Home Tie-Down***

A manufactured home must be placed on the site in a stable manner, and must be free from hazards such as sliding or wind damage. The home must be securely anchored by a tie-down device that distributes and transfers the loads imposed by the unit to appropriate ground anchors to resist overturning and sliding.

## **PART VII: HOMEOWNERSHIP**

[24 CFR 982.625 through 982.643]

### **15-VII.A. OVERVIEW [24 CFR 982.625]**

The homeownership option is used to assist a family residing in a home purchased and owned by one or more members of the family. HACA must have the capacity to operate a successful HCV homeownership program as defined by the regulations. HACA has demonstrated this capacity by establishing a minimum homeowner down payment requirement of at least 3 percent of the purchase price, and requiring that at least one percent of the purchase price come from the family's personal resources.

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.

#### HACA Policy

HACA will offer monthly homeownership assistance payments to qualified families.

HACA 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 HACA to determine whether it is reasonable to implement a homeownership program as a reasonable accommodation. HACA must determine what is reasonable based on the specific circumstances and individual needs of the person with a disability. HACA may determine that it is not reasonable to offer homeownership assistance as a reasonable accommodation in cases where HACA has otherwise opted not to implement a homeownership program.

HACA 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]**

The family must meet all of the requirements listed below before the commencement of homeownership assistance. HACA may also establish additional initial requirements as long as they are described in HACA administrative plan.

- The family must have been admitted to the Housing Choice Voucher program.
- The family must qualify as a first-time homeowner, or may be a cooperative member. Qualification includes:
  - No member of the household has had an ownership interest in any residence during the three years preceding commencement of home ownership assistance. However, a single parent or displaced homemaker who, while married, owned a home with a spouse/significant other (or resided in a home owned by a spouse/significant other) is considered a ‘first-time homeowner’ for purposes of the homeownership program.
  - The right to purchase title to a residence under a lease-purchase agreement is not considered an ‘ownership interest’.
  - HACA may exempt families that include a person with disabilities from this requirement as a reasonable accommodation.
- The family must meet the Federal minimum income requirement. The family must have a gross annual income equal to the Federal minimum wage multiplied by 2000, based on the income of adult family members who will own the home. HACA may establish a higher income standard for families. However, a family that meets the federal minimum income requirement (but not HACA's requirement) will be considered to meet the minimum income requirement if it can demonstrate that it has been pre-qualified or pre-approved for financing that is sufficient to purchase an eligible unit.

### HACA Policy

HACA will not establish a higher minimum income standard for disabled and/or non-disabled families.

- For disabled families, the minimum income requirement is equal to the current SSI monthly payment for an individual living alone, multiplied by 12.
- For elderly or disabled families, welfare assistance payments for adult family members who will own the home will be included in determining whether the family meets the minimum income requirement. It will not be included for other families.
- The family must satisfy the employment requirements by demonstrating that one or more adult members of the family who will own the home at commencement of homeownership assistance is currently employed on a full-time basis (the term 'full-time employment' means not less than an average of 30 hours per week); and has been continuously so employed during the year before commencement of homeownership assistance for the family.

### HACA Policy

Families will be considered “continuously employed” if the break in employment does not exceed four months.

HACA will count self-employment in a business when determining whether the family meets the employment requirement.

- 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, HACA must grant an exemption from the employment requirement if HACA determines that it is needed as a reasonable accommodation.
- The family has not defaulted on a mortgage securing debt to purchase a home under the homeownership option
- Except for cooperative members who have acquired cooperative membership shares prior to commencement of homeownership assistance, no household member has a present ownership interest in a residence at the commencement of homeownership assistance for the purchase of any home.
- Except for cooperative members who have acquired cooperative membership shares prior to the commencement of homeownership assistance, the family has entered a contract of sale in accordance with 24 CFR 982.631(c).

#### HACA Policy

HACA will impose additional eligibility requirements. To be eligible to participate in the homeownership option, families must meet the following criteria:

The family is not within the initial period of a HAP Contract.

The family does not owe money to HACA or any other PHA.

The family has not committed any serious or repeated violations of a PHA-assisted lease within the past year.

### **15-VII.C. SELECTION OF FAMILIES [24 CFR 982.626]**

Unless otherwise provided (under the homeownership option), HACA may limit homeownership assistance to families or purposes defined by HACA, and may prescribe additional requirements for commencement of homeownership assistance for a family. Any such limits or additional requirements must be described in HACA administrative plan.

If HACA limits the number of families that may participate in the homeownership option, HACA must establish a system by which to select families to participate.

#### HACA Policy

HACA will administer up to 5 new homeownership units per year. HACA may exceed the number of units planned per year if it is necessary as a reasonable accommodation for a person with a disability. If this occurs, HACA may reduce the number of homeownership units offered in subsequent years.

Families will be selected according to the date and time their application for participation in the homeownership option is submitted to HACA.

All families must meet eligibility requirements as defined in Section 15-VII.B. of this plan.

### **15-VII.D. ELIGIBLE UNITS [24 CFR 982.628]**

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

- The unit must meet HUD's "eligible housing" requirements. The unit may not be any of the following:
  - A public housing or Indian housing unit;
  - A unit receiving Section 8 project-based assistance;
  - A nursing home, board and care home, or facility providing continual psychiatric, medical or nursing services;
  - A college or other school dormitory;
  - On the grounds of penal, reformatory, medical, mental, or similar public or private institutions.
- The unit must be under construction or already exist at the time the family enters into the contract of sale.
- The unit must be a one-unit property or a single dwelling unit in a cooperative or condominium.
- The unit must have been inspected by HACA and by an independent inspector designated by the family.
- The unit must meet Housing Quality Standards (see Chapter 8).

- For a unit where the family will not own fee title to the real property (such as a manufactured home), the home must have a permanent foundation and the family must have the right to occupy the site for at least 40 years.
- For HACA-owned units all of the following conditions must be satisfied:
  - HACA informs the family, both orally and in writing, that the family has the right to purchase any eligible unit and a HACA-owned unit is freely selected by the family without HACA pressure or steering;
  - The unit is not ineligible housing;
  - HACA 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 HACA provided financing. All of these actions must be completed in accordance with program requirements.

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

#### **15-VII.E. ADDITIONAL HACA 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. HACA may establish the maximum time that will be allowed for a family to locate and purchase a home, and may require the family to report on their progress in finding and purchasing a home. If the family is unable to purchase a home within the maximum time established by HACA, HACA may issue the family a voucher to lease a unit or place the family's name on the waiting list for a voucher.

##### HACA Policy

The family will be allowed 120 days to identify a unit and submit a sales contract to HACA for review. The family will be allowed an additional 120 days to close on the home. HACA may grant extensions to either of these periods for good cause. The length of the extension(s) will be determined on a case-by-case, but in no case will an extension exceed a total of 125 days. The maximum amount of time a family will be given to locate and complete the purchase of a home under the homeownership option is 365 days.

During these periods, the family will continue to receive HCV rental assistance in accordance with any applicable lease and HAP contract until the family vacates the rental unit for its purchased home.

All requests for extensions must be submitted in writing to HACA prior to the expiration of the period for which the extension is being requested. HACA will approve or disapprove the extension request within 10 business days. The family will be notified of the HACA's decision in writing.

## **15-VILF. HOMEOWNERSHIP COUNSELING [24 CFR 982.630]**

Before commencement of homeownership assistance for a family, the family must attend and satisfactorily complete the pre-assistance homeownership and housing counseling program required by HACA. HUD suggests the following topics for the PHA-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 HACA jurisdiction;
- Advantages of purchasing a home in an area that does not have a high concentration of low-income families and how to locate homes in such areas;
- Information on fair housing, including fair housing lending and local fair housing enforcement agencies; and
- Information about the Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.) (RESPA), state and Federal truth-in-lending laws, and how to identify and avoid loans with oppressive terms and conditions.

HACA may adapt the subjects covered in pre-assistance counseling (as listed) to local circumstances and the needs of individual families.

HACA may also offer additional counseling after commencement of homeownership assistance (ongoing counseling). If HACA offers a program of ongoing counseling for participants in the homeownership option, HACA shall have discretion to determine whether the family is required to participate in the ongoing counseling.

### HACA Policy

If required by HACA, families must attend and complete post-purchase ongoing homeownership counseling.

If HACA does not use a HUD-approved housing counseling agency to provide the counseling, HACA should ensure that its counseling program is consistent with the counseling provided under HUD's Housing Counseling program.

## **15-VIL.G. HOME INSPECTIONS, CONTRACT OF SALE, AND HACA DISAPPROVAL OF SELLER [24 CFR 982.631]**

### **Home Inspections**

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

#### HACA Policy

When the family locates a home it wishes to purchase and submits a copy of its purchase offer/contract, HACA will conduct a housing quality standards (HQS) inspection within 10 business days. Any items found not to meet HQS must be repaired before the unit can be determined eligible for the homeownership program.

While the family is receiving homeownership assistance, HACA will conduct an HQS inspection every other year.

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.

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

#### HACA Policy

The family must hire an independent professional inspector, whose report must be submitted to HACA for review. This inspector must be a member of the American Society of Home Inspectors (ASHI) or other recognized professional society, or a licensed engineer. The inspector may not be a HACA employee.

HACA 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.

#### HACA Policy

HACA will review the professional report in a timely fashion and, based on the presence of major physical problems, may disapprove the purchase of the home.

If HACA disapproves the purchase of a home, the family will be notified in writing of the reasons for the disapproval.

### **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 HACA 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, HACA may deny approval of a seller for the same reasons a HACA may disapprove an owner under the regular HCV program [see 24 CFR 982.306(c)].

## **15-VII.H. FINANCING [24 CFR 982.632]**

HACA may establish requirements for financing purchase of a home under the homeownership option. This may include requirements concerning qualification of lenders, terms of financing, restrictions concerning debt secured by the home, lender qualifications, loan terms, and affordability of the debt. HACA must establish policies describing these requirements in the administrative plan.

HACA may not require that families acquire financing from one or more specified lenders, thereby restricting the family's ability to secure favorable financing terms.

### **HACA Policy**

As a check against predatory lending, HACA will review the financing of each purchase transaction, including estimated closing costs. HACA will review the loans for features, such as balloon payments, adjustable rate mortgages, and unusually high interest rates, all of which are prohibited. HACA may approve "seller financing" or "owner-held" mortgages on a case-by-case basis. Beyond these basic criteria, HACA will rely on the lenders to determine that the loan will be affordable to program participants.

The mortgage the family applies for must require a minimum down payment of at least 3% of the sales price with 1% of the down payment coming from the purchaser's personal funds. HACA will not require that the family have any more than the minimum of 1% of their own money in the transaction. However, in cases where a lender is requiring a larger amount, the family may be held to the underwriting guidelines set by their lending institution.

HACA will approve a family's request to utilize its Family Self-Sufficiency escrow account for down payment and/or closing costs when purchasing a unit under the HCV homeownership option.

## **15-VII.I. CONTINUED ASSISTANCE REQUIREMENTS; FAMILY OBLIGATIONS [24 CFR 982.633]**

Homeownership assistance may only be paid while the family is residing in the home. If the family moves out of the home, HACA may not continue homeownership assistance after the month when the family moves out. The family or lender is not required to refund to HACA the homeownership assistance for the month when the family moves out.

Before commencement of homeownership assistance, the family must execute a statement in which the family agrees to comply with all family obligations under the homeownership option.

The family must comply with the following obligations:

- The family must comply with the terms of the mortgage securing debt incurred to purchase the home, or any refinancing of such debt.
- The family may not convey or transfer ownership of the home, except for purposes of financing, refinancing, or pending settlement of the estate of a deceased family member. Use and occupancy of the home are subject to 24 CFR 982.551 (h) and (i).

- The family must supply information to HACA or HUD as specified in 24 CFR 982.551(b). The family must further supply any information required by HACA or HUD concerning mortgage financing or refinancing, sale or transfer of any interest in the home, or homeownership expenses.
- The family must notify HACA before moving out of the home.
- The family must notify HACA if the family defaults on the mortgage used to purchase the home.
- No family member may have any ownership interest in any other residential property.
- The family must comply with the obligations of a participant family described in 24 CFR 982.551, except for the following provisions which do not apply to assistance under the homeownership option: 24 CFR 982.551(c), (d), (e), (f), (g) and (j).
- Any HQS failed items noted on any inspection after the initial inspection will have to be corrected by the family within 30 calendar days as a condition of continued assistance. Exigent health and safety items will have to be corrected by the family within 24 hours.

#### **15-VII.J. MAXIMUM TERM OF HOMEOWNER ASSISTANCE [24 CFR 982.634]**

Except in the case of a family that qualifies as an elderly or disabled family, other family members (described below) shall not receive homeownership assistance for more than:

- Fifteen years, if the initial mortgage incurred to finance purchase of the home has a term of 20 years or longer; or
- Ten years, in all other cases.

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

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

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

If, during the course of homeownership assistance, the family ceases to qualify as a disabled or elderly family, the maximum term becomes applicable from the date homeownership assistance commenced. However, such a family must be provided at least 6 months of homeownership assistance after the maximum term becomes applicable (provided the family is otherwise eligible to receive homeownership assistance).

If the family has received such assistance for different homes, or from different PHAs, the total of such assistance terms is subject to the maximum term described in this part.

#### **15-VII.K. HOMEOWNERSHIP ASSISTANCE PAYMENTS AND HOMEOWNERSHIP EXPENSES [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, HACA will use the same payment standard schedule, payment standard amounts, and subsidy standards as those described elsewhere in this plan for the Housing Choice Voucher 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.

HACA may pay the homeownership assistance payments directly to the family, or at HACA's discretion, to a lender on behalf of the family. If the assistance payment exceeds the amount due to the lender, HACA must pay the excess directly to the family.

#### HACA Policy

The HACA's housing assistance payment will be paid directly to the lender unless the mortgage company refuses to accept payments from more than one source. In such case, the HACA's housing assistance payment will be paid directly to the family. If the assistance payment exceeds the amount due to the lender, HACA must pay the excess directly to the family.

Homeownership assistance for a family terminates automatically 180 calendar days after the last homeownership assistance payment on behalf of the family. However, a HACA may grant relief from this requirement in those cases where automatic termination would result in extreme hardship for the family.

#### HACA Policy

In order for HACA to consider granting relief from the requirement to automatically terminate homeownership assistance 180 days following HACA's last housing assistance payment on behalf of the family, the family must submit a request to HACA at least 30 days prior to the date of automatic termination. The request must include an explanation of the circumstances that will cause an extreme hardship for the family (e.g., the imminent loss of income or employment) as well as documentation supporting the request. HACA will determine on a case-by-case basis whether to grant relief from the requirement and for what period of time. In no case will HACA postpone termination beyond an additional 90 days.

HACA must adopt policies for determining the amount of homeownership expenses to be allowed by HACA in accordance with HUD requirements.

Homeownership expenses (not including cooperatives) only include amounts allowed by HACA 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;
- HACA allowance for maintenance expenses;
- HACA allowance for costs of major repairs and replacements;
- HACA 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 HACA determines that allowance of such costs as homeownership expenses is needed as a reasonable accommodation so that the homeownership option is readily accessible to and usable by such person;
- Land lease payments where a family does not own fee title to the real property on which the home is located; [see 24 CFR 982.628(b)].
- For a condominium unit, condominium operating charges or maintenance fees assessed by the condominium homeowner association.

Homeownership expenses for a cooperative member may only include amounts allowed by HACA 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;
- HACA allowance for maintenance expenses;
- HACA allowance for costs of major repairs and replacements;
- HACA 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 HACA 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.

#### HACA Policy

HACA will allow the following homeownership expenses:

**Monthly homeownership payment.** This includes principal and interest on initial mortgage debt, taxes and insurance, and any mortgage insurance premium, if applicable.

**Utility allowance.** HACA's utility allowance for the unit, based on the current HCV utility allowance schedule.

**Monthly maintenance allowance.** The monthly maintenance allowance will be the annual maintenance allowance, divided by twelve. The annual maintenance allowance will be set at .5 percent of purchase price of the home.

**Monthly major repair/replacement allowance.** The monthly major repair/replacement allowance will be the annual major repair/replacement allowance divided by 12. The annual major repair/replacement allowance will be set as a percentage of the purchase price of the home, based on the age of the home at the time of purchase and/or reexamination.

Age of Home	% of purchase price allowed
New to 20 years	.5
21 to 30 years	1.0
31 to 40 years	1.5
41 to 50 years	2.0
51 years plus	2.5

**Monthly co-op/condominium assessments.** If applicable, the monthly amount of co-op or condominium association operation and maintenance assessments.

**Monthly principal and interest on debt for improvements.** Principal and interest for major home repair, replacements, or improvements, if applicable.

#### **15-VII.L. PORTABILITY [24 CFR 982.636, 982.637, 982.353(b) and (c), 982.552, 982.553]**

Subject to the restrictions on portability included in HUD regulations and HACA policies, a family may exercise portability if HACA is administering a voucher homeownership program and accepting new homeownership families. HACA may absorb the family into its voucher program, or bill the initial PHA.

The family must attend the briefing and counseling sessions required by HACA. HACA will determine whether the financing for, and the physical condition of the unit, are acceptable. HACA must promptly notify the initial PHA if the family has purchased an eligible unit under the program, or if the family is unable to purchase a home within the maximum time established by HACA.

#### **15-VII.M. MOVING WITH CONTINUED ASSISTANCE [24 CFR 982.637]**

A family receiving homeownership assistance may move with continued tenant-based assistance. The family may move with voucher rental assistance or with voucher homeownership assistance. Continued tenant-based assistance for a new unit cannot begin so long as any family member holds title to the prior home.

##### HACA Policy

For families participating in the homeownership option, requests to move will be approved and/or denied in accordance with HACA policies in Chapter 10.

HACA will not require additional counseling of any families who move with continued assistance.

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

- If HACA has insufficient funding to provide continued assistance.
- In accordance with 24 CFR 982.638, regarding denial or termination of assistance.
- In accordance with HACA's policy regarding number of moves within a 12-month period.

HACA must deny the family permission to move to a new unit with continued voucher rental assistance if:

- The family defaulted on an FHA-insured mortgage; and
- The family fails to demonstrate that the family has conveyed, or will convey, title to the home, as required by HUD, to HUD or HUD's designee; and the family has moved, or will move, from the home within the period established or approved by HUD.

## **15-VII.N. DENIAL OR TERMINATION OF ASSISTANCE [24 CFR 982.638]**

At any time, the PHA may deny or terminate homeownership assistance in accordance with HCV program requirements in 24 CFR 982.552 (Grounds for denial or termination of assistance) or 24 CFR 982.553 (Crime by family members).

The PHA 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.

The PHA must terminate voucher homeownership assistance for any member of a 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.

### HACA Policy

HACA will terminate a family's homeownership assistance if the family violates any of the homeowner obligations listed in Section 1, as well as for any of the reasons listed in Section 2 of form HUD-52649, Statement of Homeowner Obligations Housing Choice Homeownership Voucher Program.

In making its decision to terminate homeownership assistance, HACA will consider alternatives as described in Section 12-II.C and other factors described in Section 12-II.D. Upon consideration of such alternatives and factors, HACA may, on a case-by-case basis, choose not to terminate assistance.

Termination notices will be sent in accordance with the requirements and policies set forth in Section 12-II.F.

## Chapter 16

### PROGRAM ADMINISTRATION

#### INTRODUCTION

This chapter discusses administrative policies and practices that are relevant to the activities covered in this plan. The policies are discussed in seven parts as described below:

Part I: Administrative Fee Reserve. This part describes the PHA's policies with regard to oversight of expenditures from its administrative fee reserve.

Part II: Setting Program Standards and Schedules. This part describes what payment standards are, and how they are updated, as well as how utility allowances are established and revised.

Part III: Informal Reviews and Hearings. This part outlines the requirements and procedures for informal reviews and hearings, and for informal hearings regarding citizenship status.

Part IV: Owner or Family Debts to the PHA. This part describes policies for recovery of monies that the PHA has overpaid on behalf of families, or to owners, and describes the circumstances under which the PHA 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 HACA.

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 HACA will follow.

Part VII: Reporting and Record Keeping for Children with Elevated Blood Lead Level. This part describes the PHA'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 the PHA'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 position (UNP) 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 UNP account from funding provided prior to 2004 may be used for “other housing purposes permitted by state and local law,” in accordance with 24 CFR 982.155(b)(1).

If a PHA has not adequately administered its HCV program, HUD may prohibit use of funds in the UNP 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 UNP account without specific approval.

### HACA Policy

Expenditures from the UNP account will be made in accordance with all applicable federal requirements. HACA’s Board of Commissioners approves expenditures during the budget approval process. Expenditures will not exceed \$100,000 per occurrence without the prior approval of HACA’s Board of Commissioners.

## PART II: SETTING PROGRAM STANDARDS AND SCHEDULES

### 16-II.A. OVERVIEW

Although many of the program's requirements are established centrally by HUD, the HCV program's regulations recognize that some flexibility is required to allow HACA to adapt the program to local conditions. This part discusses how the PHA 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).

#### HACA Policy

Copies of the payment standard and utility allowance schedules are available for review in HACA's offices during normal business hours and on HACA's agency website.

HACA 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 position, is covered in Chapter 6 (see Section 6-I.G.).

### 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 the PHA each month [24 CFR 982.505(a)]. Payment standards are based on fair market rents (FMRs) published annually by HUD. FMRs are set at a percentile within the rent distribution of standard quality rental housing units in each FMR area. For most jurisdictions FMRs are set at the 40th percentile of rents in the market area.

The PHA must establish a payment standard schedule that establishes payment standard amounts for each FMR area within the PHA's jurisdiction, and for each unit size within each of the FMR areas. For each unit size, the PHA may establish a single payment standard amount for the whole FMR area, or may set different payment standards for different parts of the FMR area. Unless HUD grants an exception, the PHA is required to establish a payment standard within a "basic range" established by HUD – between 90 and 110 percent of the published FMR for each unit size.

## Updating Payment Standards

When HUD updates its FMRs, the PHA must update its payment standards if the standards are no longer within the basic range [24 CFR 982.503(b) and PIH 2018-01]. HUD may require the PHA to make further adjustments if it determines that rent burdens for assisted families in HACA's jurisdiction are unacceptably high [24 CFR 982.503(g)].

### HACA Policy

HACA will review the appropriateness of the payment standards on at least an annual basis when the new FMR is published. In addition to ensuring the payment standards are always within the "basic range" HACA will consider one or more of the following factors when determining whether an adjustment should be made to the payment standard schedule:

**Funding Availability:** HACA 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. HACA 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, HACA will consider increasing the payment standard. In evaluating rent burdens, HACA will not include families renting a larger unit than their family unit size.

**Size and Quality of Units Selected:** HACA will review the size and 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:** HACA 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:** HACA will review the availability of units for each unit size, particularly in areas with low concentrations of poor and minority families.

**Lease-up Time and Success Rate:** HACA will consider the percentage of families that are unable to locate suitable housing before the voucher expires and whether families are leaving the jurisdiction to find affordable housing.

**Rents in the Market Area:** HACA will review the rents of units for each unit size in the market area.

### HACA Policy (continued)

At HACA's discretion, and depending on market conditions, changes to payment standard amounts will be effective no later than three months following the effective date of the change in the FMR.

If HACA has already processed reexaminations that will be effective on or after the effective date of the payment standards, HACA will make retroactive adjustments to any such reexaminations if the new payment standard amount is higher than the one used by HACA at the time the reexamination was originally processed.

### **Exception Payment Standards [982.503(c)]**

the PHA must request HUD approval to establish payment standards that are higher than the basic range. At HUD's sole discretion, HUD may approve a payment standard amount that is higher than the basic range for a designated part of the FMR area. HUD may approve an exception payment standard amount (in accordance with program requirements) for all units, or for all units of a given size, leased by program families in the exception area. Any PHA with jurisdiction in the exception area may use the HUD-approved exception payment standard amount. The total population of all HUD-approved exception areas in an FMR area may not include more than 50 percent of the population of the FMR area.

### **Unit-by-Unit Exceptions [24 CFR 982.503(b) , 24 CFR 982.505(d), Notice PIH 2010-26, Notice PIH 2013-03 (HA)]**

Unit-by-unit exceptions to the PHA'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 HACA's payment standard schedule.

When needed as a reasonable accommodation, the PHA 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. The PHA 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. [24 CFR 982.503(b)].

### HACA Policy

A family that requires a reasonable accommodation may request a higher payment standard at any time. The family must document the need for the exception. In order to approve an exception, HACA must determine that:

There is a shortage of affordable units that would be appropriate for the family (excludes families remaining in their currently assisted unit);

The family's TTP would otherwise exceed 40 percent of adjusted monthly income; and

The rent for the unit is reasonable.

### **"Success Rate" Payment Standard Amounts [24 CFR 982.503(e)]**

If a substantial percentage of families have difficulty finding a suitable unit, the PHA may request a "success rate payment standard" that applies to the entire jurisdiction. If approved by HUD, a success rate payment standard allows HACA to set its payment standards at 90-110 percent of a higher FMR (the 50<sup>th</sup>, rather than the 40<sup>th</sup> percentile FMR). To support the request, HACA must demonstrate that during the most recent 6-month period for which information is available:

- Fewer than 75 percent of families who were issued vouchers became participants;
- The PHA had established payment standards for all unit sizes, and for the entire jurisdiction, at 110 percent of the published FMR; and
- The PHA had a policy of allowing voucher holders who made sustained efforts to locate units at least 90 days to search for a unit.

Although HUD approves the success rate payment standard for all unit sizes in the FMR area, the PHA may choose to adjust the payment standard for only some unit sizes in all, or a designated part, of the PHA's jurisdiction within the FMR area.

### **Decreases in the Payment Standard below the Basic Range [24 CFR 982.503(d)]**

A PHA 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 the PHA subsidy. The PHA must maintain a utility allowance schedule for (1) all tenant-paid utilities, (2) the cost of tenant-supplied refrigerators and ranges, and (3) other tenant-paid housing services such as trash collection.

The utility allowance schedule must be determined based on the typical cost of utilities and services paid by energy-conservative households that occupy housing of similar size and type in the same locality. In developing the schedule, the PHA must use normal patterns of consumption for the community as a whole, and current utility rates.

The utility allowance must include the utilities and services that are necessary in the locality to provide housing that complies with housing quality standards. Costs for telephone, cable/satellite television, and internet services are not included in the utility allowance schedule.

In the utility allowance schedule, the PHA must classify utilities and other housing services according to the following general categories: space heating; air conditioning; cooking; water heating; water; sewer; trash collection; other electric; cost of tenant-supplied refrigerator; cost of tenant-supplied range; and other specified housing services.

The cost of each utility and housing service must be stated separately by unit size and type. Chapter 18 of the *HCV Guidebook* provides detailed guidance to the PHA 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.

#### HACA Policy

The majority of housing units in HACA's jurisdiction does not include central air-conditioning and is not wired for tenant-installed air conditioners. Therefore, HACA has not included an allowance for air-conditioning in its utility allowance schedule.

### **Reasonable Accommodation**

HCV program regulations require the PHA to approve a utility allowance amount higher than shown on the PHA's schedule if a higher allowance is needed as a reasonable accommodation for a family member with a disability. For example, if a family member with a disability requires such an accommodation, the PHA will approve an allowance for air-conditioning, even if the PHA has determined that an allowance for air-conditioning generally is not needed (See Chapter 2 for policies regarding the request and approval of reasonable accommodations).

### **Utility Allowance Revisions**

The PHA must review its schedule of utility allowances each year, and must revise the schedule if there has been a change of 10 percent or more in any utility rate since the last time the allowance for that utility was revised.

The PHA 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 in their administrative plans, informal review procedures for applicants, and informal hearing procedures for participants [24 CFR 982.54(d)(12) and (13)].

### **16-III.B. INFORMAL REVIEWS**

Informal reviews are provided for program applicants. An applicant is someone who has applied for admission to the program, but is not yet a participant in the program. Informal reviews are intended to provide a “minimum hearing requirement” [24 CFR 982.554], and need not be as elaborate as the informal hearing requirements. (Federal Register Volume 60, No. 127, p 36490).

#### **Decisions Subject to Informal Review**

HACA must give an applicant the opportunity for an informal review of a decision denying assistance [24 CFR 982.554(a)]. Denial of assistance may include any or all of the following [24 CFR 982.552(a)(2)]:

- Denying listing on the PHA waiting list
- Denying or withdrawing a voucher
- Refusing to enter into a HAP contract or approve a lease
- Refusing to process or provide assistance under portability procedures

Informal reviews are *not* required for the following reasons [24 CFR 982.554(c)]:

- Discretionary administrative determinations by the PHA, including denial or termination of assistance due to insufficient funds as set forth in Section VIII of this chapter.
- General policy issues or class grievances
- A determination of the family unit size under the PHA subsidy standards
- A PHA determination not to approve an extension or suspension of a voucher term
- A PHA determination not to approve an extension or suspension of a voucher term
- A PHA determination not to grant approval of the tenancy
- A PHA determination that the unit is not in compliance with the HQS
- A PHA determination that the unit is not in accordance with the HQS due to family size or composition

### HACA Policy

HACA will only offer an informal review to applicants for whom assistance is being denied. Denial of assistance includes: denying listing on HACA waiting list; denying or withdrawing a voucher except for denial or termination of assistance due to insufficient funds as set forth in Section VIII of this chapter; 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)]**

HACA must give an applicant prompt notice of a decision denying assistance. The notice must contain a brief statement of the reasons for the PHA's decision, and must also state that the applicant may request an informal review of the decision. The notice must describe how to obtain the informal review.

### **Scheduling an Informal Review**

#### HACA Policy

A request for an informal review must be made in writing and delivered to HACA 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 HACA's denial of assistance.

Except as provided in Section 3-III.G, HACA must schedule and send written notice of the informal review within 10 business days of the family's request.

### **Informal Review Procedures [24 CFR 982.554(b)]**

The informal review must be conducted by a person other than the one who made or approved the decision under review, or a subordinate of this person.

The applicant must be provided an opportunity to present written or oral objections to the decision of the PHA.

## **Informal Review Decision [24 CFR 982.554(b)]**

The PHA must notify the applicant of HACA's final decision, including a brief statement of the reasons for the final decision.

### HACA Policy

In rendering a decision, HACA 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. HACA 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, HACA will uphold the decision to deny assistance.

If the facts prove the grounds for denial, and the denial is discretionary, HACA will consider the recommendation of the person conducting the informal review in making the final decision whether to deny assistance.

HACA will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed within 10 business days of the informal review, to the applicant and his or her representative, if any, along with proof of mailing.

If the decision to deny is overturned as a result of the informal review, processing for admission will resume.

### **16-III.C. INFORMAL HEARINGS FOR PARTICIPANTS [24 CFR 982.555, Pub.L. 109-162]**

PHAs must offer an informal hearing for certain HACA determinations relating to the individual circumstances of a participant family. A participant is defined as a family that has been admitted to the PHA's HCV program and is currently assisted in the program. The purpose of the informal hearing is to consider whether the PHA's decisions related to the family's circumstances are in accordance with the law, HUD regulations and PHA policies.

The PHA is not permitted to terminate a family's assistance until the time allowed for the family to request an informal hearing has elapsed, and any requested hearing has been completed. Termination of assistance for a participant may include any or all of the following:

- Refusing to enter into a HAP contract or approve a lease
- Terminating housing assistance payments under an outstanding HAP contract
- Refusing to process or provide assistance under portability procedures

#### **Decisions Subject to Informal Hearing**

Circumstances for which the PHA 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 HACA utility allowance schedule
- A determination of the family unit size under the PHA'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)]
- A determination to deny admission on the basis of ineligible immigration status (see Section 16-III.D).

Circumstances for which an informal hearing is not required are as follows:

- Discretionary administrative determinations by the PHA, including denial or termination of assistance due to insufficient funds as set forth in Section VIII of this chapter.
- General policy issues or class grievances
- Establishment of the PHA schedule of utility allowances for families in the program
- A PHA determination not to approve an extension or suspension of a voucher term
- A PHA determination not to approve a unit or tenancy
- A PHA determination that a unit selected by the applicant is not in compliance with the HQS
- A PHA determination that the unit is not in accordance with HQS because of family size
- A determination by the PHA to exercise or not to exercise any right or remedy against an owner under a HAP contract

#### HACA Policy

HACA will only offer participants the opportunity for an informal hearing when required to by the regulations.

## **Informal Hearing Procedures**

### ***Notice to the Family* [24 CFR 982.555(c)]**

When the PHA makes a decision that is subject to informal hearing procedures, the PHA must inform the family of its right to an informal hearing at the same time that it informs the family of the decision.

For decisions related to the family's annual or adjusted income, the determination of the appropriate utility allowance, and the determination of the family unit size, the PHA must notify the family that they may ask for an explanation of the basis of the determination, and that if they do not agree with the decision, they may request an informal hearing on the decision.

For decisions related to the termination of the family's assistance, or the denial of a family's request for an exception to the PHA'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.

### **HACA Policy**

In cases where HACA 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 HACA.

- 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 HACA's decision.

- A statement that if the family does not agree with the decision the family may request an informal hearing of the decision.

- A deadline for the family to request the informal hearing.

- To whom the hearing request should be addressed.

- A copy of HACA's hearing procedures.

### ***Scheduling an Informal Hearing [24 CFR 982.555(d)]***

When an informal hearing is required, the PHA must proceed with the hearing in a reasonably expeditious manner upon the request of the family.

#### **HACA Policy**

A request for an informal hearing must be made in writing and delivered to HACA 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 HACA's decision or notice to terminate assistance.

HACA must schedule and send written notice of the informal hearing to the family within 10 business days of the family's request.

The family may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family. Requests to reschedule a hearing must be made orally or in writing prior to the hearing date. At its discretion, HACA 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 HACA within 24 hours of the scheduled hearing date, excluding weekends and holidays. HACA 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.

***Pre-Hearing Right to Discovery [24 CFR 982.555(e)(2)]***

Participants and the PHA 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 the PHA does not make the document available for examination on request of the family, the PHA may not rely on the document at the hearing.

The PHA hearing procedures may provide that the PHA must be given the opportunity to examine at the PHA offices before the hearing, any family documents that are directly relevant to the hearing. The PHA must be allowed to copy any such document at the PHA's expense. If the family does not make the document available for examination on request of the PHA, the family may not rely on the document at the hearing.

For the purpose of informal hearings, *documents* include records and regulations.

**HACA Policy**

The family will be allowed to copy any documents related to the hearing at a cost of \$.25 per page. The family must request discovery of HACA documents no later than 12:00 p.m. on the business day prior to the scheduled hearing date

HACA must be given an opportunity to examine at HACA offices before the hearing any family documents that are directly relevant to the hearing. Whenever a participant requests an informal hearing, HACA will automatically mail a letter to the participant requesting a copy of all documents that the participant intends to present or utilize at the hearing. The participant must make the documents available no later than 12:00 pm on the business day prior to the scheduled hearing date.

***Participant's Right to Bring Counsel [24 CFR 982.555(e)(3)]***

At its own expense, the family may be represented by a lawyer or other representative at the informal hearing.

***Informal Hearing Officer [24 CFR 982.555(e)(4)]***

Informal hearings will be conducted by a person or persons approved by the PHA, other than the person who made or approved the decision or a subordinate of the person who made or approved the decision.

**HACA Policy**

HACA has designated the following to serve as hearing officers:

- Deputy Director
- Senior Administrative Analyst
- Administrative Analyst
- Managerial Staff of other Bay Area Housing Authorities as needed and available
- Other qualified person (as determined by HACA), who has knowledge of HACA's Section 8 Programs.

### ***Attendance at the Informal Hearing***

#### **HACA Policy**

Hearings may be attended by a hearing officer and the following applicable persons:

A HACA representative(s) and any witnesses for HACA

The participant and any witnesses for the participant

The participant's counsel or other representative

Any other person approved by HACA as a reasonable accommodation for a person with a disability

### ***Recording of the Hearing***

#### **HACA Policy**

HACA will provide an audio recording of the hearing to the participant with the "Notice of Final Decision". Generally, HACA will not provide a transcript of the audio recorded hearing.

### ***Conduct at Hearings***

The person who conducts the hearing may regulate the conduct of the hearing in accordance with the PHA's hearing procedures [24 CFR 982.555(4)(ii)].

#### **HACA Policy**

The hearing officer is responsible to manage the order of business and to ensure that hearings are conducted in a professional and businesslike manner. Attendees are expected to comply with all hearing procedures established by the hearing officer and guidelines for conduct. Any person demonstrating disruptive, abusive or otherwise inappropriate behavior will be excused from the hearing at the discretion of the hearing officer.

### ***Evidence [24 CFR 982.555(e)(5)]***

The PHA and the family each must be given the opportunity to present evidence and question any witnesses. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

#### **HACA Policy**

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, the participant, HACA staff, other involved parties, etc.

**Documentary evidence:** a writing which is relevant to the case, for example, a letter written to HACA, an investigative report written by HACA's Program Integrity Officer or staff, information or documentation from other government or enforcement agencies, etc. Writings include all forms of recorded communication or representation, including but not limited to letters, words, social media, pictures, sounds, videotapes or symbols or combinations thereof, etc.

**Demonstrative evidence:** Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a model, a chart or other diagram.

**Real evidence:** A tangible item relating directly to the case.

*Hearsay Evidence* is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter. Even though evidence, including hearsay, is generally admissible, hearsay evidence alone cannot be used as the sole basis for the hearing officer's decision.

If either HACA or the family fail to comply with the discovery requirements contained in this chapter, the hearing officer may choose to admit such evidence.

### ***Procedures for Rehearing or Further Hearing***

#### **HACA Policy**

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 HACA will take effect and another hearing will not be granted.

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

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

#### **HACA Policy**

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

**HACA Notice to the Family:** The hearing officer will determine if the reasons for HACA's decision are factually stated in the Notice of Termination of Section 8 Assistance.

**Discovery:** The hearing officer will determine if HACA and the family were given the opportunity to examine any relevant documents in accordance with HACA policy.

**HACA Evidence to Support HACA 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 HACA's decision.

**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 HACA policies. If the grounds for termination are not specified in the regulations or are not in compliance with HACA policies, then the decision of HACA will be overturned.

The hearing officer will issue a written decision to HACA no later than 30 business days after the hearing unless extended by the hearing officer. The Hearing Officer's Decision will contain the following information:

**Hearing information:**

Name, address, and voucher number of the participant;

Date of the hearing;

Name of the hearing officer;

Name of participant attendee(s);

Name of HACA representative(s); and

Name of family representative(s) (if any).

**Background:** A brief, impartial statement of the reason for the hearing.

**Documents and Other Physical Evidence:** The hearing officer will determine if HACA and the participant were given the timely opportunity to review any relevant documents and other physical evidence.

The hearing officer will list all of the documents and other physical evidence used in the Informal Hearing.

**Ground(s) for Termination Cited in HACA's Notice of Termination:** The hearing officer will list the ground(s) for termination cited in HACA's Notice of Termination and will summarize: validity as a cause for termination, specific HACA allegation(s) and evidence supporting the ground(s), participant's evidence and rebuttal(s), HACA's rebuttal(s) of participant's evidence and rebuttal(s), and evaluation of the proof of HACA's ground(s). The hearing officer will determine whether to uphold or overturn the ground(s).

**Findings of Fact:** The hearing officer will include an evaluation of the proof of HACA's ground(s), 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.

**Decision:** The hearing officer will render a decision derived from the facts that were found to be true by a preponderance of the evidence. The decision will result in a determination of whether these facts uphold HACA's decision.

The hearing decision will include a statement of whether HACA's decision is upheld or overturned. The hearing officer will submit the hearing decision to HACA's Executive Director for acceptance or rejection.

HACA's Executive Director has the final authority on whether to accept or reject the hearing officer's decision.

If the hearing officer's decision is upheld, HACA may proceed with termination. If the hearing officer's decision is overturned, the Executive Director will specify the next course of action.

**Notice of Final Decision:** HACA will mail a "Notice of Final Decision" including the Hearing Officer's Decision and an audio recording of the hearing to the participant. This Notice will be sent by first-class mail, postage pre-paid with an affidavit of mailing enclosed. The participant will be mailed the original "Notice of Final Decision" and a copy of the proof of mailing. A copy of the "Notice of Final Decision" along with the original proof mailing will be maintained in HACA's file.

***Effect of Decision* [24 CFR 982.555(e)(6)(f)]**

The PHA is not bound by the decision of the hearing officer for matters in which HACA is not required to provide an opportunity for a hearing, decisions that exceed the authority of the hearing officer, decisions that conflict with or contradict HUD regulations, requirements, or are otherwise contrary to federal, state or local laws.

If the PHA determines it is not bound by the hearing officer's decision in accordance with HUD regulations, the PHA must promptly notify the family of the determination and the reason for the determination.

#### **16-III.D. HEARING 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 a HACA hearing is pending, but assistance to an applicant may be delayed pending the completion of the informal hearing.

A decision against a family member, issued in accordance with the USCIS appeal process or the PHA informal hearing process, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

#### **Notice of Denial or Termination of Assistance [24 CFR 5.514(d)]**

The notice of denial or termination of assistance for noncitizens must advise the family:

- That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance.
- The family may be eligible for proration of assistance.
- In the case of a participant, the criteria and procedures for obtaining relief under the provisions for preservation of families [24 CFR 5.514 and 5.518].
- That the family has a right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or explanation in support of the appeal.
- That the family has a right to request an informal hearing with HACA either upon completion of the USCIS appeal or in lieu of the USCIS appeal.
- For applicants, assistance may not be delayed until the conclusion of the USCIS appeal process, but assistance may be delayed during the period of the informal hearing process.

## **USCIS Appeal Process [24 CFR 5.514(e)]**

When the PHA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, the PHA must notify the family of the results of the USCIS verification. The family will have 30 days from the date of the notification to request an appeal of the USCIS results. The request for appeal must be made by the family in writing directly to the USCIS. The family must provide the PHA with a copy of the written request for appeal and the proof of mailing.

### **HACA Policy**

HACA 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 HACA with a copy of the written request for appeal and proof of mailing within 10 business days of sending the request to the USCIS.

The family must forward to the designated USCIS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the USCIS document verification request (used to process the secondary request) or such other form specified by the USCIS, and a letter indicating that the family is requesting an appeal of the USCIS immigration status verification results.

The USCIS will notify the family, with a copy to the PHA, of its decision. When the USCIS notifies the PHA of the decision, the PHA must notify the family of its right to request an informal hearing.

### **HACA Policy**

HACA will send written notice to the family of its right to request an informal hearing within 10 business days of receiving notice of the USCIS decision regarding the family's immigration status.

## **Informal Hearing Procedures for Applicants [24 CFR 5.514(f)]**

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that the PHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of HACA notice of denial, or within 30 days of receipt of the USCIS appeal decision.

The informal hearing procedures for applicant families are described below.

### ***Informal Hearing Officer***

The PHA 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 the PHA 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.

#### **HACA Policy**

The family will be allowed to copy any documents related to the hearing at a cost of \$.25 per page. The family must request discovery of HACA documents no later than 12:00 p.m. on the business day prior to the hearing.

The family must be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

The family must also be provided the opportunity to refute evidence relied upon by the PHA, and to confront and cross-examine all witnesses on whose testimony or information the PHA 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, HACA will provide competent interpretation services for the hearing, free of charge.

### ***Recording of the Hearing***

The family is entitled to have the hearing recorded by audiotape. The PHA may, but is not required to provide a transcript of the hearing.

#### **HACA Policy**

HACA will not provide a transcript of an audio taped hearing.

### ***Hearing Decision***

The PHA must provide the family with a written final decision, based solely on the facts presented at the hearing, within 14 calendar days of the date of the informal hearing. The decision must state the basis for the decision.

**Informal Hearing Procedures for Residents [24 CFR 5.514(f)]**

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that the PHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the PHA 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)]**

HACA must retain for a minimum of 5 years the following documents that may have been submitted to HACA by the family, or provided to HACA as part of the USCIS appeal or HACA 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 HACA**

### **16-IV.A. OVERVIEW**

The PHA is required to include in the administrative plan, policies concerning repayment by a family of amounts owed to the PHA [24 CFR 982.54]. This part describes the PHA's policies for recovery of monies owed to the PHA by families or owners.

#### HACA Policy

When an action or inaction of an owner or participant results in the overpayment of housing assistance, HACA holds the owner or participant liable to return any overpayments to HACA.

HACA will enter into repayment agreements in accordance with the policies contained in this part as a means to recover overpayments.

When an owner or participant refuses to repay monies owed to HACA, HACA will utilize other available collection alternatives including, but not limited to, the following:

- Collection agencies

- Small claims court

- Civil law suit

## **16-IV.B. REPAYMENT POLICY**

### **Owner Debts to the PHA**

#### HACA Policy

Any amount due to HACA by an owner must be repaid by the owner. HACA will notify the owner in writing that it will reduce the owner's future HAP payments effective with the next HAP payment. HACA may deduct the amount of the overpayment from any amounts due the owner (including amounts due under any other Section 8 assistance contract).

If the owner is not entitled to future HAP payments HACA may, in its sole discretion, offer to enter into a repayment agreement on terms prescribed by HACA.

If the owner refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, HACA will pursue legal action for collection of same and may ban the owner from future participation in HACA Programs.

### **Family Debts to the PHA**

#### HACA Policy

Any amount owed to HACA by a family must be repaid by the family. If the family is unable to repay the debt within 30 days, HACA may offer to enter into a repayment agreement in accordance with the policies below.

If the family refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, HACA will terminate assistance in accordance with the policies in Chapter 12 and pursue other modes of collection.

### **Repayment Agreement [24 CFR 792.103]**

The term *repayment agreement* refers to a formal written document signed by a participant or owner and provided to the PHA in which the participant 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***

#### HACA Policy

Before executing a repayment agreement with a family, HACA will generally require a down payment of 5 percent of the total amount owed. If the family can provide evidence satisfactory to HACA that a down payment of 5 percent would impose an undue hardship, HACA may, in its sole discretion, require a lesser percentage or waive the requirement.

## ***Payment Thresholds***

Notice PIH 2017-12 recommends that the total amount that a family must pay each month—the family’s monthly share of rent plus the monthly debt repayment amount—should not exceed 40 percent of the family’s monthly adjusted income. However, a family may already be paying 40 per cent or more of its monthly adjusted income in rent. Moreover, Notice PIH 2017-12 acknowledges that PHAs have the discretion to establish their own “thresholds and policies” for repayment agreements with families [24 CFR 982.552(c)(1)(vii)].

### HACA Policy

#### Total Family Debts to HACA

<b>Amount Owed</b>	<b>Repayment Term</b>
≤ \$500	6 months
\$501 - \$1,000	1 year
\$1,001 - \$2,500	2 years
\$2,501 - \$5,000	3 years
\$5,001 - \$7,500	4 years
\$7,501 - \$10,000	5 years

If the amount owed is greater than \$10,000, a repayment agreement may only be entered into with the Executive Director’s written approval.

If a family can provide evidence satisfactory to HACA that the threshold applicable to the family’s debt would impose an undue hardship, HACA may, in its sole discretion, determine that a lower monthly payment amount is reasonable. In making its determination, HACA will consider all relevant information, including the following:

The amount owed by the family to HACA

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 rent share, as calculated under 24 CFR 982.515

The family’s history of meeting its financial responsibilities

## ***Execution of the Agreement***

### HACA Policy

Any repayment agreement between HACA and a family must be signed and dated by HACA and by the head of household.

## ***Due Dates***

### HACA Policy

All payments are due by the close of business on the 7<sup>th</sup> day of the month. If the 7<sup>th</sup> does not fall on a business day, the due date is the close of business on the first business day after the 7<sup>th</sup>.

### ***Late or Missed Payments***

#### **HACA Policy**

If a payment is not received by the end of the business day on the due date, the repayment agreement will be considered in default and HACA will terminate assistance upon written notification to the family.

Approval for excused/late or missed payments will be considered based on the following mitigating circumstances:

- Extenuating circumstances beyond the control of the family that prevent it from complying with the terms of the repayment agreement (for example, a death or medical emergency in the immediate family or a serious accident or natural disaster).
- When the family claims a hardship. A hardship exists in the following circumstances:
  - When the family has lost eligibility for or is awaiting an eligibility determination for a Federal, State or local assistance program.
  - When the income of the family has decreased significantly (at HACA's sole discretion upon the approval of the Unit Manager) because of changed circumstances, including loss of employment; or temporary disability.

The following remedies for default may be employed at the sole discretion of HACA:

- HACA may suspend payments for a specific term thereby extending the repayment agreement term.
- HACA may reduce the amount of monthly payment and extend the repayment agreement term.

A payment received by personal check that is returned for insufficient funds (NSF) will be considered a non- payment and the participant will incur a charge of \$20 for processing costs. The participant will be required to make future payments for the term of the repayment agreement with certified checks or money orders.

### ***No Offer of Repayment Agreement***

#### **HACA Policy**

HACA will generally not enter into a repayment agreement with a family if there is already a repayment agreement in place with the family, or if the amount owed by the family exceeds the federal or state threshold for criminal prosecution.

### ***Repayment Agreements Involving Improper Payments***

Notice PIH 2017-12 requires certain provisions to be included in any repayment agreement involving amounts owed by a family because the family underreported or failed to report income:

- A reference to the items in the family briefing packet that state the family's obligation to provide true and complete information at every reexamination and the grounds on which the PHA may terminate assistance because of a family's action or failure to act
- A statement clarifying that each month the family not only must pay to the PHA 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 EIGHT (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 the PHA in several ways.

- High-performing PHAs can be given a competitive advantage under notices of funding availability [24 CFR 985.103].
- PHAs with deficiencies on one or more indicators are required to correct the deficiencies and report to HUD [24 CFR 985.106].
- PHAs with an overall rating of “troubled” are subject to additional HUD oversight, including on-site reviews by HUD staff, a requirement to develop a corrective action plan, and monitoring to ensure the successful implementation of the corrective action plan. In addition, PHAs that are designated “troubled” may not use any part of the administrative fee reserve for other housing purposes [24 CFR 985.107].
- HUD may determine that a PHA's failure to correct identified SEMAP deficiencies or to prepare and implement a corrective action plan required by HUD constitutes a default under the ACC [24 CFR 985.109].

## **16-V.B. SEMAP CERTIFICATION [24 CFR 985.101]**

PHAs 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 board resolution and signed by the PHA executive director. If the PHA is a unit of local government or a state, a resolution approving the certification is not required, and the certification must be executed by the Section 8 program director.

PHAs with less than 250 voucher units are only required to be assessed every other PHA fiscal year. HUD will assess such PHAs annually if the PHA 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 the PHA’s SEMAP certification, HUD will rate the PHA’s performance under each SEMAP indicator in accordance with program requirements.

### **HUD Verification Method**

Several of the SEMAP indicators are scored based on a review of a quality control sample selected for this purpose. The PHA or the Independent Auditor must select an unbiased sample that provides an adequate representation of the types of information to be assessed, in accordance with SEMAP requirements [24 CFR 985.2].

If the HUD verification method for the indicator relies on data in the Form-50058 module (formerly known as MTCS) in the PIH Information Center (PIC), and HUD determines that those data are insufficient to verify the PHA's certification on the indicator due to the PHA'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 be rated under SEMAP indicators 1-7.

SEMAP Indicators
<b>Indicator 1: Selection from the waiting list</b> <b>Maximum Score: 15</b> <ul style="list-style-type: none"><li>• This indicator shows whether the PHA has written policies in its administrative plan for selecting applicants from the waiting list and whether the PHA follows these policies when selecting applicants for admission from the waiting list.</li><li>• Points are based on the percent of families that are selected from the waiting list in accordance with the PHA's written policies, according to the PHA's quality control sample.</li></ul>
<b>Indicator 2: Rent reasonableness</b> <b>Maximum Score: 20</b> <ul style="list-style-type: none"><li>• This indicator shows whether the PHA has and implements a reasonable written method to determine and document for each unit leased that the rent to owner is reasonable based on current rents for comparable unassisted units</li><li>• Points are based on the percent of units for which the PHA follows its written method to determine reasonable rent and has documented its determination that the rent to owner is reasonable, according to the PHA's quality control sample.</li></ul>
<b>Indicator 3: Determination of adjusted income</b> <b>Maximum Score: 20</b> <ul style="list-style-type: none"><li>• This indicator measures whether the PHA verifies and correctly determines adjusted income for each assisted family, and where applicable, uses the appropriate utility allowances for the unit leased in determining the gross rent.</li><li>• Points are based on the percent of files that are calculated and verified correctly, according to the PHA's quality control sample.</li></ul>
<b>Indicator 4: Utility allowance schedule</b> <b>Maximum Score: 5</b> <ul style="list-style-type: none"><li>• This indicator shows whether the PHA maintains an up-to-date utility allowance schedule.</li><li>• Points are based on whether the PHA has reviewed the utility allowance schedule and adjusted it when required, according to the PHA's certification.</li></ul>

**Indicator 5: HQS quality control inspections****Maximum Score: 5**

- This indicator shows whether a PHA supervisor reinspects a sample of units under contract during the PHA fiscal year, which meets the minimum sample size requirements for quality control of HQS inspections.
- Points are based on whether the required quality control reinspections were completed, according to the PHA's certification.

**Indicator 6: HQS enforcement****Maximum Score: 10**

- This indicator shows whether, following each HQS inspection of a unit under contract where the unit fails to meet HQS, any cited life-threatening deficiencies are corrected within 24 hours from the inspection and all other deficiencies are corrected within no more than 30 calendar days from the inspection or any PHA-approved extension.
- Points are based on whether the PHA corrects all HQS deficiencies in accordance with required time frames, according to the PHA's certification.

**Indicator 7: Expanding housing opportunities****Maximum Points: 5**

- Only applies to PHAs with jurisdiction in metropolitan FMR areas.
- This indicator shows whether the PHA has adopted and implemented a written policy to encourage participation by owners of units located outside areas of poverty or minority concentration; informs voucher holders of the full range of areas where they may lease units both inside and outside the PHA's jurisdiction; and supplies a list of landlords or other parties who are willing to lease units or help families find units, including units outside areas of poverty or minority concentration.
- Points are based on whether the PHA has adopted and implemented written policies in accordance with SEMAP requirements, according to 's certification.

**Indicator 8: FMR limit and payment standards****Maximum Points: 5 points**

- This indicator shows whether the PHA has adopted a payment standard schedule that establishes payment standard amounts by unit size for each FMR area in the PHA's jurisdiction, that are within the basic range of 90 to 110 percent of the published FMR.
- Points are based on whether the PHA has appropriately adopted a payment standard schedule(s), according to the PHA's certification.

**Indicator 9: Annual reexaminations****Maximum Points: 10**

- This indicator shows whether the PHA completes a reexamination for each participating family at least every 12 months.
- Points are based on the percent of reexaminations that are more than 2 months overdue, according to data from PIC.

**Indicator 10: Correct tenant rent calculations****Maximum Points: 5**

- This indicator shows whether the PHA correctly calculates the family's share of the rent to owner.
- Points are based on the percent of correct calculations of family share of the rent, according to data from PIC.

**Indicator 11: Pre-contract HQS inspections****Maximum Points: 5**

- This indicator shows whether newly leased units pass HQS inspection on or before the effective date of the assisted lease and HAP contract.
- Points are based on the percent of newly leased units that passed HQS inspection prior to the effective date of the lease and HAP contract, according to data from PIC.

**Indicator 12: Annual HQS inspections****Maximum Points: 10**

- This indicator shows whether the PHA inspects each unit under contract at least annually.
- Points are based on the percent of annual HQS inspections of units under contract that are more than 2 months overdue, according to data from PIC.

**Indicator 13: Lease-up****Maximum Points: 20 points**

- This indicator shows whether the PHA enters HAP contracts for at least 98 percent of the number of the PHA's baseline voucher units in the ACC for the calendar year ending on or before the PHA's fiscal year or whether the PHA has expended at least 98 percent of its allocated budget authority for the same calendar year. The PHA 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.

**Indicator 14: Family self-sufficiency (FSS) enrollment and escrow account balances****Maximum Points: 10**

- Only applies to PHAs with mandatory FSS programs.
- This indicator shows whether the PHA has enrolled families in the FSS program as required, and measures the percent of current FSS participants that have had increases in earned income which resulted in escrow account balances.
- Points are based on the percent of mandatory FSS slots that are filled and the percent of families with escrow account balances, according to data from PIC.

**Success Rate of Voucher Holders****Maximum Points: 5**

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

**Deconcentration Bonus Indicator****Maximum Points: 5**

- Submission of data for this indicator is mandatory for a PHA using one or more payment standard amount(s) that exceed(s) 100 percent of the published FMR set at the 50 percentile rent, starting with the second full PHA fiscal year following initial use of payment standard amounts based on the FMRs set at the 50<sup>th</sup> percentile.
- Additional points are available to PHAs that have jurisdiction in metropolitan FMR areas and that choose to submit the required data.
- Points are based on whether the data that is submitted meets the requirements for bonus points.

## **PART VI: RECORD KEEPING**

### **16-VI.A. OVERVIEW**

the PHA must maintain complete and accurate accounts and other records for the program in accordance with HUD requirements, in a manner that permits a speedy and effective audit. All such records must be made available to HUD or the Comptroller General of the United States upon request.

In addition, the PHA must ensure that all applicant and participant files are maintained in a way that protects an individual's privacy rights.

### **16-VI.B. RECORD RETENTION [24 CFR 982.158]**

During the term of each assisted lease, and for at least three years thereafter, HACA must keep:

- A copy of the executed lease;
- The HAP contract; and
- The application from the family.

In addition, HACA must keep the following records for at least three years:

- Records that provide income, racial, ethnic, gender, and disability status data on program applicants and participants;
- An application from each ineligible family and notice that the applicant is not eligible;
- HUD-required reports;
- Unit inspection reports;
- Lead-based paint records as required by 24 CFR 35, Subpart B.
- Accounts and other records supporting HACA budget and financial statements for the program;
- Records to document the basis for HACA's determination that rent to owner is a reasonable rent (initially and during the term of a HAP contract);
- Other records specified by HUD.

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.

The PHA must keep confidential records of all emergency transfers requested by victims of domestic violence, dating violence, sexual assault, and stalking under the PHA'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. RECORDS MANAGEMENT**

PHAs must maintain applicant and participant files and information in accordance with the regulatory requirements described below.

### **HACA Policy**

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

HACA staff will not discuss personal family information unless there is a business reason to do so. Inappropriate discussion of family information or improper disclosure of family information by staff will result in disciplinary action.

### **Privacy Act Requirements [24 CFR 5.212 and Form-9886]**

The collection, maintenance, use, and dissemination of social security numbers (SSN), employer identification numbers (EIN), any information derived from these numbers, and income information of applicants and participants must be conducted, to the extent applicable, in compliance with the Privacy Act of 1974, and all other provisions of Federal, State, and local law.

Applicants and participants, including all adults in the household, are required to sign a consent form, HUD-9886, Authorization for Release of Information. This form incorporates the Federal Privacy Act Statement and describes how the information collected using the form may be used, and under what conditions HUD or HACA may release the information collected.

### **Upfront Income Verification (UIV) Records**

PHAs that access UIV data through HUD's Enterprise Income Verification (EIV) system are required to adopt and follow specific security procedures to ensure that all EIV data is protected in accordance with federal laws, regardless of the media on which the data is recorded (e.g. electronic, paper). These requirements are contained in the HUD issued document, *Enterprise Income Verification (EIV) System, Security Procedures for Upfront Income Verification data*.

### **HACA Policy**

HACA has adopted and implemented EIV security procedures required by HUD.

## **Criminal Records**

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

The PHA must establish and implement a system of records management that ensures that any criminal record received by the PHA from a law enforcement agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the PHA action without institution of a challenge or final disposition of any such litigation [24 CFR 5.903(g)].

The PHA must establish and implement a system of records management that ensures that any sex offender registration information received by the PHA from a State or local agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the PHA 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 HACA other than under 24 CFR 5.905.

## **Medical/Disability Records**

PHAs are not permitted to inquire about the nature or extent of a person's disability. HACA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If HACA receives a verification document that provides such information, HACA should not place this information in the tenant file. HACA 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**

The PHA 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 to which the PHA is subject.

### **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.

#### HACA Policy

The owner must provide HACA with a CC of the notifications it provides to the public health department, the HUD field office, and the OLHCHH.

HACA will monitor the owner's compliance with all reporting requirements.

### **16-VII.C. DATA COLLECTION AND RECORD KEEPING [24 CFR 35.1225(f)]**

At least quarterly, the PHA 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 the PHA obtains names and addresses of elevated blood lead level children from the public health department(s), the PHA 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, HACA must carry out the notification, verification, and hazard reduction requirements discussed in Chapter 8, and the reporting requirement discussed above.

At least quarterly, the PHA 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.

#### HACA Policy

The public health department has stated that it **does 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. Therefore, HACA is not providing such a report.

## **PART VIII: DETERMINATION OF INSUFFICIENT FUNDING**

### **16-VIII.A. OVERVIEW**

The HCV regulations allow PHAs to deny families permission to move and to terminate Housing Assistance Payments (HAP) contracts if funding under the consolidated ACC is insufficient to support continued assistance [24 CFR 982.354(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 a PHA's ability to issue vouchers to families on the waiting list. This part discusses the methodology the PHA will use to determine whether or not the PHA has sufficient funding to issue vouchers, approve moves, and to continue subsidizing all families currently under a HAP contract.

### **16-VIII.B. METHODOLOGY**

#### HACA Policy

HACA will determine whether there is adequate funding to issue vouchers, approve moves to higher cost units and areas, and continue subsidizing all current participants, in accordance with HUD requirements, by comparing HACA's annual budget authority to the annual total HAP needs on a monthly basis. The total HAP needs for the calendar year, or other funding period designated by HUD, as applicable, will be projected by establishing the actual HAP costs year to date. To that figure, HACA will add anticipated HAP expenditures for the remainder of the calendar year, or other funding period designated by HUD, as applicable. HACA may not include projected costs for vouchers that have been issued to families from the waiting list but not yet leased as part of this analysis when denying portability moves (PIH 2008-43).

## **PART IX: VIOLENCE AGAINST WOMEN ACT (VAWA): NOTIFICATION, DOCUMENTATION, CONFIDENTIALITY**

### **16-IX.A. OVERVIEW**

The Violence against Women Act of 2013 (VAWA) provides special protections for victims of domestic violence, dating violence, sexual assault, and stalking who are applying for or receiving assistance under the housing choice voucher (HCV) program. If 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 Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members’ lease and occupancy rights are allowed to remain intact.
- The term *dating violence* means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - The length of the relationship
  - The type of relationship
  - The frequency of interaction between the persons involved in the relationship
- The term *domestic violence* includes felony or misdemeanor crimes of violence committed by a current or former spouse 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 person, or an individual to whom that person stands in the position or place of a parent; or
  - Any other person, 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 his or her safety or the safety of others, or suffer substantial emotional distress.

## **16-IX.C. NOTIFICATION [24 CFR 5.2005(a)]**

### **Notification to Public**

The PHA adopts the following policy to help ensure that all actual and potential beneficiaries of its HCV program are aware of their rights under VAWA.

#### HACA Policy

HACA will post the following information regarding VAWA in its offices and on its website. It will also make the information readily available to anyone who requests it.

A 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), Notice PIH 2017-08]**

PHAs are required to inform applicants and program 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.

### HACA Policy

HACA will provide applicants with information about VAWA no later than at the time they are provided assistance or admitted (see section 5-I.B). HACA will also include information about VAWA in all notices of denial of assistance (see section 3-III.G).

HACA 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 16-2.

The PHA is not limited to providing VAWA information at the times specified in the above policy. If the PHA 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 the PHA make alternative delivery arrangements that will not put the victim at risk.

### HACA Policy

Whenever an individual staff member 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 by having the victim come to HACA's office, making reasonable accommodations as necessary. For example, HACA may decide not to send mail regarding VAWA protections to the victim's unit if HACA believes the perpetrator may have access to the victim's mail, unless requested by the victim.

When discussing VAWA with the victim, HACA 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.

### HACA Policy

HACA will notify owners and managers about their rights and obligations under VAWA when they begin their participation in the program.

HACA will provide owners and managers with the link to its website and indicate that Exhibit 16-5 and a copy of form HUD-5382, Certification of Domestic Violence, Dating Violence, and Stalking and Alternate Documentation, are available on the website.

## **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, sexual assault, stalking, 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. The PHA may extend this time period at its discretion. [24 CFR 5.2007(a)]

The individual may satisfy the PHA'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.

The PHA 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].

### HACA Policy

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.

HACA may, in its discretion, extend the deadline for 10 business days. In determining whether to extend the deadline, HACA 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 HACA will be in writing.

Once the victim provides documentation, HACA will acknowledge receipt of the documentation in a timely manner.

In cases where HACA does not request documentation (e.g. HACA was aware of the abuse and encouraged the victim to request VAWA protections), HACA will document,

in a confidential manner, the individual's verbal statement or other corroborating evidence.

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

#### HACA Policy

If presented with conflicting certification documents from members of the same household, HACA 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, HACA will provide contact information for local domestic violence resources. In such cases, applicants or tenants will be given 30 calendar days from the date of the request to provide such documentation.

If HACA does not receive third-party documentation within the required timeframe (and any extensions) HACA 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, HACA will hold separate hearings for the applicants or tenants.

### **Discretion to Require No Formal Documentation [24 CFR 5.2007(d)]**

The PHA 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.

#### HACA Policy

If HACA accepts an individual's statement or other corroborating evidence of domestic violence, dating violence, sexual assault, or stalking, HACA 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 the PHA may allow, the PHA may deny relief for protection under VAWA.

**16-IX.E. CONFIDENTIALITY [24 CFR 5.2007(b)(4)]**

All information provided to the PHA regarding domestic violence, dating violence, sexual assault, or stalking, including the fact that an individual is a victim of such violence, sexual assault, or stalking, must be retained in confidence. This means that the PHA (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.

**HACA Policy**

If disclosure is required for use in an eviction proceeding or is otherwise required by applicable law, HACA will inform the victim before disclosure occurs so that safety risks can be identified and addressed.

<b>EXHIBIT 16-1: NOTICE OF OCCUPANCY RIGHTS UNDER THE VIOLENCE AGAINST WOMEN ACT, FORM HUD-5380</b>
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**Housing Authority of the County of Alameda**

**Notice of Occupancy Rights under the Violence Against Women Act<sup>1</sup>**

**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.<sup>2</sup> The U.S. Department of Housing and Urban Development (HUD) is the Federal agency that oversees that the Housing Authority of the County of Alameda (HACA) 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 Section 8 Housing Choice Voucher, Project-Based Voucher, Rental Assistance Demonstration, or Moderate Rehabilitation programs, 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.

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<sup>1</sup> Despite the name of this law, VAWA protection is available regardless of sex, gender identity, or sexual orientation.

<sup>2</sup> 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.

## **Protections for Tenants**

If you are receiving assistance under the Section 8 Housing Choice Voucher, Project-Based Voucher, Rental Assistance Demonstration, or Moderate Rehabilitation programs, 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 Section 8 Housing Choice Voucher, Project-Based Voucher, Rental Assistance Demonstration, or Moderate Rehabilitation programs 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**

Your landlord 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 your landlord chooses to remove the abuser or perpetrator, the landlord 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 rental assistance program, the landlord 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, the landlord must follow Federal, State, and local eviction procedures. In order to divide a lease, the landlord 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, HACA 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, HACA 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, HACA 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 HACA does not already have documentation that you are a victim of domestic violence, dating violence, sexual assault, or stalking, HACA may ask you for such documentation, as described in the documentation section below.

**2. You expressly request the emergency transfer.** HACA 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.

HACA 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.

HACA's emergency transfer plan provides further information on emergency transfers, and HACA 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**

HACA 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 HACA must be in writing, and HACA 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. HACA 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 HACA as documentation. It is your choice which of the following to submit if HACA 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 HACA 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 he or she believes that the incident or incidents of domestic violence, dating violence, sexual assault, or stalking are grounds for protection.

- Any other statement or evidence that HACA has agreed to accept.

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

If HACA 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), HACA 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, HACA does not have to provide you with the protections contained in this notice.

### **Confidentiality**

HACA 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.

HACA must not allow any individual administering assistance or other services on behalf of HACA (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.

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

- You give written permission to HACA to release the information on a time limited basis.
- HACA 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 its programs.
- A law requires HACA or your landlord to release the information.

VAWA does not limit HACA'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, HACA 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 HACA 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 HACA can demonstrate the above, HACA 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 (HACA's or your landlord's) violations of these rights and seek additional assistance, if needed, by contacting or filing a complaint with the Department of Housing and Urban Development, One Sansome Street, Suite 1200, San Francisco, CA 94104. Phone (415) 489-6400. Fax: (415) 489-6419. TTY: (800) 877-8339.

## **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, HACA must make a copy of HUD's VAWA regulations available to you if you ask to see them.

For questions regarding VAWA, please contact HACA's Tenant Team at 1-510-538-8876, option 3 or at [tenantteam@haca.net](mailto:tenantteam@haca.net).

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). You may also contact Alameda County Family Justice Center at 1-510-267-8800.

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>.

For help regarding sexual assault and stalking seeking help, you may contact Alameda County Family Justice Center at 1-510-267-8800.

**Attachment:** Certification form HUD-5382

<b>EXHIBIT 16-2: CERTIFICATION OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING AND ALTERNATE DOCUMENTATION, FORM HUD-5382</b>
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**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): \_\_\_\_\_

10. 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: HOUSING AUTHORITY OF THE COUNTY OF ALAMEDA  
EMERGENCY TRANSFER PLAN FOR VICTIMS OF DOMESTIC VIOLENCE,  
DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING  
HOUSING CHOICE VOUCHER (HCV), PROJECT-BASED VOUCHER (PBV), AND  
MODERATE REHABILITATION (MR) PROGRAMS**

Attachment: Emergency Transfer Request form HUD-5383

**HOUSING AUTHORITY OF THE COUNTY OF ALAMEDA**

**Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual  
Assault, or Stalking  
Housing Choice Voucher (HCV), Project-Based Voucher (PBV), and Moderate  
Rehabilitation (MR) Programs**

**Emergency Transfers**

The Housing Authority of the County of Alameda (HACA) 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),<sup>1</sup> HACA 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.<sup>2</sup> The ability of HACA 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 HACA 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. It 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 HACA is in compliance with VAWA.

For the HCV and PBV programs, HACA is responsible for implementing the emergency transfer plan. For the MR program, the owner is responsible for implementing the emergency transfer plan. If the MR owner already has an emergency transfer plan in place, that emergency transfer plan will supersede this emergency transfer plan.

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<sup>1</sup>Despite 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.

<sup>2</sup>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.

HACA and MR owners are required to keep a record of all emergency transfer requests and the outcome of such requests, retain this information for a minimum of three years, and report this information to HUD.

This emergency transfer plan does not apply to HOME units without HCV assistance, Shelter Plus Care units (as the Continuum of Care is responsible for the emergency transfer policy), or other HACA-owned or controlled units without HCV assistance or other HUD assistance (e.g. UC Managed Unit and Park Terrace).

### **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 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**

**Emergency Transfers: Housing** for the HCV or PBV programs, the tenant shall notify HACA and submit a written request for a transfer to HACA, Attn: Emergency Transfer Request, 22941 Atherton Street, Hayward, CA, 94541 or [tenantteam@haca.net](mailto:tenantteam@haca.net). To request an emergency transfer for the MR program, the tenant shall notify the MR owner and submit a written request for a transfer to the owner. HACA 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 HACA'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.

HACA encourages tenants to utilize Form HUD-5383 (Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) to make emergency transfer requests.

### **Confidentiality**

For this section, housing provider is: 1) HACA for the HCV and PBV programs, and 2) both HACA and the owner for the MR program.

The housing provider will keep confidential any information that the tenant submits in requesting an emergency transfer, and information about the emergency transfer, unless the tenant gives the housing provider 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 the housing provider'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**

For this section, housing provider is: 1) HACA for the HCV and PBV programs, and 2) both HACA and the owner for the MR program.

The housing provider cannot guarantee that a transfer request will be approved or how long it will take to process a transfer request. The housing provider 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. A unit is considered to be available if the unit is vacant and ready for move-in within 30 days. 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. The housing provider may be unable to transfer a tenant to a particular unit if the tenant has not or cannot establish eligibility for that unit.

If the housing provider has no safe and available units for which a tenant who needs an emergency transfer is eligible, the housing provider 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, the housing provider 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, HACA will assist you to move to a safe unit quickly using your existing HCV assistance. HACA will make exceptions to program regulations restricting moves as required.

At your request, HACA will refer you to organizations that may be able to further assist you.

*Project-Based Voucher (PBV) assistance:* If you are assisted under the PBV program, you may request an emergency transfer under the following programs for which you are not required to apply:

If you have lived in your PBV unit for less than one year:

- PBV assistance in the same project (if a vacant unit is available and you determine that the vacant unit is safe).

If you have lived in your PBV unit for one year or more:

- Tenant-based voucher if you have lived in your PBV unit for one year or more, if a tenant-based voucher is available. Prior to assisting other currently housed PBV holders who have priority to receive the next available opportunity for continued tenant-based assistance, HACA will issue you an HCV under this provision.
- PBV assistance in the same project (if a vacant unit is available and you determine that the vacant unit is safe).

You may also request an emergency transfer under the following programs for which you are required to apply:

If you have lived in your PBV unit for less than one year:

- PBV assistance in another development.

If you have lived in your PBV unit for one year or more:

- PBV assistance in another development.

HACA will assist you in identifying other housing providers who may have safe and available units to which you could move and local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or stalking (attached to this plan) in the following circumstances:

- If you seek to move sooner than a tenant-based voucher will be available;
- If HACA cannot offer you other assistance (because you have not lived in your PBV unit for one year or more); or
- Another safe PBV unit is not immediately available.

### **Shelter Plus Care, HACA-Owned HOME Units, and Other HACA-Owned or Controlled Units without HCV Assistance or Other HUD Assistance**

Emergency transfers will not take priority over waiting list admissions for these programs.

In all cases above, at your request, HACA will refer you to organizations that may be able to further assist you and provide you a list of housing providers in the community.

### **Emergency Transfers: Moderate Rehabilitation (MR) Program**

If you are a participant in the MR program and request an emergency transfer from the owner as described in this plan, the owner will assist you to move to an available and safe unit as quickly as possible. If a safe unit is not available for a tenant who qualifies for an emergency transfer, the owner must, at a minimum:

1. Review the owner's existing inventory of units and determine when the next vacant unit may be available; and
2. Provide a listing of nearby HUD subsidized rental properties, with or without preference for persons of domestic violence, dating violence, sexual assault, or stalking, and contact information for the local HUD field office.

## 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.

In addition to the attached you may visit the following websites for links to other local resources:

- California Victim Compensation Board:  
<http://vcgcb.ca.gov/victims/counties/alameda.aspx>
- Alameda Commission on the Status of Women:  
[http://www.alamedacsw.org/?page\\_id=152](http://www.alamedacsw.org/?page_id=152)
- Alameda County Family Justice Center: [http://www.acfjc.org/get\\_help](http://www.acfjc.org/get_help)
- Safe Alternatives to Violent Environments: <http://save-dv.org>

# **Domestic Violence Resource Guide for Alameda County** **Guía de Recursos de Violencia Domestica para el Condado de Alameda**

## **24-HOUR CRISIS LINES**

### **Lineas de crisis las 24 hrs. del dia**

ACCESS Mental Health	1-800-309-2131
A Safe Place	510-536-7233
Building Futures with Women and Children	1-866-292-9688
Ruby's Place	510- 786-1246
Tri-Valley Haven	1-800-884-8119
Center for Domestic Peace	415-924-6616
WOMAN, Inc. – referrals (SF)	415-864-4722
Next Door	408-279-2962
Family Violence Law Center...	
Mobile Response Team	1-800-947-8301
National Domestic Violence Hotline	1-800-799-7233

## **BATTERER'S TREATMENT**

### **Tratamiento para agresores/golpeadores**

Associated Counseling (SL)	510-357-0550
Davis Street Family Resource Ctr. (SL)	510-347-4620
John Hamel & Associates (B)	510-644-8190
Men Creating Peace (O/SF)	510-730-0184
Peace Creations (CV)	925-833-9505
Second Chance (H)	510-886-8696
(N)	510-792-4357
TAG Program (P)	925-830-3911
Terra Firma Diversion (H)	510-675-9362
Triumph (O)	510-636-4111
West Oakland Health Council (O)	510-729-8800

## **CHILD ABUSE SERVICES**

### **Servicios de abuso infantil**

Child and Family Services (Alameda Co.)	510-259-1800
(SF)	415-558-2650
CALICO (SL/Oakland)	510-895-0702

## **COUNSELING SERVICES**

### **Servicios de asesoramiento/Consejeria**

Alameda Family Services (O)	510-629-6209
Asian Health Services (O)	510-986-6800
CARE Program (children) (O)	510-428-3407
Center for Non-abusive Relationships (O)	
(Men)	510-208-5006
(Women)	510-524-8284
Community Health for ...	
Asian Americans (O)	510-835-2777
Earth Circles Counseling Center (O)	510-601-1929
Family Paths (O)	510-893-5444
HEAL Program (O)	510-267-8840
	510-267-8847
Highland Hospital (O)	510-534-9290
Mujeres con Esperanza (O)	510-536-4764
Mujeres Unidas y Activas (O)	510-261-3398
Rainbow Psychotherapy Assoc. (O)	510-420-8083
Progressive Transition(s) (O)	510-917-0666
Shimruh Korean Center (O)	510-547-2360
The D.O.V.E.S Project (O)	510-428-3135
Triumph (O)	510-636-4111
Berkeley Therapy Institute (B)	510-841-8484
Blue Oak Therapy Center (B)	510-649-9818
Jewish Family & Children Services (B)	510-704-7475
Oak Creek Counseling Center (B)	1-888-637-7404

08/08/2016 NT, Alameda County Family Justice Center, 510-267-8800

## **COUNSELING continued**

### **Servicios de asesoramiento, continua**

UC Psychology Clinic (Sept.-May) (B)	510-642-2055
Women's Daytime Drop-In Center (B)	510-548-2884
Hume Center (F)	510-745-9151
Simi Markar, LMFT (F)	510-273-9126
La Familia (H)	510-881-5921
Davis Street Family Resource Ctr (SL)	510-347-4620
Family Services Counseling Ctr (SL)	510-483-6715
Pathways Counseling Center/Girls Inc. (SL)	510-357-5515
Tri-Valley Haven (L)	925-449-5845
Cameron House (Chinese) (SF)	415-781-0401

## **CULTURALLY SPECIFIC RESOURCES**

### **Recursos culturalmente específicos**

Arab Cultural and Community Center (SF)	415-664-2200
Asian Health Services (O)	510-986-6830
Korean Community Center East Bay (O)	510-547-2662
La Clinica de la Raza (O)	510-535-4000
Maitri-Indian (San Jose)	1-888-862-4874
Narika-South Asian (B)	1-800-215-7308
Shalom Bayit-Jewish (O)	510-451-7233
Terra Firma Diversion-Spanish (H)	510-674-9362

## **DEAF RESOURCES**

### **Recursos para sordos**

DCARA (SL)	510-343-6670
DeafHope (O)	deafhope@deaf-hope.org

## **ELDER ABUSE SERVICES**

### **Servicios para personas mayores victimas de abusos**

Adult Protective Services (Alameda County)	510-577-3500
(SF)	415-557-5230
API Legal Outreach (O)	510-251-2846
Area Agency on Aging (Alameda County)	510-577-1900
Institute on Aging (SF)	415-750-4111
Legal Assistance for Seniors (O)	510-832-3040
Victim Witness (O)	510-777-2248

## **HEALTHCARE RESOURCES**

### **Recursos para el cuidado de la salud**

Axis Community Health (P)	925-462-1755
Berkeley Free Clinic (B)	510-548-2570
Davis Street Family Resource Ctr. (SL)	510-347-4620
Healthy Communities (O)	510-444-9655
Highland Hospital (O)	510-437-4800
La Clinica de la Raza (O)	510-535-4000
La Familia (H)	510-881-5921
Native American Health Center (O)	510-535-4400
Public Health Dept. Immunizations (O)	510-267-8823
Purple Ribbon (O)	510-517-1994
Tiburcio Vasquez (H/U)	510-471-5880
Tri-City Health Center (O)	510-873-6500
(Fremont)	510-770-8133
Urban Indian Health Board (O)	510-434-5300
West Oakland Health Center (O)	510-835-9610

# **Domestic Violence Resource Guide for Alameda County** **Guia de Recursos de Violencia Domestica para el Condado de Alameda**

## **LAW ENFORCEMENT**

### **Aplicacion y ejecucion de la ley**

#### **For life-threatening emergencies call 911**

Alameda Police Department	510-337-8340
Albany Police Department	510-525-7300
Berkeley Police Department	510-981-5900
Dublin Police Department	925-833-6670
Emeryville Police Department	510-596-3700
Fremont Police Department	510-790-6800
Hayward Police Department	510-293-7272
Livermore Police Department	925-371-4900
Newark Police Department	510-578-4000
Oakland Police Department	510-777-3333
Pleasanton Police Department	925-931-5100
San Leandro Police Department	510-577-2740
Union City Police Department	510-471-1365
Alameda Co. Sheriff's Department	510-670-5048

## **LEGAL SERVICES**

### **Servicios legales**

Alameda County BAR Association (O)	510-302-2222
API Legal Outreach (O)	510-251-2846
(SF)	415-567-6255
ACFJC Legal Advice Clinic (O)	510-267-8800
Bay Area Legal Aid (O)	1-800-551-5554
Centro legal de la Raza (O)	510-437-1554
Family Violence Law Center (O)	1-800-947-8301
Self-Help Center (O)	510-272-1393
Family & Children Law Center (SF)	415-492-9230
Employment Law Center (SF)	415-864-8848
Tri-Valley Haven (L)	925-449-5843

## **LGBT RESOURCES**

### **Recursos para lesbianas, homosexuales, bi-sexuales y transexuales**

CUAV (SF)	415-333-4357
Hayward Lighthouse Center (referrals)	510-881-8167
Pacific Center (B)	510-548-8283
Project Eden (H)	510-247-8200
Queer Asian Women Services (SF) (Shelter)	415-751-0880
San Francisco LGBT Center	415-865-5555
Tri-Valley Haven (L)	1-800-884-8119

## **SEXUAL ASSAULT**

### **Ayuda para victimas de as altos sexuales**

Bay Area Women Against Rape (O)	510-430-1298
CALCASA (Sacramento)	916-446-2520
Contra Costa Rape Crisis	1-800-670-7273
Highland Hospital (O)	510-534-9290
MISSEY (O)	510-290-6450
Sage Project (SF)	415-905-5050
San Francisco Women Against Rape	415-861-2024
Tri-Valley Haven (L)	1-800-884-8119

## **SHELTERS**

### **Albergues/Refugios**

A Safe Place	510-536-7233
Asian Women's Shelter	1-877-751-0880
Building Futures with Women and Children	1-866-292-9688

08/08/2016 NT, Alameda County Family Justice Center, 510-267-8800

## **SHELTERS, continued**

### **Albergues/Refugios, continua**

Eden I&R	2-1-1
Ruby's Place	510-786-1246
La Casa de Las Madres	1-877-503-1850
Next Door	408-279-2962
Riley Center	415-255-0165
SAVE	510-794-6055
Second Chance	510-792-4357
Shepherd's Gate	925-443-4283
Tri-Valley Haven	1-800-884-8119
WOMAN, Inc. - referrals (SF)	415-864-4722

## **TRANSITIONAL HOUSING**

### **Alojamiento de transicion**

Alameda Point Collaborative (O)	510-898-7800
Bonita House (B)	510-923-1099
BOSS (B)	510-843-3700
Henry Robinson (O)	510-419-1010

## **IMMIGRATION ASSISTANCE**

### **Asistencia de inmigracion**

Bay Area Legal Aid (O)	1-800-551-5554
Centro legal de la Raza (O)	510-437-1554
East Bay Sanctuary (B)	510-540-5296
Immigration Center for Women & Children (SF)	415-861-1449
International Institute of the Bay Area (O)	510-451-2846

## **MISCELLANEOUS**

### **Miscelaneo**

Alameda County Community Food Bank	1-800-870-3663
Alameda County Social Services	510-263-2420
Department of Child Support Services (P)	1-866-901-3212
District Attorney's Office (O)	510-272-6222
Family and Children's Bureau (O)	510-690-2500
Victim Witness Assistance Division (O)	510-272-6180
Victim Compensation Program (O)	510-272-5044

## **SERVICES FOR MALE VICTIMS**

### **Servicios para las victimas masculinas**

**Except for shelter, most of the agencies listed make their services available to male victims of domestic violence. Please call agency for more information.**

**For a wide range of domestic violence related services call  
 Alameda County Family Justice Center  
 (510) 267-8800**

*Location Key: Oakland (O), Berkeley (B), Fremont (F), Hayward (H), Livermore (L), Newark (N), Pleasanton (P), San Leandro (SL), San Ramon (SR), Santa Clara County (SC), Castro Valley (CV)*

<b>EXHIBIT 16-4: EMERGENCY TRANSFER REQUEST FOR CERTAIN VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING, FORM HUD-5383</b>
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**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) \_\_\_\_\_

<b>EXHIBIT 16-5: OWNER NOTIFICATION OF RIGHTS AND OBLIGATIONS UNDER THE VIOLENCE AGAINST WOMEN ACT (VAWA)</b>
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VAWA provides protections for Section 8 Housing Choice Voucher (HCV), Project-Based Voucher (PBV) and Moderate Rehabilitation (MR) 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 for 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 HACA's programs. Each component of this Notice also provides citations to HUD's applicable regulations for the HCV program. For additional citations to HUD's applicable regulations for the PBV or MR programs, please contact HACA.

### **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 program 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 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 property would be present if the tenant or lawful occupant is not evicted. (See 24 CFR 5.2005(d)(3).)
  - 1) 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.)
  - 2) 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 related 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 5.207(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 5.2099(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 5.209(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 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 the 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:

- a. The duration of the risk;
- b. The nature and severity of the potential harm;
- c. The likelihood that the potential harm will occur; and
- d. 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 providers. (See 24 CFR 5.207(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**

Referrals to shelters, counselors, and advocates can be obtained through 2-1-1 Alameda County by dialing 2-1-1 from your telephone or visiting <http://www.edenir.org/>. A list of local service providers is also included in HACA's Emergency Transfer Plan.

### **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.).

## Chapter 17

### PROJECT-BASED VOUCHERS

#### INTRODUCTION

This chapter describes HUD regulations and HACA 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 HACA 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 (HAP) 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 HACA's discretion.

Part VI: Selection of PBV Program Participants. This part describes the requirements and policies governing how HACA 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.

Definition: An *owner* includes the owner(s), developer(s) and/or entity(ies) submitting a proposal for PBV assistance.

## **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 public housing authorities (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]. The PHA may only operate a PBV program if doing so is consistent with the PHA's Annual Plan, and the goal of deconcentrating poverty and expanding housing and economic opportunities [42 U.S.C. 1437f(o)(13)].

#### HACA Policy

HACA will operate a project-based voucher program using up to a maximum of 20 percent of its authorized units for project-based assistance. This assistance will be allocated over a multi-year period.

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 a HAP contract (Agreement) or a Housing Assistance Payments contract (HAP), the PHA is not required to reduce the number of these units if the amount of budget authority is subsequently reduced. However, the PHA is responsible for determining the amount of budget authority that is available for project-based vouchers and for ensuring that the amount of assistance that is attached to units is within the amounts available under the ACC, regardless of whether the PHA has vouchers available for project-basing [24 CFR 983.6 and FR Notice 1/18/17].

#### HACA Policy

HACA will use the PBV statute definition of "project" which is a single building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land.

### **Additional Project-Based Units [FR Notice 1/18/17; Notice PIH 2017-21]**

The PHA 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. 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.

### HACA Policy

HACA may project base one or more of the above unit types at its discretion after submitting information to the HUD field office on the number of units and the exception categories HACA will set aside.

## **Units Not Subject to the PBV Program Limitation [FR Notice 1/18/17; Notice PIH 2017-21 Attachment F]**

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 4/18/17 to qualify for this exemption.

### HACA Policy

HACA may project-base one or more of the above unit types at its discretion.

## **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 the PHA's 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.

### HACA Policy

Except as otherwise noted in this chapter, or unless specifically prohibited by PBV program regulations, HACA's 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 its administrative fee reserve to pay for relocation expenses after all other program administrative expenses are satisfied, and provided that payment of the relocation benefits is consistent with state and local law. Use of the administrative fee for these purposes must also be consistent with other legal and regulatory requirements, including the requirement in 24 CFR 982.155 and other official HUD issuances.

The acquisition of real property for a PBV project is subject to the URA and 49 CFR part 24, subpart B. It is the responsibility of the PHA to ensure the owner complies with these requirements.

## **17-I.D. EQUAL OPPORTUNITY REQUIREMENTS [24 CFR 983.8]**

The PHA must comply with all equal opportunity requirements under federal law and regulations in its implementation of the PBV program. This includes the requirements and authorities cited at 24 CFR 5.105(a). In addition, the PHA must comply with the PHA Annual 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, the PHA 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, the PHA 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]. The PHA may not commit PBVs until or unless it has followed the proposal selection requirements defined in 24 CFR 983.51 [Notice PIH 2011-54].

### **17-II.B. OWNER PROPOSAL SELECTION PROCEDURES [24 CFR 983.51(b); Notice PIH 2017-21]**

The PHA must select PBV proposals in accordance with the selection procedures in the PHA administrative plan. The PHA must select PBV proposals by either of the following two methods.

- PHA request for PBV proposals. The PHA may solicit proposals by using a request for proposals (RFP) to select proposals on a competitive basis in response to the PHA request. The PHA may not limit proposals to a single site or impose restrictions that explicitly or practically preclude owner submission of proposals for PBV housing on different sites.
- The PHA may select proposals 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. In such cases, the PHA need not conduct another competition.

### **Units Selected Non-Competitively [FR Notice 1/18/17; Notice PIH 2017-21]**

For certain public housing projects where the PHA has an ownership interest or control and will spend a minimum amount per unit on rehabilitation or construction, the PHA may select a project without following one of the two processes 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 the PHA. The public notice procedures may include publication of the public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice. The public notice of the PHA request for PBV proposals must specify the submission

deadline. Detailed application and selection information must be provided at the request of interested parties.

#### HACA Policy

#### **HACA Request for Proposals for Rehabilitated and Newly Constructed Units**

HACA will advertise its request for proposals (RFP) for rehabilitated and newly constructed housing in one or more of the following newspapers, depending on the jurisdiction where units are available under the RFP:

- **Oakland Tribune**
- **Argus**
- **Daily Review**
- **East Bay Times**

In addition, HACA will post the RFP and proposal submission and rating and ranking procedures on its electronic web site.

The advertisement will specify the number of units HACA estimates that it will be able to assist under the funding that HACA is making available and the date proposals will be due.

In order for the proposal to be considered, the owner must submit the proposal to HACA by the published deadline date, and the proposal must respond to all requirements as outlined in the RFP. Incomplete proposals will not be reviewed.

HACA will rate and rank proposals for rehabilitated and newly constructed housing using the following criteria:

- Project proximity to amenities (e.g. public transportation, grocery store, health facility);
- Owner experience and capability to build or rehabilitate housing as identified in the RFP;
- Property management experience to manage the type of project proposed;
- Financial feasibility of the project;
- Extent to which the project furthers the HACA goal of deconcentrating poverty and expanding housing and economic opportunities;
- If applicable, the extent to which services for special populations are provided on site or in the immediate area for occupants of the property;
- Project's use of sustainable building methods; and
- Other criteria stated in the RFP.

#### **HACA Requests for Proposals for Existing Housing Units**

HACA will advertise its RFP for existing housing in one or more of the following newspapers, depending on the jurisdiction where units are available under the RFP:

- **Oakland Tribune**

- **Argus**
- **Daily Review**
- **East Bay Times**

In addition, HACA will post the notice inviting such proposal submission and the rating and ranking procedures on its electronic web site.

The advertisement will specify the number of units HACA estimates that it will be able to assist under the funding HACA is making available and the date proposals will be due.

In order for the proposal to be considered, the owner must submit the proposal to HACA by the published deadline date, and the proposal must respond to all requirements as outlined in the RFP. Incomplete proposals will not be reviewed.

HACA will rate and rank proposals for existing housing using the following criteria:

- Project proximity to amenities (e.g. public transportation, grocery store, health facility);
- Experience as an owner in the tenant-based voucher program and owner compliance with the owner's obligations under the tenant-based program;
- Financial feasibility of the project;
- Extent to which the project furthers the HACA 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;
- Extent to which units are occupied by families that are eligible to participate in the PBV program; and
- Other criteria stated in the RFP.

**HACA Selection of Proposals Subject to a Previous Competition under a Federal, State, or Local Housing Assistance Program**

HACA 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.

HACA may 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 and HACA will evaluate each proposal on its merits using the following factors:

- Proximity to amenities (e.g. public transportation, grocery store, health facility);
- Owner experience and capability to build or rehabilitate housing as identified in the RFP;
- Property management experience to manage the type of project proposed;

- Financial feasibility of the project;
- Extent to which the project furthers the HACA goal of deconcentrating poverty and expanding housing and economic opportunities; and
- Extent to which the proposal complements other local activities (such as the redevelopment of a public housing site, the HOME program, CDBG activities, redevelopment project area activities, etc.);
- Project's use of sustainable building methods (new construction and rehabilitated housing); and
- Other criteria stated in the RFP.

#### **PHA-Owned Units [24 CFR 983.51(e), 983.59, FR Notice 1/18/17, and Notice PIH 2017-21]**

PHA-owned units 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. 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 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 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.

#### **HACA Policy**

HACA may submit, accept and process a proposal for project-based housing that is owned or controlled by HACA. If the proposal for HACA-owned housing is selected, HACA will use HUD, or a HUD approved entity, to review the HACA selection. HACA will also use a standard or high performer housing authority in or adjacent to Alameda County to establish the initial contract rent, and to perform HQS inspections of the HACA selection, prior to approving the proposal for HACA-owned housing.

The PHA may only compensate the independent entity from PHA ongoing administrative fee income (including amounts credited to the administrative fee reserve or other non-program income). 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 Notice of Owner Selection [24 CFR 983.51(d)]**

The PHA 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.

#### HACA Policy

HACA will promptly notify the selected owner in writing of the owner selection for the PBV program. HACA will also publish a notice in one or more newspapers of general circulation depending on the jurisdiction of the project to provide public notice of such selection.

Documents regarding HACA's basis of selection for PBV proposals will be made available for public inspection. This excludes sensitive owner information, e.g., financial statements and similar information about the owner.

HACA will make these documents available for review during normal business hours. The cost for reproduction of allowable documents will be in accordance with the established schedule of fees and charges in effect at the time.

### **17-II.C. HOUSING TYPE [24 CFR 983.52]**

The PHA may attach PBV assistance for units in existing housing or for newly constructed or rehabilitated housing developed under and in accordance with an Agreement 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 unit substantially complies 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.

The PHA will decide what housing type (new construction, rehabilitation, and/or existing housing) will be used to develop project-based housing and the PHA will state the type in its solicitation for proposals.

### **17-II.D. PROHIBITION OF ASSISTANCE FOR CERTAIN UNITS**

#### **Ineligible Housing Types [24 CFR 983.53]**

The PHA may not attach or pay PBV assistance to shared housing units; units on the grounds of a penal reformatory, medical, mental, or similar public or private institution; nursing homes or facilities providing continuous psychiatric, medical, nursing services, board and care, or intermediate care (except that assistance may be provided in assisted living facilities); units that are owned or controlled by an educational institution or its affiliate and are designated for occupancy by students; manufactured homes; and transitional housing. In addition, The PHA may not attach or pay PBV assistance for a unit occupied by an owner and the PHA may not select or enter into an Agreement 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 Agreement.

#### **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 the PHA in accordance with HUD requirements.

**17-II.E. SUBSIDY LAYERING REQUIREMENTS [24 CFR 983.55, FR Notice 11/24/08, FR Notice 7/9/10, and FR Notice 6/25/14]**

The PHA may provide PBV assistance only in accordance with HUD subsidy layering regulations [24 CFR 4.13] and other requirements.

The subsidy layering review is intended to prevent excessive public assistance by combining (layering) housing assistance payment subsidy under the PBV program with other governmental housing assistance from federal, state, or local agencies, including assistance such as tax concessions or tax credits.

The 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.

Subsidy layering requirements do not apply to existing housing. A further subsidy layering review is not required for new construction or rehabilitation if HUD's designee has conducted a review that included a review of PBV assistance in accordance with the PBV subsidy layering guidelines.

The PHA must submit the necessary documentation to HUD for a subsidy layering review. Except in cases noted above, the PHA may not enter into an Agreement or a HAP contract until HUD, or a HUD-approved housing credit agency (HCA), has conducted any required subsidy layering review and determined that the PBV assistance is in accordance with HUD subsidy layering requirements. However, in order to satisfy applicable requirements, HCAs must conduct

subsidy layering reviews in compliance with the guidelines set forth in the *Federal Register* notice published July 9, 2010.

The HAP contract must contain the owner's certification that the project has not received and will not receive (before or during the term of the HAP contract) any public assistance for acquisition, development, or operation of the housing other than assistance disclosed in the subsidy layering review in accordance with HUD requirements.

#### **17-II.F. CAP ON NUMBER OF PBV UNITS IN EACH PROJECT**

##### **25 Percent/25 Unit per Project Cap [24 CFR 983.56, FR Notice 1/18/17, and Notice PIH 2017-21]**

In general, the PHA may not select a proposal to provide PBV assistance for units or enter into an Agreement or a HAP contract to provide PBV assistance for units, if the total number of dwelling units 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/25 Unit per Project Cap [FR Notice 1/18/17; Notice PIH 2017-21]**

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 (“Supportive Services Household”)
- 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. Projects where these caps were implemented prior to HOTMA (HAP contracts executed prior to 4/18/17) may continue to use the former exceptions and may renew their HAP contracts under the old requirements, unless the PHA 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 PHA administrative plan the type of services offered to families for a project to qualify for the exception and the extent to which such services will be provided. 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. 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.

If a person qualifies for at least one of the services offered by the project but is not a person with a disability or is not a person with a specific disability, the person cannot be turned away from the unit because they do not have a specific disability. HUD's prohibition on granting preferences to persons with a specific disability at 24 CFR 982.207(b)(3) continues to apply.

If a person qualifies for at least one of the services offered by the project but is not a person with a disability or is not a person with a specific disability, the person cannot be turned away from the unit because they do not have a specific disability. An owner also cannot determine that a participant's needs exceed the level of care offered by qualifying services or require that individuals be transitioned to different projects based on service needs.

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 supportive services as defined in the PHA administrative plan, and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit.

### HACA Policy

HACA will provide PBV assistance for excepted units. HACA will assist housing for occupancy by elderly families and Supportive Services Households. This may include disabled families, families in need of particular supportive services, or families participating in the Family Self-Sufficiency (FSS) program. Families will not be required to accept and receive supportive services for the exception to apply to the unit.

The following types of services will be provided, depending on the needs of the family, to the extent the family needs the services:

- Transportation for activities such as, (but not limited to) grocery shopping, job training, education, attending medical and dental appointments, etc.
- Supervised taking of medications
- Treatment for drug addiction (for recovering and current users)
- Treatment for alcohol addiction (for recovering and current users)
- Training and development of housekeeping and homemaking skills
- Housekeeping aid
- Family budgeting
- Child care
- Parenting skills
- Computer access and training
- Library access
- Work skills development, job training and employment counseling
- Educational/vocational opportunities
- Case management services and/or counseling

- Access to Health and Psychiatric Services, i.e. nurse/medical staff, mental health professional, etc.
- Life skills training
- Access to on-site/off-site social activities
- Meal service adequate to meet nutritional need
- Personal assistance
- Health-related services
- Other services designed to help the recipient live in the community as independently as possible
- Employment assistance and job training
- Mental health services
- Assistance with activities of daily living
- Outpatient health services
- Services provided by State Medicaid programs to promote community based settings for individuals with disabilities
- Other services are permitted with HACA approval.

Supportive services will be provided to a family throughout their tenancy unless the family no longer needs or wants the services. The frequency and depth of services will depend on individual family need with consideration made for appropriateness and availability of such services.

HACA's FSS Action Plan allows families who have previously participated in a FSS program but did not complete the FSS contract to re-enroll in the FSS program. HACA will allow such families to re-enroll in the FSS program and thereby re-qualify for supportive services units.

### **Projects not Subject to a Project Cap [FR Notice 1/18/17; Notice PIH 2017-21]**

PBV units under the RAD program and HUD-VASH PBV set-aside vouchers are exempt from the project cap.

In addition, 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.

### **HACA Policy**

HACA does not have any PBV units that are subject to the per project cap exception other than RAD units and HUD-VASH PBV units.

### **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 all 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 the PHA may establish a per-project cap of less than 25 percent.

HACA Policy:

HACA will not impose any cap beyond HUD regulations 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)]**

The PHA may not select a proposal for existing, newly constructed, or rehabilitated PBV housing on a site or enter into an Agreement or HAP contract for units on the site, unless the PHA has determined that PBV assistance for housing at the selected site is consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities. The standard for deconcentrating poverty and expanding housing and economic opportunities must be consistent with the PHA Annual Plan under 24 CFR 903 and the PHA administrative plan.

In addition, prior to selecting a proposal, the PHA 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).

HACA Policy

It is HACA's goal to select sites for PBV housing that provide for deconcentrating poverty and expanding housing and economic opportunities. In complying with this goal HACA will limit approval of sites for PBV housing to census tracts that have poverty concentrations of 20 percent or less. In addition, HACA will also limit approval of sites for PBV housing to census tracts that have poverty concentrations that do not exceed the Alameda County or San Francisco-Oakland-Fremont Metropolitan Statistical Area by 20 percent or more.

However, HACA will consider exceptions to these standards where HACA determines that the PBV assistance will complement other local redevelopment activities designed to deconcentrate poverty and expand housing and economic opportunities, such as sites in:

- A census tract in which the proposed PBV development will be located in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community;
- A census tract where the concentration of assisted units will be or has decreased as a result of public housing demolition and HOPE VI redevelopment;
- A census tract in which the proposed PBV development will be located is undergoing significant revitalization as a result of state, local, or federal dollars invested in the area;
- A census tract where new market rate units are being developed;

- A census tract where there has been an overall decline in the poverty rate within the past five years; or
- A census tract where there are meaningful opportunities for educational and economic advancement.

Under no circumstances will HACA approve PBV assistance in a census tract with a concentration factor greater than 75 percent of the community-wide poverty rate.

#### **Existing and Rehabilitated Housing Site and Neighborhood Standards [24 CFR 983.57(d)]**

The PHA may not enter into an Agreement or 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
- Except for housing for elderly persons, be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

#### **New Construction Site and Neighborhood Standards [24 CFR 983.57(e)]**

In order to be selected for PBV assistance, a site for newly constructed housing must meet the following HUD required site and neighborhood standards:

- The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed;
- The site must have adequate utilities and streets available to service the site;
- The site must not be located in an area of minority concentration unless The PHA determines that sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration or that the project is necessary to meet overriding housing needs that cannot be met in that housing market area;
- The site must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area;
- The site must promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons;

- The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate;
- The housing must be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units; and
- Except for housing designed for elderly persons, the housing must be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

#### **17-II.H. ENVIRONMENTAL REVIEW [24 CFR 983.58]**

The PHA activities under the PBV program are subject to HUD environmental regulations in 24 CFR parts 50 and 58. The *responsible entity* is responsible for performing the federal environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The PHA may not enter into an Agreement or enter into a HAP contract until it has complied with the environmental review requirements.

In the case of existing housing, the responsible entity that is responsible for the environmental review under 24 CFR part 58 must determine whether or not PBV assistance is categorically excluded from review under the National Environmental Policy Act and whether or not the assistance is subject to review under the laws and authorities listed in 24 CFR 58.5.

The PHA may not enter into an Agreement or a HAP contract with an owner, and the PHA, the owner, and its contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct real property or commit or expend program or local funds for PBV activities under this part, until the environmental review is completed.

The PHA must supply all available, relevant information necessary for the responsible entity to perform any required environmental review for any site. The PHA 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 do not apply to the PBV program.

#### **Lead-based Paint [24 CFR 983.101(c)]**

The lead-based paint requirements for the tenant-based voucher program do not apply to the PBV program. Instead, The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR part 35, subparts A, B, H, and R, apply to the PBV program.

### **17-III.C. HOUSING ACCESSIBILITY FOR PERSONS WITH DISABILITIES**

The housing must comply with program accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8. The 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)

### **17-III.D. INSPECTING UNITS**

#### **Pre-selection Inspection [24 CFR 983.103(a)]**

The PHA must examine the proposed site before the proposal selection date. If the units to be assisted already exist, the PHA must inspect all the units before the proposal selection date, and must determine whether the units substantially comply with HQS. To qualify as existing housing, units must substantially comply with HQS on the proposal selection date. However, the PHA may not execute the HAP contract until the units fully comply with HQS.

#### **Pre-HAP Contract Inspections [24 CFR 983.103(b)]**

The PHA must inspect each contract unit before execution of the HAP contract. The PHA may not enter into a HAP contract covering a unit until the unit fully complies with HQS.

### **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, unless the PHA 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.

#### HACA Policy

HACA will not provide assistance in turnover units until the unit fully complies with HQS.

### **Annual/Biennial Inspections [24 CFR 983.103(d); FR Notice 6/25/14; PIH-2015-05]**

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.

#### HACA Policy

Once every 24 months, HACA will inspect, at a minimum, 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, the PHA must re-inspect 100 percent of the contract units in the building.

### **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)]**

In the case of PHA-owned units, the inspections must be performed by an independent agency 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: 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 (Agreement) CONTRACT**

In order to offer PBV assistance in rehabilitated or newly constructed units, the PHA must enter into an agreement to enter into a HAP contract (Agreement) with the owner of the property. The Agreement must be in the form required by HUD [24 CFR 983.152(b)]. The PHA may not enter into an Agreement if construction or rehabilitation has commenced after proposal submission [24 CFR 983.152(c)] but before execution of the Agreement. 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 other requirements stated in the RFP, and the PHA agrees that upon timely completion of such development in accordance with the terms of the Agreement, the PHA 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(d)]**

At a minimum, the Agreement must describe the following features of the housing to be developed and assisted under the PBV program:

- Site and the location of the contract units;
- Number of contract units by area (size) and number of bedrooms and bathrooms;
- Services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent;
- Utilities available to the contract units, including a specification of utility services to be paid by the owner and utility services to be paid by the tenant;
- An indication of whether or not the design and construction requirements of the Fair Housing Act and section 504 of the Rehabilitation Act of 1973 apply to units under the Agreement. If applicable, any required work item resulting from these requirements must be included in the description of work to be performed under the Agreement;
- Estimated initial rents to owner for the contract units;
- Description of the work to be performed under the Agreement. For rehabilitated units, the description must include the rehabilitation work write up and, where determined necessary by the PHA, 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 the PHA has given notice of proposal selection to the selected owner. The PHA may not enter into the Agreement if construction or rehabilitation has started either before or after proposal submission. Generally, the PHA may not enter into an Agreement with the owner until the subsidy layering review is complete. Likewise, the PHA may not enter into an Agreement with the owner until the environmental review is complete and the PHA has received environmental approval. However, the PHA 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.

#### **HACA Policy**

HACA will enter into an Agreement with the selected owner promptly, after receiving 1.) environmental approval, 2.) notice that the subsidy layering requirements, if applicable, have been met, and 3.) Authority to Use Grant Funds, if applicable. The Agreement must be executed before construction or rehabilitation work can start.

### **17-IV.C. CONDUCT OF DEVELOPMENT WORK**

#### **Labor Standards [24 CFR 983.154(b)]**

If an Agreement covers the development of nine or more contract units (whether or not completed in stages), the owner and the owner's contractors and subcontractors must pay Davis-Bacon wages to laborers and mechanics employed in the development of housing. The HUD-prescribed form of the Agreement will include the labor standards clauses required by HUD, such as those involving Davis-Bacon wage rates.

The owner, contractors, and subcontractors must also comply with the Contract Work Hours and Safety Standards Act, Department of Labor regulations in 29 CFR part 5, and other applicable federal labor relations laws and regulations. The PHA must monitor compliance with labor standards.

#### **Equal Opportunity [24 CFR 983.154(c)]**

The owner must comply with Section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations at 24 CFR part 135. The owner must also comply with federal equal employment opportunity requirements.

#### **Owner Disclosure [24 CFR 983.154(d) and (e)]**

The Agreement and HAP contract must include a certification by the owner that the owner and other project principals are not on the U.S. General Services Administration list of parties excluded from federal procurement and non-procurement programs.

The owner must also disclose any possible conflict of interest that would be a violation of the Agreement, the HAP contract, or HUD regulations.

#### **17-IV.D. COMPLETION OF HOUSING**

The Agreement must specify the deadlines for completion of the housing, and the owner must develop and complete the housing in accordance with these deadlines. The Agreement must also specify the deadline for submission by the owner of the required evidence of completion.

##### **Evidence of Completion [24 CFR 983.155(b)]**

At a minimum, the owner must submit the following evidence of completion to the PHA in the form and manner required by the PHA:

- Owner certification that the work has been completed in accordance with HQS and all requirements of the Agreement; and
- Certification that the owner has complied with labor standards and equal opportunity requirements in development of the housing.

At the PHA's discretion, the Agreement may specify additional documentation that must be submitted by the owner as evidence of housing completion.

##### **HACA Policy**

HACA 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 and will specify any additional documentation requirements in writing.

##### **PHA Acceptance of Completed Units [24 CFR 983.156]**

Upon notice from the owner that the housing is completed, the PHA must inspect the units to determine if the housing has been completed in accordance with the Agreement, including compliance with HQS and any additional requirements imposed under the Agreement. The PHA must also determine if the owner has submitted all required evidence of completion.

If the work has not been completed in accordance with the Agreement, the PHA must not enter into the HAP contract.

If the PHA determines the work has been completed in accordance with the Agreement and that the owner has submitted all required evidence of completion, the PHA must submit the HAP contract for execution by the owner and must then execute the HAP contract.

## **PART V: HOUSING ASSISTANCE PAYMENTS CONTRACT (HAP)**

### **17-V.A. OVERVIEW**

The PHA 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. 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/25 unit per project cap, which will be set aside for occupancy by qualifying families (elderly and/or Supportive Services Households); and
- The initial rent to owner for the first 12 months of the HAP contract term.

#### **Execution of the HAP Contract [24 CFR 983.204]**

The PHA may not enter into a HAP contract until each contract unit has been inspected and the PHA has determined that the unit complies with the Housing Quality Standards (HQS), unless the PHA 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 the PHA selects the owner proposal and inspects the housing units. For newly constructed or rehabilitated housing the HAP contract must be executed after the PHA has inspected the completed units and has determined that the units have been completed in accordance with the Agreement, and the owner furnishes all required evidence of completion.

### HACA Policy

For existing housing, the HAP contract will be executed promptly, pursuant to HACA determining that all units pass HQS.

For rehabilitated or newly constructed housing, the HAP contract will be executed promptly, pursuant to HACA determining that the units have been completed in accordance with the Agreement (in addition to completing other requirements stated in the RFP) and that all units meet HQS; in addition to the owner having submitted all required evidence of completion.

### **Term of HAP Contract [24 CFR 983.205, FR Notice 1/18/17, and Notice PIH 2017-21]**

The PHA 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 the PHA and the independent entity approved by HUD [24 CFR 983.59(b)(2)].

### HACA Policy

All PBV HAP contracts will be negotiated with the owner for a 20-year term.

At the time of execution of the initial HAP contract or any time before expiration of the HAP contract, the PHA may extend the term of the contract for any additional term of up to 20 years if the PHA determines an extension is appropriate to continue providing affordable housing for low-income families. A HAP contract extension may not exceed 20 years. The 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 the PHA 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 the PHA and the independent entity approved by HUD [24 CFR 983.59(b)(2)].

### HACA Policy

When determining whether or not to extend an expiring PBV contract, HACA will consider several factors including, but not limited to, as applicable,;

- 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;

- Whether the extension is appropriate to achieve long-term affordability of the housing; 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 the PHA's contractual commitment is subject to the availability of sufficient appropriated funding as determined by HUD or by the PHA 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, the PHA may terminate the HAP contract by notice to the owner. The termination must be implemented in accordance with HUD instructions.

***Termination by Owner [24 CFR 983.205(d)]***

If in accordance with program requirements the amount of rent to an owner for any contract unit is reduced below the amount of the rent to owner at the beginning of the HAP contract term, the owner may terminate the HAP contract by giving notice to the PHA. In this case, families living in the contract units must be offered tenant-based assistance.

At its discretion HACA may specify in the HAP contract that the maximum rent on a unit will not be less than the initial rent.

**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 the PHA 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. The PHA must provide the family with a voucher and the family must also be given the option by the PHA and owner to remain in their unit with HCV tenant-based assistance as long as the unit complies with inspection and rent reasonableness requirements. The family must pay their total tenant payment (TTP) and any additional amount if the gross rent exceeds the applicable payment standard. The family has the right to remain in the project as long as the units are used for rental housing and are otherwise eligible for HCV

assistance. The owner may not terminate the tenancy of a family that exercises its right to remain except for serious or repeated lease violations or other good cause. Families that receive a tenant-based voucher at the expiration or termination of the PBV HAP contract are not new admissions to the PHA 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)]**

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.

##### HACA Policy

HACA 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 the PHA'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, the PHA must inspect the proposed unit and determine the reasonable rent for the unit.

##### **Addition of Contract Units [FR Notice 1/18/17 and PIH 2017-21]**

The PHA 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, the PHA must submit to the local field office information outlined in FR Notice 1/18/17. The PHA must also detail in the administrative plan their intent to add PBV units and the rationale for adding units to the specific PBV project.

##### HACA Policy

HACA will consider adding contract units to the HAP contract when HACA determines that additional housing is needed to serve eligible low-income families. Circumstances may include, but are not limited to:

The local housing inventory is reduced due to a disaster (either due to loss of housing units, or an influx of displaced families); and

Voucher holders are having difficulty finding units that meet program requirements.

#### **17-V.D. HAP CONTRACT YEAR, ANNIVERSARY AND EXPIRATION DATES [24 CFR 983.207(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 first placed under contract.

#### **17-V.E. OWNER RESPONSIBILITIES UNDER THE HAP [24 CFR 983.210]**

When the owner executes the HAP contract s/he certifies that at such execution and at all times during the term of the HAP contract:

- All contract units are in good condition and the owner is maintaining the premises and contract units in accordance with HQS;
- The owner is providing all services, maintenance, equipment and utilities as agreed to under the HAP contract and the leases;
- Each contract unit for which the owner is receiving HAP is leased to an eligible family referred by the 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 (does not apply to a 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 the PHA and in the lease with each assisted family. In addition, maintenance, replacement and redecoration must be in accordance with the standard practice for the building as established by the owner.

The PHA may elect to establish additional requirements for quality, architecture, or design of PBV housing. Any such additional requirements must be specified in the Agreement contract and the HAP contract. These requirements must be in addition to, not in place of, compliance with HQS.

#### HACA Policy

HACA will identify the need for any special features on a case-by-case basis depending on the intended occupancy of the PBV project. HACA will specify any special design standards or additional requirements in the invitation for PBV proposals, the Agreement, and the HAP contract.

### **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 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).

#### HACA Policy

For HAP contracts that provide for vacancy payments, HACA will provide vacancy payments to the owner equal to the contract rent in effect at the time of the vacancy for a period not to exceed one month. The HAP contract with the owner will contain the terms under which vacancy payments will be made.

## **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)]**

The PHA may select families for the PBV program from those who are participants in the PHA'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 redetermined at the commencement of PBV assistance. For all others, eligibility for admission must be determined at the commencement of PBV assistance.

Applicants for PBV assistance must meet the same eligibility requirements as applicants for the tenant-based voucher program. Applicants must qualify as a family as defined by HUD and the 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.

#### HACA Policy

HACA will determine an applicant family's eligibility for the PBV program in accordance with the policies in Chapter 3.

### **In-Place Families [24 CFR 983.251(b)]**

An eligible family residing in a proposed PBV contract unit on the date the proposal is selected by the PHA is considered an "in-place family." These families are afforded protection from displacement under the PBV rule. If a unit to be placed under contract (either an existing unit or a unit requiring rehabilitation) is occupied by an eligible family on the date the proposal is selected, the in-place family must be placed on the PHA's waiting list. Once the family's continued eligibility is determined (the PHA may deny assistance to an in-place family for the grounds specified in 24 CFR 982.552 and 982.553), the family must be given an absolute selection preference and the PHA 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-VLC. ORGANIZATION OF THE WAITING LIST [24 CFR 983.251(c)]**

The PHA may establish a separate waiting list for PBV units or it may use the same waiting list for both tenant-based and PBV assistance. The PHA may also merge the PBV waiting list with a waiting list for other assisted housing programs offered by the PHA. If the PHA chooses to offer a separate waiting list for PBV assistance, the PHA must offer to place applicants who are listed on the tenant-based waiting list on the waiting list for PBV assistance.

If the PHA decides to establish a separate PBV waiting list, the PHA may use a single waiting list for the PHA's whole PBV program, or it may establish separate waiting lists for PBV units in particular projects or for sets of such units.

### **HACA Policy**

HACA will establish and manage separate waiting lists for individual projects or buildings that are receiving PBV assistance. HACA currently has waiting lists for the following PBV projects:

Carlow Court  
CCT East Bay  
Dyer St  
Eden Commons  
Emery Glen  
Estrella Vista  
Flanders House  
Howard Collins Bridgeway  
Kottinger Gardens  
Lorenzo Creek  
Magnolia Terrace  
Main Street Village  
Maple Square Apartments  
Mayten Manor  
Mission Court  
Mission View  
Nidus Court  
Peppertree Village  
Rotary Bridgeway East  
La Vereda  
Station Center  
Stevenson Terrace  
Third Street Apartments  
Union City Units (58 Scattered)  
Wexford Way

## **17-VLD. SELECTION FROM THE WAITING LIST [24 CFR 983.251(c)]**

Applicants who will occupy units with 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. The PHA may place families referred by the PBV owner on its HCV waiting list, if it is open to such families.

### **Income Targeting [24 CFR 983.251(c)(6)]**

At least 75 percent of the families admitted to the PHA's tenant-based and project-based voucher programs from the waiting list during the PHAA fiscal year must be extremely-low income families. The income targeting requirement applies to the total of admissions to both programs.

#### **Units with Accessibility Features [24 CFR 983.251(c)(7)]**

When selecting families to occupy PBV units that have special accessibility features for persons with disabilities, the PHA must first refer families who require such features to the owner.

#### **Preferences [24 CFR 983.251(d), FR Notice 11/24/08]**

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. The PHA must provide an absolute selection preference for eligible in-place families as described in Section 17-VI.B. above.

The PHA 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 PHA 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 the PHA has projects with "excepted units" for elderly families or Supportive Services Households, the PHA must give preference to such families when referring families to these units [24 CFR 983.251(d); FR Notice 1/18/17].

#### **HACA Policy**

HACA will provide a selection preference when required by the regulations (e.g., eligible in-place families, elderly families or Supportive Services Households, or mobility impaired persons for accessible units). Additional preferences have been established for the projects, buildings, or sets of units listed in section 4-III.C-Local Preferences-Section 8 Project-Based Voucher Program (PBV).

### **17-VI.E. 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:

- Refuse to list the applicant on the waiting list for tenant-based voucher assistance;
- Deny any admission preference for which the applicant qualifies;
- Change the applicant's place on the waiting list based on preference, date, and time of application, or other factors affecting selection under the PHA's selection policy;
- Remove the applicant from the tenant-based voucher waiting list.

### **Disapproval by Landlord [24 CFR 983.251(e)(2)]**

If a PBV owner rejects a family for admission to the owner's units, such rejection may not affect the family's position on the tenant-based voucher waiting list.

### **Acceptance of Offer [24 CFR 983.252]**

#### ***Family Briefing***

When a family accepts an offer for PBV assistance, the 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).

## **17-VLF. OWNER SELECTION OF TENANTS**

The owner is responsible for developing written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant's ability to fulfill their obligations under the lease. An owner must promptly notify in writing any rejected applicant of the grounds for any rejection [24 CFR 983.253(a)(2) and (a)(3)].

### **Leasing [24 CFR 983.253(a)]**

During the term of the HAP contract, the owner must lease contract units to eligible families that are selected and referred by the 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 occupancy 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.

#### **HACA Policy**

The owner must notify HACA in writing (mail, fax, or e-mail) within 5 business days of learning about any vacancy or expected vacancy.

HACA will make every reasonable effort to refer families to the owner within 10 business days of receiving such notice from the owner.

**Reduction in HAP Contract Units Due to Vacancies [24 CFR 983.254(b)]**

If any contract units have been vacant for 120 or more days since owner notice of the vacancy, the PHA 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.

HACA Policy

If any contract units have been vacant for 120 days, HACA may give notice to the owner that the HAP contract may be amended to reduce the number of contract units that have been vacant for this period.

## **17-VI.G. 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.

#### HACA Policy

HACA 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(a)(4)].

#### HACA Policy

HACA will inform owners of their responsibility to screen prospective tenants, and will provide owners with the required known name and address information. HACA 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 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.

### **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 the PHA model lease.

The PHA may review the owner's lease form to determine if the lease complies with state and local law. If the PHA determines that the lease does not comply with state or local law, the PHA may decline to approve the tenancy.

#### **HACA Policy**

HACA will not review the owner's lease for compliance with state and/or local law. However, if HACA becomes aware that an owner's lease does not comply with the state and/or local law, then HACA will require the owner to modify the lease in order to comply with state and/or local law. If the owner does not do so within 15 business days, then HACA will decline to approve the tenancy.

#### **Lease Requirements [24 CFR 983.256(c)]**

The lease for a PBV unit must specify all of the following information:

- The names of the owner and the tenant;
- The unit rented (address, apartment number, if any, and any other information needed to identify the leased contract unit);
- The term of the lease (initial term and any provision for renewal);
- The amount of the tenant rent to owner, which is subject to change during the term of the lease in accordance with HUD requirements;
- A specification of the services, maintenance, equipment, and utilities that will be provide by the owner; and
- The amount of any charges for food, furniture, or supportive services.

### **Tenancy Addendum [24 CFR 983.256(d)]**

The tenancy addendum in the lease must state:

- The program tenancy requirements;
- The composition of the household as approved by the 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)]**

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]**

With two exceptions, the owner of a PBV unit may terminate tenancy for the same reasons an owner may do so 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 owner 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. The 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 made by the PHA. After the 180-day period, the unit shall be removed from the HAP contract pursuant to 24 CFR 983.211.

##### HACA Policy

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 HACA 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. The PHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.

##### HACA Policy

HACA will allow the owner to collect a security deposit amount the owner determines is appropriate, as long as it does not exceed that allowed under state law.

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 in accordance with state law.

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.

### **17-VII.C. MOVES**

#### **Overcrowded, Under-Occupied, and Accessible Units [24 CFR 983.260]**

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.

##### HACA Policy

HACA 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 HACA's determination. HACA 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 the PHA offers the family a tenant-based voucher, the PHA 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 the PHA) 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, the PHA must remove the unit from the HAP contract. However, as referenced in section 5-II.C. for under-housed project-based families, if the family documents that the family's tenant-based voucher expires because the family cannot locate a suitable unit, and the family could remain housed in the project-based unit using the 2+1 rule, the PHA will not terminate the housing assistance payments and the family will be allowed to remain in the project-based unit for as long as the family size qualifies for the 2+1 rule.

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.

#### HACA Policy

When HACA offers a family another form of assistance that is not a tenant-based voucher, the family will be given 60 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 60-day time frame, HACA will terminate the housing assistance payments at the expiration of this 60-day period.

HACA may make exceptions to this 60-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. If the family wishes to move with continued tenant-based assistance, 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 these 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 voucher or other comparable tenant-based

assistance is not immediately available upon termination of the family's lease in the PBV unit, the PHA must give the family priority to receive the next available opportunity for continued tenant-based assistance.

#### HACA Policy

Prior to assisting currently housed PBV holders who have priority to receive the next available opportunity for continued tenant-based assistance, HACA will set aside PBVs committed for new projects coming on-line (if applicable) and assist applicants for 1.) Targeted Funding and 2.) Shortfall Terminated families, Shortfall Recalled families, and CHOICES, FACT or MHSA Graduates as described in section 4-III.C.-Local Preferences-Section 8 Housing Choice Voucher Program (HCV) as these forms of tenant-based assistance have previously been committed and are not available.

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 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.

#### HACA Policy

See Chapter 16 Part IX (Exhibit 16-3) of this administrative plan for HACA's policy on transfers for victims that have been living in a unit for less than a year or seek to move sooner than a tenant-based voucher is available.

#### **17-VI.D. EXCEPTIONS TO THE OCCUPANCY CAP [24 CFR 983.262; PIH 2017-21]**

As of April 17, 2018 the PHA 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 FSS supportive services or any other service as defined by the PHA 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. However, if the FSS family fails to successfully complete the FSS contract of participation or supportive services objective and consequently is no longer eligible for any of the supportive services offered at or by the project, the family must vacate the unit within a reasonable period of time established by the PHA, and the PHA shall cease paying HAP on behalf of the family.

Further, when a family (or remaining members of a family) residing in an excepted unit no longer meets the criteria for a “qualifying family” because the family is no longer an elderly family or Supportive Services Household due to a change in family composition, the PHA has the discretion to allow the family to remain in the excepted unit. If the PHA does not exercise this discretion, the family must vacate the unit within a reasonable period of time established by the PHA, and the PHA must cease paying housing assistance payments on behalf of the non-qualifying family.

Individuals in units with supportive services who choose to no longer participate in a service or who no longer qualify for services they qualified for at the time of initial occupancy cannot subsequently be denied continued housing opportunity because of this changed circumstance. A PHA or owner cannot determine that a participant’s needs exceed the level of care offered by qualifying services or require that individuals be transitioned to different projects based on service needs.

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 temporarily remove the unit from the PBV HAP contract; or the owner terminates the lease and evicts the family. The housing assistance payments for a family residing in an excepted unit that is not in compliance with its family obligations to comply with supportive services requirements must be terminated by the PHA.

The PHA may allow a family that initially qualified for occupancy of an excepted unit based on elderly family or Supportive Services Household status to continue to reside in a unit, where through circumstances beyond the control of the family (e.g., death of the elderly family or Supportive Services Household member or long-term or permanent hospitalization or nursing care), the elderly family or Supportive Services Household 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.

#### HACA Policy

HACA 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, when circumstances change due to a change in family composition, when an individual chooses to no longer participate in a service, or when an individual is no longer eligible for services they qualified for at the time of initial occupancy.

In cases where the FSS family fails to successfully complete the FSS contract of participation or supportive services objective and consequently is no longer eligible for any of the supportive services offered at or by the project, HACA will provide written

notice to the family and owner within 10 business days of making the determination. The family will be given 60 days from the date of the notice to move out of the PBV unit. If the family does not move out within this 60-day time frame, HACA will terminate the housing assistance payments at the expiration of this 60-day period. HACA may make exceptions to this 60-day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency of a family member.

In the event an excepted unit no longer qualifies as excepted, at HACA's sole discretion, HACA may (i) substitute the excepted unit for a non-excepted unit if it is possible to do so in accordance with 24 CFR 983.207(a), so that the unit does not lose its excepted status, (ii) temporarily remove the unit from the PBV HACA contract and provide the family with tenant-based assistance, or (iii) remove the unit from the HAP contract.

## **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 states the estimated amount of the initial rent to owner, the actual amount of the initial rent to owner is established at the beginning of the HAP contract term.

During the term of the HAP contract, the rent to owner is redetermined at the owner's request in accordance with program requirements, and at such time that there is a five percent or greater decrease in the published FMR.

### **17-VIII.B. RENT LIMITS [24 CFR 983.301]**

Except for certain tax credit units (discussed below), the rent to owner must not exceed the lowest of the following amounts:

- An amount determined by the PHA, 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 the PHA-determined amount (not to exceed 110 percent of the fair market rent or any approved exception payment standard);

For contract units that meet all of these criteria, the rent to owner must not exceed the lowest of:

- The tax credit rent minus any utility allowance;
- The reasonable rent; or
- The rent requested by the owner.

## ***Definitions***

A *qualified census tract* is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income of less than 60 percent of Area Median Gross Income (AMGI), or where the poverty rate is at least 25 percent and where the census tract is designated as a qualified census tract by HUD.

*Tax credit rent* is the rent charged for comparable units of the same bedroom size in the 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.

### **HACA Policy**

HACA 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, HACA 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, the PHA must use the most recently published FMR in effect and the utility allowance schedule in effect at execution of the HAP contract. When redetermining the rent to owner, the PHA must use the most recently published FMR and the utility allowance schedule in effect at the time of redetermination. At its discretion, the PHA 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 standard amount for use in the PBV program.

Likewise, the PHA 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.

### HACA Policy

Upon written request by the owner, HACA 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. HACA 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, HACA 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 HACA determines it is necessary due to HACA 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.

### HACA Policy

HACA will not apply SAFMRs to HACA's PBV program.

### **Redetermination of Rent [24 CFR 983.302]**

The PHA must redetermine the rent to owner upon the owner's request or when there is a 10 percent or greater decrease in the published FMR.

### ***Rent Increase***

If an owner wishes to request an increase in the rent to owner from the PHA, it must be requested at the annual anniversary of the HAP contract (see Section 17-V.D.). The request must be in writing and in the form and manner required by the PHA. The PHA 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 that have resulted from substantial general increases in real property taxes, utility rates, or similar costs).

### HACA Policy

An owner's request for a rent increase must be submitted to HACA 90 days prior to the anniversary date of the HAP contract, and must include the new rent amount the owner is proposing.

The PHA 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 redetermined by written notice from the PHA to the owner specifying the amount of the redetermined rent. The PHA 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.

### **HACA Policy**

HACA will provide the owner with at least 30 days written notice of any change in the amount of rent to owner.

### **PHA-Owned Units [24 CFR 983.301(g)]**

For PHA-owned PBV units, the initial rent to owner and the annual redetermination of rent at the anniversary of the HAP contract are determined by the independent entity approved by HUD. The PHA 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 the PHA, except where the PHA 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**

The PHA must re-determine the reasonable rent for a unit receiving PBV assistance whenever any of the following occur:

- There is a 10 percent or greater decrease in the published FMR in effect 60 days before the contract anniversary (for the unit sizes specified in the HAP contract) as compared with the FMR that was in effect one year before the contract anniversary date;
- The PHA 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, 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 unassisted units in the 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 the PHA staff or by another qualified person or entity. Those who conduct these analyses or are involved in determining the housing assistance payment based on the analyses may not have any direct or indirect interest in the property.

## **PHA-owned Units**

For PHA-owned units, the amount of the reasonable rent must be determined by an independent agency approved by HUD in accordance with PBV program requirements. The independent entity must provide a copy of the determination of reasonable rent for PHA-owned units to the PHA 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 the rent charged by the owner for other comparable unassisted units on the premises. At any time, the PHA may require the owner to submit information on rents charged by the owner for other units on 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 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, the PHA shall reduce the rent to owner due to the presence of other governmental subsidies, including tax credits or tax exemptions, grants, or other subsidized funding in the project.

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, 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.

### **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 the PHA determines that the vacancy is the owner's fault.

#### HACA Policy

If HACA determines that the owner is responsible for a vacancy and, as a result, is not entitled to keep the housing assistance payment, HACA will notify the owner of the amount of housing assistance payment that the owner must repay. HACA 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.

#### HACA 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 HACA 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 HACA may require the owner to provide documentation to support the request. If the owner does not provide the information requested by HACA within 10 business days, no vacancy payments will be made.

For HAP contracts that provide for vacancy payments, HACA will provide vacancy payments to the owner equal to the contract rent in effect at the time of the vacancy for a period not to exceed one month.

#### **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 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.

#### **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.

#### HACA Policy

HACA will make utility reimbursements 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 and/or supportive services. These charges may not be included in the rent to owner, nor may the value of meals and supportive services be included in the calculation of the reasonable rent. However, non-payment of such charges is grounds for termination of the lease by the owner in an assisted living development.

#### **Other Charges by Owner**

The owner may not charge extra amounts for items customarily included in rent in the locality or provided at no additional cost to unsubsidized tenants in the premises.

## Chapter 18

### PROJECT BASED VOUCHERS (PBV) UNDER THE RENTAL ASSISTANCE DEMONSTRATION (RAD) PROGRAM

#### INTRODUCTION

This chapter describes HUD regulations and HACA 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 HACA 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. In addition, exceptions to the occupancy cap (which limits RAD PBV assistance to 50 percent of the units in any project) are also discussed.

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 2012-32, REV-2. 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) 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), and the Consolidated and Further Continuing Appropriations Act of 2015 (Public Law 113-235, approved December 6, 2014), collectively, the “RAD Statute.” Requirements specific to the RAD program may be found in:

- Notice PIH 2012-32, REV-2, RAD – Final Implementation, Revision 2
- RAD Quick Reference Guide for Public Housing Converting to PBV Assistance (10/14)
- RAD Welcome Guide for New Awardees: RAD 1st Component (3/15)
- Notice PIH 2014-17, Relocation Requirements under the RAD Program, Public Housing in the First Component
- RAD FAQs (<http://www.radresource.net/search.cfm>)

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 HACA's 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.

### **HACA Policy**

Except as otherwise noted in this chapter, or unless specifically prohibited by PBV program regulations, HACA 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.

## **18-I.D. RELOCATION REQUIREMENTS [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 HACA 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, HACA 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 HACA's or the 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; Notice PIH 2012-32, REV-2]**

RAD conversions are governed by the same civil rights authorities that govern HUD-assisted activities in general. HACA 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.

## **PART II: PBV PROJECT SELECTION**

### **18-II.A. OVERVIEW**

Unlike in the standard PBV program where HACA 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 2012-32, REV-2. 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 2012-32, REV-2]**

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. HACA must maintain control via a ground lease.

### **18-II.C. HACA-OWNED UNITS [24 CFR 983.59, FR Notice 1/18/17, and Notice PIH 2017-21]**

If the project is HACA-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 control/ownership provided under Notice PIH 2012-32, REV-3 (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 HACA's jurisdiction (unless HACA is itself the unit of general local government or an agency of such government), or another HUD-approved public or private independent entity.

HACA may compensate the independent entity from HACA's ongoing administrative fee income (including amounts credited to the administrative fee reserve). HACA may not use other program receipts to compensate the independent entity for its services. HACA, and the independent entity, may not charge the family any fee for the services provided by the independent entity.

## **18-II.D. SUBSIDY LAYERING REQUIREMENTS [Notice PIH 2012-32, REV-2]**

In the case of HACA which 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; HACA may convey all program funds to the covered project. HUD will recapture any public housing funds that HACA has not expended once it no longer has units under ACC. In the case where HACA 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, HACA 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. CAP ON NUMBER OF PBV UNITS IN EACH PROJECT**

### **Maximum Amount of PBV Assistance [Notice PIH 2012-32, REV-2]**

Covered projects do not count against the maximum amount of assistance HACA may utilize for the PBV program, which under the standard PBV program is set at 20 percent of the amount of budget authority allocated to HACA 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.

### **50 Percent per Project Cap [Notice PIH 2012-32, REV-2]**

The limitation on the number of units receiving assistance is increased from 25 percent to 50 percent under RAD. An assisted household cannot be involuntarily displaced as a result of this provision.

### **Exceptions to the 50 Percent per Project Cap [24 CFR 983.56(b) and Notice PIH 2012-32, REV-2]**

Exceptions are allowed and PBV units are not counted against the 50 percent per project cap if:

- The units are in a single-family building (one to four units);
- The units are exclusively for elderly families; or
- The units are for households eligible for supportive services available to all families receiving PBV assistance in the project (“Supportive Services Household”)

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.

### ***Supportive Services***

HACA must include in its administrative plan the type of services offered to families for a project to qualify for the exception and the extent to which such services will be provided. It is not necessary that the services be provided at or by the project if they are approved services. The project must make supportive services available to all families receiving RAD 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 at least one of the supportive services offered at the project.

If such services are declined by the household or the household later chooses to no longer participate in a service the unit shall remain under the HAP contract, the household shall not be terminated from the PBV program, and the decision to decline an offer to receive supportive services shall not represent a ground for lease termination.

If a family at the time of initial tenancy is receiving, and while the resident of an excepted unit has received, FSS supportive services or any other supportive services as defined in HACA's administrative plan, and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit.

If a family becomes ineligible for all the supportive services available to the family other than successfully completing the supportive services objective, the unit loses its excepted status.

#### HACA Policy

HACA will assist housing for occupancy by Supportive Services Households. This may include disabled families, families in need of particular supportive services, or families participating in the Family Self-Sufficiency (FSS) program. With the exception of in-place families at the time of conversion who decline services, families must be eligible for continued occupancy. Families will not be required to accept and receive supportive services for the exception to apply to the unit.

The following types of services may be provided depending on the needs of the family, to the extent the family needs the services:

- Participation in HACA's FSS Program;
- Training and development of housekeeping and homemaking skills;
- Family budgeting;
- Parenting skills;
- Computer access and training;
- Work skills development, job training and employment counseling;
- Educational/vocational opportunities;
- Case management services and/or counseling;
- Life skills training; and
- Other as appropriate and available

Supportive services will be provided to a family throughout their tenancy unless the family no longer needs or wants the services. The frequency and depth of services will depend on individual family need with consideration made for appropriateness and availability of such services.

HACA's FSS Action Plan allows families who have previously participated in a FSS program but did not complete the FSS contract to re-enroll in the FSS program. HACA

will allow such families to re-enroll in the FSS program and thereby re-qualify for supportive services units.

**Promoting Partially Assisted Projects [24 CFR 983.56(c)]**

HACA 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].

HACA 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. HACA may also determine not to provide PBV assistance for excepted units, or HACA may establish a per-project cap of less than 50 percent.

HACA Policy:

HACA will not impose any further cap on the number of PBV units assisted per project in projects with excepted units.

## **18-II.F. SITE SELECTION STANDARDS**

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. If units are transferred to a different housing site, then the deconcentration rule applies.

HUD will conduct a front-end civil rights review of 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) to determine whether they meet one of the conditions that would allow for new construction in an area of minority concentration.

HACA 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**

HUD can neither accept nor 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 as part of the 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 2012-32, REV-2.

## **PART III: DWELLING UNITS**

### **18-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.

### **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)]**

The lead-based paint requirements for the tenant-based voucher program do not apply to the PBV program. Instead, The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR part 35, subparts A, B, H, and R, apply to the PBV program.

### **18-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. HACA 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 [Notice PIH 2012-32, REV-2]**

HACA enters into the HAP contract when financing closes for the property. All units that are undergoing rehabilitation must meet HQS by dates set in the conversion commitment with HUD.

### **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, HACA must inspect the unit. HACA may not provide assistance on behalf of the family until the unit fully complies with HQS, unless the PHA 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.

#### HACA Policy

HACA will not provide assistance in turnover units until the unit fully complies with HQS.

### **Annual/Biennial Inspections [24 CFR 983.103(d) and FR Notice 6/25/14]**

At least once every 24 months during the term of the HAP contract, HACA 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.

#### HACA Policy

Once every 24 months, HACA will inspect, at a minimum, 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, HACA must reinspect 100 percent of the contract units in the building.

### **Other Inspections [24 CFR 983.103(e)]**

HACA 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. HACA must take into account complaints and any other information coming to its attention in scheduling inspections.

HACA 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 HACA supervisory quality control HQS inspections, HACA should include a representative sample of both tenant-based and project-based units.

### **Inspecting HACA-Owned Units [24 CFR 983.103(f)]**

In the case of HACA-owned units, the inspections must be performed by an independent agency designated by HACA and approved by HUD. The independent entity must furnish a copy of each inspection report to HACA and to the HUD field office where the project is located. HACA 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 HACA-owner.

## **PART IV: HOUSING ASSISTANCE PAYMENTS (HAP) CONTRACT**

### **18-IV.A. OVERVIEW**

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 HACA 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 [PBV Quick Reference Guide (10/14)]**

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). The distinction between “existing housing” and “rehabilitated and newly constructed housing” is overridden by RAD requirements. The RAD rider must be attached to the PBV HAP contract and effectuates the conversion of public housing to PBV under RAD PBV. 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, HACA 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 2012-32, REV-2]**

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, 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 established a maximum term of 15 years, as well as 24 CFR 983.205(a), which governs the contract term.

#### **Agreement to Enter into a HAP (AHAP) Contract [Notice PIH 2012-32, REV-2]**

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 2012-32, REV-2]**

By statute, upon contract expiration, the agency administering the vouchers will offer, and HACA will accept, renewal of the contract 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 HACA discretion to renew the contract for term of up to 15 years, 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)]**

HACA 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 HACA determines that a contract does not comply with HQS, HACA 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.

#### HACA Policy

HACA 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 2012-32, REV-2]**

In certain mixed-finance projects, HACA may ask HUD permission to have assistance float among unoccupied 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 HACA 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, including any excepted units. The property must maintain the same number and type of RAD units from the time of the initial HAP contract execution forward.

#### HACA Policy

HACA will not float assistance among unoccupied units within the project.

### **Reduction in HAP Contract Units [Notice PIH 2012-32, REV-2]**

Project owners are required to make available for occupancy by eligible tenants the number of assisted units under the terms of the HAP contract.

HACA may not reduce the number of assisted units without HUD approval. Any HUD approval of HACA'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, HACA must reinstate the unit after the family has vacated the property. If the project is partially assisted, HACA may substitute a different unit for the unit on the HAP contract in accordance with 24 CFR 983.207, or where "floating" units have been permitted.

## **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, he or she 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 HACA, 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 HACA, the HAP contract may provide for vacancy payments to the owner for a HACA-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 HACA 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.

##### HACA Policy

HACA will provide vacancy payments to the owner equal to the contract rent in effect at the time of the vacancy for a period not to exceed one month. The HAP contract with the owner will contain the terms under which vacancy payments will be made.

## **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 2012-32, REV-2]**

Current households are not subject to rescreening, income eligibility, or income targeting provisions. Consequently, current households will be grandfathered for conditions that occurred prior to conversion but will be subject to any ongoing eligibility requirements for actions that occur after conversion. 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.

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 HACA, 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 HACA's collection and use of family information regarding income, expenses, and family composition [24 CFR 5.230]. HACA 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.

#### HACA Policy

HACA 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) and Notice PIH 2012-32, REV-2]**

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.

HACA Policy.

HACA will establish and manage separate waiting lists for individual projects that are receiving RAD PBV assistance. HACA currently has waiting lists for the following RAD PBV projects.

Emery Glen

Mission View

HACA 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 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.

## **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 HACA's waiting list. HACA may establish selection criteria or preferences for occupancy of particular PBV units.

### **Income Targeting [24 CFR 983.251(c)(6) and Notice PIH 2012-32, REV-2]**

At least 75 percent of the families admitted to HACA's tenant-based and project-based voucher programs during HACA's 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.

### **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, HACA must first refer families who require such features to the owner.

### **Preferences [24 CFR 983.251(d), FR Notice 11/24/08, and Notice PIH 2012-32, REV-2]**

HACA may use the same selection preferences that are used for the tenant-based voucher program, establish selection criteria or preferences for the PBV program as a whole, or for occupancy of particular PBV developments or units.

- The PHA 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 PHA 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 persons with disabilities who may benefit from services provided in the project. In these projects, residents with disabilities may not be required to accept the particular services offered as a condition of occupancy.

If HACA has projects with more than 50 percent of the units receiving project-based assistance because those projects include "excepted units" (i.e., units specifically made available for elderly, or families receiving supportive services), HACA must give preference to such families when referring families to these units [24 CFR 983.261(b)].

### **HACA Policy**

HACA will provide a selection preference when required by the regulation (e.g., eligible in-place families, qualifying families for "excepted units," persons with mobility impairments for accessible units). The following additional preferences/priority will apply:

- Voluntary Supportive Services (8 points): A family that qualifies for at least one of the Voluntary services offered in conjunction with assisted units at the project as set forth in the *Glossary*.

- Displaced-HACA (50 points): *Displaced family—HACA-owned or HACA-managed housing* as set forth in the *Glossary*.
- Displaced-Other (10 points): *Displaced family* as set forth in the *Glossary*.
- Veteran (1 point): Priority will be given to veterans or servicepersons as set forth in the *Glossary* within each preference category.

Preference points are aggregated to produce the total preference points for each applicant. Ties among applicants who have the same preferences/priorities are resolved, as applicable, by either;

- **order of ascending** lottery “tiebreaker” number (that is, applicants with a lower lottery “tiebreaker” number are selected before applicants with a higher one); or
- The date and time their complete application is received by HACA.

## **18-V.F. OFFER OF PBV ASSISTANCE**

### **Refusal of Offer [24 CFR 983.251(e)(3)]**

HACA 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 HACA'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, HACA 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, HACA must provide a briefing packet that explains how HACA 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, HACA 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, HACA 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***

HACA 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**

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 HACA from the HACA'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 HACA's subsidy standards.

### **Filling Vacancies [24 CFR 983.254(a)]**

The owner must promptly notify HACA of any vacancy or expected vacancy in a contract unit. After receiving such notice, HACA must make every reasonable effort to promptly refer a sufficient number of families for the owner to fill such vacancies. HACA and the owner must make reasonable efforts to minimize the likelihood and length of any vacancy.

#### HACA Policy

The owner must notify HACA in writing (mail, fax, or e-mail) within five business days of learning about any vacancy or expected vacancy.

HACA 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]**

### **HACA Responsibility**

HACA is not responsible or liable to the owner or any other person for the family's behavior or suitability for tenancy. However, HACA may opt to screen applicants for family behavior or suitability for tenancy and may deny applicants based on such screening.

#### HACA Policy

HACA will not conduct screening to determine a PBV applicant family's suitability for tenancy.

HACA must provide the owner with an applicant family's current and prior address (as shown in HACA records) and the name and address (if known by HACA) of the family's current landlord and any prior landlords.

In addition, HACA may offer the owner other information HACA may have about a family, including information about the tenancy history of family members or about drug trafficking and criminal activity by family members. HACA must provide applicant families a description of HACA's policy on providing information to owners, and HACA must give the same types of information to all owners.

HACA 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)].

#### HACA Policy

HACA will inform owners of their responsibility to screen prospective tenants, and will provide owners with the required known name and address information. HACA 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 HACA, 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 and Notice PIH 2012-32, REV-2]**

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) and Notice PIH 2012-32, REV-2]**

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.

HACA 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. An example of language that may be included can be found in Attachment-1E of Notice PIH 2012-32, REV-2.

#### **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 HACA (the names of family members and any HACA-approved live-in aide)

All provisions in the HUD-required tenancy addendum must be included in the lease. The terms of the tenancy addendum prevail over other provisions of the lease.

## **Initial Term and Lease Renewal [24 CFR 983.256(f) and PBV Quick Reference Guide (10/14)]**

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
- HACA terminates the HAP contract
- HACA 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 HACA a copy of all changes.

The owner must notify HACA 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 HACA and in accordance with the terms of the lease relating to its amendment. HACA 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 and Notice PIH 2012-32, REV-2]**

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 HACA’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 HACA 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, HACA 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
- 14 days in the case of nonpayment of rent
- 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

Unlike in the standard PBV program, residents in converted projects have the right to request an informal hearing for issues that adversely affect the resident’s rights, obligations, welfare, or status with both HACA and the project owner. See Chapter 16 Part III: Informal Reviews and Hearings for more information.

### ***Noncompliance with Supportive Services Requirement [24 CFR 983.257(c), FR Notice 11/24/08, and Notice PIH 2012-32, REV-2]***

Under RAD, the requirement that a family must actually receive services to reside in a unit where families receive supportive services differs. Families living in units that will convert under RAD must be given the option to receive supportive services. If such services are declined by the household, the unit will remain under the HAP contract, the household will not be terminated from the PBV program, and the decision to decline an offer to receive supportive services will not represent a ground for lease termination. Once the initial household residing in the excepted unit under RAD vacates such unit, all PBV program requirements related to the required receipt of supportive services will apply. For those families, if a family is living in a project-based unit that is excepted from the 50 percent per project cap on project-basing because of participation in a supportive services program (e.g., Family Self-Sufficiency), and the family fails to complete its supportive services requirement without good cause, such failure is grounds for lease termination by the owner.

### ***Tenant Absence from the Unit [24 CFR 983.256(g) and 982.312(a)]***

The lease may specify a maximum period of family absence from the unit that may be shorter than the maximum period permitted by HACA 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. HACA 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 and Notice PIH 2012-32, REV-2]**

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, the family will pay the owner an amount equal to their TTP. 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.

Following conversion, the standard PBV regulations apply to any newly admitted families. For those families, 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 HACA. After the 180-day period, the unit shall be removed from the HAP contract pursuant to 24 CFR 983.211.

#### **HACA Policy**

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 HACA of the change and request an interim reexamination before the expiration of the 180-day period.

## **Security Deposits [24 CFR 983.259 and PBV Quick Reference Guide (10/14)]**

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. Otherwise the security deposit requirements for standard PBV apply.

The owner may collect a security deposit from the tenant. HACA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.

### HACA Policy

HACA will allow the owner to collect a security deposit amount the owner determines is appropriate, as long as it does not exceed that allowed under state law.

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. HACA 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 2012-32, REV-2]**

Current PH FSS participants will continue to be eligible for FSS once their housing is converted under RAD, and HACA 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. HACA 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.

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.

#### **18-VI.D. RESIDENT PARTICIPATION AND FUNDING [Notice PIH 2012-32, REV-2]**

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 and Notice PIH 2012-32, REV-2]**

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.

Following conversion, the standard PBV regulations apply. If HACA determines that a family is occupying a wrong-size unit, based on the HACA'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, HACA must promptly notify the family and the owner of this determination, and HACA must offer the family the opportunity to receive continued housing assistance in another unit.

#### HACA Policy

HACA 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 HACA's determination. HACA 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 HACA offers the family a tenant-based voucher, HACA 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 HACA, 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, HACA must remove the unit from the HAP contract. However, as referenced in section 5-II.C. for under-housed project-based families, if the family documents that the family's tenant-based voucher expires because the family cannot locate a suitable unit, and the family could remain housed in the PBV unit using the 2+1 rule, HACA will not terminate the housing assistance payments and the family will be allowed to remain in the PBV unit for as long as the family size qualifies for the 2+1 rule.

If HACA 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 HACA, or both, HACA must terminate the housing assistance payments for the unit at the expiration of a reasonable period as determined by HACA and remove the unit from the HAP contract.

#### HACA Policy

When HACA offers a family another form of assistance that is not a tenant-based voucher, the family will be given 60 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 60-day time frame, HACA will terminate the housing assistance payments at the expiration of this 60-day period.

HACA may make exceptions to this 60-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 HACA.

## **Choice Mobility [Notice PIH 2012-32, REV-2]**

If the family wishes to move with continued tenant-based assistance, the family must contact HACA to request the rental assistance prior to providing notice to terminate the lease. If the family terminates the lease in accordance with lease requirements, HACA 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, HACA must give the family priority to receive the next available opportunity for continued tenant-based assistance.

If the family terminates the assisted lease before the end of the first year, the family relinquishes the opportunity for continued tenant-based assistance.

### **HACA Policy:**

Prior to providing notice to the owner to terminate the lease, the family may submit a written request to HACA 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 it continues 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, its 12-month clock will reset. The family must wait 12 months from the date of move at the new property before it 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.

HACA 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.

Prior to assisting currently housed PBV holders who have priority to receive the next available opportunity for continued tenant-based assistance, HACA will set aside PBVs committed for new projects coming on-line (if applicable) and assist applicants for 1.) Targeted Funding and 2.) FUP Graduates, CHOICES or FACT Programs Graduates, and MHSA Program Graduates as described in section 4-III.C.-Local Preferences-Section 8 Housing Choice Voucher Program (HCV) as these forms of tenant-based assistance have previously been committed and are not deemed to be available.

## **Turnover Cap**

If as a result of RAD, the total number of PBV units (including RAD PBV units) administered by HACA exceeds 20 percent of the HACA's authorized units under its HCV ACC with HUD, HACA may establish a turnover cap. HACA is not required to provide more than three-quarters of its turnover vouchers in any single year to the residents of covered projects. If HACA chooses to establish a turnover cap and the cap is implemented, HACA must create and maintain a waiting list in the order requests from eligible households were received.

### HACA Policy

HACA will not establish a choice mobility cap.

## **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.

### HACA Policy

See Chapter 16 Part IX (Exhibit 16-3) of this administrative plan for HACA's policy on transfers for victims that have been living in a unit for less than a year or seek to move sooner than a tenant-based voucher is available.

## **18-VLF EXCEPTIONS TO THE OCCUPANCY CAP [24 CFR 983.262]**

HACA may not pay housing assistance under a PBV HAP contract for more than 50 percent of the number of dwelling units in a project unless the units are [24 CFR 983.56]:

- In a single-family building;
- Specifically made available for elderly and/or disabled families; or
- Specifically made available for families receiving supportive services as defined by HACA. At least one member must be receiving at least one qualifying supportive service.

If a family at the time of initial tenancy is receiving and while the resident of an excepted unit has received Family Self-Sufficiency (FSS) supportive services or any other service as defined by HACA 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 50 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 HACA 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 HACA, and HACA 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 from the unit

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 HACA.

HACA 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.

#### HACA Policy

HACA will allow families who initially qualified to live in an excepted unit to remain when circumstances change due to situations beyond the remaining family members' control.

In all other cases, when HACA determines that a family no longer meets the criteria for a "qualifying family" in connection with the 50 percent per project cap exception, HACA will provide written notice to the family and owner within 10 business days of making the determination. The family will be given 60 days from the date of the notice to move out of the PBV unit. If the family does not move out within this 60-day time frame, HACA will terminate the housing assistance payments at the expiration of the 60-day period.

HACA may make exceptions to this 60-day period if needed for reasons beyond the family's control, such as death, serious illness, or other medical emergency of a family member.

HACA may refer other eligible families to the excepted units. However, if there are no eligible families on the waiting list and the owner does not refer eligible families to HACA, HACA will amend the HAP contract to reduce the total number of units under contract.

## **18-VI.G. REEXAMINATIONS [PBV Quick Reference Guide (10/14)]**

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, HACA 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 HACA 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.H. EARNED INCOME DISALLOWANCE [Notice PIH 2012-32, REV-2]**

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.

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.I. RESIDENTS' PROCEDURAL RIGHTS [Notice PIH 2012-32, REV-2]**

HUD is incorporating additional termination notification requirements for public housing projects that convert assistance under RAD to PBV 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 require that HACA provide adequate written notice of termination of the lease, which is no less than:

- A reasonable period of time, but not to exceed 30 days
  - If the health or safety of other tenants, HACA 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
- 14 days in the case of nonpayment of rent
- 30 days in any other case, except that if a state or local law provides for a shorter period of time, such shorter period shall apply

## **18-VI.J. INFORMAL REVIEWS AND HEARINGS [Notice PIH 2012-32, REV-2]**

Unlike in the standard PBV program, residents in converted projects have the right to request an informal hearing for issues that adversely affect the resident's rights, obligations, welfare, or status with both HACA and the project owner.

In addition to reasons for an informal hearing listed at 24 CFR 982.555(a)(1)(i)–(vi) (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)–(vi), the contract administrator will perform the hearing, as is the current standard in the program.
- For any additional hearings required under RAD, HACA (as owner) will perform the hearing.

An informal hearing will not be required for class grievances or for disputes between residents not involving HACA (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 HACA (as owner) or contract administrator.

HACA (as 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)–(vi). (See Chapter 16)

HACA (as owner) must provide an opportunity for an informal hearing before an eviction.

### **Noncompliance with Supportive Services Requirement [24 CFR 983.257(c) and FR Notice 11/24/08]**

Under RAD, the requirement that a family must qualify for services to reside in a unit differs. Families living in units that will convert under RAD must be given the option to receive supportive services. If such services are declined by the household, the unit shall remain under the HAP contract, the household will not be terminated from the PBV program, and the decision to decline an offer to receive supportive services will not represent a ground for lease termination. Once the initial household residing in the excepted unit under RAD vacates such unit, all PBV program requirements related to the required eligibility for supportive services shall apply.

## **PART VII: DETERMINING CONTRACT RENT**

### **18-VII.A. INITIAL CONTRACT RENTS [Notice PIH 2012-32, REV-2]**

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 HACA'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 2012-32, REV-2. 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.

HACA may adjust subsidy (and contract rents) across multiple projects as long as HACA does not exceed the aggregate subsidy for all of the projects HACA has submitted for conversion under RAD. This use, which HUD refers to as "bundled" rents, is permissible when HACA submits applications for two or more projects. There is no limit to the number of projects that HACA may bundle.

Notwithstanding the current funding level, the initial rents are set at the lower of:

- 110 percent of the fair market rent (FMR) or the HACA's exception payment standard approved by HUD, or the alternate rent cap in a PHA's MTW agreement
- Reasonable rent in comparison to the unassisted housing market
- An amount determined by current funding
  - Adjusted through rent bundling or reconfiguration of units

## **18-VII.B. ADJUSTING CONTRACT RENTS [Notice PIH 2012-32, REV-2 and PBV Quick Reference Guide (10/14)]**

Contract rents will be adjusted annually by HUD's operating cost adjustment factor (OCAF) at each anniversary of the HAP contract, 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, 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

HACA (or independent entity, if the project is HACA-owned) is responsible for processing rent adjustments, at each contract anniversary date, in accordance with the prevailing OCAF.

At least 120 days before the contract anniversary date, HUD recommends that the owner submit the OCAF rent adjustment worksheet (Form HUD-9625) to HACA (or the independent entity). HACA 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 can only be increased up to the reasonable rent. The approved rent adjustment will go into effect and 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 2012-32, REV-3, PBV Quick Reference Guide (10/14), and Notice PIH 2018-11]**

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. A PHA may request a waiver from HUD in order to establish a site-specific utility allowance schedule.

After conversion, the PHA may 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. The PHA may instead, however, apply site specific utility allowances in accordance with Notice PIH 2018-11.

#### HACA Policy

HACA will use the HCV utility allowance schedule for the RAD 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 HACA, 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, HACA 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 HACA. The comparability analysis may be performed by HACA 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.

#### **HACA-Owned Units**

For HACA-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 HACA-owned units to HACA 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, HACA 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 HACA agree on a later date.

Except for discretionary vacancy payments, HACA 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 HACA 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 HACA determines that the vacancy is the owner's fault.

### HACA Policy

If HACA determines that the owner is responsible for a vacancy and as a result is not entitled to keep the housing assistance payment, HACA 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 HACA, the HAP contract may provide for vacancy payments to the owner. HACA may only make vacancy payments if:

- The owner gives HACA 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 HACA 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 HACA and must provide any information or substantiation required by HACA to determine the amount of any vacancy payment.

### HACA 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 HACA 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 HACA 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.

For HAP contracts that provide for vacancy payments, HACA will provide vacancy payments to the owner equal to the contract rent in effect at the time of the vacancy for a period not to exceed one month.

### **18-VIII.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 HACA in accordance with HUD requirements. Any changes in the amount of tenant rent will be effective on the date stated in HACA's 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 HACA 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 HACA. The owner must immediately return any excess payment to the tenant.

#### **Tenant and HACA 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 HACA.

Likewise, HACA is responsible only for making the housing assistance payment to the owner in accordance with the HAP contract. HACA is not responsible for paying tenant rent, or any other claim by the owner, including damage to the unit. HACA 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, HACA 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.

HACA may pay the utility reimbursement directly to the family or to the utility supplier on behalf of the family. If HACA chooses to pay the utility supplier directly, HACA must notify the family of the amount paid to the utility supplier.

#### **HACA Policy**

HACA will make utility reimbursements directly to the family.

#### **18-VIII.D. PHASE-IN OF TENANT RENT INCREASES**

For in-place tenants, if a tenant's monthly rent increases by more than the greater of 10 percent or \$25 purely as a result of conversion, the rent increase will be phased in over 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.

##### HACA Policy

HACA will implement a five-year phase-in for in-place families whose rent increases by more than the greater of 10 percent or \$25 as a result of the conversion as follows:

Year 1: Any recertification (interim or annual) performed prior to the second annual recertification after conversion: 20 percent of the difference between the most recently paid TTP and the standard TTP

Year 2: Year 2 AR and any IR prior to Year 3 AR: 40 percent of the difference between the most recently paid TTP and the standard TTP

Year 3: Year 3 AR and any IR prior to Year 4 AR: 60 percent of the difference between the most recently paid TTP and the standard TTP

Year 4: Year 4 AR and any IR prior to Year 5 AR: 80 percent of the difference between the most recently paid TTP and the standard TTP

Year 5 AR and all subsequent recertifications: Full standard 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.

#### **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.

## **GLOSSARY**

### **A. ACRONYMS USED IN THE HOUSING CHOICE VOUCHER (HCV) PROGRAM**

<b>AAF</b>	Annual adjustment factor (published by HUD in the Federal Register and used to compute annual rent adjustments)
<b>ACC</b>	Annual Contributions Contract
<b>ADA</b>	Americans with Disabilities Act of 1990
<b>AIDS</b>	Acquired immune deficiency syndrome
<b>BR</b>	Bedroom
<b>CDBG</b>	Community Development Block Grant (Program)
<b>CFR</b>	Code of Federal Regulations (published federal rules that define and implement laws; commonly referred to as “the regulations”)
<b>CPI</b>	Consumer Price Index (published monthly by the Department of Labor as an inflation indicator)
<b>EID</b>	Earned income disallowance
<b>EIV</b>	Enterprise Income Verification
<b>FDIC</b>	Federal Deposit Insurance Corporation
<b>FHA</b>	Federal Housing Administration (HUD Office of Housing)
<b>FHEO</b>	Fair Housing and Equal Opportunity (HUD Office of)
<b>FICA</b>	Federal Insurance Contributions Act (established Social Security taxes)
<b>FMR</b>	Fair market rent
<b>FR</b>	Federal Register
<b>FSS</b>	Family Self-Sufficiency (Program)
<b>FY</b>	Fiscal year
<b>FYE</b>	Fiscal year end
<b>GAO</b>	Government Accountability Office
<b>GR</b>	Gross rent
<b>HA</b>	Housing authority or housing agency
<b>HAP</b>	Housing assistance payment
<b>HCV</b>	Housing Choice Voucher
<b>HQS</b>	Housing Quality Standards
<b>HUD</b>	Department of Housing and Urban Development
<b>HUDCLIPS</b>	HUD Client Information and Policy System
<b>IPA</b>	Independent public accountant

<b>IRA</b>	Individual retirement account
<b>IRS</b>	Internal Revenue Service
<b>JTPA</b>	Job Training Partnership Act
<b>LBP</b>	Lead-based paint
<b>LEP</b>	Limited English proficiency
<b>MSA</b>	Metropolitan Statistical Area (established by the U.S. Census Bureau)
<b>MTCS</b>	Multi-family Tenant Characteristics System (now the Form HUD-50058 submodule of the PIC system)
<b>MTW</b>	Moving to Work
<b>NOFA</b>	Notice of funding availability
<b>OGC</b>	HUD's Office of General Counsel
<b>OIG</b>	HUD's Office of Inspector General
<b>OMB</b>	Office of Management and Budget
<b>PASS</b>	Plan to Achieve Self-Support
<b>PHA</b>	Public housing agency
<b>PIC</b>	PIH Information Center
<b>PIH</b>	(HUD Office of) Public and Indian Housing
<b>PS</b>	Payment standard
<b>QC</b>	Quality control
<b>REAC</b>	(HUD) Real Estate Assessment Center
<b>RFP</b>	Request for proposals
<b>RFTA</b>	Request for tenancy approval
<b>RIGI</b>	Regional inspector general for investigation (handles fraud and program abuse matters for HUD at the regional office level)
<b>SEMAP</b>	Section Eight Management Assessment Program
<b>SRO</b>	Single room occupancy
<b>SSA</b>	Social Security Administration
<b>SSI</b>	Supplemental security income
<b>SWICA</b>	State wage information collection agency
<b>TANF</b>	Temporary assistance for needy families
<b>TPV</b>	Tenant protection vouchers
<b>TR</b>	Tenant rent
<b>TTP</b>	Total tenant payment

<b>UA</b>	Utility allowance
<b>UFAS</b>	Uniform Federal Accessibility Standards
<b>UIV</b>	Upfront income verification
<b>URP</b>	Utility reimbursement payment
<b>VAWA</b>	Violence Against Women Reauthorization Act of 2013

## **B. GLOSSARY OF SUBSIDIZED HOUSING TERMS**

***Absorption.*** In portability (under subpart H of this part 982): the point at which a receiving PHA stops billing the initial PHA for assistance on behalf of a portability family. The receiving PHA uses funds available under the receiving PHA consolidated ACC.

***Accessible.*** The facility or portion of the facility can be approached, entered, and used by persons with disabilities.

***Adjusted income.*** Annual income, less allowable HUD deductions and allowances.

***Administrative fee.*** Fee paid by HUD to HACA for administration of the program. See §982.152.

***Administrative plan.*** The plan that describes HACA's policies for administration of the tenant-based programs. The Administrative Plan and any revisions must be approved by HACA's board and included as a supporting document to HACA's PHA Plan. See §982.54.

***Admission.*** The point when the family becomes a participant in the program. The date used for this purpose is the effective date of the first HAP contract for a family (first day of initial lease term) in a tenant-based program.

***Affiliated individual.*** With respect to an individual, a spouse, parent, brother, sister, or child of that individual, or an individual to whom that individual stands in loco parentis (in the place of a parent), or any individual, tenant, or lawful occupant living in the household of that individual

***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 HACA under which HUD agrees to provide funding for a program under the 1937 Act, and HACA agrees to comply with HUD requirements for the program.

***Annual income.*** The anticipated total income of an eligible family from all sources for the 12-month period following the date of determination of income, computed in accordance with the regulations.

***Applicant (applicant family).*** A family that has applied for admission to a program but is not yet a participant in the program.

***Area exception rent.*** An amount that exceeds the published FMR. See 24 CFR 982.504(b).

***As-paid states.*** States where the welfare agency adjusts the shelter and utility component of the welfare grant in accordance with actual housing costs.

***Assets.*** (See *net family assets*.)

***At Risk of Becoming Homeless-Mainstream.*** An individual or family who:

- (i) Does not have sufficient resources or support links, e.g., family, friends, faith-based or other social networks, immediately available to prevent them from moving to an emergency shelter or other place described in paragraph (1) of the "Homeless-Mainstream" definition in

this glossary; and

(ii) Meets one of the following conditions:

(A) Has moved because of economic reasons two or more times during the 60 days immediately preceding the application for homelessness prevention assistance;

(B) Is living in the home of another because of economic hardship;

(C) Has been notified in writing that their right to occupy their current housing or living situation will be terminated within 21 days of the date of application for assistance;

(D) Lives in a hotel or motel and the cost of the hotel or motel stay is not paid by charitable organizations or by federal, State, or local government programs for low-income individuals;

(E) Lives in a single-room occupancy or efficiency apartment unit in which there reside more than two persons, or lives in a larger housing unit in which there reside more than 1.5 people per room, as defined by the U.S. Census Bureau;

(F) 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); or

(G) Otherwise lives in housing that has characteristics associated with instability and an increased risk of homelessness.

***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 PHAs under the program. For each funding increment in a PHA program, budget authority is the maximum amount that may be paid by HUD to the PHA over the ACC term of the funding increment.

**Child.** A member of the family other than the family head or spouse who is under 18 years of age.

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

**Citizen.** A citizen or national of the United States.

**Co-head.** An individual in the household who is equally responsible for the lease with the head of household. A family may have a co-head or spouse but not both. A co-head never qualifies as a dependent. The co-head must have legal capacity to enter into a lease.

**Common space.** In shared housing, the space available for use by the assisted family and other occupants of the unit.

**Computer match.** The automated comparison of databases containing records about individuals.

**Confirmatory review.** An on-site review performed by HUD to verify the management performance of a PHA.

**Consent form.** Any consent form approved by HUD to be signed by assistance applicants and participants to obtain income information from employers and SWICAs; return information from the Social Security Administration (including wages, net earnings from self-employment, and retirement income); and return information for unearned income from the IRS. Consent forms expire after a certain time and may authorize the collection of other information to determine eligibility or level of benefits.

**Congregate housing.** Housing for elderly persons or persons with disabilities that meets the HQS for congregate housing. A special housing type: see 24 CFR 982.606–609.

**Contiguous MSA.** In portability (under subpart H of part 982): An MSA that shares a common boundary with the MSA in which the jurisdiction of the initial PHA is located.

**Continuously assisted.** An applicant is continuously assisted under the 1937 Act if the family is already receiving assistance under any 1937 Housing Act program when the family is admitted to the voucher program.

**Contract authority.** The maximum annual payment by HUD to HACA for a funding increment.

**Cooperative** (term includes mutual housing). Housing owned by a nonprofit corporation or association, and where a member of the corporation or association has the right to reside in a particular apartment, and to participate in management of the housing. A special housing type (see 24 CFR 982.619).

**Covered families.** Statutory term for families who are required to participate in a welfare agency economic self-sufficiency program and who may be subject to a welfare benefit sanction for noncompliance with this obligation. Includes families who receive welfare assistance or other public assistance under a program for which federal, state or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for the assistance.

**Dating violence.** Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship
- The type of relationship
- The frequency of interaction between the persons involved in the relationship

**Dependent.** A member of the family (except foster children and foster adults) other than the family head or spouse, who is under 18 years of age, or is a person with a disability, or is a full-time student.

**Dependent child.** In the context of the student eligibility restrictions, a dependent child of a student enrolled in an institution of higher education. The dependent child must also meet the definition of *dependent* as specified above.

**Disability assistance expenses.** Reasonable expenses that are anticipated, during the period for which annual income is computed, for attendant care and auxiliary apparatus for a disabled family member, and that are necessary to enable a family member (including the disabled member) to be employed, provided that the expenses are neither paid to a member of the family nor reimbursed by an outside source.

**Disabled family.** A family whose head, cohead, spouse, or sole member is a person with disabilities; two or more persons with disabilities living together; or one or more persons with disabilities living with one or more live-in aides.

**Disabled person.** See *person with disabilities*.

**Disallowance.** Exclusion from annual income.

**Displaced Person(s).** A person or persons whose dwelling, as determined by HACA:

- Has been destroyed, rendered uninhabitable or projected to be uninhabitable for at least 120 days from the date of displacement as a result of:
  - A Federally-declared disaster in any state; or
  - A disaster declared by the State of California; or
  - In HACA's jurisdiction, action or inaction by a landlord in response to a disaster declared by the Federal Government or the State of California—provided that the family was meeting all conditions of occupancy at the time of its occurrence; or
- In HACA's jurisdiction, has been, or will be, rendered legally or functionally uninhabitable for, at least, 120 days from the date of displacement as a result of the operation of a governmental entity (such as eminent domain, demolition, a closing, improvement, or code enforcement); or

- Is owned or managed by HACA and has been or is slated to be demolished, disposed of and/or voluntarily converted.

***Displaced family—HACA-owned or HACA-managed housing.*** (A) *Displaced person(s)*, residing in a dwelling owned or managed by HACA and is eligible as a *continuously assisted* family.

***Displaced family.*** (A) *Displaced person(s)* that:

- Has submitted an online or paper application to HACA for housing assistance within 120 days after the date of displacement, or, in the case of a binding written governmental notice, within 120 days before or after the mandatory vacate date; and
- As of the date that HACA selects it for housing assistance contingent on HACA's verification of its application information, is not living in *standard, permanent replacement housing*.

***Domestic violence.***

- Felony or misdemeanor crimes of violence committed by:
  - a current or former spouse of the victim;
  - a person with whom the victim shares a child in common;
  - a person who is cohabitating with or has cohabitated with the victim as a spouse;
  - a person similarly situated to a spouse of the victim under the domestic or family violence laws of the State of California; or
  - 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 State of California.
- Abuse perpetrated against the victim by:
  - The victim's spouse or former spouse;
  - Someone the victim lives with or lived with in the past;
  - Someone the victim is dating or has dated;
  - Someone the victim has a child with;
  - Someone to whom the victim is related by blood, marriage, or adoption (including the victim's parent, grandparent, child, grandchild, brother, or sister).

***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.

***Economic self-sufficiency program.*** Any program designed to encourage, assist, train or facilitate the economic independence of assisted families, or to provide work for such families. Can include job training, employment counseling, work placement, basic skills training, education, English proficiency, Workfare, financial or household management, apprenticeship, or any other program necessary to ready a participant to work (such as treatment for drug abuse or mental health treatment). Includes any work activities as defined in the Social Security Act (42 U.S.C. 607(d)). Also see 24 CFR 5.603(c).

***Elderly family.*** A family whose head, cohead, spouse, or sole member is a person who is at least 62 years of age; two or more persons who are at least 62 years of age living together; or one or more persons who are at least 62 years of age living with one or more live-in aides.

***Elderly person.*** An individual who is at least 62 years of age.

***Eligible family*** 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 as evidence of citizenship or eligible immigration status. (See 24 CFR 5.508(b).)

***Extremely low-income family.*** A very low-income family whose annual income does not exceed the higher of the federal poverty level or 30 percent of the median income for the area. 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 24 CFR 5.603.)

***Facility.*** All or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock, or other real or personal property or interest in the property.

***Fair Housing Act.*** Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988.

***Fair market rent (FMR).*** The rent, including the cost of utilities (except telephone), as established by HUD for units of varying sizes (by number of bedrooms), that must be paid in the housing market area to rent privately owned, existing, decent, safe, and sanitary rental housing of modest (non-luxury) nature with suitable amenities. See periodic publications in the *Federal Register* in accordance with 24 CFR Part 888.

**Family.** A person or group of persons, as determined by HACA consistent with 24 CFR 5.403, approved to reside in a unit with assistance under the program. *Family* 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, displaced person, disabled person, near-elderly person, or any other single person; or
- A group of persons residing together , and such group includes, but is not limited to:
  - A family with or without children (a child who is temporarily away from the home due to placement in foster care is considered determining member of the family)
  - An elderly family;
  - A near-elderly family;
  - A disabled family;
  - A displaced family; and
  - 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 HACA in accordance with 24 CFR part 984 to promote self-sufficiency of assisted families, including the coordination of supportive services (42 U.S.C. 1437u).

**Family share.** The portion of rent and utilities paid by the family. For calculation of family share, see 24 CFR 982.515(a).

**Family unit size.** The appropriate number of bedrooms for a family, as determined by HACA under the HACA subsidy standards.

**Federal agency.** A department of the executive branch of the federal government.

**Foster child care payment.** A payment to eligible households by state, local, or private agencies appointed by the state to administer payments for the care of foster children.

**Full-time student.** A person who is attending school or vocational training on a full-time basis (carrying a subject load that is considered full-time for day students under the standards and practices of the educational institution attended). (See 24 CFR 5.603)

**Funding increment.** Each commitment of budget authority by HUD to HACA under the consolidated annual contributions contract for the HACA 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 24 CFR 982.610–614.)

**Handicap.** Any condition or characteristic that renders a person an individual with handicaps.  
(See *person with disabilities*.)

**HAP contract.** The housing assistance payments contract. A written contract between the HACA and an owner for the purpose of providing housing assistance payments to the owner on behalf of an eligible family.

**Hate Crime.** Actual or threatened physical violence or intimidation that is directed against a person or his/her property and is based on the person's race, color, religion, sex, national origin, disability or familial status, including sexual orientation, and occurred within the last 30 days or is of a continuing nature.

**Head of household.** The adult member of the family who is the head of the household for purposes of determining income eligibility and rent.

**Homeless-Mainstream.** *Homeless* means:

(1) An individual or family who lacks a fixed, regular, and adequate nighttime residence, meaning:

(i) An individual or family with a primary nighttime residence that is a public or private place not designated for or ordinarily used as a regular sleeping accommodation for human beings, including a car, park, abandoned building, bus or train station, airport, or camping ground:

(ii) An individual or family living in a supervised publicly or privately operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, State, or local government programs for low-income individuals): or

(iii) An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution;

(2) An individual or family who will imminently lose their primary nighttime residence, provided that:

(i) The primary nighttime residence will be lost within 14 days of the date of application for homeless assistance;

(ii) No subsequent residence has been identified; and

(iii) The individual or family lacks the resources or support networks, e.g., family, friends, faith-based or other social networks, needed to obtain other permanent housing;

(3) Unaccompanied youth under 25 years of age, or families with children and youth, who do not otherwise qualify as homeless under this definition, but who:

(i) Are defined as homeless under section 387 of the Runaway and Homeless Youth Act (42 U.S.C. 5732a), section 637 of the Head Start Act (42 U.S.C. 9832), section 41403 of the

Violence Against Women Act of 1994 (42 U.S.C. 14043 e-2), section 330(h) of the Public Health Service Act (42 U.S.C. 254b(h)), section 3 of the Food and Nutrition Act of 2008 (7 U.S.C. 2012, section 17(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(b)), or section 725 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11434a):

(ii) Have not had a lease, ownership interest, or occupancy agreement in permanent housing at any time during the 60 days immediately preceding the date of application for homeless assistance;

(iii) Have experienced persistent instability as measured by two moves or more during the 60-day period immediately preceding the date of applying for homeless assistance; and

(iv) Can be expected to continue in such status for an extended period of time because of chronic disabilities; chronic physical health or mental health conditions; substance addiction; histories of domestic violence or childhood abuse (including neglect); the presence of a child or youth with a disability; or two or more barriers to employment, which include the lack of a high school degree or General Education Diploma (GED), illiteracy, low English proficiency, a history of incarceration or detention for criminal activity, and a history of unstable employment; or

(4) Any individual or family who:

(i) Is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence;

(ii) Has no other residence; and

(iii) Lacks the resources or support networks, e.g. family, friends, and faith-based or other social networks, to obtain other permanent housing.

**Household.** A family, foster children, foster adults, and, if approved in writing by HACA, a *live-in aide*, including family members of the *live-in aide* approved in writing by HACA.

**Housing assistance payment.** The monthly assistance payment by HACA, which includes: (1) A payment to the owner for rent to the owner under the family's lease; and (2) An additional payment to the family if the total assistance payment exceeds the rent to owner.

**Housing agency (HA).** See *public housing agency*.

**Housing quality standards (HQS).** The HUD minimum quality standards for housing assisted under the voucher program.

**HUD.** The U.S. Department of Housing and Urban Development.

**Imputed asset income.** An asset disposed of for less than fair market value during the two years preceding examination or reexamination.

**Imputed income.** The HACA-established passbook rate multiplied by the total cash value of assets. The calculation is used when net family assets exceed \$5,000.

**Imputed welfare income.** An amount of annual income that is not actually received by a family as a result of a specified welfare benefit reduction, but is included in the family's annual income and therefore reflected in the family's rental contribution.

**Income.** Income from all sources of each member of the household, as determined in accordance with criteria established by HUD.

**Income for eligibility.** Annual income.

**Income information** means information relating to an individual's income, including:

- All employment income information known to current or previous employers or other income sources
- All information about wages, as defined in the state's unemployment compensation law, including any social security number; name of the employee; quarterly wages of the employee; and the name, full address, telephone number, and, when known, employer identification number of an employer reporting wages under a state unemployment compensation law
- Whether an individual is receiving, has received, or has applied for unemployment compensation, and the amount and the period received
- Unearned IRS income and self-employment wages and retirement income
- Wage, social security, and supplemental security income data obtained from the Social Security Administration.

**Individual with handicaps.** See *person with disabilities*.

**Initial PHA.** In portability, the term refers to both: (1) A PHA that originally selected a family that later decides to move out of the jurisdiction of the selecting PHA; and (2) A PHA that absorbed a family that later decides to move out of the jurisdiction of the absorbing PHA.

**Initial payment standard.** The payment standard at the beginning of the HAP contract term.

**Initial rent to owner.** The rent to owner at the beginning of the HAP contract term.

**Institution of higher education.** An institution of higher education as defined in 20 U.S.C. 1001 and 1002. See Exhibit 3-2 in this Administrative Plan.

**Jurisdiction.** The area in which HACA has authority under state and local law to administer the program.

**Landlord.** Either the owner of the property or his/her representative, or the managing agent or his/her representative, as shall be designated by the owner.

**Lease.** A written agreement between an owner and a tenant for the leasing of a dwelling unit to the tenant. The lease establishes the conditions for occupancy of the dwelling unit by a family with housing assistance payments under a HAP contract between the owner and HACA.

**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 HACA to select among applicant families.

**Low-income family.** A family whose income does not exceed 80 percent of the median income for the area as determined by HUD with adjustments for smaller or larger families, except that HUD may establish income limits higher or lower than 80 percent for areas with unusually high or low incomes.

**Manufactured home.** A manufactured structure that is built on a permanent chassis, is designed for use as a principal place of residence, and meets the HQS. (A special housing type: see 24 CFR 982.620 and 982.621.)

**Manufactured home space.** In manufactured home space rental: A space leased by an owner to a family. A manufactured home owned and occupied by the family is located on the space. See 24 CFR 982.622 to 982.624.

**Marriage Partner of the head of household.** An individual who (1) has entered into and maintains with the head of household either (a) a solemnized marriage civil contract as set forth in the California Family Code after having been issued a marriage license; or (b) a marriage contracted outside California that would be valid by the laws of the jurisdiction in which the marriage was contracted; or (2) is the registered domestic partner of the head of household. The spouse of the head of household.

**Medical expenses.** Medical expenses, including medical insurance premiums, that are anticipated during the period for which annual income is computed, and that are not covered by insurance (a deduction for elderly or disabled families only). These allowances are given

when calculating adjusted income for medical expenses in excess of 3 percent of annual income.

**Minor.** A member of the family household other than the family head or spouse, who is under 18 years of age.

**Mixed family.** A family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

**Monthly adjusted income.** One twelfth of adjusted income.

**Monthly income.** One twelfth of annual income.

**Mutual housing.** Included in the definition of *cooperative*.

**National.** A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

**Near-elderly family.** A family whose head, spouse, or sole member is a person who is at least 50 years of age but below the age of 62; or two or more persons, who are at least 50 years of age but below the age of 62, living together; or one or more persons who are at least 50 years of age but below the age of 62 living with one or more live-in aides.

**Net family assets.** (1) Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded.

- In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining annual income under §5.609.
- In determining net family assets, PHAs or owners, as applicable, shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefore. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

**Noncitizen.** A person who is neither a citizen nor national of the United States.

**Notice of funding availability (NOFA).** For budget authority that HUD distributes by competitive process, the *Federal Register* document that invites applications for funding. This document explains how to apply for assistance and the criteria for awarding the funding.

**Office of General Counsel (OGC).** The General Counsel of HUD.

**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 HACA 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 HACA supervisor (or by another qualified person other than the person who performed the original work) to determine if the work documented in the files or records conforms to program requirements. For minimum sample size see CFR 985.3.

***Participant (participant family).*** A family that has been admitted to the HACA program and is currently assisted in the program. The family becomes a participant on the effective date of the first HAP contract executed by HACA for the family (first day of initial lease term).

**Payment standard.** The maximum monthly assistance payment for a family assisted in the voucher program (before deducting the total tenant payment by the family).

**Person with disabilities.** *For the purposes of program eligibility.* A person who has a disability as defined under the Social Security Act or Developmental Disabilities Care Act, or a person who has a physical or mental impairment expected to be of long and indefinite duration and whose ability to live independently is substantially impeded by that impairment but could be improved by more suitable housing conditions. This includes persons with AIDS or conditions arising from AIDS but excludes persons whose disability is based solely on drug or alcohol dependence. *For the purposes of reasonable accommodation.* A person with a physical or mental impairment that substantially limits one or more major life activities, a person regarded as having such an impairment, or a person with a record of such an impairment.

**Portability.** Renting a dwelling unit with a Section 8 housing choice voucher outside the jurisdiction of the initial PHA.

**Premises.** The building or complex in which the dwelling unit is located, including common areas and grounds.

**Previously unemployed.** With regard to the earned income disallowance, a person with disabilities who has earned, in the 12 months previous to employment, no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage.

**Private space.** In shared housing, the portion of a contract unit that is for the exclusive use of an assisted family.

**Processing entity.** The person or entity that, under any of the programs covered, is responsible for making eligibility and related determinations and any income reexamination. In the HCV program, the “processing entity” is the “responsible entity.”

**Project owner.** The person or entity that owns the housing project containing the assisted dwelling unit.

**Public assistance.** Welfare or other payments to families or individuals, based on need, which are made under programs funded, separately or jointly, by federal, state, or local governments.

**Public housing agency (PHA).** Any state, county, municipality, or other governmental entity or public body, or agency or instrumentality of these entities, that is authorized to engage or assist in the development or operation of low-income housing under the 1937 Act.

**Public Housing Mis-housed.** A family whose Public Housing unit does not contain the appropriate number of bedrooms for the family’s size and composition; or, a family residing in a unit designated as restricted to elderly or disabled families that is neither an elderly nor disabled family.

**Qualified family** (under the earned income disallowance). A family participating in an applicable assisted housing program or receiving HCV assistance:

- Whose annual income increases as a result of employment of a family member who is a person with disabilities and who was previously unemployed for one or more years prior to employment;
- Whose annual income increases as a result of increased earnings by a family member who is a person with disabilities during participation in any economic self-sufficiency or other job training program; or
- Whose annual income increases, as a result of new employment or increased earnings of a family member who is a person with disabilities, during or within six months after receiving assistance, benefits or services under any state program for temporary assistance for needy families funded under Part A of Title IV of the Social Security Act, as determined by the responsible entity in consultation with the local agencies administering temporary assistance for needy families (TANF) and Welfare-to-Work (WTW) programs. The TANF program is not limited to monthly income maintenance, but also includes such benefits and services as one-time payments, wage subsidies and transportation assistance--provided that the total amount over a six-month period is at least \$500.

**Qualified census tract.** With regard to certain tax credit units, any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income of less than 60 percent of Area Median Gross Income (AMGI), or where the poverty rate is at least 25 percent, and where the census tract is designated as a qualified census tract by HUD.

**Reasonable rent.** A rent to owner that is not more than rent charged: (1) For comparable units in the private unassisted market; and (2) For comparable unassisted units in the premises.

**Reasonable accommodation.** A change, exception, or adjustment to a rule, policy, practice, or service to allow a person with disabilities to fully access HACA's programs or services.

**Receiving PHA.** In portability: A PHA that receives a family selected for participation in the tenant-based program of another PHA. The receiving PHA issues a voucher and provides program assistance to the family.

**Recertification.** Sometimes called *reexamination*. The process of securing documentation of total family income used to determine the rent the tenant will pay for the next 12 months if there are no additional changes to be reported.

**Remaining member of the tenant family.** The person left in assisted housing who may or may not normally qualify for assistance on their own circumstances (i.e., an elderly spouse dies, leaving widow age 47 who is not disabled).

**Rent to owner.** The total monthly rent payable to the owner under the lease for the unit (also known as contract rent). Rent to owner covers payment for any housing services, maintenance, and utilities that the owner is required to provide and pay for.

**Residency preference.** A HACA preference for admission of families that reside anywhere in a specified area, including families with a member who works or has been hired to work in the area (See *residency preference area*).

**Residency preference area.** The specified area where families must reside to qualify for a residency preference.

**Responsible entity.** For the public housing and the Section 8 tenant-based assistance, project-based voucher assistance, and moderate rehabilitation programs, the responsible entity means the PHA administering the program under an ACC with HUD. For all other Section 8 programs, the responsible entity means the Section 8 owner.

**Secretary.** The Secretary of Housing and Urban Development.

**Section 8.** Section 8 of the United States Housing Act of 1937.

**Section 8 covered programs.** All HUD programs which assist housing under Section 8 of the 1937 Act, including Section 8 assisted housing for which loans are made under Section 202 of the Housing Act of 1959.

**Section 214.** Section 214 of the Housing and Community Development Act of 1980, as amended.

**Section 214 covered programs.** The collective term for the HUD programs to which the restrictions imposed by Section 214 apply. These programs are set forth in 24 CFR 5.500.

**Security deposit.** A dollar amount (maximum set according to the regulations) which can be used for unpaid rent or damages to the owner upon termination of the lease.

**Set-up charges.** In a manufactured home space rental, charges payable by the family for assembling, skirting, and anchoring the manufactured home.

**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 24 CFR 982.615–982.618.)

**Significant Other.** A person with whom, in the absence of a spouse, the head of household has a romantic relationship; a boyfriend or girlfriend.

**Single person.** A person living alone or intending to live alone.

**Single room occupancy housing (SRO).** A unit that contains no sanitary facilities or food preparation facilities, or contains either, but not both, types of facilities. (A special housing type: see 24 CFR 982.602–982.605.)

**Social security number (SSN).** The nine-digit number that is assigned to a person by the Social Security Administration and that identifies the record of the person's earnings reported to the Social Security Administration. The term does not include a number with a letter as a suffix that is used to identify an auxiliary beneficiary.

**Special admission.** Admission of an applicant that is not on the HACA 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.

***Standard Replacement Housing.*** Housing that is decent, safe and sanitary according to Housing Quality Standards, that is adequate for the family size according to Housing Quality Standards, and that the family is occupying pursuant to a written or oral lease or occupancy agreement. Standard replacement housing does not include transient facilities, hotels, motels, temporary shelters, and in the case of Victims of Domestic Violence, housing occupied by the individual who engages in such violence. It does not include any individual imprisoned or detained pursuant to State Law or an Act of Congress. Shared housing with family or friends is not considered temporary and is considered standard replacement housing.

***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 HACA 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 the tenancy, until the date the PHA notifies the family in writing whether the request has been approved or denied. This practice is also called *tolling*.

***Tax credit rent.*** With regard to certain tax credit units, the rent charged for comparable units of the same bedroom size in the building that also receive the low-income housing tax credit but do not have any additional rental assistance (e.g., tenant-based voucher assistance).

***Tenancy addendum.*** For the housing choice voucher program, the lease language required by HUD in the lease between the tenant and the owner.

***Tenant.*** The person or persons (other than a live-in aide) who executes the lease as lessee of the dwelling unit.

***Tenant rent to owner.*** See *family rent to owner*.

***Term of lease.*** The amount of time a tenant agrees in writing to live in a dwelling unit.

***Total tenant payment (TTP).*** The total amount the HUD rent formula requires the tenant to pay toward rent and utilities.

***Unit.*** Residential space for the private use of a family. The size of a unit is based on the number of bedrooms contained within the unit and generally ranges from zero (0) bedrooms to six (6) bedrooms.

***Utilities.*** Water, electricity, gas, other heating, refrigeration, cooking fuels, trash collection, and sewage services. Telephone service is not included.

**Utility allowance.** HACA's estimate of the monthly cost of the reasonable consumption of those utilities except telephone (and, if supplied by the tenant, the refrigerator and/or stove) not included in the tenant rent but for which the tenant is responsible.

**Utility reimbursement.** In the voucher program, the portion of the housing assistance payment which exceeds the amount of rent to owner.

**Utility hook-up charge.** In a manufactured home space rental: Costs payable by a family for connecting the manufactured home to utilities such as water, gas, electrical and sewer lines.

**Very low-income family.** A low-income family whose annual income does not exceed 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 50 percent of the median income for the area on the basis of its finding that such variations are necessary because of unusually high or low family incomes. This is the income limit for the housing choice voucher program.

**Veteran.** Federal Definition (applies to VASH): 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. (38 U.S. Code Section 101 – Definitions)

California Definition (applies to wait list priority): Any person who has served full time in the armed forces in time of national emergency or state military emergency or during any expedition of the armed forces and who has been discharged or released 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.

**Voluntary Supportive Services.** Voluntary supportive services can consist of a variety of activities, including, for example, housekeeping assistance, personal assistance, transportation services, case management, child care, education services, employment assistance and job training, counseling services, life skills training, other services designed to help the recipient live in the community as independently as possible, and other services permitted with HACA approval. Voluntary services can also include disability related services, such as mental health services, assistance with activities of daily living, personal assistance services, outpatient health services, and the provision of medication, which are provided by State Medicaid programs to promote community based settings for individuals with disabilities.

**Voucher (housing choice voucher).** A document issued by HACA to a family selected for admission to the housing choice voucher program. This document describes the program and the procedures for HACA 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 unit to become available.

***Waiting list admission.*** An admission from the HACA waiting list.

***Welfare assistance.*** Income assistance from federal or state welfare programs, including assistance provided under TANF and general assistance. Does not include assistance directed solely to meeting housing expenses, nor programs that provide health care, child care or other services for working families. For the FSS program (984.103(b)), *welfare assistance* includes only cash maintenance payments from federal or state programs designed to meet a family's ongoing basic needs, but does not include food stamps, emergency rental and utilities assistance, SSI, SSDI, or social security.

