

# HCV ADMINISTRATIVE PLAN

EFFECTIVE

*The Long Branch Housing Authority*

**nma**  
Nan McKay  
AND ASSOCIATES, INC.



# HCV Administrative Plan

THE LONG BRANCH HOUSING

Approved by the LBHA Board of Commissioners:

Submitted to HUD:

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**ADMINISTRATIVE PLAN**  
**FOR THE**  
**HOUSING CHOICE VOUCHER PROGRAM**

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## **Introduction**

### **ABOUT THE ADMINISTRATIVE PLAN**

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

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

#### **HUD**

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

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

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

#### **State Law**

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

#### **Industry Practice**

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

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

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

## HUD HCV Guidebook

In November 2019 HUD began issuing a new version of the HCV Guidebook chapter-by-chapter. Unlike the previous version of the HCV Guidebook in which chapters were numbered, the new version of the guidebook includes chapter names, but no numbers. As the new version of the guidebook has not yet been fully released, and since the previous version of the guidebook contains guidance not found in the new version, the policy cites both versions of the guidebook. Therefore, where the HCV Guidebook is cited in the policy, the citation will make a distinction between the “old” and “new” versions of the guidebook. The “old” version of the guidebook will continue to be cited as *HCV GB* with a chapter/page reference (example: HCV GB, p. 5-4). If HUD has also released a new chapter on the same topic with information that either adds new information or updates existing information from the previous guidebook, the new guidebook will be cited as *New HCV GB* with a chapter title and page reference (example: New HCV GB, *Payment Standards*, p. 11). On September 29, 2023, HUD issued Notice PIH 2023-27 to implement sections 102 and 104 of the Housing Opportunity Through Modernization Act of 2016 (HOTMA). The notice supersedes relevant portions of the guidebook, specifically the chapters on eligibility, denials, and annual reexaminations and interim reexaminations. Where chapters have not been altered by the HOTMA implementation notice, the model policy continues to cite the HCV Guidebook.

## Abbreviations

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

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

## Resources and Where to Find Them

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

Guidebooks, handbooks, and other HUD resources may be found at the HUDClips website: [https://www.hud.gov/program\\_offices/administration/hudclips](https://www.hud.gov/program_offices/administration/hudclips).

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



<b>Document and Location</b>
Code of Federal Regulations <a href="https://www.ecfr.gov/">https://www.ecfr.gov/</a>
Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Final Rule <a href="http://edocket.access.gpo.gov/2008/pdf/E8-19435.pdf">http://edocket.access.gpo.gov/2008/pdf/E8-19435.pdf</a>
Enterprise Income Verification (EIV) System, Security Procedures for Upfront Income Verification data <a href="https://www.hud.gov/sites/documents/EIVSECGUIDELBHA.PDF">https://www.hud.gov/sites/documents/EIVSECGUIDELBHA.PDF</a>
Executive Order 11063 <a href="https://www.archives.gov/federal-register/codification/executive-order/11063.html">https://www.archives.gov/federal-register/codification/executive-order/11063.html</a>
Federal Register <a href="https://www.federalregister.gov/">https://www.federalregister.gov/</a>
Housing Choice Voucher Program Guidebook (7420.10G), Updated Chapters <a href="https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/guidebook">https://www.hud.gov/program_offices/public_indian_housing/programs/hcv/guidebook</a>
HOTMA Final Rule <a href="https://www.federalregister.gov/documents/2023/02/14/2023-01617/housing-opportunity-through-modernization-act-of-2016-implementation-of-sections-102-103-and-104?utm_campaign=subscription+mailing+list&amp;utm_source=federalregister.gov&amp;utm_medium=email">https://www.federalregister.gov/documents/2023/02/14/2023-01617/housing-opportunity-through-modernization-act-of-2016-implementation-of-sections-102-103-and-104?utm_campaign=subscription+mailing+list&amp;utm_source=federalregister.gov&amp;utm_medium=email</a>
HOTMA Implementation Notice, PIH 2023-27 <a href="https://www.hud.gov/sites/dfiles/OCHCO/documents/2023-27pihn.pdf">https://www.hud.gov/sites/dfiles/OCHCO/documents/2023-27pihn.pdf</a>
Joint Statement of the Department of Housing and Urban Development and the Department of Justice, issued May 17, 2004 <a href="https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra.pdf">https://www.justice.gov/sites/default/files/crt/legacy/2010/12/14/joint_statement_ra.pdf</a>
Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition Against National Origin Discrimination Affecting Limited English Proficient Persons, published January 22, 2007 <a href="https://www.lep.gov/guidance/HUD_guidance_Jan07.pdf">https://www.lep.gov/guidance/HUD_guidance_Jan07.pdf</a>
Notice PIH 2010-26 (HA), Nondiscrimination and Accessibility Notice <a href="https://www.hud.gov/sites/documents/DOC_8993.PDF">https://www.hud.gov/sites/documents/DOC_8993.PDF</a>
Notice PIH 2017-12, Administrative Guidance for Effective and Mandated Use of the Enterprise Income Verification (EIV) System <a href="https://www.hud.gov/sites/documents/PIH2017-12EIVNOTICE.PDF">https://www.hud.gov/sites/documents/PIH2017-12EIVNOTICE.PDF</a>
VAWA Resources <a href="https://www.hud.gov/vawa">https://www.hud.gov/vawa</a>



## Administrative Plan -Table of Contents

---

### Introduction ABOUT THE ADMINISTRATIVE PLAN

#### Chapter 1 OVERVIEW OF THE PROGRAM AND PLAN

PART I:	THE LBHA.....	1-1
	1-I.A. Overview .....	1-1
	1-I.B. Organization and Structure of the LBHA.....	1-2
	1-I.C. LBHA Mission .....	1-2
	1-I.D. The LBHA’s Programs.....	1-3
	1-I.E. The LBHA’s Commitment to Ethics and Service .....	1-3
PART II:	THE HOUSING CHOICE VOUCHER (HCV) PROGRAM .....	1-5
	1-II.A. Overview and History of the Program.....	1-5
	1-II.B. HCV Program Basics .....	1-7
	1-II.C. The HCV Partnerships.....	1-7
	The HCV Relationships:.....	1-8
	What Does HUD Do? .....	1-9
	What Does the LBHA Do?.....	1-9
	What Does the Owner Do?.....	1-10
	What Does the Family Do? .....	1-11
	1-II.D. Applicable Regulations .....	1-12
PART III:	THE HCV ADMINISTRATIVE PLAN .....	1-13
	1-III.A. Overview and Purpose of the Plan .....	1-13
	1-III.B. Contents of the Plan (24CFR 982.54) .....	1-13
	Mandatory vs. Discretionary Policy .....	1-15
	1-III.C. Organization of the Plan.....	1-15
	1-III.D. Updating and Revising the Plan .....	1-15

---

**Administrative Plan -Table of Contents**

---

**Chapter 2  
FAIR HOUSING AND EQUAL OPPORTUNITY**

PART I:	NONDISCRIMINATION .....	2-3
2-I.A.	Overview .....	2-3
2-I.B.	Nondiscrimination .....	2-4
	Providing Information to Families and Owners .....	2-5
2-1.C	Discrimination Complaints.....	2-5
	General Housing Discrimination Complaints .....	2-5
	Complaints under the Equal Access Final Rule [Notice PIH 2014-20] .....	2-5
	VAWA Complaint Processing [Notice FHEO 2023-01] .....	2-6
PART II:	POLICIES RELATED TO PERSONS WITH DISABILITIES.....	2-7
2-II.A.	Overview .....	2-7
2-II.B.	Definition of Reasonable Accommodation .....	2-8
	Types of Reasonable Accommodations .....	2-8
2-II.C.	Request for an Accommodation .....	2-9
2-II.D.	Verification of Disability.....	2-10
2-II.E.	Approval/Denial of a Requested Accommodation [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act, Notice PIH 2010-26]. .....	2-11
2-II.F.	Program Accessibility for Persons with Hearing or Vision Impairments .....	2-12
2-II.G.	Physical Accessibility.....	2-13
2-II.H.	Denial or Termination of Assistance.....	2-14
PART III:	IMPROVING ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY (LEP).....	2-15
2-III.A.	Overview .....	2-15
2-III.B.	Oral Interpretation .....	2-16
2-III.C.	Written Translation.....	2-16
2-III.D.	Implementation Plan.....	2-17
Exhibit 2-1:	Definition of a Person with a Disability Under Federal Civil Rights Laws [24 CFR Parts 8.3, and 100.201].....	2-19

## Administrative Plan - Table of Contents

### Chapter 3 ELIGIBILITY

PART I:	DEFINITIONS OF FAMILY AND HOUSEHOLD MEMBERS .....	3-3
3-I.A.	Overview .....	3-3
3-I.B.	Family and Household [24 CFR 5.403; FR Notice 02/03/12; Notice PIH 2014-20; FR Notice 2/14/23] .....	3-3
	Family .....	3-3
	Household .....	3-3
3-I.C.	Family Breakup and Remaining Member of Tenant Family .....	3-4
	Family Breakup [24 CFR 982.315; Notice PIH 2017-08] .....	3-4
	Remaining Member of a Tenant Family [24 CFR 5.403] .....	3-5
3-I.D.	Head of Household [24 CFR 5.504(b)] .....	3-5
3-I.E.	Spouse, Cohead, and Other Adult .....	3-5
3-I.F.	Dependents and Minors [24 CFR 5.603] .....	3-6
	Joint Custody of Dependents .....	3-6
3-I.G.	Full-Time Student [24 CFR 5.603, HVC GB, p. 5-29] .....	3-6
3-I.H.	Elderly and Near-Elderly Persons, and Elderly Family [24 CFR 5.100 and 5.403, FR Notice 02/03/12] .....	3-6
	Elderly Persons .....	3-6
	Near-Elderly Persons .....	3-6
	Elderly Family .....	3-6
3-I.I.	Persons with Disabilities and Disabled Family [24 CFR 5.403, FR Notice 02/03/12] .....	3-7
	Persons with Disabilities .....	3-7
	Disabled Family .....	3-7
3-I.J.	Guests [24 CFR 5.100] .....	3-7
3-I.K.	Foster Children and Foster Adults [24 CFR 5.603] .....	3-8
3-I.L.	Absent Family Members .....	3-8
	Definitions of Temporarily and Permanently Absent .....	3-8
	Absent Students .....	3-8
	Absences Due to Placement in Foster Care [24 CFR 5.403] .....	3-9
	Absent Head, Spouse, or Cohead .....	3-9
	Family Members Permanently Confined for Medical Reasons [HCV GB, p. 5-22] .....	3-9
	Return of Permanently Absent Family Members .....	3-9
3-I.M.	Live-In Aide .....	3-10

## Administrative Plan - Table of Contents

---

PART II:	BASIC ELIGIBILITY CRITERIA.....	3-11
3-II.A.	Income Eligibility and Targeting.....	3-11
	Income Limits.....	3-11
	Definitions of the Income Limits [24 CFR 5.603(b)].....	3-11
	Using Income Limits for Eligibility [24 CFR 982.201]	
	and Notice PIH 2023-27 .....	3-11
	Using Income Limits for Targeting [24 CFR 982.201].....	3-12
3-II.B.	Citizenship or Eligible Immigration Status [24 CFR 5, Subpart E].....	3-13
	Declaration [24 CFR 5.508] .....	3-13
	Mixed Families .....	3-14
	Ineligible Families [24 CFR 5.514(d), (e), and (f)].....	3-14
	Timeframe for Determination of Citizenship Status	
	[24 CFR 5.508(g)] .....	3-15
3-II.C.	Social Security Numbers [24 CFR 5.216 and 5.218,	
	Notice PIH 2018-24] .....	3-15
3-II.D.	Family Consent to Release of Information [24 CFR 5.232;	
	HCV GB, p. 5-13] .....	3-15
3-II.E.	Students Enrolled In Institutions of Higher Education	
	[24 CFR 5.612, FR Notice 4/10/06, FR Notice 9/21/16] .....	3-16
	Definitions .....	3-16
	Determining Student Eligibility .....	3-20
3-II.F.	EIV System Searches [EIV FAQs; EIV System Training 9/30/20;	
	and Notice PIH 2023-27].....	3-21
	Existing Tenant Search.....	3-21
	Debts Owed to LBHAs and Terminations.....	3-22
	Income and Income Validation Tool (IVT) Reports .....	3-22

## Administrative Plan -Table of Contents

---

PART III: DENIAL OF ASSISTANCE .....	3-23
3-III.A. Overview .....	3-23
Forms of Denial [24 CFR 982.552(a)(2); HCV GB, p. 5-35] .....	3-24
Prohibited Reasons for Denial of Program Assistance [24 CFR 982.202(b), 24 CFR 5.2005(b)] .....	3-24
3-III.B. Mandatory Denial of Assistance [24 CFR 982.553(a) and 24 CFR 982.552(b)(6)] .....	3-25
3-III.C. Restriction on Assistance Based on Assets [24 CFR 5.618] .....	3-26
3-III.D. Other Permitted Reasons for Denial of Assistance .....	3-27
Criminal Activity [24 CFR 982.553].....	3-27
Previous Behavior in Assisted Housing [24 CFR 982.552(c)].....	3-28
3-III.E. Screening .....	3-30
Screening for Eligibility .....	3-30
Screening for Suitability as a Tenant [24 CFR 982.307] .....	3-31
3-III.F. Criteria for Deciding to Deny Assistance.....	3-32
Evidence [24 CFR 982.553(c)].....	3-32
Consideration of Circumstances [24 CFR 982.552(c)(2)] .....	3-32
Removal of a Family Member's Name from the Application .....	3-34
Reasonable Accommodation [24 CFR 982.552(c)(2)(iv)].....	3-34
3-III.G. Notice of Eligibility or Denial .....	3-35
3-III.H. Prohibition Against Denial of Assistance to Victims of Domestic Violence, Dating Violence, Sexual Assault, Stalking, and Human Trafficking .....	3-36
Notification.....	3-36
Documentation .....	3-37
Exhibit 3-1: Detailed Definitions Related to Disabilities .....	3-30
Person with Disabilities [24 CFR 5.403].....	3-39
Individual with Handicaps [24 CFR 8.3] .....	3-39
Exhibit 3-2: Definition of Institution of Higher Education [20 U.S.C 1001 and 1002] .....	3-39
Eligibility of Students for Assisted Housing Under Section 8 of the U.S. Housing Act of 1937; Supplementary Guidance; Notice [Federal Register, April 10, 2006] .....	3-43

---

**Administrative Plan -Table of Contents**

---

**Chapter 4**

**APPLICATIONS, WAITING LIST AND TENANT SELECTION**

PART I:	THE APPLICATION PROCESS .....	4-3
4-I.A.	Overview .....	4-3
4-I.B.	Applying for Assistance [HCV GB, pp. 4-11 – 4-16, Notice PIH 2009-36] .....	4-3
4-I.C.	Accessibility of the Application Process .....	4-4
	Elderly and Disabled Populations [24 CFR 8 and HCV GB, pp. 4-11 – 4-13] .....	4-4
	Limited English Proficiency .....	4-4
4-I.D.	Placement on the Waiting List .....	4-5
	Ineligible for Placement on the Waiting List .....	4-5
	Eligible for Placement on the Waiting List .....	4-5
PART II:	MANAGING THE WAITING LIST .....	4-7
4-II.A.	Overview .....	4-7
4-II.B.	Organization of the Waiting List [24 CFR 982.204 and 205] .....	4-7
4-II.C.	Opening and Closing the Waiting List [24 CFR 982.206].....	4-8
	Closing the Waiting List.....	4-8
	Reopening the Waiting List.....	4-8
4-II.D.	Family Outreach [HCV GB, pp. 4-2 to 4-4].....	4-9
4-II.E.	Reporting Changes in Family Circumstances .....	4-10
4-II.F.	Updating the Waiting List [24 CFR 982.204] .....	4-10
	Purging the Waiting List .....	4-10
	Removal from the Waiting List.....	4-11
PART III:	SELECTION FOR HCV ASSISTANCE .....	4-13
4-III.A.	Overview .....	4-13
4-III.B.	Selection and HCV Funding Sources .....	4-13
	Special Admissions [24 CFR 982.203] .....	4-13
	Targeted Funding [24 CFR 982.204(e)].....	4-13
	Regular HCV Funding.....	4-13
4-III.C.	Selection Method.....	4-14
	Local Preferences [24 CFR 982.207; HCV p. 4-16] .....	4-14
	Income Targeting Requirement [24 CFR 982.201(b)(2)] .....	4-15
	Order of Selection.....	4-15
4-III.D.	Notification of Selection.....	4-16
4-III.E.	The Application Interview.....	4-16
4-III.F.	Completing the Application Process .....	4-18



## Administrative Plan -Table of Contents

---

### Chapter 5 BRIEFINGS AND VOUCHER ISSUANCE

PART I:	BRIEFINGS AND FAMILY OBLIGATIONS.....	5-1
5-I.A.	Overview .....	5-1
5-I.B.	Briefing [24 CFR 982.301].....	5-2
	Notification of Briefing .....	5-2
	In-Person Briefings.....	5-2
	Remote Briefings [Notice PIH 2020-32].....	5-3
	Accessibility Requirements for Persons with Disabilities and LEP Individuals .....	5-3
	Conducting Remote Briefings .....	5-4
	Oral Briefing [24 CFR 982.301(a)] .....	5-5
	Briefing Packet [24 CFR 982.301(b); New HCV GB, Housing Search and Leasing, p. 7].....	5-6
	Additional Items to be Included in the Briefing Packet .....	5-7
5-I.C.	Family Obligations .....	5-8
	Time Frames for Reporting Changes Required by Family Obligations .....	5-8
	Family Obligations [24 CFR 982.551].....	5-8
PART II:	SUBSIDY STANDARDS AND VOUCHER ISSUANCE.....	5-13
5-II.A.	Overview .....	5-13
5-II.B.	Determining Family Unit (Voucher) Size [24 CFR 982.402].....	5-13
5-II.C.	Exceptions to Subsidy Standards.....	5-15
5-II.D.	Voucher Issuance [24 CFR 982.302] .....	5-16
5-II.E.	Voucher Term and Extensions .....	5-17
	Voucher Term [24 CFR 982.303] .....	5-17
	Extensions of Voucher Term [24 CFR 982.303(b)].....	5-17
	Suspensions of Voucher Term [24 CFR 982.303(c)].....	5-19
	Expiration of Voucher Term .....	5-19

---

**Administrative Plan -Table of Contents**

---

**Chapter 6**  
**INCOME AND SUBSIDY DETERMINATIONS**  
[24 CFR Part 5, Subparts E and F; 24 CFR 982]

PART I:	ANNUAL INCOME.....	6-2
6-I.A.	Overview [24 CFR 5.609] .....	6-2
6-I.B.	Household Composition and Income .....	6-3
	Overview .....	6-3
	Summary of Income Included and Excluded by Person .....	6-3
	Temporarily Absent Family Members .....	6-4
	Family Members Permanently Confined for Medical Reasons .....	6-5
	Joint Custody of Dependents.....	6-5
	Caretakers for a Child.....	6-6
6-I.C.	Calculating Annual Income .....	6-7
	Anticipating Annual Income [24 CFR 5.609(c)(1)] .....	6-7
	Calculating Annual Income at Annual Reexamination [24 CFR.609(c)(2); Notice PIH 2023-27] .....	6-8
6-I.D.	Earned Income.....	6-9
6-I.E.	Earned Income Disallowance for Persons with Disabilities [24 CFR 5.617; Streamlining Final Rule (SFR) Federal Register 3/8/16; Notice PIH 2023-27].....	6-11
	Calculation of the Disallowance.....	6-11
	Calculation Method .....	6-11
6-I.F.	Business and Self-Employment Income [24 CFR 5.609(b)(28); Notice PIH 2023-27] .....	6-12
	Independent Contractors.....	6-12
	Business Expansion.....	6-12
	Capital Indebtedness.....	6-13
	Negative Business Income .....	6-13
	Withdrawal of Cash or Assets from a Business .....	6-13
	Co-owned Businesses.....	6-13
	Assets Owned by a Business Entity .....	6-13
6-I.G.	Student Financial Assistance [FR Notice 2/14/23 and Notice PIH 2023-27].....	6-14
	Introduction .....	6-14
	Pre-HOTMA Section 8 Student Financial Assistance Limitation [FR 4/10/06; Notice PIH 2015-21].....	6-14
	HOTMA Student Financial Assistance Requirements [24 CFR 5.609(b)(9)]......	6-15
	Types of Assistance.....	6-16
	Calculating Income from Student Financial Assistance [HOTMA Student Financial Assistance Resource Sheet; Notice PIH 2023-27].....	6-17

**Administrative Plan - Table of Contents**

6-I.H.	Periodic Payments .....	6-20
	Lump-Sum Payments for the Delayed Start of a Periodic Payment [24 CFR 5.609(b)(16)] .....	6-20
	Retirement Accounts [24 CFR 5.609(b)(26); Notice PIH 2023-27] .....	6-21
	Social Security Benefits [Notice PIH 2023-27] .....	6-21
	Alimony and Child Support.....	6-22
6-I.I.	Nonrecurring Income [24 CFR 5.609(b)(24) and Notice PIH 2023-27] .....	6-23
6-I.J.	Welfare Assistance .....	6-24
	Overview .....	6-24
	Sanctions Resulting in the Reduction of Welfare Benefits [24 CFR 5.615].....	6-24
6-I.K.	State Payments to Allow Individuals with Disabilities to Live at Home [24 CFR 5.609(b)(19)].....	6-25
6-I.L.	Civil Rights Settlements [24 CFR 5.609(b)(25); FR Notice 2/14/23] .....	6-25
6-I.M.	Additional Exclusions From Annual Income [24 CFR 5.609(b)] .....	6-26
PART II:	ASSETS.....	6-31
6-II.A.	Overview .....	6-31
6-II.B.	Assets Disposed of for Less Than Fair Market Value [24 CFR 5.603(b)(2)].....	6-32
6-II.C.	Asset Inclusions and Exclusions .....	6-33
6-II.D.	Determining Income from Assets.....	6-42
PART III:	ADJUSTED INCOME .....	6-45
6-III.A.	Introduction .....	6-45
	Overview .....	6-45
	Anticipating Expenses .....	6-45
6-III.B.	Dependent Deduction .....	6-46
6-III.C.	Elderly or Disabled Family Deduction.....	6-46
6-III.D.	Health and Medical Care Expenses Deduction [24 CFR 5.611(a)(3)(i) and 5.603(b)].....	6-47
	Definition of <i>Medical Expenses</i> .....	6-47
	Families That Qualify for Both and Medical and Disability Assistance Expenses .....	6-47
6-III.E.	Disability Assistance Expenses Deduction [24 CFR 5.603(b) and 24 CFR 5.611(a)(3)(ii)] .....	6-48
	Earned Income Limit on the Disability Assistance Expense Deduction.....	6-48
	Necessary and Reasonable Expenses .....	6-49
	Families That Qualify for Both Health and Medical and Disability Assistance Expenses .....	6-49

## Administrative Plan - Table of Contents

6-III.F.	Child Care Expense Deduction .....	6-50
	Clarifying the Meaning of <i>Child</i> for This Deduction .....	6-50
	Qualifying for the Deduction.....	6-50
	Earned Income Limit on Child Care Expense Deduction .....	6-51
	Eligible Child Care Expenses .....	6-52
6-III.G.	Hardship Exemptions [24 CFR 5.611(c), (d), and (e)].....	6-53
	Health and Medical Care and Disability Assistance Expenses [24 CFR 5.611(c); Notice PIH 2023-27] .....	6-53
	LBHAsed-In Relief .....	6-53
	General Relief .....	6-54
	Child Care Expense Hardship Exemption [24 CFR 5.611(d) and Notice PIH 2023-27].....	6-56
6-III.H.	Permissive Deductions [24 CFR 5.611(b)(1)(ii)].....	6-58
<b>PART IV:</b>	<b>CALCULATING FAMILY SHARE AND LBHA SUBSIDY .....</b>	<b>6-59</b>
6-IV.A.	Overview of Rent and Subsidy Calculations.....	6-59
	TTP Formula [24 CFR 5.628] .....	6-59
	Family Share [24 CFR 982.305(a)(5)] .....	6-59
	LBHA Subsidy [24 CFR 982.505(b)] .....	6-60
	Utility Reimbursement [24 CFR 982.514(b); 982.514(c)] .....	6-60
6-IV.B.	Financial Hardships Affecting Minimum Rent [24 CFR 5.630].....	6-61
	Overview .....	6-61
	HUD-Defined Financial Hardship.....	6-61
	Implementation of Hardship Exemption .....	6-61
6-IV.C.	Applying Payment Standards [24 CFR 982.505; 982.503(b)] .....	6-64
	Overview .....	6-64
	Changes in Payment Standards .....	6-64
	Reasonable Accommodation .....	6-65
6-IV.D.	Applying Utility Allowances [24 CFR 982.517] .....	6-66
	Overview .....	6-66
	Reasonable Accommodation and Individual Relief.....	6-66
	Utility Allowance Revisions.....	6-67
6-III.E.	Prorated Assistance for Mixed Families [24 CFR 5.520] .....	6-68
Exhibit 6-1:	Annual Income Full Definition.....	6-69
Exhibit 6-2:	Treatment of Family Assets.....	6-74
Exhibit 6-3:	The Effect of Welfare Benefit Reduction.....	6-75

## Administrative Plan -Table of Contents

---

### Chapter 7

#### VERIFICATION

[24 CFR 982.516, 24 CFR 982.551, 24 CFR 5.230, Notice PIH 2023-27]

PART I:	GENERAL VERIFICATION REQUIREMENTS.....	7-1
7-I.A.	Family Consent to Release of Information [24 CFR 982.516; 982.551; CFR 5.230; and Notice PIH 2023-27].....	7-1
	Consent Forms.....	7-1
	Form HUD-9886 [24 CFR 5.230(b)(1), b(2), (c)(4), and (c)(5); and Notice PIH 2023-27].....	7-2
	Penalties for Failing to Consent [24 CFR 5.232] .....	7-3
7-I.B.	Use of Other Programs' Income Determinations [24 CFR 5.609(c)(3) and Notice PIH 2023-27].....	7-4
7-I.C.	Streamlined Income Determinations [24 CFR 960.257(c); Notice PIH 2023-27] .....	7-8
7-I.D.	Verification Hierarchy [Notice PIH 2023-27].....	7-10
	File Documentation .....	7-10
7-I.E.	Level 5 and 6 Verification: Up-Front Income Verification (UIV).....	7-11
	Upfront Income Verification Using HUD's Enterprise Income Verification (EIV) System (Mandatory) .....	7-11
	Upfront Income Verification Using Non-HUD Systems .....	7-14
7-I.F.	Level 4 Verification [Notice PIH 2023-27].....	7-15
	EIV + Self-Certification .....	7-15
	Written Third-Party Verification from the Source .....	7-15
7-I.G.	Level 3 Verification: Written, Third-Party Form [Notice PIH 2023 27] .....	7-17
7-I.H.	Level 2: Oral Third-Party Verification [Notice PIH 2023-27].....	7-17
	When Third-Party Verification is Not Required [Notice PIH 2023-27] .....	7-18
7-I.I.	Level 1: Non-Third-Party Verification Technique: Self-Certification [Notice PIH 2023-27] .....	7-19
PART II:	VERIFYING FAMILY INFORMATION .....	7-21
7-II.A.	Verification of Legal Identity .....	7-21
7-II.B.	Social Security Numbers [24 CFR 5.216, Notice PIH 2023-27] .....	7-22
7-II.C.	Documentation of Age .....	7-24
7-II.D.	Family Relationships .....	7-25
	Marriage .....	7-25
	Separation or Divorce.....	7-25
	Absence of Adult Member .....	7-25
	Foster Children and Foster Adults.....	7-25
7-II.E.	Verification of Student Status .....	7-26
	General Requirements .....	7-26
	Restrictions on Assistance to Students Enrolled in Institutions of Higher Education .....	7-26

## Administrative Plan -Table of Contents

7-II.F.	Documentation of Disability .....	7-27
	Family Members Receiving SSA Disability Benefits .....	7-28
	Family Members Not Receiving SSA Disability Benefits .....	7-28
7-II.G.	Citizenship or Eligible Immigration Status [24 CFR 5.508] .....	7-29
	Overview .....	7-29
	U.S. Citizens and Nationals.....	7-29
	Eligible Immigrants .....	7-30
7-II.H.	Verification of Preference Status.....	7-30
PART III:	VERIFYING INCOME AND ASSETS .....	7-31
7-III.A.	Earned Income.....	7-31
	Tips.....	7-31
	Wages .....	7-31
7-III.B.	Business and Self Employment Income .....	7-32
7-III.C.	Periodic Payments and Payments In Lieu of Earnings.....	7-32
	Social Security/SSI Benefits [Notice PIH 2023-27] .....	7-32
7-III.D.	Alimony or Child Support [Notice PIH 2023-27] .....	7-34
7-III.E.	NONRECURRING INCOME [Notice PIH 2023-27].....	7-34
7-III.F.	Assets and Income From Assets.....	7-35
	Net Family Assets [24 CFR 5.603] .....	7-35
	Self-Certification of Real Property Ownership [24 CFR 5.618(b)(2)].....	7-36
7-III.G.	Assets Disposed of for Less Than Fair Market Value.....	7-37
7-III.H.	Net Income From Rental Property .....	7-37
7-III.I.	Federal Tax Refunds or Refundable Tax Credits [Notice PIH 2023-27] .....	7-38
7-III.J.	Retirement Accounts .....	7-38
7-III.K.	Income From Excluded Sources [Notice PIH 2023-27].....	7-38
7-III.L.	Zero Income Status Reviews [Notice PIH 2023-27] .....	7-39
7-III.M.	Student Financial Assistance [24 CFR 5.609(b)(9)] .....	7-40
7-III.L.	Parental Income of Students Subject to Eligibility Restrictions .....	7-41
PART IV:	VERIFYING MANDATORY DEDUCTIONS .....	7-42
7-IV.A.	Dependent and Elderly/Disabled Household Deductions .....	7-42
	Dependent Deduction .....	7-42
	Elderly/Disabled Family Deduction .....	7-42
7-IV.B.	Health and Medical Care Expense Deduction.....	7-44
	Amount of Expense .....	7-44
	Eligible Household .....	7-45
	Qualified Expenses .....	7-45
	Unreimbursed Expenses .....	7-45
	Expenses Incurred in Past Years .....	7-45
7-IV.C.	Disability Assistance Expenses .....	7-46
	Amount of Expense .....	7-46
	Family Member is a Person with Disabilities.....	7-48
	Family Member(s) Permitted to Work .....	7-48
	Unreimbursed Expenses .....	7-48

**Administrative Plan -Table of Contents**

---

7-IV.D. Child Care Expenses.....	7-49
Eligible Child.....	7-49
Unreimbursed Expense.....	7-49
Pursuing an Eligible Activity .....	7-50
Allowable Type of Child Care .....	7-51
Reasonableness of Expenses .....	7-51
Exhibit 7-1: Summary of Documentation Requirements for Noncitizens [HCV GB, pp. 5-9 and 5-10].....	7-52

**Administrative Plan -Table of Contents**

---

**Chapter 8**

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

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

PART I:	NSPIRE STANDARDS.....	8-3
8-I.A.	Inspectable Areas [24 CFR 5.703(a)(1) and 24 CFR 5.705(a)(2)] .....	8-3
8-I.B.	Affirmative Habitability Requirements [24 CFR 5.703(b), (c), and (d)] .....	8-3
8-I.C.	Modifications to Provide Accessibility [24 CFR 100.203; Notice 2003-31; and Notice PIH 2014-02] .....	8-4
8-I.D.	Additional Local Requirements [24 CFR 5.705(a)(3) and Notice PIH 2023-28].....	8-5
8-I.E.	Life-Threatening Deficiencies [Notice PIH 2023-28].....	8-6
8-I.F.	Owner and Family Responsibilities [24 CFR 982.404] .....	8-9
	Family Responsibilities .....	8-9
	Owner Responsibilities.....	8-9
8-I.G.	Lead-Based Paint.....	8-10
	Special Requirements for Children with Elevated Blood Lead Level [24 CFR 35.1225; FR Notice 1/13/17; Notice PIH 2017-13] .....	8-10
8-I.H.	Violation of Space Standards [24 CFR 5.703(d)(5)].....	8-11
PART II:	THE INSPECTION PROCESS.....	8-13
8-II.A.	Overview [24 CFR 982.405] .....	8-13
	Types of Inspections.....	8-13
	Inspection of LBHA-Owned Units [24 CFR 982.352(b)].....	8-13
	Inspection Costs [Notice PIH 2016-05; 24 CFR 5.705(d)] .....	8-14
	Remote Video Inspections (RVIs) [Notice PIH 2020-31] .....	8-14
	Notice and Scheduling.....	8-14
	Owner and Family Inspection Attendance .....	8-15
8-II.B.	Initial Inspection .....	8-15
	Approving Units [FR Notice 1/18/17; Notice PIH 2017-20; and 24 CFR 982.406] .....	8-15
	Timing of Initial Inspections [24 CFR 982.395(b)(2)(i)] .....	8-15
	Inspection Results and Reinspections .....	8-16
	Utilities .....	8-16
	Appliances.....	8-16
8-II.C.	Annual/Biennial Inspections [24 CFR 982.405 and 982.406; Notice PIH 2016-05] .....	8-17
	Scheduling the Inspection.....	8-17
8-II.D.	Special Inspections [24 CFR 982.405(g)] .....	8-17
8-II.E.	Quality Control Inspections [24 CFR 982.405(b); 24 CFR 985.3(e); HCV GB, p. 10-32] .....	8-18



## Administrative Plan -Table of Contents

---

8-II.F.	Inspection Results and Reinspections for Units Under HAP Contract .....	8-17
	Correction Timeframes.....	8-17
	Notification of Corrective Actions .....	8-17
	Extensions.....	8-19
	Reinspections.....	8-19
8-II.G.	Enforcing Owner Compliance .....	8-20
	HAP Abatement.....	8-20
	HAP Contract Termination.....	8-20
8-II.H.	Enforcing Family Compliance with HQS [24 CFR 982.404(b)] .....	8-20
PART III:	RENT REASONABLENESS [24 CFR 982.507] .....	8-21
8-III.A.	Overview .....	8-21
	LBHA-Owned Units [24 CFR 982.352(b)].....	8-21
8-III.B.	When Rent Reasonableness Determinations Are Required .....	8-22
	Owner-Initiated Rent Determinations .....	8-22
	LBHA- and HUD-Initiated Rent Reasonableness Determinations .....	8-22
	LIHTC- and HOME-Assisted Units [24 CFR 982.507(c)] .....	8-23
8-III.C.	How Comparability Is Established.....	8-23
	Factors to Consider.....	8-23
	Units that Must Not be Used as Comparables.....	8-23
	Rents Charged for Other Units on the Premises.....	8-24
8-III.D.	LBHA Rent Reasonableness Methodology.....	8-25
	How Market Data Is Collected .....	8-25
	How Rents Are Determined .....	8-25
Exhibit 8-1:	affirmative habitability requirements .....	8-27

---

**Administrative Plan -Table of Contents**

---

**Chapter 9  
GENERAL LEASING POLICIES**

9-I.A.	Tenant Screening .....	9-2
9-I.B.	Requesting Tenancy Approval [Form HUD-52517] .....	9-3
9-I.C.	Owner Participation.....	9-4
9-I.D.	Eligible Units.....	9-5
	Ineligible Units [24 CFR 982.352(a)] .....	9-5
	LBHA-Owned Units [24 CFR 982.352(b)].....	9-5
	Special Housing Types [24 CFR 982 Subpart M].....	9-5
	Duplicative Assistance [24 CFR 982.352(c)].....	9-6
	NSPIRE Standards [Notice PIH 2023-28] .....	9-6
	Unit Size .....	9-7
	Rent Reasonableness [24 CFR 982.305 and 24 CFR 982.507].....	9-7
	Rent Burden [24 CFR 982.508].....	9-7
9-I.E.	Lease and Tenancy Addendum .....	9-8
	Lease Form and Tenancy Addendum [24 CFR 982.308].....	9-8
	Lease Information [24 CFR 982.308(d)].....	9-8
	Term of Assisted Tenancy.....	9-9
	Security Deposit [24 CFR 982.313 (a) and (b)] .....	9-9
	Separate Non-Lease Agreements between Owner and Tenant .....	9-10
	LBHA Review of Lease .....	9-11
9-I.F.	Tenancy Approval [24 CFR 982.305].....	9-12
9-I.G.	HAP Contract Execution [24 CFR 982.305].....	9-13
9-I.H.	Changes in Lease or Rent [24 CFR 982.308].....	9-14

## Administrative Plan -Table of Contents

---

### Chapter 10

#### MOVING WITH CONTINUED ASSISTANCE AND PORTABILITY

PART I:	MOVING WITH CONTINUED ASSISTANCE.....	10-1
	10-I.A. Allowable Moves.....	10-1
	10-I.B. Restrictions On Moves .....	10-3
	Denial of Moves .....	10-3
	Restrictions on Elective Moves [24 CFR 982.354(c)] .....	10-4
	10-I.C. Moving Process .....	10-5
	Notification.....	10-5
	Approval .....	10-5
	Reexamination of Family Income and Composition.....	10-5
	Voucher Issuance and Briefing .....	10-5
	Housing Assistance Payments [24 CFR 982.311(d)].....	10-6
	Zero HAP Families Who Wish to Move [24 CFR 982.455].....	10-6
PART II:	PORTABILITY .....	10-7
	10-II.A. Overview .....	10-7
	10-II.B. Initial LBHA Role .....	10-8
	Allowable Moves under Portability.....	10-8
	Determining Income Eligibility.....	10-9
	Reexamination of Family Income and Composition.....	10-9
	Briefing.....	10-10
	Voucher Issuance and Term .....	10-10
	Voucher Extensions and Expiration .....	10-10
	Preapproval Contact with the Receiving LBHA .....	10-11
	Initial Notification to the Receiving LBHA .....	10-11
	Sending Documentation to the Receiving LBHA .....	10-12
	Initial Billing Deadline [Notice PIH 2016-09].....	10-13
	Monthly Billing Payments [Notice PIH 2016-09].....	10-14
	Annual Updates of Form HUD-50058 .....	10-14
	Denial or Termination of Assistance [24 CFR 982.355(c)(17)]... ..	10-14
	10-II.C. Receiving LBHA Role .....	10-15
	Responding to Initial LBHA’s Request [24 CFR 982.355(c)] .....	10-15
	Initial Contact with Family.....	10-15
	Briefing.....	10-16
	Income Eligibility and Reexamination.....	10-16
	Voucher Issuance.....	10-17
	Notifying the Initial LBHA .....	10-18
	Administering a Portable Family’s Voucher .....	10-18
	Absorbing a Portable Family.....	10-22

## Administrative Plan -Table of Contents

---

### Chapter 11 REEXAMINATIONS

PART I:	ANNUAL REEXAMINATIONS [24 CFR 982.516] .....	11-1
11-I.A.	Overview .....	11-1
11-I.B.	Scheduling Annual Reexaminations.....	11-2
	Notification of and Participation in the Annual Reexamination Process.....	11-2
11-I.C.	Conducting Annual Reexaminations.....	11-3
11-I.D.	Determining Ongoing Eligibility of Certain Students [24 CFR 982.552(b)(5)].....	11-5
11-I.E.	Calculating Annual Income at Annual Reexamination [24 CFR 5.609(c)(2) and Notice PIH 2023-27].....	11-6
11-I.F.	Effective Dates .....	11-8
PART II:	INTERIM REEXAMINATIONS [24 CFR 982.516; Notice PIH 2023-27] .....	11-9
11-II.A.	Overview .....	11-9
11-II.B.	Changes In Family and Household Composition.....	11-9
	Reporting.....	11-9
	New Family Members <u>Not</u> Requiring LBHA Approval .....	11-9
	New Family and Household Members Requiring Approval .....	11-10
	Departure of a Family or Household Member .....	11-11
11-II.C.	Changes Affecting Income or Expenses.....	11-12
	Overview .....	11-12
	Interim Decreases [24 CFR 982.516(c)(2) and Notice PIH 2023-27].....	11-12
	Interim Increases [24 CFR 982.516(c)(3) and Notice PIH 2023-27] .....	11-13
11-II.D.	Effective Dates [24 CFR 982.516(e) and Notice 2023-27] .....	11-16
	Changes Reported Timely [Notice PIH 2023-27] .....	11-17
	Changes Not Reported Timely [Notice PIH 2023-27] .....	11-17
PART III:	RECALCULATING FAMILY SHARE AND SUBSIDY AMOUNT .....	11-19
11-III.A.	Overview .....	11-19
11-III.B.	Changes In Payment Standards and Utility Allowances .....	11-19
	Payment Standards [24 CFR 982.505] .....	11-19
	Subsidy Standards [24 CFR 982.505(c)(4)] .....	11-20
	Utility Allowances [24 CFR 982.517(d)].....	11-20
11-III.C.	Notification of New Family Share and HAP Amount.....	11-20
11-III.D.	Discrepancies.....	11-21
PART IV:	NON-INTERIM REEXAMINATION TRANSACTIONS [Notice PIH 2023-27].....	11-23
Exhibit 11-1:	Calculating Income at Annual Reexamination .....	11-25

## Administrative Plan -Table of Contents

---

### Chapter 12 TERMINATION OF ASSISTANCE AND TENANCY

PART I:	<b>  </b> GROUND S FOR TERMINATION OF ASSISTANCE .....	12-1
	12-I.A. Overview .....	12-1
	12-I.B. Family No Longer Requires Assistance [24 CFR 982.455].....	12-1
	12-I.C. Family Chooses to Terminate Assistance.....	12-2
	12-I.D. Mandatory Termination of Assistance .....	12-2
	Eviction [24 CFR 982.552(b)(2), 24 CFR 5.2005(c)(1)] .....	12-2
	Failure to Provide Consent [24 CFR 982.552(b)(3)].....	12-2
	Failure to Document Citizenship [24 CFR 982.552(b)(4) and 24 CFR 5.514(c)] .....	12-3
	Failure to Disclose and Document Social Security Numbers [24 CFR 5.218(c), Notice PIH 2018-24] .....	12-3
	Methamphetamine Manufacture or Production [24 CFR 983.553(b)(1)(ii)].....	12-3
	Failure of Students to Meet Ongoing Eligibility Requirements [24 CFR 982.552(b)(5) and FR 4/10/06] .....	12-3
	Death of the Sole Family Member [24 CFR 982.311(d) and Notice PIH 2010-9] .....	12-4
	12-I.E. Mandatory Policies and Other Authorized Terminations.....	12-4
	Mandatory Policies [24 CFR 982.553(b) and 982.551(l)] .....	12-4
	Other Authorized Reasons for Termination of Assistance [24 CFR 982.552(c), 24 CFR 5.2005(c), 24 CFR 984.101(d)] .....	12-7
PART II:	<b>  </b> APPROACH TO TERMINATION OF ASSISTANCE.....	12-11
	12-II.A. Overview .....	12-11
	12-II.B. Method of Termination [24 CFR 982.552(a)(3)] .....	12-11
	12-II.C. Alternatives to Termination of Assistance .....	12-11
	Change in Household Composition.....	12-11
	Repayment of Family Debts.....	12-11
	12-II.D. Criteria for Deciding to Terminate Assistance.....	12-12
	Evidence .....	12-12
	Use of Criminal Conviction Records after Admission [24 CFR 5.903] .....	12-12
	Consideration of Circumstances [24 CFR 982.552(c)(2)(i)].....	12-12
	Reasonable Accommodation [24 CFR 982.552(c)(2)(iv)] .....	12-13
	12-II.E. Terminations Related to Domestic Violence, Dating Violence, Sexual Assault, Stalking, or Human Trafficking.....	12-14
	VAWA Protections against Terminations .....	12-14
	Limitations on VAWA Protections [24 CFR 5.2005(d) and (e)] .....	12-15
	Documentation of Abuse [24 CFR 5.2007].....	12-16
	Terminating the Assistance of a Domestic Violence Perpetrator .....	12-16
	12-II.F. Termination Notice.....	12-18

## Administrative Plan - Table of Contents

---

PART III:	TERMINATION OF TENANCY BY THE OWNER .....	12-19
	12-III.A. Overview .....	12-19
	12-III.B. Grounds for Owner Termination of Tenancy [24 CFR 982.310, 24 CFR 5.2005(c), and Form HUD-52641-A, Tenancy Addendum] .....	12-19
	Serious or Repeated Lease Violations .....	12-19
	Violation of Federal, State, or Local Law .....	12-19
	Criminal Activity or Alcohol Abuse .....	12-19
	Other Good Cause .....	12-20
	12-III.C. Eviction [24 CFR 982.310(e) and (f) and Form HUD-52641-A, Tenancy Addendum] .....	12-21
	12-III.D. Deciding Whether to Terminate Tenancy [24 CFR 982.310(h), 24 CFR 982.310(h)(4)] .....	12-20
	12-III.E. Effect of Tenancy Termination on the Family's Assistance .....	12-22
	Exhibit 12-1: Statement of Family Obligations .....	12-23

**Administrative Plan -Table of Contents**

---

**Chapter 13  
OWNERS**

PART I:	OWNERS IN THE HCV PROGRAM .....	13-3
	13-I.A. Owner Recruitment and Retention [HCV GB, pp. 2-4 to 2-6; HCV Landlord Strategy Guidebook for LBHAs] .....	13-3
	Recruitment .....	13-3
	Retention.....	13-4
	13-I.B. Basic HCV Program Requirements.....	13-5
	13-I.C. Owner Responsibilities [24 CFR 982.452] .....	13-7
	13-I.D. Owner Qualifications.....	13-8
	Owners Barred from Participation [24 CFR 982.306(a) and (b)] ..	13-8
	Leasing to Relatives [24 CFR 982.306(d), HCV GB p. 11-2] .....	13-8
	Conflict of Interest [24 CFR 982.161; HCV GB p. 8-19; Form HUD-52641, Section 13] .....	13-8
	Owner Actions That May Result in Disapproval of a Tenancy Request [24 CFR 982.306(c)].....	13-10
	Legal Ownership of Unit .....	13-11
	13-I.E. Non-Discrimination [HAP Contract – Form HUD-52641].....	13-11
PART II:	HAP CONTRACTS.....	13-13
	13-II.A. Overview .....	13-13
	13-II.B. HAP Contract Contents .....	13-14
	13-II.C. HAP Contract Payments.....	13-16
	General .....	13-16
	Owner Certification of Compliance .....	13-16
	Late HAP Payments [24 CFR 982.451(a)(5)] .....	13-17
	Termination of HAP Payments [24 CFR 982.311(b)].....	13-17
	13-II.D. Breach of HAP Contract [24 CFR 982.453] .....	13-18
	13-II.E. HAP Contract Term and Terminations.....	13-19
	13-II.F. Change In Ownership / Assignment of the HAP Contract [HUD-52641] .....	13-21
	13-II.G. Foreclosure [Notice PIH 2010-49] .....	13-22

---

**Administrative Plan - Table of Contents**

---

**Chapter 14  
PROGRAM INTEGRITY**

PART I:	PREVENTING, DETECTING, AND INVESTIGATING ERRORS AND PROGRAM ABUSE.....	14-3
14-I.A.	Preventing Errors and Program Abuse .....	14-3
14-I.B.	Detecting Errors and Program Abuse.....	14-4
	Quality Control and Analysis of Data .....	14-4
	Independent Audits and HUD Monitoring .....	14-4
	Individual Reporting of Possible Errors and Program Abuse .....	14-4
14-I.C.	Investigating Errors and Program Abuse .....	14-5
	When the LBHA Will Investigate .....	14-5
	Consent to Release of Information [24 CFR 982.516].....	14-5
	Analysis and Findings .....	14-5
	Consideration of Remedies.....	14-6
	Notice and Appeals.....	14-6
PART II:	CORRECTIVE MEASURES AND PENALTIES.....	14-7
14-II.A.	Subsidy Under- or Overpayments .....	14-7
	Corrections .....	14-7
	Reimbursement.....	14-7
14-II.B.	Family-Caused Errors and Program Abuse.....	14-8
	Family Reimbursement to LBHA [HCV GB pp. 22-12 to 22-13].	14-8
	LBHA Reimbursement to Family [HCV GB p. 22-12] .....	14-8
	Prohibited Actions .....	14-9
	Penalties for Program Abuse .....	14-9
14-II.C.	Owner-Caused Error or Program Abuse .....	14-10
	Owner Reimbursement to the LBHA .....	14-10
	Prohibited Owner Actions .....	14-10
	Remedies and Penalties .....	14-11
14-II.D.	LBHA-Caused Errors or Program Abuse.....	14-12
	De Minimis Errors [24 CFR 5.609(c)(4)].....	14-12
	Prohibited Activities.....	14-13
14-II.E.	Criminal Prosecution .....	14-14
14-II.F.	Fraud and Program Abuse Recoveries .....	14-14



## Administrative Plan -Table of Contents

---

### Chapter 15 SPECIAL HOUSING TYPES

[24 CFR 982 Subpart M; New HCV GB, Special Housing Types]

PART I:	SINGLE ROOM OCCUPANCY [24 CFR 982.602 through 982.605; Form HUD-52641; New HCV GB, <i>Special Housing Types</i> , p. 4] .....	15-3
	15-I.A. Overview .....	15-3
	15-I.B. Payment Standard, Utility Allowance, and HAP Calculation .....	15-3
	15-I.C. National Standards for the Physical Inspection of Real Estate (NSPIRE).....	15-3
PART II:	CONGREGATE HOUSING [24 CFR 982.606 through 982.609; Form HUD-52641; New HCV GB, <i>Special Housing Types</i> , p. 6] .....	15-5
	15-II.A. Overview .....	15-5
	15-II.B. Payment Standard, Utility Allowance, and HAP Calculation .....	15-6
	15-II.C. National Standards for the Physical Inspection of Real Estate (NSPIRE).....	15-6
PART III:	GROUP HOME [24 CFR 982.610 through 982.614; Form HUD-52641; and New HCV GB, <i>Special Housing Types</i> , p. 8] .....	15-7
	15-III.A. Overview .....	15-7
	15-III.B. Payment Standard, Utility Allowance, and HAP Calculation .....	15-7
	15-III.C. National Standards for the Physical Inspection of Real Estate (NSPIRE).....	15-8
PART IV:	SHARED HOUSING [24 CFR 982.615 through 982.618; Form HUD-52641; Notice PIH 2021-05; New HCV GB, <i>Special Housing Types</i> , p. 11].....	15-11
	15-IV.A. Overview .....	15-11
	15-IV.B. Payment Standard, Utility Allowance and HAP Calculation .....	15-13
	15-IV.C. National Standards for the Physical Inspection of Real Estate (NSPIRE).....	15-14
PART V:	COOPERATIVE HOUSING [24 CFR 982.619; New HCV GB, <i>Special Housing Types</i> , p. 14].....	15-15
	15-V.A. Overview .....	15-15
	15-V.B. Payment Standard, Utility Allowance and HAP Calculation .....	15-15
	15-V.C. National Standards for the Physical Inspection of Real Estate (NSPIRE).....	15-16

## Administrative Plan -Table of Contents

PART VI:	MANUFACTURED HOMES [24 CFR 982.620 through 982.624; FR Notice 1/18/17; New HCV GB, <i>Special Housing Types</i> , p. 15;]	15-17
15-VI.A.	Overview	15-17
15-VI.B.	Special Requirements for Manufactured Home Owners	
	Who Lease A Space	15-17
	Family Income	15-17
	Lease and HAP Contract	15-17
15-VI.C.	Payment Standard, Utility Allowance and HAP Calculation [FR Notice 1/18/17]	15-18
	Payment Standards	15-18
	Utility Allowance	15-18
	Space Rent	15-18
	Amortization Costs	15-19
	Housing Assistance Payment	15-19
	Rent Reasonableness	15-19
15-VI.D.	National Standards for the Physical Inspection of Real Estate (NSPIRE)	15-20
PART VII:	HOMEOWNERSHIP [24 CFR 982.625 through 982.643]	15-21
15-VII.A.	Overview [24 CFR 982.625]	15-21
15-VII.B.	Family Eligibility [24 CFR 982.627]	15-22
15-VII.C.	Selection of Families [24 CFR 982.626]	15-24
15-VII.D.	Eligible Units [24 CFR 982.628]	15-25
15-VII.E.	Additional LBHA Requirements for Search and Purchase [24 CFR 982.629]	15-27
15-VII.F.	Homeownership Counseling [24 CFR 982.630]	15-28
15-VII.G.	Home Inspections, Contract of Sale, and LBHA Disapproval of Seller [24 CFR 982.631]	15-29
	Home Inspections	15-29
	Contract of Sale	15-30
	Disapproval of a Seller	15-30
15-VII.H.	FINANCING [24 CFR 982.632]	15-31
15-VII.I.	Continued Assistance Requirements; Family Obligations [24 CFR 982.633]	15-32
15-VII.J.	Maximum Term of Homeowner Assistance [24 CFR 982.634]	15-33
15-VII.K.	Homeownership Assistance Payments and Homeownership Expenses [24 CFR 982.635]	15-34
15-VII.L.	Portability [24 CFR 982.636, 982.637, 982.353(b) and (c), 982.552, 982.553]	15-36
15-VII.M.	Moving with Continued Assistance [24 CFR 982.637]	15-37
15-VII.N.	Denial or Termination of Assistance [24 CFR 982.638]	15-38

## Administrative Plan -Table of Contents

---

### Chapter 16 PROGRAM ADMINISTRATION

PART I:	ADMINISTRATIVE FEE RESERVE [24 CFR 982.155] .....	16-3
PART II:	SETTING PROGRAM STANDARDS AND SCHEDULES .....	16-5
	16-II.A. Overview .....	16-5
	16-II.B. Payment Standards [24 CFR 982.503; HCV GB, Chapter 7] .....	16-5
	Updating Payment Standards .....	16-6
	Exception Payment Standards [24 CFR 982.503(c)(5), Notice PIH 2018-01, FR Notice 9/27/21].....	16-7
	Voluntary Use of Small Area FMRs [24 CFR 982.503, Notice PIH 2018-01] .....	16-7
	Unit-by-Unit Exceptions [24 CFR 982.503(b), 24 CFR 982.505(d), Notice PIH 2010-26] .....	16-7
	"Success Rate" Payment Standard Amounts [24 CFR 982.503(e)] .....	16-8
	Decreases in the Payment Standard below the Basic Range [24 CFR 982.503(d)] .....	16-8
	16-II.C. Utility Allowances [24 CFR 982.517].....	16-9
	Air Conditioning.....	16-9
	Reasonable Accommodation and Individual Relief.....	16-10
	Utility Allowance Revisions.....	16-10
PART III:	INFORMAL REVIEWS AND HEARINGS .....	16-11
	16-III.A. Overview .....	16-11
	16-III.B. Informal Reviews .....	16-11
	Decisions Subject to Informal Review [24 CFR 982.554(a) and (c)] .....	16-11
	Notice to the Applicant [24 CFR 982.554(a)] .....	16-12
	Scheduling an Informal Review .....	16-12
	Informal Review Procedures [24 CFR 982.554(b)] .....	16-12
	Remote Informal Reviews [Notice PIH 2020-32].....	16-13
	Conducting Remote Informal Reviews .....	16-14
	Ensuring Accessibility for Persons with Disabilities and LEP Individuals .....	16-13
	Informal Review Decision [24 CFR 982.554(b)].....	16-15
	16-III.C. Informal Hearings for Participants [24 CFR 982.555].....	16-16
	Decisions Subject to Informal Hearing .....	16-16
	Remote Informal Hearings [Notice PIH 2020-32] .....	16-17
	Ensuring Accessibility for Persons with Disabilities and LEP Individuals .....	16-18
	Conducting Informal Hearings Remotely .....	16-19
	Informal Hearing Procedures .....	16-20

**Administrative Plan -Table of Contents**

16-III.D. Hearing and Appeal Provisions for Noncitizens	
[24 CFR 5.514].....	16-27
Notice of Denial or Termination of Assistance	
[24 CFR 5.514(d)] .....	16-27
USCIS Appeal Process [24 CFR 5.514(e)] .....	16-28
Informal Hearing Procedures for Applicants	
[24 CFR 5.514(f)].....	16-28
Informal Hearing Procedures for Residents	
[24 CFR 5.514(f)].....	16-30
Retention of Documents [24 CFR 5.514(h)] .....	16-30
<b>PART IV: OWNER OR FAMILY DEBTS TO THE LBHA .....</b>	<b>16-31</b>
16-IV.A. Overview .....	16-31
16-IV.B. Repayment Policy.....	16-31
Owner Debts to the LBHA.....	16-31
Family Debts to the LBHA.....	16-32
Refusal to Enter into an Agreement .....	16-32
Repayment Agreement [24 CFR 792.103].....	16-32
General Repayment Agreement Guidelines.....	16-32
Repayment Agreements Involving Improper Payments.....	16-34
<b>PART V: SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP) .....</b>	<b>16-35</b>
16-V.A. Overview .....	16-35
16-V.B. SEMAP Certification [24 CFR 985.101] .....	16-36
HUD Verification Method.....	16-36
16-V.C. SEMAP Indicators [24 CFR 985.3 and form HUD-52648].....	16-37
SEMAP Indicators Chart.....	16-37
<b>PART VI: RECORD KEEPING .....</b>	<b>16-41</b>
16-VI.A. Overview .....	16-41
16-VI.B. Record Retention [24 CFR 982.158; 24 CFR 908.101] .....	16-41
16-VI.C. Records Management .....	16-42
Privacy Act Requirements [24 CFR 5.212 and Form-9886].....	16-42
Upfront Income Verification (UIV) Records .....	16-43
Criminal Records.....	16-43
Medical/Disability Records.....	16-43
Documentation of Domestic Violence, Dating Violence, Sexual Assault, Stalking or Human Trafficking.....	16-43
<b>PART VII: REPORTING AND RECORD KEEPING FOR CHILDREN WITH ELEVATED BLOOD LEAD LEVEL .....</b>	<b>16-45</b>
16-VII.A. Overview .....	16-45
16-VII.B. Reporting Requirement [24 CFR 35.1225(e) ); Notice PIH 2017-13] .....	16-45
16-VII.C. Data Collection and Record Keeping [24 CFR 35.1225(f)].....	16-45

## Administrative Plan -Table of Contents

---

PART VIII: DETERMINATION OF INSUFFICIENT FUNDING .....	16-47
16-VIII.A. Overview.....	16-47
16-VIII.B. Methodology.....	16-47
PART IX: VIOLENCE AGAINST WOMEN ACT (VAWA): NOTIFICATION, DOCUMENTATION, CONFIDENTIALITY .....	16-49
16-IX.A. Overview.....	16-49
16-IX.B. Definitions [24 CFR 5.2003].....	16-49
16-IX.C. Notification [24 CFR 5.2005(a), 42 USC 13925] .....	16-51
Notification to Public .....	16-51
Notification to Program Applicants and Participants [24 CFR 5.2005(a)(1)].....	16-52
Notification to Owners and Managers.....	16-53
16-IX.D. Documentation [24 CFR 5.2007].....	16-54
Conflicting Documentation [24 CFR 5.2007(e)].....	16-55
Discretion to Require No Formal Documentation [24 CFR 5.2007(d)] .....	16-55
Failure to Provide Documentation [24 CFR 5.2007(c)] .....	16-56
16-IX.E. CONFIDENTIALITY [24 CFR 5.2007(b)(4)].....	16-56
Exhibit 16-1: Sample Notice of Occupancy Rights Under the Violence Against Women Act, Form HUD-5380 .....	16-57
Exhibit 16-2: Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation, Form HUD-5382 .....	16-63
Exhibit 16-3: Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking (HCV Version).....	16-65
Exhibit 16-4: Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, Form HUD-5383 .....	16-69
Exhibit 16-5: Model Owner Notification of Rights and Obligations .....	16-73

---

**Administrative Plan -Table of Contents**

---

**Chapter 17  
PROJECT-BASED VOUCHERS**

PART I:	GENERAL REQUIREMENTS.....	17-3
17-I.A.	Overview [24 CFR 983.5; FR Notice 1/18/17; Notice PIH 2017-21] .....	17-3
	Additional Project-Based Units [FR Notice 1/18/17; Notice PIH 2017-21; FR Notice 1/24/22] .....	17-3
	Units Not Subject to the PBV Program Limitation [FR Notice 1/18/17; Notice PIH 2017-21] .....	17-4
17-I.B.	Tenant-Based vs. Project-Based Voucher Assistance [24 CFR 983.2].....	17-5
17-I.C.	Relocation Requirements [24 CFR 983.7] .....	17-5
17-I.D.	Equal Opportunity Requirements [24 CFR 983.8].....	17-5
PART II:	PBV OWNER PROPOSALS .....	17-7
17-II.A.	Overview .....	17-7
17-II.B.	Owner Proposal Selection Procedures [24 CFR 983.51(b)].....	17-7
	Units Selected Non-Competitively [FR Notice 1/18/17; Notice PIH 2017-21; 24 CFR 983.51(b)] .....	17-7
	Solicitation and Selection of PBV Proposals [24 CFR 983.51(c)] .....	17-8
	LBHA-Owned Units [24 CFR 983.51(e), 983.59, FR Notice 1/18/17 and Notice PIH 2017-21].....	17-11
	LBHA Notice of Owner Selection [24 CFR 983.51(d)].....	17-12
17-II.C.	Housing Type [24 CFR 983.52] .....	17-12
17-II.D.	Prohibition of Assistance for Certain Units.....	17-13
	Ineligible Housing Types [24 CFR 983.53] .....	17-13
	Subsidized Housing [24 CFR 983.54].....	17-13
17-II.E.	Subsidy Layering Requirements [24 CFR 983.55, Notice PIH 2013-11, and FR Notice 3/13/23].....	17-14
17-II.F.	Cap On Number of PBV Units in Each Project .....	17-15
	25 Percent per Project Cap [24 CFR 983.56, FR Notice 1/18/17, and Notice PIH 2017-21].....	17-15
	Exceptions to 25 Percent per Project Cap [FR Notice 1/18/17; Notice PIH 2017-21; FR Notice 1/24/22] ...	17-15
	Projects not Subject to a Project Cap [FR Notice 1/18/17; Notice PIH 2017-21] .....	17-16
	Promoting Partially Assisted Projects [24 CFR 983.56(c)] .....	17-16

**Administrative Plan - Table of Contents**

17-II.G.	Site Selection Standards .....	17-17
	Compliance with PBV Goals, Civil Rights Requirements, and NSPIRE Site Standards [24 CFR 983.57(b)].....	17-17
	Existing and Rehabilitated Housing Site and Neighborhood Standards [24 CFR 983.57(d)] .....	17-18
	New Construction Site and Neighborhood Standards [24 CFR 983.57(e)] .....	17-18
17-II.H.	Environmental Review [24 CFR 983.58].....	17-19
<b>PART III:</b>	<b>DWELLING UNITS .....</b>	<b>17-21</b>
17-III.A.	Overview .....	17-21
17-III.B.	National Standards for the Physical Inspection of Real Estate [24 CFR 983.101].....	17-21
	Lead-based Paint [24 CFR 983.101(c)].....	17-21
17-III.C.	Housing Accessibility for Persons with Disabilities .....	17-21
17-III.D.	Inspecting Units.....	17-22
	Pre-selection Inspection [24 CFR 983.103(a)] .....	17-22
	Pre-HAP Contract Inspections [24 CFR 983.103(b), FR Notice 1/18/17, and Notice PIH 2017-20].....	17-22
	Turnover Inspections [24 CFR 983.103(c)].....	17-22
	Annual/Biennial Inspections [24 CFR 983.103(d), FR Notice 6/25/14].....	17-22
	Alternative Inspections [24 CFR 983.103(g); Notice PIH 2016-05] .....	17-23
	Other Inspections [24 CFR 983.103(e)] .....	17-23
	Inspecting LBHA-Owned Units [24 CFR 983.103(f)].....	17-23
<b>PART IV:</b>	<b>REHABILITATED AND NEWLY CONSTRUCTED UNITS.....</b>	<b>17-25</b>
17-IV.A.	Overview [24 CFR 983.151] .....	17-25
17-IV.B.	Agreement to Enter into HAP Contract.....	17-25
	Content of the Agreement [24 CFR 983.152(d)].....	17-26
	Execution of the Agreement [24 CFR 983.153].....	17-26
17-IV.C.	Conduct of Development Work.....	17-27
	Labor Standards [24 CFR 983.154(b)] .....	17-27
	Owner Disclosure [24 CFR 983.154(d) and (e)] .....	17-27
17-IV.D.	Completion of Housing .....	17-28
	Evidence of Completion [24 CFR 983.155(b)] .....	17-28
	LBHA Acceptance of Completed Units [24 CFR 983.156].....	17-28

## Administrative Plan - Table of Contents

PART V:	HOUSING ASSISTANCE PAYMENTS CONTRACT (HAP) .....	17-29
17-V.A.	Overview .....	17-29
17-V.B.	HAP Contract Requirements .....	17-29
	Contract Information [24 CFR 983.203] .....	17-29
	Execution of the HAP Contract [24 CFR 983.204].....	17-30
	Term of HAP Contract [24 CFR 983.205, FR Notice 1/18/17, and Notice PIH 2017-21].....	17-30
	Statutory Notice Requirements: Contract Termination or Expiration [24 CFR 983.206; FR Notice 1/18/17, and Notice PIH 2017-21].....	17-32
	Remedies for NSPIRE Deficiencies [24 CFR 983.208(b)] .....	17-32
17-V.C.	Amendments to the HAP Contract .....	17-33
	Substitution of Contract Units [24 CFR 983.207(a)] .....	17-33
	Addition of Contract Units [FR Notice 1/18/17 and Notice PIH 2017-21].....	17-33
17-V.D.	HAP Contract Year, Anniversary and Expiration Dates [24 CFR 983.207(b) and 983.302(e)] .....	17-33
17-V.E.	Owner Responsibilities Under the HAP Contract [24 CFR 983.210] .....	17-34
17-V.F.	Additional HAP Requirements.....	17-35
	Housing Quality and Design Requirements [24 CFR 983.101(e) and 983.208(a)] .....	17-35
	Vacancy Payments [24 CFR 983.352(b)].....	17-35
PART VI:	SELECTION OF PBV PROGRAM PARTICIPANTS.....	17-37
17-VI.A.	Overview .....	17-37
17-VI.B.	Eligibility for PBV Assistance [24 CFR 983.251(a) and (b)] .....	17-37
	In-Place Families [24 CFR 983.251(b)] .....	17-38
17-VI.C.	Organization of the Waiting List [24 CFR 983.251(c)] .....	17-39
17-VI.D.	Selection From the Waiting List [24 CFR 983.251(c)] .....	17-39
	Income Targeting [24 CFR 983.251(c)(6)] .....	17-39
	Units with Accessibility Features [24 CFR 983.251(c)(7)].....	17-39
	Preferences [24 CFR 983.251(d), FR Notice 11/24/08].....	17-40
17-VI.E.	Offer of PBV Assistance .....	17-41
	Refusal of Offer [24 CFR 983.251(e)(3)].....	17-41
	Disapproval by Landlord [24 CFR 983.251(e)(2)].....	17-41
	Acceptance of Offer [24 CFR 983.252] .....	17-41
17-VI.F.	Owner Selection of Tenants .....	17-42
	Leasing [24 CFR 983.253(a)].....	17-42
	Filling Vacancies [24 CFR 983.254(a)] .....	17-42
	Reduction in HAP Contract Units Due to Vacancies [24 CFR 983.254(b)] .....	17-42
17-VI.G.	Tenant Screening [24 CFR 983.255].....	17-43
	LBHA Responsibility .....	17-43
	Owner Responsibility .....	17-43



## Administrative Plan -Table of Contents

---

PART VII: OCCUPANCY.....	17-44
17-VII.A. Overview .....	17-44
17-VII.B. Lease [24 CFR 983.256].....	17-44
Form of Lease [24 CFR 983.256(b)].....	17-44
Lease Requirements [24 CFR 983.256(c)].....	17-44
Tenancy Addendum [24 CFR 983.256(d)].....	17-46
Initial Term and Lease Renewal [24 CFR 983.256(f)].....	17-46
Changes in the Lease [24 CFR 983.256(e)] .....	17-46
Owner Termination of Tenancy [24 CFR 983.257] .....	17-47
Continuation of Housing Assistance Payments [24 CFR 983.258] .....	17-47
Security Deposits [24 CFR 983.259].....	17-48
17-VII.C. Moves .....	17-49
Overcrowded, Under-Occupied, and Accessible Units [24 CFR 983.260].....	17-49
Family Right to Move [24 CFR 983.261] .....	17-50
Emergency Transfers under VAWA [Notice PIH 2017-08] .....	17-51
17-VII.D. Exceptions to the Occupancy Cap [24 CFR 983.262].....	17-52
PART VIII: DETERMINING RENT TO OWNER .....	17-55
17-VIII.A. Overview.....	17-55
17-VIII.B. Rent Limits [24 CFR 983.301] .....	17-55
Certain Tax Credit Units [24 CFR 983.301(c)].....	17-55
Reasonable Rent [24 CFR 983.301(e) and 983.302(c)(2)] .....	17-56
Use of FMRs, Exception Payment Standards, and Utility Allowances [24 CFR 983.301(f)].....	17-57
Use of Small Area FMRs (SAFMRs) [24 CFR 888.113(h)].....	17-57
Redetermination of Rent [24 CFR 983.302] .....	17-58
LBHA-Owned Units [24 CFR 983.301(g)].....	17-58
17-VIII.C. Reasonable Rent [24 CFR 983.303] .....	17-59
When Rent Reasonable Determinations Are Required .....	17-59
How to Determine Reasonable Rent .....	17-59
LBHA-Owned Units.....	17-60
Owner Certification of Reasonable Rent.....	17-60
17-VIII.D. Effect of Other Subsidy and Rent Control.....	17-60
Other Subsidy [24 CFR 983.304].....	17-60
Rent Control [24 CFR 983.305].....	17-60

**Administrative Plan -Table of Contents**

---

PART IX: PAYMENTS TO OWNER..... 17-61

    17-IX.A. Housing Assistance Payments [24 CFR 983.351]..... 17-61

    17-IX.B. Vacancy Payments [24 CFR 983.352] ..... 17-61

    17-IX.C. Tenant Rent to Owner [24 CFR 983.353] ..... 17-63

        Tenant and LBHA Responsibilities..... 17-63

        Utility Reimbursements..... 17-63

    17-IX.D. Other Fees and Charges [24 CFR 983.354]..... 17-64

        Meals and Supportive Services ..... 17-64

        Other Charges by Owner ..... 17-64

Exhibit 17-1: PBV Development Information..... 17-65

Exhibit 17-2: Special Provisions Applying to TPVs Awarded as Part of a  
Voluntary Conversion of Public Housing Units in Projects that  
Include RAD PBV Units..... 17-69

## Administrative Plan -Table of Contents

---

### Chapter 18 SPECIAL PURPOSE VOUCHERS

PART I:	FAMILY UNIFICATION PROGRAM (FUP) .....	18-2
18-I.A.	Program Overview [Fact Sheet, Housing Choice Voucher Program Family Unification Program (FUP)] .....	18-2
	Overview .....	18-2
	Assigning Vouchers [FUP FAQs] .....	18-3
18-I.B.	Public Child Welfare Agency (PCWA) .....	18-3
	Supportive Services .....	18-4
18-I.C.	FUP Family Voucher Eligibility Criteria .....	18-5
18-I.D.	FUP Youth Voucher Eligibility Extension of Assistance Criteria .....	18-7
	Eligibility Criteria.....	18-7
18-I.E.	Assistance Period [FR Notice 1/24/22] .....	10-8
	Maximum Assistance Period.....	18-8
	Extension of Assistance.....	18-8
	Statutory Exceptions.....	18-8
	Education, Workforce Development, or Employment Activities.....	18-10
	FSS Enrollment at 24 Months .....	18-11
	FSS Enrollment Between 36 and 48 Months .....	18-12
	FSS Enrollment After 48 Months.....	18-12
	Extensions of Assistance .....	18-12
	No FSS Program or Unable to Enroll in FSS .....	18-13
	Verification Prior to Annual Reexam.....	18-13
	Termination of Assistance for Failure to Meet Conditions .....	18-15
18-I.F.	Referrals and Waiting List Management.....	18-16
	Referrals .....	18-16
	Waiting List Placement .....	18-17
	Waiting List Selection .....	18-17
18-I.G.	LBHA HCV Eligibility Determination .....	18-18
	Additional FUP Eligibility Factors [FUP FAQs] .....	18-18
19.I.H.	Lease Up [FR Notice 1/24/22] .....	18-19
18-I.I.	Termination of Assistance .....	18-20
	General Requirements .....	18-20
	FUP Family Vouchers .....	18-20
	FUP Youth Vouchers .....	18-21
18-I.J.	FUP Portability .....	18-22
	Considerations for FUP Youth Vouchers.....	18-22
18-I.K.	Project-Basing FUP Vouchers [Notice PIH 2017-21; FR Notice 1/24/22] .....	18-22

**Administrative Plan -Table of Contents**

---

PART II:	FOSTER YOUTH TO INDEPENDENCE INITIATIVE .....	18-23
	18-II.A. Program Overview [Notice PIH 2020-28; Notice PIH 2023-04; FR Notice 1/24/22] .....	18-23
	18-II.B. Partnering Agencies [Notice PIH 2023-04; FYI Updates and Partnering Opportunities Webinar].....	18-24
	Public Child Welfare Agency (PCWA) .....	18-24
	Continuum of Care (CoC) and Other Partners .....	18-24
	18-II.C. Youth Eligibility Criteria [Notice PIH 2023-04; FYI Q&As; FYI FAQs].....	18-25
	18-II.D. Supportive Services [Notice PIH 2023-04; FYI Updates and Partnering Opportunities Webinar; FYI Q&As].....	18-26
	18-II.E. Referrals and Waiting List Management [Notice PIH 2023-04; FYI Updates and Partnering Opportunities Webinar FYI FAQs] .....	18-27
	Referrals .....	18-27
	Waiting List Placement [Notice PIH 2023-04 and FYI FAQs] ...	18-28
	Waiting List Selection .....	18-28
	18-II.F. LBHA HCV Eligibility Determination [FYI FAQs].....	18-29
	Additional Eligibility Factors .....	18-29
	18-II.G. Lease Up [FR Notice 1/24/22] .....	18-30
	Turnover [Notice PIH 2023-04] .....	18-30
	18-II.H. Maximum Assistance Period [Notice PIH 2023-04 and FYI FAQs; FR Notice 1/24/22] .....	18-31
	Extension of Assistance.....	18-31
	Statutory Exceptions.....	18-31
	Education, Workforce Development, or Employment Activities.....	18-33
	FSS Enrollment at 24 Months .....	18-34
	FSS Enrollment Between 36 and 48 Months .....	18-34
	FSS Enrollment After 48 Months.....	18-35
	Extensions of Assistance .....	18-35
	No FSS Program or Unable to Enroll in FSS .....	18-35
	Verification Prior to Annual Reexam .....	18-35
	Termination of Assistance for Failure to Meet Conditions\.....	18-37
	18-II.I. Termination of Assistance [FYI FAQs] .....	18-37
	18-II.J. Portability [FYI FAQs].....	18-38
	18-II.K. Project-Basing FYI Vouchers [FYI FAQs; FR Notice 1/24/22; Notice PIH 2024-03] .....	18-38

---

## Administrative Plan -Table of Contents

---

PART III:	VETERANS AFFAIRS SUPPORTIVE HOUSING (VASH) PROGRAM .....	18-39
18-III.A.	Overview .....	18-39
18-III.B.	Referrals [FR Notice 9/27/21 and HUD-VASH Qs and As].....	18-40
18-III.C.	HCV Program Eligibility [FR Notice 9/27/21] .....	18-41
	Social Security Numbers .....	18-41
	Proof of Age .....	18-41
	Photo Identification .....	18-41
	Income Eligibility .....	18-42
	Screening .....	18-42
	Denial of Assistance [Notice PIH 2008-37].....	18-42
18-III.D.	Changes in Family Composition .....	18-43
	Adding Family Members [FR Notice 9/27/21] .....	18-43
	Remaining Family Members [HUD-VASH Qs and As].....	18-43
	Family Break Up [HUD-VASH Qs and As] .....	18-43
18-III.E.	Leasing [FR Notice 9/27/21] .....	18-44
	Waiting List.....	18-44
	Exception Payment Standards .....	18-44
	Voucher Issuance.....	18-44
	Initial Lease Term.....	18-44
	Ineligible Housing [FR Notice 6/18/14].....	18-44
	Pre-Inspections .....	18-45
18-III.F.	Portability [FR Notice 9/27/21 and Notice PIH 2011-53].....	18-46
	General Requirements .....	18-46
	Portability within the Initial VAMC or DSP's Catchment Area..	18-46
	Portability Outside of the Initial VAMC or DSP's Catchment Area .....	18-46
	Portability Outside of the Initial VAMC or DSP's Catchment Area under VAWA.....	18-47
18-III.G.	Termination of Assistance [FR Notice 9/27/21] .....	18-48
	Cessation of Case Management.....	18-48
	VAWA [FR Notice 9/27/21] .....	18-48
18-III.H.	Project-Basing VASH Vouchers .....	18-49
	General Requirements [Notice PIH 2017-21 and FR Notice 9/27/21] .....	18-49
	Failure to Participate in Case Management [FR Notice 9/27/21].....	18-50
	Moves [HUD-VASH Qs and As, FR Notice 9/27/21] .....	18-50

**Administrative Plan -Table of Contents**

PART IV:	MAINSTREAM VOUCHER PROGRAM .....	18-51
	18-IV.A. Program Overview [Notice PIH 2020-01] .....	18-51
	18-IV.B. Eligible Population [Notice PIH 2020-01 and Notice PIH 2020-22] .....	18-52
	18-IV.C. Partnership And Supportive Services [Notice PIH 2020-01].....	18-52
	18-IV.D. Waiting List Administration.....	18-53
	General Waiting List Requirements [Notice PIH 2020-01 and Mainstream Voucher Basics Webinar, 10/15/20].....	18-53
	Admission Preferences [Notice PIH 2020-01; FY17 Mainstream NOFA; FY19 Mainstream NOFA] .....	18-53
	18-IV.E. Portability [Notice PIH 2020-01 and Mainstream Voucher Basics Webinar, 10/15/20] .....	18-54
	18-IV.F. Project-Basing Mainstream Vouchers [FY19 Mainstream Voucher NOFA Q&A] .....	18-54
PART IV:	NON-ELDERLY DISABLED (NED) VOUCHERS .....	18-55
	18-V.A. Program Overview [Notice PIH 2013-19] .....	18-55
	18-V.B. Eligible Population .....	18-56
	General Requirements [Notice PIH 2013-19] .....	18-56
	NED Category 2 [Notice PIH 2013-19 and NED Category 2 FAQs].....	18-56
	18-V.C. Waiting List.....	18-57
	General Requirements [Notice PIH 2013-19] .....	18-57
	NED Category 2 Referrals [NED Category 2 FAQs] .....	18-57
	Reissuance of Turnover Vouchers [Notice PIH 2013-19] .....	18-58
	18-V.D. Lease Up [Notice PIH 2013-19].....	18-59
	Briefings .....	18-59
	Voucher Term.....	18-59
	Special Housing Types [Notice PIH 2013-19 and NED Category 2 FAQs].....	18-60
	18-V.E. Portability [NED Category 2 FAQs] .....	18-60
PART VI:	STABILITY VOUCHER PROGRAM.....	18-61
	18-VI.A. Program Overview [Notice PIH 2022-24] .....	18-61
	18-VI.B. Partnering Organization [Notice PIH 2022-24] .....	18-61
	18-VI.C. Referrals [Notice PIH 2022-24] .....	18-62
	CoC Referrals .....	18-62
	Referrals from Outside the CoC .....	18-63
	18-VI.D. Waiting List [Notice PIH 2022-24].....	18-63
	HCV Waiting List.....	18-63
	SV Waiting List.....	18-64
	HCV Waiting List Preferences .....	18-64
	SV Waiting List Preferences .....	18-64

## **Administrative Plan -Table of Contents**

---

18-VI.E. Family Eligibility [Notice PIH 2022-24] .....	18-65
Referring Agency Determination of Eligibility.....	18-65
Mandatory Denials .....	18-65
Permissive Denial .....	18-66
Self-Certification of Income at Admission.....	18-68
Recently Conducted Income Determinations .....	18-68
EIV Income Validation.....	18-69
Social Security Number and Citizenship Status Verification.....	16-69
Age and Disability Verifications .....	18-70
Income Targeting.....	18-70
18-VI.F. Housing Search And Leasing .....	18-71
Initial Voucher Term .....	18-71
Pre-Inspections .....	18-71
Initial Lease Term.....	18-71
Portability .....	18-72
Family Briefing .....	18-72
18-VI.G. Payment Standards .....	18-73
Overview .....	18-73
Increases in Payment Standards .....	18-73
18-VI.H. Project-Based Units.....	18-74
Exhibit 18-1: Sample Stability Voucher (SV) Homeless Provider’s Certification .....	18-75
Exhibit 18-2: Sample Victim Service Provider’s Certification .....	18-77
Exhibit 18-3: Sample SV Memorandum Of Understanding.....	18-79
GLOSSARY	

---

## Administrative Plan -Table of Contents

---



## Chapter 1

### OVERVIEW OF THE PROGRAM AND PLAN

#### INTRODUCTION

The LBHA receives its funding for the Housing Choice Voucher (HCV) program from the Department of Housing and Urban Development. The LBHA is not a federal department or agency. A public housing agency (LBHA) 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 LBHA enters into an Annual Contributions Contract (ACC) with HUD to administer the program requirements on behalf of HUD. The LBHA must ensure compliance with federal laws, regulations and notices and must establish policy and procedures to clarify federal requirements and to ensure consistency in program operation.

This chapter contains information about the LBHA and its programs with emLBHAsis 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 (LBHA). This part includes a description of the LBHA, 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 LBHA

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

This part explains the origin of the LBHA's creation and authorization, the general structure of the organization, and the relationship between the LBHA Board and staff.

## **1-I.B. ORGANIZATION AND STRUCTURE OF THE LBHA**

The Section 8 tenant-based Housing Choice Voucher (HCV) assistance program is funded by the federal government and administered by the **Long Branch Housing Authority** for the jurisdiction of **City of Long Branch / County of Monmouth/ County of Ocean for The VASH Program**.

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

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

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

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

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

### LBHA Policy

The LBHA's mission is to provide safe, decent and sanitary housing conditions for very low- income families and to manage resources efficiently. The LBHA is to promote personal, economic and social upward mobility to provide families the opportunity to make the transition from subsidized to non-subsidized housing.

## **1-I.D. THE LBHA'S PROGRAMS**

The following programs are included under this administrative plan:

### LBHA Policy

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

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

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

- Administer applicable federal and state laws and regulations to achieve high ratings in performance measurement indicators while maintaining efficiency in program operation to ensure fair and consistent treatment of clients served.
- Provide decent, safe, and sanitary housing – in compliance with program housing quality standards – for very low income families while ensuring that family rents are fair, reasonable, and affordable.
- Encourage self sufficiency of participant families and assist in the expansion of family opportunities which address educational, socio-economic, recreational and other human services needs.
- Promote fair housing and the equal opportunity for very low-income families of all ethnic backgrounds to experience freedom of housing choice.
- Promote a housing program which maintains quality service and integrity while providing an incentive to private property owners to rent to very low-income families.
- Promote a market-driven housing program that will help qualified low-income families be successful in obtaining affordable housing and increase the supply of housing choices for such families.
- Create positive public awareness and expand the level of family, owner, and community support in accomplishing the LBHA'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 LBHA's support systems and a high level of commitment to our employees and their development.

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



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

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

The intent of this section is to provide the public and staff with information related to the overall operation of the program. There have been many changes to the program since its inception in 1974 and a brief history of the program will assist the reader to better understand the program.

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

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

Under the Certificate program, federal housing assistance payments were made directly to private owners of rental housing, where this housing was made available to lower-income families. Eligible families were able to select housing in the private rental market. 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.

On July 29, 2016, the Housing Opportunity Through Modernization Act of 2016 (HOTMA) was signed into law. HOTMA made numerous changes to statutes governing HUD programs, including sections of the United States Housing Act of 1937. Title I of HOTMA contains 14 different sections that impact the public housing and Section 8 programs. The Final Rule implementing broad changes to income and asset in Sections 102 and 104 of HOTMA, and for LBHAs that administer the public housing program over-income provisions in Section 103, was officially published in the *Federal Register* on February 14, 2023. On September 29, 2023, HUD issued notice PIH 2023-27, which provided guidance to LBHAs on the implementation of the program changes described in the Final Rule.

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

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

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

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

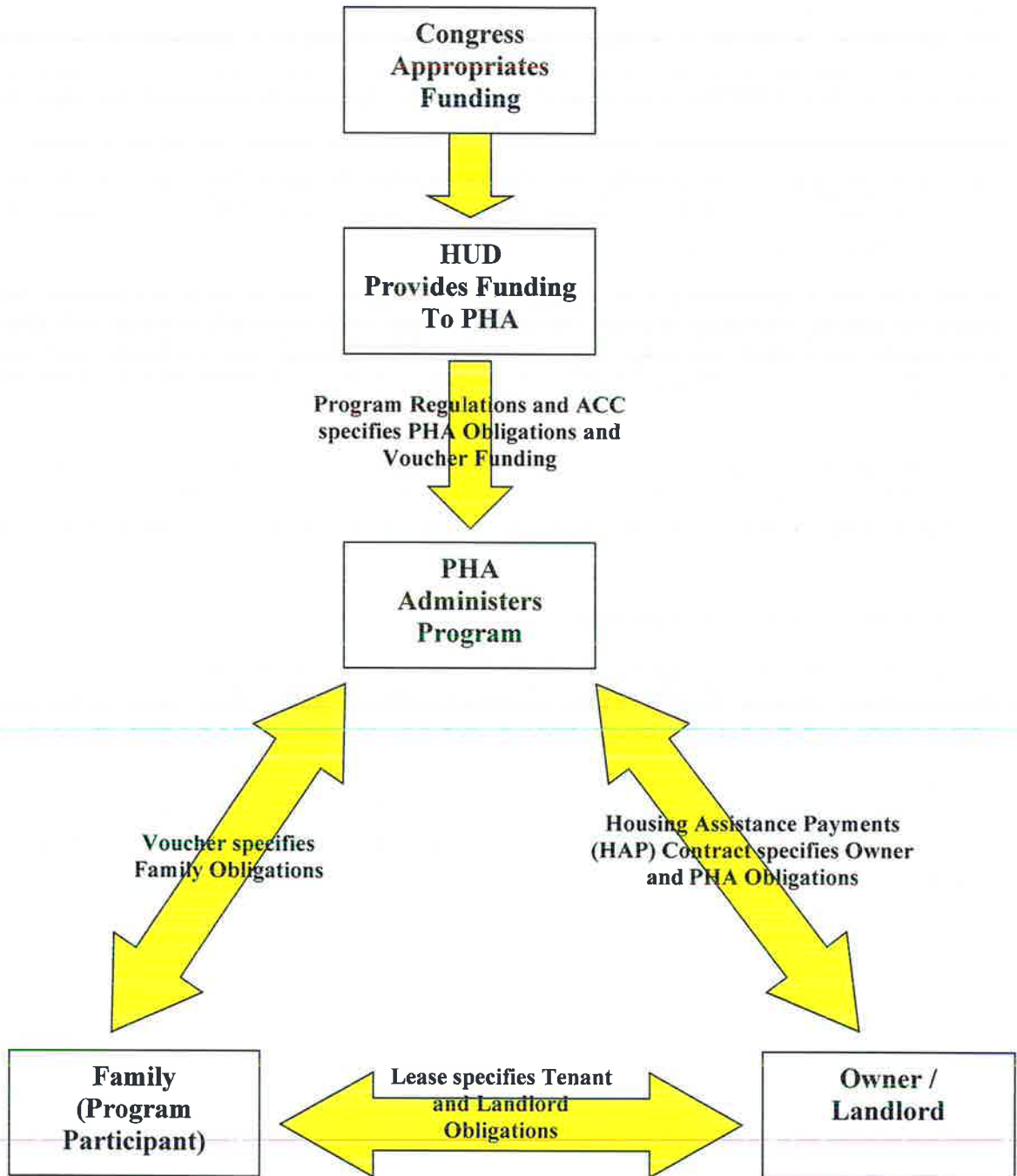
## **1-II.C. THE HCV PARTNERSHIPS**

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

## **What Does the LBHA Do?**

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

- Establish local policies to administer the program;
- Review applications from interested applicants to determine whether they are eligible for the program;
- Maintain a waiting list and select families for admission;
- Issue vouchers to eligible families and provide information on how to lease a unit;
- Conduct outreach to owners, with special attention to owners outside areas of poverty or minority concentration;
- Approve the rental unit (including assuring compliance with housing quality standards and rent reasonableness), the owner, and the tenancy;
- Make housing assistance payments to the owner in a timely manner;
- Recertify families for continued eligibility under the program;
- Ensure that owners and families comply with their contractual obligations;
- Provide families and owners with prompt, professional service;
- Comply with all fair housing and equal opportunity requirements, HUD regulations and requirements, the ACC, HUD-approved applications for funding, the LBHA's administrative plan, and other applicable federal, state and local laws.

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

The owner has the following major responsibilities:

- Screen families who apply for tenancy, to determine suitability as renters.
  - The LBHA 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 LBHA;
- Comply with all applicable fair housing laws and do not discriminate against anyone;
- Maintain the housing unit in accordance with National Standards for the Physical Inspection of Real Estate (NSPIRE) and make necessary repairs in a timely manner;
- Collect rent due from the assisted family and otherwise comply with and enforce provisions of the dwelling lease.

## **What Does the Family Do?**

The family has the following responsibilities:

- Provide the LBHA with complete and accurate information as determined by the LBHA to be necessary for administration of the program;
- Make their best and most timely efforts to locate qualified and suitable housing;
- Attend all appointments scheduled by the LBHA;
- Allow the LBHA 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 LBHA and the owner before moving or terminating the lease;
- Use the assisted unit only for residence and as the sole residence of the family. Not sublet the unit, assign the lease, or have any interest in the unit;
- Promptly notify the LBHA of any changes in family composition;
- Not commit fraud, bribery, or any other corrupt or criminal act in connection with any housing programs.

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

Applicable regulations include:

- 24 CFR Part 5: General Program Requirements
- 24 CFR Part 8: Nondiscrimination
- 24 CFR Part 35: Lead-Based Paint
- 24 CFR Part 100: The Fair Housing Act
- 24 CFR Part 982: Section 8 Tenant-Based Assistance: Housing Choice Voucher Program
- 24 CFR Part 983: Project-Based Vouchers
- 24 CFR Part 985: The Section 8 Management Assessment Program (SEMAP)

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

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

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

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

The LBHA 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 LBHA staff shall be in compliance with the LBHA's personnel policy and HUD regulations as well as all federal, state and local fair housing laws and regulations.

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

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

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

- Occupancy policies, including definition of what group of persons may qualify as a 'family', definition of when a family is considered to be 'continuously assisted'; standards for denying admission or terminating assistance based on criminal activity or alcohol abuse in accordance with 982.553 (Chapters 3 and 12);
- Encouraging participation by owners of suitable units located outside areas of low income or minority concentration (Chapter 13);
- Assisting a family that claims that illegal discrimination has prevented the family from leasing a suitable unit (Chapter 2);
- Providing information about a family to prospective owners (Chapters 3 and 9);
- Disapproval of owners (Chapter 13);
- Subsidy standards (Chapter 5);
- Family absence from the dwelling unit (Chapter 12);
- How to determine who remains in the program if a family breaks up (Chapter 3);
- Informal review procedures for applicants (Chapter 16);
- Informal hearing procedures for participants (Chapter 16);
- The process for establishing and revising voucher payment standards, including policies on administering decreases in the payment standard during the HAP contract term (Chapter 16);
- The method of determining that rent to owner is a reasonable rent (initially and during the term of a HAP contract) (Chapter 8);
- Special policies concerning special housing types in the program (e.g., use of shared housing) (Chapter 15);
- Policies concerning payment by a family to the LBHA of amounts the family owes the LBHA (Chapter 16);
- Interim redeterminations of family income and composition (Chapter 11);
- Restrictions, if any, on the number of moves by a participant family (Chapter 10);
- Approval by the board of commissioners or other authorized officials to charge the administrative fee reserve (Chapter 16);
- Procedural guidelines and performance standards for conducting required housing quality standards inspections (Chapter 8);
- LBHA screening of applicants for family behavior or suitability for tenancy (Chapter 3);
- Policies governing the project-basing of vouchers in both the standard Project-Based Voucher (PBV) program (Chapter 17) and the RAD Project-Based Voucher program (Chapter 18); and
- Special policies governing any special purpose vouchers issued by the LBHA (Chapter 19).

## **Mandatory vs. Discretionary Policy**

HUD makes a distinction between:

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

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

Creating policies based upon HUD guidance is not mandatory but provides a LBHA with a "safe harbor." HUD has already determined that the recommendations and suggestions it makes are consistent with mandatory policies. If a LBHA 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 LBHAs 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 LBHA will revise this administrative plan as needed to comply with changes in HUD regulations. The original plan and any changes must be approved by the board of commissioners of the agency, the pertinent sections included in the Agency Plan, and a copy provided to HUD.

#### LBHA Policy

The LBHA will review and update the plan as needed, to reflect changes in regulations, LBHA 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 LBHAs 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 LBHA's housing choice voucher (HCV) operations.

This chapter describes HUD regulations and LBHA 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 LBHA regarding nondiscrimination.

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

Part III: Prohibition of Discrimination Against Limited English Proficiency Persons. This part details the obligations of the LBHA to ensure meaningful access to the HCV program and its activities by persons with limited English proficiency (LEP). This part incorporates the Final Guidance to Federal Financial Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Persons published January 22, 2007, in the *Federal Register*.



## **PART I: NONDISCRIMINATION**

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

Federal laws require LBHAs to treat all applicants and participants equally, providing the same opportunity to access services, regardless of family characteristics and background. Federal law prohibits discrimination in housing on the basis of race, color, religion, sex, national origin, age, familial status, and disability. In addition, HUD regulations provide for additional protections regarding sexual orientation, gender identity, and marital status. The LBHA will comply fully with all federal, state, and local nondiscrimination laws, and with rules and regulations governing fair housing and equal opportunity in housing and employment, including:

- Title VI of the Civil Rights Act of 1964
- Title VIII of the Civil Rights Act of 1968 (as amended by the Community Development Act of 1974 and the Fair Housing Amendments Act of 1988)
- Executive Orders 11063 and 13988
- Section 504 of the Rehabilitation Act of 1973
- The Age Discrimination Act of 1975
- Title II of the Americans with Disabilities Act (to the extent that it applies, otherwise Section 504 and the Fair Housing Amendments govern)
- The Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity Final Rule, published in the *Federal Register* February 3, 2012 and further clarified in Notice PIH 2014-20
- Violence Against Women Act (VAWA)

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

Any applicable state laws or local ordinances and any legislation protecting individual rights of tenants, applicants, or staff that may subsequently be enacted will also apply.

#### LBHA Policy

No state or local nondiscrimination laws or ordinances apply.

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

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

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

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

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

### LBHA Policy

The LBHA does not identify any additional protected classes.

The LBHA will not use any of these factors to:

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

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

The LBHA 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 LBHA must provide information to HCV applicant families about civil rights requirements and the opportunity to rent in a broad range of neighborhoods [24 CFR 982.301]. The Housing Assistance Payments (HAP) contract informs owners of the requirement not to discriminate against any person because of race, color, religion, sex, national origin, age, familial status, or disability in connection with the contract.

## **2-I.C. DISCRIMINATION COMPLAINTS**

### **General Housing Discrimination Complaints**

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

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

#### LBHA Policy

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

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

The LBHA will keep a record of all complaints, investigations, notices, and corrective actions. (See Chapter 16.)

### **Complaints under the Equal Access Final Rule [Notice PIH 2014-20]**

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

### LBHA Policy

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

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

The LBHA will attempt to remedy discrimination complaints made against the LBHA and will conduct an investigation into all allegations of discrimination.

Within 10 business days following the conclusion of the LBHA's investigation, the LBHA will provide the complainant and those alleged to have violated the rule with findings and either a proposed corrective action plan or an explanation of why corrective action is not warranted.

The LBHA will keep a record of all complaints, investigations, notices, and corrective actions. (See Chapter 16.)

### **VAWA Complaint Processing [Notice FHEO 2023-01]**

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

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

### LBHA Policy

Applicants or tenant families who wish to file a VAWA complaint against the LBHA may notify the LBHA either orally or in writing.

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

The LBHA will attempt to remedy complaints made against the LBHA and will conduct an investigation into all allegations of discrimination.

The LBHA will keep a record of all complaints, investigations, notices, and corrective actions. (See Chapter 16.)

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

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

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

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

#### LBHA Policy

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

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

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

The LBHA will display posters and other housing information and signage in locations throughout the LBHA's office in such a manner as to be easily readable from a wheelchair.

## **2-II.B. DEFINITION OF REASONABLE ACCOMMODATION**

A reasonable accommodation is an adjustment made to a rule, policy, practice, or service that allows a person with a disability to have equal access to the HCV program. For example, reasonable accommodations may include making home visits, extending the voucher term, or approving an exception payment standard in order for a participant to lease an accessible dwelling unit.

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

- Permitting applications and reexaminations to be completed by mail
- Conducting home visits
- Using higher payment standards (either within the acceptable range or with HUD approval of a payment standard outside the LBHA range) if the LBHA 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 LBHA staff



## **2-II.C. REQUEST FOR AN ACCOMMODATION**

If an applicant or participant indicates that an exception, change, or adjustment to a rule, policy, practice, or service is needed because of a disability, HUD requires that the LBHA 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 LBHA's programs and services.

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

### LBHA Policy

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

## 2-II.D. VERIFICATION OF DISABILITY

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

Before providing an accommodation, the LBHA 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 LBHA's programs and services.

If a person's disability is obvious or otherwise known to the LBHA, 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 LBHA, the LBHA 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 LBHA 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 LBHA must request only information that is necessary to evaluate the disability-related need for the accommodation. The LBHA will not inquire about the nature or extent of any disability.
- Medical records will not be accepted or retained in the participant file.
- In the event that the LBHA does receive confidential information about a person's specific diagnosis, treatment, or the nature or severity of the disability, the LBHA will dispose of it. In place of the information, the LBHA will note in the file that the disability and other requested information have been verified, the date the verification was received, and the name and address of the knowledgeable professional who sent the information [Notice PIH 2010-26].

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

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

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

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

LBHA Policy

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

If the LBHA denies a request for an accommodation because there is no relationship, or nexus, found between the disability and the requested accommodation, the notice will inform the family of the right to appeal the LBHA's decision through an informal review (if applicable) or informal hearing (see Chapter 16).

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

## **2-IL.F. PROGRAM ACCESSIBILITY FOR PERSONS WITH HEARING OR VISION IMPAIRMENTS**

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

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

### LBHA Policy

To meet the needs of persons with hearing impairments, TTD/TTY (text telephone display / teletype) communication will be available.

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

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

## **2-II.G. PHYSICAL ACCESSIBILITY**

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

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

The LBHA'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 LBHA's responsibilities with regard to physical accessibility.
- Notice PIH 2010-26 summarizes information about pertinent laws and implementing regulations related to nondiscrimination and accessibility in federally-funded housing programs.
- The LBHA Plan provides information about self-evaluation, needs assessment, and transition plans.

The design, construction, or alteration of LBHA 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 LBHA will include a current list of available accessible units known to the LBHA 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 LBHA'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 LBHA's informal review process and their right to request an informal review. In addition, the notice must inform applicants with disabilities of their right to request reasonable accommodations to participate in the informal review process.

When a participant family's assistance is terminated, the notice of termination must inform them of the LBHA's informal hearing process and their right to request a hearing and reasonable accommodation.

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

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

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

Language for Limited English Proficiency Persons (LEP) can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by the HCV program. In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally-assisted programs and activities may violate the prohibition under Title VI against discrimination on the basis of national origin. This part incorporates the Final Guidance to Federal Assistance Recipients Regarding Title VI Prohibition against National Origin Discrimination Affecting Limited English Proficient Persons, published January 22, 2007, in the *Federal Register*.

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

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

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

### LBHA Policy

The LBHA will utilize a language line for telephone interpreter services.

When exercising the option to conduct remote briefings, informal reviews, or hearings, however, the LBHA will coordinate with a remote interpretation service which, when available, uses video conferencing technology rather than voice-only interpretation.

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

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

Where feasible and possible, according to its language assistance plan (LAP), the LBHA will train and hire bilingual staff to be available to act as interpreters and translators, will pool resources with other LBHA s, and will standardize documents.

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

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

### LBHA Policy

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

The LBHA will provide written translations of vital documents for each eligible LEP language group that constitutes 5 percent or 1,000 persons, whichever is less, of the population of persons eligible to be served or likely to be affected or encountered. Translation of other documents, if needed, can be provided orally; or

If there are fewer than 50 persons in a language group that reaches the 5 percent trigger, the LBHA does not translate vital written materials, but provides written notice in the primary language of the LEP language group of the right to receive competent oral interpretation of those written materials, free of cost.



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

After completing the four-factor analysis and deciding what language assistance services are appropriate, the LBHA 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 LBHA 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 LBHA's Housing Choice Voucher program and services.

### LBHA Policy

If it is determined that the LBHA serves very few LEP persons, and the LBHA has very limited resources, the LBHA will not develop a written LEP plan, but will consider alternative ways to articulate in a reasonable manner a plan for providing meaningful access. Entities having significant contact with LEP persons, such as schools, grassroots and faith-based organizations, community groups, and groups working with new immigrants will be contacted for input into the process.

If the LBHA determines it is appropriate to develop a written LEP plan, the following five steps will be taken: (1) Identifying LEP individuals who need language assistance; (2) identifying language assistance measures; (3) training staff; (4) providing notice to LEP persons; and (5) monitoring and updating the LEP plan.



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

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

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

The phrase “physical or mental impairment” includes:

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

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

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

“Is regarded as having an impairment” is defined as having a physical or mental impairment that does not substantially limit one or more major life activities but is treated by a public entity (such as the LBHA) 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 LBHA 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 LBHA 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 LBHA.
  - Have income at or below HUD-specified income limits.
  - Qualify on the basis of citizenship or the eligible immigrant status of family members.
  - Provide social security number information for household members as required.
  - Consent to the LBHA's collection and use of family information as provided for in LBHA-provided consent forms.
  - Not currently be receiving a duplicative subsidy.
  - Meet net asset and property ownership restriction requirements.
- The LBHA must determine that the current or past behavior of household members does not include activities that are prohibited by HUD or the LBHA.

This chapter contains three parts:

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



## **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 5.403; FR Notice 02/03/12; Notice PIH 2014-20; and FR Notice 2/14/23]**

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

#### **Family**

To be eligible for assistance, an applicant must qualify as a family. *Family* as defined by HUD includes, but is not limited to the following, regardless actual or perceived sexual orientation, gender identity, or marital status, a single person, who may be an elderly person, displaced person, disabled person, near-elderly person, or any other single person; an otherwise eligible youth who has attained at least 18 years of age and not more than 24 years of age and who has left foster care, or will leave foster care within 90 days, in accordance with a transition plan described in section 475(5)(H) of the Social Security Act (42 U.S.C. 675(5)(H)), and is homeless or is at risk of becoming homeless at age 16 or older; or a group of persons residing together. Such group includes but is not limited to a family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family), an elderly family, a near-elderly family, a disabled family, a displaced family, and the remaining member of a tenant family. The LBHA has the discretion to determine if any other group of persons qualifies as a family.

*Gender Identity* means actual or perceived gender characteristics.

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

#### LBHA Policy

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

Each family must identify the individuals to be included in the family at the time of application and must notify the LBHA if the family's composition changes.

#### **Household**

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

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

#### **Family Breakup [24 CFR 982.315; Notice PIH 2017-08]**

Except under the following conditions, the LBHA has discretion to determine which members of an assisted family continue to receive assistance if the family breaks up:

- If the family breakup results from an occurrence of domestic violence, dating violence, sexual assault, stalking, or human trafficking, the LBHA must ensure that the victim retains assistance. (For documentation requirements and policies related to domestic violence, dating violence, sexual assault, stalking, and human trafficking, see section 16-IX.D of this plan.)
- In accordance with Notice PIH 2017-08, for HUD–Veterans Affairs Supportive Housing (HUD–VASH) vouchers, when the veteran is the perpetrator of domestic violence, dating violence, sexual assault, stalking, or human trafficking, the victim must continue to be assisted. Upon termination of the perpetrator’s HUD–VASH voucher, the victim should be given a regular HCV if one is available, and the perpetrator’s HUD–VASH voucher should be used to serve another eligible family. If a regular HCV is not available, the victim will continue to use the HUD–VASH voucher, which must be issued to another eligible family upon the voucher’s turnover.
- If a court determines the disposition of property between members of the assisted family, the LBHA is bound by the court’s determination of which family members continue to receive assistance.

#### LBHA 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 LBHA will determine which family will retain their placement on the waiting list or continue to receive assistance. In making its determination, the LBHA will take into consideration the following factors: (1) the interest of any minor children, including custody arrangements; (2) the interest of any ill, elderly, or disabled family members; (3) the interest of any family member who is the victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking, including a family member who was forced to leave an assisted unit as a result of such actual or threatened abuse; (4) any possible risks to family members as a result of criminal activity; and (5) the recommendations of social service professionals



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

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

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

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

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

#### LBHA 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.

#### LBHA 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.

#### LBHA 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. DEPENDENTS AND MINORS [24 CFR 5.603]**

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

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

#### **Joint Custody of Dependents**

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

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

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

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

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

#### **Elderly Persons**

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

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

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

#### **Elderly Family**

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

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

#### **Persons with Disabilities**

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

As discussed in Chapter 2, the LBHA must make all aspects of the HCV program accessible to persons with disabilities and consider reasonable accommodations requested based upon a person's disability.

#### **Disabled Family**

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

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

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

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

#### LBHA Policy

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

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

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

### **3-I.K. FOSTER CHILDREN AND FOSTER ADULTS [24 CFR 5.603]**

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

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

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

#### LBHA Policy

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

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

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

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

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

#### LBHA Policy

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

#### **Absent Students**

#### LBHA 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 LBHA 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.

#### LBHA Policy

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

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

#### LBHA Policy

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

### **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].

#### LBHA Policy

An individual confined to a nursing home or hospital on a permanent basis is not considered a family member.

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

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

#### LBHA Policy

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

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

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

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

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

#### LBHA 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. For continued approval, the family must submit a new, written request-subject to LBHA verification-at each annual reexamination.

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

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

The LBHA will notify the family of its decision in writing within 10 business days of receiving a request for a live-in aide, including all required documentation related to the request.

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

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

#### **Income Limits**

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

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

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

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

*Extremely low-income family.* A family whose annual income does not exceed the federal poverty level or 30 percent of the median income for the area, whichever number is higher.

Area median income is determined by HUD, with adjustments for smaller and larger families. HUD may establish income ceilings higher or lower than 30, 50, or 80 percent of the median income for an area if HUD finds that such variations are necessary because of unusually high or low family incomes.

#### **Using Income Limits for Eligibility [24 CFR 982.201 and Notice PIH 2023-27]**

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

- A *very low-income* family
- A *low-income* family that has been “continuously assisted” under the 1937 Housing Act. A family is considered to be continuously assisted if the family is already receiving assistance under any 1937 Housing Act program at the time the family is admitted to the HCV program [24 CFR 982.4; 24 CFR 982.201(b)]

#### LBHA Policy

The LBHA will consider a family to be continuously assisted if the family was leasing a unit under any 1937 Housing Act program at the time they were selected from the LBHA’s waiting list.

- A low-income family that qualifies for voucher assistance as a non-purchasing household living in HOPE 1 (public housing homeownership), HOPE 2 (multifamily housing homeownership) developments, or other HUD-assisted multifamily homeownership programs covered by 24 CFR 248.173

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

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

LBHA Policy

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

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

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

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



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

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

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

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

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

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

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

#### LBHA Policy

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

#### ***Eligible Noncitizens***

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

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

### ***Ineligible Noncitizens***

Those noncitizens who do not wish to contend their immigration status are required to have their names listed on a noncontending family members listing, signed by the head, spouse, or cohead (regardless of citizenship status), indicating their ineligible immigration status. The LBHA 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 LBHA 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 LBHA that the individual or at least one family member is eligible. Verification of eligibility for this purpose occurs when the individual or family members have submitted documentation to the LBHA in accordance with program requirements [24 CFR 5.512(a)].

#### LBHA Policy

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

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

The notice will explain the reasons for the denial of assistance, that the family may be eligible for proration of assistance, and will advise the family of its right to request an appeal to the United States Citizenship and Immigration Services (USCIS), or to request an informal hearing with the LBHA. The informal hearing with the LBHA may be requested in lieu of the USCIS appeal, or at the conclusion of the USCIS appeal process. The notice must also inform the applicant family that assistance may not be delayed until the conclusion of the USCIS appeal process, but that it may be delayed pending the completion of the informal hearing process.

Informal hearing procedures are contained in Chapter 16.

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

For new occupants joining the assisted family, the LBHA 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 LBHA 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.

#### LBHA Policy

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

### **3-II.C. SOCIAL SECURITY NUMBERS [24 CFR 5.216 and 5.218, Notice PIH 2018-24]**

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

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

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

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

### **3-II.D. FAMILY CONSENT TO RELEASE OF INFORMATION [24 CFR 5.232; HCV GB, p. 5-13]**

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

The LBHA must deny admission to the program if any member of the applicant family fails to sign and submit the consent forms for obtaining information in accordance with 24 CFR 5, Subparts B and F [24 CFR 982.552(b)(3) and 24 CFR 5.232(a)].

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

#### LBHA Policy

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

### **3-II.E. STUDENTS ENROLLED IN INSTITUTIONS OF HIGHER EDUCATION [24 CFR 5.612, FR Notice 4/10/06, FR Notice 9/21/16]**

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

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

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

#### **Definitions**

In determining whether and how the new eligibility restrictions apply to a student, the LBHA will rely on the following definitions [FR Notice 4/10/06, FR Notice 9/21/16].

#### ***Dependent Child***

In the context of the student eligibility restrictions, *dependent child* means a dependent child of a student enrolled in an institution of higher education. The dependent child must also meet the definition of *dependent* in 24 CFR 5.603, which states that the dependent must be a member of the assisted family, other than the head of household or spouse, who is under 18 years of age, or is a person with a disability, or is a full-time student. Foster children and foster adults are not considered dependents.

## *Independent Student*

### LBHA Policy

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

The individual is of legal contract age under state law.

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

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

The individual is at least 24 years old by December 31 of the award year for which aid is sought

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

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

The individual is a veteran of the U.S. Armed Forces or is currently serving on active duty in the Armed Forces for other than training purposes

The individual is a graduate or professional student

The individual is married

The individual has one or more legal dependents other than a spouse (for example, dependent children or an elderly dependent parent)

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

A local educational agency homeless liaison

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

A financial aid administrator

The individual is a student for whom a financial aid administrator makes a documented determination of independence by reason of other unusual circumstances

The individual was not claimed as a dependent by their parents pursuant to IRS regulations, as demonstrated on the parents' most recent tax forms.

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

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

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

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

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

### ***Parents***

#### LBHA Policy

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

### ***Person with Disabilities***

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

## ***Veteran***

### LBHA Policy

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

## ***Vulnerable Youth***

### LBHA Policy

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

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

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

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

A local educational agency homeless liaison

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

A financial aid administrator

## **Determining Student Eligibility**

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

### LBHA Policy

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

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

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

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

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



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

### **LBHA Policy**

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

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

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

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

If the student has been living with one of their parents and has not had contact with or does not know where to contact their other parent, the LBHA will require the student to submit a certification under penalty of perjury describing the circumstances and stating that the student does not receive financial assistance from the other parent. The LBHA will then obtain an income declaration and certification of income from the parent with whom the student has been living or had contact.

In determining the income eligibility of the student's parents, the LBHA will use the income limits for the jurisdiction in which the parents live.

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

### **Existing Tenant Search**

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

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

### **LBHA Policy**

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

## **Debts Owed to LBHAs and Terminations**

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

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

### LBHA Policy

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

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

## **Income and Income Validation Tool (IVT) Reports**

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

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

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

A family that does not meet the eligibility criteria discussed in Parts I and II, must be denied assistance. A LBHA may deny assistance for an applicant because of the family's action or failure to act as described in 24 CFR 982.552 or 982.553. In this section we will discuss other situations and circumstances in which denial of assistance is mandatory for the LBHA, and those in which denial of assistance is optional for the LBHA.

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

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

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

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

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

Denial of assistance includes any of the following:

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

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

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

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

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

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

- Any member of the household has been evicted from federally assisted housing in the last three years for drug-related criminal activity. HUD permits, but does not require, the LBHA to admit an otherwise-eligible family if the household member has completed a LBHA-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).

#### LBHA Policy

The LBHA will admit an otherwise-eligible family who was evicted from federally assisted housing within the past three years for drug-related criminal activity if the LBHA is able to verify that the household member who engaged in the criminal activity has completed a supervised drug rehabilitation program approved by the LBHA, or the person who committed the crime, is no longer living in the household.

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

#### LBHA Policy

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

- The LBHA 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.

#### LBHA Policy

In determining reasonable cause, the LBHA will consider all credible evidence, including but not limited to, any record of convictions, arrests, or evictions of household members related to the use of illegal drugs or the abuse of alcohol. A record or records of arrest will not be used as the sole basis of determining reasonable cause. The LBHA will also consider evidence from treatment providers or community-based organizations providing services to household members.

- Any household member has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine on the premises of federally assisted housing.
- Any household member is subject to a lifetime registration requirement under a state sex offender registration program.
- Any member of the family fails to sign and submit consent forms for obtaining information.
- The family does not meet the restrictions on net assets and real property ownership as required by 24 CFR 5.618.

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

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

First, assistance may not be provided to any family if the family's net assets exceed \$100,000 (adjusted annually by HUD).

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

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

However, the real property restriction does not apply in the following circumstances:

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

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

- Does not meet the disability-related needs for all members of the family (e.g., physical accessibility requirements, disability-related need for additional bedrooms, proximity to accessible transportation, etc.);
- Is not sufficient for the size of the family;

#### LBHA Policy

The LBHA defines *not sufficient for the size of the family* as being overcrowded based on space standards in Chapter 8 of this policy.

- Is geographically located so as to be a hardship for the family (e.g., the distance or commuting time between the property and the family's place of work or school would be a hardship to the family, as determined by the LBHA or owner);

- Is not safe to reside in because of the physical condition of the property (e.g., property's physical condition poses a risk to the family's health and safety and the condition of the property cannot be easily remedied); or
- Is not a property that a family may reside in under the state or local laws of the jurisdiction where the property is located.

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

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

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

HUD permits, but does not require, the LBHA to deny assistance if the LBHA 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.

#### LBHA Policy

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

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

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

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

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

Criminal sexual conduct, including but not limited to sexual assault, incest, open and gross lewdness, or child abuse; or

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

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

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

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

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

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

#### LBHA Policy

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

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

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

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

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

The family owes rent or other amounts to any LBHA in connection with Section 8 or other public housing assistance under the 1937 Act, unless the family repays the full amount of the debt prior to being selected from the waiting list.

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



The family has breached the terms of a repayment agreement entered into with the LBHA, unless the family repays the full amount of the debt covered in the repayment agreement prior to being selected from the waiting list.

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

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

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

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

### **3-III.E. SCREENING**

#### **Screening for Eligibility**

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

##### LBHA Policy

The LBHA will perform a criminal background check through local law enforcement for every adult household member.

If the results of the criminal background check indicate that there may be past criminal activity, but the results are inconclusive, the LBHA will request a fingerprint card and will request information from the National Crime Information center (NCIC).

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

LBHAs 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)].

##### LBHA Policy

The LBHA will use the Dru Sjodin National Sex Offender database to screen applicants for admission. The LBHA will also use Core Login/Safe Rent software to conduct background checks on applicants or new members of a household who are 18 years and older.

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

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

### LBHA Policy

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

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

### LBHA Policy

The LBHA will inform owners of their responsibility to screen prospective tenants and will provide owners with the required known name and address information, at the time of the initial inspection or before. The LBHA will not provide any additional information to the owner, such as tenancy history or criminal history, etc.

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

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

##### LBHA Policy

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

##### LBHA Policy

The LBHA will consider the following facts and circumstances prior to making its decision:

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

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

The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities, or (as discussed further in section 3-III.H.) a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking

The length of time since the violation occurred, including the age of the individual at the time of the conduct, as well as the family's recent history and the likelihood of favorable conduct in the future

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

- Any statements made by witnesses or the applicant not included in the police report

- Whether criminal charges were filed

- Whether, if filed, criminal charges were abandoned, dismissed, not prosecuted, or ultimately resulted in an acquittal

- Any other evidence relevant to determining whether or not the applicant engaged in disqualifying activity

Evidence of criminal conduct will be considered if it indicates a demonstrable risk to safety and/or property

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

- The LBHA will require the applicant to submit evidence of the household member's current participation in or successful completion of a supervised drug or alcohol rehabilitation program, or evidence of otherwise having been rehabilitated successfully.

## **Removal of a Family Member's Name from the Application**

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

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

### LBHA Policy

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

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

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

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

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

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

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

If the LBHA 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.

#### LBHA Policy

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

If a LBHA uses a criminal record or sex offender registration information obtained under 24 CFR 5, Subpart J, as the basis of a denial, a copy of the record must precede the notice to deny, with an opportunity for the applicant to dispute the accuracy and relevance of the information before the LBHA 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 LBHA 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)].

#### LBHA Policy

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

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

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

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

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

- Although the VAWA 2022 statute does not specifically include human trafficking in the list of victims protected under VAWA, in 2022 HUD began including human trafficking as part of the list of victims protected under VAWA (as seen in Notices PIH 2022-06, PIH 2022-22, and PIH 2022-24). In the absence of a final rule implementing VAWA 2022 and to mirror HUD's recent usage, this policy includes human trafficking in addition to domestic violence, dating violence, sexual assault, and stalking anywhere such a list appears.

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

#### **Notification**

VAWA requires LBHAs to provide applicants who are denied assistance with a VAWA Notice of Occupancy Rights (form HUD-5380) and a domestic violence certification form (HUD-5382) at the time the applicant is denied.

#### LBHA Policy

The LBHA acknowledges that a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking may have an unfavorable history (e.g., a poor credit history, poor rental history, a record of previous damage to an apartment, a prior arrest record) due to adverse factors that would warrant denial under the LBHA's policies.

While the LBHA is not required to identify whether adverse factors that resulted in the applicant's denial are a result of domestic violence, dating violence, sexual assault, stalking, or human trafficking, the applicant may inform the LBHA that their status as a victim is directly related to the grounds for the denial. The LBHA will request that the applicant provide enough information to the LBHA to allow the LBHA to make an objectively reasonable determination, based on all circumstances, whether the adverse factor is a direct result of their status as a victim.

The LBHA will include in its notice of denial the VAWA information described in section 16-IX.C of this plan as well as including a copy of the form HUD-5382. The LBHA will request in writing that an applicant wishing to claim protection under VAWA notify the LBHA within 14 business days.



## **Documentation**

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

#### LBHA Policy

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

### ***Perpetrator Documentation***

#### LBHA Policy

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

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

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



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

### Person with Disabilities [24 CFR 5.403]

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

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

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

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

#### **(A) In General**

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

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

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

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

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

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

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

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

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

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

- (1) Physical or mental impairment includes:
  - (a) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genito-urinary; hemic and lymphatic; skin; and endocrine; or
  - (b) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction and alcoholism.
- (2) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.
- (3) Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.
- (4) *Is regarded as having an impairment* means:
  - (a) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by a recipient as constituting such a limitation;
  - (b) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or
  - (c) Has none of the impairments defined in paragraph (1) of this section but is treated by a recipient as having such an impairment.



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

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

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

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

- (a) Institution of higher education. For purposes of this chapter, other than subchapter IV and part C of subchapter I of chapter 34 of Title 42, the term “institution of higher education” means an educational institution in any State that
- (1) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;
  - (2) Is legally authorized within such State to provide a program of education beyond secondary education;
  - (3) Provides an educational program for which the institution awards a bachelor’s degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree;
  - (4) Is a public or other nonprofit institution; and
  - (5) Is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary for the granting of preaccreditation status, and the Secretary has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.
- (b) Additional institutions included. For purposes of this chapter, other than subchapter IV and part C of subchapter I of chapter 34 of Title 42, the term “institution of higher education” also includes—
- (1) Any school that provides not less than a 1-year program of training to prepare students for gainful employment in a recognized occupation and that meets the provision of paragraphs (1), (2), (4), and (5) of subsection (a) of this section; and
  - (2) A public or nonprofit private educational institution in any State that, in lieu of the requirement in subsection (a)(1) of this section, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.
- (c) List of accrediting agencies. For purposes of this section and section 1002 of this title, the Secretary shall publish a list of nationally recognized accrediting agencies or associations that the Secretary determines, pursuant to subpart 2 of part G of subchapter IV of this chapter, to be reliable authority as to the quality of the education or training offered.

*Definition of “Institution of Higher Education” From 20 U.S.C. 1002*

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

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

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

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

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

(2) Institutions outside the United States

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

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

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

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

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



- (ii) In the case of a veterinary school located outside the United States that does not meet the requirements of section 1001(a)(4) of this title, the institution's students complete their clinical training at an approved veterinary school located in the United States.
- (B) Advisory panel
- (i) In general. For the purpose of qualifying as an institution under paragraph (1)(C) of this subsection, the Secretary shall establish an advisory panel of medical experts that shall—
    - (I) Evaluate the standards of accreditation applied to applicant foreign medical schools; and
    - (II) Determine the comparability of those standards to standards for accreditation applied to United States medical schools.
  - (ii) Special rule if the accreditation standards described in clause (i) are determined not to be comparable, the foreign medical school shall be required to meet the requirements of section 1001 of this title.
- (C) Failure to release information. The failure of an institution outside the United States to provide, release, or authorize release to the Secretary of such information as may be required by subparagraph (A) shall render such institution ineligible for the purpose of part B of subchapter IV of this chapter.
- (D) Special rule. If, pursuant to this paragraph, an institution loses eligibility to participate in the programs under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, then a student enrolled at such institution may, notwithstanding such loss of eligibility, continue to be eligible to receive a loan under part B while attending such institution for the academic year succeeding the academic year in which such loss of eligibility occurred.
- (3) Limitations based on course of study or enrollment. An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution—
- (A) Offers more than 50 percent of such institution's courses by correspondence, unless the institution is an institution that meets the definition in section 2471 (4)(C) of this title;
  - (B) Enrolls 50 percent or more of the institution's students in correspondence courses, unless the institution is an institution that meets the definition in such section, except that the Secretary, at the request of such institution, may waive the applicability of this subparagraph to such institution for good cause, as determined by the Secretary in the case of an institution of higher education that provides a 2-or 4-year program of instruction (or both) for which the institution awards an associate or baccalaureate degree, respectively;

- (C) Has a student enrollment in which more than 25 percent of the students are incarcerated, except that the Secretary may waive the limitation contained in this subparagraph for a nonprofit institution that provides a 2-or 4-year program of instruction (or both) for which the institution awards a bachelor's degree, or an associate's degree or a postsecondary diploma, respectively; or
  - (D) Has a student enrollment in which more than 50 percent of the students do not have a secondary school diploma or its recognized equivalent, and does not provide a 2-or 4-year program of instruction (or both) for which the institution awards a bachelor's degree or an associate's degree, respectively, except that the Secretary may waive the limitation contained in this subparagraph if a nonprofit institution demonstrates to the satisfaction of the Secretary that the institution exceeds such limitation because the institution serves, through contracts with Federal, State, or local government agencies, significant numbers of students who do not have a secondary school diploma or its recognized equivalent.
- (4) Limitations based on management. An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if—
- (A) The institution, or an affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management or policies of the institution, has filed for bankruptcy, except that this paragraph shall not apply to a nonprofit institution, the primary function of which is to provide health care educational services (or an affiliate of such an institution that has the power, by contract or ownership interest, to direct or cause the direction of the institution's management or policies) that files for bankruptcy under chapter 11 of title 11 between July 1, 1998, and December 1, 1998; or
  - (B) The institution, the institution's owner, or the institution's chief executive officer has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, or has been judicially determined to have committed fraud involving funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.
- (5) Certification. The Secretary shall certify an institution's qualification as an institution of higher education in accordance with the requirements of subpart 3 of part G of subchapter IV of this chapter.
- (6) Loss of eligibility. An institution of higher education shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution is removed from eligibility for funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 as a result of an action pursuant to part G of subchapter IV of this chapter.

(b) Proprietary institution of higher education

- (1) Principal criteria. For the purpose of this section, the term “proprietary institution of higher education” means a school that—
  - (A) Provides an eligible program of training to prepare students for gainful employment in a recognized occupation;
  - (B) Meets the requirements of paragraphs (1) and (2) of section 1001 (a) of this title;
  - (C) Does not meet the requirement of paragraph (4) of section 1001 (a) of this title;
  - (D) Is accredited by a nationally recognized accrediting agency or association recognized by the Secretary pursuant to part G of subchapter IV of this chapter;
  - (E) Has been in existence for at least 2 years; and
  - (F) Has at least 10 percent of the school’s revenues from sources that are not derived from funds provided under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, as determined in accordance with regulations prescribed by the Secretary.
- (2) Additional institutions. The term “proprietary institution of higher education” also includes a proprietary educational institution in any State that, in lieu of the requirement in paragraph (1) of section 1001 (a) of this title, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.

(c) Postsecondary vocational institution.

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



## Chapter 4

### APPLICATIONS, WAITING LIST AND TENANT SELECTION

#### INTRODUCTION

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

The LBHA is required to adopt clear policies and procedures for accepting applications, placing families on the waiting list, and selecting families from the waiting list, and must follow these policies and procedures consistently. The actual order in which families are selected from the waiting list can be affected if a family has certain characteristics designated by HUD or the LBHA that justify their selection. Examples of this are the selection of families for income targeting and the selection of families that qualify for targeted funding.

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

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

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

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



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

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

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

### **4-I.B. APPLYING FOR ASSISTANCE [HCV GB, pp. 4-11 – 4-16, Notice PIH 2009-36]**

Any family that wishes to receive HCV assistance must apply for admission to the program. HUD permits the LBHA 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 LBHA. The LBHA must include Form HUD-92006, Supplement to Application for Federally Assisted Housing, as part of the LBHA's application.

#### LBHA Policy

Depending upon the length of time that applicants may need to wait to receive assistance, the LBHA may use a one- or two-step application process.

A one-step process will be used when it is expected that a family will be selected from the waiting list within 60 days of the date of application. At application, the family must provide all of the information necessary to establish family eligibility and level of assistance.

A two-step process will be used when it is expected that a family will not be selected from the waiting list for at least 60 days from the date of application. Under the two-step application process, the LBHA initially will require families to provide only the information needed to make an initial assessment of the family's eligibility, and to determine the family's placement on the waiting list. The family will be required to provide all of the information necessary to establish family eligibility and level of assistance when the family is selected from the waiting list.

Families may obtain application forms from the LBHA's via the LBHA's online application portal.

Completed applications must be submitted via the LBHA's online application portal. Applications must be complete in order to be accepted by the LBHA for processing. If an application is incomplete, the LBHA may notify the family of the additional information required.

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

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

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

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

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



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

The LBHA must review each complete application received and make a preliminary assessment of the family's eligibility. The LBHA 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 LBHA must notify the family in writing [24 CFR 982.201(f)]. Where the family is not determined to be ineligible, the family will be placed on a waiting list of applicants.

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

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

##### LBHA Policy

If the LBHA 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 LBHA will send written notification of the ineligibility determination within 10 business days of receiving a complete application. The notice will specify the reasons for ineligibility and will inform the family of its right to request an informal review and explain the process for doing so (see Chapter 16).

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

##### LBHA Policy

The LBHA will send written notification of the preliminary eligibility determination within 10 business days of receiving a complete application.

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

Applicants will be placed on the waiting list according to any preference(s) for which they qualify, and the date and time their complete application is received by the LBHA.



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

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

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

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

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

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

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

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

#### LBHA Policy

The LBHA will maintain a single waiting list for the HCV program.

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

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

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

#### LBHA Policy

The LBHA will not merge the HCV waiting list with the waiting list for any other program the LBHA operates.

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

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

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

##### LBHA Policy

The LBHA will close the waiting list when the estimated waiting period for housing assistance for applicants on the list reaches 24 months for the most current applicants. Where the LBHA has particular preferences or funding criteria that require a specific category of family, the LBHA may elect to continue to accept applications from these applicants while closing the waiting list to others.

##### **Reopening the Waiting List**

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

##### LBHA Policy

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

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

***The Asbury Park Press***

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

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

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

LBHA 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

LBHA 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

##### LBHA Policy

The LBHA will monitor the characteristics of the population being served and the characteristics of the population as a whole in the LBHA'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**

##### LBHA Policy

While the family is on the waiting list, the family must immediately inform the LBHA of changes in contact information, including current residence, mailing address, and phone number. The changes must be submitted in writing.

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

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

##### LBHA Policy

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

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

The family's response must be in writing and may be delivered in person, by mail, by email, or by fax. Responses should be postmarked or received by the LBHA not later than 15 business days from the date of the LBHA letter.

If the family fails to respond within 15 business days, the family will be removed from the waiting list without further notice.

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

If the notice is returned by the post office with a forwarding address, the notice will be re-sent to the address indicated. The family will have 15 business days to respond from the date the letter was re-sent.

If a family is removed from the waiting list for failure to respond, the LBHA may reinstate the family if it is determined that the lack of response was due to LBHA error, or to circumstances beyond the family's control, as a result of a family member's disability, or as a direct result of status as a victim of domestic violence, dating violence,

sexual assault, stalking, or human trafficking, including an adverse factor resulting from such abuse.

## **Removal from the Waiting List**

### LBHA Policy

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





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

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

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

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

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

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

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

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

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

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

#### LBHA Policy

The LBHA administers the following types of targeted funding:

#### ***VASH***

#### **Regular HCV Funding**

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

#### 4-III.C. SELECTION METHOD

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

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

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

##### LBHA Policy

The LBHA will use the following local preferences:

1. **Insufficient Funding:** The LBHA will offer a preference to any family that has been terminated from the HCV program due to insufficient funding.
2. **VAWA:** LBHA will provide preference to families with victims of domestic abuse, dating violence, sexual assault, stalking, or human trafficking who have been referred by 180 Turning Lives Around, One Bethany Road Building 3, Suite 42, Hazlet, NJ 07730. Referral and certification requirements also apply to tenants from LBHA's public housing program, LIHTC sites, or other covered housing programs seeking emergency transfer under VAWA.
3. **Residency:** The LBHA will offer residency preference to families who live and work in the City of Long Branch.

The residency preference will not be used to delay admission to the program in accordance with the New Jersey Law Against Discrimination (N.J.S.A. 10:5-1 et seq.) and the Fair Chance in Housing Act (N.J.S.A. 46:8-52 et seq.).

Homeless applicants will qualify for the residency preference if homeless within the City of Long Branch.

4. **Homeless:** The LBHA will have a preference for applicants who are homeless and residing in Monmouth County NJ

The LBHA provides homeless preference to qualifying families referred by Linkages - Catholic Charities, 4261 Route 33, Tinton Falls, New Jersey 07753.

For purposes of LBHA preferences, the term "homeless" applies to the HUD definition. <https://www.hudexchange.info/news/huds-definition-of-homelessness-resources-and-guidance/>

5. **Displacement/Disaster Preference:** The LBHA offers a catastrophic/disaster displacement preference to qualifying families who are referred to the LBHA from the City of Long Branch. The preference is for families who reside in the City of Long Branch NJ, being displaced from their units due to federally declared natural, or catastrophic disasters such as a flood, hurricane, tornado or any disaster as declared by the United States Federal Government or the State of New Jersey. This Housing Choice Vouchers distribution is also based on availability of funds at the time of the disaster.
6. **Veterans:** The LBHA will provide a preference for United States Armed Forces Veterans discharged or released from active duty in the armed forces under honorable conditions. To qualify for this preference, applicants must have received an honorable discharge.

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

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

#### LBHA Policy

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

### **Order of Selection**

The LBHA system of preferences may select families based on local preferences according to the date and time of application or by a random selection process (lottery) [24 CFR 982.207(c)]. If a LBHA does not have enough funding to assist the family at the top of the waiting list, it is not permitted to skip down the waiting list to a family that it can afford to subsidize when there are not sufficient funds to subsidize the family at the top of the waiting list [24 CFR 982.204(d) and (e)].

#### LBHA Policy

Families will be selected from the waiting list based on the targeted funding or selection preference(s) for which they qualify, and in accordance with the LBHA's hierarchy of preferences, if applicable. Within each targeted funding or preference category, families will be selected on a first-come, first-served basis according to the date and time their complete application is received by the LBHA. Documentation will be maintained by the LBHA as to whether families on the list qualify for and are interested in targeted funding. If a higher placed family on the waiting list is not qualified or not interested in targeted funding, there will be a notation maintained so that the LBHA does not have to ask higher placed families each time targeted selections are made.

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

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

##### LBHA Policy

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

- Date, time, and location of the scheduled application interview, including any procedures for rescheduling the interview

- Who is required to attend the interview

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

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

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

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

~~Assistance cannot be provided to the family until all SSN documentation requirements are met.~~ However, if the LBHA determines that an applicant family is otherwise eligible to participate in the program, the family may retain its place on the waiting list for a period of time determined by the LBHA [Notice PIH 2018-24].

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

##### LBHA Policy

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

The head of household and the spouse/cohead will be strongly encouraged to attend the interview together. However, either the head of household or the spouse/cohead may attend the interview on behalf of the family. Verification of information pertaining to adult members of the household not present at the interview will not begin until signed release forms are returned to the LBHA.

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

Pending disclosure and documentation of social security numbers, the LBHA will allow the family to retain its place on the waiting list for **30 days**. If not all household members have disclosed their SSNs at the next time the LBHA is issuing vouchers, the LBHA will issue a voucher to the next eligible applicant family on the waiting list.

The family must provide the information necessary to establish the family's eligibility and determine the appropriate level of assistance, and must complete required forms, provide required signatures, and submit required documentation. If any materials are missing, the LBHA will provide the family with a written list of items that must be submitted.

Any required documents or information that the family is unable to provide at the interview must be provided within 10 business days of the interview (Chapter 7 provides details about longer submission deadlines for particular items, including documentation of eligible noncitizen status). If the family is unable to obtain the information or materials within the required time frame, the family may request an extension. If the required documents and information are not provided within the required time frame (plus any extensions), the family will be sent a notice of denial (See Chapter 3).

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

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

If the family is unable to attend a scheduled interview, the family should contact the LBHA in advance of the interview to schedule a new appointment. In all circumstances, if a family does not attend a scheduled interview, the LBHA will send another notification letter with a new interview appointment time. Applicants who fail to attend two scheduled interviews without LBHA approval will be denied assistance based on the family's failure to supply information needed to determine eligibility. A notice of denial will be issued in accordance with policies contained in Chapter 3.

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

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

##### LBHA Policy

If the LBHA determines that the family is ineligible, the LBHA will send written notification of the ineligibility determination within 10 business days of the determination. The notice will specify the reasons for ineligibility, and will inform the family of its right to request an informal review (Chapter 16).

If a family fails to qualify for any criteria that affected the order in which it was selected from the waiting list (e.g. targeted funding, extremely low-income), the family will be returned to its original position on the waiting list. The LBHA will notify the family in writing that it has been returned to the waiting list, and will specify the reasons for it.

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



## Chapter 5

### BRIEFINGS AND VOUCHER ISSUANCE

#### INTRODUCTION

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

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

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

### **Notification of Briefing**

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

#### LBHA Policy

Families will be notified of their eligibility for assistance at the time they are invited to a briefing. The notice will be sent by first class mail and will also be sent by email if the family has provided a valid email address to the LBHA.

The notice will advise the family of the type of briefing, who is required to be present at the briefing, and the date and time of the briefing. The notice will also inform the family of any additional requirements for in-person or remote briefings as addressed in relevant policy elsewhere in this section.

If the notice is returned by the post office with no forwarding address or the email is returned as undeliverable, the applicant will be denied and their name will not be placed back on the waiting list. If the notice is returned by the post office with a forwarding address, the notice will be resent to the address indicated.

### **In-Person Briefings**

At the briefing, the LBHA must ensure effective communication in accordance with Section 504 requirements (Section 504 of the Rehabilitation Act of 1973) and ensure that the briefing site is accessible to individuals with disabilities. For a more thorough discussion of accessibility requirements, refer to Chapter 2.

#### LBHA Policy

In-person briefings will generally be conducted in group meetings. At the family's written request, the LBHA may provide an individual briefing.

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

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

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

## *Attendance*

### LBHA Policy

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

### **Remote Briefings [Notice PIH 2020-32]**

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

### LBHA Policy

The LBHA has the sole discretion to require that briefings be conducted remotely in case of local, state, or national physical distancing orders, and in cases of inclement weather or natural disaster. If the LBHA schedules a remote briefing, the LBHA will conduct a face-to-face briefing upon request of the applicant as a reasonable accommodation for a person with a disability if safety and health concerns can be reasonably addressed.

In addition, the LBHA will conduct a briefing remotely upon request of the applicant as a reasonable accommodation for a person with a disability, if an applicant does not have child care or transportation that would enable them to attend the briefing, or if the applicant believes an in-person briefing would create an undue health risk. The LBHA will consider other reasonable requests for a remote briefing on a case-by-case basis.

### **Accessibility Requirements for Persons with Disabilities and LEP Individuals**

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

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

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

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

## **Conducting Remote Briefings**

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

### LBHA Policy

At least 10 business days prior to scheduling the remote briefing, the LBHA will provide written notification via first class mail and/or email to families participating in the briefing to advise of technological requirements and to request the family notify the LBHA of any known barriers. If any family does not respond within five business days, or if the written notification is returned by the post office or the email is rejected, the LBHA will contact the family by telephone to identify potential technological barriers and to determine which technology resources are accessible to the family. The LBHA will resolve any barriers using the guidance in Section 6 of Notice PIH 2020-32, including offering the family the opportunity to attend an in-person briefing or have a one-on-one briefing over the phone, as appropriate.

The LBHA will conduct remote briefings via a video conferencing platform when available. If applicants are unable to adequately access the video conferencing platform, the briefing will be conducted by telephone conferencing call-in. If the family is unable to adequately access the telephone conferencing call-in, the remote briefing will be postponed, and an in-person alternative or one-on-one briefing over the phone will be provided.

~~The LBHA will provide login information and/or conferencing call-in information and an electronic copy of the briefing packet via email at least five business days before the briefing. The LBHA will provide a paper copy of the briefing packet upon family request, and may reschedule the briefing to allow adequate time for the family to receive the physical briefing packet.~~

The LBHA will ensure that all electronic information stored or transmitted as part of the briefing meets the requirements for accessibility for persons with disabilities and persons with LEP, and is secure, including ensuring personally identifiable information (PII) is protected.

~~The LBHA will ensure that families who participate in remote briefings have the opportunity to ask questions as part of the briefing.~~

If families lose connectivity during any remote briefing or otherwise feel they were unable to access information presented during the briefing, the family may request a one-on-one briefing over the phone or in person with the LBHA.

### **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 LBHA's jurisdiction;
- An explanation of how portability works. The LBHA may not discourage the family from choosing to live anywhere in the LBHA jurisdiction or outside the LBHA jurisdiction under portability, unless otherwise expressly authorized by statute, regulation, PIH Notice, or court order;
- The LBHA must inform the family of how portability may affect the family's assistance through screening, subsidy standards, payment standards, and any other elements of the portability process which may affect the family's assistance;
- The advantages of areas that do not have a high concentration of low-income families; and
- For families receiving welfare-to-work vouchers, a description of any local obligations of a welfare-to-work family and an explanation that failure to meet the obligations is grounds for denial of admission or termination of assistance.

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

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

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

- The term of the voucher, voucher suspensions, and the LBHA's policies on any extensions of the term. If the LBHA 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 LBHA determines the payment standard for a family, how the LBHA determines total tenant payment for a family, and information on the payment standard and utility allowance schedule.
- An explanation of how the LBHA determines the maximum allowable rent for an assisted unit.
- Where the family may lease a unit and an explanation of how portability works, including information on how portability may affect the family's assistance through screening, subsidy standards, payment standards, and any other elements of the portability process that may affect the family's assistance.
- The HUD-required tenancy addendum, which must be included in the lease.
- The form the family must use to request approval of tenancy, and a description of the procedure for requesting approval for a tenancy.
- A statement of the LBHA policy on providing information about families to prospective owners.
- The LBHA subsidy standards including when and how exceptions are made.
- Materials (e.g., brochures) on how to select a unit and any additional information on selecting a unit that HUD provides (e.g., HUD brochure entitled, "A Good Place to Live").
- Information on federal, state and local equal opportunity laws and a copy of the housing discrimination complaint form, including information on how to complete the form and file a fair housing complaint.
- A list of landlords known to the LBHA who may be willing to lease a unit to the family or other resources (e.g., newspapers, organizations, online search tools) known to the LBHA that may assist the family in locating a unit. LBHAs must ensure that the list of landlords or other resources covers areas outside of poverty or minority concentration.
- Notice that if the family includes a person with disabilities, the family may request a list of available accessible units known to the LBHA.
- The family obligations under the program, including any obligations of a welfare-to-work family, and any obligations of other special programs if the family is participating in one of those programs.
- The grounds on which the LBHA may terminate assistance for a participant family because of family action or failure to act.

- LBHA informal hearing procedures including when the LBHA is required to offer a participant family the opportunity for an informal hearing, and how to request the hearing.

- An explanation of the advantages of moving to an area that does not have a high concentration of low-income families.
- The HUD pamphlet on lead-based paint entitled, “Protect Your Family from Lead in Your Home.”

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

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

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

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

#### LBHA Policy

The LBHA will provide the following additional materials in the briefing packet:

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

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

“Is Fraud Worth It?” (form HUD-1141-OIG), which explains the types of actions a family must avoid and the penalties for program abuse

“What You Should Know about EIV,” a guide to the Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH 2017-12



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

Obligations of the family are described in the housing choice voucher (HCV) regulations and on the voucher itself. These obligations include responsibilities the family is required to fulfill, as well as prohibited actions. The LBHA 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**

#### LBHA Policy

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

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

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

The family obligations of the voucher are listed as follows:

- The family must supply any information that the LBHA 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 LBHA 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 deficiencies under the National Standards for the Physical Inspection of Real Estate (NSPIRE) caused by failure to pay tenant-provided utilities or appliances, or damages to the dwelling unit or premises beyond ordinary wear and tear caused by any member of the household or guest.

#### LBHA Policy

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

- The family must allow the LBHA 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.

LBHA Policy

The LBHA will determine if a family has committed serious or repeated violations of the lease based on available evidence, including but not limited to, a court-ordered eviction or an owner's notice to evict, police reports, and affidavits from the owner, neighbors, or other credible parties with direct knowledge.

*Serious and repeated lease violations* will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, living or housekeeping habits that cause damage to the unit or premises, and criminal activity. Generally, the criterion to be used will be whether or not the reason for the eviction was the fault of the tenant or guests. Any incidents of, or criminal activity related to, domestic violence, dating violence, sexual assault, stalking, or human trafficking will not be construed as serious or repeated lease violations by the victim [see 24 CFR 5.2005(c)(1)].

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

LBHA Policy

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

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

LBHA Policy

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

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

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

LBHA 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 LBHA 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 LBHA when the family is absent from the unit.

#### LBHA 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 LBHA at the start of the extended absence.

- The family must pay utility bills and provide and maintain any appliances that the owner is not required to provide under the lease [Form HUD-52646, Voucher].
- The family must not own or have any interest in the unit, (other than in a cooperative and owners of a manufactured home leasing a manufactured home space).
- Family members must not commit fraud, bribery, or any other corrupt or criminal act in connection with the program. (See Chapter 14, Program Integrity for additional information).
- Family members must not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for HUD and LBHA 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 LBHA 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 LBHA 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 LBHA 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 LBHA must also establish policies related to the issuance of the voucher, to the voucher term, and to any extensions of the voucher term.

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

For each family, the LBHA determines the appropriate number of bedrooms under the LBHA 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 LBHA 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.

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- 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 LBHA 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 LBHA subsidy standards.

LBHA Policy

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

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

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

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

### LBHA Policy

The LBHA 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 (e.g., doctor or health professional), unless the disability and the disability-related need for accommodation is readily apparent or otherwise known. The family's continued need for an additional bedroom due to special medical equipment must be re-verified at annual reexamination.

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



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

When a family is selected from the waiting list (or as a special admission as described in Chapter 4), or when a participant family wants to move to another unit, the LBHA 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 LBHA has determined the family to be eligible for the program, and that the LBHA expects to have money available to subsidize the family if the family finds an approvable unit. However, the LBHA 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 LBHA's housing choice voucher program [Voucher, form HUD-52646]

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

### LBHA Policy

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

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

### LBHA Policy

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

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

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

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

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

#### LBHA 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 LBHA grants an extension.

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

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

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

#### LBHA Policy

The LBHA will automatically approve one 30-day extension upon written request from the family.

The LBHA may 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 LBHA. Following is a list of extenuating circumstances that the LBHA 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 LBHA

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

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

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

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

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

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

### **Expiration of Voucher Term**

Once a family's housing choice voucher term (including any extensions) expires, the family is no longer eligible to search for housing under the program. If the family still wishes to receive assistance, the LBHA 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].

#### LBHA Policy

If an applicant family's voucher term or extension expires before the LBHA has approved a tenancy, the LBHA will require the family to reapply for assistance.

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





## Chapter 6

### INCOME AND SUBSIDY DETERMINATIONS

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

#### INTRODUCTION

A family's income determines eligibility for assistance and is also used to calculate the family's payment and the LBHA's subsidy. The LBHA 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 LBHA policies related to these topics in three parts as follows:

Part I: Annual Income. HUD regulations specify the sources of income which are excluded from the family's annual income. These requirements and LBHA policies for calculating annual income are found in Part I.

Part II: Assets. HUD regulations specify the types of assets which are excluded from a family's annual income. These requirements and LBHA policies for calculating income from assets are found in Part II.

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

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

## PART I: ANNUAL INCOME

### 6-I.A. OVERVIEW [24 CFR 5.609]

Annual income includes:

- All amounts, not specifically excluded in 24 CFR 5.609(b);
- All amounts received from all sources by each member of the family who is 18 years of age or older or is the head of household or spouse;
- Unearned income by or on behalf of each dependent who is under 18 years of age; and
- Imputed returns of an asset based on the current passbook savings rate, as determined by HUD, when the value of net family assets exceeds \$50,000 (which amount HUD will adjust annually) and the actual returns from a given asset cannot be calculated.

In addition to this general definition, the regulations at 24 CFR 5.609(b) provide a comprehensive listing of all sources of income that are excluded from annual income. Note, unlike in previous versions of the regulations, the current regulations governing annual income do not list sources of income that are to be included. Instead, HUD relies on the definition of excluded income under 24 CFR 5.609(b) to provide the scope of what is included. To that end, generally, all income is included unless it is specifically excluded by regulation.

Annual income includes “all amounts received,” not the amount that a family may be legally entitled to receive but did not receive. For example, a family’s child support or alimony income must be based on payments received, not the amounts to which the family is entitled by court or agency orders [Notice PIH 2023-27].

Annual income also includes all actual anticipated income from assets (provided the income is not otherwise excluded) even if the asset itself is excluded from net family assets [Notice PIH 2023-27]. 24 CFR 5.603(b)(1) describes HUD regulations for treating specific types of income and assets. The full texts of those portions of the regulations are provided in exhibits at the end of this chapter as follows:

- Annual Income Full Definition (Exhibit 6-1)
- Treatment of Family Assets (Exhibit 6-2)
- The Effect of Welfare Benefit Reduction (Exhibit 6-3)

Sections 6-I.B and 6-I.C discuss general requirements and methods for calculating annual income. The rest of this section describes how each source of income is treated for the purposes of determining annual income. Verification requirements for annual income are discussed in Chapter 7.



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

### Overview

Income received by all family members must be counted unless specifically excluded by the regulations. It is the responsibility of the head of household to report changes in family composition in accordance with HUD regulations and LBHA policies in Chapter 11. The rules on which sources of income are counted vary somewhat by family member. The chart below summarizes how family composition affects income determinations.

<b>Summary of Income Included and Excluded by Person</b>	
Live-in aides	Income from all sources (both earned and unearned) is excluded [24 CFR 5.609(b)(8)].
Foster child or foster adult	Income from all sources (both earned and unearned) is excluded [24 CFR 5.609(b)(8)].
Head, spouse, or cohead Other adult family members	All sources of income not specifically excluded by the regulations are included [24 CFR 5.609(a)].
Minors	Earned income of children under 18 years of age is excluded [24 CFR 5.609(b)(3)].  All sources of unearned income, except those specifically excluded by the regulations, are included [24 CFR 5.609(a)].
Full-time students 18 years of age or older (not head, spouse, or cohead)	Earned income in excess of the dependent deduction is excluded [24 CFR 5.609(b)(14)].  All sources of unearned income, except those specifically excluded by the regulations, are included.

## **Temporarily Absent Family Members**

The current regulations governing annual income do not specifically address temporarily absent family members. The regulations also do not define “temporarily” or “permanently” absent or specify a timeframe associated with a temporary versus a permanent absence.

### LBHA Policy

Unless specifically excluded by the regulations, the income of all family members approved to live in the unit will be counted, even if the family member is temporarily absent from the unit.

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

### ***Absent Students***

#### LBHA 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 LBHA indicating that the student has established a separate household, or the family declares that the student has established a separate household.

### ***Absences Due to Placement in Foster Care***

Children temporarily absent from the home as a result of placement in foster care (as confirmed by the state child welfare agency) are considered members of the family [24 CFR 5.403].

#### LBHA Policy

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

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

#### LBHA Policy

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

## **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].

### LBHA Policy

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

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

## **Joint Custody of Dependents**

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

## **Caretakers for a Child**

### LBHA Policy

The approval of a caretaker is at the owner and LBHA's discretion and subject to the owner and LBHA's screening criteria. If neither a parent nor a designated guardian remains in a household receiving HCV assistance, the LBHA 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 LBHA will extend the caretaker's status as an eligible visitor.
- (3) At any time that custody or guardianship legally has been awarded to a caretaker, the housing choice voucher will be transferred to the caretaker.
- (4) During any period that a caretaker is considered a visitor, the income of the caretaker is not counted in annual income and the caretaker does not qualify the family for any deductions from income.

## 6-I.C. CALCULATING ANNUAL INCOME

The methodology used for calculating income differs depending on whether income is being calculated at initial occupancy, interim reexamination, or at annual reexamination. However, income from assets is always anticipated regardless of certification type.

### **Anticipating Annual Income [24 CFR 5.609(c)(1)]**

At initial occupancy and for an interim reexamination of family income, the LBHA is required to use anticipated income (current income) for the upcoming 12-month period following the new admission or interim reexamination effective date. Policies related to verifying income are found in Chapter 7.

#### LBHA Policy

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

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

In all cases, the family file will be documented with a clear record of the reason for the decision, and a clear audit trail will be left as to how the LBHA annualized projected income.

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

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

**Example:** An employer reports that a full-time employee who has been receiving \$8/hour will begin to receive \$8.25/hour in the eighth week after the effective date of the new admission or interim reexamination. In such a case the LBHA would calculate annual income as follows:  $(\$8/\text{hour} \times 40 \text{ hours} \times 7 \text{ weeks}) + (\$8.25 \times 40 \text{ hours} \times 45 \text{ weeks})$ .

The family may present information that demonstrates that implementing a change before its effective date would create a hardship for the family. In such cases the LBHA will calculate annual income using current circumstances and then, should the change in income require the LBHA to conduct an interim reexamination, conduct an interim reexamination in accordance with LBHA policy in Chapter 11.

**Calculating Annual Income at Annual Reexamination [24 CFR.609(c)(2); Notice PIH 2023-27]**

At annual reexamination, LBHAs must first determine the family's income for the previous 12-month period and use this amount as the family income for annual reexaminations; however, adjustments to reflect current income must be made. Any change of income since the family's last annual reexamination, including those that did not meet the threshold to process an interim reexamination of family income in accordance with LBHA policies in Chapter 11 and HUD regulations, must be considered. If, however, there have been no changes to income, then the amount of income calculated for the previous 12-month period is the amount that will be used to determine the family's rental assistance. Income from assets is always anticipated, irrespective of the income examination type. Policies related to conducting annual reexaminations are located in Chapter 11.

## 6-I.D. EARNED INCOME

### ***Wages and Related Compensation [24 CFR 5.609(a); Notice PIH 2023-27]***

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

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

A *day laborer* is defined as an individual hired and paid one day at a time without an agreement that the individual will be hired or work again in the future [24 CFR 5.603(b)].

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

### **LBHA Policy**

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

For persons who regularly receive bonuses or commissions, the LBHA will verify and then average amounts received for the two years preceding admission or interim reexamination. If only a one-year history is available, the LBHA will use the prior year amounts. In either case the family may provide, and the LBHA 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 LBHA will count only the amount estimated by the employer. The file will be documented appropriately.

### ***Military Pay***

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

***Earnings of a Minor [24 CFR 5.609(b)(3)]***

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

***Earned Income of Full-Time Students [24 CFR 5.609(b)(14)]***

The earned income of a dependent full-time student in excess of the amount of the dependent deduction is excluded from annual income. All sources of unearned income, except those specifically excluded by the regulations, are included.

A family member other than the head of household or spouse/cohead is considered a full-time student if they are attending school or vocational training on a full-time basis [24 CFR 5.603(b)]. To be considered “full-time,” a student must be considered “full-time” by an educational institution with a degree or certificate program [HCV GB, p. 5-29].



**6-I.E. EARNED INCOME DISALLOWANCE FOR PERSONS WITH DISABILITIES  
[24 CFR 5.617; Streamlining Final Rule (SFR) Federal Register 3/8/16;  
Notice PIH 2023-27]**

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

**Calculation of the Disallowance**

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

**Calculation Method**

***Initial 12-Month Exclusion***

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

LBHA Policy

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

***Second 12-Month Exclusion***

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

LBHA Policy

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

***Lifetime Limitation***

The EID has a two-year (24-month) lifetime maximum. The two-year eligibility period begins at the same time that the initial exclusion period begins and ends 24 months later. During the 24-month period, an individual remains eligible for EID even if they begin to receive assistance from a different housing agency, move between public housing and Section 8 assistance, or have breaks in assistance. The EID will sunset on January 1, 2026. In no circumstances will a family member’s exclusion period continue past January 1, 2026.

## **6-I.F. BUSINESS AND SELF-EMPLOYMENT INCOME [24 CFR 5.609(b)(28); Notice PIH 2023-27]**

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

Expenditures for business expansion or amortization of capital indebtedness may not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family.”

### LBHA Policy

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

### **Independent Contractors**

Income received as an independent contractor is included in annual income, even if the source, date, or amount of the income varies [24 CFR 5.609 (b)(24)].

An *independent contractor* is defined as an individual who qualifies as an independent contractor instead of an employee in accordance with the Internal Revenue Code Federal income tax requirements and whose earnings are consequently subject to the Self-Employment Tax. In general, an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done [24 CFR 5.603(b)].

### **Business Expansion**

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

### LBHA 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 LBHA to deduct from gross income the amortization of capital indebtedness.

### LBHA 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 LBHA 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 LBHA 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.

### LBHA 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 LBHA 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**

### LBHA 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.

## **Assets Owned by a Business Entity**

If a business entity (e.g., limited liability company or limited partnership) owns the asset, then the family's asset is their ownership stake in the business, not some portion of the business's assets. However, if the family holds the assets in their own name (e.g., they own one-third of a restaurant) rather than in the name of a business entity, then the percentage value of the asset owned by the family is what is counted toward net family assets (e.g., one-third of the value of the restaurant) [Notice PIH 2023-27].

## **6-I.G. STUDENT FINANCIAL ASSISTANCE [FR Notice 2/14/23 and Notice PIH 2023-27]**

### **Introduction**

Section 479B of the HEA requires that all assistance under Title IV of the HEA and Bureau of Indian Affairs student financial assistance, even assistance provided to students in excess of tuition and required fees or charges, be excluded from HUD income calculations.

For Section 8 programs only, however, for over 10 years through FY 2022, HUD appropriations have included a provision that for certain students receiving Section 8 assistance, any amounts received in excess of tuition and any other required fees and charges are considered income (with the exception of students who lived with their parents or who were over the age of 23 with a dependent child).

While the language in various consolidated appropriations acts is limited to federal fiscal year covered by the act, this does not rule out the possibility that similar language will be included in future years' appropriations bills.

- For any funds from a year where HUD's appropriations acts include this limitation, it will apply with respect to Section 8 participants. The LBHA will follow the pre-HOTMA Section 8 student financial assistance limitation described below.
- During years in which an appropriations act does not contain this Section 8 student financial assistance limitation (or any other such limitation), then the determination of student financial assistance as included/excluded income for all Section 8 students defaults to the methodology described for the public housing program and listed below.

### **Pre-HOTMA Section 8 Student Financial Assistance Limitation [FR 4/10/06; Notice PIH 2015-21]**

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

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

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

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

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

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

Any student financial assistance not subject to inclusion under the regulations is fully excluded from annual income, whether it is paid directly to the student or to the educational institution the student is attending. This includes any financial assistance received by:

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

### **HOTMA Student Financial Assistance Requirements [24 CFR 5.609(b)(9)]**

The regulations under HOTMA distinguish between two categories of student financial assistance paid to both full-time and part-time students.

## **Types of Assistance**

Any assistance to students under section 479B of the Higher Education Act of 1965 (Title IV of the HEA) must be excluded from the family's annual income [24 CFR 5.609(b)(9)(i)].

Examples of assistance under title IV of the HEA include:

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

Any other grant-in-aid, scholarship, or other assistance amounts an individual receives for the actual covered costs charged by the institute of higher education not otherwise excluded by the Federally mandated income exclusions are excluded [24 CFR 5.609(b)(9)(ii)]. *Actual covered costs* are defined as the actual costs of:

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

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

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

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

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

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

- The Federal government;
- A state, tribal, or local government ;
- A private foundation registered as a nonprofit;
- A business entity (such as corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, or nonprofit entity); or
- An institution of higher education.

Student financial assistance, does not include:

- Financial support provided to the student in the form of a fee for services performed; (e.g., a work study or teaching fellowship that is not excluded under section 479B of the Higher Education Act HEA);
- Gifts, including gifts from family or friends; or
- Any amount of the scholarship or grant that, either by itself or in combination with assistance excluded under the HEA, exceeds the actual covered costs of the student.

### **Calculating Income from Student Financial Assistance [HOTMA Student Financial Assistance Resource Sheet; Notice PIH 2023-27]**

The formula for calculating the amount of other student financial assistance that is excluded from income always begins with deducting the assistance received under 479B of the HEA from the total actual covered costs, because the 479B assistance is intended to pay the student's actual covered costs. When a student receives assistance from both Title IV of the HEA and from other sources, the assistance received under Title IV of the HEA must be applied to the student's actual covered costs first and then other student financial assistance is applied to any remaining actual covered costs. Once actual costs are covered, any remaining student financial assistance is considered income.

## LBHA Policy

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

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

### **Example 1**

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

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

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

### **Example 2**

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



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

### **Example 3**

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

### **Example 4**

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

## 6-I.H. PERIODIC PAYMENTS

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

Income that has a discrete end date and will not be repeated beyond the coming year is excluded from a family's annual income because it is nonrecurring income. However, this does not include unemployment income and other types of periodic payments that are received at regular intervals (such as weekly, monthly, or yearly) for a period of greater than one year that can be extended. For example, a family receives income from a guaranteed income program in their city that has a discrete beginning and end date. While the guaranteed income will be repeated in the coming year, it will end before the family's next annual reexamination. This income is fully excluded from annual income.

Insurance payments and settlements for personal or property losses, including but not limited to payments under health insurance, motor vehicle insurance, and workers' compensation, are excluded from annual income. However, periodic payments paid at regular intervals (such as weekly, monthly, or yearly) for a period of greater than one year that are received in lieu of wages for workers' compensation are included in annual income. Payments received in lieu of wages for worker's compensation are excluded, even if paid in periodic payments, if the income will last for a period of less than one year.

### **Lump-Sum Payments for the Delayed Start of a Periodic Payment [24 CFR 5.609(b)(16)]**

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

#### LHA Policy

The LBHA will include in annual income lump sums received as a result of delays in processing periodic payments (other than those specifically excluded by the regulation), such as unemployment or welfare assistance.

When a delayed-start payment is received that is to be included and the family reports this during the period in which the LBHA is processing an annual reexamination, the LBHA will adjust the family's rent retroactively for the period the payment was intended to cover.

If the delayed-start payment is received outside of the time the LBHA is processing an annual reexamination, then the LBHA will consider whether the amount meets the threshold to conduct an interim reexamination. If so, the LBHA will conduct an interim in accordance with LBHA policies in Chapter 11. If not, the LBHA will consider the amount when processing the family's next annual recertification.

### **Retirement Accounts [24 CFR 5.609(b)(26); Notice PIH 2023-27]**

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

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

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

### **Social Security Benefits [Notice PIH 2018-24]**

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

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

#### LBHA Policy

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

## **Alimony and Child Support**

### LBHA Policy

The LBHA will count all regular payments of alimony or child support awarded as part of a divorce or separation agreement.

The LBHA will count court-awarded amounts for alimony and child support unless the family certifies and the LBHA verifies that the payments are not being made.

In order to verify that payments are not being made, the LBHA will review child support payments over the last three months.

If payments are being made regularly, the LBHA will use the amount received during the last 12 months (excluding any lump sums received). If payments have been made for a period less than 12 months, the LBHA will average all payments that have been made.

At new admission or interim recertification, if any lump sum payments were made in the past 12 months, the LBHA will determine the likelihood of the family receiving another similar payment within the next 12 months before deciding whether or not this amount will be included in the calculation of annual income.

If the LBHA determines and can appropriately verify that the family in all likelihood will not receive a similar payment, then the amount will not be considered when projecting annual income.

If the LBHA determines that it is likely that the family will receive a similar payment and can appropriately verify it, the amount will be included when projecting annual income.

If no payments have been made in the past three months and there are no lump sums, the LBHA will not include alimony or child support in annual income.

## **6-I.I. NONRECURRING INCOME [24 CFR 5.609(b)(24) and Notice PIH 2023-27]**

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

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

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

- Nonrecurring payments made to the family or to a third party on behalf of the family to assist with utilities;
- Payments for eviction prevention;
- Security deposits to secure housing;
- Payments for participation in research studies (depending on the duration); and
- General one-time payments received by or on behalf of the family.

Nonrecurring income that is excluded under the regulations includes:

- Payments from the U.S. Census Bureau for employment (relating to decennial census or the American Community Survey) lasting no longer than 180 days and not culminating in permanent employment [24 CFR 5.609(b)(24)(i)].
- Direct federal or state payments intended for economic stimulus or recovery [24 CFR 5.609(b)(24)(ii)].
- Amounts directly received by the family as a result of state refundable tax credits or state or federal tax refunds at the time they are received [24 CFR 5.609(b)(24)(iii) and (iv)].
- Gifts for holidays, birthdays, or other significant life events or milestones (e.g., wedding gifts, baby showers, anniversaries) [24 CFR 5.609(b)(24)(v)].
- Non-monetary, in-kind donations, such as food, clothing, or toiletries, received from a food bank or similar organization [24 CFR 5.609(b)(24)(vi)]. When calculating annual income, LBHAs are prohibited from assigning monetary value to non-monetary in-kind donations received by the family [Notice PIH 2023-27]. Non-recurring, non-monetary in-kind donations from friends and family are excluded as non-recurring income.
- Lump-sum additions to net family assets, including but not limited to lottery or other contest winnings [24 CFR 5.609(b)(24)(vii)].

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

### **Overview**

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

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

The LBHA must make a special calculation of annual income when the welfare agency imposes certain sanctions on certain families. The full text of the regulation at 24 CFR 5.615 is provided as Exhibit 6-3. The requirements are summarized below. This rule applies only if a family was receiving HCV assistance at the time the sanction was imposed.

#### ***Covered Families***

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

#### ***Imputed Income***

When a welfare agency imposes a sanction that reduces a family’s welfare income because the family commits fraud or fails to comply with the agency’s economic self-sufficiency program or work activities requirement, the LBHA must include in annual income “imputed” welfare income. The LBHA must request that the welfare agency provide the reason for the reduction of benefits and the amount of the reduction of benefits. The imputed welfare income is the amount that the benefits were reduced as a result of the sanction.

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

#### ***Offsets***

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

#### **6-I.K. STATE PAYMENTS TO ALLOW INDIVIDUALS WITH DISABILITIES TO LIVE AT HOME [24 CFR 5.609(b)(19)]**

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

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

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

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

#### **6-I.L. CIVIL RIGHTS SETTLEMENTS [24 CFR 5.609(b)(25); FR Notice 2/14/23]**

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

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

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

## **6-I.M. ADDITIONAL EXCLUSIONS FROM ANNUAL INCOME [24 CFR 5.609(b)]**

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

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



- Payments received by tribal members as a result of claims relating to the mismanagement of assets held in trust by the United States, to the extent such payments are also excluded from gross income under the Internal Revenue Code or other federal law [24 CFR 5.609(b)(21)]. Generally, payments received by tribal members in excess of the first \$2,000 of per capita shares are included in a family's annual income for purposes of determining eligibility. However, as explained in Notice PIH 2023-27, payments made under the Cobell Settlement, and certain per capita payments under the recent Tribal Trust Settlements, must be excluded from annual income in HUD programs that adopt the definitions of *annual income* in 24 CFR 5.609, the Census Long Form, and the IRS Form 1040, including the programs affected by Notice PIH 2023-27.
- Replacement housing "gap" payments made in accordance with 49 CFR Part 24 that offset increased out of pocket costs of displaced persons that move from one federally subsidized housing unit to another federally subsidized housing unit. Such replacement housing "gap" payments are not excluded from annual income if the increased cost of rent and utilities is subsequently reduced or eliminated, and the displaced person retains or continues to receive the replacement housing "gap" payments [24 CFR 5.609(b)(23)].
- Income earned on amounts placed in a family's Family Self-Sufficiency account [24 CFR 5.609(b)(27)].
- Amounts received by participants in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred e.g., special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program [24 CFR 5.609(i)(12)(ii)].
- Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS) [(24 CFR 5.609(b)(12)(i)].
- Amounts received under a resident service stipend not to exceed \$200 per month. A resident service stipend is a modest amount received by a resident for performing a service for the LBHA or owner, on a part-time basis, that enhances the quality of life in the development [24 CFR 5.609 I(12)(ii)].

Incremental earnings and benefits to any family member resulting from participation in qualifying training program funded by HUD or in qualifying federal, state, tribal, or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff are excluded from annual income. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives and are excluded only for the period during which the family member participates in the training program unless those amounts are excluded under 24 CFR 5.609(b)(9)(i) [24 CFR 5.609(b)(12)(iv)].

### LBHA Policy

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

The LBHA 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 LBHA 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 LBHA’s interim reporting requirements (see Chapter 11).

- Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era [24 CFR 5.609(b)(13)].
- Adoption assistance payments for a child in excess of the amount of the dependent deduction per adopted child [24 CFR 5.609(b)(15)].
- Refunds or rebates on property taxes paid on the dwelling unit [24 CFR 5.609(b)(20)].
- Amounts that HUD is required by federal statute to exclude from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(b) apply. HUD will publish a notice in the *Federal Register* to identify the benefits that qualify for this exclusion. Updates will be published when necessary.

HUD publishes an updated list of these exclusions periodically. The most recent list of exclusions was published in the *Federal Register* on May 20, 2014. It includes:

- (a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 (b))
- (b) Benefits under Section 1780 of the School Lunch Act and Child Nutrition Act of 1966, including WIC
- (c) Payments to volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058)
- (d) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c))
- (e) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e)
- (f) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f))
- (g) Payments received under programs funded in whole or in part under the Workforce Investment Act of 1998 (29 U.S.C. 2931)
- (h) Deferred disability benefits from the Department of Veterans Affairs, whether received as a lump sum or in monthly prospective amounts
- (i) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, 90 Stat. 2503-04)
- (j) Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b))
- (k) A lump sum or periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the United States District Court case entitled *Elouise Cobell et al. v. Ken Salazar et al.*, for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010
- (l) The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408)
- (m) Benefits under the Indian Veterans Housing Opportunity Act of 2010 (only applies to Native American housing programs)
- (n) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f))
- (o) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in *In Re Agent Orange* product liability litigation, M.D.L. No. 381 (E.D.N.Y.)

- (p) Payments received under 38 U.S.C. 1833(c) to children of Vietnam veterans born with spinal bifida, children of women Vietnam veterans born with certain birth defects, and children of certain Korean service veterans born with spinal bifida
- (q) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721)
- (r) The value of any child care provided or arranged (or any amount received as payment for such care or reimbursement for costs incurred for such care) under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q)
- (s) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j))
- (t) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433)
- (u) Amounts of scholarships funded under Title IV of the Higher Education Act of 1965j, including awards under federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu). For Section 8 programs, the exception found in § 237 of Public Law 109-249 applies and requires that the amount of financial assistance in excess of tuition and mandatory fees shall be considered income in accordance with the provisions codified at 24 CFR 5.609(b)(9), except for those persons with disabilities as defined by 42 U.S.C. 1437a(b)(3)(E) (Pub. L. 109-249) (See Section 6-I.L. for exceptions.)
- (v) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. 12637(d))
- (w) Any amount of crime victim compensation (under the Victims of Crime Act) received through crime victim assistance (or payment or reimbursement of the cost of such assistance) as determined under the Victims of Crime Act because of the commission of a crime against the applicant under the Victims of Crime Act (42 U.S.C. 10602)
- (x) Any amounts in an "individual development account" as provided by the Assets for Independence Act, as amended in 2002
- (y) Payments made from the proceeds of Indian tribal trust cases as described in Notice PIH 2013-30, "Exclusion from Income of Payments under Recent Tribal Trust Settlements" (25 U.S.C. 117b(a))
- (z) Major disaster and emergency assistance received under the Robert T. Stafford Disaster Relief and Emergency Assistance Act and comparable disaster assistance provided by states, local governments, and disaster assistance organizations
- (aa) Distributions from an ABLE account, and actual or imputed interest on the ABLE account balance [See also Notice PIH 2019-09]

## PART II: ASSETS

### 6-II.A. OVERVIEW

Annual income includes all actual anticipated income from assets (unless otherwise excluded by the regulations) even if the asset itself is excluded from net family assets [Notice PIH 2023-27].

The regulation at 24 CFR 5.603(b)(3) provides a list of items that are excluded from the calculation of net family assets. Note, unlike previous versions of the regulations, the current regulations do not list types of assets that are included in annual income. Instead, HUD relies on the definition of items excluded from assets to provide the scope of what is included. Exhibit 6-2 provides the regulatory definition of *net family assets*.

Optional policies for family self-certification of assets are found in Chapter 7. Policies related to the asset limitation may be found in Chapter 3.

Income from assets is always anticipated, irrespective of the income examination type.

#### LBHA Policy

The LBHA generally will use current circumstances to determine both the value of an asset and the anticipated income from the asset. The LBHA will use other than current circumstances to anticipate income when (1) an imminent change in circumstances is expected, (2) it is not feasible to anticipate a level of income over 12 months, or (3) the LBHA 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 LBHA can take into consideration past rental income along with the prospects of obtaining a new tenant.

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

## **6-II.B. ASSETS DISPOSED OF FOR LESS THAN FAIR MARKET VALUE [24 CFR 5.603(b)(2)]**

LBHAs must include the value of any business or family assets disposed of by an applicant or participant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application or reexamination, as applicable, in excess of the consideration received for the asset. An asset moved to a retirement account held by a member of the family is not considered to be an asset disposed of for less than fair market value. [Notice PIH 2023-27].

### ***Minimum Threshold***

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

#### LBHA Policy

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

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

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

#### LBHA 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. Negative equity in real property or other investments does not prohibit the owner from selling the property or other investments, so negative equity alone would not justify excluding the property or other investments from family assets.

### ***Asset Owned by a Business Entity***

If a business entity (e.g., limited liability company or limited partnership) owns the asset, then the family's asset is their ownership stake in the business, not some portion of the business's assets. However, if the family holds the assets in their own name (e.g., they own one third of a restaurant) rather than in the name of a business entity, then the percentage value of the asset owned by the family is what is counted toward net family assets (e.g., one-third of the value of the restaurant) [Notice PIH 2023-27].

## ***Family Declaration***

### **LBHA 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 LBHA may verify the value of the assets disposed of if other information available to the LBHA does not appear to agree with the information reported by the family.

## **6-II.C. ASSET INCLUSIONS AND EXCLUSIONS**

### ***Checking and Savings Accounts [Notice PIH 2023-27]***

HUD considers bank accounts as non-necessary items of personal property. Whether or not non-necessary personal property is counted toward net family assets depends on the combined value of all of the family's assets.

- When the combined value of net family assets is greater than \$50,000, as adjusted by inflation, checking and/or savings accounts would be counted toward net family assets.
- When the combined value of all non-necessary personal property does not exceed \$50,000, as adjusted by inflation, all non-necessary personal property is excluded from net family assets. In this case, the value of the family's checking and/or savings accounts would not be considered when calculating net family assets.

However, actual income from checking and savings accounts is always included in a family's annual income, regardless of the total value of net family assets or whether the asset itself is included or excluded from net family assets, unless that income is specifically excluded.

### ***ABLE Accounts [24 CFR 5.609(b)(10); Notice PIH 2019-09]***

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

***Investment Accounts Such as Stocks, Bonds, Saving Certificates, and Money Market Funds  
[24 CFR 5.603(b)(1)]***

HUD considers financial investments such as stocks and bonds non-necessary items of personal property. Whether non-necessary personal property is counted toward net family assets depends on the combined value of all of the family's assets.

- When the combined value of net family assets is greater than \$50,000, as adjusted by inflation, financial investments such as stocks and bonds are considered part of net family assets. In this case, the value of the family's checking and/or savings accounts would be counted toward net family assets.
- When the combined value of all non-necessary personal property does not exceed \$50,000, as adjusted by inflation, all non-necessary personal property is excluded from net family assets. In this case, the value of the family's financial investments such as stocks and bonds would not be considered when calculating net family assets.

However, actual income from financial accounts is always included in a family's annual income, regardless of the total value of net family assets or whether the asset itself is included or excluded from net family assets, unless that income is specifically excluded. When a stock issues dividends in some years but not others (e.g., due to market performance), the dividend is counted as the actual return when it is issued, but when no dividend is issued, the actual return is \$0. When the stock never issues dividends, the actual return is \$0.

LBHA Policy

The LBHA will include interest or dividends earned by investment accounts as actual income from assets even when the earnings are reinvested.

The cash value of such an asset is determined by deducting from the market value any broker fees, penalties for early withdrawal, or other costs of converting the asset to cash.

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



***Necessary and Non-Necessary Personal Property [24 CFR 5.603(b)(3)(i)]***

All assets are categorized as either *real property* (e.g., land, a home) or *personal property*.

*Personal property* includes tangible items, like boats, as well as intangible items, like bank accounts.

The value of necessary items of personal property is excluded from the calculation of net family assets. Necessary items of personal property include a car used for commuting or medical devices.

HUD defines *necessary personal property* as items essential to the family for the maintenance, use, and occupancy of the premises as a home; or they are necessary for employment, education, or health and wellness. Necessary personal property includes more than merely items that are indispensable to the bare existence of the family. It may include personal effects (such as items that are ordinarily worn or utilized by the individual), items that are convenient or useful to a reasonable existence, and items that support and facilitate daily life within the family's home. Necessary personal property also includes items that assist a household member with a disability, including any items related to disability-related needs, or that may be required for a reasonable accommodation for a person with a disability. Necessary personal property does not include bank accounts, other financial investments, or luxury items. Items of personal property that do not qualify as necessary personal property are classified as non-necessary personal property.

The combined value of all **non-necessary** items of personal property is only included in annual income when the combined total value exceeds \$50,000 (adjusted annually by HUD). When the combined value of all non-necessary personal property does not exceed \$50,000, as adjusted by inflation, all non-necessary personal property is excluded from net family assets.

While not an exhaustive list, the following table from Notice PIH 2023-27 provides examples of necessary and non-necessary personal property.

Necessary Personal Property	Non-Necessary Personal Property
<p>Car(s)/vehicle(s) that a family relies on for transportation for personal or business use (e.g., bike, motorcycle, skateboard, scooter)</p> <p>Furniture, carpets, linens, kitchenware</p> <p>Common appliances</p> <p>Common electronics (e.g., radio, television, DVD player, gaming system)</p> <p>Clothing</p>	<p>Recreational car/vehicle not needed for day-to-day transportation for personal or business use (campers, motorhomes, traveling trailers, all-terrain vehicles (ATVs))</p> <p>Bank accounts or other financial investments (e.g., checking account, savings account, stocks/bonds)</p> <p>Recreational boat/watercraft</p> <p>Expensive jewelry without religious or cultural value, or which does not hold family significance</p>
<p>Personal effects that are not luxury items (e.g., toys, books)</p> <p>Wedding and engagement rings</p> <p>Jewelry used in religious/cultural celebrations and ceremonies</p> <p>Religious and cultural items</p> <p>Medical equipment and supplies</p> <p>Health care-related supplies</p> <p>Musical instruments used by the family</p> <p>Personal computers, phones, tablets, and related equipment</p>	<p>Collectibles (e.g., coins/stamps)</p> <p>Equipment/machinery that is not used to generate income for a business</p> <p>Items such as gems/precious metals, antique cars, artwork, etc.</p>
<p>Professional tools of trade of the family, for example professional books</p> <p>Educational materials and equipment used by the family, including equipment to accommodate persons with disabilities</p> <p>Equipment used for exercising (e.g., treadmill, stationary bike, kayak, paddleboard, ski equipment)</p>	

LBHA Policy

In determining the value of non-necessary personal property, the LBHA will use the family's estimate of the value. The LBHA may obtain an appraisal if there is reason to believe that the family's estimated value is off by \$50 or more. The family must cooperate with the appraiser but cannot be charged any costs related to the appraisal.

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

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

In addition, lump sums from insurance payments, settlements for personal or property losses, and recoveries from civil actions or settlements based on claims of malpractice, negligence, or other breach of duty owed to a family member arising out of law that resulted in a member of the family becoming a family member with a disability are excluded from income.

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

However, these amounts may count toward net family assets. The LBHA must consider any actual or imputed returns from assets as income at the next applicable income examination. In the case where the lump sum addition to assets would lead to imputed income, which is unearned income, that increases the family's annual adjusted income by 10 percent or more, then the addition of the lump sum to the family's assets will trigger an immediate interim reexamination of income in accordance with Chapter 11. This reexamination of income must take place as soon as the lump sum is added to the family's net family assets unless the addition takes place in the last three months of family's income certification period and the LBHA chooses not to conduct the examination.

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

**LBHA Policy**

Any lump-sum receipts are only counted as assets if they are retained by a family in a form recognizable as an asset. [RHIIP FAQs]. For example, if the family receives a \$1,000 lump sum for lottery winnings, and the family immediately spends the entire amount, the lump sum will not be counted toward net family assets.

### ***Jointly Owned Assets [Notice PIH 2023-27]***

For assets owned jointly by the family and one or more individuals outside of the assisted family, the LBHA must include the total value of the asset in the calculation of net family assets, unless:

- The asset is otherwise excluded;
- The family can demonstrate that the asset is inaccessible to them; or
- The family cannot dispose of any portion of the asset without the consent of another owner who refuses to comply.

If the family demonstrates that they can only access a portion of an asset, then only that portion's value is included in the calculation of net family assets for the family.

Any income from a jointly owned asset must be included in annual income, unless:

- The income is specifically excluded;
- The family demonstrates that they do not have access to the income from that asset; or
- The family only has access to a portion of the income from that asset.

If the family demonstrates that they can only access a portion of the income from an asset, then only that portion's value is included in the calculation of income from assets.

If an individual is a beneficiary who is entitled to access the account's funds only upon the death of the account's owner, and may not otherwise withdraw funds from an account, then the account is not an asset to the assisted family, and the family should provide proper documentation demonstrating that they are only a beneficiary on the account.

### ***Trusts [24 CFR 5.609(b)(2) and 5.603(b)(4)]***

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

The following types of trust distributions are excluded from annual income:

- Distributions of the principal or corpus of the trust; and
- Distributions of income from the trust when the distributions are used to pay the costs of health and medical care expenses for a minor.

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

When the creator sets up an *irrevocable trust*, the creator has no access to the funds in the account. Irrevocable trusts not under the control of any member of the family or household are not assets. Typically, special needs trusts are considered irrevocable. The value of the trust is not included in net family assets, so long as the fund continues to be held in a trust that is not revocable by, or under the control of, any member of the family or household [24 CFR 5.603(b)(4)]. Where an irrevocable trust is excluded from net family assets, the LBHA must not consider actual income earned by the trust (e.g., interest earned, rental income if property is held in the trust) for so long as the income from the trust is not distributed. If the value of the trust is not considered part of the family's net assets, then distributions from the trust are treated as follows:

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

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

The value of revocable trusts that are not under the control of the family are excluded from net family assets. This happens when a member of the assisted family is the beneficiary of a revocable trust, but the grantor is not a member of the assisted family. In this case the beneficiary does not "own" the revocable trust, and the value of the trust is excluded from net family assets. For the revocable trust to be considered excluded from net family assets, no family or household member may be the account's trustee. If this is the case, then distributions from the trust are treated as follows:

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

Revocable trusts under the control of the family or household (e.g., the grantor is a member of the assisted family or household) are considered assets and must be included in net family assets.

If the value of the trust is considered part of the family's net assets, then distributions from the trust are not considered income to the family. The LBHA must count all actual returns (e.g., interest earned) from the trust as income or, if the trust has no actual returns (e.g., if the trust is comprised of farmland that is not in use) and the total value of the combined net family assets exceeds \$50,000 (as that amount is updated for inflation), as imputed returns, as applicable.

### ***Life Insurance [FR Notice 2/14/23 and Notice PIH 2023-27]***

Net family assets do not include the value of term life insurance, which has no cash value to the individual before death.

The cash value of a life insurance policy available to a family member before death, such as a whole life or universal life policy, is included in the calculation of the value of the family's assets. The cash value is the surrender value. While the cash value of an insurance policy is considered an asset, the face value of any policy is not. If such a policy earns dividends or interest that the family could elect to receive, the amount of dividends or interest is counted as income from the asset whether or not the family actually receives it.

### ***Tax Refunds [24 CFR 5.603(b)(3)(xi) and Notice PIH 2023-27]***

All amounts received by a family in the form of federal tax refunds or refundable tax credits are excluded from a family's net family assets for a period of 12 months after receipt by the family.

At the time of an annual or interim reexamination of income, if the federal tax refund was received during the 12 months preceding the effective date of the reexamination, then the amount of the refund that was received by the family is subtracted from the total value of the account in which the federal tax refund or refundable tax credits were deposited. When the subtraction results in a negative number, then the balance of the asset is considered \$0.

If the tax refund or refundable tax credit is deposited into another excluded asset, such as a retirement account or a Coverdell Education Savings Account, then the deposit will have no effect on the balance of the asset (i.e., there is no need for the LBHA to subtract the amount of the deposit from the value of the excluded asset).

### ***Asset Exclusions [24 CFR 5.603(b)]***

The following are excluded from the calculations of net family assets:

- The value of any account under a retirement plan recognized as such by the IRS, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals [24 CFR 5.603(b)(3)(iii)].
- The value of real property that the family does not have the effective legal authority to sell in the jurisdiction in which the property is located [24 CFR 5.603(b)(3)(iv)].
  - *Real property* as used in this part has the same meaning as that provided under the law of the state in which the property is located [24 CFR 5.100].
  - Examples of this include but are not limited to co-ownership situations (including situations where one owner is a victim of domestic violence), where one party cannot unilaterally sell the real property; property that is tied up in litigation; and inherited property in dispute [Notice PIH 2023-27].
- Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a family member being a person with a disability [24 CFR 5.603(b)(3)(v)];
- The value of any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986 [24 CFR 5.603(b)(3)(vi)];

- The value of any qualified tuition program under Section 529 of such Code [24 CFR 5.603(b)(3)(vi)];
- The value of any “baby bond” account created, authorized, or funded by federal, state, or local government [24 CFR 5.603(b)(3)(vi)];
- Interests in Indian trust land [24 CFR 5.603(b)(3)(vii)];
- Equity in a manufactured home where the family receives assistance under 24 CFR part 982 [24 CFR 5.603(b)(3)(viii)];
- Equity in property under the Homeownership Option for which a family receives assistance under 24 CFR part 982 [24 CFR 5.603(b)(3)(ix)];
- Family Self-Sufficiency accounts [24 CFR 5.603(b)(3)(x)];
- Federal tax refunds or refundable tax credits for a period of 12 months after receipt by the family [24 CFR 5.603(b)(3)(xi)].
- The full amount of assets held in an irrevocable trust [Notice PIH 2023-27]; and
- The full amount of assets held in a revocable trust where a member of the family is the beneficiary, but the grantor/owner and trustee of the trust is not a member of the participant family or household [Notice PIH 2023-27].

## 6-II.D. DETERMINING INCOME FROM ASSETS

In some cases, amounts that are excluded from net family assets may be included as annual income when disbursements are made to a family from an asset. In other cases, amounts are excluded from annual income as a lump-sum addition to net family assets, but those funds are then considered a net family asset if held in an account or other investment that is considered part of net family assets [Notice PIH 2023-27].

### *Net Family Assets*

*Net family assets* are defined as the net cash value of all assets owned by the family, after deducting reasonable costs that would be incurred in disposing real property, savings, stocks, bonds, and other forms of capital investment.

#### LBHA Policy

Reasonable costs that would be incurred when disposing of an asset include, but are not limited to, penalties for premature withdrawal, broker and legal fees, and settlement costs incurred in real estate transactions such as settlement costs and transfer taxes [New PH OCC GB, *Income Determinations*, p. 24].

The calculation of asset income sometimes requires the LBHA to make a distinction between an asset's market value and its cash value.

- The market value of an asset is its worth in the market (e.g., the amount a buyer would pay for real estate or the total value of an investment account).
- The cash value of an asset is its market value less all reasonable amounts that would be incurred when converting the asset to cash.

The cash value of real property or other assets with negative equity would be considered \$0 for the purposes of calculating net family assets. Negative equity in real property or other investments does not prohibit the family from selling the property or other investments, so negative equity alone would not justify excluding the property or other investments from family assets [Notice PIH 2023-27].



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

Income from assets must be included on the Form HUD-50058 regardless of the amount of income. Actual income from assets is always included in a family's annual income, regardless of the total value of net family assets or whether the asset itself is included or excluded from net family assets, unless that income is specifically excluded by 24 CFR 5.609(b).

Income or returns from assets are generally considered to be interest, dividend payments, and other actual income earned on the asset, and not the increase in market value of the asset. The increase in market value is relevant to the cash value of the asset for the purpose of determining total net family assets and imputing income.

The LBHA may determine the net assets of a family based on a self-certification by the family that the net family assets do not exceed \$50,000 (adjusted annually by HUD), without taking additional steps to verify the accuracy of the declaration [24 CFR 5.618(b)]. Policies related to verification of assets are found in Chapter 7 of this policy.

The LBHA may not calculate or include any imputed income from assets when net family assets total \$50,000 or less [24 CFR 5.609(b)(1)]. The actual income from assets must be included on the Form HUD-50058.

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

When net family assets exceed \$50,000 (adjusted annually by HUD), the LBHA may not rely on self-certification. If actual returns can be calculated, the LBHA must include actual income from the asset on the Form HUD-50058 (for example, a savings account or CD where the rate of return is known). If actual returns cannot be calculated, the LBHA must calculate imputed returns using the HUD-determined passbook rate (for example, real property or a non-necessary item of personal property such as a recreational boat). If the LBHA can compute actual income from some but not all assets, the LBHA must compute actual returns where possible and use the HUD-determined passbook rate for assets where actual income cannot be calculated [24 CFR 5.609(a)(2)].

An asset with an actual return of \$0 (such as a non-interest-bearing checking account), is not the same as an asset for which an actual return cannot be computed (such as non-necessary personal property). If the asset is a financial asset and there is no income generated (for example, a bank account with a zero percent interest rate or a stock that does not issue cash dividends), then the asset generates zero actual asset income, and imputed income is not calculated. When a stock issues dividends in some years but not others (e.g., due to market performance), the dividend is counted as the actual return when it is issued, and when no dividend is issued, the actual return is \$0. When the stock never issues dividends, the actual return is consistently \$0.



## PART III: ADJUSTED INCOME

### 6-III.A. INTRODUCTION

#### Overview

HUD regulations require LBHAs to deduct from annual income any of five mandatory deductions for which a family qualifies and allow the LBHA to deduct other permissive deductions in accordance with LBHA policy. The resulting amount is the family's adjusted income. Mandatory deductions are found in 24 CFR 5.611.

5.611 *Adjusted income* means annual income (as determined under § 5.609) of the members of the family residing or intending to reside in the dwelling unit, after making the following deductions:

(a) *Mandatory deductions*

- (1) \$480 for each dependent (adjusted annually by HUD, rounded to the next lowest multiple of \$25);
- (2) \$525 for any elderly family or disabled family (adjusted annually by HUD, rounded to the next lowest multiple of \$25);
- (3) The sum of the following, to the extent the sum exceeds ten percent of annual income:
  - (i) Unreimbursed health and medical care expenses of any elderly family or disabled family;
  - (ii) Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with disabilities, to the extent necessary to enable any member of the family (including the member who is a person with disabilities) to be employed; and
- (4) Any reasonable 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

##### LBHA Policy

Generally, the LBHA 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 LBHA 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 LBHA 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 LBHA may require the family to provide documentation of payments made in the preceding year.

When calculating health and medical care expenses, the LBHA will include those expenses anticipated to be incurred during the 12 months following the certification date which are not covered by an outside source, such as insurance. The allowance is not intended to give a family an allowance equal to last year's expenses, but to anticipate regular ongoing and anticipated expenses during the coming year. Since these expenses are anticipated, the *PH Occupancy Guidebook* states "it is likely that actual expenses will not match what was anticipated. Typically, this would not be considered an underpayment as long as at the time of the annual reexamination, the expenses were calculated based on the appropriate verification" [New PH OCC GB, *Income Determinations*, p. 30]. For annual reexaminations, the LBHA will use information for the previous 12-month period.

### **6-III.B. DEPENDENT DEDUCTION**

An allowance of \$480 is deducted from annual income for each dependent (which amount will be adjusted by HUD annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers, rounded to the next lowest multiple of \$25) [24 CFR 5.611(a)(1)]. *Dependent* is defined as any family member other than the head, spouse, or cohead who is under the age of 18 or who is 18 or older and is a person with disabilities or a full-time student. Foster children, foster adults, and live-in aides are never considered dependents [24 CFR 5.603(b)].

### **6-III.C. ELDERLY OR DISABLED FAMILY DEDUCTION**

A single deduction of \$525 is taken for any elderly or disabled family (which amount will be adjusted by HUD annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers, rounded to the next lowest multiple of \$25) [24 CFR 5.611(a)(2)].

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

### **6-III.D. HEALTH AND MEDICAL CARE EXPENSES DEDUCTION [24 CFR 5.611(a)(3)(i) and 5.603(b)]**

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

This deduction is permitted only for families in which the head, spouse, or cohead is at least 62 or is a person with disabilities. If a family is eligible for a medical expense deduction, the medical expenses of all family members are counted.

#### **Definition of *Medical Expenses***

HUD regulations define *health and medical care expenses* at 24 CFR 5.603(b) to mean “any costs incurred in the diagnosis, cure, mitigation, treatment, or prevention of disease or payments for treatments affecting any structure or function of the body. Health and medical care expenses include medical insurance premiums and long-term care premiums that are paid or anticipated during the period for which annual income is computed.” Medical insurance premiums continue to be eligible health and medical care expenses. Health and medical care expenses may be deducted from annual income only if they are eligible and not otherwise reimbursed and may only be deducted for elderly or disabled families.

Although HUD revised the definition of *health and medical care expenses* to reflect the Internal Revenue Service (IRS) general definition of medical expenses, HUD is not permitting LBHAs to specifically align their policies with IRS Publication 502 for determining which expenses are included in HUD’s mandatory deduction for health and medical care expenses. LBHAs must review each expense to determine whether it is eligible in accordance with HUD’s definition of *health and medical care expenses*.

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

##### LBHA Policy

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

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

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

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

#### **Earned Income Limit on the Disability Assistance Expense Deduction**

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

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

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

#### ***Eligible Auxiliary Apparatus [Notice PIH 2023-27]***

Auxiliary apparatus items may include expenses for wheelchairs, ramps, adaptations to vehicles, guide dogs, assistance animals, or special equipment to enable a person who is blind or has low vision to read or type or special equipment to assist a person who is deaf or hard of hearing.

### ***Eligible Attendant Care [Notice PIH 2023-27]***

Examples of attendant care expenses can include teaching a person with disabilities how to perform day-to-day tasks independently like cleaning, bathing, doing laundry, and cooking. Attendant care can be 24-hour care, or care during sporadic periods throughout the day. The family determines the type of attendant care that is appropriate for the person with disabilities.

#### **LBHA Policy**

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 LBHA will prorate the cost and allow only that portion of the expenses attributable to attendant care that enables a family member to work. For example, if the care provider also cares for a child who is not the person with disabilities, the cost of care must be prorated. Unless otherwise specified by the care provider, the calculation will be based upon the number of hours spent in each activity and/or the number of persons under care.

### ***Payments to Family Members***

No disability assistance expenses may be deducted for payments to a member of an assisted family [24 CFR 5.603(b)]. However, expenses paid to a relative who is not a member of the assisted family may be deducted if they are not reimbursed by an outside source.

### **Necessary and Reasonable Expenses**

The family determines the type of care or auxiliary apparatus to be provided and must describe how the expenses enable a family member to work. The family must certify that the disability assistance expenses are necessary and are not paid or reimbursed by any other source.

#### **LBHA Policy**

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

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

#### **LBHA 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 health and medical care or disability assistance expenses, the LBHA will consider them health and medical care expenses unless it is clear that the expenses are incurred exclusively to enable a person with disabilities to work.

## **6-III.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 (including foster children) during the period for which annual income is computed, but only where such care is necessary to enable a family member to actively seek employment, be gainfully employed, or to further his or her education and only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for 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***

##### LBHA 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 LBHA 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***

##### LBHA 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 LBHA.



## ***Furthering Education***

### LBHA Policy

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

## ***Being Gainfully Employed***

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

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

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

The LBHA 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].

### LBHA 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 LBHA 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 LBHA 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***

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

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

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

#### LBHA Policy

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

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

### **6-III.G. HARDSHIP EXEMPTIONS [24 CFR 5.611(c), (d), and (e)]**

#### **Health and Medical Care and Disability Assistance Expenses [24 CFR 5.611(c); Notice PIH 2023-27]**

The regulations provide for two types of hardship exemption categories for families that qualify for unreimbursed health and medical care expenses and/or disability assistance expenses. A family will benefit from this hardship exemption only if the family has eligible expenses that can be deducted in excess of five percent of annual income. In order to claim unreimbursed health and medical care expenses, the family must have a head, cohead, or spouse that is elderly or a person with a disability. In order to claim unreimbursed reasonable attendant care and auxiliary apparatus expenses, the family must include a person with a disability, and the expenses must enable any member of the family (including the member who is a person with a disability) to be employed.

Families may be eligible for relief under one of two categories; LBHAsed-in relief or general relief, as defined below.

#### **LBHAsed-In Relief**

The first category is applicable to all families who received a deduction for unreimbursed health and medical care and/or reasonable attendant care or auxiliary apparatus expenses based on their most recent income review. The family must receive LBHAsed-in relief if they are determined to be eligible. These families will begin receiving a 24-month LBHAsed-in relief at their next annual or interim reexamination, whichever occurs first.

For these families, the threshold amount is LBHAsed-in as follows:

- The family is eligible for a deduction totaling the sum of expenses that exceeds 5 percent of annual income for the first 12 months.
- At the conclusion of 12 months, the family is eligible for a deduction totaling the sum of their expenses that exceed 7.5 percent of annual income for another 12 months.
- At the conclusion of 24 months, the standard threshold amount of 10 percent would be used, unless the family qualifies for relief under the general hardship relief category.
  - When an eligible family's LBHAsed-in relief begins at an interim reexamination, the LBHA will need to process another transaction one year later to move the family along to the next LBHase. The transaction can be either an interim reexamination if triggered, or a non-interim reexamination transaction.

Prior to the end of the 24-month period, the family may request a hardship exemption under the second category as described below. If the family is found eligible under the second category, the hardship exemption under the first category ends, and the family's hardship is administered in accordance with the requirements listed below. Once a family requests general relief, the family may no longer receive LBHAsed-in relief.

LBHAs must track the 24-month LBHAsed-in period for each eligible family, even if a family's expenses go below the appropriate LBHAsed-in percentage, during the first or second 12-month LBHAsed-in period. The LBHAsed-in must continue for families who move to another public housing unit at the same LBHA. When the family is treated as a new admission under a different property/program (e.g., the family moves from public housing to the HCV program), unless the LBHA has a written policy to continue the LBHAsed-in relief upon admission, the family's expense deduction will be calculated using the 10-percent threshold unless request for general relief is approved by the LBHA. When a family moves with continued assistance or ports to a new LBHA, the family must continue to receive the LBHAsed-in relief. The family must receive the remaining calendar months of the percentage LBHAsed-in. The LBHA must use the existing LBHAsed-in documentation to determine the remaining calendar months and the percentage LBHAsed-in.

#### LBHA Policy

The LBHA will not continue the LBHAsed-in relief for families who move from public housing to HCV. These families will be treated as new admissions and the sum of expenses that exceeds 10 percent of annual income will be used to calculate their adjusted income.

#### **General Relief**

The second category is for families that can demonstrate:

- Their health and medical and/or disability assistance expenses increased (other than the transition to the higher threshold); or
- The family's financial hardship is a result of a change in circumstances (as defined in LBHA policy) that would not otherwise trigger an interim reexamination.

The family may request a hardship exemption under the second category regardless of whether the family previously received the health and medical and/or disability assistance deductions or are currently or were previously receiving relief under the LBHAsed-in relief category above. HUD requires that LBHAs develop policies defining what constitutes a hardship for purposes of this exemption.

The LBHA must obtain third-party verification of the hardship or must document in the file the reason third-party verification was not available. LBHAs must attempt to obtain third-party verification prior to the end of the 90-day hardship exemption period.

#### LBHA Policy

To qualify for a hardship exemption, a family must submit a request in writing. The request must show that the family's health and medical and/or disability assistance expenses have increased (other than the transition to the higher threshold) and that the family's financial hardship is a result of a change in circumstances. The LBHA defines *a change in circumstances* as a decrease in income or increase in other expenses that has resulted in the family's financial hardship but does not, on its own, trigger an interim reexam in accordance with LBHA policies.

Examples of circumstances constituting a financial hardship may include the following situations:

The family is awaiting an eligibility determination for a federal, state, or local assistance program, such as a determination for unemployment compensation or disability benefits;

The family's income decreased because of a loss of employment, death of a family member, or due to a natural or federal/state declared disaster; or

Other circumstances as determined by the LBHA.

The family must provide third-party verification of the hardship with the request. If third-party verification is not available, the LBHA will document the file with the reason and will attempt to obtain third-party verification prior to the end of the 90-day hardship exemption period.

The LBHA must promptly notify the family in writing of the change in the determination of adjusted income and the family's rent resulting from hardship exemptions. The notice must inform the family of when the hardship exemption will begin and expire [24 CFR 5.611(e)(2)].

#### LBHA Policy

The LBHA will make a determination of whether the family qualifies within 30 calendar days and will notify the family in writing of the result within 10 business days of the determination.

If the LBHA denies the hardship exemption request, the LBHA notice will also state that if the family does not agree with the LBHA determination, the family may request a hearing.

If the family qualifies for an exemption, the LBHA will include the date the hardship exemption will begin and the date it will expire as well as information on how to request a 90-day extension based on family circumstances.

If the family qualifies, the family will receive a deduction for the sum of eligible expenses that exceed five percent of annual income.

The family's hardship relief ends when the circumstances that made the family eligible for the relief are no longer applicable or after 90 days, whichever is earlier. However, the LBHA may, at its discretion, extend the relief for one or more additional 90-day periods while the family's hardship condition continues. LBHAs are not limited to a maximum number of 90-day extensions.

LBHAs must establish written policies regarding the types of circumstances that will allow a family to qualify for a financial hardship and when such deductions may be eligible for additional 90-day extensions. LBHAs must develop policies requiring families to report if the circumstances that made the family eligible for the hardship exemption are no longer applicable.

#### LBHA Policy

The family may request an extension either orally or in writing prior to the end of the hardship exemption period. The LBHA will extend relief for an additional 90-days if the family demonstrates to the LBHA's satisfaction that the family continues to qualify for the hardship exemption based on circumstances described above. The LBHA will require updated verification based on the family's current circumstances. Additional extension(s) may be granted on a case-by-case basis provided the family continues to request extensions prior to the end of each hardship exemption period. Families must report if the circumstances that made the family eligible for the hardship exemption are no longer applicable. At any time, the LBHA may terminate the hardship exemption if the LBHA determines that the family no longer qualifies for the exemption.

#### **Child Care Expense Hardship Exemption [24 CFR 5.611(d) and Notice PIH 2023-27]**

A family whose eligibility for the child care expense deduction is ending may request a financial hardship exemption to continue receiving the deduction. If the family demonstrates to the LBHA's satisfaction that the family is unable to pay their rent because of the loss of the child care expense deduction, and that the child care expense is still necessary even though the family member is not working, looking for work, or seeking to further their education, the LBHA must recalculate the family's adjusted income and continue the child care deduction.

The LBHA must develop a policy to define what constitutes a hardship, which includes the family's inability to pay rent. The LBHA must obtain third-party verification of the hardship or must document in the file the reason third-party verification was not available. LBHAs must attempt to obtain third-party verification prior to the end of the 90-day hardship exemption period.

### LBHA Policy

For a family to qualify, they must demonstrate that their inability to pay rent would be as a result of the loss of this deduction. The LBHA defines this hardship as a potential decrease in income or increase in other expenses that would result from the loss of the child care expense and such loss would impact the family's ability to pay their rent.

Some factors to consider when determining if the family is unable to pay rent may include determining that the rent, utility payment, and applicable expenses (child care expenses or health and medical expenses) are more than 40 percent of the family's adjusted income, or verifying whether the family has experienced unanticipated expenses, such as large medical bills, that have affected their ability to pay their rent.

The family must also demonstrate that the child care expense is still necessary even though the family member is no longer employed or furthering their education. The LBHA will consider qualification under this criterion on a case-by case basis (for example, if the family member who was employed has left their job in order to provide uncompensated care to an elderly friend or family member who is severely ill and lives across town).

The family must provide third-party verification of the hardship with the request. If third-party verification is not available, the LBHA will document the file with the reason and will attempt to obtain third-party verification prior to the end of the 90-day hardship exemption period.

The LBHA must promptly notify the family in writing of the change in the determination of adjusted income and the family's rent resulting from hardship exemptions.

If the LBHA denies the request, the notice must specifically state the reason for the denial. LBHAs must provide families 30 days' notice of any increase in rent.

If the LBHA approves the request, the notice must inform the family of when the hardship exemption will begin and expire [24 CFR 5.611(e)(2)]. The notice must also state the requirement for the family to report to the LBHA if the circumstances that made the family eligible for relief are no longer applicable and that the family's adjusted income and tenant rent will be recalculated upon expiration of the hardship exemption [Notice PIH 2023-27].

### LBHA Policy

The LBHA will make a determination of whether the family qualifies within 30 calendar days and will notify the family in writing of the result within 10 business days of the determination.

If the LBHA denies the hardship exemption request, the LBHA notice will also state that if the family does not agree with the LBHA determination, the family may request an informal grievance hearing.

If the family qualifies for an exemption, the LBHA will include all required information listed above as well as information on how to request a 90-day extension based on family circumstances.

If the family qualifies, the hardship exemption and the resulting alternative adjusted income calculation must remain in place for a period of up to 90 days.

The LBHA may, at its discretion, extend the hardship exemptions for additional 90-day periods based on family circumstances and as stated in LBHA policies. LBHAs are not limited to a maximum number of 90-day extensions. LBHAs must develop policies requiring families to report if the circumstances that made the family eligible for the hardship exemption are no longer applicable.

LBHAs must promptly notify families in writing if they are denied either an initial hardship exemption or an additional 90-day extension of the exemption. If the LBHA denies the request, the notice must specifically state the reason for the denial.

LBHAs must notify the family if the hardship exemption is no longer necessary and the hardship exemption will be terminated because the circumstances that made the family eligible for the exemption are no longer applicable. The notice must state the termination date and provide 30 days' notice of rent increase, if applicable.

#### LBHA Policy

The family may request an extension either orally or in writing prior to the end of the hardship exemption period. The LBHA will extend relief for an additional 90-days if the family demonstrates to the LBHA's satisfaction that the family continues to qualify for the hardship exemption. The LBHA will require updated verification based on the family's current circumstances. Additional extension may be granted on a case-by-case basis provided the family continues to request extensions prior to the end of each hardship exemption period. Families must report if the circumstances that made the family eligible for the hardship exemption are no longer applicable. At any time, the LBHA may terminate the hardship exemption if the LBHA determines that the family no longer qualifies for the exemption.

### **6-III.H. PERMISSIVE DEDUCTIONS [24 CFR 5.611(b)(1)(ii)]**

The LBHA may adopt additional permissive deductions from annual income if they establish a policy in the administrative plan. Permissive deductions are additional, optional deductions that may be applied to annual income. As with mandatory deductions, permissive deductions must be based on need or family circumstance and deductions must be designed to encourage self-sufficiency or other economic purpose. If the LBHA offers permissive deductions, they must be granted to all families that qualify for them and should complement existing income exclusions and deductions [PH Occ GB, p. 128]. Permissive deductions may be used to incentivize or encourage self-sufficiency and economic mobility.

A LBHA that adopts such deductions must have sufficient funding to cover the increased housing assistance payment cost of the deductions. A LBHA will not be eligible for an increase in HCV renewal funding for subsidy costs resulting from such deductions.

#### LBHA Policy

The LBHA has opted not to use permissive deductions.



## **PART IV: CALCULATING FAMILY SHARE AND LBHA SUBSIDY**

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

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

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

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

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

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

#### ***Welfare Rent [24 CFR 5.628]***

##### LBHA Policy

Welfare rent does not apply in this locality.

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

##### LBHA Policy

The minimum rent for this locality is \$50.

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

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

**LBHA Subsidy [24 CFR 982.505(b)]**

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

**Utility Reimbursement [24 CFR 982.514(b); 982.514(c)]**

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

LBHA Policy

The LBHA will make utility reimbursements to the family.

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

LBHA Policy

The LBHA will issue all utility reimbursements monthly.

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

### **Overview**

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

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

Financial hardship includes the following situations:

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

#### LBHA 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.

#### LBHA Policy

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

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

(4) A death has occurred in the family.

LBHA 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 LBHA.

LBHA Policy

The LBHA has not established any additional hardship criteria.

**Implementation of Hardship Exemption**

***Determination of Hardship***

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

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

LBHA Policy

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

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

<b>Example: Impact of Minimum Rent Exemption</b>	
Assume the LBHA has established a minimum rent of \$50.	
<b>Family Share – No Hardship</b>	<b>Family Share – With Hardship</b>
\$0 30% of monthly adjusted income	\$0 30% of monthly adjusted income
\$15 10% of monthly gross income	\$15 10% of monthly gross income
N/A Welfare rent	N/A Welfare rent
\$50 Minimum rent	\$50 Minimum rent
Minimum rent applies. TTP = \$50	Hardship exemption granted. TTP = \$15

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

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

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

#### LBHA Policy

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

### ***Temporary Hardship***

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

#### LBHA Policy

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

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

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

#### LBHA 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-IV.C. APPLYING PAYMENT STANDARDS [24 CFR 982.505; 982.503(b)]**

### **Overview**

The LBHA's schedule of payment standards is used to calculate housing assistance payments for HCV families. This section covers the application of the LBHA's payment standards. The establishment and revision of the LBHA'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 LBHA'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 LBHA has established an exception payment standard for a designated part of a zip code area or FMR area and a family's unit is located in the exception area, the LBHA must use the appropriate payment standard for the exception area.

The LBHA 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 LBHA 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 LBHA 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 a LBHA changes its payment standard schedule, resulting in a lower payment standard amount, during the term of a HAP contract, the LBHA is not required to reduce the payment standard used to calculate subsidy for families under HAP contract as long as the HAP contract remains in effect [FR Notice 11/16/16].

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

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

#### LBHA Policy

If a LBHA changes its payment standard schedule resulting in a lower payment standard amount, during the term of a HAP contract, the LBHA will not reduce the payment standard used to calculate subsidy for families under HAP contract as long as the HAP contract remains in effect.

The LBHA will not establish different policies for decreases in the payment standard for designated areas within their jurisdiction.

#### ***Increases***

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

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

#### ***Changes in Family Unit Size (Voucher Size)***

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

#### **Reasonable Accommodation**

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

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

### **Overview**

A LBHA-established utility allowance schedule is used in determining family share and LBHA subsidy. A family's utility allowance is determined by the size of dwelling unit leased by a family or the voucher unit size for which the family qualifies using LBHA subsidy standards, whichever is the lowest of the two. See Chapter 5 for information on the LBHA's subsidy standards.

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

### **Reasonable Accommodation and Individual Relief**

On request from a family that includes a person with disabilities, the LBHA must approve a utility allowance which is higher than the applicable amount on the utility allowance schedule if a higher utility allowance is needed as a reasonable accommodation to make the program accessible and usable by the family member with a disability [24 CFR 982.517(e)]. (See Chapter 2 for policies regarding the request and approval of reasonable accommodations.)

Further, the LBHA may grant requests for individual relief from charges in excess of the utility allowance on reasonable grounds, such as special factors not within control of the resident, as the LBHA deems appropriate. The family must request the higher allowance and provide the LBHA an explanation of the need for individual relief and an explanation about the amount of additional allowance required [see HCV GB, p. 18-8].

LBHAs should develop criteria for granting individual relief, notify residents about the availability of individual relief, and notify participants about the availability of individual relief programs (sometimes referred to as "Medical Baseline discounts") offered by the local utility company.

#### LBHA Policy

The family must request the higher allowance and provide the LBHA with information about the amount of additional allowance required.

The LBHA will consider the following criteria as valid reasons for granting individual relief:

The family's consumption was mistakenly portrayed as excessive due to defects in the meter or errors in the meter reading.

The excessive consumption is caused by a characteristic of the unit or owner-supplied equipment that is beyond the family's control, such as a particularly inefficient refrigerator or inadequate insulation. The allowance should be adjusted to reflect the higher consumption needs associated with the unit until the situation is remedied. The resident should be granted individual relief until the allowance is adjusted.

The excessive consumption is due to special needs of the family that are beyond their control, such as the need for specialized equipment in the case of a family member who is ill, elderly, or who has a disability.



In determining the amount of the reasonable accommodation or individual relief, the LBHA will allow a reasonable measure of additional usage as necessary. To arrive at the amount of additional utility cost of specific equipment, the family may provide information from the manufacturer of the equipment, or the family or LBHA may conduct an internet search for an estimate of usage or additional monthly cost.

Information on reasonable accommodation and individual relief for charges in excess of the utility allowance will be provided to all families at admission as part of the information on payment standards and utility allowances in the briefing packet. The LBHA will also provide information on utility relief programs or medical discounts (sometimes referred to as “Medical Baseline discounts”) that may be available through local utility providers.

At its discretion, the LBHA may reevaluate the need for the increased utility allowance at any regular reexamination.

If the excessive consumption is caused by a characteristic of the unit or LBHA -supplied equipment that is beyond the family’s control, such as a particularly inefficient refrigerator or inadequate insulation, the individual relief to the resident will cease when the situation is remedied.

### **Utility Allowance Revisions**

At reexamination, the LBHA must use the current utility allowance schedule [HCV GB, p. 18-8].

#### LBHA 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-IV.E. PRORATED ASSISTANCE FOR MIXED FAMILIES [24 CFR 5.520]**

HUD regulations prohibit assistance to ineligible family members. A *mixed family* is one that includes at least one U.S. citizen or eligible immigrant and any number of ineligible family members. The LBHA must prorate the assistance provided to a mixed family. The LBHA 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 LBHA subsidy for a family is calculated at \$500 and two of four family members are ineligible, the LBHA subsidy would be reduced to \$250.

## EXHIBIT 6-1: ANNUAL INCOME FULL DEFINITION

### 24 CFR 5.609

(a) Annual income includes, with respect to the family:

(1) All amounts, not specifically excluded in paragraph (b) of this section, received from all sources by each member of the family who is 18 years of age or older or is the head of household or spouse of the head of household, plus unearned income by or on behalf of each dependent who is under 18 years of age, and

(2) When the value of net family assets exceeds \$50,000 (which amount HUD will adjust annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers) and the actual returns from a given asset cannot be calculated, imputed returns on the asset based on the current passbook savings rate, as determined by HUD.

*(b) Annual income does not include the following:*

(1) Any imputed return on an asset when net family assets total \$50,000 or less (which amount HUD will adjust annually in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers) and no actual income from the net family assets can be determined.

(2) The following types of trust distributions:

(i) For an irrevocable trust or a revocable trust outside the control of the family or household excluded from the definition of net family assets under § 5.603(b):

(A) Distributions of the principal or corpus of the trust; and

(B) Distributions of income from the trust when the distributions are used to pay the costs of health and medical care expenses for a minor.

(ii) For a revocable trust under the control of the family or household, any distributions from the trust; except that any actual income earned by the trust, regardless of whether it is distributed, shall be considered income to the family at the time it is received by the trust.

(3) Earned income of children under the 18 years of age.

(4) Payments received for the care of foster children or foster adults, or State or Tribal kinship or guardianship care payments.

(5) Insurance payments and settlements for personal or property losses, including but not limited to payments through health insurance, motor vehicle insurance, and workers' compensation.

(6) Amounts received by the family that are specifically for, or in reimbursement of, the cost of health and medical care expenses for any family member.

(7) Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a member of the family becoming disabled.

(8) Income of a live-in aide, foster child, or foster adult as defined in §§ 5.403 and 5.603, respectively.

(9)

(i) Any assistance that section 479B of the Higher Education Act of 1965, as amended (20 U.S.C. 1087uu), requires be excluded from a family's income; and

(ii) Student financial assistance for tuition, books, and supplies (including supplies and equipment to support students with learning disabilities or other disabilities), room and board, and other fees required and charged to a student by an institution of higher education (as defined under Section 102 of the Higher Education Act of 1965 (20 U.S.C. 1002)) and, for a student who is not the head of household or spouse, the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit.

(A) Student financial assistance, for purposes of this paragraph (9)(ii), means a grant or scholarship received from— (

- 1) The Federal government;
- (2) A State, Tribe, or local government;
- (3) A private foundation registered as a nonprofit under 26 U.S.C. 501(c)(3);
- (4) A business entity (such as corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, or nonprofit entity); or
- (5) An institution of higher education.

(B) Student financial assistance, for purposes of this paragraph (9)(ii), does not include—

- (1) Any assistance that is excluded pursuant to paragraph (b)(9)(i) of this section;
- (2) Financial support provided to the student in the form of a fee for services performed (e.g., a work study or teaching fellowship that is not excluded pursuant to paragraph (b)(9)(i) of this section); (
- 3) Gifts, including gifts from family or friends; or

(4) Any amount of the scholarship or grant that, either by itself or in combination with assistance excluded under this paragraph or paragraph (b)(9)(i), exceeds the actual covered costs of the student. The actual covered costs of the student are the actual costs of tuition, books and supplies (including supplies and equipment to support students with learning disabilities or other disabilities), room and board, or other fees required and charged to a student by the education institution, and, for a student who is not the head of household or spouse, the reasonable and actual costs of housing while attending the institution of higher education and not residing in an assisted unit. This calculation is described further in paragraph (b)(9)(ii) of this section.

(C) Student financial assistance, for purposes of this paragraph (b)(9)(ii) must be:

- (1) Expressly for tuition, books, room and board, or other fees required and charged to a student by the education institution;
- (2) Expressly to assist a student with the costs of higher education; or
- (3) Expressly to assist a student who is not the head of household or spouse with the reasonable and actual costs of housing while attending the education institution and not residing in an assisted unit.

(D) Student financial assistance, for purposes of this paragraph (b)(9)(ii), may be paid directly to the student or to the educational institution on the student's behalf. Student financial assistance paid to the student must be verified by the responsible entity as student financial assistance consistent with this paragraph (b)(9)(ii).

(E) When the student is also receiving assistance excluded under paragraph (b)(9)(i) of this section, the amount of student financial assistance under this paragraph (b)(9)(ii) is determined as follows:

(1) If the amount of assistance excluded under paragraph (b)(9)(i) of this section is equal to or exceeds the actual covered costs under paragraph (b)(9)(ii)(B)(4) of this section, none of the assistance described in this paragraph (b)(9)(ii) of this section is considered student financial assistance excluded from income under this paragraph (b)(9)(ii)(E).

(2) If the amount of assistance excluded under paragraph (b)(9)(i) of this section is less than the actual covered costs under paragraph (b)(9)(ii)(B)(4) of this section, the amount of assistance described in paragraph (b)(9)(ii) of this section that is considered student financial assistance excluded under this paragraph is the lower of:

(i) the total amount of student financial assistance received under this paragraph (b)(9)(ii) of this section, or

(ii) the amount by which the actual covered costs under paragraph (b)(9)(ii)(B)(4) of this section exceeds the assistance excluded under paragraph (b)(9)(i) of this section.

(10) Income and distributions from any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986 or any qualified tuition program under section 529 of such Code; and income earned by government contributions to, and distributions from, "baby bond" accounts created, authorized, or funded by Federal, State, or local government.

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

(12)

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

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

(iii) Amounts received under a resident service stipend not to exceed \$200 per month. A resident service stipend is a modest amount received by a resident for performing a service for the LBHA or owner, on a part-time basis, that enhances the quality of life in the development.

(iv) Incremental earnings and benefits resulting to any family member from participation in training programs funded by HUD or in qualifying Federal, State, Tribal, or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives and are excluded only for the period during which the family member participates in the employment training program unless those amounts are excluded under paragraph (b)(9)(i) of this section.

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

(14) Earned income of dependent fulltime students in excess of the amount of the deduction for a dependent in § 5.611.

(15) Adoption assistance payments for a child in excess of the amount of the deduction for a dependent in § 5.611.

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

(17) Payments related to aid and attendance under 38 U.S.C. 1521 to veterans in need of regular aid and attendance.

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

(19) Payments made by or authorized by a State Medicaid agency (including through a managed care entity) or other State or Federal agency to a family to enable a family member who has a disability to reside in the family's assisted unit. Authorized payments may include payments to a member of the assisted family through the State Medicaid agency (including through a managed care entity) or other State or Federal agency for caregiving services the family member provides to enable a family member who has a disability to reside in the family's assisted unit.

(20) Loan proceeds (the net amount disbursed by a lender to or on behalf of a borrower, under the terms of a loan agreement) received by the family or a third party (e.g., proceeds received by the family from a private loan to enable attendance at an educational institution or to finance the purchase of a car).

(21) Payments received by Tribal members as a result of claims relating to the mismanagement of assets held in trust by the United States, to the extent such payments are also excluded from gross income under the Internal Revenue Code or other Federal law.

(22) Amounts that HUD is required by Federal statute to exclude from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in paragraph (b) of this section apply. HUD will publish a notice in the Federal Register to identify the benefits that qualify for this exclusion. Updates will be published when necessary.

(23) Replacement housing "gap" payments made in accordance with 49 CFR part 24 that offset increased out of pocket costs of displaced persons that move from one federally subsidized housing unit to another Federally subsidized housing unit. Such replacement housing "gap" payments are not excluded from annual income if the increased cost of rent and utilities is subsequently reduced or eliminated, and the displaced person retains or continues to receive the replacement housing "gap" payments.

(24) Nonrecurring income, which is income that will not be repeated in the coming year based on information provided by the family. Income received as an independent contractor, day laborer, or seasonal worker is not excluded from income under this paragraph, even if the source, date, or amount of the income varies. Nonrecurring income includes:

(i) Payments from the U.S. Census Bureau for employment (relating to decennial census or the American Community Survey) lasting no longer than 180 days and not culminating in permanent employment.

(ii) Direct Federal or State payments intended for economic stimulus or recovery.

(iii) Amounts directly received by the family as a result of State refundable tax credits or State tax refunds at the time they are received.

(iv) Amounts directly received by the family as a result of Federal refundable tax credits and Federal tax refunds at the time they are received.

(v) Gifts for holidays, birthdays, or other significant life events or milestones (e.g., wedding gifts, baby showers, anniversaries).

(vi) Non-monetary, in-kind donations, such as food, clothing, or toiletries, received from a food bank or similar organization.

(vii) Lump-sum additions to net family assets, including but not limited to lottery or other contest winnings.

(25) Civil rights settlements or judgments, including settlements or judgments for back pay.

(26) Income received from any account under a retirement plan recognized as such by the Internal Revenue Service, including individual retirement arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals; except that any distribution of periodic payments from such

accounts shall be income at the time they are received by the family.

(27) Income earned on amounts placed in a family's Family Self Sufficiency Account.

(28) Gross income a family member receives through self-employment or operation of a business; except that the following shall be considered income to a family member:

(i) Net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations; and

(ii) Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family.

## EXHIBIT 6-2: TREATMENT OF FAMILY ASSETS

### 24 CFR 5.603(b) Net Family Assets

(1) Net family assets is the net cash value of all assets owned by the family, after deducting reasonable costs that would be incurred in disposing real property, savings, stocks, bonds, and other forms of capital investment.

(2) In determining net family assets, LBHAs or owners, as applicable, must 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 consideration not measurable in dollar terms. Negative equity in real property or other investments does not prohibit the owner from selling the property or other investments, so negative equity alone would not justify excluding the property or other investments from family assets.

(3) Excluded from the calculation of net family assets are: (i) The value of necessary items of personal property; (ii) The combined value of all nonnecessary items of personal property if the combined total value does not exceed \$50,000 (which amount will be adjusted by HUD in accordance with the Consumer Price Index for Urban Wage Earners and Clerical Workers); (iii) The value of any account under a retirement plan recognized as such by the Internal Revenue Service, including individual retirement

arrangements (IRAs), employer retirement plans, and retirement plans for self-employed individuals; (iv) The value of real property that the family does not have the effective legal authority to sell in the jurisdiction in which the property is located; (v) Any amounts recovered in any civil action or settlement based on a claim of malpractice, negligence, or other breach of duty owed to a family member arising out of law, that resulted in a family member being a person with a disability; (vi) The value of any Coverdell education savings account under section 530 of the Internal Revenue Code of 1986, the value of any qualified tuition program under section 529 of such Code, the value of any Achieving a Better Life Experience (ABLE) account authorized under Section 529A of such Code, and the value of any “baby bond” account created, authorized, or funded by Federal, State, or local government. (vii) Interests in Indian trust land; (viii) Equity in a manufactured home where the family receives assistance under 24 CFR part 982; (ix) Equity in property under the Homeownership Option for which a family receives assistance under 24 CFR part 982; (x) Family Self-Sufficiency Accounts; and (xi) Federal tax refunds or refundable tax credits for a period of 12 months after receipt by the family.

(4) 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 trust fund is not a family asset and the value of the trust is not included in the calculation of net family assets, so long as the fund continues to be held in a trust that is not revocable by, or under the control of, any member of the family or household.



## EXHIBIT 6-3: 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 LBHA 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 LBHA, the welfare agency will inform the LBHA 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 LBHA of any subsequent changes in the term or amount of such specified welfare benefit reduction. The LBHA 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 LBHA'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 LBHA by the welfare agency).

(4) The amount of the imputed welfare income is offset by the amount of additional income a family receives that commences after the time the sanction was imposed. When such additional income from other sources is at least equal to the imputed

(5) The LBHA 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 LBHA decision.*

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

such denial, with a brief explanation of the basis for the LBHA determination of the amount of imputed welfare income. Such notice shall also state that if the family does not agree with the LBHA determination, the family may request an informal hearing on the determination under the LBHA hearing procedure.

*(e) LBHA relation with welfare agency.*

(1) The LBHA must ask welfare agencies to inform the LBHA 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 LBHA 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 LBHA 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 LBHA. However, the LBHA 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 LBHA shall be entitled to rely on the welfare agency notice to the LBHA of the welfare agency's

determination of a specified welfare benefits reduction.



## **Chapter 7**

### **VERIFICATION**

[24 CFR 982.516, 24 CFR 982.551, 24 CFR 5.230, Notice PIH 2023-27]

#### **INTRODUCTION**

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

The LBHA must follow the verification guidance provided by HUD in Notice PIH 2023-27 and any subsequent guidance issued by HUD. This chapter summarizes those requirements and provides supplementary LBHA policies.

Part I describes the general verification process. Part II provides more detailed requirements related to family information. Part III provides information on income and assets, and Part IV covers mandatory deductions.

Verification policies, rules and procedures will be modified as needed to accommodate persons with disabilities. All information obtained through the verification process will be handled in accordance with the records management policies of the LBHA.

#### **PART I: GENERAL VERIFICATION REQUIREMENTS**

##### **7-I.A. FAMILY CONSENT TO RELEASE OF INFORMATION [24 CFR 982.516; 982.551; CFR 5.230; and Notice PIH 2023-27]**

###### **Consent Forms**

The family must supply any information that the LBHA or HUD determines is necessary to the administration of the program and must consent to LBHA verification of that information [24 CFR 982.551]. All adult family members must sign consent forms as needed to collect information relevant to the family's eligibility and level of assistance. While LBHAs must use form HUD-9886, this form does not release all the information necessary to the administration of the program. The LBHA must also develop its own release forms to cover all other necessary information.

## **Form HUD-9886 [24 CFR 5.230(b)(1), b(2), (c)(4), and (c)(5); and Notice PIH 2023-27]**

All adult applicants and participants sign form HUD-9886, Authorization for Release of Information. All adult family members (and the head and spouse/cohead, regardless of age) are required to sign the Form HUD-9886 at admission. Participants, prior to January 1, 2024, signed and submitted Form HUD-9886 at each annual reexamination. HOTMA eliminated this requirement and instead required that the Form HUD-9886 be signed only once. On or after January 1, 2024 (regardless of the LBHA's HOTMA compliance date), current program participants must sign and submit a new Form HUD-9886 at their next interim or annual reexamination. This form will only be signed once. Another Form HUD-9886 will not be submitted to the LBHA except under the following circumstances:

- When any person 18 years or older becomes a member of the family;
- When a current member of the family turns 18; or
- As required by HUD or the LBHA in administrative instructions.

The LBHA has the discretion to establish policies around when family members must sign consent forms when they turn 18. LBHAs must establish these policies stating when family members will be required to sign consent forms at intervals other than at reexamination.

### LBHA Policy

Family members turning 18 years of age between annual recertifications will be notified in writing that they are required to sign the required Consent to the Release of Information Form HUD-9886 at the family's next annual or interim reexamination, whichever is earlier.

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 LBHA may collect information from State Wage Information Collection Agencies (SWICAs) and current and former employers of adult family members. Only HUD is authorized to collect information directly from the Internal Revenue Service (IRS) and the Social Security Administration (SSA).

The LBHA may obtain any financial record from any financial institution, as the terms financial record and financial institution are defined in the Right to Financial Privacy Act (12 U.S.C. 3401), whenever the LBHA determines the record is needed to determine an applicant's or participant's eligibility for assistance or level of benefits [24 CFR 5.230(c)(4)].

The executed form will remain effective until the family is denied assistance, assistance is terminated, or the family provides written notification to the LBHA to revoke consent.

## **Penalties for Failing to Consent [24 CFR 5.232]**

If any family member who is required to sign a consent form fails to do so, the LBHA must deny admission to applicants and terminate assistance of participants. The family may request an informal review (applicants) or informal hearing (participants) in accordance with LBHA procedures.

However, this does not apply if the applicant, participant, or any member of their family, revokes their consent with respect to the ability of the LBHA to access financial records from financial institutions, unless the LBHA establishes a policy that revocation of consent to access financial records will result in denial or termination of assistance or admission [24 CFR 5.232(c)]. LBHAs may not process interim or annual reexaminations of income without the family's executed consent forms.

### LBHA Policy

The LBHA has established a policy that revocation of consent to access financial records will result in denial of admission or termination of assistance in accordance with LBHA policy.

In order for a family to revoke their consent, the family must provide written notice to the LBHA.

Within 10 business days of the date the family provides written notice, the LBHA will send the family a notice acknowledging receipt of the request and explaining that revocation of consent will result in denial or termination of assistance, as applicable. At the same time, the LBHA will notify their local HUD office.

## **7-I.B. USE OF OTHER PROGRAMS' INCOME DETERMINATIONS [24 CFR 5.609(c)(3) and Notice PIH 2023-27]**

LBHAs may, but are not required to, determine a family's annual income, including income from assets, prior to the application of any deductions, based on income determinations made within the previous 12-month period, using income determinations from means-tested federal public assistance programs. LBHAs are not required to accept or use determinations of income from other federal means-tested forms of assistance. If the LBHA adopts a policy to accept this type of verification, the LBHA must establish in policy when they will accept Safe Harbor income determinations and from which programs. LBHAs must also create policies that outline the course of action when families present multiple verifications from the same or different acceptable Safe Harbor programs.

Means-tested federal public assistance programs include:

- Temporary Assistance for Needy Families (TANF) (42 U.S.C. 601, et seq.);
- Medicaid (42 U.S.C. 1396 et seq.);
- Supplemental Nutrition Assistance Program (SNAP) (42 U.S.C. 2011 et seq.);
- Earned Income Tax Credit (EITC) (26 U.S.C. 32);
- Low-Income Housing Credit (LIHTC) program (26 U.S.C. 42);
- Special Supplemental Nutrition Program for Woman, Infants, and Children (WIC) (42 U.S.C. 1786);
- Supplemental Security Income (SSI) (42 U.S.C. 1381 et seq.);
- Other programs administered by the HUD Secretary;
- Other means-tested forms of federal public assistance for which HUD has established a memorandum of understanding; and
- Other federal benefit determinations made in other forms of means-tested federal public assistance that the Secretary determines to have comparable reliability and announces through the *Federal Register*.



If the LBHA elects to use the annual income determination from one of the above-listed forms of means-tested federal public assistance, then they must obtain the income information by means of a third-party verification. The third-party verification must state the family size, must be for the entire family, and must state the amount of the family's annual income. The annual income need not be broken down by family member or income type. Annual income includes income earned from assets, therefore when using Safe Harbor to verify a family's income, LBHAs will neither further inquire about a family's net family assets, nor about the income earned from those assets, except with respect to whether or not the family owns assets that exceed the asset limitation in 24 CFR 5.618. The Safe Harbor documentation will be considered acceptable if any of the following dates fall into the 12-month period prior to the receipt of the documentation by the LBHA:

- Income determination effective date;
- Program administrator's signature date;
- Family's signature date;
- Report effective date; or
- Other report-specific dates that verify the income determination date.

The only information that LBHAs are permitted to use to determine income under this method is the total income determination made by the federal means-tested program administrator. Other federal programs may provide additional information about income inclusions and exclusions in their award letters; however, these determinations and any other information must not be considered by the LBHA. LBHAs are not permitted to mix and match Safe Harbor income determinations and other income verifications.

If the LBHA is unable to obtain Safe Harbor documentation or if the family disputes the other program's income determination, the LBHA must calculate the family's annual income using traditional methods as outlined in Notice PIH 2023-27 and this chapter.

If the LBHA uses a Safe Harbor determination to determine the family's income, the family is obligated to report changes in income that meet the LBHA's reporting requirement and occur after the effective date of the transaction.

The amounts of unreimbursed reasonable attendant care expenses and child-care expenses deducted from a family's annual income, except for when a family is approved for a child-care expense hardship exemption, must still be capped by the amount earned by any family member who is enabled to work as a result of the expense. LBHAs are therefore required to obtain third-party verification of the applicable employment income and cap the respective expense deductions accordingly.

LBHA Policy

The LBHA will not accept verification from other federal assistance programs. All income will be verified in accordance with the requirements of HUD's verification hierarchy and LBHA policies in this chapter.

**7-I.C. STREAMLINED INCOME DETERMINATIONS [24 CFR 960.257(c); Notice PIH 2023-27]**

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

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

Two streamlining options are available, depending upon the percentage of the family's income that is received from fixed sources.

When 90 percent or more of a family's unadjusted income is from fixed sources, the LBHA may apply the inflationary adjustment factor to the family's fixed-income sources, provided that the family certifies both that 90 percent or more of their unadjusted income is fixed and that their sources of fixed income have not changed from the previous year. Sources of non-fixed income are not required to be adjusted and must not be adjusted by a COLA, but LBHAs may choose to adjust sources of non-fixed income based on third-party verification. LBHAs have the discretion to either adjust the non-fixed income or carry over the calculation of non-fixed income from the first year to years two and three.

When less than 90 percent of a family's unadjusted income consists of fixed income, LBHAs may apply a COLA to each of the family's sources of fixed income. LBHAs must determine all other income using standard verification requirements as outlined in Notice PIH 2023-27.

LBHA Policy

The LBHA chooses not to streamline the annual reexamination process for fixed-income sources. The LBHA will obtain third-party verification, where applicable, of all sources of income annually in accordance with LBHA policies in the chapter and HUD regulations.

## **7-I.D. VERIFICATION HIERARCHY [Notice PIH 2023-27]**

When the LBHA does not use a streamlined determination of income or an income determination from a means-tested federal assistance program, HUD requires the LBHA to obtain third-party verification of:

- Reported family annual income;
- The value of net family assets when the net value exceeds \$50,000 (as adjusted annually);
- Expenses related to deductions from annual income; and
- Other factors that affect the determination of adjusted income.

HUD mandates the use of the EIV system and offers administrative guidance on the use of other methods to verify family information and specifies the circumstances in which each method will be used. In general HUD requires the LBHA to use the most reliable form of verification that is available and to document the reasons when the LBHA uses a lesser form of verification.

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

HUD developed a hierarchy that described verification documentation from most acceptable to least acceptable. The LBHA must demonstrate efforts to obtain third party verification prior to accepting self-certification except instances when self-certification is explicitly allowed.

In order of priority, the hierarchy is:

- Highest: Level 6: Up-front Income Verification (UIV) using HUD’s Enterprise Income Verification (EIV) system
- Highest: Level 5: Up-front Income Verification (UIV) using a non-EIV system
- High: Level 4:
  - Written third-party verification from the source, also known as “family-provided verification”
  - Or EIV plus self-certification
- Medium: Level 3: Written third-party verification form
- Medium: Level 2: Oral third-party verification
- Low: Level 1: Self-certification (not third-party verification)

Each of the verification methods is discussed in subsequent sections below.

### **File Documentation**

The LBHA 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 LBHA has followed all of the verification policies set forth in this plan. The record should be sufficient to enable a staff member or HUD reviewer to understand the process followed and conclusions reached.

### **7-I.E. LEVEL 5 AND 6 VERIFICATION: UP-FRONT INCOME VERIFICATION (UIV)**

Up-front income verification (UIV) refers to the LBHA's use of the verification tools available from independent sources that maintain computerized information about earnings and benefits for a number of individuals. LBHAs may use UIV sources before or during a family reexamination.

UIV will be used to the extent that these systems are available to the LBHA.

There may be legitimate differences between the information provided by the family and UIV-generated information. If the family disputes the accuracy of UIV data, no adverse action can be taken until the LBHA 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 LBHA.

### **Upfront Income Verification Using HUD's Enterprise Income Verification (EIV) System (Mandatory)**

LBHAs must use HUD's EIV system in its entirety as a third-party source to verify tenant employment and income information during annual and streamlined reexaminations of family composition and income in accordance with 24 CFR 5.236 and Notice PIH 2023-27.

HUD's EIV system contains data showing earned income, unemployment benefits, social security benefits, and SSI benefits for participant families.

The income validation tool (IVT) in EIV provides projections of discrepant income for wages, unemployment compensation, and SSA benefits pursuant to HUD's data sharing agreements with other departments.

The following policies apply to the use of HUD's EIV system.

#### ***EIV Income and IVT Reports***

LBHAs are required to obtain an EIV Income and IVT report for each family any time the LBHA conducts an annual reexamination. However, LBHAs are not required to use the EIV Income and IVT reports:

- At annual reexamination if the LBHA used Safe Harbor verification from another means-test federal assistance program to determine the family's income; or
- During any interim reexaminations.

The EIV Income and IVT Reports are also not available for program applicants at admission.

When required to use the EIV Income Report, in order for the report to be considered current, the LBHA must pull the report within 120 days of the effective date of the annual reexamination.

The EIV Income Report may be used to verify and calculate income at annual reexamination if the family self-certifies that the amount is accurate and representative of current income. The family must be provided with the information in EIV.

#### LBHA Policy

Except for when Safe Harbor verification from another means-tested federal assistance program is used to determine the family's annual income, the LBHA will obtain EIV income and IVT reports for all annual reexaminations for all families on a monthly basis. The LBHA will ensure that all EIV Income Reports are pulled within 120 days of the effective date of the annual reexamination.

Income and IVT reports will only be used for interim reexaminations as necessary. For example, EIV may be used to verify that families claiming zero income are not receiving income from any sources listed in EIV.

Income and IVT reports will be retained in participant files with the applicable annual documents or interim reexamination documents (if applicable) for the duration of the family's participation.

When the LBHA determines through EIV reports and third-party verification that a family has concealed or under-reported income, corrective action will be taken pursuant to the policies in Chapter 14, Program Integrity.

#### ***New Hires Report [Notice PIH 2023-27]***

The New Hires Report identifies participant families who have new employment within the last six months. The report is updated monthly.

LBHAs must review this information at annual reexamination except when the LBHA uses Safe Harbor verification from another means-tested federal assistance program to determine the family's income.

LBHAs that do not require families to undergo interim reexaminations for earned income increases after an interim decrease are not required to review this report between a family's annual reexamination. If the LBHA requires an interim for increases in earned income after an interim decrease, then the LBHA must review the report quarterly after the family's interim decrease.

#### LBHA Policy

In accordance with LBHA policies in Chapter 11, the LBHA does not process interim reexaminations for families who have increases in earned income. Except for instances in which the LBHA uses Safe Harbor income determinations to determine a family's annual income, the LBHA will only review the New Hires Report at annual reexamination.

### ***No Income Reported by HHS or SSA Report***

This report is a tool for LBHAs to identify participants who passed the SSA identity test, but no income information was reported by either HHS or SSA records. This scenario does not mean that the participant does not have any income. LBHAs obtain written, third-party verification of any income reported by the participant. The LBHA must identify in its policies and procedures when this report will be pulled [Notice PIH 2023-27].

#### **LBHA Policy**

The LBHA will generate the No Income Reported by HHS or SSA Report quarterly and will retain the report.

The LBHA will re-verify the status of participants identified on the report quarterly. Based on the information provided by the family and in EIV, the LBHA may require that family members provide verifications or sign release forms in order to obtain additional verification.

When the LBHA determines through this report and third-party verification that a family has concealed or under-reported income, corrective action will be taken pursuant to the policies in Chapter 14, Program Integrity

### ***EIV Identity Verification Report***

The EIV system verifies tenant identities against SSA records. These records are compared to HUD data for a match on social security number, name, and date of birth.

LBHAs are required to use EIV's *Identity Verification Report* on a monthly basis to improve the availability of income information in EIV [Notice PIH 2023-27].

When identity verification for a participant fails, a message will be displayed within the EIV system and no income information will be displayed.

#### **LBHA Policy**

The LBHA will identify participants whose identity verification has failed by reviewing EIV's *Identity Verification Report* on a monthly basis.

The LBHA will attempt to resolve discrepancies by obtaining appropriate documentation from the participant. When the LBHA determines that discrepancies exist as a result of LBHA errors such as spelling errors or incorrect birth dates, it will correct the errors promptly.



***Deceased Tenants Reports [Notice PIH 2012-4 and Notice PIH 2023-27]***

The Deceased Tenant Report identifies residents that have been reported by the SSA as deceased. The LBHA is required to review the report at least quarterly.

LBHA Policy

The LBHA will review the Deceased Tenants Report on a monthly basis.

When the Deceased Tenants Report identifies an individual as being deceased, LBHAs must immediately send a letter to the head of household or emergency contact person (if the head of household is deceased and there is no other adult household member) to confirm the death of the listed household member. The LBHA must notify the owner in writing of the deceased head of household.

LBHAs may list the EOP as the last day of the month in which the death occurred. The landlord is entitled to receive the full HAP amount for the month in which the tenant death occurred.

LBHA Policy

The LBHA will list the EOP as the last day of the month in which the death occurred. The landlord is entitled to receive the full HAP amount for the month in which the tenant death occurred.

When the only remaining household member is the live-in aide, the live-in aide is not entitled or eligible for any rental assistance or continued occupancy. The LBHA may not designate the live-in aide as the new head of household or change the relation code on the Form HUD-50058.

***Other EIV Reports [Notice PIH 2023-27]***

The LBHA is required to review the Multiple Subsidy Report at least quarterly and the Failed EIV Pre-Screening and Failed Verification (Failed SSA Identity Test) reports at least monthly.

**Upfront Income Verification Using Non-HUD Systems**

In addition to mandatory use of the EIV system, HUD encourages LBHAs to utilize other upfront verification sources.

LBHA Policy

The LBHA currently does not use any other UIV systems.

## **7-I.F. LEVEL 4 VERIFICATION [Notice PIH 2023-27]**

HUD identifies two types of Level 4 verification: written-third party verification from the source and EIV + self-certification.

### **EIV + Self-Certification**

EIV may be used as written third-party verification and may be used to calculate income if the family agrees with the information in EIV and self-certifies that the amount is accurate and representative of current income. This practice is known as *EIV + self-certification*. When calculating income using this method, the LBHA may use its discretion to determine which method of calculation is reasonable: the last four quarters combined or an average of any number of quarters. The family must be provided with the information from EIV.

### **LBHA Policy**

At annual reexamination, if the LBHA is unable to use a determination of income from a means-tested federal assistance program and if there are no reported changes to an income source, the LBHA will use EIV + self-certification as verification of employment income, provided the family agrees with the amounts listed in EIV.

The LBHA will use an average of the last two quarters of income listed in EIV to determine income from employment. The LBHA will provide the family with the information in EIV. The family will be required to sign a self-certification stating that the amount listed in EIV is accurate and representative of current income. If the family disagrees with the amount in EIV, the amount is not reflective of current income, or if less than two quarters are available in EIV, the LBHA will use written third-party verification from the source as outlined below.

The LBHA will not use this method of verification at new admission since EIV is not available for applicant families or at interim reexamination since the income information in EIV is not current.

### **Written Third-Party Verification from the Source**

Written, third-party verification from the source is also known as “tenant-provided verification.” In order to qualify as written-third party verification from the source, the documents must be original or authentic and (generally) dated within 120 days of the date received by the LBHA. For fixed-income sources, a statement dated within the appropriate benefit year is acceptable documentation. Documents may be supplied by the family or received from a third-party source.

Examples of acceptable tenant-provided documents include, but are not limited to pay stubs, payroll summary reports, employer notice or letters of hire and termination, SSA benefit verification letters, bank statements, child support payment stubs, welfare benefit letters and/or printouts, and unemployment monetary benefit notices. Income tax returns with corresponding official tax forms and schedules attached and including third-party receipt of transmission for income tax return filed (i.e., tax preparer’s transmittal receipt, summary of transmittal from online source, etc.) are an acceptable form of written, third-party verification.

The LBHA is required to obtain, at minimum, two current and consecutive pay stubs when calculating income using third-party verification from the source. For new income sources or when two pay stubs are not available, the LBHA should determine income based on the information from a traditional written, third-party verification form or the best available information.

When the family disputes EIV-reported employment income, the LBHA uses written third-party verification.

When verification of assets is required, LBHAs are required to obtain a minimum of one statement that reflects the current balance of banking/financial accounts.

### LBHA Policy

In general, the LBHA will use third-party verification from the source in the following circumstances:

- At annual reexamination when EIV + self-certification is not used;
- For all new admissions; and
- For all interim reexaminations.

The LBHA will not use this method if the LBHA is able to use an income determination from a means-tested federal assistance program or if the LBHA uses EIV + self-certification as outlined above.

In general, third-party documents provided by the family or the source must be dated within 120 days of the date received by the LBHA. However, for fixed-income sources, a statement dated within the appropriate benefit year is acceptable documentation.

The LBHA may reject documentation provided by the family if the document is not an original, if the document appears to be forged, or if the document is altered, mutilated, or illegible. If the LBHA determines that third-party documents provided by the family are not acceptable, the LBHA will explain the reason to the family and request additional documentation from the family or will use a lower form of verification such as a written third-party verification form.

When verification of assets held by a banking or financial institution is required, the LBHA will obtain one statement that reflects the current balance of the account.

When pay stubs are used, the LBHA will require the family to provide the two most current, consecutive pay stubs. At the LBHA discretion, if additional paystubs are needed due to the family's circumstances (e.g., sporadic income, fluctuating schedule, etc.), the LBHA may request additional paystubs or a payroll record.

### **7-I.G. LEVEL 3 VERIFICATION: WRITTEN, THIRD-PARTY FORM [Notice PIH 2023 -27]**

This type of verification is a form developed by the LBHA and used uniformly for all families when needed to collect information from a third-party source. This is known as “traditional third-party verification.” LBHAs send a LBHA-developed form directly to the third-party source by mail, fax, or email and the source completes the form by hand (in writing or typeset).

The LBHA may use this method when higher forms are unavailable or are rejected by the LBHA or when the family is unable to provide acceptable verification. The LBHA may skip this level of verification and may instead substitute oral third-party verification before moving to self-certification.

#### LBHA Policy

Typically, the LBHA will attempt to send written third-party verification forms to the verification source whenever higher forms of verification are unavailable.

However, on a case-by-case basis, the LBHA may choose to obtain oral third-party verification without first attempting, and in lieu of, a written-third party verification form.

### **7.I.H. LEVEL 2: ORAL THIRD-PARTY VERIFICATION [Notice PIH 2023-27]**

For third-party oral verification, LBHAs contact sources, identified by UIV techniques or by the family, by telephone or in person.

Third-party oral verification may be used when requests for written third-party verification forms have not been returned within a reasonable time—e.g., 10 business days.

LBHAs must document in the file the date and time of the telephone call or visit, the name of the person contacted, the telephone number, as well as the information confirmed.

The LBHA may skip this level of verification if they attempted written third-party verification via a form and the source did not respond and move directly to self-certification.

#### LBHA Policy

In general, the LBHA will attempt to obtain written third-party verification via a form from the verification source. If written third-party verification forms are not returned within 10 business days, the LBHA will accept self-certification from the family without attempting to obtain oral third-party verification.

However, if the LBHA chooses to obtain oral third-party verification, the LBHA will document in the file the date and time of the telephone call or visit, the name of the person contacted and the telephone number, as well as the information confirmed.

### **When Third-Party Verification is Not Required [Notice PIH 2023-27]**

Third-party verification may not be available in all situations. HUD has acknowledged that it may not be cost-effective or reasonable to obtain third-party verification of income, assets, or expenses when these items would have a minimal impact on the family's total tenant payment.

#### LBHA Policy

If the family cannot provide original documents, the LBHA may pay the service charge required to obtain third-party verification, unless it is not cost effective in which case a self-certification will be acceptable as the only means of verification. The cost of verification will not be passed on to the family.

The cost of postage and envelopes to obtain third-party verification of income, assets, and expenses is not an unreasonable cost [VG, p. 18].

#### ***Primary Documents***

Third-party verification is not required when legal documents are the primary source, such as a birth certificate or other legal documentation of birth.

## **7-1.1. LEVEL 1: NON-THIRD-PARTY VERIFICATION TECHNIQUE: SELF-CERTIFICATION [Notice PIH 2023-27]**

Non-third-party verification consists of a signed statement of reported income and/or expenses. This verification method should be used as a last resort when the LBHA has not been successful in obtaining information via all other required verification techniques.

Self-certification, however, is an acceptable form of verification when:

- A source of income is fully excluded
- Net family assets total \$50,000 or less and the LBHA has adopted a policy to accept self certification
- The family declares that they do not have any present ownership in any real property
- A family states that they have non-recurring income that will not be repeated in the coming year; and/or
- The LBHA has adopted a policy to implement streamlined annual recertifications for fixed sources of income (See Chapter 11)

When the LBHA was required to obtain third-party verification but instead relies self-certification, the family's file must be documented to explain why third-party verification was not available.

HUD does not require that a self-certification be notarized; however, HUD recommends including language on any self-certification to ensure the certifier understands the consequences of knowingly providing false information.

### LBHA 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 LBHA.

The LBHA 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 LBHA and must be signed by the family member whose information or status is being verified.

All self-certifications will include the following language:

“I/We, the undersigned, certify under penalty of perjury that the information provided here is true and correct, to the best of my knowledge and recollection. WARNING: Anyone who knowingly submits a false claim or knowingly makes a false statement is subject to criminal and/or civil penalties, including confinement for up to five years, fines, and civil and administrative penalties (18 U.S.C. 287, 1001, 1010, 1012; 31 U.S.C. 3279, 3802).”



## PART II: VERIFYING FAMILY INFORMATION

### 7-II.A. VERIFICATION OF LEGAL IDENTITY

#### LBHA Policy

The LBHA will require families to furnish verification of legal identity for each household member.

<b>Verification of Legal Identity for Adults</b>	<b>Verification of Legal Identity for Children</b>
Certificate of birth, naturalization papers	Certificate of birth
Current, valid driver's license or Department of Motor Vehicles identification card	Adoption papers Custody agreement
U.S. military discharge (DD 214)	Health and Human Services ID
Current U.S. passport	Certified school records
Current government employer identification card with picture	

If a document submitted by a family is illegible for any reason or otherwise questionable, more than one of these documents may be required.

If none of these documents can be provided and at the LBHA's discretion, a third party who knows the person may attest to the person's identity. The certification must be provided in a format acceptable to the LBHA and must be signed by the family member whose information or status is being verified.

Legal identity will be verified for all applicants at the time of eligibility determination and in cases where the LBHA has reason to doubt the identity of a person representing themselves to be a participant.



## **7-II.B. SOCIAL SECURITY NUMBERS [24 CFR 5.216, Notice PIH 2023-27]**

The family must provide documentation of a valid Social Security number (SSN) for each member of the household, with the exception of individuals who do not contend eligible immigration status. Exemptions also include existing program participants who were at least 62 years of age as of January 31, 2010, and had not previously disclosed an SSN.

Note that an individual who previously declared to have eligible immigration status may not change their declaration for the purpose of avoiding compliance with the SSN disclosure and documentation requirements or penalties associated with noncompliance with these requirements. Nor may the head of household opt to remove a household member from the family composition for this purpose.

The LBHA must accept the following documentation as acceptable evidence of the social security number:

- An original SSN card issued by the Social Security Administration (SSA)
- An original SSA-issued document, which contains the name and SSN of the individual
- An original document issued by a federal, state, or local government agency, which contains the name and SSN of the individual

While LBHAs must attempt to gather third-party verification of SSNs prior to admission as listed above, LBHAs also have the option of accepting a self-certification and a third-party document (such as a bank statement, utility or cell phone bill, or benefit letter) with the applicant's name printed on it to satisfy the SSN disclosure requirement if the LBHA has exhausted all other attempts to obtain the required documentation. If verifying an individual's SSN using this method, the LBHA must document why the other SSN documentation was not available.

If the tenant's SSN becomes verified in EIV, then no further verification is required. If the tenant's SSN fails the SSA identity match, then the LBHA must obtain a valid SSN card issued by the SSA or an original document issued by a federal or state government agency that contains the name of the individual and the SSN of the individual, along with other identifying information of the individual. The tenant's assistance must be terminated if they fail to provide the required documentation.

### LBHA Policy

The LBHA will verify an individual's SSN in the situations described above using the method described above as a last resort when no other forms of verification of the individual's SSN are available.

The LBHA may only reject documentation of an SSN provided by an applicant or participant if the document is not an original document or if the original document has been altered, mutilated, is illegible, or appears to be forged.

#### LBHA Policy

The LBHA will explain to the applicant or participant the reasons the document is not acceptable and request that the individual obtain and submit acceptable documentation of the SSN to the LBHA within 90 days.

In the case of Moderate Rehabilitation Single Room Occupancy (SRO) individuals, the required documentation must be provided within 90 calendar days from the date of admission into the program. The LBHA must grant one additional 90-day extension if it determines that the applicant's failure to comply was due to circumstances that were beyond the applicant's control and could not have been reasonably foreseen.

#### LBHA Policy

The LBHA will grant one additional 90-day extension if needed for reasons beyond the participant's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency. If the individual fails to comply with SSN disclosure and documentation requirements upon expiration of the provided time period, the LBHA will terminate the individual's assistance.

If an applicant family includes a child under 6 years of age who joined the household within the 6 months prior to the date of voucher issuance, an otherwise eligible family may be admitted to the program and the family must provide documentation of the child's SSN within 90 days of the effective date of the initial HAP contract. A 90-day extension will be granted if the LBHA determines that the participant's failure to comply was due to unforeseen circumstances and was outside of the participant's control.

#### LBHA Policy

The LBHA will grant one additional 90-day extension if needed for reasons beyond the applicant's control, such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency.

When a participant requests to add a new household member who is at least 6 years of age, or who is under the age of 6 and has an SSN, the participant must provide the complete and accurate SSN assigned to each new member at the time of reexamination or recertification, in addition to the documentation required to verify it. The LBHA may not add the new household member until such documentation is provided.

When a participant requests to add a new household member who is under the age of 6 and has not been assigned an SSN, the participant must provide the SSN assigned to each new child and the required documentation within 90 calendar days of the child being added to the household. A 90-day extension will be granted if the LBHA determines that the participant's failure to comply was due to unforeseen circumstances and was outside of the participant's control. During the period the LBHA is awaiting documentation of the SSN, the child will be counted as part of the assisted household.

#### LBHA Policy

The LBHA will grant one additional 90-day extension if needed for reasons beyond the participant's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency.

Social security numbers must be verified only once during continuously assisted occupancy.

#### LBHA Policy

The LBHA will verify each disclosed SSN by:

- Obtaining documentation from applicants and participants that is acceptable as evidence of social security numbers

- Making a copy of the original documentation submitted, returning it to the individual, and retaining a copy in the file folder

Once the individual's verification status is classified as "verified," the LBHA may, at its discretion, remove and destroy copies of documentation accepted as evidence of social security numbers. The retention of the EIV Summary Report or Income Report is adequate documentation of an individual's SSN.

#### LBHA Policy

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

### **7-II.C. DOCUMENTATION OF AGE**

A birth certificate or other official record of birth is the preferred form of age verification for all family members. For elderly family members an original document that provides evidence of the receipt of social security retirement benefits is acceptable.

#### LBHA Policy

If an official record of birth or evidence of social security retirement benefits cannot be provided, the LBHA 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.

### LBHA 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**

#### LBHA Policy

Certification by the head of household is normally sufficient verification. If the LBHA has reasonable doubts about a marital relationship, the LBHA will require the family to document the marriage.

A marriage certificate generally is required to verify that a couple is married.

In the case of a common law marriage, the couple must demonstrate that they hold themselves to be married (e.g., by telling the community they are married, calling each other husband and wife, using the same last name, filing joint income tax returns).

### **Separation or Divorce**

#### LBHA Policy

Certification by the head of household is normally sufficient verification. If the LBHA has reasonable doubts about a separation or divorce, the LBHA will require the family to provide documentation of the divorce or separation.

A certified copy of a divorce decree, signed by a court officer, is required to document that a couple is divorced.

A copy of a court-ordered maintenance or other court record is required to document a separation.

If no court document is available, documentation from a community-based agency will be accepted.

### **Absence of Adult Member**

#### LBHA 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), if the LBHA so requests.

### **Foster Children and Foster Adults**

#### LBHA Policy

Third-party verification from the state or local government agency responsible for the placement of the individual with the family is required.

## 7-II.E. VERIFICATION OF STUDENT STATUS

### General Requirements

#### LBHA Policy

The LBHA requires families to provide information about the student status of all students who are 18 years of age or older. This information will be verified only if:

- The family reports full-time student status for an adult other than the head, spouse, or cohead.

- The family reports child care expenses to enable a family member to further their education.

- The family includes a student enrolled in an *institution of higher education*.

### Restrictions on Assistance to Students Enrolled in Institutions of Higher Education

This section applies only to students who are seeking assistance on their own, separately from their parents. It does not apply to students residing with parents who are seeking or receiving HCV assistance.

#### LBHA Policy

In accordance with the verification hierarchy described in section 7-1.B, the LBHA will determine whether the student is exempt from the restrictions in 24 CFR 5.612 by verifying any one of the following exemption criteria:

- The student is enrolled at an educational institution that does not meet the definition of *institution of higher education* in the Higher Education Act of 1965 (see section Exhibit 3-2).

- The student is at least 24 years old.

- The student is a veteran, as defined in section 3-II.E.

- The student is married.

- The student has at least one dependent child, as defined in section 3-II.E.

- The student is a person with disabilities, as defined in section 3-II.E, and was receiving assistance prior to November 30, 2005.

If the LBHA cannot verify at least one of these exemption criteria, the LBHA will conclude that the student is subject to the restrictions on assistance at 24 CFR 5.612. In addition to verifying the student's income eligibility, the LBHA will then proceed to verify either the student's parents' income eligibility (see section 7-III.J) or the student's independence from their parents (see below).

## ***Independent Student***

### **LBHA Policy**

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

Either reviewing and verifying previous address information to determine whether the student has established a household separate from their parents for at least one year, or reviewing and verifying documentation relevant to determining whether the student meets the U.S. Department of Education's definition of *independent student* (see section 3-II.E)

Reviewing the student's prior year income tax returns to verify the student is independent or verifying the student meets the U.S. Department of Education's definition of *independent student* (see section 3-II.E)

Requesting and obtaining written certification directly from the student's parents identifying the amount of support they will be providing to the student, even if the amount of support is \$0, except in cases in which the LBHA determines that the student is a *vulnerable youth* (see section 3-II.E)

## **7-II.F. DOCUMENTATION OF DISABILITY**

The LBHA must verify the existence of a disability in order to allow certain income disallowances and deductions from income. The LBHA is not permitted to inquire about the nature or extent of a person's disability [24 CFR 100.202(c)]. The LBHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the LBHA receives a verification document that provides such information, the LBHA will not place this information in the tenant file. Under no circumstances will the LBHA request a participant's medical record(s). For more information on health care privacy laws, see the Department of Health and Human Services' website at <http://www.hhs.gov/ocr/privacy/>.

The above cited regulation does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they are persons with disabilities [VG, p. 24]:

Inquiry into an applicant's ability to meet the requirements of ownership or tenancy

~~Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with disabilities or to persons with a particular type of disability~~

Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with disabilities or to persons with a particular type of disability

Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance

Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance

### **Family Members Receiving SSA Disability Benefits**

Verification of the receipt of disability benefits from the Social Security Administration (SSA) is sufficient verification of disability for the purpose of qualifying for waiting list preferences (if applicable) or certain income disallowances and deductions [VG, p. 23].

#### LBHA Policy

For family members claiming disability who receive disability benefits from the SSA, the LBHA will attempt to obtain information about disability benefits through the HUD Enterprise Income Verification (EIV) system. If documentation from HUD's EIV System is not available, the LBHA will request a current (dated within the last 60 days) SSA benefit verification letter from each family member claiming disability status. If the family is unable to provide the document(s), the LBHA will ask the family to request a benefit verification letter by either calling SSA at 1-800-772-1213, or by requesting it from [www.ssa.gov](http://www.ssa.gov). Once the applicant or participant receives the benefit verification letter they will be required to provide it to the LBHA.

### **Family Members Not Receiving SSA Disability Benefits**

Receipt of veteran's disability benefits, worker's compensation, or other non-SSA benefits based on the individual's claimed disability are not sufficient verification that the individual meets HUD's definition of disability in 24 CFR 5.403.

#### LBHA 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 LBHA verification requirements related to citizenship status.

The family must provide a certification that identifies each family member as a U.S. citizen, a U.S. national, an eligible noncitizen or an ineligible noncitizen and submit the documents discussed below for each family member. Once eligibility to receive assistance has been verified for an individual it need not be collected or verified again during continuously-assisted occupancy. [24 CFR 5.508(g)(5)]

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

HUD requires a declaration for each family member who claims to be a U.S. citizen or national. The declaration must be signed personally by any family member 18 or older and by a guardian for minors.

The LBHA may request verification of the declaration by requiring presentation of a birth certificate, United States passport or other appropriate documentation.

#### LBHA Policy

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



## **Eligible Immigrants**

### ***Documents Required***

All family members claiming eligible immigration status must declare their status in the same manner as U.S. citizens and nationals.

The documentation required for eligible noncitizens varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, age, and the date on which the family began receiving HUD-funded assistance. Exhibit 7-1 at the end of this chapter summarizes documents family members must provide.

### ***LBHA 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 LBHA must verify immigration status with the United States Citizenship and Immigration Services (USCIS).

The LBHA will follow all USCIS protocols for verification of eligible immigration status.

## **7-II.H. VERIFICATION OF PREFERENCE STATUS**

The LBHA must verify any preferences claimed by an applicant that determined placement on the waiting list.

### **LBHA Policy**

The LBHA will offer a preference to any family that has been terminated from its HCV program due to insufficient program funding. The LBHA will verify this preference using the LBHA's termination records.

The LBHA will offer a Residency preference to families who live and work in the City of Long Branch. The LBHA will verify through review of the following documents:

- a. Residency: two of the below documents:
  - i. Current lease
  - ii. Utility bill with family name
  - iii. Mail form SSA
  - iv. Unemployment benefits letter
  - v. Letter from social service organization
  - vi. Financial institution documentation
  - vii. Educational or school record
  - viii. Current Driver's License of state issued Identification Card
  - ix. Work: Employment record or letter reflecting the work address as within the LBHA's jurisdiction
  - x. Hired to work: Letter of hire reflecting the work address as within the LBHA's Jurisdiction.
  - xi. Homeless applicants: documentation from a local homeless shelter, health or homeless services entity, social security administration, or law

enforcement or other government entity reflecting the individual/family is homeless within the LBHA's jurisdiction.

The LBHA will offer a Homeless preference to families who are homeless and residing in Monmouth County NJ. This preference will be verified through the applicant's referral from Linkages - Catholic Charities, 4261 Route 33, Tinton Falls, New Jersey 07753.

The LBHA will offer a Displacement/Disaster preference to families who reside in the City of Long Branch who have been displaced from their units due to federally declared natural, or catastrophic disasters such as a flood, hurricane, tornado or any disaster as declared by the United States Federal Government or the State of New Jersey. This preference will be verified through the applicant's referral from The City of Long Branch.

The LBHA will offer a Veterans preference to families who served United States Armed Forces Veterans discharged or released from active duty in the armed forces under honorable conditions. This preference will be verified through copy of their DD Form 214, Certificate of Release or Discharge from Active Duty. Referral or coordination with local Department of Veterans Affairs.

The LBHA also offers a preference for victims of domestic violence, dating violence, sexual assault, stalking, or human trafficking, as described in Section 4-III.C. To verify that applicants qualify for the preference, the LBHA will follow documentation requirements outlined in Section 16-IX.D and/or referral from 180 Turning Lives Around, One Bethany Road Building 3, Suite 42, Hazlet, NJ 07730.

## **PART III: VERIFYING INCOME AND ASSETS**

Chapter 6 of this plan describes in detail the types of income that are included and excluded and how assets and income from assets are handled. Any income reported by the family must be verified. This part provides LBHA policies that supplement the general verification procedures specified in Part I of this chapter.

### LBHA Policy

The following policies do not apply when the LBHA uses a safe harbor income determination from a means-tested federal assistance program.

### **7-III.A. EARNED INCOME**

#### **Tips**

### LBHA Policy

Unless tip income is included in a family member's W-2 by the employer or in UIV verification sources, persons who work in industries where tips are standard will be required to sign a certified estimate of tips received for the prior year or tips anticipated to be received in the coming year.

#### **Wages**

### LBHA Policy

When the LBHA requires third-party verification of wages, for wages other than tips, the family must provide originals of the two most current, consecutive pay stubs.

## **7-III.B. BUSINESS AND SELF EMPLOYMENT INCOME**

The LBHA must obtain written, third-party verification when the income type is not available in EIV. This includes income from self-employment.

### LBHA Policy

Business owners and self-employed persons will be required to provide:

Income tax returns with corresponding official tax forms and schedules attached and including third-party receipt of transmission for income tax return filed (i.e., tax preparer's transmittal receipt, summary of transmittal from online source, etc.).

If accelerated depreciation was used on the tax return or financial statement, an accountant's calculation of depreciation expense, computed using straight-line depreciation rules.

For self-employed individuals who claim they do not to file tax returns, The LBHA will obtain a completed copy of IRS Form 4506-T to verify that no return has been filed.

For those employed in "gig employment" (i.e., those in formal agreements with on-demand companies such as Uber, Lyft, or DoorDash), the LBHA will provide a format for the individual to declare their income and expenses. The LBHA will also review the printed statement of monthly income from the applicable app for all hours worked and pay received as well as the Schedule C of the individual's tax return and the corresponding IRS Form 1099 or 1099k.

The LBHA 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 LBHA 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 LBHA 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 LBHA will require the family to provide documentation of income and expenses for this period and use that information to project income.

### **7-III.C. PERIODIC PAYMENTS AND PAYMENTS IN LIEU OF EARNINGS**

For policies governing streamlined income determinations for fixed sources of income, please see Chapter 11.

#### **Social Security/SSI Benefits [Notice PIH 2023-27]**

Verification requirements for Social Security (SS) and Supplemental Security Income (SSI) benefits differ for applicants and participants.

For applicants, since EIV does not contain SS or SSI benefit information, the LBHA must ask applicants to provide a copy of their current SS and/or SSI benefit letter (dated within the last 120 calendar days) for each family member that receives SS and/or SSI benefits. If the family is unable to provide the document or documents, the LBHA should help the applicant request a benefit verification letter from SSA's website at [www.ssa.gov](http://www.ssa.gov) or ask the family to request one by calling SSA at 1-800-772-1213. The LBHA must obtain the original benefit letter from the applicant, make a photocopy of the document for the file, and return the original to the family.

For participants, the LBHA must obtain information through the HUD EIV system and confirm with the participants that the current listed benefit amount is correct.

- If the participant agrees with the amount reported in EIV, the LBHA must use the EIV-reported gross benefit amount to calculate annual income from Social Security. LBHAs are required to use the EIV-reported SS and SSI benefit amounts when calculating income unless the tenant disputes the EIV-reported amount. For example, an SSA benefit letter may list the monthly benefit amount as \$450.80 and EIV displays the amount as \$450.00. The LBHA must use the EIV-reported amount unless the participant disputes the amount.
- If the participant disputes the EIV-reported benefit amount, or if benefit information is not available in EIV, the LBHA must request a current SSA benefit verification letter (dated within the last 120 calendar days) from each family member that receives SS and/or SSI benefits. If the family is unable to provide the document or documents, the LBHA should help the participant request a benefit verification letter from SSA's website at [www.ssa.gov](http://www.ssa.gov) or ask the family to request one by calling SSA at 1-800-772-1213. The LBHA must obtain the original benefit letter from the participant, make a photocopy of the document for the file, and return the original to the family.

Photocopies of social security checks or bank statements are not acceptable forms of verification for SS/SSI benefits.

### 7-III.D. ALIMONY OR CHILD SUPPORT [Notice PIH 2023-27]

Annual income includes “all amounts received,” not the amount that a family may be legally entitled to receive but which they do not receive. For example, a family’s child support or alimony income must be based on payments received, not the amounts to which the family is entitled by court or agency orders. A copy of a court order or other written payment agreement alone may not be sufficient verification of amounts received by a family.

#### LBHA Policy

The methods the LBHA will use to verify alimony and child support payments differ depending on whether the family declares that it receives regular payments.

If the family declares that it *receives regular payments*, verification will be obtained in the following order of priority:

Copies of the receipts and/or payment stubs for the 12 months prior to LBHA request

Third-party verification form from the state or local child support enforcement agency

Third-party verification form from the person paying the support

Family's self-certification of amount received

**Note:** Families are not required to undertake independent enforcement action.

### 7-III.E. NONRECURRING INCOME [Notice PIH 2023-27]

Income that will not be repeated beyond the coming year (i.e., the 12 months following the effective date of the certification), based on information provided by the family, is considered nonrecurring income and is excluded from annual income. LBHAs may accept a self-certification from the family stating that the income will not be repeated in the coming year.

#### LBHA Policy

The LBHA will accept self-certification from the family stating that income will not be repeated in the coming year. However, the LBHA may choose, on a case-by-case basis, to require third-party verification that income sources will not be repeated in the coming year.

## **7-III.F. ASSETS AND INCOME FROM ASSETS**

### **Net Family Assets [24 CFR 5.603]**

At admission and reexam, for families with net assets totaling \$50,000 or less (adjusted annually), the LBHA may, but is not required to, accept the family's self-certification that the family's assets do not exceed \$50,000 without taking any additional steps to verify the accuracy of the declaration. The declaration must include the amount of income the family expects to receive from assets which must be included in the family's income. This includes declaring income from checking and savings accounts which, although excluded from the calculation of net family assets (because the combined value of non-necessary personal property does not exceed \$50,000), may generate asset income. LBHAs must clarify during the self-certification process which assets are included/excluded from net family assets.

For LBHAs that choose to accept self-certification, the LBHA is required to obtain third-party verification of all assets, regardless of the amount, at least once every three years.

LBHAs who choose not to accept self-certifications of assets must verify all families' assets on an annual basis.

When net family assets have a total value over \$50,000, the LBHA may not rely on the family's self-certification. Third-party verification of assets is required when net family assets exceed \$50,000, adjusted annually by HUD.

When verification of assets is required, LBHAs are required to obtain a minimum of one statement that reflects the current balance of banking/financial accounts.

#### LBHA Policy

The LBHA will obtain third-party verification of all assets regardless of the amount.

### **Self-Certification of Real Property Ownership [24 CFR 5.618(b)(2)]**

The LBHA must determine whether a family has present ownership in real property that is suitable for occupancy for purposes of determining whether the family is compliant with the asset limitation described in Chapters 3 and 12. At admission and reexam, the LBHA may accept a self-certification from the family that the family does not have any present ownership in any real property that is suitable for occupancy. If the family declares they have present ownership in real property, the LBHA must obtain third-party verification.

#### **LBHA Policy**

Both at admission and reexam, the LBHA will accept self-certification from the family that the family does not have any present ownership in any real property. The certification will state that the family does not have any present ownership interest in any real property and must be signed by all family members 18 years of age and older. The LBHA reserves the right to require additional verification in situations where the accuracy of the declaration is in question.

If the family declares they have a present ownership in real property, the LBHA will obtain third-party verification of the following factors: whether the family has the legal right to reside in the property; whether the family has effective legal authority to sell the property; and whether the property is suitable for occupancy by the family as a residence. However, in cases where a family member is a victim of domestic violence, dating violence, sexual assault, or stalking, the LBHA will comply with confidentiality requirements under 24 CFR 5.2007 and will accept a self-certification.



### **7-III.G. 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. HUD permits LBHAs to accept a self-certification from a family as verification of assets disposed of for less than fair market value [HCV GB, p. 5-28]. The LBHA needs to verify only those certifications that warrant documentation [HCV GB, p. 5-28].

#### LBHA Policy

The LBHA will accept a self-certification from a family as verification of assets disposed of for less than fair market value.

The LBHA will verify the value of assets disposed of only if:

The LBHA does not already have a reasonable estimation of its value from previously collected information, or

The amount reported by the family in the certification appears obviously in error.

Example 1: An elderly participant reported a \$10,000 certificate of deposit at the last annual reexamination and the LBHA verified this amount. Now the person reports that she has given this \$10,000 to her son. The LBHA has a reasonable estimate of the value of the asset; therefore, reverification of the value of the asset is not necessary.

Example 2: A family member has disposed of its 1/4 share of real property located in a desirable area and has valued her share at approximately \$5,000. Based upon market conditions, this declaration does not seem realistic. Therefore, the LBHA will verify the value of this asset.

### **7-III.H. NET INCOME FROM RENTAL PROPERTY**

#### LBHA 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 LBHA 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.I. FEDERAL TAX REFUNDS OR REFUNDABLE TAX CREDITS** **[Notice PIH 2023-27]**

LBHAs are not required to verify the amount of the family's federal tax refund or refundable tax credit(s) if the family's net assets are equal to or below \$50,000 (adjusted annually for inflation), even in years when full verification of assets is required or if the LBHA does not accept self-certification of assets. LBHAs must verify the amount of the family's federal tax refund or refundable tax credits if the family's net assets are greater than \$50,000.

### **7-III.J. RETIREMENT ACCOUNTS**

#### LBHA Policy

The LBHA 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.K. INCOME FROM EXCLUDED SOURCES [Notice PIH 2023-27]**

A detailed discussion of excluded income is provided in Chapter 6, Part I.

HUD guidance on verification of excluded income draws a distinction between income which is fully excluded and income which is only partially excluded.

For fully excluded income, the LBHA is **not** required to follow the verification hierarchy. For fully excluded income, the LBHA is **not** required to document why third-party verification is not available, or report the income on the 50058. *Fully excluded income* is defined as income where the entire amount qualifies to be excluded from the annual income determination in accordance with 24 CFR 5.609(b) and any *Federal Register* notice on mandatory exclusions issued by HUD (for example, food stamps, earned income of a minor, or foster care funds).

LBHAs may accept a family's signed application or reexamination form as self-certification of fully excluded income. They do not have to require additional documentation. However, if there is any doubt that a source of income qualifies for full exclusion, LBHAs have the option of requiring additional verification.

For partially excluded income, the LBHA **is** required to follow the verification hierarchy and all applicable regulations, and to report the income on the 50058. Partially excluded income is defined as income where only a certain portion of what is reported by the family qualifies to be excluded and the remainder is included in annual income (for example, the income of an adult full-time student).

#### LBHA Policy

The LBHA will accept the family's self-certification as verification of fully excluded income. The LBHA may request additional documentation if necessary to document the income source.

The LBHA will verify the source and amount of partially excluded income as described in Part 1 of this chapter.

### **7-III.L. ZERO INCOME STATUS REVIEWS [Notice PIH 2023-27]**

A *zero income review* is an assessment, sometimes periodic, performed by the LBHA of the income of a family who claims that they do not receive income from any source, including from assets. During such reviews, it is common for LBHAs to request that families complete and sign a worksheet explaining how they pay for the household's expenses. HUD does not require LBHAs to conduct periodic zero income reviews. In calculating annual income, LBHAs must not assign monetary value to nonmonetary in-kind donations from a food bank or similar organization received by the family [24 CFR § 5.609(b)(24)(vi)]. LBHAs that perform zero income reviews must update local discretionary policies, procedures, and forms. Families who begin receiving income which does not trigger an interim reexamination should no longer be considered zero income even though the family's income is not reflected on the Form HUD-50058.

#### LBHA Policy

The LBHA will check UIV sources and/or may request information from third-party sources to verify that certain forms of income such as unemployment benefits, TANF, SS, SSI, earned income, child support, etc., are not being received by families claiming to have zero annual income.

The LBHA will also require that each family member who claims zero income status complete a zero-income form. If any sources of income are identified on the form, the LBHA will verify the income in accordance with the policies in this chapter prior to including the income in the family's annual income.

The LBHA will only conduct interims in accordance with LBHA policy in Chapter 11.

### **7-III.M. STUDENT FINANCIAL ASSISTANCE [24 CFR 5.609(b)(9)]**

The regulations under HOTMA distinguish between two categories of student financial assistance paid to both full-time and part-time students. Any assistance to students under section 479B of the Higher Education Act of 1965 (Title IV of the HEA) must be excluded from the family's annual income [24 CFR 5.609(b)(9)(i)]. Any other grant-in-aid, scholarship, or other assistance amounts an individual receives for the actual covered costs charged by the institute of higher education not otherwise excluded by the federally mandated income exclusions are excluded [24 CFR 5.609(b)(9)(ii)].

#### LBHA Policy

The LBHA will request written third-party verification of both the source and the amount of student financial assistance. Family-provided documents from the educational institution attended by the student will be requested, as well as documents generated by any other person or entity providing such assistance, as reported by the student.

In addition, unless the student's only source of assistance is assistance under Title IV of the HEA, the LBHA will request written verification of the cost of the student's tuition, books, supplies, room and board, and other required fees and charges to the student from the educational institution.

If the LBHA is unable to obtain third-party written verification of the requested information, the LBHA will pursue other forms of verification following the verification hierarchy in section 7-I.B.

### **7-III.N. PARENTAL INCOME OF STUDENTS SUBJECT TO ELIGIBILITY RESTRICTIONS**

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, does not have a dependent child, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the income of the student's parents must be considered when determining income eligibility, unless the student is determined independent from their parents or a *vulnerable youth* in accordance with LBHA policy [24 CFR 5.612, FR Notice 4/10/06, p. 18146, and FR Notice 9/21/16].

This provision does not apply to students residing with parents who are seeking or receiving HCV assistance. It is limited to students who are seeking or receiving assistance on their own, separately from their parents.

#### **LBHA Policy**

If the LBHA is required to determine the income eligibility of a student's parents, the LBHA will request an income declaration and certification of income from the appropriate parent(s) (as determined in section 3-II.E). The LBHA will send the request directly to the parents, who will be required to certify to their income under penalty of perjury. The parents will be required to submit the information directly to the LBHA. The required information must be submitted (postmarked) within 10 business days of the date of the LBHA request or within any extended timeframe approved by the LBHA.

The LBHA reserves the right to request and review supporting documentation at any time if it questions the declaration or certification. Supporting documentation may include, but is not limited to, Internal Revenue Service (IRS) tax returns, consecutive and original pay stubs, bank statements, pension benefit statements, benefit award letters, and other official and authentic documents from a federal, state, or local agency.



## **PART IV: VERIFYING MANDATORY DEDUCTIONS**

### **7-IV.A. DEPENDENT AND ELDERLY/DISABLED HOUSEHOLD DEDUCTIONS**

The dependent and elderly/disabled family deductions require only that the LBHA verify that the family members identified as dependents or elderly/disabled persons meet the statutory definitions. No further verifications are required.

#### **Dependent Deduction**

See Chapter 6 for a full discussion of this deduction. The LBHA must verify that:

- Any person under the age of 18 for whom the dependent deduction is claimed is not the head, spouse, or cohead of the family and is not a foster child
- Any person age 18 or older for whom the dependent deduction is claimed is not a foster adult or live-in aide, and is a person with a disability or a full time student

#### **Elderly/Disabled Family Deduction**

See Eligibility chapter for a definition of elderly and disabled families and Chapter 6 for a discussion of the deduction. The LBHA must verify that the head, spouse, or cohead is 62 years of age or older or a person with disabilities.

## 7-IV.B. HEALTH AND MEDICAL CARE EXPENSE DEDUCTION

Policies related to medical expenses are found in Chapter 6. The amount of the deduction will be verified following the standard verification procedures described in Part I.

The LBHA must comply with the Health Insurance Portability and Accountability Act (HIPAA) (Pub. L. 104-191, 110 Stat. 1936) and the Privacy Act of 1974 (Pub. L. 93-579, 88 Stat. 1896) when requesting documentation to determine unreimbursed health and medical care expenses. The LBHA may not request documentation beyond what is sufficient to determine anticipated health and medical care costs. Before placing bills and documentation in the tenant file, the LBHA must redact all personally identifiable information [FR Notice 2/14/23].

### Amount of Expense

#### LBHA Policy

Medical expenses will be verified through:

Written third-party documents provided by the family, such as LBHarmacy printouts or receipts.

When income is projected at new admission or interim, the LBHA will make a best effort to determine what expenses from the past are likely to continue to occur in the future. The LBHA will also accept evidence of monthly payments or total payments that will be due for medical expenses during the upcoming 12 months.

Written third-party verification forms if the family is unable to provide acceptable documentation.

When income is projected at new admission or interim, if third-party or document review is not possible, written family certification as to costs anticipated to be incurred during the upcoming 12 months.

Before placing bills and documentation in the tenant file, the LBHA will redact all personally identifiable information.

If the LBHA receives documentation from a verification source that contains the individual's specific diagnosis, information regarding the individual's treatment, and/or information regarding the nature or severity of the person's disability, the LBHA will immediately dispose of this confidential information; this information will never be maintained in the individual's file. If the information needs to be disposed of, the LBHA will note in the individual's file that verification was received, the date received, and the name and address of the person/organization that provided the verification. Under no circumstances will LBHA include an applicant's or resident's medical records in the file [Notice PIH 2010-26].



In addition, the LBHA must verify that:

- The household is eligible for the deduction.
- The costs to be deducted are qualified health and medical care expenses.
- The expenses are not paid for or reimbursed by any other source.
- Costs incurred in past years are counted only once.

### **Eligible Household**

The health and medical care expense deduction is permitted only for households in which the head, spouse, or cohead is at least 62, or a person with disabilities. The LBHA must verify that the family meets the definition of an elderly or disabled family provided in the Eligibility chapter and as described in Chapter 7 (7-IV.A.) of this plan.

### **Qualified Expenses**

To be eligible for the health and medical care expense deduction, the costs must qualify as medical expenses. See Chapter 6 for the LBHA's policy on what counts as a medical expense.

### **Unreimbursed Expenses**

To be eligible for the health and medical care expense deduction, the costs must not be reimbursed by another source.

#### LBHA Policy

The family will be required to certify that the medical expenses are not paid or reimbursed to the family from any source. If expenses are verified through a third party, the third party must certify that the expenses are not paid or reimbursed from any other source.

### **Expenses Incurred in Past Years**

#### LBHA Policy

At new admission and interim reexam, when anticipated costs are related to on-going payment of medical bills incurred in past years, the LBHA will verify:

The anticipated repayment schedule

The amounts paid in the past, and

Whether the amounts to be repaid have been deducted from the family's annual income in past years

#### **7-IV.C. DISABILITY ASSISTANCE EXPENSES**

Policies related to disability assistance expenses are found in 6-II.E. The amount of the deduction will be verified following the standard verification procedures described in Part I.

The LBHA must comply with the Health Insurance Portability and Accountability Act (HIPAA) (Pub. L. 104-191, 110 Stat. 1936) and the Privacy Act of 1974 (Pub. L. 93-579, 88 Stat. 1896) when requesting documentation to determine unreimbursed auxiliary apparatus or attendance care costs. The LBHA may not request documentation beyond what is sufficient to determine anticipated reasonable attendant care and auxiliary apparatus costs. Before placing bills and documentation in the tenant file, the LBHA must redact all personally identifiable information [FR Notice 2/14/23].

#### **Amount of Expense**

##### *Attendant Care*

##### LBHA Policy

Expenses for attendant care will be verified through:

Written third-party documents provided by the family, such as receipts or cancelled checks.

Third-party verification form signed by the provider, if family-provided documents are not available.

When income is projected at new admission or interim, if third-party verification is not possible, written family certification as to costs anticipated to be incurred for the upcoming 12 months.

Before placing bills and documentation in the tenant file, the LBHA will redact all personally identifiable information.

If the LBHA receives documentation from a verification source that contains the individual's specific diagnosis, information regarding the individual's treatment, and/or information regarding the nature or severity of the person's disability, the LBHA will immediately dispose of this confidential information; this information will never be maintained in the individual's file. If the information needs to be disposed of, the LBHA will note in the individual's file that verification was received, the date received, and the name and address of the person/organization that provided the verification. Under no circumstances will LBHA include an applicant's or resident's medical records in the file [Notice PIH 2010-26].

## *Auxiliary Apparatus*

### LBHA Policy

Expenses for auxiliary apparatus will be verified through:

Written third-party documents provided by the family, such as billing statements for purchase of auxiliary apparatus, or other evidence of monthly payments or total payments that will be due for the apparatus during the upcoming 12 months.

Third-party verification form signed by the provider, if family-provided documents are not available.

If third-party verification is not possible, written family certification of estimated apparatus costs for the upcoming 12 months.

In addition, the LBHA must verify that:

- The family member for whom the expense is incurred is a person with disabilities (as described in 7-II.F above).
- The expense permits a family member, or members, to work (as described in Chapter 6.).
- The expense is not reimbursed from another source (as described in Chapter 6.).

### **Family Member is a Person with Disabilities**

To be eligible for the disability assistance expense deduction, the costs must be incurred for attendant care or auxiliary apparatus expense associated with a person with disabilities. The LBHA will verify that the expense is incurred for a person with disabilities (See 7-II.F.).

### **Family Member(s) Permitted to Work**

The LBHA must verify that the expenses claimed actually enable a family member, or members, (including the person with disabilities) to work.

#### LBHA Policy

The LBHA will request third-party verification from a rehabilitation agency or knowledgeable medical professional indicating that the person with disabilities requires attendant care or an auxiliary apparatus to be employed, or that the attendant care or auxiliary apparatus enables another family member, or members, to work (See 6-II.E.). This documentation may be provided by the family.

If third-party verification has been attempted and is either unavailable or proves unsuccessful, the family must certify that the disability assistance expense frees a family member, or members (possibly including the family member receiving the assistance), to work.

### **Unreimbursed Expenses**

To be eligible for the disability expenses deduction, the costs must not be reimbursed by another source.

#### LBHA Policy

The family will be required to certify that attendant care or auxiliary apparatus expenses are not paid by or reimbursed to the family from any source.

#### **7-IV.D. CHILD CARE EXPENSES**

Policies related to child care expenses are found in Chapter 6. The amount of the deduction will be verified following the standard verification procedures described in Part I of this chapter. In addition, the LBHA must verify that:

- The child is eligible for care (12 or younger).
- The costs claimed are not reimbursed.
- The costs enable a family member to work, actively seek work, or further their education.
- The costs are for an allowable type of child care.
- The costs are reasonable.

#### **Eligible Child**

To be eligible for the child care deduction, the costs must be incurred for the care of a child under the age of 13. The LBHA will verify that the child being cared for (including foster children) is under the age of 13 (See 7-II.C.).

#### **Unreimbursed Expense**

To be eligible for the child care deduction, the costs must not be reimbursed by another source.

#### LBHA Policy

The family (and the care provider) will be required to certify that the child care expenses are not paid or reimbursed to the family from any source.

## **Pursuing an Eligible Activity**

The LBHA must verify that the family member(s) that the family has identified as being enabled to seek work, pursue education, or be gainfully employed, are actually pursuing those activities.

### LBHA Policy

#### *Information to be Gathered*

The LBHA 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 LBHA will use documentation from a state or local agency that monitors work-related requirements (e.g., welfare or unemployment). In such cases the LBHA will request family-provided verification from the agency of the member's job seeking efforts to date, and require the family to submit to the LBHA any reports provided to the other agency.

In the event third-party verification is not available, the LBHA will provide the family with a form on which the family member must record job search efforts. The LBHA will review this information at each subsequent reexamination for which this deduction is claimed.

#### *Furthering Education*

The LBHA will request third-party documentation to verify that the person permitted to further their education by the child care is enrolled and provide information about the timing of classes for which the person is registered. The documentation may be provided by the family.

#### *Gainful Employment*

The LBHA will seek third-party verification of the work schedule of the person who is permitted to work by the child care. In cases in which two or more family members could be permitted to work, the work schedules for all relevant family members may be verified. The documentation may be provided by the family.

### **Allowable Type of Child Care**

The type of care to be provided is determined by the family, but must fall within certain guidelines, as discussed in Chapter 6.

#### LBHA Policy

The LBHA will verify that the type of child care selected by the family is allowable, as described in Chapter 6.

The LBHA 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 LBHA 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.

#### LBHA Policy

The actual costs the family incurs will be compared with the LBHA'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 LBHA will request additional documentation, as required, to support a determination that the higher cost is appropriate.

**EXHIBIT 7-1: SUMMARY OF DOCUMENTATION REQUIREMENTS FOR NONCITIZENS [HCV GB, pp. 5-9 and 5-10]**

- All noncitizens claiming eligible status must sign a declaration of eligible immigrant status on a form acceptable to the LBHA.
- 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.

<ul style="list-style-type: none"> <li>• Form I-551 Alien Registration Receipt Card (for permanent resident aliens)</li> <li>• Form I-94 Arrival-Departure Record annotated with one of the following:             <ul style="list-style-type: none"> <li>• “Admitted as a Refugee Pursuant to Section 207”</li> <li>• “Section 208” or “Asylum”</li> <li>• “Section 243(h)” or “Deportation stayed by Attorney General”</li> <li>• “Paroled Pursuant to Section 221 (d)(5) of the USCIS”</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Form I-94 Arrival-Departure Record with no annotation accompanied by:             <ul style="list-style-type: none"> <li>• A final court decision granting asylum (but only if no appeal is taken);</li> <li>• A letter from a USCIS asylum officer granting asylum (if application is filed on or after 10/1/90) or from a USCIS district director granting asylum (application filed before 10/1/90);</li> <li>• A court decision granting withholding of deportation; or</li> <li>• A letter from an asylum officer granting withholding or deportation (if application filed on or after 10/1/90).</li> </ul> </li> </ul>
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<ul style="list-style-type: none"> <li>• Form I-688 Temporary Resident Card annotated “Section 245A” or Section 210”.</li> </ul>	<ul style="list-style-type: none"> <li>• Form I-688B Employment Authorization Card annotated “Provision of Law 274a. 12(11)” or “Provision of Law 274a.12”.</li> </ul>
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- 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

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

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

#### INTRODUCTION

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

All units must pass an NSPIRE inspection prior to the approval of a lease (with some exceptions) and at least once every 24 months (or 36 months for small rural LBHAs) during the term of the HAP contract, and at other times as needed, to determine that the unit meets NSPIRE standards. HUD also requires LBHAs to determine that rents for units under the program are reasonable when compared to comparable unassisted units in the market area.

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

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

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

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

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

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



## **PART I: NSPIRE STANDARDS**

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

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

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

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

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

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

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

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

Under the Fair Housing Act of 1988 an owner must make reasonable accommodations in rules, policies, practices, or services if necessary for a person with disabilities to use the housing and must not refuse the request of a family that contains a person with a disability to make necessary and reasonable modifications to the unit if such modification is necessary to afford the person with a disability full enjoyment of the premises. Such modifications are at the family's expense. The owner may, where it is reasonable to do so, require restoration of the unit to its original condition (reasonable wear and tear excepted) if the modification would interfere with the owner or next occupant's full enjoyment of the premises. The owner may not increase a customarily required security deposit. However, the landlord may negotiate a restoration agreement that requires the family to restore the unit and, if necessary to ensure the likelihood of restoration, may require the tenant to pay a reasonable amount into an interest-bearing escrow account over a reasonable period of time. The interest in any such account accrues to the benefit of the tenant. The owner may also require reasonable assurances that the quality of the work will be acceptable and that any required building permits will be obtained. [24 CFR 100.203; Notice 2003-31].

Modifications to units to provide access for a person with a disability must meet all applicable NSPIRE requirements and conform to the design, construction, or alteration of facilities contained in the UFAS and the ADA Accessibility Guidelines (ADAAG) [28 CFR 35.151(c) and Notice 2003-31] See Chapter 2 of this plan for additional information on reasonable accommodations for persons with disabilities.

LBHA Policy

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

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

The LBHA may impose variations to the NSPIRE standards as long as the additional criteria are not likely to adversely affect the health or safety of participant families or severely restrict housing choices for families. HUD approval is required for variations to NSPIRE standards and approved variations must be added to the administrative plan.

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

LBHA Policy

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

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

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

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

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

<b>Inspectable Item</b>	<b>Deficiency</b>
Fire Escape	Fire extinguisher is damaged or missing.
Fire Extinguisher	Fire extinguisher pressure gauge reads over or under-charged.
	Fire extinguisher service tag is missing, illegible, or expired.
	Fire extinguisher is damaged or missing.
Flammable and Combustible Items	Flammable or combustible item is on or within 3 feet of an appliance that provides heat for thermal comfort or a fuel-burning water heater; OR Improperly stored chemicals.
Guardrail	Guardrail is missing or not installed.
	Guardrail is not functionally adequate.
Heating, Ventilation, and Air Conditioning (HVAC)	The inspection date is on or between October 1 and March 31 and the permanently installed heating source is not working or the permanently installed heating source is working and the interior temperature is below 64 degrees Fahrenheit.
	Unvented space heater that burns gas, oil, or kerosene is present.
	Combustion chamber cover or gas shutoff valve is missing from a fuel burning heating appliance.
	Fuel burning heating system or device exhaust vent is misaligned, blocked, disconnected, improperly connected, damaged, or missing.
Leak – Gas or Oil	Natural gas, propane, or oil leak.
Mold-like Substance	Presence of mold-like substance at extremely high levels is observed visually.
Smoke Alarm	Smoke alarm is not installed where required.
	Smoke alarm is obstructed.
	Smoke alarm does not produce an audio or visual alarm when tested.
Sprinkler Assembly	Sprinkler head assembly is encased or obstructed by an item or object that is within 18 inches of the sprinkler head.
	Sprinkler assembly component is damaged, inoperable, or missing and it is detrimental to performance.
	Sprinkler assembly has evidence of corrosion.
	Sprinkler assembly has evidence of foreign material that is detrimental to performance.
Structural System	Structural system exhibits signs of serious failure.
Toilet	Only 1 toilet was installed, and it is missing.

Inspectable Item	Deficiency
Water Heater	Chimney or flue piping is blocked, misaligned, or missing.
	Gas shutoff valve is damaged, missing, or not installed.

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

LBHA Policy

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

Utilities not in service, including no running hot water



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

### **Family Responsibilities**

The family is responsible for correcting the following deficiencies:

- Tenant-paid utilities not in service
- Failure to provide or maintain appliances owned by the family
- Damage to the unit or premises caused by a household member or guest beyond normal wear and tear.

If a family fails to correct a family-caused life-threatening condition as required by the LBHA, the LBHA will enforce the family obligations. See 8-II.H.

#### LBHA Policy

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

### **Owner Responsibilities**

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

#### LBHA Policy

The owner is responsible for all NSPIRE violations not listed as a family responsibility above, even if the violation is caused by the family's living habits (e.g., vermin infestation). However, if the family's actions constitute a serious or repeated lease violation, the owner may take legal action to evict the family.

The owner will be required to repair an inoperable smoke detector unless the LBHA determines that the family has intentionally disconnected it (by removing batteries or other means). In this case, the family will be required to repair the smoke detector within 24 hours.

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

## **8-I.G. LEAD-BASED PAINT**

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

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

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

If a LBHA is notified by a public health department or other medical health care provider, or verifies information from a source other than a public health department or medical health care provider, that a child of less than six years of age, living in an HCV-assisted unit has been identified as having an elevated blood lead level, the LBHA must complete an environmental investigation of the dwelling unit within 15 calendar days after being notified by a public health department or other medical health care provider. The environmental investigation must be completed in accordance with program requirements, and the result of the environmental investigation must be immediately provided to the owner of the dwelling unit. In cases where the public health department has already completed an evaluation of the unit, this information must be provided to the owner.

Within 30 days after receiving the environmental investigation report from the LBHA, or the evaluation from the public health department, the owner is required to complete the reduction of identified lead-based paint hazards in accordance with the lead-based paint regulations [24 CFR 35.1325 and 35.1330; 40 CFR 745.227]. If the owner does not complete the “hazard reduction” as required, the dwelling unit is in violation of HQS and the LBHA will take action in accordance with Section 8-II.G.

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

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

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

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

If the LBHA determines that a unit is overcrowded because of an increase in family size or a change in family composition, the LBHA must issue the family a new voucher, and the family and LBHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the LBHA 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 LBHA conducts the following types of inspections as needed. Each type of inspection is discussed in the paragraphs that follow.

- *Initial Inspections.* The LBHA conducts initial inspections in response to a request from the family to approve a unit for participation in the HCV program.
- *Annual/Biennial Inspections.* HUD requires the LBHA to inspect each unit under lease at least annually or biennially (or triennially for small rural LBHAs as defined in 24 CFR 982.305(b)(2)), depending on LBHA policy, to confirm that the unit still meets NSPIRE standards.
- *Special Inspections.* A special inspection may be requested by the owner, the family, or a third party as a result of problems identified with a unit between annual inspections.
- *Quality Control Inspections.* HUD requires that a sample of units be inspected by a supervisor or other qualified individual to evaluate the work of the inspector(s) and to ensure that inspections are performed in compliance with the NSPIRE standards.

#### **Inspection of LBHA-Owned Units [24 CFR 982.352(b)]**

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

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

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

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

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

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

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

#### LBHA Policy

The LBHA will not charge a fee for failed reinspections.

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

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

#### LBHA Policy

The LBHA will not conduct any inspection using RVI.

### **Notice and Scheduling**

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

#### LBHA Policy

Both the family and the owner will be given reasonable notice of all inspections. Except in the case of a life-threatening emergency, reasonable notice is considered to be not less than 48 hours. Inspections may be scheduled between 8:00 a.m. and 5:00 p.m. Generally, inspections will be conducted on business days only. In the case of a life-threatening emergency, the LBHA will give as much notice as possible, given the nature of the emergency.

## **Owner and Family Inspection Attendance**

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

### LBHA Policy

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

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

## **8-II.B. INITIAL INSPECTION**

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

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

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

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

### LBHA Policy

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

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

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

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

### LBHA Policy

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

## **Inspection Results and Reinspections**

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

### LBHA Policy

If any deficiencies are identified, the owner will be notified of the deficiencies and be given a time frame to correct them. If requested by the owner, the time frame for correcting the deficiencies may be extended by the LBHA for good cause. The LBHA will reinspect the unit within five business days of the date the owner notifies the LBHA that the required corrections have been made.

If the time period for correcting the deficiencies (or any LBHA -approved extension) has elapsed, or the unit fails at the time of the reinspection, the LBHA will notify the owner and the family that the unit has been rejected and that the family must search for another unit. The LBHA may agree to conduct a second reinspection, for good cause, at the request of the family and owner.

Following a failed reinspection, the family may submit a new Request for Tenancy Approval for the same unit after the owner has made repairs, if they are unable to locate another suitable unit.

## **Utilities**

Generally, at initial lease-up the owner is responsible for demonstrating that all utilities are in working order including those utilities that the family will be responsible for paying.

### LBHA Policy

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

## **Appliances**

### LBHA Policy

If the family is responsible for supplying the stove and/or refrigerator, the LBHA will allow the stove and refrigerator to be placed in the unit after the unit has met all other NSPIRE requirements. The required appliances must be in place before the HAP contract is executed by the LBHA. The LBHA will execute the HAP contract based upon a certification from the family that the appliances have been installed and are working. A confirmatory inspection will be scheduled within 30 days of HAP contract approval.



## **8-II.C. ANNUAL/BIENNIAL INSPECTIONS [24 CFR 982.405 and 982.406; Notice PIH 2016-05]**

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

### LBHA Policy

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

The LBHA will not rely on alternative inspection standards.

### **Scheduling the Inspection**

#### LBHA Policy

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

If the family misses the first scheduled appointment without requesting a new inspection date, the LBHA will automatically schedule a second inspection. If the family misses two scheduled inspections without LBHA approval, the LBHA will consider the family to have violated its obligation to make the unit available for inspection. This may result in termination of the family's assistance in accordance with Chapter 12.

## **8-II.D. SPECIAL INSPECTIONS [24 CFR 982.405(g)]**

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

### LBHA Policy

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

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

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

HUD requires a LBHA supervisor or other qualified person to conduct quality control inspections of a sample of units to ensure that each inspector is conducting accurate and complete inspections and that there is consistency in the application of the NSPIRE standards.

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

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

### **Correction Timeframes**

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

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

### **Notification of Corrective Actions**

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

#### LBHA Policy

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

When failures that are severe or moderate are identified, the LBHA will send the owner and the family a written notification of the inspection results within five business days of the inspection. The written notice will specify who is responsible for correcting the violation, and the time frame within which the failure must be corrected. Generally, not more than 30 days will be allowed for the correction. If low deficiencies are identified, these deficiencies will only be noted for informational purposes.

The notice of inspection results will inform the owner that if life-threatening conditions are not corrected within 24 hours, and non-life-threatening conditions are not corrected within the specified time frame (or any LBHA -approved extension), the owner's HAP will be abated in accordance with LBHA 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 LBHA -approved extension, if applicable) the family's assistance will be terminated in accordance with LBHA policy (see Chapter 12).

## **Extensions**

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

### LBHA Policy

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

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

A repair cannot be completed because of weather conditions.

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

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

## **Reinspections**

### LBHA Policy

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

The family and owner will be given reasonable notice of the reinspection appointment. If the deficiencies have not been corrected by the time of the reinspection, the LBHA 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 LBHA policies. If the LBHA is unable to gain entry to the unit in order to conduct the scheduled reinspection, the LBHA will consider the family to have violated its obligation to make the unit available for inspection. This may result in termination of the family's assistance in accordance with Chapter 12.

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

## **8-II.G. ENFORCING OWNER COMPLIANCE**

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

### **HAP Abatement**

If an owner fails to correct deficiencies by the time specified by the LBHA, HUD requires the LBHA to abate housing assistance payments no later than the first of the month following the specified correction period (including any approved extension) [24 CFR 985.3(f)]. No retroactive payments will be made to the owner for the period of time the rent was abated. Owner rents are not abated as a result of deficiencies that are the family's responsibility.

#### LBHA Policy

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

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

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

### **HAP Contract Termination**

The LBHA must decide how long any abatement period will continue before the HAP contract will be terminated. The LBHA 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 LBHA will issue a voucher to permit the family to move to another unit as described in Chapter 10.

#### LBHA Policy

The maximum length of time that HAP may be abated is 90 days. However, if the owner completes corrections and notifies the LBHA before the termination date of the HAP contract, the LBHA 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 LBHA is 30 days.

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

Families are responsible for correcting any deficiencies listed in paragraph 8-I.D. If the family fails to correct a violation within the period allowed by the LBHA (and any extensions), the LBHA will terminate the family's assistance, according to the policies described in Chapter 12.

If the owner carries out a repair for which the family is responsible under the lease, the owner may bill the family for the cost of the repair.

## **PART III: RENT REASONABLENESS [24 CFR 982.507]**

### **8-III.A. OVERVIEW**

Except in the case of certain LIHTC- and HOME-assisted units, no HAP contract can be approved until the LBHA 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.

#### **LBHA-Owned Units [24 CFR 982.352(b)]**

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

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

### **Owner-Initiated Rent Determinations**

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

#### LBHA 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 LBHA 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 LBHA will consider unit size and length of tenancy in the other units.

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

All rents adjustments will be effective the first of the month following 60 days after the LBHA's receipt of the owner's request or on the date specified by the owner, whichever is later.

### **LBHA and HUD-Initiated Rent Reasonableness Determinations**

HUD requires the LBHA to make a determination of rent reasonableness (even if the owner has not requested a change) if there is a 10 percent decrease in the fair market rent that goes into effect at least 60 days before the contract anniversary date. HUD also may direct the LBHA to make a determination at any other time. The LBHA may decide that a new determination of rent reasonableness is needed at any time.

#### LBHA Policy

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

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

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

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

### **8-III.C. HOW COMPARABILITY IS ESTABLISHED**

#### **Factors to Consider**

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

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

#### **Units that Must Not Be Used as Comparables**

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

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

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**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 LBHA 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 LBHA information regarding rents charged for other units on the premises.



## **8-III.D. LBHA RENT REASONABLENESS METHODOLOGY**

### **How Market Data Is Collected**

#### LBHA Policy

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

### **How Rents Are Determined**

#### LBHA Policy

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

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

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

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

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

The LBHA will notify the owner of the rent the LBHA 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 LBHA will confirm the accuracy of the information provided and consider this additional information when making rent determinations. The owner must submit any additional information within five business days of the LBHA's request for information or the owner's request to submit information.



<b>EXHIBIT 8-1: AFFIRMATIVE HABITABILITY REQUIREMENTS</b>
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<b>Affirmative Habitability Requirements: Inside</b>
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Must include at least 1 battery-operated or hard-wired smoke detector, in proper working condition, on each level of the property.
--

Must meet or exceed the carbon monoxide detection standards set by the Secretary through <i>Federal Register</i> notification.
--

Any outlet installed within 6 feet of a water source must be GFCI protected.
--

Must have a guardrail when there is an elevated walking surface with a drop off of 30 inches or greater measured vertically.
--

Must have permanently mounted light fixtures in any kitchens and each bathroom.
---

May not contain unvented space heaters that burn gas, oil or kerosene.
--

<b>Affirmative Habitability Requirements: Outside</b>
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Any outlet installed within 6 feet of a water source must be GFCI-protected.
--

Must have a guardrail when there is an elevated walking surface with a drop off of 30 inches or greater measured vertically.
--

**Affirmative Habitability Requirements: Unit**

Must have hot and cold running water in the bathroom and kitchen, including an adequate source of safe drinking water in the bathroom and kitchen.

Must include its own bathroom or sanitary facility that is in proper operating condition and usable in privacy. It must contain a sink, a bathtub or shower, and an interior flushable toilet.

Must have at least one battery-operated or hard-wired smoke detector, in proper working condition, in the following locations:

- On each level of the unit AND
- Inside each bedroom or sleeping area AND
- With 21 feet of any door to a bedroom measured along a path of travel AND
- Where a smoke detector is installed outside a bedroom is separated from an adjacent living area by a door, a smoke detector must also be installed in the living area side of the door.

If the unit is occupied by a hearing-impaired person, the smoke detectors must have an alarm system designed for hearing-impaired persons.

Must have a living room and a kitchen area with a sink, cooking appliance, refrigerator, food preparation area and food storage area.

Must have two working outlets or one working outlet and one permanent light fixture within all habitable rooms.

Must have a permanently mounted light fixture in each bathroom and in the kitchen.

Outlets within 6 feet of water source must be GFCI-protected.

Must have permanently installed heating source.

No units may contain unvented space heaters that burn gas, oil or kerosene.

Must have a guard rail when there is an elevated walking surface with a drop off of 30 inches or greater measured vertically.

Must have at least one bedroom or living/sleeping room for each two persons.

## Chapter 9

### GENERAL LEASING POLICIES

#### INTRODUCTION

Chapter 9 covers the lease-up process from the family's submission of a Request for Tenancy Approval to execution of the HAP contract.

In order for the LBHA 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 LBHA 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 LBHA and meet the National Standards for the Physical Inspection of Real Estate (NSPIRE) [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 LBHA, with no conflicts of interest [24 CFR 982.306]
- For families initially leasing a unit only: Where the gross rent of the unit exceeds the applicable payment standard for the family, the share of rent to be paid by the family cannot exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]

## **9-I.A. TENANT SCREENING**

The LBHA 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 LBHA may elect to screen applicants for family behavior or suitability for tenancy. See Chapter 3 for a discussion of the LBHA's policies with regard to screening applicant families for program eligibility [24 CFR 982.307(a)(1)].

The owner is responsible for screening and selection of the family to occupy the owner's unit. At or before LBHA approval of the tenancy, the LBHA must inform the owner that screening and selection for tenancy is the responsibility of the owner [24 CFR 982.307(a)(2)]. The LBHA must also inform the owner or manager of their rights and obligations under the Violence against Women Act (VAWA) [24 CFR 5.2005(a)(2)].

The LBHA must provide the owner with the family's current and prior address (as shown in the LBHA records) and the name and address (if known to the LBHA) of the landlord at the family's current and prior address [24 CFR 982.307(b)(1)].

The LBHA is permitted, but not required, to offer the owner other information in the LBHA's possession about the tenancy history or drug trafficking of family members [24 CFR 982.307(b)(2)].

The LBHA's policy on providing information to the owner must be included in the family's briefing packet [24 CFR 982.307(b)(3)].

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

### LBHA Policy

The LBHA will not screen applicants for family behavior or suitability for tenancy.

The LBHA will not provide additional screening information to the owner.

### **9-I.B. REQUESTING TENANCY APPROVAL [Form HUD-52517]**

After the family is issued a voucher, the family must locate an eligible unit, with an owner or landlord willing to participate in the voucher program. Once a family finds a suitable unit and the owner is willing to lease the unit under the program, the owner and the family must request the LBHA to approve the assisted tenancy in the selected unit.

The owner and the family must submit two documents to the LBHA:

- 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 LBHA 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 LBHA 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].

### LBHA 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) must be submitted as hard copies, in-person, by mail, by email, or by fax.

The family may not submit, and the LBHA will not process, more than one (1) RTA at a time.

When the family submits the RTA the LBHA 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 LBHA will notify the family and the owner of the deficiencies.

Missing information and/or missing documents will only be accepted as hard copies, in-person, by mail, by email, or by fax. The LBHA will not accept missing information over the phone.

When the family submits the RTA and proposed lease, the LBHA 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 LBHA 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, by mail, by email, or by fax. The LBHA will not accept corrections by phone.

Because of the time sensitive nature of the tenancy approval process, the LBHA will attempt to communicate with the owner and family by phone, fax, or email. The LBHA will use mail when the parties cannot be reached by phone, fax, or email.

### **9-I.C. OWNER PARTICIPATION**

The LBHA does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where the LBHA may deny approval of an assisted tenancy based on past owner behavior, conflict of interest, or other owner-related issues. There are also criteria for which the LBHA must disapprove an owner. No owner has a right to participate in the HCV program [24 CFR 982.306(e)]

See Chapter 13 for a full discussion of owner qualification to participate in the HCV program.



## **9-I.D. ELIGIBLE UNITS**

There are a number of criteria that a dwelling unit must meet in order to be eligible for assistance under the voucher program. Generally, a voucher-holder family may choose any available rental dwelling unit on the market in the LBHA's jurisdiction. This includes the dwelling unit they are currently occupying.

### **Ineligible Units [24 CFR 982.352(a)]**

The LBHA 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.

### **LBHA-Owned Units [24 CFR 982.352(b)]**

Otherwise eligible units that are owned or substantially controlled by the LBHA issuing the voucher may also be leased in the voucher program. In order for a LBHA-owned unit to be leased under the voucher program, the unit must not be ineligible housing and the LBHA must inform the family, both orally and in writing, that the family has the right to select any eligible unit available for lease and that the family is free to select a LBHA-owned unit without any pressure or steering by the LBHA.

#### LBHA Policy

The LBHA does not have any eligible LBHA-owned units available for leasing under the voucher program.

### **Special Housing Types [24 CFR 982 Subpart M]**

HUD regulations permit, but do not generally require, the LBHA 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 LBHA has chosen to allow.

The regulations do require the LBHA to permit use of any special housing type if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

### **Duplicative Assistance [24 CFR 982.352(c)]**

A family may not receive the benefit of HCV tenant-based assistance while receiving the benefit of any of the following forms of other housing subsidy, for the same unit or for a different unit:

- Public or Indian housing assistance;
- Other Section 8 assistance (including other tenant-based assistance);
- Assistance under former Section 23 of the United States Housing Act of 1937 (before amendment by the Housing and Community Development Act of 1974);
- Section 101 rent supplements;
- Section 236 rental assistance payments;
- Tenant-based assistance under the HOME Program;
- Rental assistance payments under Section 521 of the Housing Act of 1949 (a program of the Rural Development Administration);
- Any local or State rent subsidy;
- Section 202 supportive housing for the elderly;
- Section 811 supportive housing for persons with disabilities; (11) Section 202 projects for non-elderly persons with disabilities (Section 162 assistance); or
- Any other duplicative federal, State, or local housing subsidy, as determined by HUD. For this purpose, 'housing subsidy' does not include the housing component of a welfare payment, a social security payment received by the family, or a rent reduction because of a tax credit.

### **NSPIRE Standards [Notice PIH 2023-28]**

In order to be eligible, the dwelling unit must be in safe and habitable condition. This determination is made using HUD's National Standards for the Physical Inspection of Real Estate (NSPIRE) and/or equivalent state or local standards approved by HUD. See Chapter 8 for a full discussion of the NSPIRE standards, as well as the process for inspection at initial lease-up.

## **Unit Size**

In order to be eligible, the dwelling unit must be appropriate for the number of persons in the household. A family must be allowed to lease an otherwise acceptable dwelling unit with fewer bedrooms than the number of bedrooms stated on the voucher issued to the family, provided the unit meets the applicable space requirements [24 CFR 5.703(d)(5)]. The family must be allowed to lease an otherwise acceptable dwelling unit with more bedrooms than the number of bedrooms stated on the voucher issued to the family. See Chapter 5 for a full discussion of subsidy standards.

## **Rent Reasonableness [24 CFR 982.305 and 24 CFR 982.507]**

In order to be eligible, the dwelling unit must have a reasonable rent. The rent must be reasonable in relation to comparable unassisted units in the area and must not be in excess of rents charged by the owner for comparable, unassisted units on the premises. See Chapter 8 for a full discussion of rent reasonableness and the rent reasonableness determination process.

## **Rent Burden [24 CFR 982.508]**

Where a family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the family, the family share cannot exceed 40 percent of the family's adjusted monthly income. The term "family share" refers to the amount the family pays toward rent and utilities. The gross rent for the unit minus the total housing assistance payment (HAP) for the unit equals the family share. See Chapter 6 for a discussion of calculation of gross rent, the use of payment standards, and calculation of family income, family share of rent and HAP.

## **9-I.E. LEASE AND TENANCY ADDENDUM**

The family and the owner must execute a written dwelling lease agreement for the assisted unit. This written lease is a contract between the tenant family and the owner; the LBHA is not a party to this contract.

The tenant must have legal capacity to enter a lease under State and local law. 'Legal capacity' means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner [24 CFR 982.308(a)]

### **Lease Form and Tenancy Addendum [24 CFR 982.308]**

If the owner uses a standard lease form for rental to unassisted tenants in the locality or the premises, the lease must be in such standard form. If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease. The HAP contract prescribed by HUD contains the owner's certification that if the owner uses a standard lease form for rental to unassisted tenants, the lease for the assisted tenants is in such standard form.

All provisions in the HUD-required Tenancy Addendum must be added word-for-word to the owner's standard lease form. The Tenancy Addendum includes the HUD requirements for the tenancy. Because it is a part of the lease, the tenant shall have the right to enforce the Tenancy Addendum against the owner. If there is a conflict between the owner's lease and the Tenancy Addendum, the terms of the Tenancy Addendum shall prevail over any other provisions of the lease.

#### LBHA Policy

The LBHA does not provide a model or standard dwelling lease for owners to use in the HCV program.

### **Lease Information [24 CFR 982.308(d)]**

The assisted dwelling lease must contain all of the required information as listed below:

- The names of the owner and the tenant:
- The unit rented (address, apartment number, and any other information needed to identify the contract unit)
- The term of the lease (initial term and any provisions for renewal)
- The amount of the monthly rent to owner
- A specification of what utilities and appliances are to be supplied by the owner, and what utilities and appliances are to be supplied by the family

### **Term of Assisted Tenancy**

The initial term of the assisted dwelling lease must be for at least one year [24 CFR 982.309]. The initial lease term is also stated in the HAP contract.

The HUD program regulations permit the LBHA to approve a shorter initial lease term if certain conditions are met.

#### LBHA Policy

The LBHA will not approve an initial lease term of less than one (1) year.

During the initial term of the lease, the owner may not raise the rent to owner [24 CFR 982.309].

Any provisions for renewal of the dwelling lease will be stated in the dwelling lease [HCV Guidebook, pg. 8-22]. There are no HUD requirements regarding any renewal extension terms, except that they must be stated in the dwelling lease if they exist.

The LBHA 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 LBHA 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 LBHA chooses to do so, language to this effect must be added to Part A of the HAP contract [Form HUD-52641].

#### LBHA Policy

The LBHA will allow the owner to collect any security deposit amount the owner determines is appropriate. Therefore, no modifications to the HAP contract will be necessary.

## **Separate Non-Lease Agreements between Owner and Tenant**

Owners may not demand or accept any rent payment from the family in excess of the rent to the owner as approved by the LBHA minus the LBHA'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)].

### LBHA Policy

The LBHA permits owners and families to execute separate, non-lease agreements for services, appliances (other than range and refrigerator) and other items that are not included in the lease.

Any items, appliances, or other services that are customarily provided to unassisted families as part of the dwelling lease with those families, or are permanently installed in the dwelling unit must be included in the dwelling lease for the assisted family. These items, appliances or services cannot be placed under a separate non-lease agreement between the owner and family. Side payments for additional rent, or for items, appliances or services customarily provided to unassisted families as part of the dwelling lease for those families, are prohibited.

Any items, appliances, or other services that are not customarily provided to unassisted families as part of the dwelling lease with those families, are not permanently installed in the dwelling unit and where the family has the sole option of not utilizing the item, appliance or service, may be included in a separate non-lease agreement between the owner and the family.

The family is not liable and cannot be held responsible under the terms of the assisted dwelling lease for any charges pursuant to a separate non-lease agreement between the owner and the family. Non-payment of any charges pursuant to a separate non-lease agreement between the owner and the family cannot be a cause for eviction or termination of tenancy under the terms of the assisted dwelling lease.

Separate non-lease agreements that involve additional items, appliances or other services may be considered amenities offered by the owner and may be taken into consideration when determining the reasonableness of the rent for the property.

## **LBHA Review of Lease**

The LBHA will review the dwelling lease for compliance with all applicable requirements.

### LBHA Policy

If the dwelling lease is incomplete or incorrect, the LBHA will notify the family and the owner of the deficiencies. Missing and corrected lease information will only be accepted as hard copies, in-person, by mail, by email, or by fax. The LBHA will not accept missing and corrected information over the phone.

Because the initial leasing process is time-sensitive, the LBHA will attempt to communicate with the owner and family by phone, fax, or email. The LBHA will use mail when the parties can't be reached by phone, fax, or email.

The LBHA 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 LBHA determines that the lease does not comply with State or local law [24 CFR 982.308(c)]

### LBHA Policy

The LBHA 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 LBHA 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 LBHA 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 LBHA and meets NSPIRE standards; the lease offered by the owner is approvable and includes the required Tenancy Addendum; the rent to be charged by the owner for the unit must be reasonable; where the family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the family, the share of rent to be paid by the family does not exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]; the owner is an eligible owner, not disapproved by the LBHA, 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)].

### LBHA Policy

The LBHA will complete its determination within 10 business 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 LBHA, the LBHA 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, by email, or by fax. The LBHA will not accept corrections over the phone.

If the LBHA 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 LBHA will instruct the owner and family of the steps that are necessary to obtain approval of the tenancy.

Where the tenancy is not approvable because the unit is not approvable, the family must continue to search for eligible housing within the timeframe of the issued voucher.

If the tenancy is not approvable due to rent affordability or rent reasonableness, the LBHA 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 LBHA and the owner of the dwelling unit. Under the HAP contract, the LBHA agrees to make housing assistance payments to the owner on behalf of the family, and the owner agrees to comply with all program requirements as stated in the HAP contract.

The HAP contract form is prescribed by HUD.

If the LBHA has given approval for the family of the assisted tenancy, the owner and the LBHA must execute the HAP contract.

The term of the HAP contract must be the same as the term of the lease [24 CFR 982.451(a)(2)].

The LBHA is permitted to execute a HAP contract even if the funding currently available does not extend for the full term of the HAP contract.

The LBHA must make a best effort to ensure that the HAP contract is executed before the beginning of the lease term. Regardless, the HAP contract must be executed no later than 60 calendar days from the beginning of the lease term.

The LBHA may not pay any housing assistance payment to the owner until the HAP contract has been executed. If the HAP contract is executed during the period of 60 calendar days from the beginning of the lease term, the LBHA will pay housing assistance payments after execution of the HAP contract (in accordance with the terms of the HAP contract), to cover the portion of the lease term before execution of the HAP contract (a maximum of 60 days).

Any HAP contract executed after the 60-day period is void, and the LBHA may not pay any housing assistance payment to the owner.

### LBHA Policy

Owners who have not previously participated in the HCV program may be required to attend a meeting with the LBHA in which the terms of the Tenancy Addendum and the HAP contract will be explained. The LBHA may waive this requirement on a case-by-case basis, if it determines that the owner is sufficiently familiar with the requirements and responsibilities under the HCV program.

The owner and the assisted family will execute the dwelling lease and the owner must provide a copy to the LBHA. The LBHA will ensure that both the owner and the assisted family receive copies of the dwelling lease.

The owner and the LBHA will execute the HAP contract. The LBHA will not execute the HAP contract until the owner has submitted IRS form W-9. The LBHA will ensure that the owner receives a copy of the executed HAP contract.

As required under VAWA, once the HAP contract and lease have been executed and the family has been admitted to the program, the LBHA will notify families of their rights under VAWA by providing all families with a copy of the domestic violence certification form (HUD-5382) as well as the VAWA notice of occupancy rights (form HUD-5380).

See Chapter 13 for a discussion of the HAP contract and contract provisions.

### **9-I.H. CHANGES IN LEASE OR RENT [24 CFR 982.308]**

If the tenant and the owner agree to any changes in the lease, such changes must be in writing, and the owner must immediately give the LBHA a copy of such changes. The lease, including any changes, must remain in accordance with the requirements of this chapter.

Generally, LBHA approval of tenancy and execution of a new HAP contract are not required for changes in the lease. However, under certain circumstances, the execution of a new lease and HAP contract are required. These circumstances include:

- Changes in lease requirements governing tenant or owner responsibilities for utilities or appliances
- Changes in lease provisions governing the term of the lease
- The family moves to a new unit, even if the unit is in the same building or complex

In these cases, if the HCV assistance is to continue, the family must submit a new Request for Tenancy Approval (RTA) along with a new dwelling lease containing the proposed changes. A new tenancy must then be approved in accordance with this chapter.

Where the owner is changing the amount of the rent to owner, the owner must notify the LBHA at least 60 days before any such changes go into effect [24 CFR 982.308(g)(4)]. The LBHA will agree to such an increase only if the amount of the rent to owner is considered reasonable according to the rent reasonableness standards discussed in Chapter 8. If the requested rent is not found to be reasonable, the owner must either reduce the requested rent increase, or terminate the tenancy in accordance with the terms of the lease.

No rent increase is permitted during the initial term of the lease [24 CFR 982.309(a)(3)].

#### LBHA Policy

Where the owner is requesting a rent increase, the LBHA will determine whether the requested increase is reasonable within 10 business days of receiving the request from the owner. The owner will be notified of the determination in writing.

Rent increases will go into effect on the first of the month following the 60 day period after the owner notifies the LBHA of the rent change or on the date specified by the owner, whichever is later.

## Chapter 10

### MOVING WITH CONTINUED ASSISTANCE AND PORTABILITY

#### INTRODUCTION

Freedom of housing choice is a hallmark of the housing choice voucher (HCV) program. In general, HUD regulations impose few restrictions on where families may live or move with HCV assistance. This chapter sets forth HUD regulations and LBHA policies governing moves within or outside the LBHA'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 LBHA's HCV program, whether the family moves to another unit within the LBHA's jurisdiction or to a unit outside the LBHA'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 LBHA's jurisdiction. This part also covers the special responsibilities that the LBHA has under portability regulations and procedures.

#### PART I: MOVING WITH CONTINUED ASSISTANCE

##### 10-I.A. ALLOWABLE MOVES

HUD lists six regulatory conditions under which an assisted family is allowed to move to a new unit with continued assistance. Permission to move is subject to the restrictions set forth in section 10-I.B.

- The family has a right to terminate the lease on notice to the owner (for the owner's breach or otherwise) and has given a notice of termination to the owner in accordance with the lease [24 CFR 982.354(b)(3)]. If the family terminates the lease on notice to the owner, the family must give the LBHA a copy of the notice at the same time [24 CFR 982.354(d)(1)].
- The lease for the family's unit has been terminated by mutual agreement of the owner and the family [24 CFR 982.354(b)(1)(ii)].

##### LBHA Policy

If the family and the owner mutually agree to terminate the lease for the family's unit, the family must give the LBHA a copy of the termination agreement.

- The owner has given the family a notice to vacate, has commenced an action to evict the family, or has obtained a court judgment or other process allowing the owner to evict the family [24 CFR 982.354(b)(2)]. The family must give the LBHA a copy of any owner eviction notice [24 CFR 982.551(g)].
- The family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking, and the move is needed to protect the health or safety of the family or family member [see 24 CFR 982.354(b)(4)]. This condition applies even when the family has moved out of its unit in violation of the lease, with or without prior notification to the LBHA, if the family or family member who is the victim reasonably believed that they were imminently threatened by harm from further violence if they remained in the unit [24 CFR 982.354(b)(4), 24 CFR 982.353(b)]. The LBHA must adopt an emergency transfer plan as required by regulations at 24 CFR 5.2007(e).

### LBHA Policy

If a family requests permission to move with continued assistance or for an external transfer to another covered housing program operated by the LBHA based on a claim that the move is necessary to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking, the LBHA will request that the resident request the emergency transfer using form HUD-5383, and the LBHA will request documentation in accordance with section 16-IX.D of this plan.

The LBHA reserves the right to waive the documentation requirement if it determines that a statement or other corroborating evidence from the family or family member will suffice. In such cases the LBHA will document the waiver in the family's file.

The LBHA may choose to provide a voucher to facilitate an emergency transfer of the victim without first terminating the assistance of the perpetrator.

Before granting an emergency transfer, the LBHA will ensure the victim is eligible to receive continued assistance based on the citizenship or immigration status of the victim.

The LBHA has adopted an emergency transfer plan, which is included as Exhibit 16-3 to this plan and discusses external transfers to other covered housing programs.

- The LBHA has terminated the HAP contract for the family's unit for the owner's breach [24 CFR 982.354(b)(1)(i)].
- The LBHA determines that the family's current unit does not meet space standards because of an increase in family size or a change in family composition. In such cases, the LBHA must issue the family a new voucher, and the family and LBHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for the family, the LBHA 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 LBHA 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 LBHA may deny a family permission to move and two ways in which a LBHA may restrict moves by a family.

### **Denial of Moves**

HUD regulations permit the LBHA to deny a family permission to move under the following conditions:

#### ***Insufficient Funding***

The LBHA may deny a family permission to move either within or outside the LBHA's jurisdiction if the LBHA does not have sufficient funding for continued assistance [24 CFR 982.354(e)(1)]. However, Notice PIH 2016-09 significantly restricts the ability of LBHAs to deny permission to move due to insufficient funding and places further requirements on LBHAs regarding moves denied due to lack of funding. The requirements found in this notice are mandatory.

#### LBHA Policy

The LBHA will deny a family permission to move on grounds that the LBHA does not have sufficient funding for continued assistance if (a) the move is initiated by the family, not the owner or the LBHA; (b) the LBHA can demonstrate that the move will, in fact, result in higher subsidy costs (c) the LBHA can demonstrate, in accordance with the policies in Part VIII of Chapter 16, that it does not have sufficient funding in its annual budget to accommodate the higher subsidy costs; and (d) for portability moves, the receiving LBHA is not absorbing the voucher.

If the LBHA does not have sufficient funding for continued assistance, but the family must move from their unit (e.g., the unit failed inspection), the family may move to a higher cost unit if the move is within the LBHA's jurisdiction. The LBHA, however, will not allow the family to move under portability in this situation if the family wishes to move to a higher cost area.

For both moves within the LBHA's jurisdiction and outside under portability, the LBHA will not deny a move due to insufficient funding if the LBHA previously approved the move and subsequently experienced a funding shortfall if the family cannot remain in their current unit. The LBHA will rescind the voucher in this situation if the family will be allowed to remain in their current unit.

The LBHA will create a list of families whose moves have been denied due to insufficient funding. The LBHA will keep the family's request open indefinitely, and when funds become available, the families on this list will take precedence over families on the waiting list. The LBHA will use the same procedures for notifying families with open requests to move when funds become available as it uses for notifying families on the waiting list (see section 4-III.D).

The LBHA will inform the family of its policy regarding moves denied due to insufficient funding in a letter to the family at the time the move is denied.

### ***Grounds for Denial or Termination of Assistance***

The LBHA may deny a family permission to move if it has grounds for denying or terminating the family's assistance [24 CFR 982.354(e)(2)].

#### LBHA Policy

If the LBHA has grounds for denying or terminating a family's assistance, the LBHA will act on those grounds in accordance with the regulations and policies set forth in Chapters 3 and 12, respectively. In general, it will not deny a family permission to move for this reason; however, it retains the discretion to do so under special circumstances.

### **Restrictions on Elective Moves [24 CFR 982.354(c)]**

HUD regulations permit the LBHA to prohibit any elective move by a participant family during the family's initial lease term. They also permit the LBHA to prohibit more than one elective move by a participant family during any 12-month period. However, such prohibitions, if adopted, do not apply when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking, and the move is needed to protect the health or safety of the family or family member. (For the policy on documentation of abuse, see section 10-I.A.) In addition, the LBHA may not establish a policy permitting moves only at reexamination [Notice PIH 2016-09].

#### LBHA Policy

The LBHA will deny a family permission to make an elective move during the family's initial lease term. This policy applies to moves within the LBHA's jurisdiction or outside it under portability.

The LBHA 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 LBHA's jurisdiction.

The LBHA will consider exceptions to these policies for the following reasons: to protect the health or safety of a family member (e.g., lead-based paint hazards, domestic violence, witness protection programs), to accommodate a change in family circumstances (e.g., new employment, school attendance in a distant area), or to address an emergency situation over which a family has no control.

In addition, the LBHA 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 LBHA and the owner before moving out of the old unit or terminating the lease on notice to the owner [24 CFR 982.354(d)(2)]. If the family wishes to move to a unit outside the LBHA's jurisdiction under portability, the notice to the LBHA must specify the area where the family wishes to move [24 CFR 982.354(d)(2)]. The notices must be in writing [24 CFR 982.5].

### **Approval**

#### LBHA Policy

Upon receipt of a family's notification that it wishes to move, the LBHA will determine whether the move is approvable in accordance with the regulations and policies set forth in sections 10-I.A and 10-I.B. The LBHA will notify the family in writing of its determination within 10 business days following receipt of the family's notification.

### **Reexamination of Family Income and Composition**

#### LBHA Policy

For families approved to move to a new unit within the LBHA's jurisdiction, the LBHA will **not** perform a new annual reexamination.

For families moving into or families approved to move out of the LBHA's jurisdiction under portability, the LBHA will follow the policies set forth in Part II of this chapter.

### **Voucher Issuance and Briefing**

#### LBHA Policy

For families approved to move to a new unit within the LBHA's jurisdiction, the LBHA will issue a new voucher within 10 business days of the LBHA's written approval to move. No briefing is required for these families. The LBHA 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 LBHA approves. Otherwise, the family will lose its assistance.

For families moving into or families approved to move out of the LBHA's jurisdiction under portability, the LBHA will follow the policies set forth in Part II of this chapter.

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**Housing Assistance Payments [24 CFR 982.311(d)]**

When a family moves out of an assisted unit, the LBHA may not make any housing assistance payment to the owner for any month **after** the month the family moves out. The owner may keep the housing assistance payment for the month when the family moves out of the unit.

If a participant family moves from an assisted unit with continued tenant-based assistance, the term of the assisted lease for the new assisted unit may begin during the month the family moves out of the first assisted unit. Overlap of the last housing assistance payment (for the month when the family moves out of the old unit) and the first assistance payment for the new unit, is not considered to constitute a duplicative housing subsidy.

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

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

LBHA Policy

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



## PART II: PORTABILITY

### 10-II.A. OVERVIEW

Within the limitations of the regulations and this plan, a participant family or an applicant family that has been issued a voucher has the right to use tenant-based voucher assistance to lease a unit anywhere in the United States providing that the unit is located within the jurisdiction of a LBHA administering a tenant-based voucher program [24 CFR 982.353(b)]. The process by which a family obtains a voucher from one LBHA and uses it to lease a unit in the jurisdiction of another LBHA is known as portability. The LBHA that issues the voucher is called the **initial LBHA**. The LBHA that has jurisdiction in the area to which the family wants to move is called the **receiving LBHA**.

The receiving LBHA has the option of administering the family's voucher for the initial LBHA or absorbing the family into its own program. Under the first option, the receiving LBHA provides all housing services for the family and bills the initial LBHA for the family's housing assistance payments and the fees for administering the family's voucher. Under the second option, the receiving LBHA pays for the family's assistance with its own program funds, and the initial LBHA has no further relationship with the family. The initial LBHA must contact the receiving LBHA via email or other confirmed delivery method to determine whether the receiving LBHA will administer or absorb the initial LBHA's voucher. Based on the receiving LBHA's response, the initial LBHA must determine whether they will approve or deny the portability request [Notice PIH 2016-09].

LBHAs commonly act as both the initial and receiving LBHA because families may move into or out of their jurisdiction under portability. Each role involves different responsibilities. The LBHA will follow the rules and policies in section 10-II.B when it is acting as the initial LBHA for a family. It will follow the rules and policies in section 10-II.C when it is acting as the receiving LBHA for a family.

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

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

## 10-II.B. INITIAL LBHA ROLE

### **Allowable Moves under Portability**

A family may move with voucher assistance only to an area where there is at least one LBHA administering a voucher program [24 CFR 982.353(b)]. If there is more than one LBHA in the area, the initial LBHA provides the family with the contact information for the receiving LBHAs that serve the area, and the family selects the receiving LBHA. The family must inform the initial LBHA which receiving LBHA it has selected. If the family prefers not to select the receiving LBHA, the initial LBHA will select the receiving LBHA on behalf of the family [24 CFR 982.255(b)].

Applicant families that have been issued vouchers as well as participant families may qualify to lease a unit outside the LBHA's jurisdiction under portability. HUD regulations and LBHA policy determine whether a family qualifies.

### ***Applicant Families***

Under HUD regulations, most applicant families qualify to lease a unit outside the LBHA's jurisdiction under portability. However, HUD gives the LBHA discretion to deny a portability move by an applicant family for the same two reasons that it may deny any move by a participant family: insufficient funding and grounds for denial or termination of assistance. If a LBHA intends to deny a family permission to move under portability due to insufficient funding, the LBHA must notify HUD within 10 business days of the determination to deny the move [24 CFR 982.355(e)].

#### LBHA Policy

In determining whether or not to deny an applicant family permission to move under portability because the LBHA lacks sufficient funding or has grounds for denying assistance to the family, the initial LBHA will follow the policies established in section 10-I.B of this chapter. If the LBHA does deny the move due to insufficient funding, the LBHA will notify HUD in writing within 10 business days of the LBHA's determination to deny the move.

In addition, the initial LBHA 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)].

#### LBHA Policy

If neither the head of household nor the spouse/cohead of an applicant family had a domicile (legal residence) in the initial LBHA's jurisdiction at the time that the family's initial application for assistance was submitted, the family must lease a unit within the initial LBHA's jurisdiction for at least 12 months before requesting portability.

The LBHA will consider exceptions to this policy for purposes of reasonable accommodation (see Chapter 2) or reasons related to domestic violence, dating violence, sexual assault, stalking, or human trafficking.

### ***Participant Families***

The initial LBHA must not provide portable assistance for a participant if a family has moved out of its assisted unit in violation of the lease [24 CFR 982.353(b)]. The Violence against Women Act (VAWA) creates an exception to this prohibition for families who are otherwise in compliance with program obligations but have moved to protect the health or safety of a family member who is or has been a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking, and who reasonably believed they were imminently threatened by harm from further violence if they remained in the unit [see 24 CFR 982.353(b)].

#### **LBHA Policy**

The LBHA will determine whether a participant family may move out of the LBHA's jurisdiction with continued assistance in accordance with the regulations and policies set forth here and in sections 10-I.A and 10-I.B of this chapter. The LBHA will notify the family of its determination in accordance with the approval policy set forth in section 10-I.C of this chapter.

### **Determining Income Eligibility**

#### ***Applicant Families***

An applicant family may lease a unit in a particular area under portability only if the family is income eligible for admission to the voucher program in that area [24 CFR 982.353(d)(1)]. The family must specify the area to which the family wishes to move [24 CFR 982.355(c)(1)].

The initial LBHA is responsible for determining whether the family is income eligible in the area to which the family wishes to move [24 CFR 982.353(d)(1), 24 CFR 982.355(9)]. If the applicant family is not income eligible in that area, the LBHA must inform the family that it may not move there and receive voucher assistance [Notice PIH 2016-09].

#### ***Participant Families***

The income eligibility of a participant family is not redetermined if the family moves to a new jurisdiction under portability [24 CFR 982.353(d)(2)].

### **Reexamination of Family Income and Composition**

No new reexamination of family income and composition is required for an applicant family.

#### **LBHA Policy**

For a participant family approved to move out of its jurisdiction under portability, the LBHA generally will conduct a reexamination of family income and composition only if the family's annual reexamination must be completed on or before the initial billing deadline specified on form HUD-52665, Family Portability Information.

The LBHA 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 LBHA to provide information on portability to all applicant families that qualify to lease a unit outside the LBHA's jurisdiction under the portability procedures. Therefore, no special briefing is required for these families.

### LBHA Policy

No formal briefing will be required for a participant family wishing to move outside the LBHA's jurisdiction under portability. However, the LBHA will provide the family with the same oral and written explanation of portability that it provides to applicant families selected for admission to the program (see Chapter 5).

The LBHA will provide the name, address, and phone of the contact for the LBHA s in the jurisdiction to which they wish to move. If there is more than one LBHA with jurisdiction over the area to which the family wishes to move, the LBHA will advise the family that the family selects the receiving LBHA and notify the initial LBHA of which receiving LBHA was selected. The LBHA will provide the family with contact information for all of the receiving LBHAs that serve the area. The LBHA will not provide any additional information about receiving LBHAs in the area. The LBHA will further inform the family that if the family prefers not to select the receiving LBHA, the LBHA will select the receiving LBHA on behalf of the family. In this case, the LBHA will not provide the family with information for all receiving LBHAs in the area.

The LBHA will advise the family that they will be under the receiving LBHA's policies and procedures, including screening, subsidy standards, voucher extension policies, and payment standards.

## **Voucher Issuance and Term**

An applicant family has no right to portability until after the family has been issued a voucher [24 CFR 982.353(b)]. In issuing vouchers to applicant families, the LBHA will follow the regulations and procedures set forth in Chapter 5.

### LBHA Policy

For participating families approved to move under portability, the LBHA will issue a new voucher within 10 business days of the LBHA's written approval to move.

The initial term of the voucher will be 60 days.

## **Voucher Extensions and Expiration**

### LBHA Policy

The initial LBHA may approve **one** extension of 30 days to a voucher issued to an applicant or participant family porting out of the LBHA's jurisdiction 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 LBHA, (b) the family decides to return to the LBHA's jurisdiction and search for a unit there, or (c) the family decides to search for a unit in a third LBHA's jurisdiction. In such cases, the policies on voucher extensions set forth in Chapter 5, section 5-II.E, of this plan will apply, including the requirement that the family apply for an extension in writing prior to the expiration of the initial voucher term.

## **Preapproval Contact with the Receiving LBHA**

Prior to approving a family's request to move under portability, the initial LBHA must contact the receiving LBHA via email or other confirmed delivery method to determine whether the receiving LBHA will administer or absorb the family's voucher. Based on the receiving LBHA's response, the initial LBHA must determine whether it will approve or deny the move [24 CFR 982.355(c)(3)].

### LBHA Policy

The LBHA will use email, when possible, to contact the receiving LBHA regarding whether the receiving LBHA will administer or absorb the family's voucher.

## **Initial Notification to the Receiving LBHA**

After approving a family's request to move under portability, the initial LBHA must promptly notify the receiving LBHA via email or other confirmed delivery method to expect the family [24 CFR 982.355(c)(3); 24 CFR 982.355(c)(7)]. The initial LBHA must also advise the family how to contact and request assistance from the receiving LBHA [24 CFR 982.355(c)(6)].

### LBHA Policy

Because the portability process is time-sensitive, the LBHA will notify the receiving LBHA by phone, fax, or email to expect the family. The initial LBHA will also ask the receiving LBHA to provide any information the family may need upon arrival, including the name, fax, email address, and telephone number of the staff person responsible for business with incoming portable families and procedures related to appointments for voucher issuance. The LBHA will pass this information along to the family. The LBHA will also ask for the name, address, telephone number, fax and email of the person responsible for processing the billing information.

## **Sending Documentation to the Receiving LBHA**

The initial LBHA is required to send the receiving LBHA the following documents:

- Form HUD-52665, Family Portability Information, with Part I filled out [Notice PIH 2016-09]
- A copy of the family's voucher [Notice PIH 2016-09]
- A copy of the family's most recent form HUD-50058, Family Report, or, if necessary in the case of an applicant family, family and income information in a format similar to that of form HUD-50058 [24 CFR 982.355(c)(7), Notice PIH 2016-09]
- Copies of the income verifications backing up the form HUD-50058, including a copy of the family's current EIV data [24 CFR 982.355(c)(7), Notice PIH 2016-09]

### LBHA Policy

In addition to these documents, the LBHA may provide the following information, if available, to the receiving LBHA:

Social security numbers (SSNs)

Documentation of SSNs for all nonexempt household members whose SSNs have not been verified through the EIV system

Documentation of legal identity

Documentation of citizenship or eligible immigration status

Documentation of participation in the earned income disallowance (EID) benefit

Documentation of participation in a family self-sufficiency (FSS) program

If applicable, information related to the family's health and medical care and disability assistance expense LBHAsed-in hardship exemption, including what stage the family is in and how many months remain in that LBHAsed-in stage

The LBHA will notify the family in writing regarding any information provided to the receiving LBHA [HCV GB, p. 13-3].

### **Initial Billing Deadline [Notice PIH 2016-09]**

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

If the initial LBHA does not receive a billing notice by the deadline and does not intend to honor a late billing submission, it must notify the receiving LBHA in writing. The initial LBHA may report to HUD the receiving LBHA's failure to comply with the deadline.

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

#### LBHA Policy

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

Among other considerations as to whether to accept late billing will be if the family includes a person with disabilities and the late billing is a result of a reasonable accommodation granted to the family by the receiving LBHA.

### **Monthly Billing Payments [24 CFR 982.355(e), Notice PIH 2016-09]**

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

The initial LBHA is responsible for making billing payments in a timely manner. The first billing amount is due within 30 calendar days after the initial LBHA receives Part II of form HUD-52665 from the receiving LBHA. Subsequent payments must be **received** by the receiving LBHA no later than the fifth business day of each month. The payments must be provided in a form and manner that the receiving LBHA is able and willing to accept.

The initial LBHA may not terminate or delay making payments under existing portability billing arrangements as a result of overleasing or funding shortfalls. The LBHA 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 LBHAs as well as for families that remain within its jurisdiction.

#### LBHA Policy

The initial LBHA will utilize direct deposit to ensure that the payment is received by the deadline unless the receiving LBHA notifies the LBHA that direct deposit is not acceptable to them. If the LBHA extends the term of the voucher, the receiving LBHA's voucher will expire 30 calendar days from the new expiration date of the initial LBHA's voucher.

### **Annual Updates of Form HUD-50058**

If the initial LBHA is being billed on behalf of a portable family, it should receive an updated form HUD-50058 each year from the receiving LBHA. If the initial LBHA fails to receive an updated 50058 by the family's annual reexamination date, the initial LBHA should contact the receiving LBHA to verify the status of the family. The initial LBHA must continue paying the receiving LBHA based on the last form HUD-50058 received, unless instructed otherwise by HUD. The initial LBHA may seek absorption of the vouchers by following steps outlined in Notice PIH 2016-09.

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

At any time, either the initial LBHA or the receiving LBHA may make a determination to deny or terminate assistance with the family in accordance with 24 CFR 982.552 and 24 CFR 982.553. (For LBHA policies on denial and termination, see Chapters 3 and 12, respectively.)



## **10-II.C. RECEIVING LBHA ROLE**

If a family has a right to lease a unit in the receiving LBHA's jurisdiction under portability, the receiving LBHA must provide assistance for the family [24 CFR 982.355(10)]. HUD may determine in certain instances that a LBHA is not required to accept incoming portable families, such as a LBHA in a declared disaster area. However, the LBHA must have approval in writing from HUD before refusing any incoming portable families [24 CFR 982.355(b)].

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

### **Responding to Initial LBHA's Request [24 CFR 982.355(c)]**

The receiving LBHA must respond via email or other confirmed delivery method to the initial LBHA's inquiry to determine whether the family's voucher will be billed or absorbed [24 CFR 982.355(c)(3)]. If the receiving LBHA informs the initial LBHA that it will be absorbing the voucher, the receiving LBHA cannot reverse its decision at a later date without consent of the initial LBHA (24 CFR 982.355(c)(4)).

#### LBHA Policy

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

### **Initial Contact with Family**

When a family moves into the LBHA's jurisdiction under portability, the family is responsible for promptly contacting the LBHA and complying with the LBHA's procedures for incoming portable families. The family's failure to comply may result in denial or termination of the receiving LBHA's voucher [24 CFR 982.355(c)(8)].

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

If for any reason the receiving LBHA refuses to process or provide assistance to a family under the portability procedures, the family must be given the opportunity for an informal review or hearing [Notice PIH 2016-09]. (For more on this topic, see later under "Denial or Termination of Assistance.")

## **Briefing**

HUD allows the receiving LBHA to require a briefing for an incoming portable family as long as the requirement does not unduly delay the family's search [Notice PIH 2016-09].

### LBHA Policy

The LBHA will not require the family to attend a briefing. The LBHA 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 LBHA's payment and subsidy standards, procedures for requesting approval of a unit, the unit inspection process, and the leasing process. The LBHA may suggest that the family attend a full briefing at a later date.

## **Income Eligibility and Reexamination**

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

### LBHA Policy

The LBHA will rely upon the income information provided by the initial LBHA and will not conduct a new reexamination of income and composition for incoming portable families.

## **Voucher Issuance**

When a family moves into its jurisdiction under portability, the receiving LBHA is required to issue the family a voucher [24 CFR 982.355(c)(13)]. The family must submit a request for tenancy approval to the receiving LBHA during the term of the receiving LBHA's voucher [24 CFR 982.355(c)(15)].

### ***Timing of Voucher Issuance***

HUD expects the receiving LBHA to issue the voucher within two weeks after receiving the family's paperwork from the initial LBHA if the information is in order, the family has contacted the receiving LBHA, and the family complies with the receiving LBHA's procedures [Notice PIH 2016-09].

#### **LBHA Policy**

When a family ports into its jurisdiction, the LBHA will issue the family a voucher based on the paperwork provided by the initial LBHA unless the family's paperwork from the initial LBHA is incomplete, the family's voucher from the initial LBHA has expired or the family does not comply with the LBHA's procedures. The LBHA will update the family's information when verification has been completed.

### ***Voucher Term***

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

#### **LBHA Policy**

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

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

Once the receiving LBHA issues the portable family a voucher, the receiving LBHA's policies on extensions of the voucher term apply. The receiving LBHA must inform the initial LBHA of any extension granted to the term of the voucher. It must also bear in mind the billing deadline provided by the initial LBHA. Unless willing and able to absorb the family, the receiving LBHA 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 LBHA.

#### **LBHA Policy**

The LBHA generally will not extend the term of the voucher that it issues to an incoming portable family unless the LBHA plans to absorb the family into its own program, in which case it will follow the policies on voucher extension set forth in section 5-II.E.

The LBHA will consider an exception to this policy as a reasonable accommodation to a person with disabilities (see Chapter 2).

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

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

### **Notifying the Initial LBHA**

The receiving LBHA must promptly notify the initial LBHA 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 LBHA's voucher [24 CFR 982.355(c)(16)]. The receiving LBHA is required to use Part II of form HUD-52665, Family Portability Information, for this purpose [Notice PIH 2016-09]. (For more on this topic and the deadline for notification, see below under "Administering a Portable Family's Voucher.")

If an incoming portable family ultimately decides not to lease in the jurisdiction of the receiving LBHA but instead wishes to return to the initial LBHA's jurisdiction or to search in another jurisdiction, the receiving LBHA must refer the family back to the initial LBHA. In such a case the voucher of record for the family is once again the voucher originally issued by the initial LBHA. Any extension of search time provided by the receiving LBHA's voucher is only valid for the family's search in the receiving LBHA's jurisdiction [Notice PIH 2016-09].

### **Administering a Portable Family's Voucher**

#### ***Portability Billing [24 CFR 982.355(e)]***

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

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

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

#### **LBHA Policy**

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

### ***Initial Billing Deadline***

If a portable family's search for a unit is successful and the receiving LBHA intends to administer the family's voucher, the receiving LBHA must submit its initial billing notice (Part II of form HUD-52665) in time that the notice will be **received** no later than 90 days following the expiration date of the family's voucher issued by the initial LBHA [Notice PIH 2016-09]. This deadline may be extended for 30 additional days if the delay is due to suspension of the voucher's term (see Initial Billing Section). A copy of the family's form HUD-50058, Family Report, completed by the receiving LBHA must be attached to the initial billing notice. The receiving LBHA may send these documents by mail, fax, or email.

#### LBHA Policy

The LBHA will send its initial billing notice by fax or email, if necessary, to meet the billing deadline but will also send the notice by regular mail.

If the receiving LBHA fails to send the initial billing by the deadline, it is required to absorb the family into its own program unless (a) the initial LBHA is willing to accept the late submission or (b) HUD requires the initial LBHA to honor the late submission (e.g., because the receiving LBHA is overleased) [Notice PIH 2016-09].

### ***Ongoing Notification Responsibilities [Notice PIH 2016-09, HUD-52665]***

**Annual Reexamination.** The receiving LBHA must send the initial LBHA a copy of a portable family's updated form HUD-50058 after each annual reexamination for the duration of time the receiving LBHA is billing the initial LBHA on behalf of the family, regardless of whether there is a change in the billing amount.

#### LBHA Policy

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

**Change in Billing Amount.** The receiving LBHA is required to notify the initial LBHA, using form HUD-52665, of any change in the billing amount for the family as a result of:

- A change in the HAP amount (because of a reexamination, a change in the applicable payment standard, a move to another unit, etc.)
- An abatement or subsequent resumption of the HAP payments
- Termination of the HAP contract
- Payment of a damage/vacancy loss claim for the family
- Termination of the family from the program

The timing of the notice of the change in the billing amount should correspond with the notification to the owner and the family in order to provide the initial LBHA with advance notice of the change. Under no circumstances should the notification be later than 10 business days following the effective date of the change in the billing amount. If the receiving LBHA fails to send Form HUD-52665 within 10 days of effective date of billing changes, the initial LBHA is not responsible for any increase prior to notification. If the change resulted in a decrease in the monthly billing amount, the initial LBHA will offset future monthly payments until the difference is reconciled.

***Late Payments [Notice PIH 2016-09]***

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

***Overpayments [Notice PIH 2016-09]***

In all cases where the receiving LBHA has received billing payments for billing arrangements no longer in effect, the receiving LBHA is responsible for returning the full amount of the overpayment (including the portion provided for administrative fees) to the initial LBHA.

In the event that HUD determines billing payments have continued for at least three months because the receiving LBHA failed to notify the initial LBHA that the billing arrangement was terminated, the receiving LBHA must take the following steps:

- Return the full amount of the overpayment, including the portion provided for administrative fees, to the initial LBHA.
- Once full payment has been returned, notify the Office of Public Housing in the HUD area office with jurisdiction over the receiving LBHA of the date and the amount of reimbursement to the initial LBHA.

At HUD's discretion, the receiving LBHA will be subject to the sanctions spelled out in Notice PIH 2016-09.

### ***Denial or Termination of Assistance***

At any time, the receiving LBHA may make a determination to deny or terminate assistance to a portable family for family action or inaction [24 CFR 982.355(c)(17)].

In the case of a termination, the LBHA should provide adequate notice of the effective date to the initial LBHA to avoid having to return a payment. In no event should the receiving LBHA fail to notify the initial LBHA later than 10 business days following the effective date of the termination of the billing arrangement [HUD-52665; Notice PIH 2016-09].

#### **LBHA Policy**

If the LBHA elects to deny or terminate assistance for a portable family, the LBHA will notify the initial LBHA within 10 business days after the informal review or hearing if the denial or termination is upheld. The LBHA will base its denial or termination decision on the policies set forth in Chapter 3 or Chapter 12, respectively. The informal review or hearing will be held in accordance with the policies in Chapter 16. The LBHA will furnish the initial LBHA with a copy of the review or hearing decision.

## **Absorbing a Portable Family**

The receiving LBHA may absorb an incoming portable family into its own program when the LBHA executes a HAP contract on behalf of the family or at any time thereafter providing that the LBHA has funding available under its annual contributions contract (ACC) [24 CFR 982.355(d)(1), Notice PIH 2016-09].

If the receiving LBHA absorbs a family from the point of admission, the admission will be counted against the income targeting obligation of the receiving LBHA [24 CFR 982.201(b)(2)(vii)].

If the receiving LBHA absorbs a family after providing assistance for the family under a billing arrangement with the initial LBHA, the receiving LBHA must send an updated form HUD-52665 to the initial LBHA no later than 10 business days following the effective date of the termination of the billing arrangement [Notice PIH 2016-09].

### LBHA Policy

If the LBHA decides to absorb a portable family upon the execution of a HAP contract on behalf of the family, the LBHA will notify the initial LBHA 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 LBHA decides to absorb a family after that, it will provide the initial LBHA with 30 days' advance notice, but no later than 10 business days following the effective date of the termination of the billing arrangement.

Following the absorption of an incoming portable family, the family is assisted with funds available under the consolidated ACC for the receiving LBHA's voucher program [24 CFR 982.355(d)], and the receiving LBHA becomes the initial LBHA in any subsequent moves by the family under portability [24 CFR 982.355(e)(4)].



## Chapter 11

### REEXAMINATIONS

#### INTRODUCTION

The LBHA 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 LBHA policies concerning reexaminations are presented in three parts:

Part I: Annual Reexaminations. This part discusses the process for conducting annual reexaminations.

Part II: Interim Reexaminations. This part details the requirements for families to report changes in family income and composition between annual reexaminations.

Part III: Recalculating Family Share and Subsidy Amount. This part discusses the recalculation of family share and subsidy amounts based on the results of annual and interim reexaminations.

Part IV: Non-Interim Reexamination Transaction. This part describes transactions that do not entail changes to the family's adjusted income.

Policies governing reasonable accommodation, family privacy, required family cooperation, and program abuse, as described elsewhere in this plan, apply to both annual and interim reexaminations.

#### **PART I: ANNUAL REEXAMINATIONS [24 CFR 982.516]**

##### **11-I.A. OVERVIEW**

The LBHA must conduct a reexamination of family income and composition at least annually. This includes gathering and verifying current information about family composition, income, and expenses. Based on this updated information, the family's income and rent must be recalculated. This part discusses the schedule for annual reexaminations, the information to be collected and verified, and annual reexamination effective dates.

Unlike when performing an interim reexamination or at intake, at annual reexamination, the LBHA must determine the income of the family for the previous 12-month period, except where the LBHA uses a streamlined income determination. Income from assets, however, is always anticipated, irrespective of the income examination type [Notice PIH 2023-27]. LBHAs also have the option of using a "safe harbor" income verification from another federal means-tested program to verify gross annual income. Chapter 7 contains the LBHA's policies related to streamlined income determinations and the use of safe harbor income verifications.

## **11-I.B. SCHEDULING ANNUAL REEXAMINATIONS**

The LBHA 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].

### LBHA Policy

The LBHA will begin the annual reexamination process 120 days in advance of its scheduled effective date. Generally, the LBHA 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 LBHA will not perform a new annual reexamination.

The LBHA 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 LBHA is required to obtain the information needed to conduct annual reexaminations. How that information will be collected is left to the discretion of the LBHA. However, LBHAs should give tenants who were not provided the opportunity the option to complete Form HUD-92006 at this time [Notice PIH 2009-36].

### LBHA Policy

Annual reexaminations will generally be conducted by mail or via the agency's online portal. Notification of the annual reexamination will be sent by mail or via the agency's online portal and will inform the family of the information and documentation that must be provided to the LBHA, and the deadline for providing it. Documents will be accepted by mail, online portal submission, by email, by fax, or in-person. The LBHA will, however, conduct reexams in person if requested as a reasonable accommodation or by LEP persons. Reasonable accommodation requests will be handled in accordance with policies in Chapter 2. Further, an in-person interview will be scheduled if the family requests assistance in providing information or documentation requested by the LBHA or if the required paperwork is not returned timely, or if it is returned timely but is not complete.

If the reexamination 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, as well as to any alternate address provided in the family's file.

## 11-I.C. CONDUCTING ANNUAL REEXAMINATIONS

As part of the annual reexamination process, families are required to provide updated information to the LBHA regarding the family's income, expenses, and composition [24 CFR 982.551(b)].

### LBHA Policy

Families will be asked to supply all required information (as described in the reexamination notice) before the deadline specified in the notice. The required information will include a LBHA-designated reexamination form as well as supporting documents or forms related to the family's income, expenses, and family composition.

The LBHA will notify the family in writing if any required documentation or information is missing. The missing information or documentation must be provided within 10 business days of the date the LBHA notifies the family. If the family is unable to obtain the information or materials within the required time frame, the family may request an extension.

If the family does not provide the required documents or information within the required time period (plus any extensions), the family will be sent a notice of termination (see Chapter 12).

If the family requests or the LBHA schedules an in-person interview, families will be asked to bring all required information (as described in the reexamination notice) to the reexamination appointment.

Any required documents or information that the family is unable to provide at the time of the interview must be provided within 10 business days of the interview. If the family is unable to obtain the information or materials within the required time frame, the family may request an extension.

If the family does not provide the required documents or information within the required time period (plus any extensions), the family will be sent a notice of termination (see Chapter 12).

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

### LBHA Policy

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

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

The information provided by the family generally must be verified in accordance with the policies in Chapter 7. Unless the family reports a change, or the LBHA 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 space standards (see Chapter 8), the LBHA must issue the family a new voucher, and the family and LBHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the LBHA must terminate the HAP contract in accordance with its terms [24 CFR 982.403].

## **11-I.D. DETERMINING ONGOING ELIGIBILITY OF CERTAIN STUDENTS [24 CFR 982.552(b)(5)]**

Section 327 of Public Law 109-115 established restrictions on the ongoing eligibility of certain students (both part- and full-time) who are enrolled in institutions of higher education.

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

Students who reside with parents in an HCV assisted unit are not subject to this provision. It is limited to students who are receiving assistance on their own, separately from their parents.

### LBHA Policy

During the annual reexamination process, the LBHA will determine the ongoing eligibility of each student who is subject to the eligibility restrictions in 24 CFR 5.612 by reviewing the student's individual income as well as the income of the student's parents. If the student has been determined "independent" from their parents or is considered a *vulnerable youth* based on the policies in Sections 3-II.E and 7-II.E, the parents' income will not be reviewed.

If the student is no longer income eligible based on their own income or the income of their parents, the student's assistance will be terminated in accordance with the policies in Section 12-I.D.

If the student continues to be income eligible based on their own income and the income of their parents (if applicable), the LBHA will process a reexamination in accordance with the policies in this chapter.

## **11-I.E. CALCULATING ANNUAL INCOME AT ANNUAL REEXAMINATION [24 CFR 5.609(c)(2) and Notice PIH 2023-27]**

The LBHA must determine the income of the family for the previous 12-month period and use this amount as the family income for annual reexaminations, except where the LBHA uses a streamlined income determination as indicated in Chapter 7 of this policy. The LBHA may also use Safe Harbor income determinations dated within the last 12 months from a means-tested federal public assistance program at annual reexamination as outlined in Chapter 7 of this policy.

Except when using streamlined or Safe Harbor income determinations, in determining the income of the family for the previous 12-month period, any change of income since the family's last annual reexamination, including those that did not meet the threshold to process an interim reexamination in accordance with LBHA policies and 24 CFR 5.657(c) or 960.257(b) must be considered.

Income from assets is always anticipated, irrespective of the income examination type.

A change in income may be a loss of income or the addition of a new source of income. Changing to a different employer in the prior year does not necessarily constitute a change if the income earned from either employer is substantially the same. The LBHA should look at the entirety of the family's unearned income and earned income from the prior year in which earned income may have been one constant job or many different jobs that start and stop.

Cost of Living Adjustments (COLA) to Social Security income and Social Security disability income are always considered changes to income because the COLA is an adjustment that automatically occurs annually by law. See Chapter 6 for LBHA policies on when the COLA is applied and Chapter 7 on streamlined determination of income for inflationary adjustments.

Notice PIH 2023-27 lists the following steps to calculate both earned and unearned income at annual reexamination.

**Step 1:** The LBHA determines annual income for the previous 12-month period by reviewing the following information:

- The EIV Income Report pulled within 120 days of the effective date of the annual reexamination;
- The income reported on the most recent HUD-50058; and
- The amount of prior-year income reported by the family on the LBHA's annual reexamination paperwork.

**Step 2:** The LBHA takes into consideration any interim reexamination of family income completed since the last annual reexamination.

- If there was an interim reexamination performed, the LBHA must use the annual income from the interim to determine the family's total annual income, provided there are no additional changes.
- If the LBHA did not perform an interim or there have been changes since the last reexamination, the LBHA moves to Step 3.

**Step 3:** If there were changes in annual income not processed by the LBHA since the last reexamination, the LBHA must use current income. The family will be required to report their income for the prior year and whether there have been permanent changes.

If there are no reported changes to an income source, the LBHA may use documentation of prior-year income to calculate the annual income. For example, the LBHA may use the following documentation:

- EIV + self-certification (wages, Supplemental Security Income (SSI), Social Security, and unemployment)
- Current written third-party verification from the source verifying prior-year income that is dated within 120 days of receipt by the LBHA, for example:
  - Year-end statements
  - Paycheck with year-to-date amounts
  - Tax forms (Form 1040, W2, 1099, etc.)

If there are reported changes by the family or the LBHA notes discrepancies between EIV and what the family reports, the LBHA must follow the verification hierarchy (described in Chapter 7) to document and verify income. Exhibit 11-1 provides detailed examples of how the LBHA calculates income from different sources at annual reexamination using the above method.

## 11-I.F. EFFECTIVE DATES

The LBHA must establish policies concerning the effective date of changes that result from an annual reexamination [24 CFR 982.516].

### LBHA Policy

In general, an *increase* in the family share of the rent that results from an annual reexamination will take effect on the family's anniversary date, and the family will be notified at least 30 days in advance.

If less than 30 days remain before the scheduled effective date, the increase will take effect on the first of the month following the end of the 30-day notice period.

If a family moves to a new unit, the increase will take effect on the effective date of the new lease and HAP contract, and no 30-day notice is required.

If the LBHA chooses to schedule an annual reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be determined by the LBHA, but will always allow for the 30-day notice period.

If the family causes a delay in processing the annual reexamination, *increases* in the family share of the rent will be applied retroactively, to the scheduled effective date of the annual reexamination. The family will be responsible for any overpaid subsidy and may be offered a repayment agreement in accordance with the policies in Chapter 16.

In general, a *decrease* in the family share of the rent that results from an annual reexamination will take effect on the family's anniversary date.

If a family moves to a new unit, the decrease will take effect on the effective date of the new lease and HAP contract.

If the LBHA chooses to schedule an annual reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be determined by the LBHA.

If the family causes a delay in processing the annual reexamination, *decreases* in the family share of the rent will be applied prospectively, from the first day of the month following completion of the reexamination processing.

Delays in reexamination processing are considered to be caused by the family if the family fails to provide information requested by the LBHA by the date specified, and this delay prevents the LBHA from completing the reexamination as scheduled.



## **PART II: INTERIM REEXAMINATIONS [24 CFR 982.516; Notice PIH 2023-27]**

### **11-II.A. OVERVIEW**

Family circumstances may change between annual reexaminations. HUD and LBHA policies dictate what kinds of information about changes in family circumstances must be reported, and under what circumstances the LBHA must process interim reexaminations to reflect those changes.

A family may request an interim determination of family income or composition because of any changes since the last determination. The LBHA must conduct any interim reexamination within a reasonable period of time after the family request or when the LBHA becomes aware of a change in the family's adjusted income that must be processed in accordance with HUD regulations. What qualifies as a "reasonable time" may vary based on the amount of time it takes to verify information, but the LBHA generally should conduct the interim reexamination not longer than 30 days after the LBHA becomes aware of changes in income.

Notice PIH 2023-27 changes the conditions under which interim reexaminations must be conducted, codifies when interim reexaminations should be processed and made effective, and requires related changes for annual reexaminations and streamlined income determinations. When the LBHA determines that an interim reexamination of income is necessary, they must ask the family to report changes in all aspects of adjusted income.

### **11-II.B. CHANGES IN FAMILY AND HOUSEHOLD COMPOSITION**

#### **Reporting**

LBHAs must require families to report household composition changes; however, LBHAs determine the timeframe in which reporting happens [Notice PIH 2023-27]. The LBHA must adopt policies prescribing when and under what conditions the family must report changes in income and family composition [24 CFR 960.257(b)(5)].

#### LBHA Policy

All families must report all changes in family and household composition that occur between annual reexaminations within 10 business days of the change.

#### **New Family Members Not Requiring LBHA Approval**

The addition of a family member as a result of birth, adoption, or court-awarded custody does not require LBHA approval. However, the family is required to promptly notify the LBHA of the addition [24 CFR 982.551(h)(2)].

## **New Family and Household Members Requiring Approval**

With the exception of children who join the family as a result of birth, adoption, or court-awarded custody, a family must request LBHA approval to add a new family member [24 CFR 982.551(h)(2)] or other household member (live-in aide or foster child) [24 CFR 982.551(h)(4)].

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

If a change in family size causes a violation of space standards (see Chapter 8), the LBHA must issue the family a new voucher, and the family and LBHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, the LBHA must terminate the family's HAP contract in accordance with its terms [24 CFR 982.403].

### LBHA Policy

Families must request LBHA approval to add a new family member, live-in aide, foster child, or foster adult. This includes any person not on the lease who is expected to stay in the unit for more than 30 consecutive days or 90 cumulative days within a 12-month period and therefore no longer qualifies as a "guest." Requests must be made in writing and approved by the LBHA prior to the individual moving into the unit.

The LBHA will not approve the addition of a new family or household member unless the individual meets the LBHA's eligibility criteria (see Chapter 3) and documentation requirements (see Chapter 7, Part II).

The LBHA will not approve the addition of a foster child or foster adult if it will cause a violation of space standards.

If the LBHA determines an individual meets the LBHA's eligibility criteria and documentation requirements, the LBHA will provide written approval to the family. If the approval of a new family member or live-in aide will cause overcrowding according to space standards, the approval letter will explain that the family will be issued a voucher and will be required to move.

If the LBHA determines that an individual does not meet the LBHA's eligibility criteria or documentation requirements, the LBHA 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 LBHA will make its determination within 10 business days of receiving all information required to verify the individual's eligibility.

## **Departure of a Family or Household Member**

Families must promptly notify the LBHA if any household member no longer lives in the unit [24 CFR 982.551(h)(3)]. Because household members are considered when determining the family unit (voucher) size [24 CFR 982.402], the LBHA also needs to know when any live-in aide, foster child, or foster adult ceases to reside in the unit. The LBHA must process an interim for all decreases in adjusted income when a family member permanently moves out of the unit.

### LBHA Policy

If a household member ceases to reside in the unit, the family must inform the LBHA within 10 business days. This requirement also applies to a family member who has been considered temporarily absent at the point that the family concludes the individual is permanently absent.

## 11-II.C. CHANGES AFFECTING INCOME OR EXPENSES

### Overview

Interim reexaminations for changes in income or expenses may be scheduled either because the LBHA has reason to believe that changes in income or expenses may have occurred, or because the family reports a change.

The LBHA must estimate the income of the family for the upcoming 12-month period to determine family income for an interim reexamination [24 CFR 5.609(c)(1)]. Policies for projecting income are found in Chapter 6.

### Interim Decreases [24 CFR 982.516(c)(2) and Notice PIH 2023-27]

A family may request an interim determination of family income for any change since the last determination. However, the LBHA may decline to conduct an interim reexamination if the LBHA estimates the family's adjusted income will decrease by an amount that is less than 10 percent of the family's adjusted income. The LBHA may set a lower threshold in LBHA policy such as performing an interim for any decreases in adjusted income, although HUD prohibits the LBHA from setting a dollar-figure threshold.

However, while the LBHA has some discretion, HUD requires that the LBHA perform an interim reexamination for a decrease in adjusted income of any amount in two circumstances:

- When there is a decrease in family size attributed to the death of a family member; or
- When a family member permanently moves out of the assisted unit during the period since the family's last reexamination.

In the above circumstances, the LBHA must perform an interim reexamination for any decrease in adjusted income.

If the net effect of the changes in adjusted income due to a decrease in family size results in no change or an increase in annual adjusted income, then LBHA must process the removal of the household member(s) as a non-interim reexamination transaction without making changes to the family's annual adjusted income.

#### LBHA Policy

The LBHA will conduct an interim reexamination any time the family's adjusted income has decreased by any amount.

## **Interim Increases [24 CFR 982.516(c)(3) and Notice PIH 2023-27]**

### ***Increases Less than 10 Percent***

LBHAs must not process interim reexaminations for income increases that result in less than a 10 percent increase in annual adjusted income.

### ***Increases 10 Percent or Greater***

LBHAs must conduct an interim reexamination of family income when the LBHA becomes aware that the family's adjusted income has changed by an amount that the LBHA estimates will result in an increase of 10 percent or more in adjusted income, with the following exceptions:

- LBHAs may not consider any increases in earned income when estimating or calculating whether the family's adjusted income has increased, unless the family has previously received an interim reduction during the same reexamination cycle; and
- LBHAs may choose not to conduct an interim reexamination during the last three months of a certification period if a family reports an increase in income within three months of the next annual reexamination effective date.

When the family previously received an interim reexamination for a decrease to adjusted income during the same annual reexamination cycle, a LBHA has the discretion whether to consider a subsequent increase in earned income.

### **LBHAHA Policy**

When a family reports an increase in their earned income between annual reexaminations, the LBHA will not conduct an interim reexamination, regardless of the amount of the increase, and regardless of whether there was a previous decrease since the family's last annual reexamination.

The LBHA will process an interim reexamination for any increases in unearned income of 10 percent or more in adjusted income.

The LBHA will not perform an interim reexamination when a family reports an increase in income (whether earned or unearned income) within three months of their annual reexamination effective date. However, families who delay reporting income increases until the last three months of their certification period may be subject to retroactive rent increases in accordance with the LBHA policies in Chapter 14.

***Concurrent Increases in Earned and Unearned Income [Notice PIH 2023-27]***

When the family reports an increase in both earned and unearned income at the same time, the LBHA must look at the earned and unearned income changes independently of each other to determine if an interim reexamination is performed. The LBHA will only conduct an interim reexamination when the increase independently meets the 10 percent threshold and all other requirements for performing interim reexaminations. For example, if a family reported increases in both earned and unearned income that overall resulted in a 12 percent increase in their adjusted income, but the change in earned income represented a 7 percent increase and the change in unearned income represented a 5 percent increase, the LBHA may not perform an interim for either change since neither change meets the 10 percent threshold amount independently. If the change in unearned income met the 10 percent threshold in this case, the LBHA would be required to perform an interim. If the change in earned income met the 10 percent threshold in this case, the LBHA would refer to LBHA policy to determine whether an interim was required.

***Cumulative Increases [Notice PIH 2023-27]***

A series of smaller reported increases in adjusted income may cumulatively meet or exceed the 10-percent increase threshold, at which point the LBHA must conduct an interim reexamination in accordance with LBHA policy.

## ***Family Reporting***

The LBHA must adopt policies consistent with HUD regulations prescribing when and under what conditions the family must report a change in family income or composition [24 CFR 982.516(d)].

LBHA policy may require families to report only changes that the family estimates meet the threshold for an interim reexamination or the LBHA may establish policies requiring that families report all changes in income and household composition, and the LBHA will subsequently determine if the change requires an interim reexamination [Notice PIH 2023-27].

When the LBHA determines that an interim reexamination of income is necessary, they must ask the family to report changes in all aspects of adjusted income. For example, if the family is reporting a decrease in adjusted income that is more than 10 percent, but the family also had a change in assets that would result in a change in income, the change in assets must also be reviewed [Notice PIH 2023-27].

### LBHA Policy

The family will be required to report all changes in income regardless of the amount of the change, whether the change is to earned or unearned income, or if the change occurred during the last three months of the certification period. Families must report changes in income within 10 business days of the date the change takes effect. The family may notify the LBHA of changes either orally or in writing. If the family provides oral notice, the LBHA may also require the family to submit the changes in writing.

Within 10 business days of the family reporting the change, the LBHA will determine whether the change will require an interim reexamination.

If the change will not result in an interim reexamination, the LBHA will note the information in the tenant file but will not conduct an interim reexamination. The LBHA will send the family written notification within 10 business days of making this determination informing the family that the LBHA will not conduct an interim reexamination.

If the change will result in an interim reexamination, the LBHA will determine the documentation the family will be required to submit based on the type of change reported and LBHA policies in Chapter 7. The LBHA will ask the family to report changes in all aspects of adjusted income at this time. The family must submit any required information or documents within 10 business days of receiving a request from the LBHA. This time frame may be extended for good cause with LBHA approval. The LBHA will accept required documentation by mail, email, fax, or in person. The LBHA will conduct the interim within a reasonable time period based on the amount of time it takes to verify the information.

Generally, the family will not be required to attend an interview for an interim reexamination. However, if the LBHA determines that an interview is warranted, the family may be required to attend.

## **11-II.D. EFFECTIVE DATES [24 CFR 982.516(e) and Notice 2023-27]**

### **Changes Reported Timely [Notice PIH 2023-27]**

If the family reports a change in family income or composition timely in accordance with LBHA policies:

- For rent increases, the LBHA must provide the family with 30 days advance written notice. The rent increase is effective the first of the month after the end of that 30-day notice period.
- Rent decreases are effective on the first of the month after the date of the actual change leading to the interim reexamination of family income. This means the decrease will be applied retroactively.

### **Changes Not Reported Timely [Notice PIH 2023-27]**

If the family failed to report a change in family income or composition timely in accordance with LBHA policies:

- For rent increases, the LBHA must implement any resulting rent increases retroactively to the first of the month following the date of the change leading to the interim reexamination of family income.
- For rent decreases, the LBHA must implement the change no later than the first rent period following completion of the interim reexamination.

However, the LBHA may choose to adopt a policy that would make the effective date of the rent decrease retroactive to the first of the month following completion of the reexamination. LBHAs may choose to establish conditions or requirements for when such a retroactive application would apply. LBHAs that choose to adopt such policies must ensure the earliest date that the retroactive decrease is applied is the later of:

- The first of the month following the date of the change that led to the interim reexamination; or
- The first of the month following the most recent previous income examination.



In applying a retroactive change in rent as the result of an interim reexamination, the LBHA must clearly communicate the effect of the retroactive adjustment to the family so that there is no confusion over the amount of the rent that is the family's responsibility.

#### LBHA Policy

In general, when the family fails to report a change in income or family composition timely, and the change would lead to a rent decrease, the LBHA will apply the decrease the first of the month following completion of the interim reexamination.

However, the LBHA will apply the results of the interim reexamination retroactively where a family's ability to report a change in income promptly may have been hampered due to extenuating circumstances such as a natural disaster or disruptions to LBHA management operations. The LBHA will decide to apply decreases retroactively on a case-by-case basis.

When the LBHA applies the results of interim decreases retroactively, the LBHA will clearly communicate the effect of the retroactive adjustment to the family and may enter into a repayment agreement in accordance with LBHA policies.

The LBHA will also clearly communicate the effect of the retroactive adjustment to the owner.



## **PART III: RECALCULATING FAMILY SHARE AND SUBSIDY AMOUNT**

### **11-III.A. OVERVIEW**

After gathering and verifying required information for an annual or interim reexamination, the LBHA 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 LBHA'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 LBHA changes its payment standards or the family's situation changes, new payment standards are applied at the following times:

- If the LBHA's payment standard amount changes during the term of the HAP contract, the date on which the new standard is applied depends on whether the standard has increased or decreased:
  - If the payment standard amount has *increased*, the increased payment standard will be applied at the *first annual* reexamination following the effective date of the increase in the payment standard.
  - If the payment standard amount has *decreased*, during the term of a HAP contract, the LBHA is not required to reduce the payment standard as the HAP contract remains in effect. At the family's *second annual* reexamination, the LBHA may, but is not required to, apply the decreased payment standard or may gradually implement the reduced payment standard (See Chapter 6 for the LBHA's policy on decreases in the payment standard).
- If the family moves to a new unit, or a new HAP contract is executed due to changes in the lease (even if the family remains in place) the current payment standard applicable to the family will be used when the new HAP contract is processed.

### **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 LBHA'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 LBHA'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 LBHA must use the utility allowances in effect at the time the new lease and HAP contract are executed.

At reexamination, the LBHA must use the LBHA current utility allowance schedule [HCV GB, p. 18-8].

#### LBHA 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 LBHA 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 LBHA'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).

#### LBHA Policy

The notice to the family will include the annual and adjusted income amounts that were used to calculate the family share of the rent and the housing assistance payment.

The notice will state the family has the right to request an explanation of how the assistance was calculated and if the family disagrees, they have the right to informal hearing. The notice will include the procedures for requesting an informal hearing.

### **11-III.D. DISCREPANCIES**

During an annual or interim reexamination, the LBHA may discover that information previously reported by the family was in error, or that the family intentionally misrepresented information. In addition, the LBHA may discover errors made by the LBHA. When errors resulting in the overpayment or underpayment of subsidy are discovered, corrections will be made in accordance with the policies in Chapter 13.



#### **PART IV: NON-INTERIM REEXAMINATION TRANSACTIONS [Notice PIH 2023-27]**

Families may experience changes within the household that do not trigger an interim reexamination under LBHA policy and HUD regulations but which HUD still requires the LBHA to report to HUD via Form HUD-50058. These are known as *non-interim reexamination transactions*. In these cases, LBHAs will submit a separate, new action code on Form HUD-50058. The following is a list of non-interim reexamination transactions:

- Adding or removing a hardship exemption for the child care expense deduction;
- Updating or removing the LBHAsed-in hardship relief for the health and medical care expense deduction and/or reasonable attendant care and auxiliary apparatus expense deduction (families will begin receiving a 24-month LBHAsed-in relief at their next annual or interim reexamination, whichever occurs first);
- Adding or removing general hardship relief for the health and medical care expense deduction and/or reasonable attendant care and auxiliary apparatus expense deduction;
- Adding or removing a minimum rent hardship;
- Adding or removing a non-family member (i.e., live-in aide, foster child, foster adult);
- Ending a family's EID or excluding 50 percent (decreased from 100 percent) of a family member's increase in employment income at the start of the second 12-month EID period.
- Adding a family member and the increase in adjusted income does not trigger an interim reexamination under the final rule;
- Removing a family member and the increase in adjusted income does not trigger an interim reexamination under the final rule;
- Adding/updating a family or household member's Social Security number; and
- Updating a family member's citizenship status from eligible to ineligible or vice versa, resulting in a change to the family's rent and/or utility reimbursement, if applicable (i.e., family begins receiving prorated assistance or previously prorated assistance becomes full assistance), or updating the prorated rent calculation due to the addition or removal of family members in household with an ineligible noncitizen(s).

LBHAs must make all other changes to assets, income, and deductions at the next annual or interim reexamination of income, whichever is sooner.





**EXHIBIT 11-1: CALCULATING INCOME AT ANNUAL REEXAMINATION**

**Example 1: Calculating Annual Income at Annual Reexamination Using EIV**

Staff are processing the 3/1/2024 annual reexamination for Ruby Myers and her minor daughter, Georgia. No interim reexaminations have been processed, and Ruby has not reported any changes to annual income to the LBHA since the 3/1/2023 annual reexamination. The SSA published 2024 COLA is 7 percent.

Last reexamination – 3/1/2023 Annual Reexamination

Ruby:

Wages: \$30,000

Georgia:

SSI: \$10,980 (\$915 monthly)

The EIV report pulled on 12/15/2023

Ruby:

Wages Total: \$33,651

Quarter 3 of 2023: \$8,859 (City Public School)

Quarter 2 of 2023: \$8,616 (City Public School)

Quarter 1 of 2023: \$8,823 (City Public School)

Quarter 4 of 2022: \$7,353 (City Public School)

Georgia:

SSI Total: \$10,980

2023 benefit \$915 monthly

Income Reported on Reexamination Application

Ruby:

Wages at City Public School: \$32,000  
(switched jobs but no permanent change to amount)

Georgia:

SSI benefits: \$10,980 (no changes)

Calculating Ruby's wages:

Step 1: Determine prior annual income from EIV (i.e., Q4 2022 through Q3 of 2023: \$33,651).

Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination (in this case, there have been no interim reexaminations processed since the last annual reexamination).

Step 3: Ruby certifies that the \$33,651 of wages in EIV is accurate and reflects her current annual income, so the LBHA will use \$33,651 for annual wages for the 3/1/2024 annual reexamination given there have been no additional changes to annual income.

Calculating Georgia's SSI benefit:

Step 1: Determine the prior annual income from EIV (i.e., \$915 x 12 months: \$10,980).

Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination (in this case, there have been no interim reexaminations processed since the last annual reexamination).

Step 3: Ruby certifies the SSI income in EIV is accurate and reflects Georgia's current annual income. The LBHA must adjust the prior-year income (2023 SSI benefit) by the 7- percent COLA and will use this amount to calculate annual SSI income for the 3/1/2024 annual reexamination:

COLA: \$64.05 (\$915 x 0.07)

New gross SSI benefit: \$11,748.60 (\$979.05 x 12 months)

If Ruby did not agree with the annual wages reported in EIV, the LBHA/MFH Owner would be required to verify her current income in accordance with HUD's verification hierarchy.

Summary of Annual Income (as reported on the HUD-50058)

Ruby (Head of Household):

Other Wage: \$33,651

Myers Family Total Annual Income: \$45,399

Georgia (Other Youth Under 18):

SSI: \$11,748

**Example 2: Calculating Annual Income at Annual Reexamination Using EIV:  
Family Disagrees with EIV**

Staff are processing Paul Hewson's 5/1/2024 annual reexamination. Since the last annual reexamination, Paul reported a decrease in annual income that exceeded 10 percent. Last year, Paul reported a decrease in earned income because he transferred from a full-time job at Sasha's Sweets to a part-time job at Viking Bakery. Following HUD's EIV verification hierarchy, staff confirmed Paul was no longer employed at Sasha's Sweets and decreased his anticipated annual income from \$28,000 to \$7,500 resulting from his new part-time employment at Viking Bakery; an interim reexamination was processed effective 7/1/2023. After the 7/1/2023 interim, Paul worked briefly at two different jobs, but he says he is no longer working and is not planning to work.

5/1/2023 Annual Reexamination

Wages: \$28,000

The EIV report pulled on 1/15/2024

Wages Total: \$18,271

Quarter 3 of 2023: \$2,500 (Viking Bakery)

Quarter 3 of 2023: \$796 (Sweet Tooth Candy Bar)

Quarter 2 of 2023: \$1,300 (Sasha's Sweets)

Quarter 2 of 2023: \$584 (Larry's Concessions)

Quarter 2 of 2023: \$2,401 (Viking Bakery)

Quarter 1 of 2023: \$6,500 (Sasha's Sweets)

Quarter 4 of 2022: \$600 (Sasha's Sweets)

SS/SSI: No history of benefits

Income Reported on Reexamination Application

Wages: \$0 (permanent change: no longer receiving)

Social Security: \$14,400 (\$1,200 monthly)

Paul certified on the LBHA's annual reexamination paperwork that he does not agree with the annual wages of \$18,271 reported in EIV and it is not reflective of his current anticipated annual income. He reported he is currently unemployed, and provided a copy of an award letter from the Social Security Administration to document that he will begin receiving a monthly disability benefit of \$1,200 effective 3/1/2024.

Calculating Wages and SS Benefit

Step 1: Determine prior annual income taking into consideration the 7/1/2023 interim reexamination (i.e., EIV wages reflected Q4 2022 through Q3 2023: \$18,271)

Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there was a 7/1/2023 interim that reduced wages to \$7,500.

Step 3: Obtain documentation to verify current income and confirm Paul is no longer employed at Viking Bakery or The Sweet Tooth Candy Bar (the employers reported in the most recent quarter of EIV). This step is necessary, because Paul did not agree with the EIV income report or income reported on the last interim reexamination. Paul reported that he is no longer working at all.

Process the annual reexamination effective 5/1/2024 using annual SS income of \$14,400 and \$0 wages.

Summary of Annual Income (as reported on the HUD-50058)

Paul (Head of Household): \$14,400 (SS)

Hewson Family Total Annual Income: \$14,400

### Example 3: Calculating Annual Income at Annual Reexamination

Staff are processing the 11/1/2024 annual reexamination for Samantha and Fergus Pool, head of household and spouse. On 2/14/2024 Samantha reported her monthly child support payment was reduced from \$200 to \$100 per month, but an interim reexamination was not processed because the reduction in child support income for Samantha's daughter, Hailey, did not result in a decrease of 10 percent or more in annual adjusted income, and the LBHA did not establish a lower threshold. Samantha did not report any additional changes to the LBHA.

#### Last reexamination – 11/1/2023 Annual Reexamination

##### Samantha:

Business income: \$28,000

VA disability pension: \$12,000

Child support: \$2,400

##### Fergus:

Wages: \$8,250

Other non-wage income: \$3,000 (Go Fund Me online fundraiser)

The EIV report pulled on 9/16/2024

##### Samantha:

Wages Total: \$0 (no wage data reported since Q1 2023)

##### Fergus:

Wages Total: \$8,600

Quarter 1 of 2024: \$2,100 (Ian's Fish 'n' Chips)

Quarter 1 of 2024: \$500 (Claire's Healthcare Supplies)

Quarter 4 of 2023: \$1,000 (Claire's Healthcare Supplies)

Quarter 3 of 2023: \$1,800 (The Onion Garden Shop)

Quarter 2 of 2023: \$3,200 (Ivar's Fish Haus)

Current Family Circumstances: Income Reported on Reexamination Application

Samantha and Fergus reported how much income was earned/received in the previous 12-month period and noted permanent changes, where applicable, for each source of their income on LBHA's annual reexamination form. However, no information was reported by the family concerning other non-wage income. Fergus reported only wages and his current employment at Ian's Fish 'n' Chips for the annual reexamination. The family supplied the supporting documentation noted below to the LBHA for the 11/1/2024 annual reexamination.

Samantha:	Fergus:
Business income: \$28,750 (last year); has decreased to \$18,000 (permanent change)	Wages: \$6,000
VA disability benefit: \$12,000 (last year); has increased to \$12,300 (permanent change)	
Child support: \$2,400 (last year); has decreased to \$1,200 (permanent change)	

Calculating Samantha's Net Business Income

Step 1: Determine prior annual net business income (i.e., \$28,000 on last HUD-50058).

Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there have been no interim reexaminations processed since the last annual reexamination.

Step 3: Adjust to reflect current net business income. Samantha reported on the annual reexamination application that business income permanently decreased to \$18,000. The LBHA must obtain supporting documentation from Samantha that demonstrates current net business income. Samantha provided documentation that supported the current annual net business income is \$18,000. Process the annual reexamination effective 11/1/2024 using annual net business income determined in Step 3.

Calculating Samantha's VA Pension Income

Step 1: Determine prior annual VA pension income (i.e., \$12,000 supported by a VA award letter Samantha-supplied that documents the prior year monthly VA pension was \$1,000).

Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there have been no interim reexaminations processed since the last annual reexamination.

Step 3: The LBHA needs to adjust to reflect current VA pension income. Samantha supplies a VA award letter showing a monthly pension of \$1,025, or \$12,300 annually. Process the annual reexamination effective 11/1/2024 using annual VA pension income determined in Step 3 (\$12,300 in this example).

### Calculating Samantha's Child Support Income

Step 1: Determine prior annual child support income (i.e., \$2,400 on the last HUD-50058).

Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there have been no interim reexaminations processed since the last annual reexamination. The family reported a decrease from \$200 to \$100 monthly, but the change was not processed because it did not meet the threshold.

Step 3: The family reported changes, so the LBHA must adjust to reflect current child support income. In this example, the family submitted a child support history report from the local child support office that documents regular \$100 monthly child supports payments beginning 3/1/2024 through the current month. Process the annual reexamination effective 11/1/2024 using current annual child support income determined in Step 3 (\$1,200 in this example).

### Calculating Fergus' Wages

Step 1: Determine prior annual income from wages in EIV (i.e., Q2 2023 through Q1 of 2024: \$8,600).

Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there have been no interim reexaminations processed since the last annual reexamination.

Step 3: There is a discrepancy between what the family reported and EIV, so the LBHA must verify and adjust to reflect current annual income from wages. Fergus reported \$6,000 in annual income from wages on the annual reexamination from a single employer, Ian's Fish 'n' Chips. The LBHA projected annual income of \$7,800 based on the two paystubs for this employer, and EIV shows \$8,600 earned in the most recent four quarters in EIV. To complete Step 3, the LBHA must do the following:

- Resolve the discrepancy between EIV wages, the \$6,000 annual income Fergus reported, and the \$7,800 projected based on the paystubs he provided, and
- Verify he is no longer employed at Claire's Healthcare Supplies in accordance with HUD's verification hierarchy and local policies.

The LBHA determined that Fergus reported his net vs. gross annual income from wages, which he corrected on the annual reexamination form to reflect his current gross annual income of \$9,000. The LBHA verified Fergus was no longer employed at Claire's Healthcare Supplies and obtained two additional paystubs. Based on four current and consecutive paystubs, Fergus is now projected to earn \$9,360 annually. Process the annual reexamination effective 11/1/2024 using income from wages determined in Step 3 (\$9,360 in this example).

Calculating Fergus' Other Non-Wage Income

Step 1: Determine prior annual income from other non-wage income (i.e., \$3,000 on the last HUD- 50058).

Step 2: Take into consideration any interim reexamination of family income completed since the last annual reexamination. In this case, there have been no interim reexaminations processed since the last annual reexamination.

Step 3: The family did not report any non-wage income on the annual reexamination form, but it was included on the last HUD-50058. The LBHA must verify and adjust to reflect current non-wage income. The LBHA must verify no income was received through a "Go Fund Me" online fundraiser so that it may be excluded. Fergus provided a self-certification that he hasn't solicited funds online and doesn't plan to in the following year; he also provided records from the account that documented no fundraising activity in the prior 12-month period. Process the annual reexamination effective 11/1/2024 using annual non-wage income of \$0 determined in Step 3.

Summary of Annual Income (as reported on the HUD-50058)

Samantha (Head of Household):

Own business: \$18,000

Pension: \$12,300

Child support: \$1,200

Fergus (Co-head):

Wages: \$9,360

Poole Family Total Annual Income: \$40,860



## Chapter 12

### TERMINATION OF ASSISTANCE AND TENANCY

HUD regulations specify mandatory and optional grounds for which a LBHA can terminate a family's assistance. They also specify the circumstances under which an owner may terminate the tenancy of an assisted family. This chapter describes the policies that govern mandatory and optional terminations of assistance, and termination of tenancy by the owner. It is presented in three parts:

Part I: Grounds for Termination of Assistance. This part describes the various circumstances under which assistance under the program can be terminated by the family or by the LBHA.

Part II: Approach to Termination of Assistance. This part describes the policies and the process that the LBHA will use in evaluating decisions on whether to terminate assistance due to actions or inactions of the family where termination is an option. It specifies the alternatives that the LBHA may consider in lieu of termination, the criteria the LBHA will use when deciding what action to take, and the steps the LBHA must take when terminating a family's assistance.

Part III: Termination of Tenancy by the Owner. This part describes the HUD policies that govern the owner's right to terminate an assisted tenancy.

#### PART I: GROUNDS FOR TERMINATION OF ASSISTANCE

##### 12-I.A. OVERVIEW

HUD requires the LBHA to terminate assistance for certain actions and inactions of the family and when the family no longer requires assistance due to increases in family income. HUD permits the LBHA to terminate assistance for certain other actions or inactions of the family. In addition, a family may decide to withdraw from the program and terminate their HCV assistance at any time by notifying the LBHA.

##### 12-I.B. FAMILY NO LONGER REQUIRES ASSISTANCE [24 CFR 982.455]

As a family's income increases, the amount of the housing assistance payment decreases. If the amount of assistance provided by the LBHA is reduced to zero, the family's assistance terminates automatically 180 days after the last HAP payment.

##### LBHA Policy

If a participating family receiving zero assistance experiences a change in circumstances that would result in a HAP payment to the owner, the family must notify the LBHA of the change and request an interim reexamination before the expiration of the 180-day period.

### **12-I.C. FAMILY CHOOSES TO TERMINATE ASSISTANCE**

The family may request that the LBHA terminate housing assistance payments on behalf of the family at any time.

#### LBHA Policy

The request to terminate assistance should be made in writing and signed by the head of household, and spouse or cohead if applicable. Before terminating the family's assistance, the LBHA will follow the notice requirements in Section 12-II.F.

### **12-I.D. MANDATORY TERMINATION OF ASSISTANCE**

HUD requires the LBHA to terminate assistance in the following circumstances.

#### **Eviction [24 CFR 982.552(b)(2), 24 CFR 5.2005(c)(1)]**

The LBHA must terminate assistance whenever a family is evicted from a unit assisted under the HCV program for a serious or repeated violation of the lease. As discussed further in section 12-II.E, incidents of actual or threatened domestic violence, dating violence, sexual assault, stalking, or human trafficking may not be construed as serious or repeated violations of the lease by the victim or threatened victim of such violence or stalking.

#### LBHA 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. In such cases the LBHA will determine whether the family has committed serious or repeated violations of the lease based on available evidence and may terminate assistance or take any of the alternative measures described in section 12-II.C. In making its decision, the LBHA will consider the factors described in sections 12-II.D and 12-II.E. Upon consideration of such factors, the LBHA may, on a case-by-case basis, choose not to terminate assistance.

*Serious and repeated lease violations* will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises and criminal activity. Generally, the criterion to be used will be whether or not the reason for the eviction was the fault of the tenant or guests.

#### **Failure to Provide Consent [24 CFR 982.552(b)(3)]**

The LBHA must terminate assistance if any family member fails to sign and submit any consent form they are required to sign for a regular or interim reexamination. See Chapter 7 for a complete discussion of consent requirements.

### **Failure to Document Citizenship [24 CFR 982.552(b)(4) and [24 CFR 5.514(c)]**

The LBHA must terminate assistance if (1) a family fails to submit required documentation within the required timeframe concerning any family member's citizenship or immigration status; (2) a family submits evidence of citizenship and eligible immigration status in a timely manner, but United States Citizenship and Immigration Services (USCIS) primary and secondary verification does not verify eligible immigration status of the family; or (3) a family member, as determined by the LBHA, has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit.

For (3) above, such termination must be for a period of at least 24 months. This does not apply to ineligible noncitizens already in the household where the family's assistance has been prorated. See Chapter 7 for a complete discussion of documentation requirements.

### **Failure to Disclose and Document Social Security Numbers [24 CFR 5.218(c), Notice PIH 2018-24]**

The LBHA must terminate assistance if a participant family fails to disclose the complete and accurate social security numbers of each household member and the documentation necessary to verify each social security number.

However, if the family is otherwise eligible for continued program assistance, and the LBHA determines that the family's failure to meet the SSN disclosure and documentation requirements was due to circumstances that could not have been foreseen and were outside of the family's control, the LBHA may defer the family's termination and provide the opportunity to comply with the requirement within a period not to exceed 90 calendar days from the date the LBHA determined the family to be noncompliant.

#### LBHA Policy

The LBHA will defer the family's termination and provide the family with the opportunity to comply with the requirement for a period of 90 calendar days for circumstances beyond the participant's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency, if there is a reasonable likelihood that the participant will be able to disclose an SSN by the deadline.

### **Methamphetamine Manufacture or Production [24 CFR 982.553(b)(1)(ii)]**

The LBHA must terminate assistance if any household member has ever been convicted of the manufacture or production of methamphetamine on the premises of federally assisted housing.

### **Lifetime Registered Sex Offenders [Notice PIH 2012-28]**

Should a LBHA discover that a member of an assisted household was subject to a lifetime registration requirement at admission and was erroneously admitted after June 25, 2001, the LBHA must immediately terminate assistance for the household member.

In this situation, the LBHA must offer the family the opportunity to remove the ineligible family member from the household. If the family is unwilling to remove that individual from the household, the LBHA must terminate assistance for the household.

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**Failure of Students to Meet Ongoing Eligibility Requirements [24 CFR 982.552(b)(5) and FR 4/10/06]**

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, does not have dependent children, is not residing with their parents in an HCV assisted household, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the LBHA must terminate the student's assistance if, at the time of reexamination, either the student's income or the income of the student's parents (if applicable) exceeds the applicable income limit.

If a participant household consists of both eligible and ineligible students, the eligible students shall not be terminated, but must be issued a voucher to move with continued assistance in accordance with program regulations and LBHA policies, or must be given the opportunity to lease in place if the terminated ineligible student members elect to move out of the assisted unit.

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**Death of the Sole Family Member [24 CFR 982.311(d) and Notice PIH 2010-9]**

The LBHA must immediately terminate program assistance for deceased single member households.

**12-I.E. MANDATORY POLICIES AND OTHER AUTHORIZED TERMINATIONS****Mandatory Policies [24 CFR 982.553(b) and 982.551(D)]**

HUD requires the LBHA to establish policies that permit the LBHA to terminate assistance if the LBHA determines that:

- Any household member is currently engaged in any illegal use of a drug, or has a pattern of illegal drug use that interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents
- Any household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents
- Any household member has violated the family's obligation not to engage in any drug-related criminal activity
- Any household member has violated the family's obligation not to engage in violent criminal activity

## ***Use of Illegal Drugs and Alcohol Abuse***

### **LBHA Policy**

The LBHA 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 LBHA will terminate assistance if any household member's abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

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

The LBHA will consider all credible evidence, including but not limited to, any record of arrests, convictions, or eviction of household members related to the use of illegal drugs or abuse of alcohol.

A record or records of arrest will not be used as the sole basis for the termination or proof that the participant engaged in disqualifying criminal activity.

In making its decision to terminate assistance, the LBHA will consider alternatives as described in Section 12-II.C and other factors described in Sections 12-II.D and 12-II.E. Upon consideration of such alternatives and factors, the LBHA 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.

**LBHA Policy**

The LBHA 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 LBHA will consider all credible evidence, including but not limited to, any record of arrests and/or convictions of household members related to drug-related or violent criminal activity, and any eviction or notice to evict based on drug-related or violent criminal activity.

A record or records of arrest will not be used as the sole basis for the termination or proof that the participant engaged in disqualifying criminal activity.

In making its decision to terminate assistance, the LBHA will consider alternatives as described in Section 12-II.C and other factors described in Sections 12-II.D and 12-II.E. Upon consideration of such alternatives and factors, the LBHA may, on a case-by-case basis, choose not to terminate assistance.

**Other Authorized Reasons for Termination of Assistance  
[24 CFR 982.552(c), 24 CFR 5.2005(c), 24 CFR 984.101(d)]**

HUD permits the LBHA to terminate assistance under a number of other circumstances. It is left to the discretion of the LBHA whether such circumstances in general warrant consideration for the termination of assistance. As discussed further in section 12-II.E, the Violence against Women Act prohibits LBHAs from considering incidents of, or criminal activity directly related to, domestic violence, dating violence, sexual assault, stalking, or human trafficking as reasons for terminating the assistance of a victim of such abuse.

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

LBHA Policy

The LBHA **will** terminate a family's assistance if:

The family has failed to comply with any family obligations under the program. See Exhibit 12-1 for a listing of family obligations and related LBHA policies.

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

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

The family currently owes rent or other amounts to any LBHA in connection with Section 8 or public housing assistance under the 1937 Act.

The family has not reimbursed any LBHA for amounts the LBHA paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease.

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

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

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

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

In making its decision to terminate assistance, the LBHA will consider alternatives as described in Section 12-II.C and other factors described in Sections 12-II.D and 12-II.E. Upon consideration of such alternatives and factors, the LBHA may, on a case-by-case basis, choose not to terminate assistance.

***Family Absence from the Unit [24 CFR 982.312]***

The family may be absent from the unit for brief periods. The LBHA 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.

**LBHA Policy**

If the family is absent from the unit for more than 180 consecutive calendar days, the family's assistance will be terminated. Notice of termination will be sent in accordance with Section 12-II.F.



### ***Insufficient Funding [24 CFR 982.454]***

The LBHA may terminate HAP contracts if the LBHA determines, in accordance with HUD requirements, that funding under the consolidated ACC is insufficient to support continued assistance for families in the program.

#### **LBHA Policy**

The LBHA 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 LBHA determines there is a shortage of funding, prior to terminating any HAP contracts, the LBHA will determine if any other actions can be taken to reduce program costs.

In the event that the LBHA decides to stop issuing vouchers as a result of a funding shortfall, and the LBHA is not assisting the required number of special purpose vouchers (NED families, HUD-Veterans Affairs Supportive Housing (VASH) families, and family unification program (FUP) families), when the LBHA resumes issuing vouchers, the LBHA will issue vouchers first to the special purpose voucher families on its waiting list until it has reached the required number of special purpose vouchers, when applicable.

If after implementing all reasonable cost cutting measures there is not enough funding available to provide continued assistance for current participants, the LBHA will terminate HAP contracts as a last resort.

Prior to terminating any HAP contracts, the LBHA will inform the local HUD field office. The LBHA will terminate the minimum number needed in order to reduce HAP costs to a level within the LBHA's annual budget authority.

If the LBHA must terminate HAP contracts due to insufficient funding, the LBHA will do so in accordance with the following criteria and instructions:

Families who have been assisted in the HCV program the longest will be the first to be terminated, excluding families that include elderly or disabled family members.

Families comprising the required number of special purpose vouchers, including nonelderly disabled (NED), HUD-Veteran's Affairs Supportive Housing (HUD-VASH), and family unification program (FUP) will be the last to be terminated.



## **PART II: APPROACH TO TERMINATION OF ASSISTANCE**

### **12-II.A. OVERVIEW**

The LBHA is required by regulation to terminate a family's assistance for certain actions or inactions of the family. For other types of actions or inactions of the family, the regulations give the LBHA the authority to either terminate the family's assistance or to take another action. This part discusses the various actions the LBHA may choose to take when it has discretion, and outlines the criteria the LBHA will use to make its decision about whether or not to terminate assistance. It also specifies the requirements for the notification to the family of the LBHA's intent to terminate assistance.

### **12-II.B. METHOD OF TERMINATION [24 CFR 982.552(a)(3)]**

Termination of assistance for a participant may include any or all of the following:

- Terminating housing assistance payments under a current HAP contract,
- Refusing to enter into a new HAP contract or approve a lease, or
- Refusing to process a request for or to provide assistance under portability procedures.

### **12-II.C. ALTERNATIVES TO TERMINATION OF ASSISTANCE**

#### **Change in Household Composition**

As a condition of continued assistance, the LBHA 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)].

##### LBHA 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 LBHA request.

#### **Repayment of Family Debts**

##### LBHA Policy

If a family owes amounts to the LBHA, as a condition of continued assistance, the LBHA will require the family to repay the full amount or to enter into a repayment agreement, within 30 days of receiving notice from the LBHA of the amount owed. See Chapter 16 for policies on repayment agreements.

## 12-II.D. CRITERIA FOR DECIDING TO TERMINATE ASSISTANCE

### Evidence

For criminal activity, HUD permits the LBHA 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)].

#### LBHA Policy

The LBHA will use the concept of the preponderance of the evidence as the standard for making all termination decisions.

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

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

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

### Consideration of Circumstances [24 CFR 982.552(c)(2)(i)]

The LBHA is permitted, but not required, to consider all relevant circumstances when determining whether a family's assistance should be terminated.

#### LBHA Policy

The LBHA will consider the following facts and circumstances when making its decision to terminate assistance:

The seriousness of the case, especially with respect to how it would affect other residents' safety or property

The effects that termination of assistance may have on other members of the family who were not involved in the action or failure to act

The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities or (as discussed further in section 12-II.E) a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking

The length of time since the violation occurred, including the age of the individual at the time of the conduct, as well as the family's recent history and the likelihood of favorable conduct in the future

While a record or records of arrest will not be used as the sole basis for termination, an arrest may, however, trigger an investigation to determine whether the participant actually engaged in disqualifying criminal activity. As part of its investigation, the LBHA may obtain the police report associated with the arrest and consider the reported circumstances of the arrest. The LBHA may also consider:

- Any statements made by witnesses or the participant not included in the police report

- Whether criminal charges were filed

- Whether, if filed, criminal charges were abandoned, dismissed, not prosecuted, or ultimately resulted in an acquittal

- Any other evidence relevant to determining whether or not the participant engaged in disqualifying activity

Evidence of criminal conduct will be considered if it indicates a demonstrable risk to safety and/or property

In the case of drug or alcohol abuse, whether the culpable household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully

The LBHA will require the participant to submit evidence of the household member's current participation in or successful completion of a supervised drug or alcohol rehabilitation program, or evidence of otherwise having been rehabilitated successfully.

In the case of program abuse, the dollar amount of the overpaid assistance and whether or not a false certification was signed by the family

### **Reasonable Accommodation [24 CFR 982.552(c)(2)(iv)]**

If the family includes a person with disabilities, the LBHA's decision to terminate the family's assistance is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.

#### LBHA 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 LBHA will determine whether the behavior is related to the disability. If so, upon the family's request, the LBHA will determine whether alternative measures are appropriate as a reasonable accommodation. The LBHA will only consider accommodations that can reasonably be expected to address the

behavior that is the basis of the proposed termination of assistance. See Chapter 2 for a discussion of reasonable accommodation.

## **12-II.E. TERMINATIONS RELATED TO DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, STALKING, OR HUMAN TRAFFICKING**

This section describes the protections against termination of assistance that the Violence against Women Act (VAWA) provides for victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking. For general VAWA requirements, key VAWA definitions, and LBHA policies pertaining to notification, documentation, and confidentiality, see section 16-IX of this plan.

### **VAWA Protections against Termination**

VAWA provides four specific protections against termination of HCV assistance for victims of domestic violence, dating violence, sexual assault or stalking. (*Note:* The second, third, and fourth protections also apply to terminations of tenancy or occupancy by owners participating in the HCV program, as do the limitations discussed under the next heading.)

- Although the VAWA 2022 statute does not specifically include human trafficking in the list of victims protected under VAWA, in 2022 HUD began including human trafficking as part of the list of victims protected under VAWA (as seen in Notices PIH 2022-06, PIH 2022-22, and PIH 2022-24). In the absence of a final rule implementing VAWA 2022 and to mirror HUD's recent usage, this policy includes human trafficking in addition to domestic violence, dating violence, sexual assault, and stalking anywhere such a list appears.

First, VAWA provides that a LBHA may not terminate assistance to a family that moves out of an assisted unit in violation of the lease, with or without prior notification to the LBHA, if the move occurred to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking, and who reasonably believed they were imminently threatened by harm from further violence if they remained in the unit [see 24 CFR 982.354(b)(4)].

Second, it provides that an incident or incidents of actual or threatened domestic violence, dating violence, sexual assault, stalking, or human trafficking may not be construed either as a serious or repeated lease violation by the victim or as good cause to terminate the assistance of the victim [see 24 CFR 5.2005(c)(1)].

Third, it provides that criminal activity directly related to domestic violence, dating violence, sexual assault, stalking, or human trafficking may not be construed as cause for terminating the assistance of a tenant if a member of the tenant's household, a guest, or another person under the tenant's control is the one engaging in the criminal activity and the tenant or affiliated individual or other individual is the actual or threatened victim of the domestic violence, dating violence, sexual assault, stalking, or human trafficking [see 24 CFR 5.2005(c)(2)].

Fourth, it gives LBHAs the authority to terminate assistance to any tenant or lawful occupant who engages in criminal acts of physical violence against family members or others without terminating assistance to, or otherwise penalizing, the victim of the violence [24 CFR 5.2009(a)].

LBHAs and owners may not coerce, intimidate, threaten, interfere with, or retaliate against any person who exercises or assists or encourages a person to exercise any rights or protections under VAWA [FR Notice 1/4/23].

## Limitations on VAWA Protections [24 CFR 5.2005(d) and (e)]

VAWA does not limit the authority of a LBHA to terminate the assistance of a victim of abuse for reasons unrelated to domestic violence, dating violence, sexual assault, stalking, or human trafficking so long as the LBHA does not subject the victim to a more demanding standard than it applies to other program participants [24 CFR 5.2005(d)(1)].

Likewise, VAWA does not limit the authority of a LBHA to terminate the assistance of a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking if the LBHA can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the assisted property if the victim is not terminated from assistance [24 CFR 5.2005(d)(2)].

HUD regulations define *actual and imminent threat* to mean words, gestures, actions, or other indicators of a physical threat that (a) is real, (b) would occur within an immediate time frame, and (c) could result in death or serious bodily harm [24 CFR 5.2005(d)(2) and (e)]. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include:

- The duration of the risk
- The nature and severity of the potential harm
- The likelihood that the potential harm will occur
- The length of time before the potential harm would occur [24 CFR 5.2005(e)]

In order to demonstrate an actual and imminent threat, the LBHA must have objective evidence of words, gestures, actions, or other indicators. Even when a victim poses an actual and imminent threat, however, HUD regulations authorize a LBHA to terminate the victim's assistance "only when there are no other actions that could be taken to reduce or eliminate the threat" [24 CFR 5.2005(d)(3)].

### LBHA Policy

In determining whether a program participant who is a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking is an actual and imminent threat to other tenants or those employed at or providing service to a property, the LBHA will consider the following, and any other relevant, factors:

Whether the threat is toward an employee or tenant other than the victim of domestic violence, dating violence, sexual assault, stalking or human trafficking

Whether the threat is a physical danger beyond a speculative threat

Whether the threat is likely to happen within an immediate time frame

Whether the threat to other tenants or employees can be eliminated in some other way, such as by helping the victim relocate to a confidential location or seeking a legal remedy to prevent the perpetrator from acting on the threat

If the participant wishes to contest the LBHA's determination that they are an actual and imminent threat to other tenants or employees, the participant may do so as part of the informal hearing.



## **Documentation of Abuse [24 CFR 5.2007]**

### LBHA Policy

When an individual facing termination of assistance for reasons related to domestic violence, dating violence, sexual assault, stalking, or human trafficking claims protection under VAWA, the LBHA will request that the individual provide documentation supporting the claim in accordance with the policies in section 16-IX.D of this plan.

The LBHA reserves the right to waive the documentation requirement if it determines that a statement or other corroborating evidence from the individual will suffice. In such cases the LBHA will document the waiver in the individual's file.

### **Terminating the Assistance of a Domestic Violence Perpetrator**

Although VAWA provides protection against termination of assistance for victims of domestic violence, it does not provide such protection for perpetrators. VAWA gives the LBHA the explicit authority to “terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others” without terminating assistance to “or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant” [24 CFR 5.2009(a)]. This authority is not dependent on a bifurcated lease or other eviction action by an owner against an individual family member. Further, this authority supersedes any local, state, or other federal law to the contrary. However, if the LBHA chooses to exercise this authority, it must follow any procedures prescribed by HUD or by applicable local, state, or federal law regarding termination of assistance. This means that the LBHA must follow the same rules when terminating assistance to an individual as it would when terminating the assistance of an entire family [FR Notice 3/16/07].

If the perpetrator remains in the unit, the LBHA continues to pay the owner until the LBHA terminates the perpetrator from the program. The LBHA must not stop paying HAP until 30 days after the owner bifurcates the lease to evict the perpetrator. The LBHA may pay HAP for the full month if the 30-day period will end mid-month [Notice PIH 2017-08].

If the perpetrator is the only participant eligible to receive assistance, the LBHA will provide any remaining participant a chance to establish eligibility for the program. If the remaining participant cannot do so, the LBHA will provide them with 30 days to establish eligibility for another housing program prior to termination of the HAP contract.

### LBHA Policy

The LBHA will terminate assistance to a family member if the LBHA determines that the family member has committed criminal acts of physical violence against other family members or others. This action will not affect the assistance of the remaining, nonculpable family members.

In making its decision, the LBHA will consider all credible evidence, including, but not limited to, a signed certification (form HUD-5382) or other documentation of abuse submitted to the LBHA by the victim in accordance with this section and section 16-IX.D. The LBHA will also consider the factors in section 12-II.D. Upon such consideration, the LBHA may, on a case-by-case basis, choose not to terminate the assistance of the culpable family member.

If the LBHA does terminate the assistance of the culpable family member, it will do so in accordance with applicable law, HUD regulations, and the policies in this plan.

## **12-II.F. TERMINATION NOTICE**

HUD regulations require LBHAs to provide written notice of termination of assistance to a family only when the family is entitled to an informal hearing. However, since the family's HAP contract and lease will also terminate when the family's assistance terminates [form HUD-52641], it is a good business practice to provide written notification to both owner and family anytime assistance will be terminated, whether voluntarily or involuntarily.

### LBHA Policy

Whenever a family's assistance will be terminated, the LBHA will send a written notice of termination to the family and to the owner. The LBHA will also send a form HUD-5382 and form HUD-5380 to the family with the termination notice. The notice will state the date on which the termination will become effective. This date generally will be at least 30 calendar days following the date of the termination notice, but exceptions will be made whenever HUD rules, other LBHA policies, or the circumstances surrounding the termination require.

When the LBHA notifies an owner that a family's assistance will be terminated, the LBHA will, if appropriate, advise the owner of their right to offer the family a separate, unassisted lease.

If a family whose assistance is being terminated is entitled to an informal hearing, the notice of termination that the LBHA sends to the family must meet the additional HUD and LBHA notice requirements discussed in section 16-III.C of this plan. VAWA requires LBHAs to provide notice of VAWA rights and the HUD 5382 form when a LBHA terminates a household's housing benefits.

### LBHA Policy

Whenever the LBHA decides to terminate a family's assistance because of the family's action or failure to act, the LBHA will include in its termination notice the VAWA information described in section 16-IX.C of this plan and a form HUD-5382 and form HUD-5380. The LBHA will request in writing that a family member wishing to claim protection under VAWA notify the LBHA within 10 business days.

Still other notice requirements apply in two situations:

- If a criminal record is the basis of a family's termination, the LBHA must provide a copy of the record to the subject of the record and the tenant so that they have an opportunity to dispute the accuracy and relevance of the record [24 CFR 982.553(d)(2)].
- If immigration status is the basis of a family's termination, as discussed in section 12-I.D, the special notice requirements in section 16-III.D must be followed.

## **PART III: TERMINATION OF TENANCY BY THE OWNER**

### **12-III.A. OVERVIEW**

Termination of an assisted tenancy is a matter between the owner and the family; the LBHA is not directly involved. However, the owner is under some constraints when terminating an assisted tenancy. Termination of tenancy for certain reasons will also result in termination of assistance as discussed in this section.

### **12-III.B. GROUNDS FOR OWNER TERMINATION OF TENANCY [24 CFR 982.310, 24 CFR 5.2005(c), and Form HUD-52641-A, Tenancy Addendum]**

During the term of the lease, the owner is not permitted to terminate the tenancy except for serious or repeated violations of the lease, certain violations of state or local law, or other good cause.

#### **Serious or Repeated Lease Violations**

The owner is permitted to terminate the family's tenancy for serious or repeated violations of the terms and conditions of the lease, except when the violations are related to incidents of actual or threatened domestic violence, dating violence, sexual assault, stalking, and human trafficking and the victim is protected from eviction by the Violence against Women Act of 2013 (see section 12-II.E). A serious lease violation includes failure to pay rent or other amounts due under the lease. However, the LBHA's failure to make a HAP payment to the owner is not a violation of the lease between the family and the owner.

#### **Violation of Federal, State, or Local Law**

The owner is permitted to terminate the tenancy if a family member violates federal, state, or local law that imposes obligations in connection with the occupancy or use of the premises.

#### **Criminal Activity or Alcohol Abuse**

The owner may terminate tenancy during the term of the lease if any *covered person*—meaning any member of the household, a guest, or another person under the tenant's control—commits any of the following types of criminal activity (for applicable definitions see 24 CFR 5.100):

- Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents (including property management staff residing on the premises)
- Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of their residences by, persons residing in the immediate vicinity of the premises
- Any violent criminal activity on or near the premises
- Any drug-related criminal activity on or near the premises

However, in the case of criminal activity directly related to domestic violence, dating violence, sexual assault, stalking, or human trafficking if the tenant or an affiliated individual is the victim, the criminal activity may not be construed as cause for terminating the victim's tenancy (see section 12-II.E).

The owner may terminate tenancy during the term of the lease if any member of the household is:

- Fleeing to avoid prosecution, custody, or confinement after conviction for a crime or an attempt to commit a crime that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or
- Violating a condition of probation or parole imposed under federal or state law.

The owner may terminate tenancy during the term of the lease if any member of the household has engaged in abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

### ***Evidence of Criminal Activity***

The owner may terminate tenancy and evict by judicial action a family for criminal activity by a covered person if the owner determines the covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying the standard of proof used for a criminal conviction. This is the case except in certain incidents where the criminal activity directly relates to domestic violence, dating violence, sexual assault, stalking, or human trafficking, and the tenant or an affiliated individual is the victim or threatened victim of the domestic violence, dating violence, sexual assault, stalking, or human trafficking.

### **Other Good Cause**

During the initial lease term, the owner may not terminate the tenancy for “other good cause” unless the owner is terminating the tenancy because of something the family did or failed to do. During the initial lease term or during any extension term, other good cause includes the disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises.

After the initial lease term, “other good cause” for termination of tenancy by the owner includes:

- Failure by the family to accept the offer of a new lease or revision
- The owner’s desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit
- A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, or desire to lease the unit at a higher rent)

After the initial lease term, the owner may give the family notice at any time, in accordance with the terms of the lease.

If a property is subject to foreclosure, during the term of the lease, the new owner of the property does not have good cause to terminate the tenant’s lease, unless the new owner will occupy the unit as their primary residence and has provided the tenant with at least a 90-day notice. In that case, the lease may be terminated effective on the date of sale, although the tenant is still entitled to a 90-day notice to vacate. See Section 13-II.G for a discussion of LBHA policies relating to units in foreclosure.

**12-III.C. EVICTION [24 CFR 982.310(e) and (f) and Form HUD-52641-A, Tenancy Addendum]**

The owner must give the tenant a written notice that specifies the grounds for termination of tenancy during the term of the lease. The tenancy does not terminate before the owner has given this notice, and the notice must be given at or before commencement of the eviction action.

The notice of grounds may be included in, or may be combined with, any owner eviction notice to the tenant.

Owner eviction notice means a notice to vacate, or a complaint or other initial pleading used under state or local law to commence an eviction action. The owner may only evict the tenant from the unit by instituting a court action. The owner must give the LBHA a copy of any eviction notice at the same time the owner notifies the family. The family is also required to give the LBHA a copy of any eviction notice (see Chapter 5).

LBHA Policy

If the eviction action is finalized in court, the owner must provide the LBHA with documentation related to the eviction, including notice of the eviction date, as soon as possible, but no later than 5 business days following the court-ordered eviction.

### **12-III.D. DECIDING WHETHER TO TERMINATE TENANCY [24 CFR 982.310(h), 24 CFR 982.310(h)(4)]**

An owner who has grounds to terminate a tenancy is not required to do so, and may consider all of the circumstances relevant to a particular case before making a decision. These might include:

- The nature of the offending action
- The seriousness of the offending action;
- The effect on the community of the termination, or of the owner's failure to terminate the tenancy;
- The extent of participation by the leaseholder in the offending action;
- The effect of termination of tenancy on household members not involved in the offending activity;
- The demand for assisted housing by families who will adhere to lease responsibilities;
- The extent to which the leaseholder has shown personal responsibility and taken all reasonable steps to prevent or mitigate the offending action;
- The effect of the owner's action on the integrity of the program.

The owner may require a family to exclude a household member in order to continue to reside in the assisted unit, where that household member has participated in or been culpable for action or failure to act that warrants termination.

In determining whether to terminate tenancy for illegal use of drugs or alcohol abuse by a household member who is no longer engaged in such behavior, the owner may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully (42 U.S.C. 13661). For this purpose, the owner may require the tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

The owner's termination of tenancy actions must be consistent with the fair housing and equal opportunity provisions in 24 CFR 5.105.

An owner's decision to terminate tenancy for incidents related to domestic violence, dating violence, sexual assault, stalking, or human trafficking is limited by the Violence against Women Act (VAWA) and the conforming regulations in 24 CFR Part 5, Subpart L. (See section 12-II.E.)

### **12-III.E. EFFECT OF TENANCY TERMINATION ON THE FAMILY'S ASSISTANCE**

If a termination is not due to a serious or repeated violation of the lease, and if the LBHA has no other grounds for termination of assistance, the LBHA 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 LBHA 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 LBHA 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 deficiencies under the National Standards for the Physical Inspection of Real Estate (NSPIRE) by the family caused by failure to pay tenant-provided utilities or appliances, or damages to the dwelling unit or premises beyond ordinary wear and tear caused by any member of the household or guest.

### LBHA Policy

Damages beyond ordinary wear and tear will be considered to be damages which could be assessed against the security deposit under state law or in court practice.

- The family must allow the LBHIA 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.

### LBHA Policy

The LBHA will determine if a family has committed serious or repeated violations of the lease based on available evidence, including but not limited to, a court-ordered eviction or an owner's notice to evict, police reports, and affidavits from the owner, neighbors, or other credible parties with direct knowledge.

*Serious and repeated lease violations* will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, living or housekeeping habits that cause damage to the unit or premises, and criminal activity. Generally, the criterion to be used will be whether or not the reason for the eviction was the fault of the tenant or guests. Any incidents of, or criminal activity related to, domestic violence, dating violence, sexual assault, stalking, or human trafficking will not be construed as serious or repeated lease violations by the victim [see 24 CFR 5.2005(c)(1)].

- The family must notify the LBHA and the owner before moving out of the unit or terminating the lease.

### LBHA Policy

The family must comply with lease requirements regarding written notice to the owner. The family must provide written notice to the LBHA at the same time the owner is notified.



- The family must promptly give the LBHA 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 LBHA. The family must promptly notify the LBHA in writing of the birth, adoption, or court-awarded custody of a child. The family must request LBHA approval to add any other family member as an occupant of the unit.

LBHA Policy

The request to add a family member must be submitted in writing and approved prior to the person moving into the unit. The LBHA will determine eligibility of the new member in accordance with the policies in Chapter 3.

- The family must promptly notify the LBHA in writing if any family member no longer lives in the unit.
- If the LBHA has given approval, a foster child or a live-in aide may reside in the unit. The LBHA has the discretion to adopt reasonable policies concerning residency by a foster child or a live-in aide, and to define when LBHA 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.

LBHA 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 LBHA 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 LBHA when the family is absent from the unit.

LBHA 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 LBHA at the start of the extended absence.

- The family must pay utility bills and provide and maintain any appliances that the owner is not required to provide under the lease [Form HUD-52646, Voucher].
- The family must not own or have any interest in the unit, (other than in a cooperative and owners of a manufactured home leasing a manufactured home space).
- Family members must not commit fraud, bribery, or any other corrupt or criminal act in connection with the program. (See Chapter 14, Program Integrity for additional information).

- Family members must not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for HUD and LBHA 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 LBHA 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 LBHA has determined (and has notified the owner and the family of such determination) that approving rental of the unit, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities. [Form HUD-52646, Voucher]



## Chapter 13

### OWNERS

#### INTRODUCTION

Owners play a major role in the HCV program by supplying decent, safe, and sanitary housing for participating families.

The term “owner” refers to any person or entity with the legal right to lease or sublease a unit to a participant in the HCV program [24 CFR 982.4(b)]. The term “owner” includes a principal or other interested party [24 CFR 982.453; 24 CFR 982.306(f)], such as a designated agent of the owner.

Owners have numerous responsibilities under the program, including screening and leasing to families, maintaining the dwelling unit, enforcing the lease, and complying with various contractual obligations.

The chapter is organized in two parts:

Part I: Owners in the HCV Program. This part discusses the role of an owner in the LBHA’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 LBHA and the owner as expressed in the HAP contract.

For detailed information about HCV program responsibilities and processes, including LBHA policies in key areas, owners will need to refer to several other chapters in this plan. Where appropriate, Chapter 13 will reference the other chapters.



## **PART I. OWNERS IN THE HCV PROGRAM**

### **13-1.A. OWNER RECRUITMENT AND RETENTION [HCV GB, pp. 2-4 to 2-6; HCV Landlord Strategy Guidebook for LBHAs]**

#### **Recruitment**

LBHAs are responsible for ensuring that very low-income families have access to all types and ranges of affordable housing in the LBHA's jurisdiction, particularly housing outside areas of poverty or minority concentration. A critical element in fulfilling this responsibility is for the LBHA to ensure that a sufficient number of owners, representing all types and ranges of affordable housing in the LBHA's jurisdiction, are willing to participate in the HCV program.

To accomplish this objective, LBHAs must identify and recruit new owners to participate in the program.

If the LBHA will be conducting outreach events, the LBHA must ensure that notices and communications during outreach events are provided in a manner that is effective for persons with hearing, visual, and other communications-related disabilities. LBHAs must also take reasonable steps to ensure meaningful access to programs to persons with limited English proficiency.

#### LBHA Policy

The LBHA will conduct owner outreach to ensure that owners are familiar with the program and its advantages. The LBHA will actively recruit property owners with property located outside areas of poverty and minority concentration. These outreach strategies will include:

- Distributing printed material about the program to property owners and managers

- Contacting property owners and managers by phone or in-person

- Holding owner recruitment/information meetings at least once a year

- Participating in community-based organizations comprised of private property and apartment owners and managers

- Developing working relationships with owners, apartment associations, industry investor groups, and real estate brokers associations

- To the extent practical, partnering with and attending events hosted by other area agencies to deliver information about the HCV program

Outreach strategies will be monitored for effectiveness and adapted accordingly.

## **Retention**

In addition to recruiting owners to participate in the HCV program, the LBHA must also provide the kind of customer service that will encourage participating owners to remain active in the program.

### LBHA Policy

All LBHA 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 LBHA will provide owners with a handbook that explains the program, including HUD and LBHA policies and procedures, in easy-to-understand language.

The LBHA will give special attention to helping new owners succeed through activities such as:

- Providing the owner with a designated LBHA contact person.

- Coordinating inspection and leasing activities between the LBHA, the owner, and the family.

- Initiating telephone contact with the owner to explain the inspection process and providing an inspection booklet and other resource materials about HUD housing quality standards.

- Providing other written information about how the program operates through a landlord handbook, including answers to frequently asked questions.

- Contacting owners via emails or texts to disseminate information.

Additional services may be undertaken on an as-needed basis, and as resources permit.



### **13-I.B. BASIC HCV PROGRAM REQUIREMENTS**

HUD requires the LBHA to assist families in their housing search by providing the family with a list of landlords or other parties known to the LBHA who may be willing to lease a unit to the family, or to help the family find a unit. Although the LBHA cannot maintain a list of owners that are pre-qualified to participate in the program, owners may indicate to the LBHA 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)].

#### LBHA 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 LBHA. The LBHA will maintain a listing of such owners and provide this listing to the HCV family as part of the informational briefing packet.

When a family approaches an owner to apply for tenancy, the owner is responsible for screening the family and deciding whether to lease to the family, just as the owner would with any potential unassisted tenant. The LBHA 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 LBHA, this document is the first step in the process of obtaining approval for the family to receive the financial assistance it will need in order to occupy the unit. Also submitted with the RTA is a copy of the owner's proposed dwelling lease, including the HUD-required Tenancy Addendum (Form HUD-52641-A). See Chapter 9 for more detail on request for tenancy approval policies and process.

HUD regulations stipulate requirements for the approval of an assisted tenancy.

The owner must be qualified to participate in the program [24 CFR 982.306]. Some owners are precluded from participating in the program, or from renting to a particular family, either because of their past history with this or another federal housing program, or because of certain conflicts of interest. Owner qualifications are discussed later in this chapter.

The selected unit must be of a type that is eligible for the program [24 CFR 982.305(a)]. Certain types of dwelling units cannot be assisted under the HCV program. Other types may be assisted under certain conditions. See chapter 9 for more detail on unit eligibility policies and process.

The selected unit must meet HUD's National Standards for the Physical Inspection of Real Estate (NSPIRE) and/or equivalent state or local standards approved by HUD [24 CFR 982.305(a)]. The LBHA will inspect the owner's dwelling unit at least biennially to ensure that the unit continues to meet inspection requirements. See Chapter 8 for a discussion of the NSPIRE standards and policies for inspections at initial lease-up and throughout the family's tenancy.

The LBHA must determine that the proposed rent for the unit is reasonable [24 CFR 982.305(a)]. The rent must be reasonable in relation to comparable unassisted units in the area and must not be in excess of rents charged by the owner for comparable, unassisted units on the premises. See chapter 8 for a discussion of requirements and policies on rent reasonableness, rent comparability and the rent reasonableness determination process.

At initial lease-up of a unit, if the gross rent exceeds the applicable payment standard, the LBHA must ensure that the family share does not exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]. See chapter 6 for a discussion of the calculation of family income, family share of rent and HAP.

The dwelling lease must comply with all program requirements [24 CFR 982.308]. Owners are encouraged to use their standard leases when renting to an assisted family. The HUD Tenancy Addendum includes the HUD requirements governing the tenancy and must be added word-for-word to the owner's lease. See chapter 9 for a discussion of the dwelling lease and tenancy addendum, including lease terms and provisions.

The LBHA and the owner must execute a Housing Assistance Payment (HAP) Contract (Form HUD-52641). The HAP contract format is prescribed by HUD. See chapter 9 for a discussion of the HUD requirements for execution of the HAP contract.

### **13-I.C. OWNER RESPONSIBILITIES [24 CFR 982.452]**

The basic owner responsibilities in the HCV program are outlined in the regulations as follows:

- Complying with all of the owner's obligations under the housing assistance payments (HAP) contract and the lease
- Performing all management and rental functions for the assisted unit, including selecting a voucher-holder to lease the unit, and deciding if the family is suitable for tenancy of the unit
- Maintaining the unit in accordance with the National Standards for the Physical Inspection of Real Estate (NSPIRE), including performance of ordinary and extraordinary maintenance
- Complying with equal opportunity requirements
- Preparing and furnishing to the LBHA information required under the HAP contract
- Collecting the security deposit, the tenant rent, and any charges for unit damage by the family.
- Enforcing tenant obligations under the dwelling lease
- Paying for utilities and services that are not the responsibility of the family as specified in the lease
- Allowing reasonable modifications to a dwelling unit occupied or to be occupied by a disabled person [24 CFR 100.203]
- Complying with the Violence against Women Act (VAWA) when screening prospective HCV tenants or terminating the tenancy of an HCV family [see 24 CFR Part 5, Subpart L; 24 CFR 982.310(h)(4); 24 CFR 982.452(b)(1); and FR Notice 1/4/23]

### **13-I.D. OWNER QUALIFICATIONS**

The LBHA does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where the LBHA 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 LBHA must not approve the assisted tenancy if the LBHA 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 LBHA 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 LBHA must not approve a tenancy if the owner is the parent, child, grandparent, grandchild, sister, or brother of any member of the family. The LBHA may make an exception as a reasonable accommodation for a family member with a disability. The owner is required to certify that no such relationship exists. This restriction applies at the time that the family receives assistance under the HCV program for occupancy of a particular unit. Current contracts on behalf of owners and families that are related may continue, but any new leases or contracts for these families may not be approved.

#### **Conflict of Interest [24 CFR 982.161; HCV GB p. 8-19; Form HUD-52641, Section 13]**

The LBHA 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 LBHA (except a participant commissioner)
- Any employee of the LBHA, or any contractor, subcontractor or agent of the LBHA, who formulates policy or who influences decisions with respect to the programs
- Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the programs
- Any member of the Congress of the United States

Such “covered individual” may not have any direct or indirect interest in the HAP contract or in any benefits or payments under the contract (including the interest of an immediate family member of such covered individual) while such person is a covered individual or for one year thereafter.

*Immediate family member* means the spouse, parent (including a stepparent), child (including a stepchild), grandparent, grandchild, sister, or brother (including a stepsister or stepbrother) of any covered individual.

HUD may waive the conflict of interest requirements, except for members of Congress, for good cause. The LBHA must submit a waiver request to the appropriate HUD Field Office for determination.

Any waiver request submitted by the LBHA must include the following [HCV Guidebook pp.11-2 and 11-3]:

- Complete statement of the facts of the case;
- Analysis of the specific conflict of interest provision of the HAP contract and justification as to why the provision should be waived;
- Analysis of and statement of consistency with state and local laws. The local HUD office, the LBHA, or both parties may conduct this analysis. Where appropriate, an opinion by the state's attorney general should be obtained;
- Opinion by the local HUD office as to whether there would be an appearance of impropriety if the waiver were granted;
- Statement regarding alternative existing housing available for lease under the HCV program or other assisted housing if the waiver is denied;
- If the case involves a hardship for a particular family, statement of the circumstances and discussion of possible alternatives;
- If the case involves a public official or member of the governing body, explanation of their duties under state or local law, including reference to any responsibilities involving the HCV program;
- If the case involves employment of a family member by the LBHA or assistance under the HCV program for an eligible LBHA 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 LBHA, description of the nature of the investment, including disclosure/divestiture plans.

Where the LBHA has requested a conflict of interest waiver, the LBHA may not execute the HAP contract until HUD has made a decision on the waiver request.

#### LBHA Policy

In considering whether to request a conflict of interest waiver from HUD, the LBHA will consider certain factors such as consistency of the waiver with state and local laws, the existence of alternative housing available to families, the individual circumstances of a particular family, the specific duties of individuals whose positions present a possible conflict of interest, the nature of any financial investment in the property and plans for disclosure/divestiture, and the possible appearance of impropriety.

## **Owner Actions That May Result in Disapproval of a Tenancy Request [24 CFR 982.306(c)]**

HUD regulations permit the LBHA to disapprove a request for tenancy for various actions and inactions of the owner.

If the LBHA 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].

### LBHA Policy

The LBHA will refuse to approve a request for tenancy if the LBHA becomes aware that any of the following are true:

The owner has violated obligations under a HAP contract under Section 8 of the 1937 Act (42 U.S.C. 1437f);

The owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;

The owner has engaged in any drug-related criminal activity or any violent criminal activity;

The owner has a history or practice of noncompliance with inspection standards for units leased under the tenant-based programs, or with applicable housing standards for units leased with project-based Section 8 assistance or leased under any other federal housing program;

The owner has a history or practice of failing to terminate tenancy of tenants of units assisted under Section 8 or any other federally assisted housing program for activity engaged in by the tenant, any member of the household, a guest or another person under the control of any member of the household that:

- (i) Threatens the right to peaceful enjoyment of the premises by other residents;
- (ii) Threatens the health or safety of other residents, of employees of the LBHA, or of owner employees or other persons engaged in management of the housing;
- (iii) Threatens the health or safety of, or the right to peaceful enjoyment of their residences, by persons residing in the immediate vicinity of the premises; or
- (iv) Is drug-related criminal activity or violent criminal activity;

The owner has a history or practice of renting units that fail to meet state or local housing codes; or

The owner has not paid state or local real estate taxes, fines, or assessment.

In considering whether to disapprove owners for any of the discretionary reasons listed above, the LBHA 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 LBHA may, on a case-by-case basis, choose to approve an owner.

### **Legal Ownership of Unit**

The following represents LBHA policy on legal ownership of a dwelling unit to be assisted under the HCV program.

#### LBHA Policy

The LBHA will only enter into a contractual relationship with the legal owner of a qualified unit. No tenancy will be approved without acceptable documentation of legal ownership (e.g., deed of trust, proof of taxes for most recent year).

### **13-I.E. NON-DISCRIMINATION [HAP Contract – Form HUD-52641]**

The owner must not discriminate against any person because of race, color, religion, sex, national origin, age, familial status, or disability, in connection with any actions or responsibilities under the HCV program and the HAP contract with the LBHA.

The owner must cooperate with the LBHA 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 LBHA.

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 LBHA 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 LBHA's obligations. Under the HAP contract, the LBHA agrees to make housing assistance payments to the owner on behalf of the family approved by the LBHA to occupy the unit.

The HAP contract is used for all HCV tenant-based program tenancies except for assistance under the Section 8 homeownership program, and assistance to families that own a manufactured home and use their assistance to lease the space for the manufactured home. See chapter 15 for a discussion of any special housing types included in the LBHA's HCV program.

When the LBHA has determined that the unit meets program requirements and the tenancy is approvable, the LBHA and owner must execute the HAP contract. See chapter 9 for a discussion of the leasing process, including provisions for execution of the HAP contract.

### **13-II.B. HAP CONTRACT CONTENTS**

The HAP contract format is required by HUD, specifically Housing Assistance Payment (HAP) Contract, Form HUD-52641.

The HAP contract contains three parts.

Part A of the contract includes basic contract information: the names of the tenant and all household members, the address of the contract unit, start and end dates of initial lease term, the amount of initial monthly rent to owner, the amount of initial housing assistance payment, the utilities and appliances to be supplied by owner and tenant, and the signatures of the LBHA representative and owner [HCV Guidebook, pp. 11-10 and 11-11].

In general, the HAP contract cannot be modified. However, LBHAs 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. LBHA policy on the amount of security deposit an owner may collect is found in Chapter 9.

LBHAs also have the discretion to add language to Part A of the HAP contract that defines when the housing assistance payment by the LBHA is deemed received by the owner (e.g., upon mailing by the LBHA or actual receipt by the owner).

#### LBHA Policy

The LBHA has not adopted a policy that defines when the housing assistance payment by the LBHA is deemed received by the owner. Therefore, no modifications to the HAP contract will be necessary.

Part B is the body of the contract. It describes in detail program requirements affecting the owner and owner roles and responsibilities under the HCV program. Most of the requirements contained in Part B of the HAP contract are outlined elsewhere in this plan. Topics addressed in Part B include:

- Lease of Contract Unit
- Maintenance, Utilities, and Other Services
- Term of HAP Contract
- Provision and Payment of Utilities and Appliances
- Rent to Owner: Reasonable Rent
- LBHA Payment to Owner
- Prohibition of Discrimination
- Owner's Breach of HAP Contract
- LBHA 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 LBHA. 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 LBHA 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 LBHA 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 LBHA is credited toward the monthly rent to owner under the family's lease. The total of the rent paid by the tenant and the HAP payment is equal to the rent to owner as specified in the lease.

The family is not responsible for payment of the HAP payment, and the LBHA is not responsible for payment of the family share of rent.

The family's share of the rent cannot be more than the difference between the rent to owner and the HAP payment. The owner may not demand or accept any rent payment from the tenant in excess of this maximum [24 CFR 982.451(b)(4)]. The owner may not charge the tenant extra amounts for items customarily included in rent in the locality or provided at no additional cost to unsubsidized tenants in the premises [24 CFR 982.510(c)]. See chapter 9 for a discussion of separate, non-lease agreements for services, appliances and other items that are not included in the lease.

If the owner receives any excess HAP from the LBHA, the excess amount must be returned immediately. If the LBHA determines that the owner is not entitled to all or a portion of the HAP, the LBHA may deduct the amount of overpayment from any amounts due to the owner, including amounts due under any other Section 8 HCV contract. See Chapter 16 for additional detail on owner reimbursement of HAP overpayments.

### **Owner Certification of Compliance**

Unless the owner complies with all provisions of the HAP contract, the owner is not entitled to receive housing assistance payments under the HAP contract [HAP Contract – Form HUD-52641].

By accepting the monthly check from the LBHA, 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 NSPIRE standards; that the contract unit is leased to the tenant family and, to the best of the owner's knowledge, the family resides in the unit as the family's only residence; the rent to owner does not exceed rents charged by the owner for comparable unassisted units on the premises; and that the owner does not receive (other than rent to owner) any additional payments or other consideration for rent of the contract unit during the HAP term.

### **Late HAP Payments [24 CFR 982.451(a)(5)]**

The LBHA is responsible for making HAP payments promptly when due to the owner, in accordance with the terms of the HAP contract. After the first two calendar months of the HAP contract term, the HAP contract provides for late penalties if the LBHA 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 LBHA is not required to pay a late payment penalty if HUD determines that the payment is late for reasons beyond the LBHA's control. In addition, late payment penalties are not required if the LBHA 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 LBHA 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 LBHA 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.

#### LBHA Policy

The owner must inform the LBHA when the owner has initiated eviction proceedings against the family and the family continues to reside in the unit.

The owner must inform the LBHA when the owner has obtained a court judgment or other process allowing the owner to evict the tenant and provide the LBHA 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 LBHA will continue to make HAP payments to the owner until the family actually moves from the unit or until the family is physically evicted from the unit, whichever is earlier. The owner must inform the LBHA of the date when the family actually moves from the unit or the family is physically evicted from the unit.

### 13-II.D. BREACH OF HAP CONTRACT [24 CFR 982.453]

Any of the following actions by the owner constitutes a breach of the HAP contract:

- If the owner violates any obligations under the HAP contract including failure to maintain the unit in accordance with NSPIRE standards
- If the owner has violated any obligation under any other HAP contract under Section 8
- If the owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program
- For projects with mortgages insured by HUD or loans made by HUD, if the owner has failed to comply with the regulation for the applicable program; or if the owner has committed fraud, bribery or any other corrupt or criminal act in connection with the mortgage or loan
- If the owner has engaged in drug-related criminal activity
- If the owner has committed any violent criminal activity

If the LBHA determines that a breach of the HAP contract has occurred, it may exercise any of its rights and remedies under the HAP contract.

The LBHA rights and remedies against the owner under the HAP contract include recovery of any HAP overpayment, suspension of housing assistance payments, abatement or reduction of the housing assistance payment, termination of the payment or termination of the HAP contract. The LBHA may also obtain additional relief by judicial order or action.

The LBHA 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 LBHA must provide the owner with written notice of any reduction in housing assistance payments or the termination of the HAP contract.

#### LBHA Policy

Before the LBHA invokes a remedy against an owner, the LBHA will evaluate all information and documents available to determine if the contract has been breached.

If relevant, the LBHA 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 LBHA 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 LBHA terminates the HAP contract;
- The LBHA 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 LBHA 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 LBHA;
- The Annual Contributions Contract (ACC) between the LBHA and HUD expires
- The LBHA elects to terminate the HAP contract.

#### LBHA Policy

The LBHA may elect to terminate the HAP contract in each of the following situations:

Available program funding is not sufficient to support continued assistance for families in the program [24 CFR 982.454];

The unit does not meet size requirements due to change in family composition [24 CFR 982.403] – see Chapter 8;

The unit does not meet NSPIRE standards [24 CFR 982.404] – see Chapter 8;

The family breaks up [HUD Form 52641] – see Chapter 3;

The owner breaches the HAP contract [24 CFR 982.453(b)] – see Section 13-II.D.

If the LBHA terminates the HAP contract, the LBHA 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].

#### LBHA Policy

Generally, the HAP contract terminates at the end of the calendar month that follows the calendar month in which the LBHA gives written notice to the owner.

The LBHA cannot make any HAP payment for any month after the month the family vacates the unit.

The owner is not entitled to any housing assistance payment after this period and must return to the LBHA 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 LBHA.

An owner under a HAP contract must notify the LBHA in writing prior to a change in the legal ownership of the unit. The owner must supply all information as requested by the LBHA.

Prior to approval of assignment to a new owner, the new owner must agree to be bound by and comply with the HAP contract. The agreement between the new owner and the former owner must be in writing and in a form that the LBHA finds acceptable. The new owner must provide the LBHA with a copy of the executed agreement.

#### LBHA 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 LBHA must receive a signed, written request from the existing owner stating the name and address of the new HAP payee and the effective date of the assignment in order to change the HAP payee under an outstanding HAP contract.

Within 10 business days of receiving the owner's request, the LBHA will inform the current owner in writing whether the assignment may take place.

The new owner must provide a written certification to the LBHA that includes:

- A copy of the escrow statement or other document showing the transfer of title and recorded deed;

- A copy of the owner's IRS Form W-9, Request for Taxpayer Identification Number and Certification, or the social security number of the new owner;

- The effective date of the HAP contract assignment;

- A written agreement to comply with the terms of the HAP contract; and

- A certification that the new owner is not a prohibited relative.

If the new owner does not agree to an assignment of the HAP contract, or fails to provide the necessary documents, the LBHA 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 LBHA will process the leasing in accordance with the policies in Chapter 9.

### **13-II.G. FORECLOSURE [Notice PIH 2010-49]**

Families receiving HCV assistance are entitled to certain protections set forth under the Protecting Tenants at Foreclosure Act (PTFA). During the term of the lease, the new owner of the property does not have good cause to terminate the tenant's lease, unless the new owner will occupy the unit as their primary residence and has provided the tenant with at least a 90-day notice. In that case, the lease may be terminated effective on the date of sale, although the tenant is still entitled to a 90-day notice to vacate. Further, the new owner assumes interest in the lease between the prior owner and the tenant and to the HAP contract.

Any state or local law that provides longer time periods or other additional protections for tenants also applies.

#### LBHA Policy

If a property is in foreclosure, the LBHA will make all reasonable efforts to determine the status of the foreclosure and ownership of the property and will continue to make payments to the original owner until ownership legally transfers in accordance with the HAP contract.

The LBHA will attempt to obtain a written acknowledgement of the assignment of the HAP contract from the successor in interest. This will include a request for owner information, including a tax identification number and payment instructions from the new owner. Even if the new owner does not acknowledge the assignment of the HAP contract in writing, the assignment is still effective by operation of law.

The LBHA will inform the tenant that they must continue to pay rent in accordance with the lease, and if the new owner refuses to accept payment or cannot be identified, the tenant should pay rent into escrow. Failure to pay rent may constitute an independent ground for eviction.

In the event that the LBHA is unable to make HAP payments to the new owner due to an action or inaction by the new owner that prevents such payments (e.g., rejection of payments or failure to maintain the property according to NSPIRE standards), or due to an inability to identify the new owner, the LBHA will either use the funds to pay:

The utilities that are the owner's responsibility after taking reasonable steps to notify the owner; except that if the unit has been or will be rendered uninhabitable due to termination or threat of termination of service, prior notice is not required. In the latter case, the LBHA shall notify the owner within a reasonable time after making the utility payment; or

For the family's reasonable moving costs, including security deposit costs.

The LBHA will also refer the tenant, as needed, to the local legal aid office in order to ensure adequate protection of the tenant's rights and enforcement of the successor in interest's performance under the HAP contract.

See Section 12-III.B for a discussion of foreclosure as it pertains to owner termination of tenancy.

## Chapter 14

### PROGRAM INTEGRITY

#### INTRODUCTION

The LBHA is committed to ensuring that subsidy funds made available to the LBHA are spent in accordance with HUD requirements.

This chapter covers HUD and LBHA 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 LBHA policies related to preventing, detecting, and investigating errors and program abuse.

Part II: Corrective Measures and Penalties. This part describes the corrective measures the LBHA must and may take when errors or program abuses are found.



**PART I: PREVENTING, DETECTING, AND INVESTIGATING ERRORS AND PROGRAM ABUSE**

**14-I.A. PREVENTING ERRORS AND PROGRAM ABUSE**

HUD created the Enterprise Income Verification (EIV) system to provide LBHAs with a powerful tool for preventing errors and detecting program abuse. LBHAs are required to use the EIV system at annual reexamination in accordance with HUD administrative guidance [24 CFR 5.233]. LBHAs are further required to:

- Provide applicants and participants with form HUD-52675, “Debts Owed to LBHAs and Terminations”
- Require all adult members of an applicant or participant family to acknowledge receipt of form HUD-52675 by signing a copy of the form for retention in the family file

LBHA Policy

To ensure that the LBHA’s HCV program is administered according to the highest ethical and legal standards, the LBHA will employ a variety of techniques to ensure that both errors and intentional program abuse are rare.

The LBHA will discuss program compliance and integrity issues during the voucher briefing sessions described in Chapter 5.

The LBHA will provide each applicant and participant with a copy of “Is Fraud Worth It?” (form HUD-1141-OIG), which explains the types of actions a family must avoid and the penalties for program abuse.

The LBHA will provide each applicant and participant with a copy of “What You Should Know about EIV,” a guide to the Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH 2017-12. In addition, the LBHA will require the head of each household to acknowledge receipt of the guide by signing a copy for retention in the family file.

The LBHA will place a warning statement about the penalties for fraud (as described in 18 U.S.C. 1001 and 1010) on key LBHA forms and form letters that request information from a family or owner.

LBHA staff will be required to review and explain the contents of all HUD- and LBHA -required forms prior to requesting family member signatures.

At every regular reexamination, LBHA staff will explain any changes in HUD regulations or LBHA policy that affect program participants.

The LBHA will require first-time owners (or their agents) to participate in a briefing session on HAP contract requirements.

The LBHA will provide owners with ongoing information about the program, with an emLBHAsis on actions and situations to avoid.

The LBHA will provide each LBHA employee with the necessary training on program rules and the organization’s standards of conduct and ethics.

For purposes of this chapter the term *error* refers to an unintentional error or omission. *Program abuse or fraud* refers to a single act or pattern of actions that constitute a false statement, omission, or concealment of a substantial fact, made with the intent to deceive or mislead.

## **14-I.B. DETECTING ERRORS AND PROGRAM ABUSE**

In addition to taking steps to prevent errors and program abuse, the LBHA 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 LBHA to review a random sample of tenant records annually to determine if the records conform to program requirements and to conduct quality control inspections of a sample of units to ensure compliance with NSPIRE standards [24 CFR, Part 985]. (See Chapter 16 for additional information about SEMAP requirements).

#### LBHA Policy

In addition to the SEMAP quality control requirements, the LBHA will employ a variety of methods to detect errors and program abuse.

The LBHA routinely will use HUD and other non-HUD sources of up-front income verification. This includes The Work Number and any other private or public databases available to the LBHA.

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 LBHA will compare family-reported income and expenditures to detect possible unreported income.

### **Independent Audits and HUD Monitoring**

OMB Circular A-133 requires all LBHAs 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 LBHA activities and notifies the LBHA of errors and potential cases of program abuse.

#### LBHA Policy

The LBHA 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 LBHA's error detection and abuse prevention efforts.

### **Individual Reporting of Possible Errors and Program Abuse**

#### LBHA Policy

The LBHA will encourage staff, program participants, and the public to report possible program abuse.

## **14-I.C. INVESTIGATING ERRORS AND PROGRAM ABUSE**

### **When the LBHA Will Investigate**

#### LBHA Policy

The LBHA will review all referrals, specific allegations, complaints, and tips from any source including other agencies, companies, and individuals, to determine if they warrant investigation. In order for the LBHA 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 LBHA will investigate when inconsistent or contradictory information is detected through file reviews and the verification process.

### **Consent to Release of Information [24 CFR 982.516]**

The LBHA may investigate possible instances of error or abuse using all available LBHA and public records. If necessary, the LBHA will require HCV families to sign consent forms for the release of additional information.

### **Analysis and Findings**

#### LBHA Policy

The LBHA 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 LBHA will determine (1) whether an error or program abuse has occurred, (2) whether any amount of money is owed the LBHA, 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 LBHA will enforce other corrective actions and penalties depends upon the nature of the error or program abuse.

### LBHA Policy

In the case of family-caused errors or program abuse, the LBHA 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 LBHA 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**

### LBHA Policy

The LBHA will inform the relevant party in writing of its findings and remedies within 10 business days of the conclusion of the investigation. The notice will include (1) a description of the error or program abuse, (2) the basis on which the LBHA determined the error or program abuses, (3) the remedies to be employed, and (4) the family's right to appeal the results through the informal review or hearing process, if applicable (see Chapter 16).



## **PART II: CORRECTIVE MEASURES AND PENALTIES**

### **14-II.A. SUBSIDY UNDER- OR OVERPAYMENTS**

A subsidy under- or overpayment includes (1) an incorrect housing assistance payment to the owner, (2) an incorrect family share established for the family, and (3) an incorrect utility reimbursement to a family.

#### **Corrections**

Whether the incorrect subsidy determination is an overpayment or underpayment of subsidy, the LBHA must promptly correct the HAP, family share, and any utility reimbursement prospectively.

##### LBHA Policy

Increases in the family share will be implemented on the first of the month following a written 30-day notice.

Any decreases in family share will become effective the first of the month following the discovery of the error.

#### **Reimbursement**

Whether the family or owner is required to reimburse the LBHA or the LBHA 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 LBHA to use incorrect information provided by a third party.

### **Family Reimbursement to LBHA [HCV GB pp. 22-12 to 22-13]**

#### LBHA Policy

In the case of family-caused errors or program abuse, the family will be required to repay any excess subsidy received. The LBHA 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 LBHA will terminate the family's assistance in accordance with the policies in Chapter 12.

### **LBHA Reimbursement to Family [HCV GB p. 22-12]**

#### LBHA Policy

The LBHA 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 LBHA [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)].

### LBHA Policy

Any of the following will be considered evidence of family program abuse:

Payment to the owner in excess of amounts authorized by the LBHA for rent, security deposit, and additional services

Offering bribes or illegal gratuities to the LBHA Board of Commissioners, employees, contractors, or other LBHA 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 LBHA 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 LBHA 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 LBHA may, at its discretion, impose any of the following remedies.

- The LBHA may require the family to repay excess subsidy amounts paid by the LBHA, as described earlier in this section.
- The LBHA 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 LBHA may deny or terminate the family's assistance following the policies set forth in Chapter 3 and Chapter 12 respectively.
- The LBHA 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., NSPIRE 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 LBHA**

In all cases of overpayment of subsidy caused by the owner, the owner must repay to the LBHA any excess subsidy received. The LBHA may recover overpaid amounts by withholding housing assistance payments due for subsequent months, or if the debt is large, the LBHA may allow the owner to pay in installments over a period of time [HCV GB p. 22-13].

#### LBHA Policy

In cases where the owner has received excess subsidy, the LBHA 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 LBHA [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:

## LBHA 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 LBHA
- Charging a security deposit other than that specified in the family's lease
- Charging the family for services that are provided to unassisted tenants at no extra charge
- Knowingly accepting housing assistance payments for any month(s) after the family has vacated the unit
- Knowingly accepting incorrect or excess housing assistance payments
- Offering bribes or illegal gratuities to the LBHA Board of Commissioners, employees, contractors, or other LBHA representatives
- Offering payments or other incentives to an HCV family as an inducement for the family to make false or misleading statements to the LBHA
- Residing in the unit with an assisted family
- Committing sexual or other harassment, either quid pro quo or hostile environment, based on the protected classes defined in Chapter 2
- Retaliating against any applicant or participant reporting/alleging sexual or other harassment, either quid pro quo or hostile environment, based on the protected classes defined in Chapter 2

## **Remedies and Penalties**

When the LBHA determines that the owner has committed program abuse, the LBHA 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 LBHA programs.
- Refer the case to state or federal officials for criminal prosecution as described in section 14-II.E.

#### **14-II.D. LBHA-CAUSED ERRORS OR PROGRAM ABUSE**

The responsibilities and expectations of LBHA staff with respect to normal program administration are discussed throughout this plan. This section specifically addresses actions of a LBHA staff member that are considered errors or program abuse related to the HCV program. Additional standards of conduct may be provided in the LBHA personnel policy.

LBHA-caused incorrect subsidy determinations include (1) failing to correctly apply HCV rules regarding family composition, income, assets, and expenses, (2) assigning the incorrect voucher size to a family, and (3) errors in calculation.

##### **De Minimis Errors [24 CFR 5.609(c)(4)]**

The LBHA will not be considered out of compliance when making annual income determinations solely due to de minimis errors in calculating family income. A de minimis error is an error where the LBHA determination of family income deviates from the correct income determination by no more than \$30 per month in monthly adjusted income (\$360 in annual adjusted income) per family.

LBHAs must take corrective action to credit or repay a family if the family was overcharged rent, including when LBHAs make de minimis errors in the income determination. Families will not be required to repay the LBHA in instances where the LBHA miscalculated income resulting in a family being undercharged for rent. LBHAs state in their policies how they will repay or credit a family the amount they were overcharged as a result of the LBHA's de minimis error in income determination.

##### LBHA Policy

The LBHA will reimburse a family for any family overpayment of rent, regardless of whether the overpayment was the result of staff-caused error, staff program abuse, or a de minimis error.

## **Prohibited Activities**

### LBHA Policy

Any of the following will be considered evidence of program abuse by LBHA 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 LBHA

Disclosing confidential or proprietary information to outside parties

Gaining profit as a result of insider knowledge of LBHA 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**

### LBHA Policy

When the LBHA determines that program abuse by an owner, family, or LBHA staff member has occurred and the amount of overpaid subsidy meets or exceeds the threshold for prosecution under local or state law, the LBHA 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 LBHA may retain a portion of program fraud losses that the LBHA recovers from a family or owner through litigation, court order, or a repayment agreement [24 CFR 982.163].

The LBHA must be the principal party initiating or sustaining the action to recover amounts due from tenants that are due as a result of fraud and abuse. 24 CFR 792.202 permits the LBHA to retain the greater of:

- 50 percent of the amount it actually collects from a judgment, litigation (including settlement of a lawsuit) or an administrative repayment agreement, or
- Reasonable and necessary costs that the LBHA incurs related to the collection including costs of investigation, legal fees, and agency collection fees.

The family must be afforded the opportunity for an informal hearing in accordance with requirements in 24 CFR 982.555.

If HUD incurs costs on behalf of the LBHA related to the collection, these costs must be deducted from the amount retained by the LBHA.



**IMPORTANT: PLEASE READ**

Allowing special housing types is optional for LBHAs, except where necessary as a reasonable accommodation. Therefore, for ease of use, policy language is included in this chapter where relevant in the event the LBHA does grant use as a reasonable accommodation. Be sure to delete this box before finalizing your document.

**Chapter 15**

**SPECIAL HOUSING TYPES**

[24 CFR 982 Subpart M; New HCV GB, *Special Housing Types*]

**INTRODUCTION**

The LBHA may permit a family to use any of the special housing types discussed in this chapter. However, the LBHA is not required to permit families receiving assistance in its jurisdiction to use these housing types, except that LBHAs must permit use of any special housing type if needed as a reasonable accommodation for a person with a disability. The LBHA 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. Unless specifically modified by the regulations, NSPIRE standards apply to special housing types (Single Room Occupancy, Congregate Housing, Group Homes, Shared Housing, Manufactured Homes, Homeownership units) [Notice PIH 2023-28].

LBHA Policy

Families will be able to utilize the following special housing types:

**Homeownership**

Families will be not be permitted to use any other special housing types, unless needed as a reasonable accommodation to ensure that the program is readily accessible to a person with disabilities. However, policy language is included in this chapter where relevant in the event the LBHA does grant use as a reasonable accommodation.

Special housing types include single room occupancy (SRO), congregate housing, group homes, shared housing, cooperative housing, manufactured homes where the family owns the home and leases the space, and homeownership [24 CFR 982.601]. A single unit cannot be designated as more than one type of special housing. The LBHA cannot give preference to households that wish to live in any of these types of housing and cannot require households to select any of these types of housing [New HCV GB, *Special Housing Types*, p. 3].

This chapter consists of the following seven parts. Each part contains a description of the housing type and any special requirements associated with it. Except as modified by this chapter, the general requirements of the HCV program apply to special housing types.

Part I: Single Room Occupancy

Part II: Congregate Housing

Part III: Group Homes

Part IV: Shared Housing

Part V: Cooperative Housing

Part VI: Manufactured Homes (including manufactured home space rental)

Part VII: Homeownership

## **PART I: SINGLE ROOM OCCUPANCY**

[24 CFR 982.602 through 982.605; Form HUD-52641; New HCV GB, *Special Housing Types*, p. 4]

### **15-I.A. OVERVIEW**

A single room occupancy (SRO) unit provides living and sleeping space for the exclusive use of the occupant but requires the occupant to share sanitary and/or food preparation facilities with others. More than one person may not occupy an SRO unit. HCV regulations do not limit the number of units in an SRO facility, but the size of a facility may be limited by local ordinances.

When providing HCV assistance in an SRO unit, a separate lease and HAP contract are executed for each assisted person. The standard form of the HAP contract is used (form HUD-52641) with the special housing type specified in Part A of the HAP contract, as follows: “This HAP contract is used for the following special housing type under HUD regulations for the Section 8 voucher program: Single room occupancy (SRO) housing.”

### **15-I.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION**

The payment standard for SRO housing is 75 percent of the zero-bedroom payment standard amount on the LBHA’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. NATIONAL STANDARDS FOR THE PHYSICAL INSPECTION OF REAL ESTATE (NSPIRE)**

NSPIRE requirements described in Chapter 8 apply to SRO housing except that sanitary facilities, and space and security characteristics must meet local code standards for SRO housing. In the absence of applicable local code standards for SRO housing, the following standards apply:

- *Access:* Access doors to the SRO unit must have working locks for privacy. The occupant must be able to access the unit without going through any other unit. Each unit must have immediate access to two or more approved means of exit from the building, appropriately marked and leading to safe and open space at ground level. The SRO unit must also have any other means of exit required by State or local law.
- *Fire Safety:* All SRO facilities must have a sprinkler system that protects major spaces. “Major spaces” are defined as hallways, large common areas, and any other areas specified in local fire, building, or safety codes. SROs must also have hard-wired smoke detectors, and any other fire and safety equipment required by state or local law.

Sanitary facilities and space and security standards must meet local code requirements for SRO housing. In the absence of local code standards, the requirements discussed below apply [24 CFR 982.605].

- *Sanitary Facilities:* At least one flush toilet that can be used in privacy, a lavatory basin, and a bathtub or shower in proper operating condition must be provided for each six persons (or fewer) residing in the SRO facility. If the SRO units are leased only to males, flush urinals may be substituted for up to one half of the required number of toilets. Sanitary facilities must be reasonably accessible from a common hall or passageway to all persons sharing them and may not be located more than one floor above or below the SRO unit. They may not be located below grade unless the SRO units are located on that level.
- *Space and Security:* An SRO unit must contain at least 110 square feet of floor space, and at least four square feet of closet space with an unobstructed height of at least five feet, for use by the occupant. If the closet space is less than four square feet, the habitable floor space in the SRO unit must be increased by the amount of the deficiency. Exterior doors and windows accessible from outside the SRO unit must be lockable.

For SRO housing, 24 CFR 5.703(d) only applies to the extent that the SRO unit contains the room or facility referenced in 24 CFR 5.703(d). Because no children live in SRO housing, the NSPIRE standards applicable to lead-based paint do not apply.

## **PART II: CONGREGATE HOUSING**

[24 CFR 982.606 through 982.609; Form HUD-52641; New HCV GB, *Special Housing Types*, p. 6]

### **15-II.A. OVERVIEW**

Congregate housing is intended for use by elderly persons or persons with disabilities. A congregate housing facility contains a shared central kitchen and dining area and a private living area for the individual household that includes at least a living room, bedroom and bathroom. Food service for residents must be provided.

If approved by the LBHA, a family member or live-in aide may reside with the elderly person or person with disabilities. The LBHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in congregate housing, a separate lease and HAP contract are executed for each assisted family. The standard form of the HAP contract is used (form HUD-52641) with the special housing type specified in Part A of the HAP contract, as follows: "This HAP contract is used for the following special housing type under HUD regulations for the Section 8 voucher program: Congregate housing."

### **15-II.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION**

The payment standard for an individual unit in a congregate housing facility is based on the number of rooms in the private living area for the assisted family. If there is only one room in the unit (not including the bathroom or the kitchen, if a kitchen is provided), the LBHA must use the payment standard for a zero-bedroom unit. If the unit has two or more rooms (other than the bathroom and the kitchen), the LBHA must use the one-bedroom payment standard.

The HAP for an assisted occupant in a congregate housing facility is the lower of the applicable payment standard minus the TTP or the gross rent for the unit minus the TTP.

The gross rent for the unit for the purpose of calculating HCV assistance is the shelter portion (including utilities) of the resident's monthly housing expense only. The residents' costs for food service should not be included in the rent for a congregate housing unit.

### **15-II.C. NATIONAL STANDARDS FOR THE PHYSICAL INSPECTION OF REAL ESTATE (NSPIRE)**

NSPIRE requirements as described in Chapter 8 apply to congregate housing except for the requirements stated below. Congregate housing is not subject to the requirement that the dwelling unit must have a kitchen area. In place of the NSPIRE standards related to food preparation and refuse disposal, congregate housing must have a refrigerator of appropriate size in the private living area of each resident, a central kitchen and dining facilities located within the premises and accessible to the residents, and food service for the residents, that is not provided by the residents themselves.

The congregate housing must contain adequate facilities and services for the sanitary disposal of food waste and refuse, including facilities for temporary storage where necessary.

The NSPIRE standards applicable to lead-based paint do not apply unless a child under the age of six is expected to reside in the unit.

## **PART III: GROUP HOME**

[24 CFR 982.610 through 982.614; Form HUD-52641; New HCV GB, *Special Housing Types*, p. 8]

### **15-III.A. OVERVIEW**

A group home is a state-approved (licensed, certified, or otherwise approved in writing by the state) facility intended for occupancy by elderly persons and/or persons with disabilities. Except for live-in aides, all persons living in a group home, whether assisted or not, must be elderly persons or persons with disabilities. Persons living in a group home must not require continuous medical or nursing care.

A group home consists of bedrooms for residents, which can be shared by no more than two people, and a living room, kitchen, dining area, bathroom, and other appropriate social, recreational, or community space that may be shared with other residents. No more than 12 persons may reside in a group home including assisted and unassisted residents and any live-in aides.

If approved by the LBHA, a live-in aide may live in the group home with a person with disabilities. The LBHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in a group home, a separate lease and HAP contract is executed for each assisted family. The standard form of the HAP contract is used (form HUD-52641) with the special housing type specified in Part A of the HAP contract, as follows: "This HAP contract is used for the following special housing type under HUD regulations for the Section 8 voucher program: Group home."

### **15-III.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION**

Unless there is a live-in aide, the family unit size (voucher size) for an assisted occupant of a group home must be zero- or one-bedroom. If there is a live-in aide, the aide must be counted in determining the household's unit size.

The payment standard used to calculate the HAP is the lower of the payment standard for the family unit size or the pro rata share of the payment standard for the group home size. The pro rata share is calculated by dividing the number of persons in the assisted household by the number of persons (assisted and unassisted) living in the group home. The number of persons in the assisted household equals one assisted person plus any LBHA-approved live-in aide.

The HAP for an assisted occupant in a group home is the lower of the payment standard minus the TTP or the gross rent minus the TTP.

The utility allowance for an assisted occupant in a group home is the pro rata share of the family unit size to the utility allowance for the group home.

The rents paid for participants residing in group homes are subject to generally applicable standards for rent reasonableness. The rent for an assisted person must not exceed the pro rata portion of the reasonable rent for the group home. In determining reasonable rent, the LBHA must consider whether sanitary facilities and facilities for food preparation and service are common facilities or private facilities.

### **15-III.C. NATIONAL STANDARDS FOR THE PHYSICAL INSPECTION OF REAL ESTATE (NSPIRE)**

The entire unit must comply with NSPIRE requirements described in Chapter 8, except for the standards that relate to sanitary facilities, food preparation and refuse disposal, space and security, structure and materials, and site and neighborhood and stated below.

- *Sanitary Facilities:* A group home must have at least one bathroom in the facility, with a flush toilet that can be used in privacy, a fixed basin with hot and cold running water, and a shower or bathtub with hot and cold running water. A group home may contain private or common bathrooms. However, no more than four residents can be required to share a bathroom.
- *Food Preparation and Service:* Group home units must contain a kitchen and dining area with adequate space to store, prepare, and serve food. The facilities for food preparation and service may be private or may be shared by the residents. The kitchen must contain a range, an oven, a refrigerator, and a sink with hot and cold running water. The sink must drain into an approvable public or private disposal system.
- *Space and Security:* Group homes must contain at least one bedroom of appropriate size for every two people, and a living room, kitchen, dining area, bathroom, and other appropriate social, recreational, or community space that may be shared with other residents. Doors and windows accessible from outside the unit must be lockable.
- *Structure and Material:* To avoid any threat to the health and safety of the residents, group homes must be structurally sound. Elevators must be in good condition. Group homes must be accessible to and usable by residents with disabilities.



- *Site and Neighborhood:* Group homes must be located in a residential setting. The site and neighborhood should be reasonably free from disturbing noises and reverberations, and other hazards to the health, safety, and general welfare of the residents, and should not be subject to serious adverse conditions, such as:
  - Dangerous walks or steps
  - Instability
  - Flooding, poor drainage
  - Septic tank back-ups, sewage hazards
  - Mud slides
  - Abnormal air pollution
  - Smoke or dust
  - Excessive noise
  - Vibrations or vehicular traffic
  - Excessive accumulations of trash
  - Vermin or rodent infestation, and
  - Fire hazards.

The housing quality standards applicable to lead-based paint do not apply unless a child under the age of six is expected to reside in the unit.



## **PART IV: SHARED HOUSING**

[24 CFR 982.615 through 982.618; Form HUD-52641; Notice PIH 2021-05; New HCV GB, *Special Housing Types*, p. 11]

### **15-IV.A. OVERVIEW**

Families in markets with tight rental conditions or with a prevalence of single-family housing may determine a shared housing living arrangement to be a useful way to secure affordable housing. LBHAs offering shared housing as a housing solution may also experienced some reduction in the average per-unit-cost (PUC) paid on behalf of assisted families.

Shared housing is a single housing unit occupied by an assisted family and another resident or residents. The unit may be a house or an apartment. The shared unit consists of both common space for use by the occupants of the unit and separate private space for each assisted family.

An assisted family may share a unit with other persons assisted under the HCV program or with other unassisted persons.

Shared housing may be offered in a number of ways, including for-profit co-living (such as a boarding house, single bedroom with common living room/kitchen/dining room) run by a private company [Notice PIH 2021-05].

The owner of a shared housing unit may reside in the unit, but housing assistance may not be paid on behalf of the owner. The resident owner may not be related by blood or marriage to the assisted family.

If approved by the LBHA, a live-in aide may reside with the family to care for a person with disabilities. The LBHA 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 shared housing is offered as a housing option, HUD encourages LBHAs to consider ways in which the families may be assisted in finding shared housing, including for-profit shared housing matching (such as roommates or single-family homes) and online sites that charge a fee for their matching services, or nonprofit shared housing matching services. HUD further encourages LBHAs to include information about this housing possibility in the family's voucher briefing.

#### LBHA Policy

The LBHA will provide information to families regarding the shared housing option, including a listing to families of any known for-profit or nonprofit shared housing matching services in the community at briefing, and upon request. Families will be advised they can conduct their own internet search. Families will be cautioned to not enter into any rental agreement or pay any deposit or rental payment until the tenancy is approved by the LBHA.

LBHAs should be aware of potential local legal barriers to HCV participants using shared housing, which can create additional obstacles for shared housing:

- Municipalities may have occupancy limits for the number of unrelated persons who may share a housing unit.
- Local zoning codes for single family housing may restrict occupancy in certain areas to households whose family members are related by blood.

LBHAs should work with local jurisdictions to find solutions that encourage affordable housing and are consistent with the Fair Housing Act, Title VI, and other federal, state, and local fair housing laws. LBHAs should inform HUD if they encounter barriers to shared housing that may conflict with fair housing laws.

#### LBHA Policy

The LBHA will work with local jurisdictions as necessary to identify solutions consistent with fair housing laws and will inform HUD if the LBHA encounters barriers to shared housing that conflict with fair housing laws.

When providing HCV assistance in shared housing, a separate lease and HAP contract are executed for each assisted family. The standard form of the HAP contract is used (form HUD-52641) with the special housing type specified in Part A of the HAP contract, as follows: “This HAP contract is used for the following special housing type under HUD regulations for the Section 8 voucher program: Shared housing.”

## 15-IV.B. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION

The payment standard for a family in shared housing is the lower of the payment standard for the family unit size (voucher size) or the pro rata share of the payment standard for the shared housing unit size.

The pro rata share is calculated by dividing the number of bedrooms available for occupancy by the assisted family in the private, non-shared space by the total number of bedrooms in the unit.

**Example:** Family holds a two-bedroom voucher.  
Shared housing unit size: bedrooms available to assisted family = 2  
Total bedrooms in the unit: 3  
2 Bedrooms for assisted family  
÷ 3 Bedrooms in the unit  
.667 pro rata share  
2 BR payment standard: \$1200  
3 BR payment standard: \$1695  $\$1695 \times .667$  (pro rata share) = \$1131 \$1131 is lower than the \$1200 payment standard for the 2 BR family unit size \$1131 is the payment standard used to calculate the HAP

The HAP for a family in shared housing is the lower of the payment standard minus the TTP or the gross rent minus the TTP.

The utility allowance for an assisted family living in shared housing is the pro rata share of the utility allowance for the shared housing unit.

**Example:** A family holds a 2-bedroom voucher. The family decides to occupy 3 out of 4 bedrooms available in the unit.

- The utility allowance for a 4-bedroom unit equals \$200
- The utility allowance for a 2-bedroom unit equals \$100
- The pro rata share of the utility allowance is \$150 (3/4 of \$200)
- The LBHA will use the 2-bedroom utility allowance of \$100.

The rents paid for families living in shared housing are subject to generally applicable standards for rent reasonableness. The rent paid to the owner for the assisted family must not exceed the pro rata portion of the reasonable rent for the shared unit. In determining reasonable rent, the LBHA may consider whether sanitary and food preparation areas are private or shared.

### **15-IV.C. NATIONAL STANDARDS FOR THE PHYSICAL INSPECTION OF REAL ESTATE (NSPIRE)**

The LBHA 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.

NSPIRE requirements described in Chapter 8 apply to shared housing except for the requirements stated below.

- *Facilities Available for the Family:* Facilities available to the assisted family, whether shared or private, must include a living room, a bathroom, and food preparation and refuse disposal facilities.
- *Space and Security:* The entire unit must provide adequate space and security for all assisted and unassisted residents. The private space for each assisted family must contain at least one bedroom for each two persons in the family. The number of bedrooms in the private space of an assisted family must not be less than the family unit size (voucher size). A zero-bedroom or one-bedroom unit may not be used for shared housing.

## **PART V: COOPERATIVE HOUSING**

[24 CFR 982.619; New HCV GB, *Special Housing Types*, p. 14]

### **15-V.A. OVERVIEW**

This part applies to rental assistance for a cooperative member residing in cooperative housing. It does not apply to assistance for a cooperative member who has purchased membership under the HCV homeownership option, or to rental assistance for a family that leases a cooperative housing unit from a cooperative member.

A cooperative is a form of ownership (nonprofit corporation or association) in which the residents purchase memberships in the ownership entity. Rather than being charged “rent” a cooperative member is charged a “carrying charge.” The monthly carrying charge includes the member’s share of the cooperative debt service, operating expenses, and necessary payments to cooperative reserve funds. It does not include down payments or other payments to purchase the cooperative unit or to amortize a loan made to the family for this purpose.

The occupancy agreement or lease and other appropriate documents must provide that the monthly carrying charge is subject to Section 8 limitations on rent to owner, and the rent must be reasonable as compared to comparable unassisted units.

When providing HCV assistance in cooperative housing, the standard form of the HAP contract is used with the special housing type specified in Part A of the HAP contract, as follows: “This HAP contract is used for the following special housing type under HUD regulations for the Section 8 voucher program: Cooperative housing.”

### **15-V.B. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION**

The payment standard and utility allowance are determined according to regular HCV program requirements.

The HAP for a cooperative housing unit is the lower of the payment standard minus the TTP or the gross rent (monthly carrying charge for the unit, plus any utility allowance) minus the TTP. The monthly carrying charge includes the member’s share of the cooperative debt service, operating expenses, and necessary payments to cooperative reserve funds. The carrying charge does not include down payments or other payments to purchase the cooperative unit or to amortize a loan made to the family for this purpose.

## **15-V.C. NATIONAL STANDARDS FOR THE PHYSICAL INSPECTION OF REAL ESTATE (NSPIRE)**

All standard NSPIRE requirements apply to cooperative housing units. There are no additional NSPIRE requirements. The LBHA remedies described in 24 CFR 982.404 do not apply. Rather, if the unit and premises are not maintained in accordance with NSPIRE standards, the LBHA may exercise all available remedies regardless of whether the family or cooperative is responsible for the breach of NSPIRE standards.

No housing assistance payment can be made unless unit meets NSPIRE and the defect is corrected within the period as specified by the LBHA and the LBHA verifies correction (see Chapter 8).

In addition to regular NSPIRE deficiencies, breaches of NSPIRE standards by the family include failure to perform any maintenance for which the family is responsible in accordance with the terms of the cooperative occupancy agreement [HCV GB].



## **PART VI: MANUFACTURED HOMES**

[24 CFR 982.620 through 982.624; FR Notice 1/18/17; New HCV GB, *Special Housing Types*, p. 15;]

### **15-VI.A. OVERVIEW**

A manufactured home is a manufactured structure, transportable in one or more parts, that is built on a permanent chassis, and designed for use as a principal place of residence. HCV-assisted families may occupy manufactured homes in three different ways.

- (1) A family can choose to rent a manufactured home already installed on a space and the LBHA 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 NSPIRE requirements as provided in 15-VI.D. below.
- (2) A family can purchase a manufactured home under the Housing Choice Voucher Homeownership program.
- (3) HUD also permits an otherwise eligible family that owns a manufactured home to rent a space for the manufactured home and receive HCV assistance with the rent for the space as well as certain other housing expenses. LBHAs may, but are not required to, provide assistance for such families.

### **15-VI.B. SPECIAL REQUIREMENTS FOR MANUFACTURED HOME OWNERS WHO LEASE A SPACE**

#### **Family Income**

In determining the annual income of families leasing manufactured home spaces, the value of the family's equity in the manufactured home in which the family resides is not counted as a family asset.

#### **Lease and HAP Contract**

There is a designated HAP Contract (form HUD-52642) and designated Tenancy Addendum (form HUD 52642-A) for this special housing type.

## **15-VI.C. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION [FR Notice 1/18/17]**

### **Payment Standards**

The LBHA payment standard for manufactured homes is determined in accordance with 24 CFR 982.505 and is the payment standard used for the LBHA's HCV program. It is based on the applicable FMR for the area in which the manufactured home space is located.

The payment standard for the family is the lower of the family unit size (voucher size) or the payment standard for the number of bedrooms in the manufactured home.

### **Utility Allowance**

The LBHA must establish utility allowances for manufactured home space rental. For the first 12 months of the initial lease term only, the allowance must include an amount for a utility hook-up charge if the family actually incurred a hook-up charge because of a move. This allowance will not be given to a family that leases in place. Utility allowances for manufactured home space must not include the costs of digging a well or installing a septic system.

If the amount of the monthly assistance payment for a family exceeds the monthly rent for the manufactured home space (including the owner's monthly management and maintenance charges), the LBHA may pay the remainder to the family, lender, or utility company.

### **Space Rent**

The rent for the manufactured home space (including other eligible housing expenses) is the total of:

- The rent charged for the manufactured home space;
- Owner maintenance and management charges for the space;
- The monthly payments made by the family to amortize the cost of purchasing the manufactured home, including any required insurance and property taxes; and
- The applicable allowance for tenant-paid utilities.

### **Amortization Costs**

The monthly payment made by the family to amortize the cost of purchasing the manufactured home is the debt service established at the time of application to a lender for financing the purchase of the manufactured home if monthly payments are still being made. Any increase in debt service due to refinancing after purchase of the home may not be included in the amortization cost. Debt service for set-up charges incurred by a family may be included in the monthly amortization payments made by the family. In addition, set-up charges incurred before the family became an assisted family may be included in the amortization cost if monthly payments are still being made to amortize the charges.

### **Housing Assistance Payment**

The HAP for a manufactured home space under the housing choice voucher program is the lower of the payment standard minus the TTP or the manufactured home space rent (including other eligible housing expenses) minus the TTP.

### **Rent Reasonableness**

Initially, and at least annually thereafter, the LBHA must determine that the rent for the manufactured home space is reasonable based on rents for comparable manufactured home spaces. The LBHA must consider the location and size of the space, and any services and maintenance to be provided by the owner. By accepting the monthly housing assistance payment, the owner of the manufactured home space certifies that the rent does not exceed rents charged by the owner for comparable unassisted spaces in the same manufactured home park or elsewhere.

If requested by the LBHA, the owner must give the LBHA information on rents charged by the owner for other manufactured home spaces.

## **15-VI.D. NATIONAL STANDARDS FOR THE PHYSICAL INSPECTION OF REAL ESTATE (NSPIRE)**

Under either type of occupancy described in 15-VI.A. above, the manufactured home must meet all NSPIRE performance requirements and acceptability criteria discussed in Chapter 8 of this plan. In addition, the following requirement applies:

### ***Manufactured Home Tie-Down***

A manufactured home must be placed on the site in a stable manner and must be free from hazards such as sliding or wind damage. The home must be securely anchored by a tie-down device that distributes and transfers the loads imposed by the unit to appropriate ground anchors to resist overturning and sliding.

## **PART VII: HOMEOWNERSHIP**

[24 CFR 982.625 through 982.643]

### **15-VII.A. OVERVIEW [24 CFR 982.625]**

The homeownership option is used to assist a family residing in a home purchased and owned by one or more members of the family. A family assisted under this option may be newly admitted or an existing participant in the HCV program. The LBHA must have the capacity to operate a successful HCV homeownership program as defined by the regulations.

#### LBHA Policy

The LBHA requires that financing for purchase of a home under its Section 8 homeownership program complies with secondary mortgage market underwriting requirements; or complies with generally accepted private sector underwriting standards

There are two forms of homeownership assistance described in the regulations: monthly homeownership assistance payments and single down payment assistance grants. However, LBHAs may not offer down payment assistance until and unless funding is allocated by Congress. Since this has not yet happened, only monthly homeownership assistance may be offered.

#### LBHA Policy

The LBHA will offer the monthly homeownership assistance payments to qualified families.

The LBHA may choose not to offer homeownership assistance. However, the LBHA must offer homeownership assistance if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities. It is the sole responsibility of the LBHA to determine whether it is reasonable to implement a homeownership program as a reasonable accommodation. The LBHA must determine what is reasonable based on the specific circumstances and individual needs of the person with a disability. The LBHA may determine that it is not reasonable to offer homeownership assistance as a reasonable accommodation in cases where the LBHA has otherwise opted not to implement a homeownership program.

The LBHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

## 15-VII.B. FAMILY ELIGIBILITY [24 CFR 982.627]

If the LBHA offers the homeownership option, participation by the family is optional. However, the family must meet all of the requirements listed below before the commencement of homeownership assistance. The LBHA may also establish additional initial requirements as long as they are described in the LBHA administrative plan.

- The family must have been admitted to the Housing Choice Voucher program.
- The family must qualify as a first-time, homeowner, or may be a cooperative member.
- The family must meet the Federal minimum income requirement. The family must have a gross annual income equal to the Federal minimum wage multiplied by 2000, based on the income of adult family members who will own the home. The LBHA may establish a higher income standard for families. However, a family that meets the federal minimum income requirement (but not the LBHA's requirement) will be considered to meet the minimum income requirement if it can demonstrate that it has been pre-qualified or pre-approved for financing that is sufficient to purchase an eligible unit.

### LBHA Policy

The LBHA will not establish a higher minimum income standard for disabled and/or non-disabled families.

- For disabled families, the minimum income requirement is equal to the current SSI monthly payment for an individual living alone, multiplied by 12.
- For elderly or disabled families, welfare assistance payments for adult family members who will own the home will be included in determining whether the family meets the minimum income requirement. It will not be included for other families.
- The family must satisfy the employment requirements by demonstrating that one or more adult members of the family who will own the home at commencement of homeownership assistance is currently employed on a full-time basis (the term *full-time employment* means not less than an average of 30 hours per week); and has been continuously so employed during the year before commencement of homeownership assistance for the family.

### LBHA Policy

Families will be considered “continuously employed” if the break in employment does not exceed two months.

The LBHA will count self-employment in a business when determining whether the family meets the employment requirement.

- The employment requirement does not apply to elderly and disabled families. In addition, if a family, other than an elderly or disabled family includes a person with disabilities, the LBHA must grant an exemption from the employment requirement if the LBHA determines that it is needed as a reasonable accommodation.
- The family has not defaulted on a mortgage securing debt to purchase a home under the homeownership option

- Except for cooperative members who have acquired cooperative membership shares prior to commencement of homeownership assistance, no family member has a present ownership interest in a residence at the commencement of homeownership assistance for the purchase of any home.
- Except for cooperative members who have acquired cooperative membership shares prior to the commencement of homeownership assistance, the family has entered a contract of sale in accordance with 24 CFR 982.631(c).

#### LBHA Policy

The LBHA will impose additional eligibility requirements. To be eligible to participate in the homeownership option, families must meet the following criteria:

The family has had no family-caused violations of HUD's Housing Quality standards within the past year.

The family is not within the initial one-year period of a HAP Contract.

The family owes no money to the LBHA.

The family has not committed any serious or repeated violations of a LBHA-assisted lease within the past year.

### **15-VII.C. SELECTION OF FAMILIES [24 CFR 982.626]**

Unless otherwise provided (under the homeownership option), the LBHA may limit homeownership assistance to families or purposes defined by the LBHA and may prescribe additional requirements for commencement of homeownership assistance for a family. Any such limits or additional requirements must be described in the LBHA administrative plan.

If the LBHA limits the number of families that may participate in the homeownership option, the LBHA must establish a system by which to select families to participate.

#### LBHA Policy

The LBHA will administer up to ten new homeownership units per year. The LBHA may exceed the number of units planned per year if it is necessary as a reasonable accommodation for a person with a disability. If this occurs, the LBHA may reduce the number of homeownership units offered in subsequent years.

Families who have been participating in an economic self-sufficiency program for at least six months, or have graduated from such a program, will be given preference over other families. Elderly and disabled families will automatically be given this preference.

Within preference and non-preference categories, families will be selected according to the date and time their application for participation in the homeownership option is submitted to the LBHIA.

All families must meet eligibility requirements as defined in Section 15-VII.B. of this plan.



### **15-VII.D. ELIGIBLE UNITS [24 CFR 982.628]**

In order for a unit to be eligible, the LBHA must determine that the unit satisfies all of the following requirements:

- The unit must meet HUD’s “eligible housing” requirements. The unit may not be any of the following:
  - A public housing or Indian housing unit;
  - A unit receiving Section 8 project-based assistance;
  - A nursing home, board and care home, or facility providing continual psychiatric, medical or nursing services;
  - A college or other school dormitory;
  - On the grounds of penal, reformatory, medical, mental, or similar public or private institutions.
- The unit must be a one-unit property or a single dwelling unit in a cooperative or condominium.
- The unit must have been inspected by the LBHA and by an independent inspector designated by the family.
- The unit must meet Housing Quality Standards (see Chapter 8).
- For a unit where the family will not own fee title to the real property (such as a manufactured home), the home must have a permanent foundation and the family must have the right to occupy the site for at least 40 years.

Families may enter into contracts of sale for units not yet under construction. However, the LBHA will not commence homeownership assistance for the family for that unit until:

1. Either the responsible entity completes the environmental review as required by 24 CFR part 58 and HUD approved the environmental certification and request for release of funds prior to commencement of construction or HUD performed an environmental review under CFR part 50 and notified the LBHA in writing of environmental approval of the site prior to construction commencement; and
  2. Construction of the unit has been completed and the unit has passed the required NSPIRE inspection and independent inspection as addressed elsewhere in this chapter.
- For LBHA-owned units all of the following conditions must be satisfied:
    - The LBHA informs the family, both orally and in writing, that the family has the right to purchase any eligible unit and a LBHA-owned unit is freely selected by the family without LBHA pressure or steering;
    - The unit is not ineligible housing;
    - The LBHA obtains the services of an independent agency to inspect the unit for compliance with NSPIRE standards, review the independent inspection report, review the contract of sale, determine the reasonableness of the sales price and any LBHA provided financing. All of these actions must be completed in accordance with program requirements.

The LBHA must not approve the unit if the LBHA has been informed that the seller is debarred, suspended, or subject to a limited denial of participation.

## **15-VII.E. ADDITIONAL LBHA REQUIREMENTS FOR SEARCH AND PURCHASE [24 CFR 982.629]**

It is the family's responsibility to find a home that meets the criteria for voucher homeownership assistance. The LBHA may establish the maximum time that will be allowed for a family to locate and purchase a home and may require the family to report on their progress in finding and purchasing a home. If the family is unable to purchase a home within the maximum time established by the LBHA, the LBHA may issue the family a voucher to lease a unit or place the family's name on the waiting list for a voucher.

### LBHA Policy

The family will be allowed 120 days to identify a unit and submit a sales contract to the LBHA for review. The family will be allowed an additional 120 days to close on the home. The LBHA may grant extensions to either of these periods for good cause. The length of the extension(s) will be determined on a case-by-case, but in no case will an extension exceed a total of 125 days. The maximum amount of time a family will be given to locate and complete the purchase of a home under the homeownership option is 365 days.

During these periods, the family will continue to receive HCV rental assistance in accordance with any active lease and HAP contract until the family vacates the rental unit for its purchased home.

All requests for extensions must be submitted in writing to the LBHA prior to the expiration of the period for which the extension is being requested. The LBHA will approve or disapprove the extension request within 10 business days. The family will be notified of the LBHA's decision in writing.

The family will be required to report their progress on locating and purchasing a home to the LBHA every 30 days until the home is purchased.

If the family cannot complete the purchase of a unit within the maximum required time frame, and is not receiving rental assistance under a HAP contract at the time the search and purchase time period expires, the family will be issued a voucher to lease a unit.

## **15-VII.F. HOMEOWNERSHIP COUNSELING [24 CFR 982.630]**

Before commencement of homeownership assistance for a family, the family must attend and satisfactorily complete the pre-assistance homeownership and housing counseling program required by the LBHA. HUD suggests the following topics for the LBHA-required pre-assistance counseling:

- Home maintenance (including care of the grounds);
- Budgeting and money management;
- Credit counseling;
- How to negotiate the purchase price of a home;
- How to obtain homeownership financing and loan pre-approvals, including a description of types of financing that may be available, and the pros and cons of different types of financing;
- How to find a home, including information about homeownership opportunities, schools, and transportation in the LBHA jurisdiction;
- Advantages of purchasing a home in an area that does not have a high concentration of low-income families and how to locate homes in such areas;
- Information on fair housing, including fair housing lending and local fair housing enforcement agencies; and
- Information about the Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.) (RESPA), state and Federal truth-in-lending laws, and how to identify and avoid loans with oppressive terms and conditions.

The LBHA may adapt the subjects covered in pre-assistance counseling (as listed) to local circumstances and the needs of individual families.

The LBHA may also offer additional counseling after commencement of homeownership assistance (ongoing counseling). If the LBHA offers a program of ongoing counseling for participants in the homeownership option, the LBHA shall have discretion to determine whether the family is required to participate in the ongoing counseling.

If the LBHA does not use a HUD-approved housing counseling agency to provide the counseling, the LBHA should ensure that its counseling program is consistent with the counseling provided under HUD's Housing Counseling program.

### LBHA Policy

Families will not be required to participate in ongoing counseling after commencement of homeownership assistance.

## **15-VII.G. HOME INSPECTIONS, CONTRACT OF SALE, AND LBHA DISAPPROVAL OF SELLER [24 CFR 982.631]**

### **Home Inspections**

The LBHA may not commence monthly homeownership assistance payments for a family until the LBHA has inspected the unit and has determined that the unit passes NSPIRE standards.

#### LBHA Policy

When the family locates a home they wish to purchase and submits a copy of their purchase offer/contract, the LBHA will conduct an NSPIRE inspection within 10 business days. Any items found not to meet NSPIRE standards must be repaired before the unit can be determined eligible for the homeownership program.

An independent professional inspector selected by and paid for by the family must also inspect the unit. The independent inspection must cover major building systems and components, including foundation and structure, housing interior and exterior, and the roofing, plumbing, electrical, and heating systems. The independent inspector must be qualified to report on property conditions, including major building systems and components.

The LBHA may not require the family to use an independent inspector selected by the LBHA. The independent inspector may not be a LBHA employee or contractor, or other person under control of the LBHA. However, the LBHA may establish standards for qualification of inspectors selected by families under the homeownership option.

#### LBHA Policy

The family must hire an independent professional inspector, whose report must be submitted to the LBHA for review. This inspector must be a member of the American Society of Home Inspectors (ASHI) or other recognized professional society, or a licensed engineer. The inspector cannot be an LBHA employee or contractor.

The LBHA may disapprove a unit for assistance based on information in the independent inspector's report, even if the unit was found to comply with NSPIRE standards.

#### LBHA Policy

The LBHA will review the professional report in a timely fashion and, based on the presence of major physical problems, may advise the family not to purchase the home. The family may choose to purchase the home in spite of the LBHA's advice.

While the family is receiving homeownership assistance, the LBHA will conduct an inspection every other year.

## **Contract of Sale**

Before commencement of monthly homeownership assistance payments, a member or members of the family must enter into a contract of sale with the seller of the unit to be acquired by the family. The family must give the LBHA a copy of the contract of sale. The contract of sale must:

- Specify the price and other terms of sale by the seller to the purchaser;
- Provide that the purchaser will arrange for a pre-purchase inspection of the dwelling unit by an independent inspector selected by the purchaser;
- Provide that the purchaser is not obligated to purchase the unit unless the inspection is satisfactory to the purchaser;
- Provide that the purchaser is not obligated to pay for any necessary repairs; and
- Contain a certification from the seller that the seller has not been debarred, suspended, or subject to a limited denial of participation under CFR part 24.
- A contract for the sale of a unit not yet under construction must meet all above requirements, and requirements below. Commencement of construction in violation of the below requirements voids the purchase contract.
  - The purchaser is not obligated to purchase the unit unless an environmental review has been performed and the site received environmental approval prior to commencement of construction in accordance with 24 CFR 982.628; and
  - The construction will not commence until the environmental review has been completed and the seller has received written notice from the LBHA that environmental approval has been obtained. Environmental approval may be conditioned on the contracting parties' agreement to modification to the unit design or to mitigation actions.

## **Disapproval of a Seller**

In its administrative discretion, the LBHA may deny approval of a seller for the same reasons a LBHA may disapprove an owner under the regular HCV program [see 24 CFR 982.306(c)].

## **15-VII.H. FINANCING [24 CFR 982.632]**

The LBHA may establish requirements for financing purchase of a home under the homeownership option. This may include requirements concerning qualification of lenders, terms of financing, restrictions concerning debt secured by the home, lender qualifications, loan terms, and affordability of the debt. The LBHA must establish policies describing these requirements in the administrative plan.

A LBHA may not require that families acquire financing from one or more specified lenders, thereby restricting the family's ability to secure favorable financing terms.

### LBHA Policy

As a check against predatory lending, the LBHA will review the financing of each purchase transaction, including estimated closing costs. The LBHA will review the loans for features, such as balloon payments, adjustable rate mortgages, and unusually high interest rates, all of which are prohibited. The LBHA also will not approve "seller financing" or "owner-held" mortgages. Beyond these basic criteria, the LBHA will rely on the lenders to determine that the loan will be affordable to program participants.

The mortgage the family applies for must require a minimum down payment of at least three percent of the sales price with one percent of the down payment coming from the purchaser's personal funds. The LBHA will not require that the family have any more than the minimum of one percent of their own money in the transaction. However, in cases where a lender is requiring a larger amount, the family may be held to the underwriting guidelines set by their lending institution.

The LBHA will approve a family's request to utilize its Family Self-Sufficiency escrow account after final disbursement for down payment and/or closing costs when purchasing a unit under the HCV homeownership option.

## **15-VII.I. CONTINUED ASSISTANCE REQUIREMENTS; FAMILY OBLIGATIONS [24 CFR 982.633]**

Homeownership assistance may only be paid while the family is residing in the home. If the family moves out of the home, the LBHA may not continue homeownership assistance after the month when the family moves out. The family or lender is not required to refund to the LBHA the homeownership assistance for the month when the family moves out.

Before commencement of homeownership assistance, the family must execute a statement of family obligations in the form prescribed by HUD [form HUD-52649]. In the statement, the family agrees to comply with all family obligations under the homeownership option.

The family must comply with the following obligations:

- The family must comply with the terms of the mortgage securing debt incurred to purchase the home, or any refinancing of such debt.
- The family may not convey or transfer ownership of the home, except for purposes of financing, refinancing, or pending settlement of the estate of a deceased family member. Use and occupancy of the home are subject to 24 CFR 982.551 (h) and (i).
- The family must supply information to the LBHA or HUD as specified in 24 CFR 982.551(b). The family must further supply any information required by the LBHA or HUD concerning mortgage financing or refinancing, sale or transfer of any interest in the home, or homeownership expenses.
- The family must notify the LBHA before moving out of the home.
- The family must notify the LBHA if the family defaults on the mortgage used to purchase the home.
- The family must provide the LBHA with information on any satisfaction or payment of the mortgage debt.
- No family member may have any ownership interest in any other residential property.
- The family must comply with the obligations of a participant family described in 24 CFR 982.551, except for the following provisions which do not apply to assistance under the homeownership option: 24 CFR 982.551(c), (d), (e), (f), (g) and (j).

### LBHA Policy

Any deficiencies noted on any inspection after the initial inspection will have to be corrected by the family within 30 calendar days as a condition of continued assistance.



#### **15-VII.J. MAXIMUM TERM OF HOMEOWNER ASSISTANCE [24 CFR 982.634]**

Except in the case of a family that qualifies as an elderly or disabled family, other family members (described below) shall not receive homeownership assistance for more than:

- Fifteen years, if the initial mortgage incurred to finance purchase of the home has a term of 20 years or longer; or
- Ten years, in all other cases.

The maximum term described above applies to any member of the family who:

- Has an ownership interest in the unit during the time that homeownership payments are made; or
- Is the spouse of any member of the household who has an ownership interest in the unit during the time homeownership payments are made.

In the case of an elderly family, the exception only applies if the family qualifies as an elderly family at the start of homeownership assistance. In the case of a disabled family, the exception applies if at any time during receipt of homeownership assistance the family qualifies as a disabled family.

If, during the course of homeownership assistance, the family ceases to qualify as a disabled or elderly family, the maximum term becomes applicable from the date homeownership assistance commenced. However, such a family must be provided at least 6 months of homeownership assistance after the maximum term becomes applicable (provided the family is otherwise eligible to receive homeownership assistance).

If the family has received such assistance for different homes, or from different LBHAs, the total of such assistance terms is subject to the maximum term described in this part.

### **15-VII.K. HOMEOWNERSHIP ASSISTANCE PAYMENTS AND HOMEOWNERSHIP EXPENSES [24 CFR 982.635]**

The monthly homeownership assistance payment is the lower of: the voucher payment standard minus the total tenant payment, or the monthly homeownership expenses minus the total tenant payment.

In determining the amount of the homeownership assistance payment, the LBHA will use the same payment standard schedule, payment standard amounts, and subsidy standards as those described elsewhere in this plan for the Housing Choice Voucher program. The payment standard for a family is the greater of (i) The payment standard as determined at the commencement of homeownership assistance for occupancy of the home, or (ii) The payment standard at the most recent regular reexamination of family income and composition since the commencement of homeownership assistance for occupancy of the home.

The LBHA must adopt policies for determining the amount of homeownership expenses to be allowed by the LBHA in accordance with HUD requirements.

Homeownership expenses (not including cooperatives) must include amounts allowed by the LBHA to cover:

- Principal and interest on initial mortgage debt, any refinancing of such debt, and any mortgage insurance premium incurred to finance purchase of the home;
- Real estate taxes and public assessments on the home;
- Home insurance;
- The LBHA allowance for maintenance expenses;
- The LBHA allowance for costs of major repairs and replacements;
- The LBHA utility allowance for the home;
- Principal and interest on mortgage debt incurred to finance costs for major repairs, replacements or improvements for the home. If a member of the family is a person with disabilities, such debt may include debt incurred by the family to finance costs needed to make the home accessible for such person, if the LBHA determines that allowance of such costs as homeownership expenses is needed as a reasonable accommodation so that the homeownership option is readily accessible to and usable by such person;
- Land lease payments where a family does not own fee title to the real property on which the home is located; [see 24 CFR 982.628(b)].
- For a condominium unit, condominium operating charges or maintenance fees assessed by the condominium homeowner association.

The LBHA does not have the discretion to exclude any of the listed homeownership expenses or to add any additional items.

Homeownership expenses for a cooperative member include amounts allowed by the LBHA to cover:

- The cooperative charge under the cooperative occupancy agreement including payment for real estate taxes and public assessments on the home;
- Principal and interest on initial debt incurred to finance purchase of cooperative membership shares and any refinancing of such debt;
- Home insurance;
- The LBHA allowance for maintenance expenses;
- The LBHA allowance for costs of major repairs and replacements;
- The LBHA utility allowance for the home; and
- Principal and interest on debt incurred to finance major repairs, replacements or improvements for the home. If a member of the family is a person with disabilities, such debt may include debt incurred by the family to finance costs needed to make the home accessible for such person, if the LBHA determines that allowance of such costs as homeownership expenses is needed as a reasonable accommodation so that the homeownership option is readily accessible to and usable by such person.
- Cooperative operating charges or maintenance fees assessed by the cooperative homeowner association.

#### LBHA Policy

The LBHA will use the following amounts for homeownership expenses:

**Monthly homeownership payment.** This includes principal and interest on initial mortgage debt, taxes and insurance, public assessments, and any mortgage insurance premium, if applicable.

**Utility allowance.** The LBHA's utility allowance for the unit, based on the current HCV utility allowance schedule.

**Monthly maintenance/major repair/replacement allowance.** A single monthly maintenance/repair/replacement allowance will be provided at \$175 per month.

**Monthly co-op/condominium assessments.** If applicable, the monthly amount of co-op or condominium association operation and maintenance assessments.

**Monthly principal and interest on debt for improvements.** Principal and interest for major home repair, replacements, or improvements, if applicable.

**Land lease payments.** Land lease payments where a family does not own fee title to the real property on which the home is located.

The LBHA may pay the homeownership assistance payments directly to the family, or at the LBHA's discretion, to a lender on behalf of the family. If the assistance payment exceeds the amount due to the lender, the LBHA must pay the excess directly to the family.

#### LBHA Policy

The LBHA's housing assistance payment will be paid directly to the family. It will be the family's responsibility to make the entire payment to the lender. The LBHA may make an exception if the family requests the payment to go directly to the lender, and this arrangement is acceptable to the mortgage company. If the assistance payment exceeds the amount due to the lender, the LBHA must pay the excess directly to the family.

#### **15-VII.L. PORTABILITY [24 CFR 982.636, 982.637, 982.353(b) and (c), 982.552, 982.553]**

~~Subject to the restrictions on portability included in HUD regulations and LBHA policies, a family may exercise portability if the receiving LBHA is administering a voucher homeownership program and accepting new homeownership families. The receiving LBHA may absorb the family into its voucher program or bill the initial LBHA.~~

The family must attend the briefing and counseling sessions required by the receiving LBHA. The receiving LBHA will determine whether the financing for, and the physical condition of the unit, are acceptable. The receiving LBHA must promptly notify the initial LBHA if the family has purchased an eligible unit under the program, or if the family is unable to purchase a home within the maximum time established by the LBHA.

## **15-VII.M. MOVING WITH CONTINUED ASSISTANCE [24 CFR 982.637]**

A family receiving homeownership assistance may move with continued tenant-based assistance or with voucher homeownership assistance.

The LBHA must determine that all initial requirements have been satisfied if a family that has received homeownership assistance wants to move with continued homeownership assistance. However, the following do not apply:

- The requirement that a family must be a first-time homeowner is not applicable.
- The requirement for pre-assistance counseling is not applicable. However, the LBHA may require that the family complete additional counseling (before or after moving to a new unit with continued homeownership assistance).

Continued tenant-based assistance for a new unit cannot begin so long as any family member holds title to the prior home. However, when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking, and the move is needed to protect the health or safety of the family or family member (or any family member has been the victim of a sexual assault that occurred on the premises during the 90-calendar-day period preceding the family's request to move), such family or family member may be assisted with continued tenant-based assistance even if they own any title or other interest in the prior home.

The LBHA may deny permission to move to a new unit with continued voucher assistance:

- If the LBHA has insufficient funding to provide continued assistance.
- In accordance with 24 CFR 982.638, regarding denial or termination of assistance.
- In accordance with the LBHA's policy regarding number of moves within a 12-month period.

The LBHA must deny the family permission to move to a new unit with continued voucher rental assistance if:

- The family defaulted on an FHA-insured mortgage; and
- The family fails to demonstrate that the family has conveyed, or will convey, title to the home, as required by HUD, to HUD or HUD's designee; and
- The family has moved, or will move, from the home within the period established or approved by HUD.

### LBHA Policy

For families participating in the homeownership option, requests to move will be approved and/or denied in accordance with LBHA policies in Chapter 10.

The LBHA will not require additional counseling of any families who move with continued assistance.

## **15-VII.N. DENIAL OR TERMINATION OF ASSISTANCE [24 CFR 982.638]**

At any time, the LBHA may deny or terminate homeownership assistance in accordance with HCV program requirements in 24 CFR 982.552 (Grounds for denial or termination of assistance) or 24 CFR 982.553 (Crime by family members).

The LBHA may also deny or terminate assistance for violation of participant obligations described in 24 CFR Parts 982.551 or 982.633 and in accordance with its own policy, with the exception of failure to meet obligations under the Family Self-Sufficiency program as prohibited under the alternative requirements set forth in FR Notice 12/29/14.

Homeownership assistance for a family automatically terminates 180 calendar days after the last homeownership assistance payment on behalf of the family. However, a LBHA may grant relief from this requirement in those cases where automatic termination would result in extreme hardship for the family.

### LBHA Policy

In order for the LBHA to consider granting relief from the requirement to automatically terminate homeownership assistance 180 days following the LBHA's last housing assistance payment on behalf of the family, the family must submit a written request to the LBHA at least 30 days prior to the date of automatic termination. The request must include an explanation of the circumstances that will cause an extreme hardship for the family (e.g., the imminent loss of income or employment) as well as documentation supporting the request. The LBHA will determine on a case-by-case basis whether to grant relief from the requirement and for what period of time. In no case will the LBHA postpone termination beyond an additional 90 days.

The LBHA must terminate voucher homeownership assistance for any member of family receiving homeownership assistance that is dispossessed from the home pursuant to a judgment or order of foreclosure on any mortgage (whether FHA insured or non-FHA) securing debt incurred to purchase the home, or any refinancing of such debt.

### LBHA Policy

The LBHA will terminate a family's homeownership assistance if the family violates any of the homeowner obligations listed in Section 1, as well as for any of the reasons listed in Section 2 of form HUD-52649, Statement of Homeowner Obligations Housing Choice Homeownership Voucher Program.

In making its decision to terminate homeownership assistance, the LBHA 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 LBHA may, on a case-by-case basis, choose not to terminate assistance.

Termination notices will be sent in accordance with the requirements and policies set forth in Section 12-II.F.

## Chapter 16

### PROGRAM ADMINISTRATION

#### INTRODUCTION

This chapter discusses administrative policies and practices that are relevant to the activities covered in this plan. The policies are discussed in seven parts as described below:

Part I: Administrative Fee Reserve. This part describes the LBHA'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 LBHA. This part describes policies for recovery of monies that the LBHA has overpaid on behalf of families, or to owners, and describes the circumstances under which the LBHA 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 LBHA.

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 LBHA will follow.

Part VII: Reporting and Record Keeping for Children with Elevated Blood Lead Level. This part describes the LBHA's responsibilities for reporting, data collection, and record keeping relative to children with elevated blood lead levels that are less than six years of age, and are receiving HCV assistance.

Part VIII: Determination of Insufficient Funding. This part describes the LBHA's policies for determining if there is sufficient funding to issue vouchers, to approve moves to higher cost units or areas, and to continue assistance for all participant families.

Part IX: Violence against Women Act (VAWA): Notification, Documentation, Confidentiality. This part contains key terms used in VAWA and describes requirements related to notifying families and owners about their rights and responsibilities under VAWA; requesting documentation from victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking; and maintaining the confidentiality of information obtained from victims.





## **PART I: ADMINISTRATIVE FEE RESERVE [24 CFR 982.155]**

The LBHA will maintain administrative fee reserves, or unrestricted net position (UNP) for the program to pay program administrative expenses in excess of administrative fees paid by HUD for a LBHA fiscal year. HUD appropriations acts beginning with FFY 2004 have specified that administrative fee funding may be used only for activities related to the provision of HCV assistance, including related development activities. Notice PIH 2012-9 cites two examples of related development activities: unit modification for accessibility purposes and development of project-based voucher units. The notice makes clear that other activities may also qualify as related development activities. Administrative fees that remain in the UNP account from funding provided prior to 2004 may be used for “other housing purposes permitted by state and local law,” in accordance with 24 CFR 982.155(b)(1).

In addition, as specified in Notice PIH 2022-18, LBHAs may use administrative fee funding for both administrative and “other expenses” needed to employ strategies and undertake activities beyond regular administrative responsibilities to facilitate the successful leasing and use of housing choice vouchers by families, such as through the use of security deposit assistance and landlord recruitment and incentive payments, among other allowable expenses specified in the notice. LBHAs are also permitted to use UNP for these expenses [Notice PIH 2022-18].

If a LBHA has not adequately administered its HCV program, HUD may prohibit use of funds in the UNP Account and may direct the LBHA to use funds in that account to improve administration of the program, for HCV HAP expenses, or to reimburse ineligible expenses in accordance with the regulation at 24 CFR 982.155(b)(3).

HUD requires the LBHA Board of Commissioners or other authorized officials to establish the maximum amount that may be charged against the UNP account without specific approval.

### LBHA Policy

Expenditures from the UNP account will be made in accordance with all applicable federal requirements. Expenditures will not exceed \$10,000 per occurrence without the prior approval of the LBHA’s Board of Commissioners.



## **PART II: SETTING PROGRAM STANDARDS AND SCHEDULES**

### **16-II.A. OVERVIEW**

Although many of the program's requirements are established centrally by HUD, the HCV program's regulations recognize that some flexibility is required to allow the LBHA to adapt the program to local conditions. This part discusses how the LBHA 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).

#### LBHA Policy

Copies of the payment standard and utility allowance schedules are available for review in the LBHA'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 LBHA will maintain documentation to support its annual review of payment standards and utility allowance schedules. This documentation will be retained for at least 3 years.

Establishing and updating the LBHA passbook rate, which is used to calculate imputed income from assets, is covered in Chapter 6 (see Section 6-I.G.).

### **16-II.B. PAYMENT STANDARDS [24 CFR 982.503; HCV GB, Chapter 7]**

The payment standard sets the maximum subsidy payment a family can receive from the LBHA each month [24 CFR 982.505(a)]. Payment standards are based on fair market rents (FMRs) published annually by HUD. FMRs are set at a percentile within the rent distribution of standard quality rental housing units in each FMR area. For most jurisdictions FMRs are set at the 40th percentile of rents in the market area.

The LBHA must establish a payment standard schedule that establishes payment standard amounts for each FMR area within the LBHA's jurisdiction, and for each unit size within each of the FMR areas. For each unit size, the LBHA 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 LBHA is required to establish a payment standard within a "basic range" established by HUD – between 90 and 110 percent of the published FMR for each unit size.

## Updating Payment Standards

When HUD updates its FMRs, the LBHA must update its payment standards if the standards are no longer within the basic range [24 CFR 982.503(b)]. HUD may require the LBHA to make further adjustments if it determines that rent burdens for assisted families in the LBHA's jurisdiction are unacceptably high [24 CFR 982.503(g)].

### LBHA Policy

The LBHA will review the appropriateness of the payment standards on an annual basis when the new FMR is published, and at other times as determined necessary. In addition to ensuring the payment standards are always within the "basic range" the LBHA will consider the following factors when determining whether an adjustment should be made to the payment standard schedule:

**Funding Availability:** The LBHA 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 LBHA 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 LBHA will consider increasing the payment standard. In evaluating rent burdens, the LBHA will not include families renting a larger unit than their family unit size.

**Quality of Units Selected:** The LBHA may review the quality of units selected by participant families when making the determination of the percent of income families are paying for housing, to ensure that payment standard increases are only made when needed to reach the mid-range of the market.

**Changes in Rent to Owner:** The LBHA 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 LBHA may review the availability of units for each unit size, particularly in areas with low concentrations of poor and minority families.

**Lease-up Time and Success Rate:** The LBHA may consider the percentage of families that are unable to locate suitable housing before the voucher expires and whether families are leaving the jurisdiction to find affordable housing.

Effective dates of changes to payment standard amounts will be determined at time of update. The LBHA will always ensure the payment standards will be within the basic range.

**Exception Payment Standards [24 CFR 982.503(c)(5), Notice PIH 2018-01, FR Notice 9/27/21]**

A non-SAFMR LBHA may establish an exception payment standard for a zip code area of up to and including 110 percent of the SAFMR determined by HUD for that zip code area. Regardless of the level of the exception payment standard compared to the metropolitan area FMRs (MAFMRs), the LBHA must send an email to [SAFMRs@hud.gov](mailto:SAFMRs@hud.gov) to notify HUD that it has adopted an exception payment standard based on the SAFMR. A LBHA that adopts an exception payment standard pursuant to this authority must apply it to the entire ZIP code area, for both its HCV, and if applicable, its PBV program. For the PBV program, this means that the rent to owner may not exceed the new exception payment standard amount, provided the rent is still reasonable. A LBHA that adopts an exception payment standard area must revise its briefing materials to make families aware of the exception payment standard and the area that it covers.

In addition, HUD allows LBHAs to establish a HUD-Veterans Affairs Supportive Housing (HUD-VASH) exception payment standard. LBHAs may go up to but no higher than 120 percent of the FMR or SAFMR specifically for VASH families. LBHAs who want to establish a VASH exception payment standard over 120 percent must still request a waiver from HUD (See Section 19-III.E.).

**Voluntary Use of Small Area FMRs [24 CFR 982.503, Notice PIH 2018-01]**

LBHAs that administer vouchers in a metropolitan area where the adoption of SAFMRs is not required may request approval from HUD to voluntarily adopt SAFMRs. SAFMRs may be voluntarily adopted for one or more zip code areas.

**Unit-by-Unit Exceptions [24 CFR 982.503(b), 24 CFR 982.505(d), Notice PIH 2010-26]**

Unit-by-unit exceptions to the LBHA'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 LBHA's payment standard schedule.

When needed as a reasonable accommodation, the LBHA may make an exception to the payment standard without HUD approval if the exception amount does not exceed 120 percent of the applicable FMR for the unit size [24 CFR 982.503(b)]. The LBHA may request HUD approval for an exception to the payment standard for a particular family if the required amount exceeds 120 percent of the FMR.

### LBHA Policy

A family that requires a reasonable accommodation may request a higher payment standard at the time the Request for Tenancy Approval (RTA) is submitted. The family must document the need for the exception. In order to approve an exception, or request an exception from HUD, the LBHA must determine that:

There is a shortage of affordable units that would be appropriate for the family;

The family share would otherwise exceed 40 percent of adjusted monthly income; and

The rent for the unit is reasonable.

### **"Success Rate" Payment Standard Amounts [24 CFR 982.503(e)]**

If a substantial percentage of families have difficulty finding a suitable unit, the LBHA may request a "success rate payment standard" that applies to the entire jurisdiction. If approved by HUD, a success rate payment standard allows the LBHA to set its payment standards at 90-110 percent of a higher FMR (the 50<sup>th</sup>, rather than the 40<sup>th</sup> percentile FMR). To support the request, the LBHA 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 LBHA had established payment standards for all unit sizes, and for the entire jurisdiction, at 110 percent of the published FMR; and
- The LBHA had a policy of allowing voucher holders who made sustained efforts to locate units at least 90 days to search for a unit.

Although HUD approves the success rate payment standard for all unit sizes in the FMR area, the LBHA may choose to adjust the payment standard for only some unit sizes in all, or a designated part, of the LBHA's jurisdiction within the FMR area.

### **Decreases in the Payment Standard below the Basic Range [24 CFR 982.503(d)]**

The LBHA 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 LBHA-established utility allowance schedule is used in determining family share and LBHA subsidy. The LBHA 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 LBHA 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 LBHA 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 LBHA 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.

#### LBHA Policy

The LBHA 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 LBHA will apply this allowance to a family's rent and subsidy calculations.

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### **Reasonable Accommodation and Individual Relief**

Upon request from a family that includes a person with disabilities, the LBHA must approve a utility allowance which is higher than the applicable amount on the utility allowance schedule if a higher utility allowance is needed as a reasonable accommodation to make the program accessible and usable by the family member with a disability [24 CFR 982.517(e)]. See Chapter 2 for policies regarding the request and approval of reasonable accommodations.

Further, the LBHA may grant requests for relief from charges in excess of the utility allowance on reasonable grounds, such as special needs of the elderly, ill, or residents with disabilities, or special factors not within control of the resident, as the LBHA deems appropriate. The family must request the higher allowance and provide the LBHA with an explanation of the need for the individual relief and information about the amount of additional allowance required [see HCV GB, p. 18-8].

LBHAs should develop criteria for granting individual relief and to notify residents about the availability of individual relief, and also to notify participants about the availability of individual relief programs (sometimes referred to as “Medical Baseline discounts”) offered by the local utility company. Policies for granting exception utility allowances can be found in Section 6-III.D. of this plan.

### **Utility Allowance Revisions**

The LBHA must review its schedule of utility allowances each year, and must revise the schedule if there has been a change of 10 percent or more in any utility rate since the last time the allowance for that utility was revised [24 CFR 982.517(c)(1)].

The LBHA must maintain information supporting its annual review of utility allowance and any revisions made in its utility allowance schedule.



## **PART III: INFORMAL REVIEWS AND HEARINGS**

### **16-III.A. OVERVIEW**

Both applicants and participants have the right to disagree with, and appeal, certain decisions of the LBHA that may adversely affect them. LBHA decisions that may be appealed by applicants and participants are discussed in this section.

The process for applicant appeals of LBHA decisions is called the “informal review.” For participants (or applicants denied admission because of citizenship issues), the appeal process is called an “informal hearing.” LBHAs are required to include informal review procedures for applicants and informal hearing procedures for participants in their administrative plans [24 CFR 982.54(d)(12) and (13)].

### **16-III.B. INFORMAL REVIEWS**

Informal reviews are provided for program applicants. An applicant is someone who has applied for admission to the program, but is not yet a participant in the program. Informal reviews are intended to provide a “minimum hearing requirement” [24 CFR 982.554], and need not be as elaborate as the informal hearing requirements [*Federal Register* 60, no. 127 (3 July 1995): 34690].

#### **Decisions Subject to Informal Review [24 CFR 982.554(a) and (c)]**

The LBHA must give an applicant the opportunity for an informal review of a decision denying assistance [24 CFR 982.554(a)]. Denial of assistance may include any or all of the following [24 CFR 982.552(a)(2)]:

- Denying listing on the LBHA waiting list
- Denying or withdrawing a voucher
- Refusing to enter into a HAP contract or approve a lease
- Refusing to process or provide assistance under portability procedures

Informal reviews are *not* required for the following reasons [24 CFR 982.554(c)]:

- Discretionary administrative determinations by the LBHA
- General policy issues or class grievances
- A determination of the family unit size under the LBHA subsidy standards
- A LBHA determination not to approve an extension of a voucher term
- A LBHA determination not to grant approval of the tenancy
- A LBHA determination that the unit is not in compliance with the NSPIRE standards
- A LBHA determination that the unit does not meet space standards

### LBHA Policy

The LBHA will only offer an informal review to applicants for whom assistance is being denied. Denial of assistance includes: denying listing on the LBHA 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 LBHA must give an applicant prompt notice of a decision denying assistance. The notice must contain a brief statement of the reasons for the LBHA 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**

### LBHA Policy

A request for an informal review must be made in writing and delivered to the LBHA either in person or by first class mail, by the close of the business day, no later than 10 business days from the date of the LBHA's denial of assistance.

The LBHA must schedule and send written notice of the informal review within 10 business days of the family's request.

If the informal review will be conducted remotely, at the time the LBHA notifies the family of the informal review, the family will be informed:

Regarding the processes to conduct a remote informal review;

That, if needed, the LBHA will provide technical assistance prior to and during the informal review; and

That if the family or any individual witness has any technological, resource, or accessibility barriers preventing them from fully accessing the remote informal review, the family may inform the LBHA and the LBHA will assist the family in either resolving the issues or allow the family to participate in an in-person informal review, as appropriate.

#### **Informal Review Procedures [24 CFR 982.554(b)]**

The informal review must be conducted by a person other than the one who made or approved the decision under review, or a subordinate of this person.

The applicant must be provided an opportunity to present written or oral objections to the decision of the LBHA.

## **Remote Informal Reviews [Notice PIH 2020-32]**

There is no requirement that informal reviews be conducted in-person and, as such, HUD allows LBHAs to conduct all or a portion of their informal review remotely either over the phone, via video conferencing, or through other virtual platforms. If the LBHA chooses to conduct remote informal reviews, applicants may still request an in-person informal review, as applicable.

### LBHA Policy

The LBHA will not conduct remote informal reviews.

## **Ensuring Accessibility for Persons with Disabilities and LEP Individuals**

As with in-person informal reviews, the platform for conducting remote informal reviews must be accessible to persons with disabilities and the informal review must be conducted in accordance with Section 504 and accessibility requirements. This includes ensuring any information, websites, emails, digital notifications, and other virtual platforms are accessible for persons with vision, hearing, and other disabilities. Further, providing effective communication in a digital context may require the use of individualized auxiliary aids or services, such as audio description, captioning, sign language and other types of interpreters, keyboard accessibility, accessible documents, screen reader support, and transcripts. Auxiliary aids or services must be provided in accessible formats, in a timely manner, and in such a way to protect the privacy and independence of the individual. LBHAs may never request or require that individuals with disabilities provide their own auxiliary aids or services, including for remote informal hearings.

LBHAs are required to make reasonable accommodations in policies, practices, and procedures to ensure persons with disabilities have a full and equal opportunity to participate in and benefit from all aspects of the informal review process. See Chapter 2 for a more detailed discussion of reasonable accommodation requirements.

If no method of conducting a remote informal review is available that appropriately accommodates an individual's disability, the LBHA may not hold against the individual their inability to participate in the remote informal review, and the LBHA should consider whether postponing the remote informal review to a later date is appropriate or whether there is a suitable alternative.

Due to the individualized nature of disability, the appropriate auxiliary aid or service necessary, or reasonable accommodation, will depend on the specific circumstances and requirements.

As with in-person reviews, Limited English Proficiency (LEP) requirements also apply to remote informal reviews, including the use of interpretation services and document translation. See Chapter 2 for a more thorough discussion of accessibility and LEP requirements, all of which apply in the context of remote informal reviews.

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## **Conducting Remote Informal Reviews**

The LBHA must ensure that the lack of technology or inability to use technology for remote informal reviews does not pose a disadvantage to families that may not be apparent to the LBHA. The LBHA should determine through a survey or other means if these barriers exist prior to conducting the remote informal review and, if the family does not have the proper technology to fully participate, either postpone the informal review or provide an alternative means of access.

As with in-person informal reviews, the LBHA must provide all materials presented, whether paper or electronic, to the family prior to the remote informal review. The family must also be provided with an accessible means by which to transmit their own evidence.

The LBHA must ensure that the applicant has the right to hear and be heard. All LBHA policies and processes for remote informal reviews must be conducted in accordance with due process requirements and be in compliance with HUD regulations at 24 CFR 982.554 and guidance specified in Notice PIH 2020-32.

### LBHA Policy

The LBHA will not conduct remote informal reviews.

## **Informal Review Decision [24 CFR 982.554(b)]**

The LBHA must notify the applicant of the LBHA's final decision, including a brief statement of the reasons for the final decision.

### LBHA Policy

In rendering a decision, the LBHA will evaluate the following matters:

Whether or not the grounds for denial were stated factually in the notice to the family.

The validity of the grounds for denial of assistance. If the grounds for denial are not specified in the regulations, then the decision to deny assistance will be overturned.

The validity of the evidence. The LBHA 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 LBHA will uphold the decision to deny assistance.

If the facts prove the grounds for denial, and the denial is discretionary, the LBHA will consider the recommendation of the person conducting the informal review in making the final decision whether to deny assistance.

The LBHA will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed within 10 business days of the informal review, to the applicant and their representative, if any, along with proof of mailing.

If the decision to deny is overturned as a result of the informal review, processing for admission will resume.

If the family fails to appear for their informal review, the denial of admission will stand and the family will be so notified.

### **16-III.C. INFORMAL HEARINGS FOR PARTICIPANTS [24 CFR 982.555]**

LBHAs must offer an informal hearing for certain LBHA determinations relating to the individual circumstances of a participant family. A participant is defined as a family that has been admitted to the LBHA's HCV program and is currently assisted in the program. The purpose of the informal hearing is to consider whether the LBHA's decisions related to the family's circumstances are in accordance with the law, HUD regulations and LBHA policies.

The LBHA is not permitted to terminate a family's assistance until the time allowed for the family to request an informal hearing has elapsed, and any requested hearing has been completed. Termination of assistance for a participant may include any or all of the following:

- Refusing to enter into a HAP contract or approve a lease
- Terminating housing assistance payments under an outstanding HAP contract
- Refusing to process or provide assistance under portability procedures

#### **Decisions Subject to Informal Hearing**

Circumstances for which the LBHA must give a participant family an opportunity for an informal hearing are as follows:

- A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment
- A determination of the appropriate utility allowance (if any) for tenant-paid utilities from the LBHA utility allowance schedule
- A determination of the family unit size under the LBHA's subsidy standards
- A determination to terminate assistance for a participant family because of the family's actions or failure to act
- A determination to terminate assistance because the participant has been absent from the assisted unit for longer than the maximum period permitted under LBHA policy and HUD rules
- A determination to terminate a family's Family Self Sufficiency contract, withhold supportive services, or propose forfeiture of the family's escrow account [24 CFR 984.303(i)]

Circumstances for which an informal hearing is not required are as follows:

- Discretionary administrative determinations by the LBHA
- General policy issues or class grievances
- Establishment of the LBHA schedule of utility allowances for families in the program
- A LBHA determination not to approve an extension of a voucher term
- A LBHA determination not to approve a unit or tenancy
- A LBHA determination that a unit selected by the applicant is not in compliance with the NSPIRE standards
- A LBHA determination that the unit is not in accordance with space standards because of family size
- A determination by the LBHA to exercise or not to exercise any right or remedy against an owner under a HAP contract

LBHA Policy

The LBHA will only offer participants the opportunity for an informal hearing when required to by the regulations.

**Remote Informal Hearings [Notice PIH 2020-32]**

There is no requirement that informal hearings be conducted in-person, and as such, HUD allows LBHAs to conduct all or a portion of their informal hearings remotely either over the phone, via video conferencing, or through other virtual platforms. If the LBHA chooses to conduct remote informal hearings, applicants may still request an in-person informal hearing, as applicable.

LBHA Policy

The LBHA will not conduct remote informal hearings.

## **Ensuring Accessibility for Persons with Disabilities and LEP Individuals**

As with in-person informal hearings, the platform for conducting remote informal hearings must be accessible to persons with disabilities and the informal hearings must be conducted in accordance with Section 504 and accessibility requirements. This includes ensuring any information, websites, emails, digital notifications, and other virtual platforms are accessible for persons with vision, hearing, and other disabilities. Further, providing effective communication in a digital context may require the use of individualized auxiliary aids or services, such as audio description, captioning, sign language and other types of interpreters, keyboard accessibility, accessible documents, screen reader support, and transcripts. Auxiliary aids or services must be provided in accessible formats, in a timely manner, and in such a way to protect the privacy and independence of the individual. LBHAs may never request or require that individuals with disabilities provide their own auxiliary aids or services, including for remote informal hearings.

LBHAs are required to make reasonable accommodations in policies, practices, and procedures to ensure persons with disabilities have a full and equal opportunity to participate in and benefit from all aspects of the informal hearing process. See Chapter 2 for a more detailed discussion of reasonable accommodation requirements.

If no method of conducting a remote informal hearing is available that appropriately accommodates an individual's disability, the LBHA may not hold against the individual their inability to participate in the remote informal hearing, and the LBHA should consider whether postponing the remote hearing to a later date is appropriate or whether there is a suitable alternative.

Due to the individualized nature of disability, the appropriate auxiliary aid or service necessary, or reasonable accommodation will depend on the specific circumstances and requirements.

As with in-person reviews, Limited English Proficiency (LEP) requirements also apply to remote informal hearings, including the use of interpretation services and document translation. See Chapter 2 for a more thorough discussion of accessibility and LEP requirements, all of which apply in the context of remote informal hearings.



## **Conducting Informal Hearings Remotely**

The LBHA must ensure that the lack of technology or inability to use technology for remote informal hearings does not pose a disadvantage to families that may not be apparent to the LBHA. The LBHA should determine through a survey or other means if these barriers exist prior to conducting the remote informal hearing and, if the family does not have the proper technology to fully participate, either postpone the informal hearing or provide an alternative means of access.

As with in-person informal hearings, the LBHA must provide all materials presented, whether paper or electronic, to the family prior to the remote informal hearing. The family must also be provided with an accessible means by which to transmit their own evidence.

The LBHA's essential responsibility is to ensure informal hearings meet the requirements of due process and comply with HUD regulations. Therefore, all LBHA policies and processes for remote informal hearings will be conducted in accordance with due process requirements, and will be in compliance with HUD regulations at 24 CFR 982.555 and the guidance for conducting remote hearings specified in Notice PIH 2020-32.

### LBHA Policy

The LBHA will not conduct remote informal hearings.

## **Informal Hearing Procedures**

### ***Notice to the Family* [24 CFR 982.555(c)]**

When the LBHA makes a decision that is subject to informal hearing procedures, the LBHA 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 LBHA 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 LBHA'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.

### LBHA Policy

In cases where the LBHA 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 LBHA.

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 LBHA's decision.

A statement that if the family does not agree with the decision the family may request an informal hearing of the decision.

A deadline for the family to request the informal hearing.

To whom the hearing request should be addressed.

### ***Scheduling an Informal Hearing [24 CFR 982.555(d)]***

When an informal hearing is required, the LBHA must proceed with the hearing in a reasonably expeditious manner upon the request of the family.

#### **LBHA Policy**

A request for an informal hearing must be made in writing and delivered to the LBHA either in person or by first class mail, by the close of the business day, no later than 10 business days from the date of the LBHA's decision or notice to terminate assistance.

The LBHA must schedule and send written notice of the informal hearing to the family within 10 business days of the family's request.

The family may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family. Requests to reschedule a hearing must be made orally or in writing prior to the hearing date. At its discretion, the LBHA may request documentation of the "good cause" prior to rescheduling the hearing.

If the family does not appear within 20 minutes of the time stated in the letter of notification, the LBHA will not reschedule the hearing unless needed as a reasonable accommodation for a person with a disability.

***Pre-Hearing Right to Discovery [24 CFR 982.555(e)]***

Participants and the LBHA are permitted pre-hearing discovery rights. The family must be given the opportunity to examine before the hearing any LBHA documents that are directly relevant to the hearing. The family must be allowed to copy any such documents at their own expense. If the LBHA does not make the document available for examination on request of the family, the LBHA may not rely on the document at the hearing.

For the purpose of informal hearings, *documents* include records and regulations.

LBHA Policy

The family will be allowed to copy any documents related to the hearing at no cost to the family. The family must request discovery of LBHA documents no later than 12:00 p.m. on the business day prior to the scheduled hearing date.

Documents will be shared electronically whenever possible.

The LBHA hearing procedures may provide that the LBHA must be given the opportunity to examine at the LBHA offices before the hearing any family documents that are directly relevant to the hearing. The LBHA must be allowed to copy any such document at the LBHA's expense. If the family does not make the document available for examination on request of the LBHA, the family may not rely on the document at the hearing.

LBHA Policy

For in-person hearings, the LBHA will not require pre-hearing discovery by the LBHA of family documents directly relevant to the hearing.

If the informal hearing is to be conducted remotely, the LBHA will require the family to provide any documents directly relevant to the informal hearing at least 24 hours before the scheduled hearing through the mail, via email, or text. The LBHA will scan and email copies of these documents to the hearing officer and the LBHA representative the same day.

Documents will be shared electronically whenever possible.

***Participant's Right to Bring Counsel [24 CFR 982.555(e)(3)]***

At its own expense, the family may be represented by a lawyer or other representative at the informal hearing.

***Informal Hearing Officer [24 CFR 982.555(e)(4)]***

Informal hearings will be conducted by a person or persons approved by the LBHA, other than the person who made or approved the decision or a subordinate of the person who made or approved the decision.

### ***Attendance at the Informal Hearing***

#### **LBHA Policy**

Hearings may be attended by a hearing officer and the following applicable persons:

A LBHA representative(s) and any witnesses for the LBHA

The participant and any witnesses for the participant

The participant's counsel or other representative

Any other person approved by the LBHA 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 LBHA's hearing procedures [24 CFR 982.555(4)(ii)].

#### **LBHA Policy**

The hearing officer is responsible to manage the order of business and to ensure that hearings are conducted in a professional and businesslike manner. Attendees are expected to comply with all hearing procedures established by the hearing officer and guidelines for conduct. Any person demonstrating disruptive, abusive or otherwise inappropriate behavior will be excused from the hearing at the discretion of the hearing officer.

### ***Evidence [24 CFR 982.555(e)(5)]***

The LBHA 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.

#### LBHA 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 LBHA. Writings include all forms of recorded communication or representation, including letters, words, pictures, sounds, videotapes or symbols or combinations thereof.

**Demonstrative evidence:** Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a model, a chart or other diagram.

**Real evidence:** A tangible item relating directly to the case.

*Hearsay Evidence* is evidence based not on a witness' personal knowledge. In and of itself, hearsay evidence carries no weight when making a finding of fact. The hearing officer may include hearsay evidence when considering their decision if it is corroborated by other evidence. Even though hearsay evidence is generally admissible in a hearing, the hearing officer will not base a hearing decision on hearsay alone unless there is clear probative value and credibility of the evidence, and the party seeking the change has met the burden of proof.

If either the LBHA (or the family, if required in a remote hearing) fail to comply with the discovery requirements described above, the hearing officer will refuse to admit such evidence.

Other than the failure of a party to comply with discovery, the hearing officer has the authority to overrule any objections to evidence.

### ***Procedures for Rehearing or Further Hearing***

#### LBHA 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 LBHA will take effect and another hearing will not be granted.

### ***Hearing Officer's Decision [24 CFR 982.555(e)(6)]***

The person who conducts the hearing must issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family must be based on a preponderance of evidence presented at the hearing.

#### LBHA Policy

In rendering a decision, the hearing officer will consider the following matters:

**LBHA Notice to the Family:** The hearing officer will determine if the reasons for the LBHA's decision are factually stated in the Notice.

**Discovery:** The hearing officer will determine if the LBHA and the family were given the opportunity to examine any relevant documents in accordance with LBHA policy.

**LBHA Evidence to Support the LBHA 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 LBHA'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 LBHA policies. If the grounds for termination are not specified in the regulations or in compliance with LBHA policies, then the decision of the LBHA will be overturned.

The hearing officer will issue a written decision to the family and the LBHA no later than 10 business days after the hearing. The report will contain the following information:

#### **Hearing information:**

Name of the participant;

Date, time and place of the hearing;

Name of the hearing officer;

Name of the LBHA representative; and

Name of family representative (if any).

**Background:** A brief, impartial statement of the reason for the hearing.

**Summary of the Evidence:** The hearing officer will summarize the testimony of each witness and identify any documents that a witness produced in support of their testimony and that are admitted into evidence.

**Findings of Fact:** The hearing officer will include all findings of fact, based on a preponderance of the evidence. *Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

**Conclusions:** The hearing officer will render a conclusion derived from the facts that were found to be true by a preponderance of the evidence. The conclusion will result in a determination of whether these facts uphold the LBHA's decision.

**Order:** The hearing report will include a statement of whether the LBHA decision is upheld or overturned. If it is overturned, the hearing officer will instruct the LBHA 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 LBHA to restore the participant's program status.

***Issuance of Decision [24 CFR 982.555(e)(6)]***

A copy of the hearing must be furnished promptly to the family.

LBHA Policy

The hearing officer will mail a "Notice of Hearing Decision" to the LBHA and to the participant on the same day. This notice will be sent by first-class mail. The participant will be mailed the original "Notice of Hearing Decision" and a copy of the proof of mailing. A copy of the "Notice of Hearing Decision" will be maintained in the LBHA's file.

***Effect of Final Decision [24 CFR 982.555(f)]***

The LBHA is not bound by the decision of the hearing officer for matters in which the LBHA 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 LBHA determines it is not bound by the hearing officer's decision in accordance with HUD regulations, the LBHA must promptly notify the family of the determination and the reason for the determination.

LBHA Policy

The Executive Director has the authority to determine that the LBHA is not bound by the decision of the hearing officer because the LBHA was not required to provide a hearing, the decision exceeded the authority of the hearing officer, the decision conflicted with or contradicted HUD regulations, requirements, or the decision was otherwise contrary to federal, state, or local laws.

In such a case, the LBHA will mail a "Notice of Final Decision" to the LBHA and the participant on the same day. The "Notice of Final Decision" will be sent by first-class mail. A copy of this notice will be maintained in the LBHA's file.



### **16-III.D. HEARING AND APPEAL PROVISIONS FOR NONCITIZENS [24 CFR 5.514]**

Denial or termination of assistance based on immigration status is subject to special hearing and notice rules. Applicants who are denied assistance due to immigration status are entitled to an informal hearing, not an informal review.

Assistance to a family may not be delayed, denied, or terminated on the basis of immigration status at any time prior to a decision under the United States Citizenship and Immigration Services (USCIS) appeal process. Assistance to a family may not be terminated or denied while the LBHA 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 LBHA informal hearing process, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

#### **Notice of Denial or Termination of Assistance [24 CFR 5.514(d)]**

The notice of denial or termination of assistance for noncitizens must advise the family:

- That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance.
- The family may be eligible for proration of assistance.
- In the case of a participant, the criteria and procedures for obtaining relief under the provisions for preservation of families [24 CFR 5.514 and 5.518].
- That the family has a right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or explanation in support of the appeal.
- That the family has a right to request an informal hearing with the LBHA 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 LBHA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, the LBHA 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 LBHA with a copy of the written request for appeal and the proof of mailing.

#### LBHA Policy

The LBHA will notify the family in writing of the results of the USCIS secondary verification within 10 business days of receiving the results.

The family must provide the LBHA with a copy of the written request for appeal and proof of mailing within 10 business days of sending the request to the USCIS.

The family must forward to the designated USCIS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the USCIS document verification request (used to process the secondary request) or such other form specified by the USCIS, and a letter indicating that the family is requesting an appeal of the USCIS immigration status verification results.

The USCIS will notify the family, with a copy to the LBHA, of its decision. When the USCIS notifies the LBHA of the decision, the LBHA must notify the family of its right to request an informal hearing.

#### LBHA Policy

The LBHA will send written notice to the family of its right to request an informal hearing within 10 business days of receiving notice of the USCIS decision regarding the family's immigration status.

### **Informal Hearing Procedures for Applicants [24 CFR 5.514(f)]**

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that the LBHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the LBHA 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 LBHA 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 LBHA 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.

#### **LBHA Policy**

The family will be allowed to copy any documents related to the hearing at no charge. The family must request discovery of LBHA 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 LBHA, and to confront and cross-examine all witnesses on whose testimony or information the LBHA relies.

### ***Representation and Interpretive Services***

The family is entitled to be represented by an attorney or other designee, at the family's expense, and to have such person make statements on the family's behalf.

The family is entitled to request an interpreter. Upon request, the LBHA will provide competent interpretation services, free of charge.

### ***Recording of the Hearing***

The family is entitled to have the hearing recorded by audiotape. The LBHA may, but is not required to provide a transcript of the hearing.

#### **LBHA Policy**

The LBHA will not provide a transcript of an audio taped hearing.

### ***Hearing Decision***

The LBHA must provide the family with a written final decision, based solely on the facts presented at the hearing, within 14 calendar days of the date of the informal hearing. The decision must state the basis for the decision.

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### **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 LBHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of the LBHA 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 LBHA must retain for a minimum of 5 years the following documents that may have been submitted to the LBHA by the family, or provided to the LBHA as part of the USCIS appeal or the LBHA 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 LBHA**

### **16-IV.A. OVERVIEW**

LBHAs are required to include in the administrative plan, policies concerning repayment by a family of amounts owed to the LBHA [24 CFR 982.54]. If the family breaches an agreement with the LBHA to pay amounts owed to a LBHA, or amounts paid to an owner by a LBHA, the LBHA, at its discretion, may offer a family the opportunity to enter an agreement to pay amounts owed to a LBHA or amounts paid to an owner by a LBHA. The LBHA may prescribe the terms of the agreement [24 CFR 982.552(c)(1)(vii)]. This part describes the LBHA's policies for recovery of monies owed to the LBHA by families or owners.

#### LBHA Policy

When an action or inaction of an owner or participant results in the overpayment of housing assistance, the LBHA holds the owner or participant liable to return any overpayments to the LBHA.

The LBHA will enter into repayment agreements in accordance with the policies contained in this part as a means to recover overpayments.

### **16-IV.B. REPAYMENT POLICY**

#### **Owner Debts to the LBHA**

#### LBHA Policy

Any amount due to the LBHA by an owner must be repaid by the owner within 30 days of the LBHA 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 LBHA 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 LBHA may, in its sole discretion, offer to enter into a repayment agreement on terms prescribed by the LBHA.

If the owner refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, the LBHA will ban the owner from future participation in the program and pursue other modes of collection.

When an owner refuses to repay monies owed to the LBHA, the LBHA will utilize other available collection alternatives including, but not limited to, the following:

- Collection agencies
- Small claims court
- Civil lawsuit
- State income tax set-off program

## **Family Debts to the LBHA**

Families are required to reimburse the LBHA if they were charged less rent than required because the family either underreported or failed to report income. LBHAs are required to determine retroactive rent amounts as far back as the LBHA has documentation of family unreported income [Notice PIH 2018-18].

### LBHA Policy

Any amount owed to the LBHA by an HCV family must be repaid by the family. If the family is unable to repay the debt within 30 days, the LBHA will offer to enter into a repayment agreement in accordance with the policies below.

## **Refusal to Enter into an Agreement**

If the family refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, the LBHA must terminate assistance [Notice PIH 2018-18].

### LBHA Policy

When a family refuses to repay monies owed to the LBHA, in addition to termination of program assistance, the LBHA will utilize other available collection alternatives including, but not limited to, the following:

- Collection agencies
- Small claims court
- Civil lawsuit
- State income tax set-off program

## **Repayment Agreement [24 CFR 792.103]**

The term *repayment agreement* refers to a formal written document signed by a tenant or owner and provided to the LBHA in which a tenant or owner acknowledges a debt in a specific amount and agrees to repay the amount due at specific time periods.

## **General Repayment Agreement Guidelines for Families**

### ***Down Payment Requirement***

#### LBHA Policy

Before executing a repayment agreement with a family, the LBHA will generally require a down payment of 10 percent of the total amount owed. If the family can provide evidence satisfactory to the LBHA that a down payment of 10 percent would impose an undue hardship, the LBHA may, in its sole discretion, require a lesser percentage or waive the requirement.

### ***Payment Thresholds***

Notice PIH 2018-18 recommends that the total amount that a family must pay each month—the family’s monthly share of rent plus the monthly debt repayment amount—should not exceed 40 percent of the family’s monthly adjusted income. However, a family may already be paying 40 per cent or more of its monthly adjusted income in rent. Moreover, Notice PIH 2018-18 acknowledges that LBHAs have the discretion to establish “thresholds and policies” for repayment agreements with families [24 CFR 982.552(c)(1)(vii)].

#### **LBHA Policy**

The LBHA has established the following thresholds for repayment of debts:

Amounts between \$3,000 and the federal or state threshold for criminal prosecution must be repaid within 36 months.

Amounts between \$2,000 and \$2,999 must be repaid within 30 months.

Amounts between \$1,000 and \$1,999 must be repaid within 24 months.

Amounts under \$1,000 must be repaid within 12 months.

If a family can provide evidence satisfactory to the LBHA that the threshold applicable to the family’s debt would impose an undue hardship, the LBHA may, in its sole discretion, determine that a lower monthly payment amount is reasonable. In making its determination, the LBHA will consider all relevant information, including the following:

The amount owed by the family to the LBHA

The reason for the debt, including whether the debt was the result of family action/inaction or circumstances beyond the family’s control

The family’s current and potential income and expenses

The family’s current family share, as calculated under 24 CFR 982.515

The family’s history of meeting its financial responsibilities

### ***Execution of the Agreement***

All repayment agreements must be in writing, dated, and signed by both the family and the LBHA [Notice PIH 2018-18].

#### **LBHA Policy**

Any repayment agreement between the LBHA and a family must be signed and dated by the LBHA and by the head of household and spouse/cohead (if applicable).

### ***Due Dates***

#### **LBHA Policy**

All payments are due by the close of business on the day of the month identifies in the repayment agreement. If the due date does not fall on a business day, the due date is the close of business on the first business day after the date identified in the agreement.

## ***Late or Missed Payments***

### LBHA 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 LBHA, the LBHA will send the family a delinquency notice giving the family 10 business days to make the late payment. If the payment is not received by the due date of the delinquency notice, it will be considered a breach of the agreement and the LBHA will terminate assistance in accordance with the policies in Chapter 12.

If a family receives three delinquency notices for unexcused late payments in a 12-month period, the repayment agreement will be considered in default, and the LBHA will terminate assistance in accordance with the policies in Chapter 12.

## ***No Offer of Repayment Agreement***

### LBHA Policy

The LBHA generally will not enter into a repayment agreement with a family under any of the following conditions:

The family is already under an existing repayment agreement with the LBHA.

The LBHA determines that the family's debt is a result of program abuse or fraud (as defined in Chapter 14 of this plan).

The amount owed by the family exceeds the federal or state threshold for criminal prosecution.

## ***Repayment Agreement Terms***

All repayment agreements must be in writing, dated, signed by both the family and the LBHA, include the total retroactive rent amount owed, any amount of lump sum payment made at time of execution, if applicable, and the monthly repayment amount. Notice PIH 2018-18 requires certain provisions, at a minimum, be included in any repayment agreement involving amounts owed by a family because it underreported or failed to report income:

- A reference to the items in the family briefing packet that state the family's obligation to provide true and complete information at every reexamination and the grounds on which the LBHA may terminate assistance because of a family's action or failure to act
- A statement clarifying that each month the family not only must pay to the LBHA the monthly payment amount specified in the agreement but must also pay to the owner the family's monthly share of the rent to owner
- A statement that the terms of the repayment agreement may be renegotiated if the family's income decreases or increases
- A statement that late or missed payments constitute default of the repayment agreement and may result in termination of assistance



## **PART V: SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP)**

### **16-V.A. OVERVIEW**

The Section 8 Management Assessment Program (SEMAP) is a tool that allows HUD to measure LBHA performance in key areas to ensure program integrity and accountability. SEMAP scores translate into a rating for each LBHA as high performing, standard, or troubled. Scores on individual SEMAP indicators, as well as overall SEMAP ratings, can affect the LBHA in several ways.

- High-performing LBHAs can be given a competitive advantage under notices of funding availability [24 CFR 985.103].
- LBHAs with deficiencies on one or more indicators are required to correct the deficiencies and report to HUD [24 CFR 985.106].
- LBHAs 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, LBHAs 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 LBHA'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]**

LBHAs must submit the HUD-required SEMAP certification form within 60 calendar days after the end of its fiscal year. The certification must be approved by LBHA board resolution and signed by the LBHA executive director. If the LBHA is a unit of local government or a state, a resolution approving the certification is not required, and the certification must be executed by the Section 8 program director.

LBHAs with less than 250 voucher units are only required to be assessed every other LBHA fiscal year. HUD will assess such LBHAs annually if the LBHA elects to have its performance assessed on an annual basis; or is designated as “troubled” [24 CFR 985.105].

Failure of a LBHA to submit its SEMAP certification within the required time frame will result in an overall performance rating of “troubled.”

~~A LBHA’s SEMAP certification is subject to HUD verification by an on-site confirmatory review at any time.~~

Upon receipt of the LBHA’s SEMAP certification, HUD will rate the LBHA’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 LBHA or the Independent Auditor must select an unbiased sample that provides an adequate representation of the types of information to be assessed, in accordance with SEMAP requirements [24 CFR 985.2].

If the HUD verification method for the indicator relies on data in the Form-50058 module (formerly known as MTCS) in the PIH Information Center (PIC), and HUD determines that those data are insufficient to verify the LBHA's certification on the indicator due to the LBHA'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 LBHA that expends less than \$300,000 in Federal awards and whose Section 8 programs are not audited by an independent auditor, is not be rated under SEMAP indicators 1-7.

<b>SEMAP Indicators</b>
<p><b>Indicator 1: Selection from the waiting list</b>  <b>Maximum Score: 15</b></p> <ul style="list-style-type: none"> <li>• This indicator shows whether the LBHA has written policies in its administrative plan for selecting applicants from the waiting list and whether the LBHA follows these policies when selecting applicants from the waiting list.</li> <li>• Points are based on the percent of families that are selected from the waiting list in accordance with the LBHA’s written policies, according to the LBHA’s quality control samples.</li> </ul>
<p><b>Indicator 2: Rent reasonableness</b>  <b>Maximum Score: 20</b></p> <ul style="list-style-type: none"> <li>• This indicator shows whether the LBHA has and implements a reasonable written method to determine and document for each unit leased that the rent to owner is reasonable based on current rents for comparable unassisted units at the required times.</li> <li>• Points are based on the percent of units for which the LBHA follows its written method to determine reasonable rent and has documented its determination that the rent to owner is reasonable, according to the LBHA’s quality control sample.</li> </ul>
<p><b>Indicator 3: Determination of adjusted income</b>  <b>Maximum Score: 20</b></p> <ul style="list-style-type: none"> <li>• This indicator measures whether the LBHA verifies and correctly determines adjusted income for each assisted family, and where applicable, uses the appropriate utility allowances for the unit leased in determining the gross rent.</li> <li>• Points are based on the percent of files that are calculated and verified correctly, according to the LBHA’s quality control sample.</li> </ul>
<p><b>Indicator 4: Utility allowance schedule</b>  <b>Maximum Score: 5</b></p> <ul style="list-style-type: none"> <li>• This indicator shows whether the LBHA maintains an up-to-date utility allowance schedule.</li> <li>• Points are based on whether the LBHA has reviewed the utility allowance schedule and adjusted it when required, according to the LBHA’s certification.</li> </ul>

**Indicator 5: NSPIRE quality control inspections**

**Maximum Score: 5**

- This indicator shows whether a LBHA supervisor reinspects a sample of units under contract during the LBHA fiscal year, which meets the minimum sample size requirements for quality control of NSPIRE inspections.
- Points are based on whether the required quality control reinspections were completed, according to the LBHA's certification.

**Indicator 6: NSPIRE enforcement**

**Maximum Score: 10**

- This indicator shows whether, following each inspection of a unit under contract where the unit fails to meet NSPIRE standards, any cited life-threatening deficiencies are corrected within 24 hours from the inspection and all other deficiencies are corrected within no more than 30 calendar days from the inspection or any LBHA-approved extension.
- Points are based on whether the LBHA corrects all deficiencies in accordance with required time frames, according to the LBHA's certification.

**Indicator 7: Expanding housing opportunities**

**Maximum Points: 5**

- Only applies to LBHAs with jurisdiction in metropolitan FMR areas.
- This indicator shows whether the LBHA 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 LBHA'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 LBHA has adopted and implemented written policies in accordance with SEMAP requirements, according to the LBHA's certification.

**Indicator 8: FMR limit and payment standards**

**Maximum Points: 5 points**

- This indicator shows whether the LBHA has adopted a payment standard schedule that establishes payment standard amounts by unit size for each FMR area in the LBHA's jurisdiction, that are within the basic range of 90 to 110 percent of the published FMR.
- Points are based on whether the LBHA has appropriately adopted a payment standard schedule(s), according to the LBHA's certification.

**Indicator 9: Annual reexaminations**

**Maximum Points: 10**

- This indicator shows whether the LBHA completes a reexamination for each participating family at least every 12 months.
- Points are based on the percent of reexaminations that are less than two months overdue, according to data from PIC.

**Indicator 10: Correct tenant rent calculations****Maximum Points: 5**

- This indicator shows whether the LBHA correctly calculates the family's share of the rent to owner.
- Points are based on the percent of correct calculations of family share of the rent, according to data from PIC.

**Indicator 11: Pre-contract inspections****Maximum Points: 5**

- This indicator shows whether newly leased units pass inspection on or before the effective date of the assisted lease and HAP contract.
- Points are based on the percent of newly leased units that passed inspection on or before the effective date of the lease and HAP contract, according to data from PIC.

**Indicator 12: Annual inspections****Maximum Points: 10**

- This indicator shows whether the LBHA inspects each unit under contract at least annually.
- Points are based on the percent of annual inspections of units under contract that are more than 2 months overdue, according to data from PIC.

**Indicator 13: Lease-up****Maximum Points: 20 points**

- This indicator shows whether the LBHA enters HAP contracts for at least 98 percent of the number of the LBHA's baseline voucher units in the ACC for the calendar year ending on or before the LBHA's fiscal year, or whether the LBHA has expended at least 98 percent of its allocated budget authority for the same calendar year. The LBHA can receive 15 points if 95 to 97 percent of vouchers are leased or budget authority is utilized.
- Points are based on utilization of vouchers and HAP expenditures as reported in the voucher management system (VMS) for the most recently completed calendar year.

**Indicator 14: Family self-sufficiency (FSS) enrollment and escrow account balances****Maximum Points: 10**

- Only applies to LBHAs with mandatory FSS programs.
- This indicator shows whether the LBHA 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 LBHAs that have received approval to establish success rate payment standard amounts, and isn't effective until the second full LBHA 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 LBHA 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 LBHA fiscal year following initial use of payment standard amounts based on the FMRs set at the 50<sup>th</sup> percentile.
- Additional points are available to LBHAs that have jurisdiction in metropolitan FMR areas and that choose to submit the required data.
- Points are based on whether the data that is submitted meets the requirements for bonus points.

## **PART VI: RECORD KEEPING**

### **16-VI.A. OVERVIEW**

The LBHA 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 LBHA must ensure that all applicant and participant files are maintained in a way that protects an individual's privacy rights.

### **16-VI.B. RECORD RETENTION [24 CFR 982.158; 24 CFR 908.101]**

During the term of each assisted lease, and for at least three years thereafter, the LBHA must keep:

- A copy of the executed lease;
- The HAP contract; and
- The application from the family.

In addition, the LBHA must keep the following records for at least three years:

- Records that provide income, racial, ethnic, gender, and disability status data on program applicants and participants;
- An application from each ineligible family and notice that the applicant is not eligible;
- HUD-required reports;
- Unit inspection reports;
- Lead-based paint records as required by 24 CFR 35, Subpart B.
- Accounts and other records supporting LBHA budget and financial statements for the program;
- Records to document the basis for LBHA determination that rent to owner is a reasonable rent (initially and during the term of a HAP contract); and
- Other records specified by HUD.

The LBHA must keep the last three years of the Form HUD-50058 and supporting documentation during the term of each assisted lease, and for a period of at least three years from the end of participation (EOP) date [24 CFR 908.101].

The LBHA must maintain Enterprise Income Verification (EIV) system Income Reports in the tenant file for the duration of the tenancy but for a period not to exceed three years from the EOP date [Notice PIH 2018-18].

Notice PIH 2014-20 requires LBHAs to keep records of all complaints, investigations, notices, and corrective actions related to violations of the Fair Housing Act or the equal access final rule.

#### LBHA Policy

The LBHA will keep for at least three years records of all complaints, investigations, notices, and corrective actions related to violations of the Fair Housing Act, the equal access final rule, or VAWA.

The LBHA must keep confidential records of all emergency transfer requested by victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking under the LBHA's Emergency Transfer Plan, as well as the outcomes of such requests, and retain the records for a period of three years [see 24 CFR 5.2002(e)(12)].

If an informal hearing to establish a family's citizenship status is held, longer retention requirements apply for some types of documents. For specific requirements, see Section 16-III.D., Retention of Documents.

### **16-VI.C. RECORDS MANAGEMENT**

LBHAs must maintain applicant and participant files and information in accordance with the regulatory requirements described below.

#### LBHA Policy

All applicant and participant information will be kept in a secure location and access will be limited to authorized LBHA staff.

LBHA 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 LBHA may release the information collected.



## **Upfront Income Verification (UIV) Records**

LBHAs that access UIV data through HUD's Enterprise Income Verification (EIV) system are required to adopt and follow specific security procedures to ensure that all EIV data is protected in accordance with federal laws, regardless of the media on which the data is recorded (e.g. electronic, paper). These requirements are contained in the HUD-issued document, *Enterprise Income Verification (EIV) System, Security Procedures for Upfront Income Verification data*.

### LBHA Policy

Prior to utilizing HUD's EIV system, the LBHA will adopt and implement EIV security procedures required by HUD.

## **Criminal Records**

The LBHA may only disclose the criminal conviction records which the LBHA receives from a law enforcement agency to officers or employees of the LBHA, or to authorized representatives of the LBHA who have a job-related need to have access to the information [24 CFR 5.903(e)].

The LBHA must establish and implement a system of records management that ensures that any criminal record received by the LBHA 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 LBHA action without institution of a challenge or final disposition of any such litigation [24 CFR 5.903(g)].

The LBHA must establish and implement a system of records management that ensures that any sex offender registration information received by the LBHA 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 LBHA action without institution of a challenge or final disposition of any such litigation. However, a record of the screening, including the type of screening and the date performed must be retained [Notice PIH 2012-28]. This requirement does not apply to information that is public information, or is obtained by a LBHA other than under 24 CFR 5.905.

## **Medical/Disability Records**

LBHAs are not permitted to inquire about the nature or extent of a person's disability. The LBHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the LBHA receives a verification document that provides such information, the LBHA should not place this information in the tenant file. The LBHA should destroy the document.

## **Documentation of Domestic Violence, Dating Violence, Sexual Assault, Stalking, or Human Trafficking**

For requirements and LBHA policies related to management of documentation obtained from victims of domestic violence, dating violence, sexual assault, stalking, or human trafficking see section 16-IX.E.



## **PART VII: REPORTING AND RECORD KEEPING FOR CHILDREN WITH ELEVATED BLOOD LEAD LEVEL**

### **16-VII.A. OVERVIEW**

The LBHA has certain responsibilities relative to children with elevated blood lead levels that are receiving HCV assistance. The notification, verification, and hazard reduction requirements are discussed in Chapter 8. This part deals with the reporting requirements, and data collection and record keeping responsibilities that the LBHA is subject to.

### **16-VII.B. REPORTING REQUIREMENT [24 CFR 35.1225(e); Notice PIH 2017-13]**

The owner must report the name and address of a child identified as having an elevated blood lead level to the public health department within five business days of being so notified by any other medical health care professional. The owner must also notify the HUD field office and the HUD Office of Lead Hazard Control and Healthy Homes (OLHCHH) of the child's address within five business days. The LBHA may collaborate with the owner on the notification process, such as by agreeing with the owner to provide the required notifications on the owner's behalf.

#### LBHA Policy

Upon notification by the owner, the LBHA will provide the public health department written notice of the name and address of any child identified as having an elevated blood lead level within five business days.

Upon notification by the owner, the LBHA will notify the HUD field office and the HUD Office of Lead Hazard Control and Healthy Homes (OLHCHH) of the child's address within five business days.

### **16-VII.C. DATA COLLECTION AND RECORD KEEPING [24 CFR 35.1225(f)]**

At least quarterly, the LBHA must attempt to obtain from the public health department(s) with a similar area of jurisdiction, the names and/or addresses of children less than 6 years old with an elevated blood lead level.

If the LBHA obtains names and addresses of elevated blood lead level children from the public health department(s), the LBHA 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 LBHA must carry out the notification, verification, and hazard reduction requirements discussed in Chapter 8, and the reporting requirement discussed above.

At least quarterly, the LBHA 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.

#### LBHA 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 LBHA is not providing such a report.



## **PART VIII: DETERMINATION OF INSUFFICIENT FUNDING**

### **16-VIII.A. OVERVIEW**

The HCV regulations allow LBHAs to deny families permission to move and to terminate Housing Assistance Payments (HAP) contracts if funding under the consolidated ACC is insufficient to support continued assistance [24 CFR 982.354(e)(1) and 982.454]. If a LBHA denies a family a portability move based on insufficient funding, the LBHA is required to notify the local HUD office within 10 business days [24 CFR 982.354]. Insufficient funding may also impact the LBHA's ability to issue vouchers to families on the waiting list. This part discusses the methodology the LBHA will use to determine whether or not the LBHA has sufficient funding to issue vouchers, approve moves, and to continue subsidizing all families currently under a HAP contract.

### **16-VIII.B. METHODOLOGY**

#### LBHA Policy

The LBHA 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 LBHA'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 LBHA will add anticipated HAP expenditures for the remainder of the calendar year. Projected HAP expenditures will be calculated by multiplying the projected number of units leased per remaining months by the most current month's average HAP. The projected number of units leased per month will take into account the average monthly turnover of participant families. If the total annual HAP needs equal or exceed the annual budget authority and funding reserves, or if the LBHA cannot support the cost of the proposed subsidy commitment (voucher issuance or move) based on the funding analysis, the LBHA will be considered to have insufficient funding.



## **PART IX: VIOLENCE AGAINST WOMEN ACT (VAWA): NOTIFICATION, DOCUMENTATION, CONFIDENTIALITY**

### **16-IX.A. OVERVIEW**

The Violence against Women Act (VAWA) provides special protections for victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking who are applying for or receiving assistance under the housing choice voucher (HCV) program. If your state or local laws provide greater protection for such victims, those laws apply in conjunction with VAWA.

- Although the VAWA 2022 statute does not specifically include human trafficking in the list of victims protected under VAWA, in 2022 HUD began including human trafficking as part of the list of victims protected under VAWA (as seen in Notices PIH 2022-06, PIH 2022-22, and PIH 2022-24). In the absence of a final rule implementing VAWA 2022 and to mirror HUD's recent usage, this policy includes human trafficking in addition to domestic violence, dating violence, sexual assault, and stalking anywhere such a list appears.

In addition to definitions of key terms used in VAWA, this part contains general VAWA requirements and LBHA policies in three areas: notification, documentation, and confidentiality. Specific VAWA requirements and LBHA policies are located primarily in the following sections: 3-I.C, "Family Breakup and Remaining Member of Tenant Family"; 3-III.G, "Prohibition against Denial of Assistance to Victims of Domestic Violence, Dating Violence, Stalking and Human Trafficking"; 10-I.A, "Allowable Moves"; 10-I.B, "Restrictions on Moves"; 12-II.E, "Terminations Related to Domestic Violence, Dating Violence, Sexual Assault, Stalking, or Human Trafficking"; and 12-II.F, "Termination Notice."

### **16-IX.B. DEFINITIONS [24 CFR 5.2003, 42 USC 13925]**

As used in VAWA:

- The term *affiliated individual* means, with respect to a person:
  - A spouse, parent, brother or sister, or child of that individual, or an individual to whom that individual stands in the position or place of a parent; or
  - Any other individual, tenant, or lawful occupant living in the household of the victim of domestic violence, dating violence, sexual assault, or stalking.
- The term *bifurcate* means, with respect to a public housing or Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members' lease and occupancy rights are allowed to remain intact.
- The term *dating violence* means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - The length of the relationship
  - The type of relationship
  - The frequency of interaction between the persons involved in the relationship

- The term *domestic violence* includes felony or misdemeanor crimes committed by a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction receiving grant funding, and in the case of victim services, includes the user or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person who is:
  - The current or former spouse or intimate partner of the victim, or person similarly situated to a spouse or intimate partner of the victim
  - A person who is cohabitating or has cohabitated with the victim as a spouse or intimate partner
  - A person with whom the victim shares a child in common
  - A person who commits acts against an youth or adult victim who is protected from those acts under the domestic or family violence laws of the jurisdiction
- The term *economic abuse* means behavior that is coercive, deceptive, or unreasonably controls or restrains a person's ability to acquire, use, or maintain economic resources to which they are entitled, including using coercion, fraud, and manipulation to:
  - Restrict a person's access to money, assets, credit, or financial information
  - Unfairly use a person's personal economic resources, including money, assets, and credit, for one's own advantage
  - Exert undue influence over a person's financial and economic behavior or decisions, including forcing default on joint or other financial obligations, exploiting powers of attorney, guardianship, or conservatorship, or to whom one has a fiduciary duty
- The term *sexual assault* means:
  - Any nonconsensual sexual act proscribed by federal, tribal, or state law, including when the victim lacks the capacity to consent
- The term *stalking* means:
  - To engage in a course of conduct directed at a specific person that would cause a reasonable person to fear for their safety or the safety of others, or suffer substantial emotional distress.



- The term *technological abuse* means an act or pattern of behavior that occurs within domestic violence, dating violence, sexual assault, or stalking and is intended to harm, threaten, intimidate, control, stalk, harass, impersonate, exploit, extort, or monitor another person, except as otherwise permitted by law, that occurs using any form of technology, including but not limited to:
  - Internet enabled devices
  - Online spaces and platforms
  - Computers
  - Mobile devices
  - Cameras and imaging programs
  - Apps
  - Location tracking devices
  - Communication technologies
  - Any other emergency technologies

#### **16-IX.C. NOTIFICATION [24 CFR 5.2005(a)]**

##### **Notification to Public**

The LBHA adopts the following policy to help ensure that all actual and potential beneficiaries of its HCV program are aware of their rights under VAWA.

##### LBHA Policy

The LBHA will post the following information regarding VAWA in its offices and on its website. It will also make the information readily available to anyone who requests it.

A copy of the notice of occupancy rights under VAWA to housing choice voucher program applicants and participants who are or have been victims of domestic violence, dating violence, sexual assault, or stalking (Form HUD-5380, see Exhibit 16-1)

A copy of form HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking and Alternate Documentation (see Exhibit 16-2)

A copy of the LBHA's emergency transfer plan (Exhibit 16-3)

A copy of HUD's Emergency Transfer Request for Certain Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking, Form HUD-5383 (Exhibit 16-4)

The National Domestic Violence Hot Line: 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY) (included in Exhibits 16-1 and 16-2)

Contact information for local victim advocacy groups or service providers

## **Notification to Program Applicants and Participants [24 CFR 5.2005(a)(1)]**

LBHAs are required to inform program applicants and participants of their rights under VAWA, including their right to confidentiality and the limits thereof, when they are denied assistance, when they are admitted to the program, and when they are notified of an eviction or termination of housing benefits.

### LBHA Policy

The LBHA will provide all applicants with information about VAWA at the time they request an application for housing assistance, as part of the written briefing packet, and at the time the family is admitted to the program. The LBHA will also include information about VAWA in all notices of denial of assistance (see section 3-III.G).

The LBHA will provide all participants with information about VAWA at the time of admission (see section 5-I.B) and at annual reexamination. The LBHA will also include information about VAWA in notices of termination of assistance, as provided in section 12-II.F.

The VAWA information provided to applicants and participants will consist of the notices in Exhibits 16-1 and 16-2.

The LBHA is not limited to providing VAWA information at the times specified in the above policy. If the LBHA decides to provide VAWA information to a participant following an incident of domestic violence, Notice PIH 2017-08 cautions against sending the information by mail, since the abuser may be monitoring the mail. The notice recommends that in such cases the LBHA make alternative delivery arrangements that will not put the victim at risk.

### LBHA Policy

Whenever the LBHA has reason to suspect that providing information about VAWA to a participant might place a victim of domestic violence at risk, it will attempt to deliver the information by hand directly to the victim or by having the victim come to an office or other space that may be safer for the individual, making reasonable accommodations as necessary. For example, the LBHA may decide not to send mail regarding VAWA protections to the victim's unit if the LBHA believes the perpetrator may have access to the victim's mail, unless requested by the victim.

When discussing VAWA with the victim, the LBHA will take reasonable precautions to ensure that no one can overhear the conversation, such as having conversations in a private room.

The victim may, but is not required to, designate an attorney, advocate, or other secure contact for communications regarding VAWA protections.

## **Notification to Owners and Managers**

While LBHAs are no longer required by regulation to notify owners and managers participating in the HCV program of their rights and obligations under VAWA, the LBHA may still choose to inform them.

### LBHA Policy

The LBHA will provide owners and managers with information about their rights and obligations under VAWA when they begin their participation in the program and at least annually thereafter.

The VAWA information provided to owners will consist of the notice in Exhibit 16-5 and a copy of form HUD-5382, Certification of Domestic Violence, Dating Violence, and Stalking and Alternate Documentation.

#### **16-IX.D. DOCUMENTATION [24 CFR 5.2007]**

A LBHA presented with a claim for initial or continued assistance based on status as a victim of domestic violence, dating violence, sexual assault, stalking, human trafficking, or criminal activity related to any of these forms of abuse may—but is not required to—request that the individual making the claim document the abuse. Any request for documentation must be in writing, and the individual must be allowed at least 14 business days after receipt of the request to submit the documentation. The LBHA may extend this time period at its discretion. [24 CFR 5.2007(a)]

The individual may satisfy the LBHA’s request by providing any one of the following three forms of documentation [24 CFR 5.2007(b)]:

- (1) A completed and signed HUD-approved certification form (HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), which must include the name of the perpetrator only if the name of the perpetrator is safe to provide and is known to the victim. The form may be filled out and submitted on behalf of the victim.
- (2) A federal, state, tribal, territorial, or local police report or court record, or an administrative record
- (3) Documentation signed by a person who has assisted the victim in addressing domestic violence, dating violence, sexual assault, stalking, human trafficking, or the effects of such abuse. This person may be an employee, agent, or volunteer of a victim service provider; an attorney; a mental health professional; or a medical professional. The person signing the documentation must attest under penalty of perjury to the person’s belief that the incidents in question are bona fide incidents of abuse. The victim must also sign the documentation.

The LBHA may not require third-party documentation (forms 2 and 3) in addition to certification (form 1), except as specified below under “Conflicting Documentation,” nor may it require certification in addition to third-party documentation [FR Notice 11/16/16].

#### LBHA Policy

Any request for documentation of domestic violence, dating violence, sexual assault, stalking, or human trafficking will be in writing, will specify a deadline of 14 business days following receipt of the request, will describe the three forms of acceptable documentation, will provide explicit instructions on where and to whom the documentation must be submitted, and will state the consequences for failure to submit the documentation or request an extension in writing by the deadline.

The LBHA may, in its discretion, extend the deadline for 10 business days. In determining whether to extend the deadline, the LBHA will consider factors that may contribute to the victim’s inability to provide documentation in a timely manner, including cognitive limitations, disabilities, limited English proficiency, absence from the unit, administrative delays, the danger of further violence, and the victim’s need to address health or safety issues. Any extension granted by the LBHA will be in writing.

Once the victim provides documentation, the LBHA will acknowledge receipt of the documentation within 10 business days.

### **Conflicting Documentation [24 CFR 5.2007(e)]**

In cases where the LBHA receives conflicting certification documents from two or more members of a household, each claiming to be a victim and naming one or more of the other petitioning household members as the perpetrator, the LBHA may determine which is the true victim by requiring each to provide acceptable third-party documentation, as described above (forms 2 and 3). The LBHA may also request third-party documentation when submitted documentation contains information that conflicts with existing information already available to the LBHA. Individuals have 30 calendar days to return third-party verification to the LBHA. If the LBHA does not receive third-party documentation, and the LBHA will deny or terminate assistance as a result, the LBHA must hold separate hearings for the tenants [Notice PIH 2017-08].

The LBHA must honor any court orders issued to protect the victim or to address the distribution of property.

#### LBHA Policy

If presented with conflicting certification documents from members of the same household, the LBHA will attempt to determine which is the true victim by requiring each of them to provide third-party documentation in accordance with 24 CFR 5.2007(e) and by following any HUD guidance on how such determinations should be made.

When requesting third-party documents, the LBHA will provide contact information for local domestic violence and legal aid offices. In such cases, applicants or tenants will be given 30 calendar days from the date of the request to provide such documentation.

If the LBHA does not receive third-party documentation within the required timeframe (and any extensions) the LBHA will deny VAWA protections and will notify the applicant or tenant in writing of the denial. If, as a result, the applicant or tenant is denied or terminated from the program, the LBHA will hold separate hearings for the applicants or tenants.

### **Discretion to Require No Formal Documentation [24 CFR 5.2007(d)]**

The LBHA has the discretion to provide benefits to an individual based solely on the individual's statement or other corroborating evidence—i.e., without requiring formal documentation of abuse in accordance with 24 CFR 5.2007(b). HUD recommends documentation in a confidential manner when a verbal statement or other evidence is accepted.

#### LBHA Policy

If the LBHA accepts an individual's statement or other corroborating evidence (as determined by the victim) of domestic violence, dating violence, sexual assault, stalking, or human trafficking, the LBHA will document acceptance of the statement or evidence in the individual's file.

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**Failure to Provide Documentation [24 CFR 5.2007(c)]**

In order to deny relief for protection under VAWA, a LBHA must provide the individual requesting relief with a written request for documentation of abuse. If the individual fails to provide the documentation within 14 business days from the date of receipt, or such longer time as the LBHA may allow, the LBHA may deny relief for protection under VAWA.

**16-IX.E. CONFIDENTIALITY [24 CFR 5.2007(b)(4)]**

All information provided to the LBHA regarding domestic violence, dating violence, sexual assault, stalking, and human trafficking, including the fact that an individual is a victim, must be retained in confidence. This means that the LBHA (1) may not enter the information into any shared database, (2) may not allow employees or others to access the information unless they are explicitly authorized to do so and have a need to know the information for purposes of their work, and (3) may not provide the information to any other entity or individual, except to the extent that the disclosure is (a) requested or consented to by the individual in writing, (b) required for use in an eviction proceeding, or (c) otherwise required by applicable law.

LBHA Policy

If disclosure is required for use in an eviction proceeding or is otherwise required by applicable law, the LBHA will inform the victim before disclosure occurs so that safety risks can be identified and addressed.

**EXHIBIT 16-1: SAMPLE NOTICE OF OCCUPANCY RIGHTS UNDER THE VIOLENCE AGAINST WOMEN ACT, FORM HUD-5380**

**The Long Branch Housing Authority**

**Notice of Occupancy Rights under the Violence Against Women Act<sup>1</sup>**

**To all Tenants and Applicants**

The Violence Against Women Act (VAWA) provides protections for victims of domestic violence, dating violence, sexual assault, or stalking. VAWA protections are not only available to women, but are available equally to all individuals regardless of sex, gender identity, or sexual orientation.<sup>2</sup> The U.S. Department of Housing and Urban Development (HUD) is the federal agency that oversees that the housing choice voucher program is in compliance with VAWA. This notice explains your rights under VAWA. A HUD-approved certification form is attached to this notice. You can fill out this form to show that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking, and that you wish to use your rights under VAWA.”

**Protections for Applicants**

If you otherwise qualify for assistance under the housing choice voucher program, you cannot be denied admission or denied assistance because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

**Protections for Tenants**

If you are receiving assistance under the housing choice voucher program, you may not be denied assistance, terminated from participation, or be evicted from your rental housing because you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

Also, if you or an affiliated individual of yours is or has been the victim of domestic violence, dating violence, sexual assault, or stalking by a member of your household or any guest, you may not be denied rental assistance or occupancy rights under the housing choice voucher program solely on the basis of criminal activity directly relating to that domestic violence, dating violence, sexual assault, or stalking.

Affiliated individual means your spouse, parent, brother, sister, or child, or a person to whom you stand in the place of a parent or guardian (for example, the affiliated individual is in your care, custody, or control); or any individual, tenant, or lawful occupant living in your household.

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<sup>1</sup> Despite the name of this law, VAWA protection is available regardless of sex, gender identity, or sexual orientation.

<sup>2</sup> Housing providers cannot discriminate on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD-assisted and HUD-insured housing must be made available to all otherwise eligible individuals regardless of actual or perceived sexual orientation, gender identity, or marital status.

## **Removing the Abuser or Perpetrator from the Household**

The LBHA may divide (bifurcate) your lease in order to evict the individual or terminate the assistance of the individual who has engaged in criminal activity (the abuser or perpetrator) directly relating to domestic violence, dating violence, sexual assault, or stalking.

If the LBHA chooses to remove the abuser or perpetrator, the LBHA may not take away the rights of eligible tenants to the unit or otherwise punish the remaining tenants. If the evicted abuser or perpetrator was the sole tenant to have established eligibility for assistance under the program, the LBHA must allow the tenant who is or has been a victim and other household members to remain in the unit for a period of time, in order to establish eligibility under the program or under another HUD housing program covered by VAWA, or, find alternative housing.

In removing the abuser or perpetrator from the household, the LBHA must follow federal, state, and local eviction procedures. In order to divide a lease, the LBHA may, but is not required to, ask you for documentation or certification of the incidences of domestic violence, dating violence, sexual assault, or stalking.

## **Moving to Another Unit**

Upon your request, the LBHA may permit you to move to another unit, subject to the availability of other units, and still keep your assistance. In order to approve a request, the LBHA may ask you to provide documentation that you are requesting to move because of an incidence of domestic violence, dating violence, sexual assault, or stalking. If the request is a request for emergency transfer, the housing provider may ask you to submit a written request or fill out a form where you certify that you meet the criteria for an emergency transfer under VAWA. The criteria are:

- 1. You are a victim of domestic violence, dating violence, sexual assault, or stalking.** If your housing provider does not already have documentation that you are a victim of domestic violence, dating violence, sexual assault, or stalking, your housing provider may ask you for such documentation, as described in the documentation section below.
- 2. You expressly request the emergency transfer.** Your housing provider may choose to require that you submit a form, or may accept another written or oral request.
- 3. You reasonably believe you are threatened with imminent harm from further violence if you remain in your current unit.** This means you have a reason to fear that if you do not receive a transfer you would suffer violence in the very near future.

**OR**

**You are a victim of sexual assault and the assault occurred on the premises during the 90-calendar-day period before you request a transfer.** If you are a victim of sexual assault, then in addition to qualifying for an emergency transfer because you reasonably believe you are threatened with imminent harm from further violence if you remain in your unit, you may qualify for an emergency transfer if the sexual assault occurred on the premises of the property from which you are seeking your transfer, and that assault happened within the 90-calendar-day period before you expressly request the transfer.



The LBHA will keep confidential requests for emergency transfers by victims of domestic violence, dating violence, sexual assault, or stalking, and the location of any move by such victims and their families.

The LBHA's emergency transfer plan provides further information on emergency transfers, and the LBHA must make a copy of its emergency transfer plan available to you if you ask to see it.

### **Documenting You Are or Have Been a Victim of Domestic Violence, Dating Violence, Sexual Assault or Stalking**

The LBHA can, but is not required to, ask you to provide documentation to "certify" that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking. Such request from the LBHA must be in writing, and the LBHA must give you at least 14 business days (Saturdays, Sundays, and federal holidays do not count) from the day you receive the request to provide the documentation. The LBHA may, but does not have to, extend the deadline for the submission of documentation upon your request.

You can provide one of the following to the LBHA as documentation. It is your choice which of the following to submit if the LBHA asks you to provide documentation that you are or have been a victim of domestic violence, dating violence, sexual assault, or stalking.

- A complete HUD-approved certification form given to you by the LBHA with this notice, that documents an incident of domestic violence, dating violence, sexual assault, or stalking. The form will ask for your name, the date, time, and location of the incident of domestic violence, dating violence, sexual assault, or stalking, and a description of the incident. The certification form provides for including the name of the abuser or perpetrator if the name of the abuser or perpetrator is known and is safe to provide.
- A record of a Federal, State, tribal, territorial, or local law enforcement agency, court, or administrative agency that documents the incident of domestic violence, dating violence, sexual assault, or stalking. Examples of such records include police reports, protective orders, and restraining orders, among others.
- A statement, which you must sign, along with the signature of an employee, agent, or volunteer of a victim service provider, an attorney, a medical professional or a mental health professional (collectively, "professional") from whom you sought assistance in addressing domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse, and with the professional selected by you attesting under penalty of perjury that they believe that the incident or incidents of domestic violence, dating violence, sexual assault, or stalking are grounds for protection.
- Any other statement or evidence that the LBHA has agreed to accept.

If you fail or refuse to provide one of these documents within the 14 business days, the LBHA does not have to provide you with the protections contained in this notice.

If the LBHA receives conflicting evidence that an incident of domestic violence, dating violence, sexual assault, or stalking has been committed (such as certification forms from two or more members of a household each claiming to be a victim and naming one or more of the other petitioning household members as the abuser or perpetrator), the LBHA has the right to request that you provide third-party documentation within thirty 30 calendar days in order to resolve the conflict. If you fail or refuse to provide third-party documentation where there is conflicting evidence, the LBHA does not have to provide you with the protections contained in this notice.

## **Confidentiality**

The LBHA must keep confidential any information you provide related to the exercise of your rights under VAWA, including the fact that you are exercising your rights under VAWA.

The LBHA must not allow any individual administering assistance or other services on behalf of the LBHA (for example, employees and contractors) to have access to confidential information unless for reasons that specifically call for these individuals to have access to this information under applicable Federal, State, or local law.

The LBHA must not enter your information into any shared database or disclose your information to any other entity or individual. The LBHA, however, may disclose the information provided if:

- You give written permission to the LBHA to release the information on a time limited basis.
- The LBHA needs to use the information in an eviction or termination proceeding, such as to evict your abuser or perpetrator or terminate your abuser or perpetrator from assistance under this program.
- A law requires the LBHA or your landlord to release the information.

VAWA does not limit the LBHA's duty to honor court orders about access to or control of the property. This includes orders issued to protect a victim and orders dividing property among household members in cases where a family breaks up.

## **Reasons a Tenant Eligible for Occupancy Rights under VAWA May Be Evicted or Assistance May Be Terminated**

You can be evicted and your assistance can be terminated for serious or repeated lease violations that are not related to domestic violence, dating violence, sexual assault, or stalking committed against you. However, the LBHA cannot hold tenants who have been victims of domestic violence, dating violence, sexual assault, or stalking to a more demanding set of rules than it applies to tenants who have not been victims of domestic violence, dating violence, sexual assault, or stalking.

The protections described in this notice might not apply, and you could be evicted and your assistance terminated, if the LBHA can demonstrate that not evicting you or terminating your assistance would present a real physical danger that:

1. Would occur within an immediate time frame, and
2. Could result in death or serious bodily harm to other tenants or those who work on the property.

If the LBHA can demonstrate the above, the LBHA should only terminate your assistance or evict you if there are no other actions that could be taken to reduce or eliminate the threat.

## **Other Laws**

VAWA does not replace any federal, state, or local law that provides greater protection for victims of domestic violence, dating violence, sexual assault, or stalking. You may be entitled to additional housing protections for victims of domestic violence, dating violence, sexual assault, or stalking under other Federal laws, as well as under State and local laws.

### **Non-Compliance with The Requirements of This Notice**

You may report a covered housing provider's violations of these rights and seek additional assistance, if needed, by contacting or filing a complaint with **Newark Field Office** 1085 Raymond Boulevard 13<sup>th</sup> Fl Newark, NJ 07102-5260. **Phone:** 973-776-7200, **Email:** [NJ\\_Webmanager@hud.gov](mailto:NJ_Webmanager@hud.gov), **Fax:** 973-645-2323, **TTY:** 973-645-3298.

### **For Additional Information**

You may view a copy of HUD's final VAWA rule at: <https://www.gpo.gov/fdsys/pkg/FR-2016-11-16/pdf/2016-25888.pdf>.

Additionally, the LBHA must make a copy of HUD's VAWA regulations available to you if you ask to see them.

For questions regarding VAWA, please contact **Anthony Greene** 2 Hope Lane Long Branch NJ, 07740. **Phone:** 732-222-3747 x 113, **Email:** [greenea@lbhousing.org](mailto:greenea@lbhousing.org), **Fax:** 732-222-7487.

For help regarding an abusive relationship, you may call the National Domestic Violence Hotline at 1-800-799-7233 or, for persons with hearing impairments, 1-800-787-3224 (TTY). You may also contact Local organization listed below.

For tenants who are or have been victims of stalking seeking help may visit the National Center for Victims of Crime's Stalking Resource Center at <https://www.victimsofcrime.org/our-programs/stalking-resource-center>.

For help regarding sexual assault, you may contact Local organization listed below.

Victims of stalking seeking help may contact Local organization listed below.

### **180 Turning Lives Around**

1 Bethany Rd Ste. 42

Hazlet, NJ 07730

Domestic Violence: Call [\(888\) 843-9262](tel:(888)843-9262)

Sexual Violence: Call [\(888\) 264-7273](tel:(888)264-7273)

Chat with Us : [www.resourceconnect.com/180nj/chat](http://www.resourceconnect.com/180nj/chat)

Deaf & Hard of Hearing: Text [\(732\) 977-2832](tel:(732)977-2832)

2NDFLOOR® Youth Helpline: Call or Text [\(888\) 222-2228](tel:(888)222-2228)

**Attachment:** Certification form HUD-5382



**EXHIBIT 16-2: CERTIFICATION OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING AND ALTERNATE DOCUMENTATION, FORM HUD-5382**

**CERTIFICATION OF  
DOMESTIC VIOLENCE,  
DATING VIOLENCE,  
SEXUAL ASSAULT, OR STALKING,  
AND ALTERNATE DOCUMENTATION**

**U.S. Department of Housing  
and Urban Development**

OMB Approval No. 2577-0286  
Exp. 06/30/2017

**Purpose of Form:** The Violence Against Women Act (“VAWA”) protects applicants, tenants, and program participants in certain HUD programs from being evicted, denied housing assistance, or terminated from housing assistance based on acts of domestic violence, dating violence, sexual assault, or stalking against them. Despite the name of this law, VAWA protection is available to victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation.

**Use of This Optional Form:** If you are seeking VAWA protections from your housing provider, your housing provider may give you a written request that asks you to submit documentation about the incident or incidents of domestic violence, dating violence, sexual assault, or stalking.

In response to this request, you or someone on your behalf may complete this optional form and submit it to your housing provider, or you may submit one of the following types of third-party documentation:

- (1) A document signed by you and an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional, or a mental health professional (collectively, “professional”) from whom you have sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse. The document must specify, under penalty of perjury, that the professional believes the incident or incidents of domestic violence, dating violence, sexual assault, or stalking occurred and meet the definition of “domestic violence,” “dating violence,” “sexual assault,” or “stalking” in HUD’s regulations at 24 CFR 5.2003.
- (2) A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or
- (3) At the discretion of the housing provider, a statement or other evidence provided by the applicant or tenant.

**Submission of Documentation:** The time period to submit documentation is 14 business days from the date that you receive a written request from your housing provider asking that you provide documentation of the occurrence of domestic violence, dating violence, sexual assault, or stalking. Your housing provider may, but is not required to, extend the time period to submit the documentation, if you request an extension of the time period. If the requested information is not received within 14 business days of when you received the request for the documentation, or any extension of the date provided by your housing provider, your housing provider does not need to grant you any of the VAWA protections. Distribution or issuance of this form does not serve as a written request for certification.

**Confidentiality:** All information provided to your housing provider concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking shall be kept confidential and such details shall not be entered into any shared database. Employees of your housing provider are not to have access to these details unless to grant or deny VAWA protections to you, and such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

**TO BE COMPLETED BY OR ON BEHALF OF THE VICTIM OF DOMESTIC VIOLENCE,  
DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING**

1. Date the written request is received by victim: \_\_\_\_\_

2. Name of victim: \_\_\_\_\_

3. Your name (if different from victim's): \_\_\_\_\_

4. Name(s) of other family member(s) listed on the lease: \_\_\_\_\_  
\_\_\_\_\_

5. Residence of victim: \_\_\_\_\_

6. Name of the accused perpetrator (if known and can be safely disclosed): \_\_\_\_\_  
\_\_\_\_\_

7. Relationship of the accused perpetrator to the victim: \_\_\_\_\_

8. Date(s) and times(s) of incident(s) (if known): \_\_\_\_\_  
\_\_\_\_\_

10. Location of incident(s): \_\_\_\_\_

In your own words, briefly describe the incident(s):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

This is to certify that the information provided on this form is true and correct to the best of my knowledge and recollection, and that the individual named above in Item 2 is or has been a victim of domestic violence, dating violence, sexual assault, or stalking. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

Signature \_\_\_\_\_ Signed on (Date) \_\_\_\_\_

**Public Reporting Burden:** The public reporting burden for this collection of information is estimated to average 1 hour per response. This includes the time for collecting, reviewing, and reporting the data. The information provided is to be used by the housing provider to request certification that the applicant or tenant is a victim of domestic violence, dating violence, sexual assault, or stalking. The information is subject to the confidentiality requirements of VAWA. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid Office of Management and Budget control number.

**EXHIBIT 16-3: EMERGENCY TRANSFER PLAN FOR VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING (HCV VERSION)**

Attachment: Certification form HUD-5382

**The Long Branch Housing Authority**

**Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking**

**Housing Choice Voucher Program**

**Emergency Transfers**

The LBHA is concerned about the safety of its tenants, and such concern extends to tenants who are victims of domestic violence, dating violence, sexual assault, or stalking. In accordance with the Violence Against Women Act (VAWA),<sup>3</sup> the LBHA allows tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to request an emergency transfer from the tenant's current unit to another unit. The ability to request a transfer is available regardless of sex, gender identity, or sexual orientation.<sup>4</sup> The ability of the LBHA to honor such request for tenants currently receiving assistance, however, may depend upon a preliminary determination that the tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, and on whether the LBHA has another dwelling unit that is available and is safe to offer the tenant for temporary or more permanent occupancy.

This plan identifies tenants who are eligible for an emergency transfer, the documentation needed to request an emergency transfer, confidentiality protections, how an emergency transfer may occur, and guidance to tenants on safety and security. This plan is based on a model emergency transfer plan published by the U.S. Department of Housing and Urban Development (HUD), the federal agency that oversees that the **public housing and housing choice voucher (HCV) programs** are in compliance with VAWA.

**Eligibility for Emergency Transfers**

A tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking, as provided in HUD's regulations at 24 CFR part 5, subpart L, is eligible for an emergency transfer if the tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant remains within the same unit. If the tenant is a victim of sexual assault, the tenant may also be eligible to transfer if the sexual assault occurred on the premises within the 90-calendar-day period preceding a request for an emergency transfer.

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<sup>3</sup>Despite the name of this law, VAWA protection is available to all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation.

<sup>4</sup>Housing providers cannot discriminate on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD-assisted and HUD-insured housing must be made available to all otherwise eligible individuals regardless of actual or perceived sexual orientation, gender identity, or marital status.

A tenant requesting an emergency transfer must expressly request the transfer in accordance with the procedures described in this plan.

Tenants who are not in good standing may still request an emergency transfer if they meet the eligibility requirements in this section.

### **Emergency Transfer Request Documentation**

To request an emergency transfer, the tenant shall notify the LBHA's management office and submit a written request for a transfer to **any LBHA office**. The LBHA will provide reasonable accommodations to this policy for individuals with disabilities. The tenant's written request for an emergency transfer should include either:

1. A statement expressing that the tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant were to remain in the same dwelling unit assisted under the LBHA's program; OR
2. A statement that the tenant was a sexual assault victim and that the sexual assault occurred on the premises during the 90-calendar-day period preceding the tenant's request for an emergency transfer.

### **Confidentiality**

The LBHA will keep confidential any information that the tenant submits in requesting an emergency transfer, and information about the emergency transfer, unless the tenant gives the LBHA written permission to release the information on a time-limited basis, or disclosure of the information is required by law or required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program. This includes keeping confidential the new location of the dwelling unit of the tenant, if one is provided, from the person or persons that committed an act of domestic violence, dating violence, sexual assault, or stalking against the tenant. See the Notice of Occupancy Rights under the Violence against Women Act for All Tenants for more information about the LBHA's responsibility to maintain the confidentiality of information related to incidents of domestic violence, dating violence, sexual assault, or stalking.

### **Emergency Transfer Timing and Availability**

The LBHA cannot guarantee that a transfer request will be approved or how long it will take to process a transfer request. The LBHA will, however, act as quickly as possible to move a tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking to another unit, subject to availability and safety of a unit. If a tenant reasonably believes a proposed transfer would not be safe, the tenant may request a transfer to a different unit. If a unit is available, the transferred tenant must agree to abide by the terms and conditions that govern occupancy in the unit to which the tenant has been transferred. The LBHA may be unable to transfer a tenant to a particular unit if the tenant has not or cannot establish eligibility for that unit.

If the LBHA has no safe and available units for which a tenant who needs an emergency transfer is eligible, the LBHA will assist the tenant in identifying other housing providers who may have safe and available units to which the tenant could move. At the tenant's request, the LBHA will also assist tenants in contacting the local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or stalking that are attached to this plan.



## **Emergency Transfers: Housing Choice Voucher (HCV) Program**

Tenant-based assistance: If you are a participant in the tenant-based HCV program and request an emergency transfer as described in this plan, the LBHA will assist you to move to a safe unit quickly using your existing voucher assistance. The LBHA will make exceptions to program regulations restricting moves as required.

At your request, the LBHA will refer you to organizations that may be able to further assist you.

Project-based assistance: If you are assisted under the project-based voucher (PBV) program, you may request an emergency transfer under the following programs for which you are not required to apply:

- Tenant-based voucher, if available
- Project-based assistance in the same project (if a vacant unit is available and you determine that the vacant unit is safe)
- Project-based assistance in another development owned by the LBHA

Emergency transfers under VAWA will take priority over waiting list admissions for these types of assistance.

You may also request an emergency transfer under the following programs for which you are required to apply:

- Public housing program
- PBV assistance in another development not owned by the LBHA

Emergency transfers will not take priority over waiting list admissions for these programs. At your request, the LBHA will refer you to organizations that may be able to further assist you.

## **Safety and Security of Tenants**

Pending processing of the transfer and the actual transfer, if it is approved and occurs, the tenant is urged to take all reasonable precautions to be safe.

Tenants who are or have been victims of domestic violence are encouraged to contact the National Domestic Violence Hotline at 1-800-799-7233, or a local domestic violence shelter, for assistance in creating a safety plan. For persons with hearing impairments, that hotline can be accessed by calling 1-800-787-3224 (TTY).

Tenants who have been victims of sexual assault may call the Rape, Abuse, and Incest National Network's National Sexual Assault Hotline at 1-800-656-HOPE, or visit the online hotline at: <https://ohl.rainn.org/online/>.

Tenants who are or have been victims of stalking seeking help may visit the National Center for Victims of Crime's Stalking Resource Center at: <https://www.victimsofcrime.org/our-programs/stalking-resource-center>.

**Attachment:** Local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or stalking.

**180 Turning Lives Around**

1 Bethany Rd Ste. 42

Hazlet, NJ 07730

Domestic Violence: Call [\(888\) 843-9262](tel:(888)843-9262)

Sexual Violence: Call [\(888\) 264-7273](tel:(888)264-7273)

Chat with Us : [www.resourceconnect.com/180nj/chat](http://www.resourceconnect.com/180nj/chat)

Deaf & Hard of Hearing: Text [\(732\) 977-2832](tel:(732)977-2832)

2NDFLOOR® Youth Helpline: Call or Text [\(888\) 222-2228](tel:(888)222-2228)

**EXHIBIT 16-4: EMERGENCY TRANSFER REQUEST FOR CERTAIN VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING, FORM HUD-5383**

**EMERGENCY TRANSFER  
REQUEST FOR CERTAIN  
VICTIMS OF DOMESTIC  
VIOLENCE, DATING VIOLENCE,  
SEXUAL ASSAULT, OR STALKING**

**U.S. Department of Housing  
and Urban Development**

OMB Approval No. 2577-0286  
Exp. 06/30/2017

**Purpose of Form:** If you are a victim of domestic violence, dating violence, sexual assault, or stalking, and you are seeking an emergency transfer, you may use this form to request an emergency transfer and certify that you meet the requirements of eligibility for an emergency transfer under the Violence Against Women Act (VAWA). Although the statutory name references women, VAWA rights and protections apply to all victims of domestic violence, dating violence, sexual assault or stalking. Using this form does not necessarily mean that you will receive an emergency transfer. See your housing provider's emergency transfer plan for more information about the availability of emergency transfers.

**The requirements you must meet are:**

**(1) You are a victim of domestic violence, dating violence, sexual assault, or stalking.**

If your housing provider does not already have documentation that you are a victim of domestic violence, dating violence, sexual assault, or stalking, your housing provider may ask you for such documentation. In response, you may submit Form HUD-5382, or any one of the other types of documentation listed on that Form.

**(2) You expressly request the emergency transfer.** Submission of this form confirms that you have expressly requested a transfer. Your housing provider may choose to require that you submit this form, or may accept another written or oral request. Please see your housing provider's emergency transfer plan for more details.

**(3) You reasonably believe you are threatened with imminent harm from further violence if you remain in your current unit.** This means you have a reason to fear that if you do not receive a transfer you would suffer violence in the very near future.

**OR**

**You are a victim of sexual assault and the assault occurred on the premises during the 90-calendar-day period before you request a transfer.** If you are a victim of sexual assault, then in addition to qualifying for an emergency transfer because you reasonably believe you are threatened with imminent harm from further violence if you remain in your unit, you may qualify for an emergency transfer if the sexual assault occurred on the premises of the property from which you are seeking your transfer, and that assault happened within the 90-calendar-day period before you submit this form or otherwise expressly request the transfer.

**Submission of Documentation:** If you have third-party documentation that demonstrates why you are eligible for an emergency transfer, you should submit that documentation to your housing provider if it is safe for you to do so. Examples of third party documentation include, but are not limited to: a letter or other documentation from a victim service provider, social worker, legal assistance provider, pastoral counselor, mental health provider, or other professional from whom you have sought assistance; a current restraining order; a recent court order or other court records; a law enforcement report or records; communication records from the perpetrator of the violence or family members or friends of the perpetrator of the violence, including emails, voicemails, text messages, and social media posts.

**Confidentiality:** All information provided to your housing provider concerning the incident(s) of domestic violence, dating violence, sexual assault, or stalking, and concerning your request for an emergency transfer shall be kept confidential. Such details shall not be entered into any shared database. Employees of your housing provider are not to have access to these details unless to grant or deny VAWA protections or an emergency transfer to you. Such employees may not disclose this information to any other entity or individual, except to the extent that disclosure is: (i) consented to by you in writing in a time-limited release; (ii) required for use in an eviction proceeding or hearing regarding termination of assistance; or (iii) otherwise required by applicable law.

**TO BE COMPLETED BY OR ON BEHALF OF THE PERSON REQUESTING A TRANSFER**

1. Name of victim requesting an emergency transfer: \_\_\_\_\_

2. Your name (if different from victim's) \_\_\_\_\_

3. Name(s) of other family member(s) listed on the lease: \_\_\_\_\_

4. Name(s) of other family member(s) who would transfer with the victim: \_\_\_\_\_

5. Address of location from which the victim seeks to transfer: \_\_\_\_\_

6. Address or phone number for contacting the victim: \_\_\_\_\_

7. Name of the accused perpetrator (if known and can be safely disclosed): \_\_\_\_\_

8. Relationship of the accused perpetrator to the victim: \_\_\_\_\_

9. Date(s), Time(s) and location(s) of incident(s): \_\_\_\_\_

10. Is the person requesting the transfer a victim of a sexual assault that occurred in the past 90 days on the premises of the property from which the victim is seeking a transfer? If yes, skip question 11. If no, fill out question 11. \_\_\_\_\_

11. Describe why the victim believes they are threatened with imminent harm from further violence if they remain in their current unit.

\_\_\_\_\_  
\_\_\_\_\_

12. If voluntarily provided, list any third-party documentation you are providing along with this notice: \_\_\_\_\_

This is to certify that the information provided on this form is true and correct to the best of my knowledge, and that the individual named above in Item 1 meets the requirement laid out on this form for an emergency transfer. I acknowledge that submission of false information could jeopardize program eligibility and could be the basis for denial of admission, termination of assistance, or eviction.

Signature \_\_\_\_\_ Signed on (Date) \_\_\_\_\_



## EXHIBIT 16-5: MODEL OWNER NOTIFICATION OF RIGHTS AND OBLIGATIONS

### The Long Branch Housing Authority

### NOTIFICATION OF YOUR RIGHTS AND OBLIGATIONS

### UNDER THE VIOLENCE AGAINST WOMEN ACT (VAWA)

VAWA provides protections for Section 8 Housing Choice Voucher (HCV) and PBV applicants, tenants, and participants from being denied assistance on the basis or as a direct result of being a victim of domestic violence, dating violence, sexual assault, stalking and human trafficking.

#### **Purpose**

Many of VAWA's protections to victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking involve action by the public housing agency (LBHA), but some situations involve action by owners of assisted housing. The purpose of this notice (herein called "Notice") is to explain your rights and obligations under VAWA, as an owner of housing assisted through [insert name of housing provider] HCV program. Each component of this Notice also provides citations to HUD's applicable regulations.

#### **Denial of Tenancy**

*Protections for applicants:* Owners cannot deny tenancy based on the applicant having been or currently being a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking. However, the applicant must be otherwise eligible for tenancy. (See 24 Code of Federal Regulations (CFR) 982.452(b)(1).)

#### **Eviction**

*Protections for HCV participants:* Incidents or threats of domestic violence, dating violence, sexual assault, stalking, or human trafficking will not be considered a serious or repeated lease violation by the victim, or good cause to terminate the tenancy of the victim (see 24 CFR 5.2005(c)). Protection also applies to criminal activity related directly to domestic violence, dating violence, sexual assault, stalking, or human trafficking, conducted by a member of a tenant's household or any guest or other person under the tenant's control, if the tenant or an affiliated individual of the tenant is the victim or threatened victim of such domestic violence, dating violence, sexual assault, stalking, or human trafficking (24 CFR 5.2005(b)(2)).

#### *Limitations of VAWA protections:*

a. Nothing in VAWA limits the authority of an owner, when notified of a court order, to comply with a court order with respect to (24 CFR 5.2005(d)(1)):

- 1) The rights of access or control of property, including civil protection orders issued to protect a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking; or
- 2) The distribution or possession of property among members of a household in a case.

b. Nothing in VAWA limits an owner from evicting a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking for a lease violation that is not premised on an act of domestic violence, dating violence, sexual assault, stalking, or human trafficking, as long as the owner does not subject the victim to more demanding standards than other tenants when deciding whether to evict. (See 24 CFR 5.2005(d)(2).)

c. Nothing in VAWA limits an owner from evicting a tenant (including the victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking) if the owner can demonstrate an actual and imminent threat to other tenants or those employed at or providing services to the HCV property would be present if the tenant or lawful occupant is not evicted. (See 24 CFR 5.2005(d)(3).)

i. In this context, words, gestures, actions, or other indicators will be considered an “actual and imminent threat” if they meet the following standards: An actual and imminent threat consists of a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include: the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur. (See 24 CFR 5.2003.)

ii. Any eviction due to “actual and imminent threat” should be utilized by an owner only when there are no other actions that could be taken to reduce or eliminate the threat, including, but not limited to, transferring the victim to a different unit, barring the perpetrator from the property, contacting law enforcement to increase police presence or develop other plans to keep the property safe, or seeking other legal remedies to prevent the perpetrator from acting on a threat. Restrictions predicated on public safety cannot be based on stereotypes, but must be tailored to particularized concerns about individual residents. (See 24 CFR 5.2005(d)(4).)

### **Documentation of Domestic Violence, Dating Violence, Sexual Assault, Stalking, or Human Trafficking**

If an applicant or tenant requests VAWA protection based on status as a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking, the owner has the option to request that the victim document or provide written evidence to demonstrate that the violence occurred. However, nothing in HUD’s regulation requires a covered housing provider to request this documentation. (See 24 CFR 5.2007(b)(3).)

If the owner chooses to request this documentation, the owner must make such request in writing. The individual may satisfy this request by providing any one document type listed under 24 CFR 5.2007(b)(1):

- a. Form HUD-55383 (Self-Certification Form); or
- b. A document: 1) Signed by an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional or a mental health professional (collectively, “professional”) from whom the victim has sought assistance relating to domestic violence, dating violence, sexual assault, stalking, or human trafficking, or the effects of abuse:
  - 2) Signed by the applicant or tenant; and
  - 3) That specifies, under penalty of perjury, that the professional believes in the occurrence of the incident of domestic violence, dating violence, sexual assault, stalking, or human trafficking that is the ground for protection and remedies under 24 CFR part 5, subpart L, and that the incident meets the applicable definition of domestic violence, dating violence, sexual assault, stalking, or human trafficking under 24 CFR 5.2003; or
- c. A record of a Federal, State, tribal, territorial or local law enforcement agency, court, or administrative agency; or
- d. At the discretion of a covered housing provider, a statement or other evidence provided by the applicant or tenant.



The owner must accept any of the above items (a – c). The owner has discretion to accept a statement or other evidence (d).

The owner is prohibited from requiring third-party documentation of the domestic violence, dating violence, sexual assault, stalking, or human trafficking, unless the submitted documentation contains conflicting information.

If the owner makes a written request for documentation, the owner may require submission of that documentation within 14 business days after the date that the individual received the written request for documentation. (24 CFR 5.2007(a)(2)). The owner may extend this time period at its discretion. During the 14 business day period and any granted extensions of that time, no adverse actions, such as evictions or terminations, can be taken against the individual requesting VAWA protection.

Once a victim provides documentation of domestic violence, dating violence, sexual assault, stalking, or human trafficking, the owner is encouraged to acknowledge receipt of the documentation in a timely manner.

If the applicant or tenant fails to provide documentation that meets the criteria in 24 CFR 5.2007 within 14 business days after receiving the written request for that documentation or within the designated extension period, nothing in VAWA may be construed to limit the authority of the covered housing provider to:

- a. Deny admission by the applicant or tenant to the housing or program;
- b. Deny assistance under the covered housing program to the applicant or tenant;
- c. Terminate the participation of the tenant in the covered housing program; or
- d. Evict the tenant, or a lawful occupant that commits a violation of a lease.

An individual's failure to timely provide documentation of domestic violence, dating violence, sexual assault, stalking, or human trafficking does not result in a waiver of the individual's right to challenge the denial of assistance or termination, nor does it preclude the individual's ability to raise an incident of domestic violence, dating violence, sexual assault, stalking, or human trafficking at eviction or termination proceedings.

Owners may not coerce, intimidate, threaten, interfere with, or retaliate against any person who exercises or assists or encourages a person to exercise any rights or protections under VAWAs (See FR Notice 1/4/23.)

### **Moves**

A victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking may move in violation of their lease if the move is required to protect their safety. If a move results in the termination of the Housing Assistance Payment Contract, the lease is automatically terminated.

## **Lease Bifurcation**

Owners may choose to bifurcate a lease, or remove a household member from a lease in order to evict, remove, terminate occupancy rights, or terminate assistance to such member who engages in criminal activity directly relating to domestic violence, dating violence, sexual assault, stalking, or human trafficking against an affiliated individual or other individual. (See 24 CFR 5.2009(a).) If an owner chooses to bifurcate the lease, the owner must comply with the reasonable time to establish eligibility under the covered housing program or find alternative housing following lease bifurcation provision in 24 CFR 5.2009(b). VAWA protections, including bifurcation, do not apply to guests or unreported members of a household or anyone else residing in a household who is not a tenant.

Eviction, removal, termination of occupancy rights, or termination of assistance must be effected in accordance with the procedures prescribed by federal, state, or local law for termination of leases.

To avoid unnecessary delay in the bifurcation process, HUD recommends that owners seek court-ordered eviction of the perpetrator pursuant to applicable laws. This process results in the underlying lease becoming null and void once the owner regains possession of the unit. The owner would then execute a new lease with the victim.

## **Evictions Due to “Actual and Imminent Threat” or Violations Not Premised on Abuse**

VAWA generally prohibits eviction on the basis or as a direct result of the fact that the applicant or tenant is or has been a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking, if the applicant or tenant otherwise qualifies for assistance, participation or occupancy. (See 24 CFR 5.2005.)

However, VAWA does not prohibit an owner from evicting a tenant for any violation not premised on an act of domestic violence, dating violence, sexual assault, stalking, or human trafficking that is in question against the tenant or an affiliated individual of the tenant. Nor does VAWA prohibit an owner from evicting a tenant if the owner can demonstrate an actual and imminent threat to other tenants or those employed at or providing services to property of the owner would be present if that tenant or lawful occupant is not evicted or terminated from assistance. (See 5.2005(d)(2) and (3).)

In order to demonstrate an actual and imminent threat to other tenants or employees at the property, the covered housing provider must have objective evidence of words, gestures, actions, or other indicators that meet the standards in the following definition:

Actual and imminent threat refers to a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include:

- The duration of the risk;
- The nature and severity of the potential harm;
- The likelihood that the potential harm will occur; and
- The length of time before the potential harm would occur.

(See 24 CFR 5.2003 and 5.2005(d)(2).)

## Confidentiality

Any information submitted to a covered housing provider under 24 CFR 5.2007, including the fact that an individual is a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking, must be maintained in strict confidence by the covered housing provider. (See 24 CFR 5.2007(c).)

Employees of the owner (or those within their employ, e.g., contractors) must not have access to the information unless explicitly authorized by the owner for reasons that specifically call for these individuals to have access to this information under applicable federal, state, or local law (e.g., the information is needed by an employee to provide the VAWA protections to the victim).

The owner must not enter this information into any shared database, or disclose this information to any other entity or individual, except to the extent that disclosure is:

- a. Requested or consented to in writing by the individual (victim) in a time-limited release;
- b. Required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program; or
- c. Otherwise required by applicable law.

When communicating with the victim, owners must take precautions to ensure compliance with these confidentiality requirements.

## Service Providers

**The Long Branch Housing Authority** has extensive relationships with local service providers. **The Long Branch Housing Authority** staff are available to provide referrals to shelters, counselors, and advocates. These resources are also provided in **The Long Branch Housing Authority** Annual and 5-Year Plan, Administrative Plan, VAWA Notice of Occupancy Rights, and Emergency Transfer Plan. A list of local service providers is attached to this Notice.

## Definitions

**Actual and imminent threat** refers to a physical danger that is real, would occur within an immediate time frame, and could result in death or serious bodily harm. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include: the duration of the risk, the nature and severity of the potential harm, the likelihood that the potential harm will occur, and the length of time before the potential harm would occur.

**Affiliated individual**, with respect to an individual, means:

- (1) A spouse, parent, brother, sister, or child of that individual, or a person to whom that individual stands in the place of a parent or guardian (for example, the affiliated individual is a person in the care, custody, or control of that individual); or
- (2) Any individual, tenant, or lawful occupant living in the household of that individual.

**Bifurcate** means to divide a lease as a matter of law, subject to the permissibility of such process under the requirements of the applicable HUD-covered program and State or local law, such that certain tenants or lawful occupants can be evicted or removed and the remaining tenants or lawful occupants can continue to reside in the unit under the same lease requirements or as may be revised depending upon the eligibility for continued occupancy of the remaining tenants and lawful occupants.

**Dating violence** means violence committed by a person:

- (1) Who is or has been in a social relationship of a romantic or intimate nature with the victim; and
- (2) Where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - (i) The length of the relationship;
  - (ii) The type of relationship; and
  - (iii) The frequency of interaction between the persons involved in the relationship.

**Domestic violence** includes felony or misdemeanor crimes of committed by a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction receiving grant funding, and in the case of victim services, includes the user or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person who is:

- The current or former spouse or intimate partner of the victim, or person similarly situated to a spouse or intimate partner of the victim
- A person who is cohabitating or has cohabitated with the victim as a spouse or intimate partner
- A person with whom the victim shares a child in common
- A person who commits acts against an youth or adult victim who is protected from those acts under the domestic or family violence laws of the jurisdiction

**Sexual assault** means any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.

**Stalking** means engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- (1) Fear for the person's individual safety or the safety of others; or
- (2) Suffer substantial emotional distress.

**VAWA** means the Violence Against Women Act of 1994, as amended (42 U.S.C. 13925 and 42 U.S.C. 14043e et seq.).

**Attached:**

Legal services and the domestic violence resources for the Metro area  
Form HUD-5382 Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking  
**The Long Branch Housing Authority** VAWA Notice of Occupancy Rights

## Chapter 17

### PROJECT-BASED VOUCHERS

#### INTRODUCTION

This chapter describes HUD regulations and LBHA policies related to the project-based voucher (PBV) program in nine parts:

Part I: General Requirements. This part describes general provisions of the PBV program including maximum budget authority requirements, relocation requirements, and equal opportunity requirements.

Part II: PBV Owner Proposals. This part includes policies related to the submission and selection of owner proposals for PBV assistance. It describes the factors the LBHA will consider when selecting proposals, the type of housing that is eligible to receive PBV assistance, the cap on assistance at projects receiving PBV assistance, subsidy layering requirements, site selection standards, and environmental review requirements.

Part III: Dwelling Units. This part describes requirements related to NSPIRE standards, the type and frequency of inspections, and housing accessibility for persons with disabilities.

Part IV: Rehabilitated and Newly Constructed Units. This part describes requirements and policies related to the development and completion of rehabilitated and newly constructed housing units that will be receiving PBV assistance.

Part V: Housing Assistance Payments Contract. This part discusses HAP contract requirements and policies including the execution, term, and termination of the HAP contract. In addition, it describes how the HAP contract may be amended and identifies provisions that may be added to the HAP contract at the LBHA's discretion.

Part VI: Selection of PBV Program Participants. This part describes the requirements and policies governing how the LBHA and the owner will select a family to receive PBV assistance.

Part VII: Occupancy. This part discusses occupancy requirements related to the lease and describes under what conditions families are allowed or required to move. In addition, exceptions to the occupancy cap (which limits PBV assistance to 25 percent of the units in any project) are also discussed.

Part VIII: Determining Rent to Owner. This part describes how the initial rent to owner is determined, and how rent will be redetermined throughout the life of the HAP contract. Rent reasonableness requirements are also discussed.

Part IX: Payments to Owner. This part describes the types of payments owners may receive under this program.



## **PART I: GENERAL REQUIREMENTS**

### **17-I.A. OVERVIEW [24 CFR 983.5; FR Notice 1/18/17; Notice PIH 2017-21]**

The project-based voucher (PBV) program allows LBHAs that already administer a tenant-based voucher program under an annual contributions contract (ACC) with HUD to take up to 20 percent of its authorized units and attach the funding to specific units rather than using it for tenant-based assistance [24 CFR 983.6]. LBHAs may only operate a PBV program if doing so is consistent with the LBHA's Annual Plan, and the goal of deconcentrating poverty and expanding housing and economic opportunities [42 U.S.C. 1437f(o)(13)].

#### LBHA Policy

The LBHA will operate a project-based voucher program using up to 20 percent of its authorized units for project-based assistance.

See Exhibit 17-1 for information on projects to which the LBHA has attached PBV assistance.

PBV assistance may be attached to existing housing or newly constructed or rehabilitated housing [24 CFR 983.52]. If PBV units are already selected for project-based assistance either under an agreement to enter into HAP Contract (Agreement) or a HAP contract, the LBHA is not required to reduce the number of these units if the number of authorized units is subsequently reduced. However, the LBHA is responsible for determining the amount of budget authority that is available for project-based vouchers and ensuring that the amount of assistance that is attached to units is within the amounts available under the ACC, regardless of whether the LBHA has vouchers available for project-basing [FR Notice 1/18/17].

#### **Additional Project-Based Units [FR Notice 1/18/17; Notice PIH 2017-21; FR Notice 1/24/22]**

The LBHA may project-base an additional 10 percent of its units above the 20 percent program limit. The units may be distributed among one, all, or a combination of the categories as long as the total number of units does not exceed the 10 percent cap.

For units under a HAP contract that was first executed on or after April 18, 2017, units qualify under this exception if the units:

- Are specifically made available to house individuals and families that meet the definition of homeless under section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302) and contained in the Continuum of Care Interim Rule at 24 CFR 578.3.
- Are specifically made available to house families that are comprised of or include a veteran.
  - *Veteran* means an individual who has served in the United States Armed Forces.
- Provide supportive housing to persons with disabilities or elderly persons as defined in 24 CFR 5.403.
- Are located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year Estimates.

PBV units that house eligible youth receiving FUPY/FYI assistance are also covered by this 10 percent exception authority if the units are under a HAP contract that became effective after December 27, 2020, and if the unit is occupied by an eligible youth receiving FUPY/FYI assistance. FYI TPVs that were awarded under Notice PIH 2019-20 are not part of this exception since LBHAs are prohibited from project-basing FYI TPVs. Units added after December 27, 2020, through an amendment of a HAP contract that became effective after December 27, 2020, are eligible for this 10 percent exception authority. In contrast, units added after December 27, 2020, through an amendment of a HAP contract that became effective on or prior to December 27, 2020, are not eligible for this 10 percent exception authority [FR Notice 1/24/22]. See Chapter 19 for policies specific to project-basing FUPY vouchers.

#### LBHA Policy

The LBHA may project-base up to an additional 10 percent of its authorized units, up to 30 percent, in accordance with HUD regulations and requirements.

#### **Units Not Subject to the PBV Program Limitation [FR Notice 1/18/17]**

PBV units under the RAD program and HUD-VASH PBV set-aside vouchers do not count toward the 20 percent limitation when PBV assistance is attached to them.

In addition, units that were previously subject to certain federal rent restrictions or were receiving another type of long-term housing subsidy provided by HUD are not subject to the cap. The unit must be covered under a PBV HAP contract that first became effective on or after April 18, 2017.

#### LBHA Policy

The LBHA may project-base units not subject to the 20 percent cap in accordance with HUD regulations and requirements.



### **17-I.B. TENANT-BASED VS. PROJECT-BASED VOUCHER ASSISTANCE [24 CFR 983.2]**

Much of the tenant-based voucher program regulations also apply to the PBV program. Consequently, many of the LBHA policies related to tenant-based assistance also apply to PBV assistance. The provisions of the tenant-based voucher regulations that do not apply to the PBV program are listed at 24 CFR 983.2.

#### LBHA Policy

Except as otherwise noted in this chapter, or unless specifically prohibited by PBV program regulations, the LBHA policies for the tenant-based voucher program contained in this administrative plan also apply to the PBV program and its participants.

### **17-I.C. RELOCATION REQUIREMENTS [24 CFR 983.7]**

Any persons displaced as a result of implementation of the PBV program must be provided relocation assistance in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA)[42 U.S.C. 4201-4655] and implementing regulations at 49 CFR part 24.

The cost of required relocation assistance may be paid with funds provided by the owner, local public funds, or funds available from other sources. LBHAs may not use voucher program funds to cover relocation costs, except that LBHAs may use their administrative fee reserve to pay for relocation expenses after all other program administrative expenses are satisfied, and provided that payment of the relocation benefits is consistent with state and local law. Use of the administrative fee for these purposes must also be consistent with other legal and regulatory requirements, including the requirement in 24 CFR 982.155 and other official HUD issuances.

The acquisition of real property for a PBV project is subject to the URA and 49 CFR part 24, subpart B. It is the responsibility of the LBHA to ensure the owner complies with these requirements.

### **17-I.D. EQUAL OPPORTUNITY REQUIREMENTS [24 CFR 983.8]**

The LBHA must comply with all equal opportunity requirements under federal law and regulations in its implementation of the PBV program. This includes the requirements and authorities cited at 24 CFR 5.105(a). In addition, the LBHA must comply with the LBHA Plan certification on civil rights and affirmatively furthering fair housing, submitted in accordance with 24 CFR 903.7(o).



## **PART II: PBV OWNER PROPOSALS**

### **17-II.A. OVERVIEW**

With certain exceptions, the LBHA must describe the procedures for owner submission of PBV proposals and for LBHA selection of PBV proposals [24 CFR 983.51]. Before selecting a PBV proposal, the LBHA must determine that the PBV proposal complies with HUD program regulations and requirements, including a determination that the property is eligible housing [24 CFR 983.53 and 983.54], complies with the cap on the number of PBV units per project [24 CFR 983.56], and meets the site selection standards [24 CFR 983.57]. The LBHA may not commit PBVs until or unless it has followed the proposal selection requirements defined in 24 CFR 983.51 [Notice PIH 2011-54].

### **17-II.B. OWNER PROPOSAL SELECTION PROCEDURES [24 CFR 983.51(b)]**

The LBHA must select PBV proposals in accordance with the selection procedures in the LBHA administrative plan. The LBHA must select PBV proposals by either of the following two methods.

- LBHA request for PBV Proposals. The LBHA may solicit proposals by using a request for proposals to select proposals on a competitive basis in response to the LBHA request. The LBHA may not limit proposals to a single site or impose restrictions that explicitly or practically preclude owner submission of proposals for PBV housing on different sites.
- The LBHA may select proposal that were previously selected based on a competition. This may include selection of a proposal for housing assisted under a federal, state, or local government housing assistance program that was subject to a competition in accordance with the requirements of the applicable program, community development program, or supportive services program that requires competitive selection of proposals (e.g., HOME, and units for which competitively awarded LIHTCs have been provided), where the proposal has been selected in accordance with such program's competitive selection requirements within three years of the PBV proposal selection date, and the earlier competitive selection proposal did not involve any consideration that the project would receive PBV assistance. The LBHA need not conduct another competition.

#### **Units Selected Non-Competitively [FR Notice 1/18/17; Notice PIH 2017-21; 24 CFR 983.51(b)]**

For certain public housing projects where the LBHA has an ownership interest or control, the LBHA may attach PBV assistance non-competitively without following one of the two processes above.

This exception applies when the LBHA is engaged in an initiative to improve, develop, or replace a public housing property or site. The public housing units may either currently be in the public housing inventory or may have been removed from the public housing inventory within five years of the date on which the LBHA entered into the AHAP or HAP.

If the LBHA is planning rehabilitation or new construction on the project, a minimum threshold of \$25,000 per unit in hard costs must be expended.

If the LBHA plans to replace public housing by attaching PBV assistance to existing housing in which the LBHA has an ownership interest or control, then the \$25,000 per unit minimum threshold does not apply as long as the existing housing substantially complies with NSPIRE standards.

The LBHA must include in the administrative plan what work it plans to do on the property or site and how many PBV units will be added to the site.

#### LBHA Policy

The LBHA will not attach PBVs to projects owned by the LBHA as described above.

#### **Solicitation and Selection of PBV Proposals [24 CFR 983.51(c)]**

LBHA procedures for selecting PBV proposals must be designed and actually operated to provide broad public notice of the opportunity to offer PBV proposals for consideration by the LBHA. The public notice procedures may include publication of the public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice. The public notice of the LBHA request for PBV proposals must specify the submission deadline. Detailed application and selection information must be provided at the request of interested parties.

#### LBHA Policy

#### LBHA Request for Proposals for Rehabilitated and Newly Constructed Units

The LBHA will advertise its request for proposals (RFP) for rehabilitated and newly constructed housing in the following newspapers and trade journals.

#### **The Asbury Park Press**

The advertisement will state the number of vouchers available to be project-based, the type of units that will be considered, the submission deadline, and will note how to obtain the full RFP with information on the application and selection process. Advertisements will also contain a statement that participation in the PBV program requires compliance with Fair Housing and Equal Opportunity (FHEO) requirements.

In addition, the LBHA will post the RFP and proposal submission and rating and ranking procedures on its website.

The LBHA will publish its advertisement in the newspapers and trade journals mentioned above for at least one day per week for three consecutive weeks. The advertisement will specify the number of units the LBHA estimates that it will be able to assist under the funding the LBHA is making available. Proposals will be due in the LBHA office by close of business 30 calendar days from the date of the last publication.

In order for the proposal to be considered, the owner must submit the proposal to the LBHA by the published deadline date, and the proposal must respond to all requirements as outlined in the RFP. Incomplete proposals will not be reviewed.

The LBHA will rate and rank proposals for rehabilitated and newly constructed housing using the following criteria:

Owner experience and capability to build or rehabilitate housing as identified in the RFP;

Extent to which the project furthers the LBHA goal of deconcentrating poverty and expanding housing and economic opportunities;

If applicable, the extent to which services for special populations are provided on site or in the immediate area for occupants of the property; and

In order to promote partially assisted projects, projects where less than 25 percent of the units will be assisted will be rated higher than projects where 25 percent or more of the units will be assisted. In the case of projects for occupancy by the elderly, persons with disabilities or families needing other services, the LBHA will rate partially assisted projects on the percentage of units assisted. Projects with the lowest percentage of assisted units will receive the highest score.

#### LBHA Requests for Proposals for Existing Housing Units

The LBHA will advertise its request for proposals (RFP) for existing housing in the following newspapers and trade journals.

##### **The Asbury Park Press**

The advertisement will state the number of vouchers available to be project-based, the type of units that will be considered, the submission deadline, and will note how to obtain the full RFP with information on the application and selection process. Advertisements will also contain a statement that participation in the PBV program requires compliance with Fair Housing and Equal Opportunity (FHEO) requirements.

In addition, the LBHA will post the notice inviting such proposal submission and the rating and ranking procedures on its website.

The LBHA will periodically publish its advertisement in the newspapers and trade journals mentioned above for at least one day per week for three consecutive weeks. The advertisement will specify the number of units the LBHA estimates that it will be able to assist under the funding the LBHA is making available. Owner proposals will be accepted on a first-come first-served basis and will be evaluated using the following criteria:

Experience as an owner in the tenant-based voucher program and owner compliance with the owner's obligations under the tenant-based program;

Extent to which the project furthers the LBHA goal of deconcentrating poverty and expanding housing and economic opportunities;

If applicable, extent to which services for special populations are provided on site or in the immediate area for occupants of the property; and

Extent to which units are occupied by families that are eligible to participate in the PBV program.

LBHA Selection of Proposals Subject to a Previous Competition under a Federal, State, or Local Housing Assistance Program

The LBHA will accept proposals for PBV assistance from owners that were competitively selected under another federal, state or local housing assistance program, including projects that were competitively awarded Low-Income Housing Tax Credits on an ongoing basis.

The LBHA may periodically advertise that it is accepting proposals, in the following newspapers and trade journals:

**The Asbury Park Press**

The advertisement will state the number of vouchers available to be project-based, the type of units that will be considered, the submission deadline, and will note how to obtain the full RFP with information on the application and selection process. Advertisements will also contain a statement that participation in the PBV program requires compliance with Fair Housing and Equal Opportunity (FHEO) requirements.

In addition to, or in place of advertising, the LBHA may also directly contact specific owners that have already been selected for Federal, state, or local housing assistance based on a previously held competition, to inform them of available PBV assistance.

Proposals will be reviewed on a first-come first-served basis. The LBHA will evaluate each proposal on its merits using the following factors:

- Extent to which the project furthers the LBHA goal of deconcentrating poverty and expanding housing and economic opportunities; and

- Extent to which the proposal complements other local activities such as the redevelopment of a public housing site under the HOPE VI program, the HOME program, CDBG activities, other development activities in a HUD-designated Enterprise Zone, Economic Community, Choice Neighborhood, or Renewal Community.

**LBHA-Owned Units [24 CFR 983.51(e), 983.59, FR Notice 1/18/17, and Notice PIH 2017-21]**

A LBHA-owned unit may be assisted under the PBV program only if the HUD field office or HUD-approved independent entity reviews the selection process and determines that the LBHA-owned units were appropriately selected based on the selection procedures specified in the LBHA administrative plan. This also applies to noncompetitive selections. If the LBHA selects a proposal for housing that is owned or controlled by the LBHA, the LBHA must identify the entity that will review the LBHA proposal selection process and perform specific functions with respect to rent determinations, the term of the HAP contract, and inspections.

In the case of LBHA-owned units, the term of the HAP contract and any HAP contract renewal must be agreed upon by the LBHA and a HUD-approved independent entity. In addition, an independent entity must determine the initial rent to owner, the redetermined rent to owner, and reasonable rent. NSPIRE inspections must also be conducted by an independent entity.

The independent entity that performs these program services may be the unit of general local government for the LBHA jurisdiction (unless the LBHA is itself the unit of general local government or an agency of such government) or another HUD-approved public or private independent entity.

**LBHA Policy**

The LBHA may submit a proposal for project-based housing that is owned or controlled by the LBHA. If the proposal for LBHA-owned housing is selected, the LBHA will use **[insert name of the entity]** to review the LBHA selection process. The LBHA will obtain HUD approval of **[insert name of entity]** prior to selecting the proposal for LBHA-owned housing.

The LBHA may only compensate the independent entity from LBHA ongoing administrative fee income (including amounts credited to the administrative fee reserve). The LBHA may not use other program receipts to compensate the independent entity for its services. The LBHA and independent entity may not charge the family any fee for the appraisal or the services provided by the independent entity.

### **LBHA Notice of Owner Selection [24 CFR 983.51(d)]**

The LBHA must give prompt written notice to the party that submitted a selected proposal and must also give prompt public notice of such selection. Public notice procedures may include publication of public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice.

#### LBHA Policy

Within 10 business days of the LBHA making the selection, the LBHA will notify the selected owner in writing of the owner's selection for the LBHA program. The LBHA will also notify in writing all owners that submitted proposals that were not selected and advise such owners of the name of the selected owner.

In addition, the LBHA will publish its notice for selection of PBV proposals for two consecutive days in the same newspapers and trade journals the LBHA used to solicit the proposals. The announcement will include the name of the owner that was selected for the PBV program. The LBHA will also post the notice of owner selection on its electronic web site.

The LBHA will make available to any interested party its rating and ranking sheets and documents that identify the LBHA basis for selecting the proposal. These documents will be available for review by the public and other interested parties for one month after publication of the notice of owner selection. The LBHA will not make available sensitive owner information that is privileged, such as financial statements and similar information about the owner.

The LBHA will make these documents available for review at the LBHA during normal business hours. The cost for reproduction of allowable documents will be \$.25 per page.

### **17-II.C. HOUSING TYPE [24 CFR 983.52]**

The LBHA may attach PBV assistance for units in existing housing or for newly constructed or rehabilitated housing developed under and in accordance with an agreement to enter into a housing assistance payments contract that was executed prior to the start of construction. A housing unit is considered an existing unit for purposes of the PBV program, if, at the time of notice of LBHA selection, the units substantially comply with NSPIRE standards. Units for which new construction or rehabilitation began after the owner's proposal submission but prior to the execution of the HAP do not subsequently qualify as existing housing. Units that were newly constructed or rehabilitated in violation of program requirements also do not qualify as existing housing.

The LBHA must decide what housing type, new construction, rehabilitation, or existing housing, will be used to develop project-based housing. The LBHA choice of housing type must be reflected in its solicitation for proposals.



## **17-II.D. PROHIBITION OF ASSISTANCE FOR CERTAIN UNITS**

### **Ineligible Housing Types [24 CFR 983.53]**

The LBHA may not attach or pay PBV assistance to shared housing units; units on the grounds of a penal reformatory, medical, mental, or similar public or private institution; nursing homes or facilities providing continuous psychiatric, medical, nursing services, board and care, or intermediate care (except that assistance may be provided in assisted living facilities); units that are owned or controlled by an educational institution or its affiliate and are designated for occupancy by students; manufactured homes; and transitional housing. In addition, the LBHA may not attach or pay PBV assistance for a unit occupied by an owner and the LBHA may not select or enter into an agreement to enter into a HAP contract or HAP contract for a unit occupied by a family ineligible for participation in the PBV program. A member of a cooperative who owns shares in the project assisted under the PBV program is not considered an owner for purposes of participation in the PBV program. Finally, PBV assistance may not be attached to units for which construction or rehabilitation has started after the proposal submission and prior to the execution of an AHAP.

### **Subsidized Housing [24 CFR 983.54]**

A LBHA may not attach or pay PBV assistance to units in any of the following types of subsidized housing:

- A public housing unit;
- A unit subsidized with any other form of Section 8 assistance;
- A unit subsidized with any governmental rent subsidy;
- A unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing;
- A unit subsidized with Section 236 rental assistance payments (except that a LBHA may attach assistance to a unit subsidized with Section 236 interest reduction payments);
- A Section 202 project for non-elderly with disabilities;
- Section 811 project-based supportive housing for persons with disabilities;
- Section 202 supportive housing for the elderly;
- A Section 101 rent supplement project;
- A unit subsidized with any form of tenant-based rental assistance;
- A unit with any other duplicative federal, state, or local housing subsidy, as determined by HUD or the LBHA in accordance with HUD requirements.

**17-II.E. SUBSIDY LAYERING REQUIREMENTS [24 CFR 983.55, Notice PIH 2013-11, and FR Notice 3/13/23]**

The subsidy layering review is intended to prevent excessive public assistance by combining (layering) housing assistance payment subsidy under the PBV program with other governmental housing assistance from federal, state, or local agencies, including assistance such as tax concessions or tax credits.

HUD requires new construction and rehabilitation housing that will include forms of governmental assistance other than PBVs to undergo a subsidy layering review (SLR) prior to entering into an Agreement to Enter into Housing Assistance Payments Contract (AHAP). Subsidy layering requirements do not apply to existing housing, when PBV is the only governmental assistance, or for projects already subject to a PBV HAP contract, even if the project is recapitalized with outside sources of funding.

When a LBHA selects a new construction or rehabilitation project, the LBHA must require information regarding all HUD and/or other federal, state, or local governmental assistance to be disclosed by the project owner using Form HUD-2880. Appendix A of FR Notice 3/23/23 contains a list of all required documentation.

Either HUD or a HUD-approved housing credit agency (HCA) in the LBHA's jurisdiction performs the subsidy layering review. The LBHA must request an SLR through their local HUD Field Office or, if eligible, through a participating HCA.

If the SLR request is submitted to an approved HCA, and the proposed project-based voucher assistance meets HUD subsidy layering requirements, the HCA must submit a certification to HUD and notify the LBHA. The LBHA may proceed to execute an AHAP at that time if the environmental approval is received.

The HAP contract must contain the owner's certification that the project has not received and will not receive (before or during the term of the HAP contract) any public assistance for acquisition, development, or operation of the housing other than assistance disclosed in the subsidy layering review in accordance with HUD requirements.

## **17-II.F. CAP ON NUMBER OF PBV UNITS IN EACH PROJECT**

### **25 Percent per Project Cap [24 CFR 983.56, FR Notice 1/18/17, and Notice PIH 2017-21]**

In general, the LBHA may not select a proposal to provide PBV assistance for units in a project or enter into an agreement to enter into a HAP or a HAP contract to provide PBV assistance for units in a project, if the total number of dwelling units in the project that will receive PBV assistance during the term of the PBV HAP contract is more than the greater of 25 units or 25 percent of the number of dwelling units (assisted or unassisted) in the project.

### **Exceptions to 25 Percent per Project Cap [FR Notice 1/18/17; Notice PIH 2017-21; FR Notice 1/24/22]**

As of April 18, 2017, units are not counted against the 25 percent or 25-unit per project cap if:

- The units are exclusively for elderly families
- The units are for households eligible for supportive services available to all families receiving PBV assistance in the project
  - If the project is located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year estimates, the project cap is the greater of 25 units or 40 percent (instead of 25 percent) of the units in the project [FR Notice 7/14/17].

The Housing Opportunity Through Modernization Act of 2016 (HOTMA) eliminated the project cap exemption for projects that serve disabled families and modified the exception for supportive services.

Under the Fostering Stable Housing Opportunities (FSHO) amendments, units exclusively made available to youth receiving FUPY/FYI assistance may be excepted from the project cap for HAP contracts first effective after December 27, 2020. For more information on excepted units for FUPY, see Chapter 19.

Projects where these caps were implemented prior to HOTMA (HAP contracts executed prior to April 18, 2017) or FSHO (contract in effect on or prior to December 27, 2020) may continue to use the former exceptions and may renew their HAP contracts under the old requirements, unless the LBHA and owner agree to change the conditions of the HAP contract. However, this change may not be made if it would jeopardize an assisted family's eligibility for continued assistance in the project.

### ***Supportive Services***

LBHAs must include in the LBHA administrative plan the type of services offered to families for a project to qualify for the exception and the extent to which such services will be provided. As of April 18, 2017, the project must make supportive services available to all families receiving PBV assistance in the project, but the family does not actually have to accept and receive supportive services for the exception to apply to the unit, although the family must be eligible to receive the supportive services. It is not necessary that the services be provided at or by the project but must be reasonably available to families receiving PBV assistance at the project and designed to help families in the project achieve self-sufficiency or live in the community as independently as possible. A LBHA may not require participation in the supportive service as a condition of living in the excepted unit, although such services may be offered.

#### LBHA Policy

— Excepted units will be limited to units for elderly families.

### **Projects not Subject to a Project Cap [FR Notice 1/18/17; Notice PIH 2017-21]**

PBV units that were previously subject to certain federal rent restrictions or receiving another type of long-term housing subsidy provided by HUD are exempt from the project cap. In other words, 100 percent of the units in these projects may receive PBV assistance.

#### LBHA Policy

The LBHA does not have any PBV units that are subject to the per project cap exception.

### **Promoting Partially Assisted Projects [24 CFR 983.56(c)]**

A LBHA may establish local requirements designed to promote PBV assistance in partially assisted projects. A *partially assisted project* is a project in which there are fewer units covered by a HAP contract than residential units [24 CFR 983.3].

A LBHA may establish a per-project cap on the number of units that will receive PBV assistance or other project-based assistance in a multifamily project containing excepted units or in a single-family building. A LBHA may also determine not to provide PBV assistance for excepted units, or the LBHA may establish a per-project cap of less than 25 units or 25 percent of units.

#### LBHA Policy:

Excepted units will be limited to units for elderly families.

Beyond that, the LBHA will not impose any further cap on the number of PBV units assisted per project.

## **17-II.G. SITE SELECTION STANDARDS**

### **Compliance with PBV Goals, Civil Rights Requirements, and NSPIRE Site Standards [24 CFR 983.57(b)]**

The LBHA may not select a proposal for existing, newly constructed, or rehabilitated PBV housing on a site or enter into an agreement to enter into a HAP contract or HAP contract for units on the site, unless the LBHA has determined that PBV assistance for housing at the selected site is consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities. The standard for deconcentrating poverty and expanding housing and economic opportunities must be consistent with the LBHA Plan under 24 CFR 903 and the LBHA administrative plan.

In addition, prior to selecting a proposal, the LBHA must determine that the site is suitable from the standpoint of facilitating and furthering full compliance with the applicable Civil Rights Laws, regulations, and Executive Orders, and that the site meets the NSPIRE site and neighborhood standards at 24 CFR 5.703.

#### LBHA Policy

It is the LBHA goal to select sites for PBV housing that provide for deconcentrating poverty and expanding housing and economic opportunities. In complying with this goal the LBHA will limit approval of sites for PBV housing in census tracts that have poverty concentrations of 20 percent or less.

However, the LBHA will grant exceptions to the 20 percent standard where the LBHA determines that the PBV assistance will complement other local redevelopment activities designed to deconcentrate poverty and expand housing and economic opportunities in census tracts with poverty concentrations greater than 20 percent, such as sites in:

A census tract in which the proposed PBV development will be located in a HUD-designated Enterprise Zone, Economic Community, Choice Neighborhood, or Renewal Community;

A census tract where the concentration of assisted units will be or has decreased as a result of public housing demolition and HOPE VI redevelopment;

A census tract in which the proposed PBV development will be located is undergoing significant revitalization as a result of state, local, or federal dollars invested in the area;

A census tract where new market rate units are being developed where such market rate units will positively impact the poverty rate in the area;

A census tract where there has been an overall decline in the poverty rate within the past five years; or

A census tract where there are meaningful opportunities for educational and economic advancement.

### **Existing and Rehabilitated Housing Site and Neighborhood Standards [24 CFR 983.57(d)]**

The LBHA may not enter into an agreement to enter into a HAP contract nor enter into a HAP contract for existing or rehabilitated housing until it has determined that the site complies with the HUD required site and neighborhood standards. The site must:

- Be adequate in size, exposure, and contour to accommodate the number and type of units proposed;
- Have adequate utilities and streets available to service the site;
- Promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons;
- Be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units; and
- Be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

### **New Construction Site and Neighborhood Standards [24 CFR 983.57(e)]**

In order to be selected for PBV assistance, a site for newly constructed housing must meet the following HUD required site and neighborhood standards:

- The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed;
- The site must have adequate utilities and streets available to service the site;
- The site must not be located in an area of minority concentration unless the LBHA determines that sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration or that the project is necessary to meet overriding housing needs that cannot be met in that housing market area;
- The site must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.
- The site must promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons;
- The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate;
- The housing must be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units; and
- Except for housing designed for elderly persons, the housing must be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

## **17-IL.H. ENVIRONMENTAL REVIEW [24 CFR 983.58]**

The LBHA activities under the PBV program are subject to HUD environmental regulations in 24 CFR parts 50 and 58. The *responsible entity* is responsible for performing the federal environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.). The LBHA may not enter into an agreement to enter into a HAP contract nor enter into a HAP contract until it has complied with the environmental review requirements.

In the case of existing housing, the responsible entity that is responsible for the environmental review under 24 CFR part 58 must determine whether or not PBV assistance is categorically excluded from review under the National Environmental Policy Act and whether or not the assistance is subject to review under the laws and authorities listed in 24 CFR 58.5.

The LBHA may not enter into an agreement to enter into a HAP contract or a HAP contract with an owner, and the LBHA, the owner, and its contractors may not acquire, rehabilitate, convert, lease, repair, dispose of, demolish, or construct real property or commit or expend program or local funds for PBV activities under this part, until the environmental review is completed.

The LBHA must supply all available, relevant information necessary for the responsible entity to perform any required environmental review for any site. The LBHA must require the owner to carry out mitigating measures required by the responsible entity (or HUD, if applicable) as a result of the environmental review.





## **PART III: DWELLING UNITS**

### **17-III.A. OVERVIEW**

This part identifies the special housing quality standards that apply to the PBV program, housing accessibility for persons with disabilities, and special procedures for conducting NSPIRE inspections.

### **17-III.B. NATIONAL STANDARDS FOR THE PHYSICAL INSPECTION OF REAL ESTATE [24 CFR 983.101]**

NSPIRE standards for the tenant-based program, including those for special housing types, generally apply to the PBV program. NSPIRE requirements for shared housing, manufactured home space rental, and the homeownership option do not apply because these housing types are not assisted under the PBV program.

#### **Lead-based Paint [24 CFR 983.101(c)]**

The lead-based paint requirements for the tenant-based voucher program do not apply to the PBV program. Instead, The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR Part 35, Subparts A, B, H, and R, and 40 CFR 745.227, apply to the PBV program.

### **17-III.C. HOUSING ACCESSIBILITY FOR PERSONS WITH DISABILITIES**

The housing must comply with program accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8. The LBHA must ensure that the percentage of accessible dwelling units complies with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by HUD's regulations at 24 CFR 8, subpart C.

Housing first occupied after March 13, 1991, must comply with design and construction requirements of the Fair Housing Amendments Act of 1988 and implementing regulations at 24 CFR 100.205, as applicable. (24 CFR 983.102)

## 17-III.D. INSPECTING UNITS

### **Pre-selection Inspection [24 CFR 983.103(a)]**

The LBHA must examine the proposed site before the proposal selection date. If the units to be assisted already exist, the LBHA must inspect all the units before the proposal selection date and must determine whether the units substantially comply with NSPIRE. To qualify as existing housing, units must substantially comply with NSPIRE on the proposal selection date. However, the LBHA may not execute the HAP contract until the units fully comply with NSPIRE.

### **Pre-HAP Contract Inspections [24 CFR 983.103(b), FR Notice 1/18/17, and Notice PIH 2017-20]**

The LBHA must inspect each contract unit before execution of the HAP contract. The LBHA may not provide assistance on behalf of the family until the unit fully complies with NSPIRE, unless the LBHA has adopted a policy to enter into a HAP contract for units that fail the initial inspection as a result of only non-life-threatening conditions, or if the unit passed an alternative inspection.

#### LBHA Policy

The LBHA will not provide assistance on behalf of the family until the unit fully complies with NSPIRE.

### **Turnover Inspections [24 CFR 983.103(c)]**

Before providing assistance to a new family in a contract unit, the LBHA must inspect the unit. The LBHA may not provide assistance on behalf of the family until the unit fully complies with NSPIRE.

### **Annual/Biennial Inspections [24 CFR 983.103(d); FR Notice 6/25/14]**

At least once every 24 months during the term of the HAP contract (or at least triennially for small rural LBHAs), the LBHA must inspect a random sample consisting of at least 20 percent of the contract units in each building to determine if the contract units and the premises are maintained in accordance with NSPIRE. Turnover inspections are not counted toward meeting this inspection requirement. The LBHA also has the option in certain mixed finance properties to rely on alternative inspections conducted at least triennially.

#### LBHA Policy

The LBHA will inspect on an annual basis a random sample consisting of at least 20 percent of the contract units in each building to determine if the contract units and the premises are maintained in accordance with NSPIRE.

If more than 20 percent of the sample of inspected contract units in a building fail the initial inspection, the LBHA must reinspect 100 percent of the contract units in the building.

### **Alternative Inspections [24 CFR 983.103(g); Notice PIH 2016-05]**

In the case of mixed-finance properties that are subject to alternative inspections, the LBHA may rely upon an alternative inspection conducted at least triennially to demonstrate compliance with inspection requirements.

#### LBHA Policy

The LBHA will not rely on alternative inspection standards.

### **Other Inspections [24 CFR 983.103(e)]**

The LBHA must inspect contract units whenever needed to determine that the contract units comply with NSPIRE standards and that the owner is providing maintenance, utilities, and other services in accordance with the HAP contract. The LBHA must take into account complaints and any other information coming to its attention in scheduling inspections.

The LBHA must conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected an NSPIRE deficiency and must conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family NSPIRE deficiencies.

In conducting LBHA supervisory quality control inspections, the LBHA should include a representative sample of both tenant-based and project-based units.

### **Inspecting LBHA-Owned Units [24 CFR 983.103(f)]**

In the case of LBHA-owned units, the inspections must be performed by an independent entity designated by the LBHA and approved by HUD. The independent entity must furnish a copy of each inspection report to the LBHA and to the HUD field office where the project is located. The LBHA must take all necessary actions in response to inspection reports from the independent entity, including exercise of contractual remedies for violation of the HAP contract by the LBHA-owner.



## **PART IV: REHABILITATED AND NEWLY CONSTRUCTED UNITS**

### **17-IV.A. OVERVIEW [24 CFR 983.151]**

There are specific requirements that apply to PBV assistance for newly constructed or rehabilitated housing that do not apply to PBV assistance in existing housing. This part describes the requirements unique to this type of assistance.

Housing selected for this type of assistance may not at a later date be selected for PBV assistance as existing housing.

### **17-IV.B. AGREEMENT TO ENTER INTO HAP CONTRACT**

In order to offer PBV assistance in rehabilitated or newly constructed units, the LBHA must enter into an agreement to enter into HAP contract (Agreement) with the owner of the property. The Agreement must be in the form required by HUD [24 CFR 983.152(b)]. The LBHA may not enter into an Agreement if commencement of construction or rehabilitation has commenced after proposal submission [24 CFR 983.152(c)]. Construction begins when excavation or site preparation (including clearing of the land) begins for the housing. Rehabilitation begins with the physical commencement of rehabilitation activity on the housing.

In the Agreement the owner agrees to develop the PBV contract units to comply with NSPIRE, and the LBHA agrees that upon timely completion of such development in accordance with the terms of the Agreement, the LBHA will enter into a HAP contract with the owner for the contract units [24 CFR 983.152(a)].

### **Content of the Agreement [24 CFR 983.152(d)]**

At a minimum, the Agreement must describe the following features of the housing to be developed and assisted under the PBV program:

- Site and the location of the contract units;
- Number of contract units by area (size) and number of bedrooms and bathrooms;
- Services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent;
- Utilities available to the contract units, including a specification of utility services to be paid by the owner and utility services to be paid by the tenant;
- An indication of whether or not the design and construction requirements of the Fair Housing Act and section 504 of the Rehabilitation Act of 1973 apply to units under the Agreement. If applicable, any required work item resulting from these requirements must be included in the description of work to be performed under the Agreement;
- Estimated initial rents to owner for the contract units;
- Description of the work to be performed under the Agreement. For rehabilitated units, the description must include the rehabilitation work write up and, where determined necessary by the LBHA, specifications and plans. For new construction units, the description must include the working drawings and specifications.
- Any additional requirements for quality, architecture, or design over and above NSPIRE standards.

### **Execution of the Agreement [24 CFR 983.153]**

The Agreement must be executed promptly after LBHA notice of proposal selection to the selected owner. The LBHA may not enter into the Agreement if construction or rehabilitation has started after proposal submission. Generally, the LBHA may not enter into the Agreement with the owner until the subsidy layering review is completed. Likewise, the LBHA may not enter into the Agreement until the environmental review is completed and the LBHA has received environmental approval. However, the LBHA does not need to conduct a subsidy layering review in the case of a HAP contract for existing housing or if the applicable state or local agency has conducted such a review. Similarly, environmental reviews are not required for existing structures unless otherwise required by law or regulation.

#### LBHA Policy

The LBHA will enter into the Agreement with the owner within 10 business days of receiving both environmental approval and notice that subsidy layering requirements have been met, and before construction or rehabilitation work is started.

## **17-IV.C. CONDUCT OF DEVELOPMENT WORK**

### **Labor Standards [24 CFR 983.154(b)]**

If an Agreement covers the development of nine or more contract units (whether or not completed in stages), the owner and the owner's contractors and subcontractors must pay Davis-Bacon wages to laborers and mechanics employed in the development of housing. Further, these Davis-Bacon requirements apply to existing PBV units when the nature of any work to be performed either before the execution of the HAP contract or within 18 months after execution constitutes project development. Any development initiated on existing units within 18 months after the effective date of the HAP contract on projects with nine or more contract units triggers Davis-Bacon requirements.

The HUD-prescribed form of the Agreement will include the labor standards clauses required by HUD, such as those involving Davis-Bacon wage rates. The addendum to the HAP contract, Form HUD-5679, also includes the required labor standards clauses.

The owner, contractors, and subcontractors must also comply with the Contract Work Hours and Safety Standards Act, Department of Labor regulations in 29 CFR part 5, and other applicable federal labor relations laws and regulations. The LBHA must monitor compliance with labor standards.

### **Owner Disclosure [24 CFR 983.154(d) and (e)]**

The Agreement and HAP contract must include a certification by the owner that the owner and other project principals are not on the U.S. General Services Administration list of parties excluded from federal procurement and non-procurement programs.

The owner must also disclose any possible conflict of interest that would be a violation of the Agreement, the HAP contract, or HUD regulations.

#### **17-IV.D. COMPLETION OF HOUSING**

The Agreement must specify the deadlines for completion of the housing, and the owner must develop and complete the housing in accordance with these deadlines. The Agreement must also specify the deadline for submission by the owner of the required evidence of completion.

##### **Evidence of Completion [24 CFR 983.155(b)]**

At a minimum, the owner must submit the following evidence of completion to the LBHA in the form and manner required by the LBHA:

- Owner certification that the work has been completed in accordance with NSPIRE and all requirements of the Agreement; and
- Owner certification that the owner has complied with labor standards and equal opportunity requirements in development of the housing.

At the LBHA's discretion, the Agreement may specify additional documentation that must be submitted by the owner as evidence of housing completion.

##### LBHA Policy

The LBHA will determine the need for the owner to submit additional documentation as evidence of housing completion on a case-by-case basis depending on the nature of the PBV project. The LBHA will specify any additional documentation requirements in the Agreement to enter into HAP contract.

##### **LBHA Acceptance of Completed Units [24 CFR 983.156]**

Upon notice from the owner that the housing is completed, the LBHA must inspect to determine if the housing has been completed in accordance with the Agreement, including compliance with NSPIRE standards and any additional requirements imposed under the Agreement. The LBHA must also determine if the owner has submitted all required evidence of completion.

If the work has not been completed in accordance with the Agreement, the LBHA must not enter into the HAP contract.

If the LBHA determines the work has been completed in accordance with the Agreement and that the owner has submitted all required evidence of completion, the LBHA must submit the HAP contract for execution by the owner and must then execute the HAP contract.



## **PART V: HOUSING ASSISTANCE PAYMENTS CONTRACT (HAP)**

### **17-V.A. OVERVIEW**

The LBHA must enter into a HAP contract with an owner for units that are receiving PBV assistance. The purpose of the HAP contract is to provide housing assistance payments for eligible families. Housing assistance is paid for contract units leased and occupied by eligible families during the HAP contract term. With the exception of single-family scattered-site projects, a HAP contract shall cover a single project. If multiple projects exist, each project is covered by a separate HAP contract. The HAP contract must be in the form required by HUD [24 CFR 983.202(a)].

### **17-V.B. HAP CONTRACT REQUIREMENTS**

#### **Contract Information [24 CFR 983.203]**

The HAP contract must specify the following information:

- The total number of contract units by number of bedrooms;
- The project's name, street address, city or county, state and zip code, block and lot number (if known), and any other information necessary to clearly identify the site and the building;
- The number of contract units in each building, the location of each contract unit, the area of each contract unit, and the number of bedrooms and bathrooms in each contract unit;
- Services, maintenance, and equipment to be supplied by the owner and included in the rent to owner;
- Utilities available to the contract units, including a specification of utility services to be paid by the owner (included in rent) and utility services to be paid by the tenant;
- Features provided to comply with program accessibility requirements of Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8;
- The HAP contract term;
- The number of units in any project that will exceed the 25 percent per project cap, which will be set aside for occupancy by qualifying families (elderly and/or disabled families and families receiving supportive services); and
- The initial rent to owner for the first 12 months of the HAP contract term.

### **Execution of the HAP Contract [24 CFR 983.204]**

The LBHA may not enter into a HAP contract until each contract unit has been inspected and the LBHA has determined that the unit complies with the NSPIRE standards, unless the LBHA has adopted a policy to enter into a HAP contract for units that fail the initial inspection where no life-threatening conditions are present. For existing housing, the HAP contract must be executed promptly after the LBHA selects the owner proposal and inspects the housing units. For newly constructed or rehabilitated housing the HAP contract must be executed after the LBHA has inspected the completed units and has determined that the units have been completed in accordance with the agreement to enter into HAP, and the owner furnishes all required evidence of completion.

#### LBHA Policy

For existing housing, the HAP contract will be executed within 10 business days of the LBHA determining that all units pass inspection.

For rehabilitated or newly constructed housing, the HAP contract will be executed within 10 business days of the LBHA determining that the units have been completed in accordance with the agreement to enter into HAP, all units meet NSPIRE standards, and the owner has submitted all required evidence of completion.

### **Term of HAP Contract [24 CFR 983.205, FR Notice 1/18/17, and Notice PIH 2017-21]**

The LBHA may enter into a HAP contract with an owner for an initial term of no less than one year and no more than 20 years for each contract unit. The length of the term of the HAP contract for any contract unit may not be less than one year, nor more than 20 years. In the case of LBHA-owned units, the term of the HAP contract must be agreed upon by the LBHA and the independent entity approved by HUD [24 CFR 983.59(b)(2)].

#### LBHA Policy

The term of all PBV HAP contracts will be negotiated with the owner on a case-by-case basis.

At the time of the initial HAP contract term or any time before expiration of the HAP contract, the LBHA may extend the term of the contract for an additional term of up to 20 years if the LBHA determines an extension is appropriate to continue providing affordable housing for low-income families. A HAP contract extension may not exceed 20 years. A LBHA may provide for multiple extensions; however, in no circumstances may such extensions exceed 20 years, cumulatively. Extensions after the initial extension are allowed at the end of any extension term, provided that not more than 24 months prior to the expiration of the previous extension contract the LBHA agrees to extend the term, and that such extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities. Extensions after the initial extension term shall not begin prior to the expiration date of the previous extension term. Subsequent extensions are subject to the same limitations. All extensions must be on the form and subject to the conditions prescribed by HUD at the time of the extension. In the case of LBHA-owned units, any extension of the term of the HAP contract must be agreed upon by the LBHA and the independent entity approved by HUD [24 CFR 983.59(b)(2)].

## LBHA Policy

When determining whether or not to extend an expiring PBV contract, the LBHA will consider several factors including, but not limited to:

The cost of extending the contract and the amount of available budget authority;

The condition of the contract units;

The owner's record of compliance with obligations under the HAP contract and lease(s);

Whether the location of the units continues to support the goals of deconcentrating poverty and expanding housing opportunities; and

Whether the funding could be used more appropriately for tenant-based assistance.

### ***Termination by LBHA [24 CFR 983.205(c) and FR Notice 1/18/17]***

The HAP contract must provide that the term of the LBHA's contractual commitment is subject to the availability of sufficient appropriated funding as determined by HUD or by the LBHA in accordance with HUD instructions. For these purposes, sufficient funding means the availability of appropriations, and of funding under the ACC from such appropriations, to make full payment of housing assistance payments payable to the owner for any contract year in accordance with the terms of the HAP contract.

In times of insufficient funding, HUD requires that LBHAs first take all cost-saving measures prior to failing to make payments under existing PBV HAP contracts.

If it is determined that there may not be sufficient funding to continue housing assistance payments for all contract units and for the full term of the HAP contract, the LBHA may terminate the HAP contract by notice to the owner. The termination must be implemented in accordance with HUD instructions.

### ***Termination by Owner [24 CFR 983.205(d)]***

If in accordance with program requirements the amount of rent to an owner for any contract unit is reduced below the amount of the rent to owner at the beginning of the HAP contract term, the owner may terminate the HAP contract by giving notice to the LBHA. In this case, families living in the contract units must be offered tenant-based assistance.

**Statutory Notice Requirements: Contract Termination or Expiration [24 CFR 983.206, FR Notice 1/18/17, and Notice PIH 2017-21]**

Not less than one year before the HAP contract terminates, or if the owner refuses to renew the HAP contract, the owner must notify the LBHA and assisted tenants of the termination. The notice must be provided in the form prescribed by HUD. If the owner does not give timely notice, the owner must permit the tenants in assisted units to remain in their units for the required notice period with no increase in the tenant portion of their rent, and with no eviction as a result of the owner's inability to collect an increased tenant portion of rent. An owner may renew the terminating contract for a period of time sufficient to give tenants one-year advance notice under such terms as HUD may require.

Upon termination or expiration of the contract, a family living at the property is entitled to receive a tenant-based voucher. Tenant-based assistance would not begin until the owner's required notice period ends. The LBHA must provide the family with a voucher and the family must also be given the option by the LBHA and owner to remain in their unit with HCV tenant-based assistance as long as the unit complies with inspection and rent reasonableness requirements. The family must pay their total tenant payment (TTP) and any additional amount if the gross rent exceeds the applicable payment standard. The family has the right to remain in the project as long as the units are used for rental housing and are otherwise eligible for HCV assistance. The owner may not terminate the tenancy of a family that exercises its right to remain except for serious or repeated lease violations or other good cause. Families that receive a tenant-based voucher at the expiration or termination of the PBV HAP contract are not new admissions to the LBHA HCV tenant-based program and are not subject to income eligibility requirements or any other admission requirements. If the family chooses to remain in their unit with tenant-based assistance, the family may do so regardless of whether the family share would initially exceed 40 percent of the family's adjusted monthly income.

**Remedies for NSPIRE Deficiencies [24 CFR 983.208(b)]**

The LBHA may not make any HAP payment to the owner for a contract unit during any period in which the unit does not comply with NSPIRE standards. If the LBHA determines that a contract does not comply with NSPIRE standards, the LBHA may exercise any of its remedies under the HAP contract, for any or all of the contract units. Available remedies include termination of housing assistance payments, abatement or reduction of housing assistance payments, reduction of contract units, and termination of the HAP contract.

LBHA Policy

The LBHA will abate and terminate PBV HAP contracts for noncompliance with NSPIRE in accordance with the policies used in the tenant-based voucher program. These policies are contained in Section 8-II.G., Enforcing Owner Compliance.

## **17-V.C. AMENDMENTS TO THE HAP CONTRACT**

### **Substitution of Contract Units [24 CFR 983.207(a)]**

At the LBHA's discretion and subject to all PBV requirements, the HAP contract may be amended to substitute a different unit with the same number of bedrooms in the same project for a previously covered contract unit. Before any such substitution can take place, the LBHA must inspect the proposed unit and determine the reasonable rent for the unit.

### **Addition of Contract Units [FR Notice 1/18/17 and Notice PIH 2017-21]**

The LBHA and owner may amend the HAP contract to add additional PBV contract units in projects that already have a HAP contract without having to fulfill the selection requirements found at 24 CFR 983.51(b) for those additional PBV units, regardless of when the HAP contract was signed. The additional PBV units, however, are still subject to the PBV program cap and individual project caps. Prior to attaching additional units without competition, the LBHA must submit to the local field office information outlined in FR Notice 1/18/17. The LBHA must also detail in the administrative plan their intent to add PBV units and the rationale for adding units to the specific PBV project.

#### LBHA Policy

The LBHA will add units to the contract on a case-by-case basis to ensure the availability of affordable housing as long as the addition of units does not exceed allowable project caps.

## **17-V.D. HAP CONTRACT YEAR, ANNIVERSARY AND EXPIRATION DATES [24 CFR 983.207(b) and 983.302(e)]**

The HAP contract year is the period of 12 calendar months preceding each annual anniversary of the HAP contract during the HAP contract term. The initial contract year is calculated from the first day of the first calendar month of the HAP contract term.

The annual anniversary of the HAP contract is the first day of the first calendar month after the end of the preceding contract year.

There is a single annual anniversary and expiration date for all units under a particular HAP contract, even in cases where contract units are placed under the HAP contract in stages (on different dates) or units are added by amendment. The anniversary and expiration dates for all units coincide with the dates for the contract units that were originally placed under contract.

## **17-V.E. OWNER RESPONSIBILITIES UNDER THE HAP CONTRACT [24 CFR 983.210]**

When the owner executes the HAP contract s/he certifies that at such execution and at all times during the term of the HAP contract:

- All contract units are in good condition and the owner is maintaining the premises and contract units in accordance with NSPIRE standards;
- The owner is providing all services, maintenance, equipment and utilities as agreed to under the HAP contract and the leases;
- Each contract unit for which the owner is receiving HAP, is leased to an eligible family referred by the LBHA, and the lease is in accordance with the HAP contract and HUD requirements;
- To the best of the owner's knowledge the family resides in the contract unit for which the owner is receiving HAP, and the unit is the family's only residence;
- The owner (including a principal or other interested party) is not the spouse, parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a contract unit;
- The amount of the HAP the owner is receiving is correct under the HAP contract;
- The rent for contract units does not exceed rents charged by the owner for comparable unassisted units;
- Except for HAP and tenant rent, the owner has not received and will not receive any other payment or consideration for rental of the contract unit;
- The family does not own or have any interest in the contract unit (does not apply to family's membership in a cooperative); and
- Repair work on the project selected as an existing project that is performed after HAP execution within such post-execution period as specified by HUD may constitute development activity, and if determined to be development activity, the repair work undertaken shall be in compliance with Davis-Bacon wage requirements.

## **17-V.F. ADDITIONAL HAP REQUIREMENTS**

### **Housing Quality and Design Requirements [24 CFR 983.101(e) and 983.208(a)]**

The owner is required to maintain and operate the contract units and premises in accordance with NSPIRE standards, including performance of ordinary and extraordinary maintenance. The owner must provide all the services, maintenance, equipment, and utilities specified in the HAP contract with the LBHA and in the lease with each assisted family. In addition, maintenance, replacement and redecoration must be in accordance with the standard practice for the building as established by the owner.

The LBHA may elect to establish additional requirements for quality, architecture, or design of PBV housing. Any such additional requirements must be specified in the Agreement to enter into a HAP contract and the HAP contract. These requirements must be in addition to, not in place of, compliance with NSPIRE standards.

#### LBHA Policy

The LBHA will identify the need for any special features on a case-by-case basis depending on the intended occupancy of the PBV project. The LBHA will specify any special design standards or additional requirements in the invitation for PBV proposals, the agreement to enter into HAP contract, and the HAP contract.

### **Vacancy Payments [24 CFR 983.352(b)]**

At the discretion of the LBHA, the HAP contract may provide for vacancy payments to the owner for a LBHA-determined period of vacancy extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month. The amount of the vacancy payment will be determined by the LBHA and cannot exceed the monthly rent to owner under the assisted lease, minus any portion of the rental payment received by the owner (including amounts available from the tenant's security deposit).

#### LBHA Policy

The LBHA will decide on a case-by-case basis if the LBHA will provide vacancy payments to the owner. The HAP contract with the owner will contain any such agreement, including the amount of the vacancy payment and the period for which the owner will qualify for these payments.





## **PART VI: SELECTION OF PBV PROGRAM PARTICIPANTS**

### **17-VI.A. OVERVIEW**

Many of the provisions of the tenant-based voucher regulations [24 CFR 982] also apply to the PBV program. This includes requirements related to determining eligibility and selecting applicants from the waiting list. Even with these similarities, there are requirements that are unique to the PBV program. This part describes the requirements and policies related to eligibility and admission to the PBV program.

### **17-VI.B. ELIGIBILITY FOR PBV ASSISTANCE [24 CFR 983.251(a) and (b)]**

The LBHA may select families for the PBV program from those who are participants in the LBHA's tenant-based voucher program and from those who have applied for admission to the voucher program. For voucher participants, eligibility was determined at original admission to the voucher program and does not need to be redetermined at the commencement of PBV assistance. For all others, eligibility for admission must be determined at the commencement of PBV assistance.

Applicants for PBV assistance must meet the same eligibility requirements as applicants for the tenant-based voucher program. Applicants must qualify as a family as defined by HUD and the LBHA, meet asset limitation requirements, have income at or below HUD-specified income limits, and qualify on the basis of citizenship or the eligible immigration status of family members [24 CFR 982.201(a) and 24 CFR 983.2(a)]. In addition, an applicant family must provide social security information for family members [24 CFR 5.216 and 5.218] and consent to the LBHA's collection and use of family information regarding income, expenses, and family composition [24 CFR 5.230]. The LBHA may also not approve a tenancy if the owner (including a principal or other interested party) of the unit is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless needed as a reasonable accommodation. An applicant family must also meet HUD requirements related to current or past criminal activity.

#### LBHA Policy

The LBHA will determine an applicant family's eligibility for the PBV program in accordance with the policies in Chapter 3.

**In-Place Families [24 CFR 983.251(b)]**

An eligible family residing in a proposed PBV contract unit on the date the proposal is selected by the LBHA is considered an “in-place family.” These families are afforded protection from displacement under the PBV rule. If a unit to be placed under contract (either an existing unit or a unit requiring rehabilitation) is occupied by an eligible family on the date the proposal is selected, the in-place family must be placed on the LBHA’s waiting list. Once the family’s continued eligibility is determined (the LBHA may deny assistance to an in-place family for the grounds specified in 24 CFR 982.552 and 982.553), the family must be given an absolute selection preference and the LBHA must refer these families to the project owner for an appropriately sized PBV unit in the project. Admission of eligible in-place families is not subject to income targeting requirements.

This regulatory protection from displacement does not apply to families that are not eligible to participate in the program on the proposal selection date.

## **17-VI.C. ORGANIZATION OF THE WAITING LIST [24 CFR 983.251(c)]**

The LBHA may establish a separate waiting list for PBV units or it may use the same waiting list for both tenant-based and project-based assistance. The LBHA may also merge the PBV waiting list with a waiting list for other assisted housing programs offered by the LBHA. If the LBHA chooses to offer a separate waiting list for PBV assistance, the LBHA must offer to place applicants who are listed on the tenant-based waiting list on the waiting list for PBV assistance.

If a LBHA decides to establish a separate PBV waiting list, the LBHA may use a single waiting list for the LBHA's whole PBV program, or it may establish separate waiting lists for PBV units in particular projects or buildings or for sets of such units.

### **LBHA Policy**

The LBHA will establish and manage separate waiting lists for individual projects or buildings that are receiving PBV assistance. The LBHA currently has waiting lists for the following PBV projects:

**John R. Lewis**

**Garfield Court I & II**

**Presidential Estates**

**Seaview Manor**

## **17-VI.D. SELECTION FROM THE WAITING LIST [24 CFR 983.251(c)]**

Applicants who will occupy units with PBV assistance must be selected from the LBHA's waiting list. The LBHA may establish selection criteria or preferences for occupancy of particular PBV units. The LBHA may place families referred by the PBV owner on its PBV waiting list.

### **Income Targeting [24 CFR 983.251(c)(6)]**

At least 75 percent of the families admitted to the LBHA's tenant-based and project-based voucher programs during the LBHA fiscal year from the waiting list must be extremely low-income families. The income targeting requirement applies to the total of admissions to both programs.

### **Units with Accessibility Features [24 CFR 983.251(c)(7)]**

When selecting families to occupy PBV units that have special accessibility features for persons with disabilities, the LBHA must first refer families who require such features to the owner.

**Preferences [24 CFR 983.251(d), FR Notice 11/24/08]**

The LBHA may use the same selection preferences that are used for the tenant-based voucher program, establish selection criteria or preferences for the PBV program as a whole, or for occupancy of particular PBV developments or units. The LBHA must provide an absolute selection preference for eligible in-place families as described in Section 17-VI.B. above.

The LBHA may establish a selection preference for families who qualify for voluntary services, including disability-specific services, offered in conjunction with assisted units, provided that preference is consistent with the LBHA plan. The LBHA may not, however, grant a preference to a person with a specific disability [FR Notice 1/18/17].

In advertising such a project, the owner may advertise the project as offering services for a particular type of disability; however, the project must be open to all otherwise eligible disabled persons who may benefit from services provided in the project. In these projects, disabled residents may not be required to accept the particular services offered as a condition of occupancy.

If the LBHA has projects with “excepted units” for elderly families or supportive services, the LBHA must give preference to such families when referring families to these units [24 CFR 983.261(b); FR Notice 1/18/17].

LBHA Policy

The LBHA will provide a selection preference when required by the regulation (e.g., eligible in-place families, elderly families or units with supportive services, or mobility impaired persons for accessible units). The LBHA will not offer any additional preferences for the PBV program or for particular PBV projects or units.

## **17-VI.E. OFFER OF PBV ASSISTANCE**

### **Refusal of Offer [24 CFR 983.251(e)(3)]**

The LBHA is prohibited from taking any of the following actions against a family who has applied for, received, or refused an offer of PBV assistance:

- Refuse to list the applicant on the waiting list for tenant-based voucher assistance;
- Deny any admission preference for which the applicant qualifies;
- Change the applicant's place on the waiting list based on preference, date, and time of application, or other factors affecting selection under the LBHA's selection policy;
- Remove the applicant from the tenant-based voucher waiting list.

### **Disapproval by Landlord [24 CFR 983.251(e)(2)]**

If a PBV owner rejects a family for admission to the owner's units, such rejection may not affect the family's position on the tenant-based voucher waiting list.

### **Acceptance of Offer [24 CFR 983.252]**

#### ***Family Briefing***

When a family accepts an offer for PBV assistance, the LBHA must give the family an oral briefing. The briefing must include information on how the program works and the responsibilities of the family and owner. In addition to the oral briefing, the LBHA must provide a briefing packet that explains how the LBHA determines the total tenant payment for a family, the family obligations under the program, and applicable fair housing information.

#### ***Persons with Disabilities***

If an applicant family's head or spouse is disabled, the LBHA must assure effective communication, in accordance with 24 CFR 8.6, in conducting the oral briefing and in providing the written information packet. This may include making alternative formats available (see Chapter 2). In addition, the LBHA must have a mechanism for referring a family that includes a member with a mobility impairment to an appropriate accessible PBV unit.

#### ***Persons with Limited English Proficiency***

The LBHA should take reasonable steps to assure meaningful access by persons with limited English proficiency in accordance with Title VI of the Civil Rights Act of 1964 and Executive Order 13166 (see Chapter 2).

## **17-VI.F. OWNER SELECTION OF TENANTS**

The owner is responsible for developing written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant's ability to fulfill their obligations under the lease. An owner must promptly notify in writing any rejected applicant of the grounds for any rejection [24 CFR 983.253(a)(2) and (a)(3)].

### **Leasing [24 CFR 983.253(a)]**

During the term of the HAP contract, the owner must lease contract units to eligible families that are selected and referred by the LBHA from the LBHA's waiting list. The contract unit leased to the family must be the appropriate size unit for the size of the family, based on the LBHA's subsidy standards.

### **Filling Vacancies [24 CFR 983.254(a)]**

The owner must promptly notify the LBHA of any vacancy or expected vacancy in a contract unit. After receiving such notice, the LBHA must make every reasonable effort to promptly refer a sufficient number of families for the owner to fill such vacancies. The LBHA and the owner must make reasonable efforts to minimize the likelihood and length of any vacancy.

#### LBHA Policy

The owner must notify the LBHA in writing (mail, fax, or email) within five business days of learning about any vacancy or expected vacancy.

The LBHA will make every reasonable effort to refer families to the owner within 10 business days of receiving such notice from the owner.

### **Reduction in HAP Contract Units Due to Vacancies [24 CFR 983.254(b)]**

If any contract units have been vacant for 120 or more days since owner notice of the vacancy, the LBHA may give notice to the owner amending the HAP contract to reduce the number of contract units by subtracting the number of contract units (according to the bedroom size) that have been vacant for this period.

#### LBHA Policy

If any contract units have been vacant for 120 days, the LBHA will give notice to the owner that the HAP contract will be amended to reduce the number of contract units that have been vacant for this period. The LBHA will provide the notice to the owner within 10 business days of the 120<sup>th</sup> day of the vacancy. The amendment to the HAP contract will be effective the 1<sup>st</sup> day of the month following the date of the LBHA's notice.

## **17-VI.G. TENANT SCREENING [24 CFR 983.255]**

### **LBHA Responsibility**

The LBHA is not responsible or liable to the owner or any other person for the family's behavior or suitability for tenancy. However, the LBHA may opt to screen applicants for family behavior or suitability for tenancy and may deny applicants based on such screening.

#### LBHA Policy

The LBHA will not conduct screening to determine a PBV applicant family's suitability for tenancy.

The LBHA must provide the owner with an applicant family's current and prior address (as shown in LBHA records) and the name and address (if known by the LBHA) of the family's current landlord and any prior landlords.

In addition, the LBHA may offer the owner other information the LBHA may have about a family, including information about the tenancy history of family members or about drug trafficking and criminal activity by family members. The LBHA must provide applicant families a description of the LBHA policy on providing information to owners, and the LBHA must give the same types of information to all owners.

The LBHA may not disclose to the owner any confidential information provided in response to a request for documentation of domestic violence, dating violence, sexual assault, stalking, or human trafficking, except at the written request or with the written consent of the individual providing the documentation [see 24 CFR 5.2007(a)(4)].

#### LBHA Policy

The LBHA will inform owners of their responsibility to screen prospective tenants, and will provide owners with the required known name and address information, at the time of the turnover inspection or before. The LBHA will not provide any additional information to the owner, such as tenancy history, criminal history, etc.

### **Owner Responsibility**

The owner is responsible for screening and selection of the family to occupy the owner's unit. When screening families the owner may consider a family's background with respect to the following factors:

- Payment of rent and utility bills;
- Caring for a unit and premises;
- Respecting the rights of other residents to the peaceful enjoyment of their housing;
- Drug-related criminal activity or other criminal activity that is a threat to the health, safety, or property of others; and
- Compliance with other essential conditions of tenancy.





## **PART VII: OCCUPANCY**

### **17-VII.A. OVERVIEW**

After an applicant has been selected from the waiting list, determined eligible by the LBHA, referred to an owner and determined suitable by the owner, the family will sign the lease and occupancy of the unit will begin.

### **17-VII.B. LEASE [24 CFR 983.256]**

The tenant must have legal capacity to enter a lease under state and local law. *Legal capacity* means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner.

#### **Form of Lease [24 CFR 983.256(b)]**

The tenant and the owner must enter into a written lease agreement that is signed by both parties. If an owner uses a standard lease form for rental units to unassisted tenants in the locality or premises, the same lease must be used for assisted tenants, except that the lease must include a HUD-required tenancy addendum. The tenancy addendum must include, word-for-word, all provisions required by HUD.

If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease, such as a LBHA model lease.

The LBHA may review the owner's lease form to determine if the lease complies with state and local law. If the LBHA determines that the lease does not comply with state or local law, the LBHA may decline to approve the tenancy.

#### LBHA Policy

The LBHA will not review the owner's lease for compliance with state or local law.

#### **Lease Requirements [24 CFR 983.256(c)]**

The lease for a PBV unit must specify all of the following information:

- The names of the owner and the tenant;
- The unit rented (address, apartment number, if any, and any other information needed to identify the leased contract unit);
- The term of the lease (initial term and any provision for renewal);
- The amount of the tenant rent to owner, which is subject to change during the term of the lease in accordance with HUD requirements;
- A specification of the services, maintenance, equipment, and utilities that will be provide by the owner; and
- The amount of any charges for food, furniture, or supportive services.

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### **Tenancy Addendum [24 CFR 983.256(d)]**

The tenancy addendum in the lease must state:

- The program tenancy requirements;
- The composition of the household as approved by the LBHA (the names of family members and any LBHA-approved live-in aide);
- All provisions in the HUD-required tenancy addendum must be included in the lease. The terms of the tenancy addendum prevail over other provisions of the lease.

### **Initial Term and Lease Renewal [24 CFR 983.256(f)]**

The initial lease term must be for at least one year. The lease must provide for automatic renewal after the initial term of the lease in either successive definitive terms (e.g. month-to-month or year-to-year) or an automatic indefinite extension of the lease term. For automatic indefinite extension of the lease term, the lease terminates if any of the following occur:

- The owner terminates the lease for good cause
- The tenant terminates the lease
- The owner and tenant agree to terminate the lease
- The LBHA terminates the HAP contract
- The LBHA terminates assistance for the family

### **Changes in the Lease [24 CFR 983.256(e)]**

If the tenant and owner agree to any change in the lease, the change must be in writing, and the owner must immediately give the LBHA a copy of all changes.

The owner must notify the LBHA in advance of any proposed change in the lease regarding the allocation of tenant and owner responsibilities for utilities. Such changes may only be made if approved by the LBHA and in accordance with the terms of the lease relating to its amendment. The LBHA must redetermine reasonable rent, in accordance with program requirements, based on any change in the allocation of the responsibility for utilities between the owner and the tenant. The redetermined reasonable rent will be used in calculation of the rent to owner from the effective date of the change.

### **Owner Termination of Tenancy [24 CFR 983.257]**

With two exceptions, the owner of a PBV unit may terminate tenancy for the same reasons an owner may in the tenant-based voucher program (see Section 12-III.B. and 24 CFR 982.310). In the PBV program, terminating tenancy for “good cause” does not include doing so for a business or economic reason, or a desire to use the unit for personal or family use or other non-residential purpose.

### ***Tenant Absence from the Unit [24 CFR 983.256(g) and 982.312(a)]***

The lease may specify a maximum period of family absence from the unit that may be shorter than the maximum period permitted by LBHA policy. According to program requirements, the family’s assistance must be terminated if they are absent from the unit for more than 180 consecutive days. LBHA termination of assistance actions due to family absence from the unit are subject to 24 CFR 981.312, except that the unit is not terminated from the HAP contract if the family is absent for longer than the maximum period permitted.

### **Continuation of Housing Assistance Payments [24 CFR 982.258]**

Housing assistance payments shall continue until the tenant rent equals the rent to owner. The cessation of housing assistance payments at such point will not affect the family's other rights under its lease, nor will such cessation preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances if such changes occur within 180 days following the date of the last housing assistance payment by the LBHA. After the 180-day period, the unit shall be removed from the HAP contract pursuant to 24 CFR 983.211.

### **LBHA Policy**

If a participating family receiving zero assistance experiences a change in circumstances that would result in a HAP payment to the owner, the family must notify the LBHA of the change and request an interim reexamination before the expiration of the 180-day period.

## **Security Deposits [24 CFR 983.259]**

The owner may collect a security deposit from the tenant. The LBHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.

### LBHA Policy

The LBHA will allow the owner to collect a security deposit amount the owner determines is appropriate.

When the tenant moves out of a contract unit, the owner, subject to state and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid tenant rent, damages to the unit, or other amounts owed by the tenant under the lease.

The owner must give the tenant a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used to reimburse the owner, the owner must promptly refund the full amount of the balance to the tenant.

If the security deposit does not cover the amount owed by the tenant under the lease, the owner may seek to collect the balance from the tenant. The LBHA has no liability or responsibility for payment of any amount owed by the family to the owner.

## 17-VII.C. MOVES

### **Overcrowded, Under-Occupied, and Accessible Units [24 CFR 983.260]**

If the LBHA determines that a family is occupying a wrong size unit, based on the LBHA's subsidy standards, or a unit with accessibility features that the family does not require, and the unit is needed by a family that does require the features, the LBHA must promptly notify the family and the owner of this determination, and the LBHA must offer the family the opportunity to receive continued housing assistance in another unit.

#### LBHA Policy

The LBHA will notify the family and the owner of the family's need to move based on the occupancy of a wrong-size or accessible unit within 10 business days of the LBHA's determination. The LBHA will offer the family the following types of continued assistance in the following order, based on the availability of assistance:

- PBV assistance in the same building or project;
- PBV assistance in another project; and
- Tenant-based voucher assistance.

If the LBHA offers the family a tenant-based voucher, the LBHA must terminate the housing assistance payments for a wrong-sized or accessible unit at the earlier of the expiration of the term of the family's voucher (including any extension granted by the LBHA) or the date upon which the family vacates the unit. If the family does not move out of the wrong-sized unit or accessible unit by the expiration of the term of the family's voucher, the LBHA must remove the unit from the HAP contract.

If the LBHA offers the family another form of assistance that is not a tenant-based voucher, and the family does not accept the offer, does not move out of the PBV unit within a reasonable time as determined by the LBHA, or both, the LBHA must terminate the housing assistance payments for the unit at the expiration of a reasonable period as determined by the LBHA and remove the unit from the HAP contract.

#### LBHA Policy

When the LBHA offers a family another form of assistance that is not a tenant-based voucher, the family will be given 30 days from the date of the offer to accept the offer and move out of the PBV unit. If the family does not move out within this 30-day time frame, the LBHA will terminate the housing assistance payments at the expiration of this 30-day period.

The LBHA may make exceptions to this 30-day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency of a family member.

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**Family Right to Move [24 CFR 983.261]**

The family may terminate the lease at any time after the first year of occupancy. The family must give advance written notice to the owner in accordance with the lease and provide a copy of such notice to the LBHA. If the family wishes to move with continued tenant-based assistance, the family must contact the LBHA to request the rental assistance prior to providing notice to terminate the lease.

If the family terminates the lease in accordance with these requirements, the LBHA is required to offer the family the opportunity for continued tenant-based assistance, in the form of a voucher or other comparable tenant-based rental assistance. If voucher or other comparable tenant-based assistance is not immediately available upon termination of the family's lease in the PBV unit, the LBHA must give the family priority to receive the next available opportunity for continued tenant-based assistance.

If the family terminates the assisted lease before the end of the first year, the family relinquishes the opportunity for continued tenant-based assistance.

## **Emergency Transfers under VAWA [Notice PIH 2017-08]**

Except where special consideration is needed for the project-based voucher program, the LBHA will follow VAWA policies as outlined in Chapter 16 Part IX of this administrative plan, including using the Emergency Transfer Plan as the basis for PBV transfers under VAWA (Exhibit 16-4).

HUD requires that the LBHA include policies that address when a victim has been living in a unit for less than a year or when a victim seeks to move sooner than a tenant-based voucher is available.

### LBHA Policy

When the victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking has lived in the unit for less than one year, the LBHA will provide several options for continued assistance.

The LBHA will first try to transfer the participant to another PBV unit in the same development or transfer to a different development where the LBHA has PBV units. The LBHA will expedite the administrative processes in this case in an effort to conduct the transfer as quickly as possible.

If no units are available for an internal transfer, or if there is reasonable cause to believe that such a transfer would put the victim in jeopardy, the participant may receive continued assistance through an external transfer to either tenant-based rental assistance (HCV) or assistance in the LBHA's public housing program. Such a decision will be made by the LBHA based on the availability of tenant-based vouchers and/or vacancies in public housing units. Such families must be selected from the waiting list for the applicable program. The LBHA has adopted a waiting list preference for victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking in both its HCV and public housing programs in order to expedite this process. See Section 4-III.C. of this administrative plan.

If a victim wishes to move after a year of occupancy in the unit, but no tenant-based vouchers are available, the LBHA will offer the participant an internal transfer to another PBV unit in the same development or a transfer to a different development where the LBHA has PBV units. The LBHA will expedite the administrative processes in this case in an effort to conduct the transfer as quickly as possible.

If no units are available for an internal transfer, or if there is reasonable cause to believe that such a transfer would put the victim in jeopardy, the participant may receive continued assistance through an external transfer to the LBHA's public housing program. The LBHA has adopted a waiting list preference for victims of domestic violence, dating violence, sexual assault, stalking, and human trafficking as part of the public housing ACOP in order to expedite this process.

#### **17-VII.D. EXCEPTIONS TO THE OCCUPANCY CAP [24 CFR 983.262]**

As of April 17, 2018, the LBHA may not pay housing assistance under a PBV HAP contract for more than the greater of 25 units or 25 percent of the number of dwelling units in a project unless:

- The units are exclusively for elderly families
- The units are for households eligible for supportive services available to all families receiving PBV assistance in the project

If the project is located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year estimates, the project cap is the greater of 25 units or 40 percent (instead of 25 percent) of the units in the project [FR Notice 7/14/17].

If a family at the time of initial tenancy is receiving and while the resident of an excepted unit has received Family Self-Sufficiency (FSS) supportive services or any other service as defined by the LBHA and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit. However, if the FSS family fails to successfully complete the FSS contract of participation or supportive services objective and consequently is no longer eligible for the supportive services, the family must vacate the unit within a reasonable period of time established by the LBHA, and the LBHA shall cease paying HAP on behalf of the family.

Further, when a family (or remaining members of a family) residing in an excepted unit no longer meets the criteria for a “qualifying family” because the family is no longer an elderly family due to a change in family composition, the LBHA has the discretion to allow the family to remain in the excepted unit. If the LBHA does not exercise this discretion, the family must vacate the unit within a reasonable period of time established by the LBHA, and the LBHA must cease paying housing assistance payments on behalf of the non-qualifying family.

Individuals in units with supportive services who choose to no longer participate in a service or who no longer qualify for services they qualified for at the time of initial occupancy cannot subsequently be denied continued housing opportunity because of this changed circumstance. A LBHA or owner cannot determine that a participant’s needs exceed the level of care offered by qualifying services or require that individuals be transitioned to different projects based on service needs.

If the family fails to vacate the unit within the established time, the unit must be removed from the HAP contract unless the project is partially assisted, and it is possible for the HAP contract to be amended to substitute a different unit in the building in accordance with program requirements; or the owner terminates the lease and evicts the family. The housing assistance payments for a family residing in an excepted unit that is not in compliance with its family obligations to comply with supportive services requirements must be terminated by the LBHA.



The LBHA may allow a family that initially qualified for occupancy of an excepted unit based on elderly family status to continue to reside in a unit, where through circumstances beyond the control of the family (e.g., death of the elderly family member or long-term or permanent hospitalization or nursing care), the elderly family member no longer resides in the unit. In this case, the unit may continue to be counted as an excepted unit for as long as the family resides in that unit. Once the family vacates the unit, in order to continue as an excepted unit under the HAP contract, the unit must be made available to and occupied by a qualified family.

#### LBHA Policy

The LBHA will allow families who initially qualified to live in an excepted unit to remain when circumstances change due to circumstances beyond the remaining family members' control.

In all other cases, the LBHA will provide written notice to the family and owner within 10 business days of making the determination. The family will be given 30 days from the date of the notice to move out of the PBV unit. If the family does not move out within this 30-day time frame, the LBHA will terminate the housing assistance payments at the expiration of this 30-day period.

The LBHA may make exceptions to this 30-day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency of a family member.



## **PART VIII: DETERMINING RENT TO OWNER**

### **17-VIII.A. OVERVIEW**

The amount of the initial rent to an owner of units receiving PBV assistance is established at the beginning of the HAP contract term. Although for rehabilitated or newly constructed housing, the agreement to enter into HAP Contract (Agreement) states the estimated amount of the initial rent to owner, the actual amount of the initial rent to owner is established at the beginning of the HAP contract term.

During the term of the HAP contract, the rent to owner is redetermined at the owner's request in accordance with program requirements, and at such time that there is a ten percent or greater decrease in the published FMR.

### **17-VIII.B. RENT LIMITS [24 CFR 983.301]**

Except for certain tax credit units (discussed below), the rent to owner must not exceed the lowest of the following amounts:

- An amount determined by the LBHA, not to exceed 110 percent of the applicable fair market rent (or any HUD-approved exception payment standard) for the unit bedroom size minus any utility allowance;
- The reasonable rent; or
- The rent requested by the owner.

#### **Certain Tax Credit Units [24 CFR 983.301(c)]**

For certain tax credit units, the rent limits are determined differently than for other PBV units. Different limits apply to contract units that meet all of the following criteria:

- The contract unit receives a low-income housing tax credit under the Internal Revenue Code of 1986;
- The contract unit is not located in a qualified census tract;
- There are comparable tax credit units of the same bedroom size as the contract unit in the same project, and the comparable tax credit units do not have any form of rental assistance other than the tax credit; and
- The tax credit rent exceeds 110 percent of the fair market rent or any approved exception payment standard;

For contract units that meet all of these criteria, the rent to owner must not exceed the lowest of:

- The tax credit rent minus any utility allowance;
- The reasonable rent; or
- The rent requested by the owner.

## ***Definitions***

A *qualified census tract* is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income of less than 60 percent of Area Median Gross Income (AMGI), or where the poverty rate is at least 25 percent and where the census tract is designated as a qualified census tract by HUD.

*Tax credit rent* is the rent charged for comparable units of the same bedroom size in the project that also receive the low-income housing tax credit but do not have any additional rental assistance (e.g., tenant-based voucher assistance).

### **Reasonable Rent [24 CFR 983.301(e) and 983.302(c)(2)]**

The LBHA must determine reasonable rent in accordance with 24 CFR 983.303. The rent to owner for each contract unit may at no time exceed the reasonable rent, except in cases where the LBHA has elected within the HAP contract not to reduce rents below the initial rent to owner and, upon redetermination of the rent to owner, the reasonable rent would result in a rent below the initial rent. However, the rent to owner must be reduced in the following cases:

- To correct errors in calculations in accordance with HUD requirements
- If additional housing assistance has been combined with PBV assistance after the execution of the initial HAP contract and a rent decrease is required pursuant to 24 CFR 983.55
- If a decrease in rent to owner is required based on changes in the allocation of the responsibility for utilities between owner and tenant

If the LBHA has not elected within the HAP contract to establish the initial rent to owner as the rent floor, the rent to owner shall not at any time exceed the reasonable rent.

### **LBHA Policy**

The LBHA will elect within the HAP contract not to reduce rents below the initial level, with the exception of circumstances listed in 24 CFR 983.302(c)(2). If, upon redetermination of the rent to owner, the reasonable rent would result in a rent below the initial rent, the LBHA will use the higher initial rent to owner amount.

### **Use of FMRs, Exception Payment Standards, and Utility Allowances [24 CFR 983.301(f)]**

When determining the initial rent to owner, the LBHA must use the most recently published FMR in effect and the utility allowance schedule in effect at execution of the HAP contract. When redetermining the rent to owner, the LBHA must use the most recently published FMR and the utility allowance schedule in effect at the time of redetermination. At its discretion, the LBHA may for initial rent, use the amounts in effect at any time during the 30-day period immediately before the beginning date of the HAP contract, or for redeterminations of rent, the 30-day period immediately before the redetermination date.

Any HUD-approved exception payment standard amount under the tenant-based voucher program also applies to the project-based voucher program. HUD will not approve a different exception payment stand amount for use in the PBV program.

Likewise, the LBHA may not establish or apply different utility allowance amounts for the PBV program. The same utility allowance schedule applies to both the tenant-based and project-based voucher programs.

#### LBHA Policy

Upon written request by the owner, the LBHA will consider using the FMR or utility allowances in effect during the 30-day period before the start date of the HAP, or redetermination of rent. The owner must explain the need to use the previous FMRs or utility allowances and include documentation in support of the request. The LBHA will review and make a decision based on the circumstances and merit of each request.

In addition to considering a written request from an owner, the LBHA may decide to use the FMR or utility allowances in effect during the 30-day period before the start date of the HAP, or redetermination of rent, if the LBHA determines it is necessary due to LBHA budgetary constraints.

### **Use of Small Area FMRs (SAFMRs) [24 CFR 888.113(h)]**

While small area FMRs (SAFMRs) do not apply to PBV projects, LBHAs that operate a tenant-based program under SAFMRs may apply SAFMRs to all future PBV HAP contracts. If the LBHA adopts this policy, it must apply to all future PBV projects and the LBHA's entire jurisdiction. The LBHA and owner may not subsequently choose to revert back to use of the FMRs once the SAFMRs have been adopted, even if the LBHA subsequently changes its policy.

Further, the LBHA may apply SAFMRs to current PBV projects where the notice of owner selection was made on or before the effective date of LBHA implementation, provided the owner is willing to mutually agree to doing so and the application is prospective. The LBHA and owner may not subsequently choose to revert back to use of the FMRs once the SAFMRs have been adopted, even if the LBHA subsequently changes its policy. If rents increase as a result of the use of SAFMRs, the rent increase may not be effective until the first anniversary of the HAP contract.

#### LBHA Policy

The LBHA will not apply SAFMRs to the LBHA's PBV program.

### **Redetermination of Rent [24 CFR 983.302]**

The LBHA must redetermine the rent to owner upon the owner's request or when there is a 10 percent or greater decrease in the published FMR.

#### ***Rent Increase***

If an owner wishes to request an increase in the rent to owner from the LBHA, it must be requested at the annual anniversary of the HAP contract (see Section 17-V.D.). The request must be in writing and in the form and manner required by the LBHA. The LBHA may only make rent increases in accordance with the rent limits described previously. There are no provisions in the PBV program for special adjustments (e.g., adjustments that reflect increases in the actual and necessary expenses of owning and maintaining the units which have resulted from substantial general increases in real property taxes, utility rates, or similar costs).

#### **LBHA Policy**

An owner's request for a rent increase must be submitted to the LBHA 60 days prior to the anniversary date of the HAP contract and must include the new rent amount the owner is proposing.

The LBHA may not approve, and the owner may not receive any increase of rent to owner, until and unless the owner has complied with requirements of the HAP contract, including compliance with NSPIRE. The owner may not receive any retroactive increase of rent for any period of noncompliance.

#### ***Rent Decrease***

If there is a decrease in the rent to owner, as established in accordance with program requirements such as a change in the FMR or exception payment standard, or reasonable rent amount, the rent to owner must be decreased regardless of whether the owner requested a rent adjustment, except where the LBHA has elected within the HAP contract to not reduce rents below the initial rent under the initial HAP contract.

#### ***Notice of Rent Change***

The rent to owner is redetermined by written notice by the LBHA to the owner specifying the amount of the redetermined rent. The LBHA notice of rent adjustment constitutes an amendment of the rent to owner specified in the HAP contract. The adjusted amount of rent to owner applies for the period of 12 calendar months from the annual anniversary of the HAP contract.

#### **LBHA Policy**

The LBHA will provide the owner with at least 30 days written notice of any change in the amount of rent to owner.

### **LBHA-Owned Units [24 CFR 983.301(g)]**

For LBHA-owned PBV units, the initial rent to owner and the annual redetermination of rent at the anniversary of the HAP contract are determined by the independent entity approved by HUD. The LBHA must use the rent to owner established by the independent entity.

### **17-VIII.C. REASONABLE RENT [24 CFR 983.303]**

At the time the initial rent is established and all times during the term of the HAP contract, the rent to owner for a contract unit may not exceed the reasonable rent for the unit as determined by the LBHA, except where the LBHA has elected within the HAP contract to not reduce rents below the initial rent under the initial HAP contract.

#### **When Rent Reasonable Determinations Are Required**

The LBHA must redetermine the reasonable rent for a unit receiving PBV assistance whenever any of the following occur:

- There is a 10 percent or greater decrease in the published FMR in effect 60 days before the contract anniversary (for the unit sizes specified in the HAP contract) as compared with the FMR that was in effect one year before the contract anniversary date;
- The LBHA approves a change in the allocation of responsibility for utilities between the owner and the tenant;
- The HAP contract is amended to substitute a different contract unit in the same building or project; or
- There is any other change that may substantially affect the reasonable rent.

#### **How to Determine Reasonable Rent**

The reasonable rent of a unit receiving PBV assistance must be determined by comparison to rent for other comparable unassisted units. When making this determination, the LBHA must consider factors that affect market rent. Such factors include the location, quality, size, type and age of the unit, as well as the amenities, housing services maintenance, and utilities to be provided by the owner.

#### ***Comparability Analysis***

For each unit, the comparability analysis must use at least three comparable units in the private unassisted market. This may include units in the premises or project that is receiving project-based assistance. The analysis must show how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units, and must be retained by the LBHA. The comparability analysis may be performed by LBHA staff or by another qualified person or entity. Those who conduct these analyses or are involved in determining the housing assistance payment based on the analyses may not have any direct or indirect interest in the property.

#### **LBHA-Owned Units**

For LBHA-owned units, the amount of the reasonable rent must be determined by an independent agency approved by HUD in accordance with PBV program requirements. The independent entity must provide a copy of the determination of reasonable rent for LBHA-owned units to the LBHA and to the HUD field office where the project is located.

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### **Owner Certification of Reasonable Rent**

By accepting each monthly housing assistance payment, the owner certifies that the rent to owner is not more than rent charged by the owner for other comparable unassisted units in the premises. At any time, the LBHA may require the owner to submit information on rents charged by the owner for other units in the premises or elsewhere.

### **17-VIII.D. EFFECT OF OTHER SUBSIDY AND RENT CONTROL**

In addition to the rent limits discussed in Section 17-VIII.B above, other restrictions may limit the amount of rent to owner in a PBV unit. In addition, certain types of subsidized housing are not even eligible to receive PBV assistance (see Section 17-II.D).

#### **Other Subsidy [24 CFR 983.304]**

To comply with HUD subsidy layering requirements, at the discretion of HUD or its designee, a LBHA shall reduce the rent to owner because of other governmental subsidies, including tax credits or tax exemptions, grants, or other subsidized funding.

For units receiving assistance under the HOME program, rents may not exceed rent limits as required by that program.

For units in any of the following types of federally subsidized projects, the rent to owner may not exceed the subsidized rent (basic rent) or tax credit rent as determined in accordance with requirements for the applicable federal program:

- An insured or non-insured Section 236 project;
- A formerly insured or non-insured Section 236 project that continues to receive Interest Reduction Payment following a decoupling action;
- A Section 221(d)(3) below market interest rate (BMIR) project;
- A Section 515 project of the Rural Housing Service;
- Any other type of federally subsidized project specified by HUD.

#### ***Combining Subsidy***

Rent to owner may not exceed any limitation required to comply with HUD subsidy layering requirements.

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#### **Rent Control [24 CFR 983.305]**

In addition to the rent limits set by PBV program regulations, the amount of rent to owner may also be subject to rent control or other limits under local, state, or federal law.



## **PART IX: PAYMENTS TO OWNER**

### **17-IX.A. HOUSING ASSISTANCE PAYMENTS [24 CFR 983.351]**

During the term of the HAP contract, the LBHA must make housing assistance payments to the owner in accordance with the terms of the HAP contract. During the term of the HAP contract, payments must be made for each month that a contract unit complies with NSPIRE standards and is leased to and occupied by an eligible family. The housing assistance payment must be paid to the owner on or about the first day of the month for which payment is due, unless the owner and the LBHA agree on a later date.

Except for discretionary vacancy payments, the LBHA may not make any housing assistance payment to the owner for any month after the month when the family moves out of the unit (even if household goods or property are left in the unit).

The amount of the housing assistance payment by the LBHA is the rent to owner minus the tenant rent (total tenant payment minus the utility allowance).

In order to receive housing assistance payments, the owner must comply with all provisions of the HAP contract. Unless the owner complies with all provisions of the HAP contract, the owner does not have a right to receive housing assistance payments.

### **17-IX.B. VACANCY PAYMENTS [24 CFR 983.352]**

If an assisted family moves out of the unit, the owner may keep the housing assistance payment for the calendar month when the family moves out. However, the owner may not keep the payment if the LBHA determines that the vacancy is the owner's fault.

#### LBHA Policy

If the LBHA determines that the owner is responsible for a vacancy and, as a result, is not entitled to keep the housing assistance payment, the LBHA will notify the landlord of the amount of housing assistance payment that the owner must repay. The LBHA will require the owner to repay the amount owed in accordance with the policies in Section 16-IV.B.

At the discretion of the LBHA, the HAP contract may provide for vacancy payments to the owner. The LBHA may only make vacancy payments if:

- The owner gives the LBHA prompt, written notice certifying that the family has vacated the unit and identifies the date when the family moved out (to the best of the owner's knowledge);
- The owner certifies that the vacancy is not the fault of the owner and that the unit was vacant during the period for which payment is claimed;
- The owner certifies that it has taken every reasonable action to minimize the likelihood and length of vacancy; and
- The owner provides any additional information required and requested by the LBHA to verify that the owner is entitled to the vacancy payment.

The owner must submit a request for vacancy payments in the form and manner required by the LBHA and must provide any information or substantiation required by the LBHA to determine the amount of any vacancy payment.

#### LBHA Policy

If an owner's HAP contract calls for vacancy payments to be made, and the owner wishes to receive vacancy payments, the owner must have properly notified the LBHA of the vacancy in accordance with the policy in Section 17-VI.F. regarding filling vacancies.

In order for a vacancy payment request to be considered, it must be made within 10 business days of the end of the period for which the owner is requesting the vacancy payment. The request must include the required owner certifications and the LBHA may require the owner to provide documentation to support the request. If the owner does not provide the information requested by the LBHA within 10 business days of the LBHA's request, no vacancy payments will be made.

### **17-IX.C. TENANT RENT TO OWNER [24 CFR 983.353]**

The tenant rent is the portion of the rent to owner paid by the family. The amount of tenant rent is determined by the LBHA in accordance with HUD requirements. Any changes in the amount of tenant rent will be effective on the date stated in the LBHA notice to the family and owner.

The family is responsible for paying the tenant rent (total tenant payment minus the utility allowance). The amount of the tenant rent determined by the LBHA is the maximum amount the owner may charge the family for rental of a contract unit. The tenant rent covers all housing services, maintenance, equipment, and utilities to be provided by the owner. The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by the LBHA. The owner must immediately return any excess payment to the tenant.

#### **Tenant and LBHA Responsibilities**

The family is not responsible for the portion of rent to owner that is covered by the housing assistance payment and the owner may not terminate the tenancy of an assisted family for nonpayment by the LBHA.

Likewise, the LBHA is responsible only for making the housing assistance payment to the owner in accordance with the HAP contract. The LBHA is not responsible for paying tenant rent, or any other claim by the owner, including damage to the unit. The LBHA may not use housing assistance payments or other program funds (including administrative fee reserves) to pay any part of the tenant rent or other claim by the owner.

#### **Utility Reimbursements**

If the amount of the utility allowance exceeds the total tenant payment, the LBHA must pay the amount of such excess to the tenant as a reimbursement for tenant-paid utilities, and the tenant rent to the owner must be zero.

The LBHA may pay the utility reimbursement directly to the family or to the utility supplier on behalf of the family. If the LBHA chooses to pay the utility supplier directly, the LBHA must notify the family of the amount paid to the utility supplier.

#### LBHA Policy

The LBHA will make utility reimbursements to the family.

## **17-IX.D. OTHER FEES AND CHARGES [24 CFR 983.354]**

### **Meals and Supportive Services**

With the exception of PBV assistance in assisted living developments, the owner may not require the tenant to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy.

In assisted living developments receiving PBV assistance, the owner may charge for meals or supportive services. These charges may not be included in the rent to owner, nor may the value of meals and supportive services be included in the calculation of the reasonable rent. However, non-payment of such charges is grounds for termination of the lease by the owner in an assisted living development.

### **Other Charges by Owner**

The owner may not charge extra amounts for items customarily included in rent in the locality or provided at no additional cost to unsubsidized tenants in the premises.

**EXHIBIT 17-1: PBV DEVELOPMENT INFORMATION**

(Fill out one for each development)

**Date:** [Enter the date on which this form was completed]

**DEVELOPMENT INFORMATION**

**Development Name:** [Insert name of PBV development]

**Address:** [Insert full address of PBV development]

**Owner Information:** [Insert PBV development owner name and contact information. If development is LBHA-owned, enter "LBHA-owned."]

**Property Management Company:** [Insert property management company name and contact information, or enter "None"]

**LBHA-Owned:** [Enter "Yes" or "No." If yes, enter name of independent entity]

**Mixed Finance Development:** [Enter "Yes" or "No." If yes, list other types of funding (i.e., LIHTC, HOME, etc.) and units to which other funding applies.]

**HAP CONTRACT**

**Effective Date of Contract:** [Enter start date of HAP contract]

**HOTMA Requirements:** [If HAP contract was signed prior to April 18, 2017, enter "Pre-HOTMA." If HAP contract was signed on or after April 18, 2017, enter "Post-HOTMA."]

**Term of HAP Contract:** [Enter term from HAP contract]

**Expiration Date of Contract:** [Enter expiration date from HAP contract]

**PBV UNITS**

	0 BR	1 BR	2 BR	3 BR	4 BR	5 BR	Total
<b># of Units</b>							
<b>Initial Contract Rent</b>	\$	\$	\$	\$	\$	\$	

**Structure Type:** [Identify the structure type, i.e. Single Family Detached, Duplex or Two Family, Row House or Town House, Low Rise (3,4 Stories, including Garden Apartment), Highrise (5 or more stories)]

**Housing Type:** [Identify if the units are an Independent Group Residence or Single Room Occupancy]

## UTILITY RESPONSIBILITY

[Enter in Accordance with the HAP Exhibit C]

Utility	Fuel Type (Gas, Electric, Oil, Coal, Other)	Paid By (Tenant/Owner)	Provided By (Tenant/Owner)
Heating	Electric	Tenant	Owner
Cooking	Electric	Tenant	Owner
Water Heating	Electric	Tenant	Owner
Other Electric		Tenant	Owner
Water		Owner	Owner
Sewer		Owner	Owner
Trash Collection		Owner	Owner
Air Conditioning		Tenant	Owner
Refrigerator			
Range/Microwave			
Other (specify)			

**Accessible Units and Features:** [Identify which units are accessible and describe accessibility features or enter “None”]

**Target Population:** [Describe targeted population in accordance with HAP contract or enter “None”]

**Excepted Units:** [Identify excepted unit types below or enter “None”]

- **Supportive Services:** [Enter “Yes, see Exhibit D of HAP Contract” or enter “No”]
- **Elderly Units:** [Enter “Yes” or “No.” If yes, identify which units are elderly units.]
- **Disabled Units** (only for HAP contracts executed prior to April 18, 2017) [Enter “Yes” or “No.” If yes, identify which units are for persons with disabilities.]
- **FUPY/FYI Units:** [Enter “Yes” or “No.” If yes, identify which units are FUP units]
- **Are units excepted because they are located in a low-poverty census tract area?:** [Enter “Yes” or “No”]

## WAITING LIST AND SELECTION

**Waiting List Type:** [ Enter “Site-based waiting list,” “Combined with HCV,” “Waiting list for entire PBV program,” or “Merged with another assisted housing program”]

**Preferences:** [Enter “Same as HCV; see Chapter 4” or describe preferences offered. If different from HCV, also note in Section 17.1.B of this policy.]

**Preference Verification:** [Enter “Same as HCV; see Chapter 7” or describe for each preference listed above. If different from HCV, note in Section 17.1.B of this policy.]

**For the PBV program, is the income limit the same as the HCV program?** (Note: In mixed finance developments, other income limits may also apply.) [Enter “Same as HCV; see Chapter 3” or clearly describe. If different from HCV, note in Section 17.1.B of this policy.]

## OCCUPANCY

**Subsidy Standards:** [Enter “Same as HCV; see Chapter 5” or describe. If different from HCV, note in Section 17.1.B of this policy]

**Vacancy Payments:** [Enter in accordance with HAP contract Part 1, e, 2 and Section 17-V.F. within this chapter]





**EXHIBIT 17-2: Special Provisions Applying to TPVs Awarded as Part of a Voluntary Conversion of Public Housing Units in Projects that Include RAD PBV Units**

**[24 CFR Part 972.200; Notice PIH 2019-05; Notice PIH 2019-23]**

Under certain circumstances, HUD allows small LBHAs to reposition a public housing project (or portion of a project) by voluntarily converting units to tenant-based housing choice voucher assistance. In order to preserve affordable housing for residents of the project, the LBHA is given priority to receive replacement tenant protection vouchers (TPVs). As part of the voluntary conversion, the LBHA has the option to continue to operate it as rental housing. If so, the LBHA or subsequent owner must allow existing families to remain in their units using the TPV in the form of tenant-based assistance. In this situation, however, the LBHA may choose to project-base these TPVs in the former public housing project. Families must still be provided with the option to remain in their unit using tenant-based assistance. In order for the LBHA to project-base the assistance and include these units on the PBV HAP contract, the family must voluntarily consent in writing to PBV assistance following the requirements in Appendix A of Notice PIH 2019-05. If the family fails to consent to PBV assistance and chooses to remain using tenant-based assistance, the family’s unit is excluded from the PBV HAP contract until the family moves out or consents to switching to PBV assistance. In general, all applicable program regulations and guidance for the standard PBV program apply to these units.

The LBHA may also convert units in the same former public housing project to the PBV program under the rental assistance demonstration (RAD) program. The RAD statute authorizes HUD to waive certain statutory and regulatory provisions governing the standard PBV program and specify alternative requirements. In order to facilitate the uniform treatment of residents and units at the project, Notice PIH 2019-23 extended some of the alternative requirements to non-RAD PBV units in the converted project (i.e., the TPV units in the project). As such, while PBV TPV units in the converted project generally follow the requirements for the standard PBV program listed in this chapter, where HUD has specified alternative requirements for non-RAD PBV units in the project, PBV TPV units will instead follow the requirements outlined in Chapter 18 of this policy for the RAD PBV program.

**RAD Requirements Applicable to Non-RAD units in the Project**

<b>Alternative Requirement under RAD as Listed in Notice PIH 2019-23</b>	<b>Standard PBV Policy That Does Not Apply</b>	<b>Applicable Policy in Chapter 18</b>
1.6.A.4. Site Selection – Compliance with PBV Goals	17-II.G. SITE SELECTION STANDARDS applies with the exception of deconcentration of poverty and expanding housing and economic opportunity requirements.	18-II.F. SITE SELECTION STANDARDS

1.6.B.5.d. PBV Site-Specific Utility Allowances	Alternative requirement under RAD. No corresponding policy in Chapter 17.	18-VII.C. UTILITY ALLOWANCES
1.6.C.1. No Rescreening of Tenants upon Conversion	Policies contained in Chapter 3 relating to eligibility do not apply to existing tenants who receive TPVs.	18-V.B. PROHIBITED RESCREENING OF EXISTING TENANTS UPON CONVERSION
1.6.C.2. Right to Return	Alternative requirement under RAD. No corresponding policy in Chapter 17.	18-I.D. RELOCATION REQUIREMENTS
1.6.C.3. LBHase-in of Tenant Rent Increases	Alternative requirements under RAD. No corresponding policy in Chapter 17.	18-VIII.D. LBHASE-IN OF TENANT RENT INCREASES
1.6.C.4. Family Self Sufficiency (FSS) and Resident Opportunities and Self-Sufficiency Service Coordinator (ROSS-SC) Programs	Not covered in administrative plan.	18-VI.C. PUBLIC HOUSING FSS AND ROSS PARTICIPANTS
1.6.C.5. Resident Participation and Funding	Alternative requirement under RAD. No corresponding policy in Chapter 17.	18-VI.D. RESIDENT PARTICIPATION AND FUNDING
1.6.C.6. Resident Procedural Rights	Policies related to hearings in Chapter 16 apply, with added procedural rights and notice requirements as outlined in Chapter 18.	18-VI.H. RESIDENTS' PROCEDURAL RIGHTS
1.6.C.7. Earned Income Disregard (EID)	Alternative requirements under RAD for in-place residents. New admissions follow policies in Chapter 6.	18-VI.G. EARNED INCOME DISALLOWANCE
1.6.C.8. Jobs Plus	Not covered in administrative plan.	No corresponding policy.
1.6.C.9. When Total Tenant	Alternative requirements	18-VI.B. LEASE, Continuation

Payment Exceeds Gross Rent	under RAD for in-place residents.  New admissions follow policies in 17-VII.B. LEASE, Continuation of Housing Assistance Payments.	of Housing Assistance Payments
1.6.C.10. Under-Occupied Unit	Alternative requirements under RAD for in-place residents.  New admissions follow 17-VII.C. MOVES, Overcrowded, Under-Occupied, and Accessible Units	18-VI.E. MOVES, Overcrowded, Under-Occupied, and Accessible Units
1.6.D.4. Establishment of Waiting List	Alternative requirements under RAD for initial establishment of the waiting list.  Once waiting list is established, follow 17-VI.D. SELECTION FROM THE WAITING LIST	18-V.D. ORGANIZATION OF THE WAITING LIST
1.6.D.10. Initial Certifications and Tenant Rent Calculations	Alternative requirements under RAD for in-place residents. No corresponding policy in Chapter 17.	18-VIII.C. TENANT RENT TO OWNER, Initial Certifications

Note, while Notice PIH 2019-05 states that the LBHA must screen families for eligibility for a tenant protection voucher and that families must be below the low-income limit (80 percent of AMI), Notice PIH 2019-23 waives these requirements for residents in projects that include RAD PBV units.



## **GLOSSARY**

### **A. ACRONYMS USED IN THE HOUSING CHOICE VOUCHER (HCV) PROGRAM**

<b>ACC</b>	Annual contributions contract
<b>ADA</b>	Americans with Disabilities Act of 1990
<b>AIDS</b>	Acquired immune deficiency syndrome
<b>BR</b>	Bedroom
<b>CDBG</b>	Community Development Block Grant (Program)
<b>CFR</b>	Code of Federal Regulations (published federal rules that define and implement laws; commonly referred to as “the regulations”)
<b>CPI</b>	Consumer price index (published monthly by the Department of Labor as an inflation indicator)
<b>EIV</b>	Enterprise Income Verification
<b>FDIC</b>	Federal Deposit Insurance Corporation
<b>FHA</b>	Federal Housing Administration (HUD Office of Housing)
<b>FHEO</b>	Fair Housing and Equal Opportunity (HUD Office of)
<b>FICA</b>	Federal Insurance Contributions Act (established Social Security taxes)
<b>FMR</b>	Fair market rent
<b>FR</b>	Federal Register
<b>FSS</b>	Family Self-Sufficiency (Program)
<b>FY</b>	Fiscal year
<b>FYE</b>	Fiscal year end
<b>GAO</b>	Government Accountability Office
<b>GR</b>	Gross rent
<b>HA</b>	Housing authority or housing agency
<b>HAP</b>	Housing assistance payment
<b>HCV</b>	Housing choice voucher
<b>HIP</b>	Housing Information Portal
<b>HOTMA</b>	Housing Opportunity through Modernization Act of 2016
<b>HQS</b>	Housing quality standards
<b>HUD</b>	Department of Housing and Urban Development
<b>HUDCLIPS</b>	HUD Client Information and Policy System

<b>IPA</b>	Independent public accountant
<b>IRA</b>	Individual retirement account
<b>IRS</b>	Internal Revenue Service
<b>IVT</b>	Income Validation Tool
<b>JTPA</b>	Job Training Partnership Act
<b>LBP</b>	Lead-based paint
<b>LEP</b>	Limited English proficiency
<b>MSA</b>	Metropolitan statistical area (established by the U.S. Census Bureau)
<b>MTW</b>	Moving to Work
<b>NOFA</b>	Notice of funding availability
<b>NSPIRE</b>	National Standards for the Physical Inspection of Real Estate
<b>OGC</b>	HUD's Office of General Counsel
<b>OIG</b>	HUD's Office of Inspector General
<b>OMB</b>	Office of Management and Budget
<b>PASS</b>	Plan to Achieve Self-Support
<b>PBV</b>	Project-based voucher
<b>PHA</b>	Public housing agency
<b>PIH</b>	(HUD Office of) Public and Indian Housing
<b>PS</b>	Payment standard
<b>QC</b>	Quality control
<b>RAD</b>	Rental Assistance Demonstration Program
<b>REAC</b>	(HUD) Real Estate Assessment Center
<b>RFP</b>	Request for proposals
<b>RFTA</b>	Request for tenancy approval
<b>RIGI</b>	Regional inspector general for investigation (handles fraud and program abuse matters for HUD at the regional office level)
<b>RVI</b>	Remote Video Inspection
<b>SEMAP</b>	Section 8 Management Assessment Program
<b>SRO</b>	Single room occupancy
<b>SSA</b>	Social Security Administration
<b>SSI</b>	Supplemental security income
<b>SWICA</b>	State wage information collection agency

<b>TANF</b>	Temporary assistance for needy families
<b>TPV</b>	Tenant protection vouchers
<b>TR</b>	Tenant rent
<b>TTP</b>	Total tenant payment
<b>UA</b>	Utility allowance
<b>UFAS</b>	Uniform Federal Accessibility Standards
<b>UIV</b>	Upfront income verification
<b>URP</b>	Utility reimbursement payment
<b>VAWA</b>	Violence Against Women Act
<b>VCA</b>	Voluntary Compliance Agreement
<b>VMS</b>	Voucher Management System

## **B. GLOSSARY OF SUBSIDIZED HOUSING TERMS**

***Absorption.*** In portability (under subpart H of this part 982): the point at which a receiving PHA stops billing the initial PHA for assistance on behalf of a portability family. The receiving PHA uses funds available under the receiving PHA consolidated ACC.

***Accessible.*** The facility or portion of the facility can be approached, entered, and used by persons with disabilities.

***Adjusted income.*** Annual income, less allowable HUD deductions and allowances.

***Administrative fee.*** Fee paid by HUD to the PHA for administration of the program. See §982.152.

***Administrative plan.*** The plan that describes PHA policies for administration of the tenant-based programs. The Administrative Plan and any revisions must be approved by the PHA's board and included as a supporting document to the PHA Plan. See §982.54.

***Admission.*** The point when the family becomes a participant in the program. The date used for this purpose is the effective date of the first HAP contract for a family (first day of initial lease term) in a tenant-based program.

***Affiliated individual.*** With respect to an individual, a spouse, parent, brother, sister, or child of that individual, or an individual to whom that individual stands in loco parentis (in the place of a parent), or any individual, tenant, or lawful occupant living in the household of that individual

***Amortization payment.*** In a manufactured home space rental: The monthly debt service payment by the family to amortize the purchase price of the manufactured home.

***Annual.*** Happening once a year.

***Annual contributions contract (ACC).*** The written contract between HUD and a PHA under which HUD agrees to provide funding for a program under the 1937 Act, and the PHA agrees to comply with HUD requirements for the program.

***Annual income.*** All amounts not specifically excluded in 24 CFR 5.609(b), received from all sources by each member of the family who is 18 years of age or older or is the head of household, spouse or cohead, plus unearned income by or on behalf of each dependent who is under 18 years of age.

***Applicant (applicant family).*** A family that has applied for admission to a program but is not yet a participant in the program.

***Area exception rent.*** An amount that exceeds the published FMR. See 24 CFR 982.504(b).

***As-paid states.*** States where the welfare agency adjusts the shelter and utility component of the welfare grant in accordance with actual housing costs.

***Assets.*** (See *net family assets.*)



**Auxiliary aids.** Services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities receiving federal financial assistance.

**Biennial.** Happening every two years.

**Bifurcate.** With respect to a public housing or Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members' lease and occupancy rights are allowed to remain intact.

**Budget authority.** An amount authorized and appropriated by the Congress for payment to PHAs under the program. For each funding increment in a PHA program, budget authority is the maximum amount that may be paid by HUD to the PHA over the ACC term of the funding increment.

**Child.** A member of the family other than the family head or spouse who is under 18 years of age.

**Child care expenses.** Amounts anticipated to be paid by the family for the care of children under 13 years of age during the period for which annual income is computed, but only where such care is necessary to enable a family member to actively seek employment, be gainfully employed, or to further their education and only to the extent such amounts are not reimbursed. The amount deducted shall reflect reasonable charges for child care. In the case of child care necessary to permit employment, the amount deducted shall not exceed the amount of employment income that is included in annual income.

**Citizen.** A citizen or national of the United States.

**Cohead.** An individual in the household who is equally responsible for the lease with the head of household. A family may have a cohead or spouse but not both. A cohead never qualifies as a dependent. The cohead must have legal capacity to enter into a lease.

**Common space.** In shared housing, the space available for use by the assisted family and other occupants of the unit.

**Computer match.** The automated comparison of databases containing records about individuals.

**Confirmatory review.** An on-site review performed by HUD to verify the management performance of a PHA.

**Consent form.** Any consent form approved by HUD to be signed by assistance applicants and participants to obtain income information from employers and SWICAs; return information from the Social Security Administration (including wages, net earnings from self-employment, and retirement income); and return information for unearned income from the IRS. Consent forms expire after a certain time and may authorize the collection of other information to determine eligibility or level of benefits.

**Congregate housing.** Housing for elderly persons or persons with disabilities that meets the HQS for congregate housing. A special housing type: see 24 CFR 982.606–609.

**Contiguous MSA.** In portability (under subpart H of part 982): An MSA that shares a common boundary with the MSA in which the jurisdiction of the initial PHA is located.

**Continuously assisted.** An applicant is continuously assisted under the 1937 Act if the family is already receiving assistance under any 1937 Housing Act program when the family is admitted to the voucher program.

**Contract authority.** The maximum annual payment by HUD to a PHA for a funding increment.

**Cooperative** (term includes mutual housing). Housing owned by a nonprofit corporation or association, and where a member of the corporation or association has the right to reside in a particular apartment, and to participate in management of the housing. A special housing type (see 24 CFR 982.619).

**Covered families.** Statutory term for families who are required to participate in a welfare agency economic self-sufficiency program and who may be subject to a welfare benefit sanction for noncompliance with this obligation. Includes families who receive welfare assistance or other public assistance under a program for which federal, state or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for the assistance.

**Dating violence.** Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship
- The type of relationship
- The frequency of interaction between the persons involved in the relationship

**Day laborer.** An individual hired and paid one day at a time without an agreement that the individual will be hired or work again in the future.

**De minimis error.** An error that results in a difference in the determination of a family's adjusted income of \$30 or less per month.

**Dependent.** A member of the family (except foster children and foster adults) other than the family head or spouse, who is under 18 years of age, or is a person with a disability, or is a full-time student.

**Dependent child.** In the context of the student eligibility restrictions, a dependent child of a student enrolled in an institution of higher education. The dependent child must also meet the definition of *dependent* as specified above.

**Disability assistance expenses.** Reasonable expenses that, when combined with health and medical care expenses, exceed 10 percent of annual income and are anticipated, during the period for which annual income is computed, for attendant care and auxiliary apparatus for a disabled family member, and that are necessary to enable a family member (including the disabled member) to be employed, provided that the expenses are neither paid to a member of the family nor reimbursed by an outside source.

**Disabled family.** A family whose head, cohead, spouse, or sole member is a person with disabilities; two or more persons with disabilities living together; or one or more persons with disabilities living with one or more live-in aides.

**Disabled person.** See *person with disabilities*.

**Disallowance.** Exclusion from annual income.

**Displaced family.** A family in which each member, or whose sole member, is a person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to federal disaster relief laws.

**Domestic violence.** Felony or misdemeanor crimes committed by a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction receiving grant funding, and in the case of victim services, includes the user or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person who is:

- The current or former spouse or intimate partner of the victim, or person similarly situated to a spouse or intimate partner of the victim
- A person who is cohabitating or has cohabitated with the victim as a spouse or intimate partner
- A person with whom the victim shares a child in common
- A person who commits acts against a youth or adult victim who is protected from those acts under the domestic or family violence laws of the jurisdiction

**Domicile.** The legal residence of the household head or spouse as determined in accordance with state and local law.

**Drug-related criminal activity.** The illegal manufacture, sale, distribution, or use of a drug, or the possession of a drug with intent to manufacture, sell, distribute, or use the drug.

**Earned income.** Income or earnings from wages, tips, salaries, other employee compensation, and net income from self-employment. Earned income does not include any pension or annuity, transfer payments (meaning payments made or income received in which no goods or services are being paid for, such as welfare, social security, and governmental subsidies for certain benefits), or any cash or in-kind benefits.

**Economic abuse.** Behavior that is coercive, deceptive, or unreasonably controls or restrains a person's ability to acquire, use, or maintain economic resources to which they are entitled, including using coercion, fraud, and manipulation to:

- Restrict a person's access to money, assets, credit, or financial information
- Unfairly use a person's personal economic resources, including money, assets, and credit, for one's own advantage
- Exert undue influence over a person's financial and economic behavior or decisions, including forcing default on joint or other financial obligations, exploiting powers of attorney, guardianship, or conservatorship, or to whom one has a fiduciary duty

**Economic self-sufficiency program.** Any program designed to encourage, assist, train or facilitate the economic independence of assisted families, or to provide work for such families. Can include job training, employment counseling, work placement, basic skills training, education, English proficiency, Workfare, financial or household management, apprenticeship, or any other program necessary to ready a participant to work (such as treatment for drug abuse or mental health treatment). Includes any work activities as defined in the Social Security Act (42 U.S.C. 607(d)). Also see 24 CFR 5.603(c).

**Elderly family.** A family whose head, cohead, spouse, or sole member is a person who is at least 62 years of age; two or more persons who are at least 62 years of age living together; or one or more persons who are at least 62 years of age living with one or more live-in aides.

**Elderly person.** An individual who is at least 62 years of age.

**Eligible family** A family that is income eligible and meets the other requirements of the 1937 Act and Part 5 of 24 CFR. See also *family*.

**Employer identification number (EIN).** The nine-digit taxpayer identifying number that is assigned to an individual, trust, estate, partnership, association, company, or corporation.

**Evidence of citizenship or eligible status.** The documents which must be submitted as evidence of citizenship or eligible immigration status. See 24 CFR 5.508(b).

**Extremely low-income family.** A family whose annual income does not exceed the federal poverty level or 30 percent of the median income for the area, whichever number is higher. Area median income is determined by HUD, with adjustments for smaller and larger families. HUD may establish income ceilings higher or lower than 30 percent of median income if HUD finds such variations are necessary due to unusually high or low family incomes. See 24 CFR 5.603.

**Fair Housing Act.** Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988.

**Fair market rent (FMR).** The rent, including the cost of utilities (except telephone), as established by HUD for units of varying sizes (by number of bedrooms), that must be paid in the housing market area to rent privately owned, existing, decent, safe, and sanitary rental housing of modest (non-luxury) nature with suitable amenities. See periodic publications in the *Federal Register* in accordance with 24 CFR Part 888.

**Family.** Includes but is not limited to the following, regardless of actual or perceived sexual orientation, gender identity, or marital status, and can be further defined in PHA policy. Family includes a single person, who may be:

- An elderly person, displaced person, disabled person, near-elderly person, or any other single person;
- An otherwise eligible youth who has attained at least 18 years of age and not more than 24 years of age and who has left foster care, or will leave foster care within 90 days, in accordance with a transition plan described in section 475(5)(H) of the Social Security Act (42 U.S.C. 675(5)(H)), and is homeless or is at risk of becoming homeless at age 16 or older; or

Family also includes a group of persons residing together, and such group includes, but is not limited to:

- A family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family);
- An elderly family;
- A near-elderly family;
- A disabled family;
- A displaced family; and
- The remaining member of a tenant family.

**Family rent to owner.** In the voucher program, the portion of rent to owner paid by the family.

**Family self-sufficiency program (FSS program).** The program established by a PHA within its jurisdiction to promote self-sufficiency among participating families, including the coordination of supportive services to these families (24 CFR 984.103).

**Family share.** The portion of rent and utilities paid by the family. For calculation of family share, see 24 CFR 982.515(a).

**Family unit size.** The appropriate number of bedrooms for a family, as determined by the PHA under the PHA subsidy standards.

**Federal agency.** A department of the executive branch of the federal government.

**Foster adult.** A member of the household who is 18 years of age or older and meets the definition of a foster adult under state law. In general, a foster adult is a person who is 18 years of age or older, is unable to live independently due to a debilitating physical or mental condition, and is placed with the family by an authorized placement agency or by judgment, decree, or other order of any court of competent jurisdiction.

**Foster child.** A member of the household who meets the definition of a foster child under state law. In general, a foster child is placed with the family by an authorized placement agency (e.g., public child welfare agency) or by judgment, decree, or other order of any court of competent jurisdiction.

**Foster child care payment.** A payment to eligible households by state, local, or private agencies appointed by the state to administer payments for the care of foster children.

**Full-time student.** A person who is attending school or vocational training on a full-time basis (carrying a subject load that is considered full-time for day students under the standards and practices of the educational institution attended). See 24 CFR 5.603.

**Funding increment.** Each commitment of budget authority by HUD to a PHA under the consolidated annual contributions contract for the PHA program.

**Gender identity.** Actual or perceived gender-related characteristics.

**Gross rent.** The sum of the rent to owner plus any utility allowance.

**Group home.** A dwelling unit that is licensed by a state as a group home for the exclusive residential use of two to twelve persons who are elderly or persons with disabilities (including any live-in aide). (A special housing type: see 24 CFR 982.610–614.)

**Handicap.** Any condition or characteristic that renders a person an individual with handicaps. (See *person with disabilities*.)

**HAP contract.** The housing assistance payments contract. A written contract between the PHA and an owner for the purpose of providing housing assistance payments to the owner on behalf of an eligible family.

**Head of household.** The adult member of the family who is the head of the household for purposes of determining income eligibility and rent.

**Health and medical care expenses.** Any costs incurred in the diagnosis, cure, mitigation, treatment, or prevention of disease or payments for treatments affecting any structure or function of the body. Health and medical care expenses include medical insurance premiums and long-term care premiums that are paid or anticipated during the period for which annual income is computed.

**Household.** A household includes additional people other than the family who, with the PHA's permission, live in an assisted unit, such as live-in aides, foster children, and foster adults.

**Housing assistance payment.** The monthly assistance payment by a PHA, which includes: (1) A payment to the owner for rent to the owner under the family's lease; and (2) An additional payment to the family if the total assistance payment exceeds the rent to owner.

**Housing agency (HA).** See *public housing agency*.

**HUD.** The U.S. Department of Housing and Urban Development.

**Human trafficking.** A crime involving the exploitation of a person for labor, services, or commercial sex. The Trafficking Victims Protection Act of 2000 and its subsequent reauthorizations recognize and define two primary forms of human trafficking:

- Sex trafficking is the recruitment, harboring, transportation, provision, obtaining, patronizing, or soliciting of a person for the purpose of a commercial sex act in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age. See 22 U.S.C. § 7102(11)(A).
- Forced labor is the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery. See 22 U.S.C. § 7102(11)(B).

**Imputed welfare income.** An amount of annual income that is not actually received by a family as a result of a specified welfare benefit reduction, but is included in the family's annual income and therefore reflected in the family's rental contribution.

**Income for eligibility.** Annual income.

**Income information** means information relating to an individual's income, including:

- All employment income information known to current or previous employers or other income sources
- All information about wages, as defined in the state's unemployment compensation law, including any social security number; name of the employee; quarterly wages of the employee; and the name, full address, telephone number, and, when known, employer identification number of an employer reporting wages under a state unemployment compensation law
- Whether an individual is receiving, has received, or has applied for unemployment compensation, and the amount and the period received
- Unearned IRS income and self-employment, wages, and retirement income
- Wage, social security, and supplemental security income data obtained from the Social Security Administration.

**Independent contractor.** An individual who qualifies as an independent contractor instead of an employee in accordance with the Internal Revenue Code Federal income tax requirements and whose earnings are consequently subject to the Self-Employment Tax. In general, an individual is an independent contractor if the payer has the right to control or direct only the result of the work and not what will be done and how it will be done.

**Individual with handicaps.** See *person with disabilities*.

**Inflationary index.** An index based on the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) used to make annual adjustments to the deduction for elderly disabled families, the cap for imputing returns on assets, the restriction on net family assets, the amount of net assets the PHA may determine based on self-certification by the family, and the dependent deduction.

**Initial PHA.** In portability, the term refers to both: (1) A PHA that originally selected a family that later decides to move out of the jurisdiction of the selecting PHA; and (2) A PHA that absorbed a family that later decides to move out of the jurisdiction of the absorbing PHA.

**Initial payment standard.** The payment standard at the beginning of the HAP contract term.

**Initial rent to owner.** The rent to owner at the beginning of the HAP contract term.

**Inside.** Under NSPIRE, the inside of HUD housing (or “inside areas”) refers to the common areas and building systems that can be generally found within the building interior and are not inside a unit. Examples of “inside” common areas may include, basements, interior or attached garages, enclosed carports, restrooms, closets, utility rooms, mechanical rooms, community rooms, day care rooms, halls, corridors, stairs, shared kitchens, laundry rooms, offices, enclosed porches, enclosed patios, enclosed balconies, and trash collection areas. Examples of building systems include those components that provide domestic water such as pipes, electricity, elevators, emergency power, fire protection, HVAC, and sanitary services.

**Institution of higher education.** An institution of higher education as defined in 20 U.S.C. 1001 and 1002. See Exhibit 3-2 in this Administrative Plan.

**Jurisdiction.** The area in which the PHA has authority under state and local law to administer the program.

**Landlord.** Either the owner of the property or their representative, or the managing agent or their representative, as shall be designated by the owner.

**Lease.** A written agreement between an owner and a tenant for the leasing of a dwelling unit to the tenant. The lease establishes the conditions for occupancy of the dwelling unit by a family with housing assistance payments under a HAP contract between the owner and the PHA.

**Life Threatening deficiency.** Under NSPIRE, the life-threatening category includes deficiencies that, if evident in the home or on the property, present a high risk of death or severe illness or injury to a resident.

**Live-in aide.** A person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who:

- Is determined to be essential to the care and well-being of the persons;
- Is not obligated for the support of the persons; and
- Would not be living in the unit except to provide the necessary supportive services.

**Local preference.** A preference used by the PHA to select among applicant families.

**Low deficiency.** Under NSPIRE, deficiencies critical to habitability but not presenting a substantive health or safety risk to resident.

**Low-income family.** A family whose income does not exceed 80 percent of the median income for the area as determined by HUD with adjustments for smaller or larger families, except that HUD may establish income limits higher or lower than 80 percent for areas with unusually high or low incomes.



**Manufactured home.** A manufactured structure that is built on a permanent chassis, is designed for use as a principal place of residence, and meets the HQS. (A special housing type: see 24 CFR 982.620 and 982.621.)

**Manufactured home space.** In manufactured home space rental: A space leased by an owner to a family. A manufactured home owned and occupied by the family is located on the space. See 24 CFR 982.622 to 982.624.

**Minor.** A member of the family household other than the family head or spouse, who is under 18 years of age.

**Mixed family.** A family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

**Moderate deficiency.** Under NSPIRE, this includes deficiencies that, if evident in the home or on the property, present a moderate risk of an adverse medical event requiring a healthcare visit; cause temporary harm; or if left untreated, cause or worsen a chronic condition that may have long-lasting adverse health effects; or that the physical security or safety of a resident or their property could be compromised.

**Monthly adjusted income.** One twelfth of adjusted income.

**Monthly income.** One twelfth of annual income.

**Mutual housing.** Included in the definition of *cooperative*.

**National.** A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

**National Standards for the Physical Inspection of Real Estate.** HUD's housing inspection approach. NSPIRE is a single inspection standard for all units under the Public Housing, HCV, Multifamily, and Community Planning and Development (CPD) programs. NSPIRE's focus is on the areas that impact residents the most, such as the dwelling unit.

**Near-elderly family.** A family whose head, spouse, or sole member is a person who is at least 50 years of age but below the age of 62; or two or more persons, who are at least 50 years of age but below the age of 62, living together; or one or more persons who are at least 50 years of age but below the age of 62 living with one or more live-in aides.

**Net family assets.** The net cash value of all assets owned by the family, after deducting reasonable costs that would be incurred in disposing real property, savings, stocks, bonds, and other forms of capital investment. In determining net family assets, PHAs or owners, as applicable, must 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 consideration not measurable in dollar terms. Negative equity in real property or other investments does not prohibit the owner from selling the property or other investments, so negative equity alone would not justify excluding the property or other investments from family assets.

**Noncitizen.** A person who is neither a citizen nor national of the United States.

**Notice of funding availability (NOFA).** For budget authority that HUD distributes by competitive process, the *Federal Register* document that invites applications for funding. This document explains how to apply for assistance and the criteria for awarding the funding.

**Office of General Counsel (OGC).** The General Counsel of HUD.

**Outside.** Under NSPIRE, outside of HUD housing (or “outside areas”) refers to the building site, building exterior components, and any building systems located outside of the building or unit. Examples of “outside” components may include fencing, retaining walls, grounds, lighting, mailboxes, project signs, parking lots, detached garage or carport, driveways, play areas and equipment, refuse disposal, roads, storm drainage, non-dwelling buildings, and walkways. Components found on the exterior of the building are also considered outside areas, and examples may include doors, attached porches, attached patios, balconies, car ports, fire escapes, foundations, lighting, roofs, walls, and windows.

**Overcrowded.** A unit that does not have at least one bedroom or living/sleeping room for each two persons.

**Owner.** Any person or entity with the legal right to lease or sublease a unit to a participant.

**PHA Plan.** The annual plan and the 5-year plan as adopted by the PHA and approved by HUD.

**PHA’s quality control sample.** An annual sample of files or records drawn in an unbiased manner and reviewed by a PHA supervisor (or by another qualified person other than the person who performed the original work) to determine if the work documented in the files or records conforms to program requirements. For minimum sample size see CFR 985.3.

**Participant (participant family).** A family that has been admitted to the PHA program and is currently assisted in the program. The family becomes a participant on the effective date of the first HAP contract executed by the PHA for the family (first day of initial lease term).

**Payment standard.** The maximum monthly assistance payment for a family assisted in the voucher program (before deducting the total tenant payment by the family).

**Person with disabilities.** *For the purposes of program eligibility.* A person who has a disability as defined under the Social Security Act or Developmental Disabilities Care Act, or a person who has a physical or mental impairment expected to be of long and indefinite duration and whose ability to live independently is substantially impeded by that impairment but could be improved by more suitable housing conditions. This includes persons with AIDS or conditions arising from AIDS but excludes persons whose disability is based solely on drug or alcohol dependence. *For the purposes of reasonable accommodation.* A person with a physical or mental impairment that substantially limits one or more major life activities, a person regarded as having such an impairment, or a person with a record of such an impairment.

**Portability.** Renting a dwelling unit with a Section 8 housing choice voucher outside the jurisdiction of the initial PHA.

**Premises.** The building or complex in which the dwelling unit is located, including common areas and grounds.

**Private space.** In shared housing, the portion of a contract unit that is for the exclusive use of an assisted family.

**Project owner.** The person or entity that owns the housing project containing the assisted dwelling unit.

**Public assistance.** Welfare or other payments to families or individuals, based on need, which are made under programs funded, separately or jointly, by federal, state, or local governments.

**Public housing agency (PHA).** Any state, county, municipality, or other governmental entity or public body, or agency or instrumentality of these entities, that is authorized to engage or assist in the development or operation of low-income housing under the 1937 Act.

**Qualified census tract.** With regard to certain tax credit units, any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income of less than 60 percent of Area Median Gross Income (AMGI), or where the poverty rate is at least 25 percent, and where the census tract is designated as a qualified census tract by HUD.

**Real property.** Real property has the same meaning as that provided under the law of the state in which the property is located.

**Reasonable rent.** A rent to owner that is not more than rent charged: (1) For comparable units in the private unassisted market; and (2) For comparable unassisted units in the premises.

**Reasonable accommodation.** A change, exception, or adjustment to a rule, policy, practice, or service to allow a person with disabilities to fully access the PHA's programs or services.

**Receiving PHA.** In portability: A PHA that receives a family selected for participation in the tenant-based program of another PHA. The receiving PHA issues a voucher and provides program assistance to the family.

**Recertification.** Sometimes called *reexamination*. The process of securing documentation of total family income used to determine the rent the tenant will pay for the next 12 months if there are no additional changes to be reported.

**Remaining member of the tenant family.** The person left in assisted housing who may or may not normally qualify for assistance on their own circumstances (i.e., an elderly spouse dies, leaving widow age 47 who is not disabled).

**Rent to owner.** The total monthly rent payable to the owner under the lease for the unit (also known as contract rent). Rent to owner covers payment for any housing services, maintenance, and utilities that the owner is required to provide and pay for.

**Residency preference.** A PHA preference for admission of families that reside anywhere in a specified area, including families with a member who works or has been hired to work in the area (See *residency preference area*).

**Residency preference area.** The specified area where families must reside to qualify for a residency preference.

**Responsible entity.** For the public housing and the Section 8 tenant-based assistance, project-based voucher assistance, and moderate rehabilitation programs, the responsible entity means the PHA administering the program under an ACC with HUD. For all other Section 8 programs, the responsible entity means the Section 8 owner.

**Secretary.** The Secretary of Housing and Urban Development.

**Section 8.** Section 8 of the United States Housing Act of 1937.

**Section 8 covered programs.** All HUD programs which assist housing under Section 8 of the 1937 Act, including Section 8 assisted housing for which loans are made under Section 202 of the Housing Act of 1959.

**Section 214.** Section 214 of the Housing and Community Development Act of 1980, as amended.

**Section 214 covered programs.** The collective term for the HUD programs to which the restrictions imposed by Section 214 apply. These programs are set forth in 24 CFR 5.500.

**Security deposit.** A dollar amount (maximum set according to the regulations) which can be used for unpaid rent or damages to the owner upon termination of the lease.

**Seasonal worker.** An individual who is hired into a short-term position and the employment begins about the same time each year (such as summer or winter). Typically, the individual is hired to address seasonal demands that arise for the particular employer or industry.

**Set-up charges.** In a manufactured home space rental, charges payable by the family for assembling, skirting, and anchoring the manufactured home.

**Severe deficiency.** Under NSPIRE, the severe category includes deficiencies that, if evident in the home or on the property, present a high risk of permanent disability, or serious injury or illness, to a resident; or the physical security or safety of a resident or their property would be seriously compromised.

**Sexual assault.** Any nonconsensual sexual act proscribed by federal, tribal, or state law, including when the victim lacks capacity to consent (42 U.S.C. 13925(a)).

**Sexual orientation.** Homosexuality, heterosexuality or bisexuality.

**Shared housing.** A unit occupied by two or more families. The unit consists of both common space for shared use by the occupants of the unit and separate private space for each assisted family. (A special housing type: see 24 CFR 982.615–982.618.)

**Single person.** A person living alone or intending to live alone.

**Single room occupancy housing (SRO).** A unit that contains no sanitary facilities or food preparation facilities, or contains either, but not both, types of facilities. (A special housing type: see 24 CFR 982.602–982.605.)

**Small rural public housing agency (PHA).** Section 38 defines the term “small public housing agency” as a public housing agency “for which the sum of the number of public housing dwelling units administered by the agency and the number of vouchers under section 8(o) administered by the agency is 550 or fewer” and “that predominantly operates in a rural area, as described in section 1026.35(b)(2)(iv)(A) of title 12, Code of Federal Regulations.” After consideration of the public comments discussed above, HUD is interpreting “predominantly operates in a rural area” to mean a small PHA that:

- (1) Has a primary administrative building with a physical address in a rural area as described in 12 CFR 1026.35(b)(2)(iv)(A); or
- (2) more than 50 percent of its combined public housing units and voucher units under section 8(o) are in rural areas as described in 12 CFR 1026.35(b)(2)(iv)(A). HUD also clarifies that voucher units under section 8(o) include those in the tenant-based Housing Choice Voucher (HCV) program and the Project-Based Voucher (PBV) program.

**Social security number (SSN).** The nine-digit number that is assigned to a person by the Social Security Administration and that identifies the record of the person’s earnings reported to the Social Security Administration. The term does not include a number with a letter as a suffix that is used to identify an auxiliary beneficiary.

**Special admission.** Admission of an applicant that is not on the PHA waiting list or without considering the applicant’s waiting list position.

**Special housing types.** See subpart M of part 982. Subpart M states the special regulatory requirements for: SRO housing, congregate housing, group homes, shared housing, cooperatives (including mutual housing), and manufactured homes (including manufactured home space rental).

**Specified welfare benefit reduction.** Those reductions of welfare benefits (for a covered family) that may not result in a reduction of the family rental contribution. A reduction of welfare benefits because of fraud in connection with the welfare program, or because of welfare sanction due to noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

**Spouse.** The marriage partner of the head of household.

**Stalking.** To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate; or to place under surveillance with the intent to kill, injure, harass, or intimidate another person; and in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (1) that person, (2) a member of the immediate family of that person, or (3) the spouse or intimate partner of that person.

**State wage information collection agency (SWICA).** The state agency, including any Indian tribal agency, receiving quarterly wage reports from employers in the state, or an alternative system that has been determined by the Secretary of Labor to be as effective and timely in providing employment-related income and eligibility information.

**Subsidy standards.** Standards established by a PHA to determine the appropriate number of bedrooms and amount of subsidy for families of different sizes and compositions.

**Suspension.** The term on the family's voucher stops from the date the family submits a request for PHA approval of the tenancy, until the date the PHA notifies the family in writing whether the request has been approved or denied. This practice is also called *tolling*.

**Tax credit rent.** With regard to certain tax credit units, the rent charged for comparable units of the same bedroom size in the building that also receive the low-income housing tax credit but do not have any additional rental assistance (e.g., tenant-based voucher assistance).

**Technological abuse.** An act or pattern of behavior that occurs within domestic violence, dating violence, sexual assault, or stalking and is intended to harm, threaten, intimidate, control, stalk, harass, impersonate, exploit, extort, or monitor another person, except as otherwise permitted by law, that occurs using any form of technology, including but not limited to:

- Internet enabled devices
- Online spaces and platforms
- Computers
- Mobile devices
- Cameras and imaging programs
- Apps
- Location tracking devices
- Communication technologies
- Any other emergency technologies

**Tenancy addendum.** For the housing choice voucher program, the lease language required by HUD in the lease between the tenant and the owner.

**Tenant.** The person or persons (other than a live-in aide) who executes the lease as lessee of the dwelling unit.

**Tenant rent to owner.** See *family rent to owner*.

**Term of lease.** The amount of time a tenant agrees in writing to live in a dwelling unit.

**Total tenant payment (TTP).** The total amount the HUD rent formula requires the tenant to pay toward rent and utilities.

**Unearned income.** Any annual income, as calculated under 24 CFR 5.609, that is not earned income.

**Unit.** Under NSPIRE, a unit (or "dwelling unit") of HUD housing refers to the interior components of an individual unit. Examples of components included in the interior of a unit may include the balcony, bathroom, call-for-aid (if applicable), carbon monoxide devices, ceiling, doors, electrical systems, enclosed patio, floors, HVAC (where individual units are provided), kitchen, lighting, outlets, smoke detectors, stairs, switches, walls, water heater, and windows.

**Utilities.** Water, electricity, gas, other heating, refrigeration, cooking fuels, trash collection, and sewage services. Telephone service is not included.

**Utility allowance.** If the cost of utilities (except telephone) and other housing services for an assisted unit is not included in the tenant rent but is the responsibility of the family occupying the unit, an amount equal to the estimate made or approved by a PHA or HUD of the monthly cost of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.

**Utility reimbursement.** In the voucher program, the portion of the housing assistance payment which exceeds the amount of rent to owner.

**Utility hook-up charge.** In a manufactured home space rental: Costs payable by a family for connecting the manufactured home to utilities such as water, gas, electrical and sewer lines.

**Very low-income family.** A low-income family whose annual income does not exceed 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 50 percent of the median income for the area on the basis of its finding that such variations are necessary because of unusually high or low family incomes. This is the income limit for the housing choice voucher program.

**Veteran.** A person who has served in the active military or naval service of the United States at any time and who shall have been discharged or released therefrom under conditions other than dishonorable.

**Violence Against Women Act (VAWA).** Prohibits denying admission to the program to an otherwise qualified applicant or terminating assistance on the basis that the applicant or program participant is or has been a victim of domestic violence, dating violence, sexual assault, stalking, or human trafficking.

**Violent criminal activity.** Any illegal criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person or property of another.

**Voucher (housing choice voucher).** A document issued by a PHA to a family selected for admission to the housing choice voucher program. This document describes the program and the procedures for PHA approval of a unit selected by the family. The voucher also states obligations of the family under the program.

**Voucher holder.** A family holding a voucher with an unexpired term (search time).

**Voucher program.** The housing choice voucher program.

**Waiting list.** A list of families organized according to HUD regulations and PHA policy who are waiting for a unit to become available.

**Waiting list admission.** An admission from the PHA waiting list.

**Welfare assistance.** Income assistance from federal or state welfare programs, including assistance provided under TANF and general assistance. Does not include assistance directed solely to meeting housing expenses, nor programs that provide health care, child care or other services for working families. For the FSS program (24 CFR 984.103), *welfare assistance* includes only cash maintenance payments designed to meet a family's ongoing basic needs. Does not include nonrecurring short term benefits designed to address individual crisis situations, work subsidies, supportive services such as child care and transportation provided to families who are employed, refundable earned income tax credits, contributions to and distributions from Individual Development Accounts under TANF, services such as counseling, case management, peer support, child care information and referral, financial empowerment, transitional services, job retention, job advancement, and other employment-related services that do not provide basic income support, amounts solely directed to meeting housing expenses, amounts for health care, Supplemental Nutrition Assistance Program (SNAP) and emergency rental and utilities assistance, SSI, SSDI, or social security, and child-only or non-needy TANF grants made to or on behalf of a dependent child solely on the basis of the child's need and not the need of the child's current non-parental caretaker.