BROOKLINE HOUSING AUTHORITY
HOUSING CHOICE VOUCHER PROGRAM
ADMINISTRATIVE PLAN

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CHAPTER 1: OVERVIEW OF THE PROGRAM AND PLAN

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

This chapter contains information about the BHA 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 Brookline Housing Agency (BHA). This part includes a description of the BHA, 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 BHA

1-I.A. BHA MISSION

The Brookline Housing Authority (BHA) provides low-income families, seniors, and people of all abilities with safe, decent, accessible, and affordable places to live in a community rich with opportunities. BHA works in collaboration with government and civic organizations to support and encourage the well-being and economic self-sufficiency of BHA tenants; to sustain a diverse population in Brookline; and to maintain attractive residential neighborhoods.

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

The Section 8 tenant-based Housing Choice Voucher (HCV) assistance program is funded by the federal government and administered by the Brookline Housing Authority for the jurisdiction of the Commonwealth of Massachusetts.

The officials of the BHA 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 BHA conducts business, ensuring that policies are followed by BHA staff and ensuring that the BHA is successful in its mission. The board is responsible for preserving and expanding the agency's resources and assuring the agency's continued viability.

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

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

1-I.C. THE BHA'S PROGRAMS

The BHA's Administrative Plan is applicable to the operation of the Housing Choice Voucher Program. The Housing Choice Voucher Program consists of the following components administered by the BHA:

- Housing Choice Voucher (HCV) Program Tenant Based Assistance
- HCV Project Based Assistance
- Rental Assistance Demonstration (RAD)

1-I.D. THE BHA'S COMMITMENT TO ETHICS AND SERVICE

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

The BHA 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.

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 program. There have been many changes to the program since its inception in 1974 and a brief history of the program will assist the reader to better understand the program.

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

The Housing and Community Development (HCD) Act of 1974 created a new federally assisted housing program – the Section 8 Existing program (also known as the Section 8 Certificate program). The HCD

Act represented a significant shift in federal housing strategy from locally owned public housing to privately owned rental housing.

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

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

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

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

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

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

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

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

On July 29, 2016, the Housing Opportunity Through Modernization Act of 2016 (HOTMA) was signed into law. HOTMA made numerous changes to statutes governing HUD programs, including sections of the United States Housing Act of 1937. Title I of HOTMA contains 14 different sections that impact the public housing and Section 8 programs.

- The Final Rule implementing broad changes to income and assets in Sections 102 and 104 of HOTMA, and for PHAs that administer the public housing program over-income provisions in Section 103, was officially published in the *Federal Register* on February 14, 2023. On September 29, 2023, HUD issued notice PIH 2023-27, which provided guidance to PHAs on the implementation of the program changes described in the Final Rule. HUD issued a revised version of the notice on February 2, 2024.
- The Final Rule implementing streamlining changes to the HCV and PBV programs was published on May 7, 2024, and codified certain provisions in Sections 101, 105, 106, and 112 of HOTMA as well as incorporating changes from the NSPIRE final rule.

1-II.B. HCV PROGRAM BASICS

The purpose of the HCV program is to provide rental assistance to eligible families. The rules and regulations of the HCV program are determined by the U.S. Department of Housing and Urban Development. The BHA is afforded choices in the operation of the program which are included in this administrative plan, a document approved by the board of commissioners of the BHA.

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

When a family is determined to be eligible for the program and funding is available, the BHA issues the family a housing voucher. When the family finds a suitable housing unit and funding is available, the BHA will enter into a contract with the owner and the family will enter into a lease with the owner. Each party makes their respective payment to the owner so that the owner receives full rent.

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

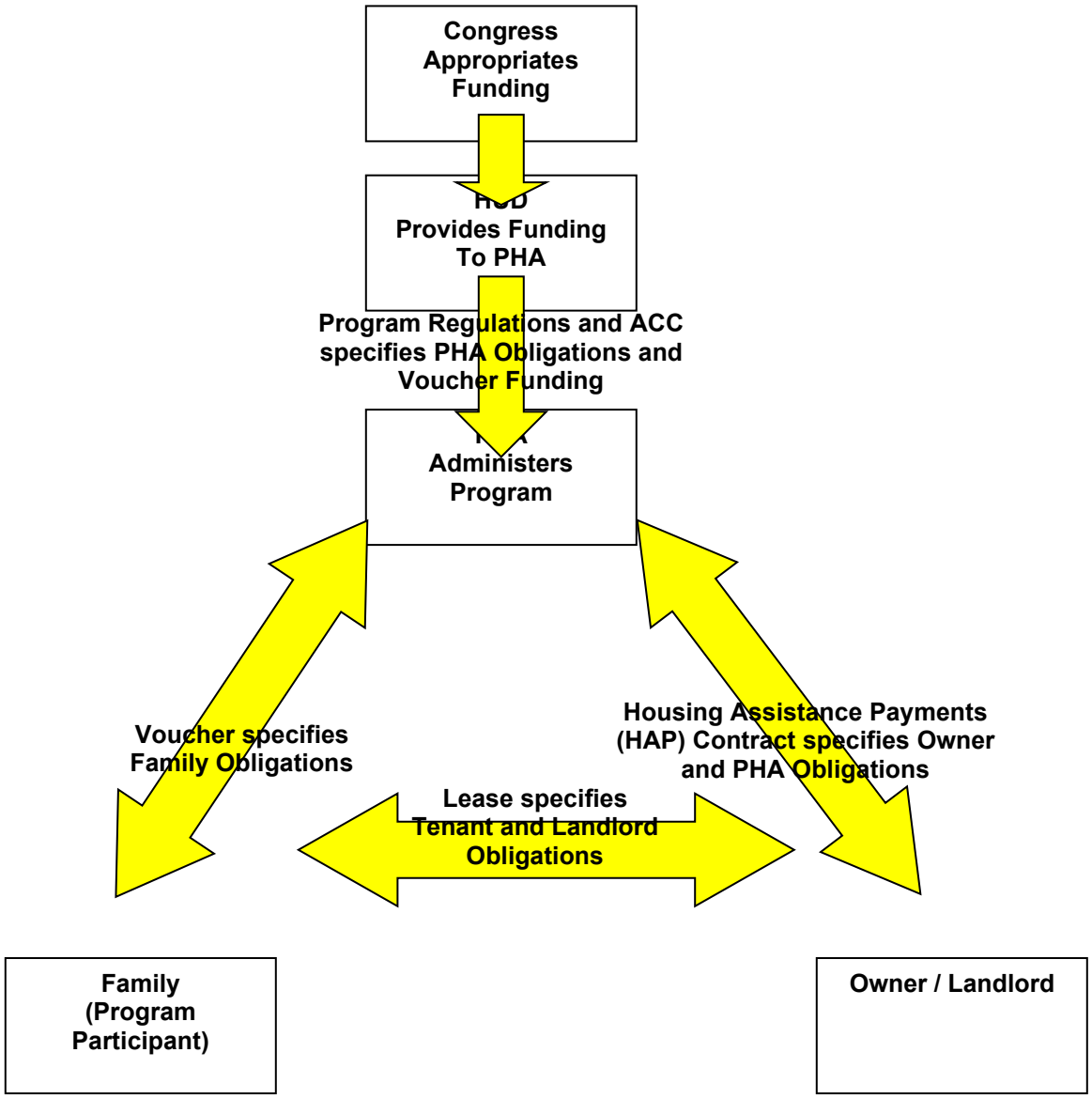
1-II.C. THE HCV PARTNERSHIPS

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

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

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

The HCV Relationships:



WHAT DOES HUD DO?

HUD has the following major responsibilities:

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

WHAT DOES THE PHA DO?

The PHA 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 their contractual obligations;
- Provide families and owners with prompt, professional service;
- Comply with all fair housing and equal opportunity requirements, HUD regulations and requirements, the ACC, HUD-approved applications for funding, the PHA's administrative plan, and other applicable federal, state and local laws.

WHAT DOES THE OWNER DO?

The owner has the following major responsibilities:

- Screen families who apply for tenancy, to determine suitability as renters.
    - The PHA can provide some information to the owner, but the primary responsibility for tenant screening rests with the owner.
    - The owner should consider family background factors such as rent and bill-paying history, history of caring for property, respecting the rights of others to peaceful enjoyment of the property, compliance with essential conditions of tenancy, whether the family is engaging in drug-related criminal activity or other criminal activity that might threaten others.
- Comply with the terms of the Housing Assistance Payments contract executed with the PHA;
- Comply with all applicable fair housing laws and do not discriminate against anyone;
- Maintain the housing unit in accordance with minimum quality standards developed by HUD in accordance with 24 CFR 5.703 (including any variations approved by HUD for the PHA) and make necessary repairs in a timely manner;
- Collect rent due from the assisted family and otherwise comply with and enforce provisions of the dwelling lease.

WHAT DOES THE FAMILY DO?

The family has the following responsibilities:

- Provide the PHA with complete and accurate information as determined by the PHA 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 the PHA;
- Allow the PHA to inspect the unit at reasonable times and after reasonable notice;
- Take responsibility for care of the housing unit, including any violations of housing quality standards caused by the family;
- Comply with the terms of the lease with the owner;
- Comply with the family obligations of the voucher;
- Not commit serious or repeated violations of the lease;
- Not engage in drug-related or violent criminal activity;
- Notify the PHA and the owner before moving or terminating the lease;
- Use the assisted unit only for residence and as the sole residence of the family. Not sublet the unit, assign the lease, or have any interest in the unit;
- Promptly notify the PHA 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)

PART III: THE HCV ADMINISTRATIVE PLAN

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

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

This administrative plan is set forth to define the BHA'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 laws. The policies in this administrative plan have been designed to ensure compliance with the consolidated ACC and all HUD-approved applications for program funding.

The BHA 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 BHA staff shall follow the BHA's personnel policy and HUD regulations as well as all federal, state and local fair housing laws and regulations.

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

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

- Selection and admission of applicants from the BHA waiting list, including any BHA admission preferences, procedures for removing applicant names from the waiting list, and procedures for closing and reopening the BHA waiting list (Chapter 4);
- Issuing or denying vouchers, including BHA policy governing the voucher term and any extensions of the voucher term. If the BHA decides to allow extensions of the voucher term, the BHA administrative plan must describe how the BHA determines whether to grant extensions, and how the BHA determines the length of any extension (Chapter 5);
- Any special rules for use of available funds when HUD provides funding to the BHA for a special purpose (e.g., desegregation), including funding for specified families or a specified category of families (Chapter 4);

- Occupancy policies, including definition of what group of persons may qualify as a 'family', definition of when a family is considered to be 'continuously assisted'; standards for denying admission or terminating assistance based on criminal activity or alcohol abuse in accordance with 982.553 (Chapters 3 and 12);
- Encouraging participation by owners of suitable units located outside areas of low income or minority concentration (Chapter 13);
- Assisting a family that claims that illegal discrimination has prevented the family from leasing a suitable unit (Chapter 2);
- Providing information about a family to prospective owners (Chapters 3 and 9);
- Disapproval of owners (Chapter 13);
- Subsidy standards (Chapter 5);
- Family absence from the dwelling unit (Chapter 12);
- How to determine who remains in the program if a family breaks up (Chapter 3);
- Informal review procedures for applicants (Chapter 16);
- Informal hearing procedures for participants (Chapter 16);
- The process for establishing and revising voucher payment standards (Chapter 16);
- Policies on administering decreases and increases in the payment standard during the HAP contract term (Chapter 6);
- The method of determining that rent to owner is a reasonable rent (initially and during the term of a HAP contract) (Chapter 8);
- Special policies concerning special housing types in the program (e.g., use of shared housing) (Chapter 15);
- Policies concerning payment by a family to the BHA of amounts the family owes the BHA (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);
- BHA screening of applicants for family behavior or suitability for tenancy (Chapter 3);
- Policies governing the project-basing of vouchers in both the standard Project-Based Voucher (PBV) program (Chapter 17) and the RAD Project-Based Voucher program (Chapter 18); and
- Special policies governing any special purpose vouchers issued by the PHA (Chapter 19).

MANDATORY VS. DISCRETIONARY POLICY

HUD makes a distinction between:

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

HUD expects the BHA to adopt local policies and procedures that are consistent with mandatory policies in areas where HUD gives the BHA discretion. The BHA's administrative plan is the foundation of those policies and procedures. HUD's directions require the BHA 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 BHA with a "safe harbor." HUD has already determined that the recommendations and suggestions it makes are consistent with mandatory policies. If the BHA adopts an alternative strategy, it must make its own determination that the alternative approach is consistent with legislation, regulations, and other mandatory requirements. There may be very good reasons for adopting a policy or procedure that is different than HUD's safe harbor, but the BHA should carefully think through those decisions.

1-III.C. ORGANIZATION OF THE PLAN

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

1-III.D. UPDATING AND REVISING THE PLAN

The BHA will revise this administrative plan as needed to reflect changes in HUD regulations, BHA operations, or when needed to ensure staff consistency in operation.

The original plan and any changes must be approved by the board of commissioners of the agency, the pertinent sections included in the Agency Plan, and a copy provided to HUD.

CHAPTER 2: FAIR HOUSING AND EQUAL OPPORTUNITY

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

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

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

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

Part III: Prohibition of Discrimination Against Limited English Proficiency Persons. This part details the obligations of the BHA 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. In addition, HUD regulations provide for additional protections regarding sexual orientation, gender identity, and marital status. The BHA will comply fully with all federal, state, and local nondiscrimination laws, and with rules and regulations governing fair housing and equal opportunity in housing and employment, including:

- Title VI of the Civil Rights Act of 1964
- Title VIII of the Civil Rights Act of 1968 (as amended by the Community Development Act of 1974 and the Fair Housing Amendments Act of 1988)
- Executive Orders 11063 and 13988
- Section 504 of the Rehabilitation Act of 1973
- 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)
- 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 Act (VAWA)

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

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

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

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

The BHA will not discriminate on the basis of marital status, gender identity, or sexual orientation [FR Notice 02/03/12; Executive Order 13988].

The BHA will not use any of these factors to:

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

SUBJECT ANYONE TO SEGREGATION OR DISPARATE TREATMENT

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

PROVIDING INFORMATION TO FAMILIES AND OWNERS

The BHA 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 BHA 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.

2-I.C. DISCRIMINATION COMPLAINTS

GENERAL HOUSING DISCRIMINATION COMPLAINTS

If an applicant or participant believes that any family member has been discriminated against by the BHA or an owner, the family should advise the BHA. The BHA should make every reasonable attempt to determine whether the applicant's or participant's assertions have merit and take any warranted corrective action.

In all cases, the BHA will advise the family that they may file a fair housing complaint if the family feels they have been discriminated against under the Fair Housing Act.

Within 10 business days of receiving the complaint, the BHA will investigate and attempt to remedy discrimination complaints made against the BHA. The BHA will also advise the family of their right to file a fair housing complaint with HUD's Office of Fair Housing and Equal Opportunity (FHEO). The fair housing poster, posted in conspicuous and accessible locations in BHA lobbies, will reference how to file a complain with FHEO.

The BHA will keep a record of all complaints, investigations, notices, and corrective actions.

COMPLAINTS UNDER THE EQUAL ACCESS FINAL RULE [NOTICE PIH 2014-20]

Notice PIH 2014-20 requires an articulated complaint process for allegations of discrimination under the Equal Access Final rule. The Equal Access Final Rule requires the BHA to provide equal access regardless of marital status, gender identity, or sexual orientation. The BHA will be informed on these obligations by the HUD Field Office or FHEO when an Equal Access complaint investigation begins.

Applicants or tenant families who believe they have been subject to unlawful discrimination based on marital status, gender identiy, or sexual orientation under the Equal Access Rule may notify the BHA either orally or in writing.

Within 10 business days of receiving the complaint, the BHA will provide a written notice to those alleged to have violated the rule. The BHA will also send a written notice to the complainant informing them the notice was sent to those alleged to have violated the rule, as well as information on how to complete and submit a housing discrimination complaint form to HUD's FHEO.

The BHA will attempt to remedy discrimination claims made against the BHA and will investigate all allegations of discrimination.

Within 10 business days following the conclusion of the investigation, the BHA will provide the complainant and those alleged to have violated the rule with findings and either a proposed corrective action plan or an explanation of why corrective action is unwarranted

VAWA COMPLAINT PROCESSING [NOTICE FHEO 2023-01]

A complainant may, not later than one year after an alleged VAWA violation has occurred or terminated, file a complaint with FHEO alleging such violation. If there is a violation that began prior to a year before the complaint is filed, but it continues into the one-year time period, HUD will accept the complaint. FHEO will investigate the complaint if it is timely and FHEO otherwise has jurisdiction. If a complaint is filed more than one year after the alleged violation occurred or terminated, FHEO may, but is not required to, investigate the allegations under the additional authority and procedures described in FHEO 2023-01.

Complaints do not need to allege a violation of the Fair Housing Act for FHEO to accept and investigate the complaint.

The BHA will advise the family of their right to file a VAWA complaint with HUD's Office of Fair Housing and Equal Opportunity (FHEO). The BHA will inform the family that not later than one year after an alleged VAWA violation has occurred or terminated, applicants and tenants who believe they have been injured by a VAWA violation or will be injured by such a violation that is about to occur may file a VAWA complaint using FHEO's online complaint form via mail, email, or telephone.

The BHA will attempt to remedy complaints made against the BHA and will investigate all allegations of discrimination.

The BHA will keep a record of all complaints, investigations, notices, and corrective actions.

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.

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

BHA will ask all applicants and clients if they require any type of accommodations, in writing, on the intake application, reexamination documents, and notices of adverse action by BHA.

If a person requests an accommodation, BHA may need to verify that the person is a qualified individual with a disability and must determine whether an accommodation is necessary to provide the individual with an equal opportunity to participate in the HCV program. A person who does not meet the definition of disability is not entitled to reasonable accommodation.

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 BHA, or result in a "fundamental alteration" in the nature of the program or service offered. A fundamental alteration is a modification that alters the essential nature of a provider's operations.

TYPES OF REASONABLE ACCOMMODATIONS

When needed, the BHA 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 BHA range) if the BHA 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 BHA staff
- Allowing for exceptions to the BHA's subsidy standards
- Allowing a change in the family's rent due date to correspond with the receipt of the head of household, or spouse or cohead's SSI or SSDI benefits

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 BHA 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 BHA's programs and services.

If the need for the accommodation is not readily apparent or known to the BHA, 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.

The BHA will encourage program participants to make reasonable accommodation requests in writing. However, accommodation requested without a formal written request must be submitted. If a request is made to a BHA staff member verbally, the request should be documented in writing by the staff person and submitted to the Director of Leased Housing for approval.

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 BHA 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 BHA's programs and services.

If a person's disability is obvious or otherwise known to the BHA, 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 BHA, the BHA 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 BHA 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 able 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 BHA must request only information that is necessary to evaluate the disability-related need for the accommodation. The BHA will not inquire about the nature or extent of any disability.

- Medical records will not be accepted or retained in the participant file.
- In the event that the BHA does receive confidential information about a person's specific diagnosis, treatment, or the nature or severity of the disability, the BHA will dispose of it. In place of the information, the BHA will note in the file that the disability and other requested information have been verified, the date the verification was received, and the name and address of the knowledgeable professional who sent the information [Notice PIH 2010-26].

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

The BHA 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 BHA, or fundamentally alter the nature of the BHA's HCV operations (including the obligation to comply with HUD requirements and regulations).

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

Before making a determination whether to approve the request, the BHA 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 BHA may verify the need for the requested accommodation.

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

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

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

2-II.G. PHYSICAL ACCESSIBILITY

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

- Notice PIH 2010-26
- Section 504 of the Rehabilitation Act of 1973
- The Americans with Disabilities Act of 1990
- The Architectural Barriers Act of 1968
- The Fair Housing Act of 1988

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

- The BHA Plan provides information about self-evaluation, needs assessment, and transition plans.

The design, construction, or alteration of BHA 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 BHA will include a current list of available accessible units known to the BHA 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

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

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

When reviewing reasonable accommodation requests, the BHA must consider whether any mitigating circumstances can be verified to explain and overcome the problem that led to the BHA's decision to deny or terminate assistance. If reasonable accommodation will allow the family to meet the requirements, the BHA 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 BHA will take affirmative steps to communicate with people who need services or information in a language other than English. These persons will be referred to as Persons with Limited English Proficiency (LEP).

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

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

The BHA's Language Assistance Plan is available for review at BHA's management office.

2-III.B. ORAL INTERPRETATION

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

The BHA will utilize a language line for telephone interpreter services as necessary.

Where LEP persons desire, they will be permitted to use, at their own expense, an interpreter of their choosing, in place of or as a supplement to the free language services offered by the BHA. The BHA, at its discretion, may choose to use the language services even when LEP persons desire to use an interpreter of their choosing. The interpreter may be a family member or friend. If the interpreter chosen by the family is a minor, the BHA will not rely on the minor to serve as the interpreter.

The BHA 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.

2-III.C. WRITTEN TRANSLATION

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

2-III.D. IMPLEMENTATION PLAN

The BHA has developed a written implementation plan to address the needs of the LEP population it serves. This plan is available to be viewed at the BHA Management Office, or can be provided upon request.

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

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

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

The phrase "physical or mental impairment" includes:

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

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

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

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

The definition of a person with disabilities does not include:

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

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

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

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

CHAPTER 3: ELIGIBLITY

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

To be eligible for the HCV program:

The applicant family must:

- Qualify as a family as defined by HUD and the BHA.
- 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 the BHA's collection and use of family information as provided for in BHA-provided consent forms.
- Not currently be receiving a duplicative subsidy.
- Meet net asset and property ownership restriction requirements.

The BHA must determine that the current or past behavior of household members does not include activities that are prohibited by HUD or the BHA.

This chapter contains three parts:

Part I: Definitions of Family and Household Members. This part contains HUD and BHA 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 the BHA to deny assistance as well as the asset limitation for HCV.

PART I: DEFINITIONS OF FAMILY & 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 & HOUSEHOLD [24 CFR 5.403; FR Notice 02/03/12; Notice PIH 2014-20; and FR Notice 2/14/23]

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, displaced person, disabled person, near-elderly person, or any other single person. An otherwise eligible youth who has attained at least 18 years of age and not more than 24 years of age and who has left foster care, or will leave foster care within 90 days, in accordance with a transition plan described in section 475(5)(H) of the Social Security Act (42 U.S.C. 675(5)(H)), and is homeless or is at risk of becoming homeless at age 16 or older; 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, and the remaining member of a tenant family. The BHA 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.

BHA policy also includes as a family 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 the BHA if the family's composition changes.

HOUSEHOLD

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

3-I.C. FAMILY BREAKUP AND REMAINING MEMBER OF TENANT FAMILY

FAMILY BREAKUP [24 CFR 982.315; NOTICE PIH 2017-08]

Except under the following conditions, the BHA 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, stalking, or human trafficking, the BA must ensure that the victim retains assistance. (For documentation requirements and policies related to domestic violence, dating violence, sexual assault, stalking, and human trafficking, 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, stalking, or human trafficking, 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, the BHA is bound by the court's determination of which family members continue to receive assistance.

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

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

In the absence of a judicial decision or an agreement among the original family members, the BHA will determine which family will retain their placement on the waiting list or continue to receive assistance. In making its determination, the BHA 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, stalking, or human trafficking, 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 cohead or spouse.

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

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

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

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

Spouse means the marriage partner of the head of household.

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

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

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

3-I.F. DEPENDENTS AND MINORS [24 CFR 5.603]

A *minor* is a member of the family, other than the head of family or spouse, who is under 18 years of age.

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, cohead, foster children/adults and live-in aides. Identifying each dependent in the family is important because each dependent qualifies the family for a dependent allowance as described in Chapter 6.

JOINT CUSTODY OF DEPENDENTS

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

When more than one applicant or participant family is claiming the same dependents as family members, the family with primary custody at the time of the initial examination or reexamination will be able to claim the dependents. If there is a dispute about which family should claim them, the BHA 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

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, cohead, 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 DISABILITES & 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 cohead 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, the BHA 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 cohead 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 the BHA from denying assistance for reasons related to alcohol and drug abuse in accordance with the policies found in Part III of this chapter, or from terminating assistance in accordance with the policies in Chapter 12.

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

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

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

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

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

3-I.K FOSTER CHILDREN & FOSTER ADULTS [24 CFR 5.603]

A *foster adult* is a member of the household who is 18 years of age or older and meets the definition of a *foster adult* under state law. In general, a foster adult is a person who is 18 years of age or older, is unable to live independently due to a debilitating physical or mental condition, and is placed with the family by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction.

A *foster child* is a member of the household who meets the definition of a *foster child* under state law. In general, a foster child is placed with the family by an authorized placement agency (e.g., public child welfare agency) or by judgment, decree, or other order of any court of competent jurisdiction.

Foster children and foster adults who are living with an applicant or who have been approved by the BHA to live with a participant family are considered household members but not family members. The income of foster children/adults is not counted in family annual income, and foster children/adults do not qualify for a dependent deduction [24 CFR 5.603; HUD-50058 IB, p. 13].

A foster child or foster adult may be allowed to reside in the unit if their presence would not result in a violation of space standards as described in Section 8-I.F. of this policy.

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

3-I.L ABSENT FAMILY MEMBERS

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

DEFINITIONS OF TEMPORARILY AND PERMANENTLY ABSENT

Generally, an individual who is or is expected to be absent from the assisted apartment for up to 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.

BHA will require temporarily absent family members complete and submit required reeamination documents on a timely basis. An individual who is or is expected to be asbent from the assisted apartment for more than 180 consecutive days is considered permanently absent and is no longer a family member. Exceptions to this policy are reviewed on a case by case basis. BHA will require documentation to support the length of the period the family member will be absent from the unit.

ABSENT STUDENTS

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

ABSENCES DUE TO PLACEMENT IN FOSTER CARE [24 CFR 5.403]

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

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

ABSENT HEAD, SPOUSE, OR COHEAD

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.

FAMILY MEMBERS PERMANENTLY CONFINED FOR MEDICAL REASONS [HCV GB P. 5-22]

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

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

RETURN OF PERMANENTLY ABSENT FAMILY MEMBERS

The family must request BHA approval for the return of any adult family members that the BHA previously 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].

The BHA 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.

A family's request for a live-in aide may be made either orally or in writing. The BHA will verify the need for a live-in aide with a reliable, knowledgeable professional, such as a doctor, social worker, or case worker, unless the disability-related need is apparent or known to the BHA. For continued approval, the family may be required to submit a new, written request-subject to BHA verification at each annual reexamination.

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

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

- The person commits fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
- The person commits drug-related criminal activity or violent criminal activity; or
- The person currently owes rent or other amounts to the BHA or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.

The BHA 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 family whose annual income does not exceed the federal poverty level or 30 percent of the median income for the area, whichever number is higher.

Area median income is determined by HUD, with adjustments for smaller and larger families. HUD may establish income ceilings higher or lower than 30, 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 AND NOTICE PIH 2023-27]

Income limits are used for eligibility only at admission. Income eligibility is determined by comparing the annual income of an applicant to the applicable income limit for their family size. Income and net family assets of household members are excluded when determining income eligibility; however, household members are considered for purposes of unit size and subsidy standards. In order to be income eligible, an applicant family must be one of the following:

- A very low-income family
- A low-income family that has been "continuously assisted" under the 1937 Housing Act. A family is considered to be continuously assisted if the family is already receiving assistance under any 1937 Housing Act program at the time the family is admitted to the HCV program [24 CFR 982.4; 24 CFR 982.201(b)]
    - The BHA will consider a family to be continuously assisted if the family was leasing a unit under any 1937 Housing Act program at the time they were selected from the BHA'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.
- A low-income family is eligible for assistance under VASH [FR Notice 8/13/24]. See Chapter 19 of this policy for more information.

HUD permits the the BHA to establish additional categories of low-income families that may be determined eligible. The additional categories must be consistent with the BHA plan and the consolidated plans for local governments within the BHA's jurisdiction. The BHA 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 the BHA's program during a BHA fiscal year must be extremely low-income families. HUD may approve exceptions to this requirement if the BHA demonstrates that it has made all required efforts but has been unable to attract an adequate number of qualified extremely low-income families.

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

3-II.B. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS [24 CFR 5, Subpart E]

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

All applicant families must be notified of the requirement to submit evidence of their citizenship status when they apply. Where feasible, and in accordance with the BHA'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, or an eligible noncitizen, except those members who elect not to contend that they have eligible immigration status. Those who elect not to contend their status are considered to be ineligible noncitizens. For citizens, nationals and eligible noncitizens the declaration must be signed personally by the head, spouse, cohead, and any other family member 18 or older, and by a parent or guardian for minors. The family must identify in writing any family members who elect not to contend their immigration status (see Ineligible Noncitizens below). No declaration is required for live-in aides, foster children, or foster adults.

U.S. Citizens and Nationals

In general, citizens and nationals are required to submit only a signed declaration as verification of their status. However, HUD regulations permit the BHA to request additional documentation of their status, such as a passport.

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

Eligible Noncitizens

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

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

Ineligible Noncitizens

Those noncitizens who do not wish to contend their immigration status are required to have their names listed on a noncontending family members listing, signed by the head, spouse, or cohead (regardless of citizenship status), indicating their ineligible immigration status. The BHA 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)]

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

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

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

The notice will explain the reasons for the denial of assistance, that the family may be eligible for proration of assistance, and will advise the family of its right to request an appeal to the United States Citizenship and Immigration Services (USCIS) or to request an informal hearing with the BHA. The informal hearing with the BHA 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 DETERMINIATION OF CITZENSHIP STATUS [24 CFR 5.508(G)]

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

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

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

The BHA will verify the citizenship status of applicants at the time other eligibility factors are determined

3-II.C. Social Security Numbers [24 CFR 5.216 and 5.218, Notice PIH 2018-24]

The applicant and all members of the applicant's household must disclose the complete and accurate social security number (SSN) assigned to each household member, and the documentation necessary to verify each SSN. 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.

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

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

3-II.D. FAMILY CONSENT TO RELEASE OF INFORMATION [24 CFR 5.230, 24 CFR 5.232, AND HCV GB, P. 5-13]

HUD requires that each adult family member, and the head of household, spouse, or cohead, regardless of age, sign form HUD-9886-A, Authorization for the Release of Information/Privacy Act Notice, the form HUD-52675 Debts Owed to Public Housing Agencies and Terminations, and other consent forms as needed to collect information relevant to the family's eligibility and level of assistance. Chapter 7 provides detailed information concerning the consent forms and verification requirements. The consent form remains effective until the family is denied assistance, assistance is terminated, or the family provides written notification to revoke consent.

The BHA 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) and 24 CFR 5.232(a)].

Upon the BHA's HOTMA 102/104 compliance date, the following on revocation of consent is added:

However, this does not apply if the applicant or participant, or any member of their family, revokes their consent with respect to the ability of the BHA to access financial records from financial institutions, unless the BHA establishes a policy that revocation of consent to access financial records will result in denial of admission or termination of assistance [24 CFR 5.232(c)].

The BHA has established a policy that revocation of consent to access financial records will result in denial of admission.

3-II.E. Students Enrolled in Institution of Higher Education [24 CFR 5.612, 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 restrictions on the eligibility of certain students (both part- and full-time) who are enrolled in institutions of higher education.

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

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

DEFINITIONS

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

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

- The individual is of legal contract age under state law.
- The individual has established a household separate from their parents for at least one year prior to application for occupancy or the individual meets the U.S. Department of Education's definition of independent student.
- To be considered an *independent student* according to the Department of Education, a student must meet one or more of the following criteria:
- The individual is at least 24 years old by December 31 of the award year for which aid is sought
- The individual is an orphan, in foster care, or a ward of the court, or was an orphan, in foster care, or ward of the court at any time when the individual was 13 years of age or older
- The individual is, or was immediately prior to attaining the age of majority, an emancipated minor or in legal guardianship as determined by a court of competent jurisdiction in the individual's state of legal residence
- The individual is a veteran of the U.S. Armed Forces or is currently serving on active duty in the Armed Forces for other than training purposes
- The individual is a graduate or professional student
- The individual is married
- The individual has one or more legal dependents other than a spouse (for example, dependent children or an elderly dependent parent)

- The individual has been verified during the school year in which the application is submitted as either an unaccompanied youth who is a homeless child or youth or as unaccompanied, at risk of homelessness, and self-supporting, by
    - A local educational agency homeless liaison,
    - The director of a program funded under subtitle B of title IV of the McKinney-Vento Homeless Assistance Act (relating to emergency shelter grants) or a designee of the director
    - A financial aid administrator; or
- 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' more recent tax forms.
- The individual provided a certificate 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 BHA determines than 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 purposes of using only the student's income for determining eligibility for assistance.

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

Institution of Higher Education

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

Parents

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

Person with Disabilities

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

Veteran

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

Vulnerable Youth

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

The individual is an orphan, in foster care, or a ward of the court, or was an orphan, in foster care, or ward of the court at any time when the individual was 13 years of age or older

The individual is, or was immediately prior to attaining the age of majority, an emancipated minor or in legal guardianship as determined by a court of competent jurisdiction in the individual's state of legal residence

The individual has been verified during the school year in which the application is submitted as either an unaccompanied youth who is a homeless child or youth, or as unaccompanied, at risk of homelessness, and self-supporting by:

A local educational agency homeless liaison

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

A financial aid administrator

DETERMINING STUDENT ELIGIBILITY

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

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

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

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

DETERMINING PARENTAL INCOME ELIGIBILITY

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

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

3-II.F. EIV System Searches [EIV FAQs; EIV System Training 9/30/20; and Notice PIH 2023-27]

EXISTING TENANT SEARCH

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

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

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

DEBTS OWED TO PHAS AND TERMINATIONS

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

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

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

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

EIV INCOME REPORT

For each new admission, the BHA is required to review income information in EIV to confirm and validate family reported income within 120 days after the admission information is transmitted to HUD. The BHA must print and maintain copies of the reports in the tenant file and resolve any discrepancies with the family.

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. The BHA may deny assistance for an applicant because of the family's action or failure to act as described in 24 CFR 982.552 or 982.553. In this section we will discuss other situations and circumstances in which denial of assistance is mandatory for the BHA, and those in which denial of assistance is optional for the BHA.

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

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

HUD's Office of General Counsel issued a memo on April 4, 2016, regarding the application of Fair Housing Act standards to the use of criminal records. This memo states that a PHA violates the Fair Housing Act when their policy or practice has an unjustified discriminatory effect, even when the PHA had no intention to discriminate. Where a policy or practice that restricts admission based on criminal history has a disparate impact on a particular race, national origin, or other protected class, that policy or practice is in violation of the Fair Housing Act if it is not necessary to serve a substantial, legitimate, nondiscriminatory interest of the PHA, or if that interest could be served by another practice that has a less discriminatory effect [OGC Memo 4/4/16]. HUD codified this stance on disparate impact and discriminatory effects in a final rule dated March 31, 2023. In doing so, HUD also standardized its long-practiced three-step approach to assessing burdens of proof.

PHAs who impose blanket prohibitions on any person with any conviction record, no matter when the conviction occurred, what the underlying conduct entailed, or what the convicted person has done since

then will be unable to show that such policy or practice is necessary to achieve a substantial, legitimate, nondiscriminatory interest. Even a PHA with a more tailored policy or practice that excludes individuals with only certain types of convictions must still prove that its policy is necessary. To do this, the PHA must show that its policy accurately distinguishes between criminal conduct that indicates a demonstrable risk to resident safety and property and criminal conduct that does not.

FORMS OF DENIAL [24 CFR 982.552(A)(2); HCB GB, P.5-35]

Denial of assistance includes any of the following:

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

PROHIBITED REASONS FOR DENIAL OF PROGRAM ASSISTANCE [24 CFR 982.202(B), 24 CFR 5.2005(B)]

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

- Age, disability, race, color, religion, sex, or national origin (See Chapter 2 for additional information about fair housing and equal opportunity requirements.)
- Where a family lives prior to admission to the program
- Where the family will live with assistance under the program. Although eligibility is not affected by where the family will live, there may be restrictions on the family's ability to move outside the BHA's jurisdiction under portability. (See Chapter 10.)
- Whether members of the family are unwed parents, recipients of public assistance, or children born out of wedlock
- Whether the family includes children
- Whether a family decides to participate in a family self-sufficiency program
- Whether or not a qualified applicant is or has been a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking if the applicant is otherwise qualified for assistance (See section 3-III.G.)

3-III.B. MANDATORY DENIAL OF ASSISTANCE [24 CFR 982.553(a) and 24 CFR 982.552(b)(6)]

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

- Any member of the household has been evicted from federally assisted housing in the last three years for drug-related criminal activity.
    - The BHA will admit an otherwise-eligible family who was evicted from federally assisted housing within the past three years for drug-related criminal activity if the BHA is able to verify that the household member who engaged in the criminal activity has completed a supervised drug rehabilitation program, or the person who committed the crime is no longer living in the household.
- The BHA determines that any household member is currently engaged in the use of illegal drugs.
    - *Currently engaged in* is defined as any use of illegal drugs during the previous three months.
- The BHA has reasonable cause to believe that any household member's current use or pattern of use of illegal drugs, or current abuse or pattern of abuse of alcohol, may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents. In determining reasonable cause, the BHA will consider all credible evidence, including but not limited to, any record of convictions,

arrests, or evictions of household members related to the use of illegal drugs or the abuse of alcohol. A record or records of arrest will not be used as the sole basis of determining reasonable cause. The BHA 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.
- Any member of the family fails to sign and submit consent forms for obtaining information.
- The family does not meet the restrictions on net assets and real property ownership as required by 24 CFR 5.618.

Upon the BHA's HOTMA 102/104 compliance date, the following section on the asset limitation is added. The asset limitation does not apply until the BHA's HOTMA compliance date.

3-III.C. RESTRICTION ON ASSISTANCE BASED ON ASSETS [24 CFR 5.618]

There are two circumstances under which a family is ineligible to receive assistance based on asset ownership.

First, assistance may not be provided to any family if the family's net assets exceed the HUD-published asset limitation amount (adjusted annually by HUD).

- This amount is listed in HUD's current year Inflation-Adjusted Values tables
- $100,000 for 2024, $103,200 for 2025

Second, the family has real property that is suitable for occupancy by the family as a residence and the family has:

- A present ownership interest in the real property; and
- A legal right to reside in the real property; and
- The effective legal authority to sell (based on state or local laws of the jurisdiction where the property is located) the real property.

The BHA does not have the discretion not to enforce or provide limited enforcement of the asset limitation at admission. However, the real property restriction does not apply in the following circumstances:

- Any property for which the family is receiving assistance for a manufactured home under 24 CFR 982.620 or under the HCV Homeownership program;
- Any property that is jointly owned by a member of the family and at least one non-household member who does not live with the family, if the non-household member resides at the jointly owned property;
- Any family that is offering the property for sale; or
- Any person who is a victim of domestic violence, dating violence, sexual assault, or stalking.
    - When a family asks for an exception because a family member is a victim of domestic violence, dating violence, sexual assault, or stalking, the BHA must comply with all the confidentiality requirements under VAWA. The BHA must accept a self-certification from the family member, and the restrictions on requesting documentation under VAWA apply.

A property is considered suitable for occupancy unless the family demonstrates that it:

- Does not meet the disability-related needs for all members of the family (e.g., physical accessibility requirements, disability-related need for additional bedrooms, proximity to accessible transportation, etc.);
- Is not sufficient for the size of the family;
    - The BHA defines not sufficient for the size of the family as being overcrowded based on space standards in Chapter 8 of this policy.
- Is geographically located so as to be a hardship for the family (e.g., the distance or commuting time between the property and the family's place of work or school would be a hardship to the family, as determined by the BHA or owner);
    - In general, the BHA defines a geographic hardship to include when a family members' work, school, health care provider, or other necessary service is located an unreasonable distance from the real property or there is a lack of adequate transportation options for the family to access work, school, health care, or other necessary services. The BHA will consider circumstantial details a family faces when determining whether a geographic hardship is present.
- Is not safe to reside in because of the physical condition of the property (e.g., property's physical condition poses a risk to the family's health and safety and the condition of the property cannot be easily remedied); or
- Is not a property that a family may reside in under the state or local laws of the jurisdiction where the property is located.

If a family meets one of the above exceptions, the real property is not automatically excluded from the calculation of net family assets. Unless the real property is specifically excluded from net family assets as described in 24 CFR 5.603 and Chapter 6 of this policy, it will be included in net family assets. If the value of that real property brings the net family assets above the HUD-published asset limitation amount, the family is out of compliance with the asset limitation.

See Chapter 7 for information on verifying net family assets for purposes of the asset limitation.

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

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

CRIMINAL ACTIVITY [24 CFR 982.553]

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

If any household member is currently engaged in, or has engaged in any of the following criminal activities, within the past three 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;
    - *Immediate vicinity* means within a three-block radius of the premises.
- Criminal sexual conduct, including but not limited to sexual assault, incest, open and gross lewdness, or child abuse; or

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

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

- Any conviction for drug-related or violent criminal activity within the past three years.
- Records of arrests for drug-related or violent criminal activity within the past three years, although a record or records of arrest will not be used as the sole basis for the denial or proof that the applicant engaged in disqualifying criminal activity.

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

PREVIOUS BEHAVIOR IN ASSISTED HOUSING [24 CFR 982.552(C)]

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

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

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

- The family does not provide information that the BHA or HUD determines is necessary in the administration of the program.
- The family does not provide complete and true information to the BHA.
- Any family member has been evicted from federally assisted housing in the last three years.
- Any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.
- The family owes rent or other amounts to any PHA in connection with Section 8 or other public housing assistance under the 1937 Act, unless the family repays the full amount of the debt prior to being selected from the waiting list.
- If the family has not reimbursed 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 selected from the waiting list.
- The family has breached the terms of a repayment agreement entered into with the PHA, unless the family repays the full amount of the debt covered in the repayment agreement prior to being selected from the waiting list.
    - When denying admission due to family debts as shown in HUD's EIV system, the BHA will provide the family with a copy of the EIV Debt Owed to PHA and Termination report.
        - If the family wishes to dispute the information in the report, the family must contact the PHA that entered the information in EIV in writing, explaining why EIV information is disputed. The family must also provide a copy of the letter and all applicable verification to the BHA to support the family's claim. The BHA will consider the information provided by the family prior to issuing a notice of denial.
- A family member has engaged in or threatened violent or abusive behavior toward PHA personnel.
    - *Abusive or violent behavior towards PHA personnel* includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.
    - *Threatening* refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.

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

3-III.E. 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 the BHA in complying with HUD requirements and BHA policies to deny assistance to applicants who are engaging in or have engaged in certain criminal activities. In order to obtain access to the records the BHA must require every applicant family to submit a consent form signed by each adult household member [24 CFR 5.903].

The BHA will perform a criminal background check through the iCORI database for every adult household member.

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

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)].

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

Additionally, the BHA 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 the BHA proposes to deny assistance based on a criminal record or on lifetime sex offender registration information, the BHA 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 BHA has no liability or responsibility to the owner for the family's behavior or suitability for tenancy. The BHA has the authority to conduct additional screening to determine whether an applicant is likely to be a suitable tenant.

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

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

EVIDENCE [24 CFR 982.553(C)]

The BHA will use the concept of the preponderance of the evidence as the standard for making all admission decisions.

Preponderance of the evidence is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

CONSIDERATION OF CIRCUMSTANCES [24 CFR 982.552(C)(2)]

HUD authorizes the BHA 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).

The BHA 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.H.) a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking
- The length of time since the violation occurred, including the age of the individual at the time of the conduct, as well as the family's recent history and the likelihood of favorable conduct in the future

While a record or records of arrest will not be used as the sole basis for denial, an arrest may trigger an investigation to determine whether the applicant actually engaged in disqualifying criminal activity. As part of its investigation, the BHA may obtain the police report associated with the arrest and consider the reported circumstances of the arrest. The BHA 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

- The BHA 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 BHA's screening process reveal that an applicant's household includes an individual subject to state lifetime registered sex offender registration, the BHA 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 BHA must deny admission to the family [Notice PIH 2012-28].

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

REASONABLE ACCOMMODATION [24 CFR 982.552(C)(2)(IV)]

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

If the family indicates that the behavior of a family member with a disability is the reason for the proposed denial of assistance, the BHA will determine whether the behavior is related to the stated disability. If so, upon the family's request, the BHA will determine whether admitting the family as a reasonable accommodation is appropriate. The BHA 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.G. NOTICE OF ELIGIBILITY OR DENIAL

If the family is eligible for assistance, the BHA will notify the family in writing and schedule an applicant briefing, as discussed in Chapter 5.

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

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

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

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

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

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

3-III.H. PROHIBITION AGAINST DENIAL OF ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, STALKING, AND HUMAN TRAFFICKING

The Violence against Women Act (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.

- Although the VAWA 2022 statute does not specifically include human trafficking in the list of victims protected under VAWA, in 2022 HUD began including human trafficking as part of the list of victims

protected under VAWA (as seen in Notices PIH 2022-06, PIH 2022-22, and PIH 2022-24). In the absence of a final rule implementing VAWA 2022 and to mirror HUD's recent usage, this policy includes human trafficking in addition to domestic violence, dating violence, sexual assault, and stalking anywhere such a list appears.

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 requires 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.

The BHA acknowledges that a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking 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 the BHA's policies.

While the BHA 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, stalking, or human trafficking, the applicant may inform the BHA that their status as a victim is directly related to the grounds for the denial. The BHA will request that the applicant provide enough information to the BHA to allow the BHA to make an objectively reasonable determination, based on all circumstances, whether the adverse factor is a direct result of their status as a victim.

The BHA 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. The BHA will request in writing that an applicant wishing to claim protection under VAWA notify the BHA within 14 business days.

DOCUMENTATION

Victim Documentation *[24 CFR 5.2007]*

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

Perpetrator Documentation

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

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

EXHIBIT 3-1: DETAILED DEFINITIONS RELATED TO DISABILITIES

Person with Disabilities [24 CFR 5.403]

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

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

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

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

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

  (A) In General

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

  (i) is attributable to a mental or physical impairment or combination of mental and physical impairments;

  (ii) is manifested before the individual attains age 22;

  (iii) is likely to continue indefinitely;

  (iv) results in substantial functional limitations in 3 or more of the following areas of major life activity: (I) Self-care, (II) Receptive and expressive language, (III) Learning, (IV) Mobility, (V) Self-direction, (VI) Capacity for independent living, (VII) Economic self-sufficiency; and

  (v) reflects the individual's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

  (B) Infants and Young Children

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

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

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

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

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

Individual with Handicaps [24 CFR 8.3]

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

(1) Physical or mental impairment includes:

(a) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or

(b) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.

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

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

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

(a) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by a recipient as constituting such a limitation;

(b) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or

(c) Has none of the impairments defined in paragraph (1) of this section but is treated by a recipient as having such an impairment.

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

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

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

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

(a) Institution of higher education. For purposes of this chapter, other than subchapter IV and part C of subchapter I of chapter 34 of Title 42, the term ''institution of higher education'' means an educational institution in any State that

(1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) Is legally authorized within such State to provide a program of education beyond secondary education;

(3) Provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree;

(4) Is a public or other nonprofit institution; and

(5) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

(b) Additional institutions included. For purposes of this chapter, other than subchapter IV and part C of subchapter I of chapter 34 of Title 42, the term ''institution of higher education'' also includes—

(1) Any school that provides not less than a 1-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provision of paragraphs (1), (2), (4), and (5) of subsection (a) of this section; and

(2) A public or nonprofit private educational institution in any State that, in lieu of the requirement in subsection (a)(1) of this section, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.

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

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

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

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

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

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

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

(2) Institutions outside the United States

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

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

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

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

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

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

(B) Advisory panel

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

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

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

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

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

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

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

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

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

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

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

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

(A) The institution, or an affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management or policies of the institution, has filed for bankruptcy, except that this paragraph shall not apply to a nonprofit institution, the primary function of which is to provide health care educational services (or an affiliate of such an institution that has the power, by contract or ownership interest, to direct or cause the direction of the institution's management or policies) that files for bankruptcy under chapter 11 of title 11 between July 1, 1998, and December 1, 1998; or

(B) The institution, the institution's owner, or the institution's chief executive officer has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, or has been judicially determined to have committed fraud involving funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.

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

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

(b) Proprietary institution of higher education

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

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

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

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

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

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

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

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

(c) Postsecondary vocational institution.

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

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

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

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

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

CHAPTER 4: APPLICATIONS, WAITING LIST & TENANT SELECTION

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

The BHA 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 BHA 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 BHA 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 BHA will be in compliance with all relevant fair housing requirements, as described in Chapter 2.

This chapter describes HUD and BHA 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 BHA will handle the applications it receives.

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

Part III: Selection for HCV Assistance. This part describes the policies that guide the BHA 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 BHA has the information needed to make a final eligibility determination.

PART I: THE APPLICATION PROCESS

4-I.A. OVERVIEW

This part describes the BHA 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 BHA'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 BHA 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 BHA. The BHA must include Form HUD-92006, Supplement to Application for Federally Assisted Housing, as part of the BHA's application.

The BHA uses a two-step application process. Under the two-step application process, the BHA initially will require families to provide only the information needed to make an initial assessment of the family's eligibility, and to determine the family's placement on the waiting list. The family will be required to provide

all information necessary to establish family eligibility and level of assistance when the family is selected from the waiting list.

Families may obtain application forms from the BHA's office during normal business hours. Families may also request – by telephone, mail, or email – that an application be mailed to them via first class mail.

The BHA uses the centralized waiting list as administered by the Massachusetts Chapter of the National Association of Housing and Redevelopment Officials (MA NAHRO). Applicants may apply at the office of any Housing Authority participating in the MA NAHRO centralized waiting list and be considered at all participating housing authorities.

Applicants may also apply online at the BHA website. Families may obtain application forms from BHA's office during normal business hours or request that an application be mailed to them via first class mail.

Applications not submitted on-line must be returned to BHA by mail, by fax, or in person during normal business hours.

4-I.C. ACCESSIBILITY OF THE APPLICATION PROCESS

ELDERLY AND DISABLED POPULATIONS [24 CFR 8 AND HCV GB, PP. 4-11 – 4-13]

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

LIMITED ENGLISH PROFICIENCY

The BHA is 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 BHA's policies related to ensuring access to people with limited English proficiency (LEP).

4-I.D. PLACEMENT ON THE WAITING LIST

The BHA must review each complete application received and make a preliminary assessment of the family's eligibility. The BHA 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 BHA 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.

If a paper application is submitted to BHA and is incomplete, where contact information is provided, BHA will send the incomplete application back to the applicant and notify the applicant of the additional information required. The application will not be assigned a date and time of receipt until it is returned complete.

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)].

Applicants who submit preliminary applications in person will be provided with a standard receipt evidencing submission. BHA will enter the information from the pre-application into the Centralized Waiting List.

Applicants who submit pre-applications through MA NAHRO will receive a submission confirmation email from MA NAHRO.

PART II: MANAGING THE WAITING LIST

4-II.A. OVERVIEW

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

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

The Centralized MA NAHRO Section 8 Waiting List is maintained as an open waiting list.

4-II.D. REPORTING CHANGES IN FAMILY CIRCUMSTANCES

While the family is on the waiting list, the family must immediately update its application online or, in writing, at the office of any housing authority participating in the Centralized Waiting List. To update the application through BHA, a written request for update must be submitted by the family to BHA. Families are required to update their application to reflect changes in income, family composition, and/or contact information, including current residence, mailing address, and phone number. Failure to report these changes may affect a family's placement on the waiting list(s) and could result in removal of the family's name from the waiting list.

4-II.E. UPDATING THE WAITING LIST [24 CFR 982.204]

PURGING THE WAITING LIST

MA NAHRO will, on a biennial basis, send a letter to each applicant on the Centralized Section 8 Waiting List. This letter will be sent to the address on the Section 8 preliminary Application or on any written change of status request that was completed and sent to a participating Housing Authority. Applicants will be requested to respond to the mailing within a time parameter set forth in the letter and the letter shall indicate that failure to respond will result in the removal of his/her name from the MA NAHRO centralized waiting list. In the event that the applicant does not respond within the applicable time parameter, his/her name shall be removed from the MA NAHRO centralized waiting list.

If an applicant who was withdrawn for failure to respond to a waiting list update, requests reinstatement within six months from the required update response date, BHA will reinstate the applicant. Reinstatement

after the six month period will be assessed on a case by case basis if it is determined that the lack of response was due to BHA error, or to circumstances beyond the family's control

REMOVAL FROM THE WAITING LIST

BHA will remove a family from the Centralized Waiting List under the following circumstances:

- The applicant requests removal of his/her name from the waiting list;
- The applicant fails to respond to a written request to supply information to BHA within an applicable time parameter;
- The applicant fails to attend a scheduled appointment at BHA (BHA may grant a second appointment upon request);
- The applicant receives a Housing Choice Voucher;
- The applicant fails to attend two scheduled briefing sessions; or

BHA will not remove an applicant from any other BHA waiting lists when housed under the Housing Choice Voucher program.

Except for the circumstances above, BHA will not remove a family from the Centralized Waiting List because the family may be eligible under another participating Housing Authority's policies, however BHA will not admit the family or select the family again unless the family has been withdrawn from the Centralized Waiting List and a new application has been submitted.

BHA will not admit a family or remove their name from the Centralized Waiting List as a result of the following:

- The applicant does not meet Section 8 eligibility criteria as set forth in Federal Regulations or by BHA rules/policies;
- Other reasons not prohibited by regulation or State or Federal law.

When a family expresses a problem with a decision made by a Housing Authority involved in the MA NAHRO centralized waiting list, that family shall be referred to the Housing Authority who made the determination in question. When a family expresses a problem with a decision made by MA NAHRO on behalf of all housing authorities participating in centralized waiting list, that family shall be referred to MA NAHRO's centralized waiting list administrator.

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

4-III.B. SELECTION AND HCV FUNDING SOURCES

SPECIAL ADMISSIONS [24 CFR 982.203]

HUD may award funding for specifically-named families living in specified types of units (e.g., a family that is displaced by demolition of public housing; a non-purchasing family residing in a HOPE 1 or 2 projects). In these cases, the BHA 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 BHA must maintain records showing that such families were admitted with special program funding.

TARGETED FUNDING [24 CFR 982.204(E)]

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

The BHA administers the following types of targeted funding:

- Mainstream Vouchers
- VASH

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

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

LOCAL PREFERENCES [24 CFR 982.207; HCV P. 4-16]

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

The BHA will first assist any family terminated from the HCV program due to insufficient funding before assisting families per its local preferences.

The BHA will use the following local preferences:

No.	Preference
1.	Emergency, Domestic Violence & Natural Disaster for existing PBV families (+ 1 year) and existing PH families
2.	Designated Housing Transfers
3.	Emergency, Domestic Violence & Natural Disaster for applicants with a residency preference
4.	Applicants with a residency preference
5.	Relocation Preference

Emergency, Domestic Violence & Natural Disaster Transfers

This preference is for current families of BHA's federal or state public housing or PBV program (PBV must have completed one year of occupancy). Qualification for this selection preference includes the following:

<u>Emergency</u>

The family:

- is in imminent danger of life threatening injuries due to providing testimony or information regarding criminal activity to a local law enforcement agency; or
- has a victim of physical harassment, extreme or repeated vandalism to personal property, and or extrme and/or repeated verbal harassment, intimidation, or coercion which places them in imminent danger that cannot be expeditiously remedied in any other way; or

- is requesting a reasonable accommodation that BHA cannot approve at any of BHA's public housing sites or PBV units because the request would place an undue financial burden on the agency or would result in a fundamental alteration of the program (assumes that the reasonable accommodation request could be resolved with a tenant based Section 8 voucher.)

Domestic Violence

The family member has been or is currently a victim of domestic violence, dating Violence, sexual assault or stalking, and has a reasonable belief of risk of imminent harm if he or she remains in the current unit and no other BHA public housing site or PBV unit provides an appropriate alternative. These families are protected under the Violence Against Women Act (VAWA).

Natural Disaster

This preference is for existing PH/PBV families who have been displaced due to flood or fire, other natural disaster and or Board of Health Condemnation in the Town of Brookline that renders the family's dwelling unit uninhabitable. The fire, flood, or other natural disaster cannot be due to the fault of the family and/or a Household Member.

Existing PBV Families who Request for a Tenant Based Voucher

If a PBV family wishes to move with continued tenant-based assistance after the first year of occupancy, BHA will offer the family the opportunity for continued tenant-based assistance, in the form of a voucher. If a voucher is not immediately available upon termination of the family's lease in the PBV unit, BHA will give the family priority to receive the next available opportunity for continued tenant-based assistance per the policies in this Plan.

Designated Housing Preference

A preference will be provided for forty eight (48) vouchers for Non-elderly Disabled Households in accordance with the terms and conditions of the BHA's approved Designated Housing Plan. BHA's Designated Housing Plan includes a designation of 80% elderly and 20% non-elderly disabled (NED).

Non-elderly disabled households and near elderly disabled households on the federal Public Housing elderly/disabled waiting list will be granted priority status at the time that they are by-passed on the Public Housing federal elderly/disabled waiting list so that an elderly household after them on the waiting list is given an offer.

If there is no Voucher available at that time, the household will be informed of their right to be added to a waiting list for Vouchers available under the set-aside. They may elect to be added to the waiting list for the set-aside at any time after they have been by-passed, but will be placed on the set-aside waiting list based on date and time of their application for the set-aside and not on the date that they were by-passed.

Emergency, Domestic Violence & Natural Disaster for Applicants with Local Residency Preference

This preference is for applicant families who meet the emergency, domestic violence or natural disaster preference AND who meet the Brookline Residency preference.

BHA has authorized the Board of Selectmen for the Town of Brookline to certify applicant households for emergency rental assistance in cases of extreme emergencies and natural disaster. Applicants must meet the applicable program eligibility requirements as well as qualify under the specific guidelines for the program(s). Applicants eligible for Natural Disaster preference will generally be referred by applicable government agency.

Local Resident Preference

Local residents are defined as families who are living, working, or who have been notified that they are hired to work in BHA's jurisdiction. Local residents are also defined as applicants who do not live in Brookline; but who have children in Brookline Public Schools and applicants who are active participants in,

education and/or training programs in BHA's jurisdiction if the education or training program is designed to prepare individuals for the job market.

Employed means working at least 20 hours per week. Participation in an education or training program means attendance for at least 20 hours per week.

BHA's residency preference will not have the purpose or effect of delaying or otherwise denying admission to the program based on the race, color, ethnic origin, gender, religion, disability, or age of any member of an applicant family.

Relocation Preference

In the event that BHA does not have PH replacement units and/or relocation vouchers from HUD, BHA will provide an admission preference for RAD Part I conversion households as well as for households displaced as a result of demolition and/or redevelopment of public housing. BHA will cap this preference at three housing choice vouchers. BHA reserves the right to adjust the cap as needed to facilitate relocation and administer a lottery if more than three families request housing choice vouchers.

VERIFICATION OF PREFERENCE

Verification is required for each preference. BHA will verify preference when an applicant is selected from the waiting list. Applicants who cannot verify their selection preference will be returned to the waiting list and reordered with any remaining applicable preference.

Requirements for verifying preference are outlined in the following table:

Local Preference	Criteria	Verification
Emergency Preference	• This preference is for those who are current residents of BHA federal or state public housing or PBV unit (for at least one year of occupancy) and meet one of the four criteria below.	
	• Are in imminent danger of life threatening injuries due to providing testimony or information regarding criminal activity to a local law enforcement agency;	• Letter from law enforcement agencies indicating the immediate need to relocate based upon the factors set forth in the criteria for the Public Housing Transfer preference
	• Are requesting a reasonable accommodation that BHA cannot approve at any of BHA's public housing sites because the request would place an undue financial burden on the agency or would result in a fundamental alteration of the program (assumes that the reasonable accommodation request could be resolved with a tenant based Section 8 voucher).	• For Reasonable Accommodation requests, reliable documentation from a Qualified Healthcare Provider or professional non-medical service agency, whose function it is to provide services to the disabled. Documentation should verify that the Applicant or a member of his/her Household is disabled under the applicable definitions for reasonable accommodation under Federal and State law and describe the limitations attributable to the disability. Documentation must also describe how the accommodation being requested will overcome or alleviate those limitations; • A letter(s) from a Qualified Healthcare Provider describing housing conditions required of by Applicant based upon

Local Preference	Criteria	Verification
		special conditions without disclosing any information which is prohibited by law • Information on maintenance conditions
	• Are a victim of physical harassment, extreme or repeated vandalism to personal property and/or extreme and/or repeated verbal harassment, intimidation or coercion which places them in imminent danger and that cannot be expeditiously remedied in any other way; or	• Police reports; • Civil Rights incident reports; • Copies of restraining orders
Domestic Violence	• A family member has been or is currently a victim of Domestic Violence, Dating Violence, sexual assault or Stalking, and has a reasonable belief of risk of imminent harm if he or she remains in the current Unit and no other BHA public housing sites provide an appropriate alternative	• Signed HUD-5382 Certification of Domestic Violence, Dating Violence, Sexual Assault of Stalking • A document signed by the victim 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 the victim has 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. • A record of a Federal, State, tribal, territorial or local law enforcement agency, court or administrative agency. • A statement or other evidence provided by the applicant or tenant (at BHA discretion).
Natural Disaster Preference	• This preference is for families who have been displaced due to flood or fire, other natural disaster and or Board of Health Condemnation that renders the applicant's dwelling unit uninhabitable. The fire, flood, or other	• Verification from the appropriate agency who is responsible to work with disasters stated above; and • A copy of the Applicant's Lease or other documentation, verifying that the

Local Preference	Criteria	Verification
	natural disaster cannot be due to the fault of the Applicant and/or a Household Member.	Applicant was the tenant of record at the address of the disaster; and • Verification from the Fire department, the Inspectional Services Department, the Health Department or other appropriate agency that the dwelling Unit is now uninhabitable; and • The cause of the disaster. BHA acknowledges that certain causes may be unknown.
Local Resident Preference	• Local residents are defined as families who are living, working, or who have been notified that they are hired to work in BHA's jurisdiction. Local residents are also defined families who do not live in Brookline but who have children in Brookline public schools and families with members who are active participants in, education and training programs in BHA's jurisdiction if the education or training program is designed to prepare individuals for the job market. • Employed means working at least 20 hours per week. • In Brookline public school means the child is registered to attend school in the current or upcoming school year • Participation in an education or training program means attendance for at least 20 hours per week.	• Verification of employment demonstrating that the applicant or family member works 20 hours or more per week or is part of a job training program for employment (which would be in Brookline) or has been hired to work more than 20 hours per week; • School record; or • Copy of a current residential lease with the eligible household member's name listed on it; or • Valid driver's license or state ID card; or • Medical card with current address; or • Utility bill (electricity or gas) with eligible household member's name on it; or • Social Security printout; or • Voter's registration card; or • Credit report.

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 the BHA's fiscal year. ELI families are those with annual incomes at or below the federal poverty level or 30 percent of the area median income, whichever number is higher. To ensure this requirement is met, a PHA may skip non-ELI families on the waiting list in order to select an ELI family.

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

BHA will ensure that extremely low-income (ELI) families make up at least 75 percent of the families admitted to the HCV program during BHA's fiscal year. ELI families are those with annual incomes at or below the federal poverty level or 30 percent of the area median income, whichever number is higher.

BHA will monitor progress in meeting the income targeting requirements 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

It is BHA's policy to ensure that all families who express an interest in housing assistance are given equal opportunity to apply, and are treated in a fair and consistent manner. Families will be selected from the waiting list based on applicable targeted funding, local preferences for which they qualify, income targeting requirements, and date and time of application.

Generally, when an applicant's name is at the top of the waiting list (WL), in accordance with BHA policies, they will be selected from the waiting list. Once selected, the applicant will be screened and an eligibility determination made.

Vouchers will be issued as outlined below.

1. Families who requested moves that were denied due to insufficient funding, including families living in PB units who were issued Tenant Based Vouchers which were recalled due to insufficient funding;
2. Families with special purpose vouchers (NEDs, FUP, VASH) that were previously terminated or who had vouchers recalled due to insufficient funding;
3. Once BHA resumes issuing vouchers after a funding shortfall, if BHA is not assisting the required number of NEDs, VASH, and FUP vouchers, BHA will issue vouchers to special purpose voucher categories of families on its waiting list until BHA is assisting its required number of special purpose vouchers.
4. Emergency, domestic violence, natural disaster or reasonable accommodation need for existing PBV families (+ 1 year of PBV occupancy) and existing PH families (another PBV or PH units may also be offered)
5. Relocation preference
6. Existing PB families (1+ year) who request a Tenant Based Voucher
7. Designated Housing Transfer (per the allocation specified in the Designated Housing Plan)
8. Emergency, domestic violence & natural disaster for applicants with a residency preference
9. Applicants with local residency preference
10. Applicants with no preference

If an existing PH family and an existing PBV family both have an Emergency, Domestic Violence & Natural Disaster preference, BHA will select the family by date and time of transfer request. Applicants within the same category/preference will be selected according to the date and time of application.

Order of Selection: Example

The following families are on the waiting list. The example below illustrates how the selection policy is applied:

Family Name	Family Preferences	Date of Application	Order of Selection
Jones	• Current PH Family • VAWA certified	• 1-9-19	1
Smith	• No preference	• 3-3-15	7
Williams	• Work full time in Brookline	• 4-7-15	5
Right	• Disabled family on PH list eligible for Designated Housing Transfer	• 7-7-18	3
Maxwell	• Has children in Brookline public school but does not live in Brookline	• 10-10-17	6
Jennings	• Applicant who is providing testimony for local law enforcement who does not live in Brookline	• 11-1-18	8
Morgan	• Lives in PB unit for 3 years and request a tenant based voucher	• 9-6-16	2
Carwell	• Applicant who is providing testimony for local law enforcement who lives in Brookline	• 12-1-18	4

4-III.D. NOTIFICATION OF SELECTION

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

BHA will notify the family by mail when it is selected from the waiting list. If a notification letter is returned to BHA with no forwarding address, the family will be removed from the waiting list. A notice of denial will be sent to the family's address of record, as well as to any known alternate address.

If an applicant fails to respond, in the manner and time frame requested an attempt by BHA, the applicant may be withdrawn from the waiting list(s). When a family is withdrawn from the waiting list for failure to respond, no informal review will be offered. Such failures to act on the part of the applicant prevent BHA from making an eligibility determination; therefore no informal review is required.

4-III.E. THE APPLICATION INTERVIEW

Families selected from a waiting list(s) are required to participate in an eligibility interview which includes the completion of a full application.

The head of household and co-head are required to attend the eligibility interview.

If the family is unable to attend a scheduled interview, the family must contact BHA in advance of the interview to schedule a new appointment. If a family does not attend a scheduled interview, BHA will schedule a second (2nd) interview. If the family does not attend the 2nd scheduled interview, the family will be withdrawn from the waiting list(s). BHA will send a withdrawal notice. Such failure to act on the part of the applicant prevents BHA from making an eligibility determination; therefore, BHA will not offer an informal review.

When applicable, selection criteria will be verified in accordance with the verification policy of this Admin Plan. If the basis for selection cannot be verified, the applicant will be returned to the waiting list, without the claimed selection criteria, retaining the same date and time of application.

The family must provide the information necessary to establish the family's eligibility and to determine the appropriate amount of rent the family will pay. The family must also complete required forms, provide required signatures, and submit required documentation.

Any required documents or information that the family is unable to provide at the time of the interview must be provided within seven (7) business days from the date of the request. If the family is unable to obtain the information or materials within the required time frame, BHA may provide a reasonable extension as necessary. Applicants who fail to provide the required information within BHA established time frames

(including any allowed extensions) will be withdrawn from the waiting list(s) based on the family's failure to supply information needed to determine eligibility. BHA will send the applicant a withdrawal notice. Such failure to act on the part of the applicant prevents BHA from making an eligibility determination; therefore, BHA will not offer an informal review.

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 Proficiency (LEP) applicants, BHA will provide translation services in accordance with BHA's LAP plan.

4-III.F. COMPLETING THE APPLICATION PROCESS

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

If BHA determines that the family is ineligible, BHA will notify the family in writing in a timely manner of the determination. The notice will specify:

- The reasons for ineligibility,
- The family's right to an informal review
- The process for obtaining the informal review
- Notification of applicant protections against denial, confidentiality requirements and request for documentation as provided by VAWA. Detailed policy concerning VAWA and denial of admission is included in the Fair Housing and Equal Opportunity chapter.

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

CHAPTER 5: BRIEFINGS & VOUCHER ISSUANCE

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 BHA 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, the BHA issues the family a voucher. The voucher includes the unit size for which the family qualifies based on the BHA's subsidy standards, as well as the issue and expiration date of the voucher. The voucher is the document that authorizes the family to begin its search for a unit and limits the amount of time the family has to successfully locate an acceptable unit.

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

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

Part II: Subsidy Standards and Voucher Issuance. This part discusses the BHA'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 & FAMILY OBLIGATIONS

5-I.A. OVERVIEW

HUD regulations require the BHA 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 BHA'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. The BHA must take reasonable steps to ensure meaningful access by persons with Limited English proficiency.

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

NOTIFICATION OF BRIEFING

Prior to issuance of a voucher, the BHA must give the family an oral briefing and provide the family with a briefing packet containing written information about the program. Families may be briefed in individual face-to-face meetings, through group briefing sessions, or via remote briefing sessions.

BHA will contact families to invite them to the briefing. Notification will identify who is required to attend the briefing, as well as the date and time of the scheduled briefing. The notice will be made by first class mail and will also be sent by email if the family has provided a valid email address to the BHA.

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. BHA will notify the family of the date and time of the second scheduled briefing. Applicants, who fail to attend two scheduled briefings without BHA approval, will be withdrawn from the waiting list. If an applicant does not attend two scheduled briefings because of a family member's disability, BHA will reschedule the family for another briefing as a reasonable accommodation.

BHA will allow for remote briefings to occur only in the case of a Reasonable Accommodation.

IN-PERSON BRIEFINGS

At the briefing, the BHA 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.

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

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

REMOTE BRIEFINGS

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

Accessibility Requirements for Persons with Disabilities and LEP Individuals

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

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

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

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

Conducting Remote Briefings

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

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 BHA's jurisdiction and any information on selecting a unit that HUD provides;
- An explanation of how portability works;
- The BHA must inform the family of how portability may affect the family's assistance through screening, subsidy standards, payment standards, and any other elements of the portability process which may affect the family's assistance; and
- An explanation of the advantages of areas that do not have a high concentration of low-income families.

The BHA may not discourage the family from choosing to live anywhere in the BHA's jurisdiction or outside the BHA's jurisdiction under portability, unless otherwise expressly authorized by statute, regulation, PIH Notice, or court order.

The BHA must take appropriate steps to ensure effective communication in accordance with 24 CFR 8.6 and 28 CFR part 35, subpart E, and must provide information on the reasonable accommodation process.

BRIEFING PACKET [24 CFR 982.301(B); NEW HCV GB, *HOUSING SEARCH AND LEASING,* P. 7]

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

- The term of the voucher, voucher suspensions, and the BHA's policies on any extensions of the term. If the BHA allows extensions, the packet must explain how the family can request an extension.
- A description of the method used to calculate the housing assistance payment for a family, including how the BHA determines the payment standard for a family and how the BHA determines total tenant payment for a family.
- An explanation of how the BHA 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 an explanation of how to request approval.
- A statement of the BHA policy on providing information about families to prospective owners.
- The PHA subsidy standards and when the BHA will consider granting exceptions as allowed by 24 CFR 982.402(b)(8), and when exceptions are required as a reasonable accommodation for persons with disabilities under Section 504, the Fair Housing Act, or the Americans with Disabilities Act (ADA).
- Materials (e.g., brochures) on how to select a unit and any additional information on selecting a unit that HUD provides (e.g., HUD brochure entitled, "A Good Place to Live").
- Information on federal, state and local equal opportunity laws, the contact information for the Section 504 coordinator, a copy of the housing discrimination complaint form, and information on how to request a reasonable accommodation or modification (including information on requesting exception payment standards as a reasonable accommodation) under Section 504, the Fair Housing Act, or the Americans with Disabilities Act (ADA).
- A list of landlords known to the BHA 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. The BHA 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 BHA is subject to requirements under 24 CFR 8.28(a)(3) to provide a current listing of accessible units known to the BHA, and if necessary, other assistance in locating an available unit.

- The family obligations under the program.
- BHA informal hearing procedures including when the BHA 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, which may include access to accessible and high-quality housing, transit, employment opportunities, educational opportunities, recreational facilities, public safety stations, retail services, and health services.
- The HUD pamphlet on lead-based paint entitled, "Protect Your Family from Lead in Your Home" [24 CFR 35.88].
- Form HUD-5380 domestic violence certification form and the form HUD-5382 notice of occupancy rights which contains information on VAWA protections for victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking
- "Is Fraud Worth It?" (form HUD-1141-OIG) which explain 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

5-I.C. FAMILY OBLIGATIONS

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

TIME FRAMES FOR REPORTING CHANGES REQUIRED BY FAMILY OBLIGATIONS

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

When a family is required to provide notice to the BHA, 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 the BHA or HUD determines to be necessary, including submission of required evidence of citizenship or eligible immigration status.
- The family must supply any information requested by the BHA 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 may be held responsible for a breach of housing quality standards caused by the family's failure to pay tenant-provided utilities or appliances, or damages to the dwelling unit or premises beyond ordinary wear and tear caused by any member of the household or guest.
- The family must allow the BHA's third-party contractor to inspect the unit at reasonable times and after reasonable notice, as described in Chapter 8 of this plan.

- The family must not commit any serious or repeated violation of the lease.
    - The BHA 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, stalking, or human trafficking will not be construed as serious or repeated lease violations by the victim [see 24 CFR 5.2005(c)(1)].
- The family must notify the BHA and the owner before moving out of the unit or terminating the lease. The family must comply with lease requirements regarding written notice to the owner. The family must provide a copy of the written notice to the BHA at the same time the owner is notified.
- The family must promptly give the BHA a copy of any owner eviction notice.
- The family must use the assisted unit for residence by the family. The unit must be the family's only residence.
- The composition of the assisted family residing in the unit must be approved by the BHA. The family must promptly notify the BHA in writing of the birth, adoption, or court-awarded custody of a child. The family must request BHA approval to add any other family member as an occupant of the unit.
    - The request to add a family member must be submitted in writing and approved prior to the person moving into the unit. The BHA will determine eligibility of the new member in accordance with the policies in Chapter 3.
- The family must promptly notify the BHA in writing if any family member no longer lives in the unit.
- If the BHA has given approval, a foster child or a live-in aide may reside in the unit. The BHA has the discretion to adopt reasonable policies concerning residency by a foster child or a live-in aide, and to define when BHA 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.
- The family must supply any information requested by the BHA to verify that the family is living in the unit or information related to family absence from the unit.
- The family must promptly notify the BHA when the family is absent from the unit.
- 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 BHA 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 BHA policies related to alcohol abuse.

- An assisted family or member of the family must not receive HCV program assistance while receiving another housing subsidy, for the same unit or a different unit under any other federal, state or local housing assistance program.
- A family must not receive HCV program assistance while residing in a unit owned by a parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the BHA 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 & VOUCHER ISSUANCE

5-II.A. OVERVIEW

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

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

For each family, the BHA determines the appropriate number of bedrooms under the BHA 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 the BHA 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 24 CFR 5.703.
- The subsidy standards must be applied consistently for all families of like size and composition.
- A child who is temporarily away from the home because of placement in foster care is considered a member of the family in determining the family unit size.
- A family that consists of a pregnant woman (with no other persons) must be treated as a two-person family.
- Any live-in aide (approved by the BHA to reside in the unit to care for a family member who is disabled or is at least 50 years of age) must be counted in determining the family unit size;

- Unless a live-in-aide resides with a family, the family unit size for any family consisting of a single person must be either a zero- or one-bedroom unit, as determined under the BHA subsidy standards.

For each family, BHA determines the appropriate voucher size under BHA Subsidy standards and enters the family unit size on the voucher that is issued to the family.

BHA will apply subsidy standards consistent with the stated gender provided by the tenant. BHA may make exceptions to this subsidy standard policy where cases of gender identity and other household members are concerned. Exceptions will be made on a case by case basis.

A household will be assigned at minimum one bedroom to their voucher for every two persons within the household. The following criteria is used in determining the voucher size:

- The Head of Household (HoH) will be assigned a bedroom. If the HoH has a spouse or spouse equivalent, they will be required to share the bedroom.
- Individuals over the age of 21 will be assigned their own bedroom
    - If two adults live in a household and are spouses or spouse-equivalents, they will be required to share a bedroom
- Individuals under the age of 21 of the same gender will share a bedroom
- Parents will not be required to share a bedroom with their children
- A pregnant woman will be counted as two individuals for the purpose of determining voucher size
    - Documentation of the pregnancy and anticipated due date is required
- A child who is temporarily away from the home due to placement in foster care, kinship care or in the custody of the Dept. of Human Services will be considered an eligible family member for determining voucher size
- A Live-in-Aide will be allocated a separate bedroom
    - Family members of a live-in-aide may reside in the unit, but will not be considered when determining the voucher size
- Children specified in joint custody agreements will be considered family members if the agreement specifies that they live with the parent for 50% or more of the time (at least 183 days a year) BHA will require verification of the custody agreement which may include school records and or court orders. When more than one applicant or client 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, BHA 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
- Full-Time Students absent from the unit to attend school will be considered family members when determining voucher size
- Voucher size increases can be made as a Reasonable Accommodation for families when necessary
    - Reasons that may be considered 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

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

Number of Bedrooms	Min. Persons/Unit	Max. Persons/Unit
0 BR	1	1
1 BR	1	2
2 BR	2	4
3 BR	3	6
4 BR	4	8
5 BR	5	10

5-II.C. EXCEPTIONS TO SUBSIDY STANDARDS

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

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

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

BHA will grant exceptions to occupancy guidelines in cases where it is the family's request and BHA determines the exceptions are justified by the relationships, age, sex, health or disability of family members, or other individual circumstances. BHA will not grant an exception that is in violation of local housing or occupancy codes, regulations or laws. BHA may require the HOH's signature acknowledging and agreeing with the approved subsidy standard exceptions.

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

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

For a single person who is not elderly or disabled, an exception cannot override the regulatory limit of a zero or one bedroom voucher.

5-II.D. VOUCHER ISSUANCE [24 CFR 982.302]

When a family is selected from the waiting list (or as a special admission as described in Chapter 4), or when a participant family wants to move to another unit, the BHA 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 the BHA has determined the family to be eligible for the program, and that the BHA expects to have money available to subsidize the family if the family finds an approvable unit. However, the BHA does not have any liability to any party by the issuance of the voucher, and the voucher does not give the family any right to participate in the BHA's Housing Choice Voucher program [Voucher, Form HUD-52646].

The BHA must issue the family a voucher within 60 days of determining the family eligible [24 CFR 982.201(e)]. The income documentation must be dated within 120 days of when it was received by the BHA. However, for fixed-income sources, including Social Security benefits, the documentation must be dated within the appropriate benefit year.

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

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

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

5.II.E. VOUCHER TERM & EXTENSIONS

VOUCHER TERM [24 CFR 982.303]

The initial term of a voucher must be at least 60 calendar days. The initial term must be stated on the voucher [24 CFR 982.303(a)]. The family must submit a Request for Tenancy Approval within the 60-day period unless the BHA grants an extension.

EXTENSIONS OF VOUCHER TERM [24 CFR 982.303(B)]

The BHA 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 BHA can approve. Discretionary policies related to extension and expiration of search time must be described in the BHA's administrative plan [24 CFR 982.54].

The BHA 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 BHA's decision to approve or deny an extension. The BHA'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)].

Upon request by the family, BHA may provide an additional 60 days if the family has been unable to locate housing within the initial 60 day period.

Upon request by the family, BHA may, in its discretion, issue an extension beyond 120 days if such extension is necessary as a reasonable accommodation for a family with disabilities or other circumstances beyond the family's control, as approved by BHA on a case-by-case basis.

Any request for an additional extension must include the reason(s) an additional extension is necessary. The BHA may require the family to provide documentation to support the request or obtain verification from a qualified third party.

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

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

SUSPENSIONS OF VOUCHER TERM [24 CFR 982.303(C)]

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

EXPIRATION OF VOUCHER TERM

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

If an applicant family's voucher term or extension expires before the family has submitted a Request for Tenancy Approval (RFTA), BHA will require the family to reapply for assistance in accord with BHA's policies on applying for assistance.

Families will be notified in writing within 10 business days of the expiration of the voucher term or any extension that the voucher has expired and the family must reapply.

CHAPTER 6: INCOME AND SUBSIDY DETERMINATIONS (PRIOR TO HOTMA)

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

This chapter is applicable prior to the BHA's HOTMA 102/104 compliance date. After this date, the BHA will follow policies as outlined in Chapter 6.B. of the model policy.

The program regulations in the current Code of Federal Regulations (CFRs) were updated for HOTMA on January 1, 2024. As a result, pre-HOTMA regulations from 2023 are no longer available on the electronic CFRs. However, since full HOTMA implementation is still pending, the pre-HOTMA regulations continue to apply to some elements of the program, and this chapter makes references to both pre-HOTMA and HOTMA regulations where applicable. Where HOTMA regulations apply, citations in this chapter have been provided indicating that current HOTMA CFRs are applicable. For all other citations, the pre-HOTMA CFRs apply. The federal government archives previous versions of the CFRs, and PHAs may access them here: https://www.govinfo.gov/app/collection/cfr/2023/title24.

A family's income determines eligibility for assistance and is also used to calculate the family's payment and the BHA subsidy. The BHA 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 BHA 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 BHA policies for calculating annual income are found in Part I.

Part II: Adjusted Income. Once annual income has been established HUD regulations require the BHA to subtract from annual income any of five mandatory deductions for which a family qualifies. These requirements and BHA policies for calculating adjusted income are found in Part II.

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

PART I: ANNUAL INCOME

6-I.A. OVERVIEW

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 (as updated for HOTMA per Notice PIH-2024-38) (Exhibit 6-2)
- Treatment of Family Assets (Exhibit 6-3)
- The Effect of Welfare Benefit Reduction (Exhibit 6-4)

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. Verification requirements for annual income are discussed in Chapter 7.A.

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(b)(8) as updated for HOTMA)].
Foster child or foster adult	Income from all sources is excluded [24 CFR 5.609(b)(8) as updated for HOTMA].
Head, spouse, or cohead Other adult family members	All sources of income not specifically excluded by the regulations are included. [24 CFR 5.609(a)]
Minors	Earned income of children under 18 years of age is excluded [24 CFR 5.609(b)(3) as updated for HOTMA]. All 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)	Earned income in excess of the dependent deduction is excluded [24 CFR 5.609(b)(14) as updated for HOTMA]. All 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].

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

Absent Students

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

Absences Due to Placement in Foster Care

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

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

Absent Head, Spouse, or Cohead
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.

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

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

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

6-I.C. ANTICIPATING ANNUAL INCOME

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

BASIS OF ANNUAL INCOME PROJECTION

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

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

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

HUD allows PHAs to use tenant-provided documents (pay stubs) dated within 120 days of the date received by the BHA 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 BHA does not determine it is necessary to obtain additional third-party data. The BHA may also accept a statement dated within the appropriate benefit year for fixed income sources.

When the BHA cannot readily anticipate income based upon current circumstances (e.g., in the case of seasonal employment, unstable working hours, or suspected fraud), the BHA will review and analyze

historical data for patterns of employment, paid benefits, and receipt of other income and use the results of this analysis to establish annual income.

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

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 [24 CFR 5.609(a); Notice PIH 2023-27; Notice PIH 2024-38]

The earned income of each member of the family who is 18 years of age or older, or who is the head of household or spouse/cohead regardless of age, is included in annual income. Income received as a day laborer or seasonal worker is also included in annual income, even if the source, date, or amount of the income varies [24 CFR 5.609 (b)(24) as updated for HOTMA].

Earned income means income or earnings from wages, tips, salaries, other employee compensation, and net income from self-employment. Earned income does not include any pension or annuity, transfer payments (meaning payments made or income received in which no goods or services are being paid for, such as welfare, social security, and governmental subsidies for certain benefits), or any cash or in-kind benefits [24 CFR 5.100 as updated for HOTMA].

A *day laborer* is defined as an individual hired and paid one day at a time without an agreement that the individual will be hired or work again in the future [24 CFR 5.603(b) as updated for HOTMA]. Income earned as a day laborer is not considered nonrecurring income.

A *seasonal worker* is defined as an individual who is hired into a short-term position (e.g., for which the customary employment period for the position is six months or fewer) and the employment begins about the same time each year (such as summer or winter). Typically, the individual is hired to address seasonal demands that arise for the particular employer or industry [24 CFR 5.603(b) as updated for HOTMA]. Some examples of seasonal work include employment limited to holidays or agricultural seasons. Seasonal work may include but is not limited to employment as a lifeguard, ballpark vendor, or snowplow driver [Notice PIH 2023-27]. Income earned as a seasonal worker is not considered nonrecurring income.

Some Types of Military Pay

All regular pay, special pay and allowances of a member of the Armed Forces are counted <u>except</u> for the special pay to a family member serving in the Armed Forces who is exposed to hostile fire [24 CFR 5.609(b)(11) as updated for HOTMA].

The BHA will include in annual income the gross amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation.

For persons who regularly receive bonuses or commissions, the BHA will verify and annualize the amount, using the prior year's total if available, or annualizing based off a sample size or estimate if not.

TYPES OF EARNED INCOME <u>NOT</u> COUNTED IN ANNUAL INCOME

Earnings of a Minor *[24 CFR 5.609(b)(3) as updated for HOTMA]*

A minor is a member of the family, other than the head of household or spouse, who is under 18 years of age. Employment income earned by minors is not included in annual income. All other sources of unearned income, except those specifically excluded by the regulations, are included.

Earned Income of Full-Time Students *[24 CFR 5.609(b)(14) as updated for HOTMA]*
The earned income of a dependent full-time student in excess of the amount of the dependent deduction is excluded from annual income. All sources of unearned income, except those specifically excluded by the regulations, are included.

A family member other than the head of household or spouse/cohead is considered a full-time student if they are attending school or vocational training on a full-time basis [24 CFR 5.603(b)]. Full-time status is defined by the educational or vocational institution the student is attending [New PH OCC GB, *Lease Requirements,* p. 5].

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 b)(8) as updated for HOTMA]. (See Eligibility chapter for a full discussion of live-in aides.)

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

[24 CFR 5.617; Streamlining Final Rule (SFR) Federal Register 3/8/16; Notice PIH 2023-27]

HOTMA removed the statutory authority for the EID. The EID is available only to families that are eligible for and participating in the program as of December 31, 2023, or before; no new families may be added on or after January 1, 2024. If a family is receiving the EID prior to or on the effective date of December 31, 2023, they are entitled to the full amount of the benefit for a full 24-month period. The policies below are applicable only to such families. No family will still be receiving the EID after December 31, 2025. The EID will sunset on January 1, 2026, and the BHA policies below will no longer be applicable as of that date or when the last qualifying family exhausts their exclusion period, whichever is sooner.

CALCULATION OF THE DISALLOWANCE

Calculation of the earned income disallowance for an eligible member of a qualified family begins with a comparison of the member's current income with their "baseline income." The family member's baseline income is their income immediately prior to qualifying for the EID. The family member's baseline income remains constant throughout the period that they are participating in the EID.

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.

Second 12-Month Exclusion
During the second exclusion period of 12 consecutive months, the BHA must exclude at least 50 percent of any increase in income attributable to 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. The EID will sunset on January 1, 2026. In no circumstances will a family member's exclusion period continue past January 1, 2026.

6-I.F. BUSINESS INCOME [24 CFR 5.609(b)(228) as updated for HOTMA; Notice PIH 2023-27)]

Annual income includes "the net income from the operation of a business or profession. *Net income* is gross income minus business expenses that allows the business to operate. *Gross income* is all income amounts received into the business, prior to the deduction of business expenses.

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)].

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

INDEPENDENT CONTRACTORS

Income received as an independent contractor is included in annual income, even if the source, date, or amount of the income varies [24 CFR 2.609 (b)(24) as updated for HOTMA].

An *independent contractor* is defined as an individual who qualifies as an independent contractor instead of an employee in accordance with the Internal Revenue Code federal income tax requirements and whose earnings are consequently subject to the self-employment tax. In general, an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done [24 CFR 5.603(b) as updated for HOTMA]. This may include individuals such as third-party delivery and transportation service providers and "gig workers" like babysitters, landscapers, rideshare drivers, and house cleaners. Income earned as an independent contractor is not considered nonrecurring income.

BUSINESS EXPANSION

HUD regulations do not permit the BHA to deduct from gross income expenses for business expansion.

CAPITAL INDEBTEDNESS

HUD regulations do not permit the BHA to deduct from gross income the amortization of capital indebtedness.

NEGATIVE BUSINESS INCOME

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

WITHDRAWAL OF CASH OR ASSETS FROM A BUSINESS

HUD regulations require the BHA 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.

6-I.G. STUDENT FINANCIAL ASSISTANCE [24 CFR 5.609(b)(9)]

INTRODUCTION

The treatment of student financial assistance depends on the HUD program, student/household characteristics, and the type of financial assistance received by the student. For public housing residents, all income received under Title IV of the HEA must be excluded from income. Other student financial assistance may be included depending on the students actual covered costs to For Section 8 programs, including HCV, however, for over 10 years HUD appropriations have included a provision that for Section 8 students who are age 23 and under and without dependent children, any amounts received in excess of tuition and any other required fees and charges must be considered income. Under HOTMA, HUD has interpreted this limitation to apply when the student is the head of household or spouse, but not when the student resides with their parents [71 FR 18146].

For any funds from a year where HUD's appropriations continue to include this Section 8 student financial assistance limitation, if the student does not reside with their parents is the head of household, cohead, or spouse, and is under the age of 23 or without dependent children, then both the assistance received under Title IV HEA and other student financial assistance received by the student is included as income to the extent that it exceeds the total of tuition and any other required fees and charges.

In contrast, student financial assistance received by a Section 8 student who is the head of household, spouse, or cohead, and is over the age of 23 with dependent children, or a student who resides with their parents in a Section 8 unit, is governed by the HOTMA student rule, which is described below.

During years in which an appropriations act does not contain this Section 8 student financial assistance limitation (or any other such limitation), then the determination of student financial assistance for all Section 8 students defaults to the methodology for public housing.

HOTMA STUDENT FINANCIAL ASSISTANCE REQUIREMENTS [24 CFR 5.609(B)(9)]

The regulations under HOTMA distinguish between two categories of student financial assistance paid to both full-time and part-time students. The first category is any assistance to students under section 479B of the Higher Education Act of 1965 (Title IV of the HEA) which must be excluded from the family's annual income [24 CFR 5.609(b)(9)(i)]. Examples of assistance under title IV of the HEA include:

- Federal Pell Grants;
- Teach Grants;
- Federal Work Study Programs;
- Federal Perkins Loans;
- Income earned in employment and training programs under section 134 of the Workforce Innovation and Opportunity Act (WIOA); or
- Bureau of Indian Affairs/Education student assistance programs
    - The Higher Education Tribal Grant
    - The Tribally Controlled Colleges or Universities Grant Program

The second category is any other grant-in-aid, scholarship, or other assistance amounts an individual receives for the actual covered costs charged by the institute of higher education (not otherwise excluded by the Federally mandated income exclusions) [24 CFR 5.609(b)(9)(ii)]. Other student financial assistance received by the student that, either by itself or in combination with HEA assistance, exceeds the actual covered costs is included in income.

Actual covered costs are defined as the actual costs of:

- Tuition, books, and supplies;
    - Including supplies and equipment to support students with learning disabilities or other disabilities
- Room and board; and
- Other fees required and charged to a student by the education institution.

For a student who is not the head of household or spouse/cohead, actual covered costs also include the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit.

Further, to qualify, other student financial assistance must be expressly:

- For tuition, book, supplies, room and board, or other fees required and charged to the student by the educational institution;
- To assist a student with the costs of higher education; or
- To assist a student who is not the head of household or spouse with the reasonable and actual costs of housing while attending the educational institution and not residing in an assisted unit.

The student financial assistance may be paid directly to the student or to the educational institution on the student's behalf. However, any student financial assistance paid to the student must be verified by the BHA.

The financial assistance must be a grant or scholarship received from:

- The Federal government;
- A state, tribal, or local government ;
- A private foundation registered as a nonprofit;
- A business entity (such as corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, or nonprofit entity); or
- An institution of higher education.
- Student financial assistance, does not include:
- Financial support provided to the student in the form of a fee for services performed; (e.g., a work study or teaching fellowship that is not excluded under section 479B of the Higher Education Act HEA);
- Gifts, including gifts from family or friends; or
- Any amount of the scholarship or grant that, either by itself or in combination with assistance excluded under the HEA, exceeds the actual covered costs of the student.

CALCULATING INCOME FROM STUDENT FINANCIAL ASSISTANCE [HOTMA STUDENT FINANCIAL ASSISTANCE RESOURCE SHEET; NOTICE PIH 2023-27]

There are two steps required as part of the calculation for Section 8 students. First, determine the student's relationship to the household, age, and whether they have dependent children. Second, calculate whether any excess student financial assistance should be included in the family's income.

If the student does not live with their parents and is the head of household, cohead, or spouse, and is 23 or younger or does not have dependent children, then Title IV HEA assistance will be considered when determining the student's total financial assistance to be included in annual income. The BHA will use Notice PIH 2015-21 as a guide to determine the total amount of the student's tuition plus required fees and charges. The BHA will subtract the total tuition plus required fees and charges from the total student financial assistance. If the result is zero or exceeds the amount of total financial assistance from all sources, then no student financial assistance will be included in annual income. Any amount of student financial assistance that exceeds the total tuition plus required fees and charges will be included in annual income.

Example 1

- Tuition and required fees and charges: $20,000
- Title IV HEA assistance: $10,000
- Other student financial assistance: $15,000
- Total student financial assistance: $10,000 + $15,000 = $25,000
- Included income: $25,000 in financial assistance - $20,000 tuition and required fees = $5,000

If a student is head, spouse, or cohead, and is over 23 with dependent children or lives with their parents, the following applies:

If a student only receives financial assistance under Title IV of the HEA and does not receive any other student financial assistance, the BHA will exclude the full amount of the assistance received under Title IV from the family's annual income. The BHA will not calculate actual covered costs in this case.

If the student does not receive any assistance under Title IV of the HEA but does receive assistance from another source, the BHA will first calculate the actual covered costs to the student in accordance with 24 CFR 5.609(b)(ii). The BHA will then subtract the total amount of the student's financial assistance from the student's actual covered costs. The BHA will include any amount of financial assistance in excess of the student's actual covered costs in the family's annual income.

Example 1

- Actual covered costs: $20,000
- Other student financial assistance: $25,000
- Excluded income: $20,000 ($25,000 in financial assistance - $20,000 in actual covered costs)
- Included income: $5,000

When a student receives assistance from both Title IV of the HEA and from other sources, the BHA will first calculate the actual covered costs to the student in accordance with 24 CFR 5.609(b)(ii). The assistance received under Title IV of the HEA will be applied to the student's actual covered costs first and then the other student financial assistance will be applied to any remaining actual covered costs.

If the amount of assistance excluded under Title IV of the HEA equals or exceeds the actual covered costs, none of the assistance included under other student financial assistance" would be excluded from income.

Example 2

- Actual covered costs: $25,000
- Title IV HEA assistance: $26,000
- Title IV HEA assistance covers the students entire actual covered costs.
- Other Student Financial Assistance: $5,000
- Excluded income: The entire Title IV HEA assistance of $26,000
- Included income: All other financial assistance of $5,000

If the amount of assistance excluded under Title IV of the HEA is less than the actual covered costs, the BHA will exclude the amount of other student financial assistance up to the amount of the remaining actual covered costs.

Example 3

- Actual covered costs: $22,000
- Title IV HEA assistance: $15,000
- The remaining amount not covered by Title IV HEA assistance is $7,000 ($22,000 in actual covered costs - $15,000 in Title IV HEA assistance).
- Other Student Financial Assistance: $5,000
- $7,000 in remaining actual covered costs - $5,000 in other financial assistance
- Excluded income: $15,000 entire amount of the Title IV HEA Assistance + $5,000 in other financial assistance
- Included income: $0

Example 4

- Actual covered costs: $18,000
- Title IV HEA Assistance: $15,000
- The remaining amount not covered by Title IV HEA assistance is $3,000 ($18,000 in actual covered costs - $15,000 in Title IV HEA Assistance)
- Other student Financial Assistance: $5,000
- When other student financial assistance is applied, financial assistance exceeds actual covered costs by $2,000 ($3,000 in actual covered costs - $5,000 in other financial assistance).
- Included income: $2,000 (the amount by which the financial aid exceeds the student's actual covered costs).

6-I.H. PERIODIC PAYMENTS [Notice PIH 2023-27]

Periodic payments are forms of income received on a regular basis.

Income that will not be repeated beyond the coming year (i.e., the 12 months following the effective date of the certification), based on information provided by the family, is considered nonrecurring income and is excluded from annual income. Income that has a discrete end date and will not be repeated beyond the coming year is excluded from a family's annual income because it is nonrecurring income. For example, a family receives income from a guaranteed income program in their city that has a discrete beginning and end date. While the guaranteed income will be repeated in the coming year, it will end before the family's next annual reexamination. This income is fully excluded from annual income.

However, this does not include unemployment income and other types of periodic payments that are received at regular intervals (such as weekly, monthly, or yearly). Unemployment income and other types of periodic payments are not considered nonrecurring income, unless explicitly excluded from income under 25 CFR 5.609(b) as updated for HOTMA, and thus they are included in annual income.

Insurance payments and settlements for personal or property losses, including but not limited to payments under health insurance, motor vehicle insurance, and workers' compensation, are excluded from annual income. Any workers' compensation is always excluded from annual income, regardless of the frequency or length of the payments.

LUMP-SUM PAYMENTS FOR THE DELAYED START OF A PERIODIC PAYMENT [24 CFR 5.609(B)(16) AS UPDATED FOR HOTMA]

Deferred periodic amounts from Supplemental Security Income (SSI) and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts, or any deferred Department of Veterans Affairs (VA) disability benefits that are received in a lump sum amount or in prospective monthly amounts are excluded from annual income.

RETIREMENT ACCOUNTS [24 CFR 5.609(B)(26) AS UPDATED FOR HOTMA; NOTICE PIH 2023-27]

Income received from any account under a retirement plan recognized as such by the IRS, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals is not considered actual income from assets.

However, any distribution of periodic payments from such accounts is included in annual income at the time they are received by the family.

An asset moved to a retirement account held by a member of the family is not considered to be an asset disposed of for less than fair market value.

SOCIAL SECURITY BENEFITS [NOTICE PIH 2023-27]

The BHA is required to use the gross benefit amount to calculate annual income from Social Security benefits.

Annually in October, the Social Security Administration (SSA) announces the cost-of-living adjustment (COLA) by which federal Social Security and SSI benefits are adjusted to reflect the increase, if any, in the cost of living. The federal COLA does not apply to state-paid disability benefits. Effective the day after the SSA has announced the COLA, PHAs are required to factor in the COLA when determining Social Security and SSI annual income for all annual reexaminations and interim reexaminations of family income that have not yet been completed and will be effective January 1 or later of the upcoming year [Notice PIH 2023-27]. When a family member's benefits are garnished, levied, or withheld to pay restitution, child support, tax debt, student loan debt, or other debts, the BHA must use the gross amount of the income, prior to the reduction, to determine a family's annual income.

Annual income includes "all amounts received," not the amount that a family may be legally entitled to receive but which they do not receive. When the SSA overpays an individual, resulting in a withholding or deduction from their benefit amount until the overpayment is paid in full, the BHA must use the reduced benefit amount after deducting only the amount of the overpayment withholding from the gross benefit amount.

6-I.I. NONRECURRING INCOME [24 CFR 5.609(b)(24) as updated for HOTMA and Notice PIH 2023-27]

Nonrecurring income, which is income that will not be repeated beyond the coming year (e.g., 12 months following the effective date of the certification) based on information provided by the family, is excluded from annual income. The BHA may accept a self-certification from the family stating that the income will not be repeated in the coming year. See Chapter 7 for BHA policies related to verification of nonrecurring income.

Income received as an independent contractor, day laborer, or seasonal worker is not excluded from income as nonrecurring income, even if the source, date, or amount of the income varies.

Income that has a discrete end date and will not be repeated beyond the coming year during the family's upcoming annual reexamination period will be excluded from a family's annual income as nonrecurring income. This exclusion does not include unemployment income and other types of periodic payments that are received at regular intervals (such as weekly, monthly, or yearly).

Income amounts excluded under this category may include, but are not limited to:

- Nonrecurring payments made to the family or to a third party on behalf of the family to assist with utilities;

- Payments for eviction prevention;
- Security deposits to secure housing;
- Payments for participation in research studies (depending on the duration); and
- General one-time payments received by or on behalf of the family.
- Nonrecurring income that is excluded under the regulations includes:
- Payments from the U.S. Census Bureau for employment (relating to decennial census or the American Community Survey) lasting no longer than 180 days and not culminating in permanent employment [24 CFR 5.609(b)(24)(i) as updated for HOTMA].
- Direct federal or state payments intended for economic stimulus or recovery [24 CFR 5.609(b)(24)(ii) as updated for HOTMA].
- Amounts directly received by the family as a result of state refundable tax credits or state or federal tax refunds at the time they are received [24 CFR 5.609(b)(24)(iii) and (iv) as updated for HOTMA].

- Gifts for holidays, birthdays, or other significant life events or milestones (e.g., wedding gifts, baby showers, anniversaries) [24 CFR 5.609(b)(24)(v) as updated for HOTMA].
- Non-monetary, in-kind donations, such as food, clothing, or toiletries, received from a food bank or similar organization [24 CFR 5.609(b)(24)(vi) as updated for HOTMA]. When calculating annual income, PHAs are prohibited from assigning monetary value to such non-monetary in-kind donations received by the family [Notice PIH 2023-27]. Non-recurring, non-monetary in-kind donations from friends and family are excluded as non-recurring income. However, the value of regular in-kind donations (such as the value of groceries) received by friends and family are included.
- Lump-sum additions to net family assets, including but not limited to lottery or other contest winnings [24 CFR 5.609(b)(24)(vii) as updated for HOTMA].

6-I.J. STATE PAYMENTS TO ALLOW INDIVIDUALS WITH DISABILITIES TO LIVE AT HOME [24 CFR 5.609(b)(19) as updated for HOTMA]

Payments made by or authorized by a state Medicaid agency (including through a managed care entity) or other state or federal agency to an assisted family to enable a member of the assisted family who has a disability to reside in the family's assisted unit are excluded.

Authorized payments may include payments to a member of the assisted family through state Medicaid-managed care systems, other state agencies, federal agencies, or other authorized entities.

The payments must be received for caregiving services a family member provides to enable another member of the assisted family who has a disability to reside in the family's assisted unit. Payments to a family member for caregiving services for someone who is not a member of the assisted family (such as for a relative that resides elsewhere) are not excluded from income.

Furthermore, if the agency is making payments for caregiving services to the family member for an assisted family member and for a person outside of the assisted family, only the payments attributable to the caregiving services for the caregiver's assisted family member would be excluded from income.

6-I.K. CIVIL RIGHTS SETTLEMENTS [24 CFR 5.609(b)(25) as updated for HOTMA; FR Notice 2/14/23]

Regardless of how the settlement or judgment is structured, civil rights settlements or judgments, including settlements or judgments for back pay, are excluded from annual income. This may include amounts received because of litigation or other actions, such as conciliation agreements, voluntary compliance agreements, consent orders, other forms of settlement agreements, or administrative or judicial orders under the Fair Housing Act, Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act (Section 504), the Americans with Disabilities Act, or any other civil rights or fair housing statute or requirement.

While these civil rights settlement or judgment amounts are excluded from income, the settlement or judgment amounts will generally be counted toward the family's net family assets (e.g., if the funds are

deposited into the family's savings account or a revocable trust under the control of the family or some other asset that is not excluded from the definition of *net family assets*). Income generated on the settlement or judgment amount after it has become a net family asset is not excluded from income. For example, if the family received a settlement or back pay and deposited the money in an interest-bearing savings account, the interest from that account would be income at the time the interest is received.

Furthermore, if a civil rights settlement or judgment increases the family's net family assets such that they exceed the HUD-published threshold amount ($50,000 for 2024, and $51,600 for 2025), then income will be imputed on the net family assets pursuant to 24 CFR 5.609(a)(2). If the imputed income, which HUD considers unearned income, increases the family's annual adjusted income by 10 percent or more, then an interim reexamination of income will be required unless the addition to the family's net family assets occurs within the last three months of the family's income certification period and the BHA or owner chooses not to conduct the examination.

6-I.L. ADDITIONAL EXCLUSIONS FROM ANNUAL INCOME [24 CFR 5.609(b) as updated for HOTMA; FR Notice 1/31/2024]

Other exclusions contained in 24 CFR 5.609(b) as updated for HOTMA and FR Notice 1/31/2024 that have not been discussed earlier in this chapter include the following:

- Payments received for the care of foster children or foster adults or state or tribal kinship or guardianship care payments [24 CFR 5.609(b)(4) as updated for HOTMA].
- Insurance payments and settlements for personal or property losses, including but not limited to payments through health insurance, motor vehicle insurance, and workers' compensation [24 CFR 5.609(b)(5) as updated for HOTMA]. However, periodic payments paid at regular intervals (such as weekly, monthly, or yearly) for a period of greater than one year that are received in lieu of wages are included in annual income [Notice PIH 2023-27].
- Amounts received by the family that are specifically for, or in reimbursement of, the cost of health and medical care expenses for any family member [24 CFR 5.609(b)(6) as updated for HOTMA].
- Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a member of the family becoming disabled [24 CFR 5.609(b)(7) as updated for HOTMA].
- Income and distributions from any Coverdell education savings account under Section 530 of the Internal Revenue Code of 1986 or any qualified tuition program under Section 529 of such Code [24 CFR 5.609(b)(10) as updated for HOTMA].
- Income earned by government contributions to, and distributions from, "baby bond" accounts created, authorized, or funded by federal, state, or local government [24 CFR 5.609(b)(10) as updated for HOTMA].
- The special pay to a family member serving in the Armed Forces who is exposed to hostile fire [24 CFR 5.609(b)(11) as updated for HOTMA].
- Payments related to aid and attendance under 38 U.S.C. 1521 to veterans in need of regular aid and attendance [24 CFR 5.609(b)(17) as updated for HOTMA]. This income exclusion applies only to veterans in need of regular aid and attendance and not to other beneficiaries of the payments, such as a surviving spouse [Notice PIH 2023-27].
- Loan proceeds (the net amount disbursed by a lender to or on behalf of a borrower, under the terms of a loan agreement) received by the family or a third party (e.g., proceeds received by the family from a private loan to enable attendance at an educational institution or to finance the purchase of a car) [24 CFR 5.609(b)(20) as updated for HOTMA]. The loan borrower or co-borrower must be a member of the family for this income exclusion to be applicable [Notice PIH 2023-27].

- Payments received by tribal members as a result of claims relating to the mismanagement of assets held in trust by the United States, to the extent such payments are also excluded from gross income under the Internal Revenue Code or other federal law [24 CFR 5.609(b)(21) as updated for HOTMA]. Generally, payments received by tribal members in excess of the first $2,000 of per capita shares are included in a family's annual income for purposes of determining eligibility. However, as explained in Notice PIH 2023-27, payments made under the Cobell Settlement, and certain per capita payments under the recent Tribal Trust Settlements, must be excluded from annual income.
- Replacement housing "gap" payments made in accordance with 49 CFR Part 24 that offset increased out of pocket costs of displaced persons that move from one federally subsidized housing unit to another federally subsidized housing unit. Such replacement housing "gap" payments are not excluded from annual income if the increased cost of rent and utilities is subsequently reduced or eliminated, and the displaced person retains or continues to receive the replacement housing "gap" payments [24 CFR 5.609(b)(23) as updated for HOTMA].
- Income earned on amounts placed in a family's Family Self-Sufficiency account [24 CFR 5.609(b)(27) as updated for HOTMA].
- Amounts received by participants in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (e.g., special equipment, clothing, transportation, childcare, etc.) and which are made solely to allow participation in a specific program [24 CFR 5.609(c)(12)(ii) as updated for HOTMA].
- 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(b)(12)(i) as updated for HOTMA].
- Amounts received under a resident service stipend not to exceed $200 per month. A resident service stipend is a modest amount received by a resident for performing a service for the BHA or owner, on a part-time basis, that enhances the quality of life in the development [24 CFR 5.600(b)(12)(iii) as updated for HOTMA].
- Incremental earnings and benefits to any family member resulting from participation in qualifying training program funded by HUD or in qualifying federal, state, tribal, 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 unless those amounts are excluded under 24 CFR 5.609(b)(9)(i) [24 CFR 5.609(b)(12)(iv) as updated for HOTMA].
- 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(b)(13) as updated for HOTMA].
- Adoption assistance payments for a child in excess of the amount of the dependent deduction per adopted child [24 CFR 5.609(b)(15) as updated for HOTMA].
- Refunds or rebates on property taxes paid on the dwelling unit [24 CFR 5.609(b)(20) as updated for HOTMA].
- Amounts that HUD is required by federal statute to exclude 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(b) as updated for HOTMA apply. HUD will publish a notice in the *Federal Register* to identify the benefits that qualify for this exclusion. Updates will be published when necessary [24 CFR 5.609(b)(22) as updated for HOTMA].

  HUD publishes an updated list of these exclusions periodically. The most recent list of exclusions was published in the *Federal Register* on January 31, 2024. 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)). This exclusion also applies to assets.

b. Benefits under Section 1780 of the Richard B. Russell School Lunch Act and Child Nutrition Act of 1966, including WIC and reduced-price lunches.

c. Payments, including for supportive services and reimbursement of out-of-pocket expenses, to volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058). The exclusion also applies to assets.

    a. Except, the exclusion does not apply when the Chief Executive Officer of the Corporation for National and Community Service determines that the value of all such payments, adjusted to reflect the number of hours such volunteers are serving, is equivalent to or greater than the minimum wage then in effect under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) or the minimum wage, under the laws of the State where such volunteers are serving, whichever is the greater (42 U.S.C. 5044(f)(1)).

d. Certain 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. 5506).

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)(1)).

g. Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998 which was reauthorized as the Workforce Innovation and Opportunity Act of 2014 (29 U.S.C. 3241(a)(2)).

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 Section 6).

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). This exclusion does not include proceeds of gaming operations regulated by the Commission (25 U.S.C. 1407–1408).

m. Payments received from programs funded under Title V of the Older Americans Act of 1965 (42 U.S.C. 3056(f)).

n. 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.). This exclusion also applies to assets.

o. 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 and Thailand service veterans born with spinal bifida (42 U.S.C. 12637(d)).

p. Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721). This exclusion also applies to assets.

q. The value of any childcare provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Childcare and Development Block Grant Act of 1990 (42 U.S.C. 9858q).

r. Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j)). This exclusion also applies to assets.

s. Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433). This exclusion also applies to assets.

t. Amounts of student financial assistance 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 only, 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 be considered income if the individual is over the age of 23 with dependent children (Pub. L. 109–115, section 327 (as amended)).

u. Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d)).

v. Any amount of crime victim compensation that provides medical or other assistance (or payment or reimbursement of the cost of such assistance) under the Victims of Crime Act of 1984 received through a crime victim assistance program, unless the total amount of assistance that the applicant receives from all such programs is sufficient to fully compensate the applicant for losses suffered as a result of the crime (34 U.S.C. 20102(c)).

w. Any amounts in an “individual development account” are excluded from assets and any assistance, benefit, or amounts earned by or provided to the individual development account are excluded from income, as provided by the Assets for Independence Act, as amended (42 U.S.C. 604(h)(4)).

x. 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. This exclusion also applies to assets.

y. Distributions from an ABLE account, distributions from and certain contributions to an ABLE account established under the ABLE Act of 2014 (Pub. L. 113–295.), as described in Notice PIH 2019–09 or subsequent or superseding notice is excluded from income and assets.

z. The amount of any refund (or advance payment with respect to a refundable credit) issued under the Internal Revenue Code is excluded from income and assets for a period of 12 months from receipt (26 U.S.C. 6409).

aa. Assistance received by a household under the Emergency Rental Assistance Program pursuant to the Consolidated Appropriations Act, 2021 (Pub. L. 116–260, section 501(j)), and the American Rescue Plan Act of 2021.

bb. Per capita payments made from the proceeds of Indian Tribal Trust Settlements listed in IRS Notice 2013-1 and 2013-55 must be excluded from annual income unless the per capita payments exceed the amount of the original Tribal Trust Settlement proceeds and are made from a Tribe’s private bank account in which the Tribe has deposited the settlement proceeds. Such amounts received in excess of the Tribal Trust Settlement are included in the gross income of the members of the Tribe receiving the per capita payments as described in IRS Notice 2013-1. The first $2,000 of per capita payments are also excluded from assets unless the per capita payments exceed the amount of the original Tribal Trust Settlement proceeds and are made from a Tribe’s private bank account in which the Tribe has deposited the settlement proceeds (25 U.S.C. 117b(a), 25 U.S.C. 1407).

- Any amounts (i) not actually received by the family, (ii) that would be eligible for exclusion under 42 U.S.C. 1382b(a)(7), and (iii) received for service-connected disability under 38 U.S.C. Chapter 11 or dependency and indemnity compensation under 38 U.S.C. Chapter 13 (25 U.S.C. 4103(9)(C)) as provided by an amendment by the Indian Veterans Housing Opportunity Act of 2010 (Pub. L. 111–269 section 2) to the definition of income applicable to programs under the Native American Housing Assistance and Self-Determination Act (NAHASDA) (25 U.S.C. 4101 et seq.).

6-I.M. ASSETS [24 CFR 5.609(b)(3); 24 CFR 5.603(b)]

OVERVIEW

There is no asset limitation for participation in the HCV program. However, HUD requires that the BHA 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, the BHA must determine the value of the asset in order to compute income from the asset. Therefore, for each asset type, this section discusses:

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

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

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

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

Valuing Assets

The calculation of asset income sometimes requires the BHA 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.

Lump-Sum Additions to Net Family Assets [24 CFR 5.609(b)(24)(viii) as updated for HOTMA; Notice PIH 2023-27]

The regulations exclude income from lump-sum additions to family assets, including lottery or other contest winnings as a type of nonrecurring income.

In addition, lump sums from insurance payments, settlements for personal or property losses, and recoveries from civil actions or settlements based on claims of malpractice, negligence, or other breach of

duty owed to a family member arising out of law that resulted in a member of the family becoming a family member with a disability are excluded from income.

Further, deferred periodic amounts from Supplemental Security Income (SSI) 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 are also excluded from income.

However, these amounts may count toward net family assets. The BHA must consider any actual or imputed returns from assets as income at the next applicable income examination. In the case where the lump sum addition to assets would lead to imputed income, which is unearned income, that increases the family's annual adjusted income by 10 percent or more, then the addition of the lump sum to the family's assets will trigger an immediate interim reexamination of income in accordance with Chapter 9. This reexamination of income must take place as soon as the lump sum is added to the family's net family assets unless the addition takes place in the last three months of family's income certification period and the BHA chooses not to conduct the examination.

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, the BHA will include in annual income the actual income anticipated to be derived from the assets. When the family has net family assets in excess of $5,000, the BHA 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 BHA.

- Note: The HUD field office no longer provides an interest rate for imputed asset income. The "safe harbor" is now for the BHA to establish a passbook rate within 0.75 percent of a national average.
- The BHA must review its passbook rate annually to ensure that it remains within 0.75 percent of the national average.

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

BHA will review the passbook rate annually. The rate will not be adjusted unless the current BHA 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.

Determining Actual Anticipated Income from Assets
It may or may not be necessary for the BHA 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."

Assets Disposed of for Less than Fair Market Value *[24 CFR 5.603(b)]*
HUD regulations require the BHA 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 the BHA to set a threshold below which assets disposed of for less than fair market value will not be counted [HCV GB, p. 5-27].

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

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

Assets placed by the family in 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.

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.

TYPES OF ASSETS

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

In determining the value of checking account and savings accounts, the BHA will use the current balance.

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

ABLE Accounts *[24 CFR 5.609(b)(10) as updated for HOTMA; Notice PIH 2019-09]*
An Achieving a Better Life Experience (ABLE) account is a type of tax-advantaged savings account that an eligible individual can use to pay for qualified disability expenses. Section 103 of the ABLE Act mandates that an individual's ABLE account (specifically, its account balance, contributions to the account, and distributions from the account) is excluded when determining the designated beneficiary's eligibility and continued occupancy under certain federal means-tested programs. The BHA must exclude the entire value of the individual's ABLE account from the household's assets. Distributions from the ABLE account are also not considered income. However, all wage income received, regardless of which account the money is paid to, is included as income.

Investment Accounts Such as Stocks, Bonds, Saving Certificates, and Money Market Funds
Interest or dividends earned by investment accounts are counted as actual income from assets even when the earnings are reinvested. The cash value of such an asset is determined by deducting from the market value any broker fees, penalties for early withdrawal, or other costs of converting the asset to cash.

In determining the market value of an investment account, the BHA will use the value of the account on the most recent investment report.

How anticipated income from an investment account will be calculated depends on whether the rate of return is known.

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

Equity in Real Property or Other Capital Investments

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

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

- Equity accounts in HUD homeownership programs [24 CFR5.603(b)]
- The value of a home currently being purchased with assistance under the HCV program Homeownership Option for the first 10 years after the purchase date of the home [24 CFR 5.603(b), Notice PIH 2012-3]
- Equity in owner-occupied cooperatives and manufactured homes in which the family lives [HCV GB, p. 5-25]
- Equity in real property when a family member's main occupation is real estate [HCV GB, p. 5-25]. This real estate is considered a business asset, and income related to this asset will be calculated as described in section 6-I.F.
- Interests in Indian Trust lands [24 CFR 5.603(b)]
- Real property and capital assets that are part of an active business or farming operation [HCV GB, p. 5-25]

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

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

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

In the case of capital investments owned jointly with others not living in a family's unit, a prorated share of the property's cash value will be counted as an asset unless the BHA determines that the family receives no income from the property and is unable to sell or otherwise convert the asset to cash.

Trusts *[24 CFR 5.609(b)(2) as updated for HOTMA]*

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).

The basis for determining how to treat trusts relies on information about who has access to either the principal in the account or the income from the account. There are two types of trusts, *revocable* and *irrevocable*.

When the creator sets up an *irrevocable trust*, the creator has no access to the funds in the account. Typically, special needs trusts are considered irrevocable. Irrevocable trusts not under the control of any member of the family are excluded from net family assets. The value of the trust continues to be excluded from net family assets so long as the fund continues to be held in a trust that is not revocable by, or under

the control of, any member of the family or household [24 CFR 5.603(b)(4) as updated for HOTMA]. Further, where an irrevocable trust is excluded from net family assets, the BHA must not consider actual income earned by the trust (e.g., interest earned, rental income if property is held in the trust) for so long as the income from the trust is not distributed.

A *revocable trust* is a trust that the creator of the trust may amend or end (revoke). When there is a revocable trust, the creator has access to the funds in the trust account.

- A revocable trust that is under the control of the family is included in net family assets when the grantor is a member of the assisted family. If a revocable trust is included in the calculation of net family assets, then the actual income earned by the revocable trust is also included in the family's income. For example, interest earned or rental income if the property is held in the trust. The BHA must calculate imputed income on the revocable trust if net family assets are more than the HUD-published threshold amount, which is adjusted annually and listed in HUD's Inflation Adjusted Values tables ($50,000 for 2024, and $51,600 for 2025), and actual income from the trust cannot be calculated (e.g., if the trust is comprised of farmland that is not in use).
- A revocable trust that is not under the control of the family is excluded from net family assets. This happens when a member of the assisted family is the beneficiary of a revocable trust, but the grantor is not a member of the assisted family. In this case the beneficiary does not "own" the revocable trust, and the value of the trust is excluded from net family assets. For the revocable trust to be considered excluded from net family assets, no family or household member may be the account's trustee.

For both irrevocable and revocable trusts, if the value of the trust is not considered part of net family assets, then distributions from the trust are treated as follows:

- All distributions from the trust's principal are excluded from income.
- Distributions of income earned by the trust (i.e., interest, dividends, realized gains, or other earnings on the trust's principal), are included as income unless the distribution is used to pay for the health and medical expenses for a minor.

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, the BHA 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].

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

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.N. WELFARE ASSISTANCE

OVERVIEW

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

SANCTIONS RESULTING IN THE REDUCTION OF WELFARE BENEFITS [24 CFR 5.615]

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

COVERED FAMILIES

The families covered by 24 CFR 5.615 are those "who receive welfare assistance or other public assistance benefits ('welfare benefits') from a State or other public agency ('welfare agency') under a program for which Federal, State or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance" [24 CFR 5.615(b)]

IMPUTED INCOME

When a welfare agency imposes a sanction that reduces a family's welfare income because the family commits fraud or fails to comply with the agency's economic self-sufficiency program or work activities requirement, the BHA must include in annual income "imputed" welfare income. The BHA 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.O. PERIODIC AND DETERMINABLE ALLOWANCES [24 CFR 5.609(b)(7)]

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

ALIMONY AND CHILD SUPPORT

The BHA must count alimony or child support amounts awarded as part of a divorce or separation agreement. Alimony and child support will be counted unless the BHA verifies that payments are not being made.

PART II: ADJUSTED INCOME

6-II.A. INTRODUCTION

OVERVIEW

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

> 5.611(a) Mandatory deductions. In determining adjusted income, the responsible entity [PHA] must deduct the following amounts from annual income:
>
> (1) $480 for each dependent;
>
> (2) $400 for any elderly family or disabled family;
>
> (3) The sum of the following, to the extent the sum exceeds three percent of annual income:
>
> (i) Unreimbursed health and medical care 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 childcare 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.

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) as updated for HOTMA].

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. HEALTH AND MEDICAL CARE EXPENSES DEDUCTION [24 CFR 5.611(a)(3)(i) and 5.603(b) as updated for HOTMA]

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

The health and medical careexpense 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 health and medical careexpense deduction, the medical expenses of all family members are counted [VG, p. 28].

DEFINITION OF MEDICAL EXPENSES

HUD regulations define *health and medical care expenses* at 24 CFR 5.603(b) (as updated for HOTMA) to mean "any costs incurred in the diagnosis, cure, mitigation, treatment, or prevention of disease or payments for treatments affecting any structure or function of the body. Health and medical care expenses include medical insurance premiums and long-term care premiums that are paid or anticipated during the period

for which annual income is computed." Health and medical care expenses may be deducted from annual income only if they are eligible under this definition and not otherwise reimbursed.

The BHA will use the most current IRS Publication 502 as a standard for determining if expenses claimed by eligible families qualify as health and medical care expenses. However, under no circumstances will the BHA deduct any expenses listed in IRS Publication 502 that do not conform with HUD's definition of *health and medical care expenses.*

Summary of Typical Allowable Health and Medical Care Expenses	
Services of medical professionals Surgery and medical procedures that are necessary, legal, and non-cosmetic Services of medical facilities Hospitalization, long-term care, and in-home nursing services Prescription medicines and insulin, but not nonprescription medicines even if recommended by a doctor Improvements to housing directly related to medical needs (e.g., ramps for a wheelchair, handrails) Medical insurance premiums or the cost of a health maintenance organization (HMO) Medicare Part B and Part D premiums	Substance abuse treatment programs Psychiatric treatment Ambulance services and some costs of transportation related to medical expenses. The BHA will use the most current medical mileage rate listed in IRS Publication 502. The cost and care of necessary equipment related to a medical condition (e.g., eyeglasses/lenses, hearing aids, crutches, and artificial teeth) The costs of buying, training, and maintaining a guide dog or other service animal to assist a visually impaired or hearing disabled person, or a person with other physical disabilities. In general, this includes any costs, such as food, grooming, and veterinary care, incurred in maintaining the health and vitality of the service animal so that it may perform its duties.
Note: This chart provides a summary of eligible health and medical care expenses only. In all cases, the BHA will consider whether health and medical expenses care expenses claimed by the family are eligible under HUD's definition.	

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 income exclusions are applied.

The family must identify the family members enabled to work as a result of the disability assistance expenses. In evaluating the family's request, the BHA will consider factors such as how the work schedule

of the relevant family members relates to the hours of care provided, the time required for transportation, the relationship of the family members to the person with disabilities, and any special needs of the person with disabilities that might determine which family members are enabled to work.

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

ELIGIBLE DISABILITY EXPENSES

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

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

Eligible Auxiliary Apparatus

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

Eligible Attendant Care

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

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

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

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

6-II.F. CHILDCARE EXPENSE DEDUCTION

HUD defines childcare 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 childcare. In the case of childcare 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

Childcare 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, childcare expenses for foster children that are living in the assisted family's household are included when determining the family's childcare expenses [HCV GB, p. 5-29].

QUALIFYING FOR THE DEDUCTION

Determining Who Is Enabled to Pursue an Eligible Activity

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

In evaluating the family's request, the BHA will consider factors such as how the schedule for the claimed activity relates to the hours of care provided, the time required for transportation, the relationship of the family member(s) to the child, and any special needs of the child that might help determine which family member is enabled to pursue an eligible activity.

Seeking Work

If the childcare 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 childcare expense being allowed by the BHA.

Furthering Education

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

Being Gainfully Employed

If the childcare 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 childcare 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 CHILDCARE EXPENSE DEDUCTION

When a family member looks for work or furthers their education, there is no cap on the amount that may be deducted for childcare – although the care must still be necessary and reasonable. However, when childcare 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 income exclusions are applied.

When the person who is enabled to work is a full-time student whose earned income above $480 is excluded, childcare 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.

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

When the childcare 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.

ELIGIBLE CHILDCARE EXPENSES

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

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

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

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

Childcare expenses will be considered for the time required for the eligible activity plus reasonable transportation time.

To establish the reasonableness of childcare costs, the BHA will use the schedule of childcare costs from a qualified local entity that either subsidizes childcare costs or licenses childcare providers. Families may present, and the BHA will consider, justification for costs that exceed typical costs in the area.

PART III: CALCULATING FAMILY SHARE AND BHA SUBSIDY

6.III.A. OVERVIEW OF RENT & 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 the BHA

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

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

***Welfare Rent** [24 CFR 5.628]*
Welfare Rent does not apply in this locality

***Minimum Rent** [24 CFR 5.630]*
The BHA has established a $50 minimum rent

FAMILY SHARE [24 CFR 982.305(A)(5)]

If a family chooses a unit with a gross rent (rent to owner plus an allowance for tenant-paid utilities) that exceeds the BHA's applicable payment standard: (1) the family will pay more than the TTP, and (2) at initial occupancy the BHA may not approve the tenancy if it would require the family share to exceed 40 percent

of the family's monthly adjusted income. (For a discussion of the application of payment standards, see section 6-III.C.)

BHA SUBSIDY [24 CFR 982.514(B); 982.514(C)]

The BHA 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 the BHA subsidy for a family exceeds the rent to owner, the family is due a utility reimbursement. The BHA will pay the reimbursement to the family on a monthly basis.

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

OVERVIEW

The BHA will grant an exemption from the minimum rent if a family is unable to pay the minimum rent because of financial hardship.

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

(2) The family would be evicted because it is unable to pay the minimum rent.

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

(4) A death has occurred in the family.

IMPLEMENTATION OF HARDSHIP EXEMPTION

Determination of Hardship

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

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

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

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

Example: Impact of Minimum Rent Exemption Assume the BHA has established a minimum rent of $50.	
Family Share – No Hardship	**Family Share – With Hardship**
$0 30% of monthly adjusted income	$0 30% of monthly adjusted income

$15 10% of monthly gross income N/A Welfare rent $50 Minimum rent	$15 10% of monthly gross income N/A Welfare rent $50 Minimum rent
Minimum rent applies. TTP = $50	Hardship exemption granted. TTP = $15

Requests for an exemption from the minimum rent must be submitted in writing to the BHA office. This written request must be accompanied by the following:

- A complete listing of all household members' current income and their sources.
- A completed Zero Income form listing all the household members' current financial obligations and routine expenditures.

BHA will respond in writing to all requests for minimum rent hardship exemption within 10 business days of receipt of completed paperwork.

No Financial Hardship

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

BHA will require the family to repay the suspended amount within 60 calendar days of BHA's notice that a hardship exemption has not been granted.

Temporary Hardship

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

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

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

Long-Term Hardship

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

At each annual reexamination, the family's eligibility for financial hardship exemption will be reviewed. The hardship will end 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) If the minimum rent is exempted due to a loss of income, it will end once new sources of income at least equal the amount lost.
3) Hardship exemptions based upon expenses will end once the cumulative amount exempted is equal to the expense incurred

6-III.C. APPLYING PAYMENT STANDARDS [24 CFR 982.505(c) and Notice PIH 2024-34]

OVERVIEW

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

Payment standard is defined as "the maximum monthly assistance payment for a family assisted in the voucher program (before deducting the total tenant payment by the family)" [24 CFR 982.4(b)].

The payment standard for a family is the lower of (1) the payment standard for the family unit size, which is defined as the appropriate number of bedrooms for the family under the BHA's subsidy standards [24 CFR 982.4(b)], or (2) the payment standard for the size of the dwelling unit rented by the family [24 CFR 982.505(c)(1)].

If the BHA has established an exception payment standard for a designated part of an FMR area in accordance with 24 CFR 982.503 and a family's unit is located in the designated area, the BHA must use the appropriate payment standard for the exception area [24 CFR 982.505(c)(2)].

The BHA is required to pay a monthly housing assistance payment (HAP) for a family that is the lower of (1) the payment standard for the family minus the family's TTP or (2) the gross rent for the family's unit minus the TTP.

If during the term of the HAP contract for a family's unit, the owner lowers the rent, the BHA will recalculate the HAP using the lower of the initial payment standard or the gross rent for the unit [HCV GB, p. 7-8].

CHANGES IN PAYMENT STANDARDS

When the BHA 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 *[24 CFR 982.505©(3) and Notice PIH 2024-34]*
For new HAP contracts, the BHA applies the payment standard in effect at the time of HAP contract execution.

If the BHA changes its payment standard schedule resulting in a lower payment standard amount, during the term of a HAP contract, the BHA will not reduce the payment standard used to calculate subsidy for families under HAP contract as long as the HAP contract remains in effect.

The BHA will not establish different policies for decreases in the payment standard for designated areas within their jurisdiction.

Increases [24 CFR 982.505(c)(4) and Notice PIH 2024-34]
For new HAP contracts, the BHA applies the payment standard in effect at the time of HAP contract execution.

If the payment standard is increased during the term of the HAP contract, the increased payment standard will be applied no later than the earliest of:

- The effective date of an increase in the gross rent that would result in an increase in the family share;
- The family's first regular or interim reexamination; or
- One year following the effective date of the increase in the payment standard amount.

The BHA will not adopt payment standard increases earlier than the date required by the regulations.

Moves
If the family moves to a new unit, or a new HAP contract is executed due to changes in the lease (even if the family remains in place) the current payment standard applicable to the family will be used when the new HAP contract is processed.

REASONABLE ACCOMMODATION [24 CFR 982.503(D)(5)]

If a family requires a higher payment standard as a reasonable accommodation for a family member who is a person with disabilities, the BHA is allowed to establish a higher payment standard for the family of not more than 120 percent of the published FMR without HUD approval or prior notification to HUD. A PHA may establish a payment standard greater than 120 percent of the applicable FMR as a reasonable

accommodation in accordance with 24 CFR part 8, after requesting and receiving HUD approval. See Chapter 16 for more information.

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

OVERVIEW

A BHA-established utility allowance schedule is used in determining family share and BHA subsidy. A family's utility allowance is determined by the size of dwelling unit leased by a family or the voucher unit size for which the family qualifies using BHA subsidy standards, whichever is the lowest of the two. See Chapter 5 for information on the BHA's subsidy standards.

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

FLAT FEES [24 CFR 982.517(B)(2)(III)]

The BHA will not base utility allowance payments on flat fees charged by the owner.

PBV DEVELOPMENTS [24 CFR 982.517(B)(2)(IV)]

If a tenant-based voucher holder resides in a project with project-based voucher (PBV) units and the PBV units use a site-specific utility allowance in accordance with PBV regulations, the BHA must use the project-specific utility allowance schedule.

REASONABLE ACCOMMODATION AND INDIVIDUAL RELIEF

On request from a family that includes a person with disabilities, the BHA must approve a utility allowance which is higher than the applicable amount on the utility allowance schedule if a higher utility allowance is needed as a reasonable accommodation to make the program accessible and usable by the family member with a disability [24 CFR 982.517(e)]. (See Chapter 2 for policies regarding the request and approval of reasonable accommodations.)

Further, the BHA may grant requests for individual relief from charges in excess of the utility allowance on reasonable grounds, such as special factors not within control of the resident, as the BHA deems appropriate. The family must request the higher allowance and provide the BHA an explanation of the need for individual relief and an explanation about the amount of additional allowance required [see HCV GB, p. 18-8].

The BHA will consider the following criteria as valid reasons for granting individual relief:

- The family's consumption was mistakenly portrayed as excessive due to defects in the meter or errors in the meter reading.
- The excessive consumption is caused by a characteristic of the unit or owner-supplied equipment that is beyond the family's control, such as a particularly inefficient refrigerator or inadequate insulation. The allowance should be adjusted to reflect the higher consumption needs associated with the unit until the situation is remedied. The resident should be granted individual relief until the allowance is adjusted.
- The excessive consumption is due to special needs of the family that are beyond their control, such as the need for specialized equipment in the case of a family member who is ill, elderly, or who has a disability.

In determining the amount of the reasonable accommodation or individual relief, the BHA will allow a reasonable measure of additional usage as necessary. To arrive at the amount of additional utility cost of specific equipment, the family may provide information from the manufacturer of the equipment, or the family or BHA may conduct an internet search for an estimate of usage or additional monthly cost.

Information on reasonable accommodation and individual relief for charges in excess of the utility allowance will be provided to all families at admission as part of the information on payment standards and utility

allowances in the briefing packet. The BHA will also provide information on utility relief programs or medical discounts (sometimes referred to as “Medical Baseline discounts”) that may be available through local utility providers.

At its discretion, the BHA may reevaluate the need for the increased utility allowance at any regular reexamination.

If the excessive consumption is caused by a characteristic of the unit or BHA-supplied equipment that is beyond the family’s control, such as a particularly inefficient refrigerator or inadequate insulation, the individual relief to the resident will cease when the situation is remedied.

UTILITY ALLOWANCE REVISIONS

At reexamination, the BHA must use the current utility allowance schedule [HCV GB, p. 18-8].

Revised utility allowances will be applied to a family’s rent and subsidy calculations at the first annual reexamination that is effective after the allowance is adopted.

6-III.E. PRORATED ASSISTANCE FOR MIXED FAMILIES [24 CFR 5.520]

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

(3) Except where excluded under paragraph (b) of this section, it also includes supportive services such as transportation and childcare 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 childcare 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, childcare information and referral, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support; and

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

EXHIBIT 6-2: ANNUAL INCOME EXCLUSIONS

24 CFR 5.609(b) as updated for HOTMA

(b)Annual income does not include the following:

(1) Any imputed return on an asset when net family assets are less than or equal to the HUD-published threshold amount (which amount HUD will adjust annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers) and no actual income from the net family assets can be determined.

(2) The following types of trust distributions:

(i) For an irrevocable trust or a revocable trust outside the control of the family or household excluded from the definition of net family assets under § 5.603(b):

(A) Distributions of the principal or corpus of the trust; and

(B) Distributions of income from the trust when the distributions are used to pay the costs of health and medical care expenses for a minor.

(ii) For a revocable trust under the control of the family or household, any distributions from the trust; except that any actual income earned by the trust, regardless of whether it is distributed, shall be considered income to the family at the time it is received by the trust.

(3) Earned income of children under the 18 years of age.

(4) Payments received for the care of foster children or foster adults, or State or Tribal kinship or guardianship care payments.

(5) Insurance payments and settlements for personal or property losses, including but not limited to payments through health insurance, motor vehicle insurance, and workers' compensation.

(6) Amounts received by the family that are specifically for, or in reimbursement of, the cost of health and medical care expenses for any family member.

(7) Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a member of the family becoming disabled.

(8) Income of a live-in aide, foster child, or foster adult as defined in §§ 5.403 and 5.603, respectively.

(9)

(i) Any assistance that section 479B of the Higher Education Act of 1965, as amended (20 U.S.C. 1087uu), requires be excluded from a family's income; and

(ii) Student financial assistance for tuition, books, and supplies (including supplies and equipment to support students with learning disabilities or other disabilities), room and board, and other fees required and charged to a student by an institution of higher education (as defined under Section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002)) and, for a student who is not the head of household or spouse, the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit.

(A) Student financial assistance, for purposes of this paragraph (9)(ii), means a grant or scholarship received from— (

1) The Federal government;

(2) A State, Tribe, or local government;

(3) A private foundation registered as a nonprofit under 26 U.S.C. 501(c)(3);

(4) A business entity (such as corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, or nonprofit entity); or

(5) An institution of higher education.

(B) Student financial assistance, for purposes of this paragraph (9)(ii), does not include—

(1) Any assistance that is excluded pursuant to paragraph (b)(9)(i) of this section;

(2) Financial support provided to the student in the form of a fee for services performed (e.g., a work study or teaching fellowship that is not excluded pursuant to paragraph (b)(9)(i) of this section); (

3) Gifts, including gifts from family or friends; or

(4) Any amount of the scholarship or grant that, either by itself or in combination with assistance excluded under this paragraph or paragraph (b)(9)(i), exceeds the actual covered costs of the student. The actual covered costs of the student are the actual costs of tuition, books and supplies (including supplies and equipment to support students with learning disabilities or other disabilities), room and board, or other fees required

and charged to a student by the education institution, and, for a student who is not the head of household or spouse, the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit. This calculation is described further in paragraph (b)(9)(ii)€ of this section.

(C) Student financial assistance, for purposes of this paragraph (b)(9)(ii) must be:

(1) Expressly for tuition, books, room and board, or other fees required and charged to a student by the education institution;

(2) Expressly to assist a student with the costs of higher education; or

(3) Expressly to assist a student who is not the head of household or spouse with the reasonable and actual costs of housing while attending the education institution and not residing in an assisted unit.

(D) Student financial assistance, for purposes of this paragraph (b)(9)(ii), may be paid directly to the student or to the educational institution on the student's behalf. Student financial assistance paid to the student must be verified by the responsible entity as student financial assistance consistent with this paragraph (b)(9)(ii).

(E) When the student is also receiving assistance excluded under paragraph (b)(9)(i) of this section, the amount of student financial assistance under this paragraph (b)(9)(ii) is determined as follows:

(1) If the amount of assistance excluded under paragraph (b)(9)(i) of this section is equal to or exceeds the actual covered costs under paragraph (b)(9)(ii)(B)(4) of this section, none of the assistance described in this paragraph (b)(9)(ii) of this section is considered student financial assistance excluded from income under this paragraph (b)(9)(ii)(E).

(2) If the amount of assistance excluded under paragraph (b)(9)(i) of this section is less than the actual covered costs under paragraph (b)(9)(ii)(B)(4) of this section, the amount of assistance described in paragraph (b)(9)(ii) of this section that is considered student financial assistance excluded under this paragraph is the lower of:

(i) the total amount of student financial assistance received under this paragraph (b)(9)(ii) of this section, or

(ii) the amount by which the actual covered costs under paragraph (b)(9)(ii)(B)(4) of this section exceeds the assistance excluded under paragraph (b)(9)(i) of this section.

(10) Income and distributions from any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986 or any qualified tuition program under section 529 of such Code; and income earned by government contributions to, and distributions from, "baby bond" accounts created, authorized, or funded by Federal, State, or local government.

(11) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire.

(12)

(i) 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);

(ii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (e.g., special equipment, clothing, transportation, childcare, etc.) and which are made solely to allow participation in a specific program;

(iii) Amounts received under a resident service stipend not to exceed $200 per month. A resident service stipend is a modest amount received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development.

(iv) Incremental earnings and benefits resulting to any family member from participation in training programs funded by HUD or in qualifying Federal, State, Tribal, 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 unless those amounts are excluded under paragraph (b)(9)(i) of this section.

(13) 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.

(14) Earned income of dependent fulltime students in excess of the amount of the deduction for a dependent in § 5.611.

(15) Adoption assistance payments for a child in excess of the amount of the deduction for a dependent in § 5.611. (

16) 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.

(17) Payments related to aid and attendance under 38 U.S.C. 1521 to veterans in need of regular aid and attendance.

(18) 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.

(19) Payments made by or authorized by a State Medicaid agency (including through a managed care entity) or other State or Federal agency to a family to enable a family member who has a disability to reside in the family's assisted unit. Authorized payments may include payments to a member of the assisted family through the State Medicaid agency (including through a managed care entity) or other State or Federal agency for caregiving services the family member provides to enable a family member who has a disability to reside in the family's assisted unit.

(20) Loan proceeds (the net amount disbursed by a lender to or on behalf of a borrower, under the terms of a loan agreement) received by the family or a third party (e.g., proceeds received by the family from a private loan to enable attendance at an educational institution or to finance the purchase of a car).

(21) Payments received by Tribal members as a result of claims relating to the mismanagement of assets held in trust by the United States, to the extent such payments are also excluded from gross income under the Internal Revenue Code or other Federal law.

(22) Amounts that HUD is required by Federal statute to exclude 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 paragraph (b) of this section apply. HUD will publish a notice in the Federal Register to identify the benefits that qualify for this exclusion. Updates will be published when necessary.

(23) Replacement housing "gap" payments made in accordance with 49 CFR part 24 that offset increased out of pocket costs of displaced persons that move from one federally subsidized housing unit to another Federally subsidized housing unit. Such replacement housing "gap" payments are not excluded from annual income if the increased cost of rent and utilities is subsequently reduced or eliminated, and the displaced person retains or continues to receive the replacement housing "gap" payments.

(24) Nonrecurring income, which is income that will not be repeated in the coming year based on information provided by the family. Income received as an independent contractor, day laborer, or seasonal worker is not excluded from income under this paragraph, even if the source, date, or amount of the income varies. Nonrecurring income includes:

(i) Payments from the U.S. Census Bureau for employment (relating to decennial census or the American Community Survey) lasting no longer than 180 days and not culminating in permanent employment.

(ii) Direct Federal or State payments intended for economic stimulus or recovery.

(iii) Amounts directly received by the family as a result of State refundable tax credits or State tax refunds at the time they are received.

(iv) Amounts directly received by the family as a result of Federal refundable tax credits and Federal tax refunds at the time they are received.

(v) Gifts for holidays, birthdays, or other significant life events or milestones (e.g., wedding gifts, baby showers, anniversaries).

(vi) Non-monetary, in-kind donations, such as food, clothing, or toiletries, received from a food bank or similar organization.

(vii) Lump-sum additions to net family assets, including but not limited to lottery or other contest winnings.

(25) Civil rights settlements or judgments, including settlements or judgments for back pay.

(26) Income received from any account under a retirement plan recognized as such by the Internal Revenue Service, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals; except that any distribution of periodic payments from such accounts shall be income at the time they are received by the family.

(27) Income earned on amounts placed in a family's Family Self Sufficiency Account.

(28) Gross income a family member receives through self-employment or operation of a business; except that the following shall be considered income to a family member:

(i) 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; and

(ii) 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.

EXHIBIT 6-3: TREATMENT OF FAMILY ASSETS

24 CFR 5.603(b) Net Family Assets

(1) Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded.

(2) In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining annual income under Sec. 5.609.

(3) In determining net family assets, PHAs or owners, as applicable, shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

(4) For purposes of determining annual income under Sec. 5.609, the term "net family assets" does not include the value of a home currently being purchased with assistance under part 982, subpart M of this title. This exclusion is limited to the first 10 years after the purchase date of the home.

EXHIBIT 6-4: THE EFFECT OF WELFARE BENEFIT REDUCTION

24 CFR 5.615

Public housing program and Section 8 tenant-based assistance program: How welfare benefit reduction affects family income.

(a) *Applicability.* This section applies to covered families who reside in public housing (part 960 of this title) or receive Section 8 tenant-based assistance (part 982 of this title).

(b) *Definitions.* The following definitions apply for purposes of this section:

Covered families. Families who receive welfare assistance or other public assistance benefits ("welfare benefits") from a State or other public agency ("welfare agency") under a program for which Federal, State, or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance.

Economic self-sufficiency program. See definition at Sec. 5.603.

Imputed welfare income. The amount of annual income not actually received by a family, as a result of a specified welfare benefit reduction, that is nonetheless included in the family's annual income for purposes of determining rent.

Specified welfare benefit reduction.

(1) A reduction of welfare benefits by the welfare agency, in whole or in part, for a family member, as determined by the welfare agency, because of fraud by a family member in connection with the welfare program; or because of welfare agency sanction against a family member for noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

(2) "Specified welfare benefit reduction" does not include a reduction or termination of welfare benefits by the welfare agency:

(i) at expiration of a lifetime or other time limit on the payment of welfare benefits;

(ii) because a family member is not able to obtain employment, even though the family member has complied with welfare agency economic self-sufficiency or work activities requirements; or

(iii) because a family member has not complied with other welfare agency requirements.

(c) *Imputed welfare income.*

(1) A family's annual income includes the amount of imputed welfare income (because of a specified welfare benefits reduction, as specified in notice to the PHA by the welfare agency), plus the total amount of other annual income as determined in accordance with Sec. 5.609.

(2) At the request of the PHA, the welfare agency will inform the PHA in writing of the amount and term of any specified welfare benefit reduction for a family member, and the reason for such reduction, and will also inform the PHA of any subsequent changes in the term or amount of such specified welfare benefit reduction. The PHA will use this information to determine the amount of imputed welfare income for a family.

(3) A family's annual income includes imputed welfare income in family annual income, as determined at the PHA's interim or regular reexamination of family income and composition, during the term of the welfare benefits reduction (as specified in information provided to the PHA by the welfare agency).

(4) The amount of the imputed welfare income is offset by the amount of additional income a family receives that commences after the time the sanction was imposed. When such additional income from other sources is at least equal to the imputed

(5) The PHA may not include imputed welfare income in annual income if the family was not an assisted resident at the time of sanction.

(d) *Review of PHA decision.*

(1) Public housing. If a public housing tenant claims that the PHA has not correctly calculated the amount of imputed welfare income in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the tenant written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. The PHA notice shall also state that if the tenant does not agree with the PHA determination, the tenant may request a grievance hearing in accordance with part 966, subpart B of this title to review the PHA determination. The tenant is not required to pay an escrow deposit pursuant to Sec. 966.55(e) for the portion of tenant rent

attributable to the imputed welfare income in order to obtain a grievance hearing on the PHA determination.

(2) Section 8 participant. A participant in the Section 8 tenant-based assistance program may request an informal hearing, in accordance with Sec. 982.555 of this title, to review the PHA determination of the amount of imputed welfare income that must be included in the family's annual income in accordance with this section. If the family claims that such amount is not correctly calculated in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the family written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. Such notice shall also state that if the family does not agree with the PHA determination, the family may request an informal hearing on the determination under the PHA hearing procedure.

(e) *PHA relation with welfare agency.*

(1) The PHA must ask welfare agencies to inform the PHA of any specified welfare benefits reduction for a family member, the reason for such reduction, the term of any such reduction, and any subsequent welfare agency determination affecting the amount or term of a specified welfare benefits reduction. If the welfare agency determines a specified welfare benefits reduction for a family member, and gives the PHA written notice of such reduction, the family's annual incomes shall include the imputed welfare income because of the specified welfare benefits reduction.

(2) The PHA is responsible for determining the amount of imputed welfare income that is included in the family's annual income as a result of a specified welfare benefits reduction as determined by the welfare agency, and specified in the notice by the welfare agency to the PHA. However, the PHA is not responsible for determining whether a reduction of welfare benefits by the welfare agency was correctly determined by the welfare agency in accordance with welfare program requirements and procedures, nor for providing the opportunity for review or hearing on such welfare agency determinations.

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

CHAPTER 6: INCOME & SUBSIDY DETERMINATIONS UNDER HOTMA 102/104
[24 CFR Part 5, Subparts E and F; 24 CFR 982]

This chapter is applicable upon the BHA's HOTMA 102/104 compliance date. Prior to this date, the BHA will follow policies as outlined in Chapter 6.A. of the model policy.

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

Part I: Annual Income. HUD regulations specify the sources of income which are excluded from the family's annual income. These requirements and BHA policies for calculating annual income are found in Part I.

Part II: Assets. HUD regulations specify the types of assets which are excluded from a family's annual income. These requirements and BHA policies for calculating income from assets are found in Part II.

Part III: Adjusted Income. Once annual income has been established, HUD regulations require the BHA to subtract from annual income any of five mandatory deductions for which a family qualifies and allow the BHA to adopt additional permissive deductions. These requirements and BHA policies for calculating adjusted income are found in Part III.

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

PART I: ANNUAL INCOME

6-I.A OVERVIEW [24 CFR 5.609]

Annual income includes:

- All amounts, not specifically excluded in 24 CFR 5.609(b);
- All amounts received from all sources (other than those specifically excluded in 24 CFR 5.609(b)) by each member of the family who is 18 years of age or older or is the head of household or spouse;
- Unearned income (other than those sources specifically excluded in 24 CFR 5.609(b)) by or on behalf of each dependent who is under 18 years of age; and
- Imputed returns of an asset based on the current passbook savings rate, as determined by HUD, when the value of net family assets exceeds the HUD-published threshold amount (adjusted annually and published in HUD's Inflation-Adjusted Values tables) and the actual returns from a given asset cannot be calculated.

In addition to this general definition, the regulations at 24 CFR 5.609(b) provide a comprehensive listing of all sources of income that are excluded from annual income. Note, unlike in previous versions of the regulations, the current regulations governing annual income do not list sources of income that are to be included. Instead, HUD relies on the definition of excluded income under 24 CFR 5.609(b) to provide the scope of what is included. To that end, generally, all income is included unless it is specifically excluded by regulation.

Annual income includes "all amounts received," not the amount that a family may be legally entitled to receive but did not receive. For example, a family's child support or alimony income must be based on payments received, not the amounts to which the family is entitled by court or agency orders. However, when a family member's wages or benefits are garnished, levied, or withheld to pay restitution, child

support, tax debt, student loan debt, or other applicable debts, the BHA must use the gross amount of the income, prior to the reduction, to determine a family's annual income [Notice PIH 2023-27].

Annual income also includes all actual anticipated income from assets (provided the income is not otherwise excluded) even if the asset itself is excluded from net family assets [Notice PIH 2023-27]. 24 CFR 5.603(b)(1) describes HUD regulations 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 Full Definition (Exhibit 6-1)
- Treatment of Family Assets (Exhibit 6-2)
- The Effect of Welfare Benefit Reduction (Exhibit 6-3)

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. Verification requirements for annual income are discussed in Chapter 7.

6-I.B. HOUSEHOLD COMPOSITION AND INCOME

OVERVIEW

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 in accordance with HUD regulations and BHA policies in Chapter 11. 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 (both earned and unearned) is excluded [24 CFR 5.609(b)(8)].
Foster child or foster adult	Income from all sources (both earned and unearned) is excluded [24 CFR 5.609(b)(8)].
Head, spouse, or cohead Other adult family members	All sources of income not specifically excluded by the regulations are included [24 CFR 5.609(a)].
Minors	Earned income of children under 18 years of age is excluded [24 CFR 5.609(b)(3)]. All sources of unearned income, except those specifically excluded by the regulations, are included [24 CFR 5.609(a)].
Full-time students 18 years of age or older (not head, spouse, or cohead)	Earned income in excess of the dependent deduction is excluded [24 CFR 5.609(b)(14)]. All sources of unearned income, except those specifically excluded by the regulations, are included.

TEMPORARILY ABSENT FAMILY MEMBERS

The current regulations governing annual income do not specifically address temporarily absent family members. The regulations also do not define "temporarily" or "permanently" absent or specify a timeframe associated with a temporary versus a permanent absence.

Unless specifically excluded by the regulations, the income of all family members approved to live in the unit will be counted, even if the family member is temporarily absent from the unit.

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

Absent Students

When someone who has been considered a family member attends school away from home, the person will continue to be considered a family member unless information becomes available to the BHA 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 (as confirmed by the state child welfare agency) are considered members of the family [24 CFR 5.403].

If a child has been placed in foster care, the BHA 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 continue to be counted as a family member.

Absent Head, Spouse, or Cohead

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.

Family Members Permanently Confined for Medical Reasons

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

The BHA 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

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

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

Caretakers for a Child

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

(1) If a responsible agency has determined that another adult is to be brought into the assisted unit to care for a child for an indefinite period, the designated caretaker will not be considered a family member until a determination of custody or legal guardianship is made.

(2) If a caretaker has assumed responsibility for a child without the involvement of a responsible agency or formal assignment of custody or legal guardianship, the caretaker will be treated as a visitor for 90 days. After the 90 days has elapsed, the caretaker will be considered a family member unless information is provided that would confirm that the caretaker's role is temporary. In such cases the BHA 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. CALCULATING ANNUAL INCOME

The methodology used for calculating income differs depending on whether income is being calculated at initial occupancy, interim reexamination, or at annual reexamination. However, income from assets is always anticipated regardless of certification type.

ANTICIPATING ANNUAL INCOME [24 CFR 5.609(c)(1)]

At initial occupancy and for an interim reexamination of family income, the BHA is required to use anticipated income (current income) for the upcoming 12-month period following the new admission or interim reexamination effective date. Policies related to verifying income are found in Chapter 7.

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

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

In all cases, the family file will be documented with a clear record of the reason for the decision, and a clear audit trail will be left as to how the BHA annualized projected income.

Known Changes in Income

If the BHA verifies an upcoming increase or decrease in income at admission or interim reexamination, annual income will be projected by applying each income amount to the appropriate part of the 12-month period.

Example: An employer reports that a full-time employee who has been receiving $8/hour will begin to receive $8.25/hour in the eighth week after the effective date of the new admission or interim reexamination. In such a case the BHA would calculate annual income as follows: ($8/hour × 40 hours × 7 weeks) + ($8.25 × 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 the BHA will calculate annual income using current circumstances and then, should the change in income require the BHA to conduct an interim reexamination, conduct an interim reexamination in accordance with BHA policy in Chapter 11.

CALCULATING ANNUAL INCOME AT ANNUAL REEXAMINATION [24 CFR.609(c)(2); NOTICE PIH 2023-27]

At annual reexamination, except where the BHA uses a streamlined income determination, PHAs must first determine the family's income for the previous 12-month period and use this amount as the family income for annual reexaminations; however, adjustments to reflect current income must be made. Any change of income since the family's last annual reexamination, including those that did not meet the threshold to process an interim reexamination of family income in accordance with BHA policies in Chapter 11 and HUD regulations, must be considered. If, however, there have been no changes to income, then the amount of income calculated for the previous 12-month period is the amount that will be used to determine the family's rental assistance. Income from assets is always anticipated, irrespective of the income examination type. Policies related to conducting annual reexaminations are located in Chapter 11.

6-I.D. EARNED INCOME

WAGES AND RELATED COMPENSATION [24 CFR 5.609(A); NOTICE PIH 2023-27]

The earned income of each member of the family who is 18 years of age or older, or who is the head of household or spouse/cohead regardless of age, is included in annual income. Income received as a day laborer or seasonal worker is also included in annual income, even if the source, date, or amount of the income varies [24 CFR 5.609 (b)(24)].

Earned income means income or earnings from wages, tips, salaries, other employee compensation, and net income from self-employment. Earned income does not include any pension or annuity, transfer payments (meaning payments made or income received in which no goods or services are being paid for, such as welfare, social security, and governmental subsidies for certain benefits), or any cash or in-kind benefits [24 CFR 5.100].

A *day laborer* is defined as an individual hired and paid one day at a time without an agreement that the individual will be hired or work again in the future [24 CFR 5.603(b)]. Income earned as a day laborer is not considered nonrecurring income.

A *seasonal worker* is defined as an individual who is hired into a short-term position (e.g., for which the customary employment period for the position is six months or fewer) and the employment begins about the same time each year (such as summer or winter). Typically, the individual is hired to address seasonal demands that arise for the particular employer or industry [24 CFR 5.603(b)]. Some examples of seasonal work include employment limited to holidays or agricultural seasons. Seasonal work may include but is not limited to employment as a lifeguard, ballpark vendor, or snowplow driver [Notice PIH 2023-27]. Income earned as a seasonal worker is not considered nonrecurring income.

The BHA will include in annual income the full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation.

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

MILITARY PAY

All regular pay, special pay and allowances of a member of the Armed Forces are counted except for the special pay to a family member serving in the Armed Forces who is exposed to hostile fire [24 CFR 5.609(b)(11)].

EARNINGS OF A MINOR [24 CFR 5.609(B)(3)]

A minor is a member of the family, other than the head of household or spouse, who is under 18 years of age. Employment income earned by minors is not included in annual income. All other sources of unearned income, except those specifically excluded by the regulations, are included.

EARNED INCOME OF FULL-TIME STUDENTS [24 CFR 5.609(B)(14)]

The earned income of a dependent full-time student in excess of the amount of the dependent deduction is excluded from annual income. All sources of unearned income, except those specifically excluded by the regulations, are included.

A family member other than the head of household or spouse/cohead is considered a full-time student if they are attending school or vocational training on a full-time basis [24 CFR 5.603(b)]. 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].

6-I.E. EARNED INCOME DISALLOWANCE FOR PERSONS WITH DISABILITIES [24 CFR 5.617; Streamlining Final Rule (SFR) Federal Register 3/8/16; Notice PIH 2023-27]

HOTMA removed the statutory authority for the EID. The EID is available only to families that are eligible for and participating on the program as of December 31, 2023, or before; no new families may be added on or after January 1, 2024. If a family is receiving the EID prior to or on the effective date of December 31, 2023, they are entitled to the full amount of the benefit for a full 24-month period. The policies below are applicable only to such families. No family will still be receiving the EID after December 31, 2025. The EID will sunset on January 1, 2026, and the BHA policies below will no longer be applicable as of that date or when the last qualifying family exhausts their exclusion period, whichever is sooner.

CALCULATION OF THE DISALLOWANCE

Calculation of the earned income disallowance for an eligible member of a qualified family begins with a comparison of the member's current income with their "baseline income." The family member's baseline income is their income immediately prior to qualifying for the EID. The family member's baseline income remains constant throughout the period that they are participating in the EID.

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.

Second 12-Month Exclusion
During the second exclusion period of 12 consecutive months, the BHA must exclude at least 50 percent of any increase in income attributable to 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. The EID will sunset on January 1, 2026. In no circumstances will a family member's exclusion period continue past January 1, 2026.

6.I.F. BUSINESS AND SELF-EMPLOYMENT INCOME [24 CFR 5.609(b)(28); Notice PIH 2023-27]

Annual income includes "net income from the operation of a business or profession. *Net income* is gross income minus business expenses that allows the business to operate. *Gross income* is all income amounts received into the business, prior to the deduction of business expenses.

Expenditures for business expansion or amortization of capital indebtedness may 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."

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

INDEPENDENT CONTRACTORS

Income received as an independent contractor is included in annual income, even if the source, date, or amount of the income varies [24 CFR 5.609 (b)(24)].

An *independent contractor* is defined as an individual who qualifies as an independent contractor instead of an employee in accordance with the Internal Revenue Code Federal income tax requirements and whose

earnings are consequently subject to the Self-Employment Tax. In general, an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done [24 CFR 5.603(b)]. This may include individuals such as third-party delivery and transportation service providers and "gig workers" like babysitters, landscapers, rideshare drivers, and house cleaners. Income earned as an independent contractor is not considered nonrecurring income.

BUSINESS EXPANSION

HUD regulations do not permit the BHA to deduct from gross income expenses for business expansion.

Business expansion is defined as any capital expenditures made to add new business activities, to expand current facilities, or to operate the business in additional locations. For example, purchase of a street sweeper by a construction business for the purpose of adding street cleaning to the services offered by the business would be considered a business expansion. Similarly, the purchase of a property by a hair care business to open at a second location would be considered a business expansion.

CAPITAL INDEBTEDNESS

HUD regulations do not permit the BHA to deduct from gross income the amortization of capital indebtedness.

Capital indebtedness is defined as the principal portion of the payment on a capital asset such as land, buildings, and machinery. This means the BHA will allow as a business expense interest, but not principal, paid on capital indebtedness.

NEGATIVE BUSINESS INCOME

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

WITHDRAWAL OF CASH OR ASSETS FROM A BUSINESS

HUD regulations require the BHA 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.

CO-OWNED BUSINESSES

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

ASSETS OWNED BY A BUSINESS ENTITY

If a business entity (e.g., limited liability company or limited partnership) owns the asset, then the family's asset is their ownership stake in the business, not some portion of the business's assets. However, if the family holds the assets in their own name (e.g., they own one-third of a restaurant) rather than in the name of a business entity, then the percentage value of the asset owned by the family is what is counted toward net family assets (e.g., one-third of the value of the restaurant) [Notice PIH 2023-27].

6-I.G. STUDENT FINANCIAL ASSISTANCE [FR Notice 2/14/23 and Notice PIH 2023-27]

INTRODUCTION

The treatment of student financial assistance depends on the HUD program, student/household characteristics, and the type of financial assistance received by the student. For public housing residents, all income received under Title IV of the HEA must be excluded from income. Other student financial assistance may be included depending on the students actual covered costs to For Section 8 programs, including HCV, however, for over 10 years HUD appropriations have included a provision that for Section 8 students who are age 23 and under and without dependent children, any amounts received in excess of

tuition and any other required fees and charges must be considered income. Under HOTMA, HUD has interpreted this limitation to apply when the student is the head of household or spouse, but not when the student resides with their parents [71 FR 18146].

For any funds from a year where HUD's appropriations continue to include this Section 8 student financial assistance limitation, if the student does not reside with their parents is the head of household, cohead, or spouse, and is under the age of 23 or without dependent children, then both the assistance received under Title IV HEA and other student financial assistance received by the student is included as income to the extent that it exceeds the total of tuition and any other required fees and charges.

In contrast, student financial assistance received by a Section 8 student who is the head of household, spouse, or cohead, and is over the age of 23 with dependent children, or a student who resides with their parents in a Section 8 unit, is governed by the HOTMA student rule, which is described below.

During years in which an appropriations act does not contain this Section 8 student financial assistance limitation (or any other such limitation), then the determination of student financial assistance for all Section 8 students defaults to the methodology for public housing.

HOTMA STUDENT FINANCIAL ASSISTANCE REQUIREMENTS [24 CFR 5.609(B)(9)]

The regulations under HOTMA distinguish between two categories of student financial assistance paid to both full-time and part-time students. The first category is any assistance to students under section 479B of the Higher Education Act of 1965 (Title IV of the HEA) which must be excluded from the family's annual income [24 CFR 5.609(b)(9)(i)]. Examples of assistance under title IV of the HEA include:

- Federal Pell Grants;
- Teach Grants;
- Federal Work Study Programs;
- Federal Perkins Loans;
- Income earned in employment and training programs under section 134 of the Workforce Innovation and Opportunity Act (WIOA); or

- Bureau of Indian Affairs/Education student assistance programs
    - The Higher Education Tribal Grant
    - The Tribally Controlled Colleges or Universities Grant Program

The second category is any other grant-in-aid, scholarship, or other assistance amounts an individual receives for the actual covered costs charged by the institute of higher education (not otherwise excluded by the Federally mandated income exclusions)[24 CFR 5.609(b)(9)(ii)]. Other student financial assistance received by the student that, either by itself or in combination with HEA assistance, exceeds the actual covered costs is included in income.

Actual covered costs are defined as the actual costs of:

- Tuition, books, and supplies;
    - Including supplies and equipment to support students with learning disabilities or other disabilities
- Room and board; and
- Other fees required and charged to a student by the education institution.

For a student who is not the head of household or spouse/cohead, actual covered costs also include the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit.

Further, to qualify, other student financial assistance must be expressly:

- For tuition, book, supplies, room and board, or other fees required and charged to the student by the educational institution;
- To assist a student with the costs of higher education; or
- To assist a student who is not the head of household or spouse with the reasonable and actual costs of housing while attending the educational institution and not residing in an assisted unit.

The student financial assistance may be paid directly to the student or to the educational institution on the student's behalf. However, any student financial assistance paid to the student must be verified by the BHA.

The financial assistance must be a grant or scholarship received from:

- The Federal government;
- A state, tribal, or local government ;
- A private foundation registered as a nonprofit;
- A business entity (such as corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, or nonprofit entity); or
- An institution of higher education.

Student financial assistance, does not include:

- Financial support provided to the student in the form of a fee for services performed; (e.g., a work study or teaching fellowship that is not excluded under section 479B of the Higher Education Act HEA);
- Gifts, including gifts from family or friends; or
- Any amount of the scholarship or grant that, either by itself or in combination with assistance excluded under the HEA, exceeds the actual covered costs of the student.

CALCULATING INCOME FROM STUDENT FINANCIAL ASSISTANCE [HOTMA STUDENT FINANCIAL ASSISTANCE RESOURCE SHEET; NOTICE PIH 2023-27]

There are two steps required as part of the calculation for Section 8 students. First, determine the student's relationship to the household, age, and whether they have dependent children. Second, calculate whether any excess student financial assistance should be included in the family's income.

If the student does not live with their parents and is the head of household, cohead, or spouse, and is 23 or younger or does not have dependent children, then Title IV HEA assistance is considered when determining the student's total financial aid amount. Subtract the total tuition plus required fees and charges from the total student financial assistance (Title IV HEA assistance and any other student financial assistance). If the total tuition plus required fees and charges is zero or exceeds the amount of total financial assistance from all sources, then no student financial assistance is included in annual income. Any amount of student financial assistance that exceeds the total tuition plus required fees and charges must be included in annual income.

If the student either lives with their parents or is over 23 with dependent children, then the calculation will use the HOTMA methodology for calculating financial assistance, which always begins with deducting the assistance received under 479B of the HEA from the total actual covered costs, because the 479B assistance is intended to pay the student's actual covered costs. When a student receives assistance from both Title IV of the HEA and from other sources, the assistance received under Title IV of the HEA must be applied to the student's actual covered costs first and then other student financial assistance is applied to any remaining actual covered costs. Once actual costs are covered, any remaining student financial assistance is considered income.

If the student does not live with their parents and is the head of household, cohead, or spouse, and is 23 or younger or does not have dependent children, then Title IV HEA assistance will be considered when determining the student's total financial assistance to be included in annual income. The BHA will use Notice PIH 2015-21 as a guide to determine the total amount of the student's tuition plus required fees and charges. The BHA will subtract the total tuition plus required fees and charges from the total student financial assistance. If the result is zero or exceeds the amount of total financial assistance from all sources, then no student financial assistance will be included in annual income. Any amount of student financial assistance that exceeds the total tuition plus required fees and charges will be included in annual income.

Example 1

Tuition and required fees and charges: $20,000

Title IV HEA assistance: $10,000

Other student financial assistance: $15,000

Total student financial assistance: $10,000 + $15,000 = $25,000

Included income: $25,000 in financial assistance - $20,000 tuition and required fees = $5,000

If a student is head, spouse, or cohead, and is over 23 with dependent children or lives with their parents, the following applies:

If a student only receives financial assistance under Title IV of the HEA and does not receive any other student financial assistance, the BHA will exclude the full amount of the assistance received under Title IV from the family's annual income. The BHA will not calculate actual covered costs in this case.

If the student does not receive any assistance under Title IV of the HEA but does receive assistance from another source, the BHA will first calculate the actual covered costs to the student in accordance with 24 CFR 5.609(b)(ii). The BHA will then subtract the total amount of the student's financial assistance from the student's actual covered costs. The BHA will include any amount of financial assistance in excess of the student's actual covered costs in the family's annual income.

Example 2

Actual covered costs: $20,000

Other student financial assistance: $25,000

Excluded income: $20,000 ($25,000 in financial assistance - $20,000 in actual covered costs)

Included income: $5,000

When a student receives assistance from both Title IV of the HEA and from other sources, the BHA will first calculate the actual covered costs to the student in accordance with 24 CFR 5.609(b)(ii). The assistance received under Title IV of the HEA will be applied to the student's actual covered costs first and then the other student financial assistance will be applied to any remaining actual covered costs.

If the amount of assistance excluded under Title IV of the HEA equals or exceeds the actual covered costs, none of the assistance included under other student financial assistance" would be excluded from income.

Example 3

Actual covered costs: $25,000

Title IV HEA assistance: $26,000

Title IV HEA assistance covers the students entire actual covered costs.

Other Student Financial Assistance: $5,000

Excluded income: The entire Title IV HEA assistance of $26,000

Included income: All other financial assistance of $5,000

If the amount of assistance excluded under Title IV of the HEA is less than the actual covered costs, the BHA will exclude the amount of other student financial assistance up to the amount of the remaining actual covered costs.

Example 4

Actual covered costs: $22,000

Title IV HEA assistance: $15,000

The remaining amount not covered by Title IV HEA assistance is $7,000 ($22,000 in actual covered costs - $15,000 in Title IV HEA assistance).

Other Student Financial Assistance: $5,000

$7,000 in remaining actual covered costs - $5,000 in other financial assistance

Excluded income: $15,000 entire amount of the Title IV HEA Assistance + $5,000 in other financial assistance

Included income: $0

Example 5

Actual covered costs: $18,000

Title IV HEA Assistance: $15,000

The remaining amount not covered by Title IV HEA assistance is $3,000 ($18,000 in actual covered costs - $15,000 in Title IV HEA Assistance)

Other student Financial Assistance: $5,000

When other student financial assistance is applied, financial assistance exceeds actual covered costs by $2,000 ($3,000 in actual covered costs - $5,000 in other financial assistance).

Included income: $2,000 (the amount by which the financial aid exceeds the student's actual covered costs).

6-I.H. PERIODIC PAYMENTS

Periodic payments are forms of income received on a regular basis.

Income that will not be repeated beyond the coming year (i.e., the 12 months following the effective date of the certification), based on information provided by the family, is considered nonrecurring income and is excluded from annual income. Income that has a discrete end date and will not be repeated beyond the coming year is excluded from a family's annual income because it is nonrecurring income. For example, a family receives income from a guaranteed income program in their city that has a discrete beginning and end date. While the guaranteed income will be repeated in the coming year, it will end before the family's next annual reexamination. This income is fully excluded from annual income.

However, this does not include unemployment income and other types of periodic payments that are received at regular intervals (such as weekly, monthly, or yearly). Unemployment income and other types of periodic payments are not considered nonrecurring income, unless explicitly excluded from income under 25 CFR 5.609(b), and thus they are included in annual income.

Insurance payments and settlements for personal or property losses, including but not limited to payments under health insurance, motor vehicle insurance, and workers' compensation, are excluded from annual income. Any workers' compensation is always excluded from annual income, regardless of the frequency or length of the payments.

LUMP-SUM PAYMENTS FOR THE DELAYED START OF A PERIODIC PAYMENT [24 CFR 5.609(B)(16)]

Deferred periodic amounts from Supplemental Security Income (SSI) and Social Security benefits that are received in a lump sum amount or in prospective monthly amounts, or any deferred Department of Veterans Affairs (VA) disability benefits that are received in a lump sum amount or in prospective monthly amounts are excluded from annual income.

The BHA will include in annual income lump sums received as a result of delays in processing periodic payments (other than those specifically excluded by the regulation), such as unemployment or welfare assistance.

When a delayed-start payment is received that is to be included and the family reports this during the period in which the BHA is processing an annual reexamination, the BHA will adjust the family's rent retroactively for the period the payment was intended to cover.

If the delayed-start payment is received outside of the time the BHA is processing an annual reexamination, then the BHA will consider whether the amount meets the threshold to conduct an interim reexamination. If so, the BHA will conduct an interim in accordance with BHA policies in Chapter 11. If not, the BHA will consider the amount when processing the family's next annual recertification.

RETIREMENT ACCOUNTS [24 CFR 5.609(B)(26); NOTICE PIH 2023-27]

Income received from any account under a retirement plan recognized as such by the IRS, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals is not considered actual income from assets.

However, any distribution of periodic payments from such accounts is included in annual income at the time they are received by the family.

An asset moved to a retirement account held by a member of the family is not considered to be an asset disposed of for less than fair market value.

SOCIAL SECURITY BENEFITS [NOTICE PIH 2018-24]

The BHA is required to use the gross benefit amount to calculate annual income from Social Security benefits.

Annually in October, the Social Security Administration (SSA) announces the cost-of-living adjustment (COLA) by which federal Social Security and SSI benefits are adjusted to reflect the increase, if any, in the cost of living. The federal COLA does not apply to state-paid disability benefits. Effective the day after the SSA has announced the COLA, PHAs are required to factor in the COLA when determining Social Security and SSI annual income for all annual reexaminations and interim reexaminations of family income that have not yet been completed and will be effective January 1 or later of the upcoming year [Notice PIH 2023-27]. When a family member's benefits are garnished, levied, or withheld to pay restitution, child support, tax debt, student loan debt, or other debts, the BHA must use the gross amount of the income, prior to the reduction, to determine a family's annual income.

ALIMONY AND CHILD SUPPORT

Annual income includes "all amounts received," not the amount that a family may be legally entitled to receive but which they do not receive. For example, a family's child-support or alimony income must be based on payments received, not the amounts to which the family is entitled by court or agency orders [Notice PIH 2023-27].

The BHA will count all regular payments of alimony or child support awarded as part of a divorce or separation agreement.

The BHA will count court-awarded amounts for alimony and child support unless the family certifies and the BHA verifies that the payments are not being made.

In order to verify that payments are not being made, the BHA will review child support payments over the last three months.

- If payments are being made regularly, the BHA will use the amount received during the last 12 months (excluding any lump sums received). If payments have been made for a period less than 12 months, the BHA will average all payments that have been made.
- At new admission or interim recertification, if any lump sum payments were made in the past 12 months, the BHA will determine the likelihood of the family receiving another similar payment within the next 12 months before deciding whether or not this amount will be included in the calculation of annual income.
- If the BHA determines and can appropriately verify that the family in all likelihood will not receive a similar payment, then the amount will not be considered when projecting annual income.
- If the BHA determines that it is likely that the family will receive a similar payment and can appropriately verify it, the amount will be included when projecting annual income.

If no payments have been made in the past three months and there are no lump sums, the BHA will not include alimony or child support in annual income

6-I.I. NON-RECURRING INCOME [24 CFR 5.609(b)(24) and Notice PIH 2023-27]

Income received as an independent contractor, day laborer, or seasonal worker is not excluded from income as nonrecurring income, even if the source, date, or amount of the income varies.

Income that has a discrete end date and will not be repeated beyond the coming year during the family's upcoming annual reexamination period will be excluded from a family's annual income as nonrecurring income. This exclusion does not include unemployment income and other types of periodic payments that are received at regular intervals (such as weekly, monthly, or yearly).

Income amounts excluded under this category may include, but are not limited to:

- Nonrecurring payments made to the family or to a third party on behalf of the family to assist with utilities;
- Payments for eviction prevention;
- Security deposits to secure housing;
- Payments for participation in research studies (depending on the duration); and
- General one-time payments received by or on behalf of the family.

Nonrecurring income that is excluded under the regulations includes:

- Payments from the U.S. Census Bureau for employment (relating to decennial census or the American Community Survey) lasting no longer than 180 days and not culminating in permanent employment [24 CFR 5.609(b)(24)(i)].
- Direct federal or state payments intended for economic stimulus or recovery [24 CFR 5.609(b)(24)(ii)].
- Amounts directly received by the family as a result of state refundable tax credits or state or federal tax refunds at the time they are received [24 CFR 5.609(b)(24)(iii) and (iv)].
- Gifts for holidays, birthdays, or other significant life events or milestones (e.g., wedding gifts, baby showers, anniversaries) [24 CFR 5.609(b)(24)(v)].
- Non-monetary, in-kind donations, such as food, clothing, or toiletries, received from a food bank or similar organization [24 CFR 5.609(b)(24)(vi)]. When calculating annual income, PHAs are prohibited from assigning monetary value to such non-monetary in-kind donations received by the family [Notice PIH 2023-27]. Non-recurring, non-monetary in-kind donations from friends and family are excluded as non-recurring income. However, the value of regular in-kind donations (such as the value of groceries) received by friends and family are included.
- Lump-sum additions to net family assets, including but not limited to lottery or other contest winnings [24 CFR 5.609(b)(24)(vii)].

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.

SANCTIONS RESULTING IN THE REDUCTION OF WELFARE BENEFITS [24 CFR 5.615]

The BHA 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 6-3. The requirements are summarized below. This rule applies only if a family was receiving HCV assistance at the time the sanction was imposed.

COVERED FAMILIES

The families covered by 24 CFR 5.615 are those "who receive welfare assistance or other public assistance benefits ('welfare benefits') from a State or other public agency ('welfare agency') under a program for which Federal, State or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance" [24 CFR 5.615(b)]

IMPUTED INCOME

When a welfare agency imposes a sanction that reduces a family's welfare income because the family commits fraud or fails to comply with the agency's economic self-sufficiency program or work activities requirement, the BHA must include in annual income "imputed" welfare income. The BHA 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. STATE PAYMENTS TO ALLOW INDIVIDUALS WITH DISABILITIES TO LIVE AT HOME [24 CFR 5.609(b)(19)]

Payments made by or authorized by a state Medicaid agency (including through a managed care entity) or other state or federal agency to an assisted family to enable a member of the assisted family who has a disability to reside in the family's assisted unit are excluded.

Authorized payments may include payments to a member of the assisted family through state Medicaid-managed care systems, other state agencies, federal agencies or other authorized entities.

The payments must be received for caregiving services a family member provides to enable another member of the assisted family who has a disability to reside in the family's assisted unit. Payments to a family member for caregiving services for someone who is not a member of the assisted family (such as for a relative that resides elsewhere) are not excluded from income.

Furthermore, if the agency is making payments for caregiving services to the family member for an assisted family member and for a person outside of the assisted family, only the payments attributable to the caregiving services for the caregiver's assisted family member would be excluded from income.

6-I.L. CIVIL RIGHTS SETTLEMENTS [24 CFR 5.609(b)(25); FR Notice 2/14/23]

Regardless of how the settlement or judgment is structured, civil rights settlements or judgments, including settlements or judgments for back pay, are excluded from annual income. This may include amounts received because of litigation or other actions, such as conciliation agreements, voluntary compliance agreements, consent orders, other forms of settlement agreements, or administrative or judicial orders under the Fair Housing Act, Title VI of the Civil Rights Act, Section 504 of the Rehabilitation Act (Section 504), the Americans with Disabilities Act, or any other civil rights or fair housing statute or requirement.

While these civil rights settlement or judgment amounts are excluded from income, the settlement or judgment amounts will generally be counted toward the family's net family assets (e.g., if the funds are deposited into the family's savings account or a revocable trust under the control of the family or some other asset that is not excluded from the definition of *net family assets*). Income generated on the settlement

or judgment amount after it has become a net family asset is not excluded from income. For example, if the family received a settlement or back pay and deposited the money in an interest-bearing savings account, the interest from that account would be income at the time the interest is received.

Furthermore, if a civil rights settlement or judgment increases the family's net family assets such that they exceed the HUD-published threshold amount ($50,000 for 2024, and $51,600 for 2025), then income will be imputed on the net family assets pursuant to 24 CFR 5.609(a)(2). If the imputed income, which HUD considers unearned income, increases the family's annual adjusted income by 10 percent or more, then an interim reexamination of income will be required unless the addition to the family's net family assets occurs within the last three months of the family's income certification period and the BHA or owner chooses not to conduct the examination.

6-I.M. ADDITIONAL EXCLUSIONS FROM ANNUAL INCOME [24 CFR 5.609(b); FR Notice 1/31/2024]

Other exclusions contained in 24 CFR 5.609(b) and FR Notice 1/31/24 that have not been discussed earlier in this chapter include the following:

- Payments received for the care of foster children or foster adults or state or tribal kinship or guardianship care payments [24 CFR 5.609(b)(4)].
- Insurance payments and settlements for personal or property losses, including but not limited to payments through health insurance, motor vehicle insurance, and workers' compensation [24 CFR 5.609(b)(5)]. However, periodic payments paid at regular intervals (such as weekly, monthly, or yearly) for a period of greater than one year that are received in lieu of wages are included in annual income [Notice PIH 2023-27].
- Amounts received by the family that are specifically for, or in reimbursement of, the cost of health and medical care expenses for any family member [24 CFR 5.609(b)(6)].
- Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a member of the family becoming disabled [24 CFR 5.609(b)(7)].
- Income and distributions from any Coverdell education savings account under Section 530 of the Internal Revenue Code of 1986 or any qualified tuition program under Section 529 of such Code [24 CFR 5.609(b)(10)].
- Income earned by government contributions to, and distributions from, "baby bond" accounts created, authorized, or funded by federal, state, or local government [24 CFR 5.609(b)(10)].
- The special pay to a family member serving in the Armed Forces who is exposed to hostile fire [24 CFR 5.609(b)(11)].
- Payments related to aid and attendance under 38 U.S.C. 1521 to veterans in need of regular aid and attendance [24 CFR 5.609(b)(17)]. This income exclusion applies only to veterans in need of regular aid and attendance and not to other beneficiaries of the payments, such as a surviving spouse [Notice PIH 2023-27].
- Loan proceeds (the net amount disbursed by a lender to or on behalf of a borrower, under the terms of a loan agreement) received by the family or a third party (e.g., proceeds received by the family from a private loan to enable attendance at an educational institution or to finance the purchase of a car) [24 CFR 5.609(b)(20)]. The loan borrower or co-borrower must be a member of the family for this income exclusion to be applicable [Notice PIH 2023-27].
- Payments received by tribal members as a result of claims relating to the mismanagement of assets held in trust by the United States, to the extent such payments are also excluded from gross income under the Internal Revenue Code or other federal law [24 CFR 5.609(b)(21)]. Generally, payments received by tribal members in excess of the first $2,000 of per capita shares are included in a family's annual income for purposes of determining eligibility. However, as explained in Notice PIH 2023-27, payments made under the Cobell Settlement, and certain per capita payments under the recent Tribal Trust Settlements, must be excluded from annual income.

- Replacement housing “gap” payments made in accordance with 49 CFR Part 24 that offset increased out of pocket costs of displaced persons that move from one federally subsidized housing unit to another federally subsidized housing unit. Such replacement housing “gap” payments are not excluded from annual income if the increased cost of rent and utilities is subsequently reduced or eliminated, and the displaced person retains or continues to receive the replacement housing “gap” payments [24 CFR 5.609(b)(23)].
- Income earned on amounts placed in a family’s Family Self-Sufficiency account [24 CFR 5.609(b)(27)].
- Amounts received by participants in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred e.g., special equipment, clothing, transportation, childcare, etc.) and which are made solely to allow participation in a specific program [24 CFR 5.609(i)(12)(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) [(24 CFR 5.609(b)(12)(i)].
- Amounts received under a resident service stipend not to exceed $200 per month. A resident service stipend is a modest amount received by a resident for performing a service for the BHA or owner, on a part-time basis, that enhances the quality of life in the development [24 CFR 5.609 I(12)(ii)].

Incremental earnings and benefits to any family member resulting from participation in qualifying training program funded by HUD or in qualifying federal, state, tribal, 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 unless those amounts are excluded under 24 CFR 5.609(b)(9)(i) [24 CFR 5.609(b)(12)(iv)].

- 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(b)(13)].
- Adoption assistance payments for a child in excess of the amount of the dependent deduction per adopted child [24 CFR 5.609(b)(15)].
- Refunds or rebates on property taxes paid on the dwelling unit [24 CFR 5.609(b)(20)].
- Amounts that HUD is required by federal statute to exclude 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(b) apply. HUD will publish a notice in the *Federal Register* to identify the benefits that qualify for this exclusion. Updates will be published when necessary.

HUD publishes an updated list of these exclusions periodically. The most recent list of exclusions was published in the *Federal Register* on January 31, 2024. 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)). This exclusion also applies to assets.

(b) Benefits under Section 1780 of the Richard B. Russell School Lunch Act and Child Nutrition Act of 1966, including WIC and reduced-price lunches.

(c) Payments, including for supportive services and reimbursement of out-of-pocket expenses, to volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058). The exclusion also applies to assets.

   a. Except, the exclusion does not apply when the Chief Executive Officer of the Corporation for National and Community Service determines that the value of all such payments, adjusted to reflect the number of hours such volunteers are serving, is equivalent to or

greater than the minimum wage then in effect under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) or the minimum wage, under the laws of the State where such volunteers are serving, whichever is the greater (42 U.S.C. 5044(f)(1)).

(d) Certain 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. 5506).

(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)(1)).

(g) Allowances, earnings, and payments to individuals participating in programs under the Workforce Investment Act of 1998 which was reauthorized as the Workforce Innovation and Opportunity Act of 2014 (29 U.S.C. 3241(a)(2)).

(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 Section 6).

(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). This exclusion does not include proceeds of gaming operations regulated by the Commission (25 U.S.C. 1407–1408).

(m) Payments received from programs funded under Title V of the Older Americans Act of 1965 (42 U.S.C. 3056(f)).

(n) 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.). This exclusion also applies to assets.

(o) 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 and Thailand service veterans born with spinal bifida (42 U.S.C. 12637(d)).\

(p) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721). This exclusion also applies to assets.

(q) The value of any childcare provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Childcare and Development Block Grant Act of 1990 (42 U.S.C. 9858q).

(r) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j)). This exclusion also applies to assets.

(s) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433) This exclusion also applies to assets.

(t) Amounts of student financial assistance 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, only, 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 be considered income if the individual is over the age of 23 with dependent children (Pub. L. 109–115, section 327 (as amended)).

(u) Allowances, earnings, and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d)).

(v) Any amount of crime victim compensation that provides medical or other assistance (or payment or reimbursement of the cost of such assistance) under the Victims of Crime Act of 1984 received through a crime victim assistance program, unless the total amount of assistance that the applicant receives from all such programs is sufficient to fully compensate the applicant for losses suffered as a result of the crime (34 U.S.C. 20102(c)).

(w) Any amounts in an "individual development account" are excluded from assets and any assistance, benefit, or amounts earned by or provided to the individual development account are excluded from income, as provided by the Assets for Independence Act, as amended (42 U.S.C. 604(h)(4)).

(x) 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. This exclusion also applies to assets.

(y) Distributions from an ABLE account, distributions from and certain contributions to an ABLE account established under the ABLE Act of 2014 (Pub. L. 113–295.), as described in Notice PIH 2019–09 or subsequent or superseding notice is excluded from income and assets.

(z) The amount of any refund (or advance payment with respect to a refundable credit) issued under the Internal Revenue Code is excluded from income and assets for a period of 12 months from receipt (26 U.S.C. 6409).

(aa) Assistance received by a household under the Emergency Rental Assistance Program pursuant to the Consolidated Appropriations Act, 2021 (Pub. L. 116–260, section 501(j)), and the American Rescue Plan Act of 2021.

(bb) Per capita payments made from the proceeds of Indian Tribal Trust Settlements listed in IRS Notice 2013-1 and 2013-55 must be excluded from annual income unless the per capita payments exceed the amount of the original Tribal Trust Settlement proceeds and are made from a Tribe's private bank account in which the Tribe has deposited the settlement proceeds. Such amounts received in excess of the Tribal Trust Settlement are included in the gross income of the members of the Tribe receiving the per capita payments as described in IRS Notice 2013-1. The first $2,000 of per capita payments are also excluded from assets unless the per capita payments exceed the amount of the original Tribal Trust Settlement proceeds and are made from a Tribe's private bank account in which the Tribe has deposited the settlement proceeds (25 U.S.C. 117b(a), 25 U.S.C. 1407).

(cc) Any amounts (i) not actually received by the family, (ii) that would be eligible for exclusion under 42 U.S.C. 1382b(a)(7), and (iii) received for service-connected disability under 38 U.S.C. Chapter 11 or dependency and indemnity compensation under 38 U.S.C. Chapter 13 (25 U.S.C. 4103(9)(C)) as provided by an amendment by the Indian Veterans Housing Opportunity Act of 2010 (Pub. L. 111–269 section 2) to the definition of income applicable to programs under the Native American Housing Assistance and Self-Determination Act (NAHASDA) (25 U.S.C. 4101 et seq.).

PART II: ASSETS

6-II.A. OVERVIEW

Annual income includes all actual anticipated income from assets (unless otherwise excluded by the regulations) even if the asset itself is excluded from net family assets [Notice PIH 2023-27].

The regulation at 24 CFR 5.603(b)(3) provides a list of items that are excluded from the calculation of net family assets. Note, unlike previous versions of the regulations, the current regulations do not list types of

assets that are included in annual income. Instead, HUD relies on the definition of items excluded from assets to provide the scope of what is included. Exhibit 6-2 provides the regulatory definition of *net family assets*.

Optional policies for family self-certification of assets are found in Chapter 7. Policies related to the asset limitation may be found in Chapters 3 and 12.

Income from assets is always anticipated, irrespective of the income examination type.

The BHA generally will use current circumstances to determine both the value of an asset and the anticipated income from the asset. The BHA 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) the BHA believes that past income is the best indicator of anticipated income. For example, if a family member owns real property that typically receives rental income, but the property is currently vacant, the BHA can take into consideration past rental income along with the prospects of obtaining a new tenant.

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

6-II.B. ASSETS DISPOSED OF FOR LESS THAN FAIR MARKET VALUE [24 CFR 5.603(b)(2)]

PHAs must include the value of any business or family assets disposed of by an applicant or participant 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 or reexamination, as applicable, in excess of the consideration received for the asset. An asset moved to a retirement account held by a member of the family is not considered to be an asset disposed of for less than fair market value [Notice PIH 2023-27].

The family must certify whether any assets have been disposed of for less than fair market value in the preceding two years.

MINIMUM THRESHOLD

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

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

SEPARATION OR DIVORCE

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

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

FORECLOSURE OR BANKRUPTCY

Assets are not considered disposed of for less than fair market value when the disposition is the result of a foreclosure or bankruptcy sale. Negative equity in real property or other investments does not prohibit the owner from selling the property or other investments, so negative equity alone would not justify excluding the property or other investments from family assets.

ASSET OWNED BY A BUSINESS ENTITY

If a business entity (e.g., limited liability company or limited partnership) owns the asset, then the family's asset is their ownership stake in the business, not some portion of the business's assets. However, if the family holds the assets in their own name (e.g., they own one third of a restaurant) rather than in the name of a business entity, then the percentage value of the asset owned by the family is what is counted toward net family assets (e.g., one-third of the value of the restaurant) [Notice PIH 2023-27].

FAMILY DECLARATION

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

6-II.C. ASSET INCLUSIONS AND EXCLUSIONS

NECESSARY AND NON-NECESSARY PERSONAL PROPERTY [24 CFR 5.603(B)(3)(I)]

All assets are categorized as either *real property* (e.g., land, a home) or *personal property*.

Personal property includes tangible items, like boats, as well as intangible items, like bank accounts.

The value of necessary items of personal property is excluded from the calculation of net family assets. Necessary items of personal property include a car used for commuting or medical devices.

HUD defines *necessary personal property* as items essential to the family for the maintenance, use, and occupancy of the premises as a home; or they are necessary for employment, education, or health and wellness. Necessary personal property includes more than merely items that are indispensable to the bare existence of the family. It may include personal effects (such as items that are ordinarily worn or utilized by the individual), items that are convenient or useful to a reasonable existence, and items that support and facilitate daily life within the family's home. Necessary personal property also includes items that assist a household member with a disability, including any items related to disability-related needs, or that may be required for a reasonable accommodation for a person with a disability. Necessary personal property does not include bank accounts, other financial investments, or luxury items. Items of personal property that do not qualify as necessary personal property are classified as non-necessary personal property.

The combined value of all **non-necessary** items of personal property is only included in annual income when the combined total value exceeds the HUD-published threshold amount (adjusted annually and published in HUD's current year Inflation-Adjusted Values tables). When the combined value of all non-necessary personal property does not exceed the HUD-published threshold amount, all non-necessary personal property is excluded from net family assets.

- The threshold amount is $50,000 for 2024, and $51,600 for 2025.

While not an exhaustive list, the following table from Notice PIH 2023-27 provides examples of necessary and non-necessary personal property.

Necessary Personal Property	Non-Necessary Personal Property
Car(s)/vehicle(s) that a family relies on for transportation for personal or business use (e.g., bike, motorcycle, skateboard, scooter) Furniture, carpets, linens, kitchenware Common appliances Common electronics (e.g., radio, television, DVD player, gaming system)	Recreational car/vehicle not needed for day-to-day transportation for personal or business use (campers, motorhomes, traveling trailers, all-terrain vehicles (ATVs)) Bank accounts or other financial investments (e.g., checking account, savings account, stocks/bonds) Recreational boat/watercraft

Clothing Personal effects that are not luxury items (e.g., toys, books) Wedding and engagement rings Jewelry used in religious/cultural celebrations and ceremonies Religious and cultural items Medical equipment and supplies Health care–related supplies Musical instruments used by the family Personal computers, phones, tablets, and related equipment Professional tools of trade of the family, for example professional books Educational materials and equipment used by the family, including equipment to accommodate persons with disabilities Equipment used for exercising (e.g., treadmill, stationary bike, kayak, paddleboard, ski equipment)	Expensive jewelry without religious or cultural value, or which does not hold family significance Collectibles (e.g., coins/stamps) Equipment/machinery that is not used to generate income for a business Items such as gems/precious metals, antique cars, artwork, etc.

CHECKING AND SAVINGS ACCOUNTS [NOTICE PIH 2023-27]

HUD considers bank accounts as non-necessary items of personal property. Whether or not non-necessary personal property is counted toward net family assets depends on the combined value of all of the family's assets.

- When the combined value of net family assets is greater than the HUD-published threshold amount, which is adjusted annually and listed in HUD's current year Inflation Adjusted Values tables ($50,000 for 2024, and $51,600 for 2025), checking and/or savings accounts would be counted toward net family assets.
- When the combined value of all non-necessary personal property does not exceed the HUD-published threshold amount, all non-necessary personal property is excluded from net family assets. In this case, the value of the family's checking and/or savings accounts would not be considered when calculating net family assets.

However, actual income from checking and savings accounts is always included in a family's annual income, regardless of the total value of net family assets or whether the asset itself is included or excluded from net family assets, unless that income is specifically excluded.

ABLE ACCOUNTS [24 CFR 5.609(B)(10); NOTICE PIH 2019-09]

An Achieving a Better Life Experience (ABLE) account is a type of tax-advantaged savings account that an eligible individual can use to pay for qualified disability expenses. Section 103 of the ABLE Act mandates that an individual's ABLE account (specifically, its account balance, contributions to the account, and distributions from the account) is excluded when determining the designated beneficiary's eligibility and continued occupancy under certain federal means-tested programs. The BHA must exclude the entire value of the individual's ABLE account from the household's assets. Distributions from the ABLE account are also not considered income. However, all wage income received, regardless of which account the money is paid to, is included as income.

INVESTMENT ACCOUNTS SUCH AS STOCKS, BONDS, SAVING CERTIFICATES, AND MONEY MARKET FUNDS [24 CFR 5.603(B)(1)]

HUD considers financial investments such as stocks and bonds non-necessary items of personal property. Whether non-necessary personal property is counted toward net family assets depends on the combined value of all of the family's assets.

- When the combined value of net family assets is greater than the HUD-published threshold amount, which is adjusted annually and listed in HUD's Inflation Adjusted Values tables ($50,000 for 2024, and $51,600 for 2025), financial investments such as stocks and bonds are considered part of net family assets. In this case, the value of the family's financial investments such as stocks and bonds would be counted toward net family assets.
- When the combined value of all non-necessary personal property does not the HUD-published threshold amount, all non-necessary personal property is excluded from net family assets. In this case, the value of the family's financial investments such as stocks and bonds would not be considered when calculating net family assets.

However, actual income from financial accounts is always included in a family's annual income, regardless of the total value of net family assets or whether the asset itself is included or excluded from net family assets, unless that income is specifically excluded. When a stock issues dividends in some years but not others (e.g., due to market performance), the dividend is counted as the actual return when it is issued, but when no dividend is issued, the actual return is $0. When the stock never issues dividends, the actual return is $0.

The BHA will include interest or dividends earned by investment accounts as actual income from assets even when the earnings are reinvested.

The cash value of such an asset is determined by deducting from the market value any broker fees, penalties for early withdrawal, or other costs of converting the asset to cash.

In determining the market value of an investment account, the BHA will use the value of the account on the most recent investment report.

LUMP-SUM ADDITIONS TO NET FAMILY ASSETS [24 CFR 5.609(B)(24(VIII); NOTICE PIH 2023-27]

The regulations exclude income from lump-sum additions to family assets, including lottery or other contest winnings as a type of nonrecurring income.

In addition, lump sums from insurance payments, settlements for personal or property losses, and recoveries from civil actions or settlements based on claims of malpractice, negligence, or other breach of duty owed to a family member arising out of law that resulted in a member of the family becoming a family member with a disability are excluded from income.

Further, deferred periodic amounts from Supplemental Security Income (SSI) 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 are also excluded from income.

However, these amounts may count toward net family assets. The BHA must consider any actual or imputed returns from assets as income at the next applicable income examination. In the case where the lump sum addition to assets would lead to imputed income, which is unearned income, that increases the family's annual adjusted income by 10 percent or more, then the addition of the lump sum to the family's assets will trigger an immediate interim reexamination of income in accordance with Chapter 11. This reexamination of income must take place as soon as the lump sum is added to the family's net family assets unless the addition takes place in the last three months of family's income certification period and the BHA chooses not to conduct the examination.

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.

JOINTLY OWNED ASSETS [NOTICE PIH 2023-27]

For assets owned jointly by the family and one or more individuals outside of the assisted family, the BHA must include the total value of the asset in the calculation of net family assets, unless:

- The asset is otherwise excluded;
- The family can demonstrate that the asset is inaccessible to them; or
- The family cannot dispose of any portion of the asset without the consent of another owner who refuses to comply.

If the family demonstrates that they can only access a portion of an asset, then only that portion's value is included in the calculation of net family assets for the family.

Any income from a jointly owned asset must be included in annual income, unless:

- The income is specifically excluded;
- The family demonstrates that they do not have access to the income from that asset; or
- The family only has access to a portion of the income from that asset.

If the family demonstrates that they can only access a portion of the income from an asset, then only that portion's value is included in the calculation of income from assets.

If an individual is a beneficiary who is entitled to access the account's funds only upon the death of the account's owner, and may not otherwise withdraw funds from an account, then the account is not an asset to the assisted family, and the family should provide proper documentation demonstrating that they are only a beneficiary on the account.

TRUSTS [24 CFR 5.609(B)(2) AND 5.603(B)(4)]

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).

The basis for determining how to treat trusts relies on information about who has access to either the principal in the account or the income from the account. There are two types of trusts, *revocable* and *irrevocable*.

When the creator sets up an *irrevocable trust*, the creator has no access to the funds in the account. Typically, special needs trusts are considered irrevocable. Irrevocable trusts not under the control of any member of the family are excluded from net family assets. The value of the trust continues to be excluded from net family assets, so long as the fund continues to be held in a trust that is not revocable by, or under the control of, any member of the family or household [24 CFR 5.603(b)(4)]. Further, where an irrevocable trust is excluded from net family assets, the BHA must not consider actual income earned by the trust (e.g., interest earned, rental income if property is held in the trust) for so long as the income from the trust is not distributed.

A revocable trust is a trust that the creator of the trust may amend or end (revoke). When there is a revocable trust, the creator has access to the funds in the trust account.

- A revocable trust that is under the control of the family is included in net family assets when the grantor is a member of the assisted family. If a revocable trust is included in the calculation of net family assets, then the actual income earned by the revocable trust is also included in the family's income. For example, interest earned or rental income if the property is held in the trust. The BHA must calculate imputed income on the revocable trust if net family assets are more than the HUD-published threshold amount, which is adjusted annually and listed in HUD's Inflation Adjusted Values tables ($50,000 for 2024, and $51,600 for 2025), and actual income from the trust cannot be calculated (e.g., if the trust is comprised of farmland that is not in use).

- A revocable trust that is not under the control of the family is excluded from net family assets. This happens when a member of the assisted family is the beneficiary of a revocable trust, but the grantor is not a member of the assisted family. In this case the beneficiary does not "own" the revocable trust, and the value of the trust is excluded from net family assets. For the revocable trust to be considered excluded from net family assets, no family or household member may be the account's trustee.

For both irrevocable and revocable trusts, if the value of the trust is not considered part of net family assets, then distributions from the trust are treated as follows:

- All distributions from the trust's principal are excluded from income.
- Distributions of income earned by the trust (i.e., interest, dividends, realized gains, or other earnings on the trust's principal), are included as income unless the distribution is used to pay for the health and medical expenses for a minor.

LIFE INSURANCE [FR NOTICE 2/14/23 AND NOTICE PIH 2023-27]

Net family assets do not include the value of term life insurance, which has no cash value to the individual before death.

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. The cash value is the surrender value. While the cash value of an insurance policy is considered an asset, the face value of any policy is not. If such a policy earns dividends or interest that the family could elect to receive, the amount of dividends or interest is counted as income from the asset whether or not the family actually receives it.

TAX REFUNDS [24 CFR 5.603(B)(3)(XI) AND NOTICE PIH 2023-27]

All amounts received by a family in the form of federal tax refunds or refundable tax credits are excluded from a family's net family assets for a period of 12 months after receipt by the family.

At the time of an annual or interim reexamination of income, if the federal tax refund was received during the 12 months preceding the effective date of the reexamination, then the amount of the refund that was received by the family is subtracted from the total value of net family assets. When the subtraction results in a negative number, then net family assets are considered $0.

ASSET EXCLUSIONS [24 CFR 5.603(B)]

The following are excluded from the calculations of net family assets:

- The value of any account under a retirement plan recognized as such by the IRS, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals [24 CFR 5.603(b)(3)(iii)].
- The value of real property that the family does not have the effective legal authority to sell in the jurisdiction in which the property is located [24 CFR 5.603(b)(3)(iv)].
    - *Real property* as used in this part has the same meaning as that provided under the law of the state in which the property is located [24 CFR 5.100].
    - Examples of this include but are not limited to co-ownership situations (including situations where one owner is a victim of domestic violence), where one party cannot unilaterally sell the real property; property that is tied up in litigation; and inherited property in dispute [Notice PIH 2023-27].
- Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a family member being a person with a disability [24 CFR 5.603(b)(3)(v)];
- The value of any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986 [24 CFR 5.603(b)(3)(vi)];

- The value of any qualified tuition program under Section 529 of such Code [24 CFR 5.603(b)(3)(vi)];
- The value of any "baby bond" account created, authorized, or funded by federal, state, or local government [24 CFR 5.603(b)(3)(vi)];
- Interests in Indian trust land [24 CFR 5.603(b)(3)(vii)];
- Equity in a manufactured home where the family receives assistance under 24 CFR part 982 [24 CFR 5.603(b)(3)(viii)];
- Equity in property under the Homeownership Option for which a family receives assistance under 24 CFR part 982 [24 CFR 5.603(b)(3)(ix)];
- Family Self-Sufficiency accounts [24 CFR 5.603(b)(3)(x)];
- Federal tax refunds or refundable tax credits for a period of 12 months after receipt by the family [24 CFR 5.603(b)(3)(xi)].
- The full amount of assets held in an irrevocable trust [Notice PIH 2023-27]; and
- The full amount of assets held in a revocable trust where a member of the family is the beneficiary, but the grantor/owner and trustee of the trust is not a member of the participant family or household [Notice PIH 2023-27].

6-II.D. DETERMINING INCOME FROM ASSETS

In some cases, amounts that are excluded from net family assets may be included as annual income when disbursements are made to a family from an asset. In other cases, amounts are excluded from annual income as a lump-sum addition to net family assets, but those funds are then considered a net family asset if held in an account or other investment that is considered part of net family assets [Notice PIH 2023-27].

NET FAMILY ASSETS

Net family assets are defined as the net cash value of all assets owned by the family, after deducting reasonable costs that would be incurred in disposing real property, savings, stocks, bonds, and other forms of capital investment.

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 such as settlement costs and transfer taxes [New PH OCC GB, *Income Determinations,* p. 24].

The calculation of asset income sometimes requires the BHA 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.

The cash value of real property or other assets with negative equity would be considered $0 for the purposes of calculating net family assets. Negative equity in real property or other investments does not prohibit the family from selling the property or other investments, so negative equity alone would not justify excluding the property or other investments from family assets [Notice PIH 2023-27].

ACTUAL INCOME FROM ASSETS

Income from assets must be included on the Form HUD-50058 regardless of the amount of income. Actual income from assets is always included in a family's annual income, regardless of the total value of net family assets or whether the asset itself is included or excluded from net family assets, unless that income is specifically excluded by 24 CFR 5.609(b).

Income or returns from assets are generally considered to be interest, dividend payments, and other actual income earned on the asset, and not the increase in market value of the asset. The increase in market value is relevant to the cash value of the asset for the purpose of determining total net family assets and imputing income.

The BHA may determine the net assets of a family based on a self-certification by the family that the net family assets do not exceed the HUD-published threshold amount, which is adjusted annually and listed in HUD's Inflation Adjusted Values tables, without taking additional steps to verify the accuracy of the declaration [24 CFR 5.618(b)]. Policies related to verification of assets are found in Chapter 7 of this policy.

- The threshold amount is $50,000 for 2024, and $51,600 for 2025.

The BHA may not calculate or include any imputed income from assets when net family assets are less than or equal to the HUD-published threshold amount [24 CFR 5.609(b)(1)]. The actual income from assets must be included on the Form HUD-50058.

IMPUTED INCOME FROM ASSETS

When net family assets exceed the HUD-published threshold amount, which is adjusted annually and listed in HUD's Inflation Adjusted Values tables, the BHA may not rely on self-certification. If actual returns can be calculated, the BHA must include actual income from the asset on the Form HUD-50058 (for example, a savings account or CD where the rate of return is known). If actual returns cannot be calculated, the BHA must calculate imputed returns using the HUD-determined passbook rate (for example, real property or a non-necessary item of personal property such as a recreational boat). Imputed income is calculated by multiplying the net cash value of the asset (found by deducting reasonable costs that would be incurred in disposing of the asset from the market value), by the HUD-published passbook rate. If the BHA can compute actual income from some but not all assets, the BHA must compute actual returns where possible and use the HUD-determined passbook rate for assets where actual income cannot be calculated [24 CFR 5.609(a)(2)].

An asset with an actual return of $0 (such as a non-interest-bearing checking account), is not the same as an asset for which an actual return cannot be computed (such as non-necessary personal property). If the asset is a financial asset and there is no income generated (for example, a bank account with a zero percent interest rate or a stock that does not issue cash dividends), then the asset generates zero actual asset income, and imputed income is not calculated. When a stock issues dividends in some years but not others (e.g., due to market performance), the dividend is counted as the actual return when it is issued, and when no dividend is issued, the actual return is $0. When the stock never issues dividends, the actual return is consistently $0.

PART III: ADJUSTED INCOME

6-III.A. INTRODUCTION

OVERVIEW

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

5.611 *Adjusted income* means annual income (as determined under § 5.609) of the members of the family residing or intending to reside in the dwelling unit, after making the following deductions:

(a) *Mandatory deductions*

(1) $480 for each dependent (adjusted annually by HUD, rounded to the next lowest multiple of $25);

(2) $525 for any elderly family or disabled family (adjusted annually by HUD, rounded to the next lowest multiple of $25);

(3) The sum of the following, to the extent the sum exceeds ten percent of annual income:

(i) Unreimbursed health and medical care 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; and

(4) Any reasonable childcare expenses necessary to enable a member of the family to be employed or to further his or her education.

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

ANTICIPATING EXPENSES

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

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

When calculating health and medical care expenses, the BHA will include those expenses anticipated to be incurred during the 12 months following the certification date which are not covered by an outside source, such as insurance. The allowance is not intended to give a family an allowance equal to last year's expenses, but to anticipate regular ongoing and anticipated expenses during the coming year. Since these expenses are anticipated, the *PH Occupancy Guidebook* states "it is likely that actual expenses will not match what was anticipated. Typically, this would not be considered an underpayment as long as at the time of the annual reexamination, the expenses were calculated based on the appropriate verification" [New PH OCC GB, *Income Determinations,* p. 30]. For annual reexaminations, the BHA will use information for the previous 12-month period.

6-III.B. DEPENDNT DEDUCTION

An allowance of $480 is deducted from annual income for each dependent (which amount will be adjusted by HUD annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers, rounded to the next lowest multiple of $25) [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-III.C. ELDERLY OR DISABLED FAMILY DEDUCTION

A single deduction of $525 is taken for any elderly or disabled family (which amount will be adjusted by HUD annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers, rounded to the next lowest multiple of $25) [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-III.D. HEALTH AND MEDICAL CARE EXPENSES DEDUCTION [24 CFR 5.611(A)(3)(I) AND 5.603(B)]

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

This 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 health and medical care expense deduction, the unreimbursed health and medical care expenses of all family members are included. The BHA calculates health and medical care expenses based on the family's past expenses, but accounting for any anticipated changes in expenses during the certification period.

DEFINITION OF MEDICAL EXPENSES

HUD regulations define *health and medical care expenses* at 24 CFR 5.603(b) to mean "any costs incurred in the diagnosis, cure, mitigation, treatment, or prevention of disease or payments for treatments affecting any structure or function of the body. Health and medical care expenses include medical insurance premiums and long-term care premiums that are paid or anticipated during the period for which annual income is computed."

Health and medical care expenses may be deducted from annual income only if they are eligible under this definition and not otherwise reimbursed.

Although HUD revised the definition of *health and medical care expenses* to reflect the Internal Revenue Service (IRS) general definition of medical expenses, HUD is not permitting PHAs to specifically align their policies to IRS Publication 502. PHAs must review each expense to determine whether it is eligible in accordance with HUD's definition.

While PHA policies may not specifically align with IRS Publication 502, HUD recommends PHAs use it as a standard for determining allowable expenses, and the PHA may list examples of allowable expenses in their policy provided they comply with HUD's definition at 24 CFR 5.603. The PHA may not define *health and medical care expenses* more narrowly than the regulation.

The BHA will use the most current IRS Publication 502 as a standard for determining if expenses claimed by eligible families qualify as health and medical care expenses. However, under no circumstances will the BHA deduct any expenses listed in IRS Publication 502 that do not conform with HUD's definition of *health and medical care expenses.*

Summary of Typical Allowable Health and Medical Care Expenses	
Services of medical professionals	Substance abuse treatment programs
Surgery and medical procedures that are necessary, legal, and non-cosmetic	Psychiatric treatment
Services of medical facilities	Ambulance services and some costs of transportation related to medical expenses. The BHA will use the most current medical mileage rate listed in IRS Publication 502.
Hospitalization, long-term care, and in-home nursing services	
Prescription medicines and insulin, but not nonprescription medicines even if recommended by a doctor	The cost and care of necessary equipment related to a medical condition (e.g., eyeglasses/lenses, hearing aids, crutches, and artificial teeth)
Improvements to housing directly related to medical needs (e.g., ramps for a wheelchair, handrails)	The costs of buying, training, and maintaining a guide dog or other service animal to assist a visually impaired or hearing disabled person, or a person with other physical disabilities. In general, this includes any costs, such as food, grooming, and veterinary care, incurred in maintaining
Medical insurance premiums or the cost of a health maintenance organization (HMO)	
Medicare Part B and Part D premiums	

	the health and vitality of the service animal so that it may perform its duties.
Note: This chart provides a summary of eligible health and medical care expenses only. In all cases, the BHA will consider whether health and medical expenses care expenses claimed by the family are eligible under HUD's definition.	

FAMILIES THAT QUALIFY FOR BOTH HEALTH AND MEDICAL AND DISABILITY ASSISTANCE EXPENSES

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

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

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

Unreimbursed reasonable expenses for attendant care and auxiliary apparatus for each member of the family who is a person with disabilities 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 ten percent of annual income, and (4) do not exceed the earned income received by the family member who is enabled to work.

EARNED INCOME LIMIT ON THE DISABILITY ASSISTANCE EXPENSE DEDUCTION

A family can qualify for the disability assistance expense deduction only if at least one family member (who may be the person with disabilities) is enabled to work [24 CFR 5.603(b)].

The disability expense deduction is capped by the amount of "earned income received by family members who are 18 years of age or older and who are able to work" because of the expense [24 CFR 5.611(a)(3)(ii)]. The earned income used for this purpose is the amount verified before any earned income disallowances or income exclusions are applied.

The family must identify the family members enabled to work as a result of the disability assistance expenses. In evaluating the family's request, the BHA will consider factors such as how the work schedule of the relevant family members relates to the hours of care provided, the time required for transportation, the relationship of the family members to the person with disabilities, and any special needs of the person with disabilities that might determine which family members are enabled to work.

When the BHA 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 Auxiliary Apparatus [Notice PIH 2023-27]

Auxiliary apparatus items may include expenses for wheelchairs, ramps, adaptations to vehicles, guide dogs, assistance animals, or special equipment to enable a person who is blind or has low vision to read or type or special equipment to assist a person who is deaf or hard of hearing.

Eligible Attendant Care [Notice PIH 2023-27]

Examples of attendant care expenses can include teaching a person with disabilities how to perform day-to-day tasks independently like cleaning, bathing, doing laundry, and cooking. Attendant care can be 24-hour care, or care during sporadic periods throughout the day. The family determines the type of attendant care that is appropriate for the person with disabilities.

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

attendant care expense. However, if the person enabled to work is the person with disabilities, personal services necessary to enable the person with disabilities to work are eligible.

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

6-III.F. CHILDCARE EXPENSE DEDUCTION

HUD defines *childcare 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 (age 12 and younger) (including foster children) 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 childcare. In the case of childcare 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

Childcare 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, childcare expenses for foster children that are living in the assisted family's household are included when determining the family's childcare expenses [HCV GB, p. 5-29].

QUALIFYING FOR THE DEDUCTION

Determining Who Is Enabled to Pursue an Eligible Activity

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

In evaluating the family's request, BHA will consider factors such as how the schedule for the claimed activity relates to the hours of care provided, the time required for transportation, the relationship of the family member(s) to the child, and any special needs of the child that might help determine which family member is enabled to pursue an eligible activity.

Seeking Work

If the child care expense being claimed is to enable a family member to seek employment, the family must provide evidence of the family member's efforts to obtain employment at each reexamination. The deduction may be reduced or denied if the family member's job search efforts are not commensurate with the child care expense being claimed.

Furthering Education

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

Being Gainfully Employed

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

EARNED INCOME LIMIT ON CHILDCARE EXPENSE DEDUCTION

When a family member looks for work or furthers their education, there is no cap on the amount that may be deducted for childcare – although the care must still be necessary and reasonable. However, when childcare 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.

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

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

ELIGIBLE CHILDCARE EXPENSES

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

Allowable Childcare Activities

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

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

If a childcare provider also renders other services to a family or childcare is used to enable a family member to conduct activities that are not eligible for consideration, the BHA will prorate the costs and allow only that portion of the expenses that is attributable to childcare 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 childcare 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

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

To establish the reasonableness of childcare costs, the BHA will use the schedule of childcare costs from a qualified local entity that either subsidizes childcare costs or licenses childcare providers. Families may present, and the BHA will consider, justification for costs that exceed typical costs in the area.

6-III.G. HARDSHIP EXEMPTIONS [24 CFR 5.6122(c), (d), and (e)]

HEALTH AND MEDICAL CARE AND DISABILITY ASSISTANCE EXPENSES [24 CFR 5.611(C); NOTICE PIH 2023-27]

The regulations provide for two types of hardship exemption categories for families that qualify for unreimbursed health and medical care expenses and/or disability assistance expenses. A family will benefit from this hardship exemption only if the family has eligible expenses that can be deducted in excess of five percent of annual income. In order to claim unreimbursed health and medical care expenses, the family must have a head, cohead, or spouse that is elderly or a person with a disability. In order to claim unreimbursed reasonable attendant care and auxiliary apparatus expenses, the family must include a person with a disability, and the expenses must enable any member of the family (including the member who is a person with a disability) to be employed.

Families may be eligible for relief under one of two categories; phased-in relief or general relief, as defined below.

PHASED-IN RELIEF

The first category is applicable to all families who received a deduction for unreimbursed health and medical care and/or reasonable attendant care or auxiliary apparatus expenses based on their most recent income review prior to January 1, 2024. The family must receive phased-in relief if they are determined to be eligible. These families will begin receiving a 24-month phased-in relief at their next annual or interim reexamination, whichever occurs first, after the date on which the BHA implements phased-in relief.

For these families, the threshold amount is phased-in as follows:

- The family is eligible for a deduction totaling the sum of expenses that exceeds 5 percent of annual income for the first 12 months.
- At the conclusion of 12 months, the family is eligible for a deduction totaling the sum of their expenses that exceed 7.5 percent of annual income for another 12 months.
- At the conclusion of 24 months, the standard threshold amount of 10 percent would be used, unless the family qualifies for relief under the general hardship relief category.

When an eligible family's phased-in relief begins at an interim reexamination, the BHA must process another transaction (either an interim reexamination or non-interim transaction, as applicable) one year later to move the family to the next phase.

Prior to the end of the 24-month period, the family may request a hardship exemption under the second category as described below. If the family is found eligible under the second category, the hardship exemption under the first category ends, and the family's hardship is administered in accordance with the requirements listed below. Once a family requests general relief, the family may no longer receive phased-in relief.

PHAs must track the 24-month phase-period for each eligible family, even if a family's expenses go below the appropriate phase-in percentage, during the first or second 12-month phase-in period. The phase-in must continue for families who move to another housing unit at the same PHA. When the family is treated as a new admission under a different property/program (e.g., the family moves from public housing to the HCV program), unless the PHA has a written policy to continue the phased-in relief upon admission, the family's expense deduction will be calculated using the 10-percent threshold unless request for general relief is approved by the PHA. When a family moves with continued assistance or ports to a new PHA, the family must continue to receive the phased-in relief. The family must receive the remaining calendar months of the percentage phase-in. The BHA must use the existing phase-in documentation to determine the remaining calendar months and the percentage phase-in.

The BHA will not continue the phased-in relief for families who move from public housing to HCV. These families will be treated as new admissions and the sum of expenses that exceeds 10 percent of annual income will be used to calculate their adjusted income.

GENERAL RELIEF

The second category is for families that can demonstrate:

- Their health and medical and/or disability assistance expenses increased (other than the transition to the higher threshold); or
- The family's financial hardship is a result of a change in circumstances (as defined in PHA policy) that would not otherwise trigger an interim reexamination.

The BHA must obtain third-party verification of the hardship or must document in the file the reason third-party verification was not available. The BHA must attempt to obtain third-party verification prior to the end of the 90-day hardship exemption period.

The BHA must promptly notify the family in writing of the change in the determination of adjusted income and the family's rent resulting from hardship exemptions. The notice must inform the family of when the hardship exemption will begin and expire [24 CFR 5.611(e)(2)].

The BHA will make a determination of whether the family qualifies within 30 calendar days and will notify the family in writing of the result within 10 business days of the determination.

- If the BHA denies the hardship exemption request, the BHA notice will also state that if the family does not agree with the BHA determination, the family may request a hearing.
- If the family qualifies for an exemption, the BHA will include the date the hardship exemption will begin and the date it will expire as well as information on how to request a 90-day extension based on family circumstances.

If the family qualifies, the family will receive a deduction for the sum of eligible expenses that exceed five percent of annual income.

The family's hardship relief ends when the circumstances that made the family eligible for the relief are no longer applicable or after 90 days, whichever is earlier. However, the BHA may, at its discretion, extend the relief for one or more additional 90-day periods while the family's hardship condition continues.

The family may request an extension either orally or in writing prior to the end of the hardship exemption period. The BHA will extend relief for an additional 90-days if the family demonstrates to the BHA that the family continues to qualify for the hardship exemption based on circumstances described above. The BHA will require updated verification based on the family's current circumstances. Additional extension(s) may be granted on a case-by-case basis provided the family continues to request extensions prior to the end of each hardship exemption period. Families must report if the circumstances that made the family eligible for the hardship exemption are no longer applicable. At any time, the BHA may terminate the hardship exemption if the BHA determines that the family no longer qualifies for the exemption.

CHILDCARE EXPENSE HARDSHIP EXEMPTION [24 CFR 5.611(D) AND NOTICE PIH 2023-27]

A family whose eligibility for the childcare expense deduction is ending may request a financial hardship exemption to continue receiving the deduction. If the family demonstrates to the BHA's satisfaction that the family is unable to pay their rent because of the loss of the childcare expense deduction, and that the childcare expense is still necessary even though the family member is not working, looking for work, or seeking to further their education, the BHA must recalculate the family's adjusted income and continue the childcare deduction.

For a family to qualify, they must demonstrate that their inability to pay rent would be as a result of the loss of this deduction. The BHA defines this hardship as a potential decrease in income or increase in other expenses that would result from the loss of the childcare expense and such loss would impact the family's ability to pay their rent.

Some factors to consider when determining if the family is unable to pay rent may include determining that the rent, utility payment, and applicable expenses (childcare expenses or health and medical expenses) are more than 40 percent of the family's adjusted income, or verifying whether the family has experienced unanticipated expenses, such as large medical bills, that have affected their ability to pay their rent.

The family must also demonstrate that the childcare expense is still necessary even though the family member is no longer employed or furthering their education. The BHA will consider qualification under this criterion on a case-by case basis (for example, if the family member who was employed has left their job in order to provide uncompensated care to an elderly friend or family member who is severely ill and lives across town).

The family must provide third-party verification of the hardship with the request. If third-party verification is not available, the BHA will document the file with the reason and will attempt to obtain third-party verification prior to the end of the 90-day hardship exemption period.

The BHA must promptly notify the family in writing of the change in the determination of adjusted income and the family's rent resulting from hardship exemptions.

If the BHA denies the request, the notice must specifically state the reason for the denial. BHA must provide families 30 days' notice of any increase in rent.

If the BHA approves the request, the notice must inform the family of when the hardship exemption will begin and expire [24 CFR 5.611(e)(2)]. The notice must also state the requirement for the family to report to the BHA if the circumstances that made the family eligible for relief are no longer applicable and that the family's adjusted income and tenant rent will be recalculated upon expiration of the hardship exemption [Notice PIH 2023-27].

The BHA will make a determination of whether the family qualifies within 30 calendar days and will notify the family in writing of the result within 10 business days of the determination.

If the BHA denies the hardship exemption request, the BHA notice will also state that if the family does not agree with the BHA determination, the family may request an informal hearing.

If the family qualifies for an exemption, the BHA will include all required information listed above as well as information on how to request a 90-day extension based on family circumstances.

If the family qualifies, the hardship exemption and the resulting alternative adjusted income calculation must remain in place for a period of up to 90 days.

The BHA may, at its discretion, extend the hardship exemptions for additional 90-day periods based on family circumstances and as stated in BHA policies.

The family may request an extension either orally or in writing prior to the end of the hardship exemption period. The BHA will extend relief for an additional 90-days if the family demonstrates to the BHA's satisfaction that the family continues to qualify for the hardship exemption. The BHA will require updated verification based on the family's current circumstances. Additional extensions may be granted on a case-by-case basis provided the family continues to request extensions prior to the end of each hardship exemption period. Families must report if the circumstances that made the family eligible for the hardship exemption are no longer applicable. At any time, the BHA may terminate the hardship exemption if the BHA determines that the family no longer qualifies for the exemption.

6-III.H. PERMISSIVE DEDUCTIONS [24 CFR 5.611(B)(1)(II)]

The BHA may adopt additional permissive deductions from annual income if they establish a policy in the administrative plan. Permissive deductions are additional, optional deductions that may be applied to annual income. As with mandatory deductions, permissive deductions must be based on need or family circumstance and deductions must be designed to encourage self-sufficiency or other economic purpose.

The BHA has opted not to use permissive deductions.

PART IV: CALCULATING FAMILY SHARE & BHA SUBSIDY

6-IV.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 the BHA

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

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

Welfare Rent [24 CFR 5.628]
Welfare rent does not apply in this locality.

Minimum Rent [24 CFR 5.630]
The minimum rent for this locality is $50.

FAMILY SHARE [24 CFR 982.305(A)(5)]

If a family chooses a unit with a gross rent (rent to owner plus an allowance for tenant-paid utilities) that exceeds the BHA's applicable payment standard: (1) the family will pay more than the TTP, and (2) at initial occupancy the BHA may not approve the tenancy if it would require the family share to exceed 40 percent of the family's monthly adjusted income. (For a discussion of the application of payment standards, see section 6-IV.C.)

BHA SUBSIDY [24 CFR 982.505(B)]

The BHA 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-IV.C.)

UTILITY REIMBURSEMENT [24 CFR 982.514(B); 982.514(C)]

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

The BHA will make utility reimbursements monthly to the family.

6-IV.B. FINANCIAL HARDSHIPS AFFECTING MINIMUM RENT [24 CFR 5.630]

OVERVIEW

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

The financial hardship exemption applies only to families required to pay the minimum rent. If a family's TTP is higher than the minimum rent, the family is not eligible for a hardship exemption. If the BHA determines that a hardship exists, the family share is the highest of the remaining components of the family's calculated TTP.

HUD-DEFINED FINANCIAL HARDSHIP

Financial hardship includes the following situations:

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

a. 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.

b. 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.

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

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

(5) The family has experienced other circumstances determined by the BHA. The BHA has not established any additional hardship criteria.

IMPLEMENTATION OF HARDSHIP EXEMPTION

Determination of Hardship

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

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

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

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

Example: Impact of Minimum Rent Exemption Assume the BHA has established a minimum rent of $50.	
Family Share – No Hardship	**Family Share – With Hardship**
$0 30% of monthly adjusted income $15 10% of monthly gross income N/A Welfare rent $50 Minimum rent	$0 30% of monthly adjusted income $15 10% of monthly gross income N/A Welfare rent $50 Minimum rent
Minimum rent applies. TTP = $50	Hardship exemption granted. TTP = $15

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

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

No Financial Hardship

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

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

Temporary Hardship

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

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

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

Long-Term Hardship

If the BHA determines that the financial hardship is long-term, the BHA must exempt the family from the minimum rent requirement for so long as the hardship continues. The exemption will apply from the first of the month following the family's request until the end of the qualifying hardship. When the financial hardship has been determined to be long-term, the family is not required to repay the minimum rent.

The hardship period ends when any of the following circumstances apply:

(1) At an interim or annual reexamination, the family's calculated TTP is greater than the minimum rent.

(2) For hardship conditions based on loss of income, the hardship condition will continue to be recognized until new sources of income are received that are at least equal to the amount lost. For example, if a hardship is approved because a family no longer receives a $60/month child support payment, the hardship will continue to exist until the family receives at least $60/month in income from another source or once again begins to receive the child support.

(3) For hardship conditions based upon hardship-related expenses, the minimum rent exemption will continue to be recognized until the cumulative amount exempted is equal to the expense incurred.

6-IV.C. APPLYING PAYMENT STANDARDS [24 CFR 982.505(c) and Notice PIH 2024-34]

OVERVIEW

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

Payment standard is defined as "the maximum monthly assistance payment for a family assisted in the voucher program (before deducting the total tenant payment by the family)" [24 CFR 982.4(b)].

The payment standard for a family is the lower of (1) the payment standard for the family unit size, which is defined as the appropriate number of bedrooms for the family under the BHA's subsidy standards [24 CFR 982.4(b)], or (2) the payment standard for the size of the dwelling unit rented by the family [24 CFR 982.505(c)(1)].

If the BHA has established an exception payment standard for a designated part of a an FMR area in accordance with 24 CFR 982.503 and a family's unit is located in the designated area, the BHA must use the appropriate payment standard for the exception area [24 CFR 982.505(c)(2)].

The BHA is required to pay a monthly housing assistance payment (HAP) for a family that is the lower of (1) the payment standard for the family minus the family's TTP or (2) the gross rent for the family's unit minus the TTP.

If during the term of the HAP contract for a family's unit, the owner lowers the rent, the BHA will recalculate the HAP using the lower of the initial payment standard or the gross rent for the unit [HCV GB, p. 7-8].

CHANGES IN PAYMENT STANDARDS

When the BHA 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. Regulations governing increases and decreases in the payment standard have changed, with a required compliance date of December 3, 2024.

Decreases *[24 CFR 982.505(c)(3) and Notice PIH 2024-34]*
For new HAP contracts, the BHA applies the payment standard in effect at the time of HAP contract execution.

The BHA must administer decreases in the payment standard amount for the family in accordance with the BHA policy as described in the administrative plan and apply the policy consistently to all families.

If the BHA changes its payment standard schedule resulting in a lower payment standard amount, during the term of a HAP contract, the BHA will not reduce the payment standard used to calculate subsidy for families under HAP contract as long as the HAP contract remains in effect.

The BHA will not establish different policies for decreases in the payment standard for designated areas within their jurisdiction.

Increases *[24 CFR 982.505(c)(4) and Notice PIH 2024-34]*
For new HAP contracts, the BHA applies the payment standard in effect at the time of HAP contract execution.

Changes effective 12/2/24 and earlier: 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 effective 12/3/24 and later: If the payment standard is increased during the term of the HAP contract, the increased payment standard will be applied no later than the earliest of:

The effective date of an increase in the gross rent that would result in an increase in the family share;

The family's first regular or interim reexamination; or

One year following the effective date of the increase in the payment standard amount.

The BHA will not adopt payment standard increases earlier than the date required by the regulations.

Changes in Family Unit Size (Voucher Size) *[24 CFR 982.505(c)(6) and Notice PIH 2024-34]*
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 may be used to determine the payment standard immediately but no later than the family's first regular reexamination following the change in family unit size.

If the family unit size (voucher size) changes during the term of a HAP contract, the new family unit size will be used to determine the payment standard at the family's first regular reexamination following the change in family unit size.

Moves
If the family moves to a new unit, or a new HAP contract is executed due to changes in the lease (even if the family remains in place) the current payment standard applicable to the family will be used when the new HAP contract is processed.

REASONABLE ACCOMMODATION [24 CFR 982.503(D)(5)]

If a family requires a higher payment standard as a reasonable accommodation for a family member who is a person with disabilities, the BHA is allowed to establish a higher payment standard for the family of not more than 120 percent of the published FMR without HUD approval or prior notification to HUD. A PHA may establish a payment standard greater than 120 percent of the applicable FMR as a reasonable accommodation in accordance with 24 CFR part 8, after requesting and receiving HUD approval. See Chapter 16 for more information.

6-IV.D. APPLYING UTILITY ALLOWANCES [24 CFR 982.517]

OVERVIEW

A BHA-established utility allowance schedule is used in determining family share and BHA subsidy. A family's utility allowance is determined by the size of dwelling unit leased by a family or the voucher unit size for which the family qualifies using BHA subsidy standards, whichever is the lowest of the two. See Chapter 5 for information on the BHA's subsidy standards.

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

FLAT FEES [24 CFR 982.517(B)(2)(III)]

The BHA will not base utility allowance payments on flat fees charged by the owner.

PBV DEVELOPMENTS [24 CFR 982.517(B)(2)(IV)]

If a tenant-based voucher holder resides in a project with project-based voucher (PBV) units and the PBV units use a site-specific utility allowance in accordance with PBV regulations, the BHA must use the project-specific utility allowance schedule.

REASONABLE ACCOMMODATION AND INDIVIDUAL RELIEF

On request from a family that includes a person with disabilities, the BHA must approve a utility allowance which is higher than the applicable amount on the utility allowance schedule if a higher utility allowance is needed as a reasonable accommodation to make the program accessible and usable by the family member with a disability [24 CFR 982.517(e)]. (See Chapter 2 for policies regarding the request and approval of reasonable accommodations.)

Further, the BHA may grant requests for individual relief from charges in excess of the utility allowance on reasonable grounds, such as special factors not within control of the resident, as the BHA deems appropriate. The family must request the higher allowance and provide the BHA an explanation of the need for individual relief and an explanation about the amount of additional allowance required [see HCV GB, p. 18-8].

The family must request the higher allowance and provide the BHA with information about the amount of additional allowance required.

The BHA will consider the following criteria as valid reasons for granting individual relief:

- The family's consumption was mistakenly portrayed as excessive due to defects in the meter or errors in the meter reading.
- The excessive consumption is caused by a characteristic of the unit or owner-supplied equipment that is beyond the family's control, such as a particularly inefficient refrigerator or inadequate insulation. The allowance should be adjusted to reflect the higher consumption needs associated with the unit until the situation is remedied. The resident should be granted individual relief until the allowance is adjusted.
- The excessive consumption is due to special needs of the family that are beyond their control, such as the need for specialized equipment in the case of a family member who is ill, elderly, or who has a disability.

In determining the amount of the reasonable accommodation or individual relief, the BHA will allow a reasonable measure of additional usage as necessary. To arrive at the amount of additional utility cost of specific equipment, the family may provide information from the manufacturer of the equipment, or the family or BHA may conduct an internet search for an estimate of usage or additional monthly cost.

Information on reasonable accommodation and individual relief for charges in excess of the utility allowance will be provided to all families at admission as part of the information on payment standards and utility allowances in the briefing packet. The BHA will also provide information on utility relief programs or medical discounts (sometimes referred to as “Medical Baseline discounts”) that may be available through local utility providers.

At its discretion, the BHA may reevaluate the need for the increased utility allowance at any regular reexamination.

If the excessive consumption is caused by a characteristic of the unit or BHA-supplied equipment that is beyond the family’s control, such as a particularly inefficient refrigerator or inadequate insulation, the individual relief to the resident will cease when the situation is remedied.

UTILITY ALLOWANCE REVISIONS

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

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

CHAPTER 7: VERFICATION (PRE-HOTMA)

[24 CFR 982.516, 24 CFR 982.551, 24 CFR 5.230, PIH Notice 2018-18]

INTRODUCTION

Prior to the HOTMA compliance date, the BHA will follow policies as outlined in this chapter. Upon the HOTMA compliance date, the BHA will follow policies as outlined in Chapter 7.B.

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

The BHA will follow the verification guidance provided by HUD in Notice PIH 2018-18 and any subsequent guidance issued by HUD. This chapter summarizes those requirements and provides supplementary BHA policies.

Part I describes the general verification process. Part II provides more detailed requirements related to family information. Part III provides information on income and assets, and Part IV covers mandatory deductions.

Verification policies, rules and procedures will be modified as needed to accommodate persons with disabilities. All information obtained through the verification process will be handled in accordance with the records management policies of the BHA.

PART I: General Verification Requirements

7-I.A FAMILY CONSENT TO RELEASE OF INFORMATION [24 CFR 982.516; 24 CFR 982.551; 24 CFR 5.230; and Notice PIH 2023-27]

Consent Forms

The family must supply any information that the BHA or HUD determines is necessary to the administration of the program and must consent to BHA verification of that information [24 CFR 982.551]. All adult family members must sign consent forms as needed to collect information relevant to the family's eligibility and level of assistance. While the BHA must use form HUD-9886-A, this form does not release all the information necessary to the administration of the program. The BHA also utilizes its own release forms to cover all other necessary information.

FORM HUD-9886-A [24 CFR 5.230(B)(1), B(2), (C)(4), AND (C)(5); AND NOTICE PIH 2023-27]

All adult applicants and participants sign form HUD-9886-A, Authorization for Release of Information. All adult family members (and the head and spouse/cohead, regardless of age) are required to sign the Form HUD-9886-A at admission. Participants, prior to January 1, 2024, signed and submitted Form HUD-9886 at each annual reexamination. HOTMA eliminated this requirement and instead required that the Form HUD-9886-A be signed only once. On or after January 1, 2024 (regardless of the HOTMA compliance date), current program participants must sign and submit a new Form HUD-9886-A at their next interim or annual reexamination. This form will only be signed once. Another Form HUD-9886-A will not be submitted to the BHA except under the following circumstances:

- When any person 18 years or older becomes a member of the family;
- When a current member of the family turns 18; or
- As required by HUD or the BHA in administrative instructions.

Family members turning 18 years of age must sign consent forms at the next Annual Reexamination upon turning 18 years of age, or if requested by the BHA in order to verify necessary information to administer the program and meet verification requirements.

The purpose of form HUD-9886-A is to facilitate automated data collection and computer matching from specific sources and provides the family's consent only for the specific purposes listed on the form. HUD and the BHA 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).

The BHA may obtain any financial record from any financial institution, as the terms financial record and financial institution are defined in the Right to Financial Privacy Act (12 U.S.C. 3401), whenever the BHA determines the record is needed to determine an applicant's or participant's eligibility for assistance or level of benefits [24 CFR 5.230(c)(4)].

The executed form will remain effective until the family is denied assistance, assistance is terminated, or the family provides written notification to the BHA to revoke consent.

PENALTIES FOR FAILING TO CONSENT [24 CFR 5.232]

If any family member who is required to sign a consent form fails to do so, the BHA 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 BHA procedures.

7-I.B. OVERVIEW OF VERIFICATION REQUIREMENTS

USE OF OTHER PROGRAMS' INCOME DETERMINATIONS [24 CFR 5.609(C)(3) AND NOTICE PIH 2023-27]

The BHA will conduct their own review of program participant income and not utilize Safe Harbor determinations of income from other means-tested federal agencies.

HUD'S VERIFICATION HIERARCHY [NOTICE PIH 2018-18]

HUD mandates the use of the EIV system and offers administrative guidance on the use of other methods to verify family information and specifies the circumstances in which each method will be used. In general HUD requires the BHA to use the most reliable form of verification that is available and to document the reasons when the BHA uses a lesser form of verification.

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

- Up-front Income Verification (UIV) using HUD's Enterprise Income Verification (EIV) system
- Up-front Income Verification (UIV) using a non-HUD system
- Written Third-Party Verification (may be provided by applicant or participant)
- Written Third-party Verification Form
- Oral Third-party Verification
- Self-Certification

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

REQUIREMENTS FOR ACCEPTABLE DOCUMENTS

Any documents used for verification must be the original (not photocopies) and generally must be dated within 120 days of receipt by the BHA. Statements dated within the appropriate benefit year are acceptable for fixed sources of income. The documents must not be damaged, altered or in any way illegible.

Printouts from webpages are considered original documents.

The BHA staff member who views the original document must make a photocopy.

Any family self-certifications must be made in a format acceptable to the BHA and must be signed by the family member whose information or status is being verified.

FILE DOCUMENTATION

The BHA 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 BHA 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.

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

- Reported family annual income
- Value of assets
- Expenses related to deductions from annual income
- Other factors influencing adjusted income

When the BHA is unable to obtain third-party verification, the BHA will document in the family file the reason that third-party verification was not available [24 CFR 982.516(a)(2); Notice PIH 2018-18].

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

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

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 BHA 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 BHA.

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

UPFRONT INCOME VERIFICATION USING HUD'S ENTERPRISE INCOME VERIFICATION (EIV) SYSTEM (MANDATORY)

PHAs must use HUD's EIV system in its entirety as a third-party source to verify tenant employment and income information during mandatory reexaminations or recertifications of family composition and income in accordance with 24 CFR 5.236 and administrative guidance issued by HUD. The EIV system contains data showing earned income, unemployment benefits, social security benefits, and SSI benefits for participant families. The following policies apply to the use of HUD's EIV system.

EIV Income and IVT Reports

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

The BHA will obtain income and IVT reports for annual reexaminations on a monthly basis. Reports will be generated as part of the regular reexamination process.

Income and IVT reports will be compared to family-provided information as part of the annual reexamination process. Income reports may be used in the calculation of annual income, as described in Chapter 6-I.C. Income reports may also be used to meet the regulatory requirement for third party verification, as described above. Policies for resolving discrepancies between income reports and family-provided information will be resolved as described in Chapter 6-I.C. and in this chapter.

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

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

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

EIV Identity Verification

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

PHAs are required to use EIV's *Identity Verification Report* on a monthly basis to improve the availability of income information in EIV [Notice PIH 2018-18].

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

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

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

UPFRONT INCOME VERIFICATION USING NON-HUD SYSTEMS (OPTIONAL)

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

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

- HUD's EIV system
- CCVerify (Employment Income)
- TNC Verify (Employment Income)

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 BHA by the family. If written third-party verification is not available, the BHA 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 2018-18]

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

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

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

Third-party documents provided by the family must be dated within 120 days of of receipt by the BHA. The BHA will accept a statement dated within the appropriate benefit year for fixed income sources.

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

As verification of earned income, the BHA will require the family to provide the two most current, consecutive pay stubs for biweekly, bimonthly, or monthly pay. The BHA will require 4 current, consecutive paystubs as verification for weekly pay. At the BHA's discretion, if additional paystubs are needed due to the family's circumstances (e.g., sporadic income, fluctuating schedule, etc.), the BHA may request additional paystubs or a payroll record.

WRITTEN THIRD-PARTY VERIFICATION FORM

When upfront verification is not available and the family is unable to provide written third-party documents, the BHA 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.

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

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

ORAL THIRD-PARTY VERIFICATION [NOTICE PIH 2018-18]

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

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

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

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

When any source responds verbally to the initial written request for verification the BHA 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 2018-18]

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

If the family cannot provide original documents, the BHA will pay the service charge required to obtain third-party verification, unless it is not cost effective in which case a self-certification will be acceptable as the only means of verification. The cost of verification will not be passed on to the family.

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

Primary Documents
Third-party verification is not required when legal documents are the primary source, such as a birth certificate or other legal documentation of birth.

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

Value of Assets and Asset Income [24 CFR 982.516(a)]
For families with net assets totaling $5,000 or less, the BHA may accept the family's declaration of asset value and anticipated asset income. However, the BHA 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.

7-I.E. SELF-CERTIFICATION

When HUD requires third-party verification, self-certification or "tenant declaration," is used as a last resort when the BHA 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 BHA has adopted a policy to accept self certification at annual recertification, when applicable
- The BHA has adopted a policy to implement streamlined annual recertifications for fixed sources of income (See Chapter 11)

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

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

The self-certification must be made in a format acceptable to the BHA 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

The BHA will require families to furnish verification of legal identity for each household member.

Verification of Legal Identity for Adults	Verification of Legal Identity for Children
Photo ID: Current, valid Driver's license or state issued identification card; OR a current U.S. Passport And one of the following: Birth Certificate Naturalization Papers Church Issued Baptismal Certificate U.S. Military Discharge (DD214)	Certificate of birth Adoption papers Custody agreement Health and Human Services ID Certified school records

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

If none of these documents can be provided and at the BHA's discretion, a third party who knows the person may attest to the person's identity. The certification must be provided in a format acceptable to the BHA and must be signed by the family member whose information or status is being verified.

Legal identity will be verified for all applicants at the time of eligibility determination and in cases where the BHA has reason to doubt the identity of a person representing themselves to be a participant.

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

The family must provide documentation of a valid social security number (SSN) for each member of the household, with the exception of individuals who do not contend eligible immigration status. Exemptions

also include existing program participants who were at least 62 years of age as of January 31, 2010, and had not previously disclosed an SSN.

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

The BHA 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

While PHAs must attempt to gather third-party verification of SSNs prior to admission as listed above, PHAs also have the option of accepting a self-certification and a third-party document (such as a bank statement, utility or cell phone bill, or benefit letter) with the applicant's name printed on it to satisfy the SSN disclosure requirement if the BHA has exhausted all other attempts to obtain the required documentation. If verifying an individual's SSN using this method, the BHA must document why the other SSN documentation was not available [Notice PIH 2023-27].

The BHA will verify an individual's SSN in the situations described above using the method described above as a last resort when no other forms of verification of the inidivudal's SSN are available.

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

The BHA 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 BHA within 90 days.

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. The BHA 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 BHA 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 BHA 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 BHA is awaiting documentation of the SSN, the child will be counted as part of the assisted household. The BHA 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.

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

7-II.C. DOCUMENTATION OF AGE

A birth certificate or other official record of birth is the preferred form of age verification for all family members. For elderly family members an original document that provides evidence of the receipt of social security retirement benefits is acceptable.

Age must be verified only once during continuously assisted occupancy.

7-II.D. FAMILY RELATIONSHIPS

Applicants and program participants are required to identify the relationship of each household member to the head of household. Definitions of the primary household relationships are provided in the Eligibility chapter.

Family relationships are verified only to the extent necessary to determine a family's eligibility and level of assistance. Certification by the head of household normally is sufficient verification of family relationships.

MARRIAGE

Certification by the head of household is normally sufficient verification. If the BHA has reasonable doubts about a marital relationship, the BHA will require the family to document the marriage.

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

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

SEPARATION OR DIVORCE

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

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

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

If no court document is available, documentation from a community-based agency will be accepted.

ABSENCE OF ADULT MEMBER

If an adult member who was formerly a member of the household is reported to be permanently absent, the family 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), if the BHA so requests.

FOSTER CHILDREN AND FOSTER ADULTS

Third-party verification from the state or local government agency responsible for the placement of the individual with the family is required.

7-II.E. VERIFICATION OF STUDENT STATUS

GENERAL REQUIREMENTS

The BHA requires families to provide information about the student status of all students who are 18 years of age or older. This information will be verified only if:

- The family reports full-time student status for an adult other than the head, spouse, or cohead.
- The family reports childcare expenses to enable a family member to further their education.
- The family includes a student enrolled in an *institution of higher education.*

RESTRICTIONS ON ASSISTANCE TO STUDENTS ENROLLED IN INSTITUTIONS OF HIGHER EDUCATION

This section applies only to students who are seeking assistance on their own, separately from their parents. It does not apply to students residing with parents who are seeking or receiving HCV assistance.

In accordance with the verification hierarchy described in section 7-1.B, the BHA 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 the BHA cannot verify at least one of these exemption criteria, the BHA will conclude that the student is subject to the restrictions on assistance at 24 CFR 5.612. In addition to verifying the student's income eligibility, the BHA will then proceed to verify either the student's parents' income eligibility (see section 7-III.J) or the student's independence from their parents (see below).

Independent Student

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

- Either reviewing and verifying previous address information to determine whether the student has established a household separate from their parents for at least one year, or reviewing and verifying documentation relevant to determining whether the student meets the U.S. Department of Education's definition of *independent student* (see section 3-II.E)
- Reviewing the student's prior year income tax returns to verify the student is independent or verifying the student meets the U.S. Department of Education's definition of *independent student* (see section 3-II.E)
- Requesting and obtaining written certification directly from the student's parents identifying the amount of support they will be providing to the student, even if the amount of support is $0, except in cases in which the BHA determines that the student is a *vulnerable youth* (see section 3-II.E)

7-II.F. DOCUMENTATION OF DISABILITY

The BHA must verify the existence of a disability in order to allow certain income disallowances and deductions from income. The BHA is not permitted to inquire about the nature or extent of a person's disability [24 CFR 100.202(c)]. The BHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the BHA receives a verification document that provides such

information, the BHA will not place this information in the tenant file. Under no circumstances will the BHA 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].

FAMILY MEMBERS NOT RECEIVING SSA DISABILITY BENEFITS

Receipt of veteran's disability benefits, worker's compensation, or other non-SSA benefits based on the individual's claimed disability are not sufficient verification that the individual meets HUD's definition of disability in 24 CFR 5.403.

For family members claiming disability who do not receive disability benefits from the SSA, a knowledgeable professional must provide third-party verification that the family member meets the HUD definition of disability. See the Eligibility chapter for the HUD definition of disability. The knowledgeable professional will verify whether the family member does or does not meet the HUD definition.

7-II.G. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS [24 CFR 5.508]

OVERVIEW

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

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

U.S. CITIZENS AND NATIONALS

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

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

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

ELIGIBLE IMMIGRANTS

Documents Required

All family members claiming eligible immigration status must declare their status in the same manner as U.S. citizens and nationals.

The documentation required for eligible noncitizens varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, age, and the date on which the family began receiving HUD-funded assistance. Exhibit 7-1 at the end of this chapter summarizes documents family members must provide.

BHA Verification [HCV GB, pp. 5-3 and 5-7]

For family members age 62 or older who claim to be eligible immigrants, proof of age is required in the manner described in 7-II.C. of this plan. No further verification of eligible immigration status is required.

For family members under the age of 62 who claim to be eligible immigrants, the BHA must verify immigration status with the United States Citizenship and Immigration Services (USCIS).

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

7-II.H. VERIFICATION OF PREFERENCE STATUS

The BHA must verify any preferences claimed by an applicant that determined placement on the waiting list.

The BHA will offer a preference to any family that has been terminated from its HCV program due to insufficient program funding. The BHA will verify this preference using the BHA's termination records.

The BHA also offers a preference for victims of domestic violence, dating violence, sexual assault, or stalking, as described in Section 4-III.C. To verify that applicants qualify for the preference, the BHA will follow documentation requirements outlined in Section 16-IX.D.

PART III: VERIFYING INCOME AND ASSETS

Chapter 6, Part I of this plan describes in detail the types of income that are included and excluded and how assets and income from assets are handled. Any assets and income reported by the family must be verified. This part provides BHA policies that supplement the general verification procedures specified in Part I of this chapter.

7-III.A. EARNED INCOME

Tips

Unless tip income is included in a family member's W-2 by the employer, persons who work in industries where tips are standard will be required to sign a certified estimate of tips received for the prior year and tips anticipated to be received in the coming year.

Wages

For wages other than tips, the family must provide originals of the two most current, consecutive pay stubs for biweekly, bimonthly, or monthly pay. For weekly pay, the four most current, consecutive pay stubs are required.

7-III.B. BUSINESS AND SELF EMPLOYMENT INCOME

Business owners and self-employed persons will be required to provide:

- An audited financial statement for the previous fiscal year if an audit was conducted. If an audit was not conducted, a statement of income and expenses must be submitted and the business owner or self-employed person must certify to its accuracy.
- All schedules completed for filing federal and local taxes in the preceding year.
- If accelerated depreciation was used on the tax return or financial statement, an accountant's calculation of depreciation expense, computed using straight-line BHA rules.

If a family member has been self-employed less than three (3) months, the BHA will accept the family member's certified estimate of income and schedule an interim reexamination in three (3) months. If the family member has been self-employed for three (3) to twelve (12) months the BHA will require the family to provide documentation of income and expenses for this period and use that information to project income.

7-III.C. PERIODIC PAYMENTS AND PAYMENTS IN LIEU OF EARNINGS

For policies governing streamlined income determinations for fixed sources of income, please see Chapter 11.

SOCIAL SECURITY/SSI BENEFITS

Verification requirements for Social Security (SS) and Supplemental Security Income (SSI) benefits differ for applicants and participants.

For applicants, since EIV does not contain SS or SSI benefit information, the BHA must ask applicants to provide a copy of their current SS and/or SSI benefit letter (dated within the appropriate benefit year) for each family member that receives SS and/or SSI benefits. If the family is unable to provide the document or documents, the BHA should help the applicant request a benefit verification letter from SSA's website at www.ssa.gov or ask the family to request one by calling SSA at 1-800-772-1213. The BHA must obtain the original benefit letter from the applicant, make a photocopy of the document for the file, and return the original to the family.

For participants, the BHA must obtain information through the HUD EIV system and confirm with the participants that the current listed benefit amount is correct.

- If the participant agrees with the amount reported in EIV, the BHA must use the EIV-reported gross benefit amount to calculate annual income from Social Security. The BHA is required to use the EIV-reported SS and SSI benefit amounts when calculating income unless the tenant disputes the EIV-reported amount. For example, an SSA benefit letter may list the monthly benefit amount as $450.80 and EIV displays the amount as $450.00. The BHA must use the EIV-reported amount unless the participant disputes the amount.
- If the participant disputes the EIV-reported benefit amount, or if benefit information is not available in EIV, the BHA must request a current SSA benefit verification letter (dated within the appropriate benefit year) from each family member that receives SS and/or SSI benefits. If the family is unable to provide the document or documents, the BHA should help the participant request a benefit verification letter from SSA's website at www.ssa.gov or ask the family to request one by calling SSA at 1-800-772-1213. The BHA must obtain the original benefit letter from the participant, make a photocopy of the document for the file, and return the original to the family.

Photocopies of social security checks or bank statements are not acceptable forms of verification for SS/SSI benefits.

7-III.D. ALIMONY OR CHILD SUPPORT

The methods the BHA 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 BHA 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
- Self-Certification

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

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

- The BHA does not already have a reasonable estimation of its value from previously collected information, or
- The amount reported by the family in the certification appears obviously in error.

Example 1: An elderly participant reported a $10,000 certificate of deposit at the last annual reexamination and the BHA verified this amount. Now the person reports that she has given this $10,000 to her son. The BHA 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, the BHA will verify the value of this asset.

7-III.F. NET INCOME FROM RENTAL PROPERTY

The family must provide:

- A current executed lease for the property that shows the rental amount or certification from the current tenant
- A self-certification from the family members engaged in the rental of property providing an estimate of expenses for the coming year and the most recent IRS Form 1040 with Schedule E (Rental Income).

If schedule E was not prepared, the BHA 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

The BHA will accept written third-party documents supplied by the family as evidence of the status of retirement accounts.

The type of original document that will be accepted depends upon the family member's retirement status.

- *Before* retirement, the BHA will accept an original document from the entity holding the account dated within the appropriate benefit year.
- *Upon* retirement, the BHA will accept an original document dated within the appropriate benefit year from the entity holding the account that reflects any distributions of the account balance, any lump sums taken and any regular payments.
- *After* retirement, the BHA will accept an original document from the entity holding the account dated within the appropriate benefit year 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 BHA 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].

For partially excluded income, the BHA **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).

The BHA will accept the family's self-certification as verification of fully excluded income. The BHA may request additional documentation if necessary to document the income source.

The BHA will verify the source and amount of partially excluded income as described in Part 1 of this chapter.

7-III.I. ZERO INCOME FAMILIES [Notice PIH 2023-27]

PHAs have discretion to establish reasonable procedures to manage the risk of unreported income, such as asking families to complete a zero-income worksheet at admission or periodically after admission to determine if they have any sources of unreported income or searching any UIV sources for unreported income.

In calculating annual income, PHAs must not assign monetary value to nonmonetary in-kind donations from a food bank or similar organization received by the family [24 CFR 5.609(b)(24)(vi)].

PHAs may accept a self-certification of zero income from the family without taking any additional steps to verify zero reported income. HUD does not require such self-certifications be notarized.

PHAs that perform zero income reviews must update local discretionary policies, procedures, and forms. Families who begin receiving income which does not trigger an interim reexamination should no longer be considered zero income even though the family's income is not reflected on the Form HUD-50058.

The BHA will check UIV sources and/or may request information from third-party sources to verify that certain forms of income such as unemployment benefits, TANF, SS, SSI, earned income, child support, etc., are not being received by families claiming to have zero annual income.

The BHA will also require that each family member who claims zero income status complete a zero-income form. If any sources of income are identified on the form, the BHA will verify the income in accordance with the policies in this chapter prior to including the income in the family's annual income. The BHA will conduct interims in accordance with BHA policy in Chapter 11.

7-III.J. STUDENT FINANCIAL ASSISTANCE [24 CFR 5.609(b)(9) as updated for HOTMA]

The regulations under HOTMA distinguish between two categories of student financial assistance paid to both full-time and part-time students. Any other grant-in-aid, scholarship, or other assistance amounts an individual receives for the actual covered costs charged by the institute of higher education not otherwise excluded by the federally mandated income exclusions are included [24 CFR 5.609(b)(9)(ii)].

The BHA will request written third-party verification of both the source and the amount of student financial assistance. Family-provided documents from the educational institution attended by the student will be requested, as well as documents generated by any other person or entity providing such assistance, as reported by the student.

In addition, unless the student's only source of assistance is assistance under Title IV of the HEA, the BHA will request written verification of the cost of the student's tuition, books, supplies, room and board, and other required fees and charges to the student from the educational institution.

If the BHA is unable to obtain third-party written verification of the requested information, the BHA will pursue other forms of verification following the verification hierarchy in section 7-I.B.

7-III.K. PARENTAL INCOME OF STUDENTS SUBJECT TO ELIGIBLITY RESTRICTIONS

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, does not have a dependent child, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the income of the student's parents must be considered when determining income eligibility, unless the student is determined independent from their parents or a vulnerable youth in accordance with BHA 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.

If the BHA is required to determine the income eligibility of a student's parents, the BHA will request an income declaration and certification of income from the appropriate parent(s) (as determined in section 3-II.E). The BHA will send the request directly to the parents, who will be required to certify to their income under penalty of perjury. The parents will be required to submit the information directly to the BHA. The required information must be submitted (postmarked) within 10 business days of the date of the BHA's request or within any extended timeframe approved by the BHA.

The BHA reserves the right to request and review supporting documentation at any time if it questions the declaration or certification. Supporting documentation may include, but is not limited to, Internal Revenue Service (IRS) tax returns, consecutive and original pay stubs, bank statements, pension benefit statements, benefit award letters, and other official and authentic documents from a federal, state, or local agency.

PART IV: VERIFYING MANDATORY DEDUCTIONS

7-IV.A. DEPENDENT AND ELDERLY/DISABLED HOUSEHOLD DEDUCTIONS

The dependent and elderly/disabled family deductions require only that the BHA verify that the family members identified as dependents or elderly/disabled persons meet the statutory definitions. No further verifications are required.

DEPENDENT DEDUCTION

See Chapter 6 (6-II.B.) for a full discussion of this deduction. The BHA must verify that:

- Any person under the age of 18 for whom the dependent deduction is claimed is not the head, spouse, or cohead of the family and is not a foster child
- Any person age 18 or older for whom the dependent deduction is claimed is not a foster adult or live-in aide, and is a person with a disability or a full time student

ELDERLY/DISABLED FAMILY DEDUCTION

See Eligibility chapter for a definition of elderly and disabled families and Chapter 6 (6-II.C.) for a discussion of the deduction. The BHA must verify that the head, spouse, or cohead is 62 years of age or older or a person with disabilities.

7-IV.B. HEALTH & MEDICAL CARE EXPENSE DEDUCTION

Policies related to health and medical care 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

Health and medical care expenses will be verified through:

- Written third-party documents provided by the family, such as pharmacy printouts or receipts.
- The BHA will make a best effort to determine what expenses from the past are likely to continue to occur in the future. The BHA will also accept evidence of monthly payments or total payments that will be due for medical expenses during the upcoming 12 months.
- Written third-party verification forms, if the family is unable to provide acceptable documentation.
- If third-party or document review is not possible, written family certification as to costs anticipated to be incurred during the upcoming 12 months.

In addition, the BHA 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 health and medical care expense deduction is permitted only for households in which the head, spouse, or cohead is at least 62, or a person with disabilities. The BHA 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 health and medical care expenses deduction, the costs must qualify as health and medical care expenses. See Chapter 6 (6-II.D.) for the BHA's policy on what counts as a health and medical care expense.

UNREIMBURSED EXPENSES

To be eligible for the health and medical care expenses deduction, the costs must not be reimbursed by another source.

EXPENSES INCURRED IN PAST YEARS

When anticipated costs are related to on-going payment of medical bills incurred in past years, the BHA 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
The BHA will accept written third-party documents provided by the family.

If family-provided documents are not available, the BHA will provide a third-party verification form directly to the care provider requesting the needed information.

Expenses for attendant care will be verified through:

- Written third-party documents provided by the family, such as receipts or cancelled checks.
- Third-party verification form signed by the provider, if family-provided documents are not available.
- If third-party verification is not possible, written family certification as to costs anticipated to be incurred for the upcoming 12 months.

Auxiliary Apparatus
Expenses for auxiliary apparatus will be verified through:

- Written third-party documents provided by the family, such as billing statements for purchase of auxiliary apparatus, or other evidence of monthly payments or total payments that will be due for the apparatus during the upcoming 12 months.
- Third-party verification form signed by the provider, if family-provided documents are not available.
- If third-party verification is not possible, written family certification of estimated apparatus costs for the upcoming 12 months.

In addition, the BHA 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.).

7-IV.D. CHILDCARE EXPENSES

Policies related to childcare 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, the BHA 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 childcare.
- The costs are reasonable.

ELIGIBLE CHILD

To be eligible for the childcare deduction, the costs must be incurred for the care of a child under the age of 13. The BHA 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 childcare deduction, the costs must not be reimbursed by another source.

The family will be required to certify that the childcare expenses are not paid or reimbursed to the family from any source.

PURSUING AN ELIGIBLE ACTIVITY

The BHA must verify that the family member(s) that the family has identified as being enabled to seek work, pursue education, or be gainfully employed, are actually pursuing those activities.

Information to be Gathered

The BHA will verify information about how the schedule for the claimed activity relates to the hours of care provided, the time required for transportation, the time required for study (for students), the relationship of the family member(s) to the child, and any special needs of the child that might help determine which family member is enabled to pursue an eligible activity.

Seeking Work

Whenever possible the BHA will use documentation from a state or local agency that monitors work-related requirements (e.g., welfare or unemployment). In such cases the BHA will request family-provided verification from the agency of the member's job seeking efforts to date, and require the family to submit to the BHA any reports provided to the other agency.

In the event third-party verification is not available, the BHA will provide the family with a form on which the family member must record job search efforts. The BHA will review this information at each subsequent reexamination for which this deduction is claimed.

Furthering Education

The BHA will request third-party documentation to verify that the person permitted to further their education by the childcare is enrolled and provide information about the timing of classes for which the person is registered. The documentation may be provided by the family.

Gainful Employment

The BHA will seek third-party verification of the work schedule of the person who is permitted to work by the childcare. 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 CHILDCARE

The type of care to be provided is determined by the family, but must fall within certain guidelines, as discussed in Chapter 6.

The BHA will verify that the type of childcare selected by the family is allowable, as described in Chapter 6 (6-II.F).

The BHA will verify that the fees paid to the childcare provider cover only childcare costs (e.g., no housekeeping services or personal services) and are paid only for the care of an eligible child (e.g., prorate costs if some of the care is provided for ineligible family members).

The BHA will verify that the childcare 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 childcare costs can be deducted.

If the family presents a justification for costs that exceed typical costs in the area, the BHA 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 the PHA.
- Except for persons 62 or older, all noncitizens must sign a verification consent form
- Additional documents are required based upon the person's status.

ELDERLY NONCITIZENS

- A person 62 years of age or older who claims eligible immigration status also must provide proof of age such as birth certificate, passport, or documents showing receipt of SS old-age benefits.

ALL OTHER NONCITIZENS

- Noncitizens that claim eligible immigration status also must present the applicable USCIS document. Acceptable USCIS documents are listed below.

• Form I-551 Alien Registration Receipt Card (for permanent resident aliens) • Form I-94 Arrival-Departure Record annotated with one of the following: • "Admitted as a Refugee Pursuant to Section 207" • "Section 208" or "Asylum" • "Section 243(h)" or "Deportation stayed by Attorney General" • "Paroled Pursuant to Section 221 (d)(5) of the USCIS"	• Form I-94 Arrival-Departure Record with no annotation accompanied by: • A final court decision granting asylum (but only if no appeal is taken); • A letter from a USCIS asylum officer granting asylum (if application is filed on or after 10/1/90) or from a USCIS district director granting asylum (application filed before 10/1/90); • A court decision granting withholding of deportation; or • A letter from an asylum officer granting withholding or deportation (if application filed on or after 10/1/90).
• Form I-688 Temporary Resident Card annotated "Section 245A" or Section 210".	• Form I-688B Employment Authorization Card annotated "Provision of Law 274a. 12(11)" or "Provision of Law 274a.12".

- A receipt issued by the USCIS indicating that an application for issuance of a replacement document in one of the above listed categories has been made and the applicant's entitlement to the document has been verified; or
- Other acceptable evidence. If other documents are determined by the USCIS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the Federal Register

CHAPTER 7: VERIFICATION UNDER HOTMA 102/104

[24 CFR 982.516, 24 CFR 982.551, 24 CFR 5.230, Notice PIH 2023-27]

This chapter is applicable upon the BHA's HOTMA 102/104 compliance date. Prior to this date, the BHA will follow policies as outlined in Chapter 7.A. of the model policy.

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

The BHA must follow the verification guidance provided by HUD in Notice PIH 2023-27 and any subsequent guidance issued by HUD. This chapter summarizes those requirements and provides supplementary BHA policies.

Part I describes the general verification process. Part II provides more detailed requirements related to family information. Part III provides information on income and assets, and Part IV covers mandatory deductions.

Verification policies, rules and procedures will be modified as needed to accommodate persons with disabilities. All information obtained through the verification process will be handled in accordance with the records management policies of the BHA.

PART I: GENERAL VERIFICATION REQUIREMENTS

7-I.A. FAMILY CONSENT TO RELEASE OF INFORMATION [24 CFR 982.516; 24 CFR 982.551; 24 CFR 5.230; and Notice PIH 2023-27]

CONSENT FORMS

The family must supply any information that the BHA or HUD determines is necessary to the administration of the program and must consent to BHA verification of that information [24 CFR 982.551]. All adult family members must sign consent forms as needed to collect information relevant to the family's eligibility and level of assistance. While PHAs must use form HUD-9886-A, this form does not release all the information necessary to the administration of the program. The BHA must also develop its own release forms to cover all other necessary information.

FORM HUD-9886-A [24 CFR 5.230(B)(1), B(2), (C)(4), AND (C)(5); AND NOTICE PIH 2023-27]

All adult applicants and participants sign form HUD-9886-A, Authorization for Release of Information. All adult family members (and the head and spouse/cohead, regardless of age) are required to sign the Form HUD-9886-A at admission. Participants, prior to January 1, 2024, signed and submitted Form HUD-9886 at each annual reexamination. HOTMA eliminated this requirement and instead required that the Form HUD-9886-A be signed only once. On or after January 1, 2024 (regardless of the BHA's HOTMA compliance date), current program participants must sign and submit a new Form HUD-9886-A at their next interim or annual reexamination. This form will only be signed once. Another Form HUD-9886-A will not be submitted to the BHA except under the following circumstances:

- When any person 18 years or older becomes a member of the family;
- When a current member of the family turns 18; or
- As required by HUD or the BHA in administrative instructions.

The BHA has the discretion to establish policies around when family members must sign consent forms when they turn 18. PHAs must establish these policies stating when family members will be required to sign consent forms at intervals other than at reexamination.

Family members turning 18 years of age must sign consent forms at the next Annual Reexamination upon turning 18 years of age, or if requested by the BHA in order to verify necessary information to administer the program and meet verification requirements.

The purpose of form HUD-9886-A is to facilitate automated data collection and computer matching from specific sources and provides the family's consent only for the specific purposes listed on the form. HUD and the BHA 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).

The BHA may obtain any financial record from any financial institution, as the terms financial record and financial institution are defined in the Right to Financial Privacy Act (12 U.S.C. 3401), whenever the BHA determines the record is needed to determine an applicant's or participant's eligibility for assistance or level of benefits [24 CFR 5.230(c)(4)].

The executed form will remain effective until the family is denied assistance, assistance is terminated, or the family provides written notification to the BHA to revoke consent.

PENALTIES FOR FAILING TO CONSENT [24 CFR 5.232]

If any family member who is required to sign a consent form fails to do so, the BHA must deny admission to applicants and terminate assistance of participants. The family may request an informal review (applicants) or informal hearing (participants) in accordance with BHA procedures.

However, this does not apply if the applicant, participant, or any member of their family, revokes their consent with respect to the ability of the BHA to access financial records from financial institutions, unless the BHA establishes a policy that revocation of consent to access financial records will result in denial of admission or termination of assistance [24 CFR 5.232(c)]. PHAs may not process interim or annual reexaminations of income without the family's executed consent forms.

The BHA has established a policy that revocation of consent to access financial records will result in denial of admission or termination of assistance in accordance with BHA policy.

In order for a family to revoke their consent, the family must provide written notice to the BHA.

Within 10 business days of the date the family provides written notice, the BHA will send the family a notice acknowledging receipt of the request and explaining that revocation of consent will result in denial or termination of assistance, as applicable. At the same time, the BHA will notify their local HUD office.

7-I.B. USE OF OTHER PROGRAMS' INCOME DETERMINATIONS [24 CFR 5.609(c)(3) and Notice PIH 2023-27]

The BHA will conduct their own review of program participant income and not utilize Safe Harbor determinations of income from other means-tested federal agencies.

7-I.C. STREAMLINED INCOME DETERMINATIONS [24 CFR 960.257(c); Notice PIH 2023-27]

The BHA opts to collect updated income information when completing Annual Reexaminations for fixed sources of income.

7-I.D. VERIFICATION HIERARCHY [Notice PIH 2023-27]

When the BHA does not use a streamlined determination of income or an income determination from a means-tested federal assistance program, HUD requires the BHA to obtain third-party verification of:

- Reported family annual income;

- The value of net family assets when the net value exceeds the HUD-published threshold, as listed in HUD's Inflation-Adjusted Values tables ($50,000 for 2024, and $51,600 for 2025);
- Expenses related to deductions from annual income; and
- Other factors that affect the determination of adjusted income.

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 the BHA to use the most reliable form of verification that is available and to document the reasons when the BHA uses a lesser form of verification.

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

HUD developed a hierarchy that described verification documentation from most acceptable to least acceptable. The BHA must demonstrate efforts to obtain third party verification prior to accepting self-certification except instances when self-certification is explicitly allowed.

In order of priority, the hierarchy is:

- Highest: Level 6: Up-front Income Verification (UIV) using HUD's Enterprise Income Verification (EIV) system
- Highest: Level 5: Up-front Income Verification (UIV) using a non-EIV system
- High: Level 4:
    - Written third-party verification from the source, also known as "family-provided verification"
    - Or EIV plus self-certification
- Medium: Level 3: Written third-party verification form
- Medium: Level 2: Oral third-party verification
- Low: Level 1: Self-certification (not third-party verification)

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

FILE DOCUMENTATION

The BHA 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 BHA has followed all of the verification policies set forth in this plan. The record should be sufficient to enable a staff member or HUD reviewer to understand the process followed and conclusions reached.

7-I.E. LEVEL 5 AND 6 VERIFICATIONS: UP-FRONT INCOME VERIFICATION (UIV)

Up-front income verification (UIV) refers to the BHA's use of the verification tools available from independent sources that maintain computerized information about earnings and benefits for a number of individuals. The BHA may use UIV sources before or during a family reexamination.

UIV will be used to the extent that these systems are available to the BHA.

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 BHA 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 BHA.

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 annual and streamlined reexaminations of family composition and income in accordance with 24 CFR 5.236 and Notice PIH 2023-27.

HUD's EIV system contains data showing earned income, unemployment benefits, social security benefits, and SSI benefits for participant families.

The income validation tool (IVT) in EIV provides projections of discrepant income for wages, unemployment compensation, and SSA benefits pursuant to HUD's data sharing agreements with other departments.

The following policies apply to the use of HUD's EIV system.

EIV Income Report
The BHA is required to obtain an EIV Income Report for each family any time the BHA conducts an annual reexamination. However, PHAs are not required to use the EIV Income Report:

- At annual reexamination if the BHA used Safe Harbor verification from another means-tested federal assistance program to determine the family's income; or
- During any interim reexaminations.

The EIV Income Report is also not available for program applicants at admission.

When required to use the EIV Income Report, for the report to be considered current, the BHA must pull the report within 120 days of the effective date of the annual reexamination.

New Hires Report *[Notice PIH 2023-27]*
The New Hires Report identifies participant families who have new employment within the last six months. The report is updated monthly.

In accordance with BHA policies in Chapter 11, the BHA does not process interim reexaminations for families who have increases in earned income. The BHA will only review the New Hires Report at annual reexamination.

No Income Reported by HHS or SSA Report
This report is a tool for PHAs to identify participants who passed the SSA identity test, but no income information was reported by either HHS or SSA records. This scenario does not mean that the participant does not have any income. PHAs obtain written, third-party verification of any income reported by the participant. The BHA must identify in its policies and procedures when this report will be pulled [Notice PIH 2023-27].

The BHA will generate the No Income Reported by HHS or SSA Report quarterly and will retain the report.

The BHA will re-verify the status of participants identified on the report quarterly. Based on the information provided by the family and in EIV, the BHA may require that family members provide verifications or sign release forms in order to obtain additional verification.

When the BHA determines through this report 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 Report
The EIV system verifies tenant identities against SSA records. These records are compared to HUD data for a match on social security number, name, and date of birth.

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

The BHA will attempt to resolve discrepancies by obtaining appropriate documentation from the participant. When the BHA determines that discrepancies exist as a result of BHA errors such as spelling errors or incorrect birth dates, it will correct the errors promptly.

Deceased Tenants Reports [Notice PIH 2012-4 and Notice PIH 2023-27]
The Deceased Tenant Report identifies residents that have been reported by the SSA as deceased.

The BHA will review the Deceased Tenants Report on a monthly basis.

When the Deceased Tenants Report identifies an individual as being deceased, the BHA must immediately send a letter to the head of household or emergency contact person (if the head of household is deceased

and there is no other adult household member) to confirm the death of the listed household member. The BHA must notify the owner in writing of the deceased head of household.

The BHA will list the EOP as the last day of the month in which the death occurred. The landlord is entitled to receive the full HAP amount for the month in which the tenant death occurred.

When the only remaining household member is the live-in aide, the live-in aide is not entitled or eligible for any rental assistance or continued occupancy. The BHA may not designate the live-in aide as the new head of household or change the relation code on the Form HUD-50058.

Other EIV Reports [Notice PIH 2023-27]

The BHA is required to review the Multiple Subsidy Report at least quarterly and the Failed EIV Pre-Screening and Failed Verification (Failed SSA Identity Test) reports at least monthly.

Upfront Income Verification Using Non-HUD Systems

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

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

- HUD's EIV system
- CCVerify (Employment Income)
- TNC Verify (Employment Income)

7-I.F. LEVEL 4 VERIFICATION [Notice PIH 2023-27]

HUD identifies two types of Level 4 verification: written-third party verification from the source and EIV + self-certification.

EIV + Self-Certification

EIV may be used as written third-party verification and may be used to calculate income if the family agrees with the information in EIV and self-certifies that the amount is accurate and representative of current income. This practice is known as EIV + self-certification. When calculating income using this method, the BHA may use its discretion to determine which method of calculation is reasonable: the last four quarters combined or an average of any number of quarters. The family must be provided with the information from EIV.

The BHA will use an average of the last two quarters of income listed in EIV to determine income from employment. The BHA will provide the family with the information in EIV. The family will be required to sign a self-certification stating that the amount listed in EIV is accurate and representative of current income. If the family disagrees with using only the last two quarters of income listed in EIV, because of the seasonal or otherwise fluctuating nature of a particular family member's employment, the BHA will permit the family to sign a self-certification stating that the average of all four quarters of income listed in EIV is accurate and representative of current annual income and use that amount for calculating annual income. If the family disagrees and contends that the amount listed in EIV is not reflective of current income, or if less than two quarters are available in EIV, the BHA will use written third-party verification from the source as outlined below.

The BHA will not use this method of verification at new admission since EIV is not available for applicant families or at interim reexamination since the income information in EIV is not current.

Written Third-Party Verification from the Source

Written, third-party verification from the source is also known as "tenant-provided verification." In order to qualify as written-third party verification from the source, the documents must be original or authentic and (generally) dated within 120 days of the date received by the BHA. For fixed-income sources, a statement dated within the appropriate benefit year is acceptable documentation. The BHA may use the verification

obtained during an interim reexamination for an annual reexamination if there have been no other changes to annual income since the interim reexamination. Documents 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. Income tax returns with corresponding official tax forms and schedules attached and including third-party receipt of transmission for income tax return filed (i.e., tax preparer's transmittal receipt, summary of transmittal from online source, etc.) are an acceptable form of written, third-party verification.

In general, the BHA use third-party verification from the source in the following circumstances:

- At annual reexamination when EIV + self-certification is not used;
- For all new admissions; and
- For all interim reexaminations.

The BHA will not use this method if the BHA uses EIV + self-certification as outlined above.

In general, third-party documents provided by the family or the source must be dated within 120 days of the date received by the BHA. However, for fixed-income sources, a statement dated within the appropriate benefit year is acceptable documentation.

The BHA 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. If the BHA determines that third-party documents provided by the family are not acceptable, the BHA will explain the reason to the family and request additional documentation from the family or will use a lower form of verification such as a written third-party verification form.

When verification of assets held by a banking or financial institution is required, the BHA will obtain one statement that reflects the current balance of the account.

When pay stubs are used, the BHA will require the family to provide the two most current, consecutive pay stubs for biweekly, bimonthly, or monthly pay. For weekly pay, four current, consecutive paystubs are required for verification. At the BHA's discretion, if additional paystubs are needed due to the family's circumstances (e.g., sporadic income, fluctuating schedule, etc.), the BHA may request additional paystubs or a payroll record.

7-I.G. LEVEL 3 VERIFICATION: WRITTEN, THIRD-PARTY FORM [Notice PIH 2023 -27]

This type of verification is a form developed by the BHA and used uniformly for all families when needed to collect information from a third-party source. This is known as "traditional third-party verification. The form is sent directly to the third-party source by mail, fax, or email and the source completes the form by hand (in writing or typeset).

Typically, the BHA will attempt to send written third-party verification forms to the verification source whenever higher forms of verification are unavailable.

However, on a case-by-case basis, the BHA may choose to obtain oral third-party verification without first attempting, and in lieu of, a written-third party verification form.

7.I.H. LEVEL 2: ORAL THIRD-PARTY VERIFICATION [Notice PIH 2023-27]

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

In general, the BHA will attempt to obtain written third-party verification via a form from the verification source. If written third-party verification forms are not returned within 10 business days, the BHA will accept self-certification from the family without attempting to obtain oral third-party verification.

However, if the BHA chooses to obtain oral third-party verification, the BHA will document in the file the date and time of the telephone call or visit, the name of the person contacted and the telephone number, as well as the information confirmed.

WHEN THIRD-PARTY VERIFICATION IS NOT REQUIRED [NOTICE PIH 2023-27]

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

If the family cannot provide original documents, the BHA will pay the service charge required to obtain third-party verification, unless it is not cost effective in which case a self-certification will be acceptable as the only means of verification. The cost of verification will not be passed on to the family.

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

Primary Documents

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

7-I.I. LEVEL 1: NON-THIRD-PARTY VERIFICATION: SELF-CERTIFICATION [Notice PIH 2023-27]

Non-third-party verification consists of a signed statement of reported income and/or expenses. This verification method should be used as a last resort when the BHA has not been successful in obtaining information via all other required verification techniques.

Self-certification, however, is an acceptable form of verification when:

- A source of income is fully excluded
- Net family assets are less than or equal to the HUD-published threshold ($50,000 for 2024, and $51,600 for 2025) and the BHA has adopted a policy to accept self certification
- The family declares that they do not have any present ownership in any real property
- A family reports zero income;
- A family states that they have non-recurring income that will not be repeated in the coming year; and/or
- The PHA has adopted a policy to implement streamlined verification for fixed sources of income (See Chapter 11)

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

The BHA may require a family to certify that a family member does <u>not</u> receive a particular type of income or benefit.

The self-certification must be made in a format acceptable to the BHA and must be signed by the family member whose information or status is being verified.

All self-certifications will include the following language:

"I/We, the undersigned, certify under penalty of perjury that the information provided here is true and correct, to the best of my knowledge and recollection. WARNING: Anyone who knowingly submits a false claim or knowingly makes a false statement is subject to criminal and/or civil penalties, including confinement for up to five years, fines, and civil and administrative penalties (18 U.S.C. 287, 1001, 1010, 1012; 31 U.S.C. 3279, 3802)."

PART II: VERIFYING FAMILY INFORMATION

7-II.A. VERIFICATION OF LEGAL IDENTITY

The BHA will require families to furnish verification of legal identity for each household member.

Verification of Legal Identity for Adults	Verification of Legal Identity for Children
Photo ID: Current, valid Driver's license or state issued identification card; OR a current U.S. Passport And one of the following: Birth Certificate Naturalization Papers Church Issued Baptismal Certificate U.S. Military Discharge (DD214)	Certificate of birth Adoption papers Custody agreement Health and Human Services ID Certified school records

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

If none of these documents can be provided and at the BHA's discretion, a third party who knows the person may attest to the person's identity. The certification must be provided in a format acceptable to the BHA and must be signed by the family member whose information or status is being verified.

Legal identity will be verified for all applicants at the time of eligibility determination and in cases where the BHA has reason to doubt the identity of a person representing themselves to be a participant.

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

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

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

The BHA 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

While PHAs must attempt to gather third-party verification of SSNs prior to admission as listed above, PHAs also have the option of accepting a self-certification and a third-party document (such as a bank statement, utility or cell phone bill, or benefit letter) with the applicant's name printed on it to satisfy the SSN disclosure requirement if the PHA has exhausted all other attempts to obtain the required documentation. If verifying an individual's SSN using this method, the BHA must document why the other SSN documentation was not available [Notice PIH 2023-27].

The BHA will verify an individual's SSN in the situations described above using the method described above as a last resort when no other forms of verification of the inidivudal's SSN are available.

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

The BHA 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 BHA within 90 days.

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. The BHA 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 BHA 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 BHA 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 BHA is awaiting documentation of the SSN, the child will be counted as part of the assisted household. The BHA 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.

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

7-II.C. DOCUMENTATION OF AGE

A birth certificate or other official record of birth is the preferred form of age verification for all family members. For elderly family members an original document that provides evidence of the receipt of social security retirement benefits is acceptable.

Age must be verified only once during continuously assisted occupancy.

7-II.D. FAMILY RELATIONSHIPS

Applicants and program participants are required to identify the relationship of each household member to the head of household. Definitions of the primary household relationships are provided in the Eligibility chapter.

Family relationships are verified only to the extent necessary to determine a family's eligibility and level of assistance. Certification by the head of household normally is sufficient verification of family relationships.

MARRIAGE

Certification by the head of household is normally sufficient verification. If the BHA has reasonable doubts about a marital relationship, the BHA will require the family to document the marriage.

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

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

SEPARATION OR DIVORCE

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

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

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

If no court document is available, documentation from a community-based agency will be accepted.

ABSENCE OF ADULT MEMBER

If an adult member who was formerly a member of the household is reported to be permanently absent, the family 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), if the BHA so requests.

FOSTER CHILDREN AND FOSTER ADULTS

Third-party verification from the state or local government agency responsible for the placement of the individual with the family is required.

7-II.E. VERIFICATION OF STUDENT STATUS

GENERAL REQUIREMENTS

The BHA requires families to provide information about the student status of all students who are 18 years of age or older. This information will be verified only if:

- The family reports full-time student status for an adult other than the head, spouse, or cohead.
- The family reports childcare expenses to enable a family member to further their education.
- The family includes a student enrolled in an *institution of higher education.*

RESTRICTIONS ON ASSISTANCE TO STUDENTS ENROLLED IN INSTITUTIONS OF HIGHER EDUCATION

This section applies only to students who are seeking assistance on their own, separately from their parents. It does not apply to students residing with parents who are seeking or receiving HCV assistance.

In accordance with the verification hierarchy described in section 7-1.B, the BHA 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 the BHA cannot verify at least one of these exemption criteria, the BHA will conclude that the student is subject to the restrictions on assistance at 24 CFR 5.612. In addition to verifying the student's income eligibility, the BHA will then proceed to verify either the student's parents' income eligibility (see section 7-III.J) or the student's independence from their parents (see below).

Independent Student

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

- Either reviewing and verifying previous address information to determine whether the student has established a household separate from their parents for at least one year, or reviewing and verifying documentation relevant to determining whether the student meets the U.S. Department of Education's definition of *independent student* (see section 3-II.E)
- Reviewing the student's prior year income tax returns to verify the student is independent or verifying the student meets the U.S. Department of Education's definition of *independent student* (see section 3-II.E)
- Requesting and obtaining written certification directly from the student's parents identifying the amount of support they will be providing to the student, even if the amount of support is $0, except in cases in which the BHA determines that the student is a *vulnerable youth* (see section 3-II.E)

7-II.F. DOCUMENTATION OF DISABILITY

The BHA must verify the existence of a disability in order to allow certain income disallowances and deductions from income. The BHA is not permitted to inquire about the nature or extent of a person's disability [24 CFR 100.202(c)]. The BHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the BHA receives a verification document that provides such information, the BHA will not place this information in the tenant file. Under no circumstances will the BHA 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].

FAMILY MEMBERS NOT RECEIVING SSA DISABILITY BENEFITS

Receipt of veteran's disability benefits, worker's compensation, or other non-SSA benefits based on the individual's claimed disability are not sufficient verification that the individual meets HUD's definition of disability in 24 CFR 5.403.

For family members claiming disability who do not receive disability benefits from the SSA, a knowledgeable professional must provide third-party verification that the family member meets the HUD definition of disability. See the Eligibility chapter for the HUD definition of disability. The knowledgeable professional will verify whether the family member does or does not meet the HUD definition.

7-II.G. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS [24 CFR 5.508]

OVERVIEW

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

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

U.S. CITIZENS AND NATIONALS

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

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

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

ELIGIBLE IMMIGRANTS

Documents Required

All family members claiming eligible immigration status must declare their status in the same manner as U.S. citizens and nationals.

The documentation required for eligible noncitizens varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, age, and the date on which the family began receiving HUD-funded assistance. Exhibit 7-1 at the end of this chapter summarizes documents family members must provide.

BHA Verification [HCV GB, pp. 5-3 and 5-7]

For family members age 62 or older who claim to be eligible immigrants, proof of age is required in the manner described in 7-II.C. of this plan. No further verification of eligible immigration status is required.

For family members under the age of 62 who claim to be eligible immigrants, the BHA must verify immigration status with the United States Citizenship and Immigration Services (USCIS).

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

7-II.H. VERIFICATION OF PREFERENCE STATUS

The BHA must verify any preferences claimed by an applicant that determined placement on the waiting list.

The BHA will offer a preference to any family that has been terminated from its HCV program due to insufficient program funding. The BHA will verify this preference using the BHA's termination records.

The BHA also offers a preference for victims of domestic violence, dating violence, sexual assault, or stalking, as described in Section 4-III.C. To verify that applicants qualify for the preference, the BHA will follow documentation requirements outlined in Section 16-IX.D.

PART III: VERIFYING INCOME AND ASSETS

Chapter 6 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 income reported by the family must be verified. This part provides BHA policies that supplement the general verification procedures specified in Part I of this chapter.

7-III.A. EARNED INCOME

TIPS

Unless tip income is included in a family member's W-2 by the employer or in UIV verification sources, persons who work in industries where tips are standard will be required to sign a certified estimate of tips received for the prior year or tips anticipated to be received in the coming year.

WAGES

When the BHA requires third-party verification of wages, for wages other than tips, the family must provide originals of the two most current, consecutive pay stubs for biweekly, bimonthly, or monthly pay. If receiving weekly pay, the family must provide four current, consecutive paystubs.

7-III.B. BUSINESS AND SELF EMPLOYMENT INCOME

The BHA must obtain written, third-party verification when the income type is not available in EIV. This includes income from self-employment.

Business owners and self-employed persons will be required to provide:

- Income tax returns with corresponding official tax forms and schedules attached and including third-party receipt of transmission for income tax return filed (i.e., tax preparer's transmittal receipt, summary of transmittal from online source, etc.).
- 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.

For self-employed individuals who claim they do not have to file tax returns, The BHA will obtain a completed copy of IRS Form 4506-T to verify that no return has been filed.

For those employed in "gig employment" (i.e., those in formal agreements with on-demand companies such as Uber, Lyft, or DoorDash), the BHA will provide a format for the individual to declare their income and expenses. The BHA will also review the printed statement of monthly income from the applicable app for all hours worked and pay received as well as the Schedule C of the individual's tax return and the corresponding IRS Form 1099 or 1099k.

The BHA will provide a format for any person who is unable to provide such a statement to record income and expenses for the coming year. The business owner/self-employed person will be required to submit the information requested and to certify to its accuracy at all future reexaminations. At any reexamination the BHA may request documents that support submitted financial statements such as manifests, appointment books, cash books, or bank statements.

If a family member has been self-employed less than three (3) months, the BHA will accept the family member's certified estimate of income and schedule an interim reexamination in three (3) months. If the family member has been self-employed for three (3) to twelve (12) months the BHA will require the family to provide documentation of income and expenses for this period and use that information to project income.

7-III.C. PERIODIC PAYMENTS AND PAYMENTS IN LIEU OF EARNINGS

For policies governing streamlined income determinations for fixed sources of income, please see Chapter 11.

SOCIAL SECURITY/SSI BENEFITS [NOTICE PIH 2023-27]

Verification requirements for Social Security (SS) and Supplemental Security Income (SSI) benefits differ for applicants and participants.

For applicants, since EIV does not contain SS or SSI benefit information, the BHA must ask applicants to provide a copy of their current SS and/or SSI benefit letter (dated within the appropriate benefit year) for each family member that receives SS and/or SSI benefits. If the family is unable to provide the document or documents, the BHA should help the applicant request a benefit verification letter from SSA's website at www.ssa.gov or ask the family to request one by calling SSA at 1-800-772-1213. The BHA must obtain the original benefit letter from the applicant, make a photocopy of the document for the file, and return the original to the family.

For participants, the BHA must obtain information through the HUD EIV system and confirm with the participants that the current listed benefit amount is correct.

- If the participant agrees with the amount reported in EIV, the BHA must use the EIV-reported gross benefit amount to calculate annual income from Social Security. The BHA is required to use the EIV-reported SS and SSI benefit amounts when calculating income unless the tenant disputes the EIV-reported amount. For example, an SSA benefit letter may list the monthly benefit amount as $450.80 and EIV displays the amount as $450.00. The BHA must use the EIV-reported amount unless the participant disputes the amount.
- If the participant disputes the EIV-reported benefit amount, or if benefit information is not available in EIV, the BHA must request a current SSA benefit verification letter (dated within the appropriate benefit year) from each family member that receives SS and/or SSI benefits. If the family is unable to provide the document or documents, the BHA should help the participant request a benefit verification letter from SSA's website at www.ssa.gov or ask the family to request one by calling SSA at 1-800-772-1213. The BHA must obtain the original benefit letter from the participant, make a photocopy of the document for the file, and return the original to the family.

Photocopies of social security checks or bank statements are not acceptable forms of verification for SS/SSI benefits.

7-III.D. ALIMONY OR CHILD SUPPORT [Notice PIH 2023-27]

Annual income includes "all amounts received," not the amount that a family may be legally entitled to receive but which they do not receive. For example, a family's child support or alimony income must be based on payments received, not the amounts to which the family is entitled by court or agency orders. A copy of a court order or other written payment agreement alone may not be sufficient verification of amounts received by a family.

Verification will be obtained in the following order of priority:

- Copies of the receipts and/or payment stubs for the 12 months prior to BHA 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

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

7-III.E. NONRECURRING INCOME [Notice PIH 2023-27]

Income that will not be repeated beyond the coming year (i.e., the 12 months following the effective date of the certification), based on information provided by the family, is considered nonrecurring income and is

excluded from annual income. The BHA will accept self-certification from the family stating that income will not be repeated in the coming year. However, the BHA may choose, on a case-by-case basis, to require third-party verification that income sources will not be repeated in the coming year.

7-III.F. ASSETS AND INCOME FROM ASSETS

NET FAMILY ASSETS [24 CFR 5.603]

For families with net assets less than or equal to the HUD-published threshold listed in the current year's Inflation-Adjusted Values tables, the BHA will accept the family's self-certification of the value of family assets and anticipated asset income. The family's declaration must show the total amount of income expected from all assets. All family members 18 years of age and older must sign the family's declaration. The BHA reserves the right to require additional verification in situations where the accuracy of the declaration is in question. Any income the family expects to receive from assets will be included in the family's annual income. The family will be required to provide third-party verification of net family assets every three years.

When verification is required, in determining the value of checking or savings accounts, the BHA will use the current balance.

In determining the anticipated income from an interest-bearing checking or savings account when verification is required and the rate of return is known, the BHA will multiply the current balance of the account by the current rate of interest paid on the account. If a checking account does not bear interest, the anticipated income from the account is zero.

SELF-CERTIFICATION OF REAL PROPERTY OWNERSHIP [24 CFR 5.618(B)(2); NOTICE PIH 2023-27]

The BHA must determine whether a family has present ownership in real property that is suitable for occupancy for purposes of determining whether the family is compliant with the asset limitation described in Chapters 3

The BHA will accept self-certification from the family stating that the family does not have any present ownership in any real property. The certification must be signed by all family members 18 years of age and older. The BHA reserves the right to require additional verification in situations where the accuracy of the declaration is in question.

If the family declares they have a present ownership in real property, the BHA will obtain third-party verification of the following factors: whether the family has the legal right to reside in the property; whether the family has effective legal authority to sell the property; and whether the property is suitable for occupancy by the family as a residence. However, in cases where a family member is a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking, the BHA will comply with confidentiality requirements under 24 CFR 5.2007 and will accept a self-certification.

7-III.G. NET INCOME FROM RENTAL PROPERTY

The family must provide:

- A current executed lease for the property that shows the rental amount or certification from the current tenant
- A self-certification from the family members engaged in the rental of property providing an estimate of expenses for the coming year and the most recent IRS Form 1040 with Schedule E (Rental Income).
- If schedule E was not prepared, the BHA 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.H. FEDERAL TAX REFUNDS OR REFUNDABLE TAX CREDITS [Notice PIH 2023-27]

PHAs are not required to verify the amount of the family's federal tax refund or refundable tax credit(s) if the family's net assets are less than or equal to the HUD-published threshold listed in HUD's current year Inflation-Adjusted Values tables ($50,000 for 2024, $51,600 for 2025), even in years when full verification of assets is required or if the BHA does not accept self-certification of assets. The BHA must verify the amount of the family's federal tax refund or refundable tax credits if the family's net assets are greater than the HUD-published threshold.

7-III.I. RETIREMENT ACCOUNTS

The BHA 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.J. INCOME FROM EXCLUDED SOURCES [Notice PIH 2023-27]

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 BHA is **not** required to follow the verification hierarchy, For fully excluded income, the BHA is **not** required to document why third-party verification is not available, or report the income on the 50058. *Fully excluded income* is defined as income where the entire amount qualifies to be excluded from the annual income determination in accordance with 24 CFR 5.609(b) and any *Federal Register* notice on mandatory exclusions issued by HUD (for example, food stamps, earned income of a minor, or foster care funds).

The BHA will accept the family's self-certification as verification of fully excluded income. The BHA may request additional documentation if necessary to document the income source.

The BHA will verify the source and amount of partially excluded income as described in Part 1 of this chapter.

7-III.K. ZERO INCOME FAMILIES [Notice PIH 2023-27]

PHAs have discretion to establish reasonable procedures to manage the risk of unreported income, such as asking families to complete a zero-income worksheet at admission or periodically after admission to determine if they have any sources of unreported income or searching any UIV sources for unreported income.

In calculating annual income, PHAs must not assign monetary value to nonmonetary in-kind donations from a food bank or similar organization received by the family [24 CFR § 5.609(b)(24)(vi)].

PHAs may accept a self-certification of zero income from the family without taking any additional steps to verify zero reported income. HUD does not require such self-certifications be notarized.

The BHA will check UIV sources and/or may request information from third-party sources to verify that certain forms of income such as unemployment benefits, TANF, SS, SSI, earned income, child support, etc., are not being received by families claiming to have zero annual income.

The BHA will also require that each family member who claims zero income status complete a zero-income form. If any sources of income are identified on the form, the BHA will verify the income in accordance with the policies in this chapter prior to including the income in the family's annual income.

The BHA will only conduct interims in accordance with BHA policy in Chapter 11.

7-III.L. STUDENT FINANCIAL ASSISTANCE [24 CFR 5.609(b)(9)]

The regulations under HOTMA distinguish between two categories of student financial assistance paid to both full-time and part-time students. Any other grant-in-aid, scholarship, or other assistance amounts an individual receives for the actual covered costs charged by the institute of higher education not otherwise excluded by the federally mandated income exclusions are included [24 CFR 5.609(b)(9)(ii)].

The BHA will request written third-party verification of both the source and the amount of student financial assistance. Family-provided documents from the educational institution attended by the student will be requested, as well as documents generated by any other person or entity providing such assistance, as reported by the student.

In addition, unless the student's only source of assistance is assistance under Title IV of the HEA, the BHA will request written verification of the cost of the student's tuition, books, supplies, room and board, and other required fees and charges to the student from the educational institution.

If the BHA is unable to obtain third-party written verification of the requested information, the BHA will pursue other forms of verification following the verification hierarchy in section 7-I.B.

7-III.M. PARENTAL INCOME OF STUDENTS SUBJECT TO ELGIIBLITY RESTRICTIONS

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, does not have a dependent child, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the income of the student's parents must be considered when determining income eligibility, unless the student is determined independent from their parents or a *vulnerable youth* in accordance with BHA 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.

If the BHA is required to determine the income eligibility of a student's parents, the BHA will request an income declaration and certification of income from the appropriate parent(s) (as determined in section 3-II.E). The BHA will send the request directly to the parents, who will be required to certify to their income under penalty of perjury. The parents will be required to submit the information directly to the BHA. The required information must be submitted (postmarked) within 10 business days of the date of the BHA's request or within any extended timeframe approved by the BHA.

The BHA reserves the right to request and review supporting documentation at any time if it questions the declaration or certification. Supporting documentation may include, but is not limited to, Internal Revenue Service (IRS) tax returns, consecutive and original pay stubs, bank statements, pension benefit statements, benefit award letters, and other official and authentic documents from a federal, state, or local agency.

PART IV: VERIFYING MANDATORY DEDUCTIONS

7-IV.A. DEPENDENT AND ELDERLY/DISABLED HOUSEHOLD DEDUCTIONS

The dependent and elderly/disabled family deductions require only that the BHA verify that the family members identified as dependents or elderly/disabled persons meet the statutory definitions. No further verifications are required.

DEPENDENT DEDUCTION

See Chapter 6 for a full discussion of this deduction. The BHA must verify that:

- Any person under the age of 18 for whom the dependent deduction is claimed is not the head, spouse, or cohead of the family and is not a foster child
- Any person age 18 or older for whom the dependent deduction is claimed is not a foster adult or live-in aide, and is a person with a disability or a full time student

ELDERLY/DISABLED FAMILY DEDUCTION

See Eligibility chapter for a definition of elderly and disabled families and Chapter 6 for a discussion of the deduction. The BHA must verify that the head, spouse, or cohead is 62 years of age or older or a person with disabilities.

7-IV.B. HEALTH AND MEDICAL CARE EXPENSE DEDUCTION

Policies related to medical expenses are found in Chapter 6. The amount of the deduction will be verified following the standard verification procedures described in Part I.

The BHA must comply with the Health Insurance Portability and Accountability Act (HIPAA) (Pub. L. 104-191, 110 Stat. 1936) and the Privacy Act of 1974 (Pub. L. 93-579, 88 Stat. 1896) when requesting documentation to determine unreimbursed health and medical care expenses. The BHA may not request documentation beyond what is sufficient to determine anticipated health and medical care costs. Before placing bills and documentation in the tenant file, the BHA must redact all personally identifiable information [FR Notice 2/14/23].

AMOUNT OF EXPENSE

Medical expenses will be verified through:

- Written third-party documents provided by the family, such as pharmacy printouts or receipts.
- When income is projected at new admission or interim, the BHA will make a best effort to determine what expenses from the past are likely to continue to occur in the future. The BHA 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.
- When income is projected at new admission or interim, if third-party or document review is not possible, written family certification as to costs anticipated to be incurred during the upcoming 12 months.
- Before placing bills and documentation in the tenant file, the BHA will redact all personally identifiable information.

If the BHA receives documentation from a verification source that contains the individual's specific diagnosis, information regarding the individual's treatment, and/or information regarding the nature or severity of the person's disability, the BHA will immediately dispose of this confidential information; this information will never be maintained in the individual's file. If the information needs to be disposed of, the BHA will note in the individual's file that verification was received, the date received, and the name and address of the person/organization that provided the verification. Under no circumstances will the BHA include an applicant's or resident's medical records in the file [Notice PIH 2010-26].

In addition, the BHA must verify that:

- The household is eligible for the deduction.
- The costs to be deducted are qualified health and medical care 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 health and medical care expense deduction is permitted only for households in which the head, spouse, or cohead is at least 62, or a person with disabilities. The BHA 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 health and medical care expense deduction, the costs must qualify as medical expenses. See Chapter 6 for the BHA's policy on what counts as a medical expense.

UNREIMBURSED EXPENSES

To be eligible for the health and medical care expense deduction, the costs must not be reimbursed by another source.

EXPENSES INCURRED IN PAST YEARS

At new admission and interim reexam, when anticipated costs are related to on-going payment of medical bills incurred in past years, the BHA 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.

The BHA must comply with the Health Insurance Portability and Accountability Act (HIPAA) (Pub. L. 104-191, 110 Stat. 1936) and the Privacy Act of 1974 (Pub. L. 93-579, 88 Stat. 1896) when requesting documentation to determine unreimbursed auxiliary apparatus or attendance care costs. The BHA may not request documentation beyond what is sufficient to determine anticipated reasonable attendant care and auxiliary apparatus costs. Before placing bills and documentation in the tenant file, the BHA must redact all personally identifiable information [FR Notice 2/14/23].

AMOUNT OF EXPENSE

Attendant Care

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.
- When income is projected at new admission or interim, if third-party verification is not possible, written family certification as to costs anticipated to be incurred for the upcoming 12 months.

Before placing bills and documentation in the tenant file, the BHA will redact all personally identifiable information.

If the BHA receives documentation from a verification source that contains the individual's specific diagnosis, information regarding the individual's treatment, and/or information regarding the nature or severity of the person's disability, the BHA will immediately dispose of this confidential information; this information will never be maintained in the individual's file. If the information needs to disposed of, the BHA will note in the individual's file that verification was received, the date received, and the name and address of the person/organization that provided the verification. Under no circumstances will BHA include an applicant's or resident's medical records in the file [Notice PIH 2010-26].

Auxiliary Apparatus

Expenses for auxiliary apparatus will be verified through:

Written third-party documents provided by the family, such as billing statements for purchase of auxiliary apparatus, or other evidence of monthly payments or total payments that will be due for the apparatus during the upcoming 12 months.

Third-party verification form signed by the provider, if family-provided documents are not available.

If third-party verification is not possible, written family certification of estimated apparatus costs for the upcoming 12 months.

In addition, the BHA 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 Chapter 6.).
- The expense is not reimbursed from another source (as described in Chapter 6.).

FAMILY MEMBER IS A PERSON WITH DISABILITIES

To be eligible for the disability assistance expense deduction, the costs must be incurred for attendant care or auxiliary apparatus expense associated with a person with disabilities. The BHA will verify that the expense is incurred for a person with disabilities (See 7-II.F.).

FAMILY MEMBER(S) PERMITTED TO WORK

The BHA must verify that the expenses claimed actually enable a family member, or members, (including the person with disabilities) to work.

The BHA will request third-party verification from a rehabilitation agency or knowledgeable medical professional indicating that the person with disabilities requires attendant care or an auxiliary apparatus to be employed, or that the attendant care or auxiliary apparatus enables another family member, or members, to work (See 6-II.E.). This documentation may be provided by the family.

If third-party verification has been attempted and is either unavailable or proves unsuccessful, the family must certify that the disability assistance expense frees a family member, or members (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.

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. CHILDCARE EXPENSES

Policies related to childcare expenses are found in Chapter 6. The amount of the deduction will be verified following the standard verification procedures described in Part I of this chapter. In addition, the BHA 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 childcare.
- The costs are reasonable.

ELIGIBLE CHILD

To be eligible for the childcare deduction, the costs must be incurred for the care of a child under the age of 13. The BHA 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 childcare deduction, the costs must not be reimbursed by another source.

The family (and the care provider) will be required to certify that the childcare expenses are not paid or reimbursed to the family from any source.

PURSUING AN ELIGIBLE ACTIVITY

The BHA must verify that the family member(s) that the family has identified as being enabled to seek work, pursue education, or be gainfully employed, are actually pursuing those activities.

Information to be Gathered

The BHA will verify information about how the schedule for the claimed activity relates to the hours of care provided, the time required for transportation, the time required for study (for students), the relationship of the family member(s) to the child, and any special needs of the child that might help determine which family member is enabled to pursue an eligible activity.

Seeking Work

Whenever possible the BHA will use documentation from a state or local agency that monitors work-related requirements (e.g., welfare or unemployment). In such cases the BHA will request family-provided verification from the agency of the member's job seeking efforts to date, and require the family to submit to the BHA any reports provided to the other agency.

In the event third-party verification is not available, the BHA will provide the family with a form on which the family member must record job search efforts. The BHA will review this information at each subsequent reexamination for which this deduction is claimed.

Furthering Education

The BHA will request third-party documentation to verify that the person permitted to further their education by the childcare is enrolled and provide information about the timing of classes for which the person is registered. The documentation may be provided by the family.

Gainful Employment

The BHA will seek third-party verification of the work schedule of the person who is permitted to work by the childcare. 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 CHILDCARE

The type of care to be provided is determined by the family, but must fall within certain guidelines, as discussed in Chapter 6.

The BHA will verify that the type of childcare selected by the family is allowable, as described in Chapter 6.

The BHA will verify that the fees paid to the childcare provider cover only childcare costs (e.g., no housekeeping services or personal services) and are paid only for the care of an eligible child (e.g., prorate costs if some of the care is provided for ineligible family members).

The BHA will verify that the childcare 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 childcare costs can be deducted.

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 the BHA.
- Except for persons 62 or older, all noncitizens must sign a verification consent form
- Additional documents are required based upon the person's status.

Elderly Noncitizens

- A person 62 years of age or older who claims eligible immigration status also must provide proof of age such as birth certificate, passport, or documents showing receipt of SS old-age benefits.

All other Noncitizens

- Noncitizens that claim eligible immigration status also must present the applicable USCIS document. Acceptable USCIS documents are listed below.

• Form I-551 Alien Registration Receipt Card (for permanent resident aliens) • Form I-94 Arrival-Departure Record annotated with one of the following: • "Admitted as a Refugee Pursuant to Section 207" • "Section 208" or "Asylum" • "Section 243(h)" or "Deportation stayed by Attorney General" • "Paroled Pursuant to Section 221 (d)(5) of the USCIS"	• Form I-94 Arrival-Departure Record with no annotation accompanied by: • A final court decision granting asylum (but only if no appeal is taken); • A letter from a USCIS asylum officer granting asylum (if application is filed on or after 10/1/90) or from a USCIS district director granting asylum (application filed before 10/1/90); • A court decision granting withholding of deportation; or • A letter from an asylum officer granting withholding or deportation (if application filed on or after 10/1/90).
• Form I-688 Temporary Resident Card annotated "Section 245A" or Section 210".	Form I-688B Employment Authorization Card annotated "Provision of Law 274a. 12(11)" or "Provision of Law 274a.12".

- A receipt issued by the USCIS indicating that an application for issuance of a replacement document in one of the above listed categories has been made and the applicant's entitlement to the document has been verified; or
- Other acceptable evidence. If other documents are determined by the USCIS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the *Federal Register*

CHAPTER 8: HOUSING QUALITY STANDARDS AND RENT REASONABLENESS DETERMINATIONS

[24 CFR 982 Subpart I and 24 CFR 982.507]

Owners must maintain all units occupied by families receiving Housing Choice Voucher (HCV) assistance in accordance with housing quality standards. Units assisted under the program must comply with HUD's National Standards for the Physical Inspection of Real Estate (NSPIRE) regulations and standards no later than October 1, 2025. Until such time, the BHA may continue using the HQS inspection standards.

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 BHA 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 BHA 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 BHA 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.

NSPIRE AND HQS

Even once the HQS inspection standard has sunset, the regulations at 24 CFR Part 982 and 983 governing the HCV and PBV programs will continue to use the terms *HQS* and *housing quality standards* rather than *NSPIRE*. This is because the definition of *housing quality standards (HQS)* at 24 CFR 982.4 means the minimum quality standards developed by HUD in accordance with 24 CFR 5.703 for the HCV program, including any variations approved by HUD for the BHA. As such, the model policy uses the term *housing quality standards* whenever applicable regulations use this term. Except in the chapter describing HQS, the acronym *HQS* is not used in the model policy in order to avoid confusion between the umbrella term meaning housing standards and the specific inspection protocol. The model policy only uses the term *NSPIRE* when referring to specific NSPIRE standards.

PART I: PHYSICAL STANDARDS

8-I.A. GENERAL HUD RQUIREMENTS

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.

NSPIRE STANDARDS APPLICABLE TO HQS [HUD LETTER 6/14/24]

Even if the BHA is still under the HQS inspection standard, the BHA must apply the following requirements under NSPIRE:

- The NSPIRE standards for carbon monoxide alarms are currently applicable even if the BHA has not yet transitioned to NSPIRE;
- PHAs are required to comply with the NSPIRE Smoke Alarm Standard prior to December 3, 2024; and
- The Visual Assessment Standard for Potential Lead-Based Paint Hazard in 24 CFR Part 35 Subparts M and H apply.

TENANT PREFERENCE ITEMS

HUD requires the BHA to enforce minimum HQS but also recognizes that certain judgments about the acceptability of the unit are left to the family. For example, the BHA must ensure that the unit contains the

required sanitary facilities, but the family decides whether the cosmetic appearance of the facilities is acceptable. Exhibit 8-2 summarizes those items that are considered tenant preferences.

MODIFICATIONS TO PROVIDE ACCESSIBILITY

Under the Fair Housing Act of 1988 an owner must not refuse the request of a family that contains a person with a disability to make necessary and reasonable modifications to the unit. Such modifications are at the family's expense. The owner may require restoration of the unit to its original condition if the modification would interfere with the owner or next occupant's full enjoyment of the premises. The owner may not increase a customarily required security deposit. However, the landlord may negotiate a restoration agreement that requires the family to restore the unit and, if necessary to ensure the likelihood of restoration, may require the tenant to pay a reasonable amount into an interest bearing escrow account over a reasonable period of time. The interest in any such account accrues to the benefit of the tenant. The owner may also require reasonable assurances that the quality of the work will be acceptable and that any required building permits will be obtained. [24 CFR 100.203; Notice 2003-31].

Modifications to units to provide access for a person with a disability must meet all applicable HQS requirements and conform to the design, construction, or alteration of facilities contained in the UFAS and the ADA Accessibility Guidelines (ADAAG) [28 CFR 35.151(c) and Notice 2003-31] See Chapter 2 of this plan for additional information on reasonable accommodations for persons with disabilities.

8-I.B. ADDITIONAL LOCAL REQUIREMENTS

The BHA may impose variations to the HQS as long as the additional criteria are not likely to adversely affect the health or safety of participant families or severely restrict housing choices for families. HUD approval is required for variations to the HQS. HUD approval is not required if the variations are clarifications of HUD's acceptability criteria or performance standards [24 CFR 982.401(a)(4)].

THERMAL ENVIRONMENT [HCV GB P.10-7]

The heating system must be capable of maintaining an interior temperature of a minimum 68 degrees Ffrom September 15 – June 15 from 7am – 11pm, and 64 degrees F from 11:01pm – 6:49am. The temperature during the heating season shall at no time exceed 78 degrees F. [105 CMR 410.201]

CLARIFICATIONS OF HUD REQUIREMENTS

As permitted by HUD, the BHA 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); FR Notice 1/18/17]

HUD requires BHA 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 BHA notification. BHA's definition of life threatening conditions includes the following:

- Any condition that jeopardizes the security of the unit
- Major plumbing leaks or flooding, waterlogged ceiling or floor in imminent danger of falling
- Natural 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 state limits which required the supply of heat
- Utilities not in service, including no running hot water
- Conditions that present the imminent of possibility of injury
- Obstacles that prevent safe entrance or exit from the unit
- Absence of a functioning toilet in the unit
- Inoperable smoke detectors
- Missing or inoperable carbon monoxide detector
- Missing, damaged, discharged, overcharged, or expired fire extinguisher (when required)
- Gas/oil-fired water heater or heating, ventilation, or cooling system with missing, damaged, improper, or misaligned chimney venting

If an owner fails to correct life threatening conditions as required by BHA, the housing assistance payment will be abated and the HAP Contract will be terminated.

If a family fails to correct a family caused life threatening condition as required by BHA, BHA may terminate the family's assistance.

The owner will be required to repair an inoperable smoke detector unless BHA 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]

The following is applicable to HAP contracts executed or renewed June 5, 2024, or earlier:

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 ordinary wear and tear that results in a breach of the HQS. *Ordinary 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.

The owner is responsible for all housing quality violations not listed as a family responsibility above, even if the violation is caused by the family's living habits (e.g., vermin infestation). However, if the family's actions constitute a serious or repeated lease violation, the owner may take legal action to evict the family.

The owner will be required to repair an inoperable smoke detector unless the BHA determines that the family has intentionally disconnected it (by removing batteries or other means). In this case, the family will be required to repair the smoke detector within 24 hours.

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

The following is applicable to HAP contracts executed or renewed June 6, 2024, or later:

OWNER OBLIGATION

The owner must maintain the unit in accordance with housing quality standards. A unit is not in compliance with housing quality standards if the BHA or other inspector authorized by the state or local government determines that the unit has housing quality standards deficiencies based upon an inspection, notifies the owner in writing of the deficiencies, and the deficiencies are not remedied within the appropriate time frame.

In the case of a housing quality standards deficiency that the BHA determines is caused by the tenant, any member of the household, or any guest or other person under the tenant's control (other than damage resulting from ordinary use), the BHA may waive the owner's responsibility to remedy the violation. The HAP to the owner may not be withheld or abated if the owner responsibility has been waived. However, if the family's actions constitute a serious or repeated lease violation, the owner may take legal action to evict the family. In addition, the BHA may terminate the family's assistance because of a housing quality standards breach (beyond damage resulting from ordinary use) caused by any member of the household, guest, or other person under the tenant's control.

The BHA will waive the owner's responsibility for housing quality standards deficiencies that have been determined to have been caused by the tenant, any member of the household, or any guest or other person under the tenant's control, to the extent the tenant can be held responsible for ensuring that the deficiencies are corrected: the tenant must take all necessary steps permissible under the lease and state and local law to remedy the deficiency. This may include paying the owner for the cost of the necessary repairs in accordance with the lease.

FAMILY RESPONSIBILITIES

The family may be held responsible for a breach of housing quality standards caused by any of the following:

- Tenant-paid utilities not in service;
- Failure to provide or maintain appliances owned by the family; and
- Damage to the dwelling unit or premises caused by a household member or guest beyond ordinary wear and tear.

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

If the BHA has waived the owner's responsibility to remedy the violation as outlined under the owner obligations above, the following applies:

- If the housing quality standards breach caused by the family is life-threatening, the family must take all steps permissible under the lease and state and local law to ensure the deficiency is corrected within 24 hours of notification.
- For other family-caused deficiencies, the family must take all steps permissible under the lease and state and local law to ensure the deficiency is corrected within 30 calendar days of notification (or any BHA -approved extension).

If the family has caused a breach of the HQS, the BHA must take prompt and vigorous action to enforce the family obligations. The BHA may terminate assistance for the family in accordance with 24 CFR 982.552.

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 the BHA 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 BHA 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 BHA, or the evaluation from the public health department, the owner is required to complete the reduction of identified lead-based paint hazards in accordance with the lead-based paint regulations [24 CFR 35.1325 and 35.1330; 40 CFR 745.227]. If the owner does not complete the "hazard reduction" as required, the dwelling unit is in violation of HQS and the BHA will take action in accordance with Section 8-II.G.

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

PART II: THE INSPECTION PROCESS

8-II.A. OVERVIEW

TYPES OF INSPECTIONS

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

- *Initial Inspections*. The BHA conducts initial inspections in response to a request from the family to approve a unit for participation in the HCV program.
- *Periodic Inspections*. HUD requires the BHA to inspect each unit under lease at least annually or biennially, depending on BHA 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.
- *Interim 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.
- *Supervisory 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 BHA-OWNED UNITS [24 CFR 982.352(B)]

The BHA must obtain the services of an independent entity to perform all HQS inspections in cases where an HCV family is receiving assistance in a BHA-owned unit as defined in 24 CFR 982.4. The independent entity must communicate the results of each inspection to the family and the BHA. The independent agency must be approved by HUD and may be the unit of general local government for the BHA jurisdiction (unless the BHA is itself the unit of general local government or an agency of such government). The BHA must inform the family, both orally and in writing, that the family has the right to select any eligible unit available for lease. BHA-owned unit is freely selected by the family, without BHA pressure or steering.

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

INSPECTION COSTS [NOTICE PIH 2016-05; 24 CFR 5.705(H)]

The BHA will not charge a fee to tenants or property owners for inspections.

REMOTE VIDEO INSPECTIONS (RVIS) [NOTICE PIH 2020-31]

The BHA will not conduct any HQS inspection using RVI.

NOTICE AND SCHEDULING

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

OWNER AND FAMILY INSPECTION ATTENDANCE

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

At initial inspection of a vacant unit, the BHA 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 982.405(a)]

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

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

If the BHA adopts the alternative inspection option in combination with the non-life-threatening deficiencies option, the BHA must follow family and owner notification requirements listed at 24 CFR 982.406(f). Otherwise, if neither of the above provisions are adopted, the BHA must determine that the unit the family selects meets NSPIRE standards prior to approving tenancy.

APPROVING UNITS WITH NON-LIFE-THREATENING DEFICIENCIES [FR NOTICE 1/18/17; NOTICE PIH 2017-20; FR NOTICE 5/7/24; AND 24 CFR 982.405(J)]

The BHA will not allow for occupancy of units that do not pass the initial inspection on or before the effective date of the HAP Contract, even if the inspection failure is due to Non-Life Threatening Deficiencies.

APPROVING UNITS USING ALTERNATIVE INSPECTIONS [FR NOTICE 1/18/17; NOTICE PIH 2017-20; FR NOTICE 5/7/24; AND 24 CFR 982.406]

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

TIMING OF INITIAL INSPECTIONS [24 CFR 982.305(B)(2)(I)]

The BHA 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 REINSPECTIONS

If any HQS violations are identified, the owner will be notified of the deficiencies and be given a time frame to correct them. If requested by the owner, the time frame for correcting the deficiencies may be extended by the BHA for good cause.

If the time period for correcting the deficiencies (or any BHA-approved extension) has elapsed, or the unit fails HQS at the time of the reinspection, the BHA will notify the owner and the family that the unit has been rejected and that the family must search for another unit. The BHA may agree to conduct a second reinspection, for good cause, at the request of the family and owner.

Following a failed reinspection, the family may submit a new Request for Tenancy Approval for the same unit after the owner has made repairs, if they are unable to locate another suitable unit.

UTILITIES

Generally, at initial lease-up the owner is responsible for demonstrating that all utilities are in working order including those utilities that the family will be responsible for paying.

The BHA will not execute a HAP contract until all utilities are operational.

APPLIANCES [FORM HUD-52580]

If the family is responsible for supplying the stove and/or refrigerator, the BHA will allow the stove and refrigerator to be placed in the unit after the unit has met all other HQS requirements. The required appliances must be in place before the HAP contract is executed by the BHA. The BHA will execute the HAP contract based upon a certification from the family that the appliances have been installed and are working. A confirmatory inspection will be scheduled within 30 days of HAP contract approval.

8-II.C. PERIODIC HQS INSPECTIONS [24 CFR 982.405(b) and Notice PIH 2016-05]

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

The BHA will not rely on alternative inspection standards.

SCHEDULING THE INSPECTION

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

If the family misses the first scheduled appointment without requesting a new inspection date, the BHA will automatically schedule a second inspection. If the family misses two scheduled inspections without BHA approval, the BHA will consider the family to have violated its obligation to make the unit available for inspection. This may result in the termination of the family's assistance in accordance with Chapter 12.

8-II.D. INTERIM INSPECTIONS [24 CFR 982.405(d)]

If a participant or government official notifies the BHA of a potential deficiency, the following applies:

- If the reported deficiency is life-threatening, the BHA must, within 24 hours of notification, both inspect the housing unit and notify the owner if the life-threatening deficiency is confirmed. The owner must then make the repairs within 24 hours of BHA notification.
- If the reported deficiency is non-life-threatening, the BHA must, within 15 days of notification, both inspect the unit and notify the owner if the deficiency is confirmed. The owner must then make the repairs within 30 days of notification from the BHA or within any BHA-approved extension.

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

HUD requires a BHA supervisor or other qualified person to conduct quality control inspections of a sample of units to ensure that each inspector is conducting accurate and complete inspections and that there is consistency in the application of the HQS.

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

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

The following is applicable to HAP contracts executed or renewed June 5, 2024, or earlier:

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 BHA will determine (1) whether or not the failure is a life-threatening condition and (2) whether the family or owner is responsible.

When life-threatening conditions are identified, the BHA will immediately notify both. The notice will specify who is responsible for correcting the violation. The corrective actions must be taken within 24 hours of the BHA's notice.

When failures that are not life-threatening are identified, the BHA will send the owner and the family a written notification of the inspection results within five business days of the inspection. The written notice will specify who is responsible for correcting the violation, and the time frame within which the failure must be corrected. Generally, not more than 30 days will be allowed for the correction.

The notice of inspection results will inform the owner that if life-threatening conditions are not corrected within 24 hours, and non-life-threatening conditions are not corrected within the specified time frame (or any BHA-approved extension), the owner's HAP will be abated in accordance with BHA policy (see 8-II.G.).

Likewise, in the case of family caused deficiencies, the notice will inform the family that if corrections are not made within the specified time frame (or any BHA-approved extension, if applicable) the family's assistance will be terminated in accordance with BHA policy (see Chapter 12).

The following is applicable to HAP contracts executed or renewed June 6, 2024, or later:

NOTIFICATION OF CORRECTIVE ACTIONS [24 CFR 982.404(D)(1)]

The owner must maintain the unit in accordance with housing quality standards. The unit is in noncompliance with housing quality standards if:

- The BHA or authorized inspector determines the unit has housing quality standards deficiencies based upon an inspection
- The BHA notified the owner in writing of the unit housing quality standards deficiencies; and
- The unit's housing quality standards deficiencies are not corrected within the required timeframes.

The BHA may withhold assistance payments for units that have deficiencies once the owner has been notified in writing of the deficiencies. In this case, if the unit is brought into compliance during the applicable cure period, the BHA must resume assistance payments and provide payments to cover the time period for which the payments were withheld.

The BHA must abate the HAP, including amounts that had been withheld, if the owner fails to make the repairs within the applicable cure period. In this case, the BHA must notify the family and the owner that it is abating payments and, if the unit does not meet housing quality standards within 60 days, the BHA will terminate the HAP contract for the unit and the family will have to move to receive continued assistance. In this case, the BHA must issue the family its voucher to move at least 30 days prior to the termination of the HAP contract.

EXTENSIONS

For conditions that are life-threatening, the BHA cannot grant an extension to the 24 hour corrective action period. For conditions that are not life-threatening, the BHA may grant an exception to the required time frames for correcting the violation, if the BHA determines that an extension is appropriate [24 CFR 982.404].

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

- A repair cannot be completed because required parts or services are not available.
- A repair cannot be completed because of weather conditions.
- A reasonable accommodation is needed because the family includes a person with disabilities.

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

REINSPECTIONS [24 CFR 982.405(I)]

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

The family and owner will be given reasonable notice of the reinspection appointment. If the deficiencies have not been corrected by the time of the reinspection, the BHA 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 BHA policies. If the BHA is unable to gain entry to the unit in order to conduct the scheduled reinspection, the BHA will consider the family to have violated its obligation to make the unit available for inspection. This may result in termination of the family's assistance in accordance with Chapter 12.

The BHA will not accept self-certification of HQS repairs.

8-II.G. ENFORCING OWNER COMPLIANCE

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

The following is applicable to HAP contracts executed or renewed June 5, 2024, or earlier:

HAP ABATEMENT

If an owner fails to correct HQS deficiencies by the time specified by the BHA, HUD requires the BHA to abate housing assistance payments no later than the first of the month following the specified correction period (including any approved extension) [24 CFR 985.3(f)]. No retroactive payments will be made to the owner for the period of time the rent was abated. Owner rents are not abated as a result of HQS failures that are the family's responsibility.

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

The BHA will inspect abated units once notified that repairs have been made. Payment will resume effective on the day the unit passes inspection.

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

HAP CONTRACT TERMINATION

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

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

The following is applicable to HAP contracts executed or renewed June 6, 2024, or later:

HAP WITHHOLDING [24 CFR 982.404(D)(1)]

The BHA will not withhold assistance payments upon notification to the owner of the deficiencies.

HAP ABATEMENT [24 CFR 982.404(D)(2)]

The BHA must abate the HAP if the owner fails to make the repairs within the applicable cure period. In this case, the BHA must notify the family and the owner that it is abating payments and, if the unit does not meet housing quality standards within 60 days, the BHA will terminate the HAP contract for the unit and the family will have to move to receive continued assistance. In this case, the BHA must issue the family its voucher to move at least 30 days prior to the termination of the HAP contract.

The owner may not terminate the tenancy of any family due to the withholding or abatement of assistance.

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

The BHA will inspect abated units upon 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.

For BHA policies on family moves when units are in abatement and termination of the HAP contract when a family moves due to deficiencies, see Section 10-I.B.

HAP CONTRACT TERMINATION

The maximum length of time that HAP may be abated is 60 days. However, if the owner completes corrections and notifies the BHA before the termination date of the HAP contract, the BHA may rescind the termination notice if (1) the family still resides in the unit and wishes to remain in the unit and (2) the unit passes inspection.

Reasonable notice of HAP contract termination by the BHA is 30 days. The BHA will issue a voucher to permit the family to move to another unit as described in Chapter 10.

8-II.H. ENFORCING FAMILY COMPLIANCE WITH HQS [24 CFR 982.404(B)]

The following is applicable to HAP contracts executed or renewed June 5, 2024, or earlier:

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 BHA (and any extensions), the BHA 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.

The following is applicable to HAP contracts executed or renewed June 6, 2024, or later:

If the BHA waived the landlord responsibility for housing quality standards deficiencies that have been determined to have been caused by the tenant, any member of the household, or any guest or other person under the tenant's control (see section 8-I.D), the family is responsible for correcting any housing quality standards violations listed in paragraph 8.I.D. If the family fails to correct a violation within the period allowed by the BHA (and any extensions), the BHA 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 and may enter into a repayment agreement with the family.

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 BHA has determined that the rent for the unit is reasonable. The purpose of the rent reasonableness test is to ensure that a fair rent is paid for each unit rented under the HCV program.

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

BHA-OWNED UNITS [24 CFR 982.352(B)]

In cases where an HCV family is receiving assistance in a BHA-owned unit, the BHA 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 BHA-owned unit is defined as a unit that is owned by the BHA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the BHA). The independent agency must communicate the results of the rent reasonableness determination to the family and the BHA. The independent agency must be approved by HUD, and may be the unit of general local government for the BHA jurisdiction (unless the BHA 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 BHA 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 BHA (or independent agency in the case of BHA-owned units) will assist the family with the negotiations upon request. At initial occupancy the BHA must determine whether the proposed rent is reasonable before a HAP Contract is signed. The owner must not change the rent during the initial lease term. Subsequent requests for rent adjustments must be consistent with the lease between the owner and the family. Rent increases will not be approved unless any failed items identified by the most recent HQS inspection have been corrected.

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

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

All rents adjustments will be effective the first of the month following 60 days after the BHA's receipt of the owner's request or on the date specified by the owner, whichever is later.

BHA AND HUD-INITIATED RENT REASONABLENESS DETERMINATIONS

HUD requires the BHA 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 BHA to make a determination at any other time. The BHA may decide that a new determination of rent reasonableness is needed at any time.

In addition to the instances described above, the BHA will make a determination of rent reasonableness at any time after the initial occupancy period if: (1) the BHA determines that the initial rent reasonableness determination was in error or (2) the BHA 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 BHA 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 BHA for the unit size involved.

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 BHA 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 BHA information regarding rents charged for other units on the premises.

8-III.D BHA RENT REASONABLENESS METHODOLOGY

HOW MARKET DATA IS COLLECTED

The BHA largely uses a third-party software database called GoSection8 to track market rent data for the purpose of conducting rent reasonableness certifications.

The BHA may also collect and maintain data on market rents in its jurisdiction if necessary. Information sources include newspapers, realtors, market surveys, inquiries of owners and other available sources. The BHA will not utilize data more than 12-years old for completing rent reasonableness in this manner.

HOW RENTS ARE DETERMINED

The rent for a unit proposed for HCV assistance will be compared to the rent charged for comparable units in the same market area. Because units may be similar, but not exactly like the unit proposed for HCV assistance, the BHA 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 x 11 months = 5500/12 months = actual monthly rent of $488.

The BHA will notify the owner of the rent the BHA can approve based upon its analysis of rents for comparable units. The owner may submit information about other comparable units in the market area. The

BHA will confirm the accuracy of the information provided and consider this additional information when making rent determinations. The owner must submit any additional information within five business days of the BHA's request for information or the owner's request to submit information.

The BHA largely uses a third-party software GoSection8 to collect rental comparisons for units and conduct rent reasonableness determinations on units.

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 BHA
- 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 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 BHA). 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.

EXHIBIT 8-2: SUMMARY OF TENANT PREFERENCE AREAS RELATED TO HOUSING QUALITY

Note: This document provides an overview of unit and site characteristics and conditions for which the family determines acceptability. For more detailed information see the following documents:

- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)

Provided the minimum housing quality standards have been met, HUD permits the family to determine whether the unit is acceptable with regard to the following characteristics.

- *Sanitary Facilities*. The family may determine the adequacy of the cosmetic condition and quality of the sanitary facilities, including the size of the lavatory, tub, or shower; the location of the sanitary facilities within the unit; and the adequacy of the water heater.
- *Food Preparation and Refuse Disposal*. The family selects size and type of equipment it finds acceptable. When the family is responsible for supplying cooking appliances, the family may choose to use a microwave oven in place of a conventional oven, stove, or range. When the owner is responsible for providing cooking appliances, the owner may offer a microwave oven in place of an oven, stove, or range only if other subsidized and unsubsidized units on the premises are furnished with microwave ovens only. The adequacy of the amount and type of storage space, the cosmetic conditions of all equipment, and the size and location of the kitchen are all determined by the family.
- *Space and Security*. The family may determine the adequacy of room sizes and room locations. The family is also responsible for deciding the acceptability of the type of door and window locks.
- *Energy conservation items*. The family may determine whether the amount of insulation, presence of absence of storm doors and windows and other energy conservation items are acceptable.
- *Illumination and Electricity*. The family may determine whether the location and the number of outlets and fixtures (over and above those required to meet HQS standards) are acceptable or if the amount of electrical service is adequate for the use of appliances, computers, or stereo equipment.
- *Structure and Materials.* Families may determine whether minor defects, such as lack of paint, or worn flooring or carpeting will affect the livability of the unit.
- *Indoor Air.* Families may determine whether window and door screens, filters, fans, or other devices for proper ventilation are adequate to meet the family's needs. However, if screens are present they must be in good condition.
- *Sanitary Conditions.* The family determines whether the sanitary conditions in the unit, including minor infestations, are acceptable.
- *Neighborhood conditions.* Families may determine whether neighborhood conditions such as the presence of drug activity, commercial enterprises, and convenience to shopping will affect the livability of the unit.

Families have no discretion with respect to lead-based paint standards and smoke detectors.

CHAPTER 8: NATIONAL STANDARDS FOR THE PHYSICAL INSPECTION OF REAL ESTATE AND RENT REASONABLENESS DETERMINATIONS

[24 CFR 5 Subpart G and Notice PIH 2024-26]

OVERVIEW

Owners must maintain all units occupied by families receiving Housing Choice Voucher (HCV) and Project Based Voucher (PBV) assistance in accordance with housing quality standards. Units assisted under the program must comply with HUD's National Standards for the Physical Inspection of Real Estate (NSPIRE) regulations and standards no later than October 1, 2025. The inspection performance standards and procedures for conducting NSPIRE inspections must be included in the administrative plan [Notice PIH 2024-26].

All units must pass an inspection prior to the approval of a lease (with some exceptions) and at least once every 24 months (or 36 months for small rural PHAs) during the term of the HAP contract, and at other times as needed, to determine that the unit meets housing quality standards. HUD also requires PHAs to determine that rents for units under the program are reasonable when compared to comparable unassisted units in the market area.

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

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

> Part I. Physical Standards. This part discusses NSPIRE standards required of units occupied by HCV and PBV-assisted families. It also identifies affirmative habitability requirements for all units and life-threatening conditions that must be corrected in 24 hours.
>
> Part II. The Inspection Process. This part describes the types of inspections the BHA will make and the steps that will be taken when units do not meet NSPIRE standards.
>
> Part III. Rent Reasonableness Determinations. This part discusses the policies the BHA will use to make rent reasonableness determinations.

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

NSPIRE AND HQS

Even once the HQS inspection standard has sunset, the regulations at 24 CFR Part 982 and 983 governing the HCV and PBV programs will continue to use the terms *HQS* and *housing quality standards* rather than *NSPIRE*. This is because the definition of *housing quality standards (HQS)* at 24 CFR 982.4 means the minimum quality standards developed by HUD in accordance with 24 CFR 5.703 for the HCV program, including any variations approved by HUD for the BHA. As such, the model policy uses the term *housing quality standards* whenever applicable regulations use this term. Except in the chapter describing HQS, the acronym *HQS* is not used in the model policy in order to avoid confusion between the umbrella term meaning housing standards and the specific inspection protocol. The model policy only uses the term *NSPIRE* when referring to specific NSPIRE standards.

PART I: NSPIRE STANDARDS

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

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

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

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

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

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

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

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

Under the Fair Housing Act of 1988 an owner must make reasonable accommodations in rules, policies, practices, or services if necessary for a person with disabilities to use the housing and must not refuse the request of a family that contains a person with a disability to make necessary and reasonable modifications to the unit if such modification is necessary to afford the person with a disability full enjoyment of the premises. Such modifications are at the family's expense. The owner may, where it is reasonable to do so, require restoration of the unit to its original condition (reasonable wear and tear excepted) if the modification would interfere with the owner or next occupant's full enjoyment of the premises. The owner may not increase a customarily required security deposit. However, the landlord may negotiate a restoration agreement that requires the family to restore the unit and, if necessary to ensure the likelihood of restoration, may require the tenant to pay a reasonable amount into an interest- bearing escrow account over a reasonable period of time. The interest in any such account accrues to the benefit of the tenant. The owner may also require reasonable assurances that the quality of the work will be acceptable and that any required building permits will be obtained. [24 CFR 100.203; Notice 2003-31].

Modifications to units to provide access for a person with a disability must meet all applicable NSPIRE requirements and conform to the design, construction, or alteration of facilities contained in the UFAS and the ADA Accessibility Guidelines (ADAAG) [28 CFR 35.151(c) and Notice 2003-31] See Chapter 2 of this plan for additional information on reasonable accommodations for persons with disabilities.

8-I.D. ADDITIONAL LOCAL REQUIREMENTS [24 CFR 5.705(a)(3) and Notice PIH 2024-26]

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

8-I.E. LIFE-THREATENING DEFICIENCIES [Notice PIH 2024-26]

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

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

Inspectable Item	Deficiency
Call-for-Aid System	System is blocked, or pull cord is higher than 6 inches off the floor.
	System does not function properly
Carbon Monoxide Alarm	Carbon monoxide alarm is missing, not installed, or not installed in a proper location.
	Carbon monoxide alarm is obstructed.
	Carbon monoxide alarm does not produce an audio or visual alarm when tested.
Chimney	A visually accessible chimney, flue, or firebox connected to a fireplace or wood-burning appliance is incomplete or damaged such that it may not safely contain fire and convey smoke and combustion gases to the exterior.
	Chimney exhibits signs of structural failure.
Clothes Dryer Exhaust Ventilation	Electric dryer transition duct is detached or missing.
	Gas dryer transition duct is detached or missing.
	Electric dryer exhaust ventilation system has restricted airflow.
	Dryer transition duct is constructed of unsuitable material.
	Gas dryer exhaust ventilation system has restricted airflow.
Door – Entry	Entry door is missing.
Door – Fire Labeled	Fire labeled door is missing.
Egress	Obstructed means of egress.
	Sleeping room is located on the third floor or below and has an obstructed rescue opening.
	Fire escape is obstructed.
Electrical – Conductor, Outlet, and Switch	Outlet or switch is damaged.
	Exposed electrical conductor.
	Water is currently in contact with an electrical conductor.
Electrical – Service Panel	The overcurrent protection device is damaged.
Exit Sign	Exit sign is damaged, missing, obstructed, or not adequately illuminated.
Fire Escape	Fire escape component is damaged or missing.
Fire Extinguisher	Fire extinguisher pressure gauge reads over or under-charged.
	Fire extinguisher service tag is missing, illegible, or expired.
	Fire extinguisher is damaged or missing.
Flammable and Combustible Items	Flammable or combustible item is on or within 3 feet of an appliance that provides heat for thermal comfort or a fuel-burning water heater; OR Improperly stored chemicals.
Guardrail	Guardrail is missing or not installed.
	Guardrail is not functionally adequate.

Inspectable Item	Deficiency
Heating, Ventilation, and Air Conditioning (HVAC)	The inspection date is on or between October 1 and March 31 and the permanently installed heating source is not working or the permanently installed heating source is working and the interior temperature is below 64 degrees Fahrenheit.
	Unvented space heater that burns gas, oil, or kerosene is present.
	Combustion chamber cover or gas shutoff valve is missing from a fuel burning heating appliance.
	Fuel burning heating system or device exhaust vent is misaligned, blocked, disconnected, improperly connected, damaged, or missing.
Leak – Gas or Oil	Natural gas, propane, or oil leak.
Mold-like Substance	Presence of mold-like substance at extremely high levels is observed visually.
Smoke Alarm	Smoke alarm is not installed where required.
	Smoke alarm is obstructed.
	Smoke alarm does not produce an audio or visual alarm when tested.
Sprinkler Assembly	Sprinkler head assembly is encased or obstructed by an item or object that is within 18 inches of the sprinkler head.
	Sprinkler assembly component is damaged, inoperable, or missing and it is detrimental to performance.
	Sprinkler assembly has evidence of corrosion.
	Sprinkler assembly has evidence of foreign material that is detrimental to performance.
Structural System	Structural system exhibits signs of serious failure.
Toilet	Only 1 toilet was installed, and it is missing.
Water Heater	Chimney or flue piping is blocked, misaligned, or missing.
	Gas shutoff valve is damaged, missing, or not installed.

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

Utilities not in service, including no running hot water

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

The following is applicable to HAP contracts executed or renewed June 5, 2024, or earlier:

FAMILY RESPONSIBILITIES

The family is responsible for correcting the following deficiencies:

- Tenant-paid utilities not in service
- Failure to provide or maintain appliances owned by the family
- Damage to the unit or premises caused by a household member or guest beyond ordinary wear and tear.

If a family fails to correct a family-caused life-threatening condition as required by the BHA, the BHA will enforce the family obligations. See 8-II.H.

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

OWNER RESPONSIBILITIES

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

The owner is responsible for all housing quality violations not listed as a family responsibility above, even if the violation is caused by the family's living habits (e.g., vermin infestation). However, if the family's actions constitute a serious or repeated lease violation, the owner may take legal action to evict the family.

The owner will be required to repair an inoperable smoke detector unless the BHA determines that the family has intentionally disconnected it (by removing batteries or other means). In this case, the family will be required to repair the smoke detector within 24 hours.

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

The following is applicable to HAP contracts executed or renewed June 6, 2024, or later.

OWNER OBLIGATION

The owner must maintain the unit in accordance with housing quality standards. A unit is not in compliance with housing quality standards if the BHA or other inspector authorized by the state or local government determines that the unit has housing quality standards deficiencies based upon an inspection, notifies the owner in writing of the deficiencies, and the deficiencies are not remedied within the appropriate time frame.

In the case of a housing quality standards deficiency that the BHA determines is caused by the tenant, any member of the household, or any guest or other person under the tenant's control (other than damage resulting from ordinary use), the BHA will waive the owner's responsibility for housing quality standards deficiencies that have been determined to have been caused by the tenant, any member of the household, or any guest or other person under the tenant's control, to the extent the tenant can be held responsible for ensuring that the deficiencies are corrected: the tenant must take all necessary steps permissible under the lease and state and local law to remedy the deficiency. This may include paying the owner for the cost of the necessary repairs in accordance with the lease.

In addition, the BHA may terminate the family's assistance because of a housing quality standards breach (beyond damage resulting from ordinary use) caused by any member of the household, guest, or other person under the tenant's control.

FAMILY RESPONSIBILITIES

The family may be held responsible for a breach of housing quality standards caused by any of the following:

- Tenant-paid utilities not in service;
- Failure to provide or maintain appliances owned by the family; and
- Damage to the dwelling unit or premises caused by a household member or guest beyond ordinary wear and tear.

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

If the BHA has waived the owner's responsibility to remedy the violation as outlined under the owner obligations above, the following applies:

- If the housing quality standards breach caused by the family is life-threatening, the family must take all steps permissible under the lease and state and local law to ensure the deficiency is corrected within 24 hours of notification.
- For other family-caused deficiencies, the family must take all steps permissible under the lease and state and local law to ensure the deficiency is corrected within 30 calendar days of notification (or any BHA-approved extension).

If the family has caused a breach of housing quality standards, the BHA must take prompt and vigorous action to enforce the family obligations. The BHA may terminate assistance for the family in accordance with 24 CFR 982.552.

8-I.G. LEAD-BASED PAINT

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

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

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

If the BHA 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 BHA 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 BHA, or the evaluation from the public health department, the owner is required to complete the reduction of identified lead-based paint hazards in accordance with the lead-based paint regulations [24 CFR 35.1325 and 35.1330; 40 CFR 745.227]. If the owner does not complete the “hazard reduction” as required, the dwelling unit is in violation of NSPIRE and the BHA will take action in accordance with Section 8-II.G.

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

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

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

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

If the BHA determines that a unit is overcrowded because of an increase in family size or a change in family composition, the BHA must issue the family a new voucher, and the family and BHA must try to find an

acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the BHA 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 BHA conducts the following types of inspections as needed. Each type of inspection is discussed in the paragraphs that follow.

- *Initial Inspections*. The BHA conducts initial inspections in response to a request from the family to approve a unit for participation in the HCV program.
- *Periodic Inspections*. HUD requires the BHA to inspect each unit under lease at least annually or biennially.
- *Interim 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.
- *Supervisory 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 housing quality standards.

INSPECTION OF BHA-OWNED UNITS [24 CFR 982.352(B)]

The BHA must obtain the services of an independent entity to perform all inspections in cases where an HCV family is receiving assistance in a BHA-owned unit as defined in 24 CFR 982.4. The independent entity must communicate the results of each inspection to the family and the BHA. The independent agency must be approved by HUD and may be the unit of general local government for the BHA jurisdiction (unless the BHA is itself the unit of general local government or an agency of such government). The BHA must inform the family, both orally and in writing, that the family has the right to select any eligible unit available for lease. BHA-owned unit is freely selected by the family, without BHA pressure or steering.

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

INSPECTION COSTS [NOTICE PIH 2016-05 AND 24 CFR 5.705(H)]

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

In the case of inspections of BHA-owned units, the BHA may compensate the independent agency from ongoing administrative fees (including fees credited to the administrative fee reserve) for inspections performed. The BHA and the independent agency may not charge the family any fee or charge for the inspection [24 CFR.982.352(b)(1)(v)(B)].

The BHA 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. The BHA will not charge a fee for failed reinspections.

REMOTE VIDEO INSPECTIONS (RVIS) [NOTICE PIH 2020-31]

The BHA will not conduct any inspection using RVI.

NOTICE AND SCHEDULING

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

Both the family and the owner will be given reasonable notice of all inspections. Except in the case of emergency conditions, reasonable notice is considered to be no less than 5 calendar days. In the case of emergency conditions, BHA will give as much notice as possible, given the nature of the emergency.

OWNER AND FAMILY INSPECTION ATTENDANCE

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

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

8-II.B. INITIAL INSPECTION [24 CFR 982.405(a)]

HUD regulations require that units assisted under the HCV program be inspected to determine that the units meet housing quality standards before the BHA approves assisted tenancy.

APPROVING UNITS WITH NON-LIFE-THREATENING DEFICIENCIES [FR NOTICE 1/18/17; NOTICE PIH 2017-20; FR NOTICE 5/7/24; AND 24 CFR 982.405(J)]

The BHA will not use the Non-Life Threatening Deficiencies option. All units must pass the initial inspection on or before the effective date of the HAP contract.

APPROVING UNITS USING ALTERNATIVE INSPECTIONS [FR NOTICE 1/18/17; NOTICE PIH 2017-20; FR NOTICE 5/7/24; AND 24 CFR 982.406]

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

TIMING OF INITIAL INSPECTIONS [24 CFR 982.305(B)(2)(I)]

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

INSPECTION RESULTS AND REINSPECTIONS

If any deficiencies are identified, the owner will be notified of the deficiencies and be given a time frame to correct them. If requested by the owner, the time frame for correcting the deficiencies may be extended by the BHA for good cause. The BHA will reinspect the unit within five business days of the date the owner notifies the BHA that the required corrections have been made.

If the time period for correcting the deficiencies (or any BHA-approved extension) has elapsed, or the unit fails at the time of the reinspection, the BHA will notify the owner and the family that the unit has been rejected and that the family must search for another unit. The BHA may agree to conduct a second reinspection, for good cause, at the request of the family and owner.

Following a failed reinspection, the family may submit a new Request for Tenancy Approval for the same unit after the owner has made repairs, if they are unable to locate another suitable unit.

UTILITIES

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

APPLIANCES

If the family is responsible for supplying the stove and/or refrigerator, the BHA will allow the stove and refrigerator to be placed in the unit after the unit has met all other NSPIRE requirements. The required appliances must be in place before the HAP contract is executed by the BHA. The BHA will execute the

HAP contract based upon a certification from the family that the appliances have been installed and are working. A confirmatory inspection will be scheduled within 30 days of HAP contract approval.

8-II.C. PERIODIC INSPECTIONS [24 CFR 982.405(B) AND NOTICE PIH 2016-05]

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

The BHA will not rely on alternative inspection standards.

SCHEDULING THE INSPECTION

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

If the family misses the first scheduled appointment without requesting a new inspection date, the BHA will automatically schedule a second inspection. If the family misses two scheduled inspections without BHA approval, the BHA will consider the family to have violated its obligation to make the unit available for inspection. This may result in the termination of the family's assistance in accordance with Chapter 12.

8-II.D. INTERIM INSPECTIONS [24 CFR 982.405(d)]

If a participant family or government official notifies the BHA of a potential deficiency, the following applies:

- If the reported deficiency is life-threatening, the BHA must, within 24 hours of notification, both inspect the housing unit and notify the owner if the life-threatening deficiency is confirmed. The owner must then make the repairs within 24 hours of BHA notification.
- If the reported deficiency is non-life-threatening, the BHA must, within 15 days of notification, both inspect the unit and notify the owner if the deficiency is confirmed. The owner must then make the repairs within 30 days of notification from the BHA or within any BHA-approved extension

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

If the periodic inspection has been scheduled or is due within 90 days of the date the interim inspection is scheduled the BHA may elect to conduct a full inspection.

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

HUD requires a BHA supervisor or other qualified person to conduct quality control inspections of a sample of units to ensure that each inspector is conducting accurate and complete inspections and that there is consistency in the application of the NSPIRE standards.

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

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

CORRECTION TIMEFRAMES

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

For units under HAP contract, life-threatening deficiencies must be corrected within 24 hours after notice has been provided. All other non-life-threatening deficiencies (severe and moderate) must be corrected within 30 days (or a BHA-approved extension) after notice has been provided. If low deficiencies are present

in a unit, these deficiencies result in a pass and would only be noted by the inspector for informational purposes.

The following is applicable to HAP contracts executed or renewed June 5, 2024, or earlier:

NOTIFICATION OF CORRECTIVE ACTIONS

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

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

When failures that are severe or moderate are identified, the BHA will send the owner and the family a written notification of the inspection results within five business days of the inspection. The written notice will specify who is responsible for correcting the violation, and the time frame within which the failure must be corrected. Generally, not more than 30 days will be allowed for the correction. If low deficiencies are identified, these deficiencies will only be noted for informational purposes.

The notice of inspection results will inform the owner that if life-threatening conditions are not corrected within 24 hours, and non-life-threatening conditions are not corrected within the specified time frame (or any BHA-approved extension), the owner's HAP will be abated in accordance with BHA policy (see 8-II.G.).

Likewise, in the case of family caused deficiencies, the notice will inform the family that if corrections are not made within the specified time frame (or any BHA-approved extension, if applicable) the family's assistance will be terminated in accordance with BHA policy (see Chapter 12).

The following is applicable to HAP contracts executed or renewed June 6, 2024, or later:

NOTIFICATION OF CORRECTIVE ACTIONS [24 CFR 982.404(D)(1)]

The owner must maintain the unit in accordance with housing quality standards. The unit is in noncompliance with housing quality standards if:

- The BHA or authorized inspector determines the unit has housing quality standards deficiencies based upon an inspection
- The BHA notified the owner in writing of the unit housing quality standards deficiencies; and
- The unit's housing quality standards deficiencies are not corrected within the required timeframes.

The BHA may withhold assistance payments for units that have deficiencies once the owner has been notified in writing of the deficiencies. In this case, if the unit is brought into compliance during the applicable cure period, the BHA must resume assistance payments and provide payments to cover the time period for which the payments were withheld.

The BHA must abate the HAP, including amounts that had been withheld, if the owner fails to make the repairs within the applicable cure period. In this case, the BHA must notify the family and the owner that it is abating payments and, if the unit does not meet housing quality standards within 60 days, the BHA will terminate the HAP contract for the unit and the family will have to move to receive continued assistance. In this case, the BHA must issue the family its voucher to move at least 30 days prior to the termination of the HAP contract.

EXTENSIONS

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

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

- A repair cannot be completed because required parts or services are not available.
- A repair cannot be completed because of weather conditions.
- A reasonable accommodation is needed because the family includes a person with disabilities.

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

REINSPECTIONS [24 CFR 982.405(I)]

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

The family and owner will be given reasonable notice of the reinspection appointment. If the deficiencies have not been corrected by the time of the reinspection, the BHA 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 BHA policies. If the BHA is unable to gain entry to the unit in order to conduct the scheduled reinspection, the BHA will consider the family to have violated its obligation to make the unit available for inspection. This may result in termination of the family's assistance in accordance with Chapter 12.

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

8-II.G. ENFORCING OWNER COMPLIANCE

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

The following is applicable to HAP contracts executed or renewed June 5, 2024, or earlier:

HAP ABATEMENT

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

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

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

HAP CONTRACT TERMINATION

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

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

The following is applicable to HAP contracts executed or renewed June 6, 2024, or later:

HAP WITHHOLDING [24 CFR 982.404(D)(1)]

The BHA will not withhold assistance payments upon notification to the owner of the deficiencies.

HAP ABATEMENT [24 CFR 982.404(D)(2)]

The BHA must abate the HAP, including amounts that had been withheld, if the owner fails to make the repairs within the applicable cure period. In this case, the BHA must notify the family and the owner that it is abating payments and, if the unit does not meet housing quality standards within 60 days (or a reasonable longer period established by the BHA), the BHA will terminate the HAP contract for the unit and the family will have to move to receive continued assistance.

The owner may not terminate the tenancy of any family due to the withholding or abatement of assistance.

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

The BHA will inspect abated units within five business days of the owner's notification that the work has been completed. Payment will resume effective on the day the unit passes inspection, or retroactive to the date when the BHA is notified by the owner the repairs are complete and a reinspection request is made.

During any abatement period the family continues to be responsible for its share of the rent.

For BHA policies on family moves when units are in abatement and termination of the HAP contract when a family moves due to deficiencies, see Section 10-I.B.

HAP CONTRACT TERMINATION

The maximum length of time that HAP may be abated is 60 days. However, if the owner completes corrections and notifies the BHA before the termination date of the HAP contract, the BHA may rescind the termination notice if (1) the family still resides in the unit and wishes to remain in the unit and (2) the unit passes inspection.

Reasonable notice of HAP contract termination by the BHA is 30 days. The BHA will issue a voucher to permit the family to move to another unit as described in Chapter 10.

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

The following is applicable to HAP contracts executed or renewed June 5, 2024, or earlier:
Families are responsible for correcting any deficiencies listed in paragraph 8-I.D. If the family fails to correct a violation within the period allowed by the BA (and any extensions), the BHA 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.

The following is applicable to HAP contracts executed or renewed June 6, 2024, or later:
If the BHA waived the landlord responsibility for housing quality standards deficiencies that have been determined to have been caused by the tenant, any member of the household, or any guest or other person under the tenant's control, (see section 8-I.D), the family is responsible for correcting any housing quality standards violations listed in paragraph 8.I.D. If the family fails to correct a violation within the period allowed by the BHA (and any extensions), the BHA 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 and may enter into a repayment agreement with the family.

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 BHA has determined that the rent for the unit is reasonable. The purpose of the rent reasonableness test is to ensure that a fair rent is paid for each unit rented under the HCV program.

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

BHA -OWNED UNITS [24 CFR 982.352(B)]

In cases where an HCV family is receiving assistance in a BHA-owned unit, the BHA 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 BHA -owned unit is defined as a unit that is owned by the BHA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the BHA). The independent agency must communicate the results of the rent reasonableness determination to the family and the BHA. The independent agency must be approved by HUD and may be the unit of general local government for the BHA jurisdiction (unless the BHA 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 BHA 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 BHA (or independent agency in the case of BHA-owned units) will assist the family with the negotiations upon request. At initial occupancy the BHA must determine whether the proposed rent is reasonable before a HAP Contract is signed. The owner must not change the rent during the initial lease term. Subsequent requests for rent adjustments must be consistent with the lease between the owner and the family. Rent increases will not be approved unless any failed items identified by the most recent inspection have been corrected.

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

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

All rents adjustments will be effective the first of the month following 60 days after the BHA's receipt of the owner's request or on the date specified by the owner, whichever is later.

BHA AND HUD-INITIATED RENT REASONABLENESS DETERMINATIONS

HUD requires the BHA 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 BHA to make a determination at any other time. The BHA may decide that a new determination of rent reasonableness is needed at any time.

In addition to the instances described above, the BHA will make a determination of rent reasonableness at any time after the initial occupancy period if: (1) the BHA determines that the initial rent reasonableness determination was in error or (2) the BHA 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 BHA 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 BHA may use these factors to make upward or downward adjustments to the rents of comparison units when the units are not identical to the HCV-assisted unit.

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

UNITS THAT MUST NOT BE USED AS COMPARABLES

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

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

RENTS CHARGED FOR OTHER UNITS ON THE PREMISES

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

By accepting the BHA 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 BHA information regarding rents charged for other units on the premises.

8-III.D BHA RENT REASONABLENESS METHODOLOGY

HOW MARKET DATA IS COLLECTED

The BHA largely uses a third-party software database called GoSection8 to track market rent data for the purpose of conducting rent reasonableness certifications.

The BHA may also collect and maintain data on market rents in its jurisdiction if necessary. Information sources include newspapers, realtors, market surveys, inquiries of owners and other available sources. The BHA will not utilize data more than 12-years old for completing rent reasonableness in this manner.

HOW RENTS ARE DETERMINED

The rent for a unit proposed for HCV assistance will be compared to the rent charged for comparable units in the same market area. Because units may be similar, but not exactly like the unit proposed for HCV assistance, the BHA 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 x 11 months = 5500/12 months = actual monthly rent of $488.

The BHA will notify the owner of the rent the BHA can approve based upon its analysis of rents for comparable units. The owner may submit information about other comparable units in the market area. The BHA will confirm the accuracy of the information provided and consider this additional information when making rent determinations. The owner must submit any additional information within five business days of the BHA’s request for information or the owner’s request to submit information.

The BHA largely uses a third-party software GoSection8 to collect rental comparisons for units and conduct rent reasonableness determinations on units.

EXHIBIT 8-1: AFFIRMATIVE HABITABILITY REQUIREMENTS

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

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

Affirmative Habitability Requirements: Unit
Must have hot and cold running water in the bathroom and kitchen, including an adequate source of safe drinking water in the bathroom and kitchen.
Must include its own bathroom or sanitary facility that is in proper operating condition and usable in privacy. It must contain a sink, a bathtub or shower, and an interior flushable toilet.
Must have at least one battery-operated or hard-wired smoke detector, in proper working condition, in the following locations: • On each level of the unit AND • Inside each bedroom or sleeping area AND • With 21 feet of any door toa bedroom measured along a path of travel AND • Where a smoke detector is installed outside a bedroom is separated from an adjacent living area by a door, a smoke detector must also be installed in the living area side of the door.
If the unit is occupied by a hearing-impaired person, the smoke detectors must have an alarm system designed for hearing-impaired persons.
Must have a living room and a kitchen area with a sink, cooking appliance, refrigerator, food preparation area and food storage area.
Must have two working outlets or one working outlet and one permanent light fixture within all habitable rooms.
Must have a permanently mounted light fixture in each bathroom and in the kitchen.
Outlets within 6 feet of water source must be GFCI-protected.
Must have permanently installed heating source.
No units may contain unvented space heaters that burn gas, oil or kerosene.
Must have a guard rail when there is an elevated walking surface with a drop off of 30 inches or greater measured vertically.
Must have at least one bedroom or living/sleeping room for each two persons.

CHAPTER 9: GENERAL LEASING POLICIES

Chapter 9 covers the lease-up process from the family's submission of a Request for Tenancy Approval to execution of the HAP contract.

In order for the BHA to assist a family in a particular dwelling unit, or execute a Housing Assistance Payments (HAP) contract with the owner of a dwelling unit, the BHA must determine that all the following program requirements are met:

- The unit itself must qualify as an eligible unit [24 CFR 982.305(a)]
- The unit must be inspected by the BHA and pass applicable housing quality standards [24 CFR 982.305(a)]
- The lease offered by the owner must be approvable and must include the required Tenancy Addendum [24 CFR 982.305(a)]
- The rent to be charged by the owner for the unit must be reasonable [24 CFR 982.305(a)]
- The owner must be an eligible owner, approvable by the BHA, with no conflicts of interest [24 CFR 982.306]
- For families initially leasing a unit only: Where the gross rent of the unit exceeds the applicable payment standard for the family, the share of rent to be paid by the family cannot exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]

9-I.A. TENANT SCREENING

The BHA has no liability or responsibility to the owner or other persons for the family's behavior or suitability for tenancy [24 CFR 982.307(a)(1)].

The owner is responsible for screening and selection of the family to occupy the owner's unit. At or before BHA approval of the tenancy, the BHA must inform the owner that screening and selection for tenancy is the responsibility of the owner [24 CFR 982.307(a)(2)]. The BHA must also inform the owner or manager or their rights and obligations under the Violence against Women Act (VAWA) [24 CFR 5.2005(a)(2)].

The BHA must provide the owner with the family's current and prior address (as shown in the BHA records) and the name and address (if known to the BHA) of the landlord at the family's current and prior address [24 CFR 982.307(b)(1)].

The BHA's policy on providing information to the owner must be included in the family's briefing packet [24 CFR 982.307(b)(3)].

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

The BHA will not screen applicants for family behavior or suitability for tenancy.

The BHA will not provide additional screening information to the owner.

9-I.B. REQUESTING TENANCY APPROVAL [Form HUD-52517 and 24 CFR 982.302]

After the family is issued a voucher, the family must locate an eligible unit, with an owner or landlord willing to participate in the voucher program. Once a family finds a suitable unit and the owner is willing to lease the unit under the program, the owner and the family must request the BHA to approve the assisted tenancy in the selected unit.

The owner and the family must submit two documents to the BHA:

- Completed Request for Tenancy Approval (RFTA) – Form HUD-52517
- Copy of the proposed lease, including the HUD-prescribed Tenancy Addendum – Form HUD-52641-A

The RFTA contains important information about the rental unit selected by the family, including the unit address, number of bedrooms, structure type, year constructed, utilities included in the rent, and the requested beginning date of the lease, necessary for the BHA to determine whether to approve the assisted tenancy in this unit.

Owners must certify to the most recent amount of rent charged for the unit and provide an explanation for any difference between the prior rent and the proposed rent.

Owners must certify that they are not the parent, child, grandparent, grandchild, sister or brother of any member of the family, unless the BHA 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 RFTA must be signed by both the family and the owner.

The owner may submit the RFTA on behalf of the family.

Completed RFTA (including the proposed dwelling lease) must be submitted as hard copies, in-person, by mail, or by email.

The family may not submit, and the BHA will not process, more than one RFTA at a time.

When the family submits the RFTA the BHA will review the RFTA for completeness.

- If the RFTA is incomplete (including lack of signature by family, owner, or both), or if the dwelling lease is not submitted with the RFTA, the BHA will notify the family and the owner of the deficiencies.
- Missing information and/or missing documents will only be accepted as hard copies, in-person, by mail, or by email. The BHA will not accept missing information over the phone.

When the family submits the RFTA and proposed lease, the BHA will also review the terms of the RFTA for consistency with the terms of the proposed lease.

- If the terms of the RFTA are not consistent with the terms of the proposed lease, the BHA will notify the family and the owner of the discrepancies.
- Corrections to the terms of the RFTA and/or the proposed lease will only be accepted as hard copies, in-person, by mail, or by email. The BHA will not accept corrections by phone.

Because of the time sensitive nature of the tenancy approval process, the BHA will attempt to communicate with the owner and family by phone or email. The BHA will use mail when the parties cannot be reached by phone or email.

9-I.C. OWNER PARTICIPATION

The BHA does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where the BHA 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 BHA 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 the BHA's jurisdiction. This includes the dwelling unit they are currently occupying.

INELIGIBLE UNITS [24 CFR 982.352(A)]

The BHA 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.

Both the RFTA and the proposed lease must be submitted no later than the expiration date stated on the voucher. [HCV GB p.8-15].

The BHA must identify in the administrative plan whether the family will be permitted to submit more than one RFTA at a time [24 CFR 982.54(d)(25)].

BHA-OWNED UNITS [24 CFR 982.352(B)]

BHA-owned units as defined in 24 CFR 982.4 may also be leased in the voucher program. In order for a BHA-owned unit to be leased under the voucher program, the unit must not be ineligible housing and the BHA 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 BHA-owned unit without any pressure or steering by the BHA. The BHA must obtain the services of an independent entity to perform certain functions as described in 24 CFR 982.352(b)(v)(A).

SPECIAL HOUSING TYPES [24 CFR 982 SUBPART M]

HUD regulations permit, but do not generally require, the BHA to permit families to use voucher assistance in a number of special housing types in accordance with the specific requirements applicable to those programs. These special housing types include single room occupancy (SRO) housing, congregate housing, group home, shared housing, manufactured home space (where the family owns the manufactured home and leases only the space), cooperative housing and homeownership option. See Chapter 15 for specific information and policies on any of these housing types that the BHA has chosen to allow.

The regulations do require the BHA 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.

INITIAL INSPECTION

In order to be eligible, the dwelling unit must be in safe and habitable condition and pass applicable housing quality standards. See Chapter 8 for a full discussion of inspection standards, as well as the process for 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 space requirements [24 CFR 5.703(d)(5)]. 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. See Chapter 6 for a discussion of calculation of gross rent, the use of payment standards, and calculation of family income, family share of rent and HAP.

9-I.E. LEASE AND TENANCY ADDENDUM

The family and the owner must execute a written dwelling lease agreement for the assisted unit. This written lease is a contract between the tenant family and the owner; the BHA is not a party to this contract.

The tenant must have legal capacity to enter a lease under State and local law. 'Legal capacity' means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner [24 CFR 982.308(a)]

LEASE FORM AND TENANCY ADDENDUM [24 CFR 982.308]

If the owner uses a standard lease form for rental to unassisted tenants in the locality or the premises, the lease must be in such standard form. If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease. The HAP contract prescribed by HUD contains the owner's certification that if the owner uses a standard lease form for rental to unassisted tenants, the lease for the assisted tenants is in such standard form.

All provisions in the HUD-required Tenancy Addendum must be added word-for-word to the owner's standard lease form. The Tenancy Addendum includes the HUD requirements for the tenancy. Because it is a part of the lease, the tenant shall have the right to enforce the Tenancy Addendum against the owner. If there is a conflict between the owner's lease and the Tenancy Addendum, the terms of the Tenancy Addendum shall prevail over any other provisions of the lease.

The BHA does not provide a model or standard dwelling lease for owners to use in the HCV program.

LEASE INFORMATION [24 CFR 982.308(D)]

The assisted dwelling lease must contain all of the required information as listed below:

- The names of the owner and the tenant:
- The unit rented (address, apartment number, and any other information needed to identify the contract unit)
- The term of the lease (initial term and any provisions for renewal)
- The amount of the monthly rent to owner
- A specification of what utilities and appliances are to be supplied by the owner, and what utilities and appliances are to be supplied by the family

TERM OF ASSISTED TENANCY

The initial term of the assisted dwelling lease must be for at least one year [24 CFR 982.309]. The initial lease term is also stated in the HAP contract.

The BHA will not approve an initial lease term of less than one (1) year.

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.

The BHA 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 BHA will allow the owner to collect any security deposit amount the owner determines is appropriate. Therefore, no modifications to the HAP contract will be necessary.

SEPARATE NON-LEASE AGREEMENTS BETWEEN OWNER AND TENANT

Owners may not demand or accept any rent payment from the family in excess of the rent to the owner as approved by the BHA minus the BHA'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)].

The BHA permits owners and families to execute separate, non-lease agreements for services, appliances (other than range and refrigerator) and other items that are not included in the lease.

Any items, appliances, or other services that are customarily provided to unassisted families as part of the dwelling lease with those families, or are permanently installed in the dwelling unit must be included in the dwelling lease for the assisted family. These items, appliances or services cannot be placed under a separate non-lease agreement between the owner and family. Side payments for additional rent, or for items, appliances or services customarily provided to unassisted families as part of the dwelling lease for those families, are prohibited.

Any items, appliances, or other services that are not customarily provided to unassisted families as part of the dwelling lease with those families, are not permanently installed in the dwelling unit and where the family has the sole option of not utilizing the item, appliance or service, may be included in a separate non-lease agreement between the owner and the family.

The family is not liable and cannot be held responsible under the terms of the assisted dwelling lease for any charges pursuant to a separate non-lease agreement between the owner and the family. Non-payment of any charges pursuant to a separate non-lease agreement between the owner and the family cannot be a cause for eviction or termination of tenancy under the terms of the assisted dwelling lease.

Separate non-lease agreements that involve additional items, appliances or other services may be considered amenities offered by the owner and may be taken into consideration when determining the reasonableness of the rent for the property.

BHA REVIEW OF LEASE

The BHA will review the dwelling lease for compliance with all applicable requirements.

If the dwelling lease is incomplete or incorrect, the BHA will notify the family and the owner of the deficiencies. Missing and corrected lease information will only be accepted as hard copies, in-person, by mail, or by email. The BHA will not accept missing and corrected information over the phone.

Because the initial leasing process is time-sensitive, the BHA will attempt to communicate with the owner and family by phone or email. The BHA will use mail when the parties can't be reached by phone or email.

The BHA 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, the BHA 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, the BHA must ensure that all required actions and determinations, discussed in Part I of this chapter have been completed.

These actions include ensuring that the unit is eligible; the unit has been inspected by the BHA and meets housing quality standards; 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 is reasonable; where the family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the family, the share of rent to be paid by the family does not exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]; the owner is an eligible owner, not disapproved by the BHA, with no conflicts of interest [24 CFR 982.306]; the family and the owner have executed the lease, including the Tenancy Addendum, and the lead-based paint disclosure information [24 CFR 982.305(b)].

The BHA will complete its determination within 10 business days of receiving all required information.

If the terms of the RFTA/proposed lease are changed for any reason, including but not limited to negotiation with the BHA, the BHA will obtain corrected copies of the RFTA and proposed lease, signed by the family and the owner.

Corrections to the RFTA/proposed lease will only be accepted as hard copies, in-person, by mail, or by email. The BHA will not accept corrections over the phone.

If the BHA determines that the tenancy cannot be approved for any reason, the owner and the family will be notified in writing and given the opportunity to address any reasons for disapproval. The BHA will instruct the owner and family of the steps that are necessary to obtain approval of the tenancy.

Where the tenancy is not approvable because the unit is not approvable, the family must continue to search for eligible housing within the timeframe of the issued voucher.

If the tenancy is not approvable due to rent affordability or rent reasonableness, the BHA will attempt to negotiate the rent with the owner. If a new, approvable rent is negotiated, the tenancy will be approved. If the owner is not willing to negotiate an approvable rent, the family must continue to search for eligible housing within the timeframe of the issued voucher.

9-I.G. HAP CONTRACT EXECUTION [24 CFR 982.305]

The HAP contract is a written agreement between the BHA and the owner of the dwelling unit. Under the HAP contract, the BHA agrees to make housing assistance payments to the owner on behalf of the family, and the owner agrees to comply with all program requirements as stated in the HAP contract.

The HAP contract form is prescribed by HUD.

If the BHA has given approval for the family of the assisted tenancy, the owner and the BHA 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)].

The BHA is permitted to execute a HAP contract even if the funding currently available does not extend for the full term of the HAP contract.

The BHA 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. Any HAP contract executed after the 60-day period is void, and the BHA may not pay any housing assistance payment to the owner, unless there are extenuating circumstances that prevent or prevented the BHA from meeting the 60-day deadline—then the BHA may submit to the HUD field office a request for an extension no later than two weeks after the 60-day deadline.

The BHA may not pay any housing assistance payment to the owner until the HAP contract has been executed. If the HAP contract is executed during the period of 60 calendar days from the beginning of the

lease term, the BHA will pay housing assistance payments after execution of the HAP contract (in accordance with the terms of the HAP contract), to cover the portion of the lease term before execution of the HAP contract (a maximum of 60 days).

Any HAP contract executed after the 60-day period is void, and the BHA may not pay any housing assistance payment to the owner

The owner and the BHA will execute the HAP contract. The BHA will not execute the HAP contract until the owner has submitted IRS form W-9. The BHA will ensure that the owner receives a copy of the executed HAP contract.

As required under VAWA, once the HAP contract and lease have been executed and the family has been admitted to the program, the BHA will notify families of their rights under VAWA by providing all families with a copy of the domestic violence certification form (HUD-5382) as well as the VAWA notice of occupancy rights (form HUD-5380).

See Chapter 13 for a discussion of the HAP contract and contract provisions.

9-I.H. CHANGES IN LEASE OR RENT [24 CFR 982.308]

If the tenant and the owner agree to any changes in the lease, such changes must be in writing, and the owner must immediately give the BHA a copy of such changes. The lease, including any changes, must remain in accordance with the requirements of this chapter.

Generally, BHA 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 the BHA at least 60 days before any such changes go into effect [24 CFR 982.308(g)(4)]. The BHA will agree to such an increase only if the amount of the rent to owner is considered reasonable according to the rent reasonableness standards discussed in Chapter 8. If the requested rent is not found to be reasonable, the owner must either reduce the requested rent increase, or terminate the tenancy in accordance with the terms of the lease.

No rent increase is permitted during the initial term of the lease [24 CFR 982.309(a)(3)].

Where the owner is requesting a rent increase, the BHA will determine whether the requested increase is reasonable within 10 business days of receiving the request from the owner. The owner will be notified of the determination in writing.

Rent increases will go into effect on the first of the month following the 60-day period after the owner notifies the BHA of the rent change or on the date specified by the owner, whichever is later.

CHAPTER 10: MOVING WITH CONTINUED ASSISTANCE & PORTABILITY

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 BHA policies governing moves within or outside the BHA'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 BHA's HCV program, whether the family moves to another unit within the BHA's jurisdiction or to a unit outside the BHA's jurisdiction under portability.

Part II: Portability. This part covers the special rules that apply to moves by a family under portability, whether the family moves out of or into the BHA's jurisdiction. This part also covers the special responsibilities that the BHA has under portability regulations and procedures.

PART I: MOVING WITH CONTINUED ASSISTANCE

10-I.A. ALLOWABLE MOVES

HUD lists six regulatory conditions under which an assisted family is allowed to move to a new unit with continued assistance. Permission to move is subject to the restrictions set forth in section 10-I.B.

- The family has a right to terminate the lease on notice to the owner (for the owner's breach or otherwise) and has given a notice of termination to the owner in accordance with the lease [24 CFR 982.354(b)(3)]. If the family terminates the lease on notice to the owner, the family must give the BHA a copy of the notice at the same time [24 CFR 982.354(d)(1)].
- The lease for the family's unit has been terminated by mutual agreement of the owner and the family [24 CFR 982.354(b)(1)(ii)].
    - If the family and the owner mutually agree to terminate the lease for the family's unit, the family must give the BHA 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 the BHA 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, stalking, or human trafficking, and the move is needed to protect the health or safety of the family or family member [see 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 the BHA, if the family or family member who is the victim reasonably believed that they were imminently threatened by harm from further violence if they remained in the unit [24 CFR 982.354(b)(4), 24 CFR 982.353(b)]. The BHA must adopt an emergency transfer plan as required by regulations at 24 CFR 5.2007(e).
    - If a family requests permission to move with continued assistance or for an external transfer to another covered housing program operated by the BHA 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, stalking, or human trafficking, the BHA will request that the resident request the emergency transfer using form HUD-5383, and the BHA will request documentation in accordance with section 16-IX.D of this plan.

      The BHA reserves the right to waive the documentation requirement if it determines that a statement or other corroborating evidence from the family or family member will suffice. In such cases the BHA will document the waiver in the family's file.

The BHA 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, the BHA will ensure the victim is eligible to receive continued assistance based on the citizenship or immigration status of the victim.

The BHA has adopted an emergency transfer plan, which is included as Exhibit 16-3 to this plan and discusses external transfers to other covered housing programs.

- The BHA has terminated the HAP contract for the family's unit for the owner's breach [24 CFR 982.354(b)(1)(i)].
- The BHA determines that the family's current unit does not meet space standards because of an increase in family size or a change in family composition. In such cases, the BHA must issue the family a new voucher, and the family and BHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for the family, the BHA must terminate the HAP contract for the family's old unit in accordance with the HAP contract terms and must notify both the family and the owner of the termination. The HAP contract terminates at the end of the calendar month that follows the calendar month in which the BHA gives notice to the owner. [24 CFR 982.403(a) and (c)]

10-I.B. FAMILY MOVES DUE TO UNIT DEFICIENCIES

UNITS IN ABATEMENT [24 CFR 982.404(D)(3)]

An owner may not terminate the tenancy of a family due to the BHA withholding or abating HAP for housing quality standards deficiencies that are not repaired timely. During the period that assistance is abated, the family may terminate tenancy by notifying the owner and the BHA. If the family chooses to terminate tenancy, the HAP contract will automatically terminate on the effective date of tenancy termination or the date the family vacates the unit, whichever is earlier. The BHA must promptly issue the family its voucher to move.

Upon receipt of a family's written notification that it wishes to move, the BHA will issue a voucher within 10 business days of the BHA's written approval to move. No briefing is required for these families. The BHA will follow the policies set forth in Chapter 5 on voucher term, extension, and expiration.

TERMINATION OF HAP CONTRACT AND FAMILY MOVES [24 CFR 982.404(E)]

For HAP contracts executed or renewed on or after June 6, 2024, if an owner fails to make required repairs within 60 days (or a reasonable longer period established by the BHA) of the notice of abatement, the BHA must terminate the HAP contract. In this case, the BHA must issue the family its voucher at least 30 days prior to the termination of the HAP contract.

The BHA will issue a family whose HAP contract is being terminated due to an owner failing to make required repairs within the required time frame a voucher no later than 30 days prior to the termination of the HAP contract. The initial term of the voucher will be 120 calendar days. No briefing is required for these families.

To continue under the tenant-based HCV program, the family must submit a Request for Tenancy Approval and proposed lease within the 120-day period unless the BHA grants an extension. The BHA will follow the policies set forth in Chapter 5 on voucher extension and expiration.

OFFER OF PUBLIC HOUSING [24 CFR 982.404(E)(2)]

If the family is unable to lease a new unit within the term of the voucher. and the BHA owns or operates public housing, the BHA must offer, and if accepted, provide the family a selection preference for an appropriate-sized public housing unit that first becomes available for occupancy after the time period expires.

The BHA does operate a public housing program and will provide a preference for HCV families whose HAP contract is being terminated due to an owner failing to make required repairs within the required time frame, and who were unable to lease a new unit within the term of the voucher.

Thirty days prior to the expiration date of the voucher, the BHA will provide written notice to the family stating that the BHA does provide such a preference and providing an estimation of availability for the appropriate-sized public housing unit.

RELOCATION ASSISTANCE [24 CFR 982.404(E)(3)]

PHAs may assist families relocating due to the HAP contract being terminated as a result of the owner failing to make required repairs within the required time frame in finding a new unit, including using up to two months of the withheld and abated assistance payments for costs directly associated with relocating to a new unit, such as security deposits, temporary housing costs, or other reasonable moving costs as determined by the BHA based on their locality.

The BHA must assist families with disabilities with locating available accessible units in accordance with 24 CFR 8.28(a)(3).

10-I.C. 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 the BHA to deny a family permission to move under the following conditions:

Insufficient Funding

The BHA will deny a family permission to move on grounds that the BHA does not have sufficient funding for continued assistance if (a) the move is initiated by the family, not the owner or the BHA; (b) the BHA can demonstrate that the move will, in fact, result in higher subsidy costs (c) the BHA 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 BHA is not absorbing the voucher.

If the BHA does not have sufficient funding for continued assistance, but the family must move from their unit (e.g., the unit failed inspection), the family may move to a higher cost unit if the move is within the BHA's jurisdiction. The BHA, however, will not allow the family to move under portability in this situation if the family wishes to move to a higher cost area.

For both moves within the BHA's jurisdiction and outside under portability, the BHA will not deny a move due to insufficient funding if the BHA previously approved the move and subsequently experienced a funding shortfall if the family cannot remain in their current unit. The BHA will rescind the voucher in this situation if the family will be allowed to remain in their current unit.

The BHA will create a list of families whose moves have been denied due to insufficient funding. The BHA 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. The BHA will use the same procedures for notifying families with open requests to move when funds become available as it uses for notifying families on the waiting list (see section 4-III.D).

The BHA will inform the family of its policy regarding moves denied due to insufficient funding in a letter to the family at the time the move is denied.

Grounds for Denial or Termination of Assistance

The BHA may deny a family permission to move if it has grounds for denying or terminating the family's assistance [24 CFR 982.354(e)(2)].

If the BHA has grounds for denying or terminating a family's assistance, the BHA will act on those grounds in accordance with the regulations and policies set forth in Chapters 3 and 12, respectively. In general, it will not deny a family permission to move for this reason; however, it retains the discretion to do so under special circumstances.

RESTRICTIONS ON ELECTIVE MOVES [24 CFR 982.354(C)]

The BHA will deny a family permission to make an elective move during the family's initial lease term. This policy applies to moves within the BHA's jurisdiction or outside it under portability.

The BHA will also deny a family permission to make more than one elective move during any 12-month period. This policy applies to all assisted families residing in the BHA's jurisdiction.

The BHA 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, the BHA 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.D. MOVING PROCESS

NOTIFICATION

If a family wishes to move to a new unit, the family must notify the BHA 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 the BHA's jurisdiction under portability, the notice to the BHA 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

Upon receipt of a family's notification that it wishes to move, the BHA will determine whether the move is approvable in accordance with the regulations and policies set forth in sections 10-I.A and 10-I.B. The BHA will notify the family in writing of its determination within 10 business days following receipt of the family's notification.

REEXAMINATION OF FAMILY INCOME AND COMPOSITION

For families approved to move to a new unit within the BHA's jurisdiction, the BHA will perform a new annual reexamination in accordance with the policies set forth in Chapter 11 of this plan.

For families moving into or families approved to move out of the BHA's jurisdiction under portability, the BHA will follow the policies set forth in Part II of this chapter.

VOUCHER ISSUANCE AND BRIEFING

For families approved to move to a new unit within the BHA's jurisdiction, the BHA will issue a new voucher within 10 business days of the BHA's written approval to move. No briefing is required for these families. The BHA will follow the policies set forth in Chapter 5 on voucher term, extension, and expiration. If a family does not locate a new unit within the term of the voucher and any extensions, the family may remain in its current unit with continued voucher assistance if the owner agrees and the BHA approves. Otherwise, the family will lose its assistance.

For families moving into or families approved to move out of the BHA's jurisdiction under portability, the BHA will follow the policies set forth in Part II of this chapter.

For families moving due an owner failing to make required repairs timely, resulting in the BHA terminating the HAP contract, the BHA will follow the policies set forth earlier in this section and in Chapter 8, Part II.

HOUSING ASSISTANCE PAYMENTS [24 CFR 982.311(D)]

When a family moves out of an assisted unit, the BHA 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.

ZERO HAP FAMILIES WHO WISH TO MOVE [24 CFR 982.455]

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

PART II: PORTABILITY

10-II.A. OVERVIEW

Within the limitations of the regulations and this plan, a participant family or an applicant family that has been issued a voucher has the right to use tenant-based voucher assistance to lease a unit anywhere in the United States providing that the unit is located within the jurisdiction of 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 they will approve or deny the portability request [Notice PIH 2016-09].

PHAs commonly act as both the initial and receiving PHA because families may move into or out of their jurisdiction under portability. Each role involves different responsibilities. The BHA 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 BHA does not comply with HUD portability requirements [24 CFR 982.355(e)(7)].

10-II.B. INITIAL PHA ROLE

ALLOWABLE MOVES UNDER PORTABILITY

A family may move with voucher assistance only to an area where there is at least one PHA administering a voucher program [24 CFR 982.353(b)]. If there is more than one PHA in the area, the initial PHA provides the family with the contact information for the receiving PHAs that serve the area, and the family selects the receiving PHA. The family must inform the initial PHA which receiving PHA it has selected. If the family

prefers not to select the receiving PHA, the initial PHA will select the receiving PHA on behalf of the family [24 CFR 982.255(b)].

Applicant families that have been issued vouchers as well as participant families may qualify to lease a unit outside the PHA'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 PHA's jurisdiction under portability. However, HUD gives the PHA discretion to deny a portability move by an applicant family for the same two reasons that it may deny any move by a participant family: insufficient funding and grounds for denial or termination of assistance. If a PHA intends to deny a family permission to move under portability due to insufficient funding, the PHA must notify HUD within 10 business days of the determination to deny the move [24 CFR 982.355(e)].

In determining whether or not to deny an applicant family permission to move under portability because the PHA lacks sufficient funding or has grounds for denying assistance to the family, the BHA will follow the policies established in section 10-I.B of this chapter. If the BHA does deny the move due to insufficient funding, the BHA will notify HUD in writing within 10 business days of the BHA's determination to deny the move.

If neither the head of household nor the spouse/cohead of an applicant family had a domicile (legal residence) in the initial PHA's jurisdiction at the time that the family's initial application for assistance was submitted, the family must lease a unit within the initial PHA's jurisdiction for at least 12 months before requesting portability.

The BHA will consider exceptions to this policy for purposes of reasonable accommodation (see Chapter 2) or reasons related to domestic violence, dating violence, sexual assault, stalking, or human trafficking.

Participant Families

The BHA will determine whether a participant family may move out of the PHA'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. The PHA will notify the family of its determination in accordance with the approval policy set forth in section 10-I.C of this chapter.

REEXAMINATION OF FAMILY INCOME AND COMPOSITION

No new reexamination of family income and composition is required for an applicant family.

BRIEFING

The regulations and policies on briefings set forth in Chapter 5 of this plan require the BHA to provide information on portability to all applicant families that qualify to lease a unit outside the BHA's jurisdiction under the portability procedures. Therefore, no special briefing is required for these families.

No formal briefing will be required for a participant family wishing to move outside the BHA's jurisdiction under portability. However, the BHA will provide the family with the same oral and written explanation of portability that it provides to applicant families selected for admission to the program (see Chapter 5).

The BHA will provide the name, address, and phone of the contact for PHAs in the jurisdiction to which they wish to move. If there is more than one PHA with jurisdiction over the area to which the family wishes to move, the BHA will advise the family that the family selects the receiving PHA and notify the BHA of which receiving PHA was selected. The BHA will provide the family with contact information for all of the receiving PHAs that serve the area. The BHA will not provide any additional information about receiving PHAs in the area. The BHA will further inform the family that if the family prefers not to select the receiving PHA, the BHA will select the receiving PHA on behalf of the family. In this case, the BHA will not provide the family with information for all receiving PHAs in the area.

The BHA will advise the family that they will be under the receiving PHA's policies and procedures, including screening, subsidy standards, voucher extension policies, and payment standards.

VOUCHER ISSUANCE AND TERM

An applicant family has no right to portability until after the family has been issued a voucher [24 CFR 982.353(b)]. In issuing vouchers to applicant families, the BHA will follow the regulations and procedures set forth in Chapter 5.

For participating families approved to move under portability, the BHA will issue a new voucher within 10 business days of the BHA's written approval to move.

The initial term of the voucher will be 60 days.

However, if the move is due to the HAP contract being terminated due to an owner failing to make required repairs within the required time frame, the BHA will issue the family a voucher no later than 30 days prior to the termination of the HAP contract. The initial term of the voucher will be 120 calendar days.

VOUCHER EXTENSIONS AND EXPIRATION

The BHA will approve **no** extensions to a voucher issued to an applicant or participant family porting out of the BHA's jurisdiction except under the following circumstances: (a) the initial term of the voucher will expire before the portable family will be issued a voucher by the receiving PHA, (b) the family decides to return to the BHA's jurisdiction and search for a unit there, or (c) the family decides to search for a unit in a third PHA's jurisdiction. In such cases, the policies on voucher extensions set forth in Chapter 5, section 5-II.E, of this plan will apply, including the requirement that the family apply for an extension in writing prior to the expiration of the initial voucher term.

PREAPPROVAL CONTACT WITH THE RECEIVING PHA

Prior to approving a family's request to move under portability, the BHA must contact the receiving PHA via email or other confirmed delivery method to determine whether the receiving PHA will administer or absorb the family's voucher. Based on the receiving PHA's response, the BHAmust determine whether it will approve or deny the move [24 CFR 982.355(c)(3)].

The BHA will use email, when possible, to contact the receiving PHA regarding whether the receiving PHA will administer or absorb the family's voucher.

INITIAL NOTIFICATION TO THE RECEIVING PHA

After approving a family's request to move under portability, the BHA 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 BHA must also advise the family how to contact and request assistance from the receiving PHA [24 CFR 982.355(c)(6)].

Because the portability process is time-sensitive, the BHA will notify the receiving PHA by phone or email to expect the family. The BHA will also ask the receiving PHA to provide any information the family may need upon arrival, including the name, email address, and telephone number of the staff person responsible for business with incoming portable families and procedures related to appointments for voucher issuance. The BHA will pass this information along to the family. The BHA will also ask for the name, address, telephone number, and email of the person responsible for processing the billing information.

SENDING DOCUMENTATION TO THE RECEIVING PHA

The BHA is required to send the receiving PHA the following documents:

- Form HUD-52665, Family Portability Information, with Part I filled out [Notice PIH 2016-09]
- A copy of the family's voucher [Notice PIH 2016-09]
- A copy of the family's most recent form HUD-50058, Family Report, or, if necessary in the case of an applicant family, family and income information in a format similar to that of form HUD-50058 [24 CFR 982.355(c)(7), Notice PIH 2016-09]

- Copies of the income verifications backing up the form HUD-50058, including a copy of the family's current EIV data [24 CFR 982.355(c)(7), Notice PIH 2016-09]

In addition to these documents, the PHA 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
- If applicable, information related to the family's health and medical care and disability assistance expense phased-in hardship exemption, including what stage the family is in and how many months remain in that phase-in stage

The PHA will notify the family in writing regarding any information provided to the receiving PHA [HCV GB, p. 13-3].

INITIAL BILLING DEADLINE [NOTICE PIH 2016-09]

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

If the initial PHA does not receive a billing notice by the deadline and does not intend to honor a late billing submission, it must notify the receiving PHA in writing. The initial PHA may report to HUD the receiving PHA's failure to comply with the deadline.

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

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

Among other considerations as to whether to accept late billing will be if the family includes a person with disabilities and the late billing is a result of a reasonable accommodation granted to the family by the receiving PHA.

MONTHLY BILLING PAYMENTS [24 CFR 982.355(E), NOTICE PIH 2016-09]

If the receiving PHA is administering the family's voucher, the receiving PHA bills the initial PHA for housing assistance payments and administrative fees. When reimbursing for administrative fees, the initial PHA must promptly reimburse the receiving PHA for the lesser of 80 percent of the initial PHA ongoing administrative fee or 100 percent of the receiving PHA's ongoing administrative fee for each program 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.

ANNUAL UPDATES OF FORM HUD-50058

If the initial PHA is being billed on behalf of a portable family, it should receive an updated form HUD-50058 each year from the receiving PHA. If the initial PHA fails to receive an updated 50058 by the family's annual reexamination date, the initial PHA should contact the receiving PHA to verify the status of the family. The initial PHA must continue paying the receiving PHA based on the last form HUD-50058 received, unless instructed otherwise by HUD. The initial PHA may seek absorption of the vouchers by following steps outlined in Notice PIH 2016-09.

DENIAL OR TERMINATION OF ASSISTANCE [24 CFR 982.355(C)(17)]

At any time, either the initial PHA or the receiving PHA may make a determination to deny or terminate assistance with the family in accordance with 24 CFR 982.552 and 24 CFR 982.553. (For PHA policies on denial and termination, see Chapters 3 and 12, respectively.)

10-II.C. RECEIVING PHA ROLE

If a family has a right to lease a unit in the receiving PHA's jurisdiction under portability, the receiving PHA must provide assistance for the family [24 CFR 982.355(10)]. HUD may determine in certain instances that a PHA is not required to accept incoming portable families, such as a PHA in a declared disaster area. However, the PHA must have approval in writing from HUD before refusing any incoming portable families [24 CFR 982.355(b)].

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

RESPONDING TO INITIAL PHA'S REQUEST [24 CFR 982.355(C)]

The receiving PHA must respond via email or other confirmed delivery method to the initial PHA's inquiry to determine whether the family's voucher will be billed or absorbed [24 CFR 982.355(c)(3)]. If the receiving PHA informs the initial PHA that it will be absorbing the voucher, the receiving PHA cannot reverse its decision at a later date without consent of the initial PHA (24 CFR 982.355(c)(4).

The BHA will use email, 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 or hearing [Notice PIH 2016-09]. (For more on this topic, see later under "Denial or Termination of Assistance.") Briefing

HUD allows the receiving PHA to require a briefing for an incoming portable family as long as the requirement does not unduly delay the family's search [Notice PIH 2016-09].

The BHA will not require the family to attend a briefing. The PHA will provide the family with a briefing packet (as described in Chapter 5) and, in an individual briefing, will orally inform the family about the BHA'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 redetermine eligibility for a portable family that was already receiving assistance in the initial PHA's voucher program [24 CFR 982.355(c)(9)]. If the receiving PHA opts to conduct a new reexamination for a current participant family, the receiving PHA may not delay issuing the family a voucher or otherwise delay approval of a unit [24 CFR 982.355(c)(11)].

For any family moving into its jurisdiction under portability, the PHA will conduct a new reexamination of family income and composition. However, the PHA will not delay issuing the family a voucher for this reason. Nor will the PHA delay approving a unit for the family until the reexamination process is complete unless the family is an applicant and the PHA cannot otherwise confirm that the family is income eligible for admission to the program in the area where the unit is located.

In conducting its own reexamination, the PHA will rely upon any verifications provided by the initial PHA to the extent that they (a) accurately reflect the family's current circumstances and (b) were obtained within the last 120 days. Any new information may be verified by documents provided by the family and adjusted, if necessary, when third party verification is received.

VOUCHER ISSUANCE

When a family moves into its jurisdiction under portability, the receiving PHA is required to issue the family a voucher [24 CFR 982.355(c)(13)]. The family must submit a request for tenancy approval to the receiving PHA during the term of the receiving PHA's voucher [24 CFR 982.355(c)(15)].

Timing of Voucher Issuance

HUD expects the receiving PHA to issue the voucher within two weeks after receiving the family's paperwork from the initial PHA if the information is in order, the family has contacted the receiving PHA, and the family complies with the receiving PHA's procedures [Notice PIH 2016-09].

When a family ports into its jurisdiction, the PHA 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 PHA's procedures. The PHA will update the family's information when verification has been completed.

Voucher Term

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

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

The BHA generally will not extend the term of the voucher that it issues to an incoming portable family unless the BHA plans to absorb the family into its own program, in which case it will follow the policies on voucher extension set forth in section 5-II.E.

The BHA will consider an exception to this policy as a reasonable accommodation to a person with disabilities (see Chapter 2).

Voucher Suspensions [24 CFR 982.303, 24 CFR 982.355(c)(15)]
If the family submits a request for tenancy approval during the term of the receiving PHA's voucher, the PHA must suspend the term of that voucher. The term of the voucher stops from the date that the family submits a request for PHA approval of the tenancy until the date the PHA notifies the family in writing whether the request has been approved or denied [24 CFR 982.4(b)] (see Section 5-II.E).

NOTIFYING THE INITIAL PHA

The receiving PHA must promptly notify the initial PHA if the family has leased an eligible unit under the program or if the family fails to submit a request for tenancy approval for an eligible unit within the term of the receiving PHA's voucher [24 CFR 982.355(c)(16)]. The receiving PHA is required to use Part II of form HUD-52665, Family Portability Information, for this purpose [Notice PIH 2016-09]. (For more on this topic and the deadline for notification, see below under "Administering a Portable Family's Voucher.")

If an incoming portable family ultimately decides not to lease in the jurisdiction of the receiving PHA but instead wishes to return to the initial PHA's jurisdiction or to search in another jurisdiction, the receiving PHA must refer the family back to the initial PHA. In such a case the voucher of record for the family is once again the voucher originally issued by the initial PHA. Any extension of search time provided by the receiving PHA's voucher is only valid for the family's search in the receiving PHA's jurisdiction [Notice PIH 2016-09].

ADMINISTERING A PORTABLE FAMILY'S VOUCHER

Portability Billing [24 CFR 982.355(e)]
To cover assistance for a portable family that was not absorbed, the receiving PHA bills the initial PHA for housing assistance payments and administrative fees. The amount of the housing assistance payment for a portable family in the receiving PHA's program is determined in the same manner as for other families in the receiving PHA's program.

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

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

Unless the BHA negotiates a different amount of reimbursement with the initial PHA, the BHA 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 or email.

The BHA will send its initial billing notice by email, if necessary, to meet the billing deadline but will also send the notice by regular mail.

If the receiving PHA fails to send the initial billing by the deadline, it is required to absorb the family into its own program unless (a) the initial PHA is willing to accept the late submission or (b) HUD requires the initial PHA to honor the late submission (e.g., because the receiving PHA is overleased) [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.

The BHA 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].

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].

If the BHA decides to absorb a portable family upon the execution of a HAP contract on behalf of the family, the BHA will notify the initial PHA by the initial billing deadline specified on form HUD-52665. The effective date of the HAP contract will be the effective date of the absorption.

If the BHA 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

Pre-HOTMA Implementation

This chapter is applicable until the BHA's HOTMA 102/104 compliance date. After this date, the BHA will follow policies as outlined in Chapter 11.B. of the model policy.

The BHA 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 BHA policies concerning reexaminations are presented in three parts:

Part I: Annual Reexaminations. This part discusses the process for conducting annual reexaminations.

Part II: Interim Reexaminations. This part details the requirements for families to report changes in family income and composition between annual reexaminations.

Part III: Recalculating Family Share and Subsidy Amount. This part discusses the recalculation of family share and subsidy amounts based on the results of annual and interim reexaminations.

Policies governing reasonable accommodation, family privacy, required family cooperation, and program abuse, as described elsewhere in this plan, apply to both annual and interim reexaminations.

PART I: ANNUAL REEXAMINATIONS [24 CFR 982.516]

11-I.A. OVERVIEW

The BHA must conduct a reexamination of family income and composition at least annually. This includes gathering and verifying current information about family composition, income, and expenses. Based on this updated information, the family's income and rent must be recalculated. This part discusses the schedule for annual reexaminations, the information to be collected and verified, and annual reexamination effective dates.

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

The BHA will streamline the annual reexamination process by applying the verified COLA or interest rate to fixed-income sources. The BHA 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, the BHA 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, the BHA 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 BHA will begin the annual reexamination process 120 days in advance of its scheduled effective date. Generally, the BHA will schedule annual reexamination effective dates to coincide with the family's anniversary date.

Anniversary date is defined as 12 months from the effective date of the family's last annual reexamination or, during a family's first year in the program, from the effective date of the family's initial examination (admission).

If the family moves to a new unit, the BHA will perform a new annual reexamination.

The BHA also may schedule an annual reexamination for completion prior to the anniversary date for administrative purposes.

NOTIFICATION OF AND PARTICIPATION IN THE ANNUAL REEXAMINATION PROCESS

Notification of the Annual Reexamination process will be sent via first-class mail. The mailing will include the necessary documents to be completed as part of the Annual Reexamination process, as well as a breakdown of what the family needs to provide in order to verify the family's income, expenses, assets, and composition.The Annual Reexamination notice will include a date by which the family is to provide the required documentation. If a family wishes to have their Annual Reexamination conducted in person, they can contact the BHA staff assigned to their Annual Reexamination in order to do so.

11-I.D. CONDUCTING ANNUAL REEXAMINATIONS

As part of the annual reexamination process, families are required to provide updated information to the BHA regarding the family's income, expenses, and composition [24 CFR 982.551(b)].

Families will be asked to provide all required information (as described in the reexamination notice) to the BHA by the due date indicated on their Annual Reexamination notice. The required information will include a BHA-designated reexamination form, an Authorization for the Release of Information/Privacy Act Notice, as well as supporting documents or forms related to the family's income, expenses, and family composition.

Any required documents or information missing from the submitted reexamination paperwork will be requested from the family to be provided within 10 business days. If the family is unable to obtain the information or materials within the required time frame, the family may request an extension.

If the family does not provide the required documents or information within the required time period (plus any extensions), the family will be sent a notice of termination (See Chapter 12).

The information provided by the family generally must be verified in accordance with the policies in Chapter 7. Unless the family reports a change, or the BHA has reason to believe a change has occurred in information previously reported by the family, certain types of information that are verified at admission typically do not need to be re-verified on an annual basis. These include:

- Legal identity
- Age
- Social security numbers
- A person's disability status
- Citizenship or immigration status

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

11-I.E. DETERMINING ONGOING ELIGIBILITY OF CERTAIN STUDENTS [24 CFR 982.552(b)(5)]

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

If a student enrolled in an institution of higher education is under the age of 24, is not a veteran, is not married, does not have a dependent child, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the student's eligibility must be reexamined along with the income eligibility of the student's parents on an annual basis. In these cases, both the student and the student's parents must be income eligible for the student to continue to receive HCV assistance. If, however, a student in these circumstances is determined independent from their parents or is considered a *vulnerable youth* in accordance with BHA policy, the income of the student's parents will not be considered in determining the student's ongoing eligibility.

Students who reside with parents in an HCV assisted unit are not subject to this provision. It is limited to students who are receiving assistance on their own, separately from their parents.

During the annual reexamination process, the BHA will determine the ongoing eligibility of each student who is subject to the eligibility restrictions in 24 CFR 5.612 by reviewing the student's individual income as well as the income of the student's parents. If the student has been determined "independent" from their parents or is considered a *vulnerable youth* based on the policies in Sections 3-II.E and 7-II.E, the parents' income will not be reviewed.

If the student is no longer income eligible based on their own income or the income of their parents, the student's assistance will be terminated in accordance with the policies in Section 12-I.D.

If the student continues to be income eligible based on their own income and the income of their parents (if applicable), the BHA will process a reexamination in accordance with the policies in this chapter.

11-I.F. EFFECTIVE DATES

The BHA has an established policy for determining the effective date of changes that result from an annual reexamination [24 CFR 982.516].

In general, an *increase* in the family share of the rent that results from an annual reexamination will take effect on the family's anniversary date, and the family will be notified at least 30 days in advance.

- If less than 30 days remain before the scheduled effective date, the increase will take effect on the first of the month following the end of the 30-day notice period.
- If a family moves to a new unit, the increase will take effect on the effective date of the new lease and HAP contract, and no 30-day notice is required.
- If the BHA chooses to schedule an annual reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be determined by the BHA, but will always allow for the 30-day notice period.
- If the family causes a delay in processing the annual reexamination, *increases* in the family share of the rent will be applied retroactively, to the scheduled effective date of the annual reexamination. The family will be responsible for any overpaid subsidy and may be offered a repayment agreement in accordance with the policies in Chapter 16.

In general, a *decrease* in the family share of the rent that results from an annual reexamination will take effect on the family's anniversary date.

- If a family moves to a new unit, the decrease will take effect on the effective date of the new lease and HAP contract.
- If the BHA chooses to schedule an annual reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be determined by the BHA.
- 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 BHA by the date specified, and this delay prevents the BHA from completing the reexamination as scheduled.

PART II: INTERIM REEXAMINATION [24 CFR 982.516]

11-II.A. OVERVIEW

Family circumstances may change between annual reexaminations. HUD and BHA policies dictate what kinds of information about changes in family circumstances must be reported, and under what circumstances the BHA must process interim reexaminations to reflect those changes. HUD regulations also permit the BHA 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 BHA must complete the interim reexamination within a reasonable time after the family's request.

This part includes HUD and BHA policies describing what changes families are required to report, what changes families may choose to report, and how the BHA will process both BHA- 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 BHA 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 BHA has limited discretion in this area.

The BHA will conduct interim reexaminations to account for any changes in household composition that occur between annual reexaminations.

NEW FAMILY MEMBERS NOT REQUIRING BHA APPROVAL

The addition of a family member as a result of birth, adoption, or court-awarded custody does not require BHA approval. However, the family is required to promptly notify the BHA of the addition [24 CFR 982.551(h)(2)].

The family must inform the BHA of the birth, adoption, or court-awarded custody of a child within 10 business days.

NEW FAMILY AND HOUSEHOLD MEMBERS REQUIRING APPROVAL

With the exception of children who join the family as a result of birth, adoption, or court-awarded custody, a family must request BHA 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)].

If a change in family size causes a violation of Housing Quality Standards (HQS) space standards (see Chapter 8), the BHA must issue the family a new voucher, and the family and BHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the BHA must terminate the family's HAP contract in accordance with its terms [24 CFR 982.403].

Families must request BHA approval to add a new family member, live-in aide, foster child, or foster adult. This includes any person not on the lease who is expected to stay in the unit for more than 30 consecutive days or 90 cumulative days within a 12-month period and therefore no longer qualifies as a "guest." Requests must be made in writing and approved by the BHA prior to the individual moving into the unit.

The BHA will not approve the addition of a new family or household member unless the individual meets the BHA's eligibility criteria (see Chapter 3) and documentation requirements (see Chapter 7, Part II).

The BHA will not approve the addition of a foster child or foster adult if it will cause a violation of HQS space standards.

If the BHA determines an individual meets the BHA's eligibility criteria and documentation requirements, the BHA will provide written approval to the family. If the approval of a new family member or live-in aide will cause overcrowding according to HQS standards, the approval letter will explain that the family will be issued a voucher and will be required to move.

If the BHA determines that an individual does not meet the BHA's eligibility criteria or documentation requirements, the BHA will notify the family in writing of its decision to deny approval of the new family or household member and the reasons for the denial.

The BHA 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 BHA 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 BHA also needs to know when any live-in aide, foster child, or foster adult ceases to reside in the unit.

If a household member ceases to reside in the unit, the family must inform the BHA 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.

CHANGES IN FAMILY UNIT SIZE (VOUCHER SIZE) [24 CFR 982.505(C)(6)]

Changes effective 12/2/24 and earlier: 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.

Changes effective 12/3/24 and later: 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 may be used to determine the payment standard immediately or at the family's first regular reexamination following the change in family unit size.

If the family unit size (voucher size) changes during the term of a HAP contract, the BHA wil use the new family unit to determine the payment standard at the family's first regular reexamination following the change in family unit size.

11-II.C. CHANGES AFFECTING INCOME OR EXPENSES

Interim reexaminations can be scheduled either because the BHA 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 BHA may take different actions depending on whether the family reported the change voluntarily, or because it was required to do so.

BHA-INITIATED INTERIM REEXAMINATIONS

BHA-initiated interim reexaminations are those that are scheduled based on circumstances or criteria defined by the BHA. They are not scheduled because of changes reported by the family.

The BHA will conduct interim reexaminations in each of the following instances:

- For families receiving the Earned Income Disallowance (EID), the BHA will conduct an interim reexamination at the conclusion of the 24-month eligibility period.
- 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 BHA will schedule an interim reexamination to coincide with the end of the period for which it is feasible to project income.
- If at the time of the annual reexamination, tenant declarations were used on a provisional basis due to the lack of third-party verification, and third-party verification becomes available, the BHA will conduct an interim reexamination.
- The BHA may conduct an interim reexamination at any time in order to correct an error in a previous reexamination, or to investigate a tenant fraud complaint.

FAMILY-INITIATED INTERIM REEXAMINATIONS

The BHA 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 BHA the freedom to determine the circumstances under which families will be required to report changes affecting income.

Families are required to report all increases in earned income, including new employment, within 10 business days of the date the change takes effect.

The BHA will note the information in the tenant file but will not conduct an interim reexamination unless the family is Zero income or the new earned income being added to the housheold is the result of a new member being added to the housheold.

Families are not required to report any other changes in income or expenses.

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 BHA must process the request if the family reports a change that will result in a reduced family income [HCV GB, p. 12-9].

If a family reports a decrease in income from the loss of welfare benefits due to fraud or non-compliance with a welfare agency requirement to participate in an economic self-sufficiency program, the family's share of the rent will not be reduced [24 CFR 5.615]. For more information regarding the requirement to impute welfare income see Chapter 6.

If a family reports a change that it was not required to report and that would result in an increase in the family share of the rent, the BHA 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, the BHA will conduct an interim reexamination. See Section 11-II.D. for effective dates.

Families may report changes in income or expenses at any time.

11-II.D. PROCESSING THE INTERIM REEXAMINATION

METHOD OF REPORTING

The family may notify the BHA of changes either orally or in writing. If the family provides oral notice, the BHA may also require the family to submit the changes in writing.

Generally, the family will not be required to attend an interview for an interim reexamination. However, if the BHA determines that an interview is warranted, the family may be required to attend.

Based on the type of change reported, the BHA will determine the documentation the family will be required to submit. The family must submit any required information or documents within 10 business days of receiving a request from the BHA. This time frame may be extended for good cause with BHA approval. The BHA will accept required documentation by mail, by email, or in person.

EFFECTIVE DATES

The BHA must establish the time frames in which any changes that result from an interim reexamination will take effect [24 CFR 982.516(d)]. The changes may be applied either retroactively or prospectively, depending on whether there is to be an increase or a decrease in the family share of the rent, and whether the family reported any required information within the required time frames [HCV GB, p. 12-10].

If the family share of the rent is to increase:

- The increase generally will be effective on the first of the month following 30 days' notice to the family.
- If a family fails to report a change within the required time frames, or fails to provide all required information within the required time frames, the increase will be applied retroactively, to the date it would have been effective had the information been provided on a timely basis. The family will be responsible for any overpaid subsidy and may be offered a repayment agreement in accordance with the policies in Chapter 16.

If the family share of the rent is to decrease:

- The decrease will be effective on the first day of the month following the month in which the change was reported and all required documentation was submitted. In cases where the change cannot be verified 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 BHA 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 BHA's calculations.

Specific policies governing how subsidy standards, payment standards, and utility allowances are applied are discussed below.

Payment Standards [24 CFR 982.505 and FR Notice 5/7/24]

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 BHA changes its payment standard or when there is a change in family composition.

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 immediately or 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 BHA'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 BHA must use the utility allowances in effect at the time the new lease and HAP contract are executed.

At reexamination, the BHA must use the BHA current utility allowance schedule [HCV GB, p. 18-8].

Revised utility allowances will be applied to a family's rent and subsidy calculations at the first annual reexamination after the allowance is adopted.

11-III.C. NOTIFICATION OF NEW FAMILY SHARE AND HAP AMOUNT

The BHA 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 BHA's determination of their annual or adjusted income, and the use of such income to compute the housing assistance payment [24 CFR 982.555(a)(1)(i)] (see Chapter 16).

The notice to the family will include the annual and adjusted income amounts that were used to calculate the family share of the rent and the housing assistance payment.

The notice will state the family has the right to request an explanation of how the assistance was calculated and if the family disagrees, they have the right to informal hearing. The notice will include the procedures for requesting an informal hearing.

11-III.D. DISCREPANCIES

During an annual or interim reexamination, the BHA 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 BHA. When errors resulting in the overpayment or underpayment of subsidy are discovered, corrections will be made in accordance with the policies in Chapter 14.

CHAPTER 11: REEXAMINATIONS UNDER HOTMA 102/104

This chapter is applicable upon the BHA's HOTMA 102/104 compliance date. Prior to this date, the BHA will follow policies as outlined in Chapter 11.A. of the model policy.

The BHA 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 BHA 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.

Part IV: Non-Interim Reexamination Transaction. This part describes transactions that do not entail changes to the family's adjusted income.

Policies governing reasonable accommodation, family privacy, required family cooperation, and program abuse, as described elsewhere in this plan, apply to both annual and interim reexaminations.

PART I: ANNUAL REEXAMINATIONS [24 CFR 982.516]

11-I.A. OVERVIEW

The BHA must conduct a reexamination of family income and composition at least annually. This includes gathering and verifying current information about family composition, income, and expenses. Based on this updated information, the family's income and rent must be recalculated. This part discusses the schedule for annual reexaminations, the information to be collected and verified, and annual reexamination effective dates.

Unlike when performing an interim reexamination or at intake, at annual reexamination, the BHA must determine the income of the family for the previous 12-month period, except where the BHA uses a streamlined income determination. Income from assets, however, is always anticipated, irrespective of the income examination type [Notice PIH 2023-27]. PHAs also have the option of using a Safe Harbor income verification from another federal means-tested program to verify gross annual income. Chapter 7 contains the BHA's policies related to streamlined income determinations and the use of Safe Harbor income verifications.

11-I.B. SCHEDULING ANNUAL REEXAMINATIONS

The BHA will begin the annual reexamination process 120 days in advance of its scheduled effective date. Generally, the BHA will schedule annual reexamination effective dates to coincide with the family's anniversary date.

Anniversary date is defined as 12 months from the effective date of the family's last annual reexamination or, during a family's first year in the program, from the effective date of the family's initial examination (admission).

If the family moves to a new unit, the BHA will perform a new annual reexamination.

The BHA also may schedule an annual reexamination for completion prior to the anniversary date for administrative purposes.

NOTIFCATION OF AND PARTICIPATION IN THE ANNUAL REEXAMINATION PROCESS

Notification of the Annual Reexamination process will be sent via first-class mail. The mailing will include the necessary documents to be completed as part of the Annual Reexamination process, as well as a breakdown of what the family needs to provide in order to verify the family's income, expenses, assets, and composition.The Annual Reexamination notice will include a date by which the family is to provide the required documentation. If a family wishes to have their Annual Reexamination conducted in person, they can contact the BHA staff assigned to their Annual Reexamination in order to do so.

11-I.C. CONDUCTING ANNUAL REEXAMINATIONS

As part of the annual reexamination process, families are required to provide updated information to the BHA regarding the family's income, expenses, and composition [24 CFR 982.551(b)].

Families will be asked to provide all required information (as described in the reexamination notice) to the BHA by the due date indicated on their Annual Reexamination notice. The required information will include a BHA-designated reexamination form, an Authorization for the Release of Information/Privacy Act Notice, as well as supporting documents or forms related to the family's income, expenses, and family composition.

Any required documents or information missing from the submitted reexamination paperwork will be requested from the family to be provided within 10 business days. If the family is unable to obtain the information or materials within the required time frame, the family may request an extension.

If the family does not provide the required documents or information within the required time period (plus any extensions), the family will be sent a notice of termination (See Chapter 12).

The information provided by the family generally must be verified in accordance with the policies in Chapter 7. Unless the family reports a change, or the BHA has reason to believe a change has occurred in information previously reported by the family, certain types of information that are verified at admission typically do not need to be re-verified on an annual basis. These include:

- Legal identity
- Age
- Social security numbers
- A person's disability status
- Citizenship or immigration status

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

11-I.D. DETERMINING ONGOING ELIGIBILITY OF CERTAIN STUDENTS [24 CFR 982.552(b)(5)]

Section 327 of Public Law 109-115 established restrictions on the ongoing eligibility of certain students (both part- and full-time) who are enrolled in institutions of higher education.

If a student enrolled in an institution of higher education is under the age of 24, is not a veteran, is not married, does not have a dependent child, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the student's eligibility must be reexamined along with the income eligibility of the student's parents on an annual basis. In these cases, both the student and the student's parents must be income eligible for the student to continue to receive HCV assistance. If, however, a student in these circumstances is determined independent from their parents or is considered a vulnerable youth in accordance with BHA policy, the income of the student's parents will not be considered in determining the student's ongoing eligibility.

Students who reside with parents in an HCV assisted unit are not subject to this provision. It is limited to students who are receiving assistance on their own, separately from their parents.

During the annual reexamination process, the BHA will determine the ongoing eligibility of each student who is subject to the eligibility restrictions in 24 CFR 5.612 by reviewing the student's individual income as well as the income of the student's parents. If the student has been determined "independent" from their parents or is considered a *vulnerable youth* based on the policies in Sections 3-II.E and 7-II.E, the parents' income will not be reviewed.

If the student is no longer income eligible based on their own income or the income of their parents, the student's assistance will be terminated in accordance with the policies in Section 12-I.D.

If the student continues to be income eligible based on their own income and the income of their parents (if applicable), the BHA will process a reexamination in accordance with the policies in this chapter.

11-I.E. CALCULATING ANNUAL INCOME AT ANNUAL REEXAMINATION [24 CFR 5.609(c)(2) and Notice PIH 2023-27]

The BHA must determine the income of the family for the previous 12-month period and use this amount as the family income for annual reexaminations, except where the BHA uses a streamlined income determination as indicated in Chapter 7 of this policy.

Except when using streamlined or Safe Harbor income determinations, in determining the income of the family for the previous 12-month period, any change of income since the family's last annual reexamination, including those that did not meet the threshold to process an interim reexamination in accordance with BHA policies and 24 CFR 5.657(c) or 960.257(b) must be considered.

Income from assets is always anticipated, irrespective of the income examination type.

A change in income may be a loss of income or the addition of a new source of income. Changing to a different employer in the prior year does not necessarily constitute a change if the income earned from either employer is substantially the same. The BHA should look at the entirety of the family's unearned income and earned income from the prior year in which earned income may have been one constant job or many different jobs that start and stop.

Cost of Living Adjustments (COLA) to Social Security income and Social Security disability income are always considered changes to income because the COLA is an adjustment that automatically occurs annually by law. See Chapter 6 for BHA policies on when the COLA is applied and Chapter 7 on streamlined determination of income for inflationary adjustments.

Notice PIH 2023-27 lists the following steps to calculate both earned and unearned income at annual reexamination.

Step 1: The BHA determines annual income for the previous 12-month period by reviewing the following information:

- The EIV Income Report pulled within 120 days of the effective date of the annual reexamination;
- The income reported on the most recent HUD–50058; and
- The amount of prior-year income reported by the family on the BHA's annual reexamination paperwork.

Step 2: The BHA takes into consideration any interim reexamination of family income completed since the last annual reexamination.

- If there was an interim reexamination performed within the last reexamination cycle and there are no additional changes, the BHA must use the annual income from the interim to determine the family's total annual income. The BHA may use verification obtained from the interim for this step.
- If the BHA did not perform an interim or there have been changes since the last reexamination, the BHA moves to Step 3.

Step 3: If there were changes in annual income not processed by the BHA since the last reexamination, the BHA must use current income. The family will be required to report their income for the prior year and whether there have been permanent changes.

If there are no reported changes to an income source, the BHA may use documentation of prior-year income to calculate the annual income. For example, the BHA may use the following documentation:

- EIV + self-certification (wages, Supplemental Security Income (SSI), Social Security, and unemployment)
- Current written third-party verification from the source verifying prior-year income that is dated within 120 days of receipt by the BHA, for example:
    - Year-end statements
    - Paystub with year-to-date amounts
    - Tax forms (Form 1040, W2, 1099, etc.)

If there are reported changes by the family or the BHA notes discrepancies between EIV and what the family reports, the BHA must follow the verification hierarchy (described in Chapter 7) to document and verify income. Exhibit 11-1 provides detailed examples of how the BHA calculates income from different sources at annual reexamination using the above method.

11-I.F. EFFECTIVE DATES

The BHA has established policies concerning the effective date of changes that result from an annual reexamination [24 CFR 982.516].

In general, an *increase* in the family share of the rent that results from an annual reexamination will take effect on the family's anniversary date, and the family will be notified at least 30 days in advance.

- If less than 30 days remain before the scheduled effective date, the increase will take effect on the first of the month following the end of the 30-day notice period.
- If a family moves to a new unit, the increase will take effect on the effective date of the new lease and HAP contract, and no 30-day notice is required.
- If the BHA chooses to schedule an annual reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be determined by the BHA, but will always allow for the 30-day notice period.
- If the family causes a delay in processing the annual reexamination, *increases* in the family share of the rent will be applied retroactively to the scheduled effective date of the annual reexamination. The family will be responsible for any overpaid subsidy and may be offered a repayment agreement in accordance with the policies in Chapter 16.

In general, a *decrease* in the family share of the rent that results from an annual reexamination will take effect on the family's anniversary date.

- If a family moves to a new unit, the decrease will take effect on the effective date of the new lease and HAP contract.
- If the BHA chooses to schedule an annual reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be determined by the BHA.
- 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 BHA by the date specified, and this delay prevents the BHA from completing the reexamination as scheduled.

PART II: INTERIM REEXAMINATIONS [24 CFR 982.516; Notice PIH 2023-27]

11-II.A. OVERVIEW

Family circumstances may change between annual reexaminations. HUD and PHA policies dictate what kinds of information about changes in family circumstances must be reported, and under what circumstances the BHA must process interim reexaminations to reflect those changes.

A family may request an interim determination of family income or composition because of any changes since the last determination. The BHA must conduct any interim reexamination within a reasonable period of time after the family request or when the BHA becomes aware of a change in the family's adjusted income that must be processed in accordance with HUD regulations. What qualifies as a "reasonable time" may vary based on the amount of time it takes to verify information, but the BHA generally should conduct the interim reexamination not longer than 30 days after the BHA becomes aware of changes in income.

Notice PIH 2023-27 changes the conditions under which interim reexaminations must be conducted, codifies when interim reexaminations should be processed and made effective, and requires related changes for annual reexaminations and streamlined income determinations. When the BHA determines that an interim reexamination of income is necessary, they must ask the family to report changes in all aspects of adjusted income.

11-II.B. CHANGES IN FAMILY AND HOUSEHOLD COMPOSITION

REPORTING

PHAs must require families to report household composition changes; however, PHAs determine the timeframe in which reporting happens [Notice PIH 2023-27]. The BHA must adopt policies prescribing when and under what conditions the family must report changes in income and family composition [24 CFR 960.257(b)(5)].

The BHA requires all families must report all changes in family and household composition that occur between annual reexaminations within 10 business days of the change.

NEW FAMILY MEMBERS NOT REQUIRING BHA APPROVAL

The addition of a family member as a result of birth, adoption, or court-awarded custody does not require BHA approval. However, the family is required to promptly notify the BHA of the addition [24 CFR 982.551(h)(2)].

NEW FAMILY AND HOUSEHOLD MEMBERS REQUIRING APPROVAL

With the exception of children who join the family as a result of birth, adoption, or court-awarded custody, a family must request BHA 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)].

If a change in family size causes a violation of space standards (see Chapter 8), the BHA must issue the family a new voucher, and the family must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the BHA must terminate the family's HAP contract in accordance with its terms [24 CFR 982.403].

Families must request BHA approval to add a new family member (other than due to birth, adoption, or court-awarded custody), live-in aide, foster child, or foster adult. This includes any person not on the lease who is expected to stay in the unit for more than 30 consecutive days or 90 cumulative days within a 12-month period and therefore no longer qualifies as a "guest." Requests must be made in writing and approved by the BHA prior to the individual moving into the unit.

The BHA will not approve the addition of a new family or household member unless the individual meets the BHA's eligibility criteria (see Chapter 3) and documentation requirements (see Chapter 7, Part II).

The BHA will not approve the addition of a foster child or foster adult if it will cause a violation of space standards.

If the BHA determines an individual meets the BHA's eligibility criteria and documentation requirements, the BHA will provide written approval to the family. If the approval of a new family member or live-in aide will cause overcrowding according to space standards, the approval letter will explain that the family will be issued a voucher and will be required to move.

If the BHA determines that an individual does not meet the BHA's eligibility criteria or documentation requirements, the BHA will notify the family in writing of its decision to deny approval of the new family or household member and the reasons for the denial.

The BHA 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 BHA if any household 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 BHA also needs to know when any live-in aide, foster child, or foster adult ceases to reside in the unit. The BHA must process an interim for all decreases in adjusted income when a family member permanently moves out of the unit.

If a household member ceases to reside in the unit, the family must inform the BHA 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.

CHANGES IN FAMILY UNIT SIZE (VOUCHER SIZE) [24 CFR 982.505(C)(6)]

Changes effective 12/2/24 and earlier: 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.

Changes effective 12/3/24 and later: 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 may be used to determine the payment standard immediately or at the family's first regular reexamination following the change in family unit size.

If the family unit size (voucher size) changes during the term of a HAP contract, the new family unit size will be used to determine the payment standard at the family's first regular reexamination following the change in family unit size.

11-II.C. CHANGES AFFECTING INCOME OR EXPENSES

OVERVIEW

Interim reexaminations for changes in income or expenses may be scheduled either because the BHA has reason to believe that changes in income or expenses may have occurred, or because the family reports a change.

The BHA must estimate the income of the family for the upcoming 12-month period to determine family income for an interim reexamination [24 CFR 5.609(c)(1)]. Policies for projecting income are found in Chapter 6.

INTERIM DECREASES [24 CFR 982.516(C)(2) AND NOTICE PIH 2023-27]

A family may request an interim determination of family income for any change since the last determination. The BHA has opted to conduct an interim reexamination any time the family's adjusted income has decreased by any amount.

HUD requires that the BHA perform an interim reexamination for a decrease in adjusted income in two circumstances:

- When there is a decrease in family size attributed to the death of a family member; or
- When a family member permanently moves out of the assisted unit during the period since the family's last reexamination.

In the above circumstances, if the net effect of the changes in adjusted income due to a decrease in family size results in no change or an increase in annual adjusted income, then the BHA must process the removal of the household member(s) as a non-interim reexamination transaction without making changes to the family's annual adjusted income.

INTERIM INCREASES [24 CFR 982.516(C)(3) AND NOTICE PIH 2023-27]

Increases Less than 10 Percent

The BHA must not process interim reexaminations for income increases that result in less than a 10 percent increase in annual adjusted income.

Increases 10 Percent or Greater

When a family reports an increase in their earned income between annual reexaminations, the BHA will not conduct an interim reexamination, regardless of the amount of the increase, and regardless of whether there was a previous decrease since the family's last annual reexamination.

The BHA will process an interim reexamination for any increases in unearned income of 10 percent or more in adjusted income.

The BHA will not perform an interim reexamination when a family reports an increase in income (whether earned or unearned income) within three months of their annual reexamination effective date. However, families who delay reporting income increases until the last three months of their certification period may be subject to retroactive rent increases in accordance with the BHA policies in Chapter 14.

Concurrent Increases in Earned and Unearned Income *[Notice PIH 2023-27]*
When the family reports an increase in both earned and unearned income at the same time, the BHA must look at the earned and unearned income changes independently of each other to determine if an interim reexamination is performed. The BHA will only conduct an interim reexamination when the increase independently meets the 10 percent threshold and all other requirements for performing interim reexaminations.

For example, if a family reported increases in both earned and unearned income that overall resulted in a 12 percent increase in their adjusted income, but the change in earned income represented a 7 percent increase and the change in unearned income represented a 5 percent increase, the BHA may not perform an interim for either change since neither change meets the 10 percent threshold amount independently. If the change in unearned income met the 10 percent threshold in this case, the BHA would be required to perform an interim. If the change in earned income met the 10 percent threshold in this case, the BHA would refer to BHA policy to determine whether an interim was required.

Cumulative Increases *[Notice PIH 2023-27]*
A series of smaller reported increases in adjusted income may cumulatively meet or exceed the 10-percent increase threshold, at which point the BHA must conduct an interim reexamination in accordance with BHA policy.

Family Reporting
The BHA has established policies consistent with HUD regulations prescribing when and under what conditions the family must report a change in family income or composition [24 CFR 982.516(d)].

The family will be required to report all changes in income regardless of the amount of the change, whether the change is to earned or unearned income, or if the change occurred during the last three months of the certification period. Families must report changes in income within 10 business days of the date the change takes effect. The family may notify the BHA of changes either orally or in writing, including email. If the family provides oral notice, the BHA may also require the family to submit the changes in writing, including email.

Within 10 business days of the family reporting the change, the BHA will determine whether the change will require an interim reexamination.

- If the change will not result in an interim reexamination, the BHA will note the information in the tenant file but will not conduct an interim reexamination. The BHA will send the family written notification (which may be emailed) within 10 business days of making this determination informing the family that the BHA will not conduct an interim reexamination.
- If the change will result in an interim reexamination, the BHA will determine the documentation the family will be required to submit based on the type of change reported and BHA policies in Chapter 7. The BHA will ask the family to report changes in all aspects of adjusted income at this time. The family must submit any required information or documents within 10 business days of receiving a request from the BHA. This time frame may be extended for good cause with BHA approval. The BHA will accept required documentation by mail, email, or in person. The BHA will conduct the interim within a reasonable time period based on the amount of time it takes to verify the information.

Generally, the family will not be required to attend an interview for an interim reexamination. However, if the BHA determines that an interview is warranted, the family may be required to attend.

11-II.D. EFFECTIVE DATES [24 CFR 982.516(e) and Notice 2023-27]

CHANGES REPORTED TIMELY [NOTICE PIH 2023-27]

If the family reports a change in family income or composition timely in accordance with BHA policies:

- For rent increases, the BHA must provide the family with 30 days advance written notice. The rent increase is effective the first of the month after the end of that 30-day notice period.
- Rent decreases are effective on the first of the month after the date of the actual change leading to the interim reexamination of family income. This means the decrease will be applied retroactively.

CHANGES NOT REPORTED TIMELY [NOTICE PIH 2023-27]

If the family failed to report a change in family income or composition timely in accordance with BHA policies:

- For rent increases, the BHA must implement any resulting rent increases retroactively to the first of the month following the date of the change leading to the interim reexamination of family income.
- For rent decreases, the BHA must implement the change no later than the first rent period following completion of the interim reexamination.

However, the BHA will apply the results of the interim reexamination retroactively where a family's ability to report a change in income promptly may have been hampered due to extenuating circumstances such as a natural disaster or disruptions to BHA management operations. The BHA will decide to apply decreases retroactively on a case-by-case basis.

When the BHA applies the results of interim increases retroactively, the BHA will clearly communicate the effect of the retroactive adjustment to the family and may enter into a repayment agreement in accordance with BHA policies.

The BHA will also clearly communicate the effect of the retroactive adjustment to the owner.

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 BHA 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 BHA's calculations.

Specific policies governing how subsidy standards, payment standards, and utility allowances are applied are discussed below.

PAYMENT STANDARDS [24 CFR 982.505 AND FR NOTICE 5/7/24]

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 BHA changes its payment standard or when there is a change in family composition.

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 BHA's subsidy standards (see Chapter 5), the new family unit size must be used to determine the payment standard amount for the family immediately or 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 BHA'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 BHA must use the utility allowances in effect at the time the new lease and HAP contract are executed.

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 BHA 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 BHA's determination of their annual or adjusted income, and the use of such income to compute the housing assistance payment [24 CFR 982.555(a)(1)(i)] (see Chapter 16).

11-III.D. DISCREPANCIES

During an annual or interim reexamination, the BHA may discover that information previously reported by the family was in error, or that the family intentionally misrepresented information. In addition, the BHA may discover errors made by the BHA. When errors resulting in the overpayment or underpayment of subsidy are discovered, corrections will be made in accordance with the policies in Chapter 14.

PART IV: NON-INTERIM REEXAMINATION TRANSACTIONS [Notice PIH 2023-27]

Families may experience changes within the household that do not trigger an interim reexamination under BHA policy and HUD regulations, but which HUD still requires the BHA to report to HUD via Form HUD-50058. These are known as non-interim reexamination transactions. In these cases, the BHA will submit a separate, new action code on Form HUD-50058. The following is a list of non-interim reexamination transactions:

- Adding or removing a hardship exemption for the childcare expense deduction;
- Updating or removing the phased-in hardship relief for the health and medical care expense deduction and/or reasonable attendant care and auxiliary apparatus expense deduction (families will begin receiving a 24-month phased-in relief at their next annual or interim reexamination, whichever occurs first);
- Adding or removing general hardship relief for the health and medical care expense deduction and/or reasonable attendant care and auxiliary apparatus expense deduction;
- Adding or removing a minimum rent hardship;
- Adding or removing a non-family member (i.e., live-in aide, foster child, foster adult);
- Ending a family's EID or excluding 50 percent (decreased from 100 percent) of a family member's increase in employment income at the start of the second 12- month EID period.

- Adding a family member and the increase in adjusted income does not trigger an interim reexamination under the final rule;
- Removing a family member and the increase in adjusted income does not trigger an interim reexamination under the final rule;
- Adding/updating a family or household member's Social Security number;
- Updating a family member's citizenship status from eligible to ineligible or vice versa, resulting in a change to the family's rent and/or utility reimbursement, if applicable (i.e., family begins receiving prorated assistance or previously prorated assistance becomes full assistance), or updating the prorated rent calculation due to the addition or removal of family members in household with an ineligible noncitizen(s); and
- Rent increases

The BHA must make all other changes to assets, income, and deductions at the next annual or interim reexamination of income, whichever is sooner.

EXHIBIT 11-1: CALCULATING INCOME AT ANNUAL REEXAMINATION

Example 1: Calculating Annual Income at Annual Reexamination Using EIV

Staff are processing the 3/1/2024 annual reexamination for Ruby Myers and her minor daughter, Georgia. No interim reexaminations have been processed, and Ruby has not reported any changes to annual income to the PHA since the 3/1/2023 annual reexamination. The SSA published 2024 COLA is 7 percent.

Last reexamination – 3/1/2023 Annual Reexamination

Ruby:	Georgia:
Wages: $30,000	SSI: $10,980 ($915 monthly)

The EIV report pulled on 12/15/2023

Ruby:	Georgia:
Wages Total: $33,651	SSI Total: $10,980
Quarter 3 of 2023: $8,859 (City Public School)	2023 benefit $915 monthly
Quarter 2 of 2023: $8,616 (City Public School)	
Quarter 1 of 2023: $8,823 (City Public School)	
Quarter 4 of 2022: $7,353 (City Public School)	

<table>
<tr><td colspan="2">Income Reported on Reexamination Application</td></tr>
<tr><td>Ruby:

Wages at City Public School: $32,000 (switched jobs but no permanent change to amount)</td><td>Georgia:

SSI benefits: $10,980 (no changes)</td></tr>
<tr><td>Calculating Ruby’s wages:

Step 1: Determine prior annual income from EIV (i.e., Q4 2022 through Q3 of 2023: $33,651).

Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination (in this case, there have been no interim reexaminations processed since the last annual reexamination).

Step 3: Ruby certifies that the $33,651 of wages in EIV is accurate and reflects her current annual income, so the PHA will use $33,651 for annual wages for the 3/1/2024 annual reexamination given there have been no additional changes to annual income.</td><td>Calculating Georgia’s SSI benefit:

Step 1: Determine the prior annual income from EIV (i.e., $915 x 12 months: $10,980).

Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination (in this case, there have been no interim reexaminations processed since the last annual reexamination).

Step 3: Ruby certifies the SSI income in EIV is accurate and reflects Georgia’s current annual income. The PHA must adjust the prior-year income (2023 SSI benefit) by the 7- percent COLA and will use this amount to calculate annual SSI income for the 3/1/2024 annual reexamination:

COLA: $64.05 ($915 x 0.07)

New gross SSI benefit: $11,748.60 ($979.05 x 12 months)</td></tr>
<tr><td colspan="2">If Ruby did not agree with the annual wages reported in EIV, the PHA/MFH Owner would be required to verify her current income in accordance with HUD’s verification hierarchy.</td></tr>
<tr><td colspan="2">Summary of Annual Income (as reported on the HUD-50058)</td></tr>
<tr><td>Ruby (Head of Household):

Other Wage: $33,651

Myers Family Total Annual Income: $45,399</td><td>Georgia (Other Youth Under 18):

SSI: $11,748</td></tr>
</table>

Example 2: Calculating Annual Income at Annual Reexamination Using EIV: Family Disagrees with EIV

Staff are processing Paul Hewson's 5/1/2024 annual reexamination. Since the last annual reexamination, Paul reported a decrease in annual income that exceeded 10 percent. Last year, Paul reported a decrease in earned income because he transferred from a full-time job at Sasha's Sweets to a part-time job at Viking Bakery. Following HUD's EIV verification hierarchy, staff confirmed Paul was no longer employed at Sasha's Sweets and decreased his anticipated annual income from $28,000 to $7,500 resulting from his new part-time employment at Viking Bakery; an interim reexamination was processed effective 7/1/2023. After the 7/1/2023 interim, Paul worked briefly at two different jobs, but he says he is no longer working and is not planning to work.
5/1/2023 Annual Reexamination
Wages: $28,000

The EIV report pulled on 1/15/2024

Wages Total: $18,271

Quarter 3 of 2023: $2,500 (Viking Bakery)

Quarter 3 of 2023: $796 (Sweet Tooth Candy Bar)

Quarter 2 of 2023: $1,300 (Sasha's Sweets)

Quarter 2 of 2023: $584 (Larry's Concessions)

Quarter 2 of 2023: $2,401 (Viking Bakery)

Quarter 1 of 2023: $6,500 (Sasha's Sweets)

Quarter 4 of 2022: $600 (Sasha's Sweets)

SS/SSI: No history of benefits

Income Reported on Reexamination Application
Wages: $0 (permanent change; no longer receiving)
Social Security: $14,400 ($1,200 monthly)
Paul certified on the PHA's annual reexamination paperwork that he does not agree with the annual wages of $18,271 reported in EIV and it is not reflective of his current anticipated annual income. He reported he is currently unemployed, and provided a copy of an award letter from the Social Security Administration to document that he will begin receiving a monthly disability benefit of $1,200 effective 3/1/2024.
Calculating Wages and SS Benefit
Step 1: Determine prior annual income taking into consideration the 7/1/2023 interim reexamination (i.e., EIV wages reflected Q4 2022 through Q3 2023: $18,271)
Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there was a 7/1/2023 interim that reduced wages to $7,500.
Step 3: Obtain documentation to verify current income and confirm Paul is no longer employed at Viking Bakery or The Sweet Tooth Candy Bar (the employers reported in the most recent quarter of EIV). This step is necessary, because Paul did not agree with the EIV income report or income reported on the last interim reexamination. Paul reported that he is no longer working at all.
Process the annual reexamination effective 5/1/2024 using annual SS income of $14,400 and $0 wages.
Summary of Annual Income (as reported on the HUD-50058)
Paul (Head of Household): $14,400 (SS)
Hewson Family Total Annual Income: $14,400

Example 3: Calculating Annual Income at Annual Reexamination

Staff are processing the 11/1/2024 annual reexamination for Samantha and Fergus Pool, head of household and spouse. On 2/14/2024 Samantha reported her monthly child support payment was reduced from $200 to $100 per month, but an interim reexamination was not processed because the reduction in child support income for Samantha's daughter, Hailey, did not result in a decrease of 10 percent or more in annual adjusted income, and the PHA did not establish a lower threshold. Samantha did not report any additional changes to the PHA.

Last reexamination – 11/1/2023 Annual Reexamination

Samantha:	Fergus:
Business income: $28,000	Wages: $8,250
VA disability pension: $12,000	Other non-wage income: $3,000 (Go Fund Me online fundraiser)
Child support: $2,400	

The EIV report pulled on 9/16/2024

Samantha:	Fergus:
Wages Total: $0 (no wage data reported since Q1 2023)	Wages Total: $8,600
	Quarter 1 of 2024: $2,100 (Ian's Fish 'n' Chips)
	Quarter 1 of 2024: $500 (Claire's Healthcare Supplies)
	Quarter 4 of 2023: $1,000 (Claire's Healthcare Supplies)
	Quarter 3 of 2023: $1,800 (The Onion Garden Shop)
	Quarter 2 of 2023: $3,200 (Ivar's Fish Haus)

Current Family Circumstances: Income Reported on Reexamination Application

Samantha and Fergus reported how much income was earned/received in the previous 12-month period and noted permanent changes, where applicable, for each source of their income on PHA's annual reexamination form. However, no information was reported by the family concerning other non-wage income. Fergus reported only wages and his current employment at Ian's Fish 'n' Chips for the annual reexamination. The family supplied the supporting documentation noted below to the PHA for the 11/1/2024 annual reexamination.

Samantha:	Fergus:
Business income: $28,750 (last year); has decreased to $18,000 (permanent change)	Wages: $6,000
VA disability benefit: $12,000 (last year); has increased to $12,300 (permanent change)	
Child support: $2,400 (last year); has decreased to $1,200 (permanent change)	

Calculating Samantha's Net Business Income

Step 1: Determine prior annual net business income (i.e., $28,000 on last HUD–50058).

Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there have been no interim reexaminations processed since the last annual reexamination.

Step 3: Adjust to reflect current net business income. Samantha reported on the annual reexamination application that business income permanently decreased to $18,000. The PHA must obtain supporting documentation from Samantha that demonstrates current net business income. Samantha provided documentation that supported the current annual net business income is $18,000. Process the annual reexamination effective 11/1/2024 using annual net business income determined in Step 3.

Calculating Samantha's VA Pension Income

Step 1: Determine prior annual VA pension income (i.e., $12,000 supported by a VA award letter Samantha supplied that documents the prior year monthly VA pension was $1,000).

Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there have been no interim reexaminations processed since the last annual reexamination.

Step 3: The PHA needs to adjust to reflect current VA pension income. Samantha supplies a VA award letter showing a monthly pension of $1,025, or $12,300 annually. Process the annual reexamination effective 11/1/2024 using annual VA pension income determined in Step 3 ($12,300 in this example).

Calculating Samantha's Child Support Income

Step 1: Determine prior annual child support income (i.e., $2,400 on the last HUD–50058).

Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there have been no interim reexaminations processed since the last annual reexamination. The family reported a decrease from $200 to $100 monthly, but the change was not processed because it did not meet the threshold.

Step 3: The family reported changes, so the PHA must adjust to reflect current child support income. In this example, the family submitted a child support history report from the local child support office that documents regular $100 monthly child supports payments beginning 3/1/2024 through the current month. Process the annual reexamination effective 11/1/2024 using current annual child support income determined in Step 3 ($1,200 in this example).

Calculating Fergus' Wages

Step 1: Determine prior annual income from wages in EIV (i.e., Q2 2023 through Q1 of 2024: $8,600).

Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there have been no interim reexaminations processed since the last annual reexamination.

Step 3: There is a discrepancy between what the family reported and EIV, so the PHA must verify and adjust to reflect current annual income from wages. Fergus reported $6,000 in annual income from wages on the annual reexamination from a single employer, Ian's Fish 'n' Chips. The PHA projected annual income of $7,800 based on the two paystubs for this employer, and EIV shows $8,600 earned in the most recent four quarters in EIV. To complete Step 3, the PHA must do the following:

- Resolve the discrepancy between EIV wages, the $6,000 annual income Fergus reported, and the $7,800 projected based on the paystubs he provided, and
- Verify he is no longer employed at Claire's Healthcare Supplies in accordance with HUD's verification hierarchy and local policies.

The PHA determined that Fergus reported his net vs. gross annual income from wages, which he corrected on the annual reexamination form to reflect his current gross annual income of $9,000. The PHA verified Fergus was no longer employed at Claire's Healthcare Supplies and obtained two additional paystubs. Based on four current and consecutive paystubs, Fergus is now projected to earn $9,360 annually. Process the annual reexamination effective 11/1/2024 using income from wages determined in Step 3 ($9,360 in this example).

<table>
<tr><td colspan="2">Calculating Fergus' Other Non-Wage Income</td></tr>
<tr><td colspan="2">Step 1: Determine prior annual income from other non-wage income (i.e., $3,000 on the last HUD– 50058).

Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there have been no interim reexaminations processed since the last annual reexamination.

Step 3: The family did not report any non-wage income on the annual reexamination form, but it was included on the last HUD–50058. The PHA must verify and adjust to reflect current non-wage income. The PHA must verify no income was received through a "Go Fund Me" online fundraiser so that it may be excluded. Fergus provided a self-certification that he hasn't solicited funds online and doesn't plan to in the following year; he also provided records from the account that documented no fundraising activity in the prior 12-month period. Process the annual reexamination effective 11/1/2024 using annual non-wage income of $0 determined in Step 3.</td></tr>
<tr><td colspan="2">Summary of Annual Income (as reported on the HUD-50058)</td></tr>
<tr><td>Samantha (Head of Household):

Own business: $18,000

Pension: $12,300

Child support: $1,200</td><td>Fergus (Co-head):

Wages: $9,360</td></tr>
<tr><td colspan="2">Poole Family Total Annual Income: $40,860</td></tr>
</table>

CHAPTER 12: TERMINATION OF ASSISTANCE AND TENANCY

HUD regulations specify mandatory and optional grounds for which a PHA can terminate a family's assistance. They also specify the circumstances under which an owner may terminate the tenancy of an assisted family. This chapter describes the policies that govern mandatory and optional terminations of assistance, and termination of tenancy by the owner. It is presented in three parts:

Part I: Grounds for Termination of Assistance. This part describes the various circumstances under which assistance under the program can be terminated by the family or by the BHA.

Part II: Approach to Termination of Assistance. This part describes the policies and the process that the BHA will use in evaluating decisions on whether to terminate assistance due to actions or inactions of the family where termination is an option. It specifies the alternatives that the BHA may consider in lieu of termination, the criteria the BHA will use when deciding what action to take, and the steps the BHA must take when terminating a family's assistance.

Part III: Termination of Tenancy by the Owner. This part describes the HUD policies that govern the owner's right to terminate an assisted tenancy.

PART I: GROUNDS FOR TERMINATION OF ASSISTANCE

12-I.A. OVERVIEW

HUD requires the BHA to terminate assistance for certain actions and inactions of the family and when the family no longer requires assistance due to increases in family income. HUD permits the BHA to terminate assistance for certain other actions or inactions of the family. In addition, a family may decide to withdraw from the program and terminate their HCV assistance at any time by notifying the BHA.

12-I.B. FAMILY NO LONGER REQUIRES ASSISTANCE [24 CFR 982.455]

As a family's income increases, the amount of the housing assistance payment decreases. If the amount of assistance provided by the BHA is reduced to zero, the family's assistance terminates automatically 180 days after the last HAP payment.

If a participating family receiving zero assistance experiences a change in circumstances that would result in a HAP payment to the owner, the family must notify the BHA 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 the BHA terminate housing assistance payments on behalf of the family at any time.

The request to terminate assistance should be made in writing and signed by the head of household, and spouse or cohead if applicable. Before terminating the family's assistance, the BHA will follow the notice requirements in Section 12-II.F.

12-I.D. MANDATORY TERMINATION OF ASSISTANCE

HUD requires the BHA to terminate assistance in the following circumstances.

EVICTION [24 CFR 982.552(B)(2), 24 CFR 5.2005(C)(1)]

The BHA must terminate assistance whenever a family is evicted from a unit assisted under the HCV program for a serious or repeated violation of the lease. As discussed further in section 12-II.E, incidents of actual or threatened domestic violence, dating violence, sexual assault, stalking, or human trafficking may not be construed as serious or repeated violations of the lease by the victim or threatened victim of such violence or stalking.

A family will be considered *evicted* if the family moves after a legal eviction order has been issued, whether or not physical enforcement of the order was necessary.

If a family moves after the owner has given the family an eviction notice for serious or repeated lease violations but before a legal eviction order has been issued, termination of assistance is not mandatory. In such cases the BHA 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, the BHA will consider the factors described in sections 12-II.D and 12-II.E. Upon consideration of such factors, the BHA may, on a case-by-case basis, choose not to terminate assistance.

Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises and criminal activity. Generally, the criterion to be used will be whether or not the reason for the eviction was the fault of the tenant or guests.

FAILURE TO PROVIDE CONSENT [24 CFR 982.552(B)(3)]

The BHA must terminate assistance if any family member fails to sign and submit any consent form they are required to sign for a regular or interim reexamination. See Chapter 7 for a complete discussion of consent requirements.

Upon the BHA**'s HOTMA 102/104 compliance date, the below policy on failure to provide consent is added:**

The BHA will also terminate assistance if the family revokes consent for the BHA to collect information from financial institutions.

FAILURE TO DOCUMENT CITIZENSHIP [24 CFR 982.552(B)(4) AND [24 CFR 5.514(C)]

The BHA must terminate assistance if (1) a family fails to submit required documentation within the required timeframe concerning any family member's citizenship or immigration status; (2) a family submits evidence of citizenship and eligible immigration status in a timely manner, but United States Citizenship and Immigration Services (USCIS) primary and secondary verification does not verify eligible immigration status of the family; or (3) a family member, as determined by the BHA, 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 2018-24]

The BHA must terminate assistance if a participant family fails to disclose the complete and accurate social security numbers of each household member and the documentation necessary to verify each social security number.

However, if the family is otherwise eligible for continued program assistance, and the BHA determines that the family's failure to meet the SSN disclosure and documentation requirements was due to circumstances that could not have been foreseen and were outside of the family's control, the BHA may defer the family's termination and provide the opportunity to comply with the requirement within a period not to exceed 90 calendar days from the date the BHA determined the family to be noncompliant.

The BHA will defer the family's termination and provide the family with the opportunity to comply with the requirement for a period of 90 calendar days for circumstances beyond the participant's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency, if there is a reasonable likelihood that the participant will be able to disclose an SSN by the deadline.

METHAMPHETAMINE MANUFACTURE OR PRODUCTION [24 CFR 982.553(B)(1)(II)]

The BHA 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 the BHA 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 BHA must immediately terminate assistance for the household member.

In this situation, the BHA 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 BHA 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 their parents in an HCV assisted household, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the BHA must the 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 BHA 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 BHA 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 the BHA to establish policies that permit the BHA to terminate assistance if the BHA determines that:

- Any household member is currently engaged in any illegal use of a drug, or has a pattern of illegal drug use that interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents
- Any household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents
- Any household member has violated the family's obligation not to engage in any drug-related criminal activity
- Any household member has violated the family's obligation not to engage in violent criminal activity

Use of Illegal Drugs and Alcohol Abuse

The BHA will terminate a family's assistance if any household member is currently engaged in any illegal use of a drug or has a pattern of illegal drug use that interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

The BHA 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 three months.

The BHA 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 or records of arrest will not be used as the sole basis for the termination or proof that the participant engaged in disqualifying criminal activity.

In making its decision to terminate assistance, the BHA will consider alternatives as described in Section 12-II.C and other factors described in Sections 12-II.D and 12-II.E. Upon consideration of such alternatives and factors, the BHA may, on a case-by-case basis, choose not to terminate assistance.

Drug-Related and Violent Criminal Activity *[24 CFR 5.100]*
Drug means a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

Drug-related criminal activity is defined by HUD as the illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute or use the drug.

Violent criminal activity means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

The BHA will terminate a family's assistance if any household member has violated the family's obligation not to engage in any drug-related or violent criminal activity during participation in the HCV program.

The BHA 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.

A record or records of arrest will not be used as the sole basis for the termination or proof that the participant engaged in disqualifying criminal activity.

In making its decision to terminate assistance, the BHA will consider alternatives as described in Section 12-II.C and other factors described in Sections 12-II.D and 12-II.E. Upon consideration of such alternatives and factors, the BHA 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), 24 CFR 984.101(D)]

HUD permits the BHA to terminate assistance under a number of other circumstances. It is left to the discretion of the BHA whether such circumstances in general warrant consideration for the termination of assistance. As discussed further in section 12-II.E, the Violence against Women Act prohibits PHAs from considering incidents of, or criminal activity directly related to, domestic violence, dating violence, sexual assault, stalking, or human trafficking as reasons for terminating the assistance of a victim of such abuse.

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

The BHA **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 BHA policies.
- Any family member has been evicted from federally assisted housing in the last three years.
- Any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.
- The family currently owes rent or other amounts to any BHA in connection with Section 8 or public housing assistance under the 1937 Act.
- The family has not reimbursed any BHA for amounts the BHA 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 BHA.
- A family member has engaged in or threatened violent or abusive behavior toward BHA personnel.
    - *Abusive or violent behavior towards BHA personnel* includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.

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

In making its decision to terminate assistance, the BHA will consider alternatives as described in Section 12-II.C and other factors described in Sections 12-II.D and 12-II.E. Upon consideration of such alternatives and factors, the BHA may, on a case-by-case basis, choose not to terminate assistance.

Family Absence from the Unit *[24 CFR 982.312]*
The family may be absent from the unit for brief periods. The BHA 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.

If the family is absent from the unit for more than 180 consecutive calendar days, the family's assistance will be terminated. Notice of termination will be sent in accordance with Section 12-II.F.

Upon the BHA's HOTMA 102/104 compliance date, the below section on the asset limitation is added:

Asset Limitation *[24 CFR 5.618; Notice PIH 2023-27]*
The BHA has discretion with respect to the application of the asset limitation at annual and interim reexamination. The BHA may adopt a written policy of total nonenforcement, enforcement, or limited enforcement as well as adopting exception policies.

The BHA has adopted a policy of total nonenforcement of the asset limitation for all program participants. The asset limitation only applies to initial eligibility determinations for new admissions to the BHA's HCV program.

Insufficient Funding *[24 CFR 982.454]*
The BHA may terminate HAP contracts if the BHA determines, in accordance with HUD requirements, that funding under the consolidated ACC is insufficient to support continued assistance for families in the program [24 CFR 982.54(d)(26)].

The BHA will determine whether there is sufficient funding to pay for currently assisted families according to the policies in Part VIII of Chapter 16. If the BHA determines there is a shortage of funding, prior to terminating any HAP contracts, the BHA will determine if any other actions can be taken to reduce program costs.

In the event that the BHA decides to stop issuing vouchers as a result of a funding shortfall, and the BHA is not assisting the required number of special purpose vouchers (NED families, HUD-Veterans Affairs Supportive Housing (VASH) families, and family unification program (FUP) families), when the BHA resumes issuing vouchers, the BHA will issue vouchers first to the special purpose voucher families on its waiting list until it has reached the required number of special purpose vouchers, when applicable.

If after implementing all reasonable cost cutting measures there is not enough funding available to provide continued assistance for current participants, the BHA will terminate HAP contracts as a last resort.

Prior to terminating any HAP contracts, the BHA will inform the local HUD field office. The BHA will terminate the minimum number needed in order to reduce HAP costs to a level within the BHA's annual budget authority.

If the BHA must terminate HAP contracts due to insufficient funding, the BHA will do so in accordance with the following criteria and instructions:

1. BHA will terminate families who are of sufficient income to not receive any HAP
2. BHA will terminate families who owe BHA money but are not yet under a repayment agreement. Families in this situation will be terminated in the order of the amount owed, beginning with the largest.
3. BHA will terminate families who owe money to BHA under repayment agreement and who have made at least one late payment. Families in this situation will be terminated in order of the amount owed, beginning with the largest.

4. BHA will terminate families who owe BHA money, are under repayment agreement, and have made all payments in accordance with the repayment agreement.
5. BHA will terminate non-elderly, non-disabled single member families.
6. BHA will terminate non-elderly, non-disabled families with no children under the age of 18
7. BHA will terminate non-elderly, non-disabled families with children under the age of 18
8. BHA will terminate families who have been assisted in the HCV program the longest
9. Families comprising the required number of special purpose vouchers, including nonelderly disabled (NED), HUD-Veteran's Affairs Supportive Housing (HUD-VASH), Mainstream, and family unification program (FUP) will be the last to be terminated.

PART II: APPROACH TO TERMINATION OF ASSISTANCE

12-II.A. OVERVIEW

The BHA is required by regulation to terminate a family's assistance for certain actions or inactions of the family. For other types of actions or inactions of the family, the regulations give the BHA the authority to either terminate the family's assistance or to take another action. This part discusses the various actions the BHA may choose to take when it has discretion and outlines the criteria the BHA 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 BHA'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, the BHA may require that any household member who participated in or was responsible for an offense no longer resides in the unit [24 CFR 982.552(c)(2)(ii)].

As a condition of continued assistance, the head of household must certify that the culpable family member has vacated the unit and will not be permitted to visit or to stay as a guest in the assisted unit. The family must present evidence of the former family member's current address upon BHA request.

REPAYMENT OF FAMILY DEBTS

If a family owes amounts to the BHA, as a condition of continued assistance, the BHA will require the family to repay the full amount or to enter into a repayment agreement, within 30 days of receiving notice from the BHA of the amount owed. See Chapter 16 for policies on repayment agreements.

12-II.D. CRITERIA FOR DECIDING TO TERMINATE ASSISTANCE

EVIDENCE

For criminal activity, HUD permits the BHA to terminate assistance if a preponderance of the evidence indicates that a household member has engaged in the activity, regardless of whether the household member has been arrested or convicted [24 CFR 982.553(c)].

The BHA will use the concept of the preponderance of the evidence as the standard for making all termination decisions.

Preponderance of the evidence is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

USE OF CRIMINAL CONVICTION RECORDS AFTER ADMISSION [24 CFR 5.903]

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

CONSIDERATION OF CIRCUMSTANCES [24 CFR 982.552(c)(2)(i)]

The BHA is permitted, but not required, to consider all relevant circumstances when determining whether a family's assistance should be terminated.

The BHA 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 effects that termination of assistance may have on other members of the family who were not involved in the action or failure to act
- The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities or (as discussed further in section 12-II.E) a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking
- The length of time since the violation occurred, including the age of the individual at the time of the conduct, as well as the family's recent history and the likelihood of favorable conduct in the future
- While a record or records of arrest will not be used as the sole basis for termination, an arrest may, however, trigger an investigation to determine whether the participant actually engaged in disqualifying criminal activity. As part of its investigation, the BHA may obtain the police report associated with the arrest and consider the reported circumstances of the arrest. The BHA 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
- The BHA 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 (See Chapter 16-IV.B. Repayment Policy, Criminal Prosecution for Program Fraud/Abuse).

REASONABLE ACCOMMODATION [24 CFR 982.552(C)(2)(IV)]

If the family includes a person with disabilities, the BHA's decision to terminate the family's assistance is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.

If a family indicates that the behavior of a family member with a disability is the reason for a proposed termination of assistance, the BHA will determine whether the behavior is related to the disability. If so, upon the family's request, the BHA will determine whether alternative measures are appropriate as a reasonable accommodation. The BHA 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, STALKING, OR HUMAN TRAFFICKING

This section describes the protections against termination of assistance that the Violence against Women Act (VAWA) provides for victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking. For general VAWA requirements, key VAWA definitions, and BHA policies pertaining to notification, documentation, and confidentiality, see section 16-IX of this plan.

VAWA PROTECTIONS AGAINST TERMINATION

VAWA provides four specific protections against termination of HCV assistance for victims of domestic violence, dating violence, sexual assault or stalking. (Note: The second, third, and fourth protections also apply to terminations of tenancy or occupancy by owners participating in the HCV program, as do the limitations discussed under the next heading.)

- Although the VAWA 2022 statute does not specifically include human trafficking in the list of victims protected under VAWA, in 2022 HUD began including human trafficking as part of the list of victims protected under VAWA (as seen in Notices PIH 2022-06, PIH 2022-22, and PIH 2022-24). In the absence of a final rule implementing VAWA 2022 and to mirror HUD's recent usage, this policy includes human trafficking in addition to domestic violence, dating violence, sexual assault, and stalking anywhere such a list appears.

First, VAWA provides that the BHA 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 BHA, 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 stalking, or human trafficking, and who reasonably believed they were imminently threatened by harm from further violence if they remained in the unit [see 24 CFR 982.354(b)(4)].

Second, it provides that an incident or incidents of actual or threatened domestic violence, dating violence, sexual assault, stalking, or human trafficking 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 [see 24 CFR 5.2005(c)(1)].

Third, it provides that criminal activity directly related to domestic violence, dating violence, sexual assault, stalking, or human trafficking may not be construed as cause for terminating the assistance of a tenant if a

member of the tenant's household, a guest, or another person under the tenant's control is the one engaging in the criminal activity and the tenant or affiliated individual or other individual is the actual or threatened victim of the domestic violence, dating violence, sexual assault, stalking, or human trafficking [see 24 CFR 5.2005(c)(2)].

Fourth, it gives the BHA 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)].

PHAs and owners may not coerce, intimidate, threaten, interfere with, or retaliate against any person who exercises or assists or encourages a person to exercise any rights or protections under VAWA [FR Notice 1/4/23].

LIMITATIONS ON VAWA PROTECTIONS [24 CFR 5.2005(D) AND (E)]

VAWA does not limit the authority of the BHA to terminate the assistance of a victim of abuse for reasons unrelated to domestic violence, dating violence, sexual assault, stalking, or human trafficking so long as the BHA 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 the BHA to terminate the assistance of a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking if the BHA 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 BHA 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 the BHA to terminate the victim's assistance "only when there are no other actions that could be taken to reduce or eliminate the threat" [24 CFR 5.2005(d)(3)].

In determining whether a program participant who is a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking is an actual and imminent threat to other tenants or those employed at or providing service to a property, the BHA 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, stalking or human trafficking
- Whether the threat is a physical danger beyond a speculative threat
- Whether the threat is likely to happen within an immediate time frame
- Whether the threat to other tenants or employees can be eliminated in some other way, such as by helping the victim relocate to a confidential location or seeking a legal remedy to prevent the perpetrator from acting on the threat

If the participant wishes to contest the the BHA's determination that they are an actual and imminent threat to other tenants or employees, the participant may do so as part of the informal hearing.

DOCUMENTATION OF ABUSE [24 CFR 5.2007]

When an individual facing termination of assistance for reasons related to domestic violence, dating violence, sexual assault, stalking, or human trafficking claims protection under VAWA, the BHA will request that the individual provide documentation supporting the claim in accordance with the policies in section 16-IX.D of this plan.

The BHA reserves the right to waive the documentation requirement if it determines that a statement or other corroborating evidence from the individual will suffice. In such cases the BHA will document the waiver in the individual's file.

TERMINATING THE ASSISTANCE OF A DOMESTIC VIOLENCE PERPETRATOR

The BHA will terminate assistance to a family member if the BHA determines that the family member has committed criminal acts of physical violence against other family members or others. This action will not affect the assistance of the remaining, nonculpable family members.

In making its decision, the BHA will consider all credible evidence, including, but not limited to, a signed certification (form HUD-5382) or other documentation of abuse submitted to the BHA by the victim in accordance with this section and section 16-IX.D. The BHA will also consider the factors in section 12-II.D. Upon such consideration, the BHA may, on a case-by-case basis, choose not to terminate the assistance of the culpable family member.

If the BHA does terminate the assistance of the culpable family member, it will do so in accordance with applicable law, HUD regulations, and the policies in this plan.

12-II.F. TERMINATION NOTICE

Whenever a family's assistance will be terminated, the BHA will send a written notice of termination to the family and to the owner. The BHA 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 BHA policies, or the circumstances surrounding the termination require.

When the BHA notifies an owner that a family's assistance will be terminated, the BHA will, if appropriate, advise the owner of their right to offer the family a separate, unassisted lease.

Whenever the BHA decides to terminate a family's assistance because of the family's action or failure to act, the BHA 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. The BHA will request in writing that a family member wishing to claim protection under VAWA notify the BHA 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 BHA must provide a copy of the record to the subject of the record and the tenant so that they have an opportunity to dispute the accuracy and relevance of the record [24 CFR 982.553(d)(2)].
- If immigration status is the basis of a family's termination, as discussed in section 12-I.D, the special notice requirements in section 16-III.D must be followed.

PART III: TERMINATION OF TENANCY BY THE OWNER

12-III.A. OVERVIEW

Termination of an assisted tenancy is a matter between the owner and the family; the BHA is not directly involved. However, the owner is under some constraints when terminating an assisted tenancy. Termination of tenancy for certain reasons will also result in termination of assistance as discussed in this section.

12-III.B. GROUNDS FOR OWNER TERMINATION OF TENANCY [24 CFR 982.310, 24 CFR 5.2005(c), and Form HUD-52641-A, Tenancy Addendum]

During the term of the lease, the owner is not permitted to terminate the tenancy except for serious or repeated violations of the lease, certain violations of state or local law, or other good cause.

SERIOUS OR REPEATED LEASE VIOLATIONS

The owner is permitted to terminate the family's tenancy for serious or repeated violations of the terms and conditions of the lease, except when the violations are related to incidents of actual or threatened domestic violence, dating violence, sexual assault, stalking, and human trafficking and the victim is protected from eviction by the Violence against Women Act (see section 12-II.E). A serious lease violation includes failure to pay rent or other amounts due under the lease. However, the BHA'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
- 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, stalking, or human trafficking if the tenant or an affiliated individual is the victim, the criminal activity may not be construed as cause for terminating the victim's tenancy (see section 12-II.E).

The owner may terminate tenancy during the term of the lease if any member of the household is:

- Fleeing to avoid prosecution, custody, or confinement after conviction for a crime or an attempt to commit a crime that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or
- Violating a condition of probation or parole imposed under federal or state law.

The owner may terminate tenancy during the term of the lease if any member of the household has engaged in abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

EVIDENCE OF CRIMINAL ACTIVITY

The owner may terminate tenancy and evict by judicial action a family for criminal activity by a covered person if the owner determines the covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying the standard of proof used for a criminal conviction. This is the case except in certain incidents where the criminal activity directly relates to domestic violence, dating violence, sexual assault, stalking, or human trafficking, and the tenant or an affiliated individual is the victim or threatened victim of the domestic violence, dating violence, sexual assault, stalking, or human trafficking.

OTHER GOOD CAUSE

During the initial lease term, the owner may not terminate the tenancy for "other good cause" unless the owner is terminating the tenancy because of something the family did or failed to do. During the initial lease term or during any extension term, other good cause includes the disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises.

After the initial lease term, "other good cause" for termination of tenancy by the owner includes:

- Failure by the family to accept the offer of a new lease or revision
- The owner's desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit
- A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, or desire to lease the unit at a higher rent)

After the initial lease term, the owner may give the family notice at any time, in accordance with the terms of the lease.

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

12-III.C. EVICTION [24 CFR 982.310(e) and (f) and Form HUD-52641-A, Tenancy Addendum]

The owner must give the tenant a written notice that specifies the grounds for termination of tenancy during the term of the lease. The tenancy does not terminate before the owner has given this notice, and the notice must be given at or before commencement of the eviction action.

The notice of grounds may be included in, or may be combined with, any owner eviction notice to the tenant.

Owner eviction notice means a notice to vacate, or a complaint or other initial pleading used under state or local law to commence an eviction action. The owner may only evict the tenant from the unit by instituting a court action. The owner must give the BHA a copy of any eviction notice at the same time the owner notifies the family. The family is also required to give the BHA a copy of any eviction notice (see Chapter 5).

If the eviction action is finalized in court, the owner must provide the BHA with documentation related to the eviction, including notice of the eviction date, as soon as possible, but no later than 5 business days following the court-ordered eviction.

12-III.D. DECIDING WHETHER TO TERMINATE TENANCY [24 CFR 982.310(h), 24 CFR 982.310(h)(4)]

An owner who has grounds to terminate a tenancy is not required to do so, and may consider all of the circumstances relevant to a particular case before making a decision. These might include:

- The nature of the offending action
- The seriousness of the offending action;

- The effect on the community of the termination, or of the owner's failure to terminate the tenancy;
- The extent of participation by the leaseholder in the offending action;
- The effect of termination of tenancy on household members not involved in the offending activity;
- The demand for assisted housing by families who will adhere to lease responsibilities;
- The extent to which the leaseholder has shown personal responsibility and taken all reasonable steps to prevent or mitigate the offending action;
- The effect of the owner's action on the integrity of the program.

The owner may require a family to exclude a household member in order to continue to reside in the assisted unit, where that household member has participated in or been culpable for action or failure to act that warrants termination.

In determining whether to terminate tenancy for illegal use of drugs or alcohol abuse by a household member who is no longer engaged in such behavior, the owner may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully (42 U.S.C. 13661). For this purpose, the owner may require the tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

The owner's termination of tenancy actions must be consistent with the fair housing and equal opportunity provisions in 24 CFR 5.105.

An owner's decision to terminate tenancy for incidents related to domestic violence, dating violence, sexual assault, stalking, or human trafficking is limited by the Violence against Women Act (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 the BHA has no other grounds for termination of assistance, the BHA may issue a new voucher so that the family can move with continued assistance (see Chapter 10).

CHAPTER 13: OWNERS

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 the BHA’s HCV program and highlights key owner rights and responsibilities.

Part II: HAP Contracts. This part explains provisions of the HAP contract and the relationship between the BHA and the owner as expressed in the HAP contract.

For detailed information about HCV program responsibilities and processes, including BHA policies in key areas, owners will need to refer to several other chapters in this plan. Where appropriate, Chapter 13 will reference the other chapters.

PART I: OWNERS IN THE HCV PROGRAM

13-I.A. OWNER RECRUITMENT AND RETENTION [HCV GB, pp. 2-4 to 2-6; HCV Landlord Strategy Guidebook for PHAs]

BHA will conduct owner outreach to ensure that owners are familiar with the program and its advantages. BHA will actively recruit property owners with property located outside areas of poverty and minority concentration. These outreach strategies may include:

- Distributing printed material about the program to property owners and managers;
- Developing working relationships with owners and real estate brokers associations.

RETENTION

In addition to recruiting owners to participate in the HCV program, BHA will also provide the kind of customer service that will encourage participating owners to remain active in the program.

All BHA 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.

13-I.B. BASIC HCV PROGRAM REQUIREMENTS

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. The BHA has no liability or responsibility to the owner or other persons for the family's behavior or suitability for tenancy. See Chapters 3 and 9 for more detail on tenant family screening policies and process.

If the owner is willing, the family and the owner must jointly complete a Request for Tenancy Approval (RFTA, Form HUD-52517), which constitutes the family's request for assistance in the specified unit, and which documents the owner's willingness to lease to the family and to follow the program's requirements. When submitted to the BHA, this document is the first step in the process of obtaining approval for the family to receive the financial assistance it will need in order to occupy the unit. Also submitted with the RFTA is a copy of the owner's proposed dwelling lease, including the HUD-required Tenancy Addendum (Form HUD-52641-A). See Chapter 9 for more detail on request for tenancy approval policies and process.

HUD regulations stipulate requirements for the approval of an assisted tenancy.

The owner must be qualified to participate in the program [24 CFR 982.306]. Some owners are precluded from participating in the program, or from renting to a particular family, either because of their past history with this or another federal housing program, or because of certain conflicts of interest. Owner qualifications are discussed later in this chapter.

The selected unit must be of a type that is eligible for the program [24 CFR 982.305(a)]. Certain types of dwelling units cannot be assisted under the HCV program. Other types may be assisted under certain conditions. See Chapter 9 for more detail on unit eligibility policies and process.

The selected unit must pass housing quality standards [24 CFR 982.305(a)(2)]. The BHA will inspect the owner's dwelling unit at least biennially to ensure that the unit continues to meet inspection requirements. See Chapter 8 for a discussion of the inspection standards and policies for inspections at initial lease-up and throughout the family's tenancy.

The BHA 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, the BHA 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 (Form HUD-52641-A) includes the HUD requirements governing the tenancy and must be added word-for-word to the owner's lease. See Chapter 9 for a discussion of the dwelling lease and tenancy addendum, including lease terms and provisions.

The BHA 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 housing quality standards, including performance of ordinary and extraordinary maintenance
    - A unit is not in compliance with housing quality standards if the BHA or other inspector authorized by the state or local government determines that the unit has deficiencies based upon an inspection, the agency or inspector notifies the owner in writing of the deficiencies, and the deficiencies are not remedied within the appropriate timeframe.
- Complying with equal opportunity requirements
- Preparing and furnishing to the BHA 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 Act (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); 24 CFR 982.452(b)(1); and FR Notice 1/4/23]

13-I.D. OWNER QUALIFICATIONS

The BHA does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where the BHA may deny approval of an assisted tenancy based on past owner behavior,

conflict of interest, or other owner-related issues. No owner has a right to participate in the HCV program [24 CFR 982.306(e)].

OWNERS BARRED FROM PARTICIPATION [24 CFR 982.306(A) AND (B)]

The BHA must not approve the assisted tenancy if the BHA has been informed that the owner has been debarred, suspended, or subject to a limited denial of participation under 24 CFR part 24. HUD may direct the BHA not to approve a tenancy request if a court or administrative agency has determined that the owner violated the Fair Housing Act or other federal equal opportunity requirements, or if such an action is pending.

LEASING TO RELATIVES [24 CFR 982.306(D), HCV GB P. 11-2]

The BHA must not approve a tenancy if the owner is the parent, child, grandparent, grandchild, sister, or brother of any member of the family. The BHA 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; FORM HUD-52641, SECTION 13]

The BHA must not approve a tenancy in which any of the following classes of persons has any interest, direct or indirect, during tenure or for one year thereafter:

- Any present or former member or officer of the BHA (except a participant commissioner)
- Any employee of the BHA, or any contractor, subcontractor or agent of the BHA, who formulates policy or who influences decisions with respect to the programs
- Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the programs
- Any member of the Congress of the United States

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

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

HUD may waive the conflict-of-interest requirements, except for members of Congress, for good cause. The BHA must submit a waiver request to the appropriate HUD Field Office for determination.

Any waiver request submitted by the BHA 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, the BHA, or both parties may conduct this analysis. Where appropriate, an opinion by the state’s attorney general should be obtained;
- Opinion by the local HUD office as to whether there would be an appearance of impropriety if the waiver were granted;
- Statement regarding alternative existing housing available for lease under the HCV program or other assisted housing if the waiver is denied;
- If the case involves a hardship for a particular family, statement of the circumstances and discussion of possible alternatives;

- If the case involves a public official or member of the governing body, explanation of their duties under state or local law, including reference to any responsibilities involving the HCV program;
- If the case involves employment of a family member by the PHA or assistance under the HCV program for an eligible BHA employee, explanation of the responsibilities and duties of the position, including any related to the HCV program;
- If the case involves an investment on the part of a member, officer, or employee of the BHA, description of the nature of the investment, including disclosure/divestiture plans.

Where the BHA has requested a conflict of interest waiver, the BHA may not execute the HAP contract until HUD has made a decision on the waiver request.

OWNER ACTIONS THAT MAY RESULT IN DISAPPROVAL OF A TENANCY REQUEST [24 CFR 982.306(C)]

HUD regulations permit the BHA to disapprove a request for tenancy for various actions and inactions of the owner.

If the BHA disapproves a request for tenancy because an owner is not qualified, it may not terminate the HAP contract for any assisted families that are already living in the owner's properties unless the owner has violated the HAP contract for those units [HCV GB p. 11-4].

The BHA will refuse to approve a request for tenancy if the BHA 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 noncompliance with inspection standards 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 the BHA, 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, the BHA will consider any mitigating factors. Such factors may include, but are not limited to, the seriousness of the violation in relation to program requirements, the impact on the ability of families to lease units under the program, health and safety of participating families, among others. Upon consideration of such circumstances, the BHA may, on a case-by-case basis, choose to approve an owner.

LEGAL OWNERSHIP OF UNIT

The BHA 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 the BHA.

The owner must cooperate with the BHA and with HUD in conducting any equal opportunity compliance reviews and complaint investigations in connection with the HCV program and the HAP contract with the BHA.

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 (Form HUD-52641) represents a written agreement between the BHA and the owner of the dwelling unit occupied by a HCV assisted family. The contract spells out the owner's responsibilities under the program, as well as the BHA's obligations. Under the HAP contract, the BHA agrees to make housing assistance payments to the owner on behalf of the family approved by the BHA to occupy the unit.

The HAP contract is used for all HCV tenant-based 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 the BHA's HCV program.

When the BHA has determined that the unit meets program requirements and the tenancy is approvable, the BHA and owner must execute the HAP contract. See Chapter 9 for a discussion of the leasing process, including provisions for execution of the HAP contract.

13-II.B. HAP CONTRACT CONTENTS

The HAP contract format is required by HUD, specifically Housing Assistance Payment (HAP) Contract, Form HUD-52641.

The HAP contract contains three parts.

Part A of the contract includes basic contract information: the names of the tenant and all household members, the address of the contract unit, start and end dates of initial lease term, the amount of initial monthly rent to owner, the amount of initial housing assistance payment, the utilities and appliances to be supplied by owner and tenant, and the signatures of the BHA 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. The BHA 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 BHA is deemed received by the owner (e.g., upon mailing by the BHA or actual receipt by the owner).

The BHA has not adopted a policy that defines when the housing assistance payment by the BHA 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 BHA. The tenant has the right to enforce the Tenancy Addendum against the owner. The terms of the Tenancy Addendum prevail over any other provisions of the lease.

13-II.C. HAP CONTRACT PAYMENTS

GENERAL

During the term of the HAP contract, and subject to the provisions of the HAP contract, the BHA must make monthly HAP payments to the owner on behalf of the family at the beginning of each month. If a lease term begins after the first of the month, the HAP payment for the first month is prorated for a partial month.

The amount of the HAP payment is determined according to the policies described in Chapter 6 and is subject to change during the term of the HAP contract. The BHA must notify the owner and the family in writing of any changes in the HAP payment.

HAP payments can be made only during the lease term, and only while the family is residing in the unit.

The monthly HAP payment by the BHA 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 the BHA is not responsible for payment of the family share of rent.

The family's share of the rent cannot be more than the difference between the 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 the BHA, the excess amount must be returned immediately. If the BHA determines that the owner is not entitled to all or a portion of the HAP, the BHA may deduct the amount of overpayment from any amounts due to the owner, including amounts due under any other Section 8 HCV contract. See Chapter 16 for additional detail on owner reimbursement of HAP overpayments.

OWNER CERTIFICATION OF COMPLIANCE

Unless the owner complies with all provisions of the HAP contract, the owner is not entitled to receive housing assistance payments under the HAP contract [HAP Contract – Form HUD-52641].

By accepting the monthly check from the BHA, 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 housing quality standards; that the contract unit is leased to the tenant family and, to the best of the owner's knowledge, the family resides in the unit as the family's only residence; the rent to owner does not exceed rents charged by the owner for comparable unassisted units on the premises; and that the owner does not receive (other than rent to owner) any additional payments or other consideration for rent of the contract unit during the HAP term.

LATE HAP PAYMENTS [24 CFR 982.451(A)(5)]

The BHA 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 the BHA fails to make the HAP payment on time.

Penalties for late HAP payments can only be imposed if 1) the penalties are in accordance with generally accepted local rental market practices and law governing penalties for late payment by tenants; 2) it is the owner's normal business practice to charge late payment penalties for both assisted and unassisted families; and 3) the owner charges the assisted family for late payment of the family's share of the rent.

The BHA is not required to pay a late payment penalty if HUD determines that the payment is late for reasons beyond the BHA's control. In addition, late payment penalties are not required if the BHA intentionally delays or denies payment as a remedy to an owner breach of the HAP contract [HCV Guidebook p. 11-7].

TERMINATION OF HAP PAYMENTS [24 CFR 982.311(B)]

The BHA must continue making housing assistance payments to the owner in accordance with the HAP contract as long as the tenant continues to occupy the unit and the HAP contract is not violated.

HAP payments terminate when the HAP contract terminates or when the tenancy is terminated in accordance with the terms of the lease.

If the owner has initiated eviction proceedings against the family and the family continues to reside in the unit, the BHA must continue to make housing assistance payments to the owner until the owner has obtained a court judgment or other process allowing the owner to evict the tenant.

The owner must inform the BHA when the owner has initiated eviction proceedings against the family and the family continues to reside in the unit.

The owner must inform the BHA when the owner has obtained a court judgment or other process allowing the owner to evict the tenant and provide the BHA with a copy of such judgment or determination.

After the owner has obtained a court judgment or other process allowing the owner to evict the tenant, the BHA will continue to make HAP payments to the owner until the family actually moves from the unit or until the family is physically evicted from the unit, whichever is earlier. The owner must inform the BHA 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 housing quality standards
- 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 the BHA determines that a breach of the HAP contract has occurred, the BHA must take enforcement action in accordance with 24 CFR 982.404.

The BHA rights and remedies against the owner under the HAP contract include recovery of any HAP overpayment, withholding or abatement of housing assistance payments, termination of the payment, or termination of the HAP contract. The BHA may also obtain additional relief by judicial order or action.

The BHA must notify the owner of its determination and provide in writing the reasons for the determination. The notice may require the owner to take corrective action by an established deadline. The BHA must provide the owner with written notice of any reduction in housing assistance payments or the termination of the HAP contract.

13-II.E. HAP CONTRACT TERM AND TERMINATIONS

The term of the HAP contract runs concurrently with the term of the dwelling lease [24 CFR 982.451(a)(2)], beginning on the first day of the initial term of the lease and terminating on the last day of the term of the lease, including any lease term extensions.

The HAP contract and the housing assistance payments made under the HAP contract terminate if [HCV Guidebook pp.11-4 and 11-5, pg. 15-3]:

- The owner or the family terminates the lease.
- The lease expires.
- The BHA terminates the HAP contract.
- The BHA terminates assistance for the family.
- The family moves from the assisted unit. In this situation, the owner is entitled to keep the housing assistance payment for the month when the family moves out of the unit.
- 180 calendar days have elapsed since the BHA made the last housing assistance payment to the owner.
- The family is absent from the unit for longer than the maximum period permitted by the BHA.
- The Annual Contributions Contract (ACC) between the BHA and HUD expires.
- The BHA elects to terminate the HAP contract.

The BHA 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 size requirements due to change in family composition [24 CFR 982.403] – see Chapter 8;
- The unit does not meet housing quality standards [24 CFR 982.404] – see Chapter 8;
- The family breaks up [HUD Form 52641] – see Chapter 3;
- The owner breaches the HAP contract [24 CFR 982.453(b)] – see Section 13-II.D.

If the BHA terminates the HAP contract, the BHA 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].

Generally, the HAP contract terminates at the end of the calendar month that follows the calendar month in which the BHA gives written notice to the owner.

The BHA cannot make any HAP payment for any month after the month the family vacates the unit.

The owner is not entitled to any housing assistance payment after this period and must return to the BHA any housing assistance payment received after this period.

If the family moves from the assisted unit into a new unit, even if the new unit is in the same building or complex as the assisted unit, the HAP contract for the assisted unit terminates. A new HAP contract would be required [HCV GB, p. 11-17].

When the family moves from an assisted unit into a new unit, the term of the HAP contract for the new unit may begin in the same month in which the family moves out of its old unit. This is not considered a duplicative subsidy [HCV GB, p. 8-22].

13-II.F. CHANGE IN OWNERSHIP / ASSIGNMENT OF THE HAP CONTRACT [HUD-52641]

The HAP contract cannot be assigned to a new owner without the prior written consent of the BHA.

An owner under a HAP contract must notify the BHA in writing prior to a change in the legal ownership of the unit. The owner must supply all information as requested by the BHA.

Prior to approval of assignment to a new owner, the new owner must agree to be bound by and comply with the HAP contract. The agreement between the new owner and the former owner must be in writing and in a form that the BHA finds acceptable. The new owner must provide the BHA with a copy of the executed agreement.

Assignment of the HAP contract will be approved only if the new owner is qualified to become an owner under the HCV program according to the policies in Section 13-I.D. of this chapter.

The BHA 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, the BHA will inform the current owner in writing whether the assignment may take place.

The new owner must provide a written certification to the BHA 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

If the new owner does not agree to an assignment of the HAP contract, or fails to provide the necessary documents, the BHA will terminate the HAP contract with the old owner. If the new owner wants to offer the family a new lease, and the family elects to stay with continued assistance, the BHA will process the leasing in accordance with the policies in Chapter 9.

13-II.G. FORECLOSURE [Notice PIH 2010-49]

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

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

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

The BHA will attempt to obtain a written acknowledgement of the assignment of the HAP contract from the successor in interest. This will include a request for owner information, including a tax identification number and payment instructions from the new owner. Even if the new owner does not acknowledge the assignment of the HAP contract in writing, the assignment is still effective by operation of law.

The BHA will inform the tenant that they must continue to pay rent in accordance with the lease, and if the new owner refuses to accept payment or cannot be identified, the tenant should pay rent into escrow. Failure to pay rent may constitute an independent ground for eviction.

The BHA will also refer the tenant, as needed, to the local legal aid office in order to ensure adequate protection of the tenant's rights and enforcement of the successor in interest's performance under the HAP contract.

See Section 12-III.B for a discussion of foreclosure as it pertains to owner termination of tenancy.

CHAPTER 14: PROGRAM INTEGRITY

The BHA is committed to ensuring that subsidy funds made available to the BHA are spent in accordance with HUD requirements.

This chapter covers HUD and BHA 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 BHA policies related to preventing, detecting, and investigating errors and program abuse.

Part II: Corrective Measures and Penalties. This part describes the corrective measures the BHA must and may take when errors or program abuses are found.

PART I: PREVENTING, DETECTING, AND INVESTIGATING ERROS 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 at annual reexamination in accordance with HUD administrative guidance [24 CFR 5.233]. PHAs are further required to:

- Provide applicants and participants with form HUD-52675, "Debts Owed to PHAs and Terminations"
- Require all adult members of an applicant or participant family to acknowledge receipt of form HUD-52675 by signing a copy of the form for retention in the family file

To ensure that the BHA's HCV program is administered according to the highest ethical and legal standards, the BHA will employ a variety of techniques to ensure that both errors and intentional program abuse are rare.

- The BHA will discuss program compliance and integrity issues during the voucher briefing sessions described in Chapter 5.
- The BHA will provide each applicant and participant with a copy of "Is Fraud Worth It?" (form HUD-1141-OIG), which explains the types of actions a family must avoid and the penalties for program abuse.
- The BHA will provide each applicant and participant with a copy of "What You Should Know about EIV," a guide to the Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH 2017-12. In addition, the BHA will require the head of each household to acknowledge receipt of the guide by signing a copy for retention in the family file.
- The BHA will place a warning statement about the penalties for fraud (as described in 18 U.S.C. 1001 and 1010) on key BHA forms and form letters that request information from a family or owner.
- The BHA will provide each BHA employee with the necessary training on program rules and the organization's standards of conduct and ethics.

For purposes of this chapter the term *error* refers to an unintentional error or omission. *Program abuse or fraud* refers to a single act or pattern of actions that constitute a false statement, omission, or concealment of a substantial fact, made with the intent to deceive or mislead.

14-I.B. DETECTING ERRORS AND PROGRAM ABUSE

In addition to taking steps to prevent errors and program abuse, the PHA will use a variety of activities to detect errors and program abuse.

QUALITY CONTROL AND ANALYSIS OF DATA

Under the Section 8 Management Assessment Program (SEMAP), HUD requires the BHA 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 compliance with applicable housing quality standards [24 CFR, Part 985]. (See Chapter 16 for additional information about SEMAP requirements).

In addition to the SEMAP quality control requirements, the BHA will employ a variety of methods to detect errors and program abuse.

- The BHA routinely will use HUD and other non-HUD sources of up-front income verification. This includes The Work Number and any other private or public databases available to the BHA.

- At each annual or interim reexamination, current information provided by the family will be compared to information provided at the most recent reexamination to identify inconsistencies and incomplete information.
- The BHA 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 $750,000 or more in federal awards annually to have an independent audit (IPA). In addition, HUD conducts periodic on-site and automated monitoring of BHA activities and notifies the BHA of errors and potential cases of program abuse.

The BHA will use the results reported in any IPA or HUD monitoring reports to identify potential program abuses as well as to assess the effectiveness of the BHA's error detection and abuse prevention efforts.

INDIVIDUAL REPORTING OF POSSIBLE ERRORS AND PROGRAM ABUSE

The BHA will encourage staff, program participants, and the public to report possible program abuse.

14-I.C. INVESTIGATING ERRORS AND PROGRAM ABUSE

WHEN THE BHA WILL INVESTIGATE

The BHA will review all referrals, specific allegations, complaints, and tips from any source including other agencies, companies, and individuals, to determine if they warrant investigation. In order for the BHA to investigate, the allegation must contain at least one independently verifiable item of information, such as the name of an employer or the name of an unauthorized household member.

The BHA will investigate when inconsistent or contradictory information is detected through file reviews and the verification process.

CONSENT TO RELEASE OF INFORMATION [24 CFR 982.516]

The BHA may investigate possible instances of error or abuse using all available BHA and public records. If necessary, the BHA will require HCV families to sign consent forms for the release of additional information.

ANALYSIS AND FINDINGS

The BHA will base its evaluation on a preponderance of the evidence collected during its investigation.

Preponderance of the evidence is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence that as a whole shows that the fact sought to be proved is more probable than not. Preponderance of evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

For each investigation the BHA will determine (1) whether an error or program abuse has occurred, (2) whether any amount of money is owed the BHA, and (3) what corrective measures or penalties will be assessed.

CONSIDERATION OF REMEDIES

All errors and instances of program abuse must be corrected prospectively. Whether the BHA will enforce other corrective actions and penalties depends upon the nature of the error or program abuse.

In the case of family-caused errors or program abuse, the BHA will take into consideration (1) the seriousness of the offense and the extent of participation or culpability of individual family members, (2) any special circumstances surrounding the case, (3) any mitigating circumstances related to the disability of a family member, (4) the effects of a particular remedy on family members who were not involved in the offense.

In the case of owner-caused errors or program abuse, the BHA will take into consideration (1) the seriousness of the offense, (2) the length of time since the violation has occurred, and (3) the effects of a particular remedy on family members who were not involved in the offense.

NOTICE AND APPEALS

The BHA will inform the relevant party in writing of its findings and remedies within 10 business days of the conclusion of the investigation. The notice will include (1) a description of the error or program abuse, (2) the basis on which the BHA 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, the BHA must promptly correct the HAP, family share, and any utility reimbursement prospectively.

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 the BHA or the BHA is required to make retroactive subsidy payments to the owner or family depends upon which party is responsible for the incorrect subsidy payment and whether the action taken was an error or program abuse. Policies regarding reimbursement are discussed in the three sections that follow.

14-II.B. FAMILY-CAUSED ERRORS AND PROGRAM ABUSE

Family obligations and general administrative requirements for participating in the program are discussed throughout this plan. This section deals specifically with errors and program abuse by family members.

An incorrect subsidy determination caused by a family generally would be the result of incorrect reporting of family composition, income, assets, or expenses, but also would include instances in which the family knowingly allows the BHA to use incorrect information provided by a third party.

FAMILY REIMBURSEMENT TO PHA [HCV GB PP. 22-12 TO 22-13]

In the case of family-caused errors or program abuse, the family will be required to repay any excess subsidy received. The BHA may, but is not required to, offer the family a repayment agreement in accordance with Chapter 16. If the family fails to repay the excess subsidy, the BHA will terminate the family's assistance in accordance with the policies in Chapter 12.

BHA REIMBURSEMENT TO FAMILY [HCV GB P. 22-12]

The BHA will not reimburse the family for any underpayment of assistance when the underpayment clearly is caused by the family.

PROHIBITED ACTIONS

An applicant or participant in the HCV program must not knowingly:

- Make a false statement to the BHA [Title 18 U.S.C. Section 1001].
- Commit fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program [24 CFR 982.552(c)(iv)].

Any of the following will be considered evidence of family program abuse:

- Payment to the owner in excess of amounts authorized by the BHA for rent, security deposit, and additional services
- Offering bribes or illegal gratuities to the BHA Board of Commissioners, employees, contractors, or other BHA representatives
- Offering payments or other incentives to the owner or a third party as an inducement for the third party to make false or misleading statements to the BHA on the family's behalf
- Use of a false name or the use of falsified, forged, or altered documents
- Intentional misreporting of family information or circumstances (e.g. income, family composition)
- Omitted facts that were obviously known by a family member (e.g., not reporting employment income)
- Admission of program abuse by an adult family member

The BHA may determine other actions to be program abuse based upon a preponderance of the evidence, as defined earlier in this chapter.

PENALTIES FOR PROGRAM ABUSE

In the case of program abuse caused by a family the BHA may, at its discretion, impose any of the following remedies.

- The BHA may require the family to repay excess subsidy amounts paid by the BHA, as described earlier in this section.
- The BHA may require, as a condition of receiving or continuing assistance, that a culpable family member not reside in the unit. See policies in Chapter 3 (for applicants) and Chapter 12 (for participants).
- The BHA may deny or terminate the family's assistance following the policies set forth in Chapter 3 and Chapter 12 respectively.
- The BHA 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., housing quality standards 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 BHA

In all cases of overpayment of subsidy caused by the owner, the owner must repay to the BHA any excess subsidy received. The BHA may recover overpaid amounts by withholding housing assistance payments

due for subsequent months, or if the debt is large, the BHA may allow the owner to pay in installments over a period of time [HCV GB p. 22-13].

In cases where the owner has received excess subsidy, the BHA will require the owner to repay the amount owed in accordance with the policies in Section 16-IV.B.

PROHIBITED OWNER ACTIONS

An owner participating in the HCV program must not:

- Make any false statement to the BHA [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)]

Any of the following will be considered evidence of owner program abuse:

- Charging the family rent above or below the amount specified by the BHA
- Charging a security deposit other than that specified in the family's lease
- Charging the family for services that are provided to unassisted tenants at no extra charge
- Knowingly accepting housing assistance payments for any month(s) after the family has vacated the unit
- Knowingly accepting incorrect or excess housing assistance payments
- Offering bribes or illegal gratuities to the BHA Board of Commissioners, employees, contractors, or other BHA representatives
- Offering payments or other incentives to an HCV family as an inducement for the family to make false or misleading statements to the BHA
- Residing in the unit with an assisted family
- Committing sexual or other harassment, either quid pro quo or hostile environment, based on the protected classes defined in Chapter 2
- Retaliating against any applicant or participant reporting/alleging sexual or other harassment, either quid pro quo or hostile environment, based on the protected classes defined in Chapter 2

REMEDIES AND PENALTIES

When the BHA determines that the owner has committed program abuse, the BHA 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 BHA programs.
- Refer the case to state or federal officials for criminal prosecution as described in section 14-II.E.

14-II.D. BHA-CAUSED ERRORS OR PROGRAM ABUSE

The responsibilities and expectations of BHA staff with respect to normal program administration are discussed throughout this plan. This section specifically addresses actions of a BHA staff member that are considered errors or program abuse related to the HCV program. Additional standards of conduct may be provided in the BHA personnel policy.

BHA -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.

DE MINIMIS ERRORS [24 CFR 5.609(C)(4)]

The BHA will not be considered out of compliance when making annual income determinations solely due to de minimis errors in calculating family income. A de minimis error is an error where the BHA determination of family income deviates from the correct income determination by no more than $30 per month in monthly adjusted income ($360 in annual adjusted income) per family.

PHAs must take corrective action to credit or repay a family if the family was overcharged rent, including when PHAs make de minimis errors in the income determination. Families will not be required to repay the BHA in instances where the PH BHA A miscalculated income resulting in a family being undercharged for rent. PHAs state in their policies how they will repay or credit a family the amount they were overcharged as a result of the BHA's de minimis error in income determination.

The BHA will reimburse a family for any family overpayment of rent, regardless of whether the overpayment was the result of staff-caused error, staff program abuse, or a de minimis error.

14-II.E. CRIMINAL PROSECUTION

When the BHA determines that program abuse by an owner, family, or PHA staff member has occurred and the amount of overpaid subsidy meets or exceeds the threshold for prosecution under local or state law, the BHA will refer the matter to the appropriate entity for prosecution. When the amount of overpaid assistance meets or exceeds the federal threshold, the case will also be referred to the HUD Office of Inspector General (OIG).

Other criminal violations related to the HCV program will be referred to the appropriate local, state, or federal entity.

14-II.F . FRAUD AND PROGRAM ABUSE RECOVERIES

The BHA may retain a portion of program fraud losses that the BHA recovers from a family or owner through litigation, court order, or a repayment agreement [24 CFR 982.163].

The BHA must be the principal party initiating or sustaining the action to recover amounts due from tenants that are due as a result of fraud and abuse. 24 CFR 792.202 permits the BHA to retain the greater of:

- 50 percent of the amount it actually collects from a judgment, litigation (including settlement of a lawsuit) or an administrative repayment agreement, or
- Reasonable and necessary costs that the BHA incurs related to the collection including costs of investigation, legal fees, and agency collection fees.

The family must be afforded the opportunity for an informal hearing in accordance with requirements in 24 CFR 982.555.

If HUD incurs costs on behalf of the BHA related to the collection, these costs must be deducted from the amount retained by the BHA.

CHAPTER 15: SPECIAL HOUSING TYPES

[24 CFR 982 Subpart M; New HCV GB, *Special Housing Types*]

Families will not be permitted to use any special housing types, with the following exceptions:

- If needed as a reasonable accommodation so that the program is readily accessible to a person with disabilities; and
- The BHA must permit a family to lease a manufactured home and space with assistance under the program.

Policy language is included in this chapter where relevant in the event the BHA does grant use as a reasonable accommodation or when a family leases a manufactured home and space.

Special housing types include single room occupancy (SRO), congregate housing, group homes, shared housing, cooperative housing, manufactured homes where the family owns the home and leases the space, and homeownership [24 CFR 982.601]. A single unit cannot be designated as more than one type of special housing. The BHA cannot give preference to households that wish to live in any of these types of housing and cannot require households to select any of these types of housing [New HCV GB, *Special Housing Types,* p. 3].

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

Part I: Single Room Occupancy

Part II: Congregate Housing

Part III: Group Homes

Part IV: Shared Housing

Part V: Cooperative Housing

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

PART I: SINGLE ROOM OCCUPANCY

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

15-I.A. OVERVIEW

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

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

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

The payment standard for SRO housing is 75 percent of the zero-bedroom payment standard amount on the BHA'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. SRO: HOUSING QUALITY STANDARDS [24 CFR 982.605(a)]

Housing quality standards requirements described in the applicable portions of Chapter 8 apply to SRO housing except that sanitary facilities, and space and security characteristics must meet local code standards for SRO housing. In the absence of applicable local code standards for SRO housing, the following standards apply:

- *Access*: Access doors to the SRO unit must have working locks for privacy. The occupant must be able to access the unit without going through any other unit. Each unit must have immediate access to two or more approved means of exit from the building, appropriately marked and leading to safe and open space at ground level. The SRO unit must also have any other means of exit required by State or local law.
- *Fire Safety*: All SRO facilities must have a sprinkler system that protects major spaces. "Major spaces" are defined as hallways, large common areas, and any other areas specified in local fire, building, or safety codes. SROs must also have hard-wired smoke detectors, and any other fire and safety equipment required by state or local law.

Sanitary facilities and space and security standards must meet local code requirements for SRO housing. In the absence of local code standards, the requirements discussed below apply [24 CFR 982.605].

- *Sanitary Facilities*: At least one flush toilet that can be used in privacy, a lavatory basin, and a bathtub or shower in proper operating condition must be provided for each six persons (or fewer) residing in the SRO facility. If the SRO units are leased only to males, flush urinals may be substituted for up to one half of the required number of toilets. Sanitary facilities must be reasonably accessible from a common hall or passageway to all persons sharing them and may not be located more than one floor above or below the SRO unit. They may not be located below grade unless the SRO units are located on that level.
- *Space and Security*: An SRO unit must contain at least 110 square feet of floor space, and at least four square feet of closet space with an unobstructed height of at least five feet, for use by the occupant. If the closet space is less than four square feet, the habitable floor space in the SRO unit

must be increased by the amount of the deficiency. Exterior doors and windows accessible from outside the SRO unit must be lockable.

For SRO housing, 24 CFR 5.703(d) only applies to the extent that the SRO unit contains the room or facility referenced in 24 CFR 5.703(d). Because no children live in SRO housing, the housing quality standards applicable to lead-based paint do not apply.

PART II: CONGREGATE HOUSING

[24 CFR 982.606 through 982.609; Form HUD-52641; New HCV GB, *Special Housing Types,* p. 6]

15-II.A. OVERVIEW

Congregate housing is intended for use by elderly persons or persons with disabilities. A congregate housing facility contains a shared central kitchen and dining area and a private living area for the individual household that includes at least a living room, bedroom and bathroom. Food service for residents must be provided.

If approved by the BHA, a family member or live-in aide may reside with the elderly person or person with disabilities. The BHA 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. The standard form of the HAP contract is used (Form HUD-52641) with the special housing type specified in Part A of the HAP contract, as follows: "This HAP contract is used for the following special housing type under HUD regulations for the Section 8 voucher program: Congregate housing."

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

The payment standard for an individual unit in a congregate housing facility is based on the number of rooms in the private living area for the assisted family. If there is only one room in the unit (not including the bathroom or the kitchen, if a kitchen is provided), the BHA must use the payment standard for a zero-bedroom unit. If the unit has two or more rooms (other than the bathroom and the kitchen), the BHA must use the one-bedroom payment standard.

The HAP for an assisted occupant in a congregate housing facility is the lower of the applicable payment standard minus the TTP or the gross rent for the unit minus the TTP.

The gross rent for the unit for the purpose of calculating HCV assistance is the shelter portion (including utilities) of the resident's monthly housing expense only. The residents' costs for food service should not be included in the rent for a congregate housing unit.

15-II.C. CONGREGATE: HOUSING QUALITY STANDARDS

Housing quality standards requirements as described in Chapter 8 apply to congregate housing except for the requirements stated below. Congregate housing is not subject to the requirement that the dwelling unit must have a kitchen area. In place of the housing quality standards related to food preparation and refuse disposal, congregate housing must have a refrigerator of appropriate size in the private living area of each resident, a central kitchen and dining facilities located within the premises and accessible to the residents, and food service for the residents, that is not provided by the residents themselves.

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

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

PART III: GROUP HOME

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

15-III.A. OVERVIEW

A group home is a state-approved (licensed, certified, or otherwise approved in writing by the state) facility intended for occupancy by elderly persons and/or persons with disabilities. Except for live-in aides, all persons living in a group home, whether assisted or not, must be elderly persons or persons with disabilities. Persons living in a group home must not require continuous medical or nursing care.

A group home consists of bedrooms for residents, which can be shared by no more than two people, and a living room, kitchen, dining area, bathroom, and other appropriate social, recreational, or community space that may be shared with other residents. No more than 12 persons may reside in a group home including assisted and unassisted residents and any live-in aides.

If approved by the BHA, a live-in aide may live in the group home with a person with disabilities. The BHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

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

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

Unless there is a live-in aide, the family unit size (voucher size) for an assisted occupant of a group home must be zero- or one-bedroom. If there is a live-in aide, the aide must be counted in determining the household’s unit size.

The payment standard used to calculate the HAP is the lower of the payment standard for the family unit size or the pro rata share of the payment standard for the group home size. The pro rata share is calculated by dividing the number of persons in the assisted household by the number of persons (assisted and unassisted) living in the group home. The number of persons in the assisted household equals one assisted person plus any BHA-approved live-in aide.

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

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

The rents paid for participants residing in group homes are subject to generally applicable standards for rent reasonableness. The rent for an assisted person must not exceed the pro rata portion of the reasonable rent for the group home. In determining reasonable rent, the BHA must consider whether sanitary facilities and facilities for food preparation and service are common facilities or private facilities.

15-III.C. GROUP HOME: HOUSING QUALITY STANDARDS

The entire unit must comply with housing quality requirements described in Chapter 8, except for the standards that relate to sanitary facilities, food preparation and refuse disposal, space and security, structure and materials, and site and neighborhood as stated below.

- *Sanitary Facilities*: A group home must have at least one bathroom in the facility, with a flush toilet that can be used in privacy, a fixed basin with hot and cold running water, and a shower or bathtub with hot and cold running water. A group home may contain private or common bathrooms. However, no more than four residents can be required to share a bathroom.
- *Food Preparation and Service*: Group home units must contain a kitchen and dining area with adequate space to store, prepare, and serve food. The facilities for food preparation and service may be private or may be shared by the residents. The kitchen must contain a range, an oven, a refrigerator, and a sink with hot and cold running water. The sink must drain into an approvable public or private disposal system.

- *Space and Security*: Group homes must contain at least one bedroom of appropriate size for every two people, and a living room, kitchen, dining area, bathroom, and other appropriate social, recreational, or community space that may be shared with other residents. Doors and windows accessible from outside the unit must be lockable.
- *Structure and Material*: To avoid any threat to the health and safety of the residents, group homes must be structurally sound. Elevators must be in good condition. Group homes must be accessible to and usable by residents with disabilities.
- *Site and Neighborhood*: Group homes must be located in a residential setting. The site and neighborhood should be reasonably free from disturbing noises and reverberations, and other hazards to the health, safety, and general welfare of the residents, and should not be subject to serious adverse conditions, such as:
    - Dangerous walks or steps
    - Instability
    - Flooding, poor drainage
    - Septic tank back-ups, sewage hazards
    - Mud slides
    - Abnormal air pollution
    - Smoke or dust
    - Excessive noise
    - Vibrations or vehicular traffic
    - Excessive accumulations of trash
    - Vermin or rodent infestation, and
    - Fire hazards.

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

PART IV: SHARED HOUSING

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

15-IV.A. OVERVIEW

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

Shared housing is a single housing unit occupied by an assisted family and another resident or residents. The unit may be a house or an apartment. The shared unit consists of both common space for use by the occupants of the unit and separate private space for each assisted family.

An assisted family may share a unit with other persons assisted under the HCV program or with other unassisted persons.

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

The owner of a shared housing unit may reside in the unit, but housing assistance may not be paid on behalf of the owner. The resident owner may not be related by blood or marriage to the assisted family.

If approved by the BHA, a live-in aide may reside with the family to care for a person with disabilities. The BHA 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.

The BHA will work with local jurisdictions as necessary to identify solutions consistent with fair housing laws and will inform HUD if the BHA encounters barriers to shared housing that conflict with fair housing laws.

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

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

The payment standard for a family in shared housing is the lower of the payment standard for the family unit size (voucher size) or the pro rata share of the payment standard for the shared housing unit size.

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

Example: Family holds a two-bedroom voucher.

Shared housing unit size: bedrooms available to assisted family = 2

Total bedrooms in the unit: 3

2 Bedrooms for assisted family

÷ 3 Bedrooms in the unit

.667 pro rata share

2 BR payment standard: $1200

3 BR payment standard: $1695 $1695 x .667 (pro rata share) = $1131 $1131 is lower than the $1200 payment standard for the 2 BR family unit size $1131 is the payment standard used to calculate the HAP

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

The utility allowance for an assisted family living in shared housing is the pro rata 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 pro rata share of the utility allowance is $150 (3/4 of $200)**
>
> **The** BHA **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, the BHA may consider whether sanitary and food preparation areas are private or shared.

15-IV.C. SHARED HOUSING: HOUSING QUALITY STANDARDS

The BHA 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.

Housing quality standards requirements described in Chapter 8 apply to shared housing except for the requirements stated below.

- *Facilities Available for the Family*: Facilities available to the assisted family, whether shared or private, must include a living room, a bathroom, and food preparation and refuse disposal facilities.
- *Space and Security*: The entire unit must provide adequate space and security for all assisted and unassisted residents. The private space for each assisted family must contain at least one bedroom for each two persons in the family. The number of bedrooms in the private space of an assisted family must not be less than the family unit size (voucher size). A zero-bedroom or one-bedroom unit may not be used for shared housing.

PART V: COOPERATIVE HOUSING

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

15-V.A. OVERVIEW

This part applies to rental assistance for a cooperative member residing in cooperative housing. It does not apply to assistance for a cooperative member who has purchased membership under the HCV homeownership option, or to rental assistance for a family that leases a cooperative housing unit from a cooperative member.

A cooperative is a form of ownership (nonprofit corporation or association) in which the residents purchase memberships in the ownership entity. Rather than being charged "rent" a cooperative member is charged a "carrying charge." The monthly carrying charge includes the member's share of the cooperative debt service, operating expenses, and necessary payments to cooperative reserve funds. It does not include down payments or other payments to purchase the cooperative unit or to amortize a loan made to the family for this purpose.

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

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

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

The payment standard and utility allowance are determined according to regular HCV program requirements.

The HAP for a cooperative housing unit is the lower of the payment standard minus the TTP or the gross rent (monthly carrying charge for the unit, plus any utility allowance) minus the TTP. The monthly carrying charge includes the member's share of the cooperative debt service, operating expenses, and necessary payments to cooperative reserve funds. The carrying charge does not include down payments or other payments to purchase the cooperative unit or to amortize a loan made to the family for this purpose.

15-V.C. COOPERATIVE: HOUSING QUALITY STANDARDS

All housing quality standard requirements apply to cooperative housing units. There are no additional requirements. The BHA remedies described in 24 CFR 982.404 do not apply. Rather, if the unit and premises are not maintained in accordance with housing quality standards, the BHA may exercise all available remedies regardless of whether the family or cooperative is responsible for the breach of housing quality standards.

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

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

PART VI: MANUFACTURED HOMES

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

15-VI.A. OVERVIEW

A manufactured home is a manufactured structure, transportable in one or more parts, that is built on a permanent chassis, and designed for use as a principal place of residence. HCV-assisted families may occupy manufactured homes in three different ways.

1. A family may choose to rent a manufactured home already installed on a space and the BHA 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 housing quality requirements as provided in 15-VI.D. below.
2. A family can purchase a manufactured home under the Housing Choice Voucher Homeownership program.
3. HUD also permits an otherwise eligible family that owns a manufactured home to rent a space for the manufactured home and receive HCV assistance with the rent for the space as well as certain other housing expenses. PHAs may, but are not required to, provide assistance for such families.

15-VI.B. SPECIAL REQUIREMENTS FOR MANUFACTURED HOME OWNERS WHO LEASE A SPACE

FAMILY INCOME

In determining the annual income of families leasing manufactured home spaces, the value of the family's equity in the manufactured home in which the family resides is not counted as a family asset.

LEASE AND HAP CONTRACT

There is a designated HAP Contract (Form HUD-52642) and designated Tenancy Addendum (Form HUD-52642-A) for this special housing type.

15-VI.C. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION

PAYMENT STANDARDS

The BHA payment standard for manufactured homes is determined in accordance with 24 CFR 982.505 and is the payment standard used for the BHA'sHCV 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 [24 CFR 982.624]

The BHA must establish utility allowances for manufactured home space rental. For the first 12 months of the initial lease term only, the allowance must include a reasonable amount for a utility hook-up charge if the family actually incurred a hook-up charge because of a move. This allowance will not be given to a family that leases in place. Utility allowances for manufactured home space must not include the costs of digging a well or installing a septic system.

SPACE RENT [24 CFR 982.622]

Rent to owner for rental of a manufactured home space includes payment for maintenance and services that the owner must provide to the tenant under the lease for the space. Rent to owner does not include the costs of utilities and trash collection for the manufactured home. However, the owner may charge the family a separate fee for the cost of utilities or trash collection provided by the owner.

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 [24 CFR 982.623(A)]

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 family's eligible housing expenses minus the TTP.

ELIGIBLE HOUSING EXPENSES [24 CFR 982.623(B)]

The family's eligible housing expenses are the total of:

- The rent charged by the owner for the manufactured home space.
- Charges for the maintenance and management the space owner must provide under the lease.
- The monthly payments made by the family to amortize the cost of purchasing the manufactured home established at the time of application to a lender for financing the purchase of the manufactured home if monthly payments are still being made, including any required insurance and property taxes included in the loan payment to the lender.
    - Any increase in debt service or term due to refinancing after purchase of the home may not be included in the amortization cost.
    - Debt service for installation charges incurred by a family may be included in the monthly amortization payments. Installation 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.
- The applicable allowances for tenant-paid utilities, as determined under 24 CFR 982.517 and 982.624.

RENT REASONABLENESS [24 CFR 982.622(B)]

During the assisted tenancy, the rent to owner for the manufactured home space may not exceed a reasonable rent. Initially, and at least annually thereafter, the BHA must determine that the rent for the manufactured home space is reasonable based on rents for comparable manufactured home spaces. The BHA must consider the location and size of the space, and any services and maintenance to be provided by the owner in accordance with the lease (without a fee in addition to rent). By accepting the monthly housing assistance payment, the owner of the manufactured home space certifies that the rent does not exceed rents charged by the owner for comparable unassisted spaces in the same manufactured home park or elsewhere.

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

DISTRIBUTION OF HAP [24 CFR 982.623(C)]

The BHA pays the owner of the space the lesser of the housing assistance payment or the portion of the monthly rent due to the owner. The portion of the monthly rent due to the owner is the total of:

- The actual rent charged by the owner for the manufactured home space; and
- Charges for the maintenance and management the space owner must provide under the lease.

If the housing assistance payment exceeds the portion of the monthly rent due to the owner, the BHA may pay the balance of the housing assistance payment to the family. Alternatively, the BHA may pay the balance to the lender or utility company, in an amount no greater than the amount due for the month to each, respectively, subject to the lender's or utility company's willingness to accept the BHA's payment on behalf of the family.

SINGLE HAP TO FAMILY [24 CFR 982.623.(D)]

If the owner of the manufactured home space agrees, the BHA may make the entire housing assistance payment to the family, and the family is responsible for paying the owner directly for the full amount of rent of the manufactured home space due to the owner, including owner maintenance and management charges.

15-VI.D. MANUFACTURED HOMES: HOUSING QUALITY STANDARDS [24 CFR 982.621]

Under either type of occupancy described in 15-VI.A. above, the manufactured home must meet all housing quality standards performance requirements and acceptability criteria discussed in Chapter 8 of this plan. In addition, the following requirements apply:

- *Performance Requirement*: 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.
- *Acceptability Criteria*: 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.

CHAPTER 16: PROGRAM ADMINISTRATION

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 BHA'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 BHA. This part describes policies for recovery of monies that the BHA has overpaid on behalf of families, or to owners, and describes the circumstances under which the BHA will offer repayment agreements to owners and families. Also discussed are the consequences for failure to make payments in accordance with a repayment agreement.

Part V: Section 8 Management Assessment Program (SEMAP). This part describes what the SEMAP scores represent, how they are established, and how those scores affect a PHA.

Part VI: Record-Keeping. All aspects of the program involve certain types of record-keeping. This part outlines the privacy rights of applicants and participants and record retention policies the BHA will follow.

Part VII: Reporting and Record Keeping for Children with Elevated Blood Lead Level. This part describes the BHA'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 BHA'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, stalking, and human trafficking; and maintaining the confidentiality of information obtained from victims.

PART I: ADMINISTRATIVE FEE RESERVE [24 CFR 982.155]

The BHA 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 BHA 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).

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

If the BHA has not adequately administered its HCV program, HUD may prohibit use of funds in the UNP Account and may direct the BHA 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.

Expenditures from the UNP account will be made in accordance with all applicable federal requirements. Expenditures will not exceed $10,000 per occurrence without the prior approval of the BHA's Board of Commissioners.

PART II: SETTING PROGRAM STANDARDS AND SCHEDULES

16-II.A. OVERVIEW

Although many of the program's requirements are established centrally by HUD, the HCV program's regulations recognize that some flexibility is required to allow the BHA to adapt the program to local conditions. This part discusses how the BHA establishes and updates certain schedules and standards that are used to administer the program locally. Details about how these schedules are applied to individual families are provided in other chapters. The schedules and standards discussed here include:

- *Payment Standards*, which dictate the maximum subsidy a family can receive (application of the payment standards is discussed in Chapter 6); and
- *Utility Allowances*, which specify how a family's payment should be adjusted to account for tenant-paid utilities (application of utility allowances is discussed in Chapter 6).

Copies of the payment standard and utility allowance schedules are available for review in the BHA's offices during normal business hours and on the BHA's website.

Families, owners, and members of the public may submit written comments on the schedules discussed in this part, at any time, for consideration during the next revision cycle.

16-II.B. PAYMENT STANDARDS [24 CFR 982.503; HCV GB, Chapter 7; and Notice PIH 2024-34]

The payment standard sets the maximum subsidy payment a family can receive from the BHA 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 gross rents in the market area.

In the HCV program, the FMR may be established at the ZIP code level, metropolitan market area level, or nonmetropolitan county level. Within each FMR area, the applicable FMR is the HUD-published:

- Small Area FMR (SAFMR);
    - For any metropolitan area designated as an SAFMR area; or
    - Anywhere a PHA has notified HUD it will voluntarily use SAFMRs;
- Metropolitan FMR for any other metropolitan area; or
- FMR for any other non-metropolitan county.

The BHA must establish a payment standard schedule that establishes payment standard amounts for each FMR area within the BHA's jurisdiction and for each unit size within each of the FMR areas. The established payment standards within the payment standard area always must be within the basic range of the applicable FMR area, or any HUD-approved exception payment standard. Program regulations and this policy refer to the "applicable FMR." The "applicable FMR" is the HUD-published SAFMR for PHAs in mandatory SAFMR areas or for those PHAs that have opted-in to using the SAFMR, both of which are discussed below.

SMALL AREA FMR PHAS (MANDATORY AND OPT-IN) [NOTICE PIH 2018-01; NOTICE PIH 2023-32; NOTICE PIH 2024-34; AND IMPLEMENTING SMALL AREA FAIR MARKET RENTS (SAFMR) GUIDEBOOK]

The BHA is not a mandatory SAFMR PHA. The BHA has voluntarily adopted to use the SAFMR within the town of Brookline, covering zip codes 02445, 02446, and 02467. All other municipalities and zip codes within the BHA's jursidcition will have payment standards set based upon the metro area Fair Market Rents.

THE BASIC RANGE [24 CFR 982.503(C) AND NOTICE PIH 2024-34]

The BHA may establish a payment standard within the "basic range" established by HUD—between 90 and 110 percent of the published FMR for each unit size—without HUD approval or prior notification to HUD. For each payment standard area, the BHA must establish a payment standard amount for each unit size

which may be based on the same percentage of the published FMR (for example, all units at 100 percent of FMR), or the BHA may set different payment standards for different unit sizes (for example, 1-bedrooms at 90 percent and 2-bedrooms at 100 percent of the FMR).

DESIGNATED PAYMENT STANDARD AREAS [24 CFR 982.503(A)(3) AND NOTICE PIH 2024-34]

The BHA may establish designated payment standard areas within each FMR area where the BHA establishes different payment standards, provided each area is no smaller than a census tract block group. If the BHA designates payment standard areas, then it must include the criteria used to determine the designated areas and the payment standard amounts for those areas in the administrative plan.

The BHA has not established any designated payment standard areas.

EXCEPTION PAYMENT STANDARDS [24 CFR 982.503(D), NOTICE PIH 2018-01, NOTICE PIH 2024-34, AND FR NOTICE 9/27/21]

There are several options available to increase payment standards above the basic range. These are known as *exception payment standards,* which are payment standards that exceed 110 percent of the published FMR. The following are types of exception payment standards:

- Payment standards based on SAFMRs in ZIP codes where the SAFMR is higher than the applicable metropolitan or non-metropolitan county FMR
- Payment standards greater than 110 percent up to 120 percent of the applicable FMR
- Payment standards over 120 percent of the applicable FMR
- Payment standards up to 120 percent of the FMR for Veterans Affairs Supportive Housing (HUD-VASH)
- Payment standards necessary as a reasonable accommodation

The BHA has not established exception payment standards outside of considering them for approval via a Reasonable Accommodation request.

REASONABLE ACCOMMODATION [24 CFR 982.503(D)(5), 24 CFR 982.505(D), NOTICE PIH 2024-34, AND NOTICE PIH 2010-26]

Unit-by-unit exceptions to the BHA's payment standards generally are not permitted. However, an exception may be made on a case-by-case basis as a reasonable accommodation for a family that includes a person with disabilities. (See Chapter 2 for a discussion of reasonable accommodations.) This type of exception does not affect the BHA's payment standard schedule.

If required as a reasonable accommodation, the BHA may make an exception to the payment standard without HUD approval if the exception amount does not exceed 120 percent of the applicable FMR/SAFMR for the unit size (or in the case of VASH, up to 140 percent of the FMR/SAFMR). The BHA 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/SAFMR.

A family that requires a reasonable accommodation may request a higher payment standard at the time the Request for Tenancy Approval (RTA) is submitted. The family must document the need for the exception. In order to approve an exception, or request an exception from HUD, the BHA must determine that:

- There is a shortage of affordable units that would be appropriate for the family;
- The family share would otherwise exceed 40 percent of adjusted monthly income; and
- The rent for the unit is reasonable.

PAYMENT STANDARD BELOW THE BASIC RANGE [24 CFR 982.503(E) AND NOTICE PIH 2024-34]

The BHA 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 consider rent burden on families assisted under the program.

UPDATING PAYMENT STANDARDS [24 CFR 982.503(C)(3) AND NOTICE PIH 2023-24]

HUD publishes FMRs in the *Federal Register* and also makes them available on the HUD website with an effective date of October 1. When HUD updates FMRs, the BHA must revise its payment standard amounts and schedule no later than three months following the effective date of the published FMR if revisions are necessary to stay within the basic range. HUD may require the BHA to make further adjustments if it determines that rent burdens for assisted families in the BHA's jurisdiction are unacceptably high [24 CFR 982.503(h)].

The BHA will review the appropriateness of the payment standards on an annual basis when the new FMR is published, and at other times as determined necessary. In addition to ensuring the payment standards are always within the "basic range," the BHA will consider the following factors when determining whether an adjustment should be made to the payment standard schedule:

- **Funding Availability**: The BHA will review projected HAP expenditures to determine the impact projected subsidy adjustments will have on funding available for the program and the number of families served. The BHA will compare the number of families who could be served under revised payment standard amounts with the number assisted under current payment standard amounts.
- **Rent Burden of Participating Families:** Rent burden will be determined by identifying the percentage of families, for each unit size, that are paying more than 30 percent of their monthly adjusted income as the family share. When 40 percent or more of families, for any given unit size, are paying more than 30 percent of adjusted monthly income as the family share, the BHA will consider increasing the payment standard. In evaluating rent burdens, the BHA will not include families renting a larger unit than their family unit size.
- **Quality of Units Selected**: The BHA may review the quality of units selected by participant families when making the determination of the percent of income families are paying for housing, to ensure that payment standard increases are only made when needed to reach the mid-range of the market.
- **Changes in Rent to Owner**: The BHA may review a sample of the units to determine how often owners are increasing or decreasing rents and the average percent of increases and decreases by bedroom size.
- **Unit Availability:** The BHA may review the availability of units for each unit size, particularly in areas with low concentrations of poor and minority families.
- **Lease-up Time and Success Rate**: The BHA may consider the percentage of families that are unable to locate suitable housing before the voucher expires and whether families are leaving the jurisdiction to find affordable housing.

Effective dates of changes to payment standard amounts will be determined at the time of update. The BHA will always ensure the payment standards will be within the basic range. The BHA will post its payment standards schedule on the BHA's website and include a copy in the voucher briefing materials.

16-II.C. UTILITY ALLOWANCES [24 CFR 982.517]

A BHA-established utility allowance schedule is used in determining family share and BHA subsidy. The BHA 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 BHA must maintain an area-wide utility allowance schedule. 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 BHA 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 BHA 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; applicable surcharges; 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 BHA about establishing utility allowance schedules.

The BHA must state its policy for utility allowance payments in the administrative plan and apply it consistently to all households. The BHA must provide a copy of the utility allowance schedule to HUD.

ENERGY EFFICIENT UTILITY

The BHA will not maintain an energy efficient utility allowance schedule.

REASONABLE ACCOMMODATION AND INDIVIDUAL RELIEF

Upon request from a family that includes a person with disabilities, the BHA must approve a utility allowance which is higher than the applicable amount on the utility allowance schedule if a higher utility allowance is needed as a reasonable accommodation to make the program accessible and usable by the family member with a disability [24 CFR 982.517(e)]. See Chapter 2 for policies regarding the request and approval of reasonable accommodations.

Further, the BHA may grant requests for relief from charges in excess of the utility allowance on reasonable grounds, such as special needs of the elderly, ill, or residents with disabilities, or special factors not within control of the resident, as the BHA deems appropriate. The family must request the higher allowance and provide the BHA with an explanation of the need for the individual relief and information about the amount of additional allowance required [see HCV GB, p. 18-8].

UTILITY ALLOWANCE REVISIONS

The BHA 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 [24 CFR 982.517(c)(1)].

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 BHA that may adversely affect them. BHA decisions that may be appealed by applicants and participants are discussed in this section.

The process for applicant appeals of BHA decisions is called the "informal review." For participants (or applicants denied admission because of citizenship issues), the appeal process is called an "informal hearing." The BHA are required to include informal review procedures for applicants and informal hearing procedures for participants in their administrative plans [24 CFR 982.54(d)(12) and (13)].

16-III.B. INFORMAL REVIEWS

Informal reviews are provided for program applicants. An applicant is someone who has applied for admission to the program but is not yet a participant in the program. Informal reviews are intended to provide a "minimum hearing requirement" [24 CFR 982.554] and need not be as elaborate as the informal hearing requirements [*Federal Register* 60, no. 127 (3 July 1995): 34690].

DECISIONS SUBJECT TO INFORMAL REVIEW [24 CFR 982.554(A) AND (C)]

The BHA 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 BHA 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 BHA
- General policy issues or class grievances
- A determination of the family unit size under the BHA subsidy standards
- A BHA determination not to approve an extension of a voucher term
- A BHA determination not to grant approval of the tenancy
- A BHA determination that the unit is not in compliance with the housing quality standards
- A BHA determination that the unit does not meet space standards

NOTICE TO THE APPLICANT [24 CFR 982.554(A)]

The BHA must give an applicant prompt notice of a decision denying assistance. The notice must contain a brief statement of the reasons for the BHA decision and must also state that the applicant may request an informal review of the decision. The notice must describe how to obtain the informal review.

SCHEDULING AN INFORMAL REVIEW

A request for an informal review must be made in writing and delivered to the BHA either in person or by first class mail, by the close of the business day, no later than 10 business days from the date of the BHA's denial of assistance.

The BHA must schedule and send written notice of the informal review within 10 business days of the family's request.

If the informal review will be conducted remotely, at the time the BHA notifies the family of the informal review, the family will be informed:

- Regarding the processes to conduct a remote informal review;
- That, if needed, the BHA will provide technical assistance prior to and during the informal review; and
- That if the family or any individual witness has any technological, resource, or accessibility barriers preventing them from fully accessing the remote informal review, the family may inform the BHA and the BHA will assist the family in either resolving the issues or allow the family to participate in an in-person informal review, as appropriate.

INFORMAL REVIEW PROCEDURES [24 CFR 982.554(B)]

The informal review must be conducted by a person other than the one who made or approved the decision under review, or a subordinate of this person.

The applicant must be provided an opportunity to present written or oral objections to the decision of the BHA.

REMOTE INFORMAL REVIEWS [NOTICE PIH 2020-32]

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

The BHA has the sole discretion to require that informal reviews be conducted remotely in case of local, state, or national physical distancing orders, and in cases of inclement weather or natural disaster.

In addition, the BHA will conduct an informal review remotely upon request of the applicant as a reasonable accommodation for a person with a disability, if an applicant does not have childcare or transportation that would enable them to attend the informal review, or if the applicant believes an in-person informal review would create an undue health risk. The BHA will consider other reasonable requests for a remote informal review on a case-by-case basis.

ENSURING ACCESSIBILITY FOR PERSONS WITH DISABILITIES AND LEP INDIVIDUALS

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

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

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

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

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

CONDUCTING REMOTE INFORMAL REVIEWS

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

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

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

The BHA will conduct remote informal reviews via a video conferencing platform, when available. If, after attempting to resolve any barriers, applicants are unable to adequately access the video conferencing platform at any point, or upon applicant request, the informal review will be conducted by telephone conferencing call-in. If the family is unable to adequately access the telephone conferencing call-in at any point, the remote informal review will be postponed, and an in-person alternative will be provided promptly within a reasonable time.

At least five business days prior to the scheduled remote review, the BHA will provide the family with login information and/or conferencing call-in information and an electronic and/or physical copy of all materials being presented via first class mail and/or email. The notice will advise the family of technological requirements for the informal review and request the family notify the BHA of any known barriers. The BHA will resolve any barriers using the guidance in Section 6 of Notice PIH 2020-32, including offering the family the opportunity to attend an in-person informal review.

If the informal review is to be conducted remotely, the BHA will require the family to provide any documents directly relevant to the informal review at least 24 hours before the scheduled review through the mail, via email, or text. The BHA will scan and email copies of these documents to the BHA representative the same day.

Documents will be shared electronically whenever possible.

The BHA will follow up the email with a phone call and/or email to the applicant at least one business day prior to the remote informal review to ensure that the applicant received all information and is comfortable accessing the video conferencing or call-in platform.

The BHA will ensure that all electronic information stored or transmitted with respect to the informal review is secure, including protecting personally identifiable information (PII), and meets the requirements for accessibility for persons with disabilities and persons with LEP.

The BHA will only offer an informal review to applicants for whom assistance is being denied. Denial of assistance includes denying listing on the BHA 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 REVIEW DECISION [24 CFR 982.554(B)]

The BHA must notify the applicant of the BHA's final decision, including a brief statement of the reasons for the final decision.

In rendering a decision, the BHA will evaluate the following matters:

- Whether or not the grounds for denial were stated factually in the notice to the family.
- The validity of the grounds for denial of assistance. If the grounds for denial are not specified in the regulations, then the decision to deny assistance will be overturned.
- The validity of the evidence. The BHA will evaluate whether the facts presented prove the grounds for denial of assistance. If the facts prove that there are grounds for denial, and the denial is required by HUD, the BHA will uphold the decision to deny assistance.
- If the facts prove the grounds for denial, and the denial is discretionary, the BHA will consider the recommendation of the person conducting the informal review in making the final decision whether to deny assistance.

The BHA will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed within 10 business days of the informal review, to the applicant and their representative, if any, along with proof of mailing.

If the decision to deny is overturned as a result of the informal review, processing for admission will resume.

If the family fails to appear for their informal review, the denial of admission will stand and the family will be so notified.

16-III.C. INFORMAL HEARINGS FOR PARTICIPANTS [24 CFR 982.555]

The purpose of the informal hearing is to consider whether the BHA's decisions related to the family's circumstances are in accordance with the law, HUD regulations and BHA policies.

The BHA 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 BHA must give a participant family an opportunity for an informal hearing are as follows:

- A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment
- A determination of the appropriate utility allowance (if any) for tenant-paid utilities from the BHA utility allowance schedule
- A determination of the family unit size under the BHA'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 BHA policy and HUD rules

The BHA will also give participant families an opportunity for an informal hearing for:

- Any denial of a request for a reasonable accommodation for a person with disabilities (see Chapter 2).

- Families participating in the Family Self-Sufficiency (FSS) program, when the BHA withholds the coordination of supportive services or terminates a family's participation in the FSS program because the BHA determines the FSS family has failed to comply without good cause with the requirements of the FSS Contract of Participation in accordance with the FSS Action Plan [24 CFR 984.303(i)].

Circumstances for which an informal hearing is not required are as follows:

- Discretionary administrative determinations by the BHA
- General policy issues or class grievances
- Establishment of the BHA schedule of utility allowances for families in the program
- A BHA determination not to approve an extension of a voucher term
- A BHA determination not to approve a unit or tenancy
- A BHA determination that a unit selected by the applicant is not in compliance with housing quality standards
- A BHA determination that the unit is not in accordance with space standards because of family size
- A determination by the BHA to exercise or not to exercise any right or remedy against an owner under a HAP contract

REMOTE INFORMAL HEARINGS [NOTICE PIH 2020-32]

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

The BHA has the sole discretion to require that informal hearings be conducted remotely in case of local, state, or national physical distancing orders, and in cases of inclement weather or natural disaster.

In addition, the BHA will conduct an informal hearing remotely upon request as a reasonable accommodation for a person with a disability, if a participant does not have childcare or transportation that would enable them to attend the informal hearing, or if the participant believes an in-person hearing would create an undue health risk. The BHA will consider other reasonable requests for a remote informal hearing on a case-by-case basis.

ENSURING ACCESSIBILITY FOR PERSONS WITH DISABILITIES AND LEP INDIVIDUALS

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

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

If no method of conducting a remote informal hearing is available that appropriately accommodates an individual's disability, the BHA may not hold against the individual their inability to participate in the remote

informal hearing, and the BHA should consider whether postponing the remote hearing to a later date is appropriate or whether there is a suitable alternative.

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

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

CONDUCTING INFORMAL HEARINGS REMOTELY

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

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

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

The BHA will conduct remote informal hearings via a video conferencing platform, when available. If, after attempting to resolve any barriers, participants are unable to adequately access the video conferencing platform at any point, or upon request, the informal hearing will be conducted by telephone conferencing call-in. If the family is unable to adequately access the telephone conferencing call-in at any point, the remote informal hearing will be postponed, and an in-person alternative will be provided promptly within a reasonable time.

At least five business days prior to the scheduled remote hearing, the BHA will provide the family with login information and/or conferencing call-in information and an electronic copy of all materials being presented via first class mail and/or email. The notice will advise the family of technological requirements for the hearing and request the family notify the BHA of any known barriers. The BHA will resolve any barriers using the guidance in Section 6 of Notice PIH 2020-32, including offering the family the opportunity to attend an in-person hearing.

The BHA will follow up with a phone call and/or email to the family at least one business day prior to the remote informal hearing to ensure that the family received all information and is comfortable accessing the video conferencing or call-in platform.

The BHA will ensure that all electronic information stored or transmitted with respect to the informal hearing is secure, including protecting personally identifiable information (PII), and meets the requirements for accessibility for persons with disabilities and persons with LEP.

INFORMAL HEARING PROCEDURES

Notice to the Family *[24 CFR 982.555(c)]*

When the BHA makes a decision that is subject to informal hearing procedures, the BHA 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 BHA 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 BHA's subsidy standards, the notice must contain a brief statement of the reasons for the decision, a statement that if the family does not agree with the decision, the family may request an informal hearing on the decision, and a statement of the deadline for the family to request an informal hearing.

In cases where the BHA makes a decision for which an informal hearing must be offered, the notice to the family will include all of the following:

- The proposed action or decision of the BHA.
- A brief statement of the reasons for the decision, including the regulatory reference.
- The date the proposed action will take place.
- A statement of the family's right to an explanation of the basis for the BHA'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 the BHA's hearing procedures.
- That the family may request a remote informal hearing.

Scheduling an Informal Hearing [24 CFR 982.555(d)]
When an informal hearing is required, the BHA must proceed with the hearing in a reasonably expeditious manner upon the request of the family.

A request for an informal hearing must be made in writing and delivered to the BHA either in person or by first class mail, by the close of the business day, no later than 10 business days from the date of the BHA's decision or notice to terminate assistance.

The BHA must schedule and send written notice of the informal hearing to the family within 10 business days of the family's request.

If the BHA hearing will be conducted remotely, at the time the notice is sent to the family, the family will be notified:

- Regarding the processes involved in a remote informal hearing;
- That the BHA will provide technical assistance prior to and during the informal hearing, if needed; and
- That if the family or any individual witness has any technological, resource, or accessibility barriers, the family may inform the BHA and the BHA will assist the family in either resolving the issue or allow the family to participate in an in-person hearing, as appropriate.

The family may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family. Requests to reschedule a hearing must be made orally or in writing prior to the hearing date. At its discretion, the BHA 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 the BHA within 24 hours of the scheduled hearing date, excluding weekends and holidays. The BHA will reschedule the hearing only if the family can show good cause for the failure to appear, or if it is needed as a reasonable accommodation for a person with disabilities. If the family cannot show good cause for the failure to appear, or a rescheduling is not needed as a reasonable accommodation, the BHA's decision will stand.

Pre-Hearing Right to Discovery *[24 CFR 982.555(e)]*
Participants and the BHA are permitted pre-hearing discovery rights. The family must be given the opportunity to examine before the hearing any BHA documents that are directly relevant to the hearing.

The family must be allowed to copy any such documents at their own expense. If the BHA does not make the document available for examination on request of the family, the BHA may not rely on the document at the hearing.

For the purpose of informal hearings, *documents* include records and regulations.

The family will be allowed to copy any documents related to the hearing at no cost to the family. The family must request discovery of BHA documents no later than 12:00 p.m. on the business day prior to the scheduled hearing date.

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

Documents will be shared electronically whenever possible.

The BHA hearing procedures may provide that the BHA must be given the opportunity to examine at the BHA offices before the hearing any family documents that are directly relevant to the hearing. The BHA must be allowed to copy any such document at the BHA expense. If the family does not make the document available for examination on request of the BHA, the family may not rely on the document at the hearing.

For in-person hearings, the BHA will not require pre-hearing discovery by the BHA of family documents directly relevant to the hearing.

If the informal hearing is to be conducted remotely, the BHA will require the family to provide any documents directly relevant to the informal hearing at least 24 hours before the scheduled hearing through the mail, via email, or text. The BHA will scan and email copies of these documents to the hearing officer and the BHA representative the same day.

Documents will be shared electronically whenever possible.

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 BHA, other than the person who made or approved the decision or a subordinate of the person who made or approved the decision.

Attendance at the Informal Hearing
Hearings may be attended by a hearing officer and the following applicable persons:

- A BHA representative(s) and any witnesses for the BHA
- The participant and any witnesses for the participant
- The participant's counsel or other representative
- Any other person approved by the BHA as a reasonable accommodation for a person with a disability

Conduct at Hearings
The person who conducts the hearing may regulate the conduct of the hearing in accordance with the BHA's hearing procedures [24 CFR 982.555(4)(ii)].

The hearing officer is responsible to manage the order of business and to ensure that hearings are conducted in a professional and businesslike manner. Attendees are expected to comply with all hearing procedures established by the hearing officer and guidelines for conduct. Any person demonstrating disruptive, abusive or otherwise inappropriate behavior will be excused from the hearing at the discretion of the hearing officer.

Evidence *[24 CFR 982.555(e)(5)]*
The BHA and the family must be given the opportunity to present evidence and question any witnesses. In general, all evidence is admissible at an informal hearing. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

Any evidence to be considered by the hearing officer must be presented at the time of the hearing. There are four categories of evidence.

1. **Oral evidence**: the testimony of witnesses
2. **Documentary evidence**: a writing which is relevant to the case, for example, a letter written to the BHA. Writings include all forms of recorded communication or representation, including letters, words, pictures, sounds, videotapes or symbols or combinations thereof.
3. **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.
4. **Real evidence**: A tangible item relating directly to the case.

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

If either the BHA (or the family, if required in a remote hearing) fail to comply with the discovery requirements described above, the hearing officer will refuse to admit such evidence.

Other than the failure of a party to comply with discovery, the hearing officer has the authority to overrule any objections to evidence.

Procedures for Rehearing or Further Hearing
The hearing officer may ask the family for additional information and/or might adjourn the hearing in order to reconvene at a later date, before reaching a decision. If the family misses an appointment or deadline ordered by the hearing officer, the action of the BHA will take effect and another hearing will not be granted.

Hearing Officer's Decision *[24 CFR 982.555(e)(6)]*
The person who conducts the hearing must issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family must be based on a preponderance of evidence presented at the hearing.

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

- **BHA Notice to the Family**: The hearing officer will determine if the reasons for the BHA decision are factually stated in the Notice.
- **Discovery:** The hearing officer will determine if the BHA and the family were given the opportunity to examine any relevant documents in accordance with BHA policy.
- **BHA Evidence to Support the BHA 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 the BHA's conclusion.
- **Validity of Grounds for Termination of Assistance (when applicable)**: The hearing officer will determine if the termination of assistance is for one of the grounds specified in the HUD regulations and BHA policies. If the grounds for termination are not specified in the regulations or in compliance with BHA policies, then the decision of the BHA will be overturned.

The hearing officer will issue a written decision to the family and BHA no later than 20 business days after the hearing. The report will contain the following information:

Hearing information:

- Name of the participant;
- Date, time and place of the hearing;
- Name of the hearing officer;
- Name of the BHA representative; and
- Name of family representative (if any).

Background: A brief, impartial statement of the reason for the hearing.

Summary of the Evidence: The hearing officer will summarize the testimony of each witness and identify any documents that a witness produced in support of their testimony and that are admitted into evidence.

Findings of Fact: The hearing officer will include all findings of fact, based on a preponderance of the evidence. *Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

Conclusions: The hearing officer will render a conclusion derived from the facts that were found to be true by a preponderance of the evidence. The conclusion will result in a determination of whether these facts uphold the BHA's decision.

Order: The hearing report will include a statement of whether the BHA's decision is upheld or overturned. If it is overturned, the hearing officer will instruct the BHA to change the decision in accordance with the hearing officer's determination. In the case of termination of assistance, the hearing officer will instruct the BHA to restore the participant's program status.

Issuance of Decision *[24 CFR 982.555(e)(6)]*
A copy of the hearing order must be furnished promptly to the family.

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

Effect of Final Decision *[24 CFR 982.555(f)]*
The BHA is not bound by the decision of the hearing officer for matters in which the BHA 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 BHA determines it is not bound by the hearing officer's decision in accordance with HUD regulations, the BHA must promptly notify the family of the determination and the reason for the determination.

The Executive Director has the authority to determine that the BHA is not bound by the decision of the hearing officer because the BHA was not required to provide a hearing, the decision exceeded the authority of the hearing officer, the decision conflicted with or contradicted HUD regulations, requirements, or the decision was otherwise contrary to federal, state, or local laws.

In such a case, the BHA will mail a "Notice of Final Decision" to the BHA program director and the participant on the same day. The "Notice of Final Decision" will be sent by first-class mail. A copy of this notice will be maintained in the BHA's file.

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

16-III.D. HEARING AND APPEAL PROVISIONS FOR NONCITIZENS [24 CFR 5.514]

Denial or termination of assistance based on immigration status is subject to special hearing and notice rules. Applicants who are denied assistance due to immigration status are entitled to an informal hearing, not an informal review.

Assistance to a family may not be delayed, denied, or terminated on the basis of immigration status at any time prior to a decision under the United States Citizenship and Immigration Services (USCIS) appeal process. Assistance to a family may not be terminated or denied while the BHA 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 BHA informal hearing process, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

NOTICE OF DENIAL OR TERMINATION OF ASSISTANCE [24 CFR 5.514(D)]

The notice of denial or termination of assistance for noncitizens must advise the family:

- That financial assistance will be denied or terminated and provide a brief explanation of the reasons for the proposed denial or termination of assistance.

- The family may be eligible for proration of assistance.
- In the case of a participant, the criteria and procedures for obtaining relief under the provisions for preservation of families [24 CFR 5.514 and 5.518].
- That the family has a right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or explanation in support of the appeal.
- That the family has a right to request an informal hearing with the BHA 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 BHA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, the BHA 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 BHA with a copy of the written request for appeal and the proof of mailing.

The BHA will notify the family in writing of the results of the USCIS secondary verification within 10 business days of receiving the results.

The family must provide the BHA 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 BHA, of its decision. When the USCIS notifies the BHA of the decision, the BHA must notify the family of its right to request an informal hearing.

The BHA 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 BHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the BHA 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 BHA 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 BHA pertaining to the family's eligibility status, or in the possession of the USCIS (as permitted by USCIS requirements), including any records and regulations that may be relevant to the hearing.

- The family will be allowed to copy any documents related to the hearing at no charge.
- The family must request discovery of BHA 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 BHA, and to confront and cross-examine all witnesses on whose testimony or information the BHA 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, the BHA will provide competent interpretation services, free of charge.

Recording of the Hearing

The family is entitled to have the hearing recorded by audiotape. The BHA may, but is not required to provide a transcript of the hearing.

Hearing Decision

The BHA 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 BHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the BHA notice of termination, or within 30 days of receipt of the USCIS appeal decision.

For the informal hearing procedures that apply to participant families whose assistance is being terminated based on immigration status, see Section 16-III.C.

RETENTION OF DOCUMENTS [24 CFR 5.514(H)]

The BHA must retain for a minimum of 5 years the following documents that may have been submitted to the BHA by the family, or provided to the BHA as part of the USCIS appeal or the BHA 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 THE BHA

16-IV.A. OVERVIEW

When an action or inaction of an owner or participant results in the overpayment of housing assistance, the BHA holds the owner or participant liable to return any overpayments to the BHA.

The BHA will enter into repayment agreements in accordance with the policies contained in this part as a means to recover overpayments.

16-IV.B. REPAYMENT POLICY

OWNER DEBTS TO THE BHA

Any amount due to the BHA by an owner must be repaid by the owner.

If the owner is entitled to future HAP payments, the BHA will reduce the future BHA payments by the amount owed until the debt is paid in full.

If the owner is not entitled to future HAP payments the BHA will inform the owner of the owed amount, and request the owner to repay the BHA within 30-days of notification. The BHA may, in its sole discretion, offer a repayment agreement to the owner on terms prescribed by the BHA.

If the owner refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, the BHA will ban the owner from future participation in the program and pursue other modes of collection.

When an owner refuses to repay monies owed to the BHA, the BHA will utilize other available collection alternatives including, but not limited to, the following:

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

FAMILY DEBTS TO THE BHA

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

Any amount owed to the BHA by an HCV family must be repaid by the family. If the family is unable to repay the debt within 30 days, the BHA will offer to enter into a repayment agreement in accordance with the policies below.

CRIMINAL PROSECUTION FOR PROGRAM FRAUD/ABUSE

The BHA will consult with the HUD Field Office and regional OIG Special Agent in Charge (SAC) to determine whether it will refer the matter to the state or local district attorney to pursue criminal fraud charges.

REFUSAL TO ENTER INTO AN AGREEMENT

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

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

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

REPAYMENT AGREEMENT [24 CFR 792.103]

The term *repayment agreement* refers to a formal written document signed by a tenant or owner and provided to the BHA in which a tenant or owner acknowledges a debt in a specific amount and agrees to repay the amount due at specific time periods.

GENERAL REPAYMENT AGREEMENT GUIDELINES FOR FAMILIES

Minimum Monthly Payment
Families entering a repayment agreement will be required to make monthly payments toward the repayment balance. The monthly payment amount will be the higher of (a) 10% of the tenant's adjusted monthly income, or (b) $50.

Repayment Agreement Length
Repayment Agreements will be executed with a term not to exceed 60-months. If the minimum monthly payment amount would result in a repayment term exceeding 60-months, the BHA will require the family to either accept a higher monthly payment amount, or provide a down payment in such an amount that the remainder of the repayment agreement will be paid in full over a 60-month term at the minimum payment amount.

Execution of the Agreement
Any repayment agreement between the BHA and a family must be signed and dated by the BHA and by the head of household and spouse/cohead (if applicable).

Due Dates
All payments are due by the close of business on the 15th day of the month. If the 15th does not fall on a business day, the due date is the close of business on the first business day after the 15th.

Late or Missed Payments
If a payment is not received by the end of the business day on the date due, and prior approval for the missed payment has not been given by the BHA, the BHA will send the family a delinquency notice giving the family 10 business days to make the late payment. If the payment is not received by the due date of the delinquency notice, it will be considered a breach of the agreement and the BHA may move to terminate assistance in accordance with the policies in Chapter 12.

If a family receives three delinquency notices for unexcused late payments in a 12-month period, the repayment agreement will be considered in default, and the BHA will terminate assistance in accordance with the policies in Chapter 12.

No Offer of Repayment Agreement
The BHA generally will not enter into a repayment agreement with a family if there is already a repayment agreement in place with the family or if the BHA, in consultation with HUD and local law enforcement, determine to pursue criminal charges in connection with the conduct and the amounts owed.

Repayment Agreement Terms

All repayment agreements must be in writing, dated, signed by both the family and the BHA, include the total retroactive rent amount owed, any amount of lump sum payment made at time of execution, if applicable, and the monthly repayment amount. Notice PIH 2018-18 requires certain provisions, at a minimum, be included in any repayment agreement involving amounts owed by a family because it underreported or failed to report income:

- A reference to the items in the family briefing packet that state the family's obligation to provide true and complete information at every reexamination and the grounds on which the BHA 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 BHA 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

Restructuring a Repayment Agreement

If during the term of the repayment agreement a family's circumstances change, they may request to restructure their repayment agreement based upon their remaining balance. Such changes may include a significant loss/change in the family's income, changes in the household composition, or other changes to the household's circumstances that impact their adjusted monthly income.

Such requests can be approved or denied by the BHA at their sole discretion. In general, the BHA will consider such requests only if:

- The change of circumstances results in either:
    - At least a 20% decrease in the minimum monthly payment; OR
    - The monthly payment decreasing to the $50 minimum
- The revised repayment agreement will not result in the total term from the start of the initial repayment agreement to the end of the revised repayment agreement to exceed 84 months (7 years)
- The tenant is up to date and in good standing with the current executed repayment agreement

For example, a tenant is subject to a repayment agreement totaling $3,000 with a minimum monthly payment of $150 based upon their adjusted monthly income. They make payments for ten consecutive months, bringing the balance down to $1,500. The family then suffers a loss of income resulting in 10% of their adjusted monthly income lowering to $100. The family may request to restructure their repayment agreement for the remaining $1,500 to be paid in fifteen monthly payments of $100. If such a request is granted, a new repayment agreement will be carried out between the BHA and the tenant under the new terms.

If a repayment agreement is restructured based off changes in the family's circumstances that result in a decrease in adjusted monthly income, the BHA may require that the family revert back to the original repayment agreement minimum payment amount should the family's circumstances change such that the original amount no longer exceeds 10% of their adjusted monthly income.

PART V: SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP)

16-V.A. OVERVIEW

The Section 8 Management Assessment Program (SEMAP) is a tool that allows HUD to measure PHA performance in key areas to ensure program integrity and accountability. SEMAP scores translate into a

rating for each PHA as high performing, standard, or troubled. Scores on individual SEMAP indicators, as well as overall SEMAP ratings, can affect 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]

BHA will submit the HUD-required SEMAP certification form within 60 calendar days after the end of its fiscal year.

HUD VERIFICATION METHOD

Several of the SEMAP indicators are scored based on a review of a quality control sample selected for this purpose. The BHA 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 BHA's certification on the indicator due to the BHA's failure to adequately report family data, HUD will assign a zero rating for the indicator [24 CFR 985.3].

16-V.C. SEMAP INDICATORS [24 CFR 985.3 and Form HUD-52648]

The table below lists each of the SEMAP indicators, contains a description of each indicator, and explains the basis for points awarded under each indicator.

A PHA that expends less than $300,000 in Federal awards and whose Section 8 programs are not audited by an independent auditor, is not to be rated under SEMAP indicators 1-7.

SEMAP Indicators
Indicator 1: Selection from the waiting list **Maximum Score: 15** • This indicator shows whether the BHA has written policies in its administrative plan for selecting applicants from the waiting list and whether the BHA follows these policies when selecting applicants from the waiting list. • Points are based on the percent of families that are selected from the waiting list in accordance with the BHA's written policies, according to the BHA's quality control samples.
Indicator 2: Rent reasonableness **Maximum Score: 20**

- This indicator shows whether the BHA has and implements a reasonable written method to determine and document for each unit leased that the rent to owner is reasonable based on current rents for comparable unassisted units at the required times.
- Points are based on the percent of units for which the BHA follows its written method to determine reasonable rent and has documented its determination that the rent to owner is reasonable, according to the BHA's quality control sample.

Indicator 3: Determination of adjusted income
Maximum Score: 20

- This indicator measures whether the BHA verifies and correctly determines adjusted income for each assisted family, and where applicable, uses the appropriate utility allowances for the unit leased in determining the gross rent.
- Points are based on the percent of files that are calculated and verified correctly, according to the BHA's quality control sample.

Indicator 4: Utility allowance schedule
Maximum Score: 5

- This indicator shows whether the BHA maintains an up-to-date utility allowance schedule.
- Points are based on whether the BHA has reviewed the utility allowance schedule and adjusted it when required, according to the BHA's certification.

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 inspection of a unit under contract where the unit fails to meet housing quality standards, 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 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 BHA 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 BHA'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 BHA has adopted and implemented written policies in accordance with SEMAP requirements, according to the BHA's certification.

Indicator 8: FMR limit and payment standards
Maximum Points: 5 points

- This indicator shows whether the BHA has adopted a payment standard schedule that establishes payment standard amounts by unit size for each FMR area in the BHA's jurisdiction, that are within the basic range of 90 to 110 percent of the published FMR.
- Points are based on whether the BHA has appropriately adopted a payment standard schedule(s), according to the BHA's certification.

Indicator 9: Annual reexaminations
Maximum Points: 10

- This indicator shows whether the BHA completes a reexamination for each participating family at least every 12 months.
- Points are based on the percent of reexaminations that are less than two months overdue, according to data from PIC.

Indicator 10: Correct tenant rent calculations
Maximum Points: 5

- This indicator shows whether the BHA 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 inspections
Maximum Points: 5

- This indicator shows whether newly leased units pass 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 inspection on or before the effective date of the lease and HAP contract, according to data from PIC.

Indicator 12: Annual inspections
Maximum Points: 10

- This indicator shows whether the BHA inspects each unit under contract at least annually.
- Points are based on the percent of annual 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 BHA enters HAP contracts for at least 98 percent of the number of the BHA's baseline voucher units in the ACC for the calendar year ending on or before the BHA's fiscal year, or whether the BHA 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 BHA 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 BHA 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 BHA using one or more payment standard amount(s) that exceed(s) 100 percent of the published FMR set at the 50th percentile rent, starting with the second full BHA fiscal year following initial use of payment standard amounts based on the FMRs set at the 50th percentile.
- Additional points are available to PHAs that have jurisdiction in metropolitan FMR areas and that choose to submit the required data.
- Points are based on whether the data that is submitted meets the requirements for bonus points.

PART VI: RECORD KEEPING

16-VI.A. OVERVIEW

The BHA 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 BHA must ensure that all applicant and participant files are maintained in a way that protects an individual's privacy rights.

16-VI.B. RECORD RETENTION [24 CFR 982.158; 24 CFR 908.101]

During the term of each assisted lease, and for at least three years thereafter, the BHA must keep:

- A copy of the executed lease;
- The HAP contract; and
- The application from the family.

In addition, the BHA 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 BHA budget and financial statements for the program;
- Records to document the basis for BHA determination that rent to owner is a reasonable rent (initially and during the term of a HAP contract); and
- Other records specified by HUD.

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

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

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

The BHA will keep for at least three years records of all complaints, investigations, notices, and corrective actions related to violations of the Fair Housing Act, the equal access final rule, or VAWA.

The BHA must keep confidential records of all emergency transfer requested by victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking under the BHA's Emergency Transfer Plan, as well as the outcomes of such requests, and retain the records for a period of three years [see 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

All applicant and participant information will be kept in a secure location and access will be limited to authorized BHA staff.

BHA 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-A]

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-A, Authorization for Release of Information. This form incorporates the Federal Privacy Act Statement and describes how the information collected using the form may be used, and under what conditions HUD or the BHA may release the information collected.

UPFRONT INCOME VERIFICATION (UIV) RECORDS

Prior to utilizing HUD's EIV system, the BHA will adopt and implement EIV security procedures required by HUD.

CRIMINAL RECORDS

The BHA may only disclose the criminal conviction records which the BHA receives from a law enforcement agency to officers or employees of the BHA, or to authorized representatives of the BHA who have a job-related need to have access to the information [24 CFR 5.903(e)].

The BHA must establish and implement a system of records management that ensures that any criminal record received by the BHA 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 BHA action without institution of a challenge or final disposition of any such litigation [24 CFR 5.903(g)].

The BHA must establish and implement a system of records management that ensures that any sex offender registration information received by the BHA 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 BHA 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 BHA other than under 24 CFR 5.905.

MEDICAL/DISABILITY RECORDS

PHAs are not permitted to inquire about the nature or extent of a person's disability. The BHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the BHA receives a verification document that provides such information, the BHA should not place this information in the tenant file. The BHA should destroy the document.

DOCUMENTATION OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, STALKING, OR HUMAN TRAFFICKING

For requirements and BHA policies related to management of documentation obtained from victims of domestic violence, dating violence, sexual assault, stalking, or human trafficking see section 16-IX.E.

PART VII: REPORTING AND RECORD KEEPING FOR CHILDREN WITH ELEVATED BLOOD LEVEL

16-VII.A. OVERVIEW

The BHA has certain responsibilities relative to children with elevated blood lead levels that are receiving HCV assistance. The notification, verification, and hazard reduction requirements are discussed in Chapter 8. This part deals with the reporting requirements, and data collection and record keeping responsibilities that the BHA is subject to.

16-VII.B. REPORTING REQUIREMENT [24 CFR 35.1225(e); Notice PIH 2017-13]

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

Upon notification by the owner, the BHA will provide the public health department written notice of the name and address of any child identified as having an elevated blood lead level within five business days.

Upon notification by the owner, the BHA will notify the HUD field office and the HUD Office of Lead Hazard Control and Healthy Homes (OLHCHH) of the child's address within five business days.

16-VII.C. DATA COLLECTION AND RECORD KEEPING [24 CFR 35.1225(f)]

At least quarterly, the BHA 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 BHA obtains names and addresses of elevated blood lead level children from the public health department(s), the BHA must match this information with the names and addresses of families receiving HCV assistance, unless the public health department performs such a procedure. If a match occurs, the BHA must carry out the notification, verification, and hazard reduction requirements discussed in Chapter 8, and the reporting requirement discussed above.

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 the BHA denies a family a portability move based on insufficient funding, the BHA is required to notify the local HUD office within 10 business days [24 CFR 982.354]. Insufficient funding may also impact the BHA's ability to issue vouchers to families on the waiting list. This part discusses the methodology the BHA will use to determine whether or not the BHA has sufficient funding to issue vouchers, approve moves, and to continue subsidizing all families currently under a HAP contract. The BHA must identify in the administrative plan, in the event of insufficient funding, considering any cost saving measures taken by the BHA, a description of the factors the BHA will consider when determining which HAP contracts to terminate first. See Chapter 12 for a description of these factors.

16-VIII.B. METHODOLOGY

The BHA will determine whether there is adequate funding to issue vouchers, approve moves to higher cost units and areas, and continue subsidizing all current participants by comparing the BHA's annual budget authority to the annual total HAP needs on a monthly basis. The total HAP needs for the calendar year will be projected by establishing the actual HAP costs year to date. To that figure, the BHA will add anticipated HAP expenditures for the remainder of the calendar year. Projected HAP expenditures will be calculated by multiplying the projected number of units leased per remaining months by the most current month's average HAP. The projected number of units leased per month will take into account the average monthly turnover of participant families. If the total annual HAP needs equal or exceed the annual budget authority and funding reserves, or if the BHA cannot support the cost of the proposed subsidy commitment (voucher issuance or move) based on the funding analysis, the BHA will be considered to have insufficient funding.

PART IX: VIOLENCE AGAINST WOMEN ACT (VAWA): NOTIFICATION, DOCUMENTATION, CONFIDENTIALITY

16-IX.A. OVERVIEW

The Violence Against Women Act (VAWA) provides special protections for victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking who are applying for or receiving assistance under the housing choice voucher (HCV) program. If your state or local laws provide greater protection for such victims, those laws apply in conjunction with VAWA.

- Although the VAWA 2022 statute does not specifically include human trafficking in the list of victims protected under VAWA, in 2022 HUD began including human trafficking as part of the list of victims protected under VAWA (as seen in Notices PIH 2022-06, PIH 2022-22, and PIH 2022-24). In the absence of a final rule implementing VAWA 2022 and to mirror HUD's recent usage, this policy includes human trafficking in addition to domestic violence, dating violence, sexual assault, and stalking anywhere such a list appears.

In addition to definitions of key terms used in VAWA, this part contains general VAWA requirements and BHA policies in three areas: notification, documentation, and confidentiality. Specific VAWA requirements and BHA policies are located primarily in the following sections: 3-I.C, "Family Breakup and Remaining Member of Tenant Family"; 3-III.H, "Prohibition against Denial of Assistance to Victims of Domestic Violence, Dating Violence, Sexual Assault, Stalking and Human Trafficking"; 10-I.A, "Allowable Moves"; 10-I.B, "Restrictions on Moves"; 12-II.E, "Terminations Related to Domestic Violence, Dating Violence, Sexual Assault, Stalking, or Human Trafficking"; and 12-II.F, "Termination Notice."

16-IX.B. DEFINITIONS [24 CFR 5.2003, 42 USC 13925]

As used in VAWA:

- The term *affiliated individual* means, with respect to a person:
    - A spouse, parent, brother or sister, or child of that individual, or an individual to whom that individual stands in the position or place of a parent; or
    - Any other individual, tenant, or lawful occupant living in the household of the victim of domestic violence, dating violence, sexual assault, or stalking.
- The term *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 committed by a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction receiving grant funding, and in the case of victim services, includes the user or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person who is:
    - The current or former spouse or intimate partner of the victim, or person similarly situated to a spouse or intimate partner of the victim
    - A person who is cohabitating or has cohabitated with the victim as a spouse or intimate partner
    - A person with whom the victim shares a child in common
    - A person who commits acts against an youth or adult victim who is protected from those acts under the domestic or family violence laws of the jurisdiction
- The term *economic abuse* means behavior that is coercive, deceptive, or unreasonably controls or restrains a person's ability to acquire, use, or maintain economic resources to which they are entitled, including using coercion, fraud, and manipulation to:
    - Restrict a person's access to money, assets, credit, or financial information
    - Unfairly use a person's personal economic resources, including money, assets, and credit, for one's own advantage
    - Exert undue influence over a person's financial and economic behavior or decisions, including forcing default on joint or other financial obligations, exploiting powers of attorney, guardianship, or conservatorship, or to whom one has a fiduciary duty
- The term *sexual assault* means:
    - Any nonconsensual sexual act proscribed by federal, tribal, or state law, including when the victim lacks the capacity to consent
- The term *stalking* means:
    - To engage in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.
- The term technological abuse means an act or pattern of behavior that occurs within domestic violence, dating violence, sexual assault, or stalking and is intended to harm, threaten, intimidate, control, stalk, harass, impersonate, exploit, extort, or monitor another person, except as otherwise permitted by law, that occurs using any form of technology, including but not limited to:
    - Internet enabled devices
    - Online spaces and platforms
    - Computers
    - Mobile devices
    - Cameras and imaging programs
    - Apps
    - Location tracking devices
    - Communication technologies
    - Any other emergency technologies

16-IX.C. NOTIFICATION [24 CFR 5.2005(a)]

NOTIFICATION TO PROGRAM APPLICANTS AND PARTICIPANTS [24 CFR 5.2005(A)(1)]

The BHA will provide all applicants with information about VAWA at the time they request an application for housing assistance, as part of the written briefing packet, and at the time the family is admitted to the program. The BHA will also include information about VAWA in all notices of denial of assistance (see section 3-III.H).

The BHA will provide all participants with information about VAWA at the time of admission (see section 5-I.B) and at annual reexamination. The BHA 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 notices in Exhibits 16-1 and 16-2.

Whenever the BHA has reason to suspect that providing information about VAWA to a participant might place a victim of domestic violence at risk, it will attempt to deliver the information by hand directly to the victim or by having the victim come to an office or other space that may be safer for the individual, making reasonable accommodations as necessary. For example, the BHA may decide not to send mail regarding VAWA protections to the victim's unit if the BHA believes the perpetrator may have access to the victim's mail, unless requested by the victim.

When discussing VAWA with the victim, the BHA 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.

16-IX.D. DOCUMENTATION [24 CFR 5.2007]

If the BHA is presented with a claim for initial or continued assistance based on status as a victim of domestic violence, dating violence, sexual assault, stalking, human trafficking, 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 BHA may extend this time period at its discretion. [24 CFR 5.2007(a)]

The individual may satisfy the BHA'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, stalking, human trafficking, 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 BHA 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 [FR Notice 11/16/16].

CONFLICTING DOCUMENTATION [24 CFR 5.2007(E)]

If presented with conflicting certification documents from members of the same household, the BHA will attempt to determine which is the true victim by requiring each of them to provide third-party documentation in accordance with 24 CFR 5.2007(e) and by following any HUD guidance on how such determinations should be made.

When requesting third-party documents, the BHA will provide contact information for local domestic violence and legal aid offices. In such cases, applicants or tenants will be given 30 calendar days from the date of the request to provide such documentation.

If the BHA does not receive third-party documentation within the required timeframe (and any extensions) the BHA will deny VAWA protections and will notify the applicant or tenant in writing of the denial. If, as a result, the applicant or tenant is denied or terminated from the program, the BHA will hold separate hearings for the applicants or tenants.

DISCRETION TO REQUIRE NO FORMAL DOCUMENTATION [24 CFR 5.2007(D)]

The BHA has the discretion to provide benefits to an individual based solely on the individual's statement or other corroborating evidence—i.e., without requiring formal documentation of abuse in accordance with 24 CFR 5.2007(b). HUD recommends documentation in a confidential manner when a verbal statement or other evidence is accepted.

If the BHA accepts an individual's statement or other corroborating evidence (as determined by the victim) of domestic violence, dating violence, sexual assault, stalking, or human trafficking, the BHA 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 BHA 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 BHA may allow, the BHA may deny relief for protection under VAWA.

16-IX.E. CONFIDENTIALITY [24 CFR 5.2007(b)(4)]

All information provided to the BHA regarding domestic violence, dating violence, sexual assault, stalking, or human trafficking, including the fact that an individual is a victim, must be retained in confidence. This means that the BHA (1) may not enter the information into any shared database, (2) may not allow employees or others to access the information unless they are explicitly authorized to do so and have a need to know the information for purposes of their work, and (3) may not provide the information to any other entity or individual, except to the extent that the disclosure is (a) requested or consented to by the individual in writing, (b) required for use in an eviction proceeding, or (c) otherwise required by applicable law.

If disclosure is required for use in an eviction proceeding or is otherwise required by applicable law, the BHA will inform the victim before disclosure occurs so that safety risks can be identified and addressed.

CHAPTER 17: PROJECT BASED VOUCHERS

This chapter describes HUD regulations and BHA 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, the cap on the number of assisted units in each project, relocation requirements, and equal opportunity requirements.

Part II: PBV Owner Proposals. This part includes policies related to the submission and selection of owner proposals for PBV assistance. It describes the factors the PHA will consider when selecting proposals, the type of housing that is eligible to receive PBV assistance, subsidy layering requirements, site selection standards, and environmental review requirements.

Part III: Dwelling Units. This part describes requirements related to inspections, the type and frequency of inspections, and housing accessibility for persons with disabilities.

Part IV: Rehabilitated and Newly Constructed Units. This part describes requirements and policies related to the development and completion of rehabilitated and newly constructed housing units that will be receiving PBV assistance.

Part V: Housing Assistance Payments Contract. This part discusses HAP contract requirements and policies including the execution, term, and termination of the HAP contract. In addition, it describes how the HAP contract may be amended and identifies provisions that may be added to the HAP contract at the PHA's discretion.

Part VI: Selection of PBV Program Participants. This part describes the requirements and policies governing how the BHA 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.

Part VIII: Determining Rent to Owner. This part describes how the initial rent to owner is determined, and how rent will be redetermined throughout the life of the HAP contract. Rent reasonableness requirements are also discussed.

Part IX: Payments to Owner. This part describes the types of payments owners may receive under this program.

PART I: GENERAL REQUIREMENTS

17-I.A. OVERVIEW [24 CFR 983.5]

BHA operates a project-based voucher program. Under the project-based voucher program, BHA enters into assistance contracts with owners for specified units and for a specified term. PBV assistance may be attached to existing housing or newly constructed or rehabilitated housing. BHA may project-base up to 20 percent of its Consolidated Annual Contributions Contract (ACC) authorized units.

17-I.B. PBV DEFINITIONS [24 CFR 983.3]

The following terms apply to the PBV program and are used throughout this chapter:

Excepted units are units in a project not counted toward the project cap because they exclusively serve or are made available to certain families in accordance with 24 CFR 983.54(c)(2).

Excluded units are units in a project not counted toward the program cap or project cap because they meet certain criteria in accordance with 24 CFR 983.59.

Existing housing is a project that meets the following criteria:

- All the proposed contract units in the project either fully comply or substantially comply with HQS on the proposal or project selection date, as determined per 24 CFR 983.103(a). (The units must fully comply with HQS at the time required by 24 CFR 983.103(c). The units substantially comply with HQS if:
    - The units only require repairs to current components or replacement of equipment and/or materials by items of substantially the same kind to correct deficiencies; and
    - The BHA determines all deficiencies can reasonably be corrected within a 30-day period, taking into consideration the totality of the deficiencies in the project.
- The BHA determines the project is not reasonably expected to require substantial improvement and the owner certifies it has no plans to undertake substantial improvement from the proposal submission date (for projects subject to competitive selection) or the project selection date (for projects excepted from competitive selection) through the first two years of the HAP contract.
- The following units do not qualify as existing housing:
    - Units for which rehabilitation or new construction began after proposal submission or the date of board resolution but prior to the effective date of an AHAP (if applicable); and
    - Units that were newly constructed or rehabilitated in violation of program requirements.

An *independent entity* is either:

- The unit of general local government; however, if the PHA itself is the unit of general local government or an agency of such government, then only the next level of general local government (or an agency of such government) or higher may serve as the independent entity; or
- A HUD-approved entity that is autonomous and recognized under state law as a separate legal entity from the BHA. The entity must not be connected financially (except regarding compensation for services performed for BHA -owned units) or in any other manner that could result in the BHA improperly influencing the entity.

An *in-place family* is a family residing in a proposed contract unit on the proposal or project selection date.

Newly constructed housing is a project containing housing units that do not exist on the proposal or project selection date and are developed after the date of selection for use under the PBV program.

A BHA -*owned unit* is a dwelling unit in a project that is:

- Owned by the BHA (including having a controlling interest in the entity that owns the project);
- Owned by an entity wholly controlled by the BHA; or
- Owned by a limited liability company or limited partnership in which the BHA (or an entity wholly controlled by the BHA) holds a controlling interest in the managing member or general partner.
    - A *controlling interest* is:
- Holding more than 50 percent of the stock of any corporation;
- Having the power to appoint more than 50 percent of the members of the board of directors of a non-stock corporation (such as a nonprofit corporation);
- Where more than 50 percent of the members of the board of directors of any corporation also serve as directors, officers, or employees of the BHA;
- Holding more than 50 percent of all managing member interests in an LLC;
- Holding more than 50 percent of all general partner interests in a partnership; or
- Equivalent levels of control in other ownership structures.

A *project* can be a single building, multiple contiguous buildings, or multiple buildings on contiguous parcels of land. “Contiguous” in this definition includes “adjacent to,” as well as touching along a boundary or a point.

Rehabilitated housing is a project which is developed for use under the PBV program, in which all proposed contract units exist on the proposal or project selection date, but which does not qualify as existing housing.

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 Income (AMI), or where the poverty rate is at least 25 percent and where the census tract is designated as a qualified census tract by HUD.

Substantial improvement is one of the following activities undertaken at a time beginning from the proposal submission date (for projects subject to competitive selection) or from the project selection date (for projects excepted from competitive selection), or undertaken during the term of the PBV HAP contract:

- Remodeling that alters the nature or type of housing units in a project;
- Reconstruction; or

A substantial improvement in the quality or kind of equipment and materials. The replacement of equipment and/or materials rendered unsatisfactory because of normal wear and tear by items of substantially the same kind does not constitute substantial improvement.

17-I.C. MAXIMUM NUMBER OF PBV UNITS (PERCENTAGE LIMITATION) [24 CFR 983.6]

PROGRAM CAP

If a PHA decides to operate a PBV program, the PHA’s PBV program is funded with a portion of appropriated funding (budget authority) available under the PHA’s voucher Annual Contributions Contract (ACC). Except for certain units discussed below, a PHA may commit project-based assistance to no more than 20 percent of its authorized voucher units, as adjusted, at the time of commitment, with the ability to project-base an additional 10 percent of units that meet certain requirements. An analysis of impact must be conducted if a PHA is project-basing 50 percent or more of the PHA’s authorized voucher units.

All PBV units which the BHA has selected (from the time of the proposal or project selection date) or which are under an Agreement to Enter into a HAP Contract (AHAP) or HAP contract for PBV assistance count toward the 20 percent maximum or increased cap. The BHA 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. Appendix I of Notice PIH 2017-21 contains a sample PBV program cap calculation worksheet. If PBV units are already selected for project-based assistance either under an AHAP or a HAP contract, the BHA is not required to reduce the number of units if the number of authorized units is subsequently reduced.

INCREASED CAP [24 CFR 983.6(D)]

The BHA may project-base an additional 10 percent of its authorized voucher units above the 20 percent program limit, provided the units meet requirements outlined in 24 CFR 983.6(d)(1) or (2). The units may be distributed among one, all, or a combination of the categories described below, as long as the total number of units does not exceed the 10 percent cap. The PBV HAP contract must specify, and the owner must set aside, the number of units meeting the conditions to qualify for the increased program cap. To qualify for the increased program cap, the unit must be occupied by the type of family specified in the applicable paragraph below.

For units under a HAP contract that was first executed on or after April 18, 2017, or added on or after that date to a current HAP contract entered into prior to April 19, 2017, units qualify under the increased program cap if the units meet one or more of the conditions below [24 CFR 983.6(d)(1)]:

- 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.
  - A family qualifies if they were homeless at the time the family first occupies the unit.
- The units are specifically made available to house families that are comprised of or include a veteran at the time the family first occupies a unit.
- A *veteran* is person who served in the active military, naval, air, or space service, and who was discharged or released therefrom.The units provide supportive housing to persons with disabilities or elderly persons as defined in 24 CFR 5.403.
  - A disabled or elderly member of the family must be eligible for one or more of the supportive services at the time the family first occupies the unit. The member of the family may choose not to participate in the services.
  - *Supportive housing* means that the project makes supportive services available for all of the assisted families in the project and provides a range of services tailored to the needs of the residents occupying such housing.
  - Such supportive services need not be provided by the owner or onsite but must be reasonably available to the families receiving PBV assistance in the project.
  - The PHA's administrative plan must describe the type and availability of supportive services the PHA will consider as qualifying for the 10 percent increased cap.
- The units are located in areas where vouchers are difficult to use.
- The units replace, on a different site, units listed in 24 CFR 983.59(b)(1) and (2) for which the BHA had authority under 24 CFR 983.59 to commit PBV assistance on the original site without the units counting toward the program cap or project cap.

The increased program cap also applies to units that are part of a HAP contract executed on or after December 27, 2020, or are added on or after that date to any current HAP contract, including a contract entered into prior to December 27, 2020, and meet the following requirements [24 CFR 983.6(d)(2)]:

- The units are exclusively made available to eligible youth receiving Family Unification Program (FUP) or Foster Youth to Independence (FYI) assistance; and
- If the units exclusively made available to eligible youth use FUP assistance that is normally available for eligible families and youth, the PHA determines and documents that the limitation of the units to youth is consistent with the local housing needs of both eligible FUP populations

(families and youth) and amends its administrative plan to specify that FUP PBV assistance is solely for eligible youth.

The BHA will project-base up to an additional 10 percent of its authorized units, up to 30 percent, in accordance with HUD regulations and requirements.

17-I.D. CAP ON NUMBER OF PBV UNITS IN EACH PROJECT [24 CFR 983.54]

PROJECT CAP [24 CFR 983.54(A)]

In general, the BHA may not select a proposal for units in a project or enter into an AHAP or a HAP contract to provide PBV assistance for units in a project if the total number of dwelling units in the project that will receive PBV assistance is more than the greater of 25 units or 25 percent of the number of dwelling units (assisted or unassisted, as adjusted) in the project.

HIGHER PROJECT CAP [24 CFR 983.54(B)]

The BHA may provide PBV assistance to the greater of 25 units or 40 percent of the number of dwelling units (assisted and unassisted, as adjusted) in the project if the project is located in an area where vouchers are difficult to use [24 CFR 983.54(b)]. An area where a voucher is difficult to use is defined as:

- A census tract with a poverty rate of 20 percent or less, as determined by HUD;
- A ZIP code area where the rental vacancy rate is less than 4 percent, as determined by HUD; or
- A ZIP code area where 90 percent of the Small Area FMR is more than 110 percent of the metropolitan area or county FMR.

EXCEPTIONS TO THE PROJECT CAP [24 CFR 983.54(C)]

Certain units are removed from the number of dwelling units for purposes of calculating the project cap. These are known as *excepted units,* which are defined as units in a project not counted toward the project cap because they exclusively service or are made available to certain families.

The PHA determines the number of units in the project for which the PHA will provide project-based assistance, including whether and how many units will be excepted. The PBV HAP contract must specify, and the owner must set aside, the number of excepted units made available for occupancy by families who qualify for the exception. For a unit to be considered excepted, it must be occupied by a family who qualifies for the exception.

Which units are considered excepted differs depending on when the HAP contract was executed. Contracts executed prior to April 18, 2017, follow the “old” statutory PBV requirements for excepted units. Projects where the HAP contract was executed on or after April 18, 2017, follow new requirements. In this case, PBV units are not counted toward the project cap if the units are:

- Exclusively for elderly families;
- Exclusively made available to eligible youth receiving FUP or FYI assistance; or
- For households eligible for supportive services available to all families receiving PBV assistance in the project.

A project is not limited to a single exception category but may include excepted units from any of the exception categories.

The BHA will have excepted units in certain PBV Projects

Elderly Family
The BHA will have excepted units for elderly families, which is defined as follows a family whose head, spouse, cohead or sole member is a person who is at least 62 years of age. The family may include two or more persons who are at least 62 years of age living together, or one or more persons who are at least 62 years of age living with one or more live-in aides.

The BHA will provide excepted units for elderly families in the following projects:

90 Longwood Avenue

61 Park Street

50 Pleasant Street

32 Marion Street

The BHA will allow families who initially qualified to live in an excepted unit to remain when circumstances change due to circumstances beyond the remaining family members' control.

In all other cases, the BHA will provide written notice to the family and owner within 10 business days of making the determination. The family will be given 30 days from the date of the notice to move out of the PBV unit. If the family does not move out within this 30-day time frame, the BHA will terminate the housing assistance payments at the expiration of this 30-day period.

The BHA may make exceptions to this 30-day period if needed for reasons beyond the family's control, such as death, serious illness, or other medical emergency of a family member.

Supportive Services
The BHA will provide excepted units that offer optional supportive services available to all PBV-assisted families in a project. Families are not required to participate in services as a condition of living in excepted units. The exception applies to any household eligible for the supportive services and is not limited to households with a family member with a disability.

The following projects will offer optional supportive services:

90 Longwood Avenue

61 Park Street

50 Pleasant Street

32 Marion Street

The following types of supportive services will be offered:

[Enter a description of the type of supportive service offered, length of time services will be provided, frequency of services, and depth of services.]

When families opt in to supportive services, such services will be made available to the family as quickly as reasonably practicable, but no longer than 120 calendar days from the family's request.

A unit is excepted from the project cap if any member of the family is eligible for one or more of the supportive services, even if the family chooses not to participate in the services. If a family member chooses to participate in and successfully completes the supportive services, the unit continues to count as an excepted unit for as long as the family resides in the unit, even if the members that continue to reside in the unit are ineligible during tenancy for all available supportive services.

The unit loses its excepted status only if the entire family becomes ineligible during the tenancy for all supportive services available to the family. This provision does not apply where any member of the family has successfully completed the supportive services. A family cannot be terminated from the program or evicted from the unit because they become ineligible for all supportive services during the tenancy.

UNITS THAT NO LONGER QUALIFY AS EXCEPTED UNITS OR UNITS UNDER THE INCREASED PROGRAM CAP [24 CFR 983.262(B)]

In order to qualify as either excepted units or units under the increased program cap, units must be occupied by a family that meets the exception criteria applicable to the unit. Once the family vacates the unit, the BHA must select a new family from the waiting list via an admission preference, and the unit must be made available to and occupied by a family that meets the applicable exception.

If, due to circumstances beyond the control of the family, the unit is no longer qualified as an excepted unit or unit under the increased program cap, the unit will continue to count as long as the family resides in the unit. However, requirements for wrong-sized units will apply.

17-I.E. UNITS NOT SUBJECT TO THE PBV PROGRAM CAP OR PROJECT CAP [FR NOTICE 1/18/17 AND 24 CFR 983.59]

For HAP contracts that first became effective on or after April 18, 2017, the BHA may commit project-based assistance to units that meet the requirements below without the units counting toward the program cap (including the 10 percent exception) or project cap. These are known as *excluded units* and fall into two different categories:

- **Existing or Rehabilitation Units:** In the five years prior to the request for proposals (RFP) or the proposal or project selection date (in the case of selection without RFP), these units fall into one of the categories described below, provided that the units are removed from all categories prior to the effective date of the HAP contract. These units include units that received one of the following forms of HUD assistance:
  - Public Housing Capital or Operating Funds;
  - Project-Based Rental Assistance (Section 8), including units assisted under Section 8 Moderate Rehabilitation (Mod Rehab) and Mod Rehab Single-Room Occupancy (SRO) programs;
  - Housing for Elderly (Section 202);
  - Housing for Persons with Disabilities (Section 811);
  - Rental Assistance Program (RAP) (Section 236(f)(2) of the National Housing Act); or Flexible Subsidy Program (Section 201 of the Housing and Community Development Amendments of 1978).

Or the units have been subject to a federally required rent restriction under one of the following programs:

- The Low-Income Housing Tax Credit program (26 U.S.C. 42);
- Section 515 Rural Rental Housing Loans (42 U.S.C. 1485); or
- The following HUD programs:
- Section 236;
- Section 221(d)(3) Below Market Interest Rate;
- Housing For the Elderly (Section 202 of the Housing Act of 1959);
- Housing for Persons with Disabilities (Section 811 of the Cranston-Gonzalez National Affordable Housing Act);
- Flexible Subsidy Program (Section 201 of the Housing and Community Development Amendments Act of 1978); or

- Any other program identified by HUD through Federal Register notice subject to public comment.**Replacement Units:** Newly constructed units developed under the PBV program are also considered excluded units if the primary purpose of the newly constructed units is or was to replace units that meet the criteria listed above. The newly constructed unit must be located on the same site as the unit it is replacing; however, an expansion of or modification to the prior project's

site boundaries as a result of the design of the newly constructed project is acceptable as long as a majority of the replacement units are built back on the site of the original project and any replacement units that are not located on the existing site are part of a project that shares a common border with, are across a public right of way from, or touch that site. In addition, in order for the replacement units to be excluded from the program and project caps, one of the following must be true:

- Former residents of the original project must be provided with a selection preference that provides the residents with the right of first occupancy at the PBV newly constructed project when it is ready for occupancy; or
- Prior to the demolition of the original project, the PBV newly constructed project must have been identified as replacement housing for that original project as part of a documented plan for the redevelopment of the site.

Units in the following projects are not subject to the program cap or project cap because they are excluded units:

90 Longwood Avenue

61 Park Street

50 Pleasant Street

32 Marion Street

17-I.F. BHA**-OWNED UNITS** [24 CFR 982.4 and 983.57]

For BHA-owned units (as defined in 24 CFR 982.4), an independent entity (as defined in 24 CFR 982.4) must perform the following functions:

- Determine rent to owner, including rent reasonableness and calculating any rent adjustments by HUD's Operating Cost Adjustment Factor (OCAF) (where applicable), in accordance with 24 CFR 983.301 through 983.305;
- Perform unit inspections in accordance with 24 CFR 983.103(g);
- When the owner carries out development activity or substantial improvement, the independent entity must review the evidence and work completion certification submitted by the owner and determine if the units are complete in accordance with 24 CFR 983.156; and
- Determine whether to approve substantial improvement to units under a HAP contract in accordance with 24 CFR 983.212.

The BHA may only compensate the independent entity from BHA ongoing administrative fee income (including amounts credited to the administrative fee reserve). The BHA may not use other program receipts to compensate the independent entity for its services. The BHA and independent entity may not charge the family any fee for the appraisal, or the services provided by the independent entity.

17-I.G. 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 BHA 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(c).

Except as otherwise noted in this chapter, or unless specifically prohibited by PBV program regulations, the BHA policies for the tenant-based voucher program contained in this administrative plan also apply to the PBV program.

17-I.H. RELOCATION REQUIREMENTS [24 CFR 983.7]

Any persons displaced as a result of implementation of the PBV program must be provided relocation assistance in accordance with the requirements of the Uniform Relocation Assistance and Real Property

Acquisition Policies Act of 1970 (URA)[42 U.S.C. 4201-4655] and implementing regulations at 49 CFR part 24.

The cost of required relocation assistance may be paid with funds provided by the owner, local public funds, or funds available from other sources. PHAs may not use voucher program funds to cover relocation costs, except that PHAs may use their administrative fee reserve to pay for relocation expenses after all other program administrative expenses are satisfied, and provided that payment of the relocation benefits is consistent with state and local law. Use of the administrative fee for these purposes must also be consistent with other legal and regulatory requirements, including the requirement in 24 CFR 982.155 and other official HUD issuances.

The acquisition of real property for a PBV project is subject to the URA and 49 CFR part 24, subpart B. It is the responsibility of the BHA to ensure the owner complies with these requirements.

17-I.I. EQUAL OPPORTUNITY REQUIREMENTS [24 CFR 983.8]

The BHA 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 BHA must comply with the BHA Plan certification on civil rights and affirmatively furthering fair housing, submitted in accordance with 24 CFR 903.7(o).

PART II: PROPOSAL AND PROJECT SELECTION

17-II.A. OVERVIEW

The BHA must include a description of the circumstances under which the BHA will use noncompetitive selection for PBV projects and competitive selection for PBV proposals, including the procedures for submission and selection of such proposals, in the administrative plan [24 CFR 983.10(b)(3)].

Before selecting a PBV proposal, the BHA must determine that the PBV proposal complies with HUD program regulations and requirements, including a determination that the property is eligible housing [24 CFR 983.52 and 983.53], complies with the cap on the number of PBV units per project [24 CFR 983.54], and meets the site selection standards [24 CFR 983.55]. The BHA may not commit PBVs until or unless it has followed the proposal selection requirements defined in 24 CFR 983.51.

The BHA may allow for entities that have site control to submit proposals provided the entity will be the owner prior to entering into the AHAP or HAP contract. An owner may submit, and the BHA may select, a single proposal covering multiple projects where each project consists of a single-family building, provided all projects are the same housing type (existing, rehabilitated, or newly constructed) [24 CFR 983.51(a)].

The BHA may not commit project-based assistance to a project if the owner or any principal or interested party is debarred, suspended subject to a limited denial of participation, or otherwise excluded under 2 CFR Part 2424 or is listed on the U.S. General Services Administration list of parties excluded from federal procurement or non-procurement programs. HUD approval of specific projects or owners is not required. For example, owner proposal selection does not require submission of form HUD-2530 (Previous Participation Certification) or other HUD previous participation clearance.

SELECTION OF BHA-OWNED UNITS [24 CFR 983.51(H)]

A BHA-owned unit (as defined in 24 CFR 982.4) 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 BHA -owned units were appropriately selected based on the selection procedures specified in the BHA's administrative plan.

With the exception of projects selected in accordance with 24 CFR 983.51(c) (projects that meet the criteria to be excepted from competitive selection), the BHA's selection procedures must be designed in a manner that does not effectively eliminate the submission of proposals for non-BHA -owned units or give preferential treatment (e.g., additional points) to BHA-owned units.

17-II.B. COMPETITIVE SELECTION OF PROPOSALS [24 CFR 983.51(b)]

The BHA must select PBV proposals in accordance with the selection procedures in the BHA administrative plan. The BHA must select PBV proposals by either of the following two methods:

- BHA request for PBV Proposals. The BHA may solicit proposals by using a RFP to select proposals on a competitive basis in response to the BHA request. The BHA 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 BHA may establish selection procedures that combine or are in conjunction with other federal, state, or local government housing assistance, community development, or supportive services competitive selection processes. If the BHA selection process is combined and administered in conjunction with another RFP process, the BHA remains responsible for complying with proposal selection procedures as described in 24 CFR 983.51.
- The BHA may select, without issuing an RFP, 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, community development, or supportive services program that was subject to a competition in accordance with the requirements of the applicable program 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 competition did not involve any consideration that the project would receive PBV assistance.

SOLICITATION AND SELECTION OF PBV PROPOSALS [24 CFR 983.51(D)]

BHA Request for Proposals for Rehabilitated and Newly Constructed Units

The BHA will advertise its request for proposals (RFP) for rehabilitated and newly constructed housing in newspapers of general circulation (to be identified at the time of publication).

In addition, the BHA will post the RFP and proposal submission and rating and ranking procedures on its website. The advertisement will remain on the BHA's website until such time as the application period is closed.

The advertisement will state the number of vouchers available to be project-based, the type of units that will be considered, the submission deadline, and will note how to obtain the full RFP with information on the application and selection process. Advertisements will also contain a statement that participation in the PBV program requires compliance with Fair Housing and Equal Opportunity (FHEO) requirements and that the Federal Labor Standard provisions may be applicable for new and rehabilitation projects.

The BHA will publish its advertisement in the same newspaper used for publication of the RFP for at least one day per week for three consecutive weeks. The advertisement will specify the number of units the BHA estimates that it will be able to assist under the funding the BHA is making available. Proposals will be due in the BHA office by close of business 30 calendar days from the date of the last publication. The BHA will date and time stamp all applications upon receipt. Applications received after the published deadline date will not be accepted for consideration under the RFP process. Postmarks are not acceptable.

In order for the proposal to be considered, the owner must submit the proposal to the BHA by the published deadline date, and the proposal must respond to all requirements as outlined in the RFP and be in compliance with all HUD program requirements. Incomplete proposals will not be reviewed. The BHA reserves the right to reject applications at any time for misinformation, errors, or omissions of any kind.

The BHA will rate and rank proposals for rehabilitated and newly constructed housing using the following criteria:

1. Owner experience and capability to build or rehabilitate housing as identified in the RFP;
2. Extent to which the project furthers the BHA goal of deconcentrating poverty and expanding housing and economic opportunities;
3. If applicable, the extent to which services for special populations are provided on site or in the immediate area for occupants of the property; and

4. In order to promote partially assisted projects, projects where less than 25 percent of the units will be assisted will be rated higher than projects where 25 percent or more of the units will be assisted. In the case of projects for occupancy by the elderly, persons with disabilities or families needing other services, the BHA will rate partially assisted projects on the percentage of units assisted. Projects with the lowest percentage of assisted units will receive the highest score.

BHA Request for Proposals for Existing Housing Units

The BHA will advertise its request for proposals (RFP) for existing housing in newspapers of general circulation (to be identified at the time of publication).

In addition, the BHA will post the notice inviting such proposal submission and the rating and ranking procedures on its website.

The advertisement will state the number of vouchers available to be project-based, the type of units that will be considered, the submission deadline, and will note how to obtain the full RFP with information on the application and selection process. Advertisements will also contain a statement that participation in the PBV program requires compliance with Fair Housing and Equal Opportunity (FHEO) requirements.

The BHA will periodically publish its advertisement in the same newspaper used for publication of the RFP for at least one day per week for three consecutive weeks. The advertisement will specify the number of units the BHA estimates that it will be able to assist under the funding the BHA is making available. Owner proposals will be accepted on a first-come first-served basis and will be evaluated using the following criteria:

1. Experience as an owner in the tenant-based voucher program and owner compliance with the owner's obligations under the tenant-based program;
2. Extent to which the project furthers the BHA goal of deconcentrating poverty and expanding housing and economic opportunities;
3. If applicable, extent to which services for special populations are provided on site or in the immediate area for occupants of the property; and
4. Extent to which units are occupied by families that are eligible to participate in the PBV program.

BHA Selection of Proposals Subject to a Previous Competition under a Federal, State, or Local Housing Assistance Program

The BHA 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 (if the earlier competition did not involve any consideration that the project would receive PBV assistance) on an ongoing basis.

The BHA may periodically advertise that it is accepting proposals, in newspapers of general circulation (to be identified at the time of publication).

The advertisement will state the number of vouchers available to be project-based, the type of units that will be considered, the submission deadline, and will note how to obtain the full RFP with information on the application and selection process. Advertisements will also contain a statement that participation in the PBV program requires compliance with Fair Housing and Equal Opportunity (FHEO) requirements and that the Federal Labor Standard provisions may be applicable for new and rehabilitation projects.

In addition to, or in place of advertising, the BHA may also directly contact specific owners that have already been selected for Federal, state, or local housing assistance based on a previously held competition, to inform them of available PBV assistance.

Proposals will be reviewed on a first-come first-served basis. The BHA will evaluate each proposal on its merits using the following factors:

1. Extent to which the project furthers the BHA goal of deconcentrating poverty and expanding housing and economic opportunities; and
2. Extent to which the proposal complements other local activities such as the redevelopment of a public housing site under the HOPE VI program, the HOME program, CDBG activities, other

development activities in a HUD-designated Enterprise Zone, Economic Community, Choice Neighborhood, or Renewal Community.

17-II.C. NON-COMPETITIVE PROJECT SELECTION [24 CFR 983.51(c)]

The BHA may select units without a competitive selection process in certain circumstances described in 24 CFR 983.51(c) and FR Notice 8/13/24. Prior to selecting units based on the below criteria, the BHA must notify the public of its intent to noncompetitively select one or more projects for PBV assistance through its 5-Year Plan. If this requirement is not met, the BHA may not select units non-competitively.

The BHA may select units for PBV assistance without following a competitive process in the following circumstances:

- The BHA may select existing, newly constructed, or rehabilitated public housing projects where the BHA has an ownership interest or over which the BHA has control, when the BHA is engaged in an initiative to improve, develop, or replace a public housing property or site.
    - The public housing units may either currently be in the public housing inventory or may have been removed from the public housing inventory through any available legal removal tool within five years of the project selection date.
- The BHA may select for future PBV assistance a project currently under the public housing program, or a project that is replacing the public housing project, in which a PHA has no ownership interest, or which a BHA has no control over, provided:
    - The public housing project is either still in the public housing inventory or had been removed from the public housing inventory through any available legal removal tool within five years of the project selection date;
    - The BHA that owned or owns the public housing project does not administer the HCV program;
    - The project selected for PBV assistance was specifically identified as replacement housing for the impacted public housing residents as part of the public housing demolition/disposition application, voluntary conversion application, or any other application process submitted to and approved by HUD to remove the public housing project from the public housing inventory; and
    - With respect to replacement housing, the BHA does not have to replace the housing on the same site as the original public housing, but the number of contract units in the replacement project may not exceed the number of units in the original public housing project by more than a de minimis amount for this exception to apply.
- The BHA may select a project consisting of BHA -owned units as defined at 24 CFR 982.4.
    - The units must continue to meet the definition of BHA -owned for the initial two years of the HAP contract unless there is a transfer of ownership approved by HUD.
- The BHA may select a project that underwent an eligibility event within five years of the project selection date, in which a family (or families) qualifies for enhanced voucher assistance and provided informed consent to relinquish its enhanced voucher for PBV assistance.

- The BHA may select one or more PBV projects with units made exclusively available to VASH families on the site of a VA facility [FR Notice 8/13/24].
    - The method of project selection must comply with all other requirements under 24 CFR 983.51, including that the BHA must notify the public of its intent to noncompetitively select one or more projects for PBV assistance through its 5-Year Plan and to ensure any project selection is consistent with the BHA administrative plan.

The BHA may noncompetitively attach PBVs to projects as described above. If BHA does intend to select units noncompetitively, the BHA will first notify the public through the BHA's 5-Year Plan process and will include the procedures for submission and selection to address under what circumstances the BHA will use this method.

17-II.D. PROJECT OR PROPOSAL SELECTION [24 CFR 983.51(f) and 24 CFR 983.153(c)(3)]

INSPECTIONS REQUIRED PRIOR TO PROJECT OR PROPOSAL SELECTION [24 CFR 983.51(E)]

The BHA must examine the proposed site before the proposal or project selection date to determine whether the site complies with the site selection standards outlined in 24 CFR 983.55.

The BHA may execute a HAP contract for existing housing if:

- All proposed contract units in the project fully or substantially comply with housing quality standards on the proposal or project selection date, which the BHA must determine via inspection;
- The project meets the environmental review requirements at 24 CFR 983.56, if applicable; and
- The project meets the initial inspection requirements in accordance with 24 CFR 983.103(c).

BHA WRITTEN NOTICE OF PROPOSAL OR PROJECT SELECTION [24 CFR 983.51(F) AND (H) AND 24 CFR 983.153(C)(3)]

If the project does not contain BHA-owned units, the BHA will notify the selected owner in writing of the owner's selection for the PBV program within 10 business days of the BHA making the selection. The BHA will also notify in writing all owners that submitted proposals that were not selected and advise such owners of the name of the selected owner.

If the project contains BHA -owned units, within 10 business days of the BHA making the selection, the BHA will provide the written notice of proposal selection to the responsible BHA official, and that official must certify in writing that the BHA accepts the terms and requirements stated in the notice within 10 business days of receiving the BHA's written notice.

When an environmental review is required, if the review has not been conducted prior to the proposal selection date, the BHA's written notice of proposal selection will state that the selection is subject to completion of a favorable environmental review and that the proposal may be rejected based on the results of the environmental review.

For any project to which labor standards apply, the BHA's written notice will state that any construction contracts must incorporate a Davis-Bacon contract clause and the current applicable prevailing wage determination.

The BHA will publish its notice for selection of PBV proposals for two consecutive days in the same newspapers the BHA used to solicit the proposals. The announcement will include the name of the owner that was selected for the PBV program. The BHA will also post the notice of owner selection on its website.

The BHA will make available to any interested party its rating and ranking sheets and documents that identify the BHA basis for selecting the proposal. These documents will be available for review by the public and other interested parties for one month after publication of the notice of owner selection. The BHA will not make available sensitive owner information that is privileged, such as financial statements and similar information about the owner.

The BHA will make these documents available for review at the BHA during normal business hours. The cost for reproduction of allowable documents will be $.25 per page.

The owner must submit a written response to the BHA accepting the terms and requirements stated in the notice within 10 business days of the BHA's written notification to the owner.

In addition to the requirements above, for projects selected under an exception to the competitive process under 24 CFR 983.51(c), the BHA must give prompt written notice of project selection to the owner following the BHA board's resolution approving the project-basing of assistance at the specific project. The project selection date is the date of the BHA's board resolution approving the project-basing of assistance at the specific project. The written notice of project selection must require the owner of the project selected to provide a written response to the BHA accepting the terms and requirements stated in the notice.

If the project contains BHA-owned units, within 10 business days of the board's resolution approving the project-basing of assistance at a specific project, the BHA will provide the written notice of project selection to the responsible BHA official, and that official must certify in writing that the BHA accepts the terms and requirements stated in the notice within 10 business days of receiving the BHA's written notice.

If the project does not contain BHA-owned units, within 10 business days of the board's resolution approving the project-basing of assistance at a specific project, the BHA will notify the owner in writing of the project's selection. The owner must submit a written response to the BHA accepting the terms and requirements stated in the notice within 10 business days of the BHA's written notification to the owner.

In addition, when an environmental review is required, if the review has not been conducted prior to the project selection date, the BHA's written notice of project selection will state that the selection is subject to completion of a favorable environmental review and that the project may be rejected based on the results of the environmental review.

Further, for any project to which labor standards apply, the BHA's written notice will state that any construction contracts must incorporate a Davis-Bacon contract clause and the current applicable prevailing wage determination.

17-II.E. HOUSING TYPE [24 CFR 983.52]

The BHA must decide what housing type, new construction, rehabilitation, or existing housing, will be used to develop project-based housing. The BHA choice of housing type must be reflected in its solicitation for proposals. With certain exceptions, the BHA may not execute a HAP contract for units:

- On which construction or rehabilitation commenced after the date of proposal submission (for housing subject to competitive selection) or the date of the BHA's board resolution approving the project-basing of assistance at the project (for housing excepted from competitive selection); and
- Prior to the effective date of an AHAP.

However, HUD makes an exception in the following circumstances:

- The BHA has exercised its discretion under 24 CFR 983.154(f) to undertake development activity without an AHAP; or
- The BHA has executed an AHAP after construction or rehabilitation that complied with applicable requirements of 24 CFR 983.153 has commenced; or
- The BHA will undertake development activity after execution of the HAP contract as authorized under 24 CFR 983.157.

At HUD's sole discretion, HUD may approve a BHA's request for additional exceptions to this prohibition.

17-II.F. PROHIBITION OF ASSISTANCE FOR CERTAIN UNITS

INELIGIBLE UNITS [24 CFR 983.52]

A HAP contract must not be effective and no PBV assistance may be provided for any of the following: 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; and transitional housing. Manufactured homes are ineligible only if the manufactured home is not permanently affixed to a permanent foundation or the owner does not own fee title to the real property (land) on which the manufactured home is located.

In addition, the BHA may not attach or pay PBV assistance for a unit occupied by an owner of the housing. 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.

Before the BHA places a specific unit under a HAP contract, the BHA must determine whether the unit is occupied and, if occupied, whether the unit's occupants are eligible for assistance in accordance with 24 CFR 982.201. For a family to be eligible for assistance in the specific unit, the unit must be appropriate for the size of the family under the BHA's subsidy standards and the total tenant payment (TTP) for the family must be less than the gross rent for the unit. The BHA must not enter into a HAP contract for a unit occupied by a family ineligible for participation in the PBV program.

However, unlike in the regular PBV program, the BHA may opt to select an occupied unit or admit a family to a unit if such unit is made exclusively available to VASH families if the PBV project is either on the grounds of a VA facility or there are VASH supportive services provided on-site at the project. See Chapter 19 for more information.

SUBSIDIZED HOUSING [24 CFR 983.53]

A HAP contract must not be effective and no PBV assistance may be provided 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 subsidy that pays all or any part of the rent);
- A unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing;
- A unit subsidized with rental assistance payments under Section 521 of the Housing Act of 1949, 42 U.S.C. 1490a (a Rural Housing Service Program). However, the BHA may attach assistance for a unit subsidized with Section 515 interest reduction payments (42 U.S.C. 1485);
- 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; or
- A unit with any other duplicative federal, state, or local housing subsidy, as determined by HUD or the BHA in accordance with HUD requirements. For this purpose, *housing subsidy* does not include the housing component of a welfare payment; a social security payment; or a federal, state, or local tax concession (such as relief from local real property taxes).

17-II.G. SUBSIDY LAYERING REQUIREMENTS [24 CFR 983.11, 24 CFR 983.153(b), 24 CFR 4.13, Notice PIH 2013-11, and FR Notice 3/13/23]

DEVELOPMENT ACTIVITY BEFORE HAP CONTRACT [24 CFR 983.153(B)]

As part of the PBV project or proposal selection process, the project owner must disclose information regarding all HUD and/or other federal, state, or local governmental assistance committed to the project, as well as other governmental assistance, using Form HUD-2880 (even if no other governmental assistance is received or anticipated) [FR Notice 3/3/23].

HUD requires a subsidy layering review (SLR) be conducted when new construction or rehabilitation housing will include PBVs in combination with other governmental housing assistance from federal, state, or local agencies, including assistance such as tax concessions or tax credits. The SLR must occur before the BHA attaches PBV assistance to a project. This means when an SLR is required, the BHA may not execute an AHAP or HAP contract until HUD or a HUD-approved housing credit agency (HCA) has conducted the required subsidy layering review and determined the project compliance with 24 CFR 4.13 and other related regulation requirements with regards to attaching PBV assistance. Subsidy layering requirements also do not apply to existing housing when PBV is the only governmental assistance.

CONDUCTING THE SLR [FR NOTICE 3/3/23 AND NOTICE PIH 2023-15]

PHAs request an SLR through their local HUD Field Office or, if eligible, through a participating HCA. The BHA is responsible for collecting all required documentation for the SLR from the project owner. Appendix A of FR Notice 3/23/23 contains a list of all required documentation. The owner must inform the BHA if any information changes during or after the application process. If new information becomes available after initial submission, the BHA is responsible for submitting updated information to HUD or the HCA.

If HUD completes the SLR and determines the PBV assistance complies with all requirements, HUD will notify the BHA in writing. If the SLR request is submitted to an approved HCA, and the proposed project-based voucher assistance meets HUD subsidy layering requirements, the HCA must submit a certification to HUD and notify the BHA. The BHA may proceed to execute an AHAP at that time if the environmental approval is received.

ADDITIONAL ASSISTANCE AFTER HAP CONTRACT [24 CFR 983.11(D)]

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, unless the owner discloses additional assistance in accordance with HUD requirements [24 CFR 983.11(d)].

For newly constructed or rehabilitated housing under a HAP contract, the owner must disclose to the BHA information regarding any additional related assistance from the federal government, a state, or a unit of general local government, or any agency or instrumentality thereof. *Related assistance* includes but is not limited to any loan, grant, guarantee, insurance, payment, rebate, subsidy, credit, tax benefit, or any other form of direct or indirect assistance. If the additional related assistance meets certain threshold and other requirements established by HUD, a subsidy layering review may be required to determine if it would result in excess public assistance to the project. The BHA must adjust the amount of the housing assistance payments to the owner to compensate in whole or in part for such related assistance.

17-II.H. SITE SELECTION STANDARDS

COMPLIANCE WITH PBV GOALS, CIVIL RIGHTS REQUIREMENTS, AND SITE AND NEIGHBORHOOD STANDARDS [24 CFR 983.55(B)]

The BHA may not select a project or proposal for existing, newly constructed, or rehabilitated PBV housing on a site or enter into an AHAP or HAP contract for units on the site, unless the BHA 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 BHA Plan under 24 CFR 903 and the BHA administrative plan.

In addition, prior to selecting a proposal, the BHA 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 housing quality standards and neighborhood standards at 24 CFR 5.703.

It is the BHA goal to select sites for PBV housing that provide for deconcentrating poverty and expanding housing and economic opportunities. In complying with this goal the BHA will limit approval of sites for PBV housing in census tracts that have poverty concentrations of 20 percent or less.

However, the BHA will grant exceptions to the 20 percent standard where the BHA determines that the PBV assistance will complement other local redevelopment activities designed to deconcentrate poverty and expand housing and economic opportunities in census tracts with poverty concentrations greater than 20 percent, such as sites in:

- A census tract in which the proposed PBV development will be located in a HUD-designated Enterprise Zone, Economic Community, Choice Neighborhood, or Renewal Community;
- A census tract where the concentration of assisted units will be or has decreased as a result of public housing demolition and HOPE VI redevelopment;
- A census tract in which the proposed PBV development will be located is undergoing significant revitalization as a result of state, local, or federal dollars invested in the area;
- A census tract where new market rate units are being developed where such market rate units will positively impact the poverty rate in the area;
- A census tract where there has been an overall decline in the poverty rate within the past five years; or
- A census tract where there are meaningful opportunities for educational and economic advancement.

The BHA will also consider whether the site is suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d-2000d(4)) and HUD's implementing regulations at 24 CFR Part 1; Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601-3629) and HUD's implementing regulations at 24 CFR Parts 100 through 199; Executive Order 11063 (27 FR 11527; 3 CFR, 1959-1963 Comp., p. 652), and HUD's implementing regulations at 24 CFR Part 107.

The site must also be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of the Americans with Disabilities Act (42 U.S.C. 12131-12134) and implementing regulations (28 CFR Part 35), and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and HUD's implementing regulations at 24 CFR Part 8, including meeting the Section 504 site selection requirements described in 24 CFR 8.4(b)(5).

The BHA will also consider whether the site and neighborhood are reasonably free from disturbing noises and reverberations and other dangers to the health, safety, and general welfare of the occupants. The site and neighborhood may not be subject to serious adverse environmental conditions, natural or manmade, that could affect the health or safety of the project occupants, such as dangerous walks or steps; contamination; instability; flooding, poor drainage, septic tank back-ups or sewage hazards; mudslides; abnormal air pollution, smoke or dust; excessive noise, vibration or vehicular traffic; excessive accumulations of trash; vermin or rodent infestation; or fire hazards.

EXISTING AND REHABILITATED HOUSING SITE AND NEIGHBORHOOD STANDARDS [24 CFR 983.55(D)]

The BHA may not enter into an AHAP or HAP contract for existing or rehabilitated housing until it has determined that the site complies with the HUD required site and neighborhood standards. The site must:

- Be adequate in size, exposure, and contour to accommodate the number and type of units proposed;
- Have adequate utilities and streets available to service the site;
- Promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons;
- Be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units; and
- Be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

NEW CONSTRUCTION SITE AND NEIGHBORHOOD STANDARDS [24 CFR 983.55(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 BHA 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, unless there is actively in progress a concerted program to remedy the undesirable conditions;
- 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.I. ENVIRONMENTAL REVIEW [24 CFR 983.56]

The BHA activities under the PBV program are subject to HUD environmental regulations in 24 CFR parts 50 and 58, other than where exceptions are provided in the PBV regulations.

For projects or proposals that were selected in accordance with the site selection standards at 24 CFR 983.55 in effect on or after June 6, 2024, no environmental review is required to be undertaken before entering into a HAP contract for existing housing, except to the extent a Federal environmental review is required by law or regulation relating to funding other than PBV.

When an environmental review is required, 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.). If the review has not been conducted prior to the proposal or project selection date, then the BHA's written notice of proposal or project selection must state that the selection is subject to completion of a favorable environmental review and that the project may be rejected based on the results of the environmental review.

The BHA may not enter into an AHAP or HAP contract until the responsible entity has complied with the environmental review requirements.

The BHA may not enter into an AHAP or a HAP contract with an owner, and the BHA, 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 one of the following occurs:

- The responsible entity has determined that the activities to be undertaken are exempt under 24 CFR 85.34(a) or categorically excluded and not subject to compliance with environmental laws under 24 CFR 58.35(b);
- The responsible entity has completed the environmental review procedures required by 24 CFR Part 58, and HUD has approved the BHA's Request for Release of Funds and Certification (form HUD-7015.15)
    - HUD approves the Request for Release of Funds and Certification by issuing a Letter to Proceed or form HUD-7015.16, thereby authorizing the BHA to execute an AHAP or HAP contract, as applicable; or
- HUD has performed an environmental review under 24 CFR Part 50 and has notified the BHA in writing of environmental clearance.

The BHA must supply all available, relevant information necessary for the responsible entity to perform any required environmental review for any site. The BHA 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 inspections.

17-III.B. HOUSING QUALITY STANDARDS [24 CFR 983.101]

Housing quality standards for the tenant-based program, including those for special housing types, generally apply to the PBV program. Housing quality standards requirements for shared housing, and the homeownership option do not apply because these housing types are not assisted under the PBV program.

The owner is required to maintain and operate the contract units and premises in accordance with housing quality standards, 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 BHA 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.

LEAD-BASED PAINT [24 CFR 983.101(C)]

The lead-based paint requirements for the tenant-based voucher program do not apply to the PBV program. Instead, the Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR Part 35, Subparts A, B, H, and R, and 40 CFR 745.227, apply to the PBV program.

HOUSING QUALITY AND DESIGN REQUIREMENTS [24 CFR 983.101(E) AND 983.208(A)]

The BHA may elect to establish additional requirements for quality, architecture, or design of PBV housing. Any such additional requirements must be specified in the AHAP and the HAP contract. These requirements must be in addition to, not in place of, compliance with housing quality standards. The BHA must specify the conditions under which it will require additional housing quality requirements in the administrative plan.

The BHA will identify the need for any special features on a case-by-case basis depending on the intended occupancy of the PBV project. The BHA will specify any special design standards or additional requirements in the invitation for PBV proposals (if applicable), the AHAP, and the HAP contract.

17-III.C. HOUSING ACCESSIBILITY FOR PERSONS WITH DISABILITIES [24 CFR 983.102]

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 BHA 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 [24 CFR 983.103]

The BHA must inspect contract units whenever needed to determine that the contract units comply with housing quality standards and that the owner is providing maintenance, utilities, and other services in accordance with the HAP contract. The BHA must take into account complaints and any other information coming to its attention in scheduling inspections.

PRE-SELECTION INSPECTION [24 CFR 983.103(A)]

If the units to be assisted already exist, the BHA must inspect all the units before the proposal selection date and must determine if the project meets the definition of *existing housing*. If the project is existing

housing, the BHA may not execute the HAP contract until the units meet the initial inspection requirements in accordance with 24 CFR 983.103(c).

INITIAL INSPECTION: NEWLY CONSTRUCTED AND REHABILITATED PROJECTS THAT UNDERWENT SUBSTANTIAL IMPROVEMENT [24 CFR 983.103(B)]

Following completion of work pursuant to 24 CFR 983.155, the BHA must complete the following inspections, as applicable:

- For rehabilitated housing that is developed prior to the HAP contract term or newly constructed housing, the BHA must inspect each proposed newly constructed and rehabilitated PBV unit before execution of the HAP contract. Each proposed PBV unit must fully comply with housing quality standards prior to HAP contract execution.
- For rehabilitated housing that will undergo development activity after HAP contract execution, the BHA must conduct unit inspections in accordance with the requirements of 24 CFR 983.157.
- For units that underwent substantial improvement pursuant to 24 CFR 983.207(d) or 983.212, inspect each unit. Each PBV unit that underwent substantial improvement must fully comply with housing quality standards prior to the BHA adding the unit to the HAP contract, returning the unit temporarily removed to the HAP contract, allowing re-occupancy of the unit, and resuming housing assistance payments, as applicable.

INITIAL INSPECTION: EXISTING HOUSING [24 CFR 983.103(C)]

The BHA must inspect and determine that all of the proposed PBV units fully comply with housing quality standards before entering into the HAP contract, unless the BHA has adopted a policy to enter into a HAP contract for units that fail the initial inspection as a result of only non-life-threatening conditions (NLT option), or if the unit passed an alternative inspection, or both. The BHA must establish in its administrative plan the amount of time that may elapse between the initial inspection of existing housing and execution of a HAP contract for that unit.

The BHA will not provide assistance on behalf of the family until the unit fully complies with housing quality standards.

The BHA will not rely on alternative inspections for initial inspections.

The HAP contract for existing housing must be executed within 45 calendar days of the initial inspection.

TURNOVER INSPECTIONS [24 CFR 983.103(D)]

Before providing assistance to a new family in a contract unit, the BHA must inspect the unit. The BHA may not provide assistance on behalf of the family until the unit fully complies with housing quality standards.

PERIODIC INSPECTIONS [24 CFR 983.103(E); FR NOTICE 6/25/14]

At least once every 24 months during the term of the HAP contract (or at least triennially for small rural PHAs), the BHA 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 housing quality standards. Turnover inspections are not counted toward meeting this inspection requirement.

The BHA will inspect all PBV units on a biennial basis.

This requirement also applies in the case of a HAP contract that is undergoing development activity after HAP contract execution; however, if the periodic inspection occurs during the period of development activity covered by the rider and fewer than 20 percent of contract units in each building are designated in the rider as available for occupancy, the BHA is only required to inspect the units in that building that are designated as available for occupancy.

ALTERNATIVE INSPECTIONS FOR PERIODIC INSPECTIONS [24 CFR 983.103(G); NOTICE PIH 2016-05]

The BHA will not rely on alternative inspection standards.

INTERIM INSPECTIONS [24 CFR 983.103(F)]

If a participant or government official notifies the BHA of a potential deficiency in a PBV unit or development, the following applies:

- If the reported deficiency is life-threatening, the BHA must, within 24 hours of notification, both inspect the housing unit and notify the owner if the life-threatening deficiency is confirmed. The owner must then make the repairs within 24 hours of BHA notification.
- If the reported deficiency is non-life-threatening, the BHA must, within 15 days of notification, both inspect the unit and notify the owner if the deficiency is confirmed. The owner must then make the repairs within 30 days of notification from the BHA or within any BHA -approved extension.

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

If the periodic inspection has been scheduled or is due within 90 days of the date the special inspection is scheduled the BHA may elect to conduct a full inspection.

FOLLOW UP INSPECTIONS [24 CFR 983103(F)(2)]

The BHA must conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected a housing quality standards violation and must conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family violations of housing quality standards.

SUPERVISORY QUALITY CONTROL INSPECTIONS [24 CFR 983.103(F)(3)]

In conducting BHA supervisory quality control inspections, the BHA should include a representative sample of both tenant-based and project-based units.

INSPECTING BHA-OWNED UNITS [24 CFR 983.103(G)]

In the case of BHA-owned units, the inspections must be performed by an independent entity designated by the BHA and approved by HUD. The independent entity must furnish a copy of each inspection report to the BHA. The BHA must take all necessary actions in response to inspection reports from the independent entity, including exercise of contractual remedies for violation of the HAP contract by the BHA-owner.

PART IV: REHABILITATED AND NEWLY CONSTRUCTED UNITS

17-IV.A. OVERVIEW [24 CFR 983.151 and 983.152]

There are specific requirements that apply to PBV assistance for newly constructed or rehabilitated housing that do not apply to PBV assistance in existing housing. This part describes the requirements unique to this type of assistance. Housing selected for this type of assistance may not at a later date be selected for PBV assistance as existing housing.

17-IV.B. AGREEMENT TO ENTER INTO HAP CONTRACT (AHAP) [24 CFR 983.154]

Except where the BHA decides not to use an AHAP or chooses to execute an AHAP after construction or rehabilitation has commenced, the BHA and owner must enter into an AHAP that will govern development activity. In the AHAP, the owner agrees to develop the PBV contract units to comply with housing quality standards, and the BHA agrees that upon timely completion of development in accordance with the terms of the AHAP, the BHA will enter into a HAP contract with the owner for the contract units. The AHAP must cover a single project, except one AHAP may cover multiple projects that each consist of a single-family building.

The effective date of the AHAP must be on or after the date the AHAP is executed. The AHAP must be executed and effective prior to the commencement of development activity as described in 24 CFR 983.154(d), except where the BHA decides not to use an AHAP or chooses to execute an AHAP after construction or rehabilitation has commenced. The AHAP must be in the form required by HUD.

The BHA and owner may agree to amend the contents of the AHAP by executing an addendum, so long as such amendments are consistent with all PBV requirements. The BHA and owner may only execute an addendum affecting a unit prior to the BHA accepting the completed unit.

Development activity must not commence after the date of proposal submission (for housing subject to competitive selection) or the date of the BHA's board resolution approving the project-basing of assistance at the project (for housing excepted from competitive selection) and before the effective date of the AHAP, except where the BHA decides not to use an AHAP or chooses to execute an AHAP after construction or rehabilitation has commenced. In the case of new construction, development activity begins with excavation or site preparation (including clearing of the land). Rehabilitation begins with the physical commencement of rehabilitation activity on the housing.

BHA DISCRETION NOT TO USE AN AHAP [24 CFR 983.154(F)]

The BHA will not exercise its discretion to not use an AHAP or to execute an AHAP after construction or rehabilitation.

CONTENT OF THE AHAP [24 CFR 983.154(E)]

At a minimum, the AHAP 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 (square footage) and number of bedrooms and bathrooms;
- Services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent to owner;
- Utilities available to the contract units, including a specification of utility services to be paid by the owner (without charges in addition to rent) 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 AHAP. If applicable, any required work item resulting from these requirements must be included in the description of work to be performed under the AHAP;

- A description of any required work item if the requirement to install broadband infrastructure applies;
- Estimated initial rents to owner for the contract units;
- Description of the work to be performed under the AHAP.
    - For rehabilitated units, the description must include the rehabilitation work write up and, where determined necessary by the BHA, specifications and plans.
    - For new construction units, the description must include the working drawings and specifications.
- The deadline for completion of the work to be performed under the AHAP; and
- Any additional requirements for quality, architecture, or design over and above housing quality standards. The BHA must specify the conditions under which it will require additional housing quality requirements in the administrative plan.

EXECUTION OF THE AHAP [FR NOTICE 11/24/08]

The AHAP must be executed promptly after BHA notice of proposal selection to the selected owner.

The BHA will enter into the AHAP with the owner within 10 business days of receiving both environmental approval and notice that subsidy layering requirements have been met, and before construction or rehabilitation work is started.

17-IV.C. DEVELOPMENT REQUIREMENTS

LABOR STANDARDS [24 CFR 983.153(C)]

If an AHAP 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.

Further, these Davis-Bacon requirements apply to existing PBV units when the nature of any work to be performed either before the execution of the HAP contract or within 18-months after execution constitutes project development. Any development initiated on existing units within 18-months after the effective date of the HAP contract on projects with nine or more contract units triggers Davis-Bacon requirements.

When the BHA exercises its discretion at 24 CFR 983.154(f) or 983.157(a) to allow the owner to conduct some or all development activity while the proposed PBV units are not under an AHAP or HAP contract, the applicable parties must comply with the labor standards outlined above from the date of proposal submission (for housing subject to competitive selection) or from the date of the BHA's board resolution approving the project-basing of assistance at the project (for housing excepted from competitive selection).

The AHAP will include the labor standards clauses required by HUD, such as those involving Davis-Bacon wage rates. The addendum to the HAP contract, Form HUD-5679, also includes the required labor standards clauses.

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 BHA must monitor compliance with labor standards.

For any project to which labor standards apply, the BHA's written notice to the party that submitted the selected proposal or board resolution approving project-basing of assistance at the specific project must state that any construction contracts must incorporate a Davis-Bacon contract clause and the current applicable prevailing wage determination.

Development activity is also subject to the federal equal employment opportunity requirements of Executive Orders 11246 as amended (3 CFR, 1964-1965 Comp., p. 339), 11625 (3 CFR, 1971-1975 Comp., p. 616), 12432 (3 CFR, 1983 Comp., p. 198), and 12138 (3 CFR, 1977 Comp., p. 393).

ACCESSIBILITY [24 CFR 983.153(E)]

As applicable, the design and construction requirements of the Fair Housing Act and implementing regulations at 24 CFR 100.205; the accessibility requirements of Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR Part 8, including 8.22 and 8.23; and Title II of the Americans with Disabilities Act (42 U.S.C. 12131-12134) and implementing regulations at 28 CFR Part 35, including 24 CFR 35.150 and 35.151, apply to development activity.

A description of any required work item resulting from these requirements must be included in the AHAP (if applicable) or HAP contract (if applicable).

BROADBAND INFRASTRUCTURE [24 CFR 983.153(F)]

Any development activity that constitutes substantial rehabilitation (as defined by 24 CFR 5.100) of a building with more than four rental units and where the proposal or project selection date or the start of the development activity while under a HAP contract is after January 19, 2017, must include installation of broadband infrastructure, as defined in 24 CFR 5.100, except where the owner determines and documents the determination that:

- The location of the new construction or substantial rehabilitation makes installation of broadband infrastructure infeasible;
- The cost of installing broadband infrastructure would result in a fundamental alteration in the nature of its program or activity or in an undue financial burden; or
- The structure of the housing to be substantially rehabilitated makes installation of broadband infrastructure infeasible.

A description of any required work item resulting from this requirement must be included in the AHAP (if applicable) or HAP contract (if applicable).

OWNER DISCLOSURE [24 CFR 983.153(G)]

The AHAP 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 AHAP, the HAP contract, or HUD regulations.

17-IV.D. COMPLETION OF WORK [24 CFR 983.155]

EVIDENCE OF COMPLETION [24 CFR 983.155]

The owner must submit evidence and certify to the BHA, in the form and manner required by the BHA's administrative plan, that development activity or substantial improvement has been completed, and that all such work was completed in accordance with the applicable requirements. The BHA must review the evidence to determine whether the development activity or substantial improvement was completed in accordance with the applicable requirements.

In the case of BHA -owned units, the owner must submit evidence and certify to the independent entity, in the form and manner required by the BHA's administrative plan, that development activity or substantial improvement has been completed, and that all such work was completed in accordance with the applicable requirements. The independent entity must review the evidence to determine whether the development activity or substantial improvement was completed in accordance with the applicable requirements.

At a minimum, the owner must submit the following evidence of completion to the BHA or independent entity, as applicable:

- Owner certification that the work has been completed in accordance with housing quality standards and all requirements of the AHAP; and

- Owner certification that the owner has complied with labor standards and equal opportunity requirements in development of the housing.

At the discretion of the BHA, the AHAP may specify additional documentation that must be submitted by the owner as evidence of housing completion. For example, such documentation may include:

- A certificate of occupancy or other evidence that the units comply with local requirements (such as code and zoning requirements); and
- An architect's certification that the housing complies with:
    - HUD housing quality standards;
    - State, local, or other building codes;
    - Zoning;
    - The rehabilitation work write-up (for rehabilitated housing) or the work description (for newly constructed housing); or
    - Any additional design or quality requirements pursuant to the AHAP.

The BHA will determine the need for the owner to submit additional documentation as evidence of housing completion on a case-by-case basis depending on the nature of the PBV project. The BHA will specify any additional documentation requirements in the AHAP.

BHA ACCEPTANCE OF COMPLETED UNITS [24 CFR 983.156(A) AND (B)]

After the BHA has received all required evidence of completion and the owner's certification that all work was completed in accordance with the applicable requirements, the BHA must inspect to determine if the housing has been completed in accordance with the AHAP, including compliance with housing quality standards and any additional design, architecture, or quality requirements imposed under the AHAP. For BHA -owned units, the independent entity must perform the inspection. The BHA must also determine if the owner has submitted all required evidence of completion.

If the work has not been completed in accordance with the AHAP, the BHA must not enter into the HAP contract.

If the BHA determines the work has been completed in accordance with the AHAP and all applicable requirements and that the owner has submitted all required evidence of completion, the BHA must:

- For units which will not undergo development activity after HAP contract execution, submit the HAP contract for execution by the owner and then execute the HAP contract;
- For rehabilitated housing projects for which development activity has commenced prior to HAP contract execution under 24 CFR 983.157(b), submit the HAP contract for execution by the owner and then execute the HAP contract;
- For development activity after the HAP contract execution, amend the HAP contract rider to designate the completed units as available for occupancy, or if the owner has completed all development activity as provided in the rider, amend the HAP contract to delete the rider; or
- For units that underwent substantial improvement in order to be added to the HAP contract, amend the HAP contract to add the units to the HAP contract.

STAGED COMPLETION OF CONTRACT UNITS [24 CFR 983.156(C)]

Contract units that will not undergo development activity after HAP contract execution may be placed under the HAP contract in stages commencing on different dates. In such a case, the BHA must determine separately for each stage whether the development activity was completed in accordance with the applicable requirements and that the units meet housing quality standards and any additional design, architecture, or quality requirements specified by the BHA. If the first stage is determined compliant, then the BHA must submit the HAP contract for execution by the owner and must execute the HAP contract for

PBV rehabilitated housing and newly constructed housing projects. As each subsequent stage is determined compliant, the BHA and owner must amend the HAP contract to add the units to the HAP contract.

PART V: HOUSING ASSISTANCE PAYMENTS (HAP) CONTRACT

17-V.A. OVERVIEW [24 CFR 983.202(a)]

The BHA 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 leasing PBV units during the term of the HAP contract. With some exceptions, a HAP contract must cover a single project. If multiple projects exist, each project is covered by a separate HAP contract. However, the BHA and owner may agree to place multiple projects, each consisting of a single-family building, under one HAP contract. The HAP contract must be in the form required by HUD.

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 and the Americans with Disabilities Act, as applicable;
- The HAP contract term;
- The number of units under the increased program cap or excepted from the project cap that will be set aside for occupancy by families who qualify for such a unit;
- The initial rent to owner for the first 12 months of the HAP contract term; and
- Whether the BHA has elected not to reduce rents below the initial rent to owner.

EXECUTION OF THE HAP CONTRACT [24 CFR 983.204]

Before execution of the HAP contract, the BHA must determine that applicable pre-HAP contract housing quality standards requirements have been met in accordance with 24 CFR 983.103(b) or (c) as applicable. The BHA may not execute the HAP contract for any contract unit that does not meet the pre-HAP contract housing quality standards requirements. For existing housing, the HAP contract must be executed promptly after the BHA selects the owner proposal and the BHA determines that applicable pre-HAP contract housing quality standards requirements have been met. For newly constructed or rehabilitated housing that will not undergo development activity after HAP contract execution, the HAP contract must be executed promptly after the BHA has inspected the completed units and has determined that the units have been completed in accordance with the AHAP, and the owner furnishes all required evidence of completion. For rehabilitated housing that will undergo development activity after HAP contract execution, the HAP contract must be executed and effective promptly after all proposed PBV units are added to the contract at this time, including units that do not comply with HQS or that will undergo development activity.

For existing housing, the HAP contract will be executed within 10 business days of the BHA determining that all units pass inspection.

For rehabilitated or newly constructed housing, the HAP contract will be executed within 10 business days of the BHA determining that the units have been completed in accordance with the AHAP, all units meet housing quality standards, and the owner has submitted all required evidence of completion.

EFFECTIVE DATE OF THE HAP CONTRACT [24 CFR 983.204(D)]

The effective date of the HAP contract must be on or after the date the HAP contract is executed. The HAP contract must be effective before the effective date of the first lease covering a contract unit occupied by an assisted family, and the BHA may not pay any housing assistance payment to the owner until the HAP contract is effective.

TERM OF HAP CONTRACT [24 CFR 983.205, FR NOTICE 1/18/17, AND NOTICE PIH 2017-21]

The BHA 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.

The term of all PBV HAP contracts will be negotiated with the owner on a case-by-case basis.

The BHA and owner may agree at any time before expiration of the HAP contract to execute one or more extensions of the HAP contract term, but the following conditions apply:

- Each extension executed must have a term that does not exceed 20 years;
- At no time may the total remaining term of the HAP contract, with extensions, exceed 40 years;
- Before agreeing to an extension, the BHA must determine that the extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities; and
- Each extension must be on the form and subject to the conditions prescribed by HUD at the time of the extension.

When determining whether or not to extend an expiring PBV contract, the BHA will consider several factors including, but not limited to:

- The cost of extending the contract and the amount of available budget authority;
- The condition of the contract units;
- The owner's record of compliance with obligations under the HAP contract and leases;
- Whether the location of the units continues to support the goals of deconcentrating poverty and expanding housing opportunities; and

- Whether the funding could be used more appropriately for tenant-based assistance.

17-V.C. TERMINATION OF THE HAP CONTRACT

TERMINATION BY AGREEMENT OF BHA AND OWNER [24 CFR 983.206(E)]

The BHA and owner may agree to terminate the HAP contract prior to the end of the term. The owner is required to give notice in accordance 24 CFR 983.206(a) prior to termination, and families must be provided tenant-based assistance and may elect to remain in the project.

TERMINATION BY BHA [24 CFR 983.205(C)]

The HAP contract must provide that the BHA may terminate the contract for insufficient funding, subject to HUD requirements. The BHA has the option of terminating a PBV HAP contract based on "insufficient funding" only if:

- The BHA determines in accordance with HUD requirements that it lacks sufficient HAP funding (including HAP reserves) to continue to make housing assistance payments for all voucher units currently under a HAP contract;
- The BHA has taken cost-saving measures specified by HUD;
- The BHA notifies HUD of its determination and provides the information required by HUD; and
- HUD determines that the BHA lacks sufficient funding and notifies the BHA it may terminate HAP contracts as a result.

If the BHA determines that the owner has breached the HAP contract, the BHA may exercise any of its rights or remedies under the HAP contract, including but not limited to contract termination. The provisions of 24 CFR 983.208 apply for HAP contract breaches involving failure to comply with housing quality standards. For any other contract termination due to breach, 24 CFR 983.206(b) on provision of tenant-based assistance applies.

NON-EXTENSION BY OWNER – NOTICE REQUIREMENTS [24 CFR 983.206(A)]

Not less than one year before the HAP contract terminates, the owner must notify the BHA and assisted tenants of the termination. The notice must be provided in the form prescribed by HUD. The term *termination* for applicability of this notice requirement means the expiration of the HAP contract, termination of the HAP contract by agreement of BHA and owner, or an owner's refusal to renew the HAP contract.

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 and the BHA may agree to renew the terminating contract for a period of time sufficient to give tenants one-year advance notice under such terms as HUD may require.

TERMINATION BY OWNER – REDUCTION BELOW INITIAL CONTRACT RENT [24 CFR 983.206(D)]

If the amount of the rent to owner for any contract unit, as adjusted, is reduced below the amount of the initial rent to owner, the owner may terminate the HAP contract, upon notice to the BHA no fewer than 90 calendar days prior to the planned termination, and families must be provided tenant-based assistance and may elect to remain in the project. The owner is not required to provide the one-year notice of the termination of the HAP contract to the family and the BHA when terminating the HAP contract due to rent reduction below the initial rent to owner.

TERMINATION OR EXPIRATION WITHOUT EXTENSIONS – REQUIRED PROVISION OF TENANT-BASED ASSISTANCE [24 CFR 983.206(B)]

Unless a termination or expiration without extension occurs due to a determination of insufficient funding or other extraordinary circumstances determined by HUD, upon termination or expiration of the contract, a family living at the property is entitled to receive a tenant-based voucher no fewer than 60 calendar days

prior to the planned termination or expiration of the PBV HAP contract. However, the BHA is not required to issue the family a voucher if the BHA has offered the family an alternative housing option (e.g., an assisted unit in another PBV project), and the family chooses to accept the alternative housing option instead of the voucher.

Tenant-based assistance would not begin until the owner's required notice period ends. The BHA must provide the family with a voucher and the family must also be given the option by the BHA and owner to remain in their unit with HCV tenant-based assistance subject to the following:

- The unit must comply with housing quality standards;
- The BHA must determine or have determined that the rent for the unit is reasonable;
- The family must pay its required share of the rent and the amount, if any, by which the unit rent (including the amount allowed for tenant-based utilities) exceeds the applicable payment standard (the limitation at 24 CFR 982.508 regarding maximum family share at initial occupancy does not apply); and
- The owner may not refuse to initially lease a unit in the project to a family that elects to use their tenant-based assistance to remain in the same project, except where the owner will use the unit for a purpose other than a residential rental unit. The owner may not later terminate the tenancy of such a family, except for the following grounds:
    - The grounds in 24 CFR 982.310, except paragraphs 24 CFR 982.310(d)(1)(iii) and (iv);
    - The owner's desire to use the unit for a purpose other than a residential rental unit; and
    - The owner's desire to renovate the unit, subject to the following:
- The owner must consider whether a reasonable alternative to terminating the lease exists. If a reasonable alternative exists, the owner must not terminate the lease. The owner must consider the following alternatives:
    - Completing renovations without the family vacating the unit, if the renovations can be completed in a manner that does not result in life-threatening conditions, does not result in deficiencies under housing quality standards that are not corrected within 30 days, and is mutually agreeable to the owner and the family; and
    - Temporarily relocating the family to complete the renovations, if the relocation and renovations can be completed within a single calendar month (beginning no sooner than the first day of a month and ending no later than the last day of the same month) and the family can be relocated to a location and in a manner mutually agreeable to the owner and the family;
- If the owner terminates the lease for renovation, the owner must make every reasonable effort to make available and lease the family another unit within the project that meets the tenant-based voucher program requirements; and
- If no other unit within the project is available for the family to lease during the renovation period or the family chooses to move from the project during the renovation period, the owner must make every reasonable effort to make available and lease the family a unit within the project upon completion of renovations.

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. Families that receive a tenant-based voucher at the expiration or termination of the PBV HAP contract are not new admissions to the BHA 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.

The voucher issued to the family is the voucher attached to its unit under the expiring or terminating PBV contract. Consequently, if the family vacates the contract unit following the issuance of the tenant-based voucher and prior to the contract termination or expiration date, the BHA must remove the unit from the

PBV HAP contract at the time the family vacates the unit. The PBV HAP contract must provide that, if the units continue to be used for rental housing upon termination or expiration without extension of a PBV HAP contract, each assisted family may elect to use its tenant-based assistance to remain in the same project.

REMEDIES FOR HOUSING QUALITY STANDARDS DEFICIENCIES [24 CFR 983.208]

The following is applicable to HAP contracts executed or renewed June 5, 2024, or earlier:

The BHA not make any HAP payment to the owner for a contract unit during any period in which the unit does not comply with housing quality standards. If the BHA determines that a contract does not comply with housing quality standards, the BHA exercise any of its remedies under the HAP contract, for any or all of the contract units. Available remedies include termination of housing assistance payments, abatement or reduction of housing assistance payments, reduction of contract units, and termination of the HAP contract.

The BHA will abate and terminate PBV HAP contracts for noncompliance with housing quality standards in accordance with the policies used in the tenant-based voucher program. These policies are contained in Section 8-II.G., Enforcing Owner Compliance.

The following is applicable to HAP contracts executed or renewed June 6, 2024, or later.

ENFORCEMENT OF HOUSING QUALITY STANDARDS [24 CFR 983.208(B)]

The BHA must vigorously enforce the owner's obligation to maintain contract units in accordance with housing quality standards. If the owner fails to maintain the dwelling unit in accordance with housing quality standards, the BHA must take enforcement action. The unit is in noncompliance with housing quality standards if:

- The BHA or other inspector authorized by the state or local government determines the unit has housing quality standards deficiencies based upon an inspection;
- The agency or inspector notifies the owner in writing of the unit housing quality standards deficiencies; and
- The deficiencies are not remedied within the following timeframes:
    - For life-threatening deficiencies, the owner must correct the deficiency within 24 hours of notification;
    - For other deficiencies, the owner must correct the deficiency within 30 calendar days of notification (or any reasonable BHA -approved extension).

In the case of a housing quality standards deficiency that the BHA determines is caused by the tenant, any member of the household, or any guest or other person under the tenant's control, other than any damage resulting from ordinary use, the BHA may waive the owner's responsibility to remedy the violation. Housing assistance payments to the owner may not be withheld or abated if the owner responsibility has been waived. However, the BHA may terminate assistance to a family because of a housing quality standards breach beyond damage resulting from ordinary use caused by any member of the household or any guest or other person under the tenant's control, which may result in removing the unit from the HAP contract.

The BHA will waive the owner's responsibility for housing quality standards deficiencies that have been determined to have been caused by the tenant, any member of the household, or any guest or other person under the tenant's control, to the extent the tenant can be held responsible for ensuring that the deficiencies are corrected: the tenant must take all necessary steps permissible under the lease and state and local law to remedy the deficiency. This may include paying the owner for the cost of the necessary repairs in accordance with the lease.

In the case of a housing quality standards deficiency that is caused by fire, natural disaster, or similar extraordinary circumstances, the BHA may permit the owner to undertake substantial improvement in accordance with 24 CFR 983.212. However, so long as the contract unit with deficiencies is occupied, the BHA must withhold or abate housing assistance payments and remove units from or terminate the HAP contract as described in this section.

In the case of a project that is undergoing development activity after HAP contract execution, the remedies of 24 CFR 983.208(d) do not apply to units designated as unavailable for occupancy during the period of development activity in accordance with the rider. However, in the case of any contract unit with deficiencies that is occupied, the BHA must withhold or abate housing assistance payments and remove units from or terminate the HAP contract as described in this section.

FAMILY OBLIGATION [24 CFR 983.208(C)]

The family may be held responsible for a breach of housing quality standards caused by any of the following:

- Tenant-paid utilities not in service;
- Failure to provide or maintain appliances owned by the family; and
- Damage to the dwelling unit or premises caused by a household member or guest beyond ordinary wear and tear.
    - Damages beyond ordinary wear and tear will be considered to be damages which could be assessed against the security deposit under state law or in court practice.

If the BHA has waived the owner's responsibility to remedy the violation, the following applies:

- If the housing quality standards breach caused by the family is life-threatening, the family must take all steps permissible under the lease and state and local law to ensure the deficiency is corrected within 24 hours of notification.
- For other family-caused deficiencies, the family must take all steps permissible under the lease and state and local law to ensure the deficiency is corrected within 30 calendar days of notification (or any BHA -approved extension).

If the family has caused a breach of the housing quality standards, the BHA must take prompt and vigorous action to enforce the family obligations. The BHA may terminate assistance for the family in accordance with 24 CFR 982.552.

BHA REMEDIES [24 CFR 983.208(D)]

The remedies listed below apply when housing quality standards deficiencies are identified as the result of an inspection other than a pre-selection, initial, or turnover inspection. The BHA must identify in its administrative plan the conditions under which it will withhold HAP and the conditions under which it will abate HAP or terminate the HAP contract for units other than the unit with housing quality standards deficiencies.

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

The BHA will not withhold assistance payments upon notification to the owner of the deficiencies.

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

When failures that are not life-threatening are identified, the BHA will send the owner and the family a written notification of the inspection results within five business days of the inspection. The written notice will specify who is responsible for correcting the violation, and the time frame within which the failure must be corrected. Generally, not more than 30 days will be allowed for the correction.

If the owner is responsible for correcting the deficiency, the notice of inspection results will inform the owner that if life-threatening conditions are not corrected within 24 hours, and non-life-threatening conditions are not corrected within the specified time frame (or any BHA -approved extension), the owner's HAP will be abated.

Likewise, if the family is responsible for correcting the deficiency, the notice will inform the family that if corrections are not made within the specified time frame (or any BHA -approved extension, if applicable) the family's assistance will be terminated in accordance with BHA policy (see Chapter 12).

HAP WITHHOLDING [24 CFR 983.208(D)(1)

The BHA will not withhold assistance payments upon notification to the owner of the deficiencies.

HAP ABATEMENT [24 CFR 983.208(D)(2)]

The BHA must abate the HAP, including amounts that had been withheld, if the owner fails to make the repairs within the applicable cure period. The BHA may choose to abate payments for all units covered by the HAP contract due to a contract unit's noncompliance with the housing quality standards, even if some of the contract units continue to meet housing quality standards. In this case, the BHA must notify the family and the owner that it is abating payments and, if the unit does not meet housing quality standards within 60 days (or a reasonable longer period established by the BHA), the PHA will either terminate the HAP contract or remove the unit with deficiencies from the HAP contract, and any family residing in a unit that does not comply with housing quality standards will have to move if the family wishes to receive continued assistance.

The owner may not terminate the tenancy of any family due to the withholding or abatement of assistance.

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

The BHA will abate payments only for those contract units that do not meet housing quality standards.

The BHA will inspect abated units within ten 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.

FAILURE TO MAKE REPAIRS

If an owner fails to make required repairs within 60 days (or a reasonable longer period established by the BHA) of the notice of abatement, the BHA must either remove the unit from the HAP contract or terminate the HAP contract in its entirety. The BHA must issue the family whose unit will be removed or all families residing in contract units, if the BHA is terminating the HAP contract, a tenant-based voucher to move at least 30 days prior to the removal of the unit from the HAP contract or termination of the HAP contract. A family may elect to remain in the project if the project contains a unit that meets the requirements of that section, with priority given to families who will remain in the same unit if there are insufficient units available to accommodate all families that wish to remain. The BHA must give any family residing in a unit that is either removed from the HAP contract or for which the HAP contract is terminated due to a failure to correct housing quality standards deficiencies at least 90 days or a longer period as the BHA determines is reasonably necessary following the termination of the HAP contract or removal of the unit from the HAP contract to lease a unit with tenant-based assistance.

The BHA will issue a family whose HAP contract is being terminated due to an owner failing to make required repairs within the required time frame a voucher no later than 30 days prior to the termination of the HAP contract. The initial term of the voucher will be 120 calendar days. No briefing is required for these families.

In order to receive tenant-based assistance under the HCV program, the family must submit a Request for Tenancy Approval and proposed lease within the 120-day period, unless the BHA grants an extension. The BHA will follow the policies set forth in Chapter 5 on voucher extension and expiration.

OFFER OF PUBLIC HOUSING [24 CFR 983.208(D)(6)(II)]

The BHA does operate a public housing program and will provide a preference for PBV families whose units are being removed from the HAP contract or whose HAP contract is being terminated due to an owner

failing to make required repairs within the required time frame, and who were unable to lease a new unit within the term of the voucher.

Thirty days prior to the expiration date of the voucher, the BHA will provide written notice to the family stating that the BHA does provide such a preference and providing an estimation of availability for the appropriately-size public housing unit.

17-V.D. AMENDMENTS TO THE HAP CONTRACT TO ADD OR SUBSTITUTE UNITS [24 CFR 983.207]

At the BHA's discretion, the BHA and owner may execute an amendment to the HAP contract to substitute a different unit with the same number of bedrooms in the same project for a previously covered contract unit or to add additional contract units to the existing HAP contract without a new proposal selection.

The proposed substituted or added units may be vacant or occupied (subject to the requirements of 24 CFR 983.207(c) described below). Before any such substitution or addition can take place:

- The units must comply with housing quality standards;
- The rent to owner must be reasonable; and
- One of the following conditions must apply:
    - The units existed at the time of HAP contract execution; or
    - In the case of a project completed in stages, the units existed at the time of BHA acceptance of the last completed units; or
    - A unit, office space, or common area within the interior of a building containing contract units existed at the time described above, as applicable, and is reconfigured without impacting the building envelope, subject to 24 CFR 983.207(d), into one or more units to be added or substituted.

The BHA will add units to the contract on a case-by-case basis to ensure the availability of affordable housing as long as the addition of units does not exceed allowable project caps.

ADDITION OF CONTRACT UNITS [24 CFR 983.207(B)]

Before adding any contract units, the units must comply with housing quality standards and the rent to owner must be reasonable. The additional PBV units, however, are still subject to the PBV program cap and project cap. However, added units that qualify for an exclusion from the program cap (as described in 24 CFR 983.59) or an exception to or exclusion from the project cap (as described in 24 FR 983.54(c) and 24 CFR 983.59, respectively) do not count toward such caps.

SUBSTITUTING OR ADDING OCCUPIED UNITS [24 CFR 983.207(C)]

The BHA may place occupied units on the HAP contract subject to the following:

- The family occupying the unit must be eligible for assistance;
- The unit must be the appropriate for the size of the family occupying the unit under the BHA's subsidy standards;
- The family must be selected from the waiting list in accordance with applicable selection policies; and
- The unit may be occupied by a family who was assisted with a tenant-based voucher immediately prior to the unit being placed on the PBV HAP contract. The tenant-based HAP contract for the unit must terminate before the unit may be placed under the PBV HAP contract. The family occupying the unit is not a new admission to the voucher program.
    - If the family is in the initial term of the tenant-based lease, the family agreed to mutually terminate the tenant-based lease with the owner and enter into a PBV lease.
    - If the initial term of the tenant-based lease has passed or the end of that term coincides with the time at which the unit will be placed on the PBV HAP contract, upon the owner's decision not to renew the tenant-based lease or to terminate the tenant-based lease in accordance with 24 CFR 982.308 or 982.310, respectively, the family agreed to relinquish the tenant-based voucher and enter into a PBV lease.

17-V.E. HAP CONTRACT YEAR, ANNIVERSARY AND EXPIRATION DATES [24 CFR 983.207(b)(2) and (g) and 983.302(e)]

The HAP contract year is the period of 12 calendar months preceding each annual anniversary of the HAP contract during the HAP contract term. The initial contract year is calculated from the first day of the first calendar month of the HAP contract term.

The annual anniversary of the HAP contract is the first day of the first calendar month after the end of the preceding contract year.

There is a single annual anniversary and expiration date for all units under a particular HAP contract, even in cases where contract units are placed under the HAP contract in stages (on different dates) or units are added by amendment. The anniversary and expiration dates for all units coincide with the dates for the contract units that were originally placed under contract.

17-V.F. OWNER RESPONSIBILITIES UNDER THE HAP CONTRACT [24 CFR 983.210]

When the owner executes the HAP contract, the owner certifies that at such execution and at all times during the term of the HAP contract:

- The owner is maintaining the premises and contract units in accordance with housing quality standards;
- 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 BHA or selected from the owner-maintained waiting list, 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 (unless needed as a reasonable accommodation);

- 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 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.

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 BHA may select families for the PBV program from those who are participants in the BHA'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 using information received and verified by the BHA within a period of 60 days before commencement of PBV assistance. For all families, the BHA must determine the total tenant payment for the family is less than the gross rent, such that the unit will be eligible for a monthly HAP.

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 BHA, 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 BHA's collection and use of family information regarding income, expenses, and family composition [24 CFR 5.230]. The BHA may also not approve a tenancy if the owner (including a principal or other interested party) of the unit is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless needed as a reasonable accommodation. An applicant family must also meet HUD requirements related to current or past criminal activity.

The BHA 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)]

A family residing in a proposed contract unit on the proposal or project selection date is considered an *in-place family*. If an in-place family is determined to be eligible prior to placement of the family's unit on the HAP contract, the in-place family must be placed on the BHA's waiting list (if the family is not already on the list). Once the family's continued eligibility is determined (the BHA 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 BHA must refer families to the applicable project owner for an appropriately sized PBV unit in the specific project. Admission of eligible in-place families is not subject to income targeting requirements.

During the initial term of the lease under the tenant-based tenancy, an in-place tenant-based voucher family may agree, but is not required, to mutually terminate the lease with the owner and enter into a lease and tenancy under the PBV program. If the family chooses to continue the tenant-based assisted tenancy, the unit may not be added to the PBV HAP contract. The owner may not terminate the lease for other good cause during the initial term unless the owner is terminating the tenancy because of something the family did or failed to do in accordance with 24 CFR 982.310(d)(2). The owner is expressly prohibited from terminating the tenancy during the initial term of the lease based on the family's failure to accept the offer of a new lease or revision, or for a business or economic reason.

If, after the initial term, the owner chooses not to renew the lease or terminates the lease for other good cause (as defined in 24 CFR 982.310(d)) to end the tenant-based assisted tenancy, the family would be required to move with continued tenant-based assistance or relinquish the tenant-based voucher and enter into a new lease to receive PBV assistance in order to remain in the unit.

17-VI.C. ORGANIZATION OF THE WAITING LIST [24 CFR 983.251(c)]

The BHA will use separate, site-based waiting lists for all projects or buildings that are receiving PBV assistance.

While some waiting lists will be maintained by the owner as described below, the BHA will maintain waiting lists for the following PBV projects:

- 32 Marion Street
- 50 Pleasant Street
- 61 Park Street
- 90 Longwood Avenue
- 99 Kent St/Village at Brookline
- 1550 Beacon Street
- 100 Centre Street
- Village at Brookline/Kent Street

BHA WAITING LIST PREFERENCES [24 CFR 983.251(c)(3)]

The BHA will offer waiting list preferences for BHA -maintained waiting lists. Further, the following properties are subject to following protocols outlined in the Tenant Selection Plans for the project:

- 32 Marion Street
- 50 Pleasant Street
- 61 Park Street
- 90 Longwood Avenue

Tenant Selection Plans are available on the Brookline Housing Authority website and at the BHA Office.

The BHA Preferences for the PBV waiting lists maintained by the BHA are outlined below:

1. Families currently in PBV units, for less than one year, and qualify for an Emergency, Domestic Violence & Natural Disaster transfer and families currently in Public Housing units and qualify for an Emergency, Domestic Violence & Natural Disaster transfer; or as needed to relocate Public Housing families in connection with the redevelopment of a new public housing development and/or the conversion of a public housing development to project-based assistance under the Rental Assistance Demonstration (RAD) program; or the dislocation of Public Housing families because of BHA redevelopment activities.
2. Emergency, Domestic Violence & Natural Disaster for applicants with a residency preference
3. Local Resident applicant

17-VI.D. OWNER-MAINTAINED WAITING LISTS [24 CFR 983.251(c)(7)]

Under an owner-maintained waiting list, the owner is responsible for carrying out responsibilities including, but not limited to:

- Processing changes in applicant information;
- Removing an applicant's name from the waiting list;
- Opening and closing the waiting list;
    - If the owner-maintained waiting list is open and additional applicants are needed to fill vacant units, the owner must give public notice in accordance with the requirements of 24 CFR 982.206 and the owner waiting list policy.

- Maintaining complete and accurate records as described in 24 CFR 982.158; and
- Giving the BHA, HUD, and the Comptroller General full and free access to its offices and records concerning waiting list management, as described in 24 CFR 982.158(c).

Applicants may apply directly at the project, or the applicant may request that the BHA refer the applicant to the owner for placement on the project's waiting list. The BHA must disclose to the applicant all the PBV projects available to the applicant, including the projects' contact information and other basic information about the project.

The BHA will establish owner-maintained waiting lists at the following PBV projects:

- 769 Washington Street
- 1754 Beacon
- 1017 Beacon
- 67 Winchester
- 183 Fuller
- 1027 Beacon
- St. Aidan's

The BHA will disclose information to all applicants about all the PBV projects, including the projects' contact information and other basic information such as the location, number of accessible units, types of excepted units (if any), amenities, and anticipated waiting time.

OWNER WAITING LIST POLICY [24 CFR 983.251(C)(7)(I)]

The owner must develop and submit to the BHA a written owner waiting list policy that must include:

- Policies and procedures concerning waiting list management and selection of applicants from the project's waiting list, including any admission preferences;
- Procedures for removing applicant names from the waiting list; and
- Procedures for closing and reopening the waiting list.

The owner must receive approval from the BHA in accordance with the process established in the BHA's administrative plan, and the BHA must include the owner's waiting list policy in the BHA's administrative plan.

Prior to any owner initially managing a waiting list, the owner must develop and submit a written owner waiting list policy to the BHA. Owners may not operate a waiting list without prior BHA approval. The BHA will review the owner's policy to ensure that, at a minimum, it includes policies and procedures concerning waiting list management and selection of applicants from the project's waiting list, including any admission preferences; procedures for removing applicant names from the waiting list; and procedures for closing and reopening the waiting list. Further, if the owner will maintain waiting list preferences, the owner must also receive written approval from the BHA for any preferences that will be applicable to the project (see Preferences below).

The BHA will not approve any owner waiting list policies that do not meet minimum requirements as described in the regulations and BHA policy. Owner policies must be submitted electronically to the BHA. If, upon review, the BHA is unable to approve the policy, the BHA will send the owner written notice via email specifying the reasons the policy is being disapproved. The owner will have 10 business days to amend and resubmit the policy to the BHA, subject to extensions for good cause, which the owner must request prior to the end of the 10-bussiness day period. The owner must receive final written approval from the BHA prior to maintaining a waiting list. Once an owner's policy is approved, the BHA will email the owner a copy of the approval and will maintain a copy of the approval in the project records. The BHA will also amend its administrative plan to include the name of the project and the owner's waiting list policy. All owner waiting list policies are included at the end of this chapter as Exhibit 17-3.

The owner must submit any changes to the waiting list policy to the BHA in writing electronically 30 days prior to implementing the changes. The BHA will review the proposed changes and will provide the owner with a written approval or denial letter via email. The owner may not implement any changes to the waiting list policy without prior BHA approval. Changes to the owner's policy will be included in the BHA's administrative plan.

OWNER-MAINTAINED WAITING LIST PREFERENCES [24 CFR 983.251(C)(7)(II)]

For any owner-maintained waiting lists, the owner may not give selection preferences to families without prior BHA approval. The BHA will review and approve owner preferences as part of its owner waiting list policy approval process. All owner preferences must be consistent with the BHA Plan. If applicable, the owner must give an absolute preference to eligible families residing in a proposed PBV contract unit on the date the proposal or project is selected by the BHA ("in-place families") in accordance with 24 CFR 983.251(b).

If the project offers services for a particular type of disability, the owner's preference must be provided to all applicants who qualify for the voluntary services offered in conjunction with the assisted units and may not require families to accept the particular services offered at the project nor require families to provide their own equivalent services if they decline the project's services. The owner may not grant a preference for persons with specific disabilities. In advertising the project, the owner may advertise the project as offering services for a particular type of disability; however, the preference must be provided to all applicants who qualify for the voluntary services offered in conjunction with the assisted units. The owner is responsible for notifying the family of any determination that the family is not eligible for a preference.

BHA OVERSIGHT [24 CFR 983.251(C)(7)(X)]

The BHA is responsible for oversight of owner-maintained waiting lists to ensure that they are administered properly and in accordance with program requirements, including but not limited to nondiscrimination and equal opportunity requirements under 24 CFR 5.105(a). The BHA must identify in the administrative plan the oversight procedures the BHA will use to ensure these requirements are met.

The BHA will review owner waiting list and waiting list procedures annually. The owner must maintain an electronic waiting list and provide the BHA electronic records upon request. The BHA will review the owner's waiting list policy to ensure the following:

- No changes were made to the owner's waiting list policy without prior BHA approval;
- Applicants were selected from the waiting list in the proper order, recognizing applicable preferences;
- If applicable, when preferences were applied, they were properly documented;
- If the owner opens the waiting list, the owner complied with requirements of 24 CFR 982.206;
- The owner's waiting list complies with all equal opportunity requirements listed under 24 CFR 5.105(a); and
- Families in need of vacant accessible units were identified on the waiting list (as applicable).

The BHA will communicate any deficiencies found during the waiting list review to the owner in writing via email within 10 business days after the BHA completes its review. The owner must provide the BHA with a written response detailing how deficiencies were remedied within 30 calendar days of the BHA's email notification.

By signing the HAP contract, the owner certifies that at all times during the term of the HAP contract, each contract unit for which the owner is receiving housing assistance payments is leased to an eligible family selected from the owner-maintained waiting list. Serious noncompliance identified by the BHA may result in the owner losing the ability to maintain the waiting list. If the BHA determines that the owner has breached the HAP contract, the BHA may exercise any of its rights or remedies under the HAP contract, including but not limited to contract termination.

17-VI.E. SELECTION FROM THE WAITING LIST [24 CFR 983.251(c)]

INCOME TARGETING [24 CFR 983.251(C)(9)]

At least 75 percent of the families admitted to the BHA's tenant-based and project-based voucher programs during the BHA fiscal year from the waiting list (including owner-maintained PBV waiting lists) 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)(9)]

Families who require particular accessibility features for persons with disabilities must be selected first to occupy PBV units with such accessibility features. The BHA must have some mechanism for referring to accessible PBV units a family that includes a person with a mobility or sensory impairment.

17-VI.F. OFFER OF PBV ASSISTANCE OR OWNER'S REJECTION

REFUSAL OF OFFER [24 CFR 983.251(E)]

If a family refuses the BHA's offer of PBV assistance or the owner rejects a family for admission, the family's position on the waiting list for tenant-based assistance and those for other project-specific PBVs are not affected. The impact (of a family's rejection of the offer or the owner's rejection of the family) on a family's position on the PBV waiting list will be determined as follows:

- If a project-specific PBV waiting list is used, the family's name is removed from the project's waiting list connected to the family's rejection of the offer without good cause or the owner's rejection of the family. The family's position on any other project-specific PBV waiting list is not affected.
    - The BHA defines good cause as any of the following:
        - The family determines the unit is not accessible to a household member with a disability or otherwise does not meet the member's disability-related needs;
        - The unit has housing quality standards deficiencies;
        - The family is unable to accept the offer due to circumstances beyond the family's control (such as hospitalization, temporary economic hardship, or natural disaster); and
        - The family determines the unit presents a health or safety risk to a household member who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.

The BHA must not take 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;
    - The BHA (or owner in the case of owner-maintained waiting lists) is not required to open a closed waiting list to place the family on that waiting list.
- Deny any admission preference for which the applicant is currently qualified;
- Change the applicant's place on the waiting list based on preference, date, and time of application, or other factors affecting selection from the waiting list;
- Remove the applicant from the tenant-based voucher waiting list.

ACCEPTANCE OF OFFER [24 CFR 983.252(A) AND (B)**]**

Family Briefing

When a family accepts an offer for PBV assistance, the BHA must give the family an oral briefing. The briefing must include information on how the program works, the responsibilities of the family and owner, and the family's right to move.

In addition to the oral briefing, the BHA must provide a briefing packet that contains the following information:

- How the BHA determines the total tenant payment for a family;
- The family obligations under the program;
- Information on federal, state, and local equal opportunity laws, the contact information for the Section 504 coordinator, a copy of the housing discrimination complaint form, and information on how to request a reasonable accommodation or modification under Section 504, the Fair Housing Act, and the Americans with Disabilities Act;
- BHA subsidy standards, including when the BHA will consider granting exceptions to the standards, and when exceptions are required as a reasonable accommodation for a person with disabilities under Section 504, the Fair Housing Act, or the Americans with Disabilities Act; and
- The family's right to move.

The BHA and family must sign the statement of family responsibility.

Persons with Disabilities

The BHA must take appropriate steps to ensure effective communication, in accordance with 24 CFR 8.6 and 28 CFR Part 35, subpart E, and must provide information on the reasonable accommodation process 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 BHA 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 [24 CFR 983.252(d)]

The BHA must take reasonable steps to ensure meaningful access by persons with limited English proficiency in accordance with Title VI of the Civil Rights Act of 1964, HUD's implementing regulation at 24 CFR Part 1, Executive Order 13166 (see Chapter 2), and HUD's Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (72 FR 2732) or successor authority.

17-VI.G. LEASING OF CONTRACT UNITS [24 CFR 983.252]

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)]. The owner must provide a copy of the rejection notice to the BHA. During the term of the HAP contract, the owner must lease contract units to eligible families that are selected from the waiting list for the PBV program. The contract unit leased to the family must be the appropriate size unit for the size of the family, based on the BHA's subsidy standards.

FILLING VACANCIES [24 CFR 983.254(A)]

The BHA and the owner must make reasonable, good-faith efforts to minimize the likelihood and length of any vacancy in a contract unit. However, contract units in a rehabilitated housing project undergoing development activity after HAP contract execution that are not available for occupancy are not subject to this requirement.

If an owner-maintained waiting list is used, the owner must promptly notify the BHA of any vacancy or expected vacancy in a contract unit and refer the family to the BHA for final eligibility determination. The BHA must make every reasonable effort to make such final eligibility determination within 30 calendar days.

If a BHA -maintained waiting list is used, the owner must promptly notify the BHA of any vacancy or expected vacancy in a contract unit. After receiving such notice, the BHA must make every reasonable effort to promptly refer a sufficient number of families for the owner to fill such vacancies within 30 calendar days.

For units where the waiting list is owner-maintained, the owner must notify the BHA in writing via email within five business days of learning about any vacancy or expected vacancy.

The owner is responsible for notifying the family of their selection from the waiting list. The BHA will make every reasonable effort to notify the owner in writing via email of the BHA's eligibility determination within 30 calendar days of receiving such notice from the owner. If the family is determined eligible, the BHA will notify the family and refer them back to the owner for a suitability screening. If the owner rejects the family after conducting a suitability screening, the owner must provide a copy of the rejection notice to the BHA. The owner may not offer a unit to a family until the BHA determines that the family is eligible for the program and has given the owner written confirmation.

For units where the waiting list is BHA -maintained, the owner must notify the BHA in writing via email within five business days of learning about any vacancy or expected vacancy. The BHA will refer families determined eligible to the owner for a suitability determination within 30 calendar days of receiving such notice from the owner. If the owner rejects the family after conducting a suitability screening, the owner must provide a copy of the rejection notice to the BHA. The owner may not offer a unit to a family until the BHA determines that the family is eligible for the program and has given the owner written confirmation.

REDUCTION IN HAP CONTRACT UNITS DUE TO VACANCIES [24 CFR 983.254(B)]

If any contract units have been vacant for 120 days, the BHA can give notice to the owner that the HAP contract will be amended to reduce the number of contract units that have been vacant for this period. The BHA will provide the notice to the owner within 10 business days of the 120th day of the vacancy.

The amendment to the HAP contract will be effective the 1st day of the month following the date of the BHA's notice.

17-VI.H. TENANT SCREENING [24 CFR 983.255]

BHA OPTION

The BHA is not responsible or liable to the owner or any other person for the family's behavior or suitability for tenancy. However, the BHA may opt to screen applicants for family behavior or suitability for tenancy and may deny applicants based on such screening.

The BHA will not conduct screening to determine a PBV applicant family's suitability for tenancy.

The BHA must provide the owner with an applicant family's current and prior address (as shown in BHA records) and the name and address (if known by the BHA) of the family's current landlord and any prior landlords.

In addition, the BHA may offer the owner other information the BHA 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 BHA must provide applicant families a description of the BHA policy on providing information to owners, and the BHA must give the same types of information to all owners.

The protections for victims of domestic violence, dating violence, sexual assault, stalking, or human trafficking in 24 CFR part 5, subpart L, apply to tenant screening. The BHA may not disclose to the owner any confidential information provided in response to a request for documentation of domestic violence, dating violence, sexual assault, stalking, or human trafficking, except at the written request or with the written consent of the individual providing the documentation [see 24 CFR 5.2007(a)(4)].

OWNER RESPONSIBILITY

The owner is responsible for screening and selection of the family to occupy the owner's unit. When screening families the owner may consider a family's background with respect to the following factors:

- Payment of rent and utility bills;
- Caring for a unit and premises;
- Respecting the rights of other residents to the peaceful enjoyment of their housing;
- Drug-related criminal activity or other criminal activity that is a threat to the health, safety, or property of others; and
- Compliance with other essential conditions of tenancy.

PART VII: OCCUPANCY

17-VII.A. OVERVIEW

After an applicant has been selected from the waiting list, determined eligible by the BHA, 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 [24 CFR 983.256(a)].

FORM OF LEASE [24 CFR 983.256(B)]

The tenant and the owner must enter into a written lease agreement that is signed by both parties. If an owner uses a standard lease form for rental units to unassisted tenants in the locality or premises, the same lease must be used for assisted tenants, except that the lease must include a HUD-required tenancy addendum. The tenancy addendum must include, word-for-word, all provisions required by HUD.

If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease, such as a BHA model lease.

The BHA will not review the owner's lease for compliance with state or local law.

LEASE REQUIREMENTS [24 CFR 983.256(C)]

The lease for a PBV unit must specify all of the following information:

- The names of the owner and the tenant;
- The unit rented (address, apartment number, if any, and any other information needed to identify the leased contract unit);
- The term of the lease (initial term and any provision for renewal);
- The amount of the tenant rent to owner, which is subject to change during the term of the lease in accordance with HUD requirements;
- A specification of the services, maintenance, equipment, and utilities that will be provide by the owner; and
- The amount of any charges for food, furniture, or supportive services.

TENANCY ADDENDUM [24 CFR 983.256(D)]

The tenancy addendum in the lease must state:

- The program tenancy requirements;
- The composition of the household as approved by the BHA (the names of family members and any BHA-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 BHA terminates the HAP contract
- The BHA 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 BHA a copy of all changes.

The owner must notify the BHA 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 BHA and in accordance with the terms of the lease relating to its amendment. The BHA 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 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. The regulations at 24 CFR 5.858 through 5.861 on eviction for drug and alcohol abuse and 24 CFR Part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) apply to the PBV program.

In addition, the owner may terminate the tenancy in accordance with the requirements related to lease terminations for development activity on units under a HAP contract and for substantial improvement to units under a HAP contract.

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 BHA 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. BHA termination of assistance actions due to family absence from the unit are subject to 24 CFR 981.312, except that the unit is not terminated from the HAP contract if the family is absent for longer than the maximum period permitted.

CONTINUATION OF HOUSING ASSISTANCE PAYMENTS [24 CFR 982.258]

Housing assistance payments shall continue until the tenant rent equals the rent to owner. The cessation of housing assistance payments at such point will not affect the family's other rights under its lease, nor will such cessation preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances if such changes occur within 180 days following the date of the last housing assistance payment by the BHA. After the 180-day period, the unit shall be removed from the HAP contract pursuant to 24 CFR 983.211.

If a participating family receiving zero assistance experiences a change in circumstances that would result in a HAP payment to the owner, the family must notify the BHA 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 BHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.

The BHA will allow the owner to collect a security deposit amount the owner determines is appropriate.

When the tenant moves out of a contract unit, the owner, subject to state and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid tenant rent, damages to the unit, or other amounts owed by the tenant under the lease.

The owner must give the tenant a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used to reimburse the owner, the owner must promptly refund the full amount of the balance to the tenant.

If the security deposit does not cover the amount owed by the tenant under the lease, the owner may seek to collect the balance from the tenant. The BHA 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 BHA determines that a family is occupying a wrong size unit, based on the BHA'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 BHA must promptly notify the family and the owner of this determination, and within 60 days of the determination, the BHA must offer the family the opportunity to receive continued housing assistance in another unit.

The BHA 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 60 days of the BHA's determination. The BHA will offer the family the following types of continued assistance in the following order, based on the availability of assistance:

- PBV assistance in an appropriately sized unit in the same building or project;
- PBV assistance an appropriately sized unit in in another project; and
- Tenant-based voucher assistance.

If no continued housing assistance is available, the BHA must remove the wrong-sized or accessible unit from the HAP contract to make voucher assistance available to issue the family a tenant-based voucher.

If the BHA offers the family a tenant-based voucher, the BHA 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 BHA) 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 BHA must remove the unit from the HAP contract.

If the BHA offers the family another form of assistance that is not a tenant-based voucher, the BHA must terminate the housing assistance payments for the wrong-sized or accessible unit and remove the unit from the HAP contract when:

- The BHA has offered PBV assistance or other project-based assistance in an appropriately sized unit, and the family does not accept the offer, does not move out of the PBV unit within a reasonable time as determined by the BHA (not to exceed 90 days); or
- The BHA has offered other comparable tenant-based rental assistance, the family either accepts or does not accept the offer but does not move out of the PBV unit within a reasonable time as determined by the BHA (not to exceed 90 days).

In either of the above situations, the family may request, and the BHA may grant, one extension not to exceed up to an additional 90 days to accommodate the family's efforts to locate affordable, safe, and geographically proximate replacement housing.

The BHA must terminate the housing assistance payments for the wrong-sized or accessible unit and remove the unit from the HAP contract when the BHA has offered PBV assistance or other project-based assistance in an appropriately sized unit, and the family accepts the offer but does not move out of the PBV unit within a reasonable time as determined by the BHA (not to exceed 90 days). No extensions may be granted in this case. The BHA may reinstate a removed unit to the HAP contract after the family vacates the property, in accordance with 24 CFR 983.207(b).

When the BHA offers a family another form of assistance that is not a tenant-based voucher, the family will be given 90 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 90-day time frame, the BHA will terminate the housing assistance payments at the expiration of this 90-day period.

Except in the case of an offer by the BHA of PBV assistance or other project-based housing assistance in an appropriate size unit, the family accepts the offer but does not move out, the BHA may make exceptions to this 90-day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency of a family member or to accommodate the family's efforts to locate affordable, safe, and geographically proximate replacement housing. The family must make such a request in writing prior to the end of the 90-day period. The BHA will only grant one extension which will not exceed an additional 90 days.

FAMILY RIGHT TO MOVE [24 CFR 983.261]

The family may terminate the lease at any time after one year of PBV assistance. The family must give advance written notice to the owner in accordance with the lease and provide a copy of such notice to the BHA. If the family wishes to move with continued tenant-based assistance, the family must contact the BHA to request the rental assistance prior to providing notice to terminate the lease. The right to request a move with tenant-based assistance does not expire, and the family may request a move at any time after the one-year period has expired.

If the family terminates the lease in accordance with these requirements, the BHA 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. The BHA must specify in the administrative plan whether it will offer families assistance under the voucher program or other comparable tenant-based rental assistance. If voucher assistance is offered to the family and the search term expires, the BHA must issue the voucher to the next eligible family before issuing another voucher to the family that requested to move. If voucher or other comparable tenant-based assistance is not immediately available upon the family's request to the BHA, the BHA must give the family priority to receive the next available opportunity for continued tenant-based assistance.

If the family terminates the assisted lease before one year of PBV assistance, the family relinquishes the opportunity for continued tenant-based assistance.

Except for families seeking protection under VAWA as described below, prior to providing notice to the owner to terminate the lease, any eligible family may submit a written request to the BHA for a voucher at any time after completing the 12-month occupancy requirement. The BHA will process the request within 10 business days of receiving the family's request. The BHA will verify that the family has met the 12-month occupancy requirement. No additional screening will be performed.

If the request is approved by the BHA, the family will receive the next available tenant-based voucher.

If a tenant-based voucher is not immediately available, the BHA will maintain a combined, agency-wide waiting list for all standard PBV and RAD PBV families wishing to move after one year of PBV assistance. A RAD resident does not have priority for tenant-based assistance over a non-RAD PBV resident and vice versa. The list will be maintained separately from the tenant-based HCV list. Families on this list will be given priority over families on the tenant-based waiting list. The list will be organized by date and time of the family's written request. The list will also identify whether families live in standard or RAD PBV units. Once a family is placed on the list, the BHA will send the family an acknowledgement of receipt of their request and successful placement on the list. If a family requests a tenant-based voucher and then is unable or unwilling to move once the BHA offers the family a tenant-based voucher, the family's name will be removed from the list. The family may resubmit a new request to move at any time.

While the family will not be required to attend a standard HCV briefing in order to receive a voucher, the BHA will promptly schedule a meeting with each family at the time of voucher issuance.

Families exercising their right to move are not required to vacate their units before a lease has been entered into using their tenant-based voucher so long as the resident has not yet provided notice to vacate to the owner. At the time the BHA issues the tenant-based voucher, the BHA will notify the family of their right to remain in their unit if they are unable find a rental unit using the tenant-based voucher. If family's search term (and any extensions) expires, the BHA must issue the voucher to the next eligible family. The family's name will be removed from the priority list, and the family will be able to resubmit a request at a later time.

EMERGENCY TRANSFERS UNDER VAWA [NOTICE PIH 2017-08 AND 24 CFR 983.261(F) AND (G)]

Except where special consideration is needed for the project-based voucher program, the BHA 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).

When the victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking has lived in the unit for less than one year, the BHA will provide several options for continued assistance.

The BHA will first try to transfer the participant to another PBV unit in the same development or transfer to a different development where the BHA has PBV units. The BHA will expedite the administrative processes in this case in an effort to conduct the transfer as quickly as possible.

If no units are available for an internal transfer, or if there is reasonable cause to believe that such a transfer would put the victim in jeopardy, the participant may receive continued assistance through an external transfer to either tenant-based rental assistance (HCV) or assistance in the BHA's public housing program. Such a decision will be made by the BHA based on the availability of tenant-based vouchers and/or vacancies in public housing units. Such families must be selected from the waiting list for the applicable program. The BHA has adopted a waiting list preference for victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking in both its HCV and public housing programs in order to expedite this process. See Section 4-III.C. of this administrative plan.

If a victim wishes to move after a year of occupancy in the unit, but no tenant-based vouchers are available, the BHA will offer the participant an internal transfer to another PBV unit in the same development or a transfer to a different development where the BHA has PBV units. The BHA will expedite the administrative processes in this case in an effort to conduct the transfer as quickly as possible.

If no units are available for an internal transfer, or if there is reasonable cause to believe that such a transfer would put the victim in jeopardy, the participant may request an external emergency transfer to the BHA's public housing program for which they are required to apply. The BHA has adopted a waiting list preference for victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking as part of the public housing ACOP in order to expedite this process.

PART VIII: DETERMINING RENT TO OWNER

17-VIII.A. OVERVIEW [24 CFR 983.301(a)]

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 AHAP 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.

17-VIII.B. AMOUNT OF RENT TO OWNER [24 CFR 983.301(b)]

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 BHA in accordance with the administrative plan not to exceed 110 percent of the applicable fair market rent (or amount of any applicable exception payment standard) for the unit bedroom size minus any utility allowance;
- The reasonable rent; or
- The rent requested by the owner.

RENT TO OWNER FOR 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. Tax credit units that do not meet the criteria below will have their rents determined by the BHA pursuant to 24 CFR 983.301(b) as stated above.

Rents are set differently in 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;
- In the same building, there are comparable tax credit units of the same bedroom size as the contract unit and the comparable tax credit units do not have any form of rental assistance other than the tax credit; and
- The tax credit rent exceeds 110 percent of the fair market rent (or any exception payment standard) as determined in 24 CFR 983.301(b);

For contract units that meet these criteria, the rent to owner must not exceed the lowest of:

- An amount determined by the BHA in accordance with the administrative plan, not to exceed the tax credit rent minus any utility allowance;
- The reasonable rent; or
- The rent requested by the owner.

The *tax credit rent* is the rent charged for comparable units of the same bedroom size in the building that also receive the low-income housing tax credit but do not have any additional rental assistance (e.g., additional assistance such as tenant-based voucher assistance).

USE OF FMRS, EXCEPTION PAYMENT STANDARDS, AND UTILITY ALLOWANCES [24 CFR 983.301(F)]

When determining the initial rent to owner, the BHA 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 BHA must use the most recently published FMR and the utility allowance schedule in effect at the time of redetermination. At its discretion, the BHA 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.

For PBV projects that are not located in a designated SAFMR area or located in a ZIP code where the BHA has opted in to SAFMRs, any 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.

For PBV projects that are located in a designated SAFMR area or located in a ZIP code where the BHA has opted in to SAFMRs, an exception payment standard amount under the tenant-based voucher program applies when setting rents under 24 CFR 983.301(b)(1) for PBV units and 983.301(c)(1)(iv) for certain tax credit units only if the BHA has adopted a policy applying SAFMRs to its PBV program and met all other requirements in 24 CFR 888.113(h), which are described below.

The BHA may not establish or apply different utility allowance amounts for the PBV program. The same utility allowance schedule applies to both the tenant-based and project-based voucher programs.

Upon written request by the owner, the BHA will consider using the FMR or utility allowances in effect during the 30-day period before the start date of the HAP, or redetermination of rent. The owner must explain the need to use the previous FMRs or utility allowances and include documentation in support of the request. The BHA will review and make a decision based on the circumstances and merit of each request.

In addition to considering a written request from an owner, the BHA may decide to use the FMR or utility allowances in effect during the 30-day period before the start date of the HAP, or redetermination of rent, if the BHA determines it is necessary due to BHA budgetary constraints.

USE OF SMALL AREA FMRS (SAFMRS) [24 CFR 888.113(H) AND 24 CFR 983.301(F)(3)]

Unless one of the following exceptions apply, SAFMRs do not apply to PBV projects regardless of whether HUD designates the metropolitan area or the BHA notifies HUD and implements the SAFMRs under paragraph 883.113(c)(3).

- Where the proposal or project selection date was on or before the effective dates of either or both the SAFMR designation/implementation and the BHA administrative policy, the BHA and owner may mutually agree to apply the SAFMR. The application of the SAFMRs must be prospective and consistent with the BHA administrative plan. The owner and BHA may not subsequently choose to revert back to the use of the metropolitan-wide or county-wide FMRs for the PBV project. If the rent to owner will increase as a result of the mutual agreement to apply the SAFMRs to the PBV project, the rent increase must not be effective until the next annual anniversary of the HAP contract.

- Where the proposal or project selection date was after the effective dates of both the SAFMR designation/implementation and the BHA administrative policy, the SAFMR must apply to the PBV project if the BHA administrative plan provides that SAFMRs are used for all future PBV projects. If the BHA chooses to implement this administrative policy, the SAFMRs must apply to all future PBV projects located within the same metropolitan area or non-metropolitan county where the SAFMRs are in effect for the BHA's HCV program. An owner and the BHA may not subsequently choose to apply the metropolitan area or county FMR to the project, regardless of whether the BHA subsequently changes its administrative plan to revert to the use of metropolitan-wide or county-wide FMR for future PBV projects.

For purposes of this section, the term *effective date of the Small Area FMR designation* means:

- The date that HUD designated a metropolitan area as a SAFMR area; or

- The date that HUD approved a BHA request to voluntarily opt to use Small Area FMRs for its HCV program, as applicable.

For purposes of this section, the term *effective date of the* BHA *administrative policy* means the date the administrative policy was formally adopted as part of the BHA administrative plan by the BHA Board of Commissioners or other authorized BHA officials.

The BHA does apply SAFMR for PBV units located in zip codes within the town of Brookline.

17-VIII.C. REDETERMINATION OF RENT TO OWNER [24 CFR 983.302]

The BHA must redetermine the rent to owner:

- When there is a 10 percent or greater decrease in the published FMR;
- Upon the owner's request consistent with requirements established in the BHA's administrative plan; or
- At the time of the automatic adjustment by an operating cost adjustment factor (OCAF) in accordance with 24 CFR 983.302(b)(3).

Adjusted rent to owner amount applies for the period of 12 calendar months from the annual anniversary of the HAP contract.

RENT INCREASE [24 CFR 983.302(B)]

During the term of the HAP contract, any increase in rent to owner is effective on the annual anniversary of the HAP contract. A rent increase may occur either through automatic adjustment by an OCAF or as the result of an owner request for a rent increase. The owner does not need to request a rent adjust when a rent increase occurs through an OCAF since the BHA redetermines the rent automatically under that option.

OCAF [24 CFR 983.302(B)(3)]

If the BHA and owner agree, the HAP contract may provide for rent adjustments using an OCA=F established by the HUD pursuant to Section 524(c) of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA) at each annual anniversary of the HAP contract and published annually in the *Federal Register.* Further, the HAP contract may require an additional increase up to an amount determined by the BHA (pursuant to 24 CFR 983.301(b) and (c)) if requested by the owner in writing, periodically during the term of the contract. The HAP contract must require an additional increase up to an amount determined by the BHA at the point of contract extension, pursuant to 24 CFR 983.301(b) and (c), if requested by the owner in writing.

The BHA will allow for rent increases by OCAF rather than owner request on a case-by-case basis, including allowing for additional increases up to an amount determined by the BHA pursuant to 24 CFR 983.301(b) and (c) if requested by the owner in writing. An owner's request must be submitted to the BHA 60 days prior to the anniversary date of the HAP contract and must include the new rent amount the owner is proposing.

When the BHA allows for rent increases by OCAF, at the point of contract extension, the contract will require an additional increase up to an amount determined by the BHA if requested by the owner in writing. An owner's request must be submitted to the BHA 60 days prior to the anniversary date of the contract extension date and must include the new rent amount the owner is proposing.

OWNER-REQUESTED RENT INCREASES [24 CFR 983.302(B)(4)]

If the HAP contract does not provide for automatic adjustment by an OCAF, and if an owner wishes to request an increase in the rent to owner from the BHA, it must be requested at the annual anniversary of the HAP contract (see Section 17-V.E.). The request must be in writing and in the form and manner required by the BHA. The BHA may only make rent increases in accordance with the rent limits described previously. There are no provisions in the PBV program for special adjustments (e.g., adjustments that reflect increases in the actual and necessary expenses of owning and maintaining the units which have resulted from

substantial general increases in real property taxes, utility rates, or similar costs). The administrative plan must specify any advance notice the owner must give the BHA and the form the request must take.

An owner's request for a rent increase must be submitted to the BHA in writing (or via email) 60 days prior to the anniversary date of the HAP contract and must include the new rent amount the owner is proposing.

The BHA 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 housing quality standards, except that housing quality standards compliance is not required for units undergoing development activity that complies with 24 CFR 983.157 or substantial improvement that complies with 24 CFR 983.212. The owner may not receive any retroactive increase of rent for any period of noncompliance.

RENT DECREASE [24 CFR 983.302(C)]

If the HAP contract does not provide for adjustment by an OCAF and 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.

If the HAP contract provides for rent adjustments by an OCAF and there is a decrease in the fair market rent, tax credit rent, or reasonable rent that requires a decrease to the rent to owner, the rent to owner must be decreased.

However, at any time during the term of the HAP contract, the BHA may elect within the HAP contract to not reduce rents below the initial rent to owner. Where a BHA makes such an election, the rent to owner shall not be reduced below the initial rent to owner, except:

- 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; or
- 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.

NOTICE OF RENT CHANGE TO OWNER [24 CFR 983.203(D)]

Whenever there is a change in rent to owner, the BHA must provide written notice to the owner specifying the amount of the new rent to owner. The BHA notice of rent adjustment constitutes an amendment of the rent to owner specified in the HAP contract. The adjusted amount of rent to owner applies for the period of 12 calendar months from the annual anniversary of the HAP contract.

The BHA will provide the owner with at least 30 days written notice of any change in the amount of rent to owner.

BHA -OWNED UNITS [24 CFR 983.301(G)]

For BHA-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 BHA *must use the rent to owner established by the independent entity.

17-VIII.D. REASONABLE RENT [24 CFR 983.301(d) and 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 BHA, except where the BHA 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 BHA must redetermine 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 BHA approves a change in the allocation of responsibility for utilities between the owner and the tenant;
- The HAP contract is amended to add a contract unit or substitute a different contract unit in the same building or project;
- The BHA accepts a completed unit after development activity that is conducted after HAP contract execution in accordance with 24 CFR 983.156(b)(3); and
- There is any other change that may substantially affect the reasonable rent.

The BHA must determine reasonable rent in accordance with 24 CFR 983.303.

RENT FLOOR

The rent to owner for each contract unit may at no time exceed the reasonable rent, except in cases where the BHA 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; and
- 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 BHA 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.

The BHA will elect within the HAP contract not to reduce rents below the initial level, with the exception of the 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, the BHA will use the higher initial rent to owner amount.

HOW TO DETERMINE REASONABLE RENT [24 CFR 983.303(c)]

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 BHA 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. The reasonable rent determination must be based on the condition of the assisted unit at the time of the determination and not on anticipated future unit conditions.

Comparability Analysis [24 CFR 983.303(d)]

For each unit, the comparability analysis must use at least three comparable units in the private unassisted market. This may include units in the premises or project that is receiving project-based assistance. The analysis must show how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units, and must be retained by the BHA. The comparability analysis may be performed by BHA 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.

BHA-Owned Units [24 CFR 983.303(f)]

For BHA -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 BHA -owned units to the BHA.

Owner Certification of Reasonable Rent [24 CFR 983.303(e)]

By accepting each monthly housing assistance payment, the owner certifies that the rent to owner is not more than rent charged by the owner for other comparable unassisted units in the premises. At any time, the BHA may require the owner to submit information on rents charged by the owner for other units in the premises or elsewhere.

17-VIII.E. EFFECT OF OTHER SUBSIDY AND RENT CONTROL

In addition to the rent limits discussed in Section 17-VIII.B above, other restrictions may limit the amount of rent to owner in a PBV unit. In addition, certain types of subsidized housing are not even eligible to receive PBV assistance (see Section 17-II.D).

OTHER SUBSIDY [24 CFR 983.304]

To comply with HUD subsidy layering requirements, at the discretion of HUD or its designee, a BHA shall reduce the rent to owner because of other governmental subsidies, including tax credits or tax exemptions, grants, or other subsidized funding.

For units receiving assistance under the HOME program, rents may not exceed rent limits as required by that program.

For units in any of the following types of federally subsidized projects, the rent to owner may not exceed the subsidized rent (basic rent) or tax credit rent as determined in accordance with requirements for the applicable federal program:

- An insured or non-insured Section 236 project;
- A formerly insured or non-insured Section 236 project that continues to receive Interest Reduction Payment following a decoupling action;
- A Section 221(d)(3) below market interest rate (BMIR) project;
- A Section 515 project of the Rural Housing Service;
- Any other type of federally subsidized project specified by HUD.

Combining Subsidy

Rent to owner may not exceed any limitation required to comply with HUD subsidy layering requirements.

RENT CONTROL [24 CFR 983.305]

In addition to the rent limits set by PBV program regulations, the amount of rent to owner may also be subject to rent control or other limits under local, state, or federal law.

PART IX: PAYMENTS TO OWNER

17-IX.A. HOUSING ASSISTANCE PAYMENTS [24 CFR 983.351]

During the term of the HAP contract, the BHA 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 housing quality standards 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 BHA agree on a later date.

Except for discretionary vacancy payments, the BHA 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 BHA 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]

PAYMENT AT MOVE-OUT MONTH [24 CFR 983.352(A)]

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 BHA determines that the vacancy is the owner's fault.

If the BHA determines that the owner is responsible for a vacancy and, as a result, is not entitled to the keep the housing assistance payment, the BHA will notify the owner of the amount of housing assistance payment that the owner must repay. The BHA will require the owner to repay the amount owed in accordance with the policies in Section 16-IV.B.

VACANCY PAYMENTS [24 CFR 983.352(B)]

At the discretion of the BHA, the HAP contract may provide for vacancy payments to the owner for a BHA -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 BHA must include in its administrative plan the BHA's policy on the conditions under which it will allow vacancy payments in a HAP contract, the duration of the payments, amount of vacancy payments it will make to an owner, and the required form and manner of requests for vacancy payments.

The BHA will not make vacancy payments to the owner unless specified in terms in the HAP Contract.

If the BHA enters a HAP Contract allowing Vacancy Payments, the BHA may only make vacancy payments if:

- The owner gives the BHA 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 and belief);
- 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 BHA 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 BHA and must provide any information or substantiation required by the BHA to determine the amount of any vacancy payment.

The vacancy payment to the owner for each month of the maximum two-month period is determined by the BHA, 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). Any vacancy payment may cover only the period the unit remains vacant.

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 BHA in accordance with HUD requirements. Any changes in the amount of tenant rent will be effective on the date stated in the BHA 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 BHA 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 BHA. The owner must immediately return any excess payment to the tenant.

TENANT AND BHA 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 BHA.

Likewise, the BHA is responsible only for making the housing assistance payment to the owner in accordance with the HAP contract. The BHA is not responsible for paying tenant rent, or any other claim by the owner, including damage to the unit. The BHA 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 [24 CFR 983.353(D)]

The BHA 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 or supportive services. These charges may not be included in the rent to owner, nor may the value of meals and supportive services be included in the calculation of the reasonable rent. However, non-payment of such charges is grounds for termination of the lease by the owner in an assisted living development.

OTHER CHARGES BY OWNER

The owner may not charge extra amounts for items customarily included in rent in the locality or provided at no additional cost to unsubsidized tenants in the premises.

17-IX.E. PROJECT RECORD RETENTION [24 CFR 983.12]

The regulation at 24 CFR 982.158 applies to both the BHA's tenant-based and project-based programs. In addition, for each PBV project, the BHA must maintain the following records throughout the HAP contract term and for three years thereafter:

- Records to document the basis for BHA selection of the proposal, if selection is competitive, or project, if selection is noncompetitive, including records of the BHA's site selection determination (see 24 CFR 983.55) and records to document the completion of the review of the selection process in the case of BHA-owned units, and copies of the written notice of proposal selection and response of the appropriate party;
- The analysis of impact, if applicable;
- The subsidy layering determination, if applicable;
- The environmental review record, if applicable;
- The Agreement to enter into HAP contract (AHAP), if applicable;
- Evidence of completion, if applicable;
- The HAP contract and any rider and/or amendments, including amendments to extend the term of the contract;
- Records to document the basis for BHA determination and redetermination of rent to owner;
- Records to document HUD approval of the independent entity or entities, in the case of BHA-owned units;
- Records of the accessibility features of the project and each contract unit; and
- Other records as HUD may require.

CHAPTER 18: PROJECT BASED VOUCHERS (PBV) UNDER THE RENTAL ASSISTANCE DEMONSTRATION (RAD) PROGRAM

This chapter describes HUD regulations and BHA policies related to the Project-Based Voucher (PBV) program under the Rental Assistance Demonstration (RAD) program in eight parts:

Part I: General Requirements. This part describes general provisions of the PBV program, including maximum budget authority requirements, relocation requirements, and equal opportunity requirements.

Part II: PBV Project Selection. This part describes the cap on assistance at projects receiving PBV assistance, ownership and control, and site selection standards.

Part III: Dwelling Units. This part describes requirements related to housing quality standards, the type and frequency of inspections, and housing accessibility for persons with disabilities.

Part IV: Housing Assistance Payments Contract. This part discusses HAP contract requirements and policies including the execution and term of the HAP contract.

Part V: Selection of PBV Program Participants. This part describes the requirements and policies governing how the BHA and the owner will select a family to receive PBV assistance.

Part VI: Occupancy. This part discusses occupancy requirements related to the lease and describes under what conditions families are allowed or required to move.

Part VII: Determining Contract Rent. This part describes how the initial rent to owner is determined, and how rent will be redetermined throughout the life of the HAP contract.

Part VIII: Payments to Owner. This part describes the types of payments owners may receive under this program.

PART I: GENERAL REQUIREMENTS

18-I.A. OVERVIEW AND HISTORY OF THE RAD PROGRAM

The Rental Assistance Demonstration (RAD) program was authorized in 2012 in order to assess the effectiveness of converting public housing, moderate rehabilitation properties, and units under the rent supplement and rental assistance payments programs to long-term, project-based Section 8 rental assistance. The program's four primary objectives are to:

Preserve and improve public and other assisted housing.

Standardize the administration of the plethora of federally subsidized housing programs and rules. The conversions are intended to promote operating efficiency by using a Section 8 project-based assistance model that has proven successful and effective for over 30 years. In other words, RAD aligns eligible properties more closely with other affordable housing programs.

Attract private market capital for property renovations. Through the use of this model, properties may be able to leverage private debt and equity to make capital repairs.

Increase tenant mobility opportunities.

Under the first component, a BHA 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).

A RAD/Section 18 blend is a public housing conversion that combines RAD and Section 18 activities and that includes both converting public housing assistance to RAD PBV and converting tenant protection voucher (TPV) assistance to PBV in the same project. All assistance converting under a RAD/Section 18 blend is placed under a single RAD HAP contract upon conversion, is subject to a single RAD Use Agreement, and is governed by the terms of Notice PIH 2019-23 (as amended by Supplemental Notice 4B and 4C).

This chapter will focus on public housing conversions to the PBV program under RAD as well as RAD/Section 18 blends. 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. Additionally, the RAD Statute imposes certain unique requirements and authorizes HUD to establish requirements for converted assistance under the Demonstration. Conversions of public housing properties through RAD, including conversions through a RAD/Section 18 Blend, will be subject to the requirements in Notice PIH 2019-23 (as amended by Supplemental Notice 4B and 4C), and as reflected in the RAD PBV HAP Contract.

Non-RAD PBV units in a project are also subject to the requirements of Notice PIH 2019-23 (as amended by Supplemental Notice 4B and 4C) in the following circumstances:

Any legacy non-RAD PBV units located in the covered project are subject to the same waivers and alternative requirements where noted in Notice PIH 2019-23 (as amended by Supplemental Notice 4B and 4C) and in this policy. Legacy non-RAD PBV units are defined as PBV assistance in a project that prior to December 31, 2024, replaced public housing at the time of conversion and that are subject to a non-RAD PBV HAP contract.

When a PHA undertakes a RAD/Section 18 blend, all units are placed under a single RAD HAP contract upon conversion and are governed by the terms of Notice PIH 2019-23 (as amended by Supplemental Notice 4B and 4C).

Otherwise, all regulatory and statutory requirements for the standard PBV program in 24 CFR Part 983 and Section 8(o)(13) of the Housing Act of 1937, and all applicable standing and subsequent Office of Public and Indian Housing (PIH) notices and guidance, including related handbooks, apply to RAD PBV. This includes environmental review, Davis-Bacon, and fair housing requirements.

RAD is authorized by the Consolidated and Further Continuing Appropriations Act of 2012 (Public Law 112-55, approved November 18, 2011), as amended by the Consolidated Appropriations Act of 2014 (Public Law 113-76, approved January 17, 2014), the Consolidated and Further Continuing Appropriations Act of 2015 (Public Law 113-235, approved December 6, 2014), the Consolidated Appropriations Act of 2016 (Public Law 114-113, approved December 18, 2015), the Consolidated Appropriations Act, 2017 (Public Law 115-31, approved May 5, 2017), and section 237 of Title II, Division L, Transportation, Housing and Urban Development, and Related Agencies, of the Consolidated Appropriations Act, 2018 (Public Law 115-141, approved March 23, 2018) collectively, the "RAD Statute."

Requirements specific to the RAD program may be found in the following:

- Generally, public housing projects converting assistance under RAD are bound by the terms of the notice in effect at the time of closing. For all conversion types, HUD reserves the right, in its sole discretion and upon request from the applicant, to apply provisions from previous versions of this notice to program participants that are near conversion.
    - Notice PIH 2025-03 (Supplemental Notice 4C) amended Notice PIH 2019-23 (as amended by Notice 2023-19) and was effective January 16, 2025.
    - Notice PIH 2023-19 (Supplemental Notice 4B) amended Notice PIH 2019-23 and Notice PIH 2021-07 and was effective July 27, 2023.
    - Notice PIH 2019-23 was immediately applicable at the time of closing to all projects converting assistance (notwithstanding execution of a commitment for conversion). Notice PIH 2019-23 was published on September 5, 2019.
        - Except with respect to changes in the project eligibility and selection criteria, not included in this policy, which were effective after a 30-day comment period.
    - Notice PIH 2012-32, REV-3 was applicable to projects that were seeking conversion of assistance through RAD, including those where a CHAP had already been issued when it was published January 12, 2017.
        - Except with respect to changes in the project eligibility and selection criteria, not included in this policy, which were effective after a 30-day comment period.
    - Notice PIH 2012-32, REV-2 was applicable to projects that were seeking conversion of assistance through RAD, including those where a CHAP had already been issued when it was published June 15, 2015.
        - Except with respect to changes in the project eligibility and selection criteria, not included in this policy, which are effective after a 30-day comment period.
- RAD Quick Reference Guide for Public Housing Converting to PBV Assistance (2/22)
- RAD Welcome Guide for New Awardees: RAD 1st Component (3/15)
- Notice PIH 2016-17, Rental Assistance Demonstration (RAD) Notice Regarding Fair Housing and Civil Rights Requirements and Relocation Requirements Applicable to RAD First Component – Public Housing Conversions.
    - This Notice applies to all projects that have applied for RAD conversion but have not yet converted as of November 10, 2016.

- Notice PIH 2014-17, Relocation Requirements under the RAD Program, Public Housing in the First Component.
    - This notice may apply to projects that have converted to RAD prior to November 10, 2016, AND who have requested and received approval from HUD to be governed by this notice. See PIH Notice 2016-17, Section 1, Paragraph 1.3 for applicability.
- RAD FAQs (http://www.radresource.net/search.cfm)

NOTE: The policies in this chapter follow Notice PIH 2019-23 (REV-4) as amended by RAD Supplemental Notice 4B and 4C.

Project	Closing Date	RAD Notice
Beacon		
Village at Brookline		
90 Longwood RAD		
61 Park RAD		

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.

18-I.C. TENANT-BASED VS. PROJECT-BASED VOUCHER ASSISTANCE [24 CFR 983.2]

Except as otherwise noted in this chapter, or unless specifically prohibited by PBV program regulations, the BHA policies for the tenant-based voucher program contained in this administrative plan also apply to the RAD PBV program and its participants. This chapter is intended to address requirements specific to the RAD PBV program only.

See Exhibit 18-1 for information on projects to which the BHA has attached RAD PBV assistance.

18-I.D. RELOCATION REQUIREMENTS

For projects that apply for conversion of assistance under the First Component of RAD and will convert November 10, 2016, or later, the following applies [Notice PIH 2016-17]:

- In some developments, in-place residents may need to be relocated as a result of properties undergoing repairs, being demolished and rebuilt, or when assistance is transferred from one site to another. RAD program rules prohibit the permanent, involuntary relocation of residents as a result of conversion. Residents that are temporarily relocated retain the right to return to the project once it has been completed. Any legacy non-RAD PBV units located in the same project are also subject to the right to return.
- Relocation assistance provided to residents will vary depending on the length of time relocation is required. Residents must be properly notified in advance of relocation requirements in accordance with RAD program rules and Uniform Relocation Act (URA) requirements, and other requirements which may be applicable such as Section 104(d) of the Housing and Community Development Act of 1974, as amended. Sample informing notices are provided in Appendices 2–5 of Notice PIH 2014-17. A written relocation plan is required if the RAD conversion involves permanent relocation (including a move in connection with a transfer of assistance) or temporary relocation anticipated to last longer than a year. While the PHA is not required to have a written relocation plan for temporary relocation lasting one year or less, HUD strongly encourages PHAs to prepare one. Appendix II of Notice PIH 2016-17 contains recommended contents for a relocation plan.
- In addition, PHAs must undertake a planning process that complies with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), although not all relocations under RAD will trigger requirements under URA. URA statute and implementing

regulations may be found at 49 CFR Part 24. The obligation due to relocating residents under RAD are broader than URA relocation assistance and payments.

- Any residents that may need to be temporarily relocated to facilitate rehabilitation or construction will have a right to return to either: a) a unit at the development once rehabilitation or construction is completed, provided the resident's household is not under-housed; or b) a unit in the development which provides the same major features as the resident's unit in the development prior to the implementation of the RAD conversion.
- Where the transfer of assistance to a new site is warranted and approved, residents of the converting development will have the right to reside in an assisted unit at the new site once rehabilitation or construction is complete.
- If the BHA's proposed plans for conversion would preclude a resident from returning to the development, the resident must be given an opportunity to comment and/or object to such plans. PHAs must alter the project plans to accommodate the resident's right to return to the development if the resident would be precluded from returning to the development.
- Examples of project plans that may preclude a resident from returning to the development include, but are not limited to:
    - Changes in the development's bedroom distribution that decrease the size of the units, resulting in the resident being under-housed;
    - The resident cannot be accommodated in the remaining assisted units due to a reduction in the number of assisted units at the development;
    - Income limit eligibility requirements associated with the LIHTC program or another program; and
    - Failure to provide a reasonable accommodation, in violation of applicable law, where reasonable accommodation may include installation of accessibility features that are needed by the resident.
- Residents of a development undergoing conversion that would be precluded from returning to the development may voluntarily accept a PHA or owner's offer to permanently relocate to alternative housing, and thereby waive their right to return to the development after rehabilitation or construction is completed. In this event, the PHA must secure the resident's written consent to a voluntary permanent relocation in lieu of returning to the development. PHAs are prohibited from employing any tactics to pressure residents into relinquishing their right to return or accepting other housing options. Additionally, a PHA may not terminate a resident's lease if the PHA fails to obtain the resident's consent and the resident seeks to exercise the right to return.
- In the case of multi-phase RAD transactions, the resident has a right to return to the development or to other converted phases of the development that are available for occupancy at the time the resident is eligible to exercise their right of return. Generally, the resident's right to return must be accommodated within the development associated with the resident's original unit, however, the PHA may treat multiple converted developments on the same site as one for purposes of right to return. Should the PHA seek to have the resident exercise the right to return at a future phase, the PHA must secure the resident's consent in writing.
- Alternative housing options may involve a variety of housing options, including but not limited to:
    - Transfers to public housing
    - Admission to other affordable housing properties subject to the applicable program rules
    - Housing choice voucher (HCV) assistance
    - Homeownership programs subject to the applicable program rules
    - Other options identified by the PHA

However, for projects that applied for conversion prior to November 10, 2016, the following applies [Notice PIH 2014-17]:

- In some developments, in-place residents may need to be relocated as a result of properties undergoing repairs, being demolished and rebuilt, or when assistance is transferred from one site to another. RAD program rules prohibit the permanent, involuntary relocation of residents as a result of conversion. Residents that are temporarily relocated retain the right to return to the project once it has been completed.
- Relocation assistance provided to residents will vary depending on the length of time relocation is required. Residents must be properly notified in advance of relocation requirements in accordance with RAD program rules and Uniform Relocation Act (URA) requirements. Sample informing notices are provided in Appendices 2–5 of Notice PIH 2014-17. While the PHA is not required to have a written relocation plan, HUD strongly encourages PHAs to prepare one. Appendix I of Notice PIH 2014-17 contains recommended contents for a relocation plan.
- In addition, PHAs must undertake a planning process that complies with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA), although not all relocations under RAD will trigger requirements under URA. URA statute and implementing regulations may be found at 49 CFR Part 24.
- Any residents that may need to be temporarily relocated to facilitate rehabilitation or construction will have a right to return to an assisted unit at the development once rehabilitation or construction is completed. Where the transfer of assistance to a new site is warranted and approved, residents of the converting development will have the right to reside in an assisted unit at the new site once rehabilitation or construction is complete. Residents of a development undergoing conversion of assistance may voluntarily accept a PHA or owner's offer to permanently relocate to another assisted unit, and thereby waive their right to return to the development after rehabilitation or construction is completed.
- For RAD/Section 18 blends, all RAD relocation requirements (such as the resident notice and meeting requirements, the right to return, and relocation assistance and payments) as described in Notice PIH 2016-17 or successor notices apply to residents of the units subject to a Section 18 action in lieu of the relocation requirements under 24 CFR 970.21. The PHA must provide the same relocation rights and benefits to all residents of the converting project [Notice PIH 2025-03].

18-I.E. EQUAL OPPORTUNITY REQUIREMENTS [24 CFR 983.8; 24 CFR 5.105; Notice PIH 2016-17]

RAD conversions are governed by the same civil rights authorities that govern HUD-assisted activities in general. These authorities prohibit discrimination and impose affirmative obligations on HUD program participants. PHAs must comply with all applicable fair housing and civil rights laws, including but not limited to the Fair Housing Act, Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973, when conducting relocation planning and providing relocation assistance. For example, persons with disabilities returning to the RAD project may not be turned away or placed on a waiting list due to a lack of accessible units. Their need for an accessible unit must be accommodated. See the *RAD Fair Housing, Civil Rights, and Relocation Notice* [Notice PIH 2016-17] for more information.

PART II: PBV PROJECT SELECTION

18-II.A. OVERVIEW

Unlike in the standard PBV program where the BHA typically selects the property through an owner proposal selection process, projects selected for assistance under RAD PBV are selected in accordance with the provisions in Notice PIH 2019-23. Therefore, 24 CFR 983.51 does not apply since HUD selects RAD properties through a competitive selection process.

18-II.B. OWNERSHIP AND CONTROL [Notice PIH 2019-23]

For projects governed by Notice PIH 2019-23, the following language applies:

- Under the PBV program, the contract administrator and the owner listed on the contract cannot be the same legal entity (i.e., the BHA cannot execute a contract with itself). To avoid this situation, the BHA may either: 1) Transfer the ownership of the project to a nonprofit affiliate or instrumentality of the BHA (including to a "single-purpose entity" that owns nothing other than the property, which will typically be a requirement of a lender or investor), or 2) The BHA can form a related entity that is responsible for management and leasing and can serve as the owner for purposes of the Section 8 HAP contract; in this scenario, the HAP is then executed between the BHA (as the contract administrator) and the BHA's related entity (as the owner for HAP contract purposes). Note that in the second scenario, both the BHA and the entity serving as the owner for HAP contract purposes will be required to sign the RAD Use Agreement [RAD Resource Desk FAQ 01/24/19].

- Except where permitted to facilitate the use of low-income housing tax credits, during both the initial term and renewal terms of the HAP contract, ownership must be by a public or nonprofit entity. HUD may also allow ownership of the project to be transferred to a tax credit entity controlled by a for-profit entity to facilitate the use of tax credits for the project, but only if HUD determines that the BHA or a nonprofit entity preserves an interest in the profit. The requirement for a public or nonprofit entity, or preservation of an interest by a PHA or nonprofit in a property owned by a tax credit entity controlled by a for-profit entity, is satisfied if a public or nonprofit entity (or entities), directly or through a wholly owned affiliate (1) holds a fee simple interest in the property; (2) is the lessor under a ground lease with the property owner; (3) has the direct or indirect legal authority to direct the financial and legal interest of the property owner with respect to the RAD units, (4) owns 51 percent or more of the general partner interests in a limited partnership or 51 percent or more of the managing member interests in a limited liability company with all powers of a general partner or managing member, as applicable; (5) owns a lesser percentage of the general partner or managing member interests and holds certain control rights as approved by HUD; (6) owns 51 percent or more of all ownership interests in a limited partnership or limited liability company and holds certain control rights as approved by HUD; or (7) demonstrates other ownership and control arrangements approved by HUD.

- Control may be established through the terms of the project owner's governing documents or through a Control Agreement, provided that in either case amendment of the terms of control requires consent from HUD.

For projects subject to the requirements of Notice PIH 2012-32, REV-3, the following language applies:

- Except where permitted to facilitate the use of low-income housing tax credits, during both the initial term and renewal terms of the HAP contract, ownership must be by a public or nonprofit entity. The requirement for a public or nonprofit entity is satisfied if a public or nonprofit entity (or entities), directly or through a wholly owned affiliate (1) holds a fee simple interest in the property; (2) is the lessor under a ground lease with the property owner; (3) has the direct or indirect legal authority to direct the financial and legal interest of the property owner with respect to the RAD units, (4) owns 51 percent or more of the general partner interests in a limited partnership or 51 percent or more of the managing member interests in a limited liability company with all powers of a general partner or managing member, as applicable; (5) owns a lesser percentage of the general partner or managing member interests and holds certain control rights as approved by HUD; (6) owns 51 percent or more of all ownership interests in a limited partnership or limited liability company and

holds certain control rights as approved by HUD; or (7) other ownership and control arrangements approved by HUD.

- If low-income housing tax credits will be used, HUD may allow ownership of the property to be transferred to a tax credit entity controlled by a for-profit entity if HUD determines that the BHA preserves its interest in the property. Preservation of BHA interest in the property includes but is not limited to the following:
    - The BHA, or an affiliate under its sole control, is the general partner or managing member;
    - The BHA retains fee ownership and leases the real estate to the tax credit entity pursuant to a long-term ground lease;
    - The BHA retains control over leasing the property and determining program eligibility;
    - The BHA enters into a control agreement by which the BHA retains consent rights over certain acts of the project owner and retains certain rights over the project;
    - Other means that HUD finds acceptable

For projects that converted assistance prior to the implementation of Notice PIH 2012-32, REV-3, the following language applies:

- During both the initial term and renewal terms of the HAP contract, ownership must be either of the following:
    - A public or nonprofit entity that has legal title to the property. The entity must have the legal authority to direct the financial, legal, beneficial, and other interests of the property; or
    - A private entity, if the property has low-income tax credits. The BHA must maintain control via a ground lease.

18-II.C. BHA-OWNED UNITS [24 CFR 983.57, FR Notice 1/18/17, and Notice PIH 2017-21]

If the project is BHA-owned, rent-setting (including redetermination of rent and determination of rent reasonableness) and inspection functions described in 24 CFR 983.57 must be conducted by an independent entity approved by HUD.

The definition of *ownership or control* provided under Notice PIH 2019-23 (listed above) is used specifically to determine whether a BHA 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 24 CFR 982.4 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 BHA -owned for purposes of requiring an independent entity.

The independent entity that performs the program services may be the unit of general local government for the BHA jurisdiction (unless the BHA is itself the unit of general local government or an agency of such government), or another HUD-approved public or private independent entity.

The BHA may compensate the independent entity from BHA ongoing administrative fee income (including amounts credited to the administrative fee reserve). The BHA may not use other program receipts to compensate the independent entity for its services. The BHA and the independent entity may not charge the family any fee for the services provided by the independent entity.

If units converted to PBV under RAD are BHA -owned housing, the BHA will use McCright Associates as the HUD-approved independent entity.

18-II.D. SUBSIDY LAYERING REQUIREMENTS [Notice PIH 2019-23; Notice PIH 2012-32, REV-3; Notice PIH 2012-32, REV-2]

For projects governed by Notice PIH 2019-23, REV-4, the following language applies:

- In the case of a PHA that will no longer have ACC units as a result of the pending or simultaneous closing or have less than 50 units remaining and have initiated procedures to dispose of their final ACC units, there is no restriction on the amount of public housing funds that may be contributed to the covered project or projects though the conversion. However, the BHA must estimate and plan for outstanding liabilities and costs and must follow Notice PIH 2016-23 or successor notice regarding the administrative activities required to terminate the ACC if it has no plans to develop additional public housing.
- In the case where the BHA will continue to maintain other units in its inventory under a public housing ACC, a contribution of operating funds to the covered project that exceeds the average amount the project has held in operating reserves over the past three years will trigger a subsidy layering review under 24 CFR 4.13. Similarly, any contribution of capital funds, including Replacement Housing Factor (RHF) or Demolition Disposition Transitional Funding (DDTF), will trigger a subsidy layering review. Notwithstanding the subsidy layering review, PHAs should be mindful of how the capital funds or operating reserves used in the financing of its RAD properties may impact the physical and financial health of properties that will remain in its public housing inventory.
- Following execution of the HAP contract, PHAs are authorized to use operating and capital funds to make HAP payments for the remainder of the first calendar year in which the HAP contract is effective. Otherwise, a PHA may not contribute public housing program funds to the covered project unless those funds have been identified in the RCC and converted at closing for Section 8 RAD purposes.

For projects governed by Notice PIH 2012-32, REV-3, the following language applies:

- In the case of a PHA that is converting all of its ACC units, there is no restriction on the amount of public housing funds that may be contributed to the covered project at closing; the PHA may convey all program funds to the covered projects. In order to cover the cost of administrative activities required to terminate the ACC, once it no longer has units under the ACC and has no plans to develop additional public housing, the PHA may:

Designate that a reserve associated with the project be available to fund any public housing closeout costs (such as an operating deficit reserve or a specific PHA closeout reserve). Any funds not needed for public housing closeout costs would remain in such reserve or may be transferred to another reserve associated with the project (such as the replacement reserve). Thereafter, these funds may be used at the project pursuant to the authorized use of the applicable reserve; or

Retain funds under the public housing program for this purpose. However, HUD will recapture any public housing funds that a PHA does not expend for closeout costs.

- In the case where the PHA will continue to maintain other units in its inventory under a public housing ACC, a contribution of operating funds to the covered project that exceeds the average amount the project has held in operating reserves over the past three years will trigger a subsidy layering review under 24 CFR 4.13. Similarly, any contribution of capital funds, including Replacement Housing Factor (RHF) or Demolition Disposition Transitional Funding (DDTF), will trigger a subsidy layering review. Notwithstanding the subsidy layering review, PHAs should be mindful of how the capital funds or operating reserves used in the financing of its RAD properties may impact the physical and financial health of properties that will remain in its public housing inventory.
- In addition, following execution of the HAP contract, PHAs are authorized to use operating and capital funds to make HAP payments for the remainder of the first calendar year in which the HAP contract is effective. Otherwise, a PHA may not contribute public housing program funds to the covered project unless such funding has been identified in the approved financing plan and included in the approved "sources and uses" attached to the RCC.

For projects governed by the requirements of Notice PIH 2012-32, REV-2, the following language applies:

- In the case of a PHA that is converting all of its ACC units, there is no restriction on the amount of public housing funds that may be contributed to the covered project at closing; the PHA may convey all program funds to the covered project. HUD will recapture any public housing funds that a PHA has not expended once it no longer has units under ACC. In the case where the PHA will continue to maintain other units in its inventory under a public housing ACC, a contribution of operating funds to the covered project that exceeds the average amount the project has held in operating reserves over the past three years will trigger a subsidy layering review under 24 CFR 4.13. Similarly, any contribution of capital funds, including Replacement Housing Factor (RHF) or Demolition Disposition Transitional Funding (DDTF), will trigger a subsidy layering review. Notwithstanding the subsidy layering review, PHAs should be mindful of how the capital funds or operating reserves used in the financing of its RAD properties may impact the physical and financial health of properties that will remain in its public housing inventory.

18-II.E. PBV PERCENTAGE LIMITATION AND UNIT CAP [Notice PIH 2025-03, Supplemental Notice 4C]

PBV PERCENTAGE LIMITATION

RAD PBV units in a covered projects do not count against the maximum amount of assistance a BHA may utilize for the PBV program (program cap), which under the standard PBV program is set at 20 percent of the authorized units allocated to a BHA under the HCV program with the ability to project-base an additional 10 percent of units that meet certain requirements. The number of PBV units excluded from the BHA's PBV program cap cannot exceed the number of former public housing units that those PBV units are replacing through the course of the RAD conversion. All PBV units in a covered project that replace former public housing units at the time of conversion are excluded from both the numerator and the denominator when calculating the percent of vouchers that may be project-based by a BHA. To implement this provision, HUD is waiving section 8(o)(13)(B) of the 1937 Act as well as 24 CFR 983.6.

CAP ON THE NUMBER OF PBV UNITS IN EACH PROJECT [NOTICE PIH 2025-03, SUPPLEMENTAL NOTICE 4C]

There is no cap on the number of units that may receive RAD PBV assistance in each project. Under 24 CFR 983.54(c)(3), units excluded under 24 CFR 983.59 that were previously subject to federally required rent restrictions or received one of the listed forms of HUD assistance do not count toward the project cap. For any RAD PBV and legacy Non-RAD PBV units in projects not already excluded under 24 CFR 983.59, including transfers of assistance to a new location, HUD waived section 8(o)(13)(D) of the Act, as well as related provisions of 24 CFR 983.54. Accordingly, units under a RAD PBV HAP contract may not be "excepted" for a specified purpose.

18-II.F. SITE SELECTION STANDARDS [Notice PIH 2019-23; Notice PIH 2016-17]

Site selection requirements set forth in 24 CFR 983.55 apply to RAD PBV, with the exception of the provisions regarding deconcentration of poverty and expanding housing and economic opportunity for existing housing sites.

To facilitate the uniform treatment of residents and units, any legacy non-RAD PBV units located in the same project are subject to the terms of this provision.

HUD will conduct a front-end civil rights review of the BHA's proposed site in certain circumstances. For RAD PBV conversions that involve new construction located in an area of minority concentration (whether on the existing public housing site or on a new site) HUD will determine whether it meets one of the exceptions that would allow for new construction in an area of minority concentration.

The BHA must ensure that its RAD PBV conversion, including any associated new construction, is consistent with its certification to affirmatively further fair housing and complies with civil rights laws.

18-II.G. ENVIRONMENTAL REVIEW [Notice PIH 2019-23; *Environmental Review Requirements for RAD Conversions*, March 2019]

HUD cannot approve an applicant's financing plan submission unless and until the required environmental review has been completed for the applicant's proposed conversion project and found to meet environmental review requirements. Environmental documents must be submitted no later than the applicant's financing plan. HUD will not issue a RAD Conversion Commitment (RCC) if the project plan does not meet the environmental review requirements described in Attachment 1A of Notice PIH 2019-23. Once an awardee has submitted an application for a specific project, they may not make any choice limiting actions before the completion of the environmental review.

PART III: DWELLING UNITS

18-III.A. OVERVIEW

This part identifies the special housing quality standards that apply to the RAD PBV program, housing accessibility for persons with disabilities, and special procedures for NSPIRE inspections.

18-III.B. HOUSING QUALITY STANDARDS [24 CFR 983.101 and 24 CFR 5.703]

Housing quality standards for the tenant-based program generally apply to the PBV program. Housing quality standards 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.

LEAD-BASED PAINT [24 CFR 983.101(C); NOTICE PIH 2019-23]

The lead-based paint requirements for the tenant-based voucher program do not apply to the PBV program. Instead, the Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR part 35, subparts A, B, H, and R, and 40 CFR 745.227, apply to the PBV program.

18-III.C. HOUSING ACCESSIBILITY FOR PERSONS WITH DISABILITIES [Notice PIH 2016-17]

Federal accessibility requirements apply to all conversions, whether they entail new construction, alternations, or existing facilities. The housing must comply with program accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8. The BHA 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 [24 CFR 983.103]

INITIAL INSPECTION [RAD QUICK REFERENCE GUIDE, NOTICE PIH 2019-23, AND NOTICE PIH 2023-19]

Under standard PBV regulations at 24 CFR 983.103(c), the BHA must inspect and determine that all of the proposed PBV units fully comply with housing quality standards before entering the HAP contract, unless the BHA has adopted a policy to enter into a HAP contract for units that fail the initial inspection as a result of only non-life-threatening conditions (NLT option), or if the unit passed an alternative inspection, or both. It is the responsibility of the contract administrator to perform this initial inspection (unless units are BHA-owned). In order to accommodate projects in which repairs are conducted, however, HUD has waived this requirement when units are undergoing rehabilitation. In this case, units must meet housing quality standards by the date indicated in the RAD Conversion Commitment (RCC). To place the unit under HAP contract and commence making payments, the BHA may rely on the owner's certification that the owner has no reasonable basis to have knowledge that life-threatening conditions exist in the unit or units to be added to the HAP contract instead of conducting an initial inspection. During the period of the work, housing quality standards requirements apply. The BHA must enforce the project owner's obligations and conduct inspections when needed, (for example in response to tenant complaints or other information coming to its attention), and the owner must correct any deficiencies in accordance with NSPIRE requirements (i.e., no more than 24 hours for a life-threatening deficiency, and within no more than 30 calendar days or any BHA-approved extension for other defects, but no later than the date of the completion of the work as indicated in the RCC).

TURNOVER INSPECTIONS [24 CFR 983.103(D), FR NOTICE 1/18/17, AND NOTICE PIH 2017-20]

Before providing assistance to a new family in a contract unit, the BHA must inspect the unit. The BHA may not provide assistance on behalf of the family until the unit fully complies with housing quality standards.

PERIODIC INSPECTIONS [24 CFR 983.103(E); FR NOTICE 6/25/14]

At least once every 24 months (or once every 36 months for small rural PHAs) during the term of the HAP contract, the BHA 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 housing quality standards. Turnover inspections are not counted toward meeting this inspection requirement.

The BHA will inspect on an annual basis a random sample consisting of at least 20 percent of the contract units in each building to determine if the contract units and the premises are maintained in accordance with applicable housing quality standards.

If more than 20 percent of the sample of inspected contract units in a building fail the initial inspection, the BHA must reinspect 100 percent of the contract units in the building.

ALTERNATIVE INSPECTIONS [24 CFR 983.103(I); NOTICE PIH 2016-05]

The BHA will not rely on alternative inspection standards.

INTERIM INSPECTIONS [24 CFR 983.103(F)]

If a participant or government official notifies the BHA of a potential deficiency, the following applies:

- If the reported deficiency is life-threatening, the BHA must, within 24 hours of notification, both inspect the housing unit and notify the owner if the life-threatening deficiency is confirmed. The owner must then make the repairs within 24 hours of BHA notification.
- If the reported deficiency is non-life-threatening, the BHA must, within 15 days of notification, both inspect the unit and notify the owner if the deficiency is confirmed. The owner must then make the repairs within 30 days of notification from the BHA or within any BHA -approved extension.

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

If the periodic inspection has been scheduled or is due within 90 days of the date the special inspection is scheduled the BHA may elect to conduct a full inspection.

FOLLOW UP INSPECTIONS [24 CFR 983103(F)(2)]

The BHA must conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected a housing quality standards violation and must conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family violation of housing quality standards.

SUPERVISORY QUALITY CONTROL INSPECTIONS [24 CFR 983.103(F)(3)]

In conducting BHA supervisory quality control inspections, the BHA should include a representative sample of both tenant-based and project-based units.

INSPECTING BHA-OWNED UNITS [24 CFR 983.103(G); NOTICE PIH 2017-21]

In the case of BHA-owned units, all required inspections must be performed by an independent entity designated by the BHA and approved by HUD. The independent entity must furnish a copy of each inspection report to the BHA. The BHA 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 BHA-owner.

PART IV: HOUSING ASSISTANCE PAYMENTS (HAP) CONTRACT

18-IV.A. OVERVIEW [RAD PBV Quick Reference Guide 6/20]

Public housing projects converting under RAD do not employ the PBV Agreement to Enter into a Housing Assistance Payments (AHAP) contract. Instead, following the execution of all requirements contained in

the Commitment to Enter into a HAP (CHAP) contract and the RAD Conversion Commitment (RCC), a project is converted immediately to the RAD PBV HAP contract following the closing of any construction financing. Except for transfers of assistance, the RAD PBV HAP contract takes effect before any work begins. Owners of public housing projects converted to PBV assistance via RAD enter into a HAP contract with the PHA that will administer the PBV assistance. Units assisted under a RAD PBV HAP contract must be subject to long-term, renewable use and affordability restrictions.

18-IV.B. HAP CONTRACT REQUIREMENTS

CONTRACT INFORMATION [*RAD PBV QUICK REFERENCE GUIDE* 6/20; NOTICE PIH 2019-23]

The RAD PBV program uses the PBV HAP contract for new construction or rehabilitated housing (Form HUD-52530A), as modified by the RAD rider (Form HUD-52621). For closings on or after January 1, 2018, HUD incorporated the RAD rider directly into the standard PBV HAP contract. For closing that occurred prior to January 1, 2018, the RAD rider must be attached to the PBV HAP contract.

The distinction between "existing housing" and "rehabilitated and newly constructed housing" is overridden by RAD requirements. The project must also have an initial RAD use agreement. All public housing RAD conversion properties financed with LIHTC are also required to include an LIHTC rider.

EXECUTION AND EFFECTIVE DATE OF THE HAP CONTRACT [*RADBLAST!* 7/11/16]

RAD PBV projects do not employ an Agreement to Enter into a Housing Assistance Payments (AHAP) contract like in the standard PBV program. Rather, when the conditions of the CHAP and the RCC are met and the conversion has closed, the BHA executes the HAP contract. Project owners may select the effective date of the HAP contract as the first day of either of the two months following the completed closing.

TERM OF HAP CONTRACT [NOTICE PIH 2019-23]

The initial term of the HAP contract may not be for less than 15 years and may be for a term of up to 20 years upon request of the owner and with approval of the administering voucher agency. Upon expiration of the initial term of the contract, and upon each renewal term of the contract, the owner must accept each offer to renew the contract, for the prescribed number and mix of units, either on the site of the project subject to the expiring contract or, upon request of the project owner and subject to BHA and HUD approval, at another site through a future transfer of assistance. Contracts are subject to the terms and conditions applicable at the time of each offer and further subject to the availability of appropriations for each year of each such renewal. To implement this provision, HUD is waiving section 8(o)(13)(F) of The United States Housing Act of 1937, which permits a minimum term of one year, as well as 24 CFR 983.205(a), which governs the contract term.

After the expiration of a 20-year initial term of the HAP contract, the HAP contract must be renewed on a form approved by HUD, which must include language that requires rents to be re-determined in accordance with 24 CFR 983.301 and 983.302. If the RAD PBV HAP contract was renewed or extended prior to the 20th year after conversion, then starting with the 20th year after execution of the original RAD PBV HAP contract, contract rents shall be redetermined in accordance with 24 CFR 983.302 or successor regulation [Notice PIH 2025-03].

AGREEMENT TO ENTER INTO A HAP (AHAP) CONTRACT [NOTICE PIH 2019-23]

For public housing conversions to PBV, there will be no agreement to enter into a Housing Assistance Payments (AHAP) contract. Therefore, all regulatory references to the Agreement (AHAP), including regulations under 24 CFR Part 983 Subpart D, are waived. The definitions for proposal selection date, new construction, rehabilitation, and existing housing are not applicable.

MANDATORY CONTRACT RENEWAL [NOTICE PIH 2019-23]

By statue, upon contact expiration, the agency administering the vouchers will offer, and the BHA will accept, renewal of the contract for the prescribed number and mix of units, either on the site of the project subject to the expiring contract or, upon request of the project owner and subject to BHA and HUD approval, at another site through a future transfer of assistance. The contract is subject to the terms and conditions applicable at the time of renewal and the availability of appropriations each year for such renewal. Consequently 24 CFR 983.205(b), governing the BHA discretion to renew the contract, will not apply.

In the event that the HAP contract is removed due to breach, non-compliance or insufficiency of appropriations, for all units previously covered under the HAP contract, new tenants must have incomes at or below 80 percent of the area median income at the time of admission and rents may not exceed 30 percent of 80 percent of median income for an appropriate size unit for the remainder of the term of the RAD use agreement.

REMEDIES FOR HOUSING QUALITY STANDARDS DEFICIENCIES [24 CFR 983.208]

The following is applicable to HAP contracts executed or renewed before June 6, 2024.

The BHA may not make any HAP payment to the owner for a contract unit during any period in which the unit does not comply with housing quality standards. If the BHA determines that a contract unit does not comply with housing quality standards, the BHA 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 withholding of housing assistance payments, reduction of contract units, and termination of the HAP contract.

The BHA will abate contracts for noncompliance with housing quality standards in accordance with the policies used in the tenant-based voucher program. These policies are contained in Section 8-II.G., Enforcing Owner Compliance.

The following is applicable to HAP contracts executed or renewed June 6, 2024, or later.

ENFORCEMENT OF HOUSING QUALITY STANDARDS [24 CFR 983.208(B)]

The BHA must vigorously enforce the owner's obligation to maintain contract units in accordance with housing quality standards. If the owner fails to maintain the dwelling unit in accordance with housing quality standards, the BHA must take enforcement action. The unit is in noncompliance with housing quality standards if:

- The BHA or other inspector authorized by the state or local government determines the unit has housing quality standards deficiencies based upon an inspection;
- The agency or inspector notifies the owner in writing of the unit housing quality standards deficiencies; and
- The deficiencies are not remedied within the following timeframes:
  - For life-threatening deficiencies, the owner must correct the deficiency within 24 hours of notification;
  - For other deficiencies, the owner must correct the deficiency within 30 calendar days of notification (or any reasonable BHA-approved extension).

In the case of an HQS deficiency that the BHA determines is caused by the tenant, any member of the household, or any guest or other person under the tenant's control, other than any damage resulting from ordinary use, the BHA may waive the owner's responsibility to remedy the violation. Housing assistance payments to the owner may not be withheld or abated if the owner responsibility has been waived. However, the BHA may terminate assistance to a family because of a housing quality standards breach beyond resulting from ordinary use caused by any member of the household or any guest or other person under the tenant's control, which may result in removing the unit from the HAP contract.

18-IV.C. AMENDMENTS TO THE HAP CONTRACT

FLOATING UNITS [NOTICE PIH 2019-23]

The BHA will float assistance among unoccupied units within the project. Tracking of the number and type of units at the property, as well as identification of comparable units when assistance is floated, will be maintained by each property.

REDUCTION IN HAP CONTRACT UNITS [NOTICE PIH 2019-23]

Project owners are required to make available for occupancy by eligible tenants the number of assisted units under the terms of the HAP contract.

The BHA may not reduce the number of assisted units without written HUD approval. Any HUD approval of a BHA's request to reduce the number of assisted units under contract is subject to conditions that HUD may impose. MTW agencies may not alter this requirement.

If units are removed from the HAP contract because a new admission's TTP comes to equal or exceed the gross rent for the unit and if the project is fully assisted, the BHA must reinstate the unit after the family has vacated the property. If the project is partially assisted, the BHA may substitute a different unit for the unit on the HAP contract in accordance with 24 CFR 983.207, or where the development has "floating" units.

18-IV.D. HAP CONTRACT YEAR AND ANNIVERSARY DATES [24 CFR 983.207(B)(2) AND (G), AND 24 CFR 983.302(E)]

The HAP contract year is the period of 12 calendar months preceding each annual anniversary of the HAP contract during the HAP contract term. The initial contract year is calculated from the first day of the first calendar month of the HAP contract term.

The annual anniversary of the HAP contract is the first day of the first calendar month after the end of the preceding contract year. There is a single annual anniversary date for all units under a particular HAP contract.

18-IV.E. OWNER RESPONSIBILITIES UNDER THE HAP CONTRACT [24 CFR 983.210]

When the owner executes the HAP contract, they certify that at such execution and at all times during the term of the HAP contract:

- The owner is maintaining the premises and contract units in accordance with housing quality standards;
- 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 BHA or selected from the owner-maintained waiting list, 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 (unless needed as a reasonable accommodation);
- 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.

The BHA will waive the owner's responsibility for housing quality standards deficiencies that have been determined to have been caused by the tenant, any member of the household, or any guest or other person under the tenant's control, to the extent the tenant can be held responsible for ensuring that the deficiencies are corrected: the tenant must take all necessary steps permissible under the lease and state and local law to remedy the deficiency. This may include paying the owner for the cost of the necessary repairs in accordance with the lease.

In the case of a housing quality standards deficiency that is caused by fire, natural disaster, or similar extraordinary circumstances, the BHA may permit the owner to undertake substantial improvement in

accordance with 24 CFR 983.212. However, so long as the contract unit with deficiencies is occupied, the BHA must withhold or abate housing assistance payments and remove units from or terminate the HAP contract as described in this section.

In the case of a project that is undergoing development activity after HAP contract execution, the remedies of 24 CFR 983.208(d) do not apply to units designated as unavailable for occupancy during the period of development activity in accordance with the rider. However, in the case of any contract unit with deficiencies that is occupied, the BHA must withhold or abate housing assistance payments and remove units from or terminate the HAP contract as described in this section.

FAMILY OBLIGATION [24 CFR 983.208(C)]

The family may be held responsible for a breach of housing quality standards caused by any of the following:

- Tenant-paid utilities not in service;
- Failure to provide or maintain appliances owned by the family; and
- Damage to the dwelling unit or premises caused by a household member or guest beyond ordinary wear and tear.

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

If the BHA has waived the owner's responsibility to remedy the violation, the following applies:

- If the housing quality standards breach caused by the family is life-threatening, the family must take all steps permissible under the lease and state and local law to ensure the deficiency is corrected within 24 hours of notification.
- For other family-caused deficiencies, the family must take all steps permissible under the lease and state and local law to ensure the deficiency is corrected within 30 calendar days of notification (or any BHA -approved extension).

If the family has caused a breach of the HQS, the BHA must take prompt and vigorous action to enforce the family obligations. The BHA may terminate assistance for the family in accordance with 24 CFR 982.552.

PART V: SELECTION OF PBV PROGRAM PARTICIPANTS

18-V.A. OVERVIEW

Many of the provisions of the tenant-based voucher regulations [24 CFR 982] also apply to the PBV program. This includes requirements related to determining eligibility and selecting applicants from the waiting list. Even with these similarities, there are requirements that are unique to the PBV program. This part describes the requirements and policies related to eligibility and admission to the PBV program.

18-V.B. PROHIBITED RESCREENING OF EXISTING TENANTS UPON CONVERSION [Notice PIH 2019-23]

Current households cannot be excluded from occupancy at the covered project based on any rescreening, income eligibility, or income targeting provisions. Consequently, current households will be grandfathered for application of any eligibility criteria to conditions that occurred prior to conversion but will be subject to any ongoing eligibility requirements for actions that occur after conversion. Post-conversion, the tenure of all residents of the covered project is protected pursuant to PBV requirements regarding continued occupancy unless explicitly modified by Notice PIH 2019-23 (e.g., rent phase-in provisions). For example, a unit with a household that was over-income at time of conversion would continue to be treated as an assisted unit. Thus, 24 CFR 982.201, concerning eligibility and targeting, will not apply for current households. Once that remaining household moves out, the unit must be leased to an eligible family. Existing residents at the time of conversion may not be rescreened for citizenship status or have their social security numbers reverified.

Further, so as to facilitate the right to return to the assisted property, this provision must apply to current public housing residents of the converting project that will reside in legacy non-RAD PBV units placed in a project that contain RAD PBV units. Such families and such contract units will otherwise be subject to all requirements of the applicable program, specifically 24 CFR 983 for legacy non-RAD PBV. Any legacy non-RAD PBV units located in the same project are also subject to the right to return.

For the RAD PBV program, *in-place family* means a family who lived in a pre-conversion property at the time assistance was converted from public housing to PBV under RAD.

18-V.C. ELIGIBILITY FOR PBV ASSISTANCE [24 CFR 983.251(a) and (b)]

Applicants for PBV assistance must meet the same eligibility requirements as applicants for the tenant-based voucher program using information received and verified by the BHA within a period of 60 days before commencement of PBV assistance. For all families, the BHA must determine if the total tenant payment for the family is less than the gross rent, such that the unit will be eligible for a monthly HAP. Applicants must qualify as a family as defined by HUD and the BHA, 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 BHA's collection and use of family information regarding income, expenses, and family composition [24 CFR 5.230]. The BHA may also not approve a tenancy if the owner (including a principal or other interested party) of the unit is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless needed as a reasonable accommodation. An applicant family must also meet HUD requirements related to current or past criminal activity.

The BHA will determine an applicant family's eligibility for the RAD PBV program in accordance with the policies in Chapter 3.

18-V.D. ORGANIZATION OF THE WAITING LIST [24 CFR 983.251(c); Notice PIH 2019-23]

The BHA will establish and manage separate waiting lists for individual projects or buildings that are receiving RAD PBV assistance. The BHA currently has waiting lists for the following RAD PBV projects:

- 90 Longwood RAD

- 61 Park St RAD
- Village at Brookline
- Beacon Park

For any applicants on the public housing waiting list that are likely to be ineligible for admission to a covered project converting to PBV because the household's TTP is likely to exceed the RAD gross rent, the BHA will consider transferring such household, consistent with program requirements for administration of waiting lists, to the BHA's remaining public housing waiting lists or to another voucher waiting list, in addition to transferring such household to the waiting list for the covered project.

To the extent any wait list relies on the date and time of application, the applicants shall have priority on the wait lists to which their application was transferred in accordance with the date and time of their application to the original waiting list.

The BHA 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 BHA will provide applicants full information about each development, including an estimate of the wait time, location, occupancy, number and size of accessible units, and amenities like day care, security, transportation, and training programs at each development with a site-based waiting list. The system for selection will be consistent with all applicable civil rights and fair housing laws and regulations and may not be in conflict with any imposed or pending court order, settlement agreement, or complaint brought by HUD.

The BHA will give priority to participants moving under a VAWA emergency transfer from one PBV development to another in accordance with Section 18-VI.E.

18-V.E. SELECTION FROM THE WAITING LIST [24 CFR 983.251(c)]

After conversion to RAD PBV, applicants who will occupy units with RAD PBV assistance must be selected from the waiting list. The BHA may establish selection criteria or preferences for occupancy of particular PBV units.

INCOME TARGETING [24 CFR 983.251(C)(9); NOTICE PIH 2019-23]

At least 75 percent of the families admitted to the BHA's tenant-based and project-based voucher programs during the BHA fiscal year from the waiting list must be extremely-low income families. The income targeting requirement applies to the total of admissions to both programs.

Families in place at the time of the conversion are exempt from income targeting requirements. New admissions follow standard PBV requirements. Any legacy non-RAD PBV units located in the same project are also subject to these requirements.

UNITS WITH ACCESSIBILITY FEATURES [24 CFR 983.251(C)(9)]

Families who require particular accessibility features for persons with disabilities must be selected first to occupy PBV units with such accessibility features. The BHA must have some mechanism for referring to accessible PBV units a family that includes a person with a mobility or sensory impairment.

PREFERENCES [24 CFR 983.251(D); FR NOTICE 11/24/08; NOTICE PIH 2019-23]

The BHA Preferences for the PBV waiting lists maintained by the BHA are outlined below:

1. Families currently in PBV units, for less than one year, and qualify for an Emergency, Domestic Violence & Natural Disaster transfer and families currently in Public Housing units and qualify for an Emergency, Domestic Violence & Natural Disaster transfer; or as needed to relocate Public Housing families in connection with the redevelopment of a new public housing development and/or the conversion of a public housing development to project-based assistance under the Rental Assistance Demonstration (RAD) program; or the dislocation of Public Housing families because of BHA redevelopment activities.
2. Emergency, Domestic Violence & Natural Disaster for applicants with a residency preference

3. Local Resident applicant

18-V.F. OFFER OF PBV ASSISTANCE

REFUSAL OF OFFER [24 CFR 983.251(E)]

If a family refuses the BHA's offer of PBV assistance or the owner rejects a family for admission to the owner's PBV units, the family's position on the BHA waiting list for tenant-based assistance is not affected regardless of the type of PBV waiting list used by the BHA. The impact (of a family's rejection of the offer or the owner's rejection of the family) on a family's position on the PBV waiting list will be determined as follows:

- If a central PBV waiting list is used, the BHA's administrative plan must address the number of offers a family may reject without good cause before the family is removed from the PBV waiting list and whether the owner's rejection will impact the family's place on the PBV waiting list.
- If a project-specific PBV waiting list is used, the family's name is removed from the project's waiting list connected to the family's rejection of the offer without good cause or the owner's rejection of the family. The family's position on any other project-specific PBV waiting list is not affected.
- The BHA must define *good cause* in its administrative plan. The BHA's definition of *good cause* must include, at minimum, that:
  - The family determines the unit is not accessible to a household member with a disability or otherwise does not meet the member's disability-related needs;
  - The unit has housing quality standards deficiencies;
  - The family is unable to accept the offer due to circumstances beyond the family's control (such as hospitalization, temporary economic hardship, or natural disaster); and
  - The family determines the unit presents a health or safety risk to a household member who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking.

The BHA will define *good cause* for rejection of a unit offer as any of the factors listed above.

The BHA 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
  - However, the BHA is not required to open a closed waiting list to place the family on that waiting list.

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 BHA's selection policy

Removing the applicant from the tenant-based voucher waiting list

ACCEPTANCE OF OFFER [24 CFR 983.252(A) AND (B)]

Family Briefing
When a family accepts an offer for PBV assistance, the BHA must give the family an oral briefing. The briefing must include information on how the program works, the responsibilities of the family and owner, and the family's right to move.

In addition to the oral briefing, the BHA must provide a briefing packet that contains the following information:

How the BHA determines the total tenant payment for a family;

The family obligations under the program;

Information on federal, state, and local equal opportunity laws, the contact information for the Section 504 coordinator, a copy of the housing discrimination complaint form, and information on how to request a reasonable accommodation or modification under Section 504, the Fair Housing Act, and the Americans with Disabilities Act;

BHA subsidy standards, including when the BHA will consider granting exceptions to the standards, and when exceptions are required as a reasonable accommodation for a person with disabilities under Section 504, the Fair Housing Act, or the Americans with Disabilities Act; and

The family's right to move.

The BHA and family must sign the statement of family responsibility.

Persons with Disabilities
The BHA must take appropriate steps to ensure effective communication, in accordance with 24 CFR 8.6 and 28 CFR part 35, subpart E, and must provide information on the reasonable accommodation process, 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 BHA 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 *[24 CFR 983.252(d)]*
The BHA must take reasonable steps to ensure meaningful access by persons with limited English proficiency in accordance with Title VI of the Civil Rights Act of 1964, HUD's implementing regulation at 24 CFR Part 1, Executive Order 13166 (see Chapter 2), and HUD's Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons (72 FR 2732) or successor authority.

18-V.G. LEASING OF CONTRACT UNITS [24 CFR 983.252]

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)]. The owner must provide a copy of the rejection notice to the BHA. During the term of the HAP contract, the owner must lease contract units to eligible families that are selected from the waiting list for the PBV program. The contract unit leased to the family must be the appropriate size unit for the size of the family, based on the BHA's subsidy standards.

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 BHA from the waiting list. The contract unit leased to the family must be the appropriate size unit for the size of the family, based on the BHA's subsidy standards.

FILLING VACANCIES [24 CFR 983.254(A)]

The owner must notify the BHA in writing via email within five business days of learning about any vacancy or expected vacancy.

The BHA will make every reasonable effort to refer families determined eligible to the owner for a suitability determination within 30 calendar days of receiving such notice from the owner. If the owner rejects the family after conducting a suitability screening, the owner must provide a copy of the rejection notice to the BHA. The owner may not offer a unit to a family until the BHA determines that the family is eligible for the program and has given the owner written confirmation.

18-V.H. TENANT SCREENING [24 CFR 983.255]

BHA OPTION

The BHA is not responsible or liable to the owner or any other person for the family's behavior or suitability for tenancy. However, the BHA may opt to screen applicants for family behavior or suitability for tenancy and may deny applicants based on such screening.

The BHA will not conduct screening to determine a PBV applicant family's suitability for tenancy.

The BHA must provide the owner with an applicant family's current and prior address (as shown in BHA records) and the name and address (if known by the BHA) of the family's current landlord and any prior landlords.

In addition, the BHA may offer the owner other information the BHA 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 BHA must provide applicant families a description of the BHA policy on providing information to owners, and the BHA must give the same types of information to all owners.

The protections for victims of domestic violence, dating violence, sexual assault, stalking, or human trafficking in 24 CFR part 5, subpart L, apply to tenant screening. The BHA may not disclose to the owner any confidential information provided in response to a request for documentation of domestic violence, dating violence, sexual assault, stalking, or human trafficking except at the written request or with the written consent of the individual providing the documentation [24 CFR 5.2007(c)].

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

OWNER RESPONSIBILITY

The owner is responsible for screening and selection of the family to occupy the owner's unit. When screening families the owner may consider a family's background with respect to the following factors:

- Payment of rent and utility bills
- Caring for a unit and premises
- Respecting the rights of other residents to the peaceful enjoyment of their housing
- Drug-related criminal activity or other criminal activity that is a threat to the health, safety, or property of others
- Compliance with other essential conditions of tenancy

PART VI: OCCUPANCY

18-VI.A. OVERVIEW

After an applicant has been selected from the waiting list, determined eligible by the BHA, referred to an owner, and determined suitable by the owner, the family will sign the lease and occupancy of the unit will begin.

18-VI.B. LEASE [24 CFR 983.256]

The tenant must have legal capacity to enter into a lease under state and local law. *Legal capacity* means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner.

The tenant and the owner must enter into a written lease agreement that is signed by both parties. The tenancy addendum must include, word-for-word, all provisions required by HUD.

LEASE REQUIREMENTS [24 CFR 983.256(C); NOTICE PIH 2019-23; NOTICE PIH 2025-03, SUPPLEMENTAL NOTICE 4C]

The lease for a PBV unit must specify all of the following information:

- The names of the owner and the tenant;
- The unit rented (address, apartment number, if any, and any other information needed to identify the leased contract unit);
- The term of the lease (initial term and any provision for renewal);
- The amount of the tenant rent to owner, which is subject to change during the term of the lease in accordance with HUD requirements;
- A specification of the services, maintenance, equipment, and utilities that will be provided by the owner;
- The amount of any charges for food, furniture, or supportive services; and
- For any family admitted following conversion, the lease must specify what will happen if the family elects to remain in its unit after increasing its income such that it requires zero HAP. Specifically, the lease must make clear how the tenant rent will be calculated, and it must address the transition to a new lease. The BHA 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.

The lease terms and provisions, including all addenda and referenced documents such as House Rules, must:

- Be reasonable, use plain language, and must not contain provisions that conflict with resident rights described in Notice PIH 2025-03 or requirements of the PBV program.
- Be available in multiple languages as needed and written in a manner accessible to people with disabilities.
- For any residences that qualify as "target housing" under 42 U.S.C. 4851b, comply with the Lead Disclosure Rule, as codified in 24 CFR part 35, subpart A.

The lease must not:

- Require a new security deposit for residents in-place at the time of conversion,
- Prohibit residents' pets in-place at the time of conversion.
- Be onerous or difficult for residents to understand and should not impose overly restrictive rules about what residents may or may not do in their homes.

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 BHA (the names of family members and any BHA -approved live-in aide)

All provisions in the HUD-required tenancy addendum must be included in the lease. The terms of the tenancy addendum prevail over other provisions of the lease.

INITIAL TERM AND LEASE RENEWAL [24 CFR 983.256(F); *RAD PBV QUICK REFERENCE GUIDE* 6/20]

Leases for residents who will remain in place (i.e., who will not be relocated solely as a result of conversion) must have an effective date that coincides with—and must be signed on or before—the effective date of the RAD PBV HAP contract.

The initial lease term must be for at least one year. The lease must provide for automatic renewal after the initial term of the lease in either successive definitive terms (e.g., month-to-month or year-to-year) or an automatic indefinite extension of the lease term. For automatic indefinite extension of the lease term, the lease terminates if any of the following occur:

- The owner terminates the lease for good cause
- The tenant terminates the lease
- The owner and tenant agree to terminate the lease
- The BHA terminates the HAP contract
- The BHA 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 BHA a copy of all changes.

The owner must notify the BHA 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 BHA and in accordance with the terms of the lease relating to its amendment. The BHA must redetermine reasonable rent, in accordance with program requirements, based on any change in the allocation of the responsibility for utilities between the owner and the tenant. The redetermined reasonable rent will be used in calculation of the rent to owner from the effective date of the change.

OWNER TERMINATION OF TENANCY [24 CFR 983.257; NOTICE PIH 2019-23]

With two exceptions, the owner of a PBV unit may terminate tenancy for the same reasons an owner may in the tenant-based voucher program (see Section 12-III.B. and 24 CFR 982.310). In the PBV program, terminating tenancy for "good cause" does not include doing so for a business or economic reason, or a desire to use the unit for personal or family use or other non-residential purpose. The regulations at 24 CFR 5.858 through 5.861 on eviction for drug and alcohol abuse and 24 CFR part 5, subpart L (Protection for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking) apply to the PBV program.

Projects converting from public housing to PBV under RAD have additional procedural rights that do not apply to the standard PBV program. These procedural rights must be included in the owner's lease as well as the BHA's administrative plan. In addition to the regulations at 24 CFR 983.257 related to project owner termination of tenancy and eviction (which MTW agencies may not alter) the termination procedure for RAD conversions to PBV will require that PHAs provide adequate written notice of termination of the lease, which may not be less than:

- A reasonable period of time, but not to exceed 30 days:
  - If the health or safety of other tenants, BHA employees, or persons residing in the immediate vicinity of the premises is threatened; or
  - In the event of any drug-related or violent criminal activity or any felony conviction
- Not less than 30 days in the case of nonpayment of rent
- Not less than 30 days in any other case, except that if a state or local law provides for a shorter period of time, such shorter period will apply

These provisions apply to legacy non-RAD PBV units located in the project as well.

Tenant Absence from the Unit [24 CFR 983.256(g) and 982.312(a)]

The lease may specify a maximum period of family absence from the unit that may be shorter than the maximum period permitted by BHA 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. BHA termination of assistance actions due to family absence from the unit are subject to 24 CFR 982.312, except that the unit is not terminated from the HAP contract if the family is absent for longer than the maximum period permitted.

CONTINUATION OF HOUSING ASSISTANCE PAYMENTS [24 CFR 983.258; NOTICE PIH 2019-23; NOTICE PIH 2023-19; RAD SUPPLEMENTAL NOTICE 4B; *RAD PBV QUICK REFERENCE GUIDE* 6/20]

Pre-Conversion Residents

The unit for a family with a TTP that equals or exceeds the gross rent (which is defined as the contract rent plus any utility allowance for the unit) must be placed on the PBV HAP contract and the family must be admitted to the PBV program. In this case, and until such time as the family's TTP falls below the gross rent, the family will pay the owner the alternate rent which is defined as the lesser of:

- The family's TTP minus the utility allowance (subject to any required phase-in); or
- The Zero HAP Rent Cap, which is the lower of:
  - 110 percent fo the applicable FMR minus the utility allowance; or
  - In the event the units are subject to more restrictive rent setting requirement under the LIHTC or HOME programs (or other programs approved by HUD on a project-specific basis, the rent to owner set to comply with such requirements.

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 which case normal PBV rent requirements will apply to the family. 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 NSPIRE standards, apply as long as the unit is under HAP contract or added back to the HAP Contract. Any legacy non-RAD PBV units located in the same project are also subject to these requirements.

After a family has paid the Zero HAP Rent Cap for a period of 180 days, the BHA must remove the unit from the HAP Contract and the family's participating in the PBV program ends. If the Covered Project is fully assisted and the family subsequently leaves the property, the BHA must reinstate the unit back onto the HAP contract and admit an eligible family. If the Covered Project is partially assisted and the family subsequently leaves the property, the unit must be reinstated back onto the HAP contract unless the BHA previously substituted a different unit on the HAP contract in accordance with 24 CFR § 983.207 or, where "floating units" have been permitted.

Additionally, if the family continues to reside in the project after the family's unit was removed from the HAP contract, the family may request to return to the PBV program if the family's income subsequently decreases to the extent that the family's TTP is less than the Zero-HAP Rent Cap, and the family is otherwise eligible for PBV assistance. The BHA must, at the earliest opportunity, reinstate the family's unit back onto the HAP contract to provide rental assistance to the family. If the project was partially assisted and the BHA previously substituted a different unit on the HAP contract, the BHA must substitute the family's unit for a vacant unit on the HAP contract if there is a vacant unit at the time of the request, or by doing so as soon as a unit on the HAP contract becomes vacant if there are no vacant units on the HAP contract at the time of the family request.

New Admission Families

The BHA will not request waivers from HUD to apply the alternative requirements applicable to pre-conversion residents to new admission families.

If a participating family who was admitted after the RAD conversion receive zero assistance and subsequently experiences a change in circumstances that would result in a HAP payment to the owner, the family must notify the BHA of the change and request an interim reexamination before the expiration of the 180-day period.

SECURITY DEPOSITS [24 CFR 983.259; *RAD PBV QUICK REFERENCE GUIDE* 6/20]

Owners are permitted to recognize security deposit amounts that have been previously provided by tenants who are in-place at the time of the RAD conversion. If a tenant residing in a converting project has not previously provided a security deposit, then the owner may collect a security deposit at the time of initial lease execution. Otherwise, the security deposit requirements for standard PBV apply.

The owner may collect a security deposit from the tenant. The BHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.

The BHA will allow the owner to collect a security deposit amount the owner determines is appropriate.

When the tenant moves out of a contract unit, the owner, subject to state and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid tenant rent, damages to the unit, or other amounts owed by the tenant under the lease.

The owner must give the tenant a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used to reimburse the owner, the owner must promptly refund the full amount of the balance to the tenant.

If the security deposit does not cover the amount owed by the tenant under the lease, the owner may seek to collect the balance from the tenant. The BHA has no liability or responsibility for payment of any amount owed by the family to the owner.

18-VI.C. PUBLIC HOUSING FSS AND ROSS PARTICIPANTS [Notice PIH 2019-23 and Notice PIH 2025-03, Supplemental Notice 4C]

Current public housing FSS participants must be allowed to continue to participate in the BHA's FSS program for the duration of the grant's period of performance, and PHAs will be allowed to use any PH FSS funds granted previously or pursuant to the current fiscal year (FY) PH FSS notice of funding opportunity (NOFO) to serve those FSS participants who live in units converted to RAD and who will as a result be moving to the HCV FSS program.

A BHA must convert the PH FSS program participants at the covered project to their HCV FSS program. No special provisions are required to continue serving FSS participants that live in public housing units converting to PBV through RAD.

Residents who were converted from the PH FSS program to the HCV FSS program through RAD may not be terminated from the HCV FSS program or have HCV assistance withheld due to the participant's failure to comply with the contract of participation. Consequently, 24 CFR 984.303(b)(5)(iii) does not apply to FSS participants in converted properties.

At the completion of the FSS grant, PHAs should follow the normal closeout procedures outlined in the grant agreement and any applicable 24 CFR part 200 requirements. If the PHA continues to run an FSS program that serves public housing and/or HCV (including PBV) participants, the PHA will continue to be eligible (subject to NOFO requirements) to apply for FSS funding.

Current Resident Opportunities and Self-Sufficiency–Service Coordinators (ROSS–SC) program grantees will be able to finish out their current ROSS–SC grants once their housing is converted under RAD and the PHAs or the new Project Owners may apply for their ROSS-SC grant to be renewed, subject to requirements of the ROSS-SC NOFO. In addition, projects where the project previously received a ROSS-SC grant prior to conversion but was ineligible to renew the grant after conversion are eligible to apply for a ROSS-SC grant, subject to requirements of the ROSS-SC NOFO.

At the completion of the ROSS-SC grant, PHAs should follow the normal closeout procedures outlined in the grant agreement. To facilitate the uniform treatment of residents and units at a project previously served by a ROSS-SC grant, any legacy non-RAD PBV units in a project that replace former public housing at the time of conversion are also subject to the terms of this provision.

18-VI.D. RESIDENT PARTICIPATION AND FUNDING [Notice PIH 2019-23]

Residents of covered projects converting assistance to PBVs will have the right to establish and operate a resident organization for the purpose of addressing issues related to their living environment and be eligible for resident participation funding.

18-VI.E. MOVES

OVERCROWDED, UNDER-OCCUPIED, AND ACCESSIBLE UNITS [24 CFR 983.260; NOTICE PIH 2019-23]

All in-place tenants at the time of conversion are eligible to remain in the project. Over-housed families should be moved into appropriately sized units if such units are available in the new or rehabbed project. If appropriately sized units are not available, the existing tenants may continue to be over-housed until an appropriately sized unit becomes available or until the tenant leaves the project. Once the unit turns over, it must be leased to an appropriately sized family. Any legacy non-RAD PBV units located in the same project are also subject to these requirements.

Following conversion, the standard PBV regulations apply. If the BHA determines that a family is occupying a wrong-size unit, based on the BHA'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 BHA must promptly notify the family and the owner of this determination, and within 60 days of the determination, the BHA must offer the family the opportunity to receive continued housing assistance in another unit.

The BHA 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 60 days of the BHA's determination. The BHA will offer the family the following types of continued assistance in the following order, based on the availability of assistance:

- PBV assistance in an appropriately sized unit in the same building or project
- PBV assistance an appropriately sized unit in in another project
- Tenant-based voucher assistance

If no continued housing assistance is available, the BHA must remove the wrong-sized or accessible unit from the HAP contract to make voucher assistance available to issue the family a tenant-based voucher.

If the BHA offers the family a tenant-based voucher, the BHA must terminate the housing assistance payments for a wrong-size or accessible unit at the earlier of the expiration of the term of the family's voucher, including any extension granted by the BHA, or the date upon which the family vacates the unit. If the family does not move out of the wrong-size unit or accessible unit by the expiration of the term of the family's voucher, the BHA must remove the unit from the HAP contract.

If the BHA offers the family another form of assistance that is not a tenant-based voucher, the BHA must terminate the housing assistance payments for the wrong-sized or accessible unit and remove the unit from the HAP contract when:

- The BHA has offered PBV assistance or other project-based assistance in an appropriately sized unit, and the family does not accept the offer, does not move out of the PBV unit within a reasonable time as determined by the BHA (not to exceed 90 days); or
- The BHA has offered other comparable tenant-based rental assistance, the family either accepts or does not accept the offer but does not move out of the PBV unit within a reasonable time as determined by the BHA (not to exceed 90 days).
- In either of the above situations, the family may request, and the BHA may grant, one extension not to exceed up to an additional 90 days to accommodate the family's efforts to locate affordable, safe, and geographically proximate replacement housing.
- The BHA must terminate the housing assistance payments for the wrong-sized or accessible unit and remove the unit from the HAP contract when the BHA has offered PBV assistance or other project-based assistance in an appropriately sized unit, and the family accepts the offer but does not move out of the PBV unit within a reasonable time as determined by the BHA (not to exceed 90 days). No extensions may be granted in this case. The BHA may reinstate a unit removed unit to the HAP contract after the family vacates the property, in accordance with 24 CFR 983.207(b).

When the BHA offers a family another form of assistance that is not a tenant-based voucher, the family will be given 90 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 90-day time frame, the BHA will terminate the housing assistance payments at the expiration of this 90-day period.

Except in the case of an offer by the BHA of PBV assistance or other project-based housing assistance in an appropriate size unit, the family accepts the offer but does not move out, the BHA may make exceptions to this 90-day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency of a family member, or to accommodate the family's efforts to locate affordable, safe, and geographically proximate replacement housing. The family must make such a request in writing prior to the end of the 90-day period. The BHA will only grant one extension, which will not exceed an additional 90 days.

FAMILY RIGHT TO MOVE [24 CFR 983.261]

The family may terminate the lease at any time after one year of PBV assistance. The family must give advance written notice to the owner in accordance with the lease and provide a copy of such notice to the BHA. The right to request a move with tenant-based assistance does not expire, and the family may request a move at any time after the one-year period has expired.

CHOICE MOBILITY [NOTICE PIH 2019-23; PRRAC CHOICE MOBILITY IMPLEMENTATION GUIDANCE, 8/20]

Family's Right to Choice Mobility

Under RAD PBV, the choice mobility option provides families with the opportunity to move with continued assistance any time after 12 months of occupancy. All residents in converted properties should be aware of their housing mobility rights and of their options in a range of neighborhoods.

To ensure that residents are fully aware of and understand their rights under choice mobility, the BHA will inform families of their rights under the choice mobility option and the benefits to moving to lower poverty areas and provide a summary of the steps necessary to exercise this option, at the time the family signs the lease for the RAD PBV unit and during their annual recertification.

Information on choice mobility will be made be accessible to persons with disabilities, ensuring any information, electronic or otherwise, is accessible for persons with vision, hearing, and other disabilities. This information will also be made available in accordance with Limited English Proficiency (LEP) requirements, including document translation and user of interpretation services. See Chapter 2 for a more thorough discussion of accessibility and LEP requirements.

Moving with Continued Assistance under Choice Mobility

If the family wishes to move with continued tenant-based assistance under choice mobility, the family must contact the BHA to request the rental assistance prior to providing notice to terminate the lease. If the family terminates the lease in accordance with lease requirements, the BHA 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. The BHA must specify in the administrative plan whether it will offer families assistance under the voucher program or other comparable tenant-based rental assistance. If voucher assistance is offered to the family and the search term expires, the BHA must issue the voucher to the next eligible family before issuing another voucher to the family that requested to move. If a voucher or other comparable tenant-based assistance is not immediately available at the time of the family's request to the BHA, the BHA must give the family priority to receive the next available opportunity for continued tenant-based assistance. The BHA must describe in its administrative plan its policies and procedures for how the family must contact the BHA and how the BHA documents families waiting for continued tenant-based rental assistance.

Families are eligible to move with continued assistance under choice mobility after 12 months of occupancy. If the family terminates the assisted lease before one year of PBV assistance, the family relinquishes the opportunity for continued tenant-based assistance.

Except for families seeking protection under VAWA, prior to providing notice to the owner to terminate the lease, any eligible family may submit a written request to the BHA for a choice mobility voucher at any time after completing the 12-month occupancy requirement. The BHA will process the request within 10 business days of receiving the family's request. The BHA will verify that the family has met the 12-month occupancy requirement. No additional screening will be performed.

If the request is approved by the BHA, the family will receive the next available tenant-based voucher.

If a tenant-based voucher is not immediately available, the BHA 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 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. A RAD resident does not have priority for tenant-based assistance over a non-RAD PBV resident and vice versa. Once a family is placed on the list, the BHA will send the family an acknowledgement of receipt of their request and successful placement on the list. If a family requests a tenant-based voucher and then is unable or unwilling to move once the BHA offers the family a tenant-based voucher, the family's name will be removed from the list. The family may resubmit a new request to move at any time.

The BHA will not subject RAD PBV families applying for choice mobility vouchers to any additional rescreening requirements in order to receive a tenant-based voucher. While the family will not be required

to attend a standard HCV briefing in order to receive a voucher, the BHA will promptly schedule a meeting with each family at the time of voucher issuance.

Families exercising choice mobility will not be required to vacate their units before a lease has been entered into using their tenant-based voucher so long as the resident has not yet provided notice to vacate to the owner. At the time the BHA issues a choice mobility voucher, the BHA will notify the family of their right to remain in their unit if they are unable find a rental unit using the tenant-based voucher. If family's search term (and any extensions) expires, the BHA must issue the voucher to the next eligible family. The family's name will be removed from the priority list, and the family will be able to resubmit a request at a later time.

Turnover Cap

If as a result of RAD, the total number of PBV units (including RAD PBV units) administered by the BHA exceeds 20 percent of the BHA's authorized units under its HCV ACC with HUD, the BHA may establish a turnover cap. The BHA is not required to provide more than three-quarters of its turnover vouchers in any single year to the residents of covered projects. If the BHA chooses to establish a turnover cap and the cap is implemented, the BHA must create and maintain a waiting list in the order requests from eligible households were received.

As a result of RAD, the total number of PBV units (including RAD PBV units) administered by the BHA exceeds 20 percent of the BHA's authorized units under its HCV ACC with HUD. Therefore, the BHA will establish a choice mobility cap. The BHA will not provide more than three-quarters of its turnover vouchers in a single year to residents of covered projects.

Families who requested a choice mobility voucher and are denied due to the cap will be given priority the following year when choice mobility vouchers are again issued since the choice mobility list will be organized by the date and time of the family's request.

EMERGENCY TRANSFERS UNDER VAWA [24 CFR 983.261(F) AND (G)]

Except where special consideration is needed for the project-based voucher program, the BHA 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).

When the victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking has lived in the unit for less than one year, the BHA will provide several options for continued assistance.

The BHA will first try to transfer the participant to another PBV unit in the same development or transfer to a different development where the BHA has PBV units. The BHA will expedite the administrative processes in this case in an effort to conduct the transfer as quickly as possible. If assistance is transferred to another development, the BHA will give priority to the participant on the other development's waiting list.

If no units are available for an internal transfer to a PBV development or if there is reasonable cause to believe that such a transfer would put the victim in jeopardy, the participant may receive continued assistance through an external transfer to either tenant-based rental assistance (HCV) or assistance in the BHA's public housing program. Such a decision will be made by the BHA based on the availability of tenant-based vouchers and/or vacancies in public housing units. Such families must be selected from the waiting list for the applicable program. The BHA has adopted a waiting list preference for victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking in both its HCV and public housing programs in order to expedite this process. See Section 4-III.C. of this administrative plan.

If a victim wishes to move after a year of occupancy in the unit, but no tenant-based vouchers are available, the BHA will offer the participant an internal transfer to another PBV unit in the same development or a transfer to a different development where the BHA has PBV units. The BHA will expedite the administrative processes in this case in an effort to conduct the transfer as quickly as possible.

If no units are available for an internal transfer, or if there is reasonable cause to believe that such a transfer would put the victim in jeopardy, the participant may request an external emergency transfer to the BHA's public housing program for which they are required to apply. The BHA has adopted a waiting list preference for victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking as part of the public housing ACOP in order to expedite this process.

18-VI.F. REEXAMINATIONS [*RAD PBV Quick Reference Guide* 6/20]

A family living in a unit converted from public housing to RAD PBV may retain its certification date. Unless a family's annual reexamination is due at the same time as the effective date of the RAD PBV HAP contract, the BHA does not need to recertify tenants at the point of conversion. For each family residing in a unit undergoing conversion of assistance under RAD, the administering PHA will have to submit a form HUD-50058 reflecting the family's admission to the voucher program. The effective date of the new admission will be the same as the effective date of the RAD PBV HAP contract. The form should include the same information previously found on the public housing form 50058, including the next annual reexamination date.

18-VI.G. RESIDENTS' PROCEDURAL RIGHTS [Notice PIH 2019-23]

HUD is incorporating additional termination notification requirements for public housing projects that convert assistance under RAD to PBV and to legacy non-RAD PBV units located in the same project beyond those for the standard PBV program. In addition to the regulations at 24 CFR 983.257 related to owner termination of tenancy and eviction (which MTW agencies may not alter), the termination procedure for RAD conversions to PBV requires that PHAs provide adequate written notice of termination of the lease, which is:

- A reasonable period of time, but not to exceed 30 days:
    - If the health or safety of other tenants, project owner employees, or persons residing in the immediate vicinity of the premises is threatened; or
    - In the event of any drug-related or violent criminal activity or any felony conviction.
    - Not less than 30 days in the case of nonpayment of rent
    - Not less than 30 days in any other case, except that if a state or local law provides for a shorter period of time, such shorter period will apply

18-VI.H. INFORMAL REVIEWS AND HEARINGS [Notice PIH 2019-23]

In addition to reasons for an informal hearing listed at 24 CFR 982.555(a)(1)(i)–(v) (See 16-III.C. Informal Hearings for Participants), an opportunity for an informal hearing must be given to residents for any dispute that a resident may have with respect to an owner action in accordance with the individual's lease or the contract administrator in accordance with RAD PBV requirements that adversely affect the resident's rights, obligations, welfare, or status.

For any hearing required under 24 CFR 982.555(a)(1)(i)–(v), the contract administrator will perform the hearing in accordance with Chapter 16 Part III: Informal Reviews and Hearings, as is the current standard in the program.

For any additional hearings required under RAD, the BHA (as owner) will perform the hearing.

An informal hearing will not be required for class grievances or for disputes between residents not involving the BHA (as owner) or contract administrator. This hearing requirement does not apply to and is not intended as a forum for initiating or negotiating policy changes between a group or groups of residents and the BHA (as owner) or contract administrator.

The owner must give residents notice of their ability to request an informal hearing as outlined in 24 CFR 982.555(c)(1) for informal hearings that will address circumstances that fall outside of the scope of 24 CFR 982.555(a)(1)(i)–(v). (See Chapter 16)

The owner must provide an opportunity for an informal hearing before an eviction.

PART VII: DETERMINING CONTRACT RENT

18-VII.A. INITIAL CONTRACT RENTS [Notice PIH 2019-23]

RAD conversions are intended to be cost-neutral, and therefore, should not exceed current public housing funding as adjusted for unit size. Since public housing units do not currently have contract rents, HUD provides an estimate of current contract rents for each BHA's public housing units based on current funding as adjusted by bedroom size. Current funding includes operating subsidy, tenant rents, capital funds, replacement housing factor funds (RHF), and demolition disposition transitional funding (DDTF). The funding may limit the amount of initial rent for a property. A detailed explanation of the determination of current funding may be found in Attachment 1C of Notice PIH 2019-23. Once the current funding amount is calculated, the amount is adjusted by bedroom size to determine the current funding rent. HUD uses the same bedroom adjustment factors as in the metropolitan FMR schedules where the project is located. For RAD/Section 18 blends, HUD produces a single, blended rent schedule for all units.

BHA s may adjust subsidy (and contract rents) across multiple projects as long as the BHA does not exceed the aggregate subsidy for all of the projects the BHA has submitted for conversion under RAD.

Notwithstanding HUD's calculation of the initial contract rent based on the project's subsidy under the public housing program and any modifications made to the initial contact rent, the initial rents are set at the lower of:

- An amount determined by the BHA in accordance with the administrative plan, not to exceed 110 percent of the fair market rent (FMR) (or amount of any applicable exception payment standard), or the alternate rent cap in a BHA's MTW agreement minus any utility allowance
- The reasonable rent
- The rent requested by the owner

18-VII.B. ADJUSTING CONTRACT RENTS [Notice PIH 2019-23; *RAD PBV Quick Reference Guide* 6/20; PHA Asset Repositioning "How to Apply OCAF for RAD PBV" Webinar]

RAD PBV contract rents are adjusted differently than contract rents in the standard PBV program. At each annual anniversary of the HAP contract, contract rents will be adjusted only by HUD's operating cost adjustment factor (OCAF) that is applied to the current contract rent, less the portion of the rent paid for debt service, subject to the availability of appropriations for each year of the contract term. As such, section 8(o)(13)(I) of the 1937 Act, and 24 CFR 983.301 and 983.302, concerning rent determinations, do not apply when adjusting rents. The rent to owner may at no time exceed the reasonable rent charged for comparable unassisted units in the private market, as determined by the contract administrator in accordance with 24 CFR 983.303.

Contract rents may not exceed the reasonable rent (as determined by the BHA that administers the contract or the independent entity, as applicable), with the exception that the contract rent for each unit may not be reduced below the initial contract rent under the initial HAP contract.

However, the rent to owner may fall below the initial contract rent in the following situations:

- To correct errors in calculations in accordance with HUD requirements
- If additional housing assistance has been combined with PBV assistance after the execution of the initial HAP contract and a rent decrease is required pursuant to 983.55 (prohibition of excess public assistance)
- If a decrease in rent to owner is required based on changes in the allocation of responsibility for utilities between the owner and the tenant

The contract rent adjustment will be the lesser of:

- The current contract rent increased by the operating cost adjustment factor (OCAF), which is published annually in the *Federal Register*; or
- The reasonable rent

The administering BHA (or independent entity, if the project is BHA-owned) is responsible for processing rent adjustments at each contract anniversary date in accordance with the prevailing OCAF. The BHA who administers the contract (directly or via an independent entity) must maintain records to demonstrate how OCAF amounts were determined and how rent adjustments were calculated. HUD approval of rent adjustments is not required.

Properties are eligible to receive prior years' OCAF adjustments for years in which the OCAF was not taken. The OCAF must be applied retroactively if it was missed. The PHA administering the contract (or the independent entity) must make sure that all OCAFs have been applied correctly since the RAD closing and calculate the current rents accordingly, including making sure that the RAD PBV contract rents do not exceed the PBV program caps.

In extraordinary circumstances, a project owner may request a waiver of the rental adjustment by OCAF and receive a rental adjustment by an alternative operating cost factor. The waiver request with documentation demonstrating the need for an alternative operating cost factor rental adjustment must be submission to the Office of Recapitalization in accordance with Supplemental Notice 4C.

The owner will request a contract rent adjustment from the BHA who administers the contract within 120 days, but no less than 60 days, prior to the HAP contract anniversary date by submitting a completed OCAF rent adjustment worksheet (Form HUD-9624). The independent entity will validate the data on the form and determine whether the rent exceeds the reasonable rent charged for comparable unassisted units in the private market, in accordance with 24 CFR 983.303. If rents would be unreasonable following application of the requested OCAF, then the rent will only be increased up to the reasonable rent. The independent entity will notify the PHA who administers the contract in writing of the results of its review of the rent adjustment request. The PHA who administers the contract will retain a copy of the worksheet and any other records necessary to demonstrate how the OCAF was used to make rent adjustments for audit purposes. The approved rent adjustment will go into effect via written notice from the PHA that administers the project to the owner. This notice will constitute an amendment to the rents specified on Exhibit A of the RAD PBV HAP contract. The new rents to owner will take effect on the date of the contract anniversary.

RENT DECREASE

Rents must not be reduced below the initial rent except to correct errors, for additional subsidy to the property, or to realign utility responsibilities.

18-VII.C. UTILITY ALLOWANCES [Notice PIH 2019-23; *RAD PBV Quick Reference Guide* 6/20]

When contract rent amounts are set initially, the amount does not include a utility allowance. In general, the utility allowances that are used on the initial HAP contract at closing are the public housing utility allowances that are in effect prior to conversion. The CHAP must be updated prior to conversion to reflect current public housing utility allowances. At its discretion, a PHA may use the FMRs and utility allowances in effect during the 30-day period immediately before the beginning date of the HAP contract.

After conversion, the BHA that administers the contract must maintain the utility allowance schedule. The BHA may either maintain a utility allowance schedule for tenant-paid utilities in accordance with standard PBV and HCV utility allowance regulations at 24 CFR 983.301(f)(2)(ii) and 24 CFR 982.517, respectively, or the BHA may instead apply site-specific utility allowances. HUD waived the requirement for the standard PBV program that the HCV utility allowance be used. If a site-specific utility allowance is used, the utility allowance is applicable to legacy non-RAD PBV units in the project and is calculated consistent with Notice H 2015-04.

Each family transitions to the new utility allowance at their first recertification following conversion.

The BHA will use the HCV utility allowance schedule for the RAD PBV developments.

18-VII.D. REASONABLE RENT [983.301(d) and 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 BHA, 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 [24 CFR 983.303(c)]

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 BHA 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. The reasonable rent determination must be based on the condition of the assisted unit at the time of the determination and not on anticipated future unit conditions.

Comparability Analysis *[24 CFR 983.303(d)]*

For each unit, the comparability analysis must use at least three comparable units in the private unassisted market. This may include units in the premises or project that is receiving project-based assistance. The analysis must show how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units, and must be retained by the BHA. The comparability analysis may be performed by BHA 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.

BHA-Owned Units *[24 CFR 983.303(f)]*

For BHA-owned units, the amount of the reasonable rent must be determined by an independent entity approved by HUD in accordance with PBV program requirements. The independent entity must provide a copy of the determination of reasonable rent for BHA-owned units to the BHA.

PART VIII: PAYMENTS TO OWNER

18-VIII.A. HOUSING ASSISTANCE PAYMENTS

During the term of the HAP contract, the BHA 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 NSPIRE 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 BHA agree on a later date.

Except for discretionary vacancy payments, the BHA 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 BHA 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]

PAYMENT AT MOVE-OUT MONTH [24 CFR 983.352(A)]

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 BHA determines that the vacancy is the owner's fault.

If the BHA determines that the owner is responsible for a vacancy and as a result is not entitled to the keep the housing assistance payment, the BHA will notify the owner of the amount of housing assistance payment that the owner must repay. The BHA will require the owner to repay the amount owed in accordance with the policies in Section 16-IV.B.

Vacancy Payments

The BHA does not make vacancy payments on units.

18-VIII.C. TENANT RENT TO OWNER [24 CFR 983.353; Notice PIH 2019-23]

The tenant rent is the portion of the rent to owner paid by the family. The amount of tenant rent is determined by the BHA in accordance with HUD requirements. Any changes in the amount of tenant rent will be effective on the date stated in the BHA 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 BHA 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 BHA. The owner must immediately return any excess payment to the tenant.

INITIAL CERTIFICATIONS [NOTICE PIH 2019-23**]**

For the initial certification, the BHA will use the family's public housing tenant rent (reflected on line 10f of the family's most recent 50058) at the date of conversion to calculate HAP and tenant rent for the PBV program. The BHA will use this amount until the effective date of the earlier of the family's first regular or interim recertification following the conversion. At that point, the BHA will use the family's TTP based on the recertification and the applicable utility allowance (HCV or RAD PBV site-based, as applicable) to determine PBV HAP and tenant rent. Any legacy non-RAD PBV units located in the same project are subject to the same requirements.

TENANT AND BHA 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 BHA.

Likewise, the BHA is responsible only for making the housing assistance payment to the owner in accordance with the HAP contract. The BHA is not responsible for paying tenant rent, or any other claim by the owner, including damage to the unit. The BHA 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 [24 CFR 983.353(D)]

If the amount of the utility allowance exceeds the total tenant payment, the BHA 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 BHA will make utility reimbursements directly to the family.

18-VIII.D. PHASE-IN OF TENANT RENT INCREASES [Notice PIH 2019-23; PHA Asset Repositioning "Phase-in of Tenant Rents" Webinar]

The BHA will use the family's public housing tenant rent (reflected on line 10f of the family's most recent 50058) at the date of conversion to calculate the family's tenant rent in PBV. The BHA will implement a three-year phase-in for in-place families whose TTP increases by more than the greater of 10 percent or $25 purely as a result of the conversion as follows:

- Year 1: Any recertification (interim or annual) performed prior to the second annual recertification after conversion: 33 percent of the difference between the most recently paid TTP and the currently calculated PBV TTP. (If the family was paying flat rent immediately prior to conversion, the BHA will use the flat rent amount to calculate the phase-in for Year 1.)
- Year 2: Year 2 annual recertification and any interim recertification: 50 percent of the difference between the most recently paid TTP and the currently calculated PBV TTP
- Year 3: Year 3 annual recertification and all subsequent recertifications: Full calculated TTP

Once the standard TTP is equal to or less than the previous TTP, the phase-in ends, and tenants will pay full TTP from that point forward.

If the family's income falls during the phase-in period such that the currently calculated PBV TTP falls below the amount that would otherwise be the phased-in rent, the family pays the currently calculated PBV TTP and the phase-in ends.

The BHA will communicate the BHA's phase-in policy in writing to the family at the time the BHA first determines that the family qualifies for a rent phase-in.

Any legacy non-RAD PBV units located in the same project are also subject to rent phase-in requirements.

18.VIII.E. OTHER FEES AND CHARGES [24 CFR 983.354]

MEALS AND SUPPORTIVE SERVICES

With the exception of PBV assistance in assisted living developments, the owner may not require the tenant to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy.

In assisted living developments receiving PBV assistance, the owner may charge for meals or supportive services. These charges may not be included in the rent to owner, nor may the value of meals and supportive services be included in the calculation of the reasonable rent. However, non-payment of such charges is grounds for termination of the lease by the owner in an assisted living development.

OTHER CHARGES BY OWNER

The owner may not charge extra amounts for items customarily included in rent in the locality or provided at no additional cost to unsubsidized tenants in the premises.

CHAPTER 19: SPECIAL PURPOSE VOUCHERS

Special purpose vouchers are specifically funded by Congress in separate appropriations from regular HCV program funding in order to target specific populations. The Brookline Housing Authority will administer the following types of special purpose vouchers:

- Mainstream
- Veterans Affairs Supportive Housing (VASH)

This chapter describes HUD regulations and BHA policies for administering special purpose vouchers. The policies outlined in this chapter are organized into five sections, as follows:

Part I: Veterans Affairs Supportive Housing (VASH)

Part II: Mainstream voucher program

Except as addressed by this chapter and as required under federal statute and HUD requirements, the general requirements of the HCV program apply to special purpose vouchers.

PART I: VETERANS AFFAIRS SUPPORTIVE HOUSING (VASH) PROGRAM

19-III.A. Program Overview

Since 2008, HCV program funding has provided rental assistance under a supportive housing program for homeless veterans. The Veterans Affairs Supportive Housing (VASH) program combines HCV rental assistance with case management and clinical services provided by the Department of Veterans Affairs (VA) at VA medical centers (VAMCs) and Community-Based Outpatient Clinics (CBOCs), or through a designated service provider (DSP) as approved by the VA Secretary. Eligible families are homeless veterans and their families that agree to participate in VA case management and are referred to the VAMC's partner PHA for HCV assistance. The VAMC or DSP's responsibilities include:

- Screening homeless veterans to determine whether they meet VASH program participation criteria;
- Referring homeless veterans to the BHA;
- The term *homeless veteran* means a veteran who is homeless (as that term is defined in subsection (a) or (b) of Section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302)). See 38 U.S.C. 2002.
- Providing appropriate treatment and supportive services to potential VASH participants, if needed, prior to BHA issuance of a voucher;
- Providing housing search assistance to VASH participants;
- Identifying the social service and medical needs of VASH participants, and providing or ensuring the provision of regular ongoing case management, outpatient health services, hospitalization, and other supportive services as needed throughout the veterans' participation period; and
- Maintaining records and providing information for evaluation purposes, as required by HUD and the VA.

VASH vouchers are awarded noncompetitively based on geographic need and BHA administrative performance. Eligible PHAs must be located within the jurisdiction of a VAMC and in an area of high need based on data compiled by HUD and the VA. When Congress funds a new allocation of VASH vouchers, HUD invites eligible PHAs to apply for a specified number of vouchers.

Generally, the HUD-VASH program is administered in accordance with regular HCV program requirements. However, HUD is authorized to waive or specify alternative requirements to allow PHAs to effectively deliver and administer VASH assistance. Alternative requirements are established in the HUD-VASH Operating Requirements, which were originally published in the Federal Register on May 6, 2008, and updated September 27, 2021, and then again in 2024. Unless expressly waived by HUD, all regulatory requirements and HUD directives regarding the HCV program requirements are applicable to VASH vouchers, including the use of all HUD-required contracts and other forms, and all civil rights and fair housing requirements. In addition, the BHA may request additional statutory or regulatory waivers that it determines are necessary for the effective delivery and administration of the program.

The VASH program is administered in accordance with applicable Fair Housing requirements since civil rights requirements cannot be waived under the program. These include applicable authorities under 24 CFR 5.105(a) and 24 CFR 982.53 including, but not limited to, the Fair Housing Act, Section 504 of the Rehabilitation Act of 1973, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act, and the Age Discrimination Act and all BHA policies as outlined in Chapter 2 of this document.

When HUD-VASH recipients include veterans with disabilities or family members with disabilities, reasonable accommodation requirements in Part II of Chapter 2 of this policy apply.

19-III.B. REFERRALS [FR Notice 8/13/24 and HUD-VASH Qs and As]

VAMC case managers will screen all families in accordance with VA screening criteria and refer eligible families to the BHA for determination of program eligibility and voucher issuance. The BHA has no role in determining or verifying the veteran's eligibility under VA screening criteria, including determining the

veteran's homelessness status. The BHA must accept referrals from the partnering VAMC and must maintain written documentation of referrals in VASH tenant files. Upon turnover, VASH vouchers must be issued to eligible veteran families as identified by the VAMC.

In order to expedite the screening process, the BHA will provide all forms and a list of documents required for the VASH application to the VAMC. Case managers will work with veterans to fill out the forms and compile all documents prior to meeting with the BHA and submitting an application. When feasible, the VAMC case manager should email copies of all documents to the BHA prior to the meeting in order to allow the BHA time to review them and start a file for the veteran.

After the VAMC has given the BHA a complete referral, the BHA will perform an eligibility screening within ten business days of receipt of a VAMC referral.

19-III.C. HCV PROGRAM ELIGIBILITY [FR Notice 8/13/24]

Eligible participants are homeless veterans and their families who agree to participate in case management from the VAMC.

- A *VASH Veteran* or *veteran family* refers to either a single veteran or a veteran with a household composed of two or more related persons. It also includes one or more eligible persons living with the veteran who are determined to be important to the veteran's care or well-being.
- A veteran for the purpose of VASH is a person whose length of service meets statutory requirements, and who served in the active military, naval, or air service, was discharged or released under conditions other than dishonorable, and is eligible for VA health care.

Under VASH the BHA does not have authority to determine family eligibility in accordance with HCV program rules and BHA policies. The only reasons for denial of assistance by the BHA are failure to meet the income eligibility requirements and/or that a family member is subject to a lifetime registration requirement under a state sex offender registration program. Under portability, the receiving PHA must also comply with these VASH screening requirements.

SOCIAL SECURITY NUMBERS

When verifying Social Security numbers (SSNs) for homeless veterans and their family members, the BHAmust use available flexibilities in accordance with 24 CFR 5.216(g)(1)(iii) to accept self-certification of SSNs and at least one third-party document, such as a bank statement, utility or cell phone bill, or benefit letter that contains the name of the individual in the absence of other documentation.

In the case of the homeless veteran, the BHA must accept the Certificate of Release or Discharge from Active Duty (DD-214) or the VA-verified Application for Health Benefits (10-10EZ) as verification of SSN if these forms are available and cannot require the veteran to provide a Social Security card. A VA-issued identification card may also be used to verify the SSN of a homeless veteran.

PROOF OF AGE

The DD-214 or 10-10EZ must be accepted as proof of age in lieu of birth certificates or other BHA-required documentation as outlined in Section 7-II.C. of this policy. A VA-issued identification card may also be used to verify the age of a homeless veteran.

PHOTO IDENTIFICATION

A VA-issued identification card must be accepted in lieu of another type of government-issued photo identification. These cards also serve as verification of SSNs and date of birth.

INCOME ELIGIBILITY [FR NOTICE 8/13/24]

With some exceptions, the BHA must determine income eligibility for VASH families in accordance with 24 CFR 982.201 and policies in Section 3-II.A. Low-income families (80 percent of AMI) are eligible for assistance under VASH, and the BHA may not condition eligibility based on additional eligibility criteria specified in its administrative plan. If the family is over-income based on the most recently published income limits for the family size, the family will be ineligible for assistance.

The following alternative requirements related to income apply to VASH families:

- The BHA must determine the applicant's annual income for purposes of income eligibility by excluding all VA service-connected benefits received by the applicant. This special income exclusion only applies to the definition of *annual income* for purposes of determining income eligibility. If the HUD-VASH applicant qualifies as a low-income family under the alternative requirement, the VA service-connected benefits (with the exception of the normally excluded deferred VA disability payments under 24 CFR 5.609(b)(16) and the payments related to aid and attendance under 24 CFR 5.609(b)(17)) must still be included as annual income when calculating the family's adjusted income. In other words, the VA service-connected disability benefits are excluded for purposes of determining income eligibility but included for purposes of calculating the family's total tenant payment (TTP), housing assistance payment (HAP), and family share.
- When a veteran family reports that they have zero income, the BHA must accept a self-certification of zero income from the family at admission and at reexamination without taking any additional steps to verify the family is indeed zero income. The self-certification does not need to be notarized. The BHA must verify families' income in the Enterprise Income Verification (EIV) system within 120 days after admission. The BHA may not deny zero income families.
- Regardless of BHA policy, in determining compliance with the asset limitation at admission, for the VASH program, the BHA must accept a self-certification by the family that the family's total assets are equal to or less than the HUD-published asset limitation amount (adjusted annually) and that the family does not have any present ownership interest in real property, without taking additional steps to verify the accuracy of the declaration.
- The BHA must not enforce the asset limitation for VASH families at reexamination.
- In addition, because there needs to be a monthly housing assistance payment (HAP) in order to enter into a HAP contract on behalf of a tenant-based voucher family, the utilization of tenant-based VASH assistance by families determined income-eligible is limited to those areas where the family's (TTP) is less than the applicable payment standard or exception payment standard (including any VASH-specific exception payment standard established by the BHA). The family must select a unit with a gross rent that is above the family's TTP in order to lease a unit with the tenant-based VASH voucher.
- While income-targeting requirements will not be considered by the BHA when families are referred by the partnering VAMC, the BHA will include any extremely low-income VASH families that are admitted in its income targeting numbers for the fiscal year in which these families are admitted.

MINIMUM RENT [FR NOTICE 8/13/24]

The BHA will establish a minimum rent of $50 for VASH families.

SCREENING [FR NOTICE 8/13/24]

The BHA may not screen any potentially eligible family members or deny assistance for any grounds permitted under 24 CFR 982.552 and 982.553 with one exception: the BHA is still required to prohibit admission if any member of the household is subject to a lifetime registration requirement under a state sex offender registration program. Accordingly, with the exception of denial for registration as a lifetime sex offender under state law and BHA policies on how sex offender screenings will be conducted, BHA policy in Sections 3-III.B. through 3-III.E. do not apply to VASH. The prohibition against screening families for anything other than lifetime sex offender status applies to all family members, not just the veteran.

If a family member is subject to lifetime registration under a state sex offender registration program, the remaining family members may be served if the family agrees to remove the sex offender from its family composition. This is true unless the family member subject to lifetime registration under a state sex offender registration program is the homeless veteran, in which case the family would be denied admission to the program [FR Notice 8/13/24].

DENIAL OF ASSISTANCE [NOTICE PIH 2008-37]

Once a veteran is referred by the VAMC, the BHA must either issue a voucher or deny assistance. If the BHA denies assistance, it must provide the family with prompt notice of the decision and a brief statement of the reason for denial in accordance with Section 3-III.F. Like in the standard HCV program, the family must be provided with the opportunity for an informal review in accordance with policies in Section 3-III.F. In addition, a copy of the denial notice must be sent to the VAMC case manager.

19-III.D. CHANGES IN FAMILY COMPOSITION

ADDING FAMILY MEMBERS [FR NOTICE 8/13/24]

When adding a family member after the family has been admitted to the program, BHA policies in Section 3-II.B. apply. Other than the birth, adoption, or court-awarded custody of a child, the BHA must approve additional family members and will apply its regular screening criteria in doing so.

REMAINING FAMILY MEMBERS [HUD-VASH QS AND AS]

If the homeless veteran dies while the family is being assisted, the voucher would remain with the remaining members of the tenant family. The BHA may use one of its own regular vouchers, if available, to continue assisting this family and free up a VASH voucher for another VASH-eligible family. If a regular voucher is not available, the family would continue utilizing the VASH voucher. Once the VASH voucher turns over, however, it must go to a homeless veteran family.

FAMILY BREAK UP [HUD-VASH QS AND AS]

In the case of divorce or separation, since the set-aside of VASH vouchers is for veterans, the voucher must remain with the veteran. This overrides the BHA's policies in Section 3-I.C. on how to determine who remains in the program if a family breaks up.

19-III.E. LEASING [FR Notice 8/13/24]

WAITING LIST

The BHA does not have the authority to maintain a waiting list or apply local preferences for HUD–VASH vouchers. Policies in Chapter 4 relating to applicant selection from the waiting list, local preferences, special admissions, cross-listing, and opening and closing the waiting list do not apply to VASH vouchers.

EXCEPTION PAYMENT STANDARDS [FR NOTICE 8/13/24]

The BHA does not use exception payment standards for the HUD VASH program.

Voucher Issuance [FR Notice 8/13/24]

All VASH vouchers will have an initial term of 120 calendar days.

The family must submit a Request for Tenancy Approval and proposed lease within the 120-day period unless the BHA grants an extension.

The BHA must track issuance of HCVs for families referred by the VAMC or DSP in HUD systems as required in FR Notice 8/13/24.

SPECIAL HOUSING TYPES [FR NOTICE 8/13/24]

The BHA must permit VASH clients to use the following special housing types for tenant-based VASH assistance, regardless of whether these types are permitted in their administrative plan for other families:

- Single room occupancy (SRO);
- Congregate housing;
- Group home;
- Shared housing; and
- Cooperative housing.

INITIAL LEASE TERM [FR NOTICE 8/13/24]

Unlike in the standard the HCV program, VASH voucher holders may enter into an initial lease that is for less than 12 months. Accordingly, BHA policy in Section 9-I.E., Term of Assisted Tenancy, does not apply.

INELIGIBLE HOUSING [FR NOTICE 8/13/24]

Unlike in the standard HCV program, VASH families are permitted to live on the grounds of a VA facility in units developed to house homeless veterans. This applies to both tenant-based assistance and PBV. Therefore, 24 CFR 982.352(a)(5) and 983.53(a)(2), which prohibit units on the physical grounds of a medical, mental, or similar public or private institution, do not apply to VASH for this purpose only. Accordingly, BHA policy in 9-I.D., Ineligible Units, does not apply for this purpose only.

PRE-INSPECTIONS [FR NOTICE 8/13/24]

To expedite the leasing process, the BHA may pre-inspect available units that veterans may be interested in leasing to maintain a pool of eligible units. If a VASH family selects a unit that passed a pre-inspection (without intervening occupancy) within 45 days of the date of the RTA, the unit may be approved provided that it meets all other conditions under 24 CFR 982.305. The veteran will be free to select their unit.

When a pre-inspected unit is not selected, the BHA will make every effort to fast-track the inspection process, including adjusting the normal inspection schedule for both initial and any required reinspections.

19-III.F. PORTABILITY [Notice PIH 2011-53 and FR Notice 8/13/24]

GENERAL REQUIREMENTS

Portability policies under VASH depend on whether the family wants to move within or outside of the initial VA facility's catchment area (the area in which the VAMC or DSP operates). In all cases, the initial VA facility must be consulted prior to the move and provide written confirmation that case management will continue to be provided in the family's new location. VASH participant families may only reside in jurisdictions that are accessible to case management services, as determined by case managers at the partnering VAMC or DSP.

Under VASH, applicant families may move under portability even if the family did not have legal residency in the jurisdiction of the initial PHA when they applied. As a result, BHA policies in Section 10-II.B. about nonresident applicants do not apply. A family that moves under the portability procedures must not be subject to rescreening by the receiving PHA.

If the family no longer requires case management, there are no portability restrictions. Normal portability rules apply.

PORTABILITY WITHIN THE INITIAL VAMC OR DSP'S CATCHMENT AREA

A VASH family can move within the VAMC's catchment area as long as case management can still be provided, as determined by the VA. If the initial PHA's partnering VAMC will still provide the case

management services, the receiving BHA must process the move in accordance with portability procedures:

- If the receiving PHA has been awarded VASH vouchers, it can choose to either bill the initial PHA or absorb the family if it has a VASH voucher available to do so.
    - If the PHA absorbs the family, the VAMC or DSP providing the initial case management must agree to the absorption and the transfer of case management.
- If the receiving PHA does not administer a VASH program, it must always bill the initial PHA.

PORTABILITY OUTSIDE OF THE INITIAL VAMC OR DSP'S CATCHMENT AREA

If a family wants to move to another jurisdiction where it will not be possible for the initial PHA's partnering VAMC or DSP to provide case management services, the initial VAMC or DSP must first determine that the VASH family could be served by another VAMC or DSP that is participating in the VASH program, and the receiving PHA has an available VASH voucher.

In these cases, the family must be absorbed by the receiving PHA either as a new admission or as a portability move-in, as applicable. Upon absorption, the initial PHA's VASH voucher will be available to lease to a new VASH-eligible family, and the absorbed family will count toward the number of VASH slots awarded to the receiving PHA.

PORTABILITY OUTSIDE OF THE INITIAL VAMC OR DSP'S CATCHMENT AREA UNDER VAWA

Veterans who request to port beyond the catchment area of the VAMC or DSP where they are receiving case management to protect the health or safety of a person who is or has been the victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking, and who reasonably believes they are threatened with imminent harm from further violence by remaining in the unit may port prior to receiving approval from the receiving VAMC or DSP. The initial PHA must follow its emergency transfer plan (see Exhibit 16-3). PHAs may require verbal self-certification or a written request from a participant seeking a move beyond the catchment area of the VAMC or DSP.

The verbal self-certification or written request must include either a statement expressing why the participant reasonably believes that there is a threat of imminent harm from further violence if they were to remain in the same unit or a statement that the tenant was a sexual assault victim and that the sexual assault occurred on the premises during the 90-day period preceding the participants request for the move.

The participant must still port to a PHA that has a VASH program. If the receiving PHA does not have a VASH voucher available to lease, they may bill the initial PHA until a VASH voucher is available, at which point the porting veteran must be absorbed into the receiving PHA's program.

19-III.G. TERMINATION OF ASSISTANCE [FR Notice 8/13/24]

Prior to terminating VASH participants, HUD strongly encourages PHAs to exercise their discretion under 24 CFR 982.552(c)(2) as outlined in Section 12-II.D. of this policy and consider all relevant circumstances of the specific case. This includes granting reasonable accommodations for persons with disabilities, as well as considering the role of the case manager and the impact that ongoing case management services can have on mitigating the conditions that led to the potential termination.

VASH participant families may not be terminated after admission for a circumstance or activities that occurred prior to admission and were known to the BHA but could not be considered at the time of admission due to VASH program requirements. The BHA may terminate the family's assistance only for program violations that occur after the family's admission to the program.

There are two alternative requirements for termination of assistance for VASH participants.

CESSATION OF CASE MANAGEMENT

As a condition of receiving HCV rental assistance, a HUD-VASH-eligible family must receive case management services from the VAMC or DSP. A VASH participant family's assistance must be terminated for failure to participate, without good cause, in case management as verified by the VAMC or DSP.

However, the BHA may offer the family continued assistance through one of its regular vouchers or a PBV unit not exclusively made available for HUD-VASH.

However, a VAMC or DSP determination that the participant family no longer requires case management is not grounds for termination of voucher or PBV assistance. In such a case, at its option, the BHA may offer the family continued assistance through one of its regular vouchers. The decision to transfer assistance to a regular voucher must consider veteran preference and must be communicated to the VA prior to occurring. If the BHA has no voucher to offer, the family will retain its VASH voucher, or PBV unit, until such time as the BHA has an available voucher (or PBV unit not exclusively made available for VASH) for the family. If the BHA has no voucher to offer, the family will retain its VASH voucher or PBV unit until such time as the BHA has an available voucher for the family.

SERIOUS VIOLATION OF THE LEASE

The regulation at 24 CFR 982.552(b)(2) states that the BHA must terminate program assistance for a family evicted from housing assisted under the program for serious violation of the lease. HUD waived this provision, and establishing the alternative requirement that the BHA may terminate program assistance in this case. Prior to terminating VASH participants for this reason, HUD strongly encourages the BHA to exercise their discretion under 24 CFR 982.552(c)(2) and consider all relevant circumstances of the specific case, as well as including the role of the case manager and the impact that ongoing case management services can have on mitigating the conditions that led to the potential termination, prior to determining whether to terminate assistance.

VAWA [FR NOTICE 8/13/24]

When a veteran's family member is receiving protection under VAWA because the veteran is the perpetrator of domestic violence, dating violence, sexual assault, stalking, or human trafficking, the victim must continue to be assisted. Upon termination of the perpetrator's VASH assistance, the victim must be given a regular HCV if one is available, and the perpetrator's VASH voucher must be used to serve another eligible veteran family. If a regular HCV is not available, the perpetrator must be terminated from assistance and the victim will continue to use the VASH voucher.

19-III.H. PROJECT-BASING VASH VOUCHERS

GENERAL REQUIREMENTS [NOTICE PIH 2017-21 AND FR NOTICE 8/13/24]

PHAs are authorized to project-base their tenant-based VASH vouchers without additional HUD review or approval in accordance with Notice PIH 2017-21 and all PBV program requirements provided that the VAMC will continue to make supportive services available. In addition, since 2010, HUD has awarded VASH vouchers specifically for project-based assistance in the form of PBV HUD-VASH set-aside vouchers. While these vouchers are excluded from the PBV program cap as long as they remain under PBV HAP contract at the designated project, all other VASH vouchers are subject to the PBV program percentage limitation discussed in Section 17-I.A. Note that VASH supportive services only need to be provided to VASH families receiving PBV assistance in the project, not all families receiving PBV assistance in the project. If a VASH family does not require or no longer requires case management, the unit continues to count as an excepted PBV unit as long as the family resides in the unit. In the description of units in Exhibit A of the HAP contract, PHAs must indicate the number of units that will be exclusively made available to VASH families. The BHA must refer only VASH families to PBV units exclusively made available to VASH families and to PBV units funded through a VASH PBV set-aside award.

If the BHA project-bases VASH vouchers, the BHA must consult with the partnering VAMC or DSP to ensure approval of the project or projects. PHAs may project-base VASH vouchers in projects alongside other PBV units and may execute a single HAP contract covering both the VASH PBVs and the other PBVs. The BHA must refer only VASH families to PBV units exclusively made available to VASH families and to PBV units funded through a HUD set-aside award.

If a VASH family is referred to the BHA and there is an available PBV unit that is not exclusively made available to VASH families, the BHA may offer to refer the family to the owner if allowable under the

selection policy for that project, and the owner and BHA may amend the HAP contract to designate the PBV unit as a VASH PBV unit.

The BHA and owner may agree to amend a PBV HAP contract to redesignate a regular PBV unit as a unit specifically designated for VASH families so long as the BHA first consults with the VAMC or DSP. Additionally, the BHA and owner may agree to amend a PBV HAP contract to redesignate a unit specifically designated for VASH families as a regular PBV unit, so long as the unit is not funded through a VASH PBV set-aside award and is eligible for regular PBV (i.e., the unit is not on the grounds of a medical facility and the unit is eligible under the BHA's program and project caps). Policies for VASH PBV units will generally follow BHA policies for the standard PBV program as listed in Chapter 17, with the exception of the policies listed below.

INELIGIBLE UNITS

Unlike in the regular PBV program, the BHA may opt to select an occupied unit or admit a family to a unit if such unit is made exclusively available to VASH families if the PBV project is either on the grounds of a VA facility or there are VASH supportive services provided on-site at the project.

TERMINATION OF ASSISTANCE

A VASH family's PBV assistance must be terminated for failure to participate in case management when required by the VA. However, the BHA may allow the veteran family to receive a regular (non-VASH) tenant-based voucher or PBV unit instead of the family's assistance being terminated. In this case, the v may:

- Substitute the family's unit on the PBV HAP contract for another unit (the BHA may, in conjunction with such substitution, add the original unit to the PBV HAP contract with a non-VASH voucher if it is possible to do so;
- Remove the unit from the PBV HAP contract so the family may remain with tenant-based assistance, if the family and the owner agree to use the tenant-based voucher in the unit; or
- Change the unit's status in the PBV HAP contract from a unit exclusively made available for VASH to a regular PBV unit, if doing so is allowable under program rules.

If the BHA will not allow the veteran to receive a regular (non-VASH) tenant-based voucher or PBV unit instead of the family's assistance being terminated, then upon notification by the VA of the family's failure to participate in VA-required case management, the BHA must provide the family a reasonable period of time (as established by the BHA) to vacate the unit.

If the family fails to participate in case management when required by the VA, the BHA will terminate the family's assistance. The family will have 120 days to vacate the unit. The BHA will terminate assistance to the family at the earlier of (1) the time the family vacates or (2) the expiration of the 120-day period. If the family fails to vacate the unit within the established time, the owner may evict the family. If the owner does not evict the family, the BHA will remove the unit from the HAP contract or amend the HAP contract to substitute a different unit in the project if the project is partially assisted. The BHA may add the removed unit back onto the HAP contract after the ineligible family vacates the property.

MOVES

If a VASH family is eligible to move from its PBV unit after a year of PBV assistance, the BHA will generally follow policies in Chapter 17. However, if there is no VASH tenant-based voucher available at the time the family requests to move, the BHA's actions depend on whether the family still requires case management.

- The BHA may require a family that still requires case management to wait for a VASH tenant-based voucher for a period not to exceed 180 days. If a HUD-VASH tenant-based voucher is still not available after 180 days, the family must be allowed to move using its VASH voucher as tenant-based assistance. Alternatively, the BHA may allow the family to move using its VASH voucher as tenant-based assistance without having to meet this 180-day waiting period. In either case, the BHA may either amend the PBV HAP contract to replace the assistance in the PBV unit with one

of its regular vouchers if the unit is eligible for a regular PBV or the BHA and owner may agree to temporarily remove the unit from the HAP contract.

- If a VASH veteran has been determined to no longer require case management, the BHA must allow the family to move with the first available tenant-based voucher. If no VASH voucher is immediately available, the BHA may not require the family to wait for a VASH voucher to become available.

WRONG-SIZED OR ACCESSIBLE UNITS

If the BHA determines that a VASH family is occupying a wrong-size PBV unit or a PBV unit with accessibility features that the family does not require and the PBV unit is needed by a family that requires the accessibility features, the BHA must notify the family and the owner within 30 days of the BHA's determination. The BHA's offer of continued housing assistance (that must be made within 60 days of the BHA's determination) must be in the form of either a VASH tenant-based voucher or another VASH PBV unit. If no VASH assistance is available for the BHA to offer within 60 days of the BHA's determination, the BHA must remove the wrong-sized or accessible unit from the HAP contract to make VASH voucher assistance available to the family.

CONTRACT TERMINATIONS

The regulation at 24 CFR 983.206(b), which covers the required provision of tenant-based assistance and requires that the family may elect to use its tenant-based assistance to remain in the same project when a PBV HAP contract terminates or expires, does not apply to families issued a HUD-VASH tenant-based voucher under this circumstance. The BHA may use another voucher to add the unit removed under this alternative requirement to the HAP contract after the family vacates the property, in accordance with 24 CFR 983.207(b).

RENTS

Contract rents may not be different based on whether the unit is a VASH PBV unit or a non-VASH PBV unit. In determining the rent to owner for the PBV project, if the cap on the amount of rent to owner under 24 CFR 983.301(b)(1) is lower for non-HUD-VASH units than it is for the HUD-VASH units (e.g., the BHA has established a HUD-VASH exception payment standard and there is either no exception payment standard or a lower exception payment standard for the regular HCV program for the area in question), that lower cap is applicable when setting the rent to owner for the PBV units in the project, including the HUD-VASH units.

REMOVING UNITS FROM THE HAP CONTRACT FOR INELIGIBLE FAMILIES

The BHA and owner may also agree to temporarily remove a unit from the HAP contract in cases where a HUDVASH eligible veteran has been identified by the VA as appropriate for a VASH PBV unit, but the veteran is not income eligible to receive voucher assistance or may not be selected for the PBV unit because the family's TTP exceeds the gross rent of the unit. Although the family would not be a program participant in the housing portion of the VASH program in such a case, the family would still benefit from the project's location on the grounds of a VA facility or from the VASH supportive services on-site at the project, while the VASH voucher would be available to assist another VASH family. The BHA and owner may agree to add a VASH voucher back onto the PBV HAP contract if the family's income subsequently decreased to the point that there would be a HAP or when the family vacates the unit.

ZERO HAP FAMILIES

Under normal PBV requirements, the BHA may select an occupied unit to be included under a PBV HAP contract only if the unit's occupants are eligible for assistance under 24 CFR 982.201, and the TTP for the family is less than the gross rent for the unit. Furthermore, in selecting a family for an available PBV unit, typically the BHA must determine the TTP for the family is less than the gross rent, meaning that the unit will be eligible for a monthly HAP. However, if the PBV project is either on the grounds of a VA facility or there are HUD-VASH supportive services provided onsite at the project, the BHA may opt to select a unit occupied by a zero HAP VASH eligible family or admit a zero HAP VASH family to a unit if such unit is made exclusively available to VASH families. Until such time that the VASH family's TTP falls below the gross rent, the family is responsible for paying the entire rent to owner in addition to being responsible for paying all tenant-supplied utilities. During any period that the family's TTP falls below the gross rent, normal PBV requirements apply.

Further, under normally applicable rules, units occupied by families whose incomes have increased during their tenancy resulting in their TTP equaling the gross rent (zero HAP) must be removed from the HAP contract 180 days following the last housing assistance payment to the owner on the family's behalf. These regulations do not apply to zero HAP families admitted to the PBV project under this waiver and alternative requirement because there is no last housing assistance payment that would trigger the unit removal date of 180 days. As an alternative requirement, PHAs have the option of removing the unit in which the zero HAP family resides from the HAP contract, but no earlier than 180 days from the start of the family PBV tenancy. If the BHA exercises this option, the family may not be required to move from the unit as a consequence and continues to receive the VASH supportive services. If the project is fully assisted, the BHA may reinstate the unit removed to the HAP contract after the family either vacates the unit or their income decreases to the point that there would be a HAP. If the project is partially assisted, the BHA may substitute a different unit for the unit removed from the HAP contact when the first eligible substitute unit becomes available. Alternatively, the BHA may choose to simply leave the unit on the HAP contract while the zero HAP family continues to reside there.

PROPOSAL/PROJECT SELECTION

PBV proposal and/or project selection for VASH must follow all regular proposal and/or project selection regulations, with one exception. HUD permits noncompetitive selection of one or more PBV projects with units made exclusively available to VASH families on the site of a VA facility. Note that the method of project selection must comply with all other requirements under 24 CFR 983.51, including that the BHA must notify the public of its intent to noncompetitively select one or more projects for PBV assistance through its 5-Year Plan and to ensure any project selection is consistent with the BHA administrative plan.

FAILURE TO PARTICIPATE IN CASE MANAGEMENT [FR NOTICE 8/13/24]

Upon notification by the VAMC or DSP that a VASH PBV family has failed to participate in case management without good cause, the BHA will provide written notice of termination of assistance to the family and the owner within 10 business days. The family will be given 60 days from the date of the notice to move out of the unit.

The BHA 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.

If the family fails to vacate the unit within the established time, the owner may evict the family. If the owner does not evict the family, the BHA must remove the unit from the HAP contract or amend the HAP contract to substitute a different unit in the project if the project is partially assisted. The BHA may add the removed unit to the HAP contract after the ineligible family vacates the property.

MOVES [HUD-VASH QS AND AS, FR NOTICE 8/13/24]

When a VASH PBV family is eligible to move from its PBV unit in accordance with Section 17-VIII.C. of this policy, but there is no other comparable tenant-based rental assistance, the following procedures must be implemented:

- If a VASH tenant-based voucher is not available at the time the family wants (and is eligible) to move, the BHA may require a family who still requires case management to wait for a VASH tenant-based voucher for a period not to exceed 180 days;
- If a VASH tenant-based voucher is still not available after that period, the family must be allowed to move with its VASH voucher. Alternatively, the BHA may allow the family to move with its VASH voucher without having to meet this 180-day period. In either case, the BHA is required to replace the assistance in the PBV unit with one of its regular vouchers, unless the BHA and owner agree to temporarily remove the unit from the HAP contract; and
- If a VASH veteran is determined to no longer require case management, the BHA must allow the family to move with the first available tenant-based voucher if no VASH voucher is immediately available and cannot require the family to wait for a VASH voucher to become available.

PART II: MAINSTREAM VOUCHER PROGRAM

19-IV.A. PROGRAM OVERVIEW [Notice PIH 2020-01 and Notice PIH 2024-30]

Mainstream vouchers assist non-elderly persons with disabilities and their families (particularly those transitioning out of institutions or at serious risk of institutionalization) in the form of either project-based or tenant-based voucher assistance.

The Mainstream voucher program, (previously referred to as the Mainstream 5-Year program or the Section 811 voucher program) was originally authorized under the National Affordable Housing Act of 1990. Mainstream vouchers operated separately from the regular HCV program until the passage of the Frank Melville Supportive Housing Investment Act of 2010. Funding for Mainstream voucher renewals and administrative fees was first made available in 2012. In 2017 and 2019, incremental vouchers were made available for the first time since the Melville Act (in addition to renewals and administrative fees), and PHAs were invited to apply for a competitive award of Mainstream vouchers under the FY17 and FY19 NOFAs. In 2020, Notice PIH 2020-22 provided an opportunity for any PHA administering an HCV program to apply for Mainstream vouchers noncompetitively, while Notice PIH 2020-09 authorized an increase in Mainstream voucher units and budget authority for those PHAs already awarded Mainstream vouchers under the FY17 and FY19 NOFAs.

Funding and reporting for Mainstream vouchers is separate from the HCV program. Funds for Mainstream vouchers may be recaptured and reallocated if the BHA does not comply with all program requirements or fails to maintain a utilization rate of 80 percent for the BHA's Mainstream vouchers.

The Consolidated Appropriations Act, 2024 (Public Law 118-42) authorized HUD to establish waivers and alternative requirements for Mainstream Vouchers related to the administration of waiting lists, local preferences, and the initial term and extensions of tenant-based vouchers. HUD is not permitted to waive requirements related to tenant rights and protections, rent setting, fair housing, nondiscrimination, labor standards, and the environment. Prior to this, Mainstream vouchers follow the same program requirements as standard vouchers.

19-IV.B. ELIGIBLE POPULATION [Notice PIH 2020-01 and Notice PIH 2020-22]

All Mainstream vouchers must be used to serve non-elderly persons with disabilities and their families, defined as any family that includes a person with disabilities who is at least 18 years old and not yet 62 years old as of the effective date of the initial HAP contract. The eligible disabled household member does not need to be the head of household.

The definition of person with disabilities for purposes of Mainstream vouchers is the statutory definition under section 3(b)(3)(E) of the 1937 Act, which is the same as is used for allowances and deductions in the HCV program and is provided in Exhibit 3-1 of this policy.

Existing families receiving Mainstream vouchers, where the eligible family member is now age 62 or older, will not "age out" of the program as long as the family was eligible on the day it was first assisted under a HAP contract.

The BHA may not implement eligibility screening criteria for Mainstream vouchers that is different from that of the regular HCV program.

19-IV.C. PARTNERSHIP AND SUPPORTIVE SERVICES [Notice PIH 2020-01]

The BHA does not have a partnership with any other agencies to provide supportive services.

19-IV.D. WAITING LIST ADMINISTRATION [Notice PIH 2024-30]

The BHA utilizes the Massachusetts Section 8 Centralized Waiting List maintained by MassNAHRO. This waiting list does create a separate waiting list for Mainstream eligible voucher applicants.

19-IV.E. PREFERENCES [Notice PIH 2024-30]

The BHA does not exercise any preferences when making selections for its Mainstream vouchers.

19-IV.F. VOUCHER ISSUANCE

INITIAL SEARCH TERM [NOTICE PIH 2024-30]

For Mainstream vouchers, HUD waived 24 CFR 982.303(a), which requires an initial search term of at least 60 days, and established an alternative requirement that the initial search term for a Mainstream voucher be at least 120 days. The initial 120-day term also applies when a family chooses to move to a new unit with continued assistance inside or outside the BHA's jurisdiction. When issuing a Mainstream voucher, the BHA also must provide a current listing of available accessible units known to the BHA and, if necessary, otherwise assist the family in identifying an accessible unit.

The initial voucher term for all Mainstream vouchers, including those issued when a family wishes to exercise portability, will be 120 days.

VOUCHER EXTENSION [NOTICE PIH 2024-30]

At least 30 days prior to the expiration of the initial term of the voucher, the BHA will contact the family to remind them of the expiration date of their voucher, the process for requesting an extension, and to inquire if the family needs assistance with their housing search. Depending on the family's preferred method of communication, the BHA may contact the family via telephone, text message, email, or other accessible communication method. The BHA will ensure effective communication with persons with disabilities, including those with vision, hearing, speech, intellectual or other developmental disabilities, or any other communication-related disabilities.

Families may request an extension, either orally or in writing, at any time prior to the expiration of the family's voucher. All requests for extensions will automatically be granted without the requirement for the family to provide documentation. The initial extension period will be for 90 days. If the family requires additional extensions beyond 90 days, the family may request additional extensions, either orally or in writing, at any time prior to the expiration of the extended voucher term. All subsequent extensions will also be for a period of 90 days and will not require the family to meet certain circumstances or provide documentation. Each time the family requests an extension, the BHA will inquire if the family needs assistance with their housing search and will provide a current listing of available accessible units known to the BHA.

19-IV.G. PORTABILITY [Notice PIH 2020-01 and Mainstream Voucher Basics Webinar, 10/15/20]

Mainstream voucher participants are eligible for portability under standard portability rules and all PHA policies regarding portability in Chapter 10, Part II apply to Mainstream families.

The following special considerations for Mainstream vouchers apply under portability:

- If the receiving PHA has a Mainstream voucher available, the participant may remain a Mainstream participant.
    - If the receiving PHA chooses to bill the initial PHA, then the voucher will remain a Mainstream voucher.
    - If the receiving PHA chooses to absorb the voucher, the voucher will be considered a regular voucher, or a Mainstream voucher if the receiving PHA has a Mainstream voucher available, and the Mainstream voucher at the initial PHA will be freed up to lease to another Mainstream-eligible family.

- If the receiving PHA does not have a Mainstream voucher available, the participant may receive a regular voucher.

19-IV.H. PROJECT-BASING MAINSTREAM VOUCHERS [FY19 Mainstream Voucher NOFA Q&A]

The BHA may project-base Mainstream vouchers in accordance with all applicable PBV regulations and BHA policies in Chapter 17. PHAs are responsible for ensuring that, in addition to complying with project-based voucher program requirements, the project complies with all applicable federal nondiscrimination and civil rights statutes and requirements. This includes, but is not limited to, Section 504 of the Rehabilitation Act (Section 504), Titles II or III of the Americans with Disabilities (ADA), and the Fair Housing Act and their implementing regulations at 24 CFR Part 8; 28 CFR Parts 35 and 36; and 24 CFR Part 100. Mainstream vouchers are subject to the PBV program percentage limitation discussed in Section 17-I.A.