Chapter 1

OVERVIEW OF THE PROGRAM AND PLAN

INTRODUCTION

The Housing Department receives its funding for the Housing Choice Voucher (HCV) program from the Department of Housing and Urban Development. A public housing agency (Housing Department) 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 Housing Department enters into an Annual Contributions Contract with HUD to administer the program requirements on behalf of HUD. The Housing Department must ensure compliance with federal laws, regulations and notices and must establish policies and procedures to clarify federal requirements and to ensure consistency in program operation.

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

There are three parts to this chapter:

> Part I: The Public Housing Agency (Housing Department). This part includes a description of the Housing Department, its jurisdiction, its programs, and its mission and intent.
>
> Part II: The HCV Program. This part contains information about the Housing Choice Voucher program operation, roles and responsibilities, and partnerships.
>
> Part III: The HCV Administrative Plan. This part discusses the purpose and organization of the plan and its revision requirements.

PART I: THE HOUSING DEPARTMENT

1-I.A. OVERVIEW

This part explains the origin of the Housing Department's creation and authorization, the general structure of the organization, and the relationship between the Sumter County Board Commissioners and staff.

1-I.B. ORGANIZATION AND STRUCTURE OF THE HOUSING DEPARTMENT

The Section 8 tenant-based Housing Choice Voucher (HCV) assistance program is funded by the federal government and administered by the Sumter County Housing Department for the jurisdiction of the County of Sumter.

The Board of Sumter County Commissioners establishes policies under which the Housing Department conducts business, ensuring that policies are followed by Housing Department staff and ensuring that the Housing Department is successful in its mission. The board is responsible for preserving and expanding the agency's resources and assuring the agency's continued viability.

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

1-I.C. HOUSING DEPARTMENT'S MISSION

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

Housing Department Policy

The Housing Department's mission is to provide safe, decent and affordable housing for eligible residents of Sumter County through creative partnerships with public and private collaborators and to manage resources efficiently. The Housing Department will strive to serve the entire community with respect, economic opportunity and provide a suitable living environment free from discrimination.

1-I.D. THE HOUSING DEPARTMENT'S PROGRAMS

The following programs are included under this administrative plan:

Housing Department Policy

The Housing Department's administrative plan is applicable to the operation of the Housing Choice Voucher program.

1-I.E. THE HOUSING DEPARTMENT'S COMMITMENT TO ETHICS AND SERVICE

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

- Administer applicable federal and state laws and regulations to achieve high ratings in compliance measurement indicators while maintaining efficiency in program operation to ensure fair and consistent treatment of clients served.
- Provide decent, safe, and sanitary housing – in compliance with program housing quality standards – for extremely low and 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 services needs.
- Promote fair housing and the opportunity for extremely low and 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 extremely low and very low-income families.
- Promote a market-driven housing program that will help qualified 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 Housing Department'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 Housing Department's support systems and commitment to our employees and their development.

The Housing Department 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 will assist the audience in understanding the program.

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

The Housing and Community Development (HCD) Act of 1974 created a new federally assisted housing program – the Section 8 Existing program (also known as the Section 8 Certificate program). The HCD Act represented a significant shift in federal housing strategy from locally owned public housing to privately owned rental housing.

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

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

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

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

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

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

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

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

1-II.B. HCV PROGRAM BASICS

The purpose of the HCV program is to provide rental assistance to eligible families. The rules and regulations of the HCV program are determined by the U.S. Department of Housing and Urban Development. The Housing Department is afforded choices in the operation of the program which are included in the Housing Department's administrative plan, a document approved by the Sumter County Board of Commissioners.

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

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

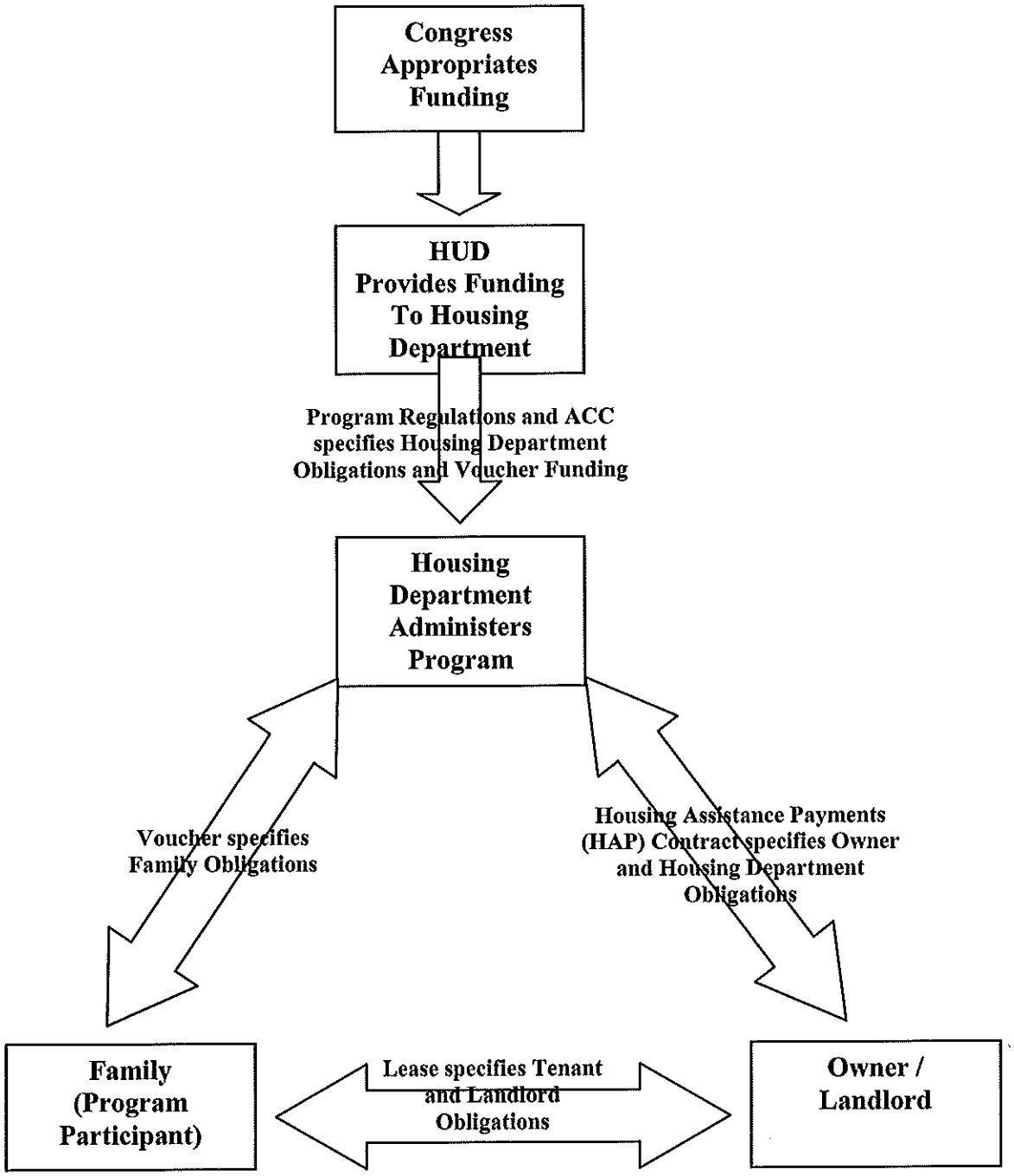
1-II.C. THE HCV PARTNERSHIPS

To administer the HCV program, the Housing Department enters into a contractual relationship with HUD. The Housing Department 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 Housing Department, 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 Housing Departments;
- Provide technical assistance to Housing Departments on interpreting and applying HCV program requirements;
- Monitor Housing Department compliance with HCV program requirements and Housing Department performance in program administration.

What does the Housing Department do?

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

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

What does the Owner do?

The owner has the following major responsibilities:

- Screen families who apply for tenancy, to determine if they will be good renters.
  - The Housing Department 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 Housing Department;
- Comply with all applicable fair housing laws and discriminate against no one;
- Maintain the housing unit by making necessary repairs in a timely manner;
- Collect rent due from the assisted family and otherwise comply with and enforce provisions of the dwelling lease;
- Promptly notify the Housing Department if the family has not paid their monthly rent portion.

What does the Family do?

The family has the following responsibilities:

- Provide the Housing Department with complete and accurate information, determined by the Housing Department to be necessary for administration of the program;
- Make their best and most timely efforts to find a place to live that is suitable for them and that qualifies for the program;
- Cooperate in attending all appointments scheduled by the Housing Department;
- Allow the Housing Department 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 Housing Department and the owner thirty (30) days 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 Housing Department of any changes in family composition;
- Not commit fraud, bribery, or any other corrupt or criminal act in connection with any housing programs.

If all parties will fulfill their obligations in a professional and timely fashion, the program responsibilities will be fulfilled in an effective manner.

1-II.D. APPLICABLE REGULATIONS

Applicable regulations include:

- 24 CFR Part 5: General Program Requirements
- 24 CFR Part 8: Nondiscrimination
- 24 CFR Part 982: Section 8 Tenant-Based Assistance: Housing Choice Voucher Program

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

This administrative plan is set forth to define the Housing Department's local policies for operation of the housing programs in the context of federal laws and regulations. All issues related to Section 8 not addressed in this document are governed by such federal regulations, HUD handbooks and guidebooks, notices and other applicable law. The policies in this administrative plan have been designed to ensure compliance with the consolidated ACC and all HUD-approved applications for program funding.

The Housing Department 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 Housing Department staff shall be in compliance with the Sumter County's personnel policy and HUD's Section 8 regulations as well as all federal, state and local fair housing laws and regulations.

1-III.B. CONTENTS OF THE PLAN (24CFR 982.54)

HUD regulations contain a list of what must be included in the administrative plan. The Housing Department administrative plan must cover Housing Department policies on these subjects:

- Selection and admission of applicants from the Housing Department waiting list, including any Housing Department admission preferences, procedures for removing applicant names from the waiting list, and procedures for closing and reopening the Housing Department waiting list (Chapter 4);
- Issuing or denying vouchers, including Housing Department policy governing the voucher term and any extensions or suspensions of the voucher term. 'Suspension' means stopping the clock on the term of a family's voucher after the family submits a request for approval of the tenancy. If the Housing Department decides to allow extensions or suspensions of the voucher term, the Housing Department administrative plan must describe how the Housing Department determines whether to grant extensions or suspensions, and how the Housing Department determines the length of any extension or suspension (Chapter 5);
- 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 illegal discrimination has prevented the family from leasing a suitable unit (Chapter 2);
- Providing information about a family to prospective owners (Chapters 3 and 9);
- Disapproval of owners (Chapter 13);
- Subsidy standards (Chapter 5);
- Family absence from the dwelling unit (Chapter 12) ;
- How to determine who remains in the program if a family breaks up (Chapter 3);
- Informal review procedures for applicants (Chapter 16);
- Informal hearing procedures for participants (Chapter 16);
- The process for establishing and revising voucher payment standards (Chapter 16);
- The method of determining 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 Housing Department of amounts the family owes the Housing Department (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);
- Procedural guidelines and performance standards for conducting required housing quality standards inspections (Chapter 8); and
- Housing Department screening of applicants for family behavior or suitability for tenancy (Chapter 3).

New Approach to Policy Development

HUD has developed an approach to monitoring and policy development that requires Housing Departments to establish policy for those purposes.

A primary focus of HUD's Rental Integrity Monitoring (RIM) program was consistency in how Housing Departments conduct their business and consistency in how HUD monitors Housing Department activities. HUD expects that all staff will be consistent in the procedures they follow and the calculations they make and that their actions will be consistent with the Housing Department's administrative plan.

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 Housing Departments to develop policies and procedures that are consistent with mandatory policies and to make clear the optional policies the Housing Department has adopted. The Housing Department's administrative plan is the foundation of those policies and procedures. HUD's new directions require, more than ever, that Housing Departments make policy choices to provide guidance to staff and consistency to program applicants and participants.

Following HUD guidance, even though it is not mandatory, provides a Housing Department with a "safe harbor." HUD has already determined that the recommendations and suggestions it makes are consistent with mandatory policies. If a Housing Department 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 Housing Departments 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 Housing Department will revise this administrative plan as needed to comply with changes in HUD regulations. The original plan and any changes must be approved by the Sumter County Board of Commissioners, the pertinent sections included in the Agency Plan, and a copy provided to HUD.

Housing Department Policy

The Housing Department will review and update the plan to reflect changes in regulations, Housing Department operations, or when needed to ensure staff consistency in operation.

Chapter 2

FAIR HOUSING AND EQUAL OPPORTUNITY

INTRODUCTION

This chapter explains the laws and HUD regulations requiring Housing Departments 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 Housing Department's housing choice voucher (HCV) operations and any other voucher assistance program awarded by HUD.

This chapter describes HUD regulations and Housing Department 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 Housing Department 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 (HUD) 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 Housing Department to ensure meaningful access to the HCV program and its activities by persons with limited English proficiency (LEP). This part incorporates HUD and DOJ's Notice of Guidance, published December 19, 2003 in the Federal Register.

PART I: NONDISCRIMINATION

2-I.A. OVERVIEW

Federal laws require Housing Departments to treat all applicants and participants equally, providing the same quality of service, regardless of family characteristics and background. Federal law prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, age, familial status, and disability. The Housing Department will comply fully with all federal, state, and local nondiscrimination laws, and with rules and regulations governing fair housing and equal opportunity in housing and employment, including:

- Title VI of the Civil Rights Act of 1964
- Title VIII of the Civil Rights Act of 1968 (as amended by the Community Development Act of 1974 and the Fair Housing Amendments Act of 1988)
- Executive Order 11063
- Section 504 of the Rehabilitation Act of 1973
- The Age Discrimination Act of 1975
- Violence Against Women Reauthorization Act of 2005 (VAWA)
- Title II of the Americans with Disabilities Act (to the extent that it applies, otherwise Section 504 and the Fair Housing Amendments govern)
- 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

<u>Housing Department Policy</u>

The Housing Department will also follow the Sumter County Fair Housing ordinance.

2-I.B. NONDISCRIMINATION

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

The Housing Department 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.

Housing Department Policy

The Housing Department will not discriminate on the basis of any protected class.

The Housing Department will not use any of these factors to:

- Deny any family the opportunity to apply for housing, nor deny any qualified applicant the opportunity to participate in the housing choice voucher program
- Provide housing which is different from what available to others
- Subject anyone to segregation or disparate treatment
- Restrict anyone's access to any benefit enjoyed by others in connection with the housing program
- Treat a person differently in determining eligibility or other requirements for admission
- Steer an applicant or participant toward or away from a particular area based upon 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 Housing Department 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 Housing Department must provide information to HCV applicant families about civil rights requirements and the opportunity to rent in a broad range of neighborhoods [24 CFR 982.301]. The Housing Assistance Payments (HAP) contract informs owners of the requirement not to discriminate against any person because of race, color, religion, sex, national origin, age, familial status, or disability in connection with the contract.

Discrimination Complaints

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

Housing Department Policy

Applicants or participants who believe that they have been subject to unlawful discrimination must notify the Housing Department in writing.

The Housing Department will attempt to remedy discrimination complaints made against the Housing Department.

The Housing Department will provide a copy of a discrimination complaint form to the complainant and provide them with information on how to complete and submit the form to HUD's Office of Fair Housing and Equal Opportunity (FHEO).

Filing a Complaint

If an applicant or participant believes their rights have been violated, they will be given the following information to file a complaint:

1. To file a complain online: http://portal.hud.gov/portal/page/portal/HUD/topics/housing_discrimination
2. Call the toll-free 1-800-669-9777
3. Printing a form online and mailing it to: Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, Room 5204, 451 Seventh St, SW, Washington, DC 20410-2000
4. Write a letter which includes name and address of the complainant, name and address of the person the complaint is above, the address of the house or apartment the family was trying to rent or buy, the date the incident occurred, a short description of what happened and mail it to the closest Fair Housing HUB office.

PART II: POLICIES RELATED TO PERSONS WITH DISABIILTIES

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

Housing Department Policy

The Housing Department will ask all applicants and participants if they require any type of accommodations, in writing, on the intake application and reexamination documents by including the following language:

> "If you or anyone in your family is a person with disabilities, do you require a specific accommodation to fully utilize our programs or services? Is so, please state the accommodation request"

2-II.B. DEFINITION OF REASONABLE ACCOMMODATION

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

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

- Permitting applications and reexaminations to be completed by a home visit
- Conducting home visits
- Using higher payment standards (either within the acceptable range or with HUD approval of a payment standard outside the Housing Department range) if the Housing Department 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 Housing Department staff
- Displaying posters and other housing information in locations throughout the Housing Department's office in such a manner as to be easily readable from a wheelchair

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 Housing Department 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 Housing Department's programs and services.

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

Housing Department Policy

The Housing Department will require the family to make a request in writing using a reasonable accommodation request form. The Housing Department will consider the accommodation any time the family indicates one is needed.

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 Housing Department 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 Housing Department's programs and services.

If a person's disability is obvious or otherwise known to the Housing Department, 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 Housing Department, the Housing Department 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 Housing Department will follow the verification policies provided in Chapter 7. All information related to a person's disability will be treated in accordance with the confidentiality policies provided in Chapter 16. In addition to the general requirements that govern all verification efforts, the following requirements apply when verifying a disability:

- Third-party verification must be obtained from an individual identified by the family who is competent to make the determination. A doctor or other medical professional, a peer support group, a non-medical service agency, or a reliable third party who is in a position to know about the individual's disability may provide verification of a disability [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act]
- The Housing Department must request only information that is necessary to evaluate the disability-related need for the accommodation. The Housing Department will not inquire about the nature or extent of any disability.
- Medical records will not be accepted or retained in the participant file.

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

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

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

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

Housing Department Policy

After a request for an accommodation is presented, the Housing Department will respond, in writing, within 10 calendar days.

If the Housing Department denies a request for an accommodation because it is not reasonable (it would impose an undue financial and administrative burden or fundamentally alter the nature of the Housing Department's operations), the Housing Department will discuss with the family whether an alternative accommodation could effectively address the family's disability-related needs without a fundamental alteration to the HCV program and without imposing an undue financial and administrative burden.

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

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

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

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

Housing Department Policy

To meet the needs of persons with hearing impairments, TTD/TTY (text telephone display / teletype) communication is available by calling the Federal Information Relay Service at 1-800-887-8339.

To meet the needs of persons with vision impairments, large-print of key program documents will be made available upon request. When visual aids are used in public meetings or presentations, or in meetings with Housing Department staff, one-on-one assistance will be provided upon request.

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

2-II.G. PHYSICAL ACCESSIBILITY

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

- PIH 2002-01 (HA), Accessibility Notice
- 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 Housing Department'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 Housing Department's responsibilities with regard to physical accessibility.
- Notice PIH 2002-01(HA) Accessibility Notice which summarizes information about pertinent laws and implementing regulations related to non-discrimination and accessibility in federally-funded housing programs.
- The Housing Department Plan provides information about self-evaluation, needs assessment, and transition plans.

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

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

2-II.H. DENIAL OR TERMINATION OF ASSISTANCE

A Housing Department'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 Housing Department's informal review process and their right to request a 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 Housing Department's informal hearing process and their right to request a hearing and reasonable accommodation.

When reviewing reasonable accommodation requests, the Housing Department must consider whether any mitigating circumstances can be verified to explain and overcome the problem that led to the Housing Department's decision to deny or terminate assistance. If a reasonable accommodation will allow the family to meet the requirements, the Housing Department 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 Notice of Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Affecting Limited English Proficient Persons, published December 19, 2003 in the Federal Register.

The Housing Department 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 Housing Department 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 Housing Department and costs. Balancing these four factors will ensure meaningful access by LEP persons to critical services while not imposing undue burdens on the Housing Department.

2-III.B. ORAL INTERPRETATION

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

Housing Department Policy

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

Where feasible, the Housing Department will train and hire bilingual staff to be available to act as interpreters and translators, will pool resources with other County Departments, and will standardize documents. Where feasible and possible, the Housing Department will encourage the use of qualified community volunteers.

When LEP persons desire, they will be permitted to use, at their own expense, an interpreter of their own choosing, in place of or as a supplement to the free language services offered by the Housing Department. The interpreter may be a family member or friend.

2-III.C. WRITTEN TRANSLATION

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

Housing Department Policy

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

Enter the HUD website and locate vital documents if available; or

Permit the LEP person to have someone of their own choosing interpreter the written materials orally

2-III.D. IMPLEMENTATION PLAN

After deciding what language assistance services are appropriate, the Housing Department shall determine whether it is necessary to develop a written implementation plan to address the identified needs of the LEP populations it serves.

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

Housing Department Policy

LEP persons will be served on a case by case basis using the resources provided by HUD Field office, HUD website and Sumter County Departments.

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" include, 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 Housing Department) as constituting such a limitation; has none of the impairments defined in this section but is treated by a public entity as having such an impairment; or has a physical or mental impairment that substantially limits one or more major life activities, only as a result of the attitudes of others toward that impairment.

The definition of a person with disabilities does not include:

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

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

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

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

Chapter 3

ELIGIBILITY

INTRODUCTION

The Housing Department 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 Housing Department 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 Housing Department.
  - 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 family members as required.
  - Consent to the Housing Department's collection and use of family information as provided for in Housing Department-provided consent forms.
- The Housing Department must determine that the current or past behavior of household members does not include activities that are prohibited by HUD or the Housing Department.

This chapter contains three parts:

Part I: Definitions of Family and Household Members. This part contains HUD and Housing Department 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 Housing Department to deny assistance.

PART I: DEFINITIONS OF FAMILY AND HOUSEHOLD MEMBERS

3-I.A. OVERVIEW

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

3-I.B. FAMILY AND HOUSEHOLD [24 CFR 982.201(c), HUD-50058 IB, p. 13]

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

Family

To be eligible for assistance, an applicant must qualify as a family. A family may be a single person or a group of persons. *Family* as defined by HUD includes a family with a child or children, two or more elderly or disabled persons living together, one or more elderly or disabled persons living with one or more live-in aides, or a single person. A single person family may be an elderly person, a displaced person, a disabled person, or any other single person. The Housing Department has the discretion to determine if any other group of persons qualifies as a family.

Housing Department Policy

A family also includes two or more individuals who are not related by blood, marriage, adoption, or other operation of law but who either can demonstrate that they have lived together previously or certify that each individual's income and other resources will be available to meet the needs of the family.

Each family must identify the individuals to be included in the family at the time of application, and must update this information if the family's composition changes.

Household

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

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

Family Break-up [24 CFR 982.315]

The Housing Department has discretion to determine which members of an assisted family continue to receive assistance if the family breaks up. However, if a court determines the disposition of property between members of the assisted family in a divorce or separation decree, the Housing Department is bound by the court's determination of which family members continue to receive assistance.

Housing Department Policy

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

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

In the absence of a judicial decision, or an agreement among the original family members, the Housing Department will determine which family retains their placement on the waiting list, or will continue to receive assistance taking 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) any possible risks to family members as a result of domestic violence or criminal activity, and (4) the recommendations of social service professionals.

If the family cannot decide who will remain in the assisted unit, the final decision will be made by the Housing Department using the factors listed above and any other pertinent information.

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.

Housing Department Policy

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

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

3-I.E. SPOUSE, COHEAD, AND OTHER ADULT

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

Spouse means the marriage partner of the head of household.

Housing Department Policy

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.

Housing Department Policy

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. DEPENDENT [24 CFR 5.603]

A *dependent* is a family member who is under 18 years of age or a person of any age who is a person with a disability or a full-time student, except that the following persons can never be dependents: the head of household, spouse, cohead, foster children/adults and live-in aides. Identifying each dependent in the family is important because each dependent qualifies the family for a deduction from annual income as described in Chapter 6.

Joint Custody of Dependents

Housing Department Policy

Dependents that are subject to a joint custody arrangement will be considered a member of the family, if they live with the applicant or participant family 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 Housing Department 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, HVC GB p. 5-29]

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

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

3-I.H. ELDERLY AND NEAR-ELDERLY PERSONS, AND ELDERLY FAMILY [24 CFR 5.100 and 5.403]

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 at least 50 years of age but below the age of 62.

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 these families qualify for special deductions from income as described in Chapter 6.

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

Persons with Disabilities

Under the HCV program, special rules apply to persons with disabilities and to any family whose head, spouse, or cohead is a person with disabilities. The technical definitions of individuals with handicaps and persons with disabilities are provided in Exhibit 3-1 at the end of this chapter. These definitions are used for a number of purposes including ensuring that persons with disabilities are not discriminated against based upon disability.

As discussed in Chapter 2, the Housing Department 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 special deductions from income as described in Chapter 6.

Even though persons with drug or alcohol dependencies are considered persons with disabilities for the purpose of non-discrimination, this does not prevent the Housing Department from denying assistance for reasons related to alcohol and drug abuse following policies found in Part III of this chapter, or from terminating assistance following 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 express or implied authority to so consent.

> Housing Department Policy
>
> A guest can remain in the assisted unit no longer than 30 consecutive 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 60 consecutive days). An exception will not be made unless the family can identify and provide documentation of the residence to which the guest will return.

3.I.K. FOSTER CHILDREN AND FOSTER ADULTS

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

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

Foster children and foster adults that are living with an applicant or assisted 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 and HUD-50058 IB, p. 13].

Housing Department Policy

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

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

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

3-I.L. ABSENT FAMILY MEMBERS

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

Definitions of Temporarily and Permanently Absent

Housing Department Policy

Generally an individual who 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 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

Housing Department Policy

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

Housing Department Policy

If a child has been placed in foster care, the Housing Department will verify with the appropriate agency whether or not the child is expected to be returned home and when. 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

Housing Department Policy

An employed head, spouse, or cohead absent from the unit more than 180 consecutive days due to employment, hospital stay, or rehabilitation center will continue to be considered a family member. Documentation must be provided and the absent can not be any longer than 240 consecutive days.

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].

Housing Department Policy

The Housing Department 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 up to 180 days. If evidence shows that the family member is confined on a permanent basis that the person not be considered a family member.

Return of Permanently Absent Family Members

Housing Department Policy

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

3-I.M. LIVE-IN AIDE

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

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

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

Housing Department Policy

A family's request for a live-in aide must be made in writing. Written verification will be required from a reliable, knowledgeable professional, such as a doctor, social worker, or case worker, that the live-in aide is essential for the care and well-being of the elderly, near-elderly, or disabled family member.

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 Housing Department 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 Housing Department or to another Housing Agency in connection with Section 8 or public housing assistance under the 1937 Act.
- The person is employed for more hours than feasible to assist the family member with the essential and well-being of the elderly, near-elderly, or disabled family member.

Within 10 calendar days of receiving a request for a live-in aide and all required documentation related to the request, the Housing Department will notify the family of its decision in writing.

PART II: BASIC ELIGIBILITY CRITERIA

3-II.A. INCOME ELIGIBILITY AND TARGETING

Income Limits

HUD is required by law to set income limits that determine the eligibility of applicants for HUD's assisted housing programs, including the housing choice voucher program. The income limits are published annually and are based on HUD estimates of median family income in a particular area or county, with adjustments for family size.

Types of Low-Income Families [24 CFR 5.603(b)]

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

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

Extremely low-income family. A family whose annual income does not exceed 30 percent of the median income for the area, adjusted for family size.

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

Using Income Limits for Eligibility [24 CFR 982.201]

Income limits are used for eligibility to be placed on the waiting list and admission to the program. Eligibility is established by comparing a family's annual income with HUD's published income limits. To be income-eligible, a family must be one of the following:

- An *extremely low income* family
- 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]

  Housing Department Policy

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

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

Housing Department Policy

The Housing Department has not established any additional categories for eligible low-income families.

Using Income Limits for Targeting [24 CFR 982.201]

At least 75 percent of the families admitted to the Housing Department's program during a Housing Department fiscal year must be extremely low-income families. HUD may approve exceptions to this requirement if the Housing Department 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 subject to the 75 percent restriction.

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 Housing Department'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 that claims their status. However, HUD regulations permit the Housing Department to request additional documentation of their status, such as a passport.

> Housing Department Policy
>
> Family members who declare citizenship or national status will not be required to provide additional documentation unless the Housing Department receives information indicating that an individual's declaration may not be accurate then the additional documentation, such as a passport, will be required.

Eligible Non-citizens

In addition to providing a signed declaration, those declaring eligible noncitizen status must sign a verification consent form and cooperate with Housing Department 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 non-contending family members listing, signed by the head, spouse, or cohead (regardless of citizenship status), indicating their ineligible immigration status. The Housing Department 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)]

A Housing Department 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 Housing Department that the individual or at least one family member is eligible [24 CFR 5.512(a)].

Housing Department Policy

The Housing Department will not provide assistance to a family before the verification has been received.

When the Housing Department 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 calendar days of the determination.

The notice will explain the reasons for the denial of assistance, that the family may be eligible for pro-ration 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 review with the Housing Department. The informal review with the Housing Department 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 review process.

Informal review procedures are contained in Chapter 16.

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

For new occupants joining the assisted family the Housing Department 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 Housing Department 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.

Housing Department Policy

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

3-II.C. SOCIAL SECURITY NUMBERS [24 CFR 5.216 and 5.218]

Every family member must provide documentation of a valid Social Security Number (SSN) or a certification stating that no SSN has been issued. If a family member who is required to execute a certification is less than 18 years old, the certification must be executed by the individual's parent or guardian [24 CFR 5.216(j)]. Assistance cannot be provided to a family until all SSN documentation requirements are met. A detailed discussion of acceptable documentation is provided in Chapter 7.

Any new member who is added to the family, the new member's SSN documentation must be submitted before approval will be granted.

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

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

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

The Housing Department 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)].

PART III: DENIAL OF ASSISTANCE

3-III.A. OVERVIEW

A family that does not meet the eligibility criteria discussed in Parts I and II, must be denied assistance.

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

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

Denial of assistance includes any of the following:

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

Prohibited Reasons for Denial of Assistance [24 CFR 982.202(b)]

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

- Age, disability, race, color, religion, sex, familial status, 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 as long as the unit meets HQS standards. Although eligibility is not affected by where the family will live, there may be restrictions on the family's ability to move outside the Housing Department's jurisdiction (See Chapter 10, Portability.)
- Whether members of the family are unwed parents, recipients of public assistance, or children born out of wedlock
- Whether the family includes children

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

HUD requires the Housing Department to deny assistance in the following cases:

- Any member of the household has been evicted from federally-assisted housing in the last 5 (five) years for drug-related criminal activity. HUD permits but does not require the Housing Department to admit an otherwise-eligible family if the household member has completed a Housing Department-approved drug rehabilitation program or the circumstances which led to eviction no longer exist (e.g. the person involved in the criminal activity no longer lives in the household).

  Housing Department Policy

  The Housing Department will admit an otherwise-eligible family who was evicted from federally-assisted housing within the past 5 (five) years for drug-related criminal activity if the person who committed the crime is no longer living in the household.

- The Housing Department determines that any household member is currently engaged in the use of illegal drugs.

  Housing Department Policy

  Currently engaged in is defined as any use of illegal drugs during the previous six months. The Housing Department will deny assistance for any arrest and/or conviction of a person currently engaged in the use of illegal drugs.

- The Housing Department 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.

  Housing Department Policy

  In determining reasonable cause, the Housing Department 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. The Housing Department will also consider evidence from treatment providers, community-based organizations, police officials, etc. providing services to household members. These will be handled on a case by case basis and all files will be documented accordingly.

- Any household member has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine on the premises of federally assisted housing

- Any household member is subject to a lifetime registration requirement under a state sex offender registration program

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

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

Criminal Activity [24 CFR 982.553]

HUD permits, but does not require, the Housing Department to deny assistance if the Housing Department 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. Arrest and/or conviction will be considered in making the determination.

Housing Department Policy

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

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

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

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

Criminal activity that may threaten the health or safety of the Housing Department including employees, inspectors, or anyone acting on behalf of the department.

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

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

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

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

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

In making its decision to deny assistance, the Housing Department will consider the factors discussed in Section 3-III.E. Upon consideration of such factors, the Housing Department 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 Housing Department to deny assistance based on the family's previous behavior in assisted housing:

Housing Department Policy

The Housing Department **will** deny assistance to an applicant family if:

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

The family does not provide complete and true information to the Housing Department.

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

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

The family owes rent or other amounts to any Housing Department in connection with the HCV program, unless the family repays the full amount of the debt prior to applying for assistance.

The family has breached the terms of a repayment agreement entered into with the Housing Department.

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

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

3-III.D. PROHIBITION AGAINST DENIAL OF ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, AND STALKING [Pub.L. 109-162]

The Violence Against Women Reauthorization Act of 2005 (VAWA) prohibits denial of admission to an otherwise qualified applicant on the basis that the applicant is or has been a victim of domestic violence, dating violence, or stalking. Specifically, Section 606(1) of VAWA adds the following provision to Section 8 of the U.S. Housing Act of 1937, which lists contract provisions and requirements for the housing choice voucher program:

- That an applicant or participant is or has been a victim of domestic violence, dating violence, or stalking is not an appropriate reason for denial of program assistance or for denial of admission, if the applicant otherwise qualifies for assistance or admission.

Definitions

As used in VAWA:

- The term domestic violence includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.
- The term *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 *stalking* means:
  - To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate; or
  - To place under surveillance with the intent to kill, injure, harass, or intimidate another person; and
  - In the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (1) that person, (2) a member of the immediate family of that person, or (3) the spouse or intimate partner of that person.

- The term *immediate family member* means, with respect to a person:
  - A spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in the position or place of a parent; or
  - Any other person living in the household of that person and related to that person by blood and marriage.

Notification and Victim Documentation

Housing Department Policy

The Housing Department acknowledges that a victim of domestic violence, dating violence, or stalking may have an unfavorable history that would warrant denial under the Housing Department's policies. Therefore, if the Housing Department makes a determination to deny admission to an applicant family, the Housing Department will include in its notice of denial a statement of the protection against denial provided by VAWA and will offer the applicant the opportunity to provide documentation affirming that the cause of the unfavorable history is that a member of the applicant family is or has been a victim of domestic violence, dating violence, or stalking.

The documentation must include two elements:

A signed statement by the victim that provides the name of the perpetrator and certifies that the incidents in question are bona fide incidents of actual or threatened domestic violence, dating violence, or stalking, and

One of the following:

A police or court record documenting the actual or threatened abuse, or

A statement signed by an employee, agent, or volunteer of a victim service provider; an attorney; a medical professional; or another knowledgeable professional from whom the victim has sought assistance in addressing the actual or threatened abuse. The professional must attest under penalty of perjury that the incidents in question are bona fide incidents of abuse, and the victim must sign or attest to the statement.

The applicant must submit the required documentation with her or his request for an informal review (see section 16-III.D) or must request an extension in writing at that time. If the applicant so requests, the Housing Department will grant an extension of 10 calendar days, and will postpone scheduling the applicant's informal review until after it has received the documentation or the extension period has elapsed. If after reviewing the documentation provided by the applicant the Housing Department determines the family is eligible for assistance, no informal review will be scheduled and the Housing Department will proceed with admission of the applicant family.

Perpetrator Removal or Documentation of Rehabilitation

Housing Department Policy

In cases where an applicant family includes the perpetrator as well as the victim of domestic violence, dating violence, or stalking, the Housing Department will proceed as above but will require that the perpetrator be removed from the applicant household and not reside in the assisted housing unit.

Housing Department Confidentiality Requirements

All information provided to the Housing Department regarding domestic violence, dating violence, or stalking, including the fact that an individual is a victim of such violence or stalking, must be retained in confidence and may neither be entered into any shared database nor provided to any related entity, except to the extent that the disclosure (a) is requested or consented to by the individual in writing, (b) is required for use in an eviction proceeding, or (c) is otherwise required by applicable law.

3-III.E. SCREENING

Screening for Eligibility

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

Housing Department Policy

The Housing Department will perform a criminal background check via the internet. A check will be conducted through Sumter, Marion, Citrus and Lake county law enforcement for every adult household member. If the applicant has resided in another county prior to application, that county will be checked. The FDLE website is also used in the screening process.

Housing Departments 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)].

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

Housing Department Policy

The Housing Department 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 Housing Department 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 Housing Department to provide prospective owners with the family's current and prior address (as shown in Housing Department records) and the name and address (if known) of the owner at the family's current and prior addresses. HUD permits the Housing Department 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.

Housing Department Policy

The Housing Department will inform owners of their responsibility to screen prospective tenants, and will provide owners with the required known name and address information. The Housing Department will not provide any additional information to the owner, such as tenancy history, criminal history, etc.

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

Evidence [24 CFR 982.553(c)]

Housing Department Policy

The Housing Department 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 Housing Department 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 mandated (see Section 3-III.B).

Housing Department Policy

The Housing Department will consider the following factors prior to making its decision:

The seriousness of the case, especially with respect to how it would affect other residents

The effects that denial of assistance may have on other members of the family who were not involved in the action or failure

The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities

The length of time since the violation occurred, the family's recent history and the likelihood of favorable conduct in the future

In the case of drug or alcohol abuse, the culpable household member is has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully

The Housing Department will require the applicant to submit evidence of the household member's successful completion of a supervised drug or alcohol rehabilitation program.

Removal of a Family Member's Name from the Application [24 CFR 982.552(c)(2)(ii)]

HUD permits Housing Departments to impose as a condition of admission, a requirement that family members who participated in or were culpable for an action or failure to act which results in the denial of assistance, to not reside in the unit.

Housing Department Policy

As a condition of receiving assistance, a family may agree to remove the culpable family member from the application. In such instances, the head of household must certify that the family member will not be permitted to visit or to stay as a guest in the assisted unit.

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

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

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

Housing Department Policy

If the family indicates that the behavior of a family member with a disability is the reason for the proposed denial of assistance, the Housing Department will determine whether the behavior is related to the disability. If so, upon the family's request, the Housing Department will determine whether alternative measures are appropriate as a reasonable accommodation. The Housing Department 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

Eligible for Assistance

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

If the Housing Department 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.

Housing Department Policy

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

If a Housing Department uses a criminal record or sex offender registration information obtained under 24 CFR 5, Subpart J, as the basis of a denial, a notice of denial will sent with the opportunity for the applicant to dispute the accuracy and relevance of the information in an Informal review before the Housing Department 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 Housing Department 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)]

Housing Department Policy

If based on a criminal record or sex offender registration information, an applicant family appears to be ineligible the Housing Department will notify the family in writing of the denial. The family will be given 10 calendar days to request in writing an Informal review. If the family does not contact the Housing Department to dispute the information within that 10 calendar day period, the Housing Department will close the file.

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

EXHIBIT 3-1: DETAILED DEFINITIONS RELATED TO DISABILITIES

Person with Disabilities [24 CFR 5.403]

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

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

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

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

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

  (A) In General

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

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

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

  (iii) is likely to continue indefinitely;

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

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

(B) Infants and Young Children

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

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

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

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

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

Individual with Handicaps [24 CFR 8.3]

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

(1) Physical or mental impairment includes:

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

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

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

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

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

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

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

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

Chapter 4

APPLICATIONS, WAITING LIST AND TENANT SELECTION

INTRODUCTION

When a family wishes to receive Section 8 HCV assistance, the family must submit an application that provides the Housing Department with the information needed to determine the family's eligibility. HUD requires the Housing Department to place all families that apply for assistance on a waiting list. When HCV assistance becomes available, the Housing Department must select families from the waiting list in accordance with HUD requirements and Housing Department policies as stated in the administrative plan and the annual plan.

The Housing Department is required to adopt a clear approach to accepting applications, placing families on the waiting list, selecting families from the waiting list and must follow this approach consistently. The actual order in which families are selected from the waiting list can be affected if a family has certain characteristics designated by HUD or the Housing Department to receive preferential treatment. Funding earmarked exclusively for families with particular characteristics may also alter the order in which families are served.

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

This chapter describes HUD and Housing Department 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 Housing Department will handle the applications it receives.
>
> Part II: Managing the Waiting List. This part presents the policies that govern how the Housing Department'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 Housing Department will use to keep the waiting list current.
>
> Part III: Selection for HCV Assistance. This part describes the policies that guide the Housing Department 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 Housing Department has the information needed to make a final eligibility determination.

PART I: THE APPLICATION PROCESS

4-I.A. OVERVIEW

This part describes the policies that guide the Housing Department's efforts to distribute and accept applications, and to make preliminary determinations of applicant family eligibility that affect placement of the family on the waiting list. This part also describes the Housing Department'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]

Any family that wishes to receive HCV assistance must apply for admission to the program. HUD permits the Housing Department 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 Housing Department.

Housing Department Policy

When the waiting list is open, any family asking to be placed on the waiting list for Section 8 rental assistance will be given the opportunity to complete an application. Applications will be made available in an accessible format upon request from a person with a disability.

All applications will be dated and time-stamped which will be the family's placement on the waiting list.

The application process will involve two phases. The first is the "initial" application for assistance. This first phase results in the family's placement on the waiting list. Verification of income will be provided by the family and a police record search will be conducted to ensure the family is income eligible and no drug or violent criminal activity has occurred with the past five years. Arrest and/or convictions will be considered in making the determination.

The second phase is the "final determination of eligibility". This process takes place when the family reaches the top of the waiting list. The family's name will be pulled from the waiting list and each family will be sent a letter to respond within ten calendar days from the date of the letter. When the applicant contacts the Housing Department, the family will be scheduled a briefing. At the briefing, the family's income, assets and expenses will be verified by third party verification.

Families may obtain application forms from the Housing Department's office during normal business hours when the application cycle is open.

Completed applications must be returned to the Housing Department by a scheduled appointment before waiting list closes. Applications must be complete in order to be accepted by the Housing Department for processing. If an application is incomplete, the Housing Department will not accept the application.

4-I.C. ACCESSIBILITY OF THE APPLICATION PROCESS

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

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

Limited English Proficiency

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

4-I.D. PLACEMENT ON THE WAITING LIST

The Housing Department must review each complete application received and make a preliminary assessment of the family's eligibility. The Housing Department 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 Housing Department 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 the waiting list of applicants.

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

Ineligible for Placement on the Waiting List

Housing Department Policy

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

Eligible for Placement on the Waiting List

Housing Department Policy

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

Applicants will be placed on the waiting list according to the date and time their complete application is received by the Housing Department.

PART II: MANAGING THE WAITING LIST

4-II.A. OVERVIEW

The Housing Department 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 Housing Department may structure its waiting list and how families must be treated if they apply for assistance from a Housing Department that administers more than one assisted housing program.

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

The Housing Department's HCV waiting list must be organized in such a manner to allow the Housing Department 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;
- Mailing address;
- Racial or ethnic designation of the head of household.

HUD requires the Housing Department to maintain a single waiting list for the HCV program unless it serves more than one county or municipality. Such Housing Departments are permitted, but not required, to maintain a separate waiting list for each county or municipality served.

<u>Housing Department Policy</u>

The Housing Department will maintain a single waiting list for the HCV program for all of Sumter County.

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

Closing the Waiting List

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

Housing Department Policy

The Housing Department will close the waiting list as stated in the public notice. The public notice will state both the opening and closing dates of applications being accepted for the HCV program.

Reopening the Waiting List

If the waiting list has been closed, it cannot be reopened until the Housing Department publishes a notice in local newspapers of general circulation, minority media, and other suitable media outlets. The notice must comply with HUD fair housing requirements and must specify who may apply, and where and when applications will be received.

Housing Department Policy

The Housing Department will announce the reopening of the waiting list at least 10 calendar days prior to the date applications will first be accepted.

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

- ***Sumter County Times***
- ***The Villages Daily Sun newspaper***
- ***Department of Children and Families***
- ***Sumter County Health Department***
- ***Bushnell Garden Apartments, Webster Apartments, Wildwood Townhomes, Wildwood Commons, Lake Panasoffkee Apartments, and Club Wildwood Apartments***
- ***Local mobile home parks***
- ***Sumter County's website***

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

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

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

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

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

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

- Submitting press releases to local newspapers, including minority newspapers
- Developing informational materials and flyers to distribute to other agencies
- Providing application forms to other public and private agencies that serve the low income population
- Developing partnerships with other organizations that serve similar populations, including agencies that provide services for persons with disabilities

<u>Housing Department Policy</u>

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

4-II.E. REPORTING CHANGES IN FAMILY CIRCUMSTANCES

Housing Department Policy

While the family is on the waiting list, the family must immediately inform the Housing Department of changes in contact information, including current residence, mailing address, and phone number.

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

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

Purging the Waiting List

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

Housing Department Policy

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

To update the waiting list, the Housing Department will send a request form by mail to each family on the waiting list to determine whether the family continues to be interested in, and to qualify for, the program. This request form will be sent to the last address that the Housing Department has on record for the family. The request form will provide a deadline by which the family must respond and will state that failure to respond will result in the applicant's name being removed from the waiting list.

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

If the notice is returned by the post office with a forwarding address, the notice will be re-sent to the address indicated.

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

Removal from the Waiting List

Housing Department Policy

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

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

PART III: SELECTION FOR HCV ASSISTANCE

4-III.A. OVERVIEW

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

The order in which families receive assistance from the waiting list depends on the selection method chosen by the Housing Department and is impacted in part by any selection preferences that the family qualifies for. The source of HCV funding also may affect the order in which families are selected from the waiting list.

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

4-III.B. SELECTION AND HCV FUNDING SOURCES

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

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

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

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

Housing Department Policy

The Housing Department does not offer any preferences.

Income Targeting Requirement [24 CFR 982.201(b)(2)]

HUD requires that extremely low-income (ELI) families make up at least 75% of the families admitted to the HCV program during the Housing Department's fiscal year. ELI families are those with annual incomes at or below 30% of the area median income. To ensure this requirement is met, a Housing Department 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)].

Housing Department Policy

The Housing Department will monitor progress in meeting the ELI requirement throughout the fiscal year. Extremely low-income families will be selected ahead of other eligible families on an as-needed basis to ensure the income targeting requirement is met.

Order of Selection

The Housing Department system of preferences may select families either according to the date and time of application, or by a random selection process [24 CFR 982.207(c)]. When selecting families from the waiting list Housing Departments are required to use targeted funding to assist only those families who meet the specified criteria, and Housing Departments are not permitted to skip down the waiting list to a family that it can afford to subsidize when there are not sufficient funds to subsidize the family at the top of the waiting list [24 CFR 982.204(d) and (e)].

Housing Department Policy

When funding is available, families will be selected from the waiting list according to date and time of their application unless the Housing Department has monitored the ELI requirement and there is a need to meet the income targeting requirement.

When there is insufficient funding available for the family at the top of the list, the Housing Department will not admit any other applicant until funding is available for the first applicant.

4-III.D. NOTIFICATION OF SELECTION

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

Housing Department Policy

The Housing Department will notify the family by first class mail when it is selected from the waiting list. The notice will inform the family of the following:

The family will have ten calendar days to contact the Housing Department to schedule a briefing.

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

4-III.E. THE APPLICATION INTERVIEW

HUD recommends that the Housing Department obtain the information and documentation needed to make an eligibility determination though a private interview [HCV GB, pg. 4-16]. Being invited to attend an interview does not constitute admission to the program.

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

Housing Department Policy

Families selected from the waiting list are required to participate in an eligibility interview.

The head of household, the spouse/co-head, and all adult members will be required to attend the interview.

The family must provide the information necessary to establish the family's eligibility and determine the appropriate level of assistance, as well as completing required forms, providing required signatures, and submitting required documentation.

Any required documents or information that the family is unable to provide at the interview must be provided within 10 calendar days of the interview. If the family is unable to obtain the information or materials within the required time frame, the family may request an extension. If the required documents and information are not provided within the required time frame, the family will be sent a notice of denial.

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

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

If the family is unable to attend a scheduled interview, the family should contact the Housing Department in advance of the interview to schedule a new appointment. In all circumstances, if a family does not attend a scheduled interview, the Housing Department will deny assistance based on the family's failure to supply information needed to determine eligibility. A notice of denial will be issued in accordance with policies contained in Chapter 3.

4-III.F. COMPLETING THE APPLICATION PROCESS

The Housing Department must verify all information provided by the family. Based on verified information, the Housing Department must make a final determination of eligibility.

Housing Department Policy

The Housing Department will update all household income, assets and eligible expenses with the family before conducting the briefing. If the family is eligible for assistance, the briefing will continue. If the family is ineligible for assistance, the family will be sent a letter explaining the decision of ineligibility and provided with opportunity for an Informal review.

Chapter 5

BRIEFINGS AND VOUCHER ISSUANCE

INTRODUCTION

This chapter explains the briefing and voucher issuance process. When a family is determined to be eligible for the Housing Choice Voucher (HCV) program, the Housing Department must ensure that the family fully understands the way the program operates and the family's obligations under the program. This is accomplished through both an oral briefing and provision of a briefing packet containing written documentation of information the family needs to know. Once the family is fully informed of the program's requirements, the Housing Department issues the family a voucher. The voucher includes the unit size the family qualifies for based on the Housing Department's subsidy standards, as well as the dates of issuance and expiration of the voucher. The voucher is the document that permits the family to begin its search for a unit, and limits the amount of time the family has to successfully locate an acceptable unit.

This chapter describes HUD regulations and Housing Department 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 Housing Department's standards for determining how many bedrooms a family of a given composition qualifies for, which in turn affects the amount of subsidy the family can receive. It also discusses the policies that dictate how vouchers are issued, and how long families have to locate a unit.

PART I: BRIEFINGS AND FAMILY OBLIGATIONS

5-I.A. OVERVIEW

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

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

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

Housing Department Policy

Briefings will be conducted individually.

The head of household, spouse/co-head, and all adult members are required to attend the briefing.

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

Notification and Attendance

Housing Department Policy

Applicants, who fail to attend a scheduled briefing without Housing Department approval, will automatically be denied assistance and removed from the waiting list.

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 Housing Department's jurisdiction;
- For families eligible under portability, an explanation of portability. The Housing Department cannot discourage eligible families from moving under portability;

Briefing Packet [24 CFR 982.301(b)]

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

- The term of the voucher, and the Housing Department's policies on any extensions or suspensions of the term. If the Housing Department 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 Housing Department determines the payment standard for a family, how the Housing Department determines total tenant payment for a family, and information on the payment standard and utility allowance schedule.
- An explanation of how the Housing Department determines the maximum allowable rent for an assisted unit.
- Where the family may lease a unit.
- The HUD-required tenancy addendum, which must be included in the lease.
- The form the family must use to request approval of tenancy, and a description of the procedure for requesting approval for a tenancy.
- A statement of the Housing Department policy on providing information about families to prospective owners.
- The HUD brochure on "A Good Place to Live" on how to select a unit that complies with HQS.
- The HUD pamphlet on lead-based paint entitled *Protect Your Family from Lead in Your Home.*
- Information on federal, state and local equal opportunity laws and a copy of the housing discrimination complaint form. The Housing Department will also include the pamphlet "Fair Housing: It's Your Right" and the phone number of the local fair housing agency and the HUD enforcement office.
- A list of landlords or other parties willing to lease to assisted families or help families find units, especially outside areas of poverty or minority concentration.
- Notice that if the family includes a person with disabilities, the family may request a list of available accessible units known to the Housing Department.
- The family obligations under the program.
- The grounds on which the Housing Department may terminate assistance for a participant family because of family action or failure to act.
- Housing Department informal hearing procedures including when the Housing Department is required to offer a participant family the opportunity for an informal hearing, and how to request the hearing.

Additional Items to be Included in the Briefing Packet

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

Housing Department Policy

The Housing Department will provide the following additional materials in the briefing packet:

The family's rights as a tenant and a program participant

A listing of all utility companies throughout Sumter County

Information on security deposits and legal referral services

The publication *Things You Should Know (HUD-1140-OIG)* that explains the types of actions a family must avoid and the penalties for program abuse.

The Violence Against Women Act pamphlet

The Attorney General pamphlet explaining consequences of committing fraud

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 Housing Department 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

Housing Department Policy

The Housing Department considers prompt notice as 10 calendar days when responding to a request or notification of a change in the household.

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

Family Obligations [24 CFR 982.551]

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

- The family must supply any information that the Housing Department 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 Housing Department or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition.
- The family must disclose and verify social security numbers and sign and submit consent forms for obtaining information.
- Any information supplied by the family must be true and complete.
- The family is responsible for any Housing Quality Standards (HQS) breach by the family caused by failure to pay tenant-provided utilities or appliances, or damages to the dwelling unit or premises beyond normal wear and tear caused by any member of the household or guest.

  Housing Department Policy

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

- The family must allow the Housing Department 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.

  Housing Department Policy

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

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

- The family must notify the Housing Department and the owner before moving out of the unit or terminating the lease.

  Housing Department Policy

  The family must comply with lease requirements regarding written notice to the owner. The family must provide written thirty day (30) notice to the Housing Department at the same time the owner is notified.

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

  Housing Department Policy

  The request to add a family member must be submitted in writing and approved prior to the person moving into the unit. The family must have written approval from the owner prior to requesting approval from the Housing Department.

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

- If the Housing Department has given approval, a foster child or a live-in aide may reside in the unit. The Housing Department has the discretion to adopt reasonable policies concerning residency by a foster child or a live-in aide, and to define when Housing Department consent may be given or denied.
- The family must not sublease the unit, assign the lease, or transfer the unit.

  Housing Department Policy

  Subleasing includes receiving payment to cover rent and/or utility costs by a person living in the unit who is not listed as a family member.
- The family must supply any information requested by the Housing Department 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 Housing Department when the family is absent from the unit.

  Housing Department Policy

  Notice is required under this provision only when all family members will be absent from the unit for an extended period. An extended period is defined as any period greater than 30 calendar days. Written notice must be provided to the Housing Department at the start of the extended absence.
- The family must pay utility bills and provide and maintain any appliances that the owner is not required to provide under the lease [Form HUD-52646, Voucher].
- The family must not own or have any interest in the unit.
- 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 Housing Department 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 Housing Department 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 Housing Department has determined (and has notified the owner and the family of such determination) that approving rental of the unit, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities. [Form HUD-52646, Voucher]

PART II: SUBSIDY STANDARDS AND VOUCHER ISSUANCE

5-II.A. OVERVIEW

The Housing Department 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 Housing Department also must establish policies related to the issuance of the voucher, to the voucher term, and to any extensions or suspensions of that term.

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

For each family, the Housing Department determines the appropriate number of bedrooms under the Housing Department 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 Housing Department determines family unit size:

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

  Housing Department Policy

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

  Persons of the opposite sex (other than spouses, and children under age 5) will be allocated separate bedrooms.

  Live-in aides will be allocated a separate bedroom.

  Single person families will be allocated one bedroom.

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

Voucher Size	**Persons in Household** (Minimum – Maximum)
1 Bedroom	1-3
2 Bedrooms	3-4
3 Bedrooms	4-6
4 Bedrooms	6-8
5 Bedrooms	8-12

5-II.C. EXCEPTIONS TO SUBSIDY STANDARDS

In determining family unit size for a particular family, the Housing Department may grant an exception to its established subsidy standards if the Housing Department 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)].

Housing Department Policy

The Housing Department will consider granting an exception for any of the reasons specified in the regulation: the age, sex, health, handicap, or relationship of family members or other personal circumstances.

The family must request any exception to the subsidy standards in writing. The request must explain the need or justification for a larger family unit size, and must include appropriate documentation. Requests based on health-related reasons must be verified by a knowledgeable professional source, unless the disability and the disability–related request for accommodation is readily apparent or otherwise known.

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

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

When a family is selected from the waiting list or when a participant family wants to move to another unit, the Housing Department 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 Housing Department has determined the family to be eligible for the program, and that the Housing Department expects to have money available to subsidize the family if the family finds an approvable unit. However, the Housing Department 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 Housing Department's housing choice voucher program [Voucher, form HUD-52646]

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

Housing Department Policy

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

The Housing Department 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 Housing Department must wait until it has adequate funds before it calls another family from the list.

Housing Department Policy

Prior to issuing any vouchers and pulling from the waiting list, the Housing Department will determine whether it has sufficient funding in accordance with the policies in Part VIII of Chapter 16.

If the Housing Department determines that there is insufficient funding, no families will be pulled from the waiting list.

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

Voucher Term [24 CFR 982.303]

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

Housing Department Policy

The initial voucher term will be 60 calendar days.

The family must submit a Request for Tenancy Approval and proposed lease within the 60-day period unless the Housing Department grants an extension.

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

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

Housing Departments 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 Housing Department's decision to approve or deny an extension. The Housing Department'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)].

Housing Department Policy

The Housing Department will automatically approve one 30-day extension upon written request and a search record at least ten calendar days before the voucher expiration date from the family.

The Housing Department will approve additional extensions only in the following circumstances:

It is necessary as a reasonable accommodation for a person with disabilities.

It is necessary due to reasons beyond the family's control, as determined by the Housing Department. Following is a list of extenuating circumstances that the Housing Department may consider in making its decision. The presence of these circumstances does not guarantee that an extension will be granted:

Serious illness or death in the family

Other family emergency

Obstacles due to employment

Whether the family has already submitted requests for tenancy approval that were not approved by the Housing Department

Whether family size or other special requirements make finding a unit difficult

Any request for an additional extension must include the reason(s) an additional extension is necessary. The Housing Department may require the family to provide documentation to support the request.

All requests for extensions to the voucher term must be made in writing and submitted to the Housing Department ten (10) calendar days before the expiration date of the voucher (or extended term of the voucher).

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

No extension will exceed a 120 day period from the initial issuance date of the voucher.

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

At its discretion, a Housing Department may adopt a policy to suspend the housing choice voucher term if the family has submitted a Request for Tenancy Approval (RTA) during the voucher term. "Suspension" means stopping the clock on a family's voucher term from the time a family submits the RTA until the time the Housing Department approves or denies the request [24 CFR 982.4]. The Housing Department's determination not to suspend a voucher term is not subject to informal review [24 CFR 982.554(c)(4)].

Housing Department Policy

When a Request for Tenancy Approval and proposed lease is received by the Housing Department, the term of the voucher will not be suspended while the Housing Department processes the request.

Expiration of Voucher Term

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

Housing Department Policy

If an applicant family's voucher term or extension expires before the family has submitted a Request for Tenancy Approval (RTA), the Housing Department will require the family to reapply for assistance. If an RTA that was submitted prior to the expiration date of the voucher is subsequently disapproved by the Housing Department (after the voucher term has expired), the family will be required to reapply for assistance.

Within 10 calendar days after the expiration of the voucher term or any extension, the Housing Department will notify the family in writing that the voucher term has expired and that the family must reapply in order to be placed on the waiting list if open.

Chapter 6

INCOME AND SUBSIDY DETERMINATIONS

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

INTRODUCTION

A family's income determines eligibility for assistance and is also used to calculate the family's payment and the Housing Department's subsidy. The Housing Department 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 Housing Department 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 Housing Department policies for calculating annual income are found in Part I.
- Part II: Adjusted Income. Once annual income has been established HUD regulations require the Housing Department to subtract from annual income any of five mandatory deductions for which a family qualifies. These requirements and Housing Department policies for calculating adjusted income are found in Part II.
- Part III: Calculating Family Share and Housing Department Subsidy. This part describes the statutory formula for calculating total tenant payment (TTP), the use of utility allowances, and the methodology for determining Housing Department subsidy and required family payment.

PART I: ANNUAL INCOME

6-I.A. OVERVIEW

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

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

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

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

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

6-I.B. HOUSEHOLD COMPOSITION AND INCOME

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

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

Temporarily 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].

Housing Department Policy

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. 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

Housing Department Policy

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

Housing Department Policy

If a child has been placed in foster care, the Housing Department 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 Co-head

Housing Department Policy

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

If the head is absent for any reason for more than 180 consecutive days they will be considered permanently absent and assistance will either be terminated or transferred to the spouse or co-head.

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].

Housing Department Policy

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

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

Joint Custody of Dependents

Housing Department Policy

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

Caretakers for a Child

Housing Department Policy

If neither a parent nor a designated guardian remains in a household receiving HCV assistance, the Housing Department 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 Housing Department will extend the caretaker's status as an eligible visitor.

(3) At any time that custody or guardianship legally has been awarded to a caretaker, the housing choice voucher will be transferred to the caretaker.

(4) During any period that a caretaker is considered a visitor, the income of the caretaker is not counted in annual income and the caretaker does not qualify the family for any deductions from income.

6-I.C. ANTICIPATING ANNUAL INCOME

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

Housing Department Policy

When the Housing Department cannot readily anticipate income based upon current circumstances (e.g., in the case of seasonal employment, unstable working hours, or suspected fraud), the Housing Department 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. Anytime current circumstances are not used to project annual income, a clear rationale for the decision will be documented in the file. In all such cases the family may present information and documentation to the Housing Department to show why the historic pattern does not represent the family's anticipated income.

Known Changes in Income

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

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

The family may present information that demonstrates that implementing a change before its effective date would create a hardship for the family. In such cases the Housing Department will calculate annual income using current circumstances and then require an interim reexamination when the change actually occurs.

Using Enterprise Income Verification (EIV)

HUD requires the use of the Enterprise Income Verification (EIV) system. EIV is a web-based computer system that contains employment and income information of individuals who participant in HUD rental assistance program.

HUD allows Housing Departments to use EIV information in conjunction with family-provided documents to anticipate income.

Housing Department Policy

Housing Department procedures for anticipating annual income will include the use of EIV methods approved by HUD in conjunction with family-provided documents dated within the last 60 days of the Housing Department interview date.

The Housing Department will follow "HUD Guidelines for Projecting Annual Income When Up-Front Income Verification (EIV) Data Is Available" in handling differences between EIV and family-provided income data. The guidelines depend on whether a difference is substantial or not. HUD defines *substantial difference* as a difference of $200 or more per month.

No Substantial Difference. If EIV information for a particular income source differs from the information provided by a family by less than $200 per month, the Housing Department will follow these guidelines:

If the EIV figure is less than the family's figure, the Housing Department will use the family's information.

If the EIV figure is more than the family's figure, the Housing Department will use the EIV data unless the family provides documentation of a change in circumstances to explain the discrepancy (e.g., a reduction in work hours). Upon receipt of acceptable family-provided documentation of a change in circumstances, the Housing Department will use the family-provided information.

Substantial Difference. If EIV information for a particular income source differs from the information provided by a family by $200 or more per month, the Housing Department will follow these guidelines:

The Housing Department will request written third-party verification from the discrepant income source in accordance with 24 CFR 5.236(b)(3)(i).

When the Housing Department cannot readily anticipate income (e.g., in cases of seasonal employment, unstable working hours, or suspected fraud), the Housing Department will review historical income data for patterns of employment, paid benefits, and receipt of other income.

The Housing Department will analyze all EIV, third-party, and family-provided data and attempt to resolve the income discrepancy.

The Housing Department will use the most current verified income data and, if appropriate, historical income data to calculate anticipated annual income.

6-I.D. EARNED INCOME

Types of Earned Income Included in Annual Income

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

Housing Department Policy

For persons who regularly receive bonuses or commissions, the Housing Department will verify amounts received from the previous year preceding admission or reexamination. The family may provide, and the Housing Department 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 Housing Department will count only the amount estimated by the employer.

Some Types of Military Pay. All regular pay, special pay and allowances of a member of the Armed Forces are counted [24 CFR 5.609(b)(8)] except for the special pay to a family member serving in the Armed Forces who is exposed to hostile fire [24 CFR 5.609(c)(7)].

Types of Earned Income Not Counted in Annual Income

Temporary, Nonrecurring, or Sporadic Income [24 CFR 5.609(c)(9)].

This type of income (including gifts) is not included in annual income.

Housing Department Policy

Sporadic income is income that is not received periodically and cannot be reliably predicted. For example, the income of an individual who works occasionally as a handyman would be considered sporadic if future work could not be anticipated and no historic, stable pattern of income existed.

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

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

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

Income Earned under Certain Federal Programs. Income from some federal programs is specifically excluded from consideration as income [24 CFR 5.609(c)(17)], including:

- Payments to volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058)
- Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b))
- Awards under the federal work-study program (20 U.S.C. 1087 uu)
- Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f))
- Allowances, earnings, and payments to Ameri-Corps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d))
- Allowances, earnings, and payments to participants in programs funded under the Workforce Investment Act of 1998 (29 U.S.C. 2931)

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

Housing Department Policy

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

The Housing Department defines *incremental earnings and benefits* as the difference between (1) the total amount of welfare assistance and earnings of a family member prior to enrollment in a training program and (2) the total amount of welfare assistance and earnings of the family member after enrollment in the program [expired Notice PIH 98-2, pp. 3–4].

In calculating the incremental difference, the Housing Department will use as the pre-enrollment income the total annualized amount of the family member's welfare assistance and earnings reported on the family's most recently completed HUD-50058.

End of participation in a training program must be reported in accordance with the Housing Department's interim reporting requirements.

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

Housing Department Policy

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

Earned Income Tax Credit. Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j)), are excluded from annual income [24 CFR 5.609(c)(17)]. Although many families receive the EITC annually when they file taxes, an EITC can also be received throughout the year. The prorated share of the annual EITC is included in the employee's payroll check.

Earned Income Disallowance. The earned income disallowance for persons with disabilities is discussed in section 6-I.E below.

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

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

Eligibility

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

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

- Increased earnings by a family member who is a person with disabilities and whose earnings increase during participation in an economic self-sufficiency or job-training program. A self-sufficiency program includes a program designed to encourage, assist, train, or facilitate the economic independence of HUD-assisted families or to provide work to such families [24 CFR 5.603(b)].

- New employment or increased earnings by a family member who is a person with disabilities and who has received benefits or services under Temporary Assistance for Needy Families (TANF) or any other state program funded under Part A of Title IV of the Social Security Act within the past six months. If the benefits are received in the form of monthly maintenance, there is no minimum amount. If the benefits or services are received in a form other than monthly maintenance, such as one-time payments, wage subsidies, or transportation assistance, the total amount received over the six-month period must be at least $500.

Calculation of the Disallowance

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

Housing Department Policy

The Housing Department defines *prior income,* or *pre-qualifying income,* as the family member's last certified income prior to qualifying for the EID.

The family member's prior, or pre-qualifying, income remains constant throughout the period that he or she is receiving the EID.

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

Housing Department Policy

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

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

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

Housing Department Policy

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

6-I.F. BUSINESS INCOME [24 CFR 5.609(b)(2)]

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

Business Expenses

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

Housing Department Policy

To determine business expenses that may be deducted from gross income, the Housing Department will use current applicable Internal Revenue Service (IRS) rules for determining allowable business expenses [see IRS Publication 535], unless a topic is addressed by HUD regulations or guidance as described below.

Business Expansion

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

Housing Department Policy

Business expansion is defined as any capital expenditures made to add new business activities, to expand current facilities, or to operate the business in additional locations. For example, purchase of a street sweeper by a construction business for the purpose of adding street cleaning to the services offered by the business would be considered a business expansion. Similarly, the purchase of a property by a hair care business to open at a second location would be considered a business expansion.

Capital Indebtedness

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

Housing Department Policy

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

Housing Department Policy

Acceptable investments in a business include cash loans and contributions of assets or equipment. For example, if a member of an assisted family provided an up-front loan of $2,000 to help a business get started, the Housing Department will not count as income any withdrawals from the business up to the amount of this loan until the loan has been repaid. Investments do not include the value of labor contributed to the business without compensation.

Co-owned Businesses

Housing Department Policy

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

6-I.G. ASSETS [24 CFR 5.609(b)(3) and 24 CFR 5.603(b)]

Overview

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

General Policies

Income from Assets

The Housing Department 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 Housing Department 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 Housing Department 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 Housing Department can take into consideration past rental income along with the prospects of obtaining a new tenant.

> Housing Department Policy
>
> 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 Housing Department 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 Housing Department to make a distinction between an asset's market value and its cash value.

- The market value of an asset is its worth (e.g., the amount a buyer would pay for real estate or the balance in an investment account).
- The cash value of an asset is its market value less all reasonable amounts that would be incurred when converting the asset to cash.
- Reasonable costs that would be incurred when disposing of an asset include, but are not limited to, penalties for premature withdrawal, broker and legal fees, and settlement costs incurred in real estate transactions.

Lump-Sum Receipts

Payments that are received in a single lump sum, such as inheritances, capital gains, lottery winnings, insurance settlements, and proceeds from the sale of property, are generally considered assets, not income. However, such lump-sum receipts are counted as assets only if they are retained by a family in a form recognizable as an asset (e.g., deposited in a savings or checking account) [RHIIP FAQs]. (For a discussion of lump-sum payments that represent the delayed start of a periodic payment, most of which are counted as income, see sections 6-I.H and 6-I.I.)

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

When net family assets are $5,000 or less, the Housing Department 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 Housing Department will include in annual income the greater of (1) the actual income derived from the assets or (2) the imputed income. Imputed income from assets is calculated by multiplying the total cash value of all family assets by the current HUD-established passbook savings rate.

Determining Actual Anticipated Income from Assets

It may or may not be necessary for the Housing Department to use the value of an asset to compute the actual anticipated income from the asset. When the value is required to compute the anticipated income from an asset, the market value of the asset is used. For example, if the asset is a property for which a family receives rental income, the anticipated income is determined by annualizing the actual monthly rental amount received for the property; it is not based on the property's market value. However, if the asset is a savings account, the anticipated income is determined by multiplying the market value of the account by the interest rate on the account.

Withdrawal of Cash or Liquidation of Investments

Any withdrawal of cash or assets from an investment will be included in income except to the extent that the withdrawal reimburses amounts invested by the family. For example, when a family member retires, the amount received by the family from a retirement plan is not counted as income until the family has received payments equal to the amount the family member deposited into the retirement fund.

Jointly Owned Assets

The regulation at 24 CFR 5.609(a)(4) specifies that annual income includes "amounts derived (during the 12-month period) from assets to which any member of the family has access."

Housing Department Policy

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

If an asset is owned by more than one person, including a family member, but the family member does not have unrestricted access to the asset, the Housing Department will prorate the asset according to the percentage of ownership. If no percentage is specified or provided for by state or local law, the Housing Department will prorate the asset evenly among all owners.

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

HUD regulations require the Housing Department to count as a current asset any business or family asset that was disposed of for less than fair market value during the two years prior to the effective date of the examination/reexamination, except as noted below.

Minimum Threshold

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

Housing Department Policy

The Housing Department 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 recertification, the family may request an interim recertification to eliminate consideration of the asset(s).

Assets placed by the family in non-revocable trusts are considered assets disposed of for less than fair market value except when the assets placed in trust were received through settlements or judgments.

Separation or Divorce

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

Housing Department Policy

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

Foreclosure or Bankruptcy

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

Housing Department Policy

Families must show proof of foreclosure or bankruptcy and the item discharged in bankruptcy in order to qualify for this exemption.

Family Declaration

Housing Department Policy

Families must sign a declaration form at initial certification and each annual recertification identifying all assets that have been disposed of for less than fair market value or declaring that no assets have been disposed of for less than fair market value. The Housing Department may verify the value of the assets disposed of if other information available to the Housing Department does not appear to agree with the information reported by the family.

Types of Assets

Checking and Savings Accounts

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

Housing Department Policy

In determining the value of a checking account, the Housing Department will use the current balance.

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

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

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

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

Housing Department Policy

In determining the market value of an investment account, the Housing Department 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 Housing Department will calculate asset income based on the earnings from 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)]
- 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]

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.

<u>Housing Department Policy</u>

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

Trusts

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

Revocable Trusts

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

Non-revocable Trusts

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

Retirement Accounts

Company Retirement/Pension Accounts

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

Housing Department Policy

In determining the value of personal property held as an investment, the Housing Department will use the family's estimate of the value. However, the Housing Department also may obtain an appraisal if appropriate to confirm the value of the asset. The family must cooperate with the appraiser but cannot be charged any costs related to the appraisal.

Generally, personal property held as an investment generates no income until it is disposed of. If regular income is generated (e.g., income from renting the personal property), the amount that is expected to be earned in the coming year is counted as actual income from the asset.

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

Housing Department Policy

Necessary personal property consists of items such as clothing, furniture, household furnishings, jewelry that is not held as an investment, and vehicles, including those specially equipped for persons with disabilities.

Life Insurance

The cash value of a life insurance policy available to a family member before death, such as a whole life or universal life policy is included in the calculation of the value of the family's assets [HCV GB 5-25]. The cash value is the surrender value. If such a policy earns dividends or interest that the family could elect to receive, the anticipated amount of dividends or interest is counted as income from the asset whether or not the family actually receives it.

6-I.H. PERIODIC PAYMENTS

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

Periodic Payments Included in Annual Income

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

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

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

Housing Department Policy

When a delayed-start payment is received and reported during the period in which the Housing Department is processing an annual reexamination, the Housing Department will adjust the family share and Housing Department subsidy to begin on the recertification date.

Periodic Payments Excluded from Annual Income

- Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the assisted family, who are unable to live alone) [24 CFR 5.609(c)(2)]

  Housing Department Policy

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

- Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home [24 CFR 5.609(c)(16)]

- Amounts received under the Low-Income Home Energy Assistance Program (42 U.S.C. 1626(c)) [24 CFR 5.609(c)(17)]

- Amounts received under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q) [24 CFR 5.609(c)(17)]

- Earned Income Tax Credit (EITC) refund payments (26 U.S.C. 32(j)) [24 CFR 5.609(c)(17)]. *Note:* EITC may be paid periodically if the family elects to receive the amount due as part of payroll payments from an employer.

- Lump sums received as a result of delays in processing Social Security and SSI payments (see section 6-I.J.) [24 CFR 5.609(b)(4)].

6-I.I. PAYMENTS IN LIEU OF EARNINGS

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

6-I.J. WELFARE ASSISTANCE

Overview

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

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

The Housing Department 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 Housing Department must include in annual income "imputed" welfare income. The Housing Department must request that the welfare agency inform the Housing Department when the benefits of an HCV participant family are reduced. The imputed income is the amount the family would have received if the family had not been sanctioned.

This requirement does not apply to reductions in welfare benefits: (1) at the expiration of the lifetime or other time limit on the payment of welfare benefits, (2) if a family member is unable to find employment even though the family member has complied with the welfare agency economic self-sufficiency or work activities requirements, or (3) because a family member has not complied with other welfare agency requirements [24 CFR 5.615(b)(2)].

6-I.K. PERIODIC AND DETERMINABLE ALLOWANCES [24 CFR 5.609(b)(7)]

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

Alimony and Child Support

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

Housing Department Policy

The Housing Department will count court-awarded amounts for alimony and child support unless the Housing Department verifies that (1) the payments are not being made and (2) the family has made reasonable efforts to collect amounts due, including filing with courts or agencies responsible for enforcing payments [HCV GB, pp. 5-23 and 5-47].

Families who do not have court-awarded alimony and child support awards are not required to seek a court award and are not required to take independent legal action to obtain collection.

Regular Contributions or Gifts

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

Housing Department Policy

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

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

6-I.L. ADDITIONAL EXCLUSIONS FROM ANNUAL INCOME

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

- Reimbursement of medical expenses [24 CFR 5.609(c)(4)]
- The full amount of student financial assistance paid directly to the student or to the educational institution [24 CFR 5.609(c)(6)], except that in accordance with Section 224 of the FY 2005 Appropriations Act, the portion of any athletic scholarship assistance available for housing costs must be included in annual income [PIH Notice 2005-16].

  Housing Department Policy

  Regular financial support from parents or guardians to students for food, clothing personal items, and entertainment **is not** considered student financial assistance and is included **in** annual income.

- Amounts received by participants in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred and which are made solely to allow participation in a specific program [24 CFR 5.609(c)(8)(iii)]
- Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS) [(24 CFR 5.609(c)(8)(ii)]
- Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era [24 CFR 5.609(c)(10)]
- Adoption assistance payments in excess of $480 per adopted child [24 CFR 5.609(c)(12)]
- Refunds or rebates on property taxes paid on the dwelling unit [24 CFR 5.609(c)(15)]
- Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home [24 CFR 5.609(c)(16)]
- Amounts specifically excluded by any other federal statute [24 CFR 5.609(c)(17)]. HUD publishes an updated list of these exclusions periodically. It includes:

  (a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 (b))

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

  (c) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c))

  (d) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e)

  (e) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f))

PART II: ADJUSTED INCOME

6-II.A. INTRODUCTION

Overview

HUD regulations require Housing Departments 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 [Housing Department] 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) Un-reimbursed medical expenses of any elderly family or disabled family;
>
> (ii) Un-reimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with disabilities, to the extent necessary to enable any member of the family (including the member who is a person with disabilities) to be employed. This deduction may not exceed the earned income received by family members who are 18 years of age or older and who are able to work because of such attendant care or auxiliary apparatus; and
>
> (4) Any reasonable child care expenses necessary to enable a member of the family to be employed or to further his or her education.

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

Anticipating Expenses

Housing Department Policy

The Housing Department 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 Housing Department 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 Housing Department 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 Housing Department may require the family to provide documentation of payments made in the preceding year.

6-II.B. DEPENDENT DEDUCTION

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

6-II.C. ELDERLY OR DISABLED FAMILY DEDUCTION

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

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

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

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

Definition of *Medical Expenses*

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

Housing Department Policy

The most current IRS Publication 502, *Medical and Dental Expenses,* will be used to determine the costs that qualify as medical expenses.

Summary of Allowable Medical Expenses from IRS Publication 502	
Services of medical professionals Surgery and medical procedures that are necessary, legal, 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 wheel chair, handrails)	Substance abuse treatment programs Psychiatric treatment Ambulance services and some costs of transportation related to medical expenses The cost and care of necessary equipment related to a medical condition (e.g., eyeglasses/lenses, hearing aids, crutches, and artificial teeth) Cost and continuing care of necessary service animals Medical insurance premiums or the cost of a health maintenance organization (HMO)
Note: This chart provides a summary of eligible medical expenses only. Detailed information is provided in IRS Publication 502. Medical expenses are considered only to the extent they are not reimbursed by insurance or some other source.	

Families That Qualify for Both Medical and Disability Assistance Expenses

Housing Department Policy

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

When expenses anticipated by a family could be defined as either medical or disability assistance expenses, the Housing Department will consider them medical expenses unless it is clear that the expenses are incurred exclusively to enable a person with disabilities to work.

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

Reasonable expenses for attendant care and auxiliary apparatus for a disabled family member may be deducted if they: (1) are necessary to enable a family member 18 years or older to work, (2) are not paid to a family member or reimbursed by an outside source, (3) in combination with any medical expenses, exceed three percent of annual income, and (4) do not exceed the earned income received by the family member who is enabled to work.

Earned Income Limit on the Disability Assistance Expense Deduction

A family can qualify for the disability assistance expense deduction only if at least one family member (who may be the person with disabilities) is enabled to work [24 CFR 5.603(b)].

The disability expense deduction is capped by the amount of "earned income received by family members who are 18 years of age or older and who are able to work" because of the expense [24 CFR 5.611(a)(3)(ii)]. The earned income used for this purpose is the amount verified before any earned income disallowances or income exclusions are applied.

Housing Department Policy

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

Eligible Auxiliary Apparatus

Housing Department Policy

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

Eligible Attendant Care

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

Housing Department Policy

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

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

If the care attendant also provides other services to the family, the Housing Department 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)].

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.

Housing Department Policy

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

Families That Qualify for Both Medical and Disability Assistance Expenses

Housing Department Policy

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

When expenses anticipated by a family could be defined as either medical or disability assistance expenses, the Housing Department will consider them medical expenses unless it is clear that the expenses are incurred exclusively to enable a person with disabilities to work.

6-II.F. CHILD CARE EXPENSE DEDUCTION

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

Clarifying the Meaning of *Child* for This Deduction

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

Qualifying for the Deduction

Determining Who Is Enabled to Pursue an Eligible Activity

Housing Department Policy

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

In evaluating the family's request, the Housing Department 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

Housing Department Policy

If the child care expense being claimed is to enable a family member to seek employment, the family must provide evidence of the family member's efforts to obtain employment at each reexamination. The deduction may be reduced or denied if the family member's job search efforts are not commensurate with the child care expense being allowed by the Housing Department.

Furthering Education

Housing Department Policy

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

Being Gainfully Employed

Housing Department Policy

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

Earned Income Limit on Child Care Expense Deduction

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

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

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

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

Housing Department Policy

When the child care expense being claimed is to enable a family member to work, only one family member's income will be considered for a given period of time. When more than one family member works during a given period, the Housing Department generally will limit allowable child care expenses to the earned income of the lowest-paid member. The family may provide information that supports a request to designate another family member as the person enabled to work.

Eligible Child Care Expenses

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

Allowable Child Care Activities

Housing Department Policy

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

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

If a child care provider also renders other services to a family or child care is used to enable a family member to conduct activities that are not eligible for consideration, the Housing Department will prorate the costs and allow only that portion of the expenses that is attributable to child care for eligible activities. For example, if the care provider also cares for a child with disabilities who is 13 or older, the cost of care will be prorated. Unless otherwise specified by the child care provider, the calculation will be based upon the number of hours spent in each activity and/or the number of persons under care.

Necessary and Reasonable Costs

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

Housing Department Policy

Child care expenses will be considered for the time required for the eligible activity plus reasonable transportation time. For child care that enables a family member to go to school, the time allowed may include not more than one study hour for each hour spent in class.

PART III: CALCULATING FAMILY SHARE AND HOUSING DEPARTMENT SUBSIDY

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

TTP Formula [24 CFR 5.628]

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

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

The Housing Department 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]

Housing Department Policy

Welfare rent does not apply in this locality.

Minimum Rent [24 CFR 5.630]

Housing Department Policy

The minimum rent for this locality is $50.00.

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 Housing Department's applicable payment standard: (1) the family will pay more than the TTP, and (2) at initial occupancy the Housing Department may not approve the tenancy if it would require the family share to exceed 40 percent of the family's monthly adjusted income. The income used for this determination must have been verified no earlier than 60 days before the family's voucher was issued. (For a discussion of the application of payment standards, see section 6-III.C.)

Housing Department Subsidy [24 CFR 982.505(b)]

The Housing Department will pay a monthly housing assistance payment (HAP) for a family that is equal to the lower of (1) the applicable payment standard for the family minus the family's TTP or (2) the gross rent for the family's unit minus the TTP. (For a discussion of the application of payment standards, see section 6-III.C.)

Utility Reimbursement [24 CFR 982.514(b)]

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

Housing Department Policy

The Housing Department will make utility reimbursements to the utility company.

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

Housing Department Policy

The financial hardship rules described below does apply in this jurisdiction because the Housing Department has established a minimum rent of $50.00.

Overview

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

HUD-Defined Financial Hardship

Financial hardship includes the following situations:

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

Housing Department Policy

A hardship will be considered to exist only if the loss of eligibility has an impact on the family's ability to pay the minimum rent.

For a family waiting for a determination of eligibility, the hardship period will end as of the first of the month following (1) implementation of assistance, if approved, or (2) the decision to deny assistance. A family whose request for assistance is denied may request a hardship exemption based upon one of the other allowable hardship circumstances.

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

Housing Department Policy

For a family to qualify under this provision, the cause of the potential eviction must be the family's failure to pay rent to the owner or tenant-paid utilities.

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

Housing Department Policy

For a family to qualify under this provision, they must show proof of loss of employment.

(4) A death has occurred in the family.

Housing Department Policy

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

(5) The family has experienced other circumstances determined by the Housing Department.

Housing Department Policy

The Housing Department will make a determination on a case by case basis for extenuating circumstances such as medical emergencies of a working member.

Implementation of Hardship Exemption

Determination of Hardship

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

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

Housing Department Policy

The Housing Department 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 Housing Department has established a minimum rent of $35.			
Family Share – No Hardship		**Family Share – With Hardship**	
$0	30% of monthly adjusted income	$0	30% of monthly adjusted income
$15	10% of monthly gross income	$15	10% of monthly gross income
N/A	Welfare rent	N/A	Welfare rent
$35	Minimum rent	$35	Minimum rent
Minimum rent applies. TTP = $35		Hardship exemption granted. TTP = $15	

Housing Department Policy

To qualify for a hardship exemption, a family must submit a request for a hardship exemption in writing. The request must explain the nature of the hardship and how the hardship has affected the family's ability to pay the minimum rent.

The Housing Department will make the determination of hardship within 30 calendar days.

No Financial Hardship

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

Housing Department Policy

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

Temporary Hardship

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

Housing Department Policy

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

Long-Term Hardship

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

Housing Department Policy

The hardship period ends when any of the following circumstances apply:

(1) At an interim or annual reexamination, the family's calculated TTP is greater than the minimum rent.

(2) For hardship conditions based on loss of income, the hardship condition will continue to be recognized until new sources of income are received that are at least equal to the amount lost. For example, if a hardship is approved because a family no longer receives a $60/month child support payment, the hardship will continue to exist until the family receives at least $60/month in income from another source or once again begins to receive the child support.

(3) For hardship conditions based upon hardship-related expenses, the minimum rent exemption will continue to be recognized until the cumulative amount exempted is equal to the expense incurred.

6-III.C. APPLYING PAYMENT STANDARDS [24 CFR 982.505]

Overview

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

If the Housing Department has established an exception payment standard for a designated part of an FMR area and a family's unit is located in the exception area, the Housing Department must use the appropriate payment standard for the exception area.

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

Decreases

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

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

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

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

Increases

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

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

Changes in Family Unit Size

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

Reasonable Accommodation

If a family requires a higher payment standard as a reasonable accommodation for a family member who is a person with disabilities, the Housing Department is allowed to establish a higher payment standard for the family within the basic range.

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

Overview

A Housing Department-established utility allowance schedule is used in determining family share and Housing Department subsidy. The Housing Department must use the appropriate utility allowance for the size of dwelling unit actually leased by a family rather than the voucher unit size for which the family qualifies using Housing Department subsidy standards. See Chapter 5 for information on the Housing Department's subsidy standards.

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

Reasonable Accommodation

HCV program regulations require a Housing Department to approve a utility allowance amount higher than shown on the Housing Department's schedule if a higher allowance is needed as a reasonable accommodation for a family member with a disability. For example, if a family member with a disability requires such an accommodation, the Housing Department will approve an allowance for air-conditioning, even if the Housing Department has determined that an allowance for air-conditioning generally is not needed.

The family must request the higher allowance and provide the Housing Department with an explanation of the need for the reasonable accommodation and information about the amount of additional allowance required [HCV GB, p. 18-8].

Utility Allowance Revisions

At reexamination, the Housing Department must use the Housing Department current utility allowance schedule [24 CFR 982.517(d)(2)].

> Housing Department Policy
>
> Revised utility allowances will be applied to a family's rent and subsidy calculations at the first annual reexamination that is effective after the allowance is adopted.

6-III.E. PRORATED ASSISTANCE FOR MIXED FAMILIES [24 CFR 5.520]

HUD regulations prohibit assistance to ineligible family members. A *mixed family* is one that includes at least one U.S. citizen or eligible immigrant and any number of ineligible family members. The Housing Department must prorate the assistance provided to a mixed family. The Housing Department 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 Housing Department subsidy for a family is calculated at $500 and two of four family members are ineligible, the Housing Department 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[1]; and

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

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

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

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

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

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

[1] Text of 45 CFR 260.31 follows.

HHS DEFINITION OF "ASSISTANCE"

45 CFR: GENERAL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

260.31 What does the term "assistance" mean?

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

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

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

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

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

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

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

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

(iii) Will not extend beyond four months.

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

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

(4) Refundable earned income tax credits;

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

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

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

EXHIBIT 6-2: ANNUAL INCOME EXCLUSIONS

24 CFR 5.609

(c) Annual income does not include the following:

(1) Income from employment of children (including foster children) under the age of 18 years;

(2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);

(3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (b)(5) of this section);

(4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;

(5) Income of a live-in aide, as defined in Sec. 5.403;

(6) The full amount of student financial assistance paid directly to the student or to the educational institution;

(7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;

(8) (i) Amounts received under training programs funded by HUD;

(ii) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

(iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed $200 per month) received by a resident for performing a service for the Housing Department or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the Housing Department's governing board. No resident may receive more than one such stipend during the same period of time;

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

(9) Temporary, nonrecurring or sporadic income (including gifts);

(10) Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era;

(11) Earnings in excess of $480 for each full-time student 18 years old or older (excluding the head of household and spouse);

(12) Adoption assistance payments in excess of $480 per adopted child;

(13) [Reserved]

(14) Deferred periodic amounts from supplemental security income and social security benefits that are received in a lump sum amount or in prospective monthly amounts.

(15) Amounts received by the family in the form of refunds or rebates under State or local law for property taxes paid on the dwelling unit;

(16) Amounts paid by a State agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home; or

(17) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply. A notice will be published in the Federal Register and distributed to Housing Departments and housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary. [See the following chart for a list of benefits that qualify for this exclusion.]

Sources of Income Excluded by Federal Statute from Consideration as Income for Purposes of Determining Eligibility or Benefits

a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 (b));

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

c) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c));

d) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e);

e) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f));

f) Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. 1552(b); (effective July 1, 2000, references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998 (29 U.S.C. 2931);

g) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub.L- 94-540, 90 Stat. 2503-04);

h) The first $2000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first $2000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408);

i) Amounts of scholarships funded under title IV of the Higher Education Act of 1965, including awards under federal work-study program or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);

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

k) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in In Re Agent-product liability litigation, M.D.L. No. 381 (E.D.N.Y.);

l) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721);

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

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

o) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433);

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

q) Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran (38 U.S.C. 1805);

r) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602); and

s) Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931).

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, Housing Departments 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: EARNED INCOME DISALLOWANCE FOR PERSONS WITH DISABILITIES

24 CFR 5.617 Self-sufficiency incentives for persons with disabilities–Disallowance of increase in annual income.

(a) Applicable programs. The disallowance of increase in annual income provided by this section is applicable only to the following programs: HOME Investment Partnerships Program (24 CFR part 92); Housing Opportunities for Persons with AIDS (24 CFR part 574); Supportive Housing Program (24 CFR part 583); and the Housing Choice Voucher Program (24 CFR part 982).

(b) Definitions. The following definitions apply for purposes of this section.

Disallowance. Exclusion from annual income.

Previously unemployed includes a person with disabilities who has earned, in the twelve months previous to employment, no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage.

Qualified family. A family residing in housing assisted under one of the programs listed in paragraph (a) of this section or receiving tenant-based rental assistance under one of the programs listed in paragraph (a) of this section.

(1) Whose annual income increases as a result of employment of a family member who is a person with disabilities and who was previously unemployed for one or more years prior to employment;

(2) Whose annual income increases as a result of increased earnings by a family member who is a person with disabilities during participation in any economic self-sufficiency or other job training program; or

(3) Whose annual income increases, as a result of new employment or increased earnings of a family member who is a person with disabilities, during or within six months after receiving assistance, benefits or services under any state program for temporary assistance for needy families funded under Part A of Title IV of the Social Security Act, as determined by the responsible entity in consultation with the local agencies administering temporary assistance for needy families (TANF) and Welfare-to-Work (WTW) programs. The TANF program is not limited to monthly income maintenance, but also includes such benefits and services as one-time payments, wage subsidies and transportation assistance--provided that the total amount over a six-month period is at least $500.

(c) Disallowance of increase in annual income—

(1) Initial twelve month exclusion. During the cumulative twelve month period beginning on the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the responsible entity must exclude from annual income (as defined in the regulations governing the applicable program listed in paragraph (a) of this section) of a qualified family any increase in income of the family member who is a person with disabilities as a result of employment over prior income of that family member.

(2) Second twelve month exclusion and phase-in. During the second cumulative twelve month period after the date a member who is a person with disabilities of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the responsible entity must exclude from annual income of a qualified family fifty percent of any increase in income of such family member as a result of employment over income of that family member prior to the beginning of such employment.

(3) Maximum four year disallowance. The disallowance of increased income of an individual family member who is a person with disabilities as provided in paragraph (c)(1) or (c)(2) is limited to a lifetime 48 month period. The disallowance only applies for a maximum of twelve months for disallowance under paragraph (c)(1) and a maximum of twelve months for disallowance under paragraph (c)(2), during the 48 month period starting from the initial exclusion under paragraph (c)(1) of this section.

(d) Inapplicability to admission. The disallowance of increases in income as a result of employment of persons with disabilities under this section does not apply for purposes of admission to the program (including the determination of income eligibility or any income targeting that may be applicable).

EXHIBIT 6-5: THE EFFECT OF WELFARE BENEFIT REDUCTION

24 CFR 5.615

Public housing program and Section 8 tenant-based assistance program: How welfare benefit reduction affects family income.

(a) Applicability. This section applies to covered families who reside in public housing (part 960 of this title) or receive Section 8 tenant-based assistance (part 982 of this title).

(b) Definitions. The following definitions apply for purposes of this section:

Covered families. Families who receive welfare assistance or other public assistance benefits ("welfare benefits") from a State or other public agency ("welfare agency") under a program for which Federal, State, or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance.

Economic self-sufficiency program. See definition at Sec. 5.603.

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 Housing Department 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 Housing Department, the welfare agency will inform the Housing Department 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 Housing Department of any subsequent changes in the term or amount of such specified welfare benefit reduction. The Housing Department 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 Housing Department'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 Housing Department by the welfare agency).

(4) The Housing Department 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 Housing Department decision.

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

(e) Housing Department relation with welfare agency.

(1) The Housing Department must ask welfare agencies to inform the Housing Department 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 Housing Department 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 Housing Department 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 Housing Department. However, the Housing Department 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 Housing

Department shall be entitled to rely on the welfare agency notice to the Housing Department of the welfare agency's determination of a specified welfare benefits reduction.

Chapter 7

VERIFICATION
[24 CFR 982.516, 24 CFR 982.551, 24 CFR 5.230]

INTRODUCTION

The Housing Department must verify all information that is used to establish the family's eligibility and level of assistance and is required to obtain the family's consent to collect the information. Applicants and program participants must cooperate with the verification process as a condition of receiving assistance. The Housing Department must not pass on the cost of verification to the family.

The Housing Department will follow the verification guidance provided by HUD in PIH Notice 2004-01 Verification Guidance and any subsequent guidance issued by HUD. This chapter summarizes those requirements and provides supplementary Housing Department policies.

Part I describes the general verification process. More detailed requirements related to individual factors are provided in subsequent parts including family information (Part II), income and assets (Part III), and mandatory deductions (Part IV).

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 Housing Department.

PART I. GENERAL VERIFICATION REQUIREMENTS

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

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

Consent Forms

It is required that all adult applicants and participants sign form HUD-9886, Authorization for Release of Information. The purpose of form HUD-9886 is to facilitate automated data collection and computer matching from specific sources and provides the family's consent only for the specific purposes listed on the form. HUD and the Housing Department may collect information from State Wage Information Collection Agencies (SWICAs) and current and former employers of adult family members. Only HUD is authorized to collect information directly from the Internal Revenue Service (IRS) and the Social Security Administration (SSA). Adult family members must sign other consent forms as needed to collect information relevant to the family's eligibility and level of assistance.

Penalties for Failing to Consent [24 CFR 5.232]

If any family member who is required to sign a consent form fails to do so, the Housing Department 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 Housing Department procedures.

7-I.B. OVERVIEW OF VERIFICATION REQUIREMENTS

HUD's Verification Hierarchy

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

Housing Department Policy

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

Up-front Income Verification (UIV) whenever available

Third-party Written Verification

Third-party Oral Verification

Review of Documents

Self-Certification

Each of the verification methods is discussed in subsequent sections below. Exhibit 7-1 at the end of the chapter contains an excerpt from the notice that provides guidance with respect to how each method may be used.

Requirements for Acceptable Documents

Housing Department Policy

Any documents used for verification may be the original, photocopies, or faxed copies and must be dated within 60 calendar days of the date they are provided to the Housing Department. The documents must not be damaged, altered or in any way illegible.

The Housing Department will accept documents dated up to 6 months before the effective date of the family's reexamination if the document represents the most recent scheduled report from a source. For example, if the holder of a pension annuity provides semi-annual reports, the Housing Department would accept the most recent report.

Print-outs from web pages are considered original documents.

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

File Documentation

The Housing Department 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 Housing Department 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.C. UP-FRONT INCOME VERIFICATION (UIV)

Up-front income verification (UIV) refers to the Housing Department'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 Housing Department.

Housing Department Policy

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

HUD's EIV system

The Housing Department must restrict access to and safeguard UIV data in accordance with HUD guidance on security procedures, as issued and made available by HUD.

There may be legitimate differences between the information provided by the family and UIV-generated information. No adverse action can be taken against a family until the Housing Department 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 Housing Department.

Definition of Substantial Difference

UIV information is used differently depending upon whether there is a *substantial difference* between information provided by the family and the UIV information. In "HUD Guidelines for Projecting Annual Income When UIV Data is Available" [HUD website, April 2004], HUD recommends using $200 per month as the threshold for a substantial difference. The Housing Department will therefore use $200 per month as the threshold for a substantial difference.

See Chapter 6 for the Housing Department's policy on the use of UIV to project annual income.

When No Substantial Difference Exists

If UIV information does not differ substantially from family information, the UIV documentation may serve as third-party written verification.

When a Substantial Difference Exists

When there is a substantial difference between the information provided by the UIV source and the family, the Housing Department must request another form of third-party written verification and use any other verification methods (in priority order) to reconcile the difference(s).

Use of HUD's Enterprise Income Verification (EIV) System

HUD's EIV system contains data showing earned income, unemployment benefits, Social Security and SSI benefits for participant families. HUD requires the Housing Department to use the EIV system when available. The following policies will apply when the Housing Department has access to HUD's EIV system.

The EIV system contains two main components: tenant income data reports and "exceeds threshold" reports.

Tenant Income Data (TID) Reports

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

Housing Department Policy

The Housing Department will obtain TID reports for annual reexaminations on a monthly basis. Reports will be generated as part of the regular reexamination process.

TID reports will be compared to family-provided information as part of the annual reexamination process. TID reports will not be used in the calculation of annual income. Reports may also be used to meet the regulatory requirement for third party verification, as described above. Policies for resolving discrepancies between TID reports and family-provided information will be resolved as described in Chapter 6.I.C. and in this chapter.

TID reports will be used in interim reexaminations when it is necessary to verify earned income, unemployment benefits, Social Security and/or SSI benefits.

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

When the Housing Department determines through TID 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.

Exceeds Threshold Reports (ETRs)

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

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

Housing Department Policy

The Housing Department will generate and review ETRs on a monthly basis. The ETR threshold percentage will be adjusted as necessary based on the findings in the ETRs.

In reviewing ETRs, the Housing Department will begin with the largest discrepancies.

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

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

EIV Identity Verification

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

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

Housing Department Policy

The Housing Department will identify participants whose identity verification has failed as part of the annual reexamination process.

The Housing Department will attempt to resolve PIC/SSA discrepancies by reviewing file documents. When the Housing Department determines that discrepancies exist due to Housing Department errors such as spelling errors or incorrect birth dates, the errors will be corrected promptly.

7-I.D. THIRD-PARTY WRITTEN AND ORAL VERIFICATION

Reasonable Effort and Timing

Unless third-party verification is not required as described below, HUD requires the Housing Department to make at least two unsuccessful attempts to obtain third-party verification before using another form of verification [VG, p. 15].

Housing Department Policy

The Housing Department will diligently seek third-party verification using a combination of written and oral requests to verification sources. Information received orally from third parties may be used either to clarify information provided in writing by the third party or as independent verification when written third-party verification is not received in a timely fashion.

The Housing Department may mail, fax, e-mail, or hand deliver third-party written verification requests and will accept third-party responses using any of these methods. The Housing Department will send a written request for verification to each required source within 5 business days of securing a family's authorization for the release of the information and give the source 10 calendar days to respond in writing. If a response has not been received by the 11th calendar day, the Housing Department will resend the request for third party verification.

The Housing Department will make a minimum of two attempts to obtain third-party verification. A record of each attempt to contact the third-party source (including no-answer calls) and all contacts with the source will be documented in the file.

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

If a third party agrees to confirm in writing the information provided orally, the Housing Department will wait no more than 5 calendar days for the information to be provided. If the information is not provided by the 6th calendar day, the Housing Department will use any information provided orally in combination with reviewing family-provided documents.

When Third-Party Information is Late

When third-party verification has been requested and the timeframes for submission have been exceeded, the Housing Department will use the information from documents on a provisional basis. If the Housing Department later receives third-party verification that differs from the amounts used in income and rent determinations and it is past the deadline for processing the reexamination, the Housing Department will conduct an interim reexamination to adjust the figures used for the reexamination, regardless of the Housing Department's interim reexamination policy.

When Third-Party Verification is Not Required

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.

Certain Assets and Expenses

The Housing Department will accept a self-certification from a family as verification of assets disposed of for less than fair market value [HCV GB, p. 5-28].

The Housing Department will determine that third-party verification is not available if the asset or expense involves an insignificant amount, making it not cost-effective or reasonable to obtain third-party verification [VG, p. 15].

Housing Department Policy

The Housing Department will use review of documents in lieu of requesting third-party verification when the market value of an individual asset or an expense is less than $500 annually and the family has original documents that support the declared amount.

Certain Income, Asset and Expense Sources

The Housing Department will determine that third-party verification is not available when it is known that an income source does not have the ability to provide written or oral third-party verification [VG, p. 15]. For example, the Housing Department will rely upon review of documents when the Housing Department determines that a third party's privacy rules prohibit the source from disclosing information.

Housing Department Policy

The Housing Department also will determine that third-party verification is not available when there is a service charge for verifying an asset or expense *and* the family has original documents that provide the necessary information.

If the family cannot provide original documents, the Housing Department 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].

7-I.E. REVIEW OF DOCUMENTS

Using Review of Documents as Verification

Housing Department Policy

If the Housing Department has determined that third-party verification is not available or not required, the Housing Department will use documents provided by the family as verification.

The Housing Department may also review documents when necessary to help clarify information provided by third parties. In such cases the Housing Department will document in the file how the Housing Department arrived at a final conclusion about the income or expense to include in its calculations.

7-I.F. SELF-CERTIFICATION

Housing Department Policy

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

The Housing Department 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 Housing Department and must be signed by the family member whose information or status is being verified. All self-certifications must be signed in the presence of a Housing Department representative or a notary public.

PART II. VERIFYING FAMILY INFORMATION

7-II.A. VERIFICATION OF LEGAL IDENTITY

Housing Department Policy

The Housing Department will require families to furnish verification of legal identity for each household member.

Verification of Legal Identity for Adults	Verification of Legal Identity for Children
Certificate of birth, naturalization papers	Certificate of birth
Church issued baptismal certificate	Adoption papers
Current, valid driver's license or Department of Motor Vehicles identification card	Custody agreement
U.S. military discharge (DD 214)	Health and Human Services ID
U.S. passport	School records
Employer identification card	

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

7-II.B. SOCIAL SECURITY NUMBERS [24 CFR 5.216 and HCV GB, p. 5-12]

For every family member, the family must provide documentation of a valid social security number (SSN).

Housing Department Policy

If any family member does not have documentation of a valid social security number, the Housing Department will instruct the family to obtain a duplicate card from the local Social Security Administration (SSA) office. The Housing Department must receive a copy of the new card within 60 days from the date of the request.

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

If any family member obtains an SSN after admission to the program, the new SSN must be disclosed at the next regularly scheduled reexamination.

The social security numbers of household members, such as live-in aids, must be verified for the purpose of conducting criminal background checks.

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 that no birth record exists then receipt of Social Security retirement benefits will be accepted.

Housing Department Policy

If an official record of birth or evidence cannot be provided, the Housing Department will require the family to submit other documents that support the reported age of the family member (e.g., school records, driver's license if birth year is recorded) and to provide a self-certification.

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

7-II.D. FAMILY RELATIONSHIPS

Applicants and program participants are required to identify the relationship of each household member to the head of household. Definitions of the primary household relationships are provided in the Eligibility chapter.

Housing Department Policy

Family relationships are verified only to the extent necessary to determine a family's eligibility and level of assistance. Certification by the head of household normally is sufficient verification of family relationships.

Marriage

Housing Department Policy

Certification by the head of household is normally sufficient verification. If the Housing Department has reasonable doubts about a marital relationship, the Housing Department will require the family to document the marriage.

A marriage certificate 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

Housing Department Policy

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

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

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

Absence of Adult Member

Housing Department Policy

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

Foster Children and Foster Adults

Housing Department Policy

Third-party verification from the state or local government agency responsible for the placement of the individual with the family is required.

7-II.E. VERIFICATION OF STUDENT STATUS

Housing Department Policy

The Housing Department requires families to provide information from the educational institution about the student status of all students who are 18 years of age or older. This information will be verified only if:

The family claims full-time student status for an adult other than the head, spouse, or co-head, or

The family claims a child care deduction to enable a family member to further his or her education.

Verification from the educational institution is required.

7-II.F. DOCUMENTATION OF DISABILITY

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

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

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

Family Members Receiving SSA Disability Benefits

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

Housing Department Policy

For family members claiming disability who receive disability benefits from the SSA, the Housing Department will obtain information about disability benefits through the HUD Enterprise Income Verification (EIV) system or HUD's Tenant Assessment Subsystem (TASS). If documentation from HUD's EIV System or TASS is not available, the Housing Department will request a current award letter for SSA benefit verification letter from each family member claiming disability status. If the family is unable to provide the document(s), the Housing Department will ask the family to request a benefit verification letter by either calling SSA at 1-800-772-1213, or by requesting it from www.ssa.gov. Once the applicant or participant receives the benefit verification letter they will be required to provide it to the Housing Department.

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 5.603.

Housing Department Policy

For family members claiming disability who do not receive disability benefits from the SSA, a knowledgeable professional must provide third-party verification that the family member meets the HUD definition of disability. See the Eligibility chapter for the HUD definition of disability. The knowledgeable professional will verify whether the family member does or does not meet the HUD definition.

7-II.G. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS [24 CFR 5.508]

Overview

Housing assistance is not available to persons who are not citizens, nationals, 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 Housing Department verification requirements related to citizenship status.

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

U.S. Citizens and Nationals

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

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

Housing Department Policy

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

Eligible Immigrants

Documents Required

All family members claiming eligible immigration status must declare their status in the same manner as U.S. citizens and nationals.

The documentation required for eligible non-citizens varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, age, and the date on which the family began receiving HUD-funded assistance. Exhibit 7-2 at the end of this chapter summarizes documents family members must provide.

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

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

7-II.H. VERIFICATION OF PREFERENCE STATUS

The Housing Department must verify any preferences claimed by an applicant.

Housing Department Policy

The Housing Department does not offer preferences.

PART III. VERIFYING INCOME AND ASSETS

Chapter 6, Part I of this plan describes in detail the types of income that are included and excluded and how assets and income from assets are handled. Any assets and income reported by the family must be verified. This part provides Housing Department policies that supplement the general verification procedures specified in Part I of this chapter.

7-III.A. EARNED INCOME

Tips

Housing Department Policy

Unless tip income is included in a family member's W-2 by the employer, persons who work in industries where tips are standard will be required to sign a certified estimate of tips received for the prior year and tips anticipated to be received in the coming year.

7-III.B. BUSINESS AND SELF EMPLOYMENT INCOME

Housing Department Policy

Business owners and self-employed persons will be required to provide:

An audited financial statement for the previous fiscal year if an audit was conducted. If an audit was not conducted, a statement of income and expenses must be submitted and the business owner or self-employed person must certify to its accuracy.

All schedules completed for filing federal and local taxes in the preceding year.

If accelerated depreciation was used on the tax return or financial statement, an accountant's calculation of depreciation expense, computed using straight-line depreciation rules.

The Housing Department 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 Housing Department 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 Housing Department 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 Housing Department will require the family to provide documentation of income and expenses for this period and use that information to project income.

7-III.C. PERIODIC PAYMENTS AND PAYMENTS IN LIEU OF EARNINGS

Social Security/SSI Benefits

Housing Department Policy

To verify the SS/SSI benefits of applicants, the Housing Department will request a current award letter for SSA benefit verification letter from each family member that receives social security benefits. If the family is unable to provide the document(s), the Housing Department will ask the family to request a benefit verification letter by either calling SSA at 1-800-772-1213, or by requesting it from www.ssa.gov. Once the applicant has received the benefit verification letter they will be required to provide it to the Housing Department.

To verify the SS/SSI benefits of participants, the Housing Department will obtain information about social security/SSI benefits through the HUD EIV System or the Tenant Assessment Subsystem (TASS). If benefit information is not available in HUD systems, the Housing Department will request a current SSA benefit verification letter from each family member that receives social security benefits. If the family is unable to provide the document(s) the Housing Department will ask the family to request a benefit verification letter by either calling SSA at 1-800-772-1213, or by requesting it from www.ssa.gov. Once the participant has received the benefit verification letter they will be required to provide it to the Housing Department.

7-III.D. ALIMONY OR CHILD SUPPORT

Housing Department Policy

The way the Housing Department will seek verification for alimony and child support differs depending on whether the family declares that it receives regular payments. The Housing Department will use the website www.myfloridacounty.com to verify child support payments. This website show the most recent payments received.

If the family declares that it ***receives regular payments***, verification will be sought in the following order.

If payments are made through a state or local entity, the Housing Department will accept the most current information on that state's website or request a record of payments for the past twelve months if website information is unavailable.

Third-party verification from the person paying the support

Copy of a separation or settlement agreement or a divorce decree stating amount and type of support and payment schedules

Copy of the latest check and/or payment stubs

Family's self-certification of amount received and of the likelihood of support payments being received in the future, or that support payments are not being received.

If the family declares that it ***receives irregular or no payments***, in addition to the verification process listed above, the family must provide evidence that it has taken all reasonable efforts to collect amounts due. This may include:

A statement from any agency responsible for enforcing payment that shows the family has requested enforcement and is cooperating with all enforcement efforts

If the family has made independent efforts at collection, a written statement from the attorney or other collection entity that has assisted the family in these efforts

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

7-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 Housing Department needs to verify only those certifications that warrant documentation [HCV GB, p. 5-28].

Housing Department Policy

The Housing Department will verify the value of assets disposed of only if:

The Housing Department does not already have a reasonable estimation of its value from previously collected information, or

The amount reported by the family in the certification obviously appears to be in error.

Example 1: An elderly participant reported a $10,000 certificate of deposit at the last annual reexamination and the Housing Department verified this amount. Now the person reports that she has given this $10,000 to her son. The Housing Department has a reasonable estimate of the value of the asset; therefore, re-verification of the value of the asset is not necessary.

Example 2: A family member has disposed of its 1/4 share of real property located in a desirable area and has valued her share at approximately $5,000. Based upon market conditions, this declaration does not seem realistic. Therefore, the Housing Department will verify the value of this asset.

7-III.F. NET INCOME FROM RENTAL PROPERTY

Housing Department Policy

The family must provide:

A current executed lease for the property that shows the rental amount or certification from the current tenant

A self-certification from the family members engaged in the rental of property providing an estimate of expenses for the coming year and the most recent IRS Form 1040 with Schedule E (Rental Income). If schedule E was not prepared, the Housing Department 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

Housing Department Policy

When third-party verification is not available the type of original document that will be accepted depends upon the family member's retirement status.

Before retirement, the Housing Department will accept an original document from the entity holding the account with a date that shows it is the most recently scheduled statement for the account but in no case earlier than 6 months from the effective date of the examination.

Upon retirement, the Housing Department will accept an original document from the entity holding the account that reflects any distributions of the account balance, any lump sums taken and any regular payments.

After retirement, the Housing Department will accept an original document from the entity holding the account dated no earlier than 12 months before that reflects any distributions of the account balance, any lump sums taken and any regular payments.

7-III.H. INCOME FROM EXCLUDED SOURCES

A detailed discussion of excluded income is provided in Chapter 6, Part I.

The Housing Department must obtain verification for income exclusions only if, without verification, the Housing Department would not be able to determine whether the income is to be excluded. For example: If a family's 16 year old has a job at a fast food restaurant, the Housing Department will confirm that Housing Department records verify the child's age but will not send a verification request to the restaurant. However, if a family claims the earned income disallowance for a source of income, both the source and the income must be verified.

Housing Department Policy

The Housing Department will reconcile differences in amounts reported by the third party and the family only when the excluded amount is used to calculate the family share (as is the case with the earned income disallowance). In all other cases, the Housing Department will report the amount to be excluded as indicated on documents provided by the family.

7-III.I. ZERO ANNUAL INCOME STATUS

Families that report zero or minimal income will be required to provide information regarding their means of basic subsistence, such as food, utilities, transportation, etc. The family will be required to sign a form authorizing the Housing Department to run a credit check. The Housing Department will compare the credit report to the information provided by the family. The family will be required to attend regular appointments and will be asked a series of questions regarding their household expenses verses household income.

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 Housing Department 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 Housing Department will verify that:

- Any person under the age of 18 for whom the dependent deduction is claimed is not the head, spouse, or co-head of the family and is not a foster child
- Any person age 18 or older for whom the dependent deduction is claimed is not a foster adult or live-in aide, and is a person with a disability or a full time student

Elderly/Disabled Family Deduction

See Eligibility chapter for a definition of elderly and disabled families and Chapter 6 (6-II.C.) for a discussion of the deduction. The Housing Department will verify that the head, spouse, or co-head is 62 years of age or older or a person with disabilities.

7-IV.B. MEDICAL EXPENSE DEDUCTION

Policies related to medical expenses are found in 6-II.D. The amount of the deduction will be verified following the standard verification procedures described in Part I.

Amount of Expense

Housing Department Policy

The Housing Department will provide a third-party verification form directly to the medical provider requesting the needed information.

Medical expenses will be verified through:

Third-party verification form signed by the provider, when possible.

If third-party is not possible, copies of cancelled checks used to make medical expense payments and/or printouts or receipts from the source will be used. In this case the Housing Department will make a best effort to determine what expenses from the past are likely to continue to occur in the future. The Housing Department will also accept evidence of monthly payments or total payments that will be due for medical expenses during the upcoming 12 months.

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 Housing Department must verify that:

- The household is eligible for the deduction.
- The costs to be deducted are qualified medical expenses.
- The expenses are not paid for or reimbursed by any other source.
- Costs incurred in past years are counted only once.

Eligible Household

The medical expense deduction is permitted only for households in which the head, spouse, or co-head is at least 62, or a person with disabilities. The Housing Department will verify that the family meets the definition of an elderly or disabled family provided in the Eligibility chapter and as described in Chapter 7 (7-IV.A.) of this plan.

Qualified Expenses

To be eligible for the medical expenses deduction, the costs must qualify as medical expenses. See Chapter 6 (6-II.D.) for the Housing Department's policy on what counts as a medical expense.

Un-reimbursed Expenses

To be eligible for the medical expenses deduction, the costs must not be reimbursed by another source.

Housing Department Policy

The family will be required to certify that the medical expenses are not paid or reimbursed to the family from any source.

Expenses Incurred in Past Years

Housing Department Policy

When anticipated costs are related to on-going payment of medical bills incurred in past years, the Housing Department 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

Housing Department Policy

The Housing Department will provide a third-party verification form directly to the care provider requesting the needed information.

Expenses for attendant care will be verified through:

Third-party verification form signed by the provider, when possible

If third-party is not possible, copies of cancelled checks used to make attendant care payments and/or receipts from care source

If third-party or document review is not possible, written family certification as to costs anticipated to be incurred for the upcoming 12 months

Auxiliary Apparatus

Housing Department Policy

Expenses for auxiliary apparatus will be verified through:

Third-party verification of anticipated purchase costs of auxiliary apparatus

If third-party is not possible 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

If third-party or document review is not possible, written family certification of estimated apparatus costs for the upcoming 12 months

In addition, the Housing Department must verify that:

- The family member for whom the expense is incurred is a person with disabilities (as described in 7-II.F above).
- The expense permits a family member, or members, to work (as described in 6-II.E.).
- The expense is not reimbursed from another source (as described in 6-II.E.).

Family Member is a Person with Disabilities

To be eligible for the disability assistance expense deduction, the costs must be incurred for attendant care or auxiliary apparatus expense associated with a family member who is a person with disabilities. The Housing Department will verify that the expense is incurred for a person with disabilities (See 7-II.F.).

Family Member(s) Permitted to Work

The Housing Department must verify that the expenses claimed actually enable a family member, or members, (including the person with disabilities) to work.

Housing Department Policy

The Housing Department will seek 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.).

If third-party and document review verification has been attempted and is either unavailable or proves unsuccessful, the family must certify that the disability assistance expense frees a family member, or members (including the family member receiving the assistance), to work.

Un-reimbursed Expenses

To be eligible for the disability expenses deduction, the costs must not be reimbursed by another source.

Housing Department Policy

An attendant care provider will be asked to certify that, to the best of the provider's knowledge, the expenses are not paid by or reimbursed to the family from any source.

The family will be required to certify that attendant care or auxiliary apparatus expenses are not paid by or reimbursed to the family from any source.

7-IV.D. CHILD CARE EXPENSES

Policies related to child care expenses are found in Chapter 6 (6-II.F). The amount of the deduction will be verified following the standard verification procedures described in Part I of this chapter. In addition, the Housing Department must verify that:

- The child is eligible for care.
- The costs claimed are not reimbursed.
- The costs enable a family member to pursue an eligible activity.
- The costs are for an allowable type of child care.
- The costs are reasonable.

Eligible Child

To be eligible for the child care deduction, the costs must be incurred for the care of a child under the age of 13. The Housing Department will verify that the child being cared for (including foster children) is under the age of 13 (See 7-II.C.).

Un-reimbursed Expense

To be eligible for the child care deduction, the costs must not be reimbursed by another source.

Housing Department Policy

The child care provider will be asked to certify that, to the best of the provider's knowledge, the child care expenses are not paid by or reimbursed to the family from any source.

The family will be required to certify that the child care expenses are not paid by or reimbursed to the family from any source.

Pursuing an Eligible Activity

The Housing Department must verify 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.

Housing Department Policy

Information to be Gathered

The Housing Department 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 Housing Department will use documentation from a state or local agency that monitors work-related requirements (e.g., welfare or unemployment). In such cases the Housing Department will request verification from the agency of the member's job seeking efforts to date and require the family to submit to the Housing Department any reports provided to the other agency.

In the event third-party verification is not available, the Housing Department will provide the family with a form on which the family member must record job search efforts. The Housing Department will review this information at each subsequent reexamination for which this deduction is claimed.

Furthering Education

The Housing Department will ask that the academic or vocational educational institution verify that the person permitted to further his or her education by the child care is enrolled and provide information about the timing of classes for which the person is registered.

Gainful Employment

The Housing Department will seek verification from the employer of the work schedule of the person who is permitted to work by the child care. In cases in which two or more family members could be permitted to work, the work schedules for all relevant family members will be verified.

Allowable Type of Child Care

The type of care to be provided is determined by the family, but must fall within certain guidelines, as discussed in Chapter 6.

Housing Department Policy

The Housing Department will verify that the type of child care selected by the family is allowable, as described in Chapter 6 (6-II.F).

The Housing Department will verify that the fees paid to the child care provider cover only child care costs (e.g., no housekeeping services or personal services) and are paid only for the care of an eligible child (e.g., prorate costs if some of the care is provided for ineligible family members).

The Housing Department will verify that the child care provider is not an assisted family member. Verification will be made through the head of household's declaration of family members who are expected to reside in the unit.

Reasonableness of Expenses

Only reasonable child care costs can be deducted.

Housing Department Policy

The actual costs the family incurs will be compared with the Housing Department's established standards of reasonableness for the type of care in the locality to ensure that the costs are reasonable.

If the family presents a justification for costs that exceed typical costs in the area, the Housing Department will request additional documentation, as required, to support a determination that the higher cost is appropriate.

EXHIBIT 7-1: EXCERPT FROM HUD VERIFICATION GUIDANCE NOTICE (PIH 2004-01, pp. 11-14)

Upfront (UIV)	Highest (Highly Recommended, highest level of third party verification)
Written 3rd Party	High (Mandatory if upfront income verification is not available or if UIV data differs substantially from tenant-reported information)
Oral 3rd Party	Medium (Mandatory if written third party verification is not available)
Document Review	Medium-Low (Use on provisional basis)
Tenant Declaration	Low (Use as a last resort)

Income Type	Upfront	Written Third Party	Oral Third Party	Document Review	Tenant Declaration
	(LEVEL 5)	(LEVEL 4)	(LEVEL 3)	(LEVEL 2)	(LEVEL 1)
Wages/Salaries	Use of computer matching agreements with a State Wage Information Collection Agency (SWICA) to obtain wage information electronically, by mail or fax or in person.	The PHA mails, faxes, or e-mails a verification form directly to the independent sources to obtain wage information.	In the event the independent source does not respond to the PHA's written request for information, the PHA may contact the independent source by phone or make an in person visit to obtain the requested information.	When neither form of third party verification can be obtained, the PHA may accept original documents such as consecutive pay stubs (HUD recommends the PHA review at least three months of pay stubs, if employed by the same employer for three months or more), W-2 forms, etc. from the tenant. **Note:** The PHA must document in the tenant file, the reason third party verification was not available.	The PHA may accept a notarized statement or affidavit from the tenant that declares the family's total annual income from earnings. **Note:** The PHA must document in the tenant file, the reason third party verification was not available.
	Agreements with private vendor agencies, such as The Work Number or ChoicePoint to obtain wage and salary information.	The PHA may have the tenant sign a Request for Earnings Statement from the SSA to confirm past earnings. The PHA mails the form to SSA and the statement will be sent to the address the PHA specifies on the form.			
	Use of HUD systems, when available.				

Verification of Employment Income: The PHA should always obtain as much information as possible about the employment, such as start date (new employment), termination date (previous employment), pay frequency, pay rate, anticipated pay increases in the next twelve months, year-to-date earnings, bonuses, overtime, company name, address and telephone number, name and position of the person completing the employment verification form.
Effective Date of Employment: The PHA should always confirm start and termination dates of employment.

Income Type	Upfront	Written Third Party	Oral Third Party	Document Review	Tenant Declaration
	(LEVEL 5)	(LEVEL 4)	(LEVEL 3)	(LEVEL 2)	(LEVEL 1)
Self-Employment	Not Available	The PHA mails or faxes a verification form directly to sources identified by the family to obtain income information.	The PHA may call the source to obtain income information.	The PHA may accept any documents (i.e. tax returns, invoices and letters from customers) provided by the tenant to verify self-employment income. **Note:** The PHA must document in the tenant file, the reason third party verification was not obtained.	The PHA may accept a notarized statement or affidavit from the tenant that declares the family's total annual income from self-employment. **Note:** The PHA must document in the tenant file, the reason third party verification was not available.
Verification of Self-Employment Income: Typically, it is a challenge for PHAs to obtain third party verification of self-employment income. When third party verification is not available, the PHA should always request a notarized tenant declaration that includes a perjury statement.					
Social Security Benefits	Use of HUD Tenant Assessment System (TASS) to obtain current benefit history and discrepancy reports.	The PHA mails or faxes a verification form directly to the local SSA office to obtain social security benefit information. **(Not Available in some areas because SSA makes this data available through TASS. SSA encourages PHAs to use TASS.)**	The PHA may call SSA, with the tenant on the line, to obtain current benefit amount. **(Not Available in some areas because SSA makes this data available through TASS. SSA encourages PHAs to use TASS.)**	The PHA may accept an original SSA Notice from the tenant. **Note:** The PHA must document in the tenant file, the reason third party verification was not available.	The PHA may accept a notarized statement or affidavit from the tenant that declares monthly social security benefits. **Note:** The PHA must document in the tenant file, the reason third party verification was not available.
Welfare Benefits	Use of computer matching agreements with the local Social Services Agency to obtain current benefit amount electronically, by mail or fax or in person.	The PHA mails, faxes, or e-mails a verification form directly to the local Social Services Agency to obtain welfare benefit information.	The PHA may call the local Social Services Agency to obtain current benefit amount.	The PHA may review an original award notice or printout from the local Social Services Agency provided by the tenant. **Note:** The PHA must document in the tenant file, the reason third party verification was not available.	The PHA may accept a notarized statement or affidavit from the tenant that declares monthly welfare benefits. **Note:** The PHA must document in the tenant file, the reason third party verification was not available.

Income Type	Upfront (LEVEL 5)	Written Third Party (LEVEL 4)	Oral Third Party (LEVEL 3)	Document Review (LEVEL 2)	Tenant Declaration (LEVEL 1)
Child Support	Use of agreement with the local Child Support Enforcement Agency to obtain current child support amount and payment status electronically, by mail or fax or in person.	The PHA mails, faxes, or e-mails a verification form directly to the local Child Support Enforcement Agency or child support payer to obtain current child support amount and payment status.	The PHA may call the local Child Support Enforcement Agency or child support payer to obtain current child support amount and payment status.	The PHA may review an original court order, notice or printout from the local Child Support Enforcement Agency provided by the tenant to verify current child support amount and payment status. **Note:** The PHA must document in the tenant file, the reason third party verification was not available.	The PHA may accept a notarized statement or affidavit from the tenant that declares current child support amount and payment status. **Note:** The PHA must document in the tenant file, the reason third party verification was not available.
Unemployment Benefits	Use of computer matching agreements with a State Wage Information Collection Agency to obtain unemployment compensation electronically, by mail or fax or in person. Use of HUD systems, when available.	The PHA mails, faxes, or e-mails a verification form directly to the State Wage Information Collection Agency to obtain unemployment compensation information.	The PHA may call the State Wage Information Collection Agency to obtain current benefit amount.	The PHA may review an original benefit notice or unemployment check stub, or printout from the local State Wage Information Collection Agency provided by the tenant. **Note:** The PHA must document in the tenant file, the reason third party verification was not available.	The PHA may accept a notarized statement or affidavit from the tenant that declares unemployment benefits. **Note:** The PHA must document in the tenant file, the reason third party verification was not available.
Pensions	Use of computer matching agreements with a Federal, State, or Local Government Agency to obtain pension information electronically, by mail or fax or in person.	The PHA mails, faxes, or e-mails a verification form directly to the pension provider to obtain pension information.	The PHA may call the pension provider to obtain current benefit amount.	The PHA may review an original benefit notice from the pension provider provided by the tenant. **Note:** The PHA must document in the tenant file, the reason third party verification was not available.	The PHA may accept a notarized statement or affidavit from the tenant that declares monthly pension amounts. **Note:** The PHA must document in the tenant file, the reason third party verification was not available.

Income Type	Upfront	Written Third Party	Oral Third Party	Document Review	Tenant Declaration
	(LEVEL 5)	(LEVEL 4)	(LEVEL 3)	(LEVEL 2)	(LEVEL 1)
Assets	Use of cooperative agreements with sources to obtain asset and asset income information electronically, by mail or fax or in person.	The PHA mails, faxes, or emails a verification form directly to the source to obtain asset and asset income information.	The PHA may call the source to obtain asset and asset income information.	The PHA may review original documents provided by the tenant. **Note: The PHA must document in the tenant file, the reason third party verification was not available.**	The PHA may accept a notarized statement or affidavit from the tenant that declares assets and asset income. **Note: The PHA must document in the tenant file, the reason third party verification was not available.**
Comments	Whenever HUD makes available wage, unemployment, and SSA information, the PHA should use the information as part of the reexamination process. Failure to do so may result in disallowed costs during a RIM review.	**Note:** The independent source completes the form and returns the form directly to the PHA. Agency. The tenant should not hand carry documents to or from the independent source.	The PHA should document in the tenant file, the date and time of the telephone call or in person visit, along with the name and title of the person that verified the current income amount.		The PHA should use this verification method as a last resort, when all other verification methods are not possible or have been unsuccessful. **Notarized statement should include a perjury penalty statement.**

Note: The PHA must not pass verification costs along to the participant.

Note: In cases where the PHA cannot reliably project annual income, the PHA may elect to complete regular interim reexaminations (this policy should be apart of the PHA's written policies.)

EXHIBIT 7-2: SUMMARY OF DOCUMENTATION REQUIREMENTS FOR NONCITIZENS [HCV GB, pp. 5-9 and 5-10]	
• **All** non-citizens claiming eligible status must sign a declaration of eligible immigrant status on a form acceptable to the Housing Department. • 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]

INTRODUCTION

HUD requires that all units occupied by families receiving Housing Choice Voucher (HCV) assistance meet HUD's Housing Quality Standards (HQS) and permits the Housing Department to establish additional requirements. The use of the term "HQS" in this plan refers to the combination of both HUD and Housing Department-established requirements. HQS inspections are required before the Housing Assistance Payments (HAP) Contract is signed and at least annually during the term of the contract.

HUD also requires Housing Departments to determine that units rented by families assisted under the HCV program have rents that are reasonable when compared to comparable unassisted units in the market area.

This chapter explains HUD and Housing Department 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 Housing Department 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 Housing Department will use to make rent reasonableness determinations.

Special HQS requirements for homeownership, manufactured homes, and other special housing types are discussed in Chapter 15 to the extent that they apply in this jurisdiction.

PART I: PHYSICAL STANDARDS

8.I.A. GENERAL HUD REQUIREMENTS

HUD Performance and Acceptability Standards

HUD's performance and acceptability standards for HCV-assisted housing are provided in 24 CFR 982.401. These standards cover the following areas:

- Sanitary facilities
- Food preparation and refuse disposal
- Space and security
- Thermal Environment
- Illumination and electricity
- Structure and materials
- Interior air quality
- Water supply
- Lead-based paint
- Access
- Site and neighborhood
- Sanitary condition
- Smoke detectors

A summary of HUD performance criteria is provided in Attachment 8-1. Additional guidance on these requirements is found in the following HUD resources:

- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)
- HUD Notice 2003-31, Accessibility Notice: Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Architectural Barriers Act of 1968 and the Fair Housing Act of 1988.

Tenant Preference Items

HUD requires the Housing Department to enforce minimum HQS but also requires that certain judgments about acceptability be left to the family. For example, the Housing Department must ensure that the unit contains the required sanitary facilities, but the family decides whether the cosmetic condition of the facilities is acceptable. Attachment 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.

Housing Department Policy

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

8.I.B. ADDITIONAL LOCAL REQUIREMENTS

The Housing Department may impose additional quality standards as long as the additional criteria are not likely to adversely affect the health or safety of participant families or severely restrict housing choice. HUD approval is required if more stringent standards are imposed. HUD approval is not required if the Housing Department additions are clarifications of HUD's acceptability criteria or performance standards [24 CFR 982.401(a)(4)].

Thermal Environment [HCV GB p.10-7]

The Housing Department must define a "healthy living environment" for the local climate. This may be done by establishing a temperature that the heating system must be capable of maintaining, that is appropriate for the local climate.

Housing Department Policy

The heating system must be capable of maintaining an interior temperature of 68 degrees Fahrenheit between October 1 and May 1.

Clarifications of HUD Requirements

Housing Department Policy

As permitted by HUD, the Housing Department 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 open-able without the use of a key.

Floors

All wood floors must be sanded to a smooth surface and sealed. Any loose or warped boards must be re-secured and made level. If they cannot be leveled, they must be replaced.

All floors must be in a finished state. Raw wood or unsealed concrete is not permitted.

All floors should have some type of 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 worn or cracked toilet seats and tank lids must be replaced and toilet tank lid must fit properly.

All sinks must have functioning stoppers.

Security

If window security bars or security screens are present on emergency exit windows, they must be equipped with a quick release system. The owner is responsible for ensuring that the family is instructed on the use of the quick release system.

8.I.C. LIFE THREATENING CONDITIONS [24 CFR 982.404(a)]

HUD requires the Housing Department 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 Housing Department notification.

Housing Department Policy

The following are considered life threatening conditions:

Any condition that jeopardizes the security of the unit

Major plumbing leaks or flooding, waterlogged ceiling or floor in imminent danger of falling

Natural or LP gas or fuel oil leaks

Any electrical problem or condition that could result in shock or fire

Absence of a working heating system when outside temperature is below 60 degrees Fahrenheit.

Utilities not in service, including no running hot water

Conditions that present the imminent possibility of injury

Obstacles that prevent safe entrance or exit from the unit

Absence of a functioning toilet in the unit

Inoperable smoke detectors

If an owner fails to correct life threatening conditions as required by the Housing Department, the housing assistance payment will be abated and the HAP contract will be terminated. See 8-II-G.

If a family fails to correct a family caused life threatening condition as required by the Housing Department, the Housing Department may terminate the family's assistance. See 8-II.H.

The owner will be required to repair an inoperable smoke detector unless the Housing Department determines that the family has intentionally disconnected it (by removing batteries or other means). In this case, the family will be required to repair the smoke detector within 24 hours.

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

Family Responsibilities

The family is responsible for correcting the following HQS deficiencies:

- Tenant-paid utilities not in service
- Failure to provide or maintain family-supplied appliances
- Damage to the unit or premises caused by a household member or guest beyond normal wear and tear. "Normal wear and tear" is defined as items which could not be charged against the tenant's security deposit under state law or court practice.

Owner Responsibilities

The owner is responsible for all HQS violations not listed as a family responsibility above, even if the violation is caused by the family's living habits (e.g., vermin infestation). However, if the family's actions constitute a serious or repeated lease violation the owner may take legal action to evict the family.

8-I-E. SPECIAL REQUIREMENTS FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL [24 CFR 35.1225]

If a Housing Department is notified by a public health department or other medical health care provider, or verifies information from a source other than a public health department or medical health care provider, that a child of less than 6 years of age, living in an HCV-assisted unit has been identified as having an environmental intervention blood lead level, the Housing Department must complete a risk assessment of the dwelling unit. The risk assessment must be completed in accordance with program requirements, and the result of the risk assessment must be immediately provided to the owner of the dwelling unit. In cases where the public health department has already completed an evaluation of the unit, this information must be provided to the owner.

Within 30 days after receiving the risk assessment report from the Housing Department, or the evaluation from the public health department, the owner is required to complete the reduction of identified lead-based paint hazards in accordance with the lead-based paint regulations [24 CFR 35.1325 and 35.1330]. If the owner does not complete the "hazard reduction" as required, the dwelling unit is in violation of HQS and the Housing Department will take action in accordance with Section 8-II.G.

Housing Department reporting requirements, and data collection and record keeping responsibilities related to children with an environmental intervention blood lead level are discussed in Chapter 16.

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

If the Housing Department determines that a unit does not meet the HQS space standards because of an increase in family size or a change in family composition, the Housing Department must issue the family a new voucher, and the family and Housing Department must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the Housing Department 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 Housing Department conducts the following types of inspections as needed. Each type of inspection is discussed in the paragraphs that follow.

- *Initial Inspections.* The Housing Department conducts initial inspections in response to a request from the family to approve a unit for participation in the HCV program. The unit must pass the HQS inspection before the effective date of the HAP Contract.
- *Annual Inspections.* HUD requires the Housing Department to inspect each unit under lease at least annually to confirm that the unit still meets HQS. The inspection may be conducted in conjunction with the family's annual reexamination but also may be conducted separately.
- *Special Inspections.* A special inspection may be requested by the owner, the family, or a third party as a result of problems identified with a unit between annual inspections.
- *Quality Control Inspections.* HUD requires that a sample of units be re-inspected by a supervisor or other qualified individual to ensure that HQS are being enforced correctly and uniformly by all inspectors.

Notice and Scheduling

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

Housing Department Policy

Both the family and the owner will be given reasonable notice of all inspections. Except in the case of a life threatening emergency, reasonable notice is considered to be not less than 48 hours. Inspections will be scheduled between 8:30 a.m. and 5:00 p.m. Inspections will be conducted on business days only. In the case of a life threatening emergency, the Housing Department will give as much notice as possible, given the nature of the emergency.

Attendance at inspections by owner and family

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

Housing Department Policy

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

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

8-II.B. INITIAL HQS INSPECTION [24 CFR 982.401(a)]

Timing of Initial Inspections

HUD requires the unit to pass HQS before the effective date of the lease and HAP Contract. HUD requires Housing Departments with fewer than 1,250 budgeted units to complete the initial inspection, determine whether the unit satisfies HQS, and notify the owner and the family of the determination within 15 days of submission of the Request for Tenancy Approval (RTA). For Housing Departments with 1,250 or more budgeted units, to the extent practicable such inspection and determination must be completed within 15 days. The 15-day period is suspended for any period during which the unit is not available for inspection [982.305(b)(2)].

Housing Department Policy

The Housing Department will complete the initial inspection, determine whether the unit satisfies HQS, and notify the owner and the family of the determination within 10 calendar days of submission of the Request for Tenancy Approval (RTA).

Inspection Results and Re-inspections

Housing Department Policy

If any HQS violations are identified, the owner will be notified of the deficiencies and be given a time frame to correct them. If requested by the owner, the time frame for correcting the deficiencies may be extended by the Housing Department for good cause. The Housing Department will re-inspect the unit within 5 business days of the date the owner notifies the Housing Department that the required corrections have been made.

If the time period for correcting the deficiencies (or any Housing Department-approved extension) has elapsed, or the unit fails HQS at the time of the re-inspection, the Housing Department will notify the owner and the family that the unit has been rejected and that the family must search for another unit. The Housing Department may agree to conduct a second re-inspection, for good cause, at the request of the family and owner.

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.

Housing Department Policy

If utility service is not available for testing at the time of the initial inspection, the Housing Department will allow the utilities to be placed in service after the unit has met all other HQS requirements. The Housing Department will require written certification from the owner and family that utilities are operational before the HAP contract is executed.

Appliances

Housing Department Policy

If the family is responsible for supplying the stove and/or refrigerator, the Housing Department 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 Housing Department. The Housing Department will execute the HAP contract based upon a certification from the family and owner that the appliances have been installed and are working.

8.II.C. ANNUAL HQS INSPECTIONS [24 CFR 982.405(a)]

Scheduling the Inspection

Each unit under HAP contract must have an annual inspection no more than 12 months after the most recent inspection.

Housing Department Policy

If an adult family member cannot be present on the scheduled date, the family must make arrangements for someone else to be at the unit so the inspection can be conducted on the date specified in the notification letter. It is the family's responsibility to have the unit available for inspection on the date specified to ensure HUD's requirements are met.

If the family misses the scheduled inspection without Housing Department approval, the Housing Department will consider the family to have violated its obligation to make the unit available for inspection. This will result in termination of the family's assistance in accordance with Chapter 12. The family will have the right to an Informal hearing for the first violation only.

8-II.D. SPECIAL INSPECTIONS [HCV GB p. 10-30]

The Housing Department will conduct a special inspection if the owner, family, or another source reports HQS violations in the unit.

Housing Department Policy

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

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

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

HUD requires a Housing Department 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 6 months. The selected sample will include (1) each type of inspection (initial, annual, and special), (2) inspections completed by each inspector, and (3) units from a cross-section of neighborhoods.

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

Notification of Corrective Actions

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

Housing Department Policy

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

When failures that are not life threatening are identified, the Housing Department will send the owner and the family a written notification of the inspection results within 5 calendar 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 Housing Department-approved extension), the owner's HAP will be abated in accordance with Housing Department 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 Housing Department-approved extension, if applicable) the family's assistance will be terminated in accordance with Housing Department policy (see Chapter 12).

Extensions

For conditions that are life-threatening, the Housing Department cannot grant an extension to the 24 hour corrective action period. For conditions that are not life-threatening, the Housing Department may grant an exception to the required time frames for correcting the violation, if the Housing Department determines that an extension is appropriate [24 CFR 982.404].

Housing Department Policy

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

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

A repair cannot be completed because of weather conditions.

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

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

Re-inspections

Housing Department Policy

The Housing Department will conduct a re-inspection immediately following the end of the corrective period, or any Housing Department approved extension.

The family and owner will be given reasonable notice of the re-inspection appointment. If the deficiencies have not been corrected by the time of the re-inspection, the Housing Department 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 Housing Department policies. If the Housing Department is unable to gain entry to the unit in order to conduct the scheduled re-inspection, the Housing Department will consider the family to have violated its obligation to make the unit available for inspection. This will result in termination of the family's assistance in accordance with Chapter 12.

8.II.G. ENFORCING OWNER COMPLIANCE

If the owner fails to maintain the dwelling unit in accordance with HQS, the Housing Department must take prompt and vigorous action to enforce the owner obligations.

HAP Abatement

If an owner fails to correct HQS deficiencies by the time specified by the Housing Department, HUD requires the Housing Department 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.

Housing Department Policy

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

The Housing Department will inspect abated units within 5 business days of the owner's notification that the work has been completed. Payment will resume effective on the day the unit passes inspection.

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

HAP Contract Termination

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

Housing Department Policy

The maximum length of time that a HAP may be abated is 90 days. However, if the owner completes corrections and notifies the Housing Department before the termination date of the HAP contract, the Housing Department 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 Housing Department is 90 days.

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

Families are responsible for correcting any HQS violations listed in paragraph 8.I.D. If the family fails to correct a violation within the period allowed by the Housing Department (and any extensions), the Housing Department will terminate the family's assistance, according to the policies described in Chapter 12.

If the owner carries out a repair for which the family is responsible under the lease, the owner may bill the family for the cost of the repair.

PART III: RENT REASONABLENESS [24 CFR 982.507]

8-III.A. OVERVIEW

No HAP contract can be approved until the Housing Department 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.

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

Owner-initiated Rent Determinations

The Housing Department 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 Housing Department (or independent agency in the case of Housing Department-owned units) will assist the family with the negotiations upon request. At initial occupancy the Housing Department 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.

Housing Department Policy

After the initial occupancy period, the owner may request a rent adjustment in accordance with the owner's lease. For rent increase requests after initial lease-up, the Housing Department 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 Housing Department will consider unit size and length of tenancy in the other units.

The Housing Department will determine whether the requested increase is reasonable within 10 calendar days of receiving the request from the owner. The owner will be notified of the determination in writing or by phone.

All rents adjustments will be effective the first of the month following 60 days after the Housing Department's receipt of the owner's request or on the date specified by the owner, whichever is later. However, this rule will not apply to any U.S.D.A. apartment subsidy complexes.

Housing Department- and HUD-Initiated Rent Reasonableness Determinations

HUD requires the Housing Department to make a determination of rent reasonableness (even if the owner has not requested a change) if there is a 5 percent decrease in the Fair Market Rent that goes into effect at least 60 days before the contract anniversary date. HUD also may direct the Housing Department to make a determination at any other time. The Housing Department may decide that a new determination of rent reasonableness is needed at any time.

Housing Department Policy

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

8-III.C. HOW COMPARABILITY IS ESTABLISHED

Factors to Consider

HUD requires Housing Departments to take into consideration the factors listed below when determining rent comparability. The Housing Department 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 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.

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 Housing Department 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 Housing Department information regarding rents charged for other units on the premises.

8-III.D. HOUSING DEPARTMENT RENT REASONABLENESS METHODOLOGY

How Market Data is Collected

Housing Department Policy

The Housing Department will collect and maintain data on market rents in the Housing Department's jurisdiction. Information sources include newspapers, realtors, inquiries of owners and other available sources. The data will be maintained by bedroom size and unit types. The data will be updated on an ongoing basis and rent information that is more than 12 months old will be eliminated.

How Rents are Determined

Housing Department Policy

The rent for a unit proposed for HCV assistance will be compared to the rent charged for comparable unit types. The Housing Department will develop a range of prices for comparable units by bedroom size and unit types. Units proposed for HCV assistance will be compared to the units within this rent range. Because units may be similar, but not exactly like the unit proposed for HCV assistance, the Housing Department 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 rents 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 Housing Department will notify the owner of the rent the Housing Department 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 Housing Department will confirm the accuracy of the information provided and consider this additional information when making rent determinations. The owner must submit any additional information within 5 calendar days of the Housing Department's request for information or the owner's request to submit information.

EXHIBIT 8-1: OVERVIEW OF HUD HOUSING QUALITY STANDARDS

Note: This document provides an overview of HQS. For more detailed information see the following documents:

- 24 CFR 982.401, Housing Quality Standards (HQS)
- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)

Sanitary Facilities

The dwelling unit must include sanitary facilities within the unit. The sanitary facilities must be usable in privacy and must be in proper operating condition and adequate for personal cleanliness and disposal of human waste.

Food Preparation and Refuse Disposal

The dwelling unit must have space and equipment suitable for the family to store, prepare, and serve food in a sanitary manner.

Space and Security

The dwelling unit must provide adequate space and security for the family. This includes having at least one bedroom or living/sleeping room for each two persons.

Thermal Environment

The unit must have a safe system for heating the dwelling unit. Air conditioning is not required but if provided must be in proper operating condition. The dwelling unit must not contain un-vented 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 open-able window or other adequate ventilation. Any sleeping room must have at least one window and if the window was designed to be opened, it must be in proper working order.

Water Supply

The dwelling unit must be served by an approved public or private water supply that is sanitary and free from contamination. Plumbing fixtures and pipes must be free of leaks and threats to health and safety.

Lead-Based Paint

Lead-based paint requirements apply to dwelling units built prior to 1978 that are occupied or can be occupied by families with children under six years of age, excluding zero bedroom dwellings. Owners must:

- Disclose known lead-based paint hazards to prospective tenants before the lease is signed,
- provide all prospective families with "Protect Your Family from Lead in Your Home",
- Stabilize deteriorated painted surfaces and conduct hazard reduction activities when identified by the Housing Department
- Notify tenants each time such an activity is performed
- Conduct all work in accordance with HUD safe practices
- As part of ongoing maintenance ask each family to report deteriorated paint.

For units occupied by environmental intervention blood lead level (lead poisoned) children under six years of age, a risk assessment must be conducted (paid for by the Housing Department). If lead hazards are identified during the risk assessment, the owner must complete hazard reduction activities.

See HCV GB p. 10-15 for a detailed description of these requirements. For additional information on lead-based paint requirements see 24 CFR 35, Subparts A, B, M, and R.

Access

Use and maintenance of the unit must be possible without unauthorized use of other private properties. The building must provide an alternate means of exit in case of fire.

Site and Neighborhood

The site and neighborhood must be reasonably free from disturbing noises and reverberations, excessive trash or vermin, or other dangers to the health, safety, and general welfare of the occupants.

Sanitary Condition

The dwelling unit and its equipment must be in sanitary condition and free of vermin and rodent infestation. The unit must have adequate barriers to prevent infestation.

Smoke Detectors

Smoke detectors must be installed in accordance with and meet the requirements of the National Fire Protection Association Standard (NFPA) 74 (or its successor standards). If the dwelling unit is occupied by any person with a hearing impairment, smoke detectors must have an appropriate alarm system as specified in NFPA 74 (or successor standards).

Hazards and 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.
- *Energy conservation items.* The family may determine whether the amount of insulation, presence or absence of storm doors and windows and other energy conservation items are acceptable.
- *Illumination and Electricity.* The family may determine whether the location and the number of outlets and fixtures (over and above those required to meet HQS standards) are acceptable or if the amount of electrical service is adequate for the use of appliances, computers, or stereo equipment.
- *Structure and Materials.* Families may determine whether minor defects, such as lack of paint, or worn flooring or carpeting will affect the livability of the unit.
- *Indoor Air.* Families may determine whether window and door screens, filters, fans, or other devices for proper ventilation are adequate to meet the family's needs. However, if screens are present they must be in good condition.
- *Sanitary Conditions.* The family determines whether the sanitary conditions in the unit, including minor infestations, are acceptable.

- *Neighborhood conditions*. Families may determine whether neighborhood conditions such as the presence of drug activity, commercial enterprises, and convenience to shopping will affect the livability of the unit.

Families have no discretion with respect to lead-based paint standards and smoke detectors.

Chapter 9

GENERAL LEASING POLICIES

INTRODUCTION

Chapter 9 covers the lease-up process from the family's submission of a Request for Tenancy Approval to execution of the HAP contract.

In order for the Housing Department 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 Housing Department 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 Housing Department and meet the Housing Quality Standards (HQS) [24 CFR 982.305(a)]
- The lease offered by the owner must be approvable and must include the required Tenancy Addendum [24 CFR 982.305(a)]
- The rent to be charged by the owner for the unit must be reasonable [24 CFR 982.305(a)]
- The owner must be an eligible owner, approvable by the Housing Department, with no conflicts of interest [24 CFR 982.306]
- For families initially leasing a unit only: The gross rent of the unit can not exceed the applicable payment standard for the family. Exceptions will be made on a case by case basis to accommodate a request for persons with disabilities.

9-I.A. TENANT SCREENING

The Housing Department 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 Housing Department approval of the tenancy, the Housing Department must inform the owner that screening and selection for tenancy is the responsibility of the owner [24 CFR 982.307(a)(2)].

The Housing Department must provide the owner with the family's current and prior address (as shown in the Housing Department records); and the name and address (if known to the Housing Department) of the landlord at the family's current and prior address. [24 CFR 982.307 (b)(1)].

The Housing Department's policy on providing information to the owner must be included in the family's briefing packet [24 CFR 982.307(b)(3)].

Housing Department Policy

The Housing Department will not screen applicants for family behavior or suitability for tenancy or provide additional screening information to the owner.

9-I.B. REQUESTING TENANCY APPROVAL [Form HUD-52517]

After the family is issued a voucher, the family must locate an eligible unit, with an owner or landlord willing to participate in the voucher program. Once a family finds a suitable unit and the owner is willing to lease the unit under the program, the owner and the family must request the Housing Department to approve the assisted tenancy in the selected unit.

The owner and/or the family must submit two documents to the Housing Department:

- Completed Request for Tenancy Approval (RTA) – Form HUD-52517
- Copy of the proposed lease, including the HUD-prescribed Tenancy Addendum – Form HUD-52641-A

The RTA contains important information about the rental unit selected by the family, including the unit address, number of bedrooms, structure type, year constructed, utilities included in the rent, and the requested beginning date of the lease, necessary for the Housing Department 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 Housing Department has granted a request for reasonable accommodation for a person with disabilities who is a member of the tenant household.

For units constructed prior to 1978, owners must either 1) certify that the unit, common areas, and exterior have been found to be free of lead-based paint by a certified inspector; or 2) attach a lead-based paint disclosure statement.

Both the RTA and the proposed lease must be submitted no later than the expiration date stated on the voucher. [HCV GB p.8-15].

Housing Department Policy

The RTA must be signed by both the family and the owner.

The owner may submit the RTA on behalf of the family.

Completed RTA (including the proposed dwelling lease) can be submitted as hard copies, in-person, by fax or by mail.

The family may not submit, and the Housing Department will not process, more than one (1) RTA at a time.

When the family submits the RTA the Housing Department will review the RTA for completeness.

If the RTA is incomplete (including lack of signature by family, owner, or both), or if the dwelling lease is not submitted with the RTA, the Housing Department 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 or by mail. The Housing Department will not accept missing information over the phone.

When the family submits the RTA and proposed lease, the Housing Department will also review the terms of the RTA for consistency with the terms of the proposed lease.

If the terms of the RTA are not consistent with the terms of the proposed lease, the Housing Department will notify the family and the owner of the discrepancies.

Corrections to the terms of the RTA and/or the proposed lease will only be accepted as hard copies, in-person or by mail. The Housing Department will not accept corrections by phone.

Because of the time sensitive nature of the tenancy approval process, the Housing Department will attempt to communicate with the owner and family by phone, fax, or email. The Housing Department will use mail when the parties can't be reached by phone, fax, or email.

9-I.C. OWNER PARTICIPATION

The Housing Department does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where the Housing Department may deny approval of an assisted tenancy based on past owner behavior, conflict of interest, or other owner-related issues. No owner has a right to participate in the HCV program [24 CFR 982.306(e)]

See Chapter 13 for a full discussion of owner qualification to participate in the HCV program.

9-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. A voucher-holder family may choose any available rental dwelling unit on the market in the Housing Department's jurisdiction. This includes the dwelling unit they are currently occupying.

Ineligible Units [24 CFR 982.352(a)]

The Housing Department 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.

Special Housing Types [24 CFR 982 Subpart M]

HUD regulations permit, but do not generally require, the Housing Department 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 Housing Department has chosen to allow.

The regulations do require the Housing Department 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; Section 202 projects for non-elderly persons with disabilities (Section 162 assistance); or
- Any other duplicative federal, State, or local housing subsidy, as determined by HUD. For this purpose, 'housing subsidy' does not include the housing component of a welfare payment, a social security payment received by the family, or a rent reduction because of a tax credit.

Housing Quality Standards (HQS) [24 CFR 982.305 and 24 CFR 982.401]

In order to be eligible, the dwelling unit must be in decent, safe and sanitary condition. This determination is made using HUD's Housing Quality Standards (HQS) and/or equivalent state or local standards approved by HUD. See Chapter 8 for a full discussion of the HQS standards, as well as the process for HQS inspection at initial lease-up.

Unit Size

In order to be eligible, the dwelling unit must be appropriate for the number of persons in the household. A family must be allowed to lease an otherwise acceptable dwelling unit with fewer bedrooms than the number of bedrooms stated on the voucher issued to the family, provided the unit meets the applicable HQS space requirements [24 CFR 982.402(d)]. The family must be allowed to lease an otherwise acceptable dwelling unit with more bedrooms than the number of bedrooms stated on the voucher issued to the family. 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]

When a family is initially leasing a unit the gross rent of the unit can not exceed the applicable payment standard for the family. The dwelling unit rent must be at a level where the family's share of rent does not exceed 40 percent of the family's monthly adjusted income. See Chapter 6 for a discussion of calculation of gross rent, the use of payment standards, and calculation of family income, family share of rent and HAP.

9-I.E. LEASE AND TENANCY ADDENDUM

The family and the owner must execute and enter into a written dwelling lease for the assisted unit. This written lease is a contract between the tenant family and the owner; the Housing Department is not a party to this contract.

The tenant must have legal capacity to enter a lease under State and local law. 'Legal capacity' means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner [24 CFR 982.308(a)].

Lease Form and Tenancy Addendum [24 CFR 982.308]

If the owner uses a standard lease form for rental to unassisted tenants in the locality or the premises, the lease must be in such standard form. If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease. The HAP contract prescribed by HUD contains the owner's certification that if the owner uses a standard lease form for rental to unassisted tenants, the lease is in such standard form.

The Tenancy Addendum includes the tenancy requirements for the program and the composition of the household as approved by the Housing Department. As a part of the lease, the tenant shall have the right to enforce the Tenancy Addendum against the owner and the terms of the Tenancy Addendum shall prevail over any other provisions of the lease.

> Housing Department Policy
>
> The Housing Department will provide a model or standard dwelling lease for owners to use in the HCV program at the owner's request.

Lease Information [24 CFR 982.308(d)]

The assisted dwelling lease must contain all of the required information as listed below:

- The names of the owner and the tenant:
- The unit rented (address, apartment number, and any other information needed to identify the contract unit)
- The term of the lease (initial term and any provisions for renewal)
- The amount of the monthly rent to owner
- A specification of what utilities and appliances are to be supplied by the owner, and what utilities and appliances are to be supplied by the family

Term of Assisted Tenancy

The initial term of the assisted dwelling lease must be for at least one year [24 CFR 982.309]. The initial lease term is also stated in the HAP contract.

The HUD program regulations permit the Housing Department to approve a shorter initial lease term if certain conditions are met.

Housing Department Policy

The Housing Department 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 in the dwelling lease if they exist.

The Housing Department may execute the HAP contract even if there is less than one year remaining from the beginning of the initial lease term to the end of the last expiring funding increment under the consolidated ACC. [24 CFR 982.309(b)].

Security Deposit [24 CFR 982.313 (a) and (b)]

The owner may collect a security deposit from the tenant. The Housing Department may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants. However, if the Housing Department chooses to do so, language to this effect must be added to Part A of the HAP contract [Form HUD-52641].

Housing Department Policy

The Housing Department 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 minus the Housing Department'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)].

Housing Department Policy

The Housing Department will not permit 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.

Housing Department Review of Lease

The Housing Department will review the dwelling lease for compliance with all applicable requirements.

Housing Department Policy

If the dwelling lease is incomplete or incorrect, the Housing Department will notify the family and the owner of the deficiencies. Missing and corrected lease information will only be accepted as hard copies, in-person, by mail, or by fax. The Housing Department will not accept missing and corrected information over the phone

Because the initial leasing process is time-sensitive, the Housing Department will attempt to communicate with the owner and family by phone, fax, or email. The Housing Department will use mail when the parties can't be reached by phone, fax, or email.

The Housing Department is permitted, but is not required, to review the lease to determine if the lease complies with State and local law and is permitted to decline to approve the tenancy if the Housing Department determines that the lease does not comply with State or local law [24 CFR 982.308(c)]

Housing Department Policy

The Housing Department 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 Housing Department 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 Housing Department 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 Housing Department and meets the Housing Quality Standards (HQS); the lease offered by the owner is approvable and includes the required Tenancy Addendum; the rent to be charged by the owner for the unit must is reasonable; when the family is initially leasing a unit the gross rent of the unit can not exceed 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 Housing Department, 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)].

Housing Department Policy

The Housing Department will complete its determination within 10 calendar days of receiving all required information.

If the terms of the RTA/proposed lease are changed for any reason, including but not limited to negotiation with the Housing Department, the Housing Department will obtain corrected copies of the RTA and proposed lease, signed by the family and the owner.

Corrections to the RTA/proposed lease will only be accepted as hard copies, in-person, by mail, or by fax. The Housing Department will not accept corrections over the phone.

If the Housing Department 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 Housing Department will instruct the owner and family of the steps that are necessary to approve the tenancy.

Where the tenancy is not approvable because the unit is not approvable, the family must continue to search for eligible housing within the timeframe of the issued voucher.

If the tenancy is not approvable due to rent affordability (including rent burden and rent reasonableness), the Housing Department 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 Housing Department and the owner of the dwelling unit occupied by a housing choice voucher assisted family. Under the HAP contract, the Housing Department agrees to make housing assistance payments to the owner on behalf of a specific family occupying a specific unit and obliges the owner to comply with all program requirements.

The HAP contract format is prescribed by HUD.

If the Housing Department has given approval for the family of the assisted tenancy, the owner and the Housing Department 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 Housing Department will ensure that the HAP contract is executed before the beginning of the lease term.

The Housing Department may not pay any housing assistance payment to the owner until the HAP contract has been executed.

> Housing Department Policy
>
> Owners who have not previously participated in the HCV program must attend a meeting with the Housing Department in which the terms of the Tenancy Addendum and the HAP contract will be explained. The Housing Department may waive this requirement on a case-by-case basis, if it determines that the owner is sufficiently familiar with the requirements and responsibilities under the HCV program.
>
> The owner and the assisted family will execute the dwelling lease and the owner or family must provide a copy to the Housing Department. The Housing Department will ensure that both the owner and the assisted family receive copies of the dwelling lease.
>
> The owner and the Housing Department will execute the HAP contract. The Housing Department will not execute the HAP contract until the owner has submitted IRS form W-9. The Housing Department will ensure that the owner receives a copy of the executed HAP contract.

See Chapter 13 for a discussion of the HAP contract and contract provisions.

9-I.H. CHANGES IN LEASE OR RENT [24 CFR 982.308]

If the tenant and the owner agree to any changes in the lease, such changes must be in writing, and the owner must immediately give the Housing Department a copy of such changes. The lease, including any changes, must remain in accordance with the requirements of this chapter.

Generally, Housing Department approval of tenancy and execution of a new HAP contract are not required for changes in the lease. However, under certain circumstances, voucher assistance in the unit shall not be continued unless the Housing Department has approved a new tenancy in accordance with program requirements and has executed a new HAP contract with the owner. These circumstances include:

- Changes in lease requirements governing tenant or owner responsibilities for utilities or appliances
- Changes in lease provisions governing the term of the lease
- The family moves to a new unit, even if the unit is in the same building or complex

In these cases, if the HCV assistance is to continue, the family must submit a new Request for Tenancy Approval (RTA) along with a new dwelling lease containing the altered terms. A new tenancy must then be approved in accordance with this chapter.

Where the owner is changing the amount of rent, the owner must notify the Housing Department of any changes in the amount of the rent to owner at least 60 days before any such changes go into effect [24 CFR 982.308(g)(4)]. The Housing Department 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 <u>not</u> found to be reasonable, the owner must either reduce the requested rent increase, or give the family notice in accordance with the terms of the lease.

No rent increase is permitted during the initial term of the lease [24 CFR 982.309(a)(3)].

<u>Housing Department Policy</u>

The Housing Department must comply with the rent increase of all Rural Development Apartment Complexes throughout Sumter County even if the increase occurs within the initial term of the lease.

Where the owner is requesting a rent increase, the Housing Department will determine whether the requested increase is reasonable within 10 calendar days of receiving the request from the owner.

Rent increases will go into effect on the first of the month following the 60 day period after the owner notifies the Housing Department of the rent change or on the date specified by the owner, whichever is later. This will be examined on case-by-case basis.

Chapter 10

MOVING WITH CONTINUED ASSISTANCE AND PORTABILITY

INTRODUCTION

Freedom of choice is a hallmark of the housing choice voucher (HCV) program. In general, therefore, HUD regulations impose few restrictions on where families may live or move with HCV assistance. This chapter sets forth HUD regulations and Housing Department policies governing moves within or outside the Housing Department'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 Housing Department's HCV program, whether the family moves to another unit within the Housing Department's jurisdiction or to a unit outside the Housing Department'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 Housing Department's jurisdiction. This part also covers the special responsibilities that the Housing Department has under portability regulations and procedures.

PART I. MOVING WITH CONTINUED ASSISTANCE

10-I.A. ALLOWABLE MOVES

HUD regulations list six 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 982.314(b)(3)]. If the family terminates the lease on notice to the owner, the family must give the Housing Department a copy of the notice at the same time [24 CFR 982.314(d)(1)].
- The Violence Against Women Reauthorization Act of 2005 provides that "a family may receive a voucher from a public housing agency and move to another jurisdiction under the tenant-based assistance program if the family has complied with all other obligations of the section 8 program and has moved out of the assisted dwelling unit in order to protect the health or safety of an individual who is or has been a victim of domestic violence, dating violence, or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the assisted dwelling unit" [Pub.L. 109-162]
- The lease for the family's unit has been terminated by mutual agreement of the owner and the family [24 CFR 982.314(b)(1)(ii)].

  Housing Department Policy

  If the family and the owner mutually agree to terminate the lease for the family's unit, the family must give the Housing Department a copy of the termination agreement.

- The owner has given the family a notice to vacate, has commenced an action to evict the family, or has obtained a court judgment or other process allowing the owner to evict the family [24 CFR 982.314(b)(2)]. The family must give the Housing Department a copy of any owner eviction notice [24 CFR 982.551(g)].

  Housing Department Policy

  This will be reviewed on a case by case basis. The Housing Department will have the discretion to terminate the family if eviction is for following but not limited to:

  Non-payment of rent

  Violation of family obligations

- The Housing Department has terminated the assisted lease for the family's unit for the owner's breach [24 CFR 982.314(b)(1)(i)].

- The Housing Department determines that the family's current unit does not meet the HQS space standards because of an increase in family size or a change in family composition. In such cases, the Housing Department must issue the family a new voucher, and the family and Housing Department must try to find an acceptable unit as soon as possible. If an acceptable unit is available for the family, the Housing Department 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 Housing Department gives notice to the owner. [24 CFR 982.403(a) and (c)]

10-I.B. RESTRICTIONS ON MOVES

A family's right to move is generally contingent upon the family's compliance with program requirements [24 CFR 982.1(b)(2)]. HUD specifies two conditions under which a Housing Department may deny a family permission to move and two ways in which a Housing Department may restrict moves by a family.

Denial of Moves

HUD regulations permit the Housing Department to deny a family permission to move under the following conditions:

Insufficient Funding

The Housing Department may deny a family permission to move if the Housing Department does not have sufficient funding for continued assistance [24 CFR 982.314(e)(1)].

Housing Department Policy

The Housing Department will deny a family permission to move on grounds that the Housing Department does not have sufficient funding for continued assistance if (a) the move is initiated by the family not the Housing Department; (b) the Housing Department can demonstrate that the move will, in fact, result in higher subsidy costs; and (c) the Housing Department 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. This policy applies to moves within the Housing Department's jurisdiction as well as to moves outside it under portability.

Grounds for Denial or Termination of Assistance

The Housing Department has grounds for denying or terminating the family's assistance [24 CFR 982.314(e)(2)].

Housing Department Policy

If the Housing Department has grounds for denying or terminating a family's assistance, the Housing Department will act on those grounds in accordance with the regulations and policies set forth in Chapters 3 and 12, respectively.

The Housing Department has grounds for denying or terminating the family's assistance [24 CFR 982.314(e)(2)]. VAWA creates an exception to these restrictions for families who are otherwise in compliance with program obligations, but have moved to protect the health or safety of an individual who is or has been a victim of domestic violence, dating violence or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if they remained in the unit. [Pub.L. 109-162]

Housing Department Policy

If the Housing Department has grounds for denying or terminating a family's assistance, the Housing Department will act on those grounds in accordance with the regulations and policies set forth in Chapters 3 and 12, respectively.

Restrictions on Elective Moves [24 CFR 982.314(c)]

HUD regulations permit the Housing Department to prohibit any elective move by a participant family during the family's initial lease term. They also permit the Housing Department to prohibit more than one elective move by a participant family during any 12-month period.

Housing Department Policy

The Housing Department will deny a family permission to make an elective move during the family's initial lease term. This policy applies to moves within the Housing Department's jurisdiction or outside it under portability.

The Housing Department 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 Housing Department's jurisdiction or outside it under portability.

The Housing Department 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) or to address an emergency situation over which a family has no control.

In addition, the Housing Department will allow exceptions to these policies for purposes of reasonable accommodation of a family member who is a person with disabilities (see Chapter 2).

10-I.C. MOVING PROCESS

Notification

If a family wishes to move to a new unit, the family must notify the Housing Department and the owner before moving out of the old unit or terminating the lease on notice to the owner [24 CFR 982.314(d)(2)]. If the family wishes to move to a unit outside the Housing Department's jurisdiction under portability, the notice to the Housing Department must specify the area where the family wishes to move [24 CFR 982.314(d)(2), Notice PIH 2004-12]. The notices must be in writing [24 CFR 982.5].

Approval

Housing Department Policy

Upon receipt of a family's notification that it wishes to move, the Housing Department will determine whether the move is approvable in accordance with the regulations and policies. The Housing Department will notify the family in writing of its determination within 10 calendar days following receipt of the family's notification.

Reexamination of Family Income and Composition

Housing Department Policy

For families approved to move to a new unit within the Housing Department's jurisdiction, the Housing Department 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 Housing Department's jurisdiction under portability, the Housing Department will follow the policies set forth in Part II of this chapter.

Voucher Issuance and Briefing

Housing Department Policy

For families approved to move to a new unit within the Housing Department's jurisdiction, the Housing Department will issue a new voucher within 10 calendar days of the Housing Department's written approval to move. A briefing is required for these families. The Housing Department 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 Housing Department approves. Otherwise, the family will lose the assistance.

For families moving into or families approved to move out of the Housing Department's jurisdiction under portability, the Housing Department will follow the policies set forth in Part II of this chapter.

Housing Assistance Payments [24 CFR 982.311(d)]

When a family moves out of an assisted unit, the Housing Department 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.

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 Housing Department administering a tenant-based voucher program [24 CFR 982.353(b)]. The process by which a family obtains a voucher from one Housing Department and uses it to lease a unit in the jurisdiction of another Housing Department is known as portability. The first Housing Department is called the initial Housing Department. The second is called the receiving Housing Department.

The receiving Housing Department has the option of administering the family's voucher for the initial Housing Department or absorbing the family into its own program. Under the first option, the receiving Housing Department bills the initial Housing Department for the family's housing assistance payments and the fees for administering the family's voucher. Under the second option, the receiving Housing Department pays for the family's assistance out of its own program funds, and the initial Housing Department has no further relationship with the family.

The same Housing Department commonly acts as the initial Housing Department for some families and as the receiving Housing Department for others. Each role involves different responsibilities. The Housing Department will follow the rules and policies in section 10-II.B when it is acting as the initial Housing Department for a family. It will follow the rules and policies in section 10-II.C when it is acting as the receiving Housing Department for a family.

10-II.B. INITIAL HOUSING DEPARTMENT ROLE

Allowable Moves under Portability

A family may move with voucher assistance only to an area where there is at least one Housing Department administering a voucher program [24 CFR 982.353(b)]. If there is more than one Housing Department in the area, the initial Housing Department may choose the receiving Housing Department [24 CFR 982.355(b)].

Applicant families that have been issued vouchers as well as participant families may qualify to lease a unit outside the Housing Department's jurisdiction under portability. The initial Housing Department, in accordance with HUD regulations and Housing Department policy, determines whether a family qualifies.

Applicant Families

Under HUD regulations, most applicant families qualify to lease a unit outside the Housing Department's jurisdiction under portability. However, HUD gives the Housing Department 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.

Housing Department Policy

The Housing Department will not allow applicants the right to portability until they have resided in Sumter County for a one year period. They must be a participant under the program before exercising the right of portability.

In addition, the Housing Department may establish a policy denying the right to portability to nonresident applicants during the first 12 months after they are admitted to the program [24 CFR 982.353(c)].

Housing Department Policy

The family must live in the Housing Department's jurisdiction with voucher assistance for at least 12 months before requesting portability.

Participant Families

The Initial Housing Department must not provide portable assistance for a participant if a family has moved out of its assisted unit in violation of the lease [24 CFR 982.353(b)]. VAWA creates an exception to this prohibition for families who are otherwise in compliance with program obligations but have moved to protect the health or safety of an individual who is or has been a victim of domestic violence, dating violence or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if they remained in the unit.

Housing Department Policy

The Housing Department will determine whether a participant family may move out of the Housing Department's jurisdiction with continued assistance in accordance with the regulations and policies. A cost analysis will be conducted to determine if a higher payment subsidy will be charged on behalf of the portability family.

Determining Income Eligibility

Participant Families

The income eligibility of a participant family is not re-determined if the family moves to a new jurisdiction under portability [24 CFR 982.353(d)(2), 24 CFR 982.355(c)(1)].

Reexamination of Family Income and Composition

No new reexamination of family income and composition is required for an applicant family.

Housing Department Policy

For a participant family approved to move out of its jurisdiction under portability, the Housing Department will conduct a reexamination of family income and composition.

The Housing Department will make any exceptions to this policy necessary to remain in compliance with HUD regulations.

Briefing

The regulations and policies on briefings set forth in Chapter 5 of this plan require the Housing Department to provide information on portability to all applicant families that qualify to lease a unit outside the Housing Department's jurisdiction under the portability procedures. Therefore, no special briefing is required for these families.

Housing Department Policy

A briefing will be required for a participant family wishing to move outside the Housing Department's jurisdiction under portability. The Housing Department will provide the name, address, and phone of the contact for the Housing Department in the jurisdiction to which they wish to move. The Housing Department will advise the family that they will be under the Receiving Housing Authority's policies and procedures, including subsidy standards and voucher extension policies.

Voucher Issuance and Term

An applicant family has no right to portability until after the family has been issued a voucher [24 CFR 982.353(b)]. In issuing vouchers to applicant families, the Housing Department will follow the regulations and procedures set forth in Chapter 5. A new voucher is not required for portability purposes.

Housing Department Policy

For families approved to move under portability, the Housing Department will issue a new voucher within 10 calendar days of the Housing Department's approval to move.

The initial term of the voucher will be 60 days.

Voucher Extensions and Expiration

Housing Department Policy

The Housing Department will approve **no** extensions to a voucher issued to a participant family porting out of the Housing Department'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 Housing Department, (b) the family decides to return to the initial Housing Department's jurisdiction and search for a unit there, or (c) the family decides to search for a unit in a third Housing Department's jurisdiction. In such cases, the policies on voucher extensions set forth in Chapter 5, section 5-II.E, of this plan will apply, including the requirement that the family apply for an extension in writing prior to the expiration of the initial voucher term.

To receive or continue receiving assistance under the initial Housing Department's voucher program, a family that moves to another Housing Department's jurisdiction under portability must be under HAP contract in the receiving Housing Department's jurisdiction within 60 days following the expiration date of the initial Housing Department's voucher term (including any extensions). (See below under "Initial Billing Deadline" for one exception to this policy.)

Initial Contact with the Receiving Housing Department

After approving a family's request to move under portability, the initial Housing Department must promptly notify the receiving Housing Department to expect the family [24 CFR 982.355(c)(2)]. This means that the initial Housing Department must contact the receiving Housing Department directly on the family's behalf [Notice PIH 2004-12]. The initial Housing Department must also advise the family how to contact and request assistance from the receiving Housing Department [24 CFR 982.355(c)(2)].

Housing Department Policy

Because the portability process is time-sensitive, the Housing Department will notify the receiving Housing Department by phone, fax, or e-mail to expect the family. The initial Housing Department will also ask the receiving Housing Department to provide any information the family may need upon arrival, including the name, fax, email address, and telephone number of the staff person responsible for calendar with incoming portable families and procedures related to appointments for voucher issuance. The Housing Department will pass this information along to the family. The Housing Department will also ask for the name, address, telephone number, fax and email address of the person responsible for processing the billing information.

Sending Documentation to the Receiving Housing Department

The initial Housing Department is required to send the receiving Housing Department the following documents:

- Form HUD-52665, Family Portability Information, with Part I filled out [Notice PIH 2004-12]
- A copy of the family's voucher [Notice PIH 2004-12]
- A copy of the family's most recent form HUD-50058, Family Report, or, if necessary in the case of an applicant family, family and income information in a format similar to that of form HUD-50058 [24 CFR 982.355(c)(4), Notice PIH 2004-12]
- Copies of the income verifications backing up the form HUD-50058 [24 CFR 982.355(c)(4), Notice PIH 2004-12]
- Documentation for the participant family pulled from HUD's EIV system

Housing Department Policy

In addition to these documents, the Housing Department will provide the following information, if available, to the receiving Housing Department:

Documentation of Social Security numbers for all family members

Documentation of legal identity

Documentation of participation in the earned income disallowance (EID) benefit if applicable

The Housing Department will notify the family regarding any information provided to the receiving Housing Department [HCV GB, p. 13-3].

Initial Billing Deadline [Notice PIH 2004-12]

When the initial Housing Department sends form HUD-52665 to the receiving Housing Department, it specifies in Part I the deadline by which it must receive the initial billing notice from the receiving Housing Department. This deadline is 60 days following the expiration date of the voucher issued to the family by the initial Housing Department. If the initial Housing Department does not receive a billing notice by the deadline and does not intend to honor a late billing submission, it must contact the receiving Housing Department to determine the status of the family. If the receiving Housing Department reports that the family is not yet under HAP contract, the initial Housing Department may refuse to accept a late billing submission. If the receiving Housing Department reports that the family is under HAP contract and the receiving Housing Department cannot absorb the family, the initial Housing Department must accept a late billing submission; however, it may report to HUD the receiving Housing Department's failure to comply with the deadline.

Housing Department Policy

If the Housing Department has not received an initial billing notice from the receiving Housing Department by the deadline specified on form HUD-52665, it will contact the receiving Housing Department by phone, fax, or e-mail on the next calendar day. If the Housing Department reports that the family is not yet under HAP contract, the Housing Department will inform the receiving Housing Department that it will not honor a late billing submission and will return any subsequent billings that it receives on behalf of the family. The Housing Department will send the receiving Housing Department a written confirmation of its decision by mail.

The Housing Department will allow an exception to this policy if the family includes a person with disabilities and the late billing is a result of a reasonable accommodation granted to the family by the receiving Housing Department.

Monthly Billing Payments [24 CFR 982.355(e), Notice PIH 2004-12]

If the receiving Housing Department is administering the family's voucher, the initial Housing Department is responsible for making billing payments in a timely manner. The first billing amount is due within 30 calendar days after the initial Housing Department receives Part II of form HUD-52665 from the receiving Housing Department. Subsequent payments must be received by the receiving Housing Department no later than the fifth calendar day of each month. The payments must be provided in a form and manner that the receiving Housing Department is able and willing to accept.

The initial Housing Department may not terminate or delay making payments under existing portability billing arrangements as a result of over-leasing or funding shortfalls. The Housing Department 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 Housing Departments as well as for families that remain within its jurisdiction.

Annual Updates of Form HUD-50058

If the initial Housing Department is being billed on behalf of a portable family, it should receive an updated form HUD-50058 each year from the receiving Housing Department. If the initial Housing Department fails to receive an updated 50058 by the family's annual reexamination date, the initial Housing Department should contact the receiving Housing Department to verify the status of the family.

Subsequent Family Moves

Within the Receiving Housing Department's Jurisdiction [24 CFR 314(e)(1), Notice PIH 2005-1]

The initial Housing Department has the authority to deny subsequent moves by portable families whom it is assisting under portability billing arrangements if it does not have sufficient funding for continued assistance.

> Housing Department Policy
>
> If the Housing Department determines that it must deny moves on the grounds that it lacks sufficient funding (see section 10-I.B), it will notify all receiving Housing Departments with which it has entered into portability billing arrangements that they, too, must deny moves to higher cost units by portable families from the Housing Department's jurisdiction.
>
> The Housing Department will allow exceptions to this policy for purposes of reasonable accommodation of a family member who is a person with disabilities.

Outside the Receiving Housing Department's Jurisdiction [Notice PIH 2004-12]

If the initial Housing Department is assisting a portable family under a billing arrangement and the family subsequently decides to move out of the receiving Housing Department's jurisdiction, the initial Housing Department is responsible for issuing the family a voucher while the family is either being assisted or has a voucher from the receiving Housing Department and, if the family wishes to port to another jurisdiction, sending form HUD-52665 and supporting documentation to the new receiving Housing Department. Any extensions of the initial Housing Department voucher necessary to allow the family additional search-time to return to the initial Housing Department's jurisdiction or to move to another jurisdiction would be at the discretion of the initial Housing Department.

Denial or Termination of Assistance [24 CFR 982.355(c)(9)]

If the initial Housing Department has grounds for denying or terminating assistance for a portable family that has not been absorbed by the receiving Housing Department, the initial Housing Department may act on those grounds at any time. (For Housing Department policies on denial and termination, see Chapters 3 and 12, respectively.)

10-II.C. RECEIVING HOUSING DEPARTMENT ROLE

If a family has a right to lease a unit in the receiving Housing Department's jurisdiction under portability, the receiving Housing Department must provide assistance for the family [24 CFR 982.355(10)].

The receiving Housing Department's procedures and preferences for selection among eligible applicants do not apply, and the receiving Housing Department's waiting list is not used [24 CFR 982.355(10)]. However, the family's unit, or voucher size is determined in accordance with the subsidy standards of the receiving Housing Department [24 CFR 982.355(7)], and the amount of the family's housing assistance payment is determined in the same manner as for other families in the receiving Housing Department's voucher program [24 CFR 982.355(e)(2)].

Initial Contact with Family

When a family moves into the Housing Department's jurisdiction under portability, the family is responsible for promptly contacting the Housing Department and complying with the Housing Department's procedures for incoming portable families [24 CFR 982.355(c)(3)].

If the voucher issued to the family by the initial Housing Department has expired, the receiving Housing Department does not process the family's paperwork but instead refers the family back to the initial Housing Department [Notice PIH 2004-12].

When a portable family requests assistance from the receiving Housing Department, the receiving Housing Department must promptly inform the initial Housing Department whether the receiving Housing Department will bill the initial Housing Department for assistance on behalf of the portable family or will absorb the family into its own program [24 CFR 982.355(c)(5)]. If the Housing Department initially bills the initial Housing Department for the family's assistance, it may later decide to absorb the family into its own program [Notice PIH 2004-12]. (See later under "Absorbing a Portable Family" for more on this topic.)

> Housing Department Policy
>
> Within 10 calendar days after the portable family requests assistance, the receiving Housing Department will notify the initial Housing Department whether it intends to bill the receiving Housing Department on behalf of the portable family or absorb the family into its own program.

If for any reason the receiving Housing Department refuses to process or provide assistance to a family under the portability procedures, the family must be given the opportunity for an informal hearing [Notice PIH 2004-12]. (For more on this topic, see later under "Denial or Termination of Assistance.")

Briefing

HUD allows the receiving Housing Department to require a briefing for an incoming portable family as long as the requirement does not unduly delay the family's search [Notice PIH 2004-12].

Housing Department Policy

The Housing Department will require the family to attend a briefing. The Housing Department 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 Housing Department's payment and subsidy standards, procedures for requesting approval of a unit, the unit inspection process, and the leasing process.

Income Eligibility and Reexamination

HUD allows the receiving Housing Department to conduct its own income reexamination of a portable family [24 CFR 982.355(c)(4)]. However, the receiving Housing Department may not delay voucher issuance or unit approval until the reexamination process is complete unless the reexamination is necessary to determine that an applicant family is income eligible for admission to the program in the area where the family wishes to lease a unit [Notice PIH 2004-12, 24 CFR 982.201(b)(4)]. The receiving Housing Department does not redetermine income eligibility for a portable family that was already receiving assistance in the initial Housing Department's voucher program [24 CFR 982.355(c)(1)].

Housing Department Policy

For any family moving into its jurisdiction under portability, the Housing Department will conduct a new reexamination of family income and composition. However, the Housing Department will not delay issuing the family a voucher for this reason. Nor will the Housing Department delay approving a unit for the family until the reexamination process is complete unless the family is an applicant and the Housing Department cannot otherwise confirm that the family is income eligible for admission to the program in the area where the unit is located.

In conducting an initial reexamination, the Housing Department will rely upon any verifications provided by the initial Housing Department 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.

In conducting an annual reexamination, the Housing Department will not rely upon verification provided by the initial Housing Department. The Housing Department will conduct its own verification process.

Voucher Issuance

When a family moves into its jurisdiction under portability, the receiving Housing Department is required to issue the family a voucher [24 CFR 982.355(b)(6)]. The family must submit a request for tenancy approval to the receiving Housing Department during the term of the receiving Housing Department's voucher [24 CFR 982.355(c)(6)].

Timing of Voucher Issuance

HUD expects the receiving Housing Department to issue the voucher within two weeks after receiving the family's paperwork from the initial Housing Department if the information is in order, the family has contacted the receiving Housing Department, and the family complies with the receiving Housing Department's procedures [Notice PIH 2004-12].

Housing Department Policy

When a family ports into its jurisdiction, the Housing Department will issue the family a voucher based on the paperwork provided by the initial Housing Department unless the family's paperwork from the initial Housing Department is incomplete, the family's voucher from the initial Housing Department has expired or the family does not comply with the Housing Department's procedures. The Housing Department will update the family's information when verification has been completed.

Voucher Term

The term of the receiving Housing Department's voucher may not expire before the term of the initial Housing Department's voucher [24 CFR 982.355(c)(6)].

Housing Department Policy

The receiving Housing Department's voucher will expire on the same date as the initial Housing Department's voucher.

Voucher Extensions [24 CFR 982.355(c)(6), Notice 2004-12]

The receiving Housing Department may provide additional search time to the family beyond the expiration date of the initial Housing Department's voucher; however, if it does so, it must inform the initial Housing Department of the extension. It must also bear in mind the billing deadline provided by the initial Housing Department. Unless willing and able to absorb the family, the receiving Housing Department 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 Housing Department.

Housing Department Policy

The Housing Department will not extend the term of the voucher unless the initial Housing Authority extends the voucher for the incoming portable family.

The Housing Department will consider an exception to this policy as a reasonable accommodation to a person with disabilities (see Chapter 2).

Notifying the Initial Housing Department

The receiving Housing Department must promptly notify the initial Housing Department 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 Housing Department's voucher [24 CFR 982.355(c)(8)]. The receiving Housing Department is required to use Part II of form HUD-52665, Family Portability Information, for this purpose [24 CFR 982.355(e)(5), Notice PIH 2004-12]. (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 Housing Department but instead wishes to return to the initial Housing Department's jurisdiction or to search in another jurisdiction, the receiving Housing Department must refer the family back to the initial Housing Department. In such a case the voucher of record for the family is once again the voucher originally issued by the initial Housing Department. Any extension of search time provided by the receiving Housing Department's voucher is only valid for the family's search in the receiving Housing Department's jurisdiction. [Notice PIH 2004-12]

Administering a Portable Family's Voucher

Initial Billing Deadline

If a portable family's search for a unit is successful and the receiving Housing Department intends to administer the family's voucher, the receiving Housing Department must submit its initial billing notice (Part II of form HUD-52665) (a) no later than 10 calendar days following the date the receiving Housing Department executes a HAP contract on behalf of the family and (b) in time that the notice will be received no later than 60 days following the expiration date of the family's voucher issued by the initial Housing Department [Notice PIH 2004-12]. A copy of the family's form HUD-50058, Family Report, completed by the receiving Housing Department must be attached to the initial billing notice. The receiving Housing Department may send these documents by mail, fax, or e-mail.

Housing Department Policy

The Housing Department will send its initial billing notice by fax or e-mail, if necessary, to meet the billing deadline but will also send the notice by regular mail.

If the receiving Housing Department fails to send the initial billing within 10 calendar days following the date the HAP contract is executed, it is required to absorb the family into its own program unless (a) the initial Housing Department is willing to accept the late submission or (b) HUD requires the initial Housing Department to honor the late submission (e.g., because the receiving Housing Department is over-leased) [Notice PIH 2004-12].

Ongoing Notification Responsibilities [Notice PIH 2004-12, HUD-52665]

Annual Reexamination. The receiving Housing Department must send the initial Housing Department a copy of a portable family's updated form HUD-50058 after each annual reexamination for the duration of time the receiving Housing Department is billing the initial Housing Department on behalf of the family, regardless of whether there is a change in the billing amount.

Housing Department Policy

The Housing Department will send a copy of the updated HUD-50058 by regular mail at the same time the Housing Department and owner are notified of the reexamination results.

Change in Billing Amount. The receiving Housing Department is required to notify the initial Housing Department, 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
- 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 Housing Department with advance notice of the change. Under no circumstances should the notification be later than 10 calendar days following the effective date of the change in the billing amount.

Late Payments [Notice PIH 2004-12]

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

Overpayments [Notice PIH 2004-12]

In all cases where the receiving Housing Department has received billing payments for billing arrangements no longer in effect, the receiving Housing Department is responsible for returning the full amount of the overpayment (including the portion provided for administrative fees) to the initial Housing Department.

In the event that HUD determines billing payments have continued for at least three months because the receiving Housing Department failed to notify the initial Housing Department that the billing arrangement was terminated, the receiving Housing Department must take the following steps:

- Return the full amount of the overpayment, including the portion provided for administrative fees, to the initial Housing Department.
- Once full payment has been returned, notify the Office of Public Housing in the HUD area office with jurisdiction over the receiving Housing Department of the date and the amount of reimbursement to the initial Housing Department.

At HUD's discretion, the receiving Housing Department will be subject to the sanctions spelled out in Notice PIH 2004-12.

Denial or Termination of Assistance

At any time, the receiving Housing Department may make a determination to deny or terminate assistance to a portable family for family action or inaction [24 CFR 982.355(c)(9), 24 CFR 982.355(c)(10)].

In the case of a termination, the Housing Department should provide adequate notice of the effective date to the initial Housing Department to avoid having to return a payment. In no event should the receiving Housing Department fail to notify the initial Housing Department later than 10 calendar days following the effective date of the termination of the billing arrangement. [Notice PIH 2004-12]

Housing Department Policy

If the Housing Department elects to deny or terminate assistance for a portable family, the Housing Department will notify the initial Housing Department within 10 calendar days after the informal hearing if the denial or termination is upheld. The Housing Department will base its denial or termination decision on the policies set forth in Chapter 3 or Chapter 12, respectively. The informal hearing will be held in accordance with the policies in Chapter 16. The receiving Housing Department will furnish the initial Housing Department with a copy of the review or hearing decision.

Absorbing a Portable Family

The receiving Housing Department may absorb an incoming portable family into its own program when the Housing Department executes a HAP contract on behalf of the family or at any time thereafter providing that (a) the Housing Department has funding available under its annual contributions contract (ACC) and (b) absorbing the family will not result in overleasing [24 CFR 982.355(d)(1), Notice PIH 2004-12].

If the receiving Housing Department absorbs a family from the point of admission, the admission will be counted against the income targeting obligation of the receiving Housing Department [24 CFR 982.201(b)(2)(vii)].

If the receiving Housing Department absorbs a family after providing assistance for the family under a billing arrangement with the initial Housing Department, HUD encourages the receiving Housing Department to provide adequate advance notice to the initial Housing Department to avoid having to return an overpayment. The receiving Housing Department must specify the effective date of the absorption of the family. [Notice PIH 2004-12]

Housing Department Policy

If the Housing Department decides to absorb a portable family upon the execution of a HAP contract on behalf of the family, the Housing Department will notify the initial Housing Department 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 Housing Department decides to absorb a family after that, it will provide the initial Housing Department with 30 days' advance notice.

Following the absorption of an incoming portable family, the family is assisted with funds available under the consolidated ACC for the receiving Housing Department's voucher program [24 CFR 982.355(d)], and the receiving Housing Department becomes the initial Housing Department in any subsequent moves by the family under portability.

Chapter 11

REEXAMINATIONS

INTRODUCTION

The Housing Department 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 Housing Department 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 Housing Department must conduct a reexamination of family income and composition at least annually. This includes gathering and verifying current information about family composition, income, and expenses. Based on this updated information, the family's income and rent must be recalculated. This part discusses the schedule for annual reexaminations, the information to be collected and verified, and annual reexamination effective dates.

11-I.B. SCHEDULING ANNUAL REEXAMINATIONS

The Housing Department must establish a policy to ensure that the annual reexamination for each family is completed *within* a 12-month period, and may require reexaminations more frequently [HCV GB p. 12-1].

Housing Department Policy

The Housing Department will begin the annual reexamination process 60 days in advance of its scheduled effective date. The Housing Department 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 Housing Department will perform a new annual reexamination.

The Housing Department also may schedule an annual reexamination for completion prior to the anniversary date for administrative purposes.

Notification of and Participation in the Annual Reexamination Process

The Housing Department is required to obtain the information needed to conduct annual reexaminations. How that information will be collected is left to the discretion of the Housing Department.

Housing Department Policy

Families will be are required to participate in an annual reexamination interview, which must be attended by the head of household, spouse, or co-head and all adult members. If participation in an in-person interview poses a hardship because of a family member's disability, the family must contact the Housing Department prior to the interview date to request a reasonable accommodation and a home visit will be scheduled.

Notification of annual reexamination interviews will be sent by first-class mail and will contain the date, time, and location of the interview. In addition, it will inform the family of the information and documentation that must be brought to the interview.

If the family is unable to attend a scheduled interview, the family must contact the Housing Department in advance of the interview to schedule a new appointment. If a family fails to attend the scheduled interview without Housing Department approval, or if the notice is returned by the post office with no forwarding address, a notice of termination (see Chapter 12) will be sent to the family's address of record.

An advocate, interpreter, or other assistant may assist the family in the interview process.

11-I.C. CONDUCTING ANNUAL REEXAMINATIONS

As part of the annual reexamination process, families are required to provide updated information to the Housing Department regarding the family's income, expenses, and composition [24 CFR 982.551(b)].

Housing Department Policy

Families will be asked to bring all required information such as supporting documentation related to the family's income, expenses, and family composition (as described in the reexamination notice) to the reexamination appointment. The family will be required to sign all Housing Department-designated reexamination forms and the HUD-9886 Authorization for the Release of Information/Privacy Act form.

Any required documents or information that the family is unable to provide at the time of the interview must be provided within 10 calendar days of the interview. If the family does not provide the required documents or information within the required time frame the family will be sent a notice of termination (See Chapter 12).

The information provided by the family generally must be verified in accordance with the policies in Chapter 7. Unless the family reports a change, or the agency has reason to believe a change has occurred in information previously reported by the family, certain types of information that are verified at admission typically do not need to be re-verified on an annual basis. These include:

- Legal identity
- Age
- Social security numbers
- A person's disability status
- Citizenship or immigration status

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

11-I.D. EFFECTIVE DATES

The Housing Department must establish policies concerning the effective date of changes that result from an annual reexamination [24 CFR 982.516].

Housing Department Policy

In general, an *increase* in the family share of the rent that results from an annual reexamination will take effect on the family's anniversary date, and the family will be notified at least 30 days in advance.

If 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.

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.

PART II: INTERIM REEXAMINATIONS [24 CFR 982.516]

11-II.A. OVERVIEW

Family circumstances may change throughout the period between annual reexaminations. HUD and Housing Department policies dictate what kinds of information about changes in family circumstances must be reported, and under what circumstances the Housing Department must process interim reexaminations to reflect those changes. HUD regulations also permit the Housing Department 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 Housing Department must complete the interim reexamination within a reasonable time after the family's request.

This part includes HUD and Housing Department policies describing what changes families are required to report, what changes families may choose to report, and how the Housing Department will process both Housing Department- and family-initiated interim reexaminations.

11-II.B. CHANGES IN FAMILY AND HOUSEHOLD COMPOSITION

The Housing Department must adopt policies prescribing when and under what conditions the family must report changes in family composition. However, due to family obligations under the program, the Housing Department has limited discretion in this area.

Housing Department Policy

The Housing Department will conduct interim reexaminations to account for any changes in household composition that occur between annual reexaminations.

New Family Members Not Requiring Approval

The addition of a family member as a result of birth, adoption, or court-awarded custody does not require Housing Department approval. However, the family is required to promptly notify the Housing Department of the addition [24 CFR 982.551(h)(2)].

Housing Department Policy

The family must inform the Housing Department of the birth, adoption or court-awarded custody of a child within 10 calendar days. The Housing Department will conduct interim reexaminations to account for any changes in household composition that occur between annual reexaminations

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 Housing Department approval to add a new family member [24 CFR 982.551(h)(2)] or other household member (live-in aide or foster child) [24 CFR 982.551(h)(4)].

When any new family member is added, the Housing Department must conduct an interim to determine any new income or deductions associated with the additional family member, and to make appropriate adjustments in the family share of the rent and the HAP payment [24 CFR 982.516(e)].

If a change in family size causes a violation of Housing Quality Standards (HQS) space standards (see Chapter 8), the Housing Department must issue the family a new voucher, and the family and Housing Department must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the Housing Department must terminate the HAP contract in accordance with its terms [24 CFR 982.403].

Housing Department Policy

Families must request Housing Department 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 15 consecutive days within a twelve month period and therefore no longer qualifies as a "guest." Requests must be made in writing and approved by the Housing Department and the owner prior to the individual moving in the unit.

The Housing Department will not approve the addition of a new family or household member unless the individual meets the Housing Department's eligibility criteria (see Chapter 3).

If the Housing Department determines an individual meets the Housing Department's eligibility criteria as defined in Chapter 3, the Housing Department 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 another voucher and will be required to move.

If the Housing Department determines that an individual does not meet the Housing Department's eligibility criteria as defined in Chapter 3, the Housing Department 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 family will be given the opportunity to request an Informal hearing to dispute the denial.

The Housing Department will make its determination within 10 calendar days of receiving all information required to verify the individual's eligibility.

Departure of a Family or Household Member

Families must promptly notify the Housing Department 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 Housing Department also needs to know when any live-in aide, foster child, or foster adult ceases to reside in the unit.

Housing Department Policy

If a household member ceases to reside in the unit, the family must inform the Housing Department within 10 calendar days. This requirement also applies to a family member who has been considered temporarily absent at the point that the family concludes the individual is permanently absent.

If a live-in aide, foster child, or foster adult ceases to reside in the unit, the family must inform the Housing Department within 10 calendar days.

11-II.C. CHANGES AFFECTING INCOME OR EXPENSES

Interim reexaminations can be scheduled either because the Housing Department 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 Housing Department may take different actions depending on whether the family reported the change voluntarily, or because it was required to do so.

Housing Department-Initiated Interim Reexaminations

Housing Department-initiated interim reexaminations are those that are scheduled based on circumstances or criteria defined by the Housing Department. They are not scheduled because of changes reported by the family.

Housing Department Policy

The Housing Department will conduct interim reexaminations in each of the following instances:

For families receiving the Earned Income Disallowance (EID), the Housing Department will conduct an interim reexamination at the start and conclusion of the second 12 month exclusion period (50 percent phase-in period).

If the family has reported zero income, the Housing Department will conduct an interim reexamination every 3 months as long as the family continues to report that they have no income.

If at the time of the annual reexamination, it is not feasible to anticipate a level of income for the next 12 months (e.g. seasonal or cyclic income), the Housing Department will schedule an interim reexamination to coincide with the end of the period for which it is feasible to project income.

If at the time of the annual reexamination, tenant-provided documents were used on a provisional basis due to the lack of third-party verification, and third-party verification becomes available, the Housing Department will conduct an interim reexamination.

The Housing Department 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.

If the family reports a change of income or expenses an interim will be conducted.

Family-Initiated Interim Reexaminations

The Housing Department 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 Housing Department the freedom to determine the circumstances under which families will be required to report changes affecting income.

> Housing Department Policy
>
> Families are required to report all increases in earned income, including new employment, within 10 calendar days of the date the change takes effect.

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 Housing Department 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].

> Housing Department Policy
>
> If a family reports a change that it was not required to report and that would result in an increase or decrease in the family share of the rent, the Housing Department will conduct an interim reexamination.

11-II.D. PROCESSING THE INTERIM REEXAMINATION

Method of Reporting

Housing Department Policy

The family may notify the Housing Department of changes either orally or in writing.

Generally, the family will not be required to attend an interview for an interim reexamination. However, if the Housing Department determines that an interview is warranted, the family may be required to attend.

Based on the type of change reported, the Housing Department will determine the documentation the family will be required to submit. The family must submit any required information or documents within 10 calendar days of receiving a request from the Housing Department. The Housing Department will accept required documentation by mail, by fax, or in person.

Effective Dates

The Housing Department 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].

Housing Department Policy

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 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.

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 Housing Department 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 Housing Department's calculations.

Specific policies governing how subsidy standards, payment standards, and utility allowances are applied are discussed below.

Payment Standards [24 CFR 982.505]

The family share of the rent and HAP calculations must use the correct payment standard for the family, taking into consideration the family unit size, the size of unit, and the area in which the unit is located [HCV GB, p. 12-5]. See Chapter 6 for information on how to select the appropriate payment standard.

When the Housing Department changes its payment standards or the family's situation changes, new payment standards are applied at the following times:

- If the Housing Department's payment standard amount changes during the term of the HAP contract, the date on which the new standard is applied depends on whether the standard has increased or decreased:
  - If the payment standard amount has *increased,* the increased payment standard will be applied at the *first annual* reexamination following the effective date of the increase in the payment standard.
  - If the payment standard amount has *decreased,* the decreased payment standard will be applied at the *second annual* reexamination following the effective date of the decrease in the payment standard.
- If the family moves to a new unit, or a new HAP contract is executed due to changes in the lease (even if the family remains in place) the current payment standard applicable to the family will be used when the new HAP contract is processed.

Subsidy Standards [24 CFR 982.505(c)(4)]

If there is a change in the family unit size that would apply to a family during the HAP contract term, either due to a change in family composition, or a change in the Housing Department's subsidy standards (see Chapter 5), the new family unit size must be used to determine the payment standard amount for the family at the family's *first annual* reexamination following the change in family unit size.

Utility Allowances [24 CFR 982.517(d)]

The family share of the rent and HAP calculations must reflect any changes in the family's utility arrangement with the owner, or in the Housing Department'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 Housing Department must use the utility allowances in effect at the time the new lease and HAP contract are executed.

At reexamination, the Housing Department must use the Housing Department current utility allowance schedule [24 CFR 982.517(d)(2)].

> Housing Department Policy
>
> Revised utility allowances will be applied to a family's rent and subsidy calculations at the first annual reexamination after the allowance is adopted.

11-III.C. NOTIFICATION OF NEW FAMILY SHARE AND HAP AMOUNT

The Housing Department 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 Housing Department'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 Housing Department may discover that information previously reported by the family was in error, or that the family intentionally misrepresented information. In addition, the Housing Department may discover errors made by the Housing Department. When errors resulting in the overpayment or underpayment of subsidy are discovered, corrections will be made in accordance with the policies in Chapter 13.

Chapter 12

TERMINATION OF ASSISTANCE AND TENANCY

HUD regulations specify the reasons for which a Housing Department can terminate a family's assistance, and the ways in which such terminations must take place. They also dictate the circumstances under which an owner may terminate the tenancy of an assisted family. This chapter presents the policies that govern voluntary and involuntary terminations of assistance, and termination of tenancy by the owner. It is presented in three parts:

Part I: Grounds for Termination of Assistance. This part discusses various reasons that a family's assistance may be terminated, including voluntary termination by the family, termination because the family no longer qualifies to receive subsidy, and termination by the Housing Department based on the family's behavior.

Part II: Approach to Termination of Assistance. This part describes the policies that govern how an involuntary termination takes place. It specifies the alternatives that the Housing Department may consider in lieu of termination, the criteria the Housing Department must use when deciding what action to take and the steps the Housing Department must take when terminating a family's assistance.

Part III: Termination of Tenancy by the Owner. This part presents the 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 Housing Department to terminate assistance for certain offenses and when the family no longer requires assistance. HUD permits the Housing Department to terminate assistance for certain other actions family members take or fail to take. In addition, a family may decide to stop receiving HCV assistance at any time by notifying the Housing Department.

12-I.B. FAMILY NO LONGER REQUIRES ASSISTANCE [24 CFR 982.455]

As a family's income increases, the amount of Housing Department subsidy goes down. If the amount of HCV assistance provided by the Housing Department drops to zero and remains at zero for 180 consecutive calendar days the family's assistance terminates automatically.

Housing Department Policy

If a participating family receiving zero assistance experiences a change in circumstances that would cause the HAP payment to rise above zero, the family must notify the Housing Department of the changed circumstances and request an interim reexamination before the expiration of the 180-day period. If the family does not report the change before the expiration of the 180-day period or the family's circumstances remains unchanged, the family will be sent a termination letter and will be given the opportunity for an Informal Hearing.

12-I.C. FAMILY CHOOSES TO TERMINATE ASSISTANCE

The family may request that the Housing Department terminate the family's assistance at any time.

Housing Department Policy

The request to terminate assistance must be made in writing and signed by the head of household, spouse, and cohead. The Housing Department will give the family 10 calendar days to provide the written notice. If the Housing Department does not receive the notice within the 10 days, the family's verbal notification will stand and assistance will terminate.

12-I.D. MANDATORY TERMINATION OF ASSISTANCE

HUD requires the Housing Department to terminate assistance in the following circumstances.

Eviction [24 CFR 982.552(b)(2)]

The Housing Department 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. Incidents of actual or threatened violence, dating violence, or stalking may not be construed as serious or repeated violations of the lease by the victim or threatened victim of such violence or stalking.

Housing Department Policy

A family will be considered *evicted* if the family moves after a legal eviction order has been issued, whether or not physical enforcement of the order was necessary.

If a family moves after the owner has given the family an eviction notice for serious or repeated lease violations but before a legal eviction order has been issued, termination of assistance is not mandatory. However, the Housing Department 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.

Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, disbursing neighbors, destruction of property, and criminal activity or living or housekeeping habits that cause damage to the unit or premises. Generally, the criteria to be used will be whether the reason for the eviction was through no fault of the tenant or guests.

Failure to Provide Consent [24 CFR 982.552(b)(3)]

The Housing Department must terminate assistance if any family member fails to sign and submit any consent form they are required to sign for a reexamination. See Chapter 7 for a complete discussion of consent requirements.

Failure to Document Citizenship [24 CFR 982.552(b)(4) and [24 CFR 5.514(c)]

The Housing Department must terminate assistance if (1) a family fails to submit required documentation within the requested 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 Housing Department, 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 Provide Social Security Documentation [24 CFR 5.218(c)]

The Housing Department must terminate assistance if a participant family fails to provide the documentation required for any family member who obtains a social security number.

Methamphetamine Manufacture or Production [24 CFR 982.553(b)(1)(ii)]

The Housing Department 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.

12-I.E. MANDATORY POLICIES AND OTHER AUTHORIZED TERMINATIONS

Mandatory Policies [24 CFR 982.553(b) and 982.551(l)]

HUD requires the Housing Department to establish policies that permit the Housing Department to terminate assistance if the Housing Department 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 that may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents
- Any household member who has violated the family's obligation not to engage in any drug-related criminal activity
- Any household member who has violated the family's obligation not to engage in violent criminal activity

Use of Illegal Drugs and Alcohol Abuse

Housing Department Policy

The Housing Department 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 Housing Department will terminate assistance if any household member's abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

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

The Housing Department will consider all credible evidence, including but not limited to, any record of arrests, convictions, or eviction of household members related to the use of illegal drugs or abuse of alcohol.

In making its decision to terminate assistance, the Housing Department will consider alternatives as described in Section 12-II.C and other factors described in Section 12-II.D. Upon consideration of such alternatives and factors, the Housing Department 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.

Housing Department Policy

The Housing Department 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 Housing Department will consider all credible evidence, including but not limited to, any record of arrests and/or convictions of household members related to drug-related or violent criminal activity, and any eviction or notice to evict based on drug-related or violent criminal activity.

In making its decision to terminate assistance, the Housing Department will consider alternatives as described in Section 12-II.C and other factors described in Section 12-II.D. Upon consideration of such alternatives and factors, the Housing Department may, on a case-by-case basis, choose not to terminate assistance.

Other Authorized Reasons for Termination of Assistance [24 CFR 982.552(c)]

HUD permits the Housing Department to terminate assistance under a number of other circumstances. It is left to the discretion of the Housing Department whether such circumstances in general warrant consideration for the termination of assistance. The Violence Against Women Reauthorization Act of 2005 explicitly prohibits a Housing Department from considering incidents or actual threatened domestic violence, dating violence, or stalking as reasons for terminating the assistance of a victim of such violence.

Housing Department Policy

The Housing Department will terminate a family's assistance if:

The family has failed to comply with any family obligations under the program within the past five years. See Exhibit 12-1 for a listing of family obligations and related Housing Department policies.

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

Any Housing Department has terminated assistance under the program for any member of the family within the past five years.

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

The family currently owes rent or other amounts to any Housing Department in connection with the HCV programs. This includes the SHIP Deposit Assistance Loan Program.

The family has breached the terms of a repayment agreement entered into with the Housing Department.

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

Abusive or violent behavior towards Housing Department 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.

Family Absence from the Unit [24 CFR 982.312]

The family may be absent from the unit for brief periods. The Housing Department 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.

Housing Department Policy

If the family plans to be absent from the unit for any period of time, they are required to contact the Housing Department and the owner immediately. The family's participant file will be documented of the circumstances and time frame the family will be absent. The family must contact the Housing Department immediately upon returning to the unit. If the family is absent from the unit for more than 180 consecutive calendar days, the family's assistance will be terminated.

Insufficient Funding [24 CFR 982.454]

The Housing Department may terminate HAP contracts if the Housing Department determines, in accordance with HUD requirements, that funding under the consolidated ACC is insufficient to support continued assistance for families in the program.

Housing Department Policy

The Housing Department 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 Housing Department determines there is a shortage of funding, prior to terminating any HAP contracts, the Housing Department will determine if any other actions can be taken to reduce program costs. If after implementing all reasonable cost cutting measures there is not enough funding available to provide continued assistance for current participants, the Housing Department will terminate HAP contracts as a last resort.

Prior to terminating any HAP contracts, the Housing Department will inform the local HUD field office. The Housing Department will terminate the minimum number needed in order to reduce HAP costs to a level within the Housing Department's annual budget authority.

If the Housing Department must terminate HAP contracts due to insufficient funding, the Housing Department will do so in accordance with the following criteria and instructions:

A lottery system will be used by generating numbers alphabetically for each participant. The Housing Manager will make the final determination of how many HAP contracts must be terminated due to insufficient funding. The drawing will be conducted by the Housing Manager, the Division Director and a third party which is not part of the Housing Department staff. The Housing Manager will notify the Assistant Housing Manager which families will be sent a termination letter stating the assistance will terminate in sixty days. Each participant will be notified of the termination by mail.

PART II: APPROACH TO TERMINATION OF ASSISTANCE

12-II.A. OVERVIEW

The Housing Department is required by regulation to terminate a family's assistance if certain program rules are violated. For other types of offenses, the regulations give the Housing Department the discretion to either terminate the family's assistance or to take another action. This part discusses the various actions the Housing Department may choose to take when it has discretion, and outlines the criteria the Housing Department will use to make its decision about whether or not to terminate assistance. It also specifies the requirements for the notice that must be provided before terminating assistance.

12-II.B. METHOD OF TERMINATION [24 CFR 982.552(a)(3)]

The way in which the Housing Department terminates assistance depends upon individual circumstances. HUD permits the Housing Department to terminate assistance by:

- Terminating housing assistance payments under a current HAP contract,
- Refusing to approve a request for tenancy or to enter into a new HAP contract, or
- Refusing to process a request for or to provide assistance under portability procedures.

12-II.C. ALTERNATIVES TO TERMINATION OF ASSISTANCE

Change in Household Composition

As a condition of continued assistance, the Housing Department 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)].

Housing Department Policy

As a condition of continued assistance, the head of household must certify that the culpable family member has vacated the unit and will not be permitted to visit or to stay as a guest in the assisted unit. The family must present evidence of the former family member's current address upon Housing Department request.

Repayment of Family Debts

Housing Department Policy

If a family owes amounts to the Housing Department, as a condition of continued assistance, the Housing Department will require the family to repay the full amount or to enter into a repayment agreement, within 30 days of receiving notice from the Housing Department of the amount owed. See Chapter 16 for policies on repayment agreements. If the family does not comply with the repayment agreement, they will be sent a termination letter and given the opportunity for an Informal hearing.

12-II.D. CRITERIA FOR DECIDING TO TERMINATE ASSISTANCE

Evidence

For criminal activity, HUD permits the Housing Department 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)].

Housing Department Policy

The Housing Department will use the concept of the preponderance of the evidence as the standard for making all termination decisions.

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

Consideration of Circumstances [24 CFR 982.552(c)(2)(i)]

The Housing Department is permitted, but not required, to consider all relevant circumstances when determining whether a family's assistance should be terminated.

Housing Department Policy

The Housing Department will consider the following factors when making its decision to terminate assistance:

The seriousness of the case, especially with respect to how it would affect other residents

The effects that termination of assistance may have on other members of the family who were not involved in the action or failure

The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities

The length of time since the violation occurred, the family's recent history and the likelihood of favorable conduct in the future

In the case of drug or alcohol abuse, whether the culpable household member has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully

The Housing Department will require the participant to submit evidence of the household member's successful completion of a supervised drug or alcohol rehabilitation program, or evidence of otherwise having been rehabilitated successfully.

In the case of program abuse, the dollar amount of the overpaid assistance and whether or not a false certification was signed by the family.

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

If the family includes a person with disabilities, the Housing Department's decision to terminate the family's assistance is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.

Housing Department Policy

If a family indicates that the behavior of a family member with a disability is the reason for a proposed termination of assistance, the Housing Department will determine whether the behavior is related to the disability. If so, upon the family's request, the Housing Department will determine whether alternative measures are appropriate as a reasonable accommodation. The Housing Department 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. TERMINATING THE ASSISTANCE OF DOMESTIC VIOLENCE, DATING VIOLENCE, OR STALKING VICTIMS AND PERPETRATORS [Pub.L. 109-162, Pub.L. 109-271]

The Violence Against Women Reauthorization Act of 2005 (VAWA) provides that "criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control shall not be a cause for termination of assistance, tenancy, or occupancy rights if the tenant or an immediate member of the tenant's family is the victim or threatened victim of that domestic violence, dating violence, or stalking."

VAWA also gives the Housing Department the authority to "terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant."

VAWA does not limit the authority of the Housing Department to terminate the assistance of any participant if the Housing Department "can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant is not evicted or terminated from assistance."

Victim Documentation

Housing Department Policy

When a participant family is facing assistance termination because of the actions of a participant, household member, guest, or other person under the participant's control and a participant or immediate family member of the participant's family claims that she or he is the victim of such actions and that the actions are related to domestic violence, dating violence, or stalking, the Housing Department will require the individual to submit documentation affirming that claim.

The documentation must include two elements:

A signed statement by the victim that provides the name of the perpetrator and certifies that the incidents in question are bona fide incidents of actual or threatened domestic violence, dating violence, or stalking, and

One of the following:

A police or court record documenting the actual or threatened abuse, or

A statement signed by an employee, agent, or volunteer of a victim service provider; an attorney; a medical professional; or another knowledgeable professional from whom the victim has sought assistance in addressing the actual or threatened abuse. The professional must attest under penalty of perjury that the incidents in question are bona fide incidents of abuse, and the victim must sign or attest to the statement.

The required certification and supporting documentation must be submitted to the Housing Department within 10 calendar days after the Housing Department issues their written request. The 10-day deadline may be extended at the Housing Department's discretion.

If the individual does not provide the required certification and supporting documentation within 10 calendar days, or the approved extension period, the Housing Department may proceed with assistance termination.

Terminating the Assistance of a Domestic Violence Perpetrator

Although VAWA provides assistance termination protection for victims of domestic violence, it does not provide protection for perpetrators. VAWA gives the Housing Department the explicit authority to "terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others without terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant." This authority supersedes any local, state, or other federal law to the contrary. However, if the Housing Department chooses to exercise this authority, it must follow any procedures prescribed by HUD or by applicable local, state, or federal law regarding termination of assistance.

Housing Department Policy

When the actions of a participant or other family member result in a Housing Department decision to terminate the family's assistance and another family member claims that the actions involve criminal acts of physical violence against family members or others, the Housing Department will request that the victim submit the above required certification and supporting documentation in accordance with the stated time frame. If the certification and supporting documentation are submitted within the required time frame, or any approved extension period, the Housing Department will terminate the perpetrator's assistance. If the victim does not provide the certification and supporting documentation, as required, the Housing Department will proceed with termination of the family's assistance.

If the Housing Department can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if the participant's tenancy is not terminated, the Housing Department will bypass the standard process and proceed with the immediate termination of the family's assistance.

Housing Department Confidentiality Requirements

All information provided to the Housing Department regarding domestic violence, dating violence, or stalking, including the fact that an individual is a victim of such violence or stalking, must be retained in confidence and may neither be entered into any shared data base nor provided to any related entity, except to the extent that the disclosure (a) is requested or consented to by the individual in writing, (b) is required for use in an eviction proceeding, or (c) is otherwise required by applicable law.

12-II.F. TERMINATION NOTICE [HCV GB, p. 15-7]

If a family's assistance is to be terminated, whether voluntarily or involuntarily, the Housing Department must give the family written notice that specifies:

- The reasons for which assistance has been terminated
- The effective date of the termination
- The family's right to an informal hearing as described in Chapter 16

If a criminal record is the basis of the termination, a copy of the record must accompany the notice. A copy of the criminal record also must be provided to the subject of the record [24 CFR 982.553(d)].

The owner will be sent written notice of the effective date of the termination and the family right to an informal hearing.

Housing Department Policy

When termination is initiated by the Housing Department, the notice to terminate will be sent to the family and the owner at least 30 calendar days prior to the effective date of the termination. However, if a family vacates the unit without informing the Housing Department, 30 days notice will not be given. In these cases, the notice to terminate will be sent at the time the Housing Department learns the family has vacated the unit.

When a family requests to be terminated from the program they must do so in writing to the Housing Department (see section 12-I.C.). The Housing Department will then send a confirmation notice to the family and the owner within 10 calendar days of the family's request, but no later than the termination effective date (as requested by the family). The Housing Department will give the family 10 calendar days to provide the written notice. If the Housing Department does not receive the written notice within the 10 days, the family's verbal notification will stand and assistance will terminate.

Notice of Termination Based on Citizenship Status [24 CFR 5.514 (c) and (d)]

The Housing Department must terminate assistance if (1) a family fails to submit required documentation within the required timeframe concerning any family member's citizenship or eligible immigration status; (2) evidence of citizenship and eligible immigration status is submitted timely, but USCIS primary and secondary verification does not verify eligible immigration status of a family; or (3) the Housing Department determines that a family member has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit. For (3) above, such termination must be for a period of at least 24 months.

The notice of termination must advise the family of the reasons their assistance is being terminated, that they may be eligible for proration of assistance, the criteria and procedures for obtaining relief under the provisions for preservation of families, that they have the right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal, and that they have the right to request an informal hearing with the Housing Department either upon completion of the USCIS appeal or in lieu of the USCIS appeal. Informal hearing procedures are contained in Chapter 16.

Housing Department Policy

The notice to terminate will be sent to the family and the owner at least 30 calendar days prior to the effective date of the termination.

12-II.F. HOW TERMINATION OF ASSISTANCE AFFECTS THE HAP CONTRACT AND LEASE

When the family's assistance is terminated, the lease and HAP contract terminate automatically [Form HUD-52641].

The owner may offer the family a separate unassisted lease [HCV GB, p. 15-8].

PART III: TERMINATION OF TENANCY BY THE OWNER

12-III.A. OVERVIEW

Termination of an assisted tenancy is a matter between the owner and the family; the Housing Department is not directly involved. However, the owner is under some constraints when terminating an assisted tenancy and the reasons for which a tenancy is terminated dictate whether assistance also will be terminated.

12-III.B. GROUNDS FOR OWNER TERMINATION OF TENANCY [24 CFR 982.310 and Form HUD-52641-A, Tenancy Addendum]

During the term of the lease, the owner is not permitted to terminate the tenancy except for serious or repeated violations of the lease, certain violations of state or local law, or other good cause.

Serious or Repeated Lease Violations

The owner is permitted to terminate the family's tenancy for serious or repeated violations of the terms and conditions of the lease. This includes failure to pay rent or other amounts due under the lease. However, the Housing Department's failure to make a HAP payment to the owner is not a violation of the lease between the family and the owner.

Violation of Federal, State, or Local Law

The owner is permitted to terminate the tenancy if a family member violates federal, state, or local law that imposes obligations in connection with the occupancy or use of the premises.

Criminal Activity or Alcohol Abuse

The owner may terminate tenancy during the term of the lease if any *covered person*, meaning any member of the household, a guest or another person under the tenant's control commits any of the following types of criminal activity (for applicable definitions see 24 CFR 5.100):

- Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents (including property management staff residing on the premises);
- Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of their residences by, persons residing in the immediate vicinity of the premises;
- Any violent criminal activity on or near the premises; or
- Any drug-related criminal activity on or near the premises.

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 for criminal activity by a household member in accordance with this section if the owner determines that the household member has committed the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.

The owner may terminate tenancy during the term of the lease if any member of the household has engaged in abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

Evidence of Criminal Activity

The owner may terminate tenancy and evict by judicial action a family for criminal activity by a covered person if the owner determines they have engaged in the criminal activity, regardless of arrest or conviction and without satisfying the standard of proof used for a criminal conviction.

Other Good Cause

During the initial lease term, the owner may not terminate the tenancy for "other good cause" unless the owner is terminating the tenancy because of something the family did or failed to do. During the initial lease term or during any extension term, other good cause includes the disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises.

After the initial lease term, "other good cause" for termination of tenancy by the owner includes:

- Failure by the family to accept the offer of a new lease or revision;
- The owner's desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit; or
- A calendar 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.

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 Housing Department a copy of any eviction notice at the same time the owner notifies the family. The family is also required to give the Housing Department a copy of any eviction notice (see Chapter 5).

Housing Department Policy

If the eviction action is finalized in court, the owner must provide the Housing Department with documentation related to the eviction, including notice of the eviction date, as soon as possible, but no later than 5 calendar days following the court-ordered eviction.

12-III.D. DECIDING WHETHER TO TERMINATE TENANCY [24 CFR 982.310(h)]

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 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.

12-III.E. EFFECT OF TERMINATION OF TENANCY ON THE FAMILY'S ASSISTANCE

If a termination is not due to a serious or repeated violation of the lease, and if the Housing Department has no other grounds for termination of assistance, the Housing Department may issue a new voucher so that the family can move with continued assistance (see Chapter 10).

EXHIBIT 12-1: STATEMENT OF FAMILY OBLIGATIONS

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

- The family must supply any information that the Housing Department 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 Housing Department or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition.
- The family must disclose and verify social security numbers and sign and submit consent forms for obtaining information.
- Any information supplied by the family must be true and complete.
- The family is responsible for any Housing Quality Standards (HQS) breach by the family caused by failure to pay tenant-provided utilities or appliances, or damages to the dwelling unit or premises beyond normal wear and tear caused by any member of the household or guest.

  Housing Department Policy

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

- The family must allow the Housing Department 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.

  Housing Department Policy

  The Housing Department will determine if a family has committed serious or repeated violations of the lease based on available evidence, including but not limited to, a court-ordered eviction, or an owner's notice to evict. Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, disturbing neighbors, destruction of property, and criminal activity or living or housekeeping habits that cause damage to the unit or premises. Generally, the criteria to be used are whether the reason for the eviction was through no fault of the tenant or guests.

- The family must notify the Housing Department and the owner before moving out of the unit or terminating the lease.

  Housing Department Policy

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

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

  Housing Department Policy

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

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

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

  Housing Department Policy

  Subleasing includes receiving payment to cover rent and utility costs by a person living in the unit who is not listed as a family member.

- The family must supply any information requested by the Housing Department 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 Housing Department when the family is absent from the unit.

  Housing Department Policy

  Written notice must be provided to the Housing Department at the start of the extended absence.

- The family must pay utility bills and provide and maintain any appliances that the owner is not required providing under the lease [Form HUD-52646, Voucher].

- The family must not own or have any interest in the unit.

- 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 Housing Department 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 Housing Department 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 Housing Department has determined (and has notified the owner and the family of such determination) that approving rental of the unit, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities. [Form HUD-52646, Voucher]

Chapter 13

OWNERS

INTRODUCTION

Owners play a central role in the HCV program by supplying decent, safe, and sanitary housing for participating families.

The term "owner" refers to any person or entity with the legal right to lease or sublease a unit to a participant in the HCV program [24 CFR 982.4(b)]. The term "owner" includes a principal or other interested party [24 CFR 982.453; 24 CFR 982.306(f)], such as a designated agent of the owner.

Owners have numerous responsibilities under the program, including screening and leasing to families, maintaining the dwelling unit, enforcing the lease, and complying with various contractual obligations. However, this chapter is not meant to be an overview of all aspects of owner participation in the HCV program.

The chapter is organized in two parts:

> Part I: Owners in the HCV Program. This part discusses the role of an owner in the Housing Department'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 Housing Department and the owner as expressed in the HAP contract.

PART I. OWNERS IN THE HCV PROGRAM

13-I.A. OWNER RECRUITMENT AND RETENTION [HCV GB, pp. 2-4 to 2-6]

Recruitment

Housing Departments are responsible for ensuring that very low income families have access to all types and ranges of affordable housing in the Housing Department's jurisdiction, particularly housing outside areas of poverty or minority concentration. A critical element in fulfilling this responsibility is for the Housing Department to ensure that a sufficient number of owners, representing all types and ranges of affordable housing in the Housing Department's jurisdiction, are willing to participate in the HCV program.

To accomplish this objective, Housing Departments must identify and recruit new owners to participate in the program.

Housing Department Policy

The Housing Department will conduct owner outreach to ensure that owners are familiar with the program and its advantages. The Housing Department will actively recruit property owners with property located outside areas of poverty and minority concentration. These outreach strategies will include:

Distributing printed material about the program to property owners and managers

Contacting property owners and managers by phone or in-person

Developing working relationships with owners and real estate brokers

Newspaper ads

Retention

In addition to recruiting owners to participate in the HCV program, the Housing Department must also provide the kind of customer service that will encourage participating owners to remain active in the program.

Housing Department Policy

All Housing Department 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.

The Housing Department will provide owners with a briefing packet that explains the program, including HUD and Housing Department policies and procedures, in easy-to-understand language.

The Housing Department will give special attention to helping new owners succeed through activities such as:

Provide the owner with a designated Housing Department contact person.

Coordinating inspection and leasing activities between the Housing Department, the owner, and the family.

Initiate telephone contact with the owner to explain the inspection process, and providing an inspection booklet and other resource materials about HUD housing quality standards.

Providing other written information about how the program operates, including answers to frequently asked questions.

Additional services may be undertaken on an as-needed basis, and as resources permit.

13-I.B. BASIC HCV PROGRAM REQUIREMENTS

HUD requires the Housing Department to aid families in their housing search by providing the family with a list of landlords or other parties known to the Housing Department who may be willing to lease a unit to the family, or to help the family find a unit. Although the Housing Department cannot maintain a list of owners that are pre-qualified to participate in the program, owners may indicate to the Housing Department their willingness to lease a unit to an eligible HCV family, or to help the HCV family find a unit [24 CFR 982.301(b)(11)].

Housing Department Policy

Owners that wish to indicate their willingness to lease a unit to an eligible HCV family or to help the HCV family find a unit must notify the Housing Department. The Housing Department will maintain a listing of such owners and provide this listing to the HCV family as part of the informational briefing packet.

When a family approaches an owner to apply for tenancy, the owner is responsible for screening the family and deciding whether to lease to the family, just as the owner would with any potential tenant. The Housing Department 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 (RTA, Form HUD 52517), which constitutes the family's request for assistance in the specified unit, and which documents the owner's willingness to lease to the family and to follow the program's requirements. When submitted to the Housing Department, this document is the first step in the process of obtaining approval for the family to receive the financial assistance it will need in order to occupy the unit. Also submitted with the RTA is a copy of the owner's proposed dwelling lease, including the HUD-required Tenancy Addendum (Form HUD-52641-A). See Chapter 9 for more detail on request for tenancy approval policies and process.

HUD regulations stipulate that an assisted tenancy can be approved only under certain conditions.

The owner must be qualified to participate in the program [24 CFR 982.306]. Some owners are precluded from participating in the program, or from renting to a 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. In addition, the owner must document legal ownership of the specified unit. See chapter 9 for more detail on unit eligibility policies and process.

The selected unit must meet HUD's Housing Quality Standards (HQS) and/or equivalent state or local standards approved by HUD [24 CFR 982.305(a)]. The Housing Department will inspect the owner's dwelling unit at various stages of HCV program participation, to ensure that the unit continues to meet HQS requirements. See chapter 8 for a discussion of the HQS standards, as well as the process for HQS inspections at initial lease-up and throughout the family's tenancy.

The Housing Department must determine that the cost of the unit is reasonable [24 CFR 982.305(a)]. The rent must be reasonable in relation to comparable unassisted units in the area and must not be in excess of rents charged by the owner for comparable, unassisted units on the premises. See chapter 8 for a discussion of requirements and policies on rent reasonableness, rent comparability and the rent reasonableness determination process.

At initial lease-up of a unit, the Housing Department must determine that the share of rent to be paid by the family does not exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]. See chapter 6 for a discussion of the calculation of family income, family share of rent and HAP.

The dwelling lease must comply with all program requirements [24 CFR 982.308]. Owners are encouraged to use their standard leases when renting to an assisted family. However, the HCV program requires that the Tenancy Addendum, which helps standardize the tenancy requirements for all assisted families, be included as an attachment to the lease. See chapter 9 for a discussion of the dwelling lease and tenancy addendum, including lease terms and provisions.

The Housing Department and the owner enter into a formal contractual relationship by executing the Housing Assistance Payment (HAP) Contract (Form HUD-52641). The HAP contract format is prescribed by HUD. See chapter 9 for a discussion of the HAP contract execution process. Specific HAP contract provisions and responsibilities are discussed later in this chapter 13.

13-I.C. OWNER RESPONSIBILITIES [24 CFR 982.452]

The basic owner responsibilities in the HCV program are outlined in the regulations as follows:

- Performing all of the owner's obligations under the Housing Assistance Payments (HAP) contract and the lease
- Performing all management and rental functions for the assisted unit, including selecting a voucher-holder to lease the unit, and deciding if the family is suitable for tenancy of the unit
- Maintaining the unit in accordance with the Housing Quality Standards (HQS), including performance of ordinary and extraordinary maintenance
- Complying with equal opportunity requirements
- Preparing and furnishing to the Housing Department information required under the HAP contract
- Collecting from the family any security deposit, the tenant's contribution to rent (that part of rent to owner not covered by the housing assistance payment from the Housing Department), and any charges for unit damage by the family.
- Enforcing tenant obligations under the dwelling lease
- Paying for utilities and services (unless paid by the family under the lease)
- Allowing modifications to be made to a dwelling unit occupied or to be occupied by a disabled person [24 CFR 100.203]
- Comply with the Violence Against Women Reauthorization Act of 2005 (VAWA) when screening and terminating tenants.
- Paying the property taxes for the rental unit in a timely fashion
- Keeping the rental property mortgage current, if applicable, to avoid foreclosure
- All judgments and/or liens must be paid and removed from the rental property

13-I.D. OWNER QUALIFICATIONS

There are a number of criteria where the Housing Department 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 Housing Department must not approve the assisted tenancy if the Housing Department 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 Housing Department 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 Housing Department must not approve an RTA if the owner is the parent, child, grandparent, grandchild, sister, or brother of any member of the family. The Housing Department may make an exception as a reasonable accommodation for a family member with a disability with appropriate documentation to support the accommodation. 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]

The Housing Department 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 Housing Department
- Any employee of the Housing Department, or any contractor, subcontractor or agent of the Housing Department, 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 United States Congress

HUD may waive the conflict of interest requirements, except for members of Congress, for good cause. The Housing Department must submit a waiver request to the appropriate HUD Field Office for determination.

Any waiver request submitted by the Housing Department must include:

- 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 Housing Department, or both parties may conduct this analysis. Where appropriate, an opinion by the state's attorney general should be obtained;
- Opinion by the local HUD office as to whether there would be an appearance of impropriety if the waiver were granted;
- Statement regarding alternative existing housing available for lease under the HCV program or other assisted housing if the waiver is denied;
- If the case involves a hardship for a particular family, statement of the circumstances and discussion of possible alternatives;
- If the case involves a public official or member of the governing body, explanation of his/her duties under state or local law, including reference to any responsibilities involving the HCV program;
- If the case involves employment of a family member by the Housing Department or assistance under the HCV program for an eligible Housing Department 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 Housing Department, description of the nature of the investment, including disclosure/divestiture plans.

Where the Housing Department has requested a conflict of interest waiver, the Housing Department may not execute the HAP contract until HUD has made a decision on the waiver request.

Housing Department Policy

In considering whether to request a conflict of interest waiver from HUD, the Housing Department will consider all factors as well as the reasons for waiving the requirement; consistency with state and local laws; the existence of alternative housing available to families; the individual circumstances of a particular family; the specific duties of individuals whose positions present a possible conflict of interest; the nature of any financial investment in the property and plans for disclosure/divestiture; and the possible appearance of impropriety.

Owner Actions That May Result in Disapproval of a Tenancy Request [24 CFR 982.306(c)]

HUD regulations permit the Housing Department, at the Housing Department's discretion, to refuse to approve a request for tenancy if the owner has committed any of a number of different actions.

If the Housing Department 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].

Housing Department Policy

The Housing Department will refuse to approve a request for tenancy if the Housing Department becomes aware that any of the following are true:

The owner has violated obligations under a HAP contract under Section 8 of the 1937 Act (42 U.S.C. 1437f);

The owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;

The owner has engaged in any drug-related criminal activity or any violent criminal activity;

The owner has a history or practice of non-compliance with the HQS for units leased under the tenant-based programs, or with applicable housing standards for units leased with project-based Section 8 assistance or leased under any other federal housing program;

The owner has a history or practice of failing to terminate tenancy of tenants of units assisted under Section 8 or any other federally assisted housing program for activity engaged in by the tenant, any member of the household, a guest or another person under the control of any member of the household that: (i) Threatens the right to peaceful enjoyment of the premises by other residents; (ii) Threatens the health or safety of other residents, of employees of the Housing Department, 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 of persons residing in the immediate vicinity of the premises; or (iv) Is involved in 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;

The owner has not paid state or local real estate taxes, fines, or assessment. This includes any liens which are attached to the rental property; or

The owner is unavailable to execute a Housing Assistance Payment Contract such as imprisonment, out of the country or hospitalized without an authorized representative.

In considering whether to disapprove owners for any of the discretionary reasons listed above, the Housing Department 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 Housing Department may, on a case-by-case basis, choose to approve an owner with appropriate documentation to support the decision.

Legal Ownership of Unit

The following represents Housing Department policy on legal ownership of a dwelling unit to be assisted under the HCV program.

> Housing Department Policy
>
> The Housing Department will only enter into a contractual relationship with the legal owner or owner's representative of record 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 Housing Department.

The owner must cooperate with the Housing Department 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 Housing Department.

See Chapter 2 for a more thorough discussion of Fair Housing and Equal Opportunity requirements in the HCV program.

PART II. HAP CONTRACTS

13-II.A. OVERVIEW

The HAP contract represents a written agreement between the Housing Department 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 Housing Department's obligations. Under the HAP contract, the Housing Department agrees to make housing assistance payments to the owner on behalf of a specific family occupying a specific unit.

The HAP contract is used for all HCV program tenancies except for assistance under the Section 8 homeownership program, and assistance to families that own a manufactured home and lease the space. See chapter 15 for a discussion of any special housing types included in the Housing Department's HCV program.

If the Housing Department has given approval for the family of the assisted tenancy, the owner and the Housing Department 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 about the name of the tenant family, address of the contract unit, names of all household members, first and last dates of initial lease term, amount of initial monthly rent to owner, amount of initial housing assistance payment, utilities and appliances to be supplied by owner and tenant, signatures of Housing Department and owner [HCV Guidebook, pp 11-10 and 11-11].

In general, the HAP contract cannot be modified. However, Housing Departments 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. Housing Department policy on the amount of security deposit an owner may collect is found in chapter 9.

In addition, Housing Departments have the discretion to add language to Part A of the HAP contract that defines when the housing assistance payment by the Housing Department is deemed received by the owner (e.g., upon mailing by the Housing Department or actual receipt by the owner).

Housing Department Policy

The Housing Department will not make any modifications to the HAP contract.

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
- Housing Department Payment to Owner
- Prohibition of Discrimination
- Owner's Breach of HAP Contract
- Housing Department 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 Housing Department. The owner must sign the HUD Tenancy Addendum with the prospective tenant, and the tenant has the right to enforce the Tenancy Addendum against the owner. The terms of the Tenancy Addendum prevail over any other provisions of the lease.

13-II.C. HAP CONTRACT PAYMENTS

General

During the term of the HAP contract, and subject to the provisions of the HAP contract, the Housing Department 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 Housing Department 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 Housing Department is credited toward the monthly rent to owner under the family's lease. The total of the rent paid by the tenant, plus the Housing Department HAP payment, should be equal to the rent specified in the lease (the rent to owner).

The family is not responsible for payment of the HAP payment, and the Housing Department is not responsible for payment of the family share of rent.

The family's share of the rent cannot be more than the difference between the total rent to the owner and the HAP payment. The owner may not demand or accept any rent payment from the tenant in excess of this maximum [24 CFR 982.451(b)(4)]. The owner may not charge the tenant extra amounts for items customarily included in rent in the locality, or provided at no additional cost to unsubsidized tenants in the premises [24 CFR 982.510(c)]. See chapter 9 for a discussion of separate, non-lease agreements for services, appliances and other items that are not included in the lease.

If the owner receives any excess HAP from the Housing Department, the excess amount must be returned immediately. If the Housing Department determines that the owner is not entitled to all or a portion of the HAP, the Housing Department may deduct the amount of overpayment from any amounts due to the owner, including amounts due under any other Section 8 HCV contract. See Chapter 16 for additional detail on owner reimbursement of HAP overpayments.

Owner Certification of Compliance

Unless the owner complies with all provisions of the HAP contract, the owner is not entitled to receive housing assistance payments under the HAP contract [HAP Contract – Form HUD-52641].

By endorsing the monthly check from the Housing Department, the owner certifies to compliance with the terms of the HAP contract. This includes certification that the owner is maintaining the unit and premises in accordance with HQS; that the contract unit is leased to the tenant family and, to the best of the owner's knowledge, the family resides in the unit as the family's only residence; the rent to owner does not exceed rents charged by the owner for comparable unassisted units on the premises; and that the owner does not receive (other than rent to owner) any additional payments or other consideration for rent of the contract unit during the HAP term.

Late HAP Payments [24 CFR 982.451(a)(5)]

The Housing Department is responsible for making HAP payments promptly when due to the owner, in accordance with the terms of the HAP contract. After the first two calendar months of the HAP contract term, the HAP contract provides for penalties if the Housing Department 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 Housing Department is not required to pay a late payment penalty if HUD determines that the payment is late for reasons beyond the Housing Department's control. In addition, late payment penalties are not required if the Housing Department 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 Housing Department 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 Housing Department 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.

Housing Department Policy

The owner must inform the Housing Department when the owner has initiated eviction proceedings against the family and the family continues to reside in the unit. The owner must provide the Housing Department with a copy of the court documents pertaining to the eviction.

The owner must inform the Housing Department when the owner has obtained a court judgment or other process allowing the owner to evict the tenant, and provide the Housing Department 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 Housing Department will not continue to make HAP payments to the owner.

The HAP payments will terminate when there is not an active contract in place, for example; a family's annual recertification is due and the owner is not available to execute a renewal contract. No payments will be made after the contract expires. The Housing Department will make arrangements to relocate the family immediately.

13-II.D. BREACH OF HAP CONTRACT [24 CFR 982.453]

Any of the following actions by the owner constitutes a breach of the HAP contract:

- If the owner violates any obligations under the HAP contract including failure to maintain the unit in accordance with HQS
- If the owner has violated any obligation under any other HAP contract under Section 8
- If the owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program
- For projects with mortgages insured by HUD or loans made by HUD, if the owner has failed to comply with the regulation for the applicable program; or if the owner has committed fraud, bribery or any other corrupt or criminal act in connection with the mortgage or loan
- If the owner has engaged in drug-related criminal activity
- If the owner has committed any violent criminal activity
- The owner has not paid state or local real estate taxes, fines, or assessment. This includes any liens which are attached to the rental property and mortgage
- The owner is unavailable to execute a Housing Assistance Payment Contract such as imprisonment, out of the country or hospitalized without an authorized representative

If the Housing Department determines that a breach of the HAP contract has occurred, it may exercise any of its rights and remedies under the HAP contract.

The Housing Department rights and remedies against the owner under the HAP contract include recovery of any HAP overpayment, suspension of housing assistance payments, abatement or reduction of the housing assistance payment, termination of the payment or termination the HAP contract. The Housing Department may also obtain additional relief by judicial order or action.

The Housing Department 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 Housing Department must provide the owner with written notice of any reduction in housing assistance payments or the termination of the HAP contract.

Housing Department Policy

Before the Housing Department invokes a remedy against an owner, the Housing Department will evaluate all information and documents available to determine if the contract has been breached.

If relevant, the Housing Department will conduct an audit of the owner's records pertaining to the tenancy or unit.

If it is determined that the owner has breached the contract, the Housing Department will consider all of the relevant factors including the seriousness of the breach, the effect on the family, the owner's record of compliance and the number and seriousness of any prior HAP contract violations.

13-II.E. HAP CONTRACT TERM AND TERMINATIONS

The term of the HAP contract runs concurrently with the term of the dwelling lease [24 CFR 982.451(a)(2)], beginning on the first day of the initial term of the lease and terminating on the last day of the term of the lease, including any lease term extensions.

The HAP contract and the housing assistance payments made under the HAP contract terminate if [HCV Guidebook pp.11-4 and 11-5, pg. 15-3]:

- The owner or the family terminates the lease;
- The lease expires;
- The HAP contract expired;
- The Housing Department terminates the HAP contract;
- The Housing Department 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 Housing Department 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 Housing Department;
- The Annual Contributions Contract (ACC) between the Housing Department and HUD expires;
- The Housing Department elects to terminate the HAP contract.

<u>Housing Department Policy</u>

The Housing Department may elect to terminate the HAP contract in each of the following situations:

Available program funding is not sufficient to support continued assistance for families in the program [24 CFR 982.454];

The unit does not meet HQS size requirements due to change in family composition [24 CFR 982.403] – see chapter 8;

The unit does not meet HQS [24 CFR 982.404] – see chapter 8;

The family breaks up [HUD Form 52641] – see chapter 3;

The owner breaches the HAP contract [24 CFR 982.453(b)] – see Section 13-II.D.

If the Housing Department terminates the HAP contract, the Housing Department 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].

Housing Department Policy

In all cases, the HAP contract terminates at the end of the calendar month that follows the calendar month in which the Housing Department gives written notice to the owner. The owner is not entitled to any housing assistance payment after this period, and must return to the Housing Department 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 Housing Department.

An owner under a HAP contract must notify the Housing Department prior to a change in the legal ownership of the unit. The owner must supply all information as requested by the Housing Department.

Prior to approval of assignment to a new owner, the new owner must agree to be bound by and comply with the HAP contract.

Housing Department Policy

Assignment of the HAP contract will be approved only if the new owner is qualified to become an owner under the HCV program according to the policies in Section 13-I.D. of this chapter.

The Housing Department will request from the existing owner 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 calendar days of receiving the owner's request, the Housing Department will contact the current owner.

The new owner must provide a written certification to the Housing Department that includes:

A copy of the escrow statement or other document showing the transfer of title and recorded deed;

Complete an IRS Form W-9, Request for Taxpayer Identification Number and Certification, or the social security number of the new owner;

Lead Base Paint Certification;

Landlord Certification;

Landlord Application; and

Confirmation that the new owner is not a prohibited relative.

If the new owner does not agree to an assignment of the HAP contract, or fails to provide the necessary documents, the Housing Department 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 Housing Department will process the leasing in accordance with the policies in chapter 9.

Chapter 14

PROGRAM INTEGRITY

INTRODUCTION

The Housing Department is committed to ensuring that subsidy funds made available to the Housing Department are spent in accordance with HUD requirements.

This chapter covers HUD and Housing Department 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 Housing Department policies related to preventing, detecting, and investigating errors and program abuse.
>
> Part II: Corrective Measures and Penalties. This part describes the corrective measures the Housing Department must and may take when errors or program abuses are found.

PART I: PREVENTING, DETECTING, AND INVESTIGATING ERRORS AND PROGRAM ABUSE

14-I.A. PREVENTING ERRORS AND PROGRAM ABUSE

Housing Department Policy

The Housing Department anticipates that the vast majority of families, owners, and Housing Department employees intend to and will comply with program requirements and make reasonable efforts to avoid errors.

To ensure that the Housing Department's HCV program is administered effectively and according to the highest ethical and legal standards, the Housing Department will employ a variety of techniques to ensure that both errors and intentional program abuse are rare.

The Housing Department will discuss program compliance and integrity issues during the voucher briefing sessions described in Chapter 5.

The Housing Department will provide each applicant and participant with the publication *Things You Should Know (HUD-1140-OIG)* that explains the types of actions a family must avoid and the penalties for program abuse.

The Housing Department will place a warning statement about the penalties for fraud (as described in the False Statement Act, U.S.C. 1001 and 1010) on key Housing Department forms or form letters that request information from a family or owner.

Housing Department staff will be required to review and explain the contents of all HUD- and Housing Department-required forms prior to requesting family member signatures.

Each Housing Department employee will receive 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. P*rogram 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 Housing Department 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 Housing Department to review a random sample of tenant records annually to determine if the records conform to program requirements and to conduct quality control inspections of a sample of units to ensure HQS compliance [24 CFR, Part 985]. (See Chapter 16 for additional information about SEMAP requirements).

Housing Department Policy

In addition to the SEMAP quality control requirements, the Housing Department will employ a variety of methods to detect errors and program abuse.

The Housing Department routinely will use available sources of up-front income verification to compare with family-provided information.

At each annual reexamination, current information provided by the family will be compared to information provided at the last annual reexamination to identify inconsistencies and incomplete information.

The Housing Department will compare family-reported income and expenditures to detect possible unreported income.

Independent Audits and HUD Monitoring

OMB Circular A-133 requires all Housing Departments that expend $500,000 or more in federal awards annually to have an independent audit (IPA). In addition, HUD conducts periodic on-site and automated monitoring of Housing Department activities and notifies the Housing Department of errors and potential cases of program abuse.

Housing Department Policy

The Housing Department 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 Housing Department's error detection and abuse prevention efforts.

Individual Reporting of Possible Errors and Program Abuse

Housing Department Policy

The Housing Department will encourage staff, program participants, and the public to report possible program abuse.

14-I.C. INVESTIGATING ERRORS AND PROGRAM ABUSE

When the Housing Department Will Investigate

Housing Department Policy

The Housing Department will review all referrals, specific allegations, complaints, and tips that are in writing from any source including other agencies, companies, and individuals, to determine if they warrant investigation. In order for the Housing Department 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 Housing Department will investigate inconsistent information related to the family that is identified through file reviews and the verification process.

Consent to Release of Information [24 CFR 982.516]

The Housing Department may investigate possible instances of error or abuse using all available Housing Department and public records. If necessary, the Housing Department will require HCV families to give consent to the release of additional information.

Analysis and Findings

Housing Department Policy

The Housing Department 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 Housing Department will determine (1) whether an error or program abuse has occurred, (2) whether any amount of money is owed the Housing Department, 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 Housing Department will enforce other corrective actions and penalties depends upon the nature of the error or program abuse.

Housing Department Policy

In the case of family-caused errors or program abuse, the Housing Department 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 Housing Department 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

Housing Department Policy

The Housing Department will inform the relevant party in writing of its findings and remedies within 10 calendar 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 Housing Department determined the error or program abuses, (3) the remedies to be employed, and (4) the family's or owner'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 Housing Department must promptly correct the HAP, family share, and any utility reimbursement prospectively.

Housing Department Policy

Increases in the family share will be implemented only after the family has received 30 days notice.

Any decreases in family share will become effective the first of the month following the discovery of the error.

Reimbursement

Whether the family or owner is required to reimburse the Housing Department or the Housing Department 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 Housing Department to use incorrect information provided by a third party.

Family Reimbursement to Housing Department [HCV GB pp. 22-12 to 22-13]

Housing Department Policy

In the case of family-caused errors or program abuse, the family will be required to repay any excess subsidy received. The Housing Department 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 Housing Department will terminate the family's assistance in accordance with the policies in Chapter 12.

Housing Department Reimbursement to Family [HCV GB p. 22-12]

Housing Department Policy

The Housing Department 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 Housing Department [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)].

Housing Department Policy

Any of the following will be considered evidence of family program abuse:

Payment to the owner in excess of amounts authorized by the Housing Department for rent, security deposit, and additional services

Offering bribes or illegal gratuities to the Housing Department Board of Commissioners, employees, or other Housing Department 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 Housing Department 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 Housing Department 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 Housing Department may, at its discretion, impose any of the following remedies.

- The Housing Department may require the family to repay excess subsidy amounts paid by the Housing Department, as described earlier in this section.
- The Housing Department 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 Housing Department may deny or terminate the family's assistance following the policies set forth in Chapter 3 and Chapter 12 respectively.
- The Housing Department may refer the family for state or federal criminal prosecution as described in section 14-II.E.

14-II.C. OWNER-CAUSED ERROR OR PROGRAM ABUSE

Owner requirements that are part of the regular process of offering, leasing, and maintaining a unit (e.g., HQS compliance, fair housing) are addressed in the appropriate chapters of this plan. This section focuses on errors and program abuse by owners.

An incorrect subsidy determination caused by an owner generally would be the result of an incorrect owner statement about the characteristics of the assisted unit (e.g., the number of bedrooms, which utilities are paid by the family). It also includes accepting duplicate housing assistance payments for the same unit in the same month, or after a family no longer resides in the unit.

Owner Reimbursement to the Housing Department

In all cases of overpayment of subsidy caused by the owner, the owner must repay to the Housing Department any excess subsidy received. The Housing Department may recover overpaid amounts by withholding housing assistance payments due for subsequent months, or if the debt is large, the Housing Department may allow the owner to pay in installments over a period of time [HCV GB p. 22-13].

Housing Department Policy

In cases where the owner has received excess subsidy, the Housing Department 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 Housing Department [Title 18 U.S.C. Section 1001].
- Commit fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program [24 CFR 982.453(a)(3)] including:

Housing Department Policy

Any of the following will be considered evidence of owner program abuse:

Charging the family rent above or below the amount specified by the Housing Department or charging the family for services that are provided to unassisted tenants at no extra charge

Charging a security deposit other than that specified in the family's lease

Knowingly accepting housing assistance payments for any month(s) after the family has vacated the unit

Knowingly accepting incorrect or excess housing assistance payments

Offer bribes or illegal gratuities to the Housing Department, Board of Commissioners or employees. Offering payments or other incentives to an HCV family as an inducement for the family to make false or misleading statements to the Housing Department

Residing in the unit with an assisted family

Remedies and Penalties

When the Housing Department determines that the owner has committed program abuse, the Housing Department 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 Housing Department programs.
- Refer the case to state or federal officials for criminal prosecution as described in section 14-II.E.

14-II.D. HOUSING DEPARTMENT-CAUSED ERRORS OR PROGRAM ABUSE

The responsibilities and expectations of Housing Department staff with respect to normal program administration are discussed throughout this plan. This section specifically addresses actions of a Housing Department staff member that are considered errors or program abuse related to the HCV program. Additional standards of conduct may be provided in the Housing Department personnel policy.

Housing Department-caused incorrect subsidy determinations include (1) failing to correctly apply HCV rules regarding family composition, income, assets, and expenses, (2) assigning the incorrect voucher size to a family, and (3) errors in calculation.

Repayment to the Housing Department

Neither a family nor an owner is required to repay an overpayment of subsidy if the error or program abuse is caused by Housing Department staff [HCV GB. 22-12].

Prohibited Activities

Housing Department Policy

Any of the following will be considered evidence of program abuse by Housing Department staff:

Failing to comply with any HCV program requirements for personal gain

Failing to comply with any HCV program requirements as a result of a conflict of interest relationship with any applicant, participant, or owner

Seeking or accepting anything of material value from applicants, participating families, vendors, owners, contractors, or other persons who provide services or materials to the Housing Department

Disclosing confidential or proprietary information to outside parties

Gaining profit as a result of insider knowledge of Housing Department activities, policies, or practices

Misappropriating or misusing HCV funds

Destroying, concealing, removing, or inappropriately using any records related to the HCV program

Committing any other corrupt or criminal act in connection with any federal housing program

14-II.E. CRIMINAL PROSECUTION

Housing Department Policy

When the Housing Department determines that program abuse by an owner, family, or Housing Department staff member has occurred and the amount of overpaid subsidy meets or exceeds the threshold for prosecution under local or state law, the Housing Department 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 Housing Department may retain a portion of program fraud losses that the Housing Department recovers from a family or owner through litigation, court order, or a repayment agreement [24 CFR 982.163].

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 Housing Department related to the collection, these costs must be deducted from the amount retained by the Housing Department.

Chapter 15

SPECIAL HOUSING TYPES
[24 CFR 982 Subpart M]

INTRODUCTION

The Housing Department may permit a family to use any of the special housing types discussed in this chapter. However, the Housing Department is not required to permit families receiving assistance in its jurisdiction to use these housing types, except that Housing Departments must permit use of any special housing type if needed as a reasonable accommodation for a person with a disability. The Housing Department also may limit the number of families who receive HCV assistance in these housing types and cannot require families to use a particular housing type. No special funding is provided for special housing types.

Housing Department Policy

Families will be permitted to use certain special housing types, when the use is needed as a reasonable accommodation so that the program is readily accessible to a person with disabilities. Each family situation will be handled on a case by case basis. The family's file will include documentation to leave a clear audit trail.

The Housing Department will only accept the following Special Housing Types:

1. Single Room Occupancy
2. Congregate Housing
3. Group Homes
4. Manufactured Homes

Special housing types include single room occupancy (SRO), congregate housing, group homes, shared housing, cooperative housing, manufactured homes where the family owns the home and leases the space, and homeownership [24 CFR 982.601].

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

Part I: Single Room Occupancy

Part II: Congregate Housing

Part III: Group Homes

Part IV: Shared Housing

Part V: Cooperative Housing

Part VI: Manufactured Homes

Part VII: Homeownership

PART I. SINGLE ROOM OCCUPANCY

[24 CFR 982.602 through 982.605]

15-I.A. OVERVIEW

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

When providing HCV assistance in an SRO unit, a separate lease and HAP contract are executed for each assisted person, and the standard form of the HAP contract is used.

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

The payment standard for SRO housing is 75 percent of the 0-bedroom payment standard amount on the Housing Department's payment standard schedule.

The utility allowance for an assisted person residing in SRO housing is 75 percent of the zero bedroom utility allowance.

The HAP for an assisted occupant in an SRO facility is the lower of the SRO payment standard amount minus the TTP or the gross rent for the unit minus the TTP.

15-I.C. HOUSING QUALITY STANDARDS (HQS)

HQS requirements described in Chapter 8 apply to SRO housing except as modified below.

- *Access*: Access doors to the SRO unit must have working locks for privacy. The occupant must be able to access the unit without going through any other unit. Each unit must have immediate access to two or more approved means of exit from the building, appropriately marked and leading to safe and open space at ground level. The SRO unit must also have any other means of exit required by State or local law.
- *Fire Safety*: All SRO facilities must have a sprinkler system that protects major spaces. "Major spaces" are defined as hallways, common areas, and any other areas specified in local fire, building, or safety codes. SROs must also have hard-wired smoke detectors, and any other fire and safety equipment required by state or local law.

  Sanitary facilities and space and security standards must meet local code requirements for SRO housing. In the absence of local code standards the requirements discussed below apply [24 CFR 982.605].

- *Sanitary Facilities*: Must have one flush toilet that can be used in privacy, a lavatory basin, and a bathtub or shower in proper operating condition for families residing in the SRO facility. If the SRO units are leased only to men, flush urinals may be substituted for up to one half of the required number of toilets. Sanitary facilities must be reasonably accessible from a common hall or passageway, and may not be located more than one floor above or below the SRO unit. They may not be located below grade unless the SRO units are located on that level.
- *Space and Security*: An SRO unit must contain at least 110 square feet of floor space, and at least four square feet of closet space with an unobstructed height of at least five feet, for use by the occupant. If the closet space is less than four square feet, the habitable floor space in the SRO unit must be increased by the amount of the deficiency. Exterior doors and windows accessible from outside the SRO unit must be lockable.

  Because no children live in SRO housing, the housing quality standards applicable to lead-based paint do not apply.

PART II. CONGREGATE HOUSING

[24 CFR 982.606 through 982.609]

15-II.A. OVERVIEW

Congregate housing is intended for use by elderly persons or persons with disabilities. A congregate housing facility contains a shared central kitchen and dining area and a private living area for the individual household that includes at least a living room, bedroom and bathroom. Food service for residents must be provided.

If approved by the Housing Department, a family member or live-in aide may reside with the elderly person or person with disabilities. The Housing Department must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in congregate housing, a separate lease and HAP contract are executed for each assisted family, and the standard form of the HAP contract is used.

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

The payment standard for an individual unit in a congregate housing facility is based on the number of rooms in the private living area. If there is only one room in the unit (not including the bathroom or the kitchen, if a kitchen is provided), the Housing Department must use the payment standard for a 0-bedroom unit. If the unit has two or more rooms (other than the bathroom and the kitchen), the Housing Department must use the 1-bedroom payment standard.

The HAP for an assisted occupant in a congregate housing facility is the lower of the applicable payment standard minus the TTP or the gross rent for the unit minus the TTP.

The gross rent for the unit for the purpose of calculating HCV assistance is the shelter portion (including utilities) of the resident's monthly housing expense only. The residents' costs for food service should not be included in the rent for a congregate housing unit.

Medical expenses which are paid by the resident will be deducted from their monthly income. All medical expenses must be listed in the IRS Publication 502 (Medical and Dental Expenses). The Housing Department will require a detail listing of all medical expenses, monthly income, monthly rent and utilities, and other subsidy the family may be receiving. Each resident will be handled on a case by case basis. Each resident file will be documented leaving a clear audit trail.

The following expenses will be acceptable but not limited to:

Medicines

Travel cost to doctor visits

Long-Term care expense

Oxygen cost

Wheelchair cost

Cost of doctor visits

15-II.C. HOUSING QUALITY STANDARDS

HQS requirements as described in Chapter 8 apply to congregate housing except for the requirements stated below.

Congregate housing must have (1) a refrigerator of appropriate size in the private living area of each resident; (2) a central kitchen and dining facilities located within the premises and accessible to the residents, and (3) food service for the residents, that is not provided by the residents themselves.

The housing quality standards applicable to lead-based paint do not apply.

PART III. GROUP HOME

[24 CFR 982.610 through 982.614 and HCV GB p. 7-4]

15-III.A. OVERVIEW

A group home is a state-licensed facility intended for occupancy by elderly persons and/or persons with disabilities. Except for live-in aides, all persons living in a group home, whether assisted or not, must be elderly persons or persons with disabilities. Persons living in a group home must not require continuous medical or nursing care.

A group home consists of bedrooms for residents, which can be shared by no more than two people, and a living room, kitchen, dining area, bathroom, and other appropriate social, recreational, or community space that may be shared with other residents.

No more than 12 persons may reside in a group home including assisted and unassisted residents and any live-in aides.

If approved by the Housing Department, a live-in aide may live in the group home with a person with disabilities. The Housing Department must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in a group home, a separate lease and HAP contract is executed for each assisted family, and the standard form of the HAP contract is used.

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

Unless there is a live-in aide, the family unit size for an assisted occupant of a group home must be 0- or 1-bedroom, depending on the Housing Department's subsidy standard. If there is a live-in aide, the aide must be counted in determining the household's unit size.

The payment standard used to calculate the HAP is the lower of the payment standard for the family unit size or the prorata share of the payment standard for the group home size. The prorata share is calculated by dividing the number of persons in the assisted household by the number of persons (assisted and unassisted) living in the group home.

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

The utility allowance for an assisted occupant in a group home is the prorata share of the utility allowance for the group home.

The rents paid for participants residing in group homes are subject to generally applicable standards for rent reasonableness. The rent for an assisted person must not exceed the prorata portion of the reasonable rent for the group home. In determining reasonable rent, the Housing Department should consider whether sanitary facilities and facilities for food preparation and service are common facilities or private facilities.

15-III.C. HOUSING QUALITY STANDARDS

HQS requirements described in Chapter 8 apply to group homes except for the requirements stated below.

- *Sanitary Facilities*: A group home must have at least one bathroom in the facility, with a flush toilet that can be used in privacy, a fixed basin with hot and cold running water, and a shower or bathtub with hot and cold running water. A group home may contain private or common bathrooms. However, no more than four residents can be required to share a bathroom.
- *Food Preparation and Service*: Group home units must contain a kitchen and dining area with adequate space to store, prepare, and serve food. The facilities for food preparation and service may be private or may be shared by the residents. The kitchen must contain a range, an oven, a refrigerator, and a sink with hot and cold running water. The sink must drain into an approvable public or private disposal system.
- *Space and Security*: Group homes must contain at least one bedroom of appropriate size for every two people, and a living room, kitchen, dining area, bathroom, and other appropriate social, recreational, or community space that may be shared with other residents.
- *Structure and Material*: To avoid any threat to the health and safety of the residents, group homes must be structurally sound. Elevators must be in good condition. Group homes must be accessible to and usable by residents with disabilities.
- *Site and Neighborhood*: Group homes must be located in a residential setting. The site and neighborhood should be reasonably free from hazards to the health, safety, and general welfare of the residents, and should not be subject to serious adverse conditions, such as:
  - Dangerous walks or steps
  - Instability
  - Flooding, poor drainage
  - Septic tank back-ups
  - Sewage hazards
  - Mud slides
  - Abnormal air pollution
  - Smoke or dust
  - Excessive noise
  - Vibrations or vehicular traffic
  - Excessive accumulations of trash
  - Vermin or rodent infestation, and
  - Fire hazards.

The housing quality standards applicable to lead-based paint do not apply.

PART IV. SHARED HOUSING

[24 CFR 982.615 through 982.618]

15-IV.I. OVERVIEW

Shared housing is a single housing unit occupied by an assisted family and another resident or residents. The shared unit consists of both common space for use by the occupants of the unit and separate private space for each assisted family.

An assisted family may share a unit with other persons assisted under the HCV program or with other unassisted persons. The owner of a shared housing unit may reside in the unit, but housing assistance may not be paid on behalf of the owner. The resident owner may not be related by blood or marriage to the assisted family.

If approved by the Housing Department, a live-in aide may reside with the family to care for a person with disabilities. The Housing Department must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in shared housing, a separate lease and HAP contract are executed for each assisted family, and the standard form of the HAP contract is used.

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

The payment standard for a family in shared housing is the lower of the payment standard for the family unit size or the prorata share of the payment standard for the shared housing unit size.

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

The HAP for a family in shared housing is the lower of the payment standard minus the TTP or the gross rent minus the TTP. The utility allowance for an assisted family living in shared housing is the prorata share of the utility allowance for the shared housing unit.

The rents paid for families living in shared housing are subject to generally applicable standards for rent reasonableness. The rent paid to the owner for the assisted family must not exceed the pro-rata portion of the reasonable rent for the shared unit. In determining reasonable rent, the Housing Department should consider whether sanitary and food preparation areas are private or shared.

15-IV.C. HOUSING QUALITY STANDARDS

The Housing Department may not give approval to reside in shared housing unless the entire unit, including the portion of the unit available for use by the assisted family under its lease, meets the housing quality standards.

HQS requirements described in Chapter 8 apply to shared housing except for the requirements stated below.

- *Facilities Available for the Family*: Facilities available to the assisted family, whether shared or private, must include a living room, a bathroom, and food preparation and refuse disposal facilities.
- *Space and Security*: The entire unit must provide adequate space and security for all assisted and unassisted residents. The private space for each assisted family must contain at least one bedroom for each two persons in the family. The number of bedrooms in the private space of an assisted family must not be less than the family unit size. A 0-bedroom or 1-bedroom unit may not be used for shared housing.

Housing Department Policy

The Housing Department will not accept the use of Shared Housing.

PART V. COOPERATIVE HOUSING

[24 CFR 982.619]

15-V.A. OVERVIEW

This part applies to rental assistance for a cooperative member residing in cooperative housing. It does not apply to assistance for a cooperative member who has purchased membership under the HCV homeownership option, or to rental assistance for a family that leases a cooperative housing unit from a cooperative member.

A cooperative is a form of ownership (nonprofit corporation or association) in which the residents purchase memberships in the ownership entity. Rather than being charged "rent" a cooperative member is charged a "carrying charge."

When providing HCV assistance in cooperative housing, the standard form of the HAP contract is used.

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

The payment standard and utility allowance are determined according to regular HCV program requirements.

The HAP for a cooperative housing unit is the lower of the payment standard minus the TTP or the monthly carrying charge for the unit, plus any utility allowance, minus the TTP. The monthly carrying charge includes the member's share of the cooperative debt service, operating expenses, and necessary payments to cooperative reserve funds. The carrying charge does not include down payments or other payments to purchase the cooperative unit or to amortize a loan made to the family for this purpose.

15-V.C. HOUSING QUALITY STANDARDS

All standard HQS requirements apply to cooperative housing units. There are no additional HQS requirements.

<u>Housing Department Policy</u>

The Housing Department will not accept the use of Cooperative Housing.

PART VI. MANUFACTURED HOMES

[24 CFR 982.620 through 982.624]

15-VI.A. OVERVIEW

A manufactured home is a manufactured structure, transportable in one or more parts that is built on a permanent chassis, and designed for use as a principal place of residence. HCV-assisted families may occupy manufactured homes in two different ways.

(1) A family can choose to rent a manufactured home already installed on a space and the Housing Department must permit it. In this instance program rules are the same as when a family rents any other residential housing, except that there are special HQS requirements as provided in 15-VI.D below.

(2) HUD also permits an otherwise eligible family that owns a manufactured home to rent a space for the manufactured home and receive HCV assistance with the rent for the space. Housing Departments may, but are not required to, provide assistance for such families.

15-VI.B. SPECIAL POLICIES FOR MANUFACTURED HOME OWNERS WHO LEASE A SPACE

Family Income

In determining the annual income of families leasing manufactured home spaces, the value of the family's equity in the manufactured home in which the family resides is not counted as a family asset.

Lease and HAP Contract

There is a separate Tenancy Addendum (Form 52642-a) and separate HAP Contract (Form 52642) for this special housing type.

15-VI.C. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION

Payment Standards

The FMR for a manufactured home space is generally 40 percent of the published FMR for a 2-bedroom unit or, where approved by HUD, the 40th percentile of the rental distribution of manufactured home spaces for the FMR area. The Housing Department may establish a payment standard for manufactured home spaces that is between 90-110 percent of the FMR for manufactured home spaces.

Utility Allowance

The Housing Department must establish utility allowances for manufactured home space rental. For the first 12 months of the initial lease term only, the allowance must include an amount for a utility hook-up charge if the family actually incurred a hook-up charge because of a move. This allowance will not be given to a family that leases in place. Utility allowances for manufactured home space must not include the costs of digging a well or installing a septic system.

Space Rent

The space rent is the sum of the rent to the owner for the manufactured home space, any charges for maintenance and management provided by the owner, and the utility allowance for tenant-paid utilities.

Housing Assistance Payment

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

Rent Reasonableness

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

15-VI.D. HOUSING QUALITY STANDARDS

Under either type of occupancy described in 15-VI.A above, the manufactured home must meet all HQS performance requirements and acceptability criteria discussed in Chapter 8 of this plan. In addition, the following requirement applies:

Manufactured Home Tie-Down

A manufactured home must be placed on the site in a stable manner, and must be free from hazards such as sliding or wind damage. The home must be securely anchored by a tie-down device that distributes and transfers the loads imposed by the unit to appropriate ground anchors to resist overturning and sliding.

Housing Department Policy

A family can choose to rent a manufactured home already installed on a space/property only if the owner owns both the manufactured home and the property.

PART VII. HOMEOWNERSHIP

[24 CFR 982.625 through 982.643]

15-VII.A. OVERVIEW [24 CFR 982.625]

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

There are two forms of homeownership assistance a Housing Department may offer under this option: monthly homeownership assistance payments, or a single down payment assistance grant. Housing Departments may choose to offer either or both forms of homeownership assistance, or choose not to offer either. If a Housing Department offers both forms of assistance, a family must choose which form of assistance to receive.

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

The Housing Department 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.

Housing Department Policy

The Housing Department does not administer the homeownership assistance through the voucher program. This section will not apply to any family.

Chapter 16

PROGRAM ADMINISTRATION

INTRODUCTION

This chapter discusses administrative policies and practices that are relevant to the activities covered in this plan. The policies are discussed in seven parts as described below:

Part I: Administrative Fee Reserve. This part describes the Housing Department'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 Housing Department. This part describes policies for recovery of monies that the Housing Department has overpaid on behalf of families, or to owners, and describes the circumstances under which the Housing Department 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 Housing Department.

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 Housing Department will follow.

Part VII: Reporting and Record Keeping for Children with Environmental Intervention Blood Lead Level. This part describes the Housing Department's responsibilities for reporting, data collection, and record keeping relative to children with environmental intervention blood lead levels that are less than six years of age, and are receiving HCV assistance.

Part VIII: Determination of Insufficient Funding. This part describes the Housing Department'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 I: ADMINISTRATIVE FEE RESERVE [24 CFR 982.155]

The Housing Department must maintain an administrative fee reserve for the program to pay program administrative expenses in excess of administrative fees paid by HUD for a Housing Department fiscal year. If funds in the administrative fee reserve are not needed to cover Housing Department administrative expenses, the Housing Department may use these funds for other housing purposes permitted by Federal, State and local law.

If the Housing Department has not adequately administered any Section 8 program, HUD may prohibit use of funds in the administrative fee reserve, and may direct the Housing Department to use funds in the reserve to improve administration of the program or to reimburse ineligible expenses. HUD also may prohibit use of the funds for certain purposes.

HUD requires the Housing Department Board of Commissioners or other authorized officials to establish the maximum amount that may be charged against the administrative fee reserve without specific approval.

Housing Department Policy

Expenditures from the administrative fee reserve will be made in accordance with all applicable Federal requirements. Expenditures will be approved according to the Sumter County Board of Commissioners purchasing policy.

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 Housing Department to adapt the program to local conditions. This part discusses how the Housing Department 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).

Housing Department Policy

Copies of the payment standard and utility allowance schedules are available for review in the Housing Department's offices during normal business hours.

Families, owners, and members of the public may submit written comments on the schedules discussed in this part, at any time, for consideration during the next revision cycle.

The Housing Department will maintain documentation to support its annual review of payment standards and utility allowance schedules. This documentation will be retained for 5 years.

16-II.B. PAYMENT STANDARDS [24 CFR 982.503; HCV GB, Chapter 7]

The payment standard sets the maximum subsidy payment a family can receive from the Housing Department each month [24 CFR 982.505(a)]. Payment standards are based on fair market rents published annually by HUD. Fair Market Rents are set at a percentile within the rent distribution of standard quality rental housing units in each FMR area. For most jurisdictions Fair Market Rents are set at the 40th percentile of rents in the market area.

The Housing Department must establish a payment standard schedule that establishes payment standard amounts for each FMR area within the Housing Department's jurisdiction, and for each unit size within each of the FMR areas. For each unit size, the Housing Department may establish a single payment standard amount for the whole FMR area, or may set different payment standards for different parts of the FMR area. Unless HUD grants an exception, the Housing Department is required to establish a payment standard within a "basic range" established by HUD – between 90 and 110 percent of the published FMR for each unit size.

Updating Payment Standards

When HUD updates its Fair Market Rents, the Housing Department must update its payment standards if the standards are no longer within the basic range [24 CFR 982.503(b)]. HUD may require the Housing Department to make further adjustments if it determines that rent burdens for assisted families in the Housing Department's jurisdiction are unacceptably high 24 CFR 982.503(g)].

Housing Department Policy

The Housing Department will review the appropriateness of the payment standards on an annual basis when the new FMR is published. In addition to ensuring the payment standards are always within the "basic range" the Housing Department will consider the following factors when determining whether an adjustment should be made to the payment standard schedule:

Funding Availability: The Housing Department will review the budget to determine the impact projected subsidy adjustments will have on funding available for the program and the number of families served. The Housing Department 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 Housing Department will consider increasing the payment standard. In evaluating rent burdens, the Housing Department will not include families renting a larger unit than their family unit size.

Changes in Rent to Owner: The Housing Department may review a sample of the units to determine how often owners are increasing or decreasing rents and the average percent of increases/decreases by bedroom size.

Unit Availability: The Housing Department will review the availability of units for each unit size, particularly in areas with low concentrations of poor and minority families.

Lease-up Time and Success Rate: The Housing Department will consider the percentage of families that are unable to locate suitable housing before the voucher expires and whether families are leaving the jurisdiction to find affordable housing.

Changes to payment standard amounts will be effective on or before December 1st of every year.

Exception Payment Standards [982.503(c)]

The Housing Department must request HUD approval to establish payment standards that are higher than the basic range. At HUD's sole discretion, HUD may approve a payment standard amount that is higher than the basic range for a designated part of the FMR area. HUD may approve an exception payment standard amount (in accordance with program requirements) for all units, or for all units of a given size, leased by program families in the exception area. Any Housing Department with jurisdiction in the exception area may use the HUD-approved exception payment standard amount. The total population of all HUD-approved exception areas in an FMR area may not include more than 50 percent of the population of the FMR area.

Unit-by-Unit Exceptions [24 CFR 982.503(c)(2)(ii)]

Unit-by-unit exceptions to the Housing Department's payment standards generally are not permitted. However, an exception may be made as a reasonable accommodation for a family that includes a person with disabilities. (See Chapter 2 for a discussion of reasonable accommodations.) This type of exception does not affect the Housing Department's payment standard schedule.

When needed as a reasonable accommodation, the Housing Department may make an exception to the payment standard without HUD approval if the exception amount does not exceed 110 percent of the applicable FMR for the unit size [HCV GB 7-9]. The Housing Department may request HUD approval for an exception to the payment standard for a particular family if the required amount falls between 110 and 120 percent of the FMR.

Housing Department Policy

A family that requires a reasonable accommodation may request a higher payment standard at the time the Request for Tenancy Approval (RFTA) is submitted. The family must document the need for the exception. In order to approve an exception, or request an exception from HUD, the Housing Department must determine that:

There is a shortage of affordable units that would be appropriate for the family;

The family's TTP would otherwise exceed 40 percent of adjusted monthly income;

The rent for the unit is reasonable; and

The family size requires a large rental unit.

"Success Rate" Payment Standard Amounts [24 CFR 982.503(e)]

If a substantial percentage of families have difficulty finding a suitable unit, the Housing Department may request a "success rate payment standard" that applies to the entire jurisdiction. If approved by HUD, a success rate payment standard allows the Housing Department to set its payment standards at 90-110 percent of a higher FMR (the 50th, rather than the 40th percentile FMR). To support the request, the Housing Department must demonstrate that during the most recent 6-month period for which information is available:

- Fewer than 75 percent of families who were issued vouchers became participants;
- The Housing Department had established payment standards for all unit sizes, and for the entire jurisdiction, at 110 percent of the published FMR; and
- The Housing Department had a policy of allowing voucher holders at least 90 days to search for a unit who made sustained efforts to locate units.

Although HUD approves the success rate payment standard for all unit sizes in the FMR area, the Housing Department may choose to adjust the payment standard for only some unit sizes in all, or a designated part, of the Housing Department's jurisdiction within the FMR area.

Decreases in the Payment Standard Below the Basic Range [24 CFR 982.503(d)]

The Housing Department must request HUD approval to establish a payment standard amount that is lower than the basic range. At HUD's sole discretion, HUD may approve establishment of a payment standard lower than the basic range. HUD will not approve a lower payment standard if the family share for more than 40 percent of program participants exceeds 30 percent of adjusted monthly income.

16-II.C. UTILITY ALLOWANCES [24 CFR 982.517]

A Housing Department-established utility allowance schedule is used in determining family share and Housing Department subsidy. The Housing Department must maintain a utility allowance schedule for (1) all tenant-paid utilities, (2) the cost of tenant-supplied refrigerators and ranges, and (3) other tenant-paid housing services such as trash collection.

The utility allowance schedule must be determined based on the typical cost of utilities and services paid by energy-conservative households that occupy housing of similar size and type in the same locality. In developing the schedule, the Housing Department 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 Housing Department must classify utilities and other housing services according to the following general categories: space heating; air conditioning; cooking; water heating; water; sewer; trash collection; other electric; cost of tenant-supplied refrigerator; cost of tenant-supplied range; and other specified housing services.

The cost of each utility and housing service must be stated separately by unit size and type. Chapter 18 of the *HCV Guidebook* provides detailed guidance to the Housing Department about establishing utility allowance schedules.

Air Conditioning

An allowance for air-conditioning must be provided when the majority of housing units in the market have central air-conditioning or are wired for tenant-installed air conditioners.

> Housing Department Policy
>
> The Housing Department has included an allowance for air-conditioning in its schedule. Central air-conditioning or a portable air conditioner must be present in a unit before the Housing Department will apply this allowance to a family's rent and subsidy calculations.

Reasonable Accommodation

HCV program regulations require a Housing Department to approve a utility allowance amount higher than shown on the Housing Department's schedule if a higher allowance is needed as a reasonable accommodation for a family member with a disability. For example, if a family member with a disability requires such an accommodation, the Housing Department will approve an allowance for air-conditioning, even if the Housing Department has determined that an allowance for air-conditioning generally is not needed (See Chapter 2 for policies regarding the request and approval of reasonable accommodations).

Utility Allowance Revisions

The Housing Department must review its schedule of utility allowances each year, and must revise the schedule if there has been a change of 10 percent or more in any utility rate since the last time the allowance for that utility was revised.

The Housing Department must maintain information supporting its annual review of utility allowance and any revisions made in its utility allowance schedule.

PART III: INFORMAL REVIEWS AND HEARINGS

16-III.A. OVERVIEW

When the Housing Department makes a decision that has a negative impact on a family, the family is often entitled to appeal the decision. For applicants, the appeal takes the form of an informal review; for participants, the appeal takes the form of an informal hearing.

Housing Departments are required to include in their administrative plans, informal review procedures for applicants, and informal hearing procedures for participants [24 CFR 982.54(d)(12) and (13)].

16-III.B. INFORMAL REVIEWS

Informal reviews are provided for program applicants. An applicant is someone who has applied for admission to the program, but is not yet a participant in the program. Informal reviews are intended to provide a "minimum hearing requirement" [24 CFR 982.554], and need not be as elaborate as the informal hearing requirements. (Federal Register Volume 60, No. 127, p 36490).

Decisions Subject to Informal Review

The Housing Department 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 placement on the Housing Department 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
- Denial of assistance based on an unfavorable history that may be the result of domestic violence, dating violence or stalking.

Informal reviews are *not* required for the following reasons [24 CFR 982.554(c)]:

- Discretionary administrative determinations by the Housing Department
- General policy issues or grievances
- A determination of the family unit size under the Housing Department subsidy standards
- A Housing Department determination not to grant approval of the tenancy
- A Housing Department determination that the unit is not in compliance with the HQS

<u>Housing Department Policy</u>

The Housing Department will only offer an informal review to applicants for whom assistance is being denied. Denial of assistance includes: denying listing on the Housing Department waiting list; denying or withdrawing a voucher; refusing to enter into a HAP contract or approve a lease; refusing to process or provide assistance under portability procedures.

Notice to the Applicant [24 CFR 982.554(a)]

The Housing Department must give an applicant prompt notice of a decision denying assistance. The notice must contain a brief statement of the reasons for the Housing Department 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

Housing Department Policy

A request for an informal review must be made in writing and delivered to the Housing Department either in person or by first class mail, by the close of the calendar day, no later than 10 calendar days from the date of the Housing Department's denial of assistance.

The Housing Department must schedule and send written notice of the informal review within 10 calendar days of the family's request.

Informal Review Procedures [24 CFR 982.554(b)]

The informal review must be conducted by a person other than the one who made or approved the decision under review.

The applicant must be provided an opportunity to present written or oral objections to the decision of the Housing Department.

The person conducting the review will make a recommendation to the Housing Department, but the Housing Department is responsible for making the final decision as to whether assistance should be granted or denied.

Informal Review Decision [24 CFR 982.554(b)]

The Housing Department must notify the applicant of the Housing Department's final decision, including a brief statement of the reasons for the final decision.

Housing Department Policy

In rendering a decision, the Housing Department will evaluate the following matters:

Whether or not the grounds for denial were stated factually in the notice.

The validity of the evidence. The Housing Department 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 Housing Department will uphold the decision to deny assistance.

If the facts prove the grounds for denial, and the denial is discretionary, the Housing Department will consider the recommendation of the person conducting the informal review in making the final decision whether to deny assistance.

The Housing Department will notify the applicant of the final decision, including a statement explaining the reasons for the decision. The notice will be mailed within 10 calendar days of the informal review to the applicant and his or her representative, if any, along with proof of mailing.

If the decision to deny is overturned as a result of the informal review, processing for admission will resume.

If the family fails to appear for their informal review, the denial of admission will stand and the family will be so notified.

16-III.C. INFORMAL HEARINGS FOR PARTICIPANTS [24 CFR 982.555]

Housing Departments must offer an informal hearing for certain Housing Department determinations relating to the individual circumstances of a participant family. A participant is defined as a family that has been admitted to the Housing Department's HCV program and is currently assisted in the program. The purpose of the informal hearing is to consider whether the Housing Department's decisions related to the family's circumstances are in accordance with the law, HUD regulations and Housing Department policies.

The Housing Department 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 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
- Owing the Housing Department money under the SHIP Rental Deposit program

Decisions Subject to Informal Hearing

Circumstances for which the Housing Department 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 family unit size under the Housing Department's subsidy standards
- A determination that a voucher program family is residing in a unit with a larger number of bedrooms than appropriate for the family unit size under the Housing Department's subsidy standards, or the Housing Department determination to deny the family's request for exception from the standards
- A determination to terminate assistance for a participant family because of the family's actions or failure to act
- A determination to terminate assistance because the participant has been absent from the assisted unit for longer than the maximum period permitted under Housing Department policy and HUD rules
- A determination to terminate assistance based on an unfavorable history that may be the result of domestic violence, dating violence, or stalking.

Circumstances for which an informal hearing is not required are as follows:

- Discretionary administrative determinations by the Housing Department
- General policy issues or grievances
- A Housing Department determination not to approve an extension or suspension of a voucher term
- A Housing Department determination not to approve a unit or tenancy
- A Housing Department determination that a unit selected by the applicant is not in compliance with the HQS
- A Housing Department determination that the unit is not in accordance with HQS because of family size

Housing Department Policy

The Housing Department will only offer participants the opportunity for an informal hearing when required to by the regulations or the Section 8 Administrative plan.

Informal Hearing Procedures

Notice to the Family [24 CFR 982.555(c)]

When the Housing Department makes a decision that is subject to informal hearing procedures, the Housing Department 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 Housing Department 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 Housing Department'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.

Housing Department Policy

In cases where the Housing Department 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 Housing Department.

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 Housing Department'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.

Scheduling an Informal Hearing [24 CFR 982.555(d)]

When an informal hearing is required, the Housing Department must proceed with the hearing in a reasonably expeditious manner upon the request of the family.

Housing Department Policy

A request for an informal hearing must be made in writing and delivered to the Housing Department either in person or by first class mail, by the close of the calendar day, no later than 10 calendar days from the date of the Housing Department's decision or notice to terminate assistance.

The Housing Department must schedule and send written notice of the informal hearing to the family within 10 calendar days of the family's request.

The family may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family. Requests to reschedule a hearing can be made orally or in writing prior to the hearing date. At its discretion, the Housing Department may request documentation of the "good cause" prior to rescheduling the hearing.

If the family does not appear at the scheduled time, and did not reschedule the hearing in advance the termination of assistance will stand and the family will be so notified.

Pre-Hearing Right to Discovery **[24 CFR 982.555(e)]**

Participants and the Housing Department are permitted pre-hearing discovery rights. The family must be given the opportunity to examine before the hearing any Housing Department documents that are directly relevant to the hearing. The family must be allowed to copy any such documents at their own expense. If the Housing Department does not make the document available for examination on request of the family, the Housing Department may not rely on the document at the hearing.

The Housing Department hearing procedures may provide that the Housing Department must be given the opportunity to examine at the Housing Department offices before the hearing, any family documents that are directly relevant to the hearing. The Housing Department must be allowed to copy any such document at the Housing Department's expense. If the family does not make the document available for examination on request of the Housing Department, the family may not rely on the document at the hearing.

For the purpose of informal hearings, *documents* include records and regulations.

Housing Department Policy

The family will be allowed to copy any documents related to the hearing at no cost. The family must request discovery of Housing Department documents no later than 12:00 p.m. on the calendar day prior to the scheduled hearing date

The Housing Department will review any family documents that are directly relevant to the hearing with the participant at the informal hearing.

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 Housing Department, other than the person who made or approved the decision or a subordinate of the person who made or approved the decision.

Housing Department Policy

The Housing Department has designated the following to serve as hearing officers:

The Housing Manager and Staff Assistant I which serves as the record custodian

Attendance at the Informal Hearing

Housing Department Policy

Hearings may be attended by a hearing officer and the following applicable persons:

A Housing Department representative(s) and any witnesses for the Housing Department

The participant and any witnesses for the participant

The participant's counsel or other representative

Any other person approved by the Housing Department 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 Housing Department's hearing procedures [24 CFR 982.555(4)(ii)].

Housing Department Policy

The hearing officer is responsible to manage the order of business and to ensure that hearings are conducted in a professional and business like 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 Housing Department 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.

Housing Department Policy

Any evidence to be considered by the hearing officer must be presented at the time of the hearing. There are four categories of evidence.

Oral evidence: the testimony of witnesses

Documentary evidence: a writing which is relevant to the case, for example, a letter written to the Housing Department. Writings include all forms of recorded communication or representation, including letters, words, pictures, sounds, videotapes or symbols or combinations thereof.

Demonstrative evidence: Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a model, a chart or other diagram.

Real evidence: A tangible item relating directly to the case.

Hearsay Evidence is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter. Even though evidence, including hearsay, is generally admissible, hearsay evidence alone cannot be used as the sole basis for the hearing officer's decision.

If either the Housing Department or the family fail to comply with the discovery requirements described above, the hearing officer will refuse to admit such evidence.

Other than the failure of a party to comply with discovery, the hearing officer has the authority to overrule any objections to evidence.

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

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

Housing Department Policy

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

Housing Department Notice to the Family: The hearing officer will determine if the reasons for the Housing Department's decision are factually stated in the Notice.

Discovery: The hearing officer will determine if the Housing Department and the family were given the opportunity to examine any relevant documents in accordance with Housing Department policy.

Housing Department Evidence to Support the Housing Department 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 Housing Department'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 Housing Department policies. If the grounds for termination are not specified in the regulations or in compliance with Housing Department policies, then the decision of the Housing Department will be overturned.

The hearing officer will issue a written decision to the family and the Housing Department no later than 10 calendar 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 Housing Department representative; and

Name of family representative (if any).

Background: A brief, impartial statement of the reason for the hearing.

Summary of the Evidence: The hearing officer will summarize the testimony of each witness and identify any documents that a witness produced in support of his/her testimony and that are admitted into evidence.

Findings of Fact: The hearing officer will include all findings of fact, based on a preponderance of the evidence. *Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

Conclusions: The hearing officer will render a conclusion derived from the facts that were found to be true by a preponderance of the evidence. The conclusion will result in a determination of whether these facts uphold the Housing Department's decision.

Order: The hearing report will include a statement of whether the Housing Department's decision is upheld or overturned. If it is overturned, the hearing officer will instruct the Housing Department 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 Housing Department to restore the participant's program status.

Procedures for Rehearing or Further Hearing

Housing Department Policy

The hearing officer may ask the family for additional information and/or might adjourn the hearing in order to reconvene at a later date, before reaching a decision. If the family misses an appointment or deadline ordered by the hearing officer, the action of the Housing Department will take effect and another hearing will not be granted.

Housing Department Notice of Final Decision [24 CFR 982.555(f)]

The Housing Department is not bound by the decision of the hearing officer for matters in which the Housing Department 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 Housing Department determines it is not bound by the hearing officer's decision in accordance with HUD regulations, the Housing Department must promptly notify the family of the determination and the reason for the determination.

Housing Department Policy

The Housing Department will mail a "Notice of Final Decision" including the hearing officer's report, to the participant with ten calendar days. This Notice will be sent by first-class mail.

16-III.D. HEARING AND APPEAL PROVISIONS FOR NON-CITIZENS [24 CFR 5.514]

Denial or termination of assistance based on immigration status is subject to special hearing and notice rules. Applicants who are denied assistance due to immigration status are entitled to an informal hearing, not an informal review.

Assistance to a family may not be delayed, denied, or terminated on the basis of immigration status at any time prior to a decision under the United States Citizenship and Immigration Services (USCIS) appeal process. Assistance to a family may not be terminated or denied while the Housing Department 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 Housing Department 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)]

As discussed in Chapters 3 and 11, 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 Housing Department 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 Housing Department receives notification that the USCIS secondary verification failed to confirm eligible immigration status, the Housing Department 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 Housing Department with a copy of the written request for appeal and the proof of mailing.

Housing Department Policy

The Housing Department will notify the family in writing of the results of the USCIS secondary verification within 10 calendar days of receiving the results.

The family must provide the Housing Department with a copy of the written request for appeal and proof of mailing within 10 calendar 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 Housing Department, of its decision. When the USCIS notifies the Housing Department of the decision, the Housing Department must notify the family of its right to request an informal hearing.

Housing Department Policy

The Housing Department will send written notice to the family of its right to request an informal hearing within 10 calendar 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 Housing Department provide a hearing. The request for a hearing must be made either within 30 days of receipt of the Housing Department 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 Housing Department 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 Housing Department 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.

Housing Department Policy

The family will be allowed to copy any documents related to the hearing at no cost. The family must request discovery of Housing Department 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 Housing Department, and to confront and cross-examine all witnesses on whose testimony or information the Housing Department relies.

Representation and Interpretive Services

The family is entitled to be represented by an attorney or other designee, at the family's expense, and to have such person make statements on the family's behalf.

The family is entitled to arrange for an interpreter to attend the hearing, at the expense of the family, as may be agreed upon by the two parties.

Recording of the Hearing

The family is entitled to have the hearing recorded by audiotape. The Housing Department may, but is not required to provide a transcript of the hearing.

Housing Department Policy

The Housing Department will not provide a transcript or an audio tape of the hearing.

Hearing Decision

The Housing Department must provide the family with a written final decision, based solely on the facts presented at the hearing, within 10 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 Housing Department provide a hearing. The request for a hearing must be made either within 30 days of receipt of the Housing Department 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 Housing Department must retain for a minimum of 5 years the following documents that may have been submitted to the Housing Department by the family, or provided to the Housing Department as part of the USCIS appeal or the Housing Department 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 HOUSING DEPARTMENT

16-IV.A. OVERVIEW

Housing Departments are required to include in the administrative plan, policies concerning repayment by a family of amounts owed to the Housing Department [24 CFR 982.54]. This part describes the Housing Department's policies for recovery of monies that have been overpaid on behalf of families, or to owners.

Housing Department Policy

When an action or inaction of an owner or participant results in the overpayment of housing assistance, the Housing Department holds the owner or participant liable to return any overpayments to the Housing Department.

The Housing Department will enter into repayment agreements in accordance with the policies contained in this part as a means to recover overpayments.

When an owner or participant refuses to repay monies owed to the Housing Department, the Housing Department will utilize other available collection alternatives including, but not limited to, the following:

Participants' information will be listed under HUD's EIV Debt owed to PHA module until all debt is paid in full.

Participants' will not be able to receive any other housing assistance until the debt is paid in full.

If the dollar amount is higher than $3,000.00, it will be reported to HUD's Inspector General's office.

If the owner owes the Housing Department $3,000.00 or more, it will be reported to the Florida State's Attorney's office for prosecution.

Owner's participation will be prohibited until all debt is paid in full.

16-IV.B. REPAYMENT POLICY

Owner Debts to the Housing Department

Housing Department Policy

Any amount due to the Housing Department by an owner must be repaid by the owner within 60 days of the Housing Department determination of the debt.

If the owner fails to repay the debt within the required time frame and is entitled to future HAP payments, the Housing Department will reduce the future HAP payments by the amount owed until the debt is paid in full.

If the owner is not entitled to future HAP payments the Housing Department will offer to enter into a repayment agreement in accordance with the policies below.

If the owner refuses to repay the debt, enter into a repayment agreement, or breaches a repayment agreement, the Housing Department will ban the owner from future participation in the program and pursue other modes of collection.

Family Debts to the Housing Department

Housing Department Policy

Any amount due to the Housing Department by an HCV participant must be repaid by the family. If the family is unable to repay the debt within 60 days, the Housing Department will offer to enter into a repayment agreement in accordance with the policies below.

If the family refuses to repay the debt, enter into a repayment agreement, or breaches a repayment agreement, the Housing Department will terminate the assistance upon notification to the family and pursue other modes of collection including reporting the debt owed to the Housing Department in the Enterprise Income Verification system.

Repayment Agreement [24 CFR 792.103]

The term r*epayment agreement* refers to a formal document signed by a tenant or owner and provided to the Housing Department in which a tenant or owner acknowledges a debt in a specific amount and agrees to repay the amount due at specific time periods.

Repayment Agreement Guidelines

Down Payment Requirement

Housing Department Policy

The Housing Department will prepare an amortization schedule of the total amount owed over the specific time frame. In order for a repayment agreement to be executed, the owner or family must pay one month payment owed to the Housing Department.

Payment Thresholds

Housing Department Policy

Amounts between $0 and $3,000 must be repaid within 36 months.

Any amounts over $3,000 will be handled on a case by case basis.

Execution of the Agreement

Housing Department Policy

The head of household and spouse/co-head (if applicable) must sign the repayment agreement.

Due Dates

Housing Department Policy

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.

Non-Payment

Housing Department Policy

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 Housing Department, the Housing Department will send the family a delinquency notice giving the family 10 calendar 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 Housing Department will terminate assistance upon written notification to the family.

If a family receives 2 delinquency notices for unexcused late payments in a 12 month period, the repayment agreement will be considered in default, and the Housing Department will terminate assistance upon written notification to the family.

No Offer of Repayment Agreement

Housing Department Policy

The Housing Department will not enter into a repayment agreement if there is already a repayment agreement in place with the family or owner, or the amounts owed by the family or owner exceed the Federal or State threshold for criminal prosecution.

PART V: MANAGEMENT ASSESSMENT (SEMAP)

16-V.A. OVERVIEW

The Section 8 Management Assessment Program (SEMAP) is a tool that allows HUD to measure Housing Department performance in key areas to ensure program integrity and accountability. SEMAP scores translate into a rating for each Housing Department as high performing, standard, or troubled. Scores on individual SEMAP indicators, as well as overall SEMAP ratings, can affect the Housing Department in several ways.

- High-performing Housing Departments can be given a competitive advantage under notices of funding availability [24 CFR 985.103].
- Housing Departments with deficiencies on one or more indicators are required to correct the deficiencies and report to HUD [24 CFR 985.106].
- Housing Departments 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, Housing Departments 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 Housing Department'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]

Housing Departments must submit the HUD-required SEMAP certification form within 60 calendar days after the end of its fiscal year. The certification must be approved and signed by the Housing Department Manager.

Housing Departments with less than 250 voucher units are only required to be assessed every other Housing Department fiscal year. HUD will assess such Housing Departments annually if the Housing Department elects to have its performance assessed on an annual basis; or is designated as "troubled" [24 CFR 985.105].

Failure of a Housing Department to submit its SEMAP certification within the required time frame will result in an overall performance rating of "troubled."

A Housing Department's SEMAP certification is subject to HUD verification by an on-site confirmatory review at any time.

Upon receipt of the Housing Department's SEMAP certification, HUD will rate the Housing Department's performance under each SEMAP indicator in accordance with program requirements.

HUD Verification Method

Several of the SEMAP indicators are scored based on a review of a quality control sample selected for this purpose. The Housing Department 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 Housing Department's certification on the indicator due to the Housing Department'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 Housing Department 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 Housing Department has written policies in its administrative plan for selecting applicants from the waiting list and whether the Housing Department follows these policies when selecting applicants for admission from the waiting list. • Points are based on the percent of families that are selected from the waiting list in accordance with the Housing Department's written policies, according to the Housing Department's quality control sample.
Indicator 2: Rent reasonableness **Maximum Score: 20** • This indicator shows whether the Housing Department has and implements a reasonable written method to determine and document for each unit leased that the rent to owner is reasonable based on current rents for comparable unassisted units • Points are based on the percent of units for which the Housing Department follows its written method to determine reasonable rent and has documented its determination that the rent to owner is reasonable, according to the Housing Department's quality control sample.
Indicator 3: Determination of adjusted income **Maximum Score: 20** • This indicator measures whether the Housing Department 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 Housing Department's quality control sample.
Indicator 4: Utility allowance schedule **Maximum Score: 5** • This indicator shows whether the Housing Department maintains an up-to-date utility allowance schedule. • Points are based on whether the Housing Department has reviewed the utility allowance schedule and adjusted it when required, according to the Housing Department's certification.

Indicator 5: HQS quality control inspections
Maximum Score: 5

- This indicator shows whether a Housing Department supervisor re-inspects a sample of units under contract during the Housing Department fiscal year, which meets the minimum sample size requirements for quality control of HQS inspections.
- Points are based on whether the required quality control re-inspections were completed, according to the Housing Department's certification.

Indicator 6: HQS enforcement
Maximum Score: 10

- This indicator shows whether, following each HQS inspection of a unit under contract where the unit fails to meet HQS, any cited life-threatening deficiencies are corrected within 24 hours from the inspection and all other deficiencies are corrected within no more than 30 calendar days from the inspection or any Housing Department-approved extension.
- Points are based on whether the Housing Department corrects all HQS deficiencies in accordance with required time frames, according to the Housing Department's certification.

Indicator 7: Expanding housing opportunities
Maximum Points: 5

- Only applies to Housing Departments with jurisdiction in metropolitan FMR areas.
- This indicator shows whether the Housing Department 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 Housing Department'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 Housing Department has adopted and implemented written policies in accordance with SEMAP requirements, according to the Housing Department's certification.

Indicator 8: FMR limit and payment standards
Maximum Points: 5 points

- This indicator shows whether the Housing Department has adopted a payment standard schedule that establishes payment standard amounts by unit size for each FMR area in the Housing Department's jurisdiction, that are within the basic range of 90 to 110 percent of the published FMR.
- Points are based on whether the Housing Department has appropriately adopted a payment standard schedule(s), according to the Housing Department's certification.

Indicator 10: Correct tenant rent calculations
Maximum Points: 5

- This indicator shows whether the Housing Department correctly calculates the family's share of the rent to owner.
- Points are based on the percent of correct calculations of family share of the rent, according to data from PIC.

Indicator 11: Pre-contract HQS inspections
Maximum Points: 5

- This indicator shows whether newly leased units pass HQS inspection on or before the effective date of the assisted lease and HAP contract.
- Points are based on the percent of newly leased units that passed HQS inspection prior to the effective date of the lease and HAP contract, according to data from PIC.

Indicator 12: Annual HQS inspections
Maximum Points: 10

- This indicator shows whether the Housing Department inspects each unit under contract at least annually.
- Points are based on the percent of annual HQS inspections of units under contract that are more than 2 months overdue, according to data from PIC.

Indicator 13: Lease-up
Maximum Points: 20 points

- This indicator shows whether the Housing Department enters HAP contracts for the number of units or funding reserved under ACC for at least one year.
- Points are based on the percent of units leased during the last completed Housing Department fiscal year, or the percent of allocated budget authority that has been expended by the Housing Department, according to data from the Housing Department's last year-end operating statement that is recorded in HUD's accounting system.

Indicator 14: Family self-sufficiency (FSS) enrollment and escrow account balances
Maximum Points: 10

- Only applies to Housing Departments with mandatory FSS programs.
- This indicator shows whether the Housing Department 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 Housing Departments that have received approval to establish success rate payment standard amounts, and isn't effective until the second full Housing Department 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 Housing Department using one or more payment standard amount(s) that exceed(s) 100 percent of the published FMR set at the 50 percentile rent, starting with the second full Housing Department fiscal year following initial use of payment standard amounts based on the Fair Market Rents set at the 50th percentile.. • Additional points are available to Housing Departments 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.

Indicator 14: Family self-sufficiency (FSS) enrollment and escrow account balances and De-concentration Bonus Indicator and Success rate of voucher holders does not apply to the Sumter County Housing Department. Therefore, these areas will not be scored during the review.

PART VI: RECORD KEEPING

16-VI.A. OVERVIEW

The Housing Department 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 Housing Department must ensure that all applicant and participant files are maintained in a way that protects an individual's privacy rights.

16-VI.B. RECORD RETENTION [24 CFR 982.158]

During the term of each assisted lease, and for at least five years thereafter, the Housing Department must keep:

- A copy of the executed lease;
- The HAP contract; and
- The application from the family.

In addition, the Housing Department must keep the following records for at least five years:

- Records that provide income, racial, ethnic, gender, and disability status data on program applicants and participants;
- An application from each ineligible family and notice that the applicant is not eligible;
- HUD-required reports;
- Unit inspection reports;
- Lead-based paint records as required by 24 CFR 35, Subpart B.
- Accounts and other records supporting Housing Department budget and financial statements for the program;
- Records to document the basis for Housing Department determination that rent to owner is a reasonable rent (initially and during the term of a HAP contract); and
- Other records specified by HUD.

If an informal hearing to establish a family's citizenship status is held, longer retention requirements apply for some types of documents. For specific requirements, see Section 16-III.D., Retention of Documents.

16-VI.C. RECORDS MANAGEMENT

Housing Departments must maintain applicant and participant files and information in accordance with the regulatory requirements described below.

Housing Department Policy

All applicant and participant information will be kept in a secure location and access will be limited to authorized Housing Department staff.

Housing Department staff will not discuss personal family information unless there is a business reason to do so. Inappropriate discussion of family information or improper disclosure of family information by staff will result in disciplinary action.

Privacy Act Requirements [24 CFR 5.212 and Form-9886]

The collection, maintenance, use, and dissemination of social security numbers (SSN), employer identification numbers (EIN), any information derived from these numbers, and income information of applicants and participants must be conducted, to the extent applicable, in compliance with the Privacy Act of 1974, and all other provisions of Federal, State, and local law.

Applicants and participants, including all adults in the household, are required to sign a consent form, HUD-9886, Authorization for Release of Information. This form incorporates the Federal Privacy Act Statement and describes how the information collected using the form may be used, and under what conditions HUD or the Housing Department may release the information collected.

Upfront Income Verification (UIV) Records

Housing Departments that access UIV data through HUD's Enterprise Income Verification (EIV) System are required to adopt and follow specific security procedures to ensure that all EIV data is protected in accordance with Federal laws, regardless of the media on which the data is recorded (e.g. electronic, paper). These requirements are contained in *Enterprise Income Verification (EIV) System Housing Department Security Procedures*, Version 1.2, issued January 2005.

Housing Department Policy

The Housing Department adheres to UIV's security procedures required by HUD.

Criminal Records

The Housing Department may only disclose the criminal conviction records which the Housing Department receives from a law enforcement agency to officers or employees of the Housing Department, or to authorized representatives of the Housing Department who have a job-related need to have access to the information [24 CFR 5.903(e)].

The Housing Department must establish and implement a system of records management that ensures that any criminal record received by the Housing Department 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 Housing Department action without institution of a challenge or final disposition of any such litigation [24 CFR 5.903(g)].

The Housing Department must establish and implement a system of records management that ensures that any sex offender registration information received by the Housing Department 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 Housing Department action without institution of a challenge or final disposition of any such litigation. This requirement does not apply to information that is public information, or is obtained by a Housing Department other than under 24 CFR 5.905.

Medical/Disability Records

Housing Departments are not permitted to inquire about the nature or extent of a person's disability. The Housing Department may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the Housing Department receives a verification document that provides such information, the Housing Department should not place this information in the tenant file. The Housing Department should destroy the document and memo the file accordingly.

PART VII: REPORTING AND RECORD KEEPING FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL

16-VII.A. OVERVIEW

The Housing Department has certain responsibilities relative to children with environmental intervention blood lead levels that are receiving HCV assistance. The notification, verification, and hazard reduction requirements are discussed in Chapter 8. This part deals with the reporting requirements, and data collection and record keeping responsibilities that the Housing Department is subject to.

16-VII.B. REPORTING REQUIREMENT [24 CFR 35.1225(e)]

The Housing Department must report the name and address of a child identified as having an environmental intervention blood lead level to the public health department within 5 calendar days of being so notified by any other medical health care professional.

Housing Department Policy

The Housing Department will provide the public health department written notice of the name and address of any child identified as having an environmental intervention blood lead level.

16-VII.C. DATA COLLECTION AND RECORD KEEPING [24 CFR 35.1225(f)]

At least annually, the Housing Department must attempt to obtain from the public health department(s) with a similar area of jurisdiction, the names and/or addresses of children less than 6 years old with an identified environmental intervention blood lead level.

If the Housing Department obtains names and addresses of environmental intervention blood lead level children from the public health department(s), the Housing Department 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 Housing Department must carry out the notification, verification, and hazard reduction requirements discussed in Chapter 8, and the reporting requirement discussed above.

At least annually, the Housing Department must also report an updated list of the addresses of units receiving assistance under the HCV program to the same public health department(s), unless the public health department(s) states that it does not wish to receive such a report.

Housing Department Policy

The public health department(s) has stated they **do not** wish to receive a report of an updated list of the addresses of units receiving assistance under the HCV program, on a quarterly basis. Therefore, the Housing Department is not providing such a report.

Once a year the Housing Department will contact all Head of Household's with children under the age of 6 years old. The Head of Household will be required to sign an authorization form listing each child's name, date of birth, age, and name of primary physician. All forms will be sent to the primary physician with a letter requesting information of any elevated blood levels for the child listed on the form.

If the Housing Department receives documentation of a child with elevated blood levels, the family will be contacted. The family must provide documentation from the primary physician stating the cause of the elevated blood level. If it has been determined the child has an elevated blood level due to something in the unit, an investigation will be conducted. If it is determined the unit has lead base paint, the family will be moved immediately.

PART VIII: DETERMINATION OF INSUFFICIENT FUNDING

16-VIII.A. OVERVIEW

The HCV regulations allow Housing Departments to deny families permission to move and to terminate Housing Assistance Payments (HAP) contracts if funding under the consolidated ACC is insufficient to support continued assistance [24 CFR 982.314(e)(1) and 982.454]. Insufficient funding may also impact the Housing Department's ability to issue vouchers to families on the waiting list. This part discusses the methodology the Housing Department will use to determine whether or not the Housing Department has sufficient funding to issue vouchers, approve moves, and to continue subsidizing all families currently under a HAP contract.

16-VIII.B. METHODOLOGY

Housing Department Policy

The Housing Department 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 Housing Department'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 Housing Department will add anticipated HAP expenditures for the remainder of the calendar year. Projected HAP expenditures will be calculated by multiplying the projected number of units leased per remaining months by the most current month's average HAP. The projected number of units leased per month will take into account the average monthly turnover of participant families. If the total annual HAP needs equal or exceed the annual budget authority, or if the Housing Department cannot support the cost of the proposed subsidy commitment (voucher issuance or move) based on the funding analysis, the Housing Department will be considered to have insufficient funding.

If insufficient funding is determined the Housing Department will not pull families from waiting list The Housing Department will under-spend for the months necessary to level out the current funding.

PART VIIII: NOTIFICATION REGARDING APPLICABLE PROVISIONS OF THE VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT OF 2005 (VAWA)

16-VIIII.A. NOTIFICATION TO PARTICIPANTS [Pub.L. 109-162]

VAWA requires the Housing Department to notify housing program participants of their rights under this law, including their right to confidentiality and the limits thereof.

Housing Department Policy

The Housing Department will provide all participants with notification of their protections and rights under VAWA at the time of admission and at annual reexamination.

The notice will explain the protections afforded under the law, inform the participant of Housing Department confidentiality requirements, and provide contact information for local victim advocacy groups or service providers.

The Housing Department will also include in all assistance termination notices a statement explaining assistance termination protection provided by VAWA (see Section 12-II.E).

16-VIIII.B. NOTIFICATION TO APPLICANTS

Housing Department Policy

The Housing Department will provide all applicants with notification of their protections and rights under VAWA at the time of the briefing interview.

The notice will explain the protections afforded under the law, inform each applicant of Housing Department confidentiality requirements, and provide contact information for local victim advocacy groups or service providers.

16-VIIII.C. NOTIFICATION TO OWNERS AND MANAGERS [Pub.L. 109-162]

VAWA requires the Housing Department to notify owners and managers of their rights and responsibilities under this law.

Housing Department Policy

The Housing Department will inform property owners and managers of their screening and termination responsibilities related to VAWA. The Housing Department may utilize any or all of the following means to notify owners of their VAWA responsibilities:

As appropriate in day to day interactions with owners and managers;

Inserts in HAP payments, owner workshops, and/or newsletters; or

Signs in the Housing Department lobby or meeting areas

Chapter 17

CONDUCTING BUSINESS IN ACCORDANCE WITH CORE VALUES AND ETHICAL STANDARDS ADDENDUM

INTRODUCTION

This chapter of the Housing Department's Administrative Plan outlines the policies for conducting business in accordance with core values and ethical standards including conflict of interest.

The Code of Conduct establishes standards for employees and Commissioners to follow to assure the highest level of public service. This Code of Conduct is not intended, nor should it be construed, as an attempt to unreasonably intrude upon the individual employee or Commissioner's right to privacy and the right to participate freely in a democratic society and economy.

The Housing Department operates under the Board of Sumter County Commissioners. Therefore, all employees of the Housing Department adhere to the County's Employee Manual regarding Conflict of Interest, Code of Ethics including Prohibition of Solicitation or Acceptance of Gifts; the Administrative and Disciplinary remedies for violations of the Code of Conduct; all provisions in the Florida Commission on Ethics; Code of Ethics for Public Officers and Employees; as well as the U.S. Code of Federal Regulations Section 982.

17- I. A. CONFLICT OF INTEREST; CFR 982.161

A. Neither the PHA nor any of its contractors or subcontractors may enter into any contract or arrangement in connection with the tenant-based programs in which any of the following classes of persons has any interest, direct or indirect, during tenure or for one year thereafter:

   1. Any present or former member or officer of the PHA (except a participant commissioner);

   2. Any employee of the PHA, or any contractor, subcontractor or agent of the PHA, who formulates policy or who influences decisions with respect to the programs;

   3. Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the programs; or

   4. Any member of the Congress of the United States.

B. Any member of the classes described in paragraph (a) of this section must disclose their interest or prospective interest to the PHA and HUD.

C. The conflict of interest prohibition under this section may be waived by the HUD field office for good cause.

The Conflict of Interest prohibition under this section may be waived by the HUD Field Office upon the request of the Sumter County Housing Department for good cause.

17-II.A BOARD OF SUMTER COUNTY COMMISSIONERS EMPLOYEE MANUAL - 7.030 – OUTSIDE EMPLOYMENT AND CONFLICTS OF INTEREST

A. Employees shall not, directly or indirectly, engage in any outside employment or financial interest which may conflict with the best interests of the Board or interfere with the employee's ability to perform the assigned Board job. Examples include, but are not limited to, outside employment which:

   1. Prevents the employee from being available for work beyond normal working hours, such as emergencies or peak work periods, when such availability is a regular part of the employee's job;
   2. Is conducted during the employee's work hours;
   3. Utilizes Board telephones, computers, suppliers, or any other resources, facilities or equipment.
   4. Is employed with a firm that has contracts with or does business with the Board; or
   5. May reasonably be perceived by members of the public as a conflict of interest or otherwise discredits public service.

B. An employee who chooses to have an additional employment, contractual commitment or self-employment, may do so provided the employee first files a written request and obtains prior written approval from the employee's immediate supervisor, appropriate Department Head, and Division Director. The original request and response shall be placed in the employee's official personnel file.

C. County employees shall not use or attempt to use their positions or any County property or resource entrusted to them to perform their official duties in order to obtain a special privilege, gain, or benefit for themselves or others.

17-I.B BOARD OF SUMTER COUNTY COMMISSIONERS EMPLOYEE MANUAL – 7.020 -CODE OF ETHICS

The standards of conduct summarized below apply to all Board employees and public officers.

A. GIFTS: No employee may either solicit or accept anything of value, including a gift, loan, reward, promise of future employment, favor, or service that is based on any understanding that the vote, official action, or judgment of the official would be influenced by such a gift. All employees are encouraged not to accept gifts, no matter how small, to avoid the appearance of impropriety.

B. UNAUTHORIZED COMPENSATION: No employee or his spouse or minor child may accept compensation, payment, or thing of value which, with the exercise of reasonable care, is known or should be known to have been given to influence the vote or official action of such officer or employee.

C. DOING BUSINESS WITH ONE'S AGENCY: No employee who is empowered with the authority to purchase on behalf of the County in his official capacity may directly or indirectly purchase, rent, or lease any realty, goods, or services from a business entity in which he, his spouse, or child is an officer, partner, director, or proprietor, or in which he, his spouse, or child (or any combination of them) owns a material interest, without prior approval by the County Administrator. No employee, acting in a private capacity, may rent, lease, or sell any realty, goods, or services to the County or any of its agencies, except as provided in Florida Statute, Section 112.311.

D. MISUSE OF PUBLIC POSITION: No employee may use or attempt to use his official position or any property or resource within his trust, or perform his official duties to obtain special privilege, benefit, or exemption for himself or others.

E. DISCLOSURE OR USE OF CERTAIN INFORMATION: No employee may disclose or use information not available to the general public and gained by reason of his public position for his personal benefit or the benefit of others.

In addition to the above, all provision of Florida Statute, Section 112, and Code of Ethics for Public Officers and Employees, shall apply to Board employees.

17-I.C HOUSING DEPARTMENT ADMINISTRATIVE AND DISCRIPLINARY REMEDIES FOR VIOLATION OF THE CODE OF CONDUCT

Violations of this Code of Conduct Policy will result in disciplinary action as outlined in the Board of Sumter County Commissioners Employee Manuel.

EMPLOYEE MANUAL; SECTION 8 - DISCIPLINE AND TERMINATION
8.010 DISCIPLINE

A. All employees are expected to exercise good judgment, loyalty, common sense, dedication, and courtesy in the performance of their duties. The primary mission of every employee is to provide courteous, orderly, efficient, and economic delivery of services to the citizens of Sumter County.

B. Acts, errors, or omissions which discredit public service or impair the provision of orderly services to the citizens of Sumter County may result in discipline, including termination.

C. The following are examples of the types of behavior that may result in discipline, including termination:

1. Drinking alcohol or the abuse of non-prescription or prescription drugs or other controlled substances on the job, or arriving on the job under the influence of or while in possession of alcohol, drugs, or other controlled substances;
2. Insubordination;
3. Absence from work without first notifying and securing permission from the supervisor;
4. Habitual absences or tardiness for any reason;
5. Unsatisfactory job performance;
6. Conviction of a felony or a misdemeanor involving moral turpitude;
7. Acceptance of fees, gratuities, or other valuable items in the performance of the employee's official duties for the Board;
8. Inability, refusal, or failure to perform the duties of the assigned job;
9. Threatening citizens, co-workers or supervisors with violence;
10. Violation of duties, safety rules, or rules imposed by this Manual or by any other Board rule, regulation, or administrative order;
11. Using or disclosing protected health information is the violation of Sumter County's Privacy Policy regarding the Health Insurance Portability and Accountability Act or otherwise violating the Privacy Policy.

This list is not all-inclusive, but only serves as a general guide. Employees may be disciplined for other reasons not stated above. Employment remains at will despite this list.

D. The Division Director has full discretion and authority to approve disciplinary actions short of suspension, demotion and termination. Employees are not entitled to prior notice before disciplinary action is taken. The County Administrator or the employee shall be free to terminate the employment relationship at any time, for any reason. No complaint can be filed regarding a termination decision. Employment remains at will at all times and there is to be no expectation of continued employment.

E. In the event that discipline is necessary, the goal will be to follow progressive disciplinary actions. The following types of disciplinary actions may be used:

1. Counseling. Counseling is a discussion between the employee and the supervisor whenever the supervisor notices that an employee is failing to adhere to the County's official or expected conduct standards. Counseling is a measure utilized by a supervisor to correct an employee's inappropriate conduct with the objective that the conduct will not be repeated and that disciplinary action will not become necessary. Counseling shall not be considered disciplinary action for the purposes of progressive disciplinary action, nor does counseling preclude a later decision to impose discipline.

2. Oral Warning. An oral warning is a session between the employee's supervisor and the employee on the subject of the employee's conduct and performance, or failure to observe a rule, regulation, or administrative instruction. It is intended to increase an employee's efficiency and value to the Board by changing the employee's conduct, attitude, habits, or work methods. Following the session the supervisor shall document the oral warning.

3. Reprimand. A reprimand is a formal written disciplinary action for misconduct, inadequate performance, or repeated lesser infractions. Written reprimands are placed in the employee's personnel file.

4. Suspension. A paid or unpaid suspension is a temporary absence from duty, which may be imposed by the County Administrator as a penalty for significant misconduct or repeated lesser infractions. A suspension is a severe disciplinary action which is made part of the employee's permanent record.

5. Demotions. The County Administrator may reduce the salary of an employee or demote the employee to a lower grade for significant misconduct or repeated lesser infractions. A written statement of the reasons for any such action will be furnished to the employee and a copy placed in the employee's personnel file.

6. Termination. Employees may be terminated by the County Administrator or otherwise disciplined without cause and without following any progressive disciplinary process.

8.020 TERMINATION

A. An employee may be terminated by the County Administrator from Board employment at any time, including but not limited to:

1. During or at the end of the employee's introductory period;
2. As a result of disciplinary action;
3. Due to loss of skills, certifications, job requirements, or other conditions which would make the employee unfit for service;
4. When the Board or County Administrator has made a determination that a lack of work or funding exists with respect to the employee's position;
5. If the employee has a physical or mental impairment that prevents the employee from performing the essential functions of the employee's position and the employee cannot be reasonably accommodated. Termination must be supported by medical evidence, which establishes that the individual is unable to perform essential job functions and job requirements. The Board may require an examination, at its expense, performed by a physician of its choice. Failure to submit to such a request may result in termination.
6. Whenever the County Administrator determines to make changes deemed to be in the best interest of the County.

This list is not all-inclusive, but only serves as a general guide. Termination may result from other reasons not specified above, or for no reason.