



**ADMINISTRATIVE PLAN  
FOR THE  
HOUSING CHOICE VOUCHER PROGRAM  
OF THE  
MOBILE HOUSING BOARD**

Approved by the MHB Board of Commissioners: October 16, 2013

Effective Date: January 1, 2014

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

PART 1:	THE PHA.....	1-1
	1-1.A. Overview .....	1-2
	1-1.B. Organization and Structure of the PHA.....	1-3
	1-1.C. PHA Mission .....	1-3
	1-1.D. The PHA's Programs .....	1-3
	1-1.E. The PHA's Commitment to Ethics and Service .....	1-3
PART 2:	THE HOUSING CHOICE VOUCHER (HCV) PROGRAM .....	1-4
	1-2.A. Overview and History of the Program .....	1-4
	1-2.B. HCV Program Basics .....	1-5
	1-2.C. The HCV Partnerships .....	1-6
	The HCV Relationships: .....	1-6
	What does HUD do?.....	1-7
	What does the PHA do? .....	1-7
	What does the Owner do? .....	1-7
	What does the Family do? .....	1-8
	1-2.D. Applicable Regulations.....	1-9
PART 3:	THE HCV ADMINISTRATIVE PLAN .....	1-9
	1-3.A. Overview and Purpose of the Plan.....	1-9
	1-3.B. Contents of the Plan (24 CFR §982.54) .....	1-10
	Mandatory vs. Discretionary Policy.....	1-11
	1-3.C. Organization of the Plan.....	1-12
	1-3.D. Updating and Revising the Plan.....	1-12

**Chapter 2**  
**FAIR HOUSING AND EQUAL OPPORTUNITY**

PART 1:	NONDISCRIMINATION.....	2-1
	2-1.A. Overview .....	2-1
	2-1.B. Nondiscrimination .....	2-2
	Providing Information to Families and Owners .....	2-3
	Discrimination Complaints .....	2-3
PART 2:	POLICIES RELATED TO PERSONS WITH DISABILITIES .....	2-3
	2-2.A. Overview .....	2-3
	2-2.B. Definition of Reasonable Accommodation .....	2-4
	Types of Reasonable Accommodations .....	2-4
	2-2.C. Request for an Accommodation.....	2-5
	2-2.D. Verification of Disability .....	2-5
	2-2.E. Approval/Denial of a Requested Accommodation [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].....	2-6

---

2-2.F.	Program Accessibility for Persons with Hearing or Vision Impairments .....	2-7
2-2.G.	Physical Accessibility .....	2-7
2-2.H.	Denial or Termination of Assistance .....	2-8
<b>PART III:</b>	<b>IMPROVING ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY (LEP).....</b>	<b>2-9</b>
2-3.A.	Overview .....	2-9
2-3.B.	Oral Interpretation .....	2-9
2-3.C.	Written Translation.....	2-10
2-3.D.	Implementation Plan .....	2-10
Exhibit 2-1:	Definition of a Person with a Disability Under Federal Civil Rights Laws [24 CFR Parts 8.3, and 100.201] .....	2-11

**Chapter 3  
ELIGIBILITY**

<b>PART 1:</b>	<b>DEFINITIONS OF FAMILY AND HOUSEHOLD MEMBERS.....</b>	<b>3-1</b>
3-1.A.	Overview .....	3-1
3-1.B.	Family and Household .....	3-2
	Family .....	3-2
	Household .....	3-2
3-1.C.	Family Break-Up and Remaining Member of Tenant Family.....	3-2
	Family Break-up [24 CFR §982.315].....	3-2
	Remaining Member of a Tenant Family.....	3-3
3-1.D.	Head of Household [24 CFR §5.504(b)] .....	3-3
3-1.E.	Spouse, Co-head, and Other Adult .....	3-3
3-1.F.	Dependent [24 CFR §5.603] .....	3-4
	Joint Custody of Dependents.....	3-4
3-1.G.	Full-Time Student [24 CFR §5.603, HVC GB p. 5-29] .....	3-4
3-1.H.	Elderly and Near-Elderly Persons, and Elderly Family [24 CFR §5.100 and §5.403].....	3-4
	Elderly Persons .....	3-4
	Near-Elderly Persons.....	3-4
	Elderly Family .....	3-5
3-1.I.	Persons with Disabilities and Disabled Family .....	3-5
	Persons with Disabilities .....	3-5
	Disabled Family .....	3-5
3-1.J.	Guests [24 CFR §5.100].....	3-5
3-1.K.	Foster Children and Foster Adults .....	3-6
3-1.L.	Absent Family Members .....	3-6
	Definitions of Temporarily and Permanently Absent.....	3-6
	Absent Students .....	3-6
	Absences Due to Placement in Foster Care [24 CFR §5.403].	3-6
	Absent Head, Spouse, or Co-head.....	3-7

---

	Family Members Permanently Confined for Medical Reasons [HCV GB, p. 5-22] .....	3-7
	Return of Permanently Absent Family Members .....	3-7
3-1.M.	Live-In Aide .....	3-7
<b>PART 2:</b>	<b>BASIC ELIGIBILITY CRITERIA.....</b>	<b>3-8</b>
3-2.A.	Income Eligibility and Targeting .....	3-8
	Income Limits .....	3-8
	Types of Low-Income Families [24 CFR §5.603(b)] .....	3-8
	Using Income Limits for Eligibility [24 CFR §982.201].....	3-9
	Using Income Limits for Targeting [24 CFR §982.201] .....	3-9
3-2.B.	Citizenship or Eligible Immigration Status.....	3-10
	Declaration [24 CFR §5.508] .....	3-10
	Mixed Families.....	3-11
	Ineligible Families [24 CFR §§5.514(d), (e), and (f)] .....	3-11
	Timeframe for Determination of Citizenship Status [24 CFR §5.508(g)] .....	3-12
3-2.C.	Social Security Numbers [24 CFR §5.216 and §5.218] .....	3-12
3-2.D.	Family Consent to Release of Information [24 CFR § 5.230, HCV GB, p. 5-13] .....	3-12
3-2.E.	Students Enrolled In Institutions of Higher Education [24 CFR §5.612 and FR Notice 4/10/06] .....	3-13
	Definitions.....	3-13
	Determining Student Eligibility .....	3-14
<b>PART 3:</b>	<b>DENIAL OF ASSISTANCE.....</b>	<b>3-16</b>
3-3.A.	Overview .....	3-16
	Forms of Denial .....	3-16
	Prohibited Reasons for Denial of Program Assistance [24 CFR §982.202(b), Pub.L. 109-162].....	3-16
3-3.B.	Mandatory Denial of Assistance [24 CFR §982.553(a)].....	3-17
3-3.C.	Other Permitted Reasons for Denial of Assistance .....	3-17
	Criminal Activity [24 CFR §982.553] .....	3-18
	Previous Behavior in Assisted Housing .....	3-19
3-3.D.	Screening.....	3-20
	Screening for Eligibility .....	3-20
	Screening for Suitability as a Tenant [24 CFR §982.307] .....	3-20
3-3.E.	Criteria for Deciding to Deny Assistance.....	3-21
	Evidence [24 CFR §982.553(c)] .....	3-21
	Consideration of Circumstances [24 CFR §982.552(c)(2)] .....	3-22
	Removal of a Family Member's Name from the Application [24 CFR §982.552(c)(2)(ii)] .....	3-22
	Reasonable Accommodation [24 CFR §982.552(c)(2)(iv)] .....	3-23
3-3.F.	Notice of Eligibility or Denial.....	3-23

3-3.G.	Prohibition Against Denial of Assistance to Victims of Domestic Violence, Dating Violence, and Stalking [24 CFR Part 5, Subpart L] .....	3-23
	Definitions [24 CFR §5.2003] .....	3-24
	Notification .....	3-25
	Documentation .....	3-25
	PHA Confidentiality Requirements.....	3-26
Exhibit 3-1:	Detailed Definitions Related to Disabilities .....	3-27
	Person with Disabilities [24 CFR §5.403].....	3-27
	Individual with Handicaps [24 CFR §8.3].....	3-28
Exhibit 3-2:	Definition of Institution of Higher Education [20 U.S.C §1001 and §1002] ..	3-29
	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] .....	3-29

**Chapter 4**  
**APPLICATIONS, WAITING LIST AND TENANT SELECTION**

PART 1:	THE APPLICATION PROCESS .....	4-1
4-1.A.	Overview .....	4-1
4-1.B.	Applying for Assistance [HCV GB, pp. 4-11 – 4-16, Notice PIH 2009-36] .....	4-2
4-1.C.	Accessibility of the Application Process .....	4-3
	Elderly and Disabled Populations [24 CFR §8 and HCV GB, pp. 4-11 – 4-13] .....	4-3
	Limited English Proficiency .....	4-3
4-1.D.	Placement on the Waiting List.....	4-3
	Ineligible for Placement on the Waiting List.....	4-3
	Eligible for Placement on the Waiting List.....	4-4
PART 2:	MANAGING THE WAITING LIST .....	4-4
4-2.A.	Overview .....	4-4
4-2.B.	Organization of the Waiting List [24 CFR §982.204 and §205] .....	4-4
4-2.C.	Opening and Closing the Waiting List [24 CFR §982.206] .....	4-5
	Closing the Waiting List .....	4-5
	Reopening the Waiting List.....	4-5
4-2.D.	Family Outreach [HCV GB, pp. 4-2 to 4-4] .....	4-5
4-2.E.	Reporting Changes in Family Circumstances .....	4-6
4-2.F.	Updating the Waiting List [24 CFR §982.204].....	4-6
	Purging the Waiting List.....	4-6
	Removal from the Waiting List.....	4-7
PART 3:	SELECTION FOR HCV ASSISTANCE .....	4-7
4-3.A.	Overview .....	4-7
4-3.B.	Selection and HCV Funding Sources.....	4-8

---

	Special Admissions [24 CFR §982.203].....	4-8
	Targeted Funding [24 CFR §982.204(e)].....	4-8
	Regular HCV Funding.....	4-8
4-3.C.	Selection Method .....	4-8
	Local Preferences [24 CFR §982.207; HCV p. 4-16] .....	4-8
	Income Targeting Requirement [24 CFR §982.201(b)(2)].....	4-15
	Order of Selection.....	4-15
4-3.D.	Notification of Selection.....	4-15
4-3.E.	The Application Interview .....	4-16
4-3.F.	Completing the Application Process .....	4-18

**Chapter 5**  
**BRIEFINGS AND VOUCHER ISSUANCE**

PART 1:	BRIEFINGS AND FAMILY OBLIGATIONS .....	5-1
5-1.A.	Overview .....	5-1
5-1.B.	Briefing [24 CFR §982.301] .....	5-2
	Notification and Attendance.....	5-2
	Oral Briefing [24 CFR §982.301(a)] .....	5-2
	Briefing Packet [24 CFR §982.301(b)].....	5-3
	Additional Items to be included in the Briefing Packet .....	5-4
5-1.C.	Family Obligations .....	5-4
	Time Frames for Reporting Changes Required by Family Obligations.....	5-5
	Family Obligations [24 CFR §982.551] .....	5-5
PART 2:	SUBSIDY STANDARDS AND VOUCHER ISSUANCE .....	5-7
5-2.A.	Overview .....	5-7
5-2.B.	Determining Family Unit (Voucher) Size [24 CFR §982.402] .....	5-8
5-2.C.	Exceptions to Subsidy Standards .....	5-9
5-2.D.	Voucher Issuance [24 CFR §982.302].....	5-9
5-2.E.	Voucher Term, Extensions, and Suspensions .....	5-10
	Voucher Term [24 CFR §982.303] .....	5-10
	Extensions of Voucher Term [24 CFR §982.303(b)].....	5-10
	Suspensions of Voucher Term [24 CFR §982.303(c)] .....	5-11
	Expiration of Voucher Term .....	5-11

---

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

PART 1:	ANNUAL INCOME.....	6-1
6-1.A.	Overview .....	6-1
6-1.B.	Household Composition and Income .....	6-2
	Summary of Income Included and Excluded by Person .....	6-2
	Temporarily Absent Family Members .....	6-3
	Family Members Permanently Confined for Medical Reasons.....	6-3
	Joint Custody of Dependents.....	6-4
	Caretakers for a Child.....	6-4
6-1.C.	Anticipating Annual Income .....	6-4
	Basis of Annual Income Projection .....	6-4
	Projecting Income .....	6-6
6-1.D.	Earned Income.....	6-6
	Types of Earned Income Included in Annual Income.....	6-6
	Types of Earned Income <u>Not</u> Counted in Annual Income .....	6-6
6-1.E.	Earned Income Disallowance for Persons with Disabilities [24 CFR §5.617].....	6-9
	Eligibility.....	6-9
	Calculation of the Disallowance .....	6-9
6-1.F.	Business Income [24 CFR §5.609(b)(2)].....	6-10
	Business Expenses .....	6-10
	Business Expansion .....	6-11
	Capital Indebtedness.....	6-11
	Negative Business Income .....	6-11
	Withdrawal of Cash or Assets from a Business .....	6-11
	Co-owned Businesses .....	6-11
6-1.G.	Assets [24 CFR §5.609(b)(3) and 24 CFR §5.603(b)].....	6-11
	Overview.....	6-11
	General Policies.....	6-12
	Types of Assets .....	6-15
6-1.H.	Periodic Payments .....	6-18
	Periodic Payments <u>Included</u> in Annual Income.....	6-18
	Lump-Sum Payments for the Delayed Start of a Periodic Payment.....	6-18
	Treatment of Overpayment Deductions from Social Security Benefits .....	6-19
	Periodic Payments <u>Excluded</u> from Annual Income .....	6-19
6-1.I.	Payments In Lieu of Earnings .....	6-20
6-1.J.	Welfare Assistance .....	6-20
	Overview.....	6-20
	Sanctions Resulting in the Reduction of Welfare Benefits [24 CFR §5.615] .....	6-20

6-1.K.	Periodic and Determinable Allowances [24 CFR §5.609(b)(7)]....	6-21
	Alimony and Child Support .....	6-21
	Regular Contributions or Gifts .....	6-21
6-1.L.	Student Financial Assistance [24 CFR §5.609(b)(9)] .....	6-21
	Student Financial Assistance <u>Included</u> in Annual Income	
	[24 CFR §5.609(b)(9) and FR 4/10/06] .....	6-22
	Student Financial Assistance <u>Excluded</u> from Annual Income	
	[24 CFR §5.609(c)(6)].....	6-22
6-1.M.	Additional Exclusions from Annual Income	
PART 2:	ADJUSTED INCOME .....	6-23
6-2.A.	Introduction .....	6-25
	Overview.....	6-25
	Anticipating Expenses .....	6-25
6-2.B.	Dependent Deduction .....	6-25
6-2.C.	Elderly or Disabled Family Deduction .....	6-26
6-2.D.	Medical Expenses Deduction [24 CFR §5.611(a)(3)(i)] .....	6-26
	Definition of <i>Medical Expenses</i> .....	6-26
	Summary of Allowable Medical Expenses from IRS	
	Publication 502 .....	6-26
	Families That Qualify for Both Medical and Disability	
	Assistance Expenses.....	6-27
6-2.E.	Disability Assistance Expenses Deduction [24 CFR §5.603(b)	
	and 24 CFR §5.611(a)(3)(ii)].....	6-27
	Earned Income Limit on the Disability Assistance	
	Expense Deduction.....	6-27
	Eligible Disability Expenses .....	6-27
	Necessary and Reasonable Expenses .....	6-28
	Families That Qualify for Both Medical and Disability	
	Assistance Expenses.....	6-29
6-2.F.	Child Care Expense Deduction .....	6-29
	Clarifying the Meaning of <i>Child</i> for This Deduction .....	6-29
	Qualifying for the Deduction .....	6-29
	Earned Income Limit on Child Care Expense Deduction .....	6-30
	Eligible Child Care Expenses .....	6-31
PART 3:	CALCULATING FAMILY SHARE AND PHA SUBSIDY .....	6-32
6-3.A.	Overview of Rent and Subsidy Calculations .....	6-32
	TTP Formula [24 CFR §5.628].....	6-32
	Family Share [24 CFR §982.305(a)(5)].....	6-32
	PHA Subsidy [24 CFR §982.505(b)] .....	6-32
	Utility Reimbursement [24 CFR §982.514(b)].....	6-33
6-3.B.	Financial Hardships Affecting Minimum Rent [24 CFR §5.630]... 6-33	
	Overview.....	6-33
	HUD-Defined Financial Hardship.....	6-33
	Implementation of Hardship Exemption .....	6-34

6-3.C.	Applying Payment Standards [24 CFR §982.505] .....	6-36
	Overview.....	6-36
	Changes in Payment Standards .....	6-36
	Reasonable Accommodation .....	6-37
6-3.D.	Applying Utility Allowances [24 CFR §982.517].....	6-37
	Overview.....	6-37
	Reasonable Accommodation .....	6-38
	Utility Allowance Revisions .....	6-38
6-3.E.	Prorated Assistance for Mixed Families [24 CFR §5.520].....	6-38
Exhibit 6-1:	Annual Income Inclusions.....	6-39
	HHS Definition of "Assistance" .....	6-40
Exhibit 6-2:	Annual Income Exclusions .....	6-42
Exhibit 6-3:	Treatment of Family Assets.....	6-45
Exhibit 6-4:	Earned Income Disallowance for Persons with Disabilities .....	6-46
Exhibit 6-5:	The Effect of Welfare Benefit Reduction.....	6-48

**Chapter 7**  
**VERIFICATION**

[24 CFR §982.516, 24 CFR §982.551, 24 CFR §5.230, Notice PIH 2010-19]

PART 1:	GENERAL VERIFICATION REQUIREMENTS .....	7-1
7-1.A.	Family Consent to Release of Information [24 CFR §982.516 and §982.551, 24 CFR §5.230].....	7-1
	Consent Forms .....	7-1
	Consequences and Penalties for Failing to Consent [24 CFR §5.232] .....	7-2
7-1.B.	Overview of Verification Requirements .....	7-2
	HUD's Verification Hierarchy [Notice PIH 2010-19].....	7-2
	Requirements for Acceptable Documents .....	7-3
	File Documentation.....	7-3
7-1.C.	Up-Front Income Verification (UIV) .....	7-3
	Upfront Income Verification Using Non-HUD Systems (Optional) .....	7-3
	Upfront Income Verification Using HUD's Enterprise Income Verification (EIV) System (Mandatory).....	7-4
7-1.D.	Third-Party Written and Oral Verification.....	7-5
	Written Third-Party Verification [Notice PIH 2010-19].....	7-6
	Written Third-Party Verification Form.....	7-6
	Oral Third-Party Verification [Notice PIH 2010-19] .....	7-6
	When Third-Party Verification is not Required [Notice PIH 2010-19] .....	7-7
7-1.E.	Self-Certification.....	7-7

PART 2:	VERIFYING FAMILY INFORMATION .....	7-8
7-2.A.	Verification of Legal Identity .....	7-8
7-2.B.	Social Security Numbers.....	7-8
7-2.C.	Documentation of Age.....	7-10
7-2.D.	Family Relationships .....	7-10
	Marriage .....	7-10
	Separation or Divorce .....	7-10
	Absence of Adult Member .....	7-11
	Foster Children and Foster Adults .....	7-11
7-2.E.	Verification of Student Status.....	7-11
	General Requirements.....	7-11
	Restrictions on Assistance to Students Enrolled in Institutions of Higher Education .....	7-11
7-2.F.	Documentation of Disability.....	7-12
	Family Members Receiving SSA Disability Benefits .....	7-13
	Family Members Not Receiving SSA Disability Benefits.....	7-13
7-2.G.	Citizenship or Eligible Immigration Status [24 CFR §5.508].....	7-13
	Overview.....	7-13
	U.S. Citizens and Nationals .....	7-14
	Eligible Immigrants .....	7-14
7-2.H.	Verification of Preference Status.....	7-14
PART 3:	VERIFYING INCOME AND ASSETS .....	7-15
7-3.A.	Earned Income.....	7-15
	Tips.....	7-15
7-3.B.	Business and Self Employment Income.....	7-15
7-3.C.	Periodic Payments and Payments In Lieu of Earnings .....	7-15
	Social Security/SSI Benefits .....	7-15
7-3.D.	Alimony or Child Support .....	7-16
7-3.E.	Assets and Income from Assets.....	7-16
	Assets Disposed of for Less than Fair Market Value .....	7-16
7-3.F.	Net Income from Rental Property.....	7-17
7-3.G.	Retirement Accounts.....	7-17
7-3.H.	Income from Excluded Sources .....	7-18
7-3.I.	Zero Annual Income Status.....	7-18
7-3.J.	Student Financial Assistance .....	7-18
7-3.K.	Parental Income of Students Subject to Eligibility Restrictions .	7-19
PART 4:	VERIFYING MANDATORY DEDUCTIONS.....	7-19
7-4.A.	Dependent and Elderly/Disabled Household Deductions.....	7-19
	Dependent Deduction .....	7-20
	Elderly/Disabled Family Deduction .....	7-20
7-4.B.	Medical Expense Deduction.....	7-20
	Amount of Expense .....	7-20
	Eligible Household .....	7-20

---

	Qualified Expenses.....	7-21
	Unreimbursed Expenses .....	7-21
	Expenses Incurred in Past Years.....	7-21
7-4.C.	Disability Assistance Expenses.....	7-21
	Amount of Expense .....	7-21
	Family Member is a Person with Disabilities.....	7-22
	Family Member(s) Permitted to Work .....	7-22
	Unreimbursed Expenses .....	7-22
7-4.D.	Child Care Expenses .....	7-22
	Eligible Child .....	7-23
	Unreimbursed Expense .....	7-23
	Pursuing an Eligible Activity .....	7-23
	Allowable Type of Child Care .....	7-24
	Reasonableness of Expenses .....	7-24
Exhibit 7-1:	Summary of Documentation Requirements for Noncitizens [HCV GB, pp. 5-9 and 5-10].....	7-24

**Chapter 8**  
**HOUSING QUALITY STANDARDS AND RENT REASONABLENESS**  
**DETERMINATIONS**

[24 CFR §982 Subpart I and 24 CFR §982.507]

PART 1:	PHYSICAL STANDARDS.....	8-1
8-1.A.	General HUD Requirements .....	8-1
	HUD Performance and Acceptability Standards .....	8-1
	Tenant Preference Items .....	8-2
	Modifications to Provide Accessibility .....	8-2
8-1.B.	Additional Local Requirements .....	8-3
	Thermal Environment [HCV GB p.10-7].....	8-3
	Clarifications of HUD Requirements .....	8-3
8-1.C.	Life Threatening Conditions [24 CFR §982.404(a)].....	8-4
8-1.D.	Owner and Family Responsibilities [24 CFR §982.404] .....	8-5
	Family Responsibilities .....	8-5
	Owner Responsibilities .....	8-5
8-1-E.	Special Requirements for Children with Environmental Intervention Blood Lead Level [24 CFR §35.1225] .....	8-5
8-1-F.	Violation of HQS Space Standards [24 CFR §982.403] .....	8-6
PART 2:	THE INSPECTION PROCESS .....	8-6
8-2.A.	Overview [24 CFR §982.405] .....	8-6
	Types of Inspections.....	8-6
	Inspection of PHA-owned Units [24 CFR §982.352(b)] .....	8-7
	Inspection Costs .....	8-7
	Notice and Scheduling .....	8-7
	Owner and Family Inspection Attendance .....	8-7

**Housing Choice Voucher Program  
HCV Administrative Plan**

8-2.B.	Initial HQS Inspection [24 CFR §982.401(a)].....	8-8
	Timing of Initial Inspections .....	8-8
	Inspection Results and Re-inspections.....	8-8
	Utilities .....	8-8
	Appliances .....	8-8
8-2.C.	Annual HQS Inspections [24 CFR §982.405(a)] .....	8-9
	Scheduling the Inspection.....	8-9
8-2.D.	Special Inspections [HCV GB p. 10-30].....	8-10
8-2.E.	Quality Control Inspections [24 CFR §982.405(b), HCV GB p. 10-32] .....	8-10
8-2.F.	Inspection Results and Re-inspections for Units under HAP Contract.....	8-10
	Notification of Corrective Actions.....	8-10
	Extensions .....	8-11
	Re-inspections.....	8-11
8-2.G.	Enforcing Owner Compliance .....	8-11
	HAP Abatement.....	8-12
	HAP Contract Termination.....	8-12
8-2.H.	Enforcing Family Compliance with HQS .....	8-12
PART 3:	RENT REASONABLENESS [24 CFR §982.507] .....	8-12
8-3.A.	Overview .....	8-12
	PHA-owned Units [24 CFR §982.352(b)].....	8-13
8-3.B.	When Rent Reasonableness Determinations Are Required .....	8-13
	Owner-initiated Rent Determinations.....	8-13
	PHA- and HUD-Initiated Rent Reasonableness Determinations .....	8-14
8-3.C.	How Comparability Is Established.....	8-14
	Factors to Consider .....	8-14
	Units that must not be used as Comparables .....	8-14
	Rents Charged for Other Units on the Premises .....	8-15
8-3.D.	PHA Rent Reasonableness Methodology .....	8-15
	How Market Data is Collected .....	8-15
	How Rents are Determined .....	8-15
Exhibit 8-1:	Overview of HUD Housing Quality Standards .....	8-16
Exhibit 8-2:	Summary of Tenant Preference Areas Related to Housing Quality.....	8-18

**Chapter 9**  
**GENERAL LEASING POLICIES**

9-1.A.	Tenant Screening.....	9-1
9-1.B.	Requesting Tenancy Approval [Form HUD-52517] .....	9-2
9-1.C.	Owner Participation.....	9-3
9-1.D.	Eligible Units .....	9-3
	Ineligible Units [24 CFR §982.352(a)].....	9-3
	MHB-Owned Units [24 CFR §982.352(b)] .....	9-4
	Special Housing Types [24 CFR §982 Subpart M].....	9-4
	Duplicative Assistance [24 CFR §982.352(c)] .....	9-4
	Housing Quality Standards (HQS) [24 CFR §982.305 and 24 CFR §982.401].....	9-5
	Unit Size .....	9-5
	Rent Reasonableness [24 CFR § 982.305; 24 CFR §982.507] ..	9-5
	Rent Burden [24 CFR §982.508].....	9-5
9-1.E.	Lease and Tenancy Addendum .....	9-5
	Lease Form and Tenancy Addendum [24 CFR §982.308] .....	9-6
	Lease Information [24 CFR §982.308(d)] .....	9-6
	Term of Assisted Tenancy .....	9-6
	Security Deposit [24 CFR §§982.313(a) and (b)].....	9-7
	Separate Non-Lease Agreements between Owner and Tenant .....	9-7
	PHA Review of Lease.....	9-8
9-1.F.	Tenancy Approval [24 CFR §982.305] .....	9-8
9-1.G.	HAP Contract Execution [24 CFR §982.305].....	9-9
9-1.H.	Changes in Lease or Rent [24 CFR §982.308].....	9-10

**Chapter 10**  
**MOVING WITH CONTINUED ASSISTANCE AND PORTABILITY**

PART 1:	MOVING WITH CONTINUED ASSISTANCE .....	10-1
	10-1.A. Allowable Moves .....	10-1
	10-1.B. Restrictions on Moves.....	10-2
	Denial of Moves.....	10-2
	Restrictions on Elective Moves [24 CFR §982.314(c)] .....	10-3
	10-1.C. Moving Process .....	10-4
	Notification.....	10-4
	Approval .....	10-4
	Reexamination of Family Income and Composition.....	10-4
	Voucher Issuance and Briefing.....	10-4
	Housing Assistance Payments [24 CFR §982.311(d)].....	10-5
PART 2:	PORTABILITY .....	10-5
	10-II.A. Overview .....	10-5

---

10-2.B.	Initial PHA Role .....	10-5
	Allowable Moves under Portability .....	10-5
	Determining Income Eligibility .....	10-6
	Reexamination of Family Income and Composition .....	10-7
	Briefing .....	10-7
	Voucher Issuance and Term .....	10-7
	Voucher Extensions and Expiration .....	10-7
	Initial Contact with the Receiving PHA .....	10-8
	Sending Documentation to the Receiving PHA .....	10-8
	Initial Billing Deadline [Notice PIH 2008-43] .....	10-9
	Monthly Billing Payments [24 CFR §982.355(e), Notice PIH 2008-43] .....	10-9
	Annual Updates of Form HUD-50058 .....	10-10
	Denial or Termination of Assistance [24 CFR §982.355(c)(9)] .....	10-10
10-2.C.	Receiving PHA Role .....	10-10
	Initial Contact with Family .....	10-10
	Briefing .....	10-11
	Income Eligibility and Reexamination .....	10-11
	Voucher Issuance .....	10-11
	Notifying the Initial PHA .....	10-12
	Administering a Portable Family's Voucher .....	10-12
	Absorbing a Portable Family .....	10-14

## Chapter 11 REEXAMINATIONS

PART 1:	ANNUAL REEXAMINATIONS [24 CFR §982.516] .....	11-1
	11-1.A. Overview .....	11-1
	11-1.B. Scheduling Annual Reexaminations .....	11-2
	Notification of and Participation in the Annual Reexamination Process .....	11-2
	11-1.C. Conducting Annual Reexaminations .....	11-3
	11-1.D. Determining Ongoing Eligibility of Certain Students [24 CFR §982.552(b)(5)] .....	11-4
	11-1.E. Effective Dates .....	11-4
PART 2:	INTERIM REEXAMINATIONS [24 CFR §982.516] .....	11-5
	11-2.A. Overview .....	11-5
	11-2.B. Changes In Family and Household Composition .....	11-6
	New Family Members <u>Not</u> Requiring Approval .....	11-6
	New Family and Household Members Requiring Approval..	11-6
	Departure of a Family or Household Member .....	11-7
	11-2.C. Changes Affecting Income or Expenses .....	11-7
	PHA-Initiated Interim Reexaminations .....	11-7



	Evidence .....	12-8
	Consideration of Circumstances	
	[24 CFR § 982.552(c)(2)(i)] .....	12-8
	Reasonable Accommodation	
	[24 CFR § 982.552(c)(2)(iv)].....	12-9
12-2.E.	Terminating the Assistance of Domestic Violence, Dating Violence, or Stalking Victims and Perpetrators [24 CFR §5.2005]	12-9
	Victim Documentation.....	12-10
	Terminating the Assistance of a Domestic Violence Perpetrator [24 CFR § 5.2005(c)] .....	12-11
	PHA Confidentiality Requirements	
	[24 CFR § 5.2007(a)(1)(v)] .....	12-11
12-2.F.	Termination Notice [HCV GB, p. 15-7].....	12-12
	Notice of Termination Based on Citizenship Status	
	[24 CFR §§5.514(c) and (d)].....	12-12
12-2.G.	How Termination of Assistance Affects the HAP Contract and Lease .....	12-13
PART 3:	TERMINATION OF TENANCY BY THE OWNER .....	12-13
12-3.A.	Overview .....	12-13
12-3.B.	Grounds for Owner Termination of Tenancy [24 CFR §982.310 and Form HUD-52641-A, Tenancy Addendum, Pub.L. 109-162] ...	12-13
	Serious or Repeated Lease Violations.....	12-13
	Violation of Federal, State, or Local Law .....	12-13
	Criminal Activity or Alcohol Abuse .....	12-13
	Other Good Cause.....	12-13
12-3.C.	Eviction [24 CFR §982.310(e) and (f) and Form HUD-52641-A, Tenancy Addendum].....	12-15
12-3.D.	Deciding Whether to Terminate Tenancy [24 CFR §982.310(h), 24 CFR §982.310(h)(4)].....	12-15
12-3.E.	Effect of Tenancy Termination on the Family's Assistance .....	12-16
Exhibit 12-1:	Statement of Family Obligations.....	12-17

**Chapter 13**  
**OWNERS**

PART 1:	OWNERS IN THE HCV PROGRAM.....	13-1
13-1.A.	Owner Recruitment and Retention [HCV GB, pp. 2-4 to 2-6] .....	13-1
	Recruitment .....	13-1
	Retention .....	13-2
13-1.B.	Basic HCV Program Requirements.....	13-2
13-1.C.	Owner Responsibilities [24 CFR §982.452].....	13-4
13-1.D.	Owner Qualifications .....	13-5
	Owners Barred from Participation	

---

	[24 CFR §982.306(a) and (b)].....	13-5
	Leasing to Relatives [24 CFR §982.306(d), HCV GB p. 11-2] ..	13-5
	Conflict of Interest [24 CFR §982.161; HCV GB p. 8-19].....	13-5
	Owner Actions That May Result in Disapproval of a Tenancy Request [24 CFR §982.306(c)] .....	13-6
	Legal Ownership of Unit .....	13-7
13-1.E.	Non-Discrimination [HAP Contract – Form HUD-52641] .....	13-8
<b>PART 2:</b>	<b>HAP CONTRACTS</b> .....	<b>13-8</b>
13-2.A.	Overview .....	13-8
13-2.B.	HAP Contract Contents.....	13-8
13-2.C.	HAP Contract Payments .....	13-10
	General.....	13-10
	Owner Certification of Compliance .....	13-11
	Late HAP Payments [24 CFR §982.451(a)(5)].....	13-11
	Termination of HAP Payments [24 CFR §982.311(b)].....	13-11
13-2.D.	Breach of HAP Contract [24 CFR §982.453] .....	13-12
13-2.E.	HAP Contract Term and Terminations .....	13-13
13-2.F.	Change in Ownership / Assignment of the HAP Contract [HUD-52641].....	13-14

**Chapter 14**  
**PROGRAM INTEGRITY**

<b>PART 1:</b>	<b>PREVENTING, DETECTING, AND INVESTIGATING ERRORS AND PROGRAM ABUSE</b> .....	<b>14-1</b>
14-1.A.	Preventing Errors and Program Abuse .....	14-1
14-1.B.	Detecting Errors and Program Abuse .....	14-2
	Quality Control and Analysis of Data .....	14-2
	Independent Audits and HUD Monitoring .....	14-3
	Individual Reporting of Possible Errors and Program Abuse.....	14-3
14-1.C.	Investigating Errors and Program Abuse .....	14-3
	When the PHA Will Investigate.....	14-3
	Consent to Release of Information [24 CFR §982.516].....	14-3
	Analysis and Findings.....	14-3
	Consideration of Remedies .....	14-4
	Notice and Appeals.....	14-4
<b>PART 2:</b>	<b>CORRECTIVE MEASURES AND PENALTIES</b> .....	<b>14-4</b>
14-2.A.	Subsidy Under- or Overpayments.....	14-4
	Corrections .....	14-4
	Reimbursement .....	14-4
14-2.B.	Family-Caused Errors and Program Abuse .....	14-5
	Family Reimbursement to PHA [HCV GB pp. 22-12 to 22-13] .....	14-5

---

	PHA Reimbursement to Family [HCV GB p. 22-12].....	14-5
	Prohibited Actions.....	14-5
	Penalties for Program Abuse.....	14-6
14-2.C.	Owner-Caused Error or Program Abuse.....	14-6
	Owner Reimbursement to the PHA.....	14-6
	Prohibited Owner Actions.....	14-7
	Remedies and Penalties.....	14-7
14-2.D.	PHA-Caused Errors or Program Abuse.....	14-7
	Repayment to the PHA.....	14-8
	PHA Reimbursement to Family or Owner.....	14-8
	Prohibited Activities.....	14-8
14-2.E.	Criminal Prosecution.....	14-8
14-2.F.	Fraud and Program Abuse Recoveries.....	14-9

**Chapter 15**  
**SPECIAL HOUSING TYPES**  
[24 CFR §982 Subpart M]

PART 1:	SINGLE ROOM OCCUPANCY [24 CFR §982.602 through §982.605].....	15-1
	15-1.A. Overview.....	15-1
	15-1.B. Payment Standard, Utility Allowance, and HAP Calculation.....	15-2
	15-1.C. Housing Quality Standards (HQS).....	15-2
PART 2:	CONGREGATE HOUSING [24 CFR §982.606 through §982.609].....	15-3
	15-2.A. Overview.....	15-3
	15-2.B. Payment Standard, Utility Allowance, and HAP Calculation.....	15-3
	15-2.C. Housing Quality Standards.....	15-3
PART 3:	GROUP HOME [24 CFR §982.610 – §982.614 and HCV GB p. 7-4].....	15-4
	15-3.A. Overview.....	15-4
	15-3.B. Payment Standard, Utility Allowance, and HAP Calculation.....	15-4
	15-3.C. Housing Quality Standards.....	15-5
PART 4:	SHARED HOUSING [24 CFR §982.615 – §982.618].....	15-6
	15-4.A. Overview.....	15-6
	15-4.B. Payment Standard, Utility Allowance and HAP Calculation.....	15-6
	15-4.C. Housing Quality Standards.....	15-7
PART 5:	COOPERATIVE HOUSING [24 CFR §982.619].....	15-7
	15-5.A. Overview.....	15-7
	15-5.B. Payment Standard, Utility Allowance and HAP Calculation.....	15-7
	15-5.C. Housing Quality Standards.....	15-8
PART 6:	MANUFACTURED HOMES [24 CFR §982.620 through §982.624].....	15-8
	15-6.A. Overview.....	15-8
	15-6.B. Special Policies for Manufactured Home Owners	
	Who Lease A Space.....	15-8
	Family Income.....	15-8

---

	Lease and HAP Contract .....	15-8
15-6.C.	Payment Standard, Utility Allowance and HAP Calculation .....	15-8
	Payment Standards .....	15-8
	Utility Allowance.....	15-8
	Space Rent.....	15-9
	Housing Assistance Payment .....	15-9
	Rent Reasonableness .....	15-9
15-6.D.	Housing Quality Standards .....	15-9
PART 7:	HOMEOWNERSHIP [24 CFR §982.625 through §982.643] .....	15-9
15-7.A.	Overview [24 CFR §982.625] .....	15-9
15-7.B.	Family Eligibility [24 CFR §982.627].....	15-10
15-7.C.	Selection of Families [24 CFR §982.626] .....	15-11
15-7.D.	Eligible Units [24 CFR §982.628].....	15-11
15-7.E.	Additional PHA Requirements for Search and Purchase [24 CFR §982.629] .....	15-12
15-7.F.	Homeownership Counseling [24 CFR §982.630].....	15-12
15-7.G.	Home Inspections, Contract of Sale, and PHA Disapproval of Seller [24 CFR §982.631] .....	15-13
	Home Inspections .....	15-13
	Contract of Sale .....	15-14
	Disapproval of a Seller.....	15-14
15-7.H.	Financing [24 CFR §982.632].....	15-14
15-7.I.	Continued Assistance Requirements; Family Obligations [24 CFR §982.633] .....	15-15
15-7.J.	Maximum Term of Homeowner Assistance [24 CFR §982.634]	15-15
15-7.K.	Homeownership Assistance Payments and Homeownership Expenses [24 CFR §982.635] .....	15-16
15-7.L.	Portability [24 CFR §982.636, §982.637, §982.353(b) and (c), §982.552, §982.553].....	15-17
15-7.M.	Moving with Continued Assistance [24 CFR §982.637].....	15-18
15-7.N.	Denial or Termination of Assistance [24 CFR §982.638].....	15-18

**Chapter 16**  
**PROGRAM ADMINISTRATION**

PART 1:	ADMINISTRATIVE FEE RESERVE [24 CFR §982.155].....	16-1
PART 2:	SETTING PROGRAM STANDARDS AND SCHEDULES .....	16-2
16-2.A.	Overview .....	16-2
16-2.B.	Payment Standards [24 CFR §982.503; HCV GB, Chapter 7] .....	16-2
	Updating Payment Standards.....	16-3
	Exception Payment Standards [24 CFR §982.503(c)] .....	16-4
	Unit-by-Unit Exceptions [24 CFR §982.503(c)(2)(ii)] .....	16-4

---

	"Success Rate" Payment Standard Amounts	
	[24 CFR §982.503(e)].....	16-5
	Decreases in the Payment Standard below the Basic Range	
	[24 CFR §982.503(d)].....	16-5
16-2.C.	Utility Allowances [24 CFR §982.517] .....	16-5
	Air Conditioning .....	16-5
	Reasonable Accommodation .....	16-6
	Utility Allowance Revisions .....	16-6
PART 3:	INFORMAL REVIEWS AND HEARINGS .....	16-6
16-3.A.	Overview .....	16-6
16-3.B.	Informal Reviews .....	16-6
	Decisions Subject to Informal Review .....	16-6
	Notice to the Applicant [24 CFR §982.554(a)] .....	16-7
	Scheduling an Informal Review .....	16-7
	Informal Review Procedures [24 CFR §982.554(b)] .....	16-8
	Informal Review Decision [24 CFR §982.554(b)].....	16-8
16-3.C.	Informal Hearings for Participants [24 CFR §982.555, Pub.L. 109-162].....	16-8
	Decisions Subject to Informal Hearing.....	16-9
	Informal Hearing Procedures.....	16-10
16-3.D.	Hearing and Appeal Provisions for Non-Citizens [24 CFR §5.514].....	16-15
	Notice of Denial or Termination of Assistance [24 CFR §5.514(d)] .....	16-15
	USCIS Appeal Process [24 CFR §5.514(e)].....	16-16
	Informal Hearing Procedures for Applicants [24 CFR §5.514(f)] .....	16-16
	Informal Hearing Procedures for Residents [24 CFR §5.514(f)] .....	16-16
	Retention of Documents [24 CFR §5.514(h)] .....	16-17
PART 4:	OWNER OR FAMILY DEBTS TO THE PHA .....	16-18
16-4.A.	Overview .....	16-18
16-4.B.	Repayment Policy .....	16-18
	Owner Debts to the PHA .....	16-18
	Family Debts to the PHA .....	16-19
	Repayment Agreement [24 CFR §792.103] .....	16-19
	General Repayment Agreement Guidelines for Families...	16-19
	Repayment Agreements Involving Improper Payments.....	16-21
PART 5:	MANAGEMENT ASSESSMENT (SEMAP) .....	16-21
16-5.A.	Overview .....	16-21
16-5.B.	SEMAP Certification [24 CFR §985.101].....	16-21
	HUD Verification Method .....	16-22

	16-5.C. SEMAP Indicators [24 CFR §985.3 and form HUD-52648].....	16-22
	SEMAP Indicators Chart.....	16-22
<b>PART 6:</b>	<b>RECORD KEEPING .....</b>	<b>16-26</b>
	16-6.A. Overview .....	16-26
	16-6.B. Record Retention [24 CFR §982.158] .....	16-26
	16-6.C. Records Management.....	16-26
	Privacy Act Requirements [24 CFR § 5.212 and Form-9886]	16-27
	Upfront Income Verification (UIV) Records.....	16-27
	Criminal Records .....	16-27
	Medical/Disability Records.....	16-28
<b>PART 7:</b>	<b>REPORTING AND RECORD KEEPING FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL.....</b>	<b>16-28</b>
	16-7.A. Overview .....	16-28
	16-7.B. Reporting Requirement [24 CFR §35.1225(e)] .....	16-28
	16-7.C. Data Collection and Record Keeping [24 CFR §35.1225(f)] .....	16-28
<b>PART 8:</b>	<b>DETERMINATION OF INSUFFICIENT FUNDING .....</b>	<b>16-29</b>
	16-8.A. Overview .....	16-29
	16-8.B. Methodology .....	16-29
<b>PART 9:</b>	<b>NOTIFICATION REGARDING APPLICABLE PROVISIONS OF THE VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT OF 2005 (VAWA).....</b>	<b>16-30</b>
	16-9.A. Notification to Participants [24 CFR §5.2007(3)(i)].....	16-31
	16-9.B. Notification to Applicants.....	16-31
	16-9.C. Notification to Owners and Managers [24 CFR §5.2007(3)(ii)] ....	16-31
<b>Exhibit 16-1:</b>	<b>Sample Notice to Housing Choice Voucher Applicants and Tenants Regarding the Violence Against Women Act (VAWA) .....</b>	<b>16-32</b>
<b>Exhibit 16-2:</b>	<b>Sample Notice to Housing Choice Voucher Owners and Managers Regarding the Violence Against Women Act (VAWA) .....</b>	<b>16-32</b>

**Chapter 17**  
**PROJECT-BASED VOUCHERS**

<b>PART 1:</b>	<b>GENERAL REQUIREMENTS.....</b>	<b>17-1</b>
	17-1.A. Overview [24 CFR §983.5].....	17-2
	17-1.B. Tenant-Based vs. Project-Based Voucher Assistance [24 CFR §983.2].....	17-2
	17-1.C. Relocation Requirements [24 CFR §983.7].....	17-2
	17-1.D. Equal Opportunity Requirements [24 CFR §983.8] .....	17-3
<b>PART 2:</b>	<b>PBV OWNER PROPOSALS .....</b>	<b>17-3</b>
	17-2.A. Overview .....	17-3
	17-2.B. Owner Proposal Selection Procedures [24 CFR §983.51] .....	17-3

---

	Solicitation and Selection of PBV Proposals	
	[24 CFR §§983.51(b) and (c)].....	17-4
	PHA-owned Units [24 CFR §983.51(e) and §983.59] .....	17-6
	PHA Notice of Owner Selection [24 CFR § 983.51(d)] .....	17-6
17-2.C.	Housing Type [24 CFR §983.52].....	17-7
17-2.D.	Prohibition of Assistance for Certain Units .....	17-7
	Ineligible Housing Types [24 CFR §983.53].....	17-7
	Subsidized Housing [24 CFR §983.54] .....	17-7
17-2.E.	Subsidy Layering Requirements [24 CFR §983.55, FR Notice 11/24/08, and FR Notice 7/9/10] .....	17-8
17-2.F.	Cap On Number of PBV Units in Each Project .....	17-8
	25 Percent per Project Cap	
	[24 CFR §983.56(a), FR Notice 11/24/08].....	17-8
	Exceptions to 25 Percent per Project Cap	
	[24 CFR §983.56(b), FR Notice 11/24/08].....	17-9
	Promoting Partially-Assisted Buildings	
	[24 CFR §983.56(c)].....	17-9
17-2.G.	Site Selection Standards .....	17-10
	Compliance with PBV Goals, Civil Rights Requirements, and HQS Site Standards [24 CFR §983.57(b)].....	17-10
	Existing and Rehabilitated Housing Site and Neighborhood Standards [24 CFR §983.57(d)] .....	17-11
	New Construction Site and Neighborhood Standards	
	[24 CFR §983.57(e)].....	17-11
17-2.H.	Environmental Review [24 CFR §983.58] .....	17-12
PART 3:	DWELLING UNITS .....	17-13
17-3.A.	Overview .....	17-13
17-3.B.	Housing Quality Standards [24 CFR §983.101].....	17-13
	Lead-based Paint [24 CFR § 983.101(c)] .....	17-13
17-3.C.	Housing Accessibility for Persons with Disabilities.....	17-13
17-3.D.	Inspecting Units .....	17-13
	Pre-selection Inspection [24 CFR §983.103(a)].....	17-13
	Pre-HAP Contract Inspections [24 CFR §983.103(b)] .....	17-13
	Turnover Inspections [24 CFR §983.103(c)].....	17-14
	Annual Inspections [24 CFR §983.103(d)].....	17-14
	Other Inspections [24 CFR §983.103(e)] .....	17-14
	Inspecting PHA-owned Units [24 CFR §983.103(f)] .....	17-14
PART 4:	REHABILITATED AND NEWLY CONSTRUCTED UNITS .....	17-14
17-4.A.	Overview [24 CFR §983.151] .....	17-14
17-4.B.	Agreement to Enter into HAP Contract .....	17-15
	Content of the Agreement [24 CFR §983.152(c)] .....	17-15
	Execution of the Agreement [24 CFR §983.153, FR Notice 11/24/08].....	17-15

**Housing Choice Voucher Program  
HCV Administrative Plan**

	17-4.C. Conduct of Development Work .....	17-16
	Labor Standards [24 CFR §983.154(b)] .....	17-16
	Equal Opportunity [24 CFR §983.154(c)] .....	17-16
	Owner Disclosure [24 CFR §§983.154(d) and (e)].....	17-16
	17-4.D. Completion of Housing.....	17-16
	Evidence of Completion [24 CFR §983.155(b)] .....	17-16
	PHA Acceptance of Completed Units [24 CFR §983.156] ...	17-17
<b>PART 5:</b>	<b>HOUSING ASSISTANCE PAYMENTS CONTRACT (HAP) .....</b>	<b>17-17</b>
	17-5.A. Overview .....	17-17
	17-5.B. HAP Contract Requirements.....	17-17
	Contract Information [24 CFR §983.203, FR Notice 11/24/08]	17-17
	Execution of the HAP Contract [24 CFR §983.204] .....	17-18
	Term of HAP Contract [FR Notice 11/24/08] .....	17-18
	Remedies for HQS Violations [24 CFR §983.207(b)] .....	17-19
	17-5.C. Amendments to the HAP Contract.....	17-20
	Substitution of Contract Units [24 CFR §983.206(a)].....	17-20
	Addition of Contract Units [24 CFR §983.206(b)] .....	17-20
	17-5.D. HAP Contract Year, Anniversary and Expiration Dates	
	[24 CFR §983.206(c) and §983.302(e)] .....	17-20
	17-5.E. Owner Responsibilities under the HAP [24 CFR §983.209] .....	17-20
	17-5.F. Additional HAP Requirements.....	17-21
	Housing Quality and Design Requirements	
	[24 CFR §983.101(e) and §983.207(a)].....	17-21
	Vacancy Payments [24 CFR § 983.352(b)] .....	17-21
<b>PART 6:</b>	<b>SELECTION OF PBV PROGRAM PARTICIPANTS.....</b>	<b>17-22</b>
	17-6.A. Overview .....	17-22
	17-6.B. Eligibility for PBV Assistance [24 CFR §§983.251(a) and (b)].....	17-22
	In-Place Families [24 CFR §983.251(b)] .....	17-22
	17-6.C. Organization of the Waiting List [24 CFR §983.251(c)].....	17-23
	17-6.D. Selection from the Waiting List [24 CFR §983.251(c)] .....	17-23
	Income Targeting [24 CFR §983.251(c)(6)] .....	17-23
	Units with Accessibility Features [24 CFR §983.251(c)(7)] ...	17-23
	Preferences [24 CFR §983.251(d), FR Notice 11/24/08].....	17-23
	17-6.E. Offer of PBV Assistance.....	17-24
	Refusal of Offer [24 CFR §983.251(e)(3)] .....	17-24
	Disapproval by Landlord [24 CFR §983.251(e)(2)] .....	17-24
	Acceptance of Offer [24 CFR §983.252] .....	17-25
	17-6.F. Owner Selection of Tenants .....	17-25
	Leasing [24 CFR §983.253(a)] .....	17-25
	Filling Vacancies [24 CFR §983.254(a)].....	17-25
	Reduction in HAP Contract Units Due to Vacancies	
	[24 CFR § 983.254(b)] .....	17-26
	17-6.G. Tenant Screening [24 CFR §983.255] .....	17-26
	PHA Responsibility .....	17-26

---

	Owner Responsibility .....	17-26
<b>PART 7:</b>	<b>OCCUPANCY</b> .....	<b>17-27</b>
	17-7.A. Overview .....	17-27
	17-7.B. Lease [24 CFR §983.256].....	17-27
	Form of Lease [24 CFR §983.256(b)].....	17-27
	Lease Requirements [24 CFR §983.256(c)] .....	17-27
	Tenancy Addendum [24 CFR §983.256(d)].....	17-28
	Initial Term and Lease Renewal [24 CFR §983.256(f) and §983.257(b)].....	17-28
	Changes in the Lease [24 CFR §983.256(e)] .....	17-28
	Owner Termination of Tenancy [24 CFR §983.257].....	17-28
	Security Deposits [24 CFR §983.258] .....	17-29
	17-7.C. Moves .....	17-29
	Overcrowded, Under-Occupied, and Accessible Units [24 CFR §983.259] .....	17-29
	Family Right to Move [24 CFR §983.260].....	17-30
	17-7.D. Exceptions to the Occupancy Cap [24 CFR §983.261, FR Notice 11/24/08] .....	17-30
<b>PART 8:</b>	<b>DETERMINING RENT TO OWNER</b> .....	<b>17-31</b>
	17-8.A. Overview .....	17-31
	17-8.B. Rent Limits [24 CFR §983.301] .....	17-31
	Certain Tax Credit Units 31 [24 CFR §983.301(c), FR Notice 11/24/08].....	17-31
	Use of FMRs, Exception Payment Standards, and Utility Allowances [24 CFR §983.301(f)] .....	17-32
	Re-determination of Rent [24 CFR §983.302, FR Notice 11/24/08] .....	17-33
	PHA-owned Units [24 CFR §983.301(g)].....	17-34
	17-8.C. Reasonable Rent [24 CFR §983.303].....	17-34
	When Rent Reasonable Determinations are Required .....	17-34
	How to Determine Reasonable Rent .....	17-34
	PHA-owned Units .....	17-35
	Owner Certification of Reasonable Rent.....	17-35
	17-8.D. Effect of Other Subsidy and Rent Control .....	17-35
	Other Subsidy [24 CFR §983.304] .....	17-35
	Rent Control [24 CFR §983.305].....	17-36
<b>PART 9:</b>	<b>PAYMENTS TO OWNER</b> .....	<b>17-36</b>
	17-9.A. Housing Assistance Payments [24 CFR §983.351] .....	17-36
	17-9.B. Vacancy Payments [24 CFR §983.352].....	17-36
	17-9.C. Tenant Rent to Owner [24 CFR §983.353] .....	17-37
	Tenant and PHA Responsibilities .....	17-37
	Utility Reimbursements.....	17-38

**Housing Choice Voucher Program  
HCV Administrative Plan**

---

17-9.D. Other Fees and Charges [24 CFR §983.354] .....	17-38
Meals and Supportive Services .....	17-38
Other Charges by Owner .....	17-38

ACRONYMS

GLOSSARY

# Chapter 1

## OVERVIEW OF THE PROGRAM AND PLAN

### INTRODUCTION

Mobile Housing Board is an affordable housing provider who receives its funding for the Housing Choice Voucher (“HCV”) program primarily from the United States Department of Housing and Urban Development (“HUD”). Although Mobile Housing Board is not a federal department or agency, it is a quasi-public entity created and authorized by state law to develop and operate housing and housing programs for low-income families. Mobile Housing Board enters into an Annual Contributions Contract with HUD to administer the program requirements in a manner prescribed by HUD. As such, MHB 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 *Administrative Plan for the Housing Choice Voucher Program* (“Administrative Plan”) provides an overview, guidance and general principles regarding MHB’s administration of the Housing Choice Voucher Program (“HCV Program”) (formerly and sometimes still generally referred to as the *Section 8 Program*) and generally governs the programmatic and day-to-day operation of the HCV Program. Notwithstanding the above, as every situation which may arise in the administration of the HCV Program may not be covered in this Administrative Plan, Mobile Housing Board reserves the right to make judgments in these instances that are otherwise consistent with MHB’s Mission, appropriate HUD regulations, equity and the general principles of this Administrative Plan.

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

There are three sections to this Chapter 1:

Section 1: Mobile Housing Board. This part includes a description of Mobile Housing Board, its jurisdiction, its programs, and its mission and vision.

Section 2: The HCV Program. This part contains information about the Housing Choice Voucher program operation, roles and responsibilities, and partnerships.

Section 3: The HCV Administrative Plan. This part discusses the purpose and organization of the HCV Plan and its revision requirements.

### SECTION 1: MOBILE HOUSING BOARD

#### 1-1.A. OVERVIEW

This Section explains the origin of Mobile Housing Board, the general structure of the organization, and the relationship between the Mobile Housing Board’s Governance, Executive Team and staff.

### **1-1.B. ORGANIZATION AND STRUCTURE OF MHB**

Mobile Housing Board is an asset management and affordable housing agency which is authorized to administer federal, state, local and private housing assets and resources and provide those resources largely to low and moderate income families. Mobile Housing Board provides those resources primarily through: (i) the management of approximately 3,400+ units of affordable rental housing fixed in some thirteen (13) communities within the City of Mobile, Alabama and in other portions of Mobile County, Alabama (“MHB’s Affordable Housing Portfolio” or “Affordable Housing Property Portfolio”); (ii) the management of approximately 3,400+ Housing Choice Vouchers supported by the U.S. Department of Housing and Urban Development (“HUD”); (iii) the management of several mixed-income, mixed-financed communities (“Other Rental Properties”); (iv) redevelopment and repositioning strategies and initiatives; (v) other anticipated real estate, acquisition and development activities; and (vi) several affordable and market-rate housing programs and strategies designed to develop, maintain or sell, single family or multi-family homes. Mobile Housing Board is also affiliated with a number of non-profit and for-profit companies, many of which assist in the ownership, management or service delivery to families of MHB’s rental, voucher or homeownership units. One of the affiliates specializes in real estate development and construction activities and the delivery of economic and life style independence services to low and moderate income families. For the purposes of this Administrative Plan, Mobile Housing Board and all of the affiliated companies will be designed as “MHB”.

The Section 8 tenant-based Housing Choice Voucher (HCV) assistance program (formerly and sometimes still generally referred to as the *Section 8 Program*) is a tenant-based and project-based voucher program funded by the federal government and administered by the Mobile Housing Board for the jurisdiction of the City of Mobile and up to ten (10) miles past the city’s limits.

The governing officials of MHB 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 MHB conducts business, ensuring that policies are followed by MHB staff and ensuring that MHB 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 MHB are taken through written resolutions, adopted by the board of commissioners and entered into the official records of MHB.

The principal executive employee of MHB is the executive director (“ED”) or Chief Executive Officer (“CEO”), hired and appointed by the Board of Commissioners. The Executive Director or Chief Executive Officer is directly responsible for carrying out the policies established by the commissioners and is generally delegated the responsibility for: (i) coordinating the hiring, training and supervising the remainder of MHB’s staff in order to manage the day-to-day operations of MHB, (ii) ensuring compliance with federal and state laws, regulations and directives for the programs managed, (iii) budgeting and financial planning for the agency.

### **1-1.C. MOBILE HOUSING BOARD'S MISSION**

The purpose of a mission statement is to communicate the purpose of the agency to internal and external clients, vendors and families. 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 other strategic and day-to-day decisions.

MHB Mission: MHB's mission is to be a catalyst for Community and Family Empowerment. In furtherance of this mission, MHB seeks to promote personal, economic and social upward mobility and economic and lifestyle independence to provide families the opportunity to make the transition from subsidized to non-subsidized housing.

### **1-1.D. MHB'S PROGRAMS**

The following programs are included under this Administrative Plan: Administrative Plan, Housing Choice Voucher Program, Project-Based Voucher Program, Housing Choice Voucher Homeownership Program, and any other Housing Choice Voucher related Program administered by HUD, including, but not limited to, any such program using vouchers under HUD's Rental Demonstration Program ("RAD").

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

As a public service agency, MHB is committed to providing excellent service to HCV program participants – families and owners – in the community. MHB's standards include, but are not limited to:

- Administer applicable federal and state laws and regulations to achieve high ratings in compliance measurement indicators while maintaining efficiency in program operation to ensure fair and consistent treatment of clients served.
- Provide decent, safe, and sanitary housing – in compliance with program housing quality standards – for very low income families while ensuring that family rents are fair, reasonable, and affordable.
- Encourage self-sufficiency, economic and life-style independence of participant families and assist in the expansion of family opportunities which address educational, socio-economic, recreational and other human services needs.
- Promote fair housing and the opportunity for 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 MHB'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 MHB's support systems and commitment to our employees and their development.

MHB will make efforts to keep program participants informed of HCV program rules and regulations, and to advise participants of how the program rules affect them. These efforts primarily will include the posting of information on MHB's website or through other electronic or cost-effective means.

## **SECTION 2: THE HOUSING CHOICE VOUCHER (HCV) PROGRAM**

### **1-2.A. OVERVIEW AND HISTORY OF THE PROGRAM**

This section provides the public, clients and other stakeholders with information related to the overall operation of the HCV Program. There have been many changes to the HCV Program since its inception in 1974 and a brief history of the program will assist in understanding the program.

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

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

Under the Certificate program, federal housing assistance payments were made directly to private owners of rental housing, where this housing was made available to lower-income families. Eligible families were able to select housing in the private rental market. If the housing met certain basic physical standards of quality ("housing quality standards") and was within certain HUD-established rent limitations ("fair market rents"), the family would 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 ("THCD") Act of 1987 authorized a new version of tenant-based assistance – the Section 8 Voucher program. The Voucher program was very similar to the Certificate program in that eligible families were able to select housing in the private rental market and receive assistance in that housing unit.

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

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

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

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

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

### **1-2.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. MHB is afforded choices in the operation of the program which are included in MHB’s Administrative Plan, a document approved by the board of commissioners of MHB.

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

When a family is determined to be eligible for the program and funding is available, MHB issues the family a housing voucher. When the family finds a suitable housing unit and funding is available, MHB 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.

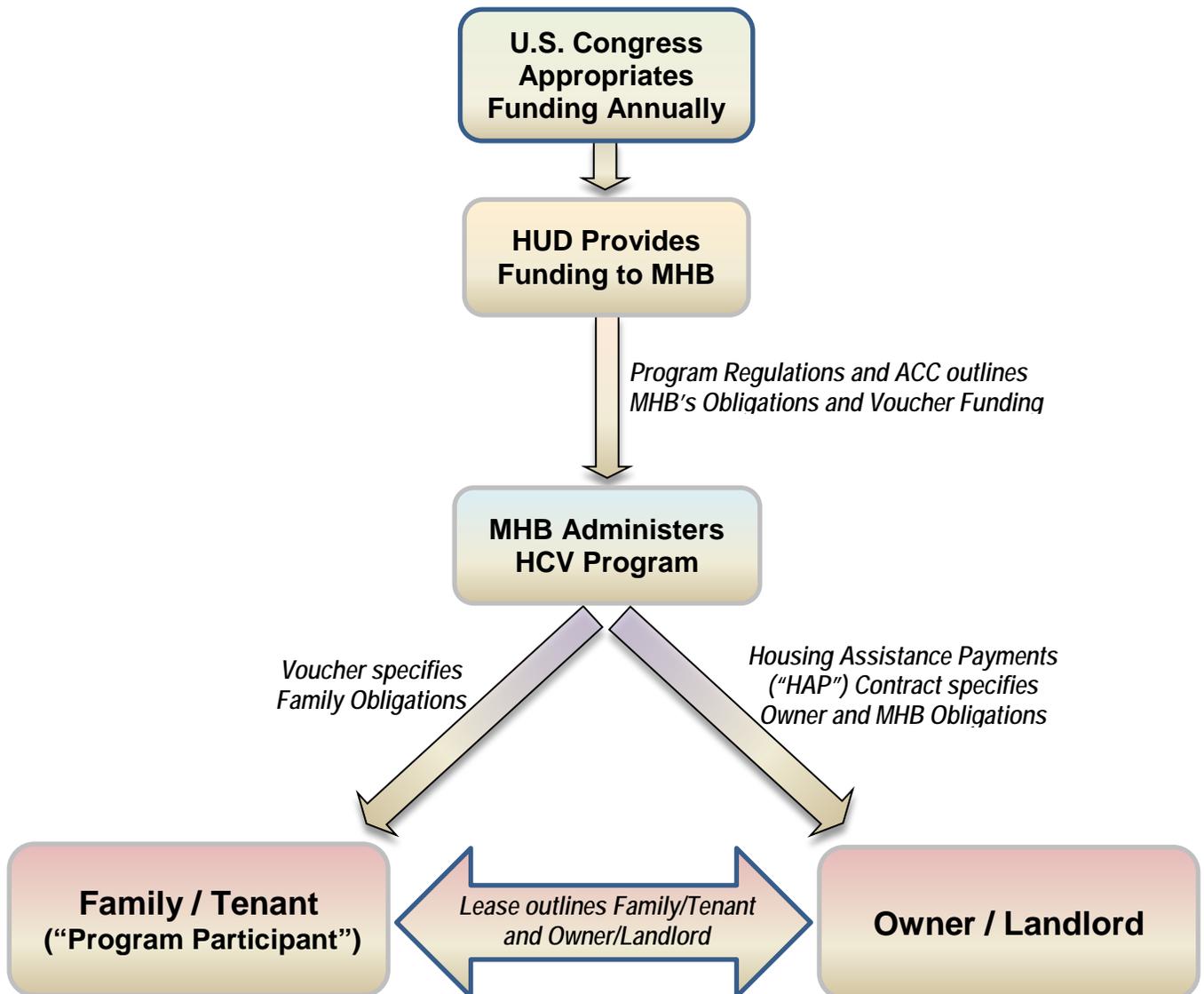
Even though the family is determined to be eligible for the program, the owner has the responsibility of approving the family as a suitable renter. MHB continues to make payments to the owner as long as the family is eligible and the housing unit continues to qualify under the program.

### 1-2.C. THE HCV PARTNERSHIPS

To administer the HCV program, MHB enters into a contractual relationship with HUD. MHB 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, MHB, 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 HCV Program.

The chart below illustrates key aspects of these relationships.



**What does HUD do?**

HUD has the following major responsibilities:

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

**What does MHB do?**

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

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

**What does the Owner do?**

The owner has the following major responsibilities:

- Screen families who apply for tenancy, to determine if they will be good renters.

- MHB 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 MHB;
- Comply with all applicable fair housing laws and discriminate against no one;
- Maintain the housing unit by making necessary repairs in a timely manner; and
- Collect rent due from the assisted family and otherwise comply with and enforce provisions of the dwelling lease.

### **What does the Family do?**

The family has the following responsibilities:

- Provide MHB with complete and accurate information, determined by MHB to be necessary for administration of the program;
- Make their best and most timely efforts to find a place to live that is suitable for them and that qualifies for the program;
- Attend all appointments scheduled by MHB;
- Encouraged to seek and Maintain full-time/part-time employment unless excused from same due to disability or senior status;
- Allow MHB 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;
- Engage in no serious or repeated violations of the lease;
- Engage in no drug-related or violent criminal activity;
- Notify MHB 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 MHB of any changes in family composition;
- Comply with the obligations and responsibilities under MHB's Good Neighbor Component of the HCV Program; and

- Commit no fraud, bribery, or any other corrupt or criminal act in connection with any housing programs.

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

#### **1-2.D. APPLICABLE REGULATIONS**

Applicable regulations include:

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

Throughout this Administrative Plan, MHB will make reference to the HCV Guide Book (“HCV GB”), PIH Notices or other references. Unless the references are statutory or regulatory, those references are largely for guidance only and shall not be construed to govern the interpretation of this Administrative Plan. Such interpretation is vested in the sound discretion of MHB.

### **SECTION 3: THE HCV ADMINISTRATIVE PLAN**

#### **1-3.A. OVERVIEW AND PURPOSE OF THE ADMINISTRATIVE PLAN**

The Administrative Plan is required by HUD. The purpose of the Administrative Plan is to establish goals and policies for carrying out the programs in a manner consistent with HUD requirements and local goals and objectives contained in MHB’s 5-Year and Annual Agency Plan and MHB’s Transformational Plan, as these Plans may be modified and amended, from time to time. This Administrative Plan is a supporting document to MHB’s 5-Year and Annual Agency Plan, and is available for public review as required by 24 CFR Part 903.

This Administrative Plan also defines MHB's local policies for operation of the HCV and related housing programs (“HCV Programs”) within the context of federal laws and regulations. All issues related to the administration of HCV Programs cannot be and are not addressed in this document. Supplemental resources regarding the governance of such HCV Programs may be set forth in applicable federal regulations, notices and other applicable law. While not binding on MHB, reference to HUD handbooks and guidebooks may be made for recommendations for the handling of certain situations that may arise during the administration of the HCV Programs. In addition, the policies and goals in this Administrative Plan have been designed to ensure compliance with the consolidated Annual Contributions Contract (“ACC”) and all HUD-approved applications for program funding.

MHB is responsible for complying with all applicable changes in HUD regulations pertaining to the HCV program. Generally, if mandatory changes in HUD regulations, clearly and unambiguously conflict with this Administrative Plan, the HUD regulations

will have precedence, only to the extent of such clear and unambiguous conflict, otherwise the provisions of this Administrative Plan shall prevail.

Administration of the HCV Programs and the functions and responsibilities of MHB staff shall be in compliance with MHB's Human Resources Policy, applicable HUD regulations, as well as all applicable federal, state and local fair housing laws and regulations.

### **1-3.B. CONTENTS OF THE ADMINISTRATIVE PLAN [Reference: 24 CFR §982.54]**

HUD regulations contain a list of what must be included in the Administrative Plan. MHB Administrative Plan covers policies on the following subjects:

- Selection and admission of applicants from MHB's waiting list(s), including any MHB admission preferences, procedures for removing applicant names from the waiting list(s), and procedures for closing and reopening MHB waiting list (see Chapter 4);
- Issuing or denying vouchers, including MHB's policy governing the voucher term and any extensions or suspensions of the voucher term. Generally, "Suspension" means stopping the clock on the term of a family's voucher after the family submits a request for approval of the tenancy. If MHB decides to allow extensions or suspensions of the voucher term, MHB's Administrative Plan generally describes how MHB determines whether to grant extensions or suspensions, and how MHB determines the length of any extension or suspension (see Chapter 5);
- Any special rules for use of available funds when HUD provides funding to MHB for a special purpose (e.g., VASH, etc.), including funding for specified families or a specified category of families (see 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 24 CFR § §982.553 (see Chapters 3 and 12);
- Encouraging participation by owners of suitable units located outside areas of low income or minority concentration (see Chapter 13);
- Assisting a family that has a verified or credible (as determined by MHB) claim that illegal discrimination has prevented the family from leasing a suitable unit (see Chapter 2);
- Providing information about a family to prospective owners (see Chapters 3 and 9);
- Disapproval of owners (see Chapter 13);
- Subsidy standards and modifications based on funding levels and appropriation considerations (see Chapter 5);
- Family absence from the dwelling unit (see Chapter 12) ;

- How to determine who remains in the program if a family breaks up (see Chapter 3);
- Informal review procedures for applicants (see Chapter 16);
- Informal hearing procedures for participants (see Chapter 16);
- The process for establishing and revising voucher payment standards (see Chapter 16);
- The method of determining that rent to owner is a reasonable rent (initially and during the term of a HAP contract) (see Chapter 8);
- Special policies concerning special housing types in the program (e.g., use of shared housing, etc.) (see Chapter 15);
- Policies concerning payment by a family to the PHA of amounts the family owes MHB (see Chapter 16);
- Interim redeterminations of family income and composition (see Chapter 11);
- Restrictions, if any, on the number of moves by a participant family (see Chapter 10);
- Approval by the board of commissioners or other authorized officials to charge the administrative fee reserve (see Chapter 16);
- Procedural guidelines and performance standards for conducting required housing quality standards inspections (see Chapter 8); and
- MHB screening of applicants for family behavior or suitability for tenancy (see Chapter 3).

### **Mandatory vs. Discretionary Policy**

HUD makes a distinction between:

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

HUD expects PHAs to develop policies and procedures that are consistent with mandatory policies and to make clear the optional policies MHB has adopted. MHB's Administrative Plan is the foundation of those policies and procedures. HUD's directions require PHAs to make policy choices that provide guidance to PHA professionals and consistency to program applicants and participants.

Generally, following HUD guidance, even though it is not mandatory, provides MHB with a "safe harbor." HUD has already determined that the recommendations and suggestions it makes are consistent with mandatory policies. In those cases where MHB 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, and in such cases, MHB has thought carefully about its desires and locally driven HCV Program decisions.

No Administrative Plan can take into account every potential situation that may arise in the administration of the Housing Choice Voucher Program. MHB retains the right to analyze and make determinations on situations that are not clearly delineated or applicable to a particular administration decision and will use its best business judgment to make a final determination on any such matter.

### **1-3.C. ORGANIZATION OF THE PLAN**

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

### **1-3.D. UPDATING AND REVISING THE PLAN**

MHB will revise this Administrative Plan as needed to comply with changes in HUD regulations or policy changes. The original plan and any substantive changes must be approved by the Board of Commissioners of MHB, the pertinent sections included in the Agency Plan, and, upon request, a copy provided to HUD.

### **1-3.E REFERENCES**

The references to law, regulations, guidebooks and other sources are for supplemental purposes only and should not be used for the construction of the language of this Administrative Plan.

## Chapter 2

### FAIR HOUSING AND EQUAL OPPORTUNITY

#### INTRODUCTION

This chapter explains the laws and HUD regulations requiring PHAs to affirmatively further civil rights and fair housing in all federally-assisted housing programs. The letter and spirit of these laws are implemented through consistent policy and processes. The responsibility to further fair housing pertains to all areas of MHB's Housing Choice Voucher ("HCV") operations.

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

Part 1: Nondiscrimination. This part presents the body of laws and regulations governing the responsibilities of MHB regarding nondiscrimination.

Part 2: Policies Related to Persons with Disabilities. This part discusses the rules and policies of the housing choice voucher program related to reasonable accommodation for persons with disabilities. These rules and policies are based on the Fair Housing Act (42 U.S.C. §§3601 - 3619) and Section 504 of the Rehabilitation Act of 1973, and incorporates applicable guidance from the Joint Statement of The Department of Housing and Urban Development and the Department of Justice (DOJ), issued May 17, 2004.

Part 3: Prohibition of Discrimination Against Limited English Proficiency Persons. This part details the obligations of MHB to ensure meaningful access to the HCV Program and its activities by persons with limited English proficiency (LEP). This part incorporates the applicable aspects of 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 1: NONDISCRIMINATION

##### 2-1.A. OVERVIEW

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

- Title VI of the Civil Rights Act of 1964,
- Title VIII of the Civil Rights Act of 1968 (as amended by the Community

Development Act of 1974 and the Fair Housing Amendments Act of 1988),

- Executive Order 11063,
- Section 504 of the Rehabilitation Act of 1973,
- The Age Discrimination Act of 1975,
- Title II of the Americans with Disabilities Act (to the extent that it applies, otherwise Section 504 and the Fair Housing Amendments govern),
- Violence Against Women Reauthorization Act of 2005, as amended (“VAWA”), and
- Any applicable state laws or local ordinances and any legislation protecting individual rights of tenants, applicants, or staff that may subsequently be enacted.

## **2-1.B. NONDISCRIMINATION**

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

MHB shall not discriminate in an unlawful manner 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.

MHB will not use any of these factors to:

- Deny to any qualified 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 substantially different from that provided to others,
- Subject anyone to segregation or disparate treatment,
- Restrict any qualified person 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 any qualified person access to the same level of services,
- Deny any qualified person the opportunity to participate in a planning or advisory group that is an integral part of the housing program,

- Unlawfully discriminate in the provision of residential real estate transactions,
- Unlawfully discriminate against someone because they are related to or associated with a member of a protected class, and
- 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**

MHB must take steps to inform families and owners of all applicable housing and civil rights laws. As part of the briefing process, and/or on its website, and/or by alternate electronic or personal methods, MHB will provide information to HCV applicant families about civil rights requirements and the opportunity to rent in a broad range of neighborhoods [24 CFR §982.301]. The Housing Assistance Payments (“HAP”) contract informs owners of the requirement not to discriminate against any person because of race, color, religion, sex, national origin, age, familial status, or disability in connection with the contract.

### **Discrimination Complaints**

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

Generally, applicants or participants who believe that they have been subjected to unlawful discrimination may notify MHB either orally or in writing. MHB will attempt to remedy discrimination complaints made against MHB. If the complainant is unsatisfied with MHB’s resolution, MHB will provide information about how an applicant can further the complaint.

## **PART 2: POLICIES RELATED TO PERSONS WITH DISABILITIES**

### **2-2.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.

MHB will assure that persons with disabilities have full access to HCV programs and services. This responsibility begins with the first inquiry of an interested family and continues through every programmatic area of the HCV program.

Generally, MHB will ask all applicants and participants if they require any type of accommodations, in writing, on the intake application, reexamination documents, and/or notices of adverse action by MHB, 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.”

Generally, a specific name and phone number will be indicated as the contact for requests for accommodation for persons with disabilities.

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

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

Federal regulations stipulate that requests for accommodations will be considered reasonable if they do not create an "undue financial and administrative burden" for MHB, 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 and verified, MHB must 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 MHB range) if MHB 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 (related to the disability) 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 MHB staff
- Displaying posters and other housing information in locations throughout MHB's office in such a manner as to be easily readable from a wheelchair

### **2-2.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 MHB 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]. MHB may require upon the receipt of such information that the family set forth its reasonable accommodation request in writing.

The family must explain what type of accommodation is needed to provide the person with the disability full access to MHB's programs and services.

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

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

### **2-2.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 a reasonable accommodation, MHB must determine that the person meets the definition of a person with a disability, and that the accommodation will allow or enhance the family's access to MHB's programs and services.

Generally, MHB will require verification of the disability by a medical provider, even if a person's disability is apparently obvious or otherwise known to MHB. This will ensure appropriate documentation of the disability and ensure that MHB's reasonable accommodation, if any, will comprehensively address all relevant aspects of the disability.

If a family indicates that an accommodation is required for a disability that is not obvious or otherwise known to MHB, MHB 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, generally, MHB 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].
- MHB must request only information that is necessary to evaluate the disability-related need for the accommodation. MHB will not inquire about the nature or extent of any disability.
- Generally, medical records will not be accepted or retained in the participant file, without the participant's consent.

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

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

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

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

After a request for an accommodation is presented, MHB will respond, in writing, within a reasonable period generally not exceeding fifteen (15) business days.

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

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

MHB will seek to ensure that persons with verified disabilities related to hearing and vision have reasonable access to MHB's programs and services [24 CFR § 8.6].

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

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

To meet the needs of persons with vision impairments, large-print or audio versions access to key program documents will be made available upon request. When visual aids are used in public meetings or presentations, or in meetings with MHB 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 (e.g., a friend, relative or advocate, named by the applicant) to receive, interpret and explain housing materials and be present at all meetings.

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

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

- Notice PIH 2006-13
- Section 504 of the Rehabilitation Act of 1973
- The Americans with Disabilities Act of 1990
- The Architectural Barriers Act of 1968
- The Fair Housing Act of 1988

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

- This Administrative Plan describes the key policies that govern MHB's responsibilities with regard to physical accessibility.
- Notice PIH 2006-13 (as the same may be amended, from time to time) summarizes information about pertinent laws and implementing regulations

related to non-discrimination and accessibility in federally-funded housing programs.

- MHB's PHA Plan provides information about self-evaluation, needs assessment, and transition plans.

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

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

A PHA'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 MHB's informal review process and their right to request a hearing. In addition, the notice must inform applicants with disabilities of their right to request reasonable accommodations to participate in the informal hearing process.

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

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

## **PART 3: IMPROVING ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY (LEP)**

### **2-3.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*.

MHB 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 who identify their limited English proficiency to MHB or whose limited English proficiency is reasonably and readily apparent to MHB.

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

### **2-3.B. ORAL INTERPRETATION**

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

MHB 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, MHB will train and hire bilingual staff to be available to act as interpreters and translators, will pool resources with other PHAs, and will standardize

documents. Where feasible and possible, MHB will encourage the use of qualified community volunteers.

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

### **2-3.C. WRITTEN TRANSLATION**

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

In order to comply with written-translation obligations, MHB may take the following steps:

MHB 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, MHB 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.

### **2-3.D. IMPLEMENTATION PLAN**

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

If MHB 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 MHB's Housing Choice Voucher Program and services.

If it is determined that MHB serves very few LEP persons, and MHB has very limited resources, MHB 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 MHB 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 §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 MHB) 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

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

This chapter contains three parts:

Part 1: Definitions of Family and Household Members. This part contains HUD and PHA definitions of family and household members and explains initial and ongoing eligibility issues related to these members.

Part 2: Basic Eligibility Criteria. This part discusses income eligibility, and rules regarding citizenship, social security numbers, and family consent.

Part 3: Denial of Assistance. This part covers factors related to an applicant's past or current conduct (e.g. criminal activity) that can cause MHB to deny assistance.

#### **PART 1: DEFINITIONS OF FAMILY AND HOUSEHOLD MEMBERS**

##### **3-1.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 correctly to identify family and household members, and to apply HUD's eligibility rules.

**3-1.B. FAMILY AND HOUSEHOLD [24 CFR §982.201(c), HUD-50058 IB, p. 13]**

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

**Family**

To be eligible for assistance, an applicant must qualify as a family. A family may be a single person or a group of persons. *Family* as defined by HUD includes, but is not limited to, the following, regardless of actual or perceived sexual orientation, gender identity, or marital status:

- A single person family may be an elderly person, a displaced person, a disabled person, near-elderly person or any other single person.
- A family with or without children (the temporary absence of a child from the home due to placement in foster care is considered a member of the family),
- An elderly family or a near-elderly family,
- A displaced family,
- The remaining member of a tenant family
- A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a tenant family.
- Two or more elderly or disabled persons living together, one or more elderly or disabled persons living with one or more live-in aides. MHB has the discretion to determine if any other group of persons qualifies as a family.

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

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

**Household**

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

**3-1.C. FAMILY BREAK-UP AND REMAINING MEMBER OF TENANT FAMILY****Family Break-up [24 CFR §982.315]**

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

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

members may make a new application with a new application date if the waiting list is open.

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

In the absence of a judicial decision, or an agreement among the original family members, MHB will determine which family retains their placement on the waiting list, or will continue to receive assistance taking into consideration the following factors: (1) the interest of any minor children, including custody arrangements, (2) the interest of any ill, elderly, or disabled family members, (3) any possible risks to family members as a result of domestic violence or criminal activity, and (4) the recommendations of social service professionals.

### **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.”), MHB may be unable to maintain assistance to the remaining family members.

### **3-1.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 HCV Program and Lease, alone, or in conjunction with a co-head or spouse.

As such, the family may designate any qualified family member as the head of household as long as the designated head of household has the legal capacity to enter into a lease under state and local law. Under special circumstances, a minor who is emancipated under state law may be designated as head of household.

### **3-1.E. SPOUSE, COHEAD, AND OTHER ADULT**

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

*Spouse* means the marriage partner of the head of household.

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

A *co-head* is an individual in the household who is equally responsible with the head of household for ensuring that the family fulfills all of its responsibilities under the program, but who is not a spouse. A family can have only one co-head.

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

### **3-1.F. DEPENDENT [24 CFR §5.603]**

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

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

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

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

### **3-1.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 a FTS, other than the head, spouse, or co-head, qualifies the family for a dependent deduction, and (2) the income of such an FTS is treated differently from the income of other family members.

### **3-1.H. ELDERLY AND NEAR-ELDERLY PERSONS, AND ELDERLY FAMILY [24 CFR §5.100 and §5.403]**

#### **Elderly Persons**

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

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

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

## **Elderly Family**

An *elderly family* is one in which the head, spouse, co-head, or sole member is an elderly person. Identifying elderly families is important because these families qualify for special deductions from income as described in Chapter 6.

### **3-1.I. PERSONS WITH DISABILITIES AND DISABLED FAMILY [24 CFR §5.403]**

#### **Persons with Disabilities**

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

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

#### **Disabled Family**

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

Even though persons with drug or alcohol dependencies are considered persons with disabilities for the purpose of non-discrimination, this does not prevent MHB from denying assistance for reasons related to alcohol and drug abuse following policies found in Part 3 of this Chapter, or from terminating assistance following the discussion in Chapter 12.

### **3-1.J. GUESTS [24 CFR §5.100]**

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

A guest can remain in the assisted unit no longer than fourteen (14) consecutive days or a total of 30 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, etc.). Generally, an exception will not be made unless the family can identify and provide documentation of the residence to which the guest will return. In addition, any exemption will be up to the sole discretion of MHB and are not lightly granted.

### **3-1.K. FOSTER CHILDREN AND FOSTER ADULTS**

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

The term *foster child* is not specifically defined by the regulations, however, generally, MHB considers a *foster child* as a child that is in the legal guardianship or custody of a state, county, or private adoption or foster care agency, yet is cared for by foster parents in their own homes, under some kind of short-term or long-term foster care arrangement with the custodial agency.

Foster children and foster adults that are living with an applicant or assisted family are considered household members but not family members. The income of foster children/adults is not counted in family annual income, and foster children/adults do not qualify for a dependent deduction [24 CFR §5.603; HUD-50058 IB, p. 13].

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

Children that are temporarily absent from the home as a result of placement in foster care are discussed in Section 3-1.L, below.

### **3-1.L. ABSENT FAMILY MEMBERS**

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

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

Generally an individual who is or is expected to be absent from the assisted unit for 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 statement are discussed below.

#### **Absent Students**

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

#### **Absences Due to Placement in Foster Care [24 CFR §5.403]**

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

If a child has been placed in foster care, MHB will verify with the appropriate agency whether and when the child is expected to be returned to the home. Generally, unless

the agency confirms that the child has been permanently removed from the home, the child will be counted as a family member.

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

An employed head, spouse, or co-head absent from the unit 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].

MHB 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.

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

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

### **3-1.M. LIVE-IN AIDE**

*Live-in aide* means a person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who: (1) is determined to be essential to the care and well-being of the 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].

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

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

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. Generally, for continued approval, the family must submit a new, written request-subject to MHB 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.

MHB 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, or has committed, fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;

The person commits, or has committed, drug-related criminal activity or violent criminal activity; or

The person currently owes rent or other amounts to MHB or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.

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

## **PART 2: BASIC ELIGIBILITY CRITERIA**

### **3-2.A. INCOME ELIGIBILITY AND TARGETING**

#### **Income Limits**

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

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

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

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

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

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

**Using Income Limits for Eligibility [24 CFR §982.201]**

Generally, income limits are used for eligibility only at admission. Eligibility is established by comparing a family's annual income with HUD's published income limits. To be income-eligible, a family must be one of the following:

- A *very low-income* family
- An *extremely 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]

MHB 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 issued a voucher by MHB. At least 75 percent of the families admitted to MHB's program during a PHA fiscal year must be extremely low-income families.

- 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 family that qualifies for voucher assistance under HUD-approved MHB Rental Assistance Demonstration community or other project conversion.
- 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 MHB to establish additional categories of low-income families that may be determined eligible through the use of local preferences and/or ranking preferences. The additional categories must be consistent with this Administrative Plan, MHB's PHA Plan and, as applicable, the consolidated plans for local governments within MHB's jurisdiction.

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

HUD may approve exceptions to this requirement if MHB demonstrates that it has made all required efforts, but has been unable to attract an adequate number of qualified extremely low-income families.

Families continuously assisted under the 1937 Housing Act and families living in eligible low-income housing that are displaced as a result of prepayment of a mortgage or voluntary termination of a mortgage insurance contract are not subject to the 75 percent restriction.

### **3-2.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 MHB'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 do not 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, co-head, and any other family member 18 or older, and by a parent or guardian for minors. The family must identify in writing any family members who elect not to contend their immigration status (see Ineligible Noncitizens below). Generally, no declaration is required for live-in aides, foster children, or foster adults.

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

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

Generally, family members who declare citizenship or national status will not be required to provide additional documentation unless MHB 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 PHA efforts to verify their immigration status as described in Chapter 7. The documentation required for establishing eligible noncitizen status varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, the person's age, and the date on which the family began receiving HUD-funded assistance.

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

### ***Ineligible Noncitizens***

Those noncitizens who do not wish to contend their immigration status are required to have their names listed on a non-contending family members listing, signed by the head, spouse, or co-head (regardless of citizenship status), indicating their ineligible immigration status. MHB 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 PHA 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 MHB 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 MHB in accordance with program requirements [24 CFR §5.512(a)].

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

When a PHA 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 ten (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 MHB. The informal hearing with MHB 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, MHB 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, MHB must grant such an extension for no more than 30 days [24 CFR §5.508(h)].

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

MHB will verify the status of applicants at the time other eligibility factors are determined.

**3-2.C. SOCIAL SECURITY NUMBERS [24 CFR §5.216 and §5.218, Notice PIH 2010-3]**

The applicant and all members of the applicant's household must disclose the complete and accurate social security number ("SSN") assigned to each household member, and the documentation necessary to verify each SSN. A detailed discussion of acceptable documentation is provided in Chapter 7.

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

In addition, each participant who has not previously disclosed a SSN has previously disclosed a 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.

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

**3-2.D. FAMILY CONSENT TO RELEASE OF INFORMATION [24 CFR §5.230, HCV GB, p. 5-13]**

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

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

### **3-2.E. STUDENTS ENROLLED IN INSTITUTIONS OF HIGHER EDUCATION [24 CFR §5.612 and FR Notice 4/10/06]**

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 his/her parents in accordance with MHB 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, MHB will rely on the following definitions [FR 4/10/06, p. 18148]:

#### ***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***

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

- The individual is of legal contract age under state law.
- The individual has established a household separate from his/her parents for at least one year prior to application for occupancy or the individual meets the U.S. Department of Education's definition of independent student.

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

- Be at least 24 years old by December 31 of the award year for which aid is sought,
  - Be an orphan or a ward of the court through the age of 18,
  - Be a veteran of the U.S. Armed Forces,
  - Have one or more legal dependents other than a spouse (for example, dependent children or an elderly dependent parent),
  - Be a graduate or professional student,
  - Be married.
- The individual was not claimed as a dependent by his/her parents pursuant to IRS regulations, as demonstrated on the parents' most recent tax forms.
  - The individual provides a certification of the amount of financial assistance that will be provided by his/her parents. This certification must be signed by the individual providing the support and must be submitted even if no assistance is being provided.

MHB will verify that a student meets the above criteria in accordance with the policies in Section 7-2.E.

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

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

### ***Parents***

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

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

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

### ***Veteran***

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

### **Determining Student Eligibility**

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

For any student who is subject to the 24 CFR §5.612 restrictions, MHB will:

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

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

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

If MHB determines that the student, the student's parents (if applicable), or the student's "family" is not eligible, MHB will send a notice of denial in accordance with the policies in Section 3-2.F, and the applicant family will have the right to request an informal review in accordance with the policies in Section 16-3.B.

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

For any student who is subject to the 24 CFR §5.612 restrictions and who does not satisfy the definition of *independent student* in this section, generally MHB will determine the income eligibility of the student's parents as follows:

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

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

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

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

### **3-2.F. PREVIOUS HISTORY**

Housing assistance is available to those family members reasonably believed to abide by the conditions and requirements of the HCV Program, Family Obligations, Lease and other relevant documents, as demonstrated by their past criminal, non-criminal, nuisance or other undesirable behavior.

## **PART 3: DENIAL OF ASSISTANCE**

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

A family that does not meet the eligibility criteria discussed in Parts 1 and 2 must be denied assistance.

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

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

Denial of assistance includes any of the following:

- Not placing the family's name on the waiting list,
- Deleting a family's name from one or more waiting list(s),
- 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), Pub.L. 109-162]**

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 MHB's jurisdiction (See Chapter 10, Portability),
- Whether members of the family are unwed parents, recipients of public assistance, or children born out of wedlock,
- Whether the family includes children,
- Whether a family decides to participate in a family self-sufficiency program, and
- Whether or not a qualified applicant has been a victim of domestic violence, dating violence, or stalking.

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

HUD requires MHB to deny assistance in the following cases:

- Drug-related Criminal Activity. Any member of the household has been evicted from federally-assisted housing in the last 3 years for drug-related criminal activity. HUD permits, but does not require, MHB to admit an otherwise-eligible family if the household member has completed a PHA-approved drug rehabilitation program or the circumstances which led to eviction no longer exist (e.g., the person involved in the criminal activity no longer lives in the household).

MHB may, in its discretion, admit an otherwise-eligible family who was evicted from federally-assisted housing within the past 3 years for drug-related criminal activity, if MHB is able to verify that the household member who engaged in the criminal activity has completed a supervised drug rehabilitation program approved by MHB, or the person who committed the crime, is no longer living in the household. Such admissions are very rare.

- Current Drug Use. MHB determines that any household member is currently engaged in the use of illegal drugs or criminal activity that may adversely affect the health, safety or peaceful enjoyment of the premises, property or neighborhood where the member lives or expects to live.

*Currently engaged in* is defined as any use of illegal drugs during the previous twelve (12) months.

- Drug, Alcohol Use and Nuisances. MHB 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, or other current or pattern of nuisance or other related conduct, may threaten the health, safety, or right to peaceful enjoyment of the premises, property or neighborhood by other residents.

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

- Methamphetamine Production. 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.
- Sex Offender. Any household member is subject to a lifetime registration requirement under a state sex offender registration law or program.

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

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

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

HUD permits, but does not require, MHB to deny assistance if MHB 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. Generally, if any household member is currently engaged in, or has engaged in any of the following criminal activities, within the past five years, the family will be denied assistance.

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

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

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

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

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

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

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

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

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

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

A review of the totality of an applicant's criminal (whether felony, misdemeanor, or otherwise), including the frequency, nature and time frame for the arrest, commission, and/or conviction for the criminal activity.

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

### **Previous or Current Behavior in Assisted Housing [24 CFR §982.552(a) - (c)]**

MHB may deny assistance, or terminate assistance based on the family's previous behavior in assisted housing, and the family's behavior while residing in MHB sponsored housing or other rental housing. Generally:

- *Denial of assistance* for an applicant may include any or all of the following: denying listing on the PHA waiting list, denying or withdrawing a voucher, refusing to enter into a HAP contract or approve a lease, and refusing to process or provide assistance under portability procedures.
- *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, and refusing to process or provide assistance under portability procedures.

In addition, MHB **may** deny assistance to an otherwise eligible family because the family previously failed, or fails, to comply, without good cause, with the family's Family Self-Sufficiency ("FSS") contract of participation or otherwise meet its obligations under the Family Self-Sufficiency program, especially if the failure was due to fraud or other prohibited conduct.

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

- The family does not provide information that MHB or HUD determines is necessary in the administration of the program.
- The family does not provide complete and true information to MHB.
- Any family member has been evicted from federally-assisted housing in the last five years.
- Any PHA has ever terminated assistance under the program for any member of the family.
- Any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.
- The family has not reimbursed any PHA for amounts paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the applicable lease.
- Any member of the family fails to sign and submit consent forms for obtaining information in accordance with MHB's procedures or part 5, subparts B and F of 24 CFR. The PHA must deny admission to the program for an applicant, or terminate program assistance for a participant, if

- The family owes rent or other amounts to any PHA in connection with the HCV, Certificate, Moderate Rehabilitation or public housing programs, unless the family repays the full amount of the debt prior to being selected from the waiting list.
- If the family has not reimbursed any PHA for amounts MHB 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 MHB, unless the family repays the full amount of the debt covered in the repayment agreement prior to being selected from the waiting list.
- The family has been engaged in criminal activity or alcohol abuse as described in 24 CFR §982.553.
- A family member has engaged in or threatened violent or abusive behavior toward MHB or other PHA personnel.
  - *Abusive or violent behavior towards MHB or other PHA personnel* includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.
  - *Threatening* refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.

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

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

#### **Screening for Eligibility**

PHAs are authorized to obtain criminal conviction and criminal history records held by law enforcement agencies to screen applicants for admission to the HCV program. This authority assists MHB in complying with HUD requirements and PHA 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 MHB generally requires every applicant family to submit a consent form signed by each adult household member [24 CFR §5.903]. Generally, MHB 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 that has been disclosed by the applicant but the results are inconclusive, MHB will order a more comprehensive background check from the National Crime Information Center ("NCIC").

MHB will perform, or have performed, criminal background checks necessary to determine whether any household member is subject to a lifetime registration

requirement under a state sex offender program in the state where the housing is located, as well as in any other state where a household member is known to have resided [24 CFR §982.553(a)(2)(i)].

If MHB proposes to deny assistance based on a criminal record or on lifetime sex offender registration information, MHB 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]**

MHB has no liability or responsibility to the owner for the family's behavior or suitability for tenancy. MHB may opt to conduct additional screening to determine whether an applicant is likely to be a suitable tenant. Should MHB determine to conduct additional screening to determine an applicant family's suitability for tenancy, MHB will notify the applicant family.

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

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

### **3-3.E. CRITERIA FOR DECIDING TO DENY ASSISTANCE**

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

Generally, MHB will use the concept of reasonable belief, or in MHB's sole discretion, the preponderance of the evidence, as the standard for making admission decisions.

*Reasonable belief* considers whether the admission decision by MHB is based on a view or knowledge of facts and circumstances which are reasonably trustworthy, and that would justify a reasonable person of average caution to believe that the admission decision is reasonable given the facts and circumstances.

*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 is generally not to 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 MHB to consider all relevant circumstances when deciding whether to deny assistance based on a family's past history except in the situations for which denial of assistance is mandated (see Section 3-3.B).

Generally, MHB will consider the following factors prior to making its decision:

- The seriousness of the case, especially with respect to how it would affect other residents, MHB's commissioners, officers, employees, contractors, and/or agents,
- The effects that denial of assistance may have on other members of the family who were not involved in the action or failure,
- The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities, or (as discussed further in Section 3-3.G) a victim of domestic violence, dating violence, or stalking,
- The length of time since the violation occurred, the family's recent history and the likelihood of favorable conduct in the future
- In the case of drug or alcohol abuse, whether the culpable household member is participating in, or has successfully completed, a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully,
  - Note: Generally, MHB will require the applicant to submit evidence of the household member's current participation in or successful completion of a supervised drug or alcohol rehabilitation program, or evidence of otherwise having been rehabilitated successfully.

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

HUD permits PHAs to impose, as a condition of admission, a requirement those family members who participated in or were culpable for an action or failure to act which results in the denial of assistance, to not reside in the unit. As a condition of receiving assistance, a family may agree to remove the culpable family member from the application. In such instances, the head of household must certify that the family member will not be permitted to visit or to stay as a guest in the assisted unit. After admission to the program, the family must present evidence of the former family member's current address upon MHB request.

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

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

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

**3-3.F. NOTICE OF ELIGIBILITY OR DENIAL**

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

If MHB determines that a family is not eligible for the HCV 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.

Generally, the family will be notified of a decision to deny assistance in writing within ten (10) business days of the final determination regarding eligibility.

If a PHA 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 MHB 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)]. MHB must give the family an opportunity to dispute the accuracy and relevance of that record, in the informal review process in accordance with program requirements [24 CFR §982.553(d)].

If based on a criminal record or sex offender registration information, an applicant family appears to be ineligible; MHB 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 ten (10) business days to dispute the accuracy and relevance of the information. If the family does not contact MHB to dispute the information within that 10-day period, MHB 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 3-2.B.

Notice policies related to denying admission to applicants who may be victims of domestic violence, dating violence, or stalking are contained in Section 3-3.G.

### **3-3.G. PROHIBITION AGAINST DENIAL OF ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, AND STALKING [24 CFR Part 5, Subpart L]**

The Violence against Women Reauthorization Act of 2005 (“VAWA”), as reauthorized in 2013, prohibits denial of admission to an otherwise qualified applicant on the basis that the applicant is or has been a victim of domestic violence, dating violence, sexual assault or stalking. VAWA 2013 expands the housing protections to cover survivors of sexual assault

- That an applicant or participant is or has been a victim of domestic violence, dating violence, or stalking is not an appropriate reason for denial of program assistance or for denial of admission, if the applicant otherwise qualifies for assistance or admission [24 CFR §5.2005].

#### **Definitions [24 CFR §5.2003]**

As used in VAWA:

- The term *bifurcate* means, with respect to a public housing or Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members’ lease and occupancy rights are allowed to remain intact.
- The term *domestic violence* includes felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person who committed a crime against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.
- The term *dating violence* means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:
  - The length of the relationship,
  - The type of relationship,
  - The frequency of interaction between the persons involved in the relationship.
- The term *sexual assault* means any nonconsensual sexual act proscribed by Federal, tribal or State law, including when the victim lacks capacity to consent.
- The term *stalking* means:

- To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate; or
  - To place under surveillance with the intent to kill, injure, harass, or intimidate another person; and
  - In the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (1) that person, (2) a member of the household of that person, or (3) the spouse or intimate partner of that person.
- - The term *household member* means, with respect to a person:
    - A spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in the position or place of a parent; or
    - Any other person living in the household of that person.

### **Notification**

MHB acknowledges that a victim of domestic violence, dating violence, or stalking may have an unfavorable history (e.g., a poor credit history, a record of previous damage to an apartment, a prior arrest record) that would warrant denial under MHB's policies. Therefore, generally, if MHB makes a determination to deny admission to an applicant family, MHB will include in its notice of denial:

- A statement of the protection against denial provided by VAWA
- A description of PHA confidentiality requirements
- A request that an applicant wishing to claim this protection submit to MHB documentation meeting the specifications below with her or his request for an informal review (see Section 16-3.D).

### **Documentation**

#### ***Victim Documentation***

An applicant claiming that the cause of an unfavorable history is that a member of the applicant family is or has been a victim of domestic violence, dating violence, or stalking must provide clear and convincing documentation (1) demonstrating the connection between the abuse and the unfavorable history and (2) naming the perpetrator of the abuse. The documentation may consist of any of the following:

- A statement signed by the victim certifying that the information provided is true and correct and that it describes bona fide incident(s) of actual or threatened domestic violence, dating violence, sexual assault or stalking
- A police or court record documenting the domestic violence, dating violence, sexual assault or stalking

- Documentation signed by a person who has assisted the victim in addressing domestic violence, dating violence, sexual assault or stalking, or the effects of such abuse. This person may be an employee, agent, or volunteer of a victim service provider; an attorney; or a medical or other knowledgeable 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.

### ***Perpetrator Documentation***

If the perpetrator of the abuse is a member of the applicant family, generally, 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, and (3) that the applicant family will not provide their address or contact information to the alleged perpetrator,
- Documentation that the perpetrator has successfully completed, or is successfully undergoing, rehabilitation or treatment. The documentation must be signed by an employee or agent of a domestic violence service provider or by a medical or other knowledgeable professional from whom the perpetrator has sought or is receiving assistance in addressing the abuse. The signer must attest under penalty of perjury to his or her belief that the rehabilitation was successfully completed or is progressing successfully. The victim and perpetrator must also sign or attest to the documentation.

### ***Time Frame for Submitting Documentation***

The applicant must submit the required documentation with her or his request for an informal review (see section 16-3.D) or must request an extension in writing at that time. If the applicant so requests, MHB may grant an extension of up to ten (10) business days, and will postpone scheduling the applicant's informal review until after it has received the documentation or the extension period has elapsed. If after reviewing the documentation provided by the applicant MHB determines that the family is eligible for assistance, and that no informal review is necessary, MHB may proceed with admission of the applicant family.

### **PHA Confidentiality Requirements [24 CFR §5.2007(a)(1)(v)]**

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

If disclosure is required for use in an eviction proceeding or is otherwise required by applicable law, MHB may inform the victim before disclosure occurs so that safety risks can be identified and addressed.

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

#### Person with Disabilities [24 CFR §5.403]

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

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

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

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

#### (A) In General

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

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

#### (B) Infants and Young Children

An individual from birth to age 9, inclusive, who has a substantial developmental delay or specific congenital or acquired condition, may be considered to have a developmental disability without meeting 3 or more of the criteria described in clauses (i) through (v) of

subparagraph (A) if the individual, without services and supports, has a high probability of meeting those criteria later in life.

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

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

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

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

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

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

(1) Physical or mental impairment includes:

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

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

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

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

- (a) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by a recipient as constituting such a limitation;
- (b) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or

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

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

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

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

*Definition of "Institution of Higher Education" From 20 U.S.C. § 1001*

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

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

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

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

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

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

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

## (2) Institutions outside the United States

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

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

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

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

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

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

(B) Advisory panel

- (i) In general. For the purpose of qualifying as an institution under paragraph (1)(C) of this subsection, the Secretary shall establish an advisory panel of medical experts that shall—
    - (I) Evaluate the standards of accreditation applied to applicant foreign medical schools; and
    - (II) Determine the comparability of those standards to standards for accreditation applied to United States medical schools.
  - (ii) Special rule if the accreditation standards described in clause (i) are determined not to be comparable, the foreign medical school shall be required to meet the requirements of section 1001 of this title.
- (C) Failure to release information. The failure of an institution outside the United States to provide, release, or authorize release to the Secretary of such information as may be required by subparagraph (A) shall render such institution ineligible for the purpose of part B of subchapter IV of this chapter.
- (D) Special rule. If, pursuant to this paragraph, an institution loses eligibility to participate in the programs under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, then a student enrolled at such institution may, notwithstanding such loss of eligibility, continue to be eligible to receive a loan under part B while attending such institution for the academic year succeeding the academic year in which such loss of eligibility occurred.
- (3) Limitations based on course of study or enrollment. An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution—
- (A) Offers more than 50 percent of such institution's courses by correspondence, unless the institution is an institution that meets the definition in section 2471 (4)(C) of this title;
  - (B) Enrolls 50 percent or more of the institution's students in correspondence courses, unless the institution is an institution that meets the definition in such section, except that the Secretary, at the request of such institution, may waive the applicability of this subparagraph to such institution for good cause, as determined by the Secretary in the case of an institution of higher education that provides a 2-or 4-year program of instruction (or both) for which the institution awards an associate or baccalaureate degree, respectively;
  - (C) Has a student enrollment in which more than 25 percent of the students are incarcerated, except that the Secretary may waive the limitation contained in this subparagraph for a nonprofit institution that provides a 2-or 4-year program of instruction (or both) for which the institution awards a bachelor's degree, or an associate's degree or a postsecondary diploma, respectively; or
  - (D) Has a student enrollment in which more than 50 percent of the students do not have a secondary school diploma or its recognized equivalent, and does not provide a 2-or 4-year program of instruction (or both) for which the institution awards a bachelor's degree or an associate's degree, respectively, except that the Secretary may waive the limitation contained in this subparagraph if a nonprofit institution demonstrates to the satisfaction of the Secretary that the institution exceeds such limitation because

the institution serves, through contracts with Federal, State, or local government agencies, significant numbers of students who do not have a secondary school diploma or its recognized equivalent.

- (4) Limitations based on management. An institution shall not be considered to meet the definition of an institution of higher education in paragraph (1) if—
    - (A) The institution, or an affiliate of the institution that has the power, by contract or ownership interest, to direct or cause the direction of the management or policies of the institution, has filed for bankruptcy, except that this paragraph shall not apply to a nonprofit institution, the primary function of which is to provide health care educational services (or an affiliate of such an institution that has the power, by contract or ownership interest, to direct or cause the direction of the institution's management or policies) that files for bankruptcy under chapter 11 of title 11 between July 1, 1998, and December 1, 1998; or
    - (B) The institution, the institution's owner, or the institution's chief executive officer has been convicted of, or has pled nolo contendere or guilty to, a crime involving the acquisition, use, or expenditure of funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, or has been judicially determined to have committed fraud involving funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42.
  - (5) Certification. The Secretary shall certify an institution's qualification as an institution of higher education in accordance with the requirements of subpart 3 of part G of subchapter IV of this chapter.
  - (6) Loss of eligibility. An institution of higher education shall not be considered to meet the definition of an institution of higher education in paragraph (1) if such institution is removed from eligibility for funds under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 as a result of an action pursuant to part G of subchapter IV of this chapter.
- (b) Proprietary institution of higher education
- (1) Principal criteria. For the purpose of this section, the term "proprietary institution of higher education" means a school that—
    - (A) Provides an eligible program of training to prepare students for gainful employment in a recognized occupation;
    - (B) Meets the requirements of paragraphs (1) and (2) of section 1001 (a) of this title;
    - (C) Does not meet the requirement of paragraph (4) of section 1001 (a) of this title;
    - (D) Is accredited by a nationally recognized accrediting agency or association recognized by the Secretary pursuant to part G of subchapter IV of this chapter;
    - (E) Has been in existence for at least 2 years; and
    - (F) Has at least 10 percent of the school's revenues from sources that are not derived from funds provided under subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42, as determined in accordance with regulations prescribed by the Secretary.

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

## Chapter 4

### APPLICATIONS, WAITING LIST AND TENANT SELECTION

#### INTRODUCTION

When a family wishes to receive HCV rental assistance, the family must submit a pre-application and/or an application that provides MHB with the information needed to determine preliminary eligibility or preliminary placement on the waiting list, as the case may be. HUD requires MHB to place all families that apply for assistance on a waiting list. When HCV assistance becomes available, MHB must select families from the waiting list in accordance with the policies stated in the Administrative Plan and the Agency's Annual Plan and/or Five-Year Plan, if applicable.

MHB is required to adopt policies for accepting applications, placing families on the waiting list, and selecting families from the waiting list. These policies must be followed 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 MHB to receive preferential treatment. Funding earmarked exclusively for families with particular characteristics may also alter the order in which families are served.

HUD regulations require that all families have an equal opportunity to apply for and receive housing assistance, and that MHB affirmatively further fair housing goals in the administration of the program [24 CFR §982.531]. Adherence to the selection policies described in this Chapter ensures that MHB will be in compliance with all relevant fair housing requirements, as described in Chapter 2.

This chapter describes HUD and PHA policies for taking applications, managing the waiting list and selecting families for HCV assistance. The policies outlined in this chapter are organized into three sections, as follows:

Part 1: 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 MHB will handle the applications it receives.

Part 2: Managing the Waiting List. This part presents the policies that govern how the PHA's waiting list is structured, when it is opened and closed, and how the public is notified of the opportunity to apply for assistance. It also discusses the process MHB will use to keep the waiting list current.

Part 3: Selection for HCV Assistance. This part describes the policies that guide MHB in selecting families for HCV assistance as such assistance becomes available. It also specifies how in-person interviews will be used to ensure that MHB has the information needed to make a final eligibility determination.

## **PART 1: THE APPLICATION PROCESS**

### **4-1.A. OVERVIEW**

This part describes the policies that guide MHB's efforts to distribute, make available and accept applications, and to make preliminary determinations of applicant family eligibility that affect placement of the family on the waiting list. This part also describes MHB's efforts to ensure the accessibility of the application process to elderly persons, people with disabilities, and people with limited English proficiency ("LEP").

### **4-1.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 MHB to determine the format and content of HCV applications, how such applications will be made available to interested families, and how applications will be accepted by MHB.

Depending upon the length of time that applicants may need to wait to receive assistance, MHB may use a one-step, 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 ninety (90) days of the date of application. At application, the family must provide all of the information necessary to establish family eligibility, level of assistance and suitability. MHB will verify the information at the appropriate time and determine the family's final placement on the waiting list and selection for HCV 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 ninety (90) days from the date of application. Under the two-step application process, MHB initially will require families to provide information deemed necessary to make a preliminary assessment of the family's eligibility, and to determine the family's preliminary placement on the waiting list. MHB may use a pre-application or a streamlined application to make the preliminary placement on the waiting list. The family will be required to provide all of the information necessary to establish family eligibility, level of assistance and suitability when the family is closer to selection from the waiting list. MHB will verify the information at the appropriate time and determine the family's final placement on the waiting list and selection for HCV assistance.

When MHB's waiting list is open, families will complete the pre-application or application online at the web address listed in the announcement and on MHB website. Preliminary placement on the waiting list will be subject to later verification of all of the information necessary to establish family eligibility, level of assistance and suitability. The electronic submission of pre-application and/or applications is a part of MHB's Green Initiative and lessens the likelihood of error sometimes prevalent with paper applications. MHB will make some reasonable accommodations for families requesting them due to disability.

#### **4-1.C. ACCESSIBILITY OF THE APPLICATION PROCESS**

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

MHB will generally take steps to ensure that the application process is accessible to those who might have difficulty complying with the normal, standard MHB application process. This could include people with disabilities, certain elderly individuals, as well as persons with limited English proficiency (“LEP”). MHB must provide reasonable accommodation to the needs of individuals with disabilities. MHB anticipates taking applications electronically, and will refer individuals to venues that are fully accessible for persons who do not have access to the internet from their homes or cell phones. If MHB allows for the submission of “paper” applications, the application-taking facility and the application process must be fully accessible, or MHB must provide an alternate approach that provides full access to the application process. Chapter 2 provides a full discussion of MHB’s policies related to providing reasonable accommodations for people with disabilities.

#### **4-1.D. PLACEMENT ON THE WAITING LIST**

MHB will review each completed pre-application and/or application received and make a preliminary assessment of the family’s eligibility and suitability. As the initial placement on the waiting list will be based on the family’s unverified information, a family’s position on the waiting list may change following complete receiving and verification of eligibility and suitability documentation. MHB reserves the right to verify, and if desirable, re-verify, eligibility and suitability information of any applicant family at any time. MHB will accept pre-applications and/or 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, MHB 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)]. Final placement on the waiting list will be subject to MHB’s verification of the family’s information provided or obtained during the waiting list process.

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

If MHB can determine from the preliminary or other information provided that a family is ineligible, the family will not be placed on the active HCV waiting list. However, the family’s application information will be entered in the computer system for tracking purposes only. The family will be notified, preferably by electronic means or via MHB’s Applicant Portal if the family is determined to be ineligible the notification 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**

MHB will notify the family, preferably by electronic means or via MHB Participant Portal once the family is preliminarily eligible for placement on the waiting list. As MHB reserves the right to utilize a random lottery selection process to determine the applicants that will be placed on the waiting list and/or the ranking of applicants within a preference category. 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 and all required verifications and documents are provided and reviewed.

Applicants will be placed on the waiting list according to any local and ranking preference(s) for which they qualify, and by lottery, modified lottery and/or the date and time their complete application is received by MHB, as specified by MHB.

## **PART 2: MANAGING THE WAITING LIST**

### **4-2.A. OVERVIEW**

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

### **4-2.B. ORGANIZATION OF THE WAITING LIST [24 CFR §982.204 and §982.205]**

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

Generally, the waiting list will contain the following information for each applicant listed, provided that the applicant family provided the information:

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

MHB maintains a single waiting list for the HCV Tenant-based Voucher Program. This waiting list is separate from any other waiting list (e.g., public housing, Catalyst Communities, project-based, etc.) in which MHB may have an interest. Moreover,

separate waiting lists will be maintained for project-based vouchers, and normally, those waiting lists are maintained at the site of the project.

A family that applies for assistance from the HCV program is entitled to the opportunity to apply for and to be placed on the waiting list for any public housing, project-based voucher or moderate rehabilitation program MHB operates if: 1) the other programs' waiting lists are open, and 2) the family is qualified for the other program(s).

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.

#### **4-2.C. OPENING AND CLOSING THE WAITING LIST [24 CFR §982.206]**

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

MHB will close the waiting list when, in MHB's reasonable opinion, it has an adequate pool of families to use its available HCV assistance. Alternatively, MHB may elect to continue to accept applications only from certain categories of families that meet particular preferences or funding criteria while closing the waiting list to others.

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

If the waiting list has been closed, it will not be reopened until MHB publishes a notice in local newspapers of general circulation, minority media, and/or other suitable media outlets. Generally, MHB will also publish the notice announcing the opening of the waiting list on its own website, Facebook page or other electronic social media. The notice must comply with HUD fair housing requirements and must specify who may apply, and where and when applications will be received. If the list is only being reopened for certain categories of families, this information will be contained in the notice.

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

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

Because HUD requires MHB to serve a specified percentage of extremely low income families (see Chapter 4, Part 3), MHB 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]. MHB will monitor the characteristics of the population being served and the characteristics of the population as a whole in MHB's jurisdiction. Targeted outreach efforts will be undertaken if a comparison suggests that certain populations are being underserved.

MHB's outreach efforts will 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, and
- Avoiding outreach efforts that prefer or exclude people who are members of a protected class unless the outreach is necessary to qualify applicants for a local or ranking preference.

PHA outreach efforts must be designed to inform qualified families about the availability of assistance under the program. These efforts may include, but not be limited to, as needed, any of the following activities:

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

#### **4-2.E. REPORTING CHANGES IN FAMILY CIRCUMSTANCES**

While the family is on the waiting list, it is the family's obligation to immediately inform MHB of changes in contact information, including current residence, mailing address, and phone number. The changes must be submitted electronically, preferably online via MHB Applicant Portal. Exceptions for reasonable accommodations will be made upon request.

#### **4-2.F. UPDATING THE WAITING LIST [24 CFR §982.204]**

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

##### **Purging the Waiting List**

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

To update the waiting list, MHB will send an update request via MHB Applicant Portal 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 email address provided upon logging in to MHB Applicant Portal. The update request will provide a deadline by which the family must respond and will state that failure to respond will result in the applicant's name being removed from the waiting list.

If the family fails to respond generally within ten (10) business days, the family will be removed from the waiting list without further notice. If the email address provided is rejected the family may be removed from the waiting list without further notice. MHB reserves the right, but is not required so to do, to send written notification via first class mail to the last known address provided by the applicant generally within ten (10) days.

If the notice is returned by the post office with no forwarding address, the applicant will be removed from the waiting list without further notice. If the notice is returned by the post office with a forwarding address, the notice may, in MHB's option, be re-sent to the address indicated. The family will have (10) ten business days to respond from the date of the letter was re-sent. If a family is removed from the waiting list for failure to respond, the Executive Director, or his designee, may, but is not obligated so, reinstate the family if she/he determines the lack of response was due to MHB error, or to extraordinary circumstances beyond the family's control.

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 an MHB request for information or updates because of the family member's disability, upon the family's timely request, MHB will consider reinstating the applicant family to the family's former position on the waiting list [24 CFR §982.204(c)(2)].

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

If at any time an applicant family is on the waiting list, MHB 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 MHB has determined the family is not eligible for assistance, a notice will be sent to the family's email address of record. A notice may also be sent to any alternate address provided on the initial application and their status will also be updated in the MHB Applicant Portal. 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 MHB's decision (see Chapter 16) [24 CFR §982.201(f)].

## **PART 3: SELECTION FOR HCV ASSISTANCE**

### **4-3.A. OVERVIEW**

As vouchers become available, families on the waiting list will be selected for assistance in accordance with the policies described in this Part. The order in which families receive assistance from the waiting list depends on the selection method chosen by MHB and is impacted in part by any local and/or ranking preferences for which the family qualifies. The source of HCV funding also may affect the order in which families are selected from the waiting list.

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

### 4-3.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 specifically-named redevelopment area, etc.). In these cases, MHB may admit families that are not on the waiting list, or without considering the family's position on the waiting list. MHB must maintain records showing that such families were admitted with special program guidelines or funding.

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

HUD may award MHB funding for a specified category of families on the waiting list. MHB must use this funding only to assist the families within the specified category. This funding is generally called *Targeting Funding*. Within this category of families, the order in which such families are assisted is determined according to the policies provided in Section 4-3.C.

Currently, MHB may administer one or more waiting lists. Generally, MHB will administer separate or sub-category waiting lists which have targeted funding, including but not limited to:

- Transitional Housing Units ("THU"),
- Veterans Affairs Supportive Housing ("VASH"),
- Project-based vouchers (PBV),
- Rental Assistance Demonstration ("RAD") authorized vouchers (*if approved by HUD*),
- Special Initiatives Homeownership Catalyst Vouchers, and
- Such other targeted funding as may be provided by HUD from time to time, and for which MHB is qualified.

#### 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 4-3.C.

### 4-3.C. SELECTION METHOD

MHB is obligated to describe the method for selecting applicant families from the waiting list, including the system of admission preferences that the MHB will use [24 CFR §982.202(d)].

#### Local Preferences [24 CFR §982.207; HCV Guidebook, pg. 4-16]

MHB is permitted to establish local and ranking preferences, at its discretion, and to give priority to serving families that meet those criteria. HUD specifically authorizes and places restrictions on certain types of local preferences. MHB may also establish other local preferences, from time to time. Any local preferences established must be consistent with the Annual and/or Five-Year PHA Plan and the consolidated plan, and

must be based on local housing needs and priorities that can be documented by generally accepted data sources. The local preferences may be amended or revised upon thirty (30) day notice to the public. The current local and ranking preferences are set forth below:

4-3.C.1. Types of Applicant Families. MHB has two categories of applicants from which it selects families for vouchers under its HCV Program. Those applicants who have a verified local preference (“Local Preference Applicants”), and those applicants who do not have a local preference, or cannot or do not verify their local preference (“Non-preference Applicants”). MHB informs all applicants about the available local preferences and gives applicants an opportunity to show that they qualify for available preferences. As non-specialty vouchers become available, MHB will generally select the applicants for vouchers from its Local Preference Applicants on MHB’s applicable local preference waiting list, and then MHB will select any additional applicants required to meet MHB’s voucher and/or income targeting needs, if any, from the Non-preference Applicants on the applicable HCV waiting list. As Federal law has abolished the former Federal Preferences, MHB has established the two broad categories of applicants based solely on its local preferences.

4.3.C-2. Local Preferences. The Local Preference categories described herein are designed to attain the federally mandated goal of achieving a broad range of incomes and avoiding concentrations of the most economically deprived families with serious social problems within selected communities where HCV voucher holders live. In addition, the local preferences and ranking preferences are designed to allow MHB to serve more low income households by allocating its scarce HAP payments amongst more low income families. Up to one hundred percent (100%) of the applicant families to which MHB will issue vouchers on an annual basis will be selected from Local Preference Applicant pool by the following Local Preferences according to the priority ranking, voucher availability, income ranking preferences and category of family required for MHB to meet its voucher goals, as set forth below.

A. Description of Local and Ranking Preferences. The local preferences shall include the following in order of priority: Displaced Due to MHB Relocation Activity, Displaced Due to Natural Disaster or Federally Declared Disaster Areas, Working Family. Within each local preference subcategory, the applicants will be placed by the Income Ranking Preference and then by the Date and Time Ranking Preference should the income be largely the same. Applicants may also be selected using a Ranking Preference only.

1) Displaced Due to MHB Relocation Activity. Any otherwise eligible family displaced or about to be displaced due to MHB initiatives as a result of redevelopment, relocation (including, but not limited to, displacement due to displacement due to conversion of units under HUD’s Rental Assistance Demonstration (“RAD”), demolition, disposition or substantial rehabilitation/ modernization activity. The option of receiving a Housing

Choice Voucher must be set forth in the relocation plan affecting the resident family. Generally, such resident family must be in compliance with their lease and be otherwise eligible and suitable under the HCV Program.

- 2) Displaced Due to Natural Disaster or Federally Declared Disaster Areas. Any otherwise eligible family displaced or about to be displaced as a result of: (i) a serious natural disaster as officially declared by state or federal authorities, and/or (ii) residing in a federally declared disaster area. This preference is conditional and effective only upon the specific authorization of the Board or the Executive Director following a disaster or the federally declared disaster area, and only for a reasonable period following the aftermath of the disaster, as determined by the Board of Commissioner or the Executive Director.
- 3) Displaced Due to Federal HCV Funding Shortfall. Family terminated from the HCV Program due to insufficient federal voucher and/or administrative fee program funding. At the time of the termination or cessation of HCV assistance, the family must have been in good standing. In addition, the family must still be eligible and suitable for the HCV Program at the time of application and at the time of voucher issuance/reinstatement).
- 4) Working Family Local Preference. The Working Family Local Preference is appropriate when an applicant where the head of household is considered working in a full-time capacity, long-term part-time capacity or an approved job training capacity followed by employment, in accordance with the following provisions:
  - a) Full-time Employment. Any head of household legally employed by an employer in a full-time capacity of not less than thirty-five (35) hours per week. The head of household must work for wages, commissions or other consideration of value and have been so gainfully employed for, at least, a *substantially uninterrupted* two and one-half (2½) years prior to the date of application. In addition:
    - It must be apparent that the full-time employment is of a continuous, as opposed to a temporary nature, and the head of household must anticipate such continuous employment through voucher issuance and after the date of leasing under the HCV Program.
    - The applicant must also demonstrate *substantially uninterrupted* full-time employment for, at least, twenty-four (24) months immediately prior to voucher issuance and the date of leasing under the HCV Program.
    - *Substantially uninterrupted* shall mean no more than a forty-five (45) – sixty (60) day gap in full-time employment for the thirty (30)

months prior to the date of application *and* continuous full-time employment for the twenty-four (24) months prior to voucher issuance and placement.

- Self-employed individuals would qualify for this Local Preference if the applicant maintains continuous self-employment for income and otherwise meets the time qualifications under this local preference; or

b) Long-term Part-time Employment. Any head of household legally employed by an employer in a part-time capacity of not less than twenty (20) hours per week. The head of household must work for wages, commissions or other consideration of value and have been so gainfully employed for, at least, a *substantially uninterrupted* three and one-half (3½) years prior to the date of application. In addition:

- It must be apparent that the part-time employment is of a continuous, as opposed to a temporary nature, and the head of household must anticipate such continuous employment after the date of leasing under the HCV Program.
- The applicant must also demonstrate *substantially uninterrupted* part-time employment for, at least, thirty (30) months immediately prior to date of voucher issuance and the date of leasing under the HCV Program.
- *Substantially uninterrupted* shall mean no more than a forty-five (45) – sixty (60) day gap in long-term part-time employment for the forty-two (42) months prior to the date of application *and* continuous full-time employment for the thirty (30) months prior to voucher issuance and placement.
- Self-employed individuals would qualify for this Local Preference if the applicant maintains continuous self-employment for income and otherwise meets the time qualifications under this local preference; or

c) Approved Job Training Program followed by Full-time Employment. Any head of household who recently, diligently and successfully participated in a full-time training, education or employment program funded by HUD, JTPA<sup>1</sup> (PIC), JOBS<sup>2</sup>, or any other Federal, state or local organization, provided that the program's primary purpose is to prepare low and very low-income individuals for economic independence or family self-sufficiency. Such participation must be for

---

<sup>1</sup>This designation means the Job Training Partnership Act (29 U.S.C. §1579(a)).

<sup>2</sup>This designation means the Job Opportunities and Basic Skills Training Program authorized under part F of Title IV of the Social Security Act (42 U.S.C. §402(a)(19)).

a minimum of twenty (20) hours per week, and must be verified, in writing, by the training, education, or employment provider. In addition:

- Such participation must lead to, and the applicant must demonstrate: (i) *substantially uninterrupted* full-time employment of a minimum of thirty-five (35) hours per week, at least, twenty-four (24) months prior to the date of application *and* continuous full-time employment up to the date of voucher issuance and leasing under the HCV Program, or (ii) *substantially uninterrupted* long-term part-time employment of a minimum of twenty (20) hours per week, at least, thirty (30) months prior to the date of application *and* continuous long-term part-time employment up to the date of voucher issuance and leasing under the HCV Program.
- *Substantially uninterrupted* shall mean no more than a forty-five (45) – sixty (60) day gap in full-time employment for twenty-four (24) months, or long-term part-time employment for the thirty (30) months, prior to the date of application *and* *substantially uninterrupted* full-time or long-term part-time employment for the thirty (30) months prior to voucher issuance and placement.
- Self-employed individuals would qualify for this Local Preference if the applicant maintains continuous self-employment for income and otherwise meets the time qualifications under this local preference.

d) Change in Working Family Preference. MHB shall recognize a change in the subcategory of the Working Family Local Preference if any applicant rises to the top of the waiting list and has a verifiable subcategory of the Working Family Local Preference which is different or additional to the subcategory originally named at the time of application. Such applicant shall be placed on the waiting list appropriately in the new subcategory, and generally will not lose his/her place on the waiting list as a result of the change, (provided that the applicant did not commit fraud or misrepresentation in which case the applicant may be removed from the waiting list), but shall only be placed in accordance with, voucher availability, applicable ranking preferences, and other HCV Program leasing concerns.

5) Income Ranking Preference. Within each of the local preference and non-preference categories or using the ranking preference solely, MHB will rank applicants by income and seek to select applicants that will best promote the objectives of attaining, to the maximum extent feasible, an overall HCV Program family demographic comprised of working families with a broad range of incomes and thereby avoiding concentrations of the most economically deprived families with serious social problems in areas of high minority concentration. MHB may implement this ranking preference by reference to: (i) the individual income of applicants to the dollar, from highest income to lowest income, or (ii) by ranking using

income bands or ranges (e.g., \$10,000 - \$14,000 income band, etc.), as determined by MHB, and the Date and Time Ranking Preference in case of a tie, or (iii) a combination thereof, from time to time. Income must be verified in accordance with already existing MHB procedures used to verify income to determine eligibility for the HCV Program.

- 6) Date and Time Ranking Preference. A local ranking preference where an applicant is additionally ranked on the Housing Choice waiting list by date and time of application or pre-application within a local preference or non-preference category or by using this Ranking Preference solely. In MHB's option, it may also use this ranking preference when it determines to place individuals on the waiting list by lottery. In the case of a lottery, the date and time of application may be computer generated and assigned. This ranking preference will generally be used to rank applicants of equal income under the Income Ranking Preference.
- B. Priority Ranking of Local Preferences. MHB shall seek to achieve and select from the applicable waiting list of Local Preferences in accordance with, voucher availability, applicable ranking preferences, as of the date and time the pre-application which requests a Local Preference was received or assigned a place in the applicable category on the waiting list. MHB shall verify the Local Preference at the time of an applicant's selection and placement or at such earlier time as MHB may select.
  - C. Preference Consideration for Elderly and Disabled. An applicant household may be given the benefit of a Local Preference, if the head and spouse, or sole member, are age 62 or older. MHB will provide timely placement for such elderly residents. Moreover, an applicant household shall be given the benefit of a Local Preference, subject to the time periods set forth above, if the head *and* spouse, or sole member, are receiving social security disability, supplemental security income disability benefits, or any other payments based on an individual's total inability to work.
  - D. Preference Applicants and Non-Preference Applicants. Generally, all applicants meeting any or all of the preference categories may be given priority for housing placement over non-preference applicants, however, nothing shall prohibit MHB from selecting non-preference applicants using the income ranking preference in order to meet its income targeting requirements or other agency initiatives and/or goals. Generally, should the waiting list be opened, any applicant satisfying a preference regardless of date and time of pre-application shall be placed ahead of a non-preference applicant.
  - E. Selections for Designated Housing. MHB may make selections from the applicable waiting list(s) which will satisfy MHB's requirements pursuant to any Designated Housing Plan for MHB which MHB may adopt for specific

housing for elderly families, disabled families, or mixed populations of elderly and disabled families.

- F. Certification and Verification of Preferences. Each applicant must certify, in writing, the nature of the preference category he or she is claiming. MHB shall verify all applicants' claims for a preference prior to offering a voucher. Should the applicant claim for a preference not be verified, the applicant may be placed back on the waiting list by date and time of application, or in the case of misrepresentation, fraud or deceit, the applicant shall be deleted from the waiting list.

At any time the waiting list is opened for applicants claiming a local preference only, the applicant may be required to verify his or her preference claim prior to an application being accepted.

- G. Verification of Local Preferences. Verifications of local preferences must be supported in accordance with MHB HCV Program's standard verification guidelines.
- H. Preference Prohibition for Drug-related Evictions. A family may not be granted a local preference if any member of the family is a person or member of a family evicted from housing assisted under the 1937 Act<sup>3</sup>, during the past five (5) years, because of drug-related criminal activity. However, the family may qualify for a local preference if each evicted person who engaged in such drug-related criminal activity who is a member of the family seeking admission to the program has successfully completed a rehabilitation program approved by MHB, and the family has shown substantial evidence of rehabilitation since the completion of the program.

MHB may waive the preference prohibition for drug-related criminal activity eviction for an evicted person if the evicted person clearly demonstrates, to the MHB's satisfaction, either that the evicted person clearly did not participate in and had no knowledge of the drug-related criminal activity, or that circumstances which lead to eviction no longer exist, including a showing of substantial evidence that the likelihood of reoccurrence is remote.

The current local and ranking preferences are summarized on Exhibit 4-A. This Exhibit may be updated and amended from time to time, based on the local needs of MHB. At an administrative level, MHB may also assign preference points (and may modify the assigned preference points) to the various local preferences, from time to time, to facilitate the orderly placement of families on

---

<sup>3</sup> "Housing assisted under the 1937 Act" means public or Indian housing, housing assisted with tenant-based or project-based assistance under Section 8, rental rehabilitation program housing, Section 23 rental assistance, housing community grant housing, and Turnkey III and mutual home ownership housing.

the waiting lists and the selection of those families, upon verification of eligibility/suitability requirements, for issuance of a HCV voucher.

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

HUD requires that extremely low-income (“ELI”) families make up at least 75% of the families admitted to the HCV program during MHB’s fiscal year. ELI families are those with annual incomes at or below 30% of the area median income. To ensure this requirement is met, MHB may skip non-ELI families on the waiting list in order to select an ELI family. Generally, subject to the local and ranking preferences, MHB will monitor progress in meeting the ELI requirement throughout the fiscal year. Extremely low-income families may be selected ahead of other eligible families on an as-needed basis to ensure the income targeting requirement is met.

Low income families admitted to the HCV 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)].

### **Order of Selection**

MHB system of preferences may select families either according to the date and time of application, a ranking preference, or by a random selection process [24 CFR §§ 982.207(c)]. When selecting families from the waiting list MHB is required to use targeted funding to assist only those families who meet the specified criteria. Generally, MHB 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)].

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 MHB’s hierarchy of preferences, if applicable. Within each targeted funding or preference category, families will be selected basing on the ranking preference, or on a first-come, first-served basis according to the date and time their complete application is received by MHB. Documentation will be maintained by MHB 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 MHB does not have to ask higher placed families each time targeted selections are made.

### **4-3.D. NOTIFICATION OF SELECTION**

When a family has been selected from the waiting list, MHB will notify the family using the last contact information provided by the family via MHB’s electronic portal.

MHB will notify the family at the email address provided by the family upon application. MHB may, but is not obligated to notify the family by first class mail when the family is selected from the waiting list. Any 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 appointment

- Documents that must be provided at the interview to document the legal identity of household members, including information about what constitutes acceptable documentation

- Other documents and information that should be brought to the interview

If the email is returned or a notification letter is returned to MHB with no forwarding address, the family will be removed from the waiting list. A notice of denial (see Chapter 3) will be sent to the family's email address of record. MHB may, but is not obligated so to do, mail a copy of the denial notice to the family's address of record as well as to any known alternate address.

#### **4-3.E. THE APPLICATION INTERVIEW**

HUD recommends that MHB obtain the information and documentation needed to make an eligibility determination through a private interview [HCV GB, pg. 4-16]. Families selected from the waiting list are required to participate in an eligibility interview. Being invited to attend an interview does not constitute admission to the program. Generally, the interview will be conducted only if the head of household or spouse/co-head provides appropriate 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, the appointment may be rescheduled to provide additional time for the family to obtain the proper documents.

Generally, MHB does not re-schedule an interview more than once, but may, in its discretion, do so for extraordinary circumstances. Failure of the applicant family to timely [i.e., within a minimum of twenty-four (24) hours, absent a demonstrated and substantial emergency where the minimum notification time is not less than three (3) hours] notify MHB of its inability to make the scheduled interview, may result in the removal of the family from the waiting list. In such a case, the family will be notified of its right to request an informal hearing.

The head of household and the spouse/co-head must generally attend the interview together. However, with prior permission by MHB, a co-head may be excused. 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 MHB.

Assistance cannot be provided to the family until all Social Security Number documentation requirements; other eligibility and suitability requirements are met. However, if MHB 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 MHB [Notice PIH 2010-3], generally 30 days in order to allow the family additional time to provide additional eligibility and/or suitability documents or information.

Reasonable accommodation may be requested by the applicant for persons with disabilities who are unable to attend an interview due to their disability.

Pending disclosure and documentation of social security numbers ("SSN"), generally, MHB will allow the family to retain its place on the waiting list for up to ten (10) days. If, at the end of that ten (10) day period, or such greater period as MHB, in its discretion, may state, all household members that have not disclosed their SSNs and provided all required documentation, will be terminated from the waiting list.

The family must provide the information necessary to establish the family's eligibility and determine the appropriate level of assistance, as well as completing required forms, providing required signatures, and submitting required documentation. If any materials are missing, MHB will provide the family with an electronic or written list of items that must be submitted with a stated deadline.

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 termination (See Chapter 3).

An interpreter, family member, friend, advocate, 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, MHB will only provide translation services in accordance with the MHB's LEP plan.

If the family is unable to attend a scheduled interview, the family should contact MHB, at least twenty-four (24) hours, in advance of the interview to schedule a new appointment. In circumstances when a family does not attend a scheduled interview and fails to contact MHB notifying MHB of the family's inability to keep the scheduled appoint, MHB may, but is not required so to do, terminate the family. In circumstances when the family requested a rescheduled appointment but fails to appear, MHB may, but is not required so to do, remove the family from the waiting list. In circumstances when MHB reschedules the interview appointment, MHB will send another electronic notification and/or letter with a new interview appointment time.

Generally, applicants have a duty to cooperate with the HCV Program during the waiting list administration, screening for eligibility/suitability, voucher issuance and leasing processes. Applicants are required to respond to the HCV Program within the specified time frames to any request to review their application and/or submit or update information and/or execute any necessary documents. Failure of the applicant to do so, or otherwise fulfill their duty to cooperate, will generally result in removal of the applicant from the applicable waiting list. HCV Program reserves the right to require applicant status checks, changes to applications regarding income and family circumstances, etc., to be done electronically, in person, or by mail. In addition, applicants who fail to attend two (2) scheduled interviews without MHB 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.

#### **4-3.F. COMPLETING THE APPLICATION PROCESS**

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

If MHB determines that the family is ineligible or unsuitable, MHB will send written notification of the determination within approximately ten (10) business days of the determination. The notice will specify the reasons for ineligibility or unsuitability determination, 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, claimed preference, etc.), absent mis-representation and/or fraud, the family will be returned to its appropriate position on the waiting list. MHB will notify the family in writing that it has been returned to the waiting list, and will specify the reasons for it. If the family fails to qualify for any claimed preference due to misrepresentation, fraud or deceit, MHB will generally remove that family from the waiting list, and will inform the family of its right to request an informal review (Chapter 16).

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

<b>Exhibit 4-A</b>
--------------------

## HOUSING CHOICE VOUCHER RENTAL ASSISTANCE PROGRAM

### SUMMARY OF LOCAL AND RANKING PREFERENCES<sup>4</sup>

#### For Waiting List Placement

(Effective: January 1, 2014)

Priority	Local/Ranking Preference Name	Local/Ranking Preference Summary	Points
1.	Displaced Due to MHB Repositioning Activity	Displacement due to redevelopment, repositioning, demolition, disposition or substantial rehabilitation/ modernization activity of MHB [see <i>Administrative Plan</i> , Section 4.3.C-2(A)(1)].	150
2.	Displaced Due to Natural Disaster or Federally Declared Disaster Areas	Eligible family displaced because of a serious natural disaster or residing in a federally declared disaster area. (Note: this preference is conditional and effective only upon certain conditions) [See <i>Administrative Plan</i> , Section 4.3.C-2(A)(2)].	150
3.	Displaced Due to Federal HCV Funding Shortfall	Family terminated from the HCV Program due to insufficient federal voucher and/or administrative fee program funding. (Note: family must have been in good standing, and remain eligible and suitable for the HCV Program at the time of application and at the time of voucher issuance/reinstatement) [See <i>Administrative Plan</i> , Section 4.3.C-2(A)(3)].	150
4.	Working Family Preference – Full-time Employment	Full-time employment of a minimum of thirty-five (35) hours or more per week for a period of, at least, two and one-half (2½) years prior to application. (Note: the applicant must also demonstrate <i>substantially uninterrupted</i> full-time employment for, at least, twenty-four (24) months immediately prior to the issuance of the voucher and date of leasing under the HCV Program) [See <i>Administrative Plan</i> , Section 4.3.C-2(A)(4)(a)].	100
5.	Working Family Preference – Long-term Part-time Employment	Long-term part-time employment of a minimum of twenty (20) hours or more per week for a period of, at least, three and one-half (3½) years prior to the date of application. (Note: the applicant must also demonstrate <i>substantially uninterrupted</i> long-term part-time employment for, at least, thirty (30) months immediately prior to voucher issuance and the date of leasing under the HCV Program) [See <i>Administrative Plan</i> , Section 4.3.C-2(A)(4)(b)].	50

<sup>4</sup> The points administratively awarded via this Summary of Local and Ranking Preferences may be modified or amended from time to time by MHB and will be published annually.

Priority	Local/Ranking Preference Name	Local/Ranking Preference Summary	Points
6.	Working Family Preference – Approved Job Training Program followed by Full-time Employment.	Recent, diligent and successful participation in a full-time approved training, education or employment program followed by: (i) <i>substantially uninterrupted</i> full-time employment of a minimum of thirty-five (35) hours per week, at least, twenty-four (24) months prior to the date of application, or (ii) <i>substantially uninterrupted</i> long-term part-time employment of a minimum of twenty (20) hours per week, at least, thirty (30) months prior to the date of application. All employment must continue through date of voucher issuance and leasing under the HCV Program) [See <i>Administrative Plan</i> , Section 4.3.C-2(A)(4)(c)].	25
6.A or 1	Income Ranking Preference	Within <i>each</i> of the local preference and non-preference categories or using the Ranking Preference independently, applicants will be ranked by income to the dollar, on an individual basis, from highest income to lowest income, or by using income ranges (e.g., Less than \$10,000 and greater than \$15,000, or a combination thereof, from time to time. [See <i>Administrative Plan</i> , Section 4.3.C-2(A)(5)].	10-30
6.B or 1	Date and Time Ranking Preference	A local ranking preference where an applicant is additionally ranked on the Housing Choice waiting list by date and time of application or pre-application within a local preference or non-preference category. Note: in the case of a lottery, the date and time of application may be computer generated and assigned) [see <i>Administrative Plan</i> , Section 4.3.C-2(A)(6)].	Auto
7.	Short-term working Family Preference	Applicants with full-time employment with a minimum of thirty-five (35) hours or more per week for a period of, at least, eighteen (18) months prior to application	25
8.	Elderly and Disabled	An applicant family whose head and spouse, or sole member are age 62 or older if the head and spouse, or sole member, are receiving social security disability, supplemental security income disability benefits, or any other payments based on an individual's total inability to work.	100

## 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, MHB describes to the family how the program operates and the family’s obligations under the HCV Program. This is accomplished through information posted on MHB’s website, an oral briefing and provision of an electronic or paper briefing packet containing electronic or other written documentation of information the family needs to know. Once the family is deemed eligible and is informed of the HCV Program’s requirements, and vouchers are available, MHB issues the family a voucher. The voucher includes the unit size the family qualifies for based on MHB’s subsidy standards, as well as the dates of issuance and expiration of the voucher. The voucher is the document that permits the family to begin its search for a unit, and limits the amount of time the family has to successfully locate an acceptable unit.

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

Part 1: Briefings and Family Obligations. This part details the HCV Program’s requirements for briefing families orally, and for providing electronic or other written materials describing the HCV Program and its requirements. It includes a particular focus on the family’s obligations under the HCV Program.

Part 2: Subsidy Standards and Voucher Issuance. This part discusses MHB’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 an acceptable unit.

#### PART 1: BRIEFINGS AND FAMILY OBLIGATIONS

##### 5-1.A. OVERVIEW

HUD regulations require MHB to conduct mandatory briefings for applicant families. The briefing provides a broad description of owner and family responsibilities, explains MHB’s procedures, and includes instructions on how to lease a unit. This part describes how oral, electronic (e.g., webinar, Skype, conference, Go-to-Meeting, etc.), or individual briefings will be conducted, specifies what written information will be provided to families, and lists the family’s obligations under the HCV Program.

**5-1.B. BRIEFING [24 CFR §982.301]**

MHB will give the family an oral or electronic briefing and provide the family with an electronic or paper briefing packet containing written information about the HCV Program. Families may be briefed individually or in groups. At the briefing, the PHA will ensure effective communication in accordance with Section 504 requirements (Section 504 of the Rehabilitation Act of 1973), and ensure that the briefing site (if it is a physical location) is accessible to individuals with disabilities. For a more thorough discussion of accessibility requirements, refer to Chapter 2.

Generally, the head of household is required to attend the briefing. If the head of household is unable to attend, MHB 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 MHB staff person.

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

**Notification and Attendance**

Families will be notified of their eligibility for assistance at the time they are invited to attend a briefing. The notice will identify who is required to attend the briefing, as well as the date and time of the scheduled briefing. In accordance with MHB's Green Initiative and Bridging the Digital Divide Initiatives, MHB preferably will communicate with the family through electronic email provided to MHB by the family or provided to the family by MHB. MHB may also, but is not required so to do, provide notification via regular mail

If the notice is returned as undeliverable by an Internet Service Provider ("ISP") or by the post office with no forwarding address, the applicant will be denied and his or her name will not be placed back on the waiting list. If the notice is returned by the ISP or post office with a forwarding address, the notice will be re-sent to the address indicated.

Applicants who fail to attend a scheduled briefing without previous notification of MHB or reason acceptable, in MHB's sole discretion, will be removed from the waiting list. Applicants who timely notify MHB of an inability to attend the briefing or have a reason acceptable to MHB will automatically be scheduled for another briefing. MHB will notify the family of the date and time of the second scheduled briefing. Applicants who fail to attend two scheduled briefings, without MHB approval, will be removed from the waiting list and denied assistance (see Chapter 3).

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

Each briefing must provide information on the following subjects:

- How the Housing Choice Voucher Program works;
- Family and owner responsibilities;

- Where the family can lease a unit, including renting a unit inside or outside MHB's jurisdiction;
- For families eligible under portability, an explanation of portability ;
- For families living in high-poverty census tracts, an explanation of the advantages of moving to areas outside of high-poverty concentrations; 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.

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

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

Documents and information provided in the briefing packet will generally include the following:

- The term of the voucher, and MHB's policies on any extensions or suspensions of the term. If MHB allows extensions, the information 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 MHB determines the payment standard for a family, how MHB determines total tenant payment for a family, and information on the payment standard and utility allowance schedule.
- An explanation of how MHB determines the maximum allowable rent for an assisted unit.
- Where the family may lease a unit. For a family that qualifies to lease a unit outside MHB jurisdiction under portability procedures, the information must include an explanation of how portability works.
- 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 MHB policy on providing information about families to prospective owners.
- MHB subsidy standards including when and how exceptions are made.
- The HUD brochure on how to select a unit.
- The HUD pamphlet on lead-based paint entitled *Protect Your Family from Lead in Your Home*.
- Information on federal, state and local equal opportunity laws and a copy of the housing discrimination complaint form.

- A list of landlords or other parties willing to lease to assisted families or help families find units, especially outside areas of poverty or minority concentration.
- Notice that if the family includes a person with disabilities, the family may request a list of available accessible units known to MHB.
- The family obligations under the program, including any obligations of a welfare-to-work family.
- The grounds on which MHB may terminate assistance for a participant family because of family action or failure to act.
- MHB informal hearing procedures including when MHB is required to offer a participant family the opportunity for an informal hearing, and how to request the hearing.

Since MHB is located in a metropolitan FMR area, the following additional information is included in the briefing packet in order to allow MHB to receive full points under SEMAP Indicator 7, Expanding Housing Opportunities [24 CFR §985.3(g)]:

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

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

In addition to items set forth above, MHB may also include supplemental materials to help explain the program to both participants and owners [HCV GB p. 8-7, Notice PIH 2010-19]. Generally, this supplemental information may include:

- Information on how to fill out and file a housing discrimination complaint form.
- *Is Fraud Worth It?* (Form HUD-1141-OIG), which explains the types of actions a family must avoid and the penalties for program abuse.
- *What You Should Know about EIV*, a guide to the Enterprise Income Verification (“EIV”) system published by HUD as an attachment to Notice PIH 2010-19.

### **5-1.C. FAMILY OBLIGATIONS**

Obligations of the family are described in the HCV regulations and on the voucher itself. These obligations include responsibilities the family is required to fulfill, as well as prohibited actions. MHB generally informs families of these obligations during the oral briefing, and the same information is 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 HCV Program. Violation of any family obligation may result in termination of assistance, as described in Chapter 12.

### **Time Frames for Reporting Changes Required By Family Obligations**

Unless otherwise noted below, when family obligations require the family to respond to a request or notify MHB of a change, notifying MHB of the request or change within thirty (30) business days is considered prompt or timely notice.

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

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

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

- 1) Supply Information. The family must supply any information that MHB or HUD determines to be necessary, including submission of required evidence of citizenship or eligible immigration status. "Information" includes any requested certification, release or other documentation.
- 2) E-mail Address. The family must maintain a valid email address and check it periodically for communications from MHB about the HCV Program and the family's continued participation, including, but not limited to, scheduled reexaminations or other renewals.
- 3) Supply Information. The family must supply any information requested by MHB or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition.
- 4) Social Security Numbers. The family must disclose and verify social security numbers and sign and submit consent forms for obtaining information.
- 5) Accuracy of Information. Any information supplied by the family must be true and complete.
- 6) Adherence to HQS. The family is responsible for any Housing Quality Standards ("HQS") breach by the family caused by failure to pay tenant-provided utilities or appliances, or damages to the dwelling unit or premises beyond normal wear and tear caused by any member of the household or guest. Generally, damages beyond normal wear and tear will be considered to be damages which could be assessed against the security deposit that is collected from the landlord
- 7) Reasonable Inspections. The family must allow MHB, or its agent(s), to inspect the unit at reasonable times and after reasonable notice, as described in Chapter 8 of this Administrative Plan.
- 8) Serious Lease Violations. The family must not commit any serious or repeated violation of the lease. Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises and criminal activity. Generally, the criteria to be used is whether the reason for the

eviction was through no fault of the tenant or guests. In addition, MHB may 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.

- 9) Notification of Move Out. The family must notify MHB and the owner before moving out of the unit or terminating the lease. Moreover, the family must comply with lease requirements regarding written notice to the owner. The family must provide written notice to MHB at the same time the owner is notified.
- 10) Eviction Notice. The family must promptly give MHB a copy of any eviction notice filed against the family by the owner.
- 11) Primary Residence Requirement. The family must use the assisted unit as the primary residence of the family. The unit must be the family's only residence and may not be sub-let, rented, or otherwise inappropriately used by non-family members.
- 12) Composition of Participant Family. The composition of the assisted family residing in the unit must be approved by MHB. The family must promptly notify MHB in writing of the birth, adoption, or court-awarded custody of a child. The family must request MHB approval to add any other family member as an occupant of the unit. The request to add a family member must be submitted in writing and approved prior to the person moving into the unit. MHB will determine eligibility of the new member in accordance with the policies in Chapter 3. In addition, the family must promptly notify MHB in writing if any family member no longer lives in the unit.
- 13) Foster Child and Live-in Aid. If MHB has given approval, a foster child or a live-in aide may reside in the unit. MHB has the discretion to adopt reasonable policies concerning residency by a foster child or a live-in aide, and to define when MHB 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, and Chapter 11.
- 14) Rental Exclusivity. The family must not sublease the unit, assign the lease, or transfer the unit. Subleasing includes receiving payment to cover rent and utility costs by a person living in the unit who is not listed as a family member.
- 15) Verification of Occupancy. The family must supply any information requested by MHB to verify that the family is living in the unit or information related to family absence from the unit.
- 16) Extended Absences from the Unit. The family must promptly notify MHB when the family is absent from the unit. Notice is required under this provision only when all family members will be absent from the unit for an extended period. An extended period is defined as any period greater than 30 calendar days. Written notice must be provided to MHB at the start of the extended absence.
- 17) Utility Bills and Appliances. The family must pay all utility bills and provide and maintain any appliances that the owner is not required to provide under the lease [Form HUD-52646, Voucher].

- 18) Re-establishing Utilities. If it is discovered that the family's utilities have been disconnected or turned off, the family will be given a maximum time frame of 72 hours to have all utilities restored or assistance will be terminated.
- 19) Financial Interest in the Unit. The family must not own or have any financial interest in the unit, (other than in a cooperative and owners of a manufactured home leasing a manufactured home space).
- 20) Fraud in HCV Program. Family members must not commit fraud, bribery, or any other corrupt or criminal act in connection with the HCV Program. (See Chapter 14, Program Integrity for additional information).
- 21) Criminal Activity. 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 MHB policies related to drug-related and violent criminal activity.)
- 22) Abuse of Alcohol. Members of the household must not engage in abuse of alcohol in a way that threatens the health, safety or right to peaceful enjoyment of the other residents and persons residing in the immediate vicinity of the premises. (See Chapter 12 for a discussion of HUD and PHA policies related to alcohol abuse.)
- 23) Dual Subsidies. 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.
- 24) Dual HCV Assistance. 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 MHB 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 2: SUBSIDY STANDARDS AND VOUCHER ISSUANCE**

### **5-2.A. OVERVIEW**

MHB has established 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. MHB has also established policies related to the issuance of the voucher, to the voucher term, and to any extensions or suspensions of that term.

**5-2.B. DETERMINING FAMILY UNIT (VOUCHER) SIZE [24 CFR §982.402]**

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

Generally, the following requirements apply when MHB determines family unit size:

- The subsidy standards must provide for the smallest number of bedrooms needed to house a family without overcrowding.
- The subsidy standards must be consistent with space requirements under the housing quality standards.
- The subsidy standards must be applied consistently for all families of like size and composition.
- A child who is temporarily away from the home because of placement in foster care is considered a member of the family in determining the family unit size.
- A family that consists of a pregnant woman (with no other persons) must be treated as a two-person family.
- Any live-in aide (approved by MHB 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 MHB subsidy standards.
- MHB will assign one bedroom for each two persons within the household, except in the following circumstances:
  - Adults of different generations or opposite sex, other than husband and wife, will be allocated separate bedrooms;
  - Live-in aides will be allocated no more than one separate bedroom.
  - Single person families will be allocated one bedroom.

Generally, MHB will reference the following chart in determining the appropriate voucher size for a family:

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

4 Bedrooms	4 - 8
5 Bedrooms	5 - 10

### **5-2.C. EXCEPTIONS TO SUBSIDY STANDARDS**

In determining family unit size for a particular family, MHB may grant an exception to its established subsidy standards if MHB determines, in its sole discretion, 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

MHB 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 request for accommodation is readily apparent or otherwise known. The family's continued need for an additional bedroom due to special medical equipment must be re-verified at annual reexamination.

Generally, MHB 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.

Even so, 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)].

### **5-2.D. APPLICANT 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, MHB issues a Housing Choice Voucher, form HUD-52646. (Note: 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 HCV Program works and explains the family obligations under the HCV Program. The voucher is evidence that MHB has determined the family to be eligible for the HCV Program, and that MHB expects to have money available, as appropriated by HUD, to subsidize the family if the family

finds an approvable unit. However, MHB does not have any liability to any party by the issuance of the voucher, and the voucher does not give the family any unqualified right to participate in MHB's Housing Choice Voucher Program [Voucher, form HUD-52646].

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

Generally, vouchers will be issued to eligible applicants at the same time of the mandatory briefing.

MHB 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, MHB must wait until it has adequate funds before it calls another family from the list [HCV GB p. 8-10]. Prior to issuing any vouchers, MHB will determine whether it has sufficient funding in accordance with the policies in Part 8 of Chapter 16.

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

## **5-2.E. VOUCHER TERM, EXTENSIONS, AND SUSPENSIONS**

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

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

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

MHB 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. [24 CFR §982.54].

PHAs must approve additional search time if needed as a reasonable accommodation to make the program accessible to and usable by a person with disabilities. The extension period must be reasonable for the purpose.

The family must be notified in writing of MHB's decision to approve or deny an extension. MHB'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)].

MHB may approve one 30-day extension upon written request from the family. MHB may, in its sole discretion, approve additional extensions 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 MHB. Following is a list of extenuating circumstances that MHB may consider in

making its decision. Even so, the presence of one or more 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 MHB, or
- Whether family size or other special requirements make finding a unit difficult.

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

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

MHB will decide whether to approve or deny an extension request within ten (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)]**

At its discretion, MHB may adopt a policy to suspend the housing choice voucher term if the family has submitted a Request for Tenancy Approval (“RFTA”) during the voucher term. “Suspension” means stopping the clock on a family’s voucher term from the time a family submits the RFTA until the time the PHA approves or denies the request [24 CFR §982.4]. Generally, when a Request for Tenancy Approval is received by MHB, the term of the voucher will not be suspended while MHB processes the request. MHB’s determination not to suspend a voucher term is not subject to informal review [24 CFR §982.554(c)(4)].

### **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 HCV Program. If the family still wishes to receive assistance, MHB 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 HCV Program on the grounds that it was unable to locate a unit before the voucher expired [HCV GB p. 8-13].

Generally, if an applicant family’s voucher term or extension expires before the family has submitted a Request for Tenancy Approval (“RFTA”), MHB will require the family to reapply for assistance. In addition, generally, if a RFTA that was submitted prior to the expiration date of the voucher is subsequently disapproved by MHB (after the voucher term has expired); the family will be required to reapply for assistance.

## 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 allowable subsidy. MHB 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 MHB's policies related to these topics in three parts as follows:

- Part 1: Annual Income. HUD regulations specify the sources of income to include and exclude to arrive at a family's annual income. These requirements and MHB's policies for calculating annual income are found in Part I.
- Part 2: Adjusted Income. Once annual income has been established MHB will subtract from annual income any of five mandatory deductions for which a family qualifies. These requirements and MHB's policies for calculating adjusted income are found in Part II.
- Part 3: Calculating Family Share and PHA Subsidy. This part describes the statutory formula for calculating total tenant payment ("TTP"), the use of utility allowances, and the methodology for determining MHB subsidy and required family payment.

#### PART I: ANNUAL INCOME

##### 6-1.A. OVERVIEW

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

5.609 Annual income.

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

(1) Go to, or on behalf of, the family head or spouse (even if temporarily absent) or to any other family member; or

(2) Are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date; and

(3) Which are not specifically excluded in paragraph [24 CFR §5.609(c)].

(4) Annual income also means amounts derived (during the 12-month period) from assets to which any member of the family has access.

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

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

Sections 6-1.B and 6-1.C discuss general requirements and methods for calculating annual income. The rest of this section describes how each source of income is treated for the purposes of determining annual income. HUD regulations present income inclusions and exclusions separately [24 CFR §5.609(b) and 24 CFR §5.609(c)]. In this Administrative Plan, however, the discussions of income inclusions and exclusions are integrated by topic (e.g., all policies affecting earned income are discussed together in section 6-1.D). Verification requirements for annual income are discussed in Chapter 7.

**6-1.B. HOUSEHOLD COMPOSITION AND INCOME**

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

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

## Temporarily Absent Family Members

The income of family members approved to live in the unit will be counted, even if the family member is temporarily absent from the unit [HCV GB, p. 5-18].

Generally an individual who is or is expected to be absent from the assisted unit for ninety (90) 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 ninety (90) consecutive days is considered permanently absent and no longer a family member. Exceptions to this general policy are discussed below.

- **Absent Students** - When someone who has been considered a family member attends school away from home, the person will continue to be considered a family member unless information becomes available to the PHA indicating that the student has established a separate household or the family declares that the student has established a separate household.
- **Absences Due to Placement in Foster Care** – Children temporarily absent from the home as a result of placement in foster care are considered members of the family [24 CFR §5.403].

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

- **Absent Head, Spouse, or Co-head** – An employed head, spouse, or co-head absent from the unit more than 90 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].

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

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

### **Joint Custody of Dependents**

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

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

### **Caretakers for a Child**

If neither a parent nor a designated guardian remains in a household receiving HCV assistance, generally, MHB will take the following actions.

- 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.
- 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 ninety (90) days. After the ninety (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, MHB may extend the caretaker's status as an eligible visitor.
- At any time that custody or guardianship legally has been awarded to a caretaker, the housing choice voucher may be transferred to the caretaker.
- 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.
- Any Caretaker will also be subject to all of MHB's eligibility and screening requirements.

### **6-1.C. ANTICIPATING ANNUAL INCOME**

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

#### **Basis of Annual Income Projection**

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

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

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

HUD allows PHAs to use pay-stubs to project income once EIV data has been received in such cases where the family does not dispute the EIV employer data and where MHB does not determine it is necessary to obtain additional third-party data.

When EIV is obtained and the family does not dispute the EIV employer data, MHB will use current tenant-provided documents to project annual income. When the tenant-provided documents are pay stubs, MHB will make every effort to obtain, at least two current and consecutive pay stubs dated within the last 60 days.

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

- If EIV or other UIV data is not available,
- If the family disputes the accuracy of the EIV employer data, and/or
- If MHB determines additional information is needed.

In such cases, MHB will review and analyze current data to anticipate annual income. In all cases, the family file will be documented with a record of the reason for the decision, and a determination of how MHB annualized projected income.

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

### **Known Changes in Income**

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

**Example:** An employer reports that a full-time employee who has been receiving \$8/hour will begin to receive \$8.25/hour in the eighth week after the effective date of the reexamination. In such a case the PHA 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 MHB may calculate annual income using current circumstances and then require an interim reexamination when the change actually occurs. This requirement may be imposed even when MHB's policy on reexaminations does not require interim reexaminations for other types of changes.

When tenant-provided third-party documents are used to anticipate annual income, they will be dated within the last 60 days of the reexamination interview date.

### **Projecting Income**

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

## **6-1.D. EARNED INCOME**

### **Types of Earned Income Included in Annual Income**

#### **Wages and Related Compensation**

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

For persons who regularly receive bonuses or commissions, MHB will verify and then average amounts received for the two (2) years preceding admission or reexamination. If only a one-year history is available, MHB will use the prior year amounts. In either case the family may provide, and MHB may 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, MHB will count only the amount estimated by the employer. The file will be documented appropriately.

#### **Some Types of Military Pay**

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

### **Types of Earned Income Not Counted in Annual Income**

#### **Temporary, Nonrecurring, or Sporadic Income [24 CFR § 5.609(c)(9)]**

This type of income (including sporadic gifts) is not included in annual income. Sporadic income includes temporary payments from the U.S. Census Bureau for employment lasting no longer than 180 days [Notice PIH 2009-19].

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

### **Children's Earnings**

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

### **Certain Earned Income of Full-Time Students**

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

### **Income of a Live-in Aide**

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

### **Income Earned under Certain Federal Programs**

Income from some federal programs is specifically excluded from consideration as income [24 CFR §5.609(c)(17)], including:

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

### **Resident Service Stipend**

Amounts received under a resident service stipend are not included in annual income. A resident service stipend is a modest amount (not to exceed \$200 per individual per month) received by a resident for performing a service for MHB or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the

PHA's governing board. No resident may receive more than one such stipend during the same period of time [24 CFR § 5.600(c)(8)(iv)].

### **State and Local Employment Training Programs**

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

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

### **HUD-Funded Training Programs**

Amounts received under training programs funded in whole or in part by HUD [24 CFR § 5.609(c)(8)(i)] are excluded from annual income. Eligible sources of funding for the training include operating subsidy, Section 8 administrative fees, and modernization, Community Development Block Grant (“CDBG”), HOME program, and other grant funds received from HUD. (Note: To qualify as a training program, the program must meet the definition of *training program* provided above for state and local employment training programs).

### **Earned Income Tax Credit**

Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. §32(j)), are excluded from annual income [24 CFR §5.609(c)(17)]. Although many families receive the EITC annually when they file taxes, an EITC

can also be received throughout the year. The prorated share of the annual EITC is included in the employee's payroll check.

### **Earned Income Disallowance**

The earned income disallowance for persons with disabilities is discussed in section 6-1.E below.

## **6-1.E. EARNED INCOME DISALLOWANCE FOR PERSONS WITH DISABILITIES** [24 CFR §5.617]

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

### **Eligibility**

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

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

### **Calculation of the Disallowance**

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

income.” MHB defines *prior income*, or *prequalifying income*, as the family member’s last certified income prior to qualifying for the EID.

The family member’s prior, or prequalifying, income remains constant throughout the period that he or she is receiving the EID.

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

During the initial 12-month exclusion period, the full amount (i.e., 100 percent) of any increase in income attributable to new employment or increased earnings is excluded. The 12 months are cumulative and need not be consecutive. The initial EID exclusion period will begin on the first of the month following the date an eligible member of a qualified family is first employed or first experiences an increase in earnings.

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

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

### **Lifetime Limitation**

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

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

## **6-1.F. BUSINESS INCOME [24 CFR §5.609(b)(2)]**

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

### **Business Expenses**

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

To determine business expenses that may be deducted from gross income, MHB will use current applicable Internal Revenue Service (“IRS”) rules for determining allowable

business expenses [see IRS Publication 535], unless a topic is addressed by HUD regulations or guidance as described below.

### **Business Expansion**

HUD regulations do not permit the PHA to deduct from gross income expenses for business expansion. *Business expansion* is defined as any capital expenditures made to add new business activities, to expand current facilities, or to operate the business in additional locations. For example, purchase of a street sweeper by a construction business for the purpose of adding street cleaning to the services offered by the business would be considered a business expansion. Similarly, the purchase of a property by a hair care business to open at a second location would be considered a business expansion.

### **Capital Indebtedness**

HUD regulations do not permit MHB to deduct from gross income the amortization of capital indebtedness. *Capital indebtedness* is defined as the principal portion of the payment on a capital asset such as land, buildings, and machinery. This means MHB 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 MHB to include in annual income the withdrawal of cash or assets from the operation of a business or profession unless the withdrawal reimburses a family member for cash or assets invested in the business by the family.

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

### **Co-owned Businesses**

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

## **6-1.G. ASSETS [24 CFR §5.609(b)(3) and 24 CFR §5.603(b)]**

### **Overview**

There is no asset limitation for participation in the HCV program. However, HUD requires that MHB include in annual income the "interest, dividends, and other net income of any kind from real or personal property" [24 CFR §5.609(b)(3)]. This section

discusses how the income from various types of assets is determined. For most types of assets, MHB must determine the value of the asset in order to compute income from the asset. Therefore, for each asset type, this section discusses:

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

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

## **General Policies**

### **Income from Assets**

MHB generally will use current circumstances to determine both the value of an asset and the anticipated income from the asset. As is true for all sources of income, MHB uses 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) MHB 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, MHB can take into consideration past rental income along with the prospects of obtaining a new tenant.

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

### **Valuing Assets**

The calculation of asset income sometimes requires MHB to make a distinction between an asset's market value and its cash value.

- The market value of an asset is its worth (e.g., the amount a buyer would pay for real estate or the balance in an investment account).
- The cash value of an asset is its market value less all reasonable amounts that would be incurred when converting the asset to cash.

Reasonable costs that would be incurred when disposing of an asset include, but are not limited to, penalties for premature withdrawal, broker and legal fees, and settlement costs incurred in real estate transactions [HCV GB, p. 5-28].

### **Lump-Sum Receipts**

Payments that are received in a single lump sum, such as inheritances, capital gains, lottery winnings, insurance settlements, and proceeds from the sale of property, are generally considered assets, not income. However, such lump-sum

receipts are counted as assets only if they are retained by a family in a form recognizable as an asset (e.g., deposited in a savings or checking account) [RHIIP FAQs]. (For a discussion of lump-sum payments that represent the delayed start of a periodic payment, most of which are counted as income, see sections 6-1.H and 6-1.I.)

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

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

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

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

### **Withdrawal of Cash or Liquidation of Investments**

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

### **Jointly Owned Assets**

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

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

If an asset is owned by more than one person, including a family member, but the family member does not have unrestricted access to the asset, MHB will prorate the asset according to the percentage of ownership. If no percentage is

specified or provided for by state or local law, MHB will prorate the asset evenly among all owners.

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

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

- **Minimum Threshold**

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

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

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

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

- **Separation or Divorce**

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

- **Foreclosure or Bankruptcy**

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

- **Family Declaration**

Families must sign a declaration form at initial certification and may also be required at 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. MHB may verify the value of the assets disposed of if other information available to MHB does not appear to agree with the information reported by the family.

## **Types of Assets**

### **Checking and Savings Accounts**

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

MHB will accept a family's declaration of the amount of assets of less than \$5,000, and the amount of income expected to be received from those assets. MHB's application and reexamination documentation, which is signed by all adult family members, can serve as the declaration. Where the family has net family assets equal to or less than \$5,000, MHB does not need to, but may if deemed appropriate by MHB, request supporting documentation (e.g. bank statements) from the family to confirm the assets or the amount of income expected to be received from those assets. Generally, where the family has net family assets in excess of \$5,000, MHB will obtain supporting documentation (e.g. bank statements) from the family to confirm the assets. [24 CFR §5.609(b)(3), §982.516(a)(2)(ii), and §960.259(c)].

In determining the value of a checking or savings account, the MHB will use the average monthly balance for the last two months.

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

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

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

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

How anticipated income from an investment account will be calculated depends on whether the rate of return is known. For assets that are held in an investment account with a known rate of return (e.g., savings certificates), asset income will

be calculated based on that known rate (market value multiplied by rate of earnings). When the anticipated rate of return is not known (e.g., stocks), MHB will calculate asset income based on the earnings for the most recent reporting period.

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

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

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

- Equity accounts in HUD homeownership programs [24 CFR §5.603(b)]
- The value of a home currently being purchased with assistance under the HCV program Homeownership Option for the first 10 years after the purchase date of the home [24 CFR §5.603(b)]
- Equity in owner-occupied cooperatives and manufactured homes in which the family lives [HCV GB, p. 5-25]
- Equity in real property when a family member's main occupation is real estate [HCV GB, p. 5-25]. This real estate is considered a business asset, and income related to this asset will be calculated as described in section 6-1.F.
- Interests in Indian Trust lands [24 CFR §5.603(b)]
- Real property and capital assets that are part of an active business or farming operation [HCV GB, p. 5-25]

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

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

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

## **Trusts**

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

### *Revocable Trusts*

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

### *Non-revocable Trusts*

In cases where a trust is not revocable by, or under the control of, any member of a family, the value of the trust fund is not considered an asset. However, any income distributed to the family from such a trust is counted as a periodic payment or a lump-sum receipt, as appropriate [24 CFR §5.603(b)]. (Periodic payments are covered in section 6-1.H. Lump-sum receipts are discussed earlier in this section.)

## **Retirement Accounts**

### *Company Retirement/Pension Accounts*

In order to correctly include or exclude as an asset any amount held in a company retirement or pension account by an employed person, MHB must know whether the money is accessible before retirement [HCV GB, p. 5-26].

While a family member is employed, only the amount the family member can withdraw without retiring or terminating employment is counted as an asset [HCV GB, p. 5-26].

After a family member retires or terminates employment, any amount distributed to the family member is counted as a periodic payment or a lump-sum receipt, as appropriate [HCV GB, p. 5-26], except to the extent that it represents funds invested in the account by the family member. (For more on periodic payments, see section 6-1.H.) The balance in the account is counted as an asset only if it remains accessible to the family member.

### *IRA, Keogh, and Similar Retirement Savings Accounts*

IRA, Keogh, and similar retirement savings accounts are counted as assets even though early withdrawal would result in a penalty [HCV GB, p. 5-25].

## **Personal Property**

Personal property held as an investment, such as gems, jewelry, coin collections, antique cars, etc., is considered an asset [HCV GB, p. 5-25].

In determining the value of personal property held as an investment, MHB will use the family's estimate of the value. MHB may obtain an appraisal to confirm the value of the asset if there is reason to believe that the family's estimated

value is off by \$50 or more. The family must cooperate with the appraiser, but cannot be charged any costs related to the appraisal.

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

Necessary items of personal property are not considered assets [24 CFR §5.603(b)]. Necessary personal property consists of only those items not held as an investment, and may include clothing, furniture, household furnishings, jewelry, and vehicles, including those specially equipped for persons with disabilities.

### **Life Insurance**

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

## **6-1.H. PERIODIC PAYMENTS**

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

### **Periodic Payments Included in Annual Income**

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

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

Most lump-sums received as a result of delays in processing periodic payments, such as unemployment or welfare assistance, are counted as income. However, lump-sum receipts for the delayed start of periodic social security or supplemental security income ("SSI") payments are not counted as income [CFR §5.609(b)(4)]. Additionally, any deferred disability benefits that are received in a lump-sum or in prospective monthly amounts from the Department of Veterans Affairs are to be excluded from annual income [FR Notice 11/24/08].

When a delayed-start payment is received and reported during the period in which MHB is processing an annual reexamination, MHB will adjust the family share and MHB subsidy retroactively for the period the payment was intended to cover. The family may

pay in full any amount due or request to enter into a repayment agreement with MHB. The decision to grant the request for repayment agreement will be in the sole discretion of MHB.

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

MHB must make a special calculation of annual income when the Social Security Administration (SSA) overpays an individual, resulting in a withholding or deduction from his or her benefit amount until the overpayment is paid in full. The amount and duration of the withholding will vary depending on the amount of the overpayment and the percent of the benefit rate withheld. Regardless of the amount withheld or the length of the withholding period, the MHB will use the reduced benefit amount after deducting only the amount of the overpayment withholding from the gross benefit amount [Notice PIH 2010-3].

### **Periodic Payments Excluded from Annual Income**

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

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

- Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home [24 CFR §5.609(c)(16)].
- Amounts received under the Low-Income Home Energy Assistance Program [42 U.S.C. §1626(c) and 24 CFR §5.609(c)(17)].
- Amounts received under the Child Care and Development Block Grant Act of 1990 (42 §U.S.C. 9858q) [24 CFR §5.609(c)(17)].
- Earned Income Tax Credit (EITC) refund payments [26 U.S.C. §32(j) and 24 CFR §5.609(c)(17)]. (*Note: EITC may be paid periodically if the family elects to receive the amount due as part of payroll payments from an employer.*)
- Lump-sums received as a result of delays in processing Social Security and SSI payments (see Section 6-1.J.) [24 CFR §5.609(b)(4)].
- Lump-sums or prospective monthly amounts received as deferred disability benefits from the Department of Veterans Affairs (VA) [FR Notice 11/24/08].

### **6-1.I. PAYMENTS IN LIEU OF EARNINGS**

Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay, are counted as income [24 CFR §5.609(b)(5)] if the payments are received either in the form of periodic payments or in the form of a lump-sum amount or prospective monthly amounts for the delayed start of a periodic payment. If they are received in a one-time lump sum (as a settlement, for instance), they are treated as lump-sum receipts [24 CFR § 5.609(c)(3)]. (See also the discussion of periodic payments in Section 6-1.H and the discussion of lump-sum receipts in Section 6-1.G.)

### **6-1.J. WELFARE ASSISTANCE**

#### **Overview**

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

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

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

#### ***Covered Families***

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

#### ***Imputed Income***

When a welfare agency imposes a sanction that reduces a family's welfare income because the family commits fraud or fails to comply with the agency's economic self-sufficiency program or work activities requirement, MHB must include in annual income "imputed" welfare income. MHB must request that the welfare agency inform MHB when the benefits of an HCV participant family are reduced. The imputed income is the amount the family would have received if the family had not been sanctioned.

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

requirements, or (3) because a family member has not complied with other welfare agency requirements [24 CFR §5.615(b)(2)].

### **Offsets**

The amount of the imputed 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)].

## **6-1.K. PERIODIC AND DETERMINABLE ALLOWANCES [24 CFR §5.609(b)(7)]**

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

### **Alimony and Child Support**

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

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

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

### **Regular Contributions or Gifts**

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

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

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

## **6-1.L. STUDENT FINANCIAL ASSISTANCE [24 CFR §5.609(b)(9)]**

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

**Student Financial Assistance Included in Annual Income [24 CFR §5.609(b)(9) and FR 4/10/06]**

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

- They are enrolled in an institution of higher education, as defined under the Higher Education Act (“HEA”) of 1965.
- They are seeking or receiving Section 8 assistance on their own—that is, apart from their parents—through the HCV program, the project-based certificate 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 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, MHB will use the definitions of *dependent child*, *institution of higher education*, and *parents* in Section 3-2.E, along with the following definitions [FR 4/10/06, pp. 18148-18150]:

- *Assistance under the Higher Education Act of 1965* includes Pell Grants, Federal Supplement Educational Opportunity Grants, Academic Achievement Incentive Scholarships, State Assistance under the Leveraging Educational Assistance Partnership Program, the Robert G. Byrd Honors Scholarship Program, and Federal Work Study programs.
- *Assistance from private sources* means assistance from nongovernmental sources, including parents, guardians, and other persons not residing with the student in an HCV assisted unit.
- *Tuition* will have the meaning given this term by the institution of higher education in which the student is enrolled.

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

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

- Students residing with parents who are seeking or receiving Section 8 assistance
- Students who are enrolled in an educational institution that does **not** meet the 1965 HEA definition of *institution of higher education*
- Students who are over 23 **AND** have at least one dependent child, as defined in Section 3-2.E

- Students who are receiving financial assistance through a governmental program not authorized under the 1965 HEA.

### **6-1.M. ADDITIONAL EXCLUSIONS FROM ANNUAL INCOME**

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

- Reimbursement of medical expenses [24 CFR §5.609(c)(4)]
- Amounts received by participants in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred and which are made solely to allow participation in a specific program [24 CFR §5.609(c)(8)(iii)]
- Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS) [(24 CFR §5.609(c)(8)(ii)]
- Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era [24 CFR §5.609(c)(10)]
- Adoption assistance payments in excess of \$480 per adopted child [24 CFR §5.609(c)(12)]
- Refunds or rebates on property taxes paid on the dwelling unit [24 CFR §5.609(c)(15)]
- Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home [24 CFR §5.609(c)(16)]
- Amounts specifically excluded by any other federal statute [24 CFR §5.609(c)(17)]. HUD publishes an updated list of these exclusions periodically. It includes:
  - (a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. §2017(b)),
  - (b) Payments to Volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. §5044(g) and 42 U.S.C. §5058),
  - (c) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. §1626(c)),
  - (d) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. §459e),
  - (e) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. §8624(f)),
  - (f) Payments received under programs funded in whole or in part under the Job Training Partnership Act (29 U.S.C. §1552(b)) (Effective July 1, 2000,

references to Job Training Partnership Act shall be deemed to refer to the corresponding provision of the Workforce Investment Act of 1998 (29 U.S.C. §2931)),

- (g) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, 90 Stat. 2503-04),
- (h) The first \$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),
- (i) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. §3056(f)),
- (j) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in *In Re Agent*-product liability litigation, M.D.L. No. 381 (E.D.N.Y.),
- (k) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. §1721),
- (l) 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),
- (m) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. §32(j)),
- (n) 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),
- (o) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 (42 U.S.C. §12637(d)),
- (p) Any allowance paid under the provisions of 38 U.S.C. 1805 to a child suffering from spina bifida who is the child of a Vietnam veteran (38 U.S.C. §1805),
- (q) 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),
- (r) Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. §2931).

## PART 2: ADJUSTED INCOME

### 6-2.A. INTRODUCTION

#### Overview

HUD regulations require PHAs to deduct from annual income any of five (5) mandatory deductions for which a family qualifies. The resulting amount is the family's adjusted income. Mandatory deductions are found in 24 CFR §5.611.

5.611(a) Mandatory deductions. In determining adjusted income, the responsible entity [PHA] must deduct the following amounts from annual income:

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

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

#### Anticipating Expenses

Generally, MHB 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), MHB will estimate costs based on historic data and known future costs.

If a family has an accumulated debt for medical or disability assistance expenses, MHB 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. MHB may require the family to provide documentation of payments made in the preceding year.

### 6-2.B. DEPENDENT DEDUCTION

A deduction of \$480 is taken for each dependent [24 CFR §5.611(a)(1)]. *Dependent* is defined as any family member other than the head, spouse, or co-head who is under

the age of 18 or who is 18 or older and is a person with disabilities or a full-time student. Foster children, foster adults, and live-in aides are never considered dependents [24 CFR §5.603(b)].

**6-2.C. ELDERLY OR DISABLED FAMILY DEDUCTION**

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

**6-2.D. MEDICAL EXPENSES DEDUCTION [24 CFR §5.611(a)(3)(i)]**

Unreimbursed medical expenses may be deducted to the extent that, in combination with any disability assistance expenses, they exceed three (3) percent of annual income.

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

**Definition of *Medical Expenses***

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

Generally, MHB will use the most current IRS Publication 502, *Medical and Dental Expenses*, to determine the costs that qualify as medical expenses.

<b>Summary of Allowable Medical Expenses from IRS Publication 502</b>	
Services of medical professionals	Substance abuse treatment programs
Surgery and medical procedures that are necessary, legal, non-cosmetic	Psychiatric treatment
Services of medical facilities	Ambulance services and some costs of transportation related to medical expenses
Hospitalization, long-term care, and in-home nursing services	The cost and care of necessary equipment related to a medical condition (e.g., eyeglasses/lenses, hearing aids, crutches, and artificial teeth)
Prescription medicines and insulin, but <u>not</u> nonprescription medicines even if recommended by a doctor	Cost and continuing care of necessary service animals
Improvements to housing directly related to medical needs (e.g., ramps for a wheel chair, handrails)	Medical insurance premiums or the cost of a health maintenance organization (HMO)

**Note:** This chart provides a summary of eligible medical expenses only. Detailed information is provided in IRS Publication 502. Medical expenses are considered only to the extent they are not reimbursed by insurance or some other source.

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

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

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

#### **6-2.E. DISABILITY ASSISTANCE EXPENSES DEDUCTION [24 CFR §5.603(b) and 24 CFR §5.611(a)(3)(ii)]**

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

#### **Earned Income Limit on the Disability Assistance Expense Deduction**

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

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

The family must identify the family members enabled to work as a result of the disability assistance expenses. In evaluating the family’s request, MHB 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 MHB determines that the disability assistance expenses enable more than one family member to work, the expenses will be capped by the sum of the family members’ incomes.

#### **Eligible Disability Expenses**

Examples of auxiliary apparatus are provided in the *HCV Guidebook* as follows: “Auxiliary apparatus are items such as wheelchairs, ramps, adaptations to vehicles, or

special equipment to enable a blind person to read or type, but only if these items are directly related to permitting the disabled person or other family member to work” [HCV GB, p. 5-30].

HUD advises PHAs to further define and describe auxiliary apparatus and other eligible expenses.

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

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

### ***Eligible Attendant Care***

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

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

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

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

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

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

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

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

## **6-2.F. CHILD CARE EXPENSE DEDUCTION**

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

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

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

### **Qualifying for the Deduction**

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

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 (i.e., seeking work, pursuing an education, or being gainfully employed).

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

***Seeking Work***

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

***Furthering Education***

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

***Being Gainfully Employed***

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

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

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

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

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

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

When the child care expense being claimed is to enable a family member to work, only one family member's income will be considered for a given period of time. When more than one family member works during a given period, MHB 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. Generally, MHB may not refuse to give a family the child care expense deduction because there is an adult family member in the household that may be available to provide child care [VG, p. 26].

#### ***Allowable Child Care Activities***

For school-age children, costs attributable to public or private school activities during standard school hours are not considered. Expenses incurred for supervised activities after school or during school holidays (e.g., summer day camp, after-school sports league, etc.) 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, MHB will prorate the costs and allow only that portion of the expenses that is attributable to child care for eligible activities. For example, if the care provider also cares for a child with disabilities who is 13 or older, the cost of care will be prorated. Unless otherwise specified by the child care provider, the calculation will be based upon the number of hours spent in each activity and/or the number of persons under care.

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

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

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

## **PART 3: CALCULATING FAMILY SHARE AND PHA SUBSIDY**

### **6-3.A. OVERVIEW OF RENT AND SUBSIDY CALCULATIONS**

#### **Total Tenant Payment (“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 2)
- 10 percent of the family’s monthly gross income (annual income, as defined in Part 1, divided by 12)
- The welfare rent (in as-paid states only)
- A minimum rent between of \$50 that is established by MHB

MHB has authority to suspend and exempt families from minimum rent when a financial hardship exists, as defined in section 6-3.B.

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

#### ***Welfare Rent [24 CFR §5.628]***

Welfare rent does not apply in this locality.

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

The minimum rent or total tenant payment (TTP) for this locality is \$50.

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

If a family chooses a unit with a gross rent (i.e., rent to owner plus an allowance for tenant-paid utilities) that exceeds MHB’s applicable payment standard: (1) the family will pay more than the TTP, and (2) at initial occupancy MHB may not approve the tenancy if it would require the family share to exceed forty (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 6-3.C.)

#### **MHB Subsidy [24 CFR §982.505(b)]**

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

**Utility Reimbursement [24 CFR §982.514(b)]**

When MHB subsidy for a family exceeds the rent to owner, the family is due a utility reimbursement. HUD permits MHB to pay the reimbursement to the family or directly to the utility provider. Currently, MHB makes utility reimbursements to the family, however, MHB, at any time, may transition to pay the reimbursement directly to the utility provider. MHB may recover from the participant any fees or charges assessed to MHB due to the participant not providing or not maintaining the necessary account information in a timely manner. Should MHB make the payment directly to the utility provider, MHB shall be entitled to the full reimbursement from the utility provider for overpayments, and the pro rata share of any rebate.

**6-3.B. FINANCIAL HARDSHIPS AFFECTING MINIMUM RENT [24 CFR §5.630]**

The financial hardship rules described below apply in this jurisdiction because MHB has established a minimum rent of \$50. If HUD allows, MHB may increase the minimum rent amount or the calculation of TTP for purposes of utility allowance payments.

**Overview**

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

**HUD-Defined Financial Hardship**

Financial hardship includes the following situations:

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

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

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

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

For a family to qualify under this provision, the cause of the potential eviction must be the family's failure to pay rent to the owner or tenant-paid utilities. MHB may require the family to demonstrate its current living expenses and determine if

spending choices made by the family are contributing to its ability to pay the minimum rent. If such a determination is made, MHB may deny the hardship request.

- (3) Family income has decreased because of changed family circumstances, including the loss of employment. In the case of loss of employment, MHB may require the family to demonstrate its efforts to obtain new employment and may limit the time period for the duration of the minimum rent.
- (4) A death has occurred in the family. In order to qualify under this provision, a family must describe, to MHB’s satisfaction, 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 MHB as requiring a hardship exemption. At the current time, MHB has not established any additional hardship criteria.

**Implementation of Hardship Exemption**

***Determination of Hardship***

When a family requests a financial hardship exemption, the family must provide full information and documentation in support of the request. Once all documentation and information necessary to make a determination regarding the hardship exemption, MHB may suspend the minimum rent requirement beginning the first of the month following the family’s completed request, if MHB has not made a determination regarding the hardship exemption.

If MHB then determines that the financial hardship exists, MHB must determine whether the hardship is *temporary* or *long-term*. Generally, MHB 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>			
<b>Family Share – No Hardship</b>		<b>Family Share – With Hardship</b>	
<b>\$0</b>	30% of monthly adjusted income	\$0	<b>30% of monthly adjusted income</b>
<b>\$15</b>	10% of monthly gross income	\$15	<b>10% of monthly gross income</b>
<b>N/A</b>	Welfare rent	N/A	<b>Welfare rent</b>
<b>\$50</b>	Minimum rent	\$50	<b>Minimum rent</b>
<b>Minimum rent applies. TTP = \$50</b>		<b>hardship exemption granted. TTP = \$15</b>	

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, and provide any supporting information or documentation. Generally, MHB will make the determination of hardship within 30 calendar days.

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

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

MHB will require the family to repay the suspended amount within 30 calendar days of the MHB's notice that a hardship exemption has not been granted. If MHB determines that the family committed fraud or otherwise misrepresented its circumstances in order to seek qualification or to actually qualify for the hardship exemption, MHB may terminate assistance to the family.

### ***Temporary Hardship***

If MHB determines that a qualifying financial hardship is *temporary*, MHB must suspend the minimum rent for the 90-day period beginning the first of the month following the date of the family's completed 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 MHB the amounts suspended. HUD requires MHB to offer a reasonable repayment agreement, on terms and conditions established by MHB. MHB also may determine that circumstances have changed and the hardship is now a long-term hardship. Generally, MHB will enter into a repayment agreement in accordance with the procedures found in Chapter 16 of this Administrative Plan, absent any evidence of fraud or misrepresentation by the family.

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

If MHB determines that the financial hardship is *long-term*, MHB will 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 completed 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, absent any evidence of fraud or misrepresentation by the family.

Generally, 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.

### **6-3.C. APPLYING PAYMENT STANDARDS [24 CFR §982.505]**

#### **Overview**

MHB's schedule of payment standards is used to calculate housing assistance payments for HCV families. This section covers the application of the MHB's payment standards. The establishment and revision of the MHB'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 PHA'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 MHB has established an exception payment standard for a designated part of an FMR area and a family's unit is located in the exception area, MHB must use the appropriate payment standard for the exception area.

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

#### **Decreases**

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

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

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

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

### ***Increases***

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

Families requiring, requesting or undergoing interim reexaminations may have their HAP payments calculated using the higher payment standard.

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

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

### ***Reasonable Accommodation***

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

## **6-3.D. APPLYING UTILITY ALLOWANCES [24 CFR §982.517]**

### ***Overview***

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

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

**Reasonable Accommodation**

HCV program regulations require a MHB to approve a utility allowance amount higher than shown on the MHB's schedule if a higher allowance is needed as a reasonable accommodation for a family member with a disability.

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

**Utility Allowance Revisions**

At reexamination, MHB must use the MHB's current utility allowance schedule [24 CFR §982.517(d)(2)].

Generally, any revised utility allowances will be applied to a family's rent and subsidy calculations at the first annual reexamination, or interim reexamination requested by the family, that is effective after the allowance is adopted. In MHB's discretion, MHB may also require MHB requested interim reexaminations for families in order to apply the new utility allowances.

**6-3.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. MHB must prorate the assistance provided to a mixed family. MHB 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 PHA subsidy for a family is calculated at \$500 and two of four family members are ineligible, the PHA subsidy would be reduced to \$250.

**EXHIBIT 6-1: ANNUAL INCOME INCLUSIONS****24 CFR §5.609**

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

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

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

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

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

(6) Welfare assistance payments.

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

(A) Qualify as assistance under the TANF program definition at 45 CFR § 260.31<sup>5</sup>; and

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

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

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

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

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

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

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

<p><b>HHS DEFINITION OF "ASSISTANCE"</b></p>
--

**45 CFR §: GENERAL TEMPORARY ASSISTANCE FOR NEEDY FAMILIES**

**260.31 What does the term "assistance" mean?**

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

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

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

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

---

<sup>5</sup> Text of 45 CFR § 260.31 follows.

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

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

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

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

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

(4) Refundable earned income tax credits;

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

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

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

<b>EXHIBIT 6-2: ANNUAL INCOME EXCLUSIONS<sup>6</sup></b>
--

**24 CFR §5.609**

*(c) Annual income does not include the following:*

- (1) Income from employment of children (including foster children) under the age of 18 years;
- (2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);
- (3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (b)(5) of this section);
- (4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
- (5) Income of a live-in aide, as defined in Sec. 5.403;
- (6) Subject to paragraph (b)(9) of this section, the full amount of student financial assistance paid directly to the student or to the educational institution;
- (7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;
- (8) (i) Amounts received under training programs funded by HUD;
- (ii) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security

---

<sup>6</sup> FR Notice 11/24/08 makes note of pending revisions to this regulation, namely the exclusion of any deferred disability benefits received in lump-sum or prospective monthly amounts from the Department of Veterans Affairs (VA). At the time of publication, 24 CFR §5.609 had yet to be updated.

Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

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

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

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

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

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

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

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

(13) [Reserved]

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

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

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

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

<p>Sources of Income Excluded by Federal Statute from Consideration as Income for Purposes of Determining Eligibility or Benefits</p>
---

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

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

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

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

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

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

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

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

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

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

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

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

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

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

o) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or

the Apache Tribe of Mescalero Reservation (Pub. L. 95-433);

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

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

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

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

**EXHIBIT 6-3: TREATMENT OF FAMILY ASSETS****24 CFR §5.603(b) Net Family Assets**

(1) Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded.

(2) In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining annual income under Sec. 5.609.

(3) In determining net family assets, PHAs or owners, as applicable, shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor.

In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

(4) For purposes of determining annual income under Sec. 5.609, the term "net family assets" does not include the value of a home currently being purchased with assistance under part 982, subpart M of this title. This exclusion is limited to the first 10 years after the purchase date of the home.

<b>EXHIBIT 6-4: EARNED INCOME DISALLOWANCE FOR PERSONS WITH DISABILITIES</b>
--

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

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

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

*Disallowance.* Exclusion from annual income.

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

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

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

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

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

*(c) Disallowance of increase in annual income—*

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

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

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

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

**EXHIBIT 6-5: THE EFFECT OF WELFARE BENEFIT REDUCTION****24 CFR §5.615**

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

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

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

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

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

Imputed welfare income. The amount of annual income not actually received by a family, as a result of a specified welfare benefit reduction, that is nonetheless included in the family's annual income for purposes of determining rent.

Specified welfare benefit reduction.

(1) A reduction of welfare benefits by the welfare agency, in whole or in part, for a family member, as determined by the welfare agency, because of fraud by a family member in connection with the welfare program; or because of welfare agency sanction against a family member for noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

(2) "Specified welfare benefit reduction" does not include a reduction or termination of welfare benefits by the welfare agency:

(i) at expiration of a lifetime or other time limit on the payment of welfare benefits;

(ii) because a family member is not able to obtain employment, even though the family member has complied with welfare agency economic self-sufficiency or work activities requirements; or

(iii) because a family member has not complied with other welfare agency requirements.

(c) Imputed welfare income.

(1) A family's annual income includes the amount of imputed welfare income (because of a specified welfare benefits reduction, as specified in notice to the PHA by the welfare agency), plus the total amount of other annual income as determined in accordance with Sec. 5.609.

(2) At the request of the PHA, the welfare agency will inform the PHA in writing of the amount and term of any specified welfare benefit reduction for a family member, and the reason for such reduction, and will also inform the PHA of any subsequent changes in the term or amount of such specified welfare benefit reduction. The PHA will use this information to determine the amount of imputed welfare income for a family.

(3) A family's annual income includes imputed welfare income in family annual income, as determined at the PHA's interim or regular reexamination of family income and composition, during the term of the welfare benefits reduction (as specified in information provided to the PHA by the welfare agency).

(4) The amount of the imputed welfare income is offset by the amount of additional income a family receives that commences after the time the sanction was imposed. When such additional income from other sources is at least equal to the imputed

(5) The PHA may not include imputed welfare income in annual income if the family was not an assisted resident at the time of sanction.

(d) Review of PHA decision.

(1) Public housing. If a public housing tenant claims that the PHA has not correctly calculated the amount of imputed welfare income in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the tenant written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. The PHA notice shall also state that if the tenant does not agree with the PHA determination, the tenant may request a grievance hearing in accordance with part 966, subpart B of this title to review the PHA determination. The tenant is not required to pay an escrow deposit pursuant to Sec. 966.55(e) for the portion of tenant rent attributable to the imputed welfare income in order to obtain a grievance hearing on the PHA determination.

(2) Section 8 participant. A participant in the Section 8 tenant-based assistance program may request an informal hearing, in accordance with Sec. 982.555 of this title, to review the PHA determination of the amount of imputed welfare income that must be included in the family's annual income in accordance with this section. If the family claims that such amount is not correctly calculated in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the family written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. Such notice shall also state that if the family does not agree with the PHA determination, the family may request an informal hearing on the determination under the PHA hearing procedure.

(e) PHA relation with welfare agency.

(1) The PHA must ask welfare agencies to inform the PHA of any specified welfare benefits reduction for a family member, the reason for such reduction, the term of any such reduction, and any subsequent welfare agency determination affecting the amount or term of a specified welfare benefits reduction. If the welfare agency determines a specified welfare benefits reduction for a family member, and gives the PHA written notice of such reduction, the family's annual incomes shall include the imputed welfare income because of the specified welfare benefits reduction.

(2) The PHA is responsible for determining the amount of imputed welfare income that is included in the family's annual income as a result of a specified welfare benefits reduction as determined by the welfare agency, and specified in the notice by the welfare agency to the PHA. However, the PHA is not responsible for determining whether a reduction of welfare benefits by the welfare agency was correctly determined by the welfare agency in accordance with welfare program requirements and procedures, or for providing the opportunity for review or hearing on such welfare agency determinations.

(3) Such welfare agency determinations are the responsibility of the welfare agency, and the family may seek appeal of such determinations through the welfare agency's normal due process procedures. The PHA shall be entitled to rely on the welfare agency notice to the PHA of the welfare agency's determination of a specified welfare benefits reduction.

## Chapter 7

### VERIFICATION

[References: 24 CFR §982.516, 24 CFR §982.551,  
24 CFR §5.230, Notice PIH 2010-19]

#### INTRODUCTION

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

MHB will follow the verification guidance provided by HUD in Notice PIH 2010-19 and any subsequent guidance issued by HUD. This chapter summarizes those requirements and provides supplementary PHA policies.

Part 1 describes the general verification process. More detailed requirements related to individual factors are provided in subsequent parts including family information (Part 2), income and assets (Part 3), and mandatory deductions (Part IV).

Verification policies, rules and procedures will be modified as needed to accommodate persons with disabilities. All information obtained through the verification process will be handled in accordance with the records management policies of MHB.

#### PART 1: GENERAL VERIFICATION REQUIREMENTS

##### **7-1.A. FAMILY CONSENT TO RELEASE OF INFORMATION [24 CFR §982.516 AND §982.551, 24 CFR §5.230]**

The family must supply any information that MHB or HUD determines is necessary to the administration of the HCV Program and must consent to MHB's verification of that information [24 CFR §982.551].

##### **Consent Forms**

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

**Consequences and 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, MHB will deny admission to applicants and terminate assistance of participants for the family’s failure to cooperate with the verification and/or other HCV Program requirements. The family may request an informal review (applicants) or informal hearing (participants) in accordance with MHB procedures.

**7-1.B. OVERVIEW OF VERIFICATION REQUIREMENTS**

**HUD’s Verification Hierarchy [Notice PIH 2010-19]**

HUD authorizes MHB to use six (6) methods to verify family information and specifies the circumstances in which each method will be used. In general HUD requires the MHB to use the highest most reliable form of verification that is available and to document the reasons when the PHA uses a lesser form of verification.

The verification hierarchy that MHB will use is: (1) Up-front Income Verification (“UIV”) using HUD’s Enterprise Income Verification (“EIV”) system, (2) Up-front Income Verification (“UIV”) using a non-HUD system, (3) Written Third-Party Verification (may be provided by applicant or participant), (4) Written Third-party Verification Form, (5) Oral Third-party Verification, and (6) Self-Certification. This hierarchy is shown on the chart below:

<b>Level</b>	<b>Verification Technique</b>	<b>Ranking</b>
<b>6</b>	<b>Upfront Income Verification (UIV)</b> using HUD’s Enterprise Income Verification (EIV) system (not available for income verifications of applicants)	<b>Highest</b> (Mandatory)
<b>5</b>	<b>Upfront Income Verification (UIV)</b> using non-HUD system	<b>Highest</b> (Optional)
<b>4</b>	<b>Written Third Party Verification</b>	<b>High</b> (Mandatory to supplement EIV-reported income sources and when EIV has no data; Mandatory for non-EIV reported income sources; Mandatory when tenant disputes EIV-reported employment and income information <b>and</b> is unable to provide acceptable documentation to support dispute)
<b>3</b>	<b>Written Third Party Verification Form</b>	<b>Medium-Low</b> (Mandatory if written third party verification documents are not available or rejected by the PHA; and when the applicant or tenant is unable to provide acceptable documentation)
<b>2</b>	<b>Oral Third Party Verification</b>	<b>Low</b> (Mandatory if written third party verification is not available)
<b>1</b>	<b>Tenant Declaration</b>	<b>Low</b> (Use as a last resort when unable to obtain any type of third party verification)

**Note:** This verification hierarchy applies to income determinations for applicants and participants. However, EIV is not available for verifying income of applicants.

Each of the verification methods is discussed in subsequent sections below.

### **Requirements for Acceptable Documents**

Generally, any documents used for verification must be the original (not photocopies) and generally must be dated within 60 days of the date they are provided to MHB. The documents must not be damaged, altered or in any way illegible. MHB may consider some reasonably reliable documents, or specified scanned documents as originals. For example, print-outs from Web pages will generally be considered original documents.

Any family self-certifications must be made in a format acceptable to the MHB.

### **File Documentation**

MHB 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 MHB has followed the verification policies set forth in this Administrative Plan. The record should be sufficient to enable a staff member reviewer to understand the process followed and conclusions reached. At a minimum, MHB will document, in the family file, the following: (i) reported family annual income, (ii) value of assets, (iii) expenses related to deductions from annual income, and (iv) other factors influencing the adjusted income or income-based rent determination. In addition, when MHB is unable to obtain 3rd party verification, MHB will document in the family file the reason that third-party verification was not available [24 CFR §960.259(c)(1); Notice PIH 2010-19].

### **7-1.C. UP-FRONT INCOME VERIFICATION (UIV)**

Up-front income verification ("UIV") refers to the PHA's use of the verification tools available from independent sources that maintain computerized information about earnings and benefits. UIV will be used to the extent that these systems are available to MHB.

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 MHB 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 MHB. See Chapter 6 for the PHA's policy on the use of UIV/EIV to project annual income.

## **Upfront Income Verification Using HUD's Enterprise Income Verification (EIV) System (Mandatory)**

HUD's EIV system contains data showing earned income, unemployment benefits, social security benefits, and SSI benefits for participant families. HUD requires MHB to use the EIV system in its entirety. The following policies apply to the use of HUD's EIV system.

### **EIV Income Reports**

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

MHB may obtain income reports for annual reexaminations on a monthly basis. Reports will be generated as part of the regular reexamination process.

Income reports will be compared to family-provided information as part of the annual reexamination process. Income reports may be used in the calculation of annual income, as described in Section 6-1.C. Income reports may also be used to meet the regulatory requirement for third party verification, as described above. Policies for resolving discrepancies between income reports and family-provided information will be resolved as described in Section 6-1.C. and in this chapter.

Income reports may be used in interim reexaminations to identify any discrepancies between reported income and income shown in the EIV system, and as necessary to verify and calculate earned income, unemployment benefits, Social Security and/or SSI benefits. EIV will also be used to verify that families claiming zero income are not receiving income from any of these sources.

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

When MHB determines through income reports and third-party verification that a family has concealed or under-reported income, corrective action, up to, and including termination of assistance, will be taken pursuant to the policies in Chapter 14, Program Integrity.

### **EIV Discrepancy Reports**

The EIV discrepancy report is a tool for identifying families who may have concealed or under-reported income. Data in the discrepancy report represents income for past reporting periods and may be between six (6) months and thirty (30) months old at the time reports are generated.

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

Income discrepancies may be identified through use of the EIV "Income Discrepancy Report" or by review of the discrepancy tab for the individual family.

MHB may generate the Income Discrepancy Report at least once every 6 months. MHB will review the EIV discrepancy tab during processing of annual and interim reexaminations.

When MHB determines that a participant appearing on the Income Discrepancy Report has not concealed or under-reported income, the participant's name will be placed on a list of "false positive" reviews. To avoid multiple reviews in this situation, participants appearing on this list may be eliminated from discrepancy processing until a subsequent interim or annual reexamination has been completed.

When it appears that a family may have concealed or under-reported income, MHB will request written third-party verification of the income in question.

When MHB determines through file review and third-party verification that a family has concealed or under-reported income, corrective action, up to, and including termination of assistance, will be taken pursuant to the policies in Chapter 14, Program Integrity.

### **EIV Identity Verification**

The EIV system verifies tenant identities against Social Security Administration ("SSA") records. These records are compared to PIC data for a match on social security number, name, and date of birth.

PHAs are required to use EIV's *Identity Verification Report* on a monthly basis to improve the availability of income information in EIV [Notice PIH 2010-3]. When identity verification for a participant fails, a message will be displayed within the EIV system and no income information will be displayed.

MHB will identify participants whose identity verification has failed by reviewing EIV's *Identity Verification Report* on a monthly basis.

MHB will attempt to resolve PIC/SSA discrepancies by obtaining appropriate documentation from the participant. When MHB determines that discrepancies exist due to MHB errors such as spelling errors or incorrect birth dates, the errors will be corrected.

### **Upfront Income Verification Using Non-HUD Systems (Optional)**

In addition to mandatory use of the EIV system, HUD encourages PHAs to utilize other upfront verification sources. MHB will inform all applicants and participants of its use of UIV resources.

### **7-1.D. THIRD-PARTY WRITTEN AND ORAL VERIFICATION**

HUD's current verification hierarchy defines two types of written third-party verification. The more preferable form, "written third-party verification," consists of an original document, or, in MHB's discretion, a reasonably reliable copy or other verification, generated by a third-party source, which may be received directly from a third-party source or provided to MHB by the family. If written third-party verification is not available, MHB will attempt to obtain a "written third-party verification form." This is a standardized form used to collect information from a third party.

**Written Third-Party Verification [Notice PIH 2010-19]**

Written third-party verification documents must be original (or, in MHB's discretion, a reasonably reliable copy or other verification) and authentic and may be supplied by the family or received from a third-party source.

Examples of acceptable tenant-provided documents include, but are not limited to: pay stubs, payroll summary reports, employer notice or letters of hire and termination, SSA benefit verification letters, bank statements, child support payment stubs, welfare benefit letters and/or printouts, and unemployment monetary benefit notices, etc.

Generally, MHB will obtain, at minimum, two current and consecutive pay stubs for determining annual income from wages.

MHB 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.

Generally, third-party documents provided by the family must be dated within sixty (60) days of MHB request date. If permitted by regulations, MHB may accept third-party documents from benefit providers that are more than sixty (60) days old if adjustments for the particular benefit are yearly and the document provided is deemed reasonably reliable (e.g., Social Security COLA verification, etc.).

If MHB determines that third-party documents provided by the family are not acceptable, MHB will explain the reason to the family and request additional documentation.

Generally, as verification of earned income, MHB will request at least two consecutive pay stubs within the 60-day period prior to MHB's request.

**Written Third-Party Verification Form**

When upfront verification is not available and the family is unable to provide written third-party documents, MHB will request a written third-party verification form. HUD's position is that this traditional third-party verification method presents administrative burdens and risks which may be reduced through the use of family-provided third-party documents.

A written third-party verification form is mandatory when there is an unreported source of income or a substantial difference in reported income (\$2,400 annually or more) and there is no UIV or tenant-provided documentation to support the income discrepancy.

PHAs may mail, fax, scan, or e-mail third-party written verification form requests to third-party sources.

Generally, MHB will send third-party verification forms directly to the third party. Third-party verification forms will be sent when third-party verification documents are unavailable or are rejected by MHB.

**Oral Third-Party Verification [Notice PIH 2010-19]**

For third-party oral verification, PHAs contact sources, identified by UIV techniques or by the family, by telephone or in person.

Oral third-party verification will be used if neither form of written third-party verification is available. Third-party oral verification may be used when requests for written third-party verification forms have not been returned within a reasonable time—e.g., 10 business days.

MHB will document in the file the date and time of the telephone call or visit, the name of the person contacted, the telephone number, as well as the information confirmed.

In collecting third-party oral verification, MHB staff will record in the family's file the name and title of the person contacted, the date and time of the conversation (or attempt), the telephone number used, and the facts provided.

When any source responds verbally to the initial written request for verification MHB will accept the verbal response as oral verification but will also request that the source complete and return any verification forms that were provided.

### **When Third-Party Verification is Not Required [Notice PIH 2010-19]**

Third-party verification may not be available in all situations. HUD has acknowledged that it may not be cost-effective or reasonable to obtain third-party verification of income, assets, or expenses when these items would have a minimal impact on the family's total tenant payment.

If the family cannot provide original documents, MHB will pay the service charge required to obtain third-party verification, unless it is not cost effective in which case a self-certification may be acceptable as the only means of verification. The cost of verification will not be passed on to the family.

Generally, the cost of postage and envelopes to obtain third-party verification of income, assets, and expenses is not an unreasonable cost [VG, p. 18].

### ***Primary Documents***

Third-party verification is not required when legal documents are the primary source, such as a birth certificate or other legal documentation of birth.

### ***Imputed Assets***

HUD permits PHAs to accept a self-certification from a family as verification of assets disposed of for less than fair market value [HCV GB, p. 5-28]. MHB will accept a self-certification from a family as verification of assets disposed of for less than fair market value.

## **7-1.E. SELF-CERTIFICATION – TENANT DECLARATION**

Self-certification, or “tenant declaration,” is used as a last resort when MHB is unable to obtain third-party verification.

When MHB relies on a tenant declaration for verification of income, assets, or expenses, the family's file must be documented to explain why third-party verification was not available.

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 MHB.

MHB 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 MHB and must be signed by the family member whose information or status is being verified.

**PART 2: VERIFYING FAMILY INFORMATION**

**7-2.A. VERIFICATION OF LEGAL IDENTITY**

MHB will require families to furnish verification of legal identity for each household member.

Verification of Legal Identity for Adults	Verification of Legal Identity for Children
Certificate of birth, naturalization papers	Certificate of birth
Church issued baptismal certificate	Adoption papers
Current, valid driver's license or Department of Motor Vehicles identification card	Custody agreement
U.S. military discharge (DD 214)	Health and Human Services ID
U.S. passport	School records
Employer identification card	

If a document submitted by a family is illegible or otherwise questionable, more than one of these documents may be required. If none of these documents can be provided and at MHB'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 MHB and be signed in the presence of an MHB representative or notary public. Legal identity will be verified on an as needed basis.

**MHB reserves the right to take a current picture of all applicants and participants generally every (4) four years. Video documentation may be used as necessary.**

**7-2.B. SOCIAL SECURITY NUMBERS [24 CFR §5.216 and Notice PIH 2010-3]**

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.

MHB must accept the following documentation as acceptable evidence of the social security number:

- An original SSN card issued by the Social Security Administration (SSA), or reasonable facsimile thereof acceptable to MHB,
- An original SSA-issued document, or reasonable facsimile thereof acceptable to MHB, 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, along with other identifying information of the individual, or a reasonable facsimile thereof acceptable to MHB, and
- Such other evidence of the SSN as HUD may prescribe in administrative instructions.

MHB may reject documentation of an SSN provided by an applicant or participant if the document is not an original document, if the original document has been altered, mutilated, or is not legible, if the document appears to be forged, or if the document is not a reasonable facsimile acceptable to MHB.

MHB 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 MHB within a reasonable period of time, typically, not exceeding ninety (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. MHB 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.

MHB may grant one additional, not to exceed, 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, MHB will terminate the individual’s assistance.

When the 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. MHB will generally 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, not to exceed, 90-day extension will be granted if MHB determines that the participant’s failure to comply was due to unforeseen circumstances and was outside of the participant’s control. During the period MHB is

awaiting documentation of the SSN, the child will be counted as part of the assisted household.

Social security numbers must be verified only once during continuously-assisted occupancy.

Once the individual's verification status is classified as "verified," MHB may remove and destroy or digitize copies of documentation accepted as evidence of social security numbers by the time of the next reexamination.

### **7-2.C. DOCUMENTATION OF AGE**

A birth certificate or other official record of birth, including a reasonable facsimile thereof acceptable to MHB, is the preferred form of age verification for all family members. For elderly family members an original document that provides evidence of the receipt of social security retirement benefits is acceptable.

If an official record of birth or evidence of social security retirement benefits cannot be provided, including a reasonable facsimile thereof acceptable to MHB, MHB may 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.

### **7-2.D. FAMILY RELATIONSHIPS**

Applicants and program participants are required to identify the relationship of each household member to the head of household. Definitions of the primary household relationships are provided in the Eligibility chapter.

Family relationships are verified only to the extent necessary to determine a family's eligibility and level of assistance. Certification by the head of household normally is sufficient verification of family relationships.

#### **Marriage**

Certification by the head of household is normally sufficient verification. If MHB has reasonable doubts about a marital relationship, MHB 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) and have otherwise fulfilled state law requirements regarding common law marriage.

### **Separation or Divorce**

Certification by the head of household is normally sufficient verification. If MHB has reasonable doubts about a separation or divorce, MHB will require the family to document the divorce, or separation. A certified copy, or other copy reasonably acceptable to MHB, of a divorce decree, signed by a court officer, is required to document that a couple is divorced.

Generally, a copy of a court-ordered maintenance or other court record is required to document a separation. If no court document is available, documentation from a community-based agency will be accepted.

### **Absence of Adult Member**

If an adult member who was formerly a member of the household is reported to be permanently absent, the family must provide evidence to support that the person is no longer a member of the family (e.g., documentation of another address at which the person resides such as a lease or utility bill).

### **Foster Children and Foster Adults**

Generally, third-party verification from the state or local government agency responsible for the placement of the individual with the family is required.

## **7-2.E. VERIFICATION OF STUDENT STATUS**

### **General Requirements**

MHB requires families to provide information about the student status of all students who are eighteen (18) years of age or older. This information will be verified only if: (i) the family reports full-time student status for an adult other than the head, spouse, or co-head, (ii) the family reports child care expenses to enable a family member to further his or her education, and (iii) the family includes a student enrolled in an *institution of higher education*.

### **Restrictions on Assistance to Students Enrolled in Institutions of Higher Education**

This section applies only to students who are seeking assistance on their own, separately from their parents. It does not apply to students residing with parents who are seeking or receiving HCV assistance.

In accordance with the verification hierarchy described in Section 7-1.B, MHB 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 3-2.E.
- The student is married.

- The student has at least one dependent child, as defined in Section 3-2.E.
- The student is a person with disabilities, as defined in Section 3-2.E, and was receiving assistance prior to November 30, 2005.

If MHB cannot verify at least one of these exemption criteria, MHB 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, MHB will then proceed to verify either the student's parents' income eligibility (see Section 7-3.J) or the student's independence from his/her parents (see below).

### **Independent Student**

MHB will verify a student's independence from his/her parents and determine if the student's parents' income is relevant for determining the student's eligibility by doing some or all of the following:

- Either reviewing and verifying previous address information to determine whether the student has established a household separate from his/her parents for at least one (1) 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 3-2.E),
- Reviewing prior year income tax returns to verify whether a parent has claimed the student as a dependent, and
- 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.

### **7-2.F. DOCUMENTATION OF DISABILITY**

MHB must verify the existence of a disability in order to allow certain income disallowances and deductions from income. MHB is not permitted to inquire about the nature or extent of a person's disability [24 CFR §100.202(c)]. MHB will not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If MHB receives a verification document that provides such information, MHB will not place this information in the tenant file. Under no circumstances will MHB request a participant's medical record(s). For more information on health care privacy laws, see the Department of Health and Human Services' website at [www.os.dhhs.gov](http://www.os.dhhs.gov).

The above cited regulation does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they are persons with disabilities [VG, p. 24]:

- Inquiry into an applicant's ability to meet the requirements of ownership or tenancy,
- Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with disabilities or to persons with a particular type of disability,

- Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with disabilities or to persons with a particular type of disability,
- Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance,
- Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance,

### **Family Members Receiving SSA Disability Benefits**

Verification of the receipt of disability benefits from the Social Security Administration (“SSA”) is generally sufficient verification of disability for the purpose of qualifying for waiting list preferences (if applicable) or certain income disallowances and deductions [VG, p. 23].

For family members claiming disability who receive disability benefits from the SSA, MHB 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, MHB will request a current (usually 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), MHB 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 MHB.

### **Family Members Not Receiving SSA Disability Benefits**

Generally, receipt of veteran’s disability benefits, worker’s compensation, or other non-SSA benefits based on the individual’s claimed disability are not sufficient verification that the individual meets HUD’s definition of disability in 24 CFR §5.603.

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.

## **7-2.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 MHB 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.

MHB may request verification of the declaration by requiring presentation of a birth certificate, United States passport or other appropriate documentation.

Generally, family members who claim U.S. citizenship or national status will not be required to provide additional documentation unless MHB 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 7-2 at the end of this chapter summarizes documents family members must provide.

#### ***PHA Verification*** [HCV GB, pp. 5-3 and 5-7]

For family members age 62 or older who claim to be eligible immigrants, proof of age is required in the manner described in 7-2.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, MHB must verify immigration status with the United States Citizenship and Immigration Services (USCIS).

MHB will follow all USCIS protocols for verification of eligible immigration status.

### **7-2.H. VERIFICATION OF PREFERENCE STATUS**

MHB will verify any local and/or ranking preferences claimed by an applicant.

For any family that has been terminated from its HCV program due to insufficient program funding, MHB will verify this preference using MHB's termination records.

## **PART 3: VERIFYING INCOME AND ASSETS**

Chapter 6, Part 1 of this Administrative Plan describes in detail the types of income that are included and excluded and how assets and income from assets are handled. Any assets and income reported by the family must be verified. This part provides MHB's

policies that supplement the general verification procedures specified in Part 1 of this chapter.

### **7-3.A. EARNED INCOME**

#### **Tips**

Unless tip income is included in a family member's W-2 by the employer, persons who work in industries where tips are standard will be required to sign a certified estimate of tips received for the prior year and tips anticipated to be received in the coming year.

### **7-3.B. BUSINESS AND SELF EMPLOYMENT INCOME**

Generally, business owners and self-employed persons will be required to provide:

- An audited financial statement for the previous fiscal year if an audit was conducted. If an audit was not conducted, a statement of income and expenses must be submitted and the business owner or self-employed person must certify to its accuracy.
- All schedules completed for filing federal and local taxes in the preceding year.
- If accelerated depreciation was used on the tax return or financial statement, an accountant's calculation of depreciation expense, computed using straight-line depreciation rules.

MHB 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 MHB may request documents that support submitted financial statements such as manifests, appointment books, cash books, or bank statements, etc.

If a family member has been self-employed less than three (3) months, MHB 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 MHB may require the family to provide documentation of income and expenses for this period and use that information to project income.

### **7-3.C. PERIODIC PAYMENTS AND PAYMENTS IN LIEU OF EARNINGS**

#### **Social Security/SSI Benefits**

To verify the SS/SSI benefits of applicants, MHB will request a current (generally dated within the last 60 days) SSA benefit verification letter from each family member that receives social security benefits. If the family is unable to provide the document(s), MHB may **assist** the applicant request a benefit verification letter from SSA's Web site at [www.socialsecurity.gov](http://www.socialsecurity.gov) or ask the family to request one by calling SSA at 1-800-772-

1213. Once the applicant has received the benefit verification letter they will be required to provide it to MHB.

To verify the SS/SSI benefits of participants, MHB may obtain information about social security/SSI benefits through the HUD EIV System, and confirm with the participant(s) that the current listed benefit amount is correct. If the participant disputes the EIV-reported benefit amount, or if benefit information is not available in HUD systems, MHB will request a current SSA benefit verification letter from each family member that receives social security benefits. If the family is unable to provide the document(s) MHB may **assist** the participant request a benefit verification letter from SSA's Web site at [www.socialsecurity.gov](http://www.socialsecurity.gov) or ask the family to request one by calling SSA at 1-800-772-1213. Once the participant has received the benefit verification letter they will be required to provide it to MHB.

### 7-3.D. ALIMONY OR CHILD SUPPORT

The way MHB will seek verification for alimony and child support differs depending on whether the family declares that it receives regular payments.

If the family declares that it **receives regular payments**, verification may be sought in the following order.

- Copy of the receipts and/or payment stubs for the 60 days prior to PHA request,
- Third-party verification form from the state or local child support enforcement agency,
- Third-party verification form from the person paying the support,
- Family's self-certification of amount received and of the likelihood of support payments being received in the future, or that support payments are not being received.

If the family declares that it **receives irregular or no payments**, in addition to the verification process listed above, the family must provide evidence that it has taken all reasonable efforts to collect amounts due. This may include:

- A statement from any agency responsible for enforcing payment that shows the family has requested enforcement and is cooperating with all enforcement efforts
- If the family has made independent efforts at collection, a written statement from the attorney or other collection entity that has assisted the family in these efforts. **Note:** Families are not required to undertake independent enforcement action.

### 7-3.E. ASSETS AND INCOME FROM ASSETS

#### Assets Disposed of for Less than Fair Market Value

The family must certify whether any assets have been disposed of for less than fair market value in the preceding two (2) years. MHB needs to verify only those certifications that warrant documentation [HCV GB, p. 5-28].

Generally, MHB will verify the value of assets disposed of if:

- MHB 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 MHB verified this amount. Now the person reports that she has given this \$10,000 to her son. MHB has a reasonable estimate of the value of the asset; therefore, re-verification of the value of the asset is not necessary.

Example 2: A family member has disposed of its 1/4 share of real property located in a desirable area and has valued her share at approximately \$5,000. Based upon market conditions, this declaration does not seem realistic. Therefore, MHB may verify the value of this asset.

### **7-3.F. NET INCOME FROM RENTAL PROPERTY**

The family must provide:

- A current executed lease for the property that shows the rental amount or certification from the current tenant
- A self-certification from the family members engaged in the rental of property providing an estimate of expenses for the coming year and the most recent IRS Form 1040 with Schedule E (Rental Income). If schedule E was not prepared, MHB 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.

### **7-3.G. RETIREMENT ACCOUNTS**

MHB will accept written third-party documents supplied by the family as evidence of the status of retirement accounts.

The type of document that will be accepted depends upon the family member's retirement status.

*Before* retirement, MHB will accept an original document, or a reasonable facsimile thereof acceptable to MHB, from the entity holding the account with a date that shows it is the most recently scheduled statement for the account but in no case earlier than 6 months from the effective date of the examination.

*Upon* retirement, MHB will accept an original document, or a reasonable facsimile thereof acceptable to MHB, from the entity holding the account that reflects any distributions of the account balance, any lump sums taken and any regular payments.

*After* retirement, MHB will accept an original document, or a reasonable facsimile thereof acceptable to MHB, 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.

### **7-3.H. INCOME FROM EXCLUDED SOURCES [HUD PIH Notice 2013-04]**

A detailed discussion of excluded income is provided in Chapter 6, Part 1.

Generally, MHB will obtain verification for income exclusions if, without verification, MHB would not be able to determine whether the income is to be excluded. For example: If a family's 16 year old has a job at a fast food restaurant, MHB will confirm that MHB's records verify the child's age but will not require third-party verification of the amount earned. However, if a family claims the earned income disallowance for a source of income, both the source and the income must be verified.

Generally, MHB will reconcile differences in amounts reported by the third party and the family only when the excluded amount is used to calculate the family share (as is the case with the earned income disallowance). In all other cases, MHB may report the amount to be excluded as indicated on documents provided by the family. MHB may accept an applicant's or participant's self-certification as verification of fully excluded income. MHB application and reexamination documentation, which is signed by all adult family members, may serve as the self-certification of the fully excluded income.

### **7-3.I. ZERO ANNUAL INCOME STATUS**

MHB will check UIV sources and/or request information from third-party sources to verify that certain forms of income such as unemployment benefits, TANF, SSI, etc., are not being received by families claiming to have zero annual income.

### **7-3.J. STUDENT FINANCIAL ASSISTANCE**

Any financial assistance, in excess of amounts received for tuition, that a person attending an institution of higher education receives under the Higher Education Act of 1965, from private sources, or from an institution of higher education must be considered income unless the student is over the age of 23 with dependent children or is residing with parents who are seeking or receiving HCV assistance [24 CFR §5.609(b)(9) and FR 4/10/06].

For students over the age of 23 with dependent children or students residing with parents who are seeking or receiving HCV assistance, the full amount of student financial assistance is excluded from annual income [24 CFR §5.609(c)(6)]. The full amount of student financial assistance is also excluded for students attending schools that do not qualify as institutions of higher education (as defined in Exhibit 3-2). Excluded amounts are verified only if, without verification, MHB would not be able to determine whether or to what extent the income is to be excluded (see Section 7-3.H).

For a student subject to having a portion of his/her student financial assistance included in annual income in accordance with 24 CFR §5.609(b)(9), MHB may request written third-party verification of both the source and the amount. Family-provided documents

from the educational institution attended by the student may be requested, as well as documents generated by any other person or entity providing such assistance, as reported by the student. In addition, MHB may request written verification of the student's tuition amount.

If MHB is unable to obtain third-party written verification of the requested information, MHB will pursue other forms of verification following the verification hierarchy in Section 7-1.B.

### **7-3.K. PARENTAL INCOME OF STUDENTS SUBJECT TO ELIGIBILITY RESTRICTIONS**

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, does not have a dependent child, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the income of the student's parents must be considered when determining income eligibility, unless the student is determined independent from his or her parents in accordance with PHA policy [24 CFR §5.612 and FR 4/10/06, p. 18146].

This provision does not apply to students residing with parents who are seeking or receiving HCV assistance. It is limited to students who are seeking or receiving assistance on their own, separately from their parents.

If MHB is required to determine the income eligibility of a student's parents, MHB may request an income declaration and certification of income from the appropriate parent(s) (as determined in Section 3-II.E). MHB may send the request directly to the parents, who will be required to certify to their income under penalty of perjury. The parents may be required to submit the information directly to MHB. Generally, the required information must be submitted (postmarked) within ten (10) business days of the date of MHB's request or within any extended timeframe approved by MHB.

MHB 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 4: VERIFYING MANDATORY DEDUCTIONS**

### **7-4.A. DEPENDENT AND ELDERLY/DISABLED HOUSEHOLD DEDUCTIONS**

The dependent and elderly/disabled family deductions require only that MHB verify that the family members identified as dependents or elderly/disabled persons meet the statutory definitions. No further verifications are required.

## **Dependent Deduction**

See Section 6-2.B. for a full discussion of this deduction. MHB must verify that:

- Any person under the age of 18 for whom the dependent deduction is claimed is not the head, spouse, or co-head of the family and is not a foster child
- Any person age 18 or older for whom the dependent deduction is claimed is not a foster adult or live-in aide, and is a person with a disability or a full time student

## **Elderly/Disabled Family Deduction**

See Eligibility chapter for a definition of elderly and disabled families and Chapter 6 (Section 6-2.C.) for a discussion of the deduction. MHB must verify that the head, spouse, or co-head is 62 years of age or older or a person with disabilities.

## **7-4.B. MEDICAL EXPENSE DEDUCTION**

Policies related to medical expenses are found in 6-2.D. The amount of the deduction will be verified following the standard verification procedures described in Part 1.

### **Amount of Expense**

Generally, medical expenses will be verified through:

- Written third-party documents provided by the family, such as pharmacy printouts or receipts.
- A best effort to determine what expenses from the past are likely to continue to occur in the future. MHB will also accept evidence of monthly payments or total payments that will be due for medical expenses during the upcoming 12 months.
- Written third-party verification forms, if the family is unable to provide acceptable documentation.
- If third-party or document review is not possible, written family certification as to costs anticipated to be incurred during the upcoming 12 months.

In addition, MHB must verify that:

- The household is eligible for the deduction.
- The costs to be deducted are qualified medical expenses.
- The expenses are not paid for or reimbursed by any other source.
- Costs incurred in past years are counted only once.

### **Eligible Household**

The medical expense deduction is permitted only for households in which the head, spouse, or co-head is at least 62, or a person with disabilities. MHB will verify that the family meets the definition of an elderly or disabled family provided in the Eligibility chapter and as described in Chapter 7 (see Section 7-4.A.) of this Administrative Plan.

### **Qualified Expenses**

To be eligible for the medical expenses deduction, the costs must qualify as medical expenses. See Chapter 6 (see Section 6-2.D.) for MHB's policy on what counts as a medical expense.

### **Unreimbursed Expenses**

To be eligible for the medical expenses deduction, the costs must not be reimbursed by another source. The family will be required to certify that the medical expenses are not paid or reimbursed to the family from any source.

### **Expenses Incurred in Past Years**

When anticipated costs are related to on-going payment of medical bills incurred in past years, Generally, MHB 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.

### **7-4.C. DISABILITY ASSISTANCE EXPENSES**

Policies related to disability assistance expenses are found in Section 6-2.E. The amount of the deduction will be verified following the standard verification procedures described in Part 1.

#### **Amount of Expense**

##### ***Attendant Care***

MHB will accept written third-party documents provided by the family. If family-provided documents are not available, MHB will provide a third-party verification form directly to the care provider requesting the needed information.

Expenses for attendant care may be verified through:

- Written third-party documents provided by the family, such as receipts or cancelled checks.
- Third-party verification form signed by the provider, if family-provided documents are not available.
- If third-party verification is not possible, written family certification as to costs anticipated to be incurred for the upcoming 12 months.

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

Generally, 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, MHB may verify that:

- The family member for whom the expense is incurred is a person with disabilities (as described in Section 7-2.F above).
- The expense permits a family member, or members, to work (as described in Section 6-2.E.).
- The expense is not reimbursed from another source (as described in Section 6-2.E.).

### **Family Member is a Person with Disabilities**

To be eligible for the disability assistance expense deduction, the costs must be incurred for attendant care or auxiliary apparatus expense associated with a person with disabilities. MHB will verify that the expense is incurred for a person with disabilities (See Section 7-2.F.).

### **Family Member(s) Permitted to Work**

MHB will verify that the expenses claimed actually enable a family member, or members, (including the person with disabilities) to work.

MHB 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 Section 6-2.E.). This documentation may be provided by the family.

If third-party verification has been attempted and is either unavailable or proves unsuccessful, the family must certify that the disability assistance expense frees a family member, or members (possibly including the family member receiving the assistance), to work.

### **Unreimbursed Expenses**

To be eligible for the disability expenses deduction, the costs must not be reimbursed by another source. The family will be required to certify that attendant care or auxiliary apparatus expenses are not paid by or reimbursed to the family from any source.

### **7-4.D. CHILD CARE EXPENSES**

Policies related to child care expenses are found in Chapter 6 (see Section 6-2.F). The amount of the deduction will be verified following the standard verification procedures described in Part 1 of this Chapter. In addition, MHB must verify that:

- The child is eligible for care.

- The costs claimed are not reimbursed.
- The costs enable a family member to pursue an eligible activity.
- The costs are for an allowable type of child care.
- The costs are reasonable.

### **Eligible Child**

To be eligible for the child care deduction, the costs must be incurred for the care of a child under the age of 13. MHB will verify that the child being cared for (including foster children) is under the age of 13 (see Section 7-2.C.).

### **Unreimbursed Expense**

To be eligible for the child care deduction, the costs must not be reimbursed by another source. The family will be required to certify that the child care expenses are not paid by or reimbursed to the family from any source.

### **Pursuing an Eligible Activity**

MHB will verify that the family member(s) that the family has identified as being enabled to seek work, pursue education, or be gainfully employed, are actually pursuing those activities.

### ***Information to be Gathered***

MHB 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, MHB may use documentation from a state or local agency that monitors work-related requirements (e.g., welfare or unemployment). In such cases MHB may request family-provided verification from the agency of the member's job seeking efforts to date, and require the family to submit to MHB any reports provided to the other agency.

In the event third-party verification is not available, MHB will provide the family with a form on which the family member must record job search efforts. MHB will review this information at each subsequent reexamination for which this deduction is claimed.

### ***Furthering Education***

MHB will request third-party documentation to verify that the person permitted to further his or her education by the child care is enrolled and provide information about the timing of classes for which the person is registered. The documentation may be provided by the family.

### ***Gainful Employment***

MHB may 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.

MHB will verify that the type of child care selected by the family is allowable, as described in Section 6 (see Section 6-2.F).

MHB may 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).

MHB may verify that the child care provider is not an assisted family member. Verification will be made through the head of household's declaration of family members who are expected to reside in the unit.

### **Reasonableness of Expenses**

Only reasonable child care costs can be deducted. The actual costs the family incurs will be compared with the MHB'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, MHB may request additional documentation, as required, to support a determination that the higher cost is appropriate.

## **EXHIBIT 7-1: SUMMARY OF DOCUMENTATION REQUIREMENTS FOR NONCITIZENS [HCV GB, pp. 5-9 and 5-10]**

- **All** noncitizens claiming eligible status must sign a declaration of eligible immigrant status on a form acceptable to the PHA.
- Except for persons 62 or older, all noncitizens must sign a verification consent form
- Additional documents may be 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.

<p><b>All other Noncitizens</b></p> <ul style="list-style-type: none"> <li>• Noncitizens that claim eligible immigration status also must present the applicable USCIS document. Acceptable USCIS documents are listed below:</li> </ul>	
<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>
<ul style="list-style-type: none"> <li>• Form I-688 Temporary Resident Card annotated “Section 245A” or Section 210”.</li> </ul>	<p>Form I-688B Employment Authorization Card annotated “Provision of Law 274a. 12(11)” or “Provision of Law 274a.12”.</p>
<ul style="list-style-type: none"> <li>• 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</li> <li>• Other acceptable evidence. If other documents are determined by the USCIS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the <i>Federal Register</i></li> </ul>	

## Chapter 8

### HOUSING QUALITY STANDARDS AND RENT REASONABLENESS DETERMINATIONS

[24 CFR §982 Subpart I and 24 CFR §982.507]

#### INTRODUCTION

HUD requires that all units occupied by families receiving Housing Choice Voucher (“HCV”) assistance meet HUD’s Housing Quality Standards (“HQS”) and permits any PHA to establish additional requirements. The use of the term “HQS” in this plan refers to the combination of both HUD and PHA-established requirements. HQS inspections are required before the Housing Assistance Payments (“HAP”) Contract is signed and at least annually during the term of the contract.

HUD also requires PHAs to determine that units rented by families assisted under the HCV program have rents that are reasonable when compared to comparable unassisted units in the market area.

This chapter explains HUD and MHB requirements related to housing quality and rent reasonableness as follows:

Part 1. Physical Standards. This part discusses the physical standards required of units occupied by HCV-assisted families and identifies decisions about the acceptability of the unit that may be made by the family based upon the family’s preference. It also identifies life-threatening conditions that must be addressed on an expedited basis.

Part 2. The Inspection Process. This part describes the types of inspections MHB will make and the steps that will be taken when units do not meet HQS.

Part 3. Rent Reasonableness Determinations. This part discusses the policies MHB will use to make rent reasonableness determinations.

Special HQS requirements for homeownership, manufactured homes, and other special housing types are discussed in Chapter 15 to the extent that they apply in this jurisdiction.

#### PART 1: PHYSICAL STANDARDS

##### 8-1.A. GENERAL HUD REQUIREMENTS

###### HUD Performance and Acceptability Standards

HUD’s performance and acceptability standards for HCV-assisted housing are provided in 24 CFR §982.401. These standards cover the following areas:

- Sanitary facilities
- Food preparation and refuse disposal

- Space and Security
- Thermal Environment
- Illumination and electricity
- Structure and materials
- Interior Air Quality
- Water Supply
- Lead-based paint
- Access
- Site and neighborhood
- Sanitary condition
- Smoke Detectors

A summary of HUD performance criteria is provided in Attachment 8-1. Additional guidance on these requirements is found in the following HUD resources:

- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)
- HUD Notice 2003-31, Accessibility Notice: Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Architectural Barriers Act of 1968 and the Fair Housing Act of 1988.

### **Tenant Preference Items**

HUD requires MHB to enforce minimum HQS, but also requires that certain judgments about acceptability be left to the family. For example, MHB must ensure that the unit contains the required sanitary facilities, but the family decides whether the cosmetic condition of the facilities is acceptable. Attachment 8-2 summarizes those items that are considered tenant preferences.

### **Modifications to Provide Accessibility**

Under the Fair Housing Act of 1988 an owner must not refuse the request of a family that contains a person with a disability to make necessary and reasonable modifications to the unit. Such modifications are at the family's expense. The owner may require restoration of the unit to its original condition if the modification would interfere with the owner or next occupant's full enjoyment of the premises. The owner may not increase a customarily required security deposit. However, the landlord may negotiate a restoration agreement that requires the family to restore the unit and, if necessary to ensure the likelihood of restoration, may require the tenant to pay a reasonable amount into an interest bearing escrow account over a reasonable period of time. The interest in any such account accrues to the benefit of the tenant. The owner may also require

reasonable assurances that the quality of the work will be acceptable and that any required building permits will be obtained [24 CFR §100.203; Notice 2003-31].

Modifications to units to provide access for a person with a disability must meet all applicable HQS requirements and conform to the design, construction, or alteration of facilities contained in the UFAS and the ADA Accessibility Guidelines (ADAAG) [28 CFR §35.151(c) and PIH Notice 2003-31]. See Chapter 2 of this Administrative Plan for additional information on reasonable accommodations for persons with disabilities.

### **8-1.B. ADDITIONAL LOCAL REQUIREMENTS**

MHB may impose additional quality standards as long as the additional criteria are not likely to adversely affect the health or safety of participant families or severely restrict housing choice. HUD approval is required if more stringent standards are imposed. HUD approval is not required if MHB additions are clarifications of HUD's acceptability criteria or performance standards [24 CFR §982.401(a)(4)].

#### **Thermal Environment [HCV GB p.10-7]**

MHB must define a "healthy living environment" for the local climate. This may be done by establishing a temperature that the heating system must be capable of maintaining, that is appropriate for the local climate.

The heating system must be capable of maintaining an interior temperature of 68 degrees Fahrenheit between October 1 and May 1.

#### **Clarifications of HUD Requirements**

As permitted by HUD, MHB has adopted the following specific requirements that elaborate on HUD standards.

##### ***Walls***

In areas where plaster or drywall is sagging, severely cracked, or otherwise damaged, it must be repaired or replaced.

##### ***Windows***

Window sashes must be in good condition, solid and intact, and properly fitted to the window frame. Damaged or deteriorated sashes must be replaced.

Windows must be weather-stripped as needed to ensure a weather-tight seal.

Window screens must be in good condition (Note: this applies only if screens are present).

##### ***Doors***

All exterior doors must be weather-tight to avoid any air or water infiltration, be lockable, have no holes, have all trim intact, and have a threshold.

All interior doors must have no holes, have all trim intact, and be operable without the use of a key.

**Floors**

All wood floors must be sanded to a smooth surface and sealed. Any loose or warped boards must be secured and made level. If they cannot be leveled, they must be replaced.

All floors must be in a finished state. Raw wood or unsealed concrete is not permitted.

All floors should have some type of base/shoe, trim, or sealing for a "finished look." Vinyl base/shoe is permitted.

**Sinks**

All sinks and commode water lines must have operable shut off valves, unless faucets are wall mounted.

All worn or cracked toilet seats and tank lids must be replaced and toilet tank lid must fit properly.

All sinks must have functioning stoppers.

**Security**

If window security bars or security screens are present on emergency exit windows, they must be equipped with an operable quick release system. The owner is responsible for ensuring that the family is instructed on the use of the quick release system.

**8-1.C. LIFE THREATENING CONDITIONS [24 CFR §982.404(a)]**

HUD requires MHB to define life threatening conditions and to notify the owner or the family (whichever is responsible) of the corrections required. The responsible party must correct life threatening conditions within twenty-four (24) hours of PHA notification.

The following are considered life threatening conditions:

- Any condition that jeopardizes the security of the unit,
- Major plumbing leaks or flooding, waterlogged ceiling or floor in imminent danger of falling,
- Natural or LP gas or fuel oil leaks,
- Any electrical problem or condition that could result in shock or fire,
- Absence of a working heating system when outside temperature is below 60 degrees Fahrenheit,
- Conditions that present the imminent possibility of injury,
- Obstacles that prevent safe entrance or exit from the unit,
- Absence of a functioning toilet in the unit,
- Inoperable smoke detectors,
- Utilities not in service, including no running hot water – If furnished by family, family is given 72 hours to restore any utilities determined to be off.

Generally, if an owner fails to correct life threatening conditions as required by MHB, the housing assistance payment will be abated and the HAP contract will be terminated. See Section 8-2-G.

If a family fails to correct a family caused life threatening condition as required by MHB, MHB may terminate the family's assistance. See Section 8-2.H.

The owner will be required to repair an inoperable smoke detector unless MHB determines that the family has intentionally disconnected it (by removing batteries or other means). In this case, the family will be required to repair the smoke detector within 24 hours.

#### **8-1.D. OWNER AND FAMILY RESPONSIBILITIES [24 CFR §982.404]**

##### **Family Responsibilities**

The family is responsible for correcting the following HQS deficiencies:

- Tenant-paid utilities not in service
- Failure to provide or maintain family-supplied appliances
- Damage to the unit or premises caused by a household member or guest beyond normal wear and tear. "Normal wear and tear" is defined as items which could not be charged against the tenant's security deposit under state law or court practice.

##### **Owner Responsibilities**

The owner is responsible for all HQS violations not listed as a family responsibility above, even if the violation is caused by the family's living habits (e.g., vermin infestation, etc.). However, if the family's actions constitute a serious or repeated lease violation the owner may take legal action to evict the family.

#### **8-1.E. SPECIAL REQUIREMENTS FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL [24 CFR §35.1225]**

If MHB 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 (6) years of age, living in an HCV-assisted unit has been identified as having an environmental intervention blood lead level, MHB must complete or have completed a risk assessment of the dwelling unit. The risk assessment must be completed in accordance with program requirements, and the result of the risk assessment must be immediately provided to the owner of the dwelling unit. In cases where the public health department has already completed an evaluation of the unit, this information must be provided to the owner. If the owner refuses to cooperate with the assessment, MHB may terminate assistance to the unit.

Within 30 days after receiving the risk assessment report from MHB, or the evaluation from the public health department, the owner is required to complete the reduction of identified lead-based paint hazards in accordance with the lead-based paint regulations [24 CFR §35.1325 and §35.1330]. If the owner does not complete the "hazard reduction" as

required, the dwelling unit is in violation of HQS and MHB will take action in accordance with Section 8-2.G.

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

### **8-1.F. VIOLATION OF HQS SPACE STANDARDS [24 CFR §982.403]**

If MHB determines that a unit does not meet the HQS space standards because of an increase in family size or a change in family composition, MHB may issue the family a new voucher, and the family and MHB must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, MHB must terminate the HAP contract in accordance with its terms.

## **PART 2: THE INSPECTION PROCESS**

### **8-2.A. OVERVIEW [24 CFR §982.405]**

#### **Types of Inspections**

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

- *Assessment Inspections.* MHB conducts assessment inspections, subject to existing resources for property owners interested in participating in the HCV Program and wishing an initial assessment as to whether the unit will satisfy MHB's HQS requirements. Such assessment inspections must be requested by the prospective or actual property owner and will be subject to the availability of inspection resources.
- *Initial Inspections.* MHB conducts initial inspections in response to a request from the family to approve a unit for participation in the HCV program. The unit must pass the HQS inspection before the effective date of the HAP Contract.
  - *Biennially Inspections.* [Section 220 of the 2014 Appropriations Act]: HUD requires MHB to inspect each unit under lease at least every 24 months to confirm that the unit still meets HQS. The inspection may be conducted in conjunction with the family's annual reexamination but also may be conducted separately.
- *Special Inspections.* A special inspection may be requested by the owner, the family, or a third party as a result of problems identified with a unit between regular inspections.
- *Quality Control Inspections.* HUD requires that a sample of units be re-inspected by a supervisor or other qualified individual to ensure that HQS are being enforced correctly and uniformly by all inspectors.

**Inspection of PHA-owned Units [24 CFR §982.352(b)]**

MHB must obtain the services of an independent entity to perform all HQS inspections in cases where an HCV family is receiving assistance in a PHA-owned unit. A PHA-owned unit is defined as a unit that is owned by the PHA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by the PHA). The independent agency must communicate the results of each inspection to the family and MHB. The independent agency must be approved by HUD, and may be the unit of general local government for the PHA jurisdiction (unless the PHA is itself the unit of general local government or an agency of such government), another housing authority authorized to administer the Housing Choice voucher Program, or an independent entity specializing in HQS and related inspections.

**Inspection Costs**

The PHA may not charge the family or owner for unit inspections [24 CFR §982.405(e)]. In the case of inspections of PHA-owned units, the PHA may compensate the independent agency from ongoing administrative fee for inspections performed. MHB and the independent agency may not charge the family any fee or charge for the inspection [24 CFR §982.352(b)].

**Notice and Scheduling**

The family must allow MHB, its agents, and other authorized third parties (including, but not limited to: entities inspecting MHB-owned units under the program, etc.) to inspect the unit at reasonable times with reasonable notice [24 CFR §982.551(d)].

Both the family and the owner will be given reasonable notice of all inspections. Generally, inspections may be scheduled between 8:00 a.m. and 4:00 p.m. Generally inspections will be conducted on business days only and during normal business hours, however, by special appointment and for special MHB-approved reasons, the inspections may be scheduled outside of these hours. In the case of a life threatening emergency, MHB will give as much prior notice as possible, given the nature of the emergency.

**Owner and Family Inspection Attendance**

HUD permits the MHB to set policy regarding family and owner presence at the time of inspection [HCV GB p. 10-27]. Generally, when a family occupies the unit at the time of an inspection, an adult family member must be present for the inspection. The presence of the owner or the owner's representative is also encouraged.

At initial inspection of a vacant unit, MHB 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.

## **8-2.B. INITIAL HQS INSPECTION [24 CFR §982.401(a)]**

### **Timing of Initial Inspections**

HUD requires the unit to pass HQS before the effective date of the lease and HAP Contract. HUD requires PHAs with fewer than 1,250 budgeted units to complete the initial inspection, determine whether the unit satisfies HQS, and notify the owner and the family of the determination within 15 days of submission of the Request for Tenancy Approval (RFTA). For PHAs with 1,250 or more budgeted units, to the extent practicable such inspection and determination generally must be completed within fifteen (15) days. The 15-day period is suspended for any period during which the unit is not available for inspection [24 CFR §982.305(b)(2)].

Generally, MHB will complete the initial inspection, determine if the unit satisfies HQS, and notify the owner and the family of the determination within fifteen (15) days of receipt of the completed Request for Tenancy Approval (“RFTA”) Form.

### **Inspection Results and Re-inspections**

If any HQS violations are identified, the owner will be notified of the deficiencies and be given a time frame to correct them. If requested by the owner, the time frame for correcting the deficiencies may be extended by MHB, for good cause. MHB will re-inspect the unit within five (5) business days of the date the owner notifies MHB that the required corrections have been made.

If the time period for correcting the deficiencies (or any MHB-approved extension) has elapsed, or the unit fails HQS at the time of the re-inspection, MHB will notify the owner and the family that the unit has been rejected and that the family must search for another unit. MHB may agree to conduct a second re-inspection, for good cause, at the request of the family and owner.

Following a failed re-inspection, the family may submit a new Request for Tenancy Approval Form for the unit if the family consents and has not found another unit by the time the owner completes all repairs.

### **Utilities**

Generally, at initial lease-up the owner is responsible for demonstrating that all utilities are in working order including those utilities that the family will be responsible for paying.

If utility service is not available for testing at the time of the initial inspection, MHB will allow the utilities to be placed in service after the unit has met all other HQS requirements. Generally, MHB will confirm that utilities are operational before the HAP contract is executed.

It is MHB’s policy that participant paid electrical service must be established and maintained in the head of household’s name at all times during the head of household’s participation in the HCV Program. MHB may require all participant paid utility services

be established and maintained in the head of household's name at all times during the head of household's participation in the HCV Program.

MHB, in its sole discretion, may provide and send utility assistance payments directly to the applicable utility provider(s) instead of the participant. .

### **Appliances**

If the family is responsible for supplying the stove and/or refrigerator, MHB will allow the stove and refrigerator to be placed in the unit after the unit has met all other HQS requirements. The required appliances must be in place before the HAP contract is executed. MHB will execute the HAP contract based upon a certification from the family that the appliances have been installed and are working. A confirmatory inspection may be scheduled within thirty (30) days of HAP contract approval.

If the owner is responsible for supplying the stove and refrigerator, they must both be in the unit and in good working order at the time of the inspection for the unit to meet HQS requirements.

## **8-2.C. ANNUAL HQS INSPECTIONS [24 CFR §982.405(a)]**

### **Scheduling the Inspection**

Section 243 of the Department of Housing and Urban Development (HUD) Appropriations Act , 2014 (July 2014) Each unit under HAP contract must have an inspection biennially, no more than 24 months, after the most recent inspection.

If the landlord and/or an adult family member cannot be present on the scheduled date at the scheduled time, the landlord should request that MHB reschedule the inspection. This request must be made by the family *prior* to the inspection date. MHB and family will agree on a new inspection date that generally should take place within five (5) business days of the originally scheduled date. MHB may schedule an inspection more than five (5) business days after the original date, but only for good cause.

If the family or landlord is not present at the scheduled inspection time (i.e., "no show"), MHB will consider the unit to fail the inspection, notify the landlord and inform them that it is his/her responsibility to have their unit inspected to prevent any negative effect on future Housing Assistance Payments.

MHB will conduct a maximum of three (3) inspections per unit to qualify the unit for the program. If the inspection has been rescheduled multiple times, through no fault of MHB, Housing Assistance Payments and Utility Assistance Payments may be abated.

MHB 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.

**8-2.D. SPECIAL INSPECTIONS [HCV GB, p. 10-30]**

The PHA will conduct a special inspection if the owner, family, or another source reports HQS violations in the unit.

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

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

**8-2.E. QUALITY CONTROL INSPECTIONS [24 CFR §982.405(b); HCV GB, p. 10-32]**

HUD requires a PHA supervisor or other qualified person to conduct quality control inspections of a sample of units to ensure that each inspector is conducting accurate and complete inspections and that there is consistency in the application of the HQS.

The unit sample must include only units that have been inspected within the preceding 3 months. The selected sample will include (1) each type of inspection (i.e., initial, annual, and special), (2) inspections completed by each inspector, and (3) units from a cross-section of neighborhoods.

**8-2.F. INSPECTION RESULTS AND REINSPECTIONS FOR UNITS UNDER HAP CONTRACT****Notification of Corrective Actions**

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

When life threatening conditions are identified, MHB will immediately notify both parties by telephone, facsimile, or email – followed-up with a letter or email notification. The notice will specify who is responsible for correcting the violation. The corrective actions must be taken within 24 hours of MHB's notice.

When failures that are not life threatening are identified, MHB will send the owner and the family a written notification of the inspection results within 5 business days of the inspection, utilizing email when possible. The written notice will specify who is responsible for correcting the violation, and the time frame within which the failure must be corrected. Generally not more than 30 days will be allowed for the correction.

The notice of inspection results will inform the owner that if life threatening conditions are not corrected within twenty-four (24) hours, and non-life threatening conditions are not corrected within the specified time frame (or any MHB-approved extension), the owner's HAP will be abated in accordance with MHB's policy (see Section 8-2.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 MHB-approved extension, if applicable) the family's assistance will be terminated in accordance with MHB's policy (see Chapter 12).

## Extensions

For conditions that are life-threatening, MHB cannot grant an extension to the 24 hour corrective action period. For conditions that are not life-threatening, MHB may grant an exception to the required time frames for correcting the violation, if MHB determines that an extension is appropriate [24 CFR §982.404].

Generally, extensions will be granted in cases where MHB 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 family has effectively hampered or denied access to the unit by the property owner or the property owner's agents.

The length of the extension will be determined on a case-by-case basis, but generally, may not exceed sixty (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 fifteen (15) calendar days, once the weather conditions have subsided.

## Re-inspections

MHB will accept signed Self-Certification forms from the owner and family in lieu of conducting an annual re-inspection where non-life-threatening issues have been found. If it is discovered a fraudulent Self-Certification has been submitted, MHB may take prompt action to recoup any monies paid out based on the self-cert taken as a true statement on both owner and family's part. Self-Certifications will no longer be accepted from the particular owner/representative for any properties, in the future, on the HCV Program. Re-inspection appointments will be made for life threatening issues, tenant complaints, new move-ins and initial inspections during or immediately following the end of the corrective period, or any MHB approved extension.

The family and owner will be given reasonable notice of the appointment. If the deficiencies have not been corrected by the time of the re-inspection, MHB 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 MHB policies. If MHB is unable to gain entry to the unit in order to conduct the scheduled re-inspection, MHB 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.

## 8-2.G. ENFORCING OWNER COMPLIANCE

If the owner fails to maintain the dwelling unit in accordance with HQS, MHB will take prompt and vigorous action to enforce the owner obligations.

## **HAP Abatement**

If an owner fails to correct HQS deficiencies by the time specified by MHB, HUD requires MHB 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. Generally, owner rents are not abated as a result of HQS failures that are the family's responsibility.

MHB will make all HAP abatements effective the first of the month following the expiration of MHB specified correction period (including any extension). MHB will inspect abated units within five (5) business days of the owner's notification that the work has been completed. Payment will resume effective on the day the unit passes inspection.

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

## **HAP Contract Termination**

MHB must decide how long any abatement period will continue before the HAP contract will be terminated. Generally, MHB will 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. MHB will issue a voucher to permit the family to move to another unit as described in Chapter 10.

The maximum length of time that a HAP may be abated is 90 days. However, if the owner completes corrections and notifies MHB before the termination date of the HAP contract, MHB 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 MHB is 30 days.

## **8-2.H. ENFORCING FAMILY COMPLIANCE WITH HQS [24 CFR §982.404(b)]**

Families are responsible for correcting any HQS violations listed in Section 8.1.D. If the family fails to correct a violation within the period allowed by MHB (and any extensions), MHB 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 3: RENT REASONABLENESS [24 CFR §982.507]**

### **8-3.A. OVERVIEW**

No HAP contract can be approved until MHB has determined that the rent for the unit is reasonable. The purpose of the rent reasonableness test is to ensure that a fair rent is paid for each unit rented under the HCV program.

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

#### **PHA-owned Units [24 CFR §982.352(b)]**

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

### **8-3.B. WHEN RENT REASONABLENESS DETERMINATIONS ARE REQUIRED**

#### **Owner-initiated Rent Determinations**

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

After the initial occupancy period, the owner may request a rent adjustment in accordance with the owner's lease. For rent increase requests after initial lease-up, MHB may request owners to provide information about the rents charged for other units on the premises, if the premises include more than four (4) units. In evaluating the proposed rents in comparison to other units on the premises, MHB will consider unit size and length of tenancy in the other units. MHB will also consider the level of funding it receives for HAP payments from HUD, federal sequestration, if any, and the overall financial condition of the HCV Program when considering any rent increases.

MHB will determine whether the requested increase is reasonable within ten (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 MHB's receipt of the owner's request or on the date specified by the owner, whichever is later.

### **PHA- and HUD-Initiated Rent Reasonableness Determinations**

HUD requires the PHA to make a determination of rent reasonableness (even if the owner has not requested a change) if there is a 5 percent decrease in the Fair Market Rent that goes into effect at least 60 days before the contract anniversary date. HUD also may direct the PHA to make a determination at any other time. MHB may decide that a new determination of rent reasonableness is needed at any time.

In addition to the instances described above, MHB will make a determination of rent reasonableness at any time after the initial occupancy period if: (1) MHB determines that the initial rent reasonableness determination was in error, or (2) MHB determines that the information provided by the owner about the unit or other units on the same premises was incorrect, (3) federal funding levels are such that an adjustment in the rent reasonableness standards will allow more families to benefit from the HCV Program and not have assistance terminated due to lack of federal funding.

### **8-3.C. HOW COMPARABILITY IS ESTABLISHED**

#### **Factors to Consider**

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

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

#### **Units that Must Not be Used as Comparables**

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

**Note:** Notice PIH 2010-18, issued May 10, 2010, provides further guidance on the issue of what constitutes an assisted unit.

### **Rents Charged for Other Units on the Premises**

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

By accepting MHB 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 MHB information regarding rents charged for other units on the premises.

## **8-3.D. PHA RENT REASONABLENESS METHODOLOGY**

### **How Market Data is Collected**

MHB will collect and maintain data on market rents within MHB's jurisdiction utilizing a web-based system. Information collected by the web-based system compares open market units to subsidized units by bedroom size, zip codes, neighborhoods and identifies natural and man-made boundaries.

MHB will generally maintain a copy of the data in electronic format.

### **How Rents are Determined**

The rent for a unit proposed for HCV assistance will be compared to the rent charged for comparable units in the same market area. MHB 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, MHB may make adjustments to the range of prices to account for these differences.

- The adjustment must reflect the local market. Not all differences in units require adjustments (e.g., the presence or absence of a garbage disposal may not affect the rent in some market areas).
- Adjustments may vary by unit type (e.g., a second bathroom may be more valuable in a three-bedroom unit than in a two-bedroom).
- The adjustment must reflect the rental value of the difference – not its construction costs (e.g., it might cost \$20,000 to put on a new roof, but the new roof might not make any difference in what a tenant would be willing to pay because rents units are presumed to have functioning roofs).
- When a comparable project offers rent concessions (e.g., first month rent-free, or reduced rent) reported monthly rents will be adjusted accordingly. For example, if a comparable project reports rents of \$500/month but new tenants receive the first month's rent free, the actual rent for the unit would be

calculated as follows:  $\$500 \times 11 \text{ months} = 5500/12 \text{ months} = \text{actual monthly rent of } \$488.$

MHB will notify the owner of the rent they can approve based upon its analysis of rents for comparable units. The owner may submit information about other comparable units in the market area. MHB will confirm the accuracy of the information provided and consider this additional information when making rent determinations. The owner must submit any additional information within 5 business days of MHB's request for information or the owner's request to submit information.

#### EXHIBIT 8-1: OVERVIEW OF HUD HOUSING QUALITY STANDARDS

Note: This document provides an overview of HQS. For more detailed information see the following documents:

- 24 CFR §982.401, Housing Quality Standards (HQS)
- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)

#### Sanitary Facilities

The dwelling unit must include sanitary facilities within the unit. The sanitary facilities must be usable in privacy and must be in proper operating condition and adequate for personal cleanliness and disposal of human waste.

#### Food Preparation and Refuse Disposal

The dwelling unit must have space and equipment suitable for the family to store, prepare, and serve food in a sanitary manner.

#### Space and Security

The dwelling unit must provide adequate space and security for the family. This includes having at least one bedroom or living/sleeping room for each two persons.

#### Thermal Environment

The unit must have a safe system for heating the dwelling unit. Air conditioning is not required but if provided must be in proper operating condition. The dwelling unit must not contain unvented room heaters that burn gas, oil, or kerosene. Portable electric room heaters or kitchen stoves with built-in heating units are not acceptable as a primary source of heat for units located in climatic areas where permanent heat systems are required.

#### Illumination and Electricity

Each room must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of occupants. The dwelling unit must have sufficient electrical sources so occupants can use essential electrical appliances. Minimum standards are set for different types of rooms. Once the minimum standards are met, the number, type and location of electrical sources are a matter of tenant preference.

## Structure and Materials

The dwelling unit must be structurally sound. Handrails are required when four or more steps (risers) are present, and protective railings are required when porches, balconies, and stoops are thirty inches or more off the ground. The elevator servicing the unit must be working [if there is one]. Manufactured homes must have proper tie-down devices capable of surviving wind loads common to the area.

## Interior Air Quality

The dwelling unit must be free of air pollutant levels that threaten the occupants' health. There must be adequate air circulation in the dwelling unit. Bathroom areas must have one operable window or other adequate ventilation. Any sleeping room must have at least one window. If a window was designed to be opened, it must be in proper working order.

## Water Supply

The dwelling unit must be served by an approved public or private water supply that is sanitary and free from contamination. Plumbing fixtures and pipes must be free of leaks and threats to health and safety.

## Lead-Based Paint

Lead-based paint requirements apply to dwelling units built prior to 1978 that are occupied or can be occupied by families with children less than six years of age, excluding zero bedroom dwellings. Owners must:

- Disclose known lead-based paint hazards to prospective tenants before the lease is signed,
- provide all prospective families with "Protect Your Family from Lead in Your Home",
- Stabilize deteriorated painted surfaces and conduct hazard reduction activities when identified by the PHA
- Notify tenants each time such an activity is performed
- Conduct all work in accordance with HUD safe practices
- As part of ongoing maintenance ask each family to report deteriorated paint.

For units occupied by environmental intervention blood lead level (lead poisoned) children under six (6) years of age, a risk assessment must be conducted (paid for by the PHA). If lead hazards are identified during the risk assessment, the owner must complete hazard reduction activities.

See HCV GB p. 10-15 for a detailed description of these requirements. For additional information on lead-based paint requirements see 24 CFR §35, Subparts A, B, M, and R.

## Access

Use and maintenance of the unit must be possible without unauthorized use of other private properties. The building must provide an alternate means of exit in case of fire.

## Site and Neighborhood

The site and neighborhood must be reasonably free from disturbing noises and reverberations, excessive trash or vermin, or other dangers to the health, safety, and general welfare of the occupants.

## Sanitary Condition

The dwelling unit and its equipment must be in sanitary condition and free of vermin and rodent infestation. The unit must have adequate barriers to prevent infestation.

### Smoke Detectors

Smoke detectors must be installed in accordance with and meet the requirements of the National Fire Protection Association Standard (NFPA) 74 (or its successor standards). If the dwelling unit is occupied by any person with a hearing impairment, smoke detectors must have an appropriate alarm system as specified in NFPA 74 (or successor standards).

### Hazards and Health/Safety

The unit, interior and exterior common areas accessible to the family, the site, and the surrounding neighborhood must be free of hazards to the family's health and safety.

<b>EXHIBIT 8-2: SUMMARY OF TENANT PREFERENCE AREAS RELATED TO HOUSING QUALITY</b>
---

Note: This document provides an overview of unit and site characteristics and conditions for which the family determines acceptability. For more detailed information see the following documents:

- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)

Provided the minimum housing quality standards have been met, HUD permits the family to determine whether the unit is acceptable with regard to the following characteristics.

- 1) *Sanitary Facilities.* The family may determine the adequacy of the cosmetic condition and quality of the sanitary facilities, including the size of the lavatory, tub, or shower; the location of the sanitary facilities within the unit; and the adequacy of the water heater.
- 2) *Food Preparation and Refuse Disposal.* The family selects size and type of equipment it finds acceptable. When the family is responsible for supplying cooking appliances, the family may choose to use a microwave oven in place of a conventional oven, stove, or range. When the owner is responsible for providing cooking appliances, the owner may offer a microwave oven in place of an oven, stove, or range only if other subsidized and unsubsidized units on the premises are furnished with microwave ovens only. The adequacy of the amount and type of storage space, the cosmetic conditions of all equipment, and the size and location of the kitchen are all determined by the family.
- 3) *Space and Security.* The family may determine the adequacy of room sizes and room locations. The family is also responsible for deciding the acceptability of the type of door and window locks.
- 4) *Energy conservation items.* The family may determine whether the amount of insulation, presence of absence of storm doors and windows and other energy conservation items are acceptable.
- 5) *Illumination and Electricity.* The family may determine whether the location and the number of outlets and fixtures (over and above those required to meet HQS standards) are acceptable or if the amount of electrical service is adequate for the use of appliances, computers, or stereo equipment.
- 6) *Structure and Materials.* Families may determine whether minor defects, such as lack of paint, or worn flooring or carpeting will affect the livability of the unit.

- 7) *Indoor Air.* Families may determine whether window and door screens, filters, fans, or other devices for proper ventilation are adequate to meet the family's needs. However, if screens are present they must be in good condition.
- 8) *Sanitary Conditions.* The family determines whether the sanitary conditions in the unit, including minor infestations, are acceptable.
- 9) *Neighborhood conditions.* Families may determine whether neighborhood conditions such as the presence of drug activity, commercial enterprises, and convenience to shopping will affect the livability of the unit.

Families have no discretion with respect to lead-based paint standards and smoke detectors.

## Chapter 9

### GENERAL LEASING POLICIES

#### INTRODUCTION

Chapter 9 covers the lease-up process from the family's submission of a Request for Tenancy Approval to execution of the Housing Assistance Payments ("HAP") contract.

In order for MHB to assist a family in a particular dwelling unit, or execute a HAP contract with the owner of a dwelling unit, MHB 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 MHB, or other MHB-approved entity, and meet the Housing Quality Standards ("HQS") and MHB's enhanced standards [24 CFR §982.305(a)] ;
- The lease offered by the owner must be approvable and must include the required Tenancy Addendum [24 CFR §982.305(a)] ;
- The rent to be charged by the owner for the unit must be reasonable and satisfy MHB's Rent Reasonableness standards [24 CFR §982.305(a)];
- The owner<sup>7</sup> must be an eligible owner, approvable by MHB, with no undisclosed conflicts of interest and not otherwise debarred, suspended, or subject to a limited denial of participation [24 CFR §982.306(a)];
- The owner must satisfy the other participation requirements described in Chapter 13 of this Administrative Plan;
- The owner must satisfy other administrative requirements imposed on owners by MHB, including but not limited to, acceptance of HAP assistance by wire transfer, ACH or other electronic transfer means as determined by MHB;
- 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)]

#### 9-1.A. TENANT SCREENING

MHB 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)].

MHB may elect to screen applicants for family behavior or suitability for tenancy. See Chapter 3 for a discussion of MHB's policies with regard to screening applicant families for program eligibility [24 CFR § 982.307(a)(1)].

---

<sup>7</sup>Note: the term "owner" throughout this Administrative Plan refers to the principal, agent or other interested party.

The owner is responsible for screening and selection of the family to occupy the owner's unit. At or before MHB's approval of the tenancy, MHB must inform the owner that screening and selection for tenancy is the responsibility of the owner [24 CFR §982.307(a)(2)]. MHB must also inform the owner or manager of their responsibility to comply with VAWA [24 CFR §5.2007(3)(ii)].

MHB must provide the owner with the family's current and prior address (as shown in MHB records); and the name and address (if known to MHB) of the landlord at the family's current and prior address. [24 CFR §982.307(b)(1)].

MHB is permitted, but not required, to offer the owner other information in MHB's possession about the family's tenancy [24 CFR §982.307(b)(2)].

MHB's policy on providing information to the owner must be included in the family's briefing packet [24 CFR §982.307(b)(3)], and generally, MHB will not screen applicants for family behavior or suitability for tenancy for any owner's unit. In addition, generally, MHB will not provide additional screening information to the owner.

### **9-1.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 HCV program, within the applicable time period. Once a family finds a suitable unit and the owner is willing to lease the unit under the HCV program, the owner and the family must request MHB to approve the assisted tenancy in the selected unit.

The owner and the family must submit two documents to MHB:

- Completed Request for Tenancy Approval ("RFTA") – Form HUD-52517
- Copy of the proposed lease, including the HUD-prescribed Tenancy Addendum – Form HUD-52641-A

The RFTA contains important information about the rental unit selected by the family, including, but not limited to, the unit address, number of bedrooms, structure type, year constructed, utilities included in the rent, and the requested beginning date of the lease. This information is necessary for MHB to determine whether to approve the assisted tenancy in this unit.

MHB may require owners to 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 MHB has granted a request for reasonable accommodation for a person with disabilities who is a member of the tenant household.

For units constructed prior to 1978, owners must either 1) certify that the unit, common areas, and exterior have been found to be free of lead-based paint by a certified inspector; or 2) attach a lead-based paint disclosure statement.

Both the RFTA and the proposed lease must be submitted no later than the expiration date stated on the voucher. [HCV GB p.8-15]. While the RFTA must be signed by both the family and the owner, the owner may submit the RFTA on behalf of the family.

In MHB's discretion, the completed RFTA (including the proposed dwelling lease) must be submitted to MHB as hard copies, in-person, by mail, electronically or by fax.

The family may not submit, and MHB will not process, more than one (1) RFTA at a time.

When the family submits the RFTA MHB will review the RFTA for completeness.

- If the RFTA is incomplete (e.g., including lack of signature by family, owner, or both), MHB will notify the family and the owner of the deficiencies.
- Missing information and/or missing documents will be accepted as hard copies, in-person, by mail, electronically, or by fax. Generally, MHB will not accept missing information over the telephone.

When the family submits the RFTA and proposed lease, MHB will also review the terms of the RFTA for consistency with the terms of the proposed lease.

- If the terms of the RFTA are not consistent with the terms of the proposed lease, MHB will notify the family and the owner of the discrepancies.
- Corrections to the terms of the RFTA and/or the proposed lease will only be accepted as hard copies, in-person, by mail or by fax. MHB will not accept corrections by telephone.

Because of the time sensitive nature of the tenancy approval process, MHB will attempt to communicate with the owner and family by telephone, fax, or email. MHB will use mail when the parties cannot be reached by telephone, fax, or email.

### **9-1.C. OWNER PARTICIPATION**

MHB does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where MHB may deny approval of an assisted tenancy based on past owner behavior, conflict of interest, or other owner-related issues. No owner has a right to participate in the HCV program [24 CFR § 982.306(e)]. See Chapter 13 for a full discussion of owner qualification to participate in the HCV program.

### **9-1.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. This includes the dwelling unit they are currently occupying.

#### **Ineligible Units [24 CFR §982.352(a)]**

MHB 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.

### **MHB-Owned Units [24 CFR §982.352(b)]**

Otherwise eligible units that are owned or substantially controlled by MHB issuing the voucher may also be leased in the voucher program. In order for a MHB-owned unit to be leased under the voucher program, the unit must not be ineligible housing and MHB 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 PHA-owned unit without any pressure or steering by MHB.

### **Special Housing Types [24 CFR §982 Subpart M]**

HUD regulations permit, but do not generally require, MHB 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 MHB has chosen to allow.

The regulations do require MHB to permit use of any special housing type if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

### **Duplicative Assistance [24 CFR §982.352(c)]**

A family may not receive the benefit of HCV tenant-based assistance while receiving the benefit of any of the following forms of other housing subsidy, for the same unit or for a different unit:

- Public or Indian housing assistance;
- Other Section 8 assistance (including other tenant-based assistance);
- Assistance under former Section 23 of the United States Housing Act of 1937 (before amendment by the Housing and Community Development Act of 1974);
- Section 101 rent supplements;
- Section 236 rental assistance payments;
- Tenant-based assistance under the HOME Program;
- Rental assistance payments under Section 521 of the Housing Act of 1949 (a program of the Rural Development Administration);
- Any local or State rent subsidy;
- Section 202 supportive housing for the elderly;
- Section 811 supportive housing for persons with disabilities;

- Section 202 projects for non-elderly persons with disabilities (Section 162 assistance); or
- Any other duplicative federal, State, or local housing subsidy, as determined by HUD. For this purpose, 'housing subsidy' does not include the housing component of a welfare payment, a social security payment received by the family, or a rent reduction because of a tax credit.

### **Housing Quality Standards (“HQS”) [24 CFR §982.305 and 24 CFR §982.401]**

In order to be eligible, the dwelling unit must be in decent, safe and sanitary condition. This determination is made using HUD’s Housing Quality Standards (“HQS”) and/or equivalent state or local standards approved by HUD. See Chapter 8 for a full discussion of the HQS standards, as well as the process for HQS inspection at initial lease-up.

### **Unit Size**

In order to be eligible, the dwelling unit must be appropriate for the number of persons in the household. A family must be allowed to lease an otherwise acceptable dwelling unit with fewer bedrooms than the number of bedrooms stated on the voucher issued to the family, provided the unit meets the applicable HQS space requirements [24 CFR § 982.402(d)]. Also, 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 provided that the rent is not more than indicated on the voucher. 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, and must be in accordance with MHB’s Rent Reasonableness standards. 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 dwelling unit rent must be at a level where the family’s share of rent does not exceed forty (40) percent of the family’s monthly adjusted income. See Chapter 6 for a discussion of calculation of gross rent, the use of payment standards, and calculation of family income, family share of rent and HAP.

## **9-1.E. LEASE AND TENANCY ADDENDUM**

The family and the owner must execute and enter into a written dwelling lease for the assisted unit. This written lease is a contract between the tenant family and the owner. MHB is not a party to this contract.

The tenant must have legal capacity to enter a lease under State and local law. 'Legal capacity' means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner [24 CFR § 982.308(a)].

### **Lease Form and Tenancy Addendum [24 CFR §982.308]**

If the owner uses a standard lease form for rental to unassisted tenants in the locality or the premises, the lease must be in such standard form. If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease. The HAP contract prescribed by HUD contains the owner's certification that if the owner uses a standard lease form for rental to unassisted tenants, the lease is in such standard form.

All provisions in the HUD-required Tenancy Addendum must also be added, word-for-word, to the owner's standard lease form, for use with the assisted family. The Tenancy Addendum includes the tenancy requirements for the program and the composition of the household as approved by MHB. As a part of the lease, the tenant shall have the right to enforce the Tenancy Addendum against the owner and the terms of the Tenancy Addendum shall prevail over any other provisions of the lease.

MHB 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, at a minimum, all of the required information as listed below:

- The names of the owner and the tenant;
- The unit rented (i.e., address, apartment number, and any other information needed to identify the contract unit);
- The term of the lease (i.e., initial term and any provisions for renewal);
- The amount of the monthly rent to owner; and
- 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 MHB to approve a shorter initial lease term if certain conditions are met, however, generally, MHB 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 the family [24 CFR §982.309].

Any provisions for renewal of the dwelling lease will be stated in the dwelling lease [HCV Guidebook, pg. 8-22]. There are no HUD requirements regarding any renewal extension terms, except that they must be in the dwelling lease if they exist.

Even so, MHB may, but is not obligated so to do, 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. MHB may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants. However, if MHB chooses to do so, language to this effect must be added to Part A of the HAP contract [Form HUD-52641].

Generally, MHB will allow the owner to collect any security deposit amount the owner determines is appropriate; therefore, no modifications to the HAP contract normally will be necessary.

### **Separate Non-Lease Agreements between Owner and Tenant**

Owners may not demand or accept any rent payment from the family in excess of the rent to the owner minus MHB'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)].

MHB 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.

### **MHB Review of Lease**

MHB will review the dwelling lease for compliance with all applicable HCV Program requirements.

If the dwelling lease is incomplete or incorrect, MHB 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, electronically or by fax. MHB will not accept missing and corrected information over the telephone.

Because the initial leasing process is time-sensitive, MHB will attempt to communicate with the owner and family by telephone, fax, or email and the owner and family must provide current contact information. MHB may use mail when the parties cannot be reached by telephone, fax, or email.

MHB 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 MHB determines that the lease does not comply with State or local law [24 CFR §982.308(c)]. Generally, MHB will not review the owner's lease for compliance with state/local law.

### **9-1.F. TENANCY APPROVAL [24 CFR §982.305]**

After receiving the family's Request for Tenancy Approval, with proposed dwelling lease, MHB will promptly notify the family and owner whether the assisted tenancy is approved.

Prior to approving the assisted tenancy and execution of a HAP contract, MHB will ensure that all required actions and determinations, discussed in Part 1 of this Chapter have been completed. These actions include ensuring that the unit is eligible; the unit has been inspected by MHB (or MHB-approved entity) and meets the Housing Quality Standards ("HQS"); the lease offered by the owner is approvable and includes the required Tenancy Addendum; the rent to be charged by the owner for the unit must be reasonable; where the family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the family, the share of rent to be paid by the family does not exceed forty (40) percent of the family's monthly adjusted income [24 CFR §982.305(a)]; the owner is an eligible owner, not disapproved by MHB, with no undisclosed 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)].

Generally, MHB will complete its determination within 10 business days of receiving all required information.

If the terms of the RFTA/proposed lease are changed for any reason, including but not limited to negotiation with MHB, MHB will obtain corrected copies of the RFTA and proposed lease, signed by the family and the owner.

Corrections to the RFTA/proposed lease will only be accepted as hard copies, in-person, by mail, electronically or by fax. MHB will not accept corrections over the phone.

If MHB determines that the tenancy cannot be approved for any reason, the owner and the family will be notified and given the opportunity to address any reasons for disapproval. MHB will instruct the owner and family of the steps, if any that are necessary to approve the tenancy.

Where the tenancy is not approvable because the unit is not approvable, the family may continue to search for eligible housing within the timeframe of the issued voucher.

If the tenancy is not approvable due to rent affordability (including rent burden and rent reasonableness), MHB 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 may continue to search for eligible housing within the timeframe of the issued voucher.

### **9-1.G. HAP CONTRACT EXECUTION [24 CFR §982.305]**

The HAP contract is a written agreement between MHB and the owner of the dwelling unit occupied or to be occupied by a housing choice voucher assisted family. Under the HAP contract, MHB agrees to make housing assistance payments to the owner on behalf of a specific family occupying a specific unit and obliges the owner to comply with all HCV program requirements.

The HAP contract format is prescribed by HUD. If MHB has given approval for the family of the assisted tenancy, the owner and MHB 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)].

MHB is permitted to execute a HAP contract even if the funding currently available does not extend for the full term of the HAP contract.

MHB 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 sixty (60) calendar days from the beginning of the lease term.

MHB 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 not to exceed sixty (60) calendar days from the beginning of the lease term, MHB 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 sixty (60) day period is void, and MHB may not pay any housing assistance payment to the owner.

Owners who have not previously participated in the HCV Program must attend a meeting with MHB in which the terms of the Tenancy Addendum and the HAP contract will be explained. MHB 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 MHB. MHB will ensure that both the owner and the assisted family receive copies of the dwelling lease.

The owner and MHB will execute the HAP contract. MHB will not execute the HAP contract until the owner has submitted IRS form W-9, direct deposit forms and other required forms (including, but not limited to, ACH or other electronic payment forms). MHB will ensure that the owner receives an electronic or paper copy of the executed HAP contract. See Chapter 13 for a further discussion of the HAP contract and contract provisions.

### **9-1.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 or send MHB a copy of such changes. Even so, the lease, including any changes, must remain in accordance with the requirements of this Chapter.

Generally, MHB approval of tenancy and execution of a new HAP contract are not required for changes in the lease. However, under certain circumstances, voucher assistance in the unit shall not be continued unless MHB has approved a new tenancy in accordance with HCV program requirements and has executed a new HAP contract with the owner. These circumstances include:

- Changes in lease requirements governing tenant or owner responsibilities for utilities or appliances;
- Changes in lease provisions governing the term of the lease;
- The family moves to a new unit, even if the unit is in the same building or complex; and
- Other changes deemed substantial and material by MHB including, but not limited to, changes in the rent or other charges.

In these cases, if the HCV assistance is to continue, the family must submit a new Request for Tenancy Approval (“RFTA”) along with a new dwelling lease containing the altered terms. A new tenancy must then be approved in accordance with this chapter.

No rent increase is permitted during the initial term of the lease [24 CFR §982.309(a)(3)].

After the initial term of the lease, where the owner requests a change in the amount of rent, the owner must notify MHB of any changes in the amount of the rent to owner at least sixty (60) days before any such changes go into effect [24 CFR § 982.308(g)(4)]. MHB may agree to such an increase 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 to an amount agreeable to MHB, keep the rent the same as in the

current or previous lease term, or give the family notice to not renew the lease in accordance with the terms of the lease, and the Rent Increase Protocols set forth below.

- the allocation by HUD for funding of HAP payments to MHB for the time period covered by the proposed rent increase is projected to be at a minimum of ninety-eight percent (98%) of HAP eligibility and not prorated to a lesser amount by HUD for the time period covered by the proposed rent increase. If the projected level of HAP payments for the relevant period is below ninety-eight percent (98%), MHB may deny the rent increase in accordance with its Rent Increase Protocol set forth below.

### Rent Increase Protocols

MHB is subject to Federal appropriations for its HAP payments in order to make payments to the landlords/owners. When the Federal appropriations to MHB do not match MHB's HAP payment needs, or the appropriations are prorated below ninety-eight percent (98%), MHB must take action to preserve its ability to fund HAP payments and to continue serving the maximum number of HCV families, despite the dwindling Federal resources. In order to accomplish these goals, MHB may take any one or combination of the following actions:

- Grant Rent Increase. MHB may determine if the rent increase is reasonable and grant the increase, on a case-by-case basis.
- Reduce Rent Increase. MHB may reduce requested increase to a lesser level, subject to agreement by the landlord/owner. If the landlord/owner does not agree to the reduced amount, MHB may deny the rent increase because of its funding concerns.
- Deny Rent Increase. MHB may deny the rent increase when MHB determines the rent increase is unreasonable or not consistent with market conditions.
- Moratorium on Rent Increases. MHB may announce a moratorium on rent increases when MHB is not fully funded for its HAP payments or its proration for HAP payments is projected to be below ninety-eight percent (98%) for the relevant period covered by the proposed rent increase. The moratorium may continue until the funding level increases above 98% or until MHB otherwise lifts the moratorium.
- Deny Rent Increase – Funding Concerns. MHB may deny the rent increase until such time as MHB's prorated HAP funding is equal to or above 98%.
- Failure to Agree. If the landlord/owner insists on the new increased rent level over MHB's disagreement and the options set forth in these Rent Increase Protocols, and no longer wishes to rent to the participant at the HAP levels set by MHB for the unit, MHB will terminate the assistance to the landlord/owner at the end of the term of the lease. Should such a termination occur, and the participant is otherwise in compliance with the lease and the participant obligations under the HCV Program, MHB may issue another voucher to the

participant to find another rental unit that comports with MHB's Payment Standards and other requirements of the HCV Program.

Where the owner is requesting a rent increase, MHB 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, if approved by MHB, will go into effect on the first of the month following the 60 day period after the owner notifies MHB 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 Choice* is a hallmark of the Housing Choice Voucher (“HCV”) Program. In general, therefore, HUD regulations impose few restrictions on where families may live or move with HCV assistance. This Chapter sets forth HUD regulations and MHB policies governing moves within or outside MHB’s jurisdiction in two parts:

Part 1: Moving with Continued Assistance. This part covers the general rules that apply to all moves by a family assisted under MHB’s HCV Program, whether the family moves to another unit within MHB’s jurisdiction or to a unit outside MHB’s jurisdiction under portability.

Part 2: Portability. This part covers the special rules that apply to moves by a family under portability, whether the family moves out of or into MHB’s jurisdiction. This part also covers the special responsibilities that MHB has under portability regulations and procedures.

#### PART 1: MOVING WITH CONTINUED ASSISTANCE

##### 10-1.A. ALLOWABLE MOVES

HUD lists five regulatory conditions, and the statutory condition under VAWA, in which an assisted family is allowed to move to a new unit with continued assistance. Permission to move is subject to the restrictions set forth in Section 10-1.B.

1. Landlord’s Substantial Breach. The family has a right to terminate the lease on notice to the owner for the owner’s substantial breach or otherwise as provided in the lease, and has given a notice of termination to the owner in accordance with the lease [24 CFR §982.314(b)(3)]. If the family terminates the lease on notice to the owner, the family must give or electronically send MHB a copy of the notice at the same time [24 CFR §982.314(d)(1)].
2. Mutual Agreement. The lease for the family’s unit has been terminated by mutual agreement of the owner and the family [24 CFR §982.314(b)(1)(ii)]. Should the family and the owner mutually agree to terminate the lease for the family’s unit, the family must give MHB a copy of the termination agreement.
3. Landlord Terminates Lease. The owner has given the family a notice to vacate, has commenced an action to evict the family, or has obtained a court judgment or other process allowing the owner to evict the family [24 CFR §982.314(b)(2)]. The family must give MHB a copy of any owner eviction notice [24 CFR §982.551(g)].
4. MHB Terminates Lease. MHB has terminated the assisted lease for the family’s unit for the owner’s breach [24 CFR §982.314(b)(1)(i)].
5. HQS Family Size. MHB determines that the family’s current unit does not meet the HQS space standards because of an increase in family size or a change in

family composition. In such cases, MHB may issue the family a new voucher, and the family and MHB must try to find an acceptable unit as soon as possible. If an acceptable unit is available for the family, MHB 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 MHB gives notice to the owner. [24 CFR §982.403(a) and (c)]

6. **VAWA Termination.** The Violence Against Women Reauthorization Act of 2013 provides that "a family may receive a voucher from a public housing agency and move to another jurisdiction under the tenant-based assistance program if the family has complied with all other obligations of the Section 8 program and has moved out of the assisted dwelling unit in order to protect the health or safety of an individual who is or has been a victim of domestic violence, dating violence, or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the assisted dwelling unit" [24 CFR §982.353(b)].

### **10-1.B. RESTRICTIONS ON MOVES**

A family's right to move is generally contingent upon the family's compliance with program requirements [24 CFR §982.1(b)(2)]. HUD specifies two conditions under which a PHA may deny a family permission to move and two ways in which a PHA may restrict moves by a family.

#### **Denial of Moves**

HUD regulations permit MHB to deny a family permission to move under the following conditions:

#### ***Insufficient Funding***

MHB may deny a family permission to move if MHB does not have sufficient funding for continued assistance [24 CFR §982.314(e)(1)]. However, Notice PIH 2008-43 limits the ability of MHB to deny permission to move under portability due to insufficient funding. The requirements found in this notice govern such moves. Generally, MHB will deny a family permission to move on grounds that MHB does not have sufficient funding for continued assistance if: (a) the move is initiated by the family, not the owner or MHB; (b) MHB can demonstrate that the move will, in fact, result in higher subsidy and/or administrative costs; and (c) MHB can demonstrate, in accordance with the policies in Part 8 of Chapter 16, that it does not have sufficient HAP and/or Administrative Fees funding in its annual budget to accommodate the higher subsidy and administrative costs.

#### ***Grounds for Denial or Termination of Assistance***

MHB has grounds for denying or terminating the family's assistance [24 CFR §982.314(e)(2)]. VAWA allows exceptions to these grounds for denial or termination of assistance for families who are otherwise in compliance with program obligations, but have moved to protect the health or safety of an individual who is or has been a victim of domestic violence, dating violence or stalking, and who reasonably believed he or

she was imminently threatened by harm from further violence if they remained in the unit [24 CFR §982.353(b)].

If MHB has grounds for denying or terminating a family's assistance, MHB will act on those grounds in accordance with the regulations and policies set forth in Chapters 3 and 12, respectively. In general, MHB may deny a family permission to move for this reason; however, it retains the discretion not to do so under special circumstances. (See Sections 3-3.G and 12-2.E for VAWA provisions).

### **Restrictions on Elective Moves [24 CFR §982.314(c)]**

HUD regulations permit MHB to prohibit any elective move by a participant family during the family's initial lease term. They also permit MHB to prohibit more than one elective move by a participant family during any 12-month period.

Generally, MHB will deny a family permission to make an elective move during the family's initial lease term. This policy applies to moves within MHB's jurisdiction or outside it under portability.

MHB 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 MHB's jurisdiction. Generally, MHB will thoroughly review the reasons for the elective move and to determine whether the family is still in compliance with HCV Program guidelines, MHB may require the family to undergo:

- 1) a complete interim recertification which may include, but not be limited to, a determination of sources of income, expenses and other determinations regarding the eligibility and suitability of the family to participate in the HCV Program;
- 2) background criminal history check on the head of household and all family members sixteen (16) years of age or older;
- 3) review of disturbance or other nuisance calls to the property; and/or
- 4) any other factors that will allow MHB to determine whether the family is currently in compliance with the lease and HCV Program guidelines.

MHB will deny a family permission to move if the family is currently under a repayment agreement unless due to reasonable accommodation.

MHB will require all applicants, participants and their household members over 18 years of age to provide a copy of their annual income tax return. If, applicant or participant or household member states he/she did not file income tax they will be required to obtain official verification from the Internal Revenue Service within (10) business days.

MHB will consider exceptions to these policies, in its discretion, 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, etc.), to accommodate a substantial change in family circumstances (e.g., new employment, school attendance in a distant area), to address an emergency situation over which a family has no control, or for purposes of reasonable accommodation of a family member who is a person with disabilities (see Chapter 2).

## **10-1.C. MOVING PROCESS**

### **Notification**

If a family wishes to move to a new unit, the family must notify MHB and the owner before moving out of the old unit or terminating the lease on notice to the owner [24 CFR §982.314(d)(2)]. If the family is still under a valid lease, the landlord must approve of the desire to move. If the landlord does not approve of the move, and unless the lease provides otherwise, the family must remain through the term of the lease. If the family wishes to move to a unit outside MHB's jurisdiction under portability, the notice to MHB must specify the area where the family wishes to move [24 CFR §982.314(d)(2), Notice PIH 2008-43]. The notices must be in writing [24 CFR §982.5] but may be transmitted to MHB in paper copy or electronically.

### **Approval**

Upon receipt of a family's notification that it wishes to move, MHB will determine whether the move is approvable in accordance with the regulations and policies set forth in sections 10-1.A and 10-1.B. Generally, MHB will notify the family in writing of its determination within ten (10) business days following receipt of the family's notification.

### **Reexamination of Family Income and Composition**

For families approved to move to a new unit within MHB's jurisdiction, MHB will perform a new annual reexamination or interim reexamination in accordance with the policies set forth in Chapter 11 of this Administrative Plan.

For families moving into or families approved to move out of MHB's jurisdiction under portability, generally, MHB will follow the policies set forth in Part 2 of this chapter.

### **Voucher Issuance and Briefing**

For families approved to move to a new unit within MHB's jurisdiction, generally, MHB will issue a new voucher within ten (10) business days of MHB's written approval to move, provided MHB has HAP resources sufficient to support the issuance of the new voucher. In MHB's option, it may waive the briefing normally required for these families. MHB 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 MHB approves. Otherwise, the family will lose its assistance.

For families moving into or families approved to move out of MHB's jurisdiction under portability, MHB will follow the policies set forth in Part 2 of this Chapter.

### **Housing Assistance Payments [24 CFR §982.311(d)]**

When a family moves out of an assisted unit, MHB may not make any housing assistance payment to the owner for any month **after** the month the family moves out. The owner may keep the housing assistance payment for the month when the family moves out of the unit.

If a participant family moves from an assisted unit with continued tenant-based assistance, the term of the assisted lease for the new assisted unit may begin during the month the family moves out of the first assisted unit. Overlap of the last housing assistance payment (for the month when the family moves out of the old unit) and the first assistance payment for the new unit, is not considered to constitute a duplicative housing subsidy.

## **PART 2: PORTABILITY**

### **10-2.A. OVERVIEW**

Within the limitations of the regulations and this Administrative Plan, a participant family or an applicant family that has been issued a voucher has the right to use tenant-based voucher assistance to lease a unit anywhere in the United States providing that the unit is located within the jurisdiction of a PHA administering a tenant-based voucher program [24 CFR §982.353(b)]. The process by which a family obtains a voucher from one PHA and uses it to lease a unit in the jurisdiction of another PHA is known as portability. The first PHA is called the **initial PHA**. The second is called the **receiving PHA**.

The receiving PHA has the option of administering the family's voucher for the initial PHA or absorbing the family into its own program. Under the first option, the receiving PHA bills the initial PHA for the family's housing assistance payments and the fees for administering the family's voucher. Under the second option, the receiving PHA pays for the family's assistance out of its own program funds, and the initial PHA has no further relationship with the family.

The same PHA commonly acts as the initial PHA for some families and as the receiving PHA for others. Each role involves different responsibilities. Generally, MHB will follow the rules and policies in section 10-2.B when it is acting as the initial PHA for a family. Generally, MHB will follow the rules and policies in section 10-2.C when it is acting as the receiving PHA for a family.

### **10-2.B. INITIAL PHA ROLE**

#### **Allowable Moves under Portability**

A family may move with voucher assistance only to an area where there is at least one PHA administering a voucher program [24 CFR §982.353(b)]. If there is more than one PHA in the area, the initial PHA may choose the receiving PHA [24 CFR §982.355(b)].

Applicant families that have been issued vouchers as well as participant families may qualify to lease a unit outside MHB's jurisdiction under portability. MHB, in accordance with HUD regulations and MHB policy, determines whether a family qualifies.

### ***Applicant Families***

Under HUD regulations, most applicant families qualify to lease a unit outside MHB's jurisdiction under portability. However, HUD gives MHB discretion to deny a portability move by an applicant family for the same reasons that it may deny any move by a participant family (e.g., insufficient funding and grounds for denial or termination of assistance). In determining whether or not to deny an applicant family permission to move under portability because MHB lacks sufficient funding or has grounds for denying assistance to the family, the initial PHA will follow the policies established in section 10-1.B of this chapter.

In addition, MHB 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)]. Therefore, if neither the head of household nor the spouse/co-head of an applicant family had a domicile (i.e., legal residence) in MHB's jurisdiction at the time the family's application for assistance was submitted or at the time the initial voucher is issued, the family must live in MHB's jurisdiction with voucher assistance for at least twelve (12) months before requesting portability. MHB will consider exceptions to this policy for purposes of reasonable accommodation (see Chapter 2). However, any exception to this policy is subject to the approval of the receiving PHA [24 CFR §982.353(c)(3)].

### ***Participant Families***

The initial PHA must not provide portable assistance for a participant if a family has moved out of its assisted unit in violation of the lease [24 CFR §982.353(b)]. VAWA creates an exception to this prohibition for families who are otherwise in compliance with program obligations but have moved to protect the health or safety of an individual who is or has been a victim of domestic violence, dating violence or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if they remained in the unit [24 CFR §982.353(b)].

MHB will determine whether a participant family may move out of MHB's jurisdiction with continued assistance in accordance with the regulations and policies set forth here and in sections 10-1.A and 10-1.B of this chapter. MHB will notify the family of its determination in accordance with the approval policy set forth in section 10-1.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)(3)]. The family must specify the area to which the family wishes to move [Notice 2008-43].

The initial PHA is responsible for determining whether the family is income eligible in the area to which the family wishes to move [24 CFR §982.355(c)(1)]. If the applicant family is not income eligible in that area, MHB will inform the family that it may not move there and receive voucher assistance [Notice PIH 2008-43].

### ***Participant Families***

The income eligibility of a participant family is not re-determined if the family moves to a new jurisdiction under portability [24 CFR §982.353(d)(2), 24 CFR §§ 982.355(c)(1)].

### **Reexamination of Family Income and Composition**

No new reexamination of family income and composition is required for an applicant family. For a participant family approved to move out of its jurisdiction under portability, MHB 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.

MHB will make any exceptions to this policy necessary to remain in compliance with HUD regulations or in the interests of HCV Program integrity/efficiency.

### **Briefing**

The regulations and policies on briefings set forth in Chapter 5 of this Administrative Plan outline MHB's process in providing information on portability to all applicant families that qualify to lease a unit outside MHB's jurisdiction under the portability procedures. Generally, no special briefing is required for these families wishing to move outside MHB's jurisdiction under portability. However, MHB will provide the family with the same oral and written explanation of portability that it provides to applicant families selected for admission to the HCV Program (see Chapter 5). Also, MHB will provide the name, address, and phone of the contact for the PHA in the jurisdiction to which they wish to move. Moreover, MHB will advise the family that they will be under the receiving PHA's policies and procedures, including subsidy standards and voucher extension policies.

### **Voucher Issuance and Term**

An applicant family has no right to portability until after the family has been issued a voucher [24 CFR §982.353(b)]. In issuing vouchers to applicant families, MHB will follow the regulations and procedures set forth in Chapter 5. A new voucher is not required for portability purposes.

For families approved to move under portability, generally, MHB will issue a new voucher within ten (10) business days of MHB's written approval to move. The initial term of the voucher will be 60 days.

### **Voucher Extensions and Expiration**

MHB will approve **no** extensions to a voucher issued to an applicant or participant family porting out of MHB's jurisdiction except under the following circumstances: (a) the initial term of the voucher will expire before the portable family will be issued a voucher by the receiving PHA, (b) the family decides to return to the initial PHA's jurisdiction and search for a unit there, or (c) the family decides to search for a unit in a third PHA's jurisdiction. In such cases, the policies on voucher extensions set forth in Chapter 5, section 5-2.E, of this Administrative Plan will apply, including the requirement that the family apply for an extension in writing prior to the expiration of the initial voucher term.

To receive or continue receiving assistance under the initial PHA's voucher program, a family that moves to another PHA's jurisdiction under portability must be under HAP contract in the receiving PHA's jurisdiction within 60 days following the expiration date of the initial PHA's voucher term (including any extensions). (See below under "Initial Billing Deadline" for one exception to this policy.)

### **Initial Contact with the Receiving PHA**

After approving a family's request to move under portability, the initial PHA must promptly notify the receiving PHA to expect the family [24 CFR §982.355(c)(2)]. This means that the initial PHA must contact the receiving PHA directly on the family's behalf [Notice PIH 2008-43]. The initial PHA must also advise the family how to contact and request assistance from the receiving PHA [24 CFR §982.355(c)(2)].

Because the portability process is time-sensitive, MHB will notify the receiving PHA by phone, fax, or e-mail to expect the family. The initial PHA will also ask the receiving PHA to provide any information the family may need upon arrival, including the name, fax, email and telephone number of the staff person responsible for business with incoming portable families and procedures related to appointments for voucher issuance. MHB will pass this information along to the family. MHB will also ask for the name, address, telephone number, fax and email of the person responsible for processing the billing information.

### **Sending Documentation to the Receiving PHA**

The initial PHA is required to send the receiving PHA the following documents:

1. Form HUD-52665, Family Portability Information, with Part I filled out [Notice PIH 2008-43].
2. A copy of the family's voucher [Notice PIH 2008-43].
3. A copy of the family's most recent form HUD-50058, Family Report, or, if necessary in the case of an applicant family, family and income information in a format similar to that of form HUD-50058 [24 CFR §§ 982.355(c)(4), Notice PIH 2008-43].
4. 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)(4), Notice PIH 2008-43].

In addition to these documents, MHB will provide the following information, if available, to the receiving PHA:

- Social security numbers (SSNs)
- Documentation of SSNs for all nonexempt household members whose SSNs have not been verified through the EIV system
- Documentation of legal identity
- Documentation of citizenship or eligible immigration status
- Documentation of participation in the earned income disallowance (EID) benefit
- Documentation of participation in a family self-sufficiency (FSS) program

MHB will notify the family in writing regarding any information provided to the receiving PHA [HCV GB, p. 13-3].

### **Initial Billing Deadline [Notice PIH 2008-43]**

When the initial PHA sends form HUD-52665 to the receiving PHA, it specifies in Part I the deadline by which it must receive the initial billing notice from the receiving PHA. This deadline is 60 days following the expiration date of the voucher issued to the family by the initial PHA. If the initial PHA does not receive a billing notice by the deadline and does not intend to honor a late billing submission, it must contact the receiving PHA to determine the status of the family. If the receiving PHA reports that the family is not yet under HAP contract, the initial PHA may refuse to accept a late billing submission. If the receiving PHA reports that the family is under HAP contract and the receiving PHA cannot absorb the family, the initial PHA must accept a late billing submission; however, it may report to HUD the receiving PHA's failure to comply with the deadline.

If MHB has not received an initial billing notice from the receiving PHA by the deadline specified on form HUD-52665, it will contact the receiving PHA by phone, fax, or e-mail. If MHB reports that the family is not yet under HAP contract, MHB will inform the receiving PHA that it will not honor a late billing submission and will return any subsequent billings that it receives on behalf of the family. MHB will send the receiving PHA a written confirmation of its decision by fax, e-mail and/or mail.

MHB will allow an exception to this policy if the family includes a person with disabilities and the late billing is a result of a reasonable accommodation granted to the family by the receiving PHA.

### **Monthly Billing Payments [24 CFR §982.355(e), Notice PIH 2008-43]**

If the receiving PHA is administering the family's voucher, the initial PHA is responsible for making billing payments in a timely manner. The first billing amount is due within thirty (30) calendar days after the initial PHA receives Part II of form HUD-52665 from the receiving PHA. Subsequent payments must be **received** by the receiving PHA no later than the fifth business day of each month. The payments must be provided in a form and manner that the receiving PHA is able and willing to accept.

Subject to the provisions set forth in this Administrative Plan, the initial PHA may not terminate or delay making payments under existing portability billing arrangements as a result of overleasing or funding shortfalls, unless the shortfalls are sufficient to trigger MHB's funding shortfall contingency protocols described more completely in Section 12-1.E. of this Administrative Plan. MHB must manage its tenant-based program in a manner that ensures that it has the financial ability to provide assistance for families that move out of its jurisdiction under portability and are not absorbed by receiving PHAs as well as for families that remain within its jurisdiction.

The initial PHA will utilize direct deposit to ensure that the payment is received by the deadline unless the receiving PHA notifies the initial PHA that direct deposit is not acceptable to them.

## **Annual Updates of Form HUD-50058**

If the initial PHA is being billed on behalf of a portable family, it should receive an updated form HUD-50058 each year from the receiving PHA. If the initial PHA fails to receive an updated 50058 by the family's annual reexamination date, the initial PHA should contact the receiving PHA to verify the status of the family.

### **Denial or Termination of Assistance [24 CFR §982.355(c)(9)]**

If the initial PHA has grounds for denying or terminating assistance for a portable family that has not been absorbed by the receiving PHA, the initial PHA may act on those grounds at any time. (For MHB policies on denial and termination, see Chapters 3 and 12, respectively.)

## **10-2.C. RECEIVING PHA ROLE**

If a family has a right to lease a unit in the receiving PHA's jurisdiction under portability, the receiving PHA must provide assistance for the family [24 CFR §982.355(10)].

The receiving PHA's procedures and preferences for selection among eligible applicants do not apply, and the receiving PHA's waiting list is not used [24 CFR §982.355(10)]. However, the family's unit, or voucher, size is determined in accordance with the subsidy standards of the receiving PHA [24 CFR §982.355(7)], and the amount of the family's housing assistance payment is determined in the same manner as for other families in the receiving PHA's voucher program [24 CFR §982.355(e)(2)].

### **Initial Contact with Family**

When a family moves into MHB's jurisdiction under portability, the family is responsible for promptly contacting MHB and complying with MHB's procedures for incoming portable families [24 CFR §982.355(c)(3)].

If the voucher issued to the family by the initial PHA has expired, the receiving PHA does not process the family's eligibility and voucher-related paperwork but instead refers the family back to the initial PHA [Notice PIH 2008-43].

When a portable family requests assistance from the receiving PHA, the receiving PHA must promptly inform the initial PHA whether the receiving PHA will bill the initial PHA for assistance on behalf of the portable family or will absorb the family into its own program [24 CFR §982.355(c)(5)]. If MHB initially bills the initial PHA for the family's assistance, it may later decide to absorb the family into its own program [Notice PIH 2008-43]. (See later under "Absorbing a Portable Family" for more on this topic.)

Within ten (10) business days after a portable family requests assistance, the receiving PHA will notify the MHB whether it intends to bill the receiving PHA on behalf of the portable family or absorb the family into its own program.

If for any reason the receiving PHA refuses to process or provide assistance to a family under the portability procedures, the family must be given the opportunity for an informal review or hearing [Notice PIH 2008-43]. (For more on this topic, see later under "Denial or Termination of Assistance.")

## **Briefing**

HUD allows the receiving PHA to require a briefing for an incoming portable family as long as the requirement does not unduly delay the family's search [Notice PIH 2008-43].

Generally, MHB will not require the family to attend a briefing. MHB will provide the family with a briefing packet (as described in Chapter 5) and, in an individual briefing, will orally inform the family about MHB's payment and subsidy standards, procedures for requesting approval of a unit, the unit inspection process, and the leasing process. MHB may suggest that the family attend a full briefing at a later date.

## **Income Eligibility and Reexamination**

HUD allows the receiving PHA to conduct its own income reexamination of a portable family [24 CFR §982.355(c)(4)]. However, the receiving PHA may not delay voucher issuance or unit approval until the reexamination process is complete unless the reexamination is necessary to determine that an applicant family is income eligible for admission to the program in the area where the family wishes to lease a unit [Notice PIH 2008-43, 24 CFR §982.201(b)(4)]. The receiving PHA does not re-determine income eligibility for a portable family that was already receiving assistance in the initial PHA's voucher program [24 CFR §982.355(c)(1)].

For any family moving into its jurisdiction under portability, MHB will conduct a new reexamination of family income and composition. However, MHB will not delay issuing the family a voucher for this reason. Nor will MHB delay approving a unit for the family until the reexamination process is complete, unless the family is an applicant and MHB cannot otherwise confirm that the family is income eligible for admission to the program in the area where the unit is located.

In conducting its own reexamination, MHB will rely upon any verifications provided by the initial PHA to the extent that they (a) accurately reflect the family's current circumstances and (b) were obtained within the last 120 days. Any new information may be verified by documents provided by the family and adjusted, if necessary, when third party verification is received.

## **Voucher Issuance**

When a family moves into its jurisdiction under portability, the receiving PHA is required to issue the family a voucher [24 CFR §982.355(b)(6)]. The family must submit a request for tenancy approval to the receiving PHA during the term of the receiving PHA's voucher [24 CFR §982.355(c)(6)].

### ***Timing of Voucher Issuance***

HUD expects the receiving PHA to issue the voucher within two weeks after receiving the family's paperwork from the initial PHA if the information is in order, the family has contacted the receiving PHA, and the family complies with the receiving PHA's procedures [Notice PIH 2008-43].

When a family ports into its jurisdiction, MHB will issue the family a voucher based on the paperwork provided by the initial PHA unless the family's paperwork from the initial PHA is incomplete, the family's voucher from the initial PHA has expired or the family

does not comply with MHB's HCV Program and/or procedures. MHB will update the family's information when verification has been completed.

### ***Voucher Term***

The term of the receiving PHA's voucher may not expire before the term of the initial PHA's voucher [24 CFR §982.355(c)(6)]. Generally, the receiving PHA's voucher will expire on the same date as the initial PHA's voucher.

### ***Voucher Extensions [24 CFR §982.355(c)(6), Notice 2008-43]***

The receiving PHA may provide additional search time to the family beyond the expiration date of the initial PHA's voucher; however, if it does so, it must inform the initial PHA of the extension. It must also bear in mind the billing deadline provided by the initial PHA. Unless willing and able to absorb the family, the receiving PHA should ensure that any voucher expiration date would leave sufficient time to process a request for tenancy approval, execute a HAP contract, and deliver the initial billing to the initial PHA.

MHB generally will not extend the term of the voucher that it issues to an incoming portable family unless MHB plans to absorb the family into its own program, in which case it will follow the policies on voucher extension set forth in section 5-2.E. MHB will consider an exception to this policy as a reasonable accommodation to a person with disabilities (see Chapter 2).

### **Notifying the Initial PHA**

The receiving PHA must promptly notify the initial PHA if the family has leased an eligible unit under the HCV Program or if the family fails to submit a request for tenancy approval for an eligible unit within the term of the receiving PHA's voucher [24 CFR §982.355(c)(8)]. The receiving PHA is required to use Part II of form HUD-52665, Family Portability Information, for this purpose [24 CFR §982.355(e)(5), Notice PIH 2008-43]. (For more on this topic and the deadline for notification, see below under "Administering a Portable Family's Voucher.")

If an incoming portable family ultimately decides not to lease in the jurisdiction of the receiving PHA but instead wishes to return to the initial PHA's jurisdiction or to search in another jurisdiction, the receiving PHA must refer the family back to the initial PHA. In such a case the voucher of record for the family is once again the voucher originally issued by the initial PHA. Any extension of search time provided by the receiving PHA's voucher is only valid for the family's search in the receiving PHA's jurisdiction [Notice PIH 2008-43].

### **Administering a Portable Family's Voucher**

#### ***Initial Billing Deadline***

If a portable family's search for a unit is successful and the receiving PHA intends to administer the family's voucher, the receiving PHA must submit its initial billing notice (Part II of form HUD-52665) (a) no later than 10 business days following the date the receiving PHA **executes** a HAP contract on behalf of the family **and** (b) in time that the notice will be **received** no later than 60 days following the expiration date of the family's

voucher issued by the initial PHA [Notice PIH 2008-43]. A copy of the family's form HUD-50058, Family Report, completed by the receiving PHA must be attached to the initial billing notice. The receiving PHA may send these documents by mail, fax, or e-mail.

MHB will send its initial billing notice by fax or e-mail, if necessary, to meet the billing deadline but may also send the notice by regular mail.

If the receiving PHA fails to send the initial billing within ten (10) business days following the date the HAP contract is executed, it is required to absorb the family into its own program unless (a) the initial PHA is willing to accept the late submission, or, (b) HUD requires the initial PHA to honor the late submission (e.g., because the receiving PHA is overleased) [Notice PIH 2008-43].

### ***Ongoing Notification Responsibilities [Notice PIH 2008-43, form HUD-52665]***

**Annual Reexamination.** The receiving PHA must send the initial PHA a copy of a portable family's updated form HUD-50058 after each annual reexamination for the duration of time the receiving PHA is billing the initial PHA on behalf of the family, regardless of whether there is a change in the billing amount.

Generally, MHB will send a copy of the updated HUD-50058 in writing at the same time MHB and owner are notified of the reexamination results.

**Change in Billing Amount.** The receiving PHA is required to notify the initial PHA, using form HUD-52665, of any change in the billing amount for the family as a result of:

1. A change in the HAP amount (because of a reexamination, a change in the applicable payment standard, a move to another unit, etc.);
2. An abatement or subsequent resumption of the HAP payments;
3. Termination of the HAP contract;
4. Payment of a damage/vacancy loss claim for the family; or
5. Termination of the family from the program.

The timing of the notice of the change in the billing amount should correspond with the notification to the owner and the family in order to provide the initial PHA with advance notice of the change. Under no circumstances should the notification be later than ten (10) business days following the effective date of the change in the billing amount. If the receiving PHA fails to send Form HUD-52665 within ten (10) days of effective date of billing changes, the initial PHA is not responsible for any increase prior to notification.

### ***Late Payments [Notice PIH 2008-43]***

If the initial PHA fails to make a monthly payment for a portable family by the fifth (5<sup>th</sup>) business day of the month, the receiving PHA must promptly notify the initial PHA in writing of the deficiency. The notice must identify the family, the amount of the billing payment, the date the billing payment was due, and the date the billing payment was received (if it arrived late). The receiving PHA must send a copy of the notification to the Office of Public Housing (OPH) in the HUD area office with jurisdiction over the receiving PHA. If the initial PHA fails to correct the problem by the second month following the notification, the receiving PHA may request by memorandum or email to

the director of the OPH with jurisdiction over the receiving PHA that HUD transfer the unit in question. A copy of the initial notification and any subsequent correspondence between MHBs on the matter must be attached. The receiving PHA must send a copy of the memorandum to the initial PHA. If the OPH decides to grant the transfer, the billing arrangement on behalf of the family ceases with the transfer, but the initial PHA is still responsible for any outstanding payments due to the receiving PHA.

### ***Overpayments [Notice PIH 2008-43]***

In all cases where the receiving PHA has received billing payments for billing arrangements no longer in effect, the receiving PHA is responsible for returning the full amount of the overpayment (including the portion provided for administrative fees) to the initial PHA.

In the event that HUD determines billing payments have continued for at least three months because the receiving PHA failed to notify the initial PHA that the billing arrangement was terminated, the receiving PHA must take the following steps:

- Return the full amount of the overpayment, including the portion provided for administrative fees, to the initial PHA.
- Once full payment has been returned, notify the Office of Public Housing in the HUD area office with jurisdiction over the receiving PHA of the date and the amount of reimbursement to the initial PHA.

At HUD's discretion, the receiving PHA may be subject to the sanctions spelled out in Notice PIH 2008-43.

### ***Denial or Termination of Assistance***

At any time, the receiving PHA may make a determination to deny or terminate assistance to a portable family for family action or inaction [24 CFR §982.355(c)(9), 24 CFR §982.355(c)(10)].

In the case of a termination, MHB should provide adequate notice of the effective date to the initial PHA to avoid having to return a payment. In no event should the receiving PHA fail to notify the initial PHA later than ten (10) business days following the effective date of the termination of the billing arrangement [Notice PIH 2008-43].

If MHB elects to deny or terminate assistance for a portable family, MHB will notify the initial PHA within ten (10) business days after the informal review or hearing if the denial or termination is upheld. Generally, MHB will base its denial or termination decision on the policies set forth in Chapter 3 or Chapter 12, respectively. The informal review or hearing will be held in accordance with the policies in Chapter 16. The receiving PHA will furnish the initial PHA with a copy of the review or hearing decision.

### ***Absorbing a Portable Family***

The receiving PHA may absorb an incoming portable family into its own program when MHB executes a HAP contract on behalf of the family or at any time thereafter providing that: (a) MHB has funding available under its annual contributions contract ("ACC"), and (b) absorbing the family will not result in overleasing [24 CFR §982.355(d)(1), Notice PIH 2008-43].

If the receiving PHA absorbs a family from the point of admission, the admission will be counted against the income targeting obligation of the receiving PHA [24 CFR §982.201(b)(2)(vii)].

If the receiving PHA absorbs a family after providing assistance for the family under a billing arrangement with the initial PHA, HUD encourages the receiving PHA to provide adequate advance notice to the initial PHA to avoid having to return an overpayment. The receiving PHA must specify the effective date of the absorption of the family [Notice PIH 2008-43].

If MHB decides to absorb a portable family upon the execution of a HAP contract on behalf of the family, MHB will notify the initial PHA by the initial billing deadline specified on form HUD-52665. The effective date of the HAP contract will be the effective date of the absorption.

If MHB decides to absorb a family after that, it will provide the initial PHA with 30 days' advance notice.

Following the absorption of an incoming portable family, the family is assisted with funds available under the consolidated ACC for the receiving PHA's voucher program [24 CFR §982.355(d)], and the receiving PHA becomes the initial PHA in any subsequent moves by the family under portability.

## Chapter 11

### REEXAMINATIONS

#### INTRODUCTION

MHB is required to reexamine each family's income and composition at least annually, and to adjust the family's level of assistance accordingly. If Federal law or HUD regulations allow, MHB may reexamine each family's income bi-annually or such other time period as may be specified in Federal law or the regulations. 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 MHB policies concerning reexaminations are presented in three parts:

Part 1: Annual Reexaminations. This part discusses the process for conducting annual reexaminations.

Part 2: Interim Reexaminations. This part details the requirements for families to report changes in family income and composition between annual reexaminations.

Part 3: Recalculating Family Share and Subsidy Amount. This part discusses the recalculation of family share and subsidy amounts based on the results of annual and interim reexaminations.

Policies governing reasonable accommodation, family privacy, required family cooperation, and program abuse, as described elsewhere in this HCV Plan, apply to both annual and interim reexaminations.

#### **PART 1: ANNUAL<sup>8</sup> REEXAMINATIONS [24 CFR §982.516]**

##### **11-1.A. OVERVIEW**

MHB must conduct a reexamination of family income and composition at least annually, or such longer period (e.g., bi-annually) as allowed by Federal law or regulations. 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 and/or bi-annual, if allowed by Federal law or regulations (hereinafter collectively referred to as "annual") reexaminations, the information to be collected and verified, and annual reexamination effective dates.

---

<sup>8</sup> The term "annually" as it relates to Section 11 descriptions of recertifications shall also be deemed to mean "bi-annually" or other such longer period of time, if such longer period of time is subsequently authorized by Federal law or regulations. In order to preserve administrative resources, MHB's preference is to re-certify various categories of participant families (e.g., families in good standing, elderly families, etc.) using the longest time allowed by Federal law or regulations between participant family recertifications.

### **11-1.B. SCHEDULING ANNUAL REEXAMINATIONS**

MHB must establish a policy to ensure that the annual reexamination for each family is completed *within* a 12-month (or if allowed by Federal law or regulation, 24-month) period, and may require reexaminations more frequently [HCV GB p. 12-1].

MHB will begin the annual reexamination process approximately ninety (90) days in advance of its scheduled effective date. Generally, MHB will schedule annual reexamination effective dates to coincide with the family's anniversary date, but may alter this date as MHB implements administrative changes designed to increase efficiency and lessen the impact of historically low Federal funding levels and prorations. Therefore, MHB also may schedule an annual reexamination for completion prior to the anniversary date for administrative purposes.

*Anniversary date* is defined as 12 months (or 24 months in case of bi-annual recertifications) 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 (i.e., admission).

If the family moves to a new unit, MHB will perform a new annual reexamination.

#### **Notification of and Participation in the Annual Reexamination Process**

MHB is required to obtain the information needed to conduct annual reexaminations. How that information will be collected is left to the discretion of MHB. However, PHAs should give tenants who were not provided the opportunity the option to complete Form HUD-92006 at this time [Notice PIH 2009-36].

Families generally are required to participate in an annual reexamination interview, which must be attended by the head of household, spouse, or co-head. If participation in an in-person interview poses a hardship because of a family member's disability, the family should contact MHB to request a reasonable accommodation (see Chapter 2).

Notification of annual reexamination interviews will be sent by email, electronic means or, in MHB's option, first-class mail and will contain the date, time, and location of the interview. In addition, it will inform the family of the information and documentation that must be brought to the interview. MHB may also opt to recertify using electronic means or by mail.

If the family is unable to attend a scheduled interview, the family should contact MHB in advance of the interview to schedule a new appointment. If a family does not attend the scheduled interview, MHB may send a second notification with a new interview appointment time. If a family fails to attend two scheduled interviews without MHB approval, or if the notice is returned by an Internet Service Provider ("ISP") or the post office with no forwarding email/address, a notice of termination (see Chapter 12) will be sent to the family's address of record, and to any alternate address provided in the family's file.

An advocate, interpreter, or other assistant may assist the family in the interview process. The family and MHB may execute a certification attesting to the role and assistance of any such third party.

### 11-1.C. CONDUCTING ANNUAL REEXAMINATIONS

As part of the annual reexamination process, families are required to provide updated information to MHB regarding the family's income, expenses, and composition [24 CFR §982.551(b)].

Families will be asked to bring all required information (as described in the reexamination notice) to the reexamination appointment. The required information may include, but not be limited to, a PHA-designated reexamination form, an Authorization for the Release of Information/Privacy Act Notice, as well as supporting documentation related to the family's income, expenses, and family composition.

- Any required documents or information that the family is unable to provide at the time of the interview must be provided within ten (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.
- When MHB conducts the annual reexamination electronically or by \_mail, the family will be sent the reexamination form, Authorization for the Release of Information/Privacy Act Notice, as well as supporting documentation related to the family's income, expenses, and family composition. The family will be required to complete and return the documents provided along with verifications of their income, assets and other relevant information pertaining to the information being submitted.
- If the family does not provide the required documents or information within the required time frame (plus any extensions), the family will be sent a notice of termination (See Chapter 12).

The information provided by the family generally must be verified in accordance with the policies in Chapter 7. Unless the family reports a change, or MHB 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, but are not limited to:

- Legal identity
- Age
- Social security numbers
- A person's disability status
- Citizenship or immigration status

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

**11-1.D. DETERMINING ONGOING ELIGIBILITY OF CERTAIN STUDENTS [24 CFR §982.552(b)(5)]**

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

If a student enrolled in an institution of higher education is under the age of 24, is not a veteran, is not married, does not have a dependent child, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the student's eligibility must be reexamined along with the income eligibility of the student's parents on an annual basis. In these cases, both the student and the student's parents must be income eligible for the student to continue to receive HCV assistance. If, however, a student in these circumstances is determined independent from his or her parents in accordance with MHB 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 or guardians, if any.

During the annual reexamination process, MHB will determine the ongoing eligibility of each student who is subject to the eligibility restrictions in 24 CFR §5.612 by reviewing the student's individual income as well as the income of the student's parents. If the student has been determined "independent" from his/her parents based on the policies in Sections 3-12.E and 7-2.E, the parents' income will not be reviewed.

If the student is no longer income eligible based on his/her own income or the income of his/her parents, the student's assistance will be terminated in accordance with the policies in Section 12-1.D.

If the student continues to be income eligible based on his/her own income and the income of his/her parents/guardian(s), if applicable, MHB will process a reexamination in accordance with the policies in this Chapter.

**11-1.E. EFFECTIVE DATES**

MHB must establish policies concerning the effective date of changes that result from an annual reexamination [24 CFR §982.516].

In general, an *increase* in the family share of the rent that results from an annual reexamination will take effect on the family's anniversary date of following the 30-day notice period, and the family will be notified at least thirty (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 MHB 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 MHB, but will always allow for the 30-day notice period.

If the family causes a delay in processing the annual reexamination, or commits misrepresentation or fraud, *increases* in the family share of the rent will be applied retroactively, to the scheduled effective date of the annual reexamination, or such date as MHB may set after appropriate notification to the family. The family will be responsible for any overpaid subsidy and, in MHB's discretion, 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 interim/annual reexamination will take effect on the month after which the change is officially reported. .

- If a family moves to a new unit, the decrease will take effect on the effective date of the new lease and HAP contract. The decrease may have an earlier effective date.
- If MHB 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 MHB.
- 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 correct information requested by MHB by the date specified, and this delay prevents MHB from completing the reexamination as scheduled.

## **PART 2: INTERIM REEXAMINATIONS [24 CFR §§ 982.516]**

### **11-2.A. OVERVIEW**

Family circumstances may change throughout the period between annual reexaminations. HUD and MHB policies dictate what kinds of information about changes in family circumstances must be reported, and under what circumstances MHB must process interim reexaminations to reflect those changes. HUD regulations also permit MHB to conduct interim reexaminations of income or family composition at any time. When an interim reexamination is conducted, generally, only those factors that have changed are verified and adjusted [HCV GB, p. 12-10].

In addition to specifying what information the family must report, HUD regulations permit the family to request an interim determination if other aspects of the family's income or composition changes. MHB must complete the interim reexamination within a reasonable time after the family's request.

This part includes HUD and MHB policies describing what changes families are required to report, what changes families may choose to report, and how MHB will process both PHA- and family-initiated interim reexaminations.

## **11-2.B. CHANGES IN FAMILY AND HOUSEHOLD COMPOSITION**

The PHA must adopt policies prescribing when and under what conditions the family must report changes in family composition. However, due to family obligations under the program, the PHA has limited discretion in this area.

MHB will conduct interim reexaminations to account for any changes in household composition that occur between annual reexaminations. Income decreases must be reported within thirty (30) calendar days of occurrence. Generally, income increases will only need to be reported at annual reexaminations. Change in sources of income (e.g., change of job, beginning of new income) should be reported within thirty (30) days of occurrence.

### **New Family Members Not Requiring Approval**

The addition of a family member as a result of birth, adoption, or court-awarded custody does not require MHB approval. However, the family is required to promptly notify MHB of the addition [24 CFR §982.551(h)(2)].

The family must inform MHB of the birth, adoption, or court-awarded custody of a child within thirty (30) calendar days. The family will also be required to inform MHB of any criminal or undesirable behavior of any household member (minor or adult).

### **New Family and Household Members Requiring Approval**

With the exception of children who join the family as a result of birth, adoption, or court-awarded custody, a family must request PHA approval to add a new family member [24 CFR § 982.551(h)(2)] or other household member (live-in aide or foster child) [24 CFR §§982.551(h)(4)].

When any new family member is added, MHB will conduct a reexamination to determine eligibility, suitability and any new income or deductions associated with the additional family member and to make appropriate adjustments in the family share of the rent and the HAP payment [24 CFR §982.516(e)].

If a change in family size causes a violation of Housing Quality Standards (“HQS”) space standards (see Chapter 8), MHB may issue the family a new voucher, and the family and MHB must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, MHB may terminate the family’s HAP contract in accordance with its terms [24 CFR §982.403].

Families must request MHB 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 thirty (30) consecutive days or ninety (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 MHB prior to the individual moving into the unit.

MHB will not approve the addition of a new family or household member unless the individual meets MHB’s eligibility criteria (see Chapter 3) and documentation requirements (see Chapter 7, Part II).

MHB will not approve the addition of a foster child or foster adult if it will cause a violation of HQS space standards.

If MHB determines an individual meets MHB's eligibility criteria and documentation requirements, MHB will provide written approval to the family. If the approval of a new family member or live-in aide will cause overcrowding according to HQS standards, the approval letter will explain that the family will be issued a voucher and will be required to move.

If MHB determines that an individual does not meet MHB's eligibility criteria or documentation requirements, MHB 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.

MHB 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 MHB if any family member no longer lives in the unit [24 CFR §982.551(h)(3)]. Because household members are considered when determining the family unit (voucher) size [24 CFR §982.402], MHB also needs to know when any live-in aide, foster child, or foster adult ceases to reside in the unit.

If a household member ceases to reside in the unit, the family must inform MHB within thirty (30) calendar days. This requirement also applies to a family member who has been considered temporarily absent at the point that the family concludes the individual is permanently absent. Proof of new address may be required prior to removing any adults eighteen (18) years of age or older.

If a live-in aide, foster child, or foster adult ceases to reside in the unit, the family must inform MHB within thirty (30) calendar days.

### **11-2.C. CHANGES AFFECTING INCOME OR EXPENSES**

Interim reexaminations can be scheduled either because MHB has reason to believe that changes in income or expenses may have occurred, or because the family reports a change. When a family reports a change, MHB may take different actions depending on whether the family reported the change voluntarily, or because it was required to do so.

#### **MHB-Initiated Interim Reexaminations**

PHA-initiated interim reexaminations are those that are scheduled based on circumstances or criteria defined by MHB. They are not scheduled because of changes reported by the family.

Generally, MHB will conduct interim reexaminations in each of the following instances:

- For families receiving the Earned Income Disallowance (EID), MHB will conduct an interim reexamination at the start and conclusion of the second 12 month exclusion period (i.e., 50 percent phase-in period).

- If the family has reported zero income, MHB may conduct an interim reexamination every one (1) to three (3) months as long as the family continues to report that they have no income.
- If at the time of the annual reexamination, it is not feasible to anticipate a level of income for the next twelve (12) months (e.g. seasonal or cyclic income); MHB will schedule an interim reexamination to coincide with the end of the period for which it is feasible to project income.
- If at the time of the annual reexamination, tenant-provided documents were used on a provisional basis due to the lack of third-party verification, and third-party verification becomes available, MHB may conduct an interim reexamination.
- MHB may conduct an interim reexamination at any time in order to correct an error in a previous reexamination, or to investigate suspected or reported tenant fraud complaint

### **Family-Initiated Interim Reexaminations**

MHB must adopt policies prescribing when and under what conditions the family must report changes in family income or expenses [24 CFR §982.516(c)]. In addition, HUD regulations require that the family be permitted to obtain an interim reexamination any time the family has experienced a change in circumstances since the last determination [24 CFR §982.516(b)(2)].

#### ***Required Reporting***

HUD regulations give MHB the freedom to determine the circumstances under which families will be required to report changes affecting income.

Families are required to report change in sources of income (e.g., change of job, beginning of new income, etc.) and should be reported within thirty (30) days of occurrence. Income decreases must be reported within thirty (30) calendar days of occurrence.

#### ***Optional Reporting***

The family may request an interim reexamination any time the family has experienced a change in circumstances since the last determination [24 CFR §982.516(b)(2)]. MHB must process the request if the family reports a change that will result in a reduced family income [HCV GB, p. 12-9].

If a family reports a decrease in income from the loss of welfare benefits due to fraud or non-compliance with a welfare agency requirement to participate in an economic self-sufficiency program, the family's share of the rent will not be reduced [24 CFR §5.615]. For more information regarding the requirement to impute welfare income see Chapter 6.

If a family reports a change that it was not required to report and that would result in an increase in the family share of the rent, MHB will note the information in the tenant file, but may not conduct an interim reexamination.

If a family reports a change that it was not required to report and that would result in a decrease in the family share of rent, MHB will conduct an interim reexamination. See Section 11-2.D. for effective dates.

## **11-2.D. PROCESSING THE INTERIM REEXAMINATION**

### **Method of Reporting**

The family may notify MHB of changes on an MHB Customer Service Report (CSR) form.

Generally, the family may not be required to attend an interview for an interim reexamination. However, if MHB determines that an interview is warranted, the family may be required to attend.

Based on the type of change reported, MHB will determine the documentation the family will be required to submit. The family must submit any required information or documents within thirty (30) calendar days of receiving a request from MHB. This time frame may be extended for good cause with MHB approval. MHB may accept required documentation electronically, by mail, by fax, or in person.

### **Effective Dates**

MHB must establish the time frames in which any changes that result from an interim reexamination will take effect [24 CFR §982.516(d)]. The changes may be applied either retroactively or prospectively, depending on whether there is to be an increase or a decrease in the family share of the rent, and whether the family reported any required information within the required time frames [HCV GB, p. 12-10].

If the family share of the rent is to *increase*:

- The increase generally will be effective on the first of the month following thirty (30) days' notice to the family.
- If a family fails to report a change within the required time frames, or fails to provide all required information within the required time frames, the increase will be applied retroactively, to the date it would have been effective had the information been provided on a timely basis. The family will be responsible for any overpaid subsidy and may be offered a repayment agreement in accordance with the policies in Chapter 16.

If the family share of the rent is to *decrease*:

The decrease will be effective on the first day of the month following the month in which the change was reported and all required documentation was submitted. In cases where the change cannot be verified until after the date the change would have become effective, the change *may* be made retroactively.

## PART 3: RECALCULATING FAMILY SHARE AND SUBSIDY AMOUNT

### 11-3.A. OVERVIEW

After gathering and verifying required information for an annual or interim reexamination, MHB 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 3 lays out policies that affect these calculations during a reexamination.

### 11-3.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 MHB'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 MHB changes its payment standards or the family's situation changes, new payment standards are applied at the following times:

- If MHB's payment standard amount changes during the term of the HAP contract, the date on which the new standard is applied depends on whether the standard has increased or decreased:
  - If the payment standard amount has *increased*, the increased payment standard will be applied at the *first annual* reexamination following the effective date of the increase in the payment standard.
  - If the payment standard amount has *decreased*, the decreased payment standard will be applied at the *second annual* reexamination following the effective date of the decrease in the payment standard.
- If the family moves to a new unit, or a new HAP contract is executed due to changes in the lease (even if the family remains in place) the current payment standard applicable to the family will be used when the new HAP contract is processed.

#### Subsidy Standards [24 CFR §982.505(c)(4)]

If there is a change in the family unit size that would apply to a family during the HAP contract term, either due to a change in family composition, or a change in MHB'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 MHB'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, MHB must use the utility allowances in effect at the time the new lease and HAP contract are executed.

At reexamination, MHB must use MHB current utility allowance schedule [24 CFR §982.517(d)(2)].

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

**11-3.C. NOTIFICATION OF NEW FAMILY SHARE AND HAP AMOUNT**

MHB 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; and
- The amount and effective date of the new tenant rent to owner.

The family must be given an opportunity for an informal hearing regarding MHB'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)] (also see Chapter 16).

The notice to the family will include the annual and adjusted income amounts that were used to calculate the family share of the rent and the housing assistance payment. The notice also will state the procedures for requesting an informal hearing.

**11-3.D. DISCREPANCIES**

During an annual or interim reexamination, MHB may discover that information previously reported by the family was in error, or that the family intentionally misrepresented information. In addition, MHB may discover errors made by MHB. When errors resulting in the overpayment or underpayment of subsidy are discovered, corrections will be made in accordance with the policies in Chapter 13.

## Chapter 12

### TERMINATION OF ASSISTANCE AND TENANCY

HUD regulations specify the reasons for which a PHA can terminate a family's assistance, and the ways in which such terminations must take place. They also dictate the circumstances under which an owner may terminate the tenancy of an assisted family. This Chapter presents the policies that govern voluntary and involuntary terminations of assistance, and termination of tenancy by the owner. It is presented in three parts:

Part 1: Grounds for Termination of Assistance. This part discusses various reasons that a family's assistance may be terminated, including voluntary termination by the family, termination because the family no longer qualifies to receive subsidy, and termination by MHB based on the family's behavior.

Part 2: Approach to Termination of Assistance. This part describes the policies that govern how an involuntary termination takes place. It specifies the alternatives that MHB may consider in lieu of termination, the criteria MHB must use when deciding what action to take and the steps MHB must take when terminating a family's assistance.

Part 3: Termination of Tenancy by the Owner. This part presents the policies that govern the owner's right to terminate an assisted tenancy.

#### PART 1: GROUNDS FOR TERMINATION OF ASSISTANCE

##### 12-1.A. OVERVIEW

HUD requires MHB to terminate assistance for certain offenses and when the family no longer requires assistance. HUD permits MHB to terminate assistance for certain other actions family members take or fail to take. In addition, a family may decide to stop receiving HCV assistance at any time by notifying MHB.

##### 12-1.B. FAMILY NO LONGER REQUIRES ASSISTANCE [24 CFR §982.455]

As a family's income increases, the amount of PHA subsidy goes down. If the amount of HCV assistance provided by MHB drops to zero and remains at zero for 180 consecutive calendar days the family's assistance terminates automatically.

If a participating family receiving zero assistance experiences a change in circumstances that would cause the HAP payment to rise above zero, the family must notify MHB of the changed circumstances and request an interim reexamination before the expiration of the 180-day period.

### **12-1.C. FAMILY CHOOSES TO TERMINATE ASSISTANCE**

The family may request that MHB terminate the family's assistance at any time.

The request to terminate assistance should be made in writing and signed by the head of household, spouse, or co-head. Before terminating the family's assistance, MHB will follow the notice requirements in Section 12-2.F.

### **12-1.D. MANDATORY TERMINATION OF ASSISTANCE**

HUD requires MHB to terminate assistance in the following circumstances.

#### **Eviction [24 CFR §982.552(b)(2), Pub.L. 109-162]**

MHB must terminate assistance whenever a family is evicted from a unit assisted under the HCV program for a serious or repeated violation of the lease. Incidents of actual or threatened violence, dating violence, or stalking may not be construed as serious or repeated violations of the lease by the victim or threatened victim of such violence or stalking, but may nevertheless be deemed so by the owner and/or MHB.

A family will be considered *evicted* if the family moves after a legal unlawful detainer or 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 unlawful detainer or eviction order has been issued, termination of assistance is presumed, but is not mandatory. MHB 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 12-2.C and other factors as described in Sections 12-2.E. Upon consideration of such alternatives and factors, MHB may, on a case-by-case basis, choose not to terminate assistance.

Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises and criminal activity. Generally, the criteria to be used is whether the reason for the eviction was through no fault of the tenant or guests.

#### **Failure to Provide Consent [24 CFR §982.552(b)(3)]**

MHB must terminate assistance if any family member fails to sign and submit any consent form they are required to sign for a reexamination. See Chapter 7 for a complete discussion of consent requirements.

#### **Failure to Document Citizenship [24 CFR §982.552(b)(4) and 24 CFR §5.514(c)]**

MHB 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 MHB, has knowingly permitted

another individual who is not eligible for assistance to reside (on a permanent or unapproved basis) in the unit.

For (3) above, such termination must be for a period of at least twenty-four (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 2010-3]** MHB 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 MHB 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, MHB may defer the family's termination and provide the opportunity to comply with the requirement within a period not to exceed ninety (90) calendar days from the date MHB determined the family to be noncompliant.

MHB will defer the family's termination and provide the family with the opportunity to comply with the requirement for a period of ninety (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)]**

MHB 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.

**Failure of Students to Meet Ongoing Eligibility Requirements [24 CFR §982.552(b)(5) and FR 4/10/06]**

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, does not have dependent children, is not residing with his/her parents in an HCV assisted household, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, MHB must terminate the student's assistance if, at the time of reexamination, either the student's income or the income of the student's parents (if applicable) exceeds the applicable income limit.

If a participant household consists of both eligible and ineligible students, the eligible students shall not be terminated, but must be issued a voucher to move with continued assistance in accordance with program regulations and PHA policies, or must be given the opportunity to lease in place if the terminated ineligible student members elect to move out of the assisted unit.

**Death of the Sole Family Member [24 CFR §982.311(d) and Notice PIH 2010-9]**

MHB 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 24 CFR §982.551(I)]**

HUD requires MHB to establish policies that permit MHB to terminate assistance if MHB 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; or
- Any household member has violated the family's obligation not to engage in violent criminal activity.

***Use of Illegal Drugs and Alcohol Abuse***

MHB 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.

MHB will terminate assistance if any household member's abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

*Currently engaged in* is defined as any use of illegal drugs during the previous six (6) months.

MHB will consider all credible evidence, including but not limited to, any record of arrests, convictions, or eviction of household members related to the use of illegal drugs or abuse of alcohol. In making its decision to terminate assistance, MHB will consider alternatives as described in Section 12-2.C and other factors described in Sections 12-2.D and 12-2.E. Upon consideration of such alternatives and factors, MHB 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.

MHB 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.

MHB will consider all credible evidence, including but not limited to, any record of arrests and/or convictions of household members related to drug-related or violent criminal activity, and any eviction or notice to evict based on drug-related or violent criminal activity. In making its decision to terminate assistance, MHB will consider alternatives as described in Section 12-2.C and other factors described in Sections 12-2.D and 12-2.E. Upon consideration of such alternatives and factors, MHB may, on a case-by-case basis, choose not to terminate assistance.

#### **Other Authorized Reasons for Termination of Assistance [24 CFR §982.552(c), Pub.L. 109-162]**

HUD permits MHB to terminate assistance under a number of other circumstances. It is left to the discretion of MHB whether such circumstances in general warrant consideration for the termination of assistance. The Violence Against Women Reauthorization Act of 2013 explicitly prohibits PHAs from considering incidents or actual threatened domestic violence, dating violence, sexual assault or stalking as reasons for terminating the assistance of a victim of such violence.

Absent and indication of misrepresentation and/or fraud, MHB **will not** terminate a family's assistance because of the family's failure to meet its obligations under the Family Self-Sufficiency program.

MHB **will** terminate a family's assistance if:

- The family has failed to comply with any family obligations under the HCV Program. See Exhibit 12-1 for a listing of family obligations and related PHA policies.
- Any family member has been evicted from federally-assisted housing in the last five (5) years.
- Any PHA has ever terminated assistance under the program for any member of the family.
- Any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program.
- The family currently owes rent or other amounts to any PHA in connection with the HCV, Certificate, Moderate Rehabilitation or public housing programs.
- The family has not reimbursed any PHA for amounts MHB 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 MHB.
- A family member has engaged in or threatened violent or abusive behavior toward MHB, MHB affiliate, MHB agent/contractor, or HUD personnel (collectively referred to as “MHB personnel”).
  - *Abusive or violent behavior towards MHB personnel* includes verbal as well as threats of or actual 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 or non-verbal threats or physical gestures that communicate intent to abuse or commit violence or intimidation.

In making its decision to terminate assistance, MHB may consider alternatives as described in Section 12-2.C and other factors described in Sections 12-2.D and 12-2.E. Upon consideration of such alternatives and factors, MHB 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. MHB 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 legally residing in the unit.

If the family is absent from the unit for more than 90 consecutive calendar days, the family’s assistance will be terminated. Notice of termination will be sent in accordance with Section 12-2.E.

#### ***Insufficient Funding [24 CFR §982.454]***

MHB may terminate HAP contracts if MHB determines, in accordance with HUD requirements, that funding or the pro-ration of the funding under the consolidated ACC is insufficient to support continued assistance for families in the program.

MHB will determine whether there is sufficient funding to pay for currently assisted families according to the policies in Part VIII of Chapter 16. If MHB determines there is a shortage of funding, prior to terminating any HAP contracts, MHB will determine if any other actions can be taken to reduce program costs. If after implementing all reasonable or desirable cost cutting measures there is not enough funding available to provide continued assistance for current participants, MHB will terminate HAP contracts as a last resort.

Prior to terminating any HAP contracts, MHB will inform the local HUD field office. MHB will terminate the minimum number needed in order to reduce HAP costs to a level within MHB’s funding availability.

If MHB must terminate HAP contracts due to insufficient funding, MHB will make its plan public for terminating assistance, and publish it on its website at least thirty (30) days

prior to any termination. In drafting and publishing its plan for terminating assistance, MHB may, but is not obligated so to do, consider terminating families:

- who are not in compliance with HCV Program guidelines or the family's lease;
- that have the earliest admission dates to the program.
- that have the latest admission to the program;
- within certain income level categories;
- that have ported to another PHA and have not been absorbed (if allowed by HUD); and/or
- such other criteria as MHB may reasonable set, etc.

In its discretion, MHB may, but is not obligated so to do, make such exemptions to families as it deems appropriate, including, but not limited to, families that are elderly and/or disabled are exempt as well as families that are participating in special programs such as Family Self-Sufficiency ("FSS"), Homeownership, Family Unification ("FUPF").

## **PART 2: APPROACH TO TERMINATION OF ASSISTANCE**

### **12-2.A. OVERVIEW**

MHB is required by regulation to terminate a family's assistance if certain program rules are violated. For other types of offenses, the regulations give MHB the discretion to either terminate the family's assistance or to take another action. This part discusses the various actions MHB may choose to take when it has discretion, and outlines the criteria MHB will use to make its decision about whether or not to terminate assistance. It also specifies the requirements for the notice that must be provided before terminating assistance.

### **12-2.B. METHOD OF TERMINATION [24 CFR §982.552(a)(3)]**

The way in which MHB terminates assistance depends upon individual circumstances. HUD permits MHB to terminate assistance by:

- Terminating housing assistance payments under a current HAP contract,
- Refusing to approve a request for tenancy or to enter into a new HAP contract, and/or
- Refusing to process a request for or to provide assistance under portability procedures.

### **12-2.C. ALTERNATIVES TO TERMINATION OF ASSISTANCE**

#### **Change in Household Composition**

As a condition of continued assistance, MHB may require that any household member who participated in or was responsible for an offense no longer reside in the unit [24 CFR §982.552(c)(2)(ii)]. Should this circumstance occur, and in MHB's discretion, as a condition of continued assistance, the head of household may be required to 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 MHB's request.

### **Repayment of Family Debts**

If a family owes amounts to MHB, as a condition of continued assistance, MHB will require the family to repay the full amount or to enter into a repayment agreement, within (30) days of receiving notice from MHB of the amount owed. See Chapter 16 for policies on repayment agreements.

## **12-2.D. CRITERIA FOR DECIDING TO TERMINATE ASSISTANCE**

### **Evidence**

For criminal activity, HUD permits MHB 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)].

Generally, MHB will use the concept of the preponderance of the evidence as the standard for making all termination decisions.

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

### **Consideration of Circumstances [24 CFR §982.552(c)(2)(i)]**

MHB is permitted, but not required, to consider all relevant circumstances when determining whether a family's assistance should be terminated.

Generally, MHB will consider the following factors when making its decision to terminate assistance:

- The seriousness of the case, especially with respect to how it would affect other residents,
- The effects that termination of assistance may have on other members of the family who were not involved in the action or failure,
- The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities or (as discussed further in section 12-2.E) a victim of domestic violence, dating violence, or stalking,
- The length of time since the violation occurred, the family's recent history and the likelihood of favorable conduct in the future,
- In the case of drug or alcohol abuse, whether the culpable household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully. (Note: MHB 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.
- Such other factor(s) as MHB may deem appropriate.

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

If the family includes a person with disabilities, MHB's decision to terminate the family's assistance is subject to consideration of reasonable accommodation in accordance with 24 CFR § Part 8.

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

### **12-2.E. TERMINATING THE ASSISTANCE OF DOMESTIC VIOLENCE, DATING VIOLENCE, OR STALKING VICTIMS AND PERPETRATORS [24 CFR §5.2005]**

The Violence Against Women Reauthorization Act of 2013 ("VAWA") provides that "criminal activity directly relating to domestic violence, dating violence, sexual assault or stalking, engaged in by a member of a tenant's household, guest or any person under the tenant's control shall not be denied assistance, be a cause for termination of assistance, tenancy, or occupancy rights to housing if the tenant or an affiliated individual of the tenant family is the victim or threatened victim of that domestic violence, dating violence, or stalking."

VAWA also gives PHAs the authority to "terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant."

VAWA does not limit the authority of MHB to terminate the assistance of any participant if MHB "can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant is not evicted or terminated from assistance." However, situations where this might be relevant are extremely rare.

In determining whether a participant who is a victim of domestic violence, dating violence, or stalking is an actual and imminent threat to other tenants or those employed at or providing service to a property, MHB may 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, or stalking.
- Whether the threat is a physical danger beyond a speculative threat.
- Whether the threat is likely to happen within a short period of time.
- Whether the threat to other tenants or employees can be eliminated in some other way, such as by helping the victim relocate to a confidential location.
- Such other factor(s) as MHB may deem appropriate.

If the tenant wishes to contest MHB's determination that he or she is an actual and imminent threat to other tenants or employees, the tenant may do so as part of the informal hearing, if one is granted to the participant. Note: generally for some types of criminal conduct, no separate informal review is held in order to protect the safety of MHB personnel.

### **Victim Documentation**

When a participant family is facing assistance termination because of the actions of a participant, household member, guest, or other person under the participant's control and a participant or immediate family member of the participant's family claims that she or he is the victim of such actions and that the actions are related to domestic violence, dating violence, sexual assault or stalking, MHB may request in writing that the individual submit documentation affirming that claim. The written request will include explicit instructions on where, when, and to whom the documentation must be submitted. It will also state the consequences for failure to submit the documentation by the deadline.

Generally, at a minimum, the documentation will consist of a completed and signed form HUD-50066, Certification of Domestic Violence, Dating Violence, or Stalking. In lieu of the certification form, MHB may accept either of the following forms of documentation:

- A police or court record documenting the actual or threatened abuse.
- Documentation signed by a person who has assisted the victim in addressing domestic violence, dating violence, or stalking, or the effects of such abuse. This person may be an employee, agent, or volunteer of a victim service provider; an attorney; or a medical or other knowledgeable 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.

MHB reserves the right to waive the documentation requirement if it determines that a statement or other corroborating evidence from the individual will suffice.

The individual claiming victim status must submit the requested documentation within fourteen (14) days after receipt of MHB's written request or must request an extension within that time frame. MHB may, at its discretion, extend the deadline for ten (10) business days.

If the individual provides the requested documentation within fourteen (14) days, or any PHA-approved extension, MHB will reconsider its termination decision in light of the documentation.

If the individual does not provide the requested documentation within fourteen (14) business days, or any PHA-approved extension, MHB will proceed with termination of the family's assistance in accordance with applicable law, program regulations, and the policies in this Administrative Plan.

### **Terminating the Assistance of a Domestic Violence Perpetrator [24 CFR §5.2005(c)]**

Although VAWA provides assistance termination protection for victims of domestic violence, it does not provide protection for perpetrators. VAWA gives MHB the explicit authority to "terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others...without terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant." This authority 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 MHB 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 [Pub.L. 109-271]. This means that MHB must follow the same rules when terminating assistance to an individual as it would when terminating the assistance of an entire family [3/16/07 *Federal Register* notice on the applicability of VAWA to HUD programs].

MHB will terminate assistance to a family member if MHB determines that the family member has committed criminal acts of physical violence against other family members or others. Generally, this action will not affect the assistance of the remaining, non-culpable family members.

In making its decision, MHB will consider all credible evidence, including, but not limited to, a signed certification (form HUD-50066) or other documentation of abuse submitted to MHB by the victim in accordance with this section. MHB will also consider the factors in section 12-2.D. Upon such consideration, MHB may, on a case-by-case basis, choose not to terminate the assistance of the culpable family member.

If MHB 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 Administrative Plan.

### **PHA Confidentiality Requirements [24 CFR §5.2007(a)(1)(v)]**

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

If disclosure is required for use in an eviction proceeding or is otherwise required by applicable law, MHB will inform the victim before disclosure occurs so that safety risks can be identified and addressed.

**12-2.F. TERMINATION NOTICE [HCV GB, p. 15-7]**

If a family's assistance is to be terminated, whether voluntarily or involuntarily, MHB must give the family and the owner written notice that specifies:

- The reasons for which assistance has been terminated;
- The effective date of the termination; and
- The family's right to an informal hearing as described in Chapter 16

If a criminal record is the basis of the termination, a copy of the record must accompany the notice. A copy of the criminal record also must be provided to the subject of the record [24 CFR §982.553(d)].

When termination is initiated by MHB, the notice to terminate will be sent to the family and the owner at least thirty (30) calendar days prior to the effective date of the termination. However, if a family vacates the unit without informing MHB, 30 days notice will not be given. In these cases, the notice to terminate will be sent at the time MHB learns the family has vacated the unit.

When a family requests to be terminated from the HCV Program, the family must do so in writing to MHB (see Section 12-I.C.). MHB will then send a confirmation notice to the family and the owner within ten (10) business days of the family's request, but no later than the termination effective date (as requested by the family).

**Notice of Termination Based on Citizenship Status [24 CFR §§5.514(c) and (d)]**

MHB must terminate assistance if: (1) a family fails to submit required documentation within the required timeframe concerning any family member's citizenship or eligible immigration status; (2) evidence of citizenship and eligible immigration status is submitted timely, but USCIS primary and secondary verification does not verify eligible immigration status of a family; or (3) MHB determines that a family member has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit. For (3) above, such termination must be for a period of at least 24 months.

The notice of termination must advise the family of the reasons their assistance is being terminated, that they may be eligible for proration of assistance, the criteria and procedures for obtaining relief under the provisions for preservation of families, that they have the right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal, and that they have the right to request an informal hearing with MHB either upon completion of the USCIS appeal or in lieu of the USCIS appeal. Informal hearing procedures are contained in Chapter 16.

Generally, the notice to terminate will be sent to the family and the owner at least thirty (30) calendar days prior to the effective date of the termination.

## **12-2.G. HOW TERMINATION OF ASSISTANCE AFFECTS THE HAP CONTRACT AND LEASE**

When the family's assistance is terminated, the lease and HAP contract terminates automatically [Form HUD-52641].

The owner may offer the family a separate unassisted lease [HCV GB, p. 15-8].

## **PART 3: TERMINATION OF TENANCY BY THE OWNER**

### **12-3.A. OVERVIEW**

Termination of an assisted tenancy is a matter between the owner and the family; MHB is not directly involved. However, the owner is under some constraints when terminating an assisted tenancy and the reasons for which a tenancy is terminated dictate whether assistance also will be terminated.

### **12-3.B. GROUNDS FOR OWNER TERMINATION OF TENANCY [24 CFR §982.310 and Form HUD-52641-A, Tenancy Addendum, Pub.L. 109-162]**

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, including failure to pay rent or other amounts due under the lease, except when the violations are related to incidents of actual or threatened domestic violence, dating violence, or stalking against that participant. This includes failure to pay rent or other amounts due under the lease. However, MHB'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 MHB staff, contractors or agents, and/or property management staff residing on the premises);

- Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of their residences by, persons residing in the immediate vicinity of the premises;
- Any violent criminal activity on or near the premises; or
- Any drug-related criminal activity on or near the premises.

The owner may terminate tenancy during the term of the lease if any member of the household is:

- Fleeing to avoid prosecution, custody, or confinement after conviction for a crime or an attempt to commit a crime that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or
- Violating a condition of probation or parole imposed under federal or state law.

The owner may terminate tenancy for criminal activity by a household member in accordance with this Section if the owner determines that the household member has committed the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.

The owner may terminate tenancy during the term of the lease if any member of the household has engaged in abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

### ***Evidence of Criminal Activity***

The owner may terminate tenancy and evict by judicial action a family for criminal activity by a covered person if the owner determines they have engaged in the criminal activity, regardless of arrest or conviction and without satisfying the standard of proof used for a criminal conviction, except in certain incidents where the criminal activity directly relates to domestic violence, dating violence, or stalking and the tenant or an immediate member of the tenant's family is the victim or threatened victim of the domestic violence, dating violence, or stalking. (See Section 12-2.E.).

### **Other Good Cause**

During the initial lease term, the owner may not terminate the tenancy for "other good cause" unless the owner is terminating the tenancy because of something the family did or failed to do. During the initial lease term or during any extension term, "other good cause" includes the disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises.

After the initial lease term, "other good cause" for termination of tenancy by the owner includes:

- Failure by the family to accept the offer of a new lease or revision;
- The owner's desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit; or

- A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, or desire to lease the unit at a higher rent).

After the initial lease term, the owner may give the family notice at any time, in accordance with the terms of the lease.

### **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 MHB a copy of any eviction notice at the same time the owner notifies the family. The family is also required to give MHB a copy of any eviction notice (see Chapter 5).

If the eviction action is finalized in court, the owner must provide MHB with documentation related to the eviction, including notice of the eviction date, as soon as possible, but no later than five (5) business days following the court order in the unlawful detainer or eviction action.

### **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, or stalking is limited by the Violence Against Women Reauthorization Act of 2005 ("VAWA"). (See Section 12-2.E.)

### **12-3.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 MHB has no other grounds for termination of assistance, MHB may issue a new voucher so that the family can move with continued assistance (see Chapter 10).

## EXHIBIT 12-1: STATEMENT OF FAMILY OBLIGATIONS (Note: subject to modification)

**I HAVE READ THESE OBLIGATIONS AND UNDERSTAND TO REMAIN ELIGIBLE FOR MY HOUSING CHOICE VOUCHER (HCV) RENTAL ASSISTANCE, I MUST COMPLY WITH THE FOLLOWING OBLIGATIONS:**

1. I/We **must not** violate any Family Obligations listed on the Housing Choice Voucher.

**Income Reporting:**

2. In compliance with Program Rules, I/We **MUST** advise the HCV office of **all income** received by **ALL** members of the household, (including any income I/We expect to receive during the next 12 months), **INITIALLY** upon receiving HCV assistance, and at least **ONCE A YEAR** during the annual recertification of my/our rental assistance. .

I/We **MUST** report income of any **new family members**, within 30 calendar days of occurrence. This includes participants who move from one job to another, regardless of the number of hours worked and rate of pay. **Annual income** means all amounts, **monetary or not**, that go to or on behalf of the family head or spouse (even if temporarily absent) or to any other family member, or all amounts anticipated to be received from a source outside the family during the 12-month period following admission or annual re-examination effective date.

**\*Failure to comply with the income reporting policy as discussed above** may result in payment for back rent due the MHB. Action will be taken to terminate my/our assistance, if failure to report (or under report) a change in income is determined to have been fraudulent. These rules include **ALL** family members 18 years of age and older, **AND** any income received by an adult for a minor child **OR** a disabled family member.

**Moves:**

3. I/We **MUST** move into the rental unit, **within 10 days of the effective date of the lease/HAP Contract AND** continue to live there, in compliance with the lease and the HCV program rules. Upon demand of MHB, I/We must provide MHB with a copy of my/our established service with Alabama Power, and all other applicable utility providers, reflecting the account(s) in the head of household's name, my/our current address, or in the case of a move, my/our new, address and account number(s).
4. I/We **MUST** report if anyone from my household moves out of the assisted unit.
5. I/We must advise the HCV Office and my Landlord, in writing of my intentions to move from my assisted unit, **BEFORE I MOVE.**
6. I understand that elective moves are only permitted **once per year** unless special permission is granted because of extenuating circumstances, even if both myself and my landlord are in agreement with the move.
7. I/We understand if we have entered into a repayment agreement with MHB HCV and owe a balance we will not be allowed to move until the balance is zero, even if the payments are current.

**Repairs:**

8. I/We **MUST** promptly notify the Landlord, **IN WRITING**, of any maintenance problems in need of repair.
9. The family is responsible for any Housing quality Standards (HQS) breach by the family caused by failure to pay tenant-provided utilities or appliances, or damages to the dwelling unit or premises beyond normal wear and tear caused by any member of the household **or guest.**

**Utilities:**

10. I/We **MUST** make my utility deposits, within 10 days after the unit passes inspection, and keep **ALL** utilities on (if not furnished by Landlord). Upon demand of MHB, I/We must provide MHB a copy of my established service with Alabama Power, and all other applicable utility providers, reflecting the account(s) in the head of household's name, my/our current address, or in the case of a move, my/our new address and account number(s).

11. My assistance **WILL BE** canceled for failure to keep my utilities on. This MAY include illegally jumping meters, or running extension cords from one unit to another. Without all utilities my unit does not meet HUD's minimum Housing Quality Standards (HQS) of Safe, Decent and Sanitary. If any of my utilities are turned off or otherwise found to be off, I/We will be given **72 hours** to have them restored. I/We must provide MHB verification disconnected service(s) have been restored and all other service(s) are current. My/Our Electrical Service account must be in the head of household's name. , MHB may require all other applicable utility(ies) be in the head of household's name or my/our assistance **WILL BE** canceled or terminated.

### **Rent:**

12. I/We **MUST** pay my/our share of the rent on time. I/We **MUST** not pay the Landlord more rent than the amount stated in my/our lease.  
I/We **MUST** report and provide documentation to the HCV Office if my Landlord requests more rent than that stated in the lease.  
I/We understand that we **MUST** promptly provide the MHB a copy of any eviction notice received from our Landlord. If our family is **EVICTED** for non-payment of rent to the Landlord or other lease violations, my HCV eligibility and rental assistance will be canceled

### **Damages:**

13. I/We are responsible for maintaining **Good Housekeeping** in the assisted unit, to meet HUD's minimum housing quality standards of safe, decent and sanitary. Failure to do so may result in cancellation of my rent assistance.
14. I/We understand that if my/our family leaves damages to an HCV assisted unit, I/We will be required to pay the Owner/Landlord all money owed for the damages, in order to continue my/our HCV assistance. Failure to pay the landlord may result in cancellation of my eligibility and rental assistance.

### **Criminal Activity:**

15. I/We understand MHB will terminate my assistance if family members and/or guests, ENGAGE in drug-related criminal activity, violent criminal activity, illegal use of a controlled substance, or abuse alcohol in a way that interferes with the health, safety or right to peaceful enjoyment of the premises by other residents. I/We have an obligation to advise MHB HCV within 10 days of such arrest.
16. I/We understand MHB will terminate my assistance if a family member has engaged in or threatened violent or abusive behavior toward MHB personnel. ***Abusive or violent*** behavior toward MHB 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

### **Communication To and From MHB HCV:**

17. I/We will be provided an email address by MHB HCV for all communication sent and received. It is my/our responsibility to check my email frequently if not daily for important information that may affect my assistance.
18. The family must supply any information that the MHB 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 MHB or HUD for use in a regularly schedule reexamination or interim reexamination of family income and composition.
19. The family must disclose and verify social security numbers and sign and submit consent forms for obtaining information.
20. Any information supplied by the family must be true and complete.
21. I/We understand if my account information is rejected by the bank due to my error, I/We must provide MHB will valid bank account information with 72 hours of MHB notification to me or MHB may take action to

terminate my assistance and eligibility. Please be advised any bank processing fees due to rejection of my information may be assessed to me.

**Repayment Agreements (Money owed MHB HCV):**

22. I/We **MUST NOT** breach a repayment agreement or my assistance may be canceled.

**Unauthorized Guest:**

23. The apartment/house is for the use of me and only those family members listed on my application/lease. **DO NOT** let other people move in without getting HCV approval **FIRST!** A request to add anyone to my/our lease **MUST BE PUT IN WRITING.**

**Inspections:**

24. The family must allow the MHB to inspect the unit at reasonable times and after reasonable notice or could be terminated from program.

**Family Self-Sufficiency Program:**

25. Participants in the Family Self-Sufficiency program have an obligation to seek and maintain suitable employment.

**Double Subsidy:**

26. 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.
27. 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).

**Appliances:**

28. I/We **MUST** provide a Stove and Refrigerator (if not furnished by the Landlord) in good working order, with no knobs missing and with pilots that light without a match. A hot plate and/or crock-pot are not sufficient to do all of my cooking.

**Other:**

29. I/We **MUST NOT** sublease my unit or my assistance will be canceled.
30. The family must use the assisted unit for residence by the family. The unit must be the family's only residence.
31. 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 MHB 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.

**I/We understand that failure to follow the rules listed above may result in eviction by my/our Landlord and/or cancellation of my/our HCV eligibility and rental assistance. By my signature below, I hereby certify that I have read and understand my obligations as a participant in the HCV program. I have also received a copy of this Statement.**

Signature \_\_\_\_\_

Date \_\_\_\_\_

## Chapter 13

### OWNERS

#### INTRODUCTION

Owners play a central role in the HCV program by supplying decent, safe, and sanitary housing for participating families.

The term “owner” refers to any person or entity with the legal right to lease or sublease a unit to a participant in the HCV program [24 CFR §982.4(b)]. The term “owner” includes a principal or other interested party [24 CFR §982.453 and 24 CFR §982.306(f)], such as a designated agent of the owner.

Owners have numerous responsibilities under the program, including screening and leasing to families, maintaining the dwelling unit, enforcing the lease, and complying with various contractual obligations. However, this chapter is not meant to be an overview of all aspects of owner participation in the HCV program.

The chapter is organized in two parts:

Part 1: Owners in the HCV Program. This part discusses the role of an owner in MHB’s HCV program and highlights key owner rights and responsibilities.

Part 2: HAP Contracts. This part explains provisions of the HAP contract and the relationship between MHB and the owner as expressed in the HAP contract.

For detailed information about HCV program responsibilities and processes, including MHB 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 1. OWNERS IN THE HCV PROGRAM

##### 13-1.A. OWNER RECRUITMENT AND RETENTION [HCV GB, pp. 2-4 to 2-6]

###### Recruitment

PHAs are responsible for ensuring that very low income families have access to all types and ranges of affordable housing in MHB’s jurisdiction, particularly housing outside areas of poverty or minority concentration. A critical element in fulfilling this responsibility is for MHB to ensure that a sufficient number of owners, representing all types and ranges of affordable housing in MHB’s jurisdiction, are willing to participate in the HCV program.

To accomplish this objective, PHAs must identify and recruit new owners to participate in the program.

MHB will conduct owner outreach to ensure that owners are familiar with the program and its advantages. MHB will actively recruit property owners with property located

outside areas of poverty and minority concentration. These outreach strategies will include, but not be limited to:

- Distributing printed or electronic material about the HCV Program to property owners and managers,
- Contacting property owners and managers by electronic means, telephone or in-person,
- Holding owner recruitment/information meetings periodically,
- Participating in community based organizations comprised of private property and apartment owners and managers, and
- Developing working relationships with owners and real estate brokers associations.

Outreach strategies will be monitored for effectiveness, and adapted accordingly.

### **Retention**

In addition to recruiting owners to participate in the HCV program, MHB must also provide the kind of customer service that will encourage participating owners to remain active in the program.

Generally, all MHB 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.

MHB will provide owners with a packet that explains the program, including selected HUD and MHB policies and procedures, in easy-to-understand language.

MHB will give special attention to helping new owners succeed through activities such as:

- Providing the owner with a designated MHB contact person.
- Coordinating inspection and leasing activities between MHB, the owner, and the family.
- Initiating telephonic or electronic contact with the owner to explain the inspection process, and providing an inspection booklet and other resource materials about HUD housing quality standards.
- Providing other written information about how the program operates, including answers to frequently asked questions.

Additional services may be undertaken on an as-needed basis, and as resources permit.

### **13-1.B. BASIC HCV PROGRAM REQUIREMENTS**

HUD requires MHB to aid families in their housing search by providing the family with a list of landlords or other parties known to MHB who may be willing to lease a unit to the family, or to help the family find a unit. Although MHB cannot maintain a list of owners that are pre-qualified to participate in the program, owners may indicate to MHB their willingness to lease a unit to an eligible HCV family, or to help the HCV family find a unit [24 CFR §982.301(b)(11)].

Owners that wish to indicate their willingness to lease a unit to an eligible HCV family or to help the HCV family find a unit may use the link on MHB website to list their properties.

When a family approaches an owner to apply for tenancy, the owner is responsible for screening the family and deciding whether to lease to the family, just as the owner would with any potential tenant. MHB has no liability or responsibility to the owner or other persons for the family's behavior or suitability for tenancy. See Chapters 3 and 9 for more detail on tenant family screening policies and process.

If the owner is willing, the family and the owner must jointly complete a Request for Tenancy Approval (RFTA, Form HUD 52517), which constitutes the family's request for assistance in the specified unit, and which documents the owner's willingness to lease to the family and to follow the program's requirements. When submitted to MHB, this document is the first step in the process of obtaining approval for the family to receive the financial assistance it will need in order to occupy the unit. Also submitted with the RFTA is a copy of the owner's proposed dwelling lease, including the HUD-required Tenancy Addendum (Form HUD-52641-A). See Chapter 9 for more detail on request for tenancy approval policies and process.

HUD regulations stipulate that an assisted tenancy can be approved only under certain conditions.

The owner must be qualified to participate in the program [24 CFR §982.306]. Some owners are precluded from participating in the program, or from renting to a particular family, either because of their past history with this or another federal housing program, or because of certain conflicts of interest. Owner qualifications are discussed later in this chapter.

The selected unit must be of a type that is eligible for the program [24 CFR §982.305(a)]. Certain types of dwelling units cannot be assisted under the HCV program. Other types may be assisted under certain conditions. In addition, the owner must document legal ownership of the specified unit. See chapter 9 for more detail on unit eligibility policies and process.

The selected unit must meet HUD's Housing Quality Standards ("HQS") and/or equivalent state or local standards approved by HUD [24 CFR §982.305(a)]. MHB will inspect the owner's dwelling unit at various stages of HCV program participation, to ensure that the unit continues to meet HQS requirements. See chapter 8 for a discussion of the HQS standards, as well as the process for HQS inspections at initial lease-up and throughout the family's tenancy.

MHB must determine that the cost of the unit is reasonable [24 CFR §982.305(a)]. The rent must be reasonable in relation to comparable unassisted units in the area and must not be in excess of rents charged by the owner for comparable, unassisted units on the premises. See Chapter 8 for a discussion of requirements and policies on rent reasonableness, rent comparability and the rent reasonableness determination process.

At initial lease-up of a unit, MHB must determine that the share of rent to be paid by the family does not exceed forty (40) percent of the family's monthly adjusted income [24

CFR §982.305(a)]. See chapter 6 for a discussion of the calculation of family income, family share of rent and HAP.

The dwelling lease must comply with all program requirements [24 CFR §982.308]. Owners are encouraged to use their standard leases when renting to an assisted family. However, the HCV program requires that the Tenancy Addendum, which helps standardize the tenancy requirements for all assisted families, be added word-for-word to that lease. See Chapter 9 for a discussion of the dwelling lease and tenancy addendum, including lease terms and provisions.

MHB and the owner enter into a formal contractual relationship by executing the Housing Assistance Payment (HAP) Contract (Form HUD-52641). The HAP contract format is prescribed by HUD. See chapter 9 for a discussion of the HAP contract execution process. Specific HAP contract provisions and responsibilities are discussed later in this Chapter 13.

### **13-1.C. OWNER RESPONSIBILITIES [24 CFR §982.452]**

The basic owner responsibilities in the HCV program are outlined in the regulations as follows:

- Performing all of the owner's obligations under the Housing Assistance Payments ("HAP") contract and the lease,
- Performing all management and rental functions for the assisted unit, including selecting a voucher-holder to lease the unit, and deciding if the family is suitable for tenancy of the unit,
- Maintaining the unit in accordance with the Housing Quality Standards ("HQS"), including performance of ordinary and extraordinary maintenance,
- Complying with equal opportunity requirements,
- Preparing and furnishing to MHB information required under the HAP contract,
- Collecting from the family any security deposit, the tenant's contribution to rent (that part of rent to owner not covered by the housing assistance payment from MHB), and any charges for unit damage by the family,
- Enforcing tenant obligations under the dwelling lease,
- Paying for utilities and services (unless paid by the family under the lease),
- Making modifications to a dwelling unit occupied or to be occupied by a disabled person [24 CFR §100.203], and
- Comply with the Violence Against Women Reauthorization Act of 2005 ("VAWA") when screening and terminating tenants.

MHB will attach a move in/move out checklist to the RFTA for **optional use** by the owner/landlord. The checklist will determine the condition of the unit prior to move in and upon move out of the family. The checklist may assist with the return of any tenant paid security deposit. Excess damages must be itemized by the landlord and put in

writing to the family (last known address), with a copy to MHB, within fourteen (14) business days.

MHB will notify the family, within fourteen (14) business days from receipt of the checklist form and request resolution with the owner, to prevent possible voucher termination.

### **13-1.D. OWNER QUALIFICATIONS**

MHB does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where MHB 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)]**

MHB must not approve the assisted tenancy if MHB 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 MHB 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]**

MHB must not approve a RTA if the owner is the parent, child, grandparent, grandchild, sister, or brother of any member of the family. MHB 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]**

MHB 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 MHB (except a participant commissioner).
- Any employee of MHB, or any contractor, subcontractor or agent of MHB, who formulates policy or who influences decisions with respect to the programs.
- Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the programs.
- Any member of the Congress of the United States.

HUD may waive the conflict of interest requirements, except for members of Congress, for good cause. MHB must submit a waiver request to the appropriate HUD Field Office for determination.

Any waiver request submitted by MHB must include [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, MHB, or both parties may conduct this analysis. Where appropriate, an opinion by the state's attorney general should be obtained;
- Opinion by the local HUD office as to whether there would be an appearance of impropriety if the waiver were granted;
- Statement regarding alternative existing housing available for lease under the HCV program or other assisted housing if the waiver is denied;
- If the case involves a hardship for a particular family, statement of the circumstances and discussion of possible alternatives;
- If the case involves a public official or member of the governing body, explanation of his/her duties under state or local law, including reference to any responsibilities involving the HCV Program;
- If the case involves employment of a family member by MHB or assistance under the HCV program for an eligible PHA employee, explanation of the responsibilities and duties of the position, including any related to the HCV Program;
- If the case involves an investment on the part of a member, officer, or employee of MHB, description of the nature of the investment, including disclosure/divestiture plans.

Where MHB has requested a conflict of interest waiver, MHB may not execute the HAP contract until HUD has made a decision on the waiver request.

In considering whether to request a conflict of interest waiver from HUD, MHB may consider factors for the reasons for waiving the requirement; consistency with state and local laws; the existence of alternative housing available to families; the individual circumstances of a particular family; the specific duties of individuals whose positions present a possible conflict of interest; the nature of any financial investment in the property and plans for disclosure/divestiture; and the possible appearance of impropriety.

#### **Owner Actions That May Result in Disapproval of a Tenancy Request [24 CFR §982.306(c)]**

HUD regulations permit MHB, at MHB's discretion, to refuse to approve a request for tenancy if the owner has committed any of a number of different actions.

If MHB 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].

MHB will refuse to approve a request for tenancy if MHB becomes aware that any of the following are true:

- The owner has violated obligations under a HAP contract under Section 8 of the 1937 Act (42 U.S.C. §1437f);
- The owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
- The owner has engaged in any drug-related criminal activity or any violent criminal activity;
- The owner has a history or practice of non-compliance with the HQS for units leased under the tenant-based programs, or with applicable housing standards for units leased with project-based Section 8 assistance or leased under any other federal housing program;
- The owner has a history or practice of failing to terminate tenancy of tenants of units assisted under Section 8 or any other federally assisted housing program for activity engaged in by the tenant, any member of the household, a guest or another person under the control of any member of the household that: (i) Threatens the right to peaceful enjoyment of the premises by other residents; (ii) Threatens the health or safety of other residents, of employees of MHB, 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, MHB 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, MHB may, on a case-by-case basis, choose to approve an owner.

### **Legal Ownership of Unit**

The following represents MHB policy on legal ownership of a dwelling unit to be assisted under the HCV program. MHB 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, etc.).

### **13-1.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 MHB.

The owner must cooperate with MHB and with HUD in conducting any equal opportunity compliance reviews and complaint investigations in connection with the HCV program and the HAP contract with MHB.

See Chapter 2 for a more thorough discussion of Fair Housing and Equal Opportunity requirements in the HCV program.

## **PART 2. HAP CONTRACTS**

### **13-2.A. OVERVIEW**

The HAP contract represents a written agreement between MHB 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 MHB's obligations. Under the HAP contract, MHB agrees to make housing assistance payments to the owner on behalf of a specific family occupying a specific unit.

The HAP contract is used for all HCV program tenancies except for assistance under the Section 8 homeownership program, and assistance to families that own a manufactured home and lease the space. See Chapter 15 for a discussion of any special housing types included in MHB's HCV program.

If MHB has given approval for the family of the assisted tenancy, the owner and MHB execute the HAP contract. See Chapter 9 for a discussion of the leasing process, including provisions for execution of the HAP contract.

### **13-2.B. HAP CONTRACT CONTENTS**

The HAP contract format is required by HUD, specifically Housing Assistance Payment ("HAP") Contract, Form HUD-52641.

The HAP contract contains three parts:

- Part A of the contract includes basic **contract information** about the name of the tenant family, address of the contract unit, names of all household members, first and last dates of initial lease term, amount of initial monthly rent to owner, amount of initial housing assistance payment, utilities and appliances to be supplied by owner and tenant, signatures of MHB and owner [HCV Guidebook, pp 11-10 and 11-11].

In general, the HAP contract cannot be modified. However, PHAs do have the discretion to add language to Part A of the HAP contract which prohibits the owner from collecting a security deposit in excess of private market practices

or in excess of amounts charged to unassisted tenants. MHB policy on the amount of security deposit an owner may collect is found in Chapter 9.

In addition, PHAs have the discretion to add language to Part A of the HAP contract that defines when the housing assistance payment by MHB is deemed received by the owner (e.g., upon mailing by MHB or actual receipt by the owner).

Currently, MHB has not adopted a policy that defines when the housing assistance payment by MHB 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 Administrative 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,
  - MHB Payment to Owner,
  - Prohibition of Discrimination,
  - Owner's Breach of HAP Contract,
  - MHB and HUD Access to Premises and Owner's Records,
  - Exclusion of Third Party Rights,
  - Conflict of Interest,
  - Assignment of the HAP Contract,
  - Written Notices, and
  - 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 MHB. The owner must sign the HUD Tenancy Addendum with the prospective tenant, and the tenant has the right to enforce the Tenancy Addendum against the owner. The terms of the Tenancy Addendum prevail over any other provisions of the lease.

## **13-2.C. HAP CONTRACT PAYMENTS**

### **General**

During the term of the HAP contract, and subject to the provisions of the HAP contract, MHB 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. MHB 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 MHB is credited toward the monthly rent to owner under the family's lease. The total of the rent paid by the tenant, plus MHB HAP payment, should be equal to the rent specified in the lease (i.e., the rent to owner).

The family is not responsible for payment of the HAP payment, and MHB is not responsible for payment of the family share of rent.

The family's share of the rent cannot be more than the difference between the total rent to the owner and the HAP payment. The owner may not demand or accept any rent payment from the tenant in excess of this maximum [24 CFR §982.451(b)(4)]. The owner may not charge the tenant extra amounts for items customarily included in rent in the locality, or provided at no additional cost to unsubsidized tenants in the premises [24 CFR §982.510(c)]. See Chapter 9 for a discussion of separate, non-lease agreements for services, appliances and other items that are not included in the lease.

If the owner receives any excess HAP from MHB, the excess amount must be returned immediately. If MHB determines that the owner is not entitled to all or a portion of the HAP, MHB 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.

### **Manner of HAP Payments**

In order to promote efficiency and reduce fraud in MHB's HAC Program, all HAP payments will be made by MHB to the owner by ACH or other electronic funds transfer directly from the appropriate MHB account directly to the banking account of owner (or designee). MHB will not make HAP payments by written checks and all owners must provide appropriate banking information to MHB for transmittal of monthly HAP amounts to the owner. The failure of the owner to provide appropriate banking information, or the failure to keep that information up to date, may result in the termination of the HAP contract. MHB may recover from the HAP payee any fees or charges assessed to MHB due to the HAP payee not providing or not maintaining the necessary account information in a timely manner.

## **Owner Certification of Compliance**

Unless the owner complies with all provisions of the HAP contract, the owner is not entitled to receive housing assistance payments under the HAP contract [HAP Contract – Form HUD-52641].

By endorsing the monthly check from MHB or by accepting an ACH or electronic funds transfer for the HAP payment, the owner certifies to compliance with the terms of the HAP contract. This includes certification that the owner is maintaining the unit and premises in accordance with HQS; that the contract unit is leased to the tenant family and, to the best of the owner's knowledge, the family resides in the unit as the family's only residence; the rent to owner does not exceed rents charged by the owner for comparable unassisted units on the premises; and that the owner does not receive (other than rent to owner) any additional payments or other consideration for rent of the contract unit during the HAP term.

### **Late HAP Payments [24 CFR §982.451(a)(5)]**

MHB is responsible for making HAP payments promptly when due to the owner, in accordance with the terms of the HAP contract and this Administrative Plan. After the first two calendar months of the HAP contract term, the HAP contract provides for penalties if MHB 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.

MHB is not required to pay a late payment penalty if HUD determines that the payment is late for reasons beyond MHB's control, including, but not limited to, HUD's failure to properly fund the monthly payments. In addition, late payment penalties are not required if MHB 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)]**

MHB 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, MHB must continue to make housing assistance payments to the owner until the owner has obtained a court judgment or other process allowing the owner to evict the tenant.

The owner must inform MHB when the owner has initiated eviction proceedings against the family and the family continues to reside in the unit.

The owner must inform MHB when the owner has obtained a court judgment or other process allowing the owner to evict the tenant, and provide MHB 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, MHB 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 MHB of the date when the family actually moves from the unit or the family is physically evicted from the unit.

### **13-2.D. BREACH OF HAP CONTRACT [24 CFR §982.453]**

Any of the following actions by the owner constitutes a breach of the HAP contract:

- If the owner violates any obligations under the HAP contract including failure to maintain the unit in accordance with HQS,
- If the owner has violated any obligation under any other HAP contract under Section 8,
- If the owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program,
- For projects with mortgages insured by HUD or loans made by HUD, if the owner has failed to comply with the regulations 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, and
- If the owner has committed any violent criminal activity.

In addition, MHB considers the following a violation of the owner of its obligations under the HCV Program:

- The owner fails to provide accurate banking information to MHB so that payments may be transmitted to owner by ACH or other electronic funds transfer protocols,
- The owner fails to accept or maintain up to date accounts to facilitate MHB's ACH or electronic transmittal of monthly HAP payments.

If MHB determines that a breach of the HAP contract has occurred, it may exercise any of its rights and remedies under the HAP contract.

MHB rights and remedies against the owner under the HAP contract include recovery of any HAP overpayment, suspension of housing assistance payments, abatement or reduction of the housing assistance payment, termination of the payment or termination the HAP contract. MHB may also obtain additional relief by judicial order or action.

MHB 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. MHB must provide the owner with written notice of any reduction in housing assistance payments or the termination of the HAP contract.

Before MHB invokes a remedy against an owner, MHB will evaluate all information and documents available to determine if the contract has been breached.

If relevant, MHB 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, MHB 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.

### **13-2.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.

If the family resides in a low income unit or any other subsidized unit, the HCV assistance and a HAP Contract will not be executed until MHB obtains clearance the family has complied with the following:

- Given the required vacate notice ;
- All monies are paid in full; No current repayment agreement;
- Unit is left in good condition; No damages/unpaid rent;
- All keys are returned to the owner/landlord/manager;
- General rental/behavior history verified;
- MHB provided documentation of same.

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;
- MHB terminates the HAP contract;
- MHB 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 MHB made the last housing assistance payment to the owner;
- The family is absent from the unit for longer than the maximum period permitted by MHB;
- The Annual Contributions Contract ("ACC") between MHB and HUD expires; or
- MHB elects to terminate the HAP contract. MHB may elect to terminate the HAP contract in each of the following situations:

- Available program funding is not sufficient to support continued assistance for families in the program [24 CFR §982.454];
- The unit does not meet HQS size requirements due to change in family composition [24 CFR §982.403] – also see Chapter 8;
- The unit does not meet HQS [24 CFR §982.404] – also see Chapter 8;
- The family breaks up [HUD Form 52641] – see Chapter 3;
- The owner fails to provide adequate information or maintain its banking account so that MHB may transmit HAP payments to the owner’s account by ACH or other electronic fund transfer protocol; or
- The owner breaches the HAP contract [24 CFR §982.453(b)] – also see Section 13-2.D.

If MHB terminates the HAP contract, MHB must give the owner and the family written notice. The notice must specify the reasons for the termination and the effective date of the termination. Once a HAP contract is terminated, no further HAP payments may be made under that contract [HCV Guidebook pg.15-4].

In all cases, the HAP contract terminates at the end of the calendar month that follows the calendar month in which MHB gives written notice to the owner. The owner is not entitled to any housing assistance payment after this period, and must return to MHB 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].

### **13-2.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 MHB.

An owner under a HAP contract must notify MHB in writing prior to a change in the legal ownership of the unit. The owner must supply all information as requested by MHB.

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 MHB finds acceptable. The new owner must provide MHB with a copy of the executed agreement and appropriate banking information so that monthly HAP payments may be made by ACH or other electronic funds transfer protocol.

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 13-1.D. of this Chapter 13.

MHB 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 ten (10) business days of receiving the owner's request, MHB will inform the current owner in writing whether the assignment may take place.

The new owner must provide a written certification to MHB 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;
- Banking information sufficient to allow MHB to pay the monthly HAP payments by ACH or other electronic fund protocol;
- The effective date of the HAP contract assignment;
- A written agreement to comply with the terms of the HAP contract; and
- Confirmation that the new owner is not a prohibited relative.

If the new owner does not agree to an assignment of the HAP contract, or fails to provide the necessary documents/information, MHB 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, MHB will process the leasing in accordance with the policies in Chapter 9.

## Chapter 14

# PROGRAM INTEGRITY

### INTRODUCTION

MHB is committed to assuring that subsidy funds made available to MHB are spent in accordance with HUD requirements.

This chapter covers HUD and PHA 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 1: Preventing, Detecting, and Investigating Errors and Program Abuse. This part presents MHB policies related to preventing, detecting, and investigating errors and program abuse.

Part 2: Corrective Measures and Penalties. This part describes the corrective measures MHB must and may take when errors or program abuses are found.

### PART 1: PREVENTING, DETECTING, AND INVESTIGATING ERRORS AND PROGRAM ABUSE

#### 14-1.A. PREVENTING ERRORS AND PROGRAM ABUSE

HUD created the Enterprise Income Verification (“EIV”) system to provide PHAs with a powerful tool for preventing errors and program abuse. PHAs are required to use the EIV system in its entirety in accordance with HUD administrative guidance [24 CFR §5.233]. PHAs are further required to:

- Provide applicants and participants with form HUD-52675, “Debts Owed to PHAs and Terminations”
- Require all adult members of an applicant or participant family to acknowledge receipt of form HUD-52675 by signing a copy of the form for retention in the family file

MHB anticipates that the vast majority of families, owners, and MHB employees intend to and will comply with program requirements and make reasonable efforts to avoid errors. Even so, to ensure that MHB’s HCV program is administered effectively and according to the highest ethical and legal standards, MHB will employ a variety of techniques to ensure that both errors and intentional program abuse are rare.

- MHB will discuss program compliance and integrity issues during the voucher briefing sessions described in Chapter 5.
- MHB 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.

- MHB will provide, or otherwise make available, to each applicant and participant 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 2010-19, as the same may be amended, from time to time. In addition, MHB will have the head of each household to acknowledge receipt of the guide.
- MHB will place a warning statement about the penalties for fraud (as described in 18 §U.S.C. 1001 and 1010) on key MHB forms and form letters that request information from a family or owner.
- MHB staff will review and explain the contents of all HUD- and PHA-required forms prior to requesting family member signatures.
- MHB will require first-time owners (or their agents) to participate in a briefing session on HAP contract requirements.
- MHB will provide each MHB employee with training on program rules and the organization’s standards of conduct and ethics. MHB may also require HCV Program employees to engage in self-study and continuing education on the HCV Program and MHB’s procedural implementation of the same.

For purposes of this Chapter the term *error* refers to an unintentional error or omission. *Program abuse or fraud* refers to a single act, multiple acts, or pattern of actions that constitute a false statement, omission, misrepresentation, or concealment of a substantial or HCV Program significant fact, made with either the intent to deceive or mislead, or in substantial or gross disregard or neglect of the truth.

#### **14-1.B. DETECTING ERRORS AND PROGRAM ABUSE**

In addition to taking steps to prevent errors and program abuse, MHB will use a variety of activities to detect errors and program abuse.

##### **Quality Control and Analysis of Data**

Under the current version of the Section 8 Management Assessment Program (“SEMAP”), HUD requires MHB to review a random sample of tenant records annually to determine if the records conform to program requirements and to conduct quality control inspections of a sample of units to ensure HQS compliance [24 CFR §985]. (See Chapter 16 for additional information about the current SEMAP requirements).

In addition to the SEMAP quality control requirements, MHB will employ a variety of methods to detect errors and program abuse.

- MHB routinely will use available sources of up-front income verification, including HUD’s EIV system, to compare with family-provided information.
- At each annual or bi-annual reexamination, as the case may be, current information provided by the family will be compared to information provided at the last annual reexamination to identify inconsistencies and incomplete information.
- MHB will compare family-reported income and expenditures to detect possible unreported income.

## **Independent Audits and HUD Monitoring**

OMB Circular A-133 requires all PHAs that expend \$500,000 or more in federal awards annually to have an independent audit (“IPA”). In addition, HUD conducts periodic on-site and automated monitoring of MHB activities and notifies MHB of errors and potential cases of program abuse.

MHB 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 MHB’s error detection and abuse prevention efforts.

## **Individual Reporting of Possible Errors and Program Abuse**

MHB will encourage staff, program participants, and the public to report possible program abuse.

### **14-1.C. INVESTIGATING ERRORS AND PROGRAM ABUSE**

#### **When MHB Will Investigate**

MHB will review all referrals, specific allegations, complaints, and tips from any source including other agencies, companies, and individuals, to determine if they warrant investigation. Generally, in order for MHB 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.

MHB will investigate inconsistent information related to the family that is identified through file reviews and the verification process.

#### **Consent to Release of Information [24 CFR §982.516]**

MHB may investigate possible instances of error or abuse using all available MHB and public records. If necessary, MHB will require HCV families to give consent to the release of additional information or otherwise cooperate with any ongoing or contemplated investigation.

#### **Analysis and Findings**

MHB 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 MHB will determine: (1) whether an error or program abuse has occurred, (2) whether any amount of money is owed MHB, and (3) what corrective measures or penalties will be assessed.

## **Consideration of Remedies**

All errors and instances of program abuse must be corrected appropriately. Whether MHB will enforce other corrective actions and penalties depends upon the nature of the error or program abuse.

In the case of family-caused errors or program abuse, MHB will take into consideration: (1) the seriousness of the offense, (2) the extent of participation or culpability of individual family member(s), (3) any special circumstances surrounding the case, (4) any mitigating circumstances related to the disability of a family member, (5) 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, MHB 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**

MHB will inform the relevant party in writing of its findings and remedies, generally, within ten (10) business days of the conclusion of the investigation. Generally, the notice will include: (1) a description of the error or program abuse, (2) the basis on which MHB 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 2: CORRECTIVE MEASURES AND PENALTIES**

### **14-2.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, MHB will promptly correct the HAP, family share, and any utility reimbursement appropriately based on the circumstances.

Increases in the family share will be implemented only after the family has received a thirty (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 MHB or MHB 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.

#### **14-2.B. FAMILY-CAUSED ERRORS AND PROGRAM ABUSE**

Family obligations and general administrative requirements for participating in the HCV Program are discussed throughout this Administrative Plan. This section deals specifically with errors and program abuse by family members.

An incorrect subsidy determination caused by a family member 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 MHB to use incorrect information provided by the family or a third party.

##### **Family Reimbursement to PHA [HCV GB pp. 22-12 to 22-13]**

In the case of family-caused errors or program abuse, the family will be required to repay any excess subsidy received. MHB 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, MHB will terminate the family's assistance in accordance with the policies in Chapter 12.

##### **MHB Reimbursement to Family [HCV GB p. 22-12]**

MHB 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 MHB [18 U.S.C. §1001].
- Commit fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program [24 CFR §982.552(c)(iv)].

Any of the following non-exclusive listing below will be considered evidence of family program abuse:

- Payment to the owner in excess of amounts authorized by MHB for rent, security deposit, and additional services;
- Offering bribes or illegal gratuities to MHB Board of Commissioners, employees, agents, contractors, or other MHB 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 MHB 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, etc.);

- Omitted facts that were obviously known by a family member (e.g., not reporting employment or other income, etc.);
- Admission of program abuse by an adult family member;

MHB may determine other actions or circumstances 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, MHB may, at its discretion, impose any of the following remedies.

- MHB may require the family to repay excess subsidy amounts paid by MHB, as described earlier in this section.
- MHB 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).
- MHB may deny or terminate the family's assistance following the policies set forth in Chapter 3 and Chapter 12 respectively.
- MHB may refer the family for state or federal criminal prosecution as described in Section 14-2.E.

### **14-2.C. OWNER-CAUSED ERROR OR PROGRAM ABUSE**

Owner requirements that are part of the regular process of offering, leasing, and maintaining a unit (e.g., HQS compliance, fair housing) are addressed in the appropriate chapters of this Administrative Plan. This section focuses on errors and program abuse by owners. (Note: throughout this Administrative Plan, including, Chapter 14, the term "owner" or "owners", includes any agent or representative of the owner/owners, including management agents or any other person or entity that is authorized to act on behalf of the owner/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, etc.). 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 MHB**

In all cases of overpayment of subsidy caused by the owner, the owner must repay to MHB any excess subsidy received. MHB may recover overpaid amounts by withholding housing assistance payments due for subsequent months, or if the debt is large, MHB may allow, but is not obligated so to do, the owner to pay in installments over a period of time [HCV GB p. 22-13].

Generally, in cases where the owner has received excess subsidy, MHB will require the owner to repay the amount owed in accordance with the policies in Section 16-4.B.

### **Prohibited Owner Actions**

An owner participating in the HCV program must not:

- Make any false statement to MHB [18 U.S.C. §1001].
- Commit fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program [24 CFR §982.453(a)(3)].

Any of the following will be considered evidence of owner program abuse:

- Charging the family rent above or below the amount specified by MHB;
- 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 MHB Board of Commissioners, employees, agents, contractors, or other MHB representatives;
- Offering payments or other incentives to an HCV family as an inducement for the family to make false or misleading statements to MHB;
- Residing in the unit with an assisted family; or
- Such other circumstances of fraud, misrepresentation, neglect or other knowingly inaccurate information or statement.

### **Remedies and Penalties**

When MHB determines that the owner has committed program abuse, MHB 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 MHB programs.
- Refer the case to state or federal officials for criminal prosecution as described in Section 14-2.E.
- Such other remedy or penalty as may be appropriate in MHB's discretion based on the circumstances.

### **14-2.D. PHA-CAUSED ERRORS OR PROGRAM ABUSE**

The responsibilities and expectations of MHB staff with respect to normal program administration are discussed throughout this Administrative Plan. This section specifically addresses actions of a MHB staff member that are considered errors or

program abuse related to the HCV Program. Additional standards of conduct may be provided in MHB's Human Resource Policy or internal MHB procedures.

PHA-caused incorrect subsidy determinations include: (1) failing to correctly apply HCV rules regarding family composition, income, assets, and expenses, (2) assigning the incorrect voucher size to a family, and (3) errors in calculation.

### **Repayment to MHB**

Neither a family nor an owner is required to repay an overpayment of subsidy if the error or program abuse is caused by MHB staff [HCV GB. 22-12] and was not discovered by the family or owner.

### **PHA Reimbursement to Family or Owner**

MHB must reimburse a family for any underpayment of subsidy, regardless of whether the underpayment was the result of staff-caused error or staff or owner program abuse. Funds for this reimbursement must come from MHB's administrative fee reserves [HCV GB p. 22-12].

### **Prohibited Activities**

Any of the following will be considered evidence of program abuse by MHB 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 MHB;
- Disclosing confidential or proprietary information to outside parties;
- Gaining profit as a result of insider knowledge of MHB activities, policies, or practices;
- Misappropriating or misusing HCV funds;
- Destroying, concealing, removing, or inappropriately using any records related to the HCV program; or
- Committing any other corrupt or criminal act in connection with any federal housing program.

### **14-2.E. CRIMINAL PROSECUTION**

When MHB determines that program abuse by an owner, family, or MHB staff member has occurred and the amount of overpaid subsidy meets or exceeds the threshold for prosecution under local or state law, MHB may refer the matter to the appropriate entity for prosecution. When the amount of overpaid assistance meets or exceeds the federal

threshold, the case may also be referred to the HUD Office of Inspector General (“OIG”).

Other criminal violations related to the HCV program may be referred to the appropriate local, state, or federal entity.

#### **14-2.F. FRAUD AND PROGRAM ABUSE RECOVERIES**

MHB may retain a portion of HCV Program fraud losses that MHB recovers from a family or owner through litigation, court order, or a repayment agreement [24 CFR §982.163].

MHB 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 MHB to retain the greater of:

- Fifty (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 MHB 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 MHB related to the collection, these costs must be deducted from the amount retained by MHB.

## Chapter 15

### SPECIAL HOUSING TYPES

[24 CFR § 982 Subpart M]

#### INTRODUCTION

MHB may permit a family to use any of the special housing types discussed in this Chapter, and such others as may be authorized by HUD, from time to time. However, MHB is not required to permit families receiving assistance in its jurisdiction to use these housing types, except that PHAs must permit use of any special housing type if needed as a reasonable accommodation for a person with a disability. MHB 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.

Generally, families will not be permitted to use any special housing types, other than homeownership for qualified participants as subject to MHB's Homeownership Program guidelines and requirements, unless use is needed as a reasonable accommodation so that the HCV Program is readily accessible to a person with disabilities.

Special housing types include single room occupancy ("SRO"), congregate housing, group homes, shared housing, cooperative housing, manufactured homes where the family owns the home and leases the space, and homeownership [24 CFR §982.601].

This Chapter 15 consists of seven (7) parts. Each part contains a description of the housing type and any special requirements associated with it [24 CFR §982]. Except as modified by this Chapter, the general requirements of the HCV program apply to special housing types.

Part 1: Single Room Occupancy

Part 2: Congregate Housing

Part 3: Group Homes

Part 4: Shared Housing

Part 5: Cooperative Housing

Part 6: Manufactured Homes (including manufactured home space rental)

Part 7: Homeownership

#### PART I: SINGLE ROOM OCCUPANCY

[24 CFR §982.602 through §982.605]

##### 15-1.A. OVERVIEW

A single room occupancy ("SRO") unit provides living and sleeping space for the exclusive use of the occupant, but requires the occupant to share sanitary and/or food preparation facilities with others. More than one person may not occupy an SRO unit.

HCV regulations do not limit the number of units in an SRO facility, but the size of a facility may be limited by local ordinances.

When providing HCV assistance in an SRO unit, a separate lease and HAP contract are executed for each assisted person, and the standard form of the HAP contract is used.

### **15-1.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION**

The payment standard for SRO housing is seventy-five (75) percent of the 0-bedroom payment standard amount on MHB's payment standard schedule.

The utility allowance for an assisted person residing in SRO housing is seventy-five (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.

### **15-1.C. HOUSING QUALITY STANDARDS (“HQS”)**

HQS requirements described in Chapter 8 apply to SRO housing except as modified below.

- *Access:* Access doors to the SRO unit must have working locks for privacy. The occupant must be able to access the unit without going through any other unit. Each unit must have immediate access to two or more approved means of exit from the building, appropriately marked and leading to safe and open space at ground level. The SRO unit must also have any other means of exit required by State or local law.
- *Fire Safety:* All SRO facilities must have a sprinkler system that protects major spaces. “Major spaces” are defined as hallways, common areas, and any other areas specified in local fire, building, or safety codes. SROs must also have hard-wired smoke detectors, and any other fire and safety equipment required by state or local law.

Sanitary facilities and space and security standards must meet local code requirements for SRO housing. In the absence of local code standards the requirements discussed below apply [24 CFR §982.605].

- *Sanitary Facilities:* At least one flush toilet that can be used in privacy, a lavatory basin, and a bathtub or shower in proper operating condition must be provided for each six persons (or fewer) residing in the SRO facility. If the SRO units are leased only to men, flush urinals may be substituted for up to one half of the required number of toilets. Sanitary facilities must be reasonably accessible from a common hall or passageway, and may not be located more than one floor above or below the SRO unit. They may not be located below grade unless the SRO units are located on that level.
- *Space and Security:* An SRO unit must contain at least 110 square feet of floor space, and at least four square feet of closet space with an unobstructed height of at least five feet, for use by the occupant. If the closet space is less than four square feet, the habitable floor space in the SRO unit must be increased by the

amount of the deficiency. Exterior doors and windows accessible from outside the SRO unit must be lockable.

Because no children live in SRO housing, the housing quality standards applicable to lead-based paint do not apply.

## **PART 2: CONGREGATE HOUSING**

[24 CFR § 982.606 through 982.609]

### **15-2.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 MHB, a family member or live-in aide may reside with the elderly person or person with disabilities. MHB must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in congregate housing, a separate lease and HAP contract are executed for each assisted family, and the standard form of the HAP contract is used.

### **15-2.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION**

The payment standard for an individual unit in a congregate housing facility is based on the number of rooms in the private living area. If there is only one room in the unit (not including the bathroom or the kitchen, if a kitchen is provided), MHB must use the payment standard for a 0-bedroom unit. If the unit has two or more rooms (other than the bathroom and the kitchen), MHB must use the 1-bedroom payment standard.

The HAP for an assisted occupant in a congregate housing facility is the lower of the applicable payment standard minus the TTP or the gross rent for the unit minus the TTP.

The gross rent for the unit for the purpose of calculating HCV assistance is the shelter portion (including utilities) of the resident's monthly housing expense only. The residents' costs for food service should not be included in the rent for a congregate housing unit.

### **15-2.C. HOUSING QUALITY STANDARDS**

HQS requirements as described in Chapter 8 apply to congregate housing except for the requirements stated below.

Congregate housing must have (1) a refrigerator of appropriate size in the private living area of each resident; (2) a central kitchen and dining facilities located within the premises and accessible to the residents, and (3) food service for the residents, that is not provided by the residents themselves.

The housing quality standards applicable to lead-based paint do not apply.

### **PART 3: GROUP HOME**

[24 CFR §982.610 through §982.614 and HCV GB p. 7-4]

#### **15-3.A. OVERVIEW**

A group home is a state-licensed facility intended for occupancy by elderly persons and/or persons with disabilities. Except for live-in aides, all persons living in a group home, whether assisted or not, must be elderly persons or persons with disabilities. Persons living in a group home must not require continuous medical or nursing care.

A group home consists of bedrooms for residents, which can be shared by no more than two (2) 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 twelve (12) persons may reside in a group home including assisted and unassisted residents and any live-in aides.

If approved by MHB, a live-in aide may live in the group home with a person with disabilities. MHB must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in a group home, a separate lease and HAP contract is executed for each assisted family, and the standard form of the HAP contract is used.

#### **15-3.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION**

Unless there is a live-in aide, the family unit size for an assisted occupant of a group home must be 0- or 1-bedroom, depending on MHB's subsidy standard. If there is a live-in aide, the aide must be counted in determining the household's unit size.

The payment standard used to calculate the HAP is the lower of the payment standard for the family unit size or the prorata share of the payment standard for the group home size. The prorata share is calculated by dividing the number of persons in the assisted household by the number of persons (assisted and unassisted) living in the group home.

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

The utility allowance for an assisted occupant in a group home is the prorata share of the utility allowance for the group home.

The rents paid for participants residing in group homes are subject to generally applicable standards for rent reasonableness. The rent for an assisted person must not exceed the prorata portion of the reasonable rent for the group home. In determining reasonable rent, MHB should consider whether sanitary facilities and facilities for food preparation and service are common facilities or private facilities.

### 15-3.C. HOUSING QUALITY STANDARDS

HQS requirements described in Chapter 8 apply to group homes in addition to the requirements stated below. In the event of a conflict between the requirements of Chapter 8 and the requirements set forth below, the requirements set forth below shall control.

- *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 (4) 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 (1) bedroom of appropriate size for every two (2) people, and a living room, kitchen, dining area, bathroom, and other appropriate social, recreational, or community space that may be shared with other residents.
- *Structure and Material:* To avoid any threat to the health and safety of the residents, group homes must be structurally sound. Elevators must be in good condition. Group homes must be accessible to and usable by residents with disabilities.
- *Site and Neighborhood:* Group homes must be located in a residential setting. The site and neighborhood should be reasonably free from hazards to the health, safety, and general welfare of the residents, and should not be subject to serious adverse conditions, such as:
  - Dangerous walks or steps
  - Instability
  - Flooding, poor drainage
  - Septic tank back-ups
  - Sewage hazards
  - Mud slides
  - Abnormal air pollution
  - Smoke or dust
  - Excessive noise
  - Vibrations or vehicular traffic
  - Excessive accumulations of trash

- Vermin or rodent infestation, and
- Fire hazards.

The housing quality standards applicable to lead-based paint do not apply.

#### **PART 4: SHARED HOUSING** [24 CFR §982.615 through §982.618]

##### **15-4.A. OVERVIEW**

Shared housing is a single housing unit occupied by an assisted family and another resident or residents. The shared unit consists of both common space for use by the occupants of the unit and separate private space for each assisted family.

An assisted family may share a unit with other persons assisted under the HCV program or with other unassisted persons. The owner of a shared housing unit may reside in the unit, but housing assistance may not be paid on behalf of the owner. The resident owner may not be related by blood or marriage to the assisted family.

If approved by MHB, a live-in aide may reside with the family to care for a person with disabilities. MHB must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in shared housing, a separate lease and HAP contract are executed for each assisted family, and the standard form of the HAP contract is used.

##### **15-4.B. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION**

The payment standard for a family in shared housing is the lower of the payment standard for the family unit size or the prorata share of the payment standard for the shared housing unit size.

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

The HAP for a family in shared housing is the lower of the payment standard minus the TTP or the gross rent minus the TTP. The utility allowance for an assisted family living in shared housing is the prorata share of the utility allowance for the shared housing unit.

The rents paid for families living in shared housing are subject to generally applicable standards for rent reasonableness. The rent paid to the owner for the assisted family must not exceed the pro-rata portion of the reasonable rent for the shared unit. In determining reasonable rent, MHB should consider whether sanitary and food preparation areas are private or shared.

### **15-4.C. HOUSING QUALITY STANDARDS**

MHB may not give approval to reside in shared housing unless the entire unit, including the portion of the unit available for use by the assisted family under its lease, meets the housing quality standards.

HQS requirements described in Chapter 8 apply to shared housing excepting 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 (1) bedroom for each two (2) persons in the family. The number of bedrooms in the private space of an assisted family must not be less than the family unit size. A 0-bedroom or 1-bedroom unit may not be used for shared housing.

## **PART 5: COOPERATIVE HOUSING**

[24 CFR §982.619]

### **15-5.A. OVERVIEW**

This part applies to rental assistance for a cooperative member residing in cooperative housing. It does not apply to assistance for a cooperative member who has purchased membership under the HCV homeownership option, or to rental assistance for a family that leases a cooperative housing unit from a cooperative member.

A cooperative is a form of ownership (nonprofit corporation or association) in which the residents purchase memberships in the ownership entity. Rather than being charged “rent” a cooperative member is charged a “carrying charge.”

When providing HCV assistance in cooperative housing, the standard form of the HAP contract is used.

### **15-5.B. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION**

The payment standard and utility allowance are determined according to regular HCV program requirements.

The HAP for a cooperative housing unit is the lower of the payment standard minus the TTP or the monthly carrying charge for the unit, plus any utility allowance, minus the TTP. The monthly carrying charge includes the member’s share of the cooperative debt service, operating expenses, and necessary payments to cooperative reserve funds. The carrying charge does not include down payments or other payments to purchase the cooperative unit or to amortize a loan made to the family for this purpose.

### **15-5.C. HOUSING QUALITY STANDARDS**

All standard HQS requirements apply to cooperative housing units. There are no additional HQS requirements.

## **PART 6: MANUFACTURED HOMES**

[24 CFR §982.620 through §982.624]

### **15-6.A. OVERVIEW**

A manufactured home is a manufactured structure, transportable in one or more parts, which is built on a permanent chassis, and designed for use as a principal place of residence. HCV-assisted families may occupy manufactured homes in two different ways.

(1) A family can choose to rent a manufactured home already installed on a space and MHB may permit it. In this instance program rules are the same as when a family rents any other residential housing, except that there are special HQS requirements as provided in 15-6.D below.

(2) HUD also permits an otherwise eligible family that owns a manufactured home to rent a space for the manufactured home and receive HCV assistance with the rent for the space. PHAs may, but are not required to, provide assistance for such families.

### **15-6.B. SPECIAL POLICIES FOR MANUFACTURED HOME OWNERS WHO LEASE A SPACE**

#### **Family Income**

In determining the annual income of families leasing manufactured home spaces, the value of the family's equity in the manufactured home in which the family resides is not counted as a family asset.

#### **Lease and HAP Contract**

There is a separate Tenancy Addendum (form HUD-52642-a) and separate HAP Contract (form HUD-52642) for this special housing type.

### **15-6.C. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION**

#### **Payment Standards**

The FMR for a manufactured home space is generally 40 percent of the published FMR for a 2-bedroom unit or, where approved by HUD, the 40th percentile of the rental distribution of manufactured home spaces for the FMR area. MHB may establish a payment standard for manufactured home spaces that is between 90-110 percent of the FMR for manufactured home spaces.

#### **Utility Allowance**

MHB must establish utility allowances for manufactured home space rental. For the first twelve (12) months of the initial lease term only, the allowance must include an amount for a utility hook-up charge if the family actually incurred a hook-up charge because of a

move. This allowance will not be given to a family that leases in place. Utility allowances for manufactured home space must not include the costs of digging a well or installing a septic system.

### **Space Rent**

The space rent is the sum of the rent to the owner for the manufactured home space, any charges for maintenance and management provided by the owner, and the utility allowance for tenant-paid utilities.

### **Housing Assistance Payment**

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

### **Rent Reasonableness**

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

## **15-6.D. HOUSING QUALITY STANDARDS**

Under either type of occupancy described in 15-6.A above, the manufactured home must meet all HQS performance requirements and acceptability criteria discussed in Chapter 8 of this Administrative 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 7: HOMEOWNERSHIP**

[24 CFR §982.625 through §982.643]

### **15-7.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. MHB must have the capacity to operate a successful HCV homeownership program as defined by the regulations.

There are two forms of homeownership assistance a PHA may offer under this option: monthly homeownership assistance payments, or a single down payment assistance

grant. PHAs may choose to offer either or both forms of homeownership assistance, or choose not to offer either. If a PHA offers both forms of assistance, a family must choose which form of assistance to receive.

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

MHB 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.

#### **15-7.B. FAMILY ELIGIBILITY [24 CFR §982.627]**

The family must meet all of the requirements listed below before the commencement of homeownership assistance. MHB may also establish additional initial requirements as long as they are described in MHB Administrative Plan. Such additional MHB requirements are set forth under MHB's Homeownership Program, which requirements and guidelines are incorporated by reference herein, as if the same had been reproduced in their entirety herein.

- 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. MHB may establish a higher income standard and requirements for families. Under MHB's requirements, the family must meet the income and debt ratio requirements set forth in MHB's Homeownership Program and Family Self Sufficiency initiatives. However, a family that meets the federal minimum income requirement (but not MHB'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.
- 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, or such longer period as MHB's Homeownership Program may require.
- 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, MHB must grant an exemption from the employment requirement if MHB 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).

#### **15-7.C. SELECTION OF FAMILIES [24 CFR §982.626]**

Unless otherwise provided (under the homeownership option), MHB may limit homeownership assistance to families or purposes defined by MHB, and may prescribe additional requirements for commencement of homeownership assistance for a family. Any such limits or additional requirements must be described in MHB Administrative Plan. These additional limits and requirements are described under MHB's Homeownership Program and related homeownership initiatives, which requirements and limits are incorporated by reference herein, as if set forth in their entirety in this Chapter.

If MHB limits the number of families that may participate in the homeownership option, MHB must establish a system by which to select families to participate.

#### **15-7.D. ELIGIBLE UNITS [24 CFR §982.628]**

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

- The unit must meet HUD's "eligible housing" requirements. The unit may not be any of the following:
  - A public housing or Indian housing unit;
  - A unit receiving Section 8 project-based assistance;

- A nursing home, board and care home, or facility providing continual psychiatric, medical or nursing services;
  - A college or other school dormitory;
  - On the grounds of penal, reformatory, medical, mental, or similar public or private institutions.
- The unit must be under construction or already exist at the time the family enters into the contract of sale.
  - The unit must be a one-unit property or a single dwelling unit in a cooperative or condominium.
  - The unit must have been inspected by MHB and by an independent inspector designated by the family.
  - The unit must meet Housing Quality Standards (see Chapter 8).
  - For a unit where the family will not own fee title to the real property (such as a manufactured home), the home must have a permanent foundation and the family must have the right to occupy the site for at least 40 years.
  - For PHA-owned units all of the following conditions must be satisfied:
    - MHB informs the family, both orally and in writing, that the family has the right to purchase any eligible unit and a PHA-owned unit is freely selected by the family without PHA pressure or steering;
    - The unit is not ineligible housing;
    - MHB obtains the services of an independent agency to inspect the unit for compliance with HQS, review the independent inspection report, review the contract of sale, determine the reasonableness of the sales price and any PHA provided financing. All of these actions must be completed in accordance with program requirements.

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

#### **15-7.E. ADDITIONAL PHA REQUIREMENTS FOR SEARCH AND PURCHASE [24 CFR §982.629]**

It is the family's responsibility to find a home that meets the criteria for voucher homeownership assistance. MHB 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 MHB, MHB may issue the family a voucher to lease a unit or place the family's name on the waiting list for a voucher.

#### **15-7.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 MHB. HUD suggests the following topics for MHB-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 MHB 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.

MHB may adapt the subjects covered in pre-assistance counseling (as listed) to local circumstances and the needs of individual families.

MHB may also offer additional counseling after commencement of homeownership assistance (ongoing counseling). If MHB offers a program of ongoing counseling for participants in the homeownership option, MHB shall have discretion to determine whether the family is required to participate in the ongoing counseling.

If MHB does not use a HUD-approved housing counseling agency to provide the counseling, MHB should ensure that its counseling program is consistent with the counseling provided under HUD's Housing Counseling program.

#### **15-7.G. HOME INSPECTIONS, CONTRACT OF SALE, AND PHA DISAPPROVAL OF SELLER [24 CFR §982.631]**

##### **Home Inspections**

MHB may not commence monthly homeownership assistance payments or provide down payment assistance grants for a family until MHB has inspected the unit and has determined that the unit passes HQS.

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

qualified to report on property conditions, including major building systems and components.

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

MHB may disapprove a unit for assistance based on information in the independent inspector's report, even if the unit was found to comply with HQS.

### **Contract of Sale**

Before commencement of monthly homeownership assistance payments or receipt of a down payment assistance grant, 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 MHB 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 24 CFR §24.

### **Disapproval of a Seller**

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

### **15-7.H. FINANCING [24 CFR §982.632]**

MHB 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. MHB must establish policies describing these requirements in the Administrative Plan.

A PHA may not require that families acquire financing from one or more specified lenders, thereby restricting the family's ability to secure favorable financing terms.

**15-7.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, MHB may not continue homeownership assistance after the month when the family moves out. The family or lender is not required to refund to MHB the homeownership assistance for the month when the family moves out.

Before commencement of homeownership assistance, the family must execute a statement in which the family agrees to comply with all family obligations under the homeownership option.

The family must comply with the following obligations:

- The family must comply with the terms of the mortgage or loan 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 MHB or HUD as specified in 24 CFR § 982.551(b).
- The family must further supply any information required by MHB or HUD concerning mortgage financing or refinancing, sale or transfer of any interest in the home, or homeownership expenses.
- The family must notify MHB before moving out of the home.
- The family must notify MHB if the family defaults on the mortgage used to purchase the home.
- No family member may have any ownership interest in any other residential property.
- The family must comply with the obligations of a participant family described in 24 CFR §982.551, except for the following provisions which do not apply to assistance under the homeownership option: 24 CFR §§982.551(c), (d), (e), (f), (g) and (j).

**15-7.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 six (6) months of homeownership assistance after the maximum term becomes applicable (provided the family is otherwise eligible to receive homeownership assistance).

If the family has received such assistance for different homes, or from different PHAs, the total of such assistance terms is subject to the maximum term described in this section.

#### **15-7.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, MHB will use the same payment standard schedule, payment standard amounts, and subsidy standards as those described in elsewhere in this Administrative Plan.

MHB may pay the homeownership assistance payments directly to the family, or at MHB's discretion, to a lender on behalf of the family. If the assistance payment exceeds the amount due to the lender, MHB must pay the excess directly to the family.

Homeownership assistance for a family terminates automatically one hundred eighty (180) calendar days after the last homeownership assistance payment made on behalf of the family. However, a PHA may grant relief from this requirement in those cases where automatic termination would result in extreme hardship for the family.

MHB has adopted policies for determining the amount of homeownership expenses to be allowed by MHB in accordance with HUD requirements. Homeownership expenses (not including cooperatives) only include amounts allowed by MHB 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;

- MHB allowance for maintenance expenses;
- MHB allowance for costs of major repairs and replacements;
- MHB 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 MHB determines that allowance of such costs as homeownership expenses is needed as a reasonable accommodation so that the homeownership option is readily accessible to and usable by such person;
- Land lease payments where a family does not own fee title to the real property on which the home is located; [see 24 CFR §982.628(b)].
- For a condominium unit, condominium operating charges or maintenance fees assessed by the condominium homeowner association.

Homeownership expenses for a cooperative member may only include amounts allowed by MHB 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;
- MHB allowance for maintenance expenses;
- MHB allowance for costs of major repairs and replacements;
- MHB 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 MHB determines that allowance of such costs as homeownership expenses is needed as a reasonable accommodation so that the homeownership option is readily accessible to and usable by such person.
- Cooperative operating charges or maintenance fees assessed by the cooperative homeowner association.

#### **15-7.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 PHA policies, a family may exercise portability if the receiving PHA is administering a voucher homeownership program and accepting new homeownership families. The receiving PHA may absorb the family into its voucher program, or bill the initial PHA.

The family must attend the briefing and counseling sessions required by the receiving PHA. The receiving PHA will determine whether the financing for, and the physical condition of the unit, are acceptable. The receiving PHA must promptly notify the initial PHA if the family has purchased an eligible unit under the program, or if the family is unable to purchase a home within the maximum time established by MHB.

#### **15-7.M. MOVING WITH CONTINUED ASSISTANCE [24 CFR §982.637]**

A family receiving homeownership assistance may move with continued tenant-based assistance. The family may move with voucher rental assistance or with voucher homeownership assistance. Continued tenant-based assistance for a new unit cannot begin so long as any family member holds title to the prior home.

MHB may deny permission to move to a new unit with continued voucher assistance as follows:

- Lack of funding to provide continued assistance.
- At any time, MHB may deny permission to move with continued rental or homeownership assistance in accordance with 24 CFR §982.638, regarding denial or termination of assistance.
- In accordance with MHB's policy regarding number of moves within a 12-month period.

MHB must deny the family permission to move to a new unit with continued voucher rental assistance if:

- The family defaulted on an FHA-insured mortgage; and
- The family fails to demonstrate that the family has conveyed, or will convey, title to the home, as required by HUD, to HUD or HUD's designee; and the family has moved, or will move, from the home within the period established or approved by HUD.

#### **15-7.N. DENIAL OR TERMINATION OF ASSISTANCE [24 CFR §982.638]**

At any time, MHB 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).

MHB may also deny or terminate assistance for violation of participant obligations described in 24 CFR §982.551 or §982.633 and in accordance with this Administrative Plan.

MHB 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.

## 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 1: Administrative Fee Reserve. This part describes MHB's policies with regard to oversight of expenditures from its administrative fee reserve.

Part 2: 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 3: Informal Reviews and Hearings. This part outlines the requirements and procedures for informal reviews and hearings, and for informal hearings regarding citizenship status.

Part 4: Owner or Family Debts to MHB. This part describes policies for recovery of monies that MHB has overpaid on behalf of families, or to owners, and describes the circumstances under which MHB 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 5: Section 8 Management Assessment Program ("SEMAP"). This part describes what the SEMAP scores represent, how they are established, and how those scores affect a PHA.

Part 6: 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 MHB will follow.

Part 7: Reporting and Record Keeping for Children with Environmental Intervention Blood Lead Level. This part describes MHB's responsibilities for reporting, data collection, and record keeping relative to children with environmental intervention blood lead levels that are less than six years of age, and are receiving HCV assistance.

Part 8: Determination of Insufficient Funding. This part describes MHB'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 1: ADMINISTRATIVE FEE RESERVE [24 CFR §982.155]**

MHB must maintain an administrative fee reserve for the program to pay program administrative expenses in excess of administrative fees paid by HUD for a PHA fiscal year. If funds in the administrative fee reserve are not needed to cover PHA

administrative expenses, MHB may use these funds for other housing purposes permitted by Federal, State and local law. The size or existence of the administrative fee reserve is dependent on the level of Federal funding for administrative fees, from year to year.

If MHB has not adequately administered any Section 8 program, HUD may prohibit use of funds in the administrative fee reserve, and may direct MHB to use funds in the reserve to improve administration of the program or to reimburse ineligible expenses. HUD also may prohibit use of the funds for certain purposes.

HUD requires MHB Board of Commissioners or other authorized officials to establish the maximum amount that may be charged against the administrative fee reserve without specific approval.

Expenditures from the administrative fee reserve will be made in accordance with all applicable Federal requirements. Unbudgeted expenditures will not exceed \$100,000 per occurrence without the prior approval of MHB's Board of Commissioners.

## **PART 2: SETTING PROGRAM STANDARDS AND SCHEDULES**

### **16-2.A. OVERVIEW**

Although many of the HCV Program's requirements are established centrally by HUD, the HCV Program's regulations recognize that some flexibility is required to allow MHB to adapt the program to local conditions. This part discusses how MHB establishes and updates certain schedules and standards that are used to administer the program locally. Details about how these schedules are applied to individual families are provided in other chapters. The schedules and standards discussed here include:

- *Payment Standards*, which dictate the maximum subsidy a family can receive (application of the payment standards is discussed in Chapter 6); and
- *Utility Allowances*, which specify how a family's payment should be adjusted to account for tenant-paid utilities (application of utility allowances is discussed in Chapter 6).

Copies of the payment standard and utility allowance schedules are available for review in MHB'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.

MHB 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.

### **16-2.B. PAYMENT STANDARDS [24 CFR §982.503; HCV GB, Chapter 7]**

The payment standard sets the maximum subsidy payment a family can receive from MHB 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.

MHB must establish a payment standard schedule that establishes payment standard amounts for each FMR area within the PHA's jurisdiction, and for each unit size within each of the FMR areas. For each unit size, the PHA may establish a single payment standard amount for the whole FMR area, or may set different payment standards for different parts of the FMR area. Unless HUD grants an exception, the PHA is required to establish a payment standard within a "basic range" established by HUD – between 90 and 110 percent of the published FMR for each unit size.

### **Updating Payment Standards**

When HUD updates its FMRs, MHB must update its payment standards if the standards are no longer within the basic range [24 CFR §982.503(b)]. HUD may require MHB to make further adjustments if it determines that rent burdens for assisted families in MHB's jurisdiction are unacceptably high [24 CFR § 982.503(g)].

MHB will review the appropriateness of the payment standards on an annual basis when the new FMR is published. In addition to ensuring the payment standards are always within the "basic range," MHB will consider the following factors when determining whether an adjustment should be made to the payment standard schedule:

- **Funding Availability:** MHB will review the budget and anticipated funding resources to determine the impact projected subsidy adjustments will have on funding available for the HCV Program and the number of families served. MHB 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 thirty (30) percent of their monthly adjusted income as the family share. When forty (40) percent or more of families, for any given unit size, are paying more than thirty (30) percent of adjusted monthly income as the family share, MHB will consider increasing the payment standard. In evaluating rent burdens, MHB will not include families renting a larger unit than their family unit size.
- **Quality of Units Selected:** MHB will 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:** MHB 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:** MHB will review the availability of units for each unit size, particularly in areas with low concentrations of poor and minority families.

- **Lease-up Time and Success Rate:** MHB will consider the percentage of families that are unable to locate suitable housing before the voucher expires and whether families are leaving the jurisdiction to find affordable housing.

MHB will determine when the payment standard amounts will be effective each year. Generally, depending on the timing of HUD's publishing of the FMRs, MHB seeks to make the payment standards amounts effective toward the end of the year or very early the next calendar year for new leases and for renewals on the anniversary date.

If the PHA has already processed reexaminations that will be effective on or after the effective date of the payment standards, the PHA will make adjustments to any such reexaminations if the new payment standard amount is higher than the one used by the PHA at the time the reexamination was originally processed.

### **Exception Payment Standards [24 CFR §982.503(c)]**

MHB must request HUD approval to establish payment standards that are higher than the basic range. At HUD's sole discretion, HUD may approve a payment standard amount that is higher than the basic range for a designated part of the FMR area. HUD may approve an exception payment standard amount (in accordance with program requirements) for all units, or for all units of a given size, leased by program families in the exception area. Any PHA with jurisdiction in the exception area may use the HUD-approved exception payment standard amount. The total population of all HUD-approved exception areas in an FMR area may not include more than 50 percent of the population of the FMR area.

### **Unit-by-Unit Exceptions [24 CFR §982.503(c)(2)(ii)]**

Unit-by-unit exceptions to MHB'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 MHB's payment standard schedule.

When needed as a reasonable accommodation, MHB may make an exception to the payment standard without HUD approval if the exception amount does not exceed 110 percent of the applicable FMR for the unit size [HCV GB 7-9]. The PHA may request HUD approval for an exception to the payment standard for a particular family if the required amount falls between 110 and 120 percent of the FMR.

A family that requires a reasonable accommodation may request a higher payment standard at the time the Request for Tenancy Approval ("RFTA") is submitted. The family must document the need for the exception. In order to approve an exception, or request an exception from HUD, MHB must determine that:

- There is a shortage of affordable units that would be appropriate for the family;
- The family's TTP would otherwise exceed 40 percent of adjusted monthly income; and
- The rent for the unit is reasonable.

**"Success Rate" Payment Standard Amounts [24 CFR §982.503(e)]**

If a substantial percentage of families have difficulty finding a suitable unit, MHB may request a "success rate payment standard" that applies to the entire jurisdiction. If approved by HUD, a success rate payment standard allows MHB 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, MHB 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;
- MHB had established payment standards for all unit sizes, and for the entire jurisdiction, at 110 percent of the published FMR; and
- MHB 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, MHB may choose to adjust the payment standard for only some unit sizes in all, or a designated part, of MHB's jurisdiction within the FMR area.

**Decreases in the Payment Standard Below the Basic Range [24 CFR §982.503(d)]**

MHB 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.

**16-2.C. UTILITY ALLOWANCES [24 CFR §982.517]**

A PHA-established utility allowance schedule is used in determining family share and PHA subsidy. MHB 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, MHB 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, generally MHB will 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.

### **Reasonable Accommodation**

HCV program regulations require a PHA to approve a utility allowance amount higher than shown on MHB's schedule if a higher allowance is needed as a reasonable accommodation for a family member with a disability. For example, if a family member with a disability requires such an accommodation, MHB will approve an allowance for air-conditioning, even if MHB has determined that an allowance for air-conditioning generally is not needed (See Chapter 2 for policies regarding the request and approval of reasonable accommodations).

### **Utility Allowance Revisions**

MHB must review its schedule of utility allowances each year, and must revise the schedule if there has been a change of ten (10) percent or more in any utility rate since the last time the allowance for that utility was revised.

MHB must maintain information supporting its annual review of utility allowance and any revisions made in its utility allowance schedule.

## **PART 3: INFORMAL REVIEWS AND HEARINGS**

### **16-3.A. OVERVIEW**

When MHB makes a decision that has a negative impact on a family, the family is often entitled to appeal the decision. For applicants, the appeal takes the form of an informal review; for participants, or for applicants denied admission because of citizenship issues, the appeal takes the form of an informal hearing.

PHAs are required to include in their Administrative Plans, informal review procedures for applicants, and informal hearing procedures for participants [24 CFR §§982.54(d)(12) and (13)].

### **16-3.B. INFORMAL REVIEWS**

Informal reviews are provided for program applicants. An applicant is someone who has applied for admission to the program, but is not yet a participant in the program. Informal reviews are intended to provide a "minimum hearing requirement" [24 CFR §982.554], and need not be as elaborate as the informal hearing requirements. (Federal Register Volume 60, No. 127, p 36490).

#### **Decisions Subject to Informal Review**

MHB 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 MHB 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; or
- Denial of assistance based on an unfavorable history that may be the result of domestic violence, dating violence or stalking. (See Section 3-3.G.).

Informal reviews are *not* required for the following reasons [24 CFR §982.554(c)]:

- Discretionary administrative determinations by MHB;
- General policy issues or class grievances;
- A determination of the family unit size under MHB subsidy standards;
- A PHA determination not to grant approval of the tenancy;
- A PHA determination that the unit is not in compliance with the HQS; or
- A PHA determination that the unit is not in accordance with the HQS due to family size or composition.
- A determination to deny admission based on an unfavorable history that may be the result of domestic violence, dating violence, stalking, or sexual assault.

MHB will only offer an informal review to applicants for whom assistance is being denied. Denial of assistance includes: denying listing on MHB 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)]**

MHB must give an applicant prompt notice of a decision denying assistance. The notice must contain a brief statement of the reasons for MHB decision, and must also state that the applicant may request an informal review of the decision. The notice must describe how to obtain the informal review.

#### **Scheduling an Informal Review**

A request for an informal review must be made in writing and delivered to MHB either in person or by first class mail or by electronic means, in accordance with the terms set forth on the notice to the family, by the close of the business day, no later than ten (10) business days from the date of MHB's written notification of denial of assistance.

Except as provided in Section 3-3.G, the PHA must schedule and send or transmit written notice of the informal review within ten (10) business days of the family's request.

If the family does not appear at the scheduled time and did not make arrangement in advance, MHB will automatically consider the family to have waived its right to an informal review.

**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 that person. The applicant must be provided an opportunity to present written or oral objections to the decision of MHB.

The person conducting the review will make a recommendation to MHB, but MHB is responsible for making the final decision as to whether assistance should be granted or denied.

**Informal Review Decision [24 CFR §982.554(b)]**

MHB must notify the applicant of MHB's final decision, including a brief statement of the reasons for the final decision.

In rendering a decision, MHB will evaluate the following matters:

- Whether or not the grounds for denial were stated factually in the notice to the family.
- The validity of grounds for denial of assistance.
- The validity of the evidence. MHB 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, MHB will uphold the decision to deny assistance.
- If the facts prove the grounds for denial, and the denial is discretionary, MHB will consider the recommendation of the person conducting the informal review in making the final decision whether to deny assistance.

MHB will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. Generally, the notice will be mailed within ten (10) business days of the informal review, to the applicant and his or her representative, if any, along with proof of mailing.

If the decision to deny is overturned as a result of the informal review, processing for admission will resume. If the family fails to appear for their informal review, the denial of admission will stand and the family will be so notified.

**16-3.C. INFORMAL HEARINGS FOR PARTICIPANTS [24 CFR §982.555, Pub.L. 109-162]**

PHAs must offer an informal hearing for certain PHA determinations relating to the individual circumstances of a participant family. A participant is defined as a family that has been admitted to MHB's HCV program and is currently assisted in the HCV Program. The purpose of the informal hearing is to consider whether MHB's decisions related to the family's circumstances are in accordance with the law, HUD regulations and PHA policies.

MHB 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; and/or
- Refusing to process or provide assistance under portability procedures.

### **Decisions Subject to Informal Hearing**

Circumstances for which MHB 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 MHB utility allowance schedule;
- A determination of the family unit size under MHB's subsidy standards;
- A determination that an HCV program family is residing in a unit with a larger number of bedrooms than appropriate for the family unit size under MHB's subsidy standards, or MHB determination to deny the family's request for exception from the standards;
- A determination to terminate assistance for a participant family because of the family's actions or failure to act;
- A determination to terminate assistance for a participant family because of the family's fraud, misrepresentation or willful concealment or failure to cooperate in any MHB investigation;
- A determination to terminate assistance because the participant has been absent from the assisted unit for longer than the maximum period permitted under MHB 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)]; and/or

Circumstances for which an informal hearing is not required are as follows:

- Discretionary administrative determinations by MHB;
- General policy issues or class grievances;
- Establishment of MHB schedule of utility allowances for families in the HCV Program;
- A PHA determination not to approve an extension or suspension of a voucher term;
- A PHA determination not to approve a unit or tenancy;

- A PHA determination that a unit selected by the applicant is not in compliance with the HQS;
- A PHA determination that the unit is not in accordance with HQS because of family size; and/or
- A determination by MHB to exercise or not to exercise any right or remedy against an owner under a HAP contract.

MHB will only offer participants the opportunity for an informal hearing when required to by the regulations or this Administrative Plan.

### **Informal Hearing Procedures**

#### ***Notice to the Family*** [24 CFR §982.555(c)]

When MHB makes a decision that is subject to informal hearing procedures, MHB will 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, MHB will 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 MHB's subsidy standards, the notice must contain a brief statement of the reasons for the decision, a statement that if the family does not agree with the decision, the family may request an informal hearing on the decision, and a statement of the deadline for the family to request an informal hearing.

In cases where MHB makes a decision for which an informal hearing must be offered, the notice to the family will generally include the following:

- The proposed action or decision of MHB.
- A brief statement of the reasons for the decision.
- The date the proposed action will take place.
- A statement of the family's right to an explanation of the basis for MHB's decision.
- A statement that if the family does not agree with the decision the family may request an informal hearing of the decision.
- A deadline for the family to request the informal hearing.
- To whom the hearing request should be addressed.
- A copy or reference to MHB's hearing procedures.

#### ***Scheduling an Informal Hearing*** [24 CFR §982.555(d)]

When an informal hearing is required, MHB must proceed with the hearing in a reasonably expeditious manner upon the request of the family.

A request for an informal hearing must be made in writing and delivered to MHB either in person, or by first class mail, or by electronic means, in accordance with the notice, by the close of the business day, no later than ten (10) business days from the date of MHB's decision or notice to terminate assistance.

Generally, MHB will schedule and send notice of the informal hearing to the family within fourteen (14) 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 in writing within two (2) days, prior to the hearing date. At its discretion, MHB may request documentation of the "good cause" prior to rescheduling the hearing.

If the family does not appear at the scheduled time, and was unable to reschedule the hearing 48 hours in advance of the scheduled hearing date, the family will automatically be considered to have waived their right to an informal hearing. The family may contact MHB within 48 hours of the scheduled hearing date, excluding weekends and holidays to ask that the automatic waiver be rescinded only if the family can show "good cause" for the failure to appear, or if it is needed as a reasonable accommodation for a person with disabilities. The decision to rescind any automatic waiver is within the discretion of MHB.

#### ***Pre-Hearing Right to Discovery [24 CFR §982.555(e)]***

Participants and MHB are permitted limited pre-hearing discovery rights. Upon request of the family, the family must be given the opportunity to examine before the hearing any PHA documents that are directly relevant to the hearing. The family must be allowed to copy any such documents at their own expense. If MHB does not make the document available for examination on request of the family, MHB may not rely on the document at the hearing.

MHB hearing procedures may provide that MHB must be given the opportunity to examine at MHB offices before the hearing, any documents upon which the family plans to introduce or that are directly relevant to the hearing. MHB must be allowed to copy any such document at MHB's expense. If the family does not make the document available for examination on request of MHB, the family may not rely on the document at the hearing.

For the purpose of informal hearings, *documents* include records and regulations.

The family will be allowed to copy any documents related to the hearing at a cost of \$.25 per page. The family must request discovery of PHA documents no later than 12:00 p.m. on the business day prior to the scheduled hearing date. If the documents requested exceed twenty-five (25) pages, MHB may charge an administrative fee equal to the hourly rate of the MHB co-worker making the copies.

MHB must be given an opportunity to examine at MHB offices before the hearing any family documents that are directly relevant to the hearing. Whenever a participant requests an informal hearing, generally, MHB will notify the participant requesting a copy of all documents that the participant intends to present or utilize at the hearing. The participant must make the documents available no later than 12:00 pm on the business day prior to the scheduled hearing date.

***Participant's Right to Bring Counsel [24 CFR §982.555(e)(3)]***

At its own expense, the family may be represented by a lawyer or other representative at the informal hearing. If the family chooses to be represented by a lawyer, they must give MHB at least a one week's prior notice.

***Informal Hearing Officer [24 CFR §982.555(e)(4)]***

Informal hearings will be conducted by a person or persons approved by MHB, other than the person who made or approved the decision or a subordinate of the person who made or approved the decision.

***Attendance at the Informal Hearing***

Hearings may be attended by a hearing officer and the following applicable persons:

- Any MHB representative(s) and any witnesses for MHB;
- The participant and any relevant witnesses for the participant;
- The participant's counsel or other representative; and
- Any other person approved by MHB 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 MHB's hearing procedures [24 CFR §982.555(4)(ii)].

The hearing officer is responsible to manage the order of business and to ensure that hearings are conducted in a professional, expeditious 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)]***

MHB and the family must be given the opportunity to present evidence and question any witnesses. In general, all relevant evidence is admissible at an informal hearing. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

Any evidence to be considered by the hearing officer must be presented or referenced 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 MHB. Writings include all forms of recorded communication or representation, including letters, words, pictures, sounds, videotapes, electronic media, or symbols or combinations thereof.
- **Demonstrative evidence:** Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a model, a chart or other diagram.
- **Real evidence:** A tangible item relating directly to the case.

*Hearsay Evidence* is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter. Even though evidence, including hearsay, is generally admissible, generally, hearsay evidence alone cannot be used as the sole basis for the hearing officer's decision.

If either MHB or the family fail to comply with the discovery requirements described above, the hearing officer may refuse to admit such evidence.

Other than the failure of a party to comply with discovery, the hearing officer has the authority to rule on all objections to evidence.

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

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

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

- **PHA Notice to the Family:** The hearing officer will determine if the reasons for MHB's decision are factually stated in the Notice.
- **Discovery:** The hearing officer will determine if MHB and the family were given the opportunity to examine any relevant documents in accordance with MHB policy.
- **PHA Evidence to Support MHB 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 MHB's conclusion or action. The contents of the participant file shall be made available to the hearing officer and may be considered in the hearing officer's decision.
- **Validity of Grounds for Termination of Assistance (when applicable):** The hearing officer will determine if the termination of assistance is for one of the grounds specified in MHB's policies or the HUD regulations. Generally, if the grounds for termination are not specified in the regulations or in compliance with MHB's policies, then the decision of MHB may be overturned.

Generally, the hearing officer will issue a written decision to the family, MHB's HCV Office, and MHB's Executive Director no later than ten (10) business days after the

hearing. The written decision shall be a preliminary report or opinion and 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 MHB representative(s); and
  - Name of family representative(s) (if any).
- **Background:** A brief, impartial statement of the reason(s) for the hearing.
- **Summary of the Evidence:** The hearing officer will summarize the testimony of each of the witnesses and identify any documents that a witness produced in support of his/her testimony and that are admitted into evidence.
- **Findings of Fact:** The hearing officer will include all findings of fact, based on a preponderance of the evidence. *Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.
- **Conclusions:** The hearing officer will render a conclusion derived from the facts that were found to be true by a preponderance of the evidence. The conclusion will result in a determination of whether these facts uphold MHB's decision.
- **Disposition:** The hearing officer's report will include a statement of whether MHB's decision is upheld or overturned. If the recommendation of the hearing officer is to overturn MHB's action, the hearing officer will recommend MHB to change the decision in accordance with the hearing officer's determination. In the case of termination of assistance, the hearing officer will instruct MHB to restore the participant's program status.

#### *Procedures for Rehearing or Further Hearing*

The hearing officer may ask the family for additional information and/or might adjourn the hearing in order to reconvene at a later date, before reaching a decision. If the family misses an appointment or deadline ordered by the hearing officer, the action of MHB will take effect and another hearing will not be granted.

Generally, within ten (10) business days after the date the hearing officer's report is mailed, emailed or otherwise sent to MHB's HCV office, MHB's Executive Director (or designee) and the participant, MHB or the participant may request a rehearing or a further hearing. Such request must be made in writing and postmarked, emailed, or hand-delivered to the hearing officer and to the other party within 10 calendar day period. The request must demonstrate cause, supported by specific references to the hearing officer's report, why the request should be granted.

A rehearing or a further hearing may be requested for the purpose of rectifying any obvious mistake of law made during the hearing or any obvious injustice not known or otherwise concealed at the time of the hearing.

It shall be within the sole discretion of the hearing officer to grant or deny the request for further hearing or rehearing. A further hearing may be limited to written submissions by the parties, in the manner specified by the hearing officer.

*PHA Notice of Final Decision* [24 CFR §982.555(f)]

MHB is not bound by the decision of the hearing officer for: (i) matters in which MHB is not required to provide an opportunity for a hearing, (ii) decisions that exceed the authority of the hearing officer, (iii) decisions that conflict with or contradict HUD regulations, requirements, (iv) decisions that conflict with or contradict MHB policies (including, but not limited to, decisions that are contrary to the weight of evidence or to public policy), (v) obvious mistake(s) of fact or law made during the hearing or any obvious injustice not known or otherwise concealed at the time of the hearing, (vi) unwarranted expansion of the issues which formed the basis for the hearing, or (vii) decisions that are otherwise contrary to Federal, State or local laws.

If MHB, through the Executive Director, or designee, determines it will not be bound by the hearing officer's decision for one or more of the seven (7) reasons set forth in the preceding paragraph of this section. In accordance with HUD regulations, MHB must promptly notify the family of the determination and the reason for the determination. A decision or report of the hearing officer shall be deemed final and binding on MHB unless it is modified, rejected or remanded by the Executive Director, or designee, within fourteen (14) calendar days of the appropriate issuance of the hearing report by the hearing officer.

MHB will mail a "Notice of Final Decision" including the hearing officer's report, to the participant and their representative. This Notice will be sent by mail or electronic means. The participant will be mailed, emailed or provided the original "Notice of Final Decision". A copy of the "Notice of Final Decision" will be maintained in MHB's records.

**16-3.D. HEARING AND APPEAL PROVISIONS FOR NON-CITIZENS** [24 CFR §5.514]

Denial or termination of assistance based on immigration status is subject to special hearing and notice rules. Applicants who are denied assistance due to immigration status are entitled to an informal hearing, not an informal review.

Assistance to a family may not be delayed, denied, or terminated on the basis of immigration status at any time prior to a decision under the United States Citizenship and Immigration Services ("USCIS") appeal process. Assistance to a family may not be terminated or denied while MHB 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 MHB informal hearing process, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

**Notice of Denial or Termination of Assistance [24 CFR §5.514(d)]**

As discussed in Chapters 3 and 11, the notice of denial or termination of assistance for noncitizens must advise the family:

- That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance.
- The family may be eligible for proration of assistance.
- In the case of a participant, the criteria and procedures for obtaining relief under the provisions for preservation of families [24 CFR §5.514 and §5.518].
- That the family has a right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or explanation in support of the appeal.
- That the family has a right to request an informal hearing with MHB 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 MHB receives notification that the USCIS secondary verification failed to confirm eligible immigration status, MHB must notify the family of the results of the USCIS verification. The family will have thirty (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 MHB with a copy of the written request for appeal and the proof of mailing.

MHB will notify the family in writing of the results of the USCIS secondary verification within ten (10) business days of receiving the results.

The family must provide MHB with a copy of the written request for appeal within ten (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 MHB, of its decision. When the USCIS notifies MHB of the decision, MHB must notify the family of its right to request an informal hearing.

MHB 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 MHB provide a hearing. The request for a hearing must be made either within thirty (30) days of receipt of MHB notice of denial, or within thirty (30) days of receipt of the USCIS appeal decision.

The informal hearing procedures for applicant families are described below.

***Informal Hearing Officer***

MHB must provide an informal hearing before an impartial individual, (i.e., 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.

***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 MHB pertaining to the family's eligibility status, or in the possession of the USCIS (as permitted by USCIS requirements), including any records and regulations that may be relevant to the hearing.

The family will be allowed to copy any documents related to the hearing at a cost of \$.25 per page. The family must request discovery of PHA documents no later than 12:00 p.m. on the business day prior to the hearing. If the documents requested exceed twenty-five (25) pages, MHB may charge an administrative fee equal to the hourly rate of the MHB co-worker making the copies.

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 MHB, and to confront and cross-examine all witnesses on whose testimony or information MHB relies.

***Representation and Interpretive Services***

The family is entitled to be represented by an attorney or other designee, at the family's expense, and to have such person make statements on the family's behalf.

The family is entitled to arrange for an interpreter to attend the hearing, at the expense of the family, or MHB, as may be agreed upon by the two parties.

***Recording of the Hearing***

The family is entitled to have the hearing recorded by audiotape, provided it provides written notice to MHB that it wishes to record the hearing. MHB may, but is not required to provide a transcript of the hearing. Generally, MHB does not record the hearing nor does it normally provide a transcript of an audio taped hearing.

### ***Hearing Decision***

MHB must provide the family with a written final decision, based solely on the facts presented at the hearing, within fourteen (14) calendar days of the date of the informal hearing. The decision must state the basis for the decision.

### **Informal Hearing Procedures for Residents [24 CFR §5.514(f)]**

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that MHB provide a hearing. The request for a hearing must be made either within thirty (30) days of receipt of MHB notice of termination, or within thirty (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)]**

MHB must retain for a minimum of five (5) years the following documents that may have been submitted to MHB by the family, or provided to MHB as part of the USCIS appeal or MHB informal hearing process, unless an alternate time frame is required under MHB's Records Retention Policy:

- 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; and
- The final informal hearing decision.

## **PART 4: OWNER OR FAMILY DEBTS TO MHB**

### **16-4.A. OVERVIEW**

PHAs are required to include in the Administrative Plan, policies concerning repayment by a family of amounts owed to MHB [24 CFR §982.54]. This part describes MHB's policies for recovery of monies owed to MHB by families or owners.

When an action or inaction of an owner or participant results in the overpayment of housing assistance, MHB holds the owner or participant liable to return any overpayments to MHB.

MHB may enter into repayment agreements in accordance with the policies contained in this part as a means to recover overpayments.

When an owner or participant refuses to repay monies owed to MHB, MHB may utilize other available collection alternatives including, but not limited to, the following: (1) Collection agencies, (2) law firms, (3) reports to credit bureau(s), (4) such other collection means and methods as is permissible under Federal or state law.

## **16-4.B. REPAYMENT POLICY**

### **Owner Debts to MHB**

Any amount due to MHB by an owner must be repaid by the owner within thirty (30) days of MHB's determination of the debt.

If the owner fails to repay the debt within the required time frame and is entitled to future HAP payments, MHB 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 MHB may, in its sole discretion, offer to enter into a repayment agreement on terms prescribed by MHB.

If the owner refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, MHB will ban the owner from future participation in the program and pursue other modes of collection.

### **Family Debts to MHB**

Any amount owed to MHB by an HCV family must be repaid by the family. If the family is unable to repay the debt within 30 days, MHB will offer to enter into a repayment agreement in accordance with the policies below.

If the family refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, MHB will terminate assistance in accordance with the policies in Chapter 12 and/or pursue other modes of collection.

### **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 MHB in which a tenant or owner acknowledges a debt in a specific amount and agrees to repay the amount due at specific time periods. MHB must agree to the terms of any repayment agreement in order for it to be effective.

### **General Repayment Agreement Guidelines for Families**

#### *Down Payment Requirement*

Before executing a repayment agreement with a family, MHB will generally require a down payment of 15 percent of the total amount owed. If the family can provide evidence satisfactory to MHB that a down payment of 15 percent would impose an undue hardship, MHB may, in its sole discretion, require a lesser percentage or waive the requirement.

#### *Payment Thresholds*

Notice PIH 2010-19 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 2010-19 acknowledges that PHAs have the discretion to establish "thresholds and policies" for repayment agreements with families [24 CFR §982.552(c)(1)(vii)].

MHB 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 MHB that the threshold applicable to the family's debt would impose an undue hardship, MHB may, in its sole discretion, determine that a lower monthly payment amount is reasonable. In making its determination, MHB will consider all relevant information, including the following:

- The amount owed by the family to MHB;
- 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; and
- The family's history of meeting its financial responsibilities.

#### *Execution of the Agreement*

Any repayment agreement between MHB and a family must be signed and dated by the head of household and spouse/co-head (if applicable).

#### *Due Dates*

All payments are due by the close of business on the 15<sup>th</sup> day of the month. If the 15<sup>th</sup> does not fall on a business day, the due date is the close of business on the first business day after the 15<sup>th</sup>.

#### *Late or Missed Payments*

If a payment is not received by the end of the business day on the date due, and prior approval for the missed payment has not been given by MHB, MHB 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 MHB may accelerate the debt and/or terminate assistance in accordance with the policies in Chapter 12.

If a family receives two (2) delinquency notices for unexcused late payments in a 12-month period, the repayment agreement will be considered in default, and MHB may accelerate the debt and/or terminate assistance in accordance with the policies in Chapter 12.

### *No Offer of Repayment Agreement*

Generally, MHB will not enter into a repayment agreement with a family after limits of two separate agreements have already been in place with the family or if the amount owed by the family exceeds the federal or state threshold for criminal prosecution.

### *Repayment Agreements Involving Improper Payments*

Notice PIH 2010-19 requires certain provisions to 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 PHA may terminate assistance because of a family's action or failure to act;
- A statement clarifying that each month the family not only must pay to the PHA the monthly payment amount specified in the agreement but must also pay to the owner the family's monthly share of the rent to owner;
- A statement that the terms of the repayment agreement may be renegotiated if the family's income decreases or increases; and
- A statement that late or missed payments constitute default of the repayment agreement and may result in termination of assistance.

## **PART 5: MANAGEMENT ASSESSMENT ("SEMAP")**

### **16-5.A. OVERVIEW**

The Section 8 Management Assessment Program ("SEMAP") is a tool that allows HUD to measure PHA performance in key areas to ensure program integrity and accountability. SEMAP scores translate into a rating for each PHA as *high performing*, *standard*, or *troubled*. Scores on individual SEMAP indicators, as well as overall SEMAP ratings, can affect MHB in several ways.

- High-performing PHAs can be given a competitive advantage under notices of funding availability [24 CFR §985.103].
- PHAs with deficiencies on one or more indicators are required to correct the deficiencies and report to HUD [24 CFR §985.106].
- PHAs with an overall rating of "troubled" are subject to additional HUD oversight, including on-site reviews by HUD staff, a requirement to develop a corrective action plan, and monitoring to ensure the successful implementation of the corrective action plan. In addition, PHAs that are designated "troubled" may not use any part of the administrative fee reserve for other housing purposes [24 CFR §985.107].

- HUD may determine that a PHA's failure to correct identified SEMAP deficiencies or to prepare and implement a corrective action plan required by HUD constitutes a default under the ACC [24 CFR §985.109].

**16-5.B. SEMAP CERTIFICATION [24 CFR §985.101]**

PHAs must submit the HUD-required SEMAP certification form within sixty (60) calendar days after the end of its fiscal year. The certification must be approved by PHA board resolution and signed by MHB executive director.

Failure of a PHA to submit its SEMAP certification within the required time frame will result in an overall performance rating of “troubled.”

A PHA’s SEMAP certification is subject to HUD verification by an on-site confirmatory review at any time.

Upon receipt of MHB’s SEMAP certification, HUD will rate MHB’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. MHB 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 MHB's certification on the indicator due to MHB's failure to adequately report family data, HUD will assign a zero rating for the indicator [24 CFR §985.3].

**16-5.C. SEMAP INDICATORS [24 CFR §985.3 and form HUD-52648]**

The table below lists each of the SEMAP indicators, contains a description of each indicator, and explains the basis for points awarded under each indicator.

A PHA that expends less than \$300,000 in Federal awards and whose Section 8 programs are not audited by an independent auditor, is not be rated under SEMAP indicators 1-7. However, as MHB expends beyond this limit, MHB is subject to SEMAP.

SEMAP Indicators
<p><b>Indicator 1: Selection from the waiting list</b></p> <p><b>Maximum Score: 15</b></p> <ul style="list-style-type: none"> <li>• This indicator shows whether MHB has written policies in its Administrative Plan for selecting applicants from the waiting list and whether MHB follows these policies when selecting applicants for admission from the waiting list.</li> <li>• Points are based on the percent of families that are selected from the waiting list in accordance with MHB’s written policies, according to MHB’s quality control sample.</li> </ul>

**Indicator 2: Rent reasonableness**

**Maximum Score: 20**

- This indicator shows whether MHB has and implements a reasonable written method to determine and document for each unit leased that the rent to owner is reasonable based on current rents for comparable unassisted units
- Points are based on the percent of units for which MHB follows its written method to determine reasonable rent and has documented its determination that the rent to owner is reasonable, according to MHB's quality control sample.

**Indicator 3: Determination of adjusted income**

**Maximum Score: 20**

- This indicator measures whether MHB verifies and correctly determines adjusted income for each assisted family, and where applicable, uses the appropriate utility allowances for the unit leased in determining the gross rent.
- Points are based on the percent of files that are calculated and verified correctly, according to MHB's quality control sample.

**Indicator 4: Utility allowance schedule**

**Maximum Score: 5**

- This indicator shows whether MHB maintains an up-to-date utility allowance schedule.
- Points are based on whether MHB has reviewed the utility allowance schedule and adjusted it when required, according to MHB's certification.

**Indicator 5: HQS quality control inspections**

**Maximum Score: 5**

- This indicator shows whether a PHA supervisor re-inspects a sample of units under contract during MHB fiscal year, which meets the minimum sample size requirements for quality control of HQS inspections.
- Points are based on whether the required quality control re-inspections were completed, according to MHB's certification.

**Indicator 6: HQS enforcement**

**Maximum Score: 10**

- This indicator shows whether, following each HQS inspection of a unit under contract where the unit fails to meet HQS, any cited life-threatening deficiencies are corrected within 24 hours from the inspection and all other deficiencies are corrected within no more than 30 calendar days from the inspection or any MHB-approved extension.
- Points are based on whether MHB corrects all HQS deficiencies in accordance with required time frames, according to MHB's certification.

**Indicator 7: Expanding housing opportunities****Maximum Points: 5**

- Only applies to PHAs with jurisdiction in metropolitan FMR areas.
- This indicator shows whether MHB 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 MHB'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 MHB has adopted and implemented written policies in accordance with SEMAP requirements, according to MHB's certification.

**Indicator 8: FMR limit and payment standards****Maximum Points: 5 points**

- This indicator shows whether MHB has adopted a payment standard schedule that establishes payment standard amounts by unit size for each FMR area in MHB's jurisdiction, that are within the basic range of 90 to 110 percent of the published FMR.
- Points are based on whether MHB has appropriately adopted a payment standard schedule(s), according to MHB's certification.

**Indicator 9: Annual reexaminations****Maximum Points: 10**

- This indicator shows whether MHB completes a reexamination for each participating family at least every 12 months.
- Points are based on the percent of reexaminations that are more than 2 months overdue, according to data from PIC.

**Indicator 10: Correct tenant rent calculations****Maximum Points: 5**

- This indicator shows whether MHB correctly calculates the family's share of the rent to owner.
- Points are based on the percent of correct calculations of family share of the rent, according to data from PIC.

**Indicator 11: Pre-contract HQS inspections****Maximum Points: 5**

- This indicator shows whether newly leased units pass HQS inspection on or before the effective date of the assisted lease and HAP contract.
- Points are based on the percent of newly leased units that passed HQS inspection prior to the effective date of the lease and HAP contract, according to data from PIC.

**Indicator 12: Annual HQS inspections****Maximum Points: 10**

<ul style="list-style-type: none"> <li>• This indicator shows whether MHB inspects each unit under contract at least annually.</li> <li>• Points are based on the percent of annual HQS inspections of units under contract that are more than 2 months overdue, according to data from PIC.</li> </ul>
<p><b>Indicator 13: Lease-up</b></p> <p><b>Maximum Points: 20 points</b></p> <ul style="list-style-type: none"> <li>• This indicator shows whether MHB enters HAP contracts for the number of units or funding reserved under ACC for at least one year.</li> <li>• Points are based on the percent of units leased during the last completed MHB fiscal year, or the percent of allocated budget authority that has been expended by MHB, according to data from MHB's last year-end operating statement that is recorded in HUD's accounting system.</li> </ul>
<p><b>Indicator 14: Family self-sufficiency (FSS) enrollment and escrow account balances</b></p> <p><b>Maximum Points: 10</b></p> <ul style="list-style-type: none"> <li>• Only applies to PHAs with mandatory FSS programs.</li> <li>• This indicator shows whether MHB 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.</li> <li>• 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.</li> </ul>
<p><b>Success Rate of Voucher Holders</b></p> <p><b>Maximum Points: 5</b></p> <ul style="list-style-type: none"> <li>• Only applies to PHAs that have received approval to establish success rate payment standard amounts, and isn't effective until the second full PHA fiscal year following the date of HUD approval of success rate payment standard amounts.</li> <li>• This indicator shows whether voucher holders were successful in leasing units with voucher assistance.</li> <li>• Points are based on the percent of families that were issued vouchers, and that became participants in the voucher program.</li> </ul>
<p><b>Deconcentration Bonus Indicator</b></p> <p><b>Maximum Points: 5</b></p> <ul style="list-style-type: none"> <li>• Submission of data for this indicator is mandatory for a PHA using one or more payment standard amount(s) that exceed(s) 100 percent of the published FMR set at the 50 percentile rent, starting with the second full PHA fiscal year following initial use of payment standard amounts based on the FMRs set at the 50th percentile.</li> <li>• Additional points are available to PHAs that have jurisdiction in metropolitan FMR areas and that choose to submit the required data.</li> <li>• Points are based on whether the data that is submitted meets the requirements for bonus points.</li> </ul>

## **PART 6: RECORD KEEPING**

### **16-6.A. OVERVIEW**

MHB will 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, MHB will ensure, to the extent practicable, that all applicant and participant files are maintained in a way that protects an individual's privacy rights.

### **16-6.B. RECORD RETENTION [24 CFR §982.158]**

During the term of each assisted lease, and for at least three years thereafter, MHB must keep:

- A copy of the executed lease;
- The HAP contract; and
- The application from the family.

In addition, MHB 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 PHA budget and financial statements for the program;
- Records to document the basis for PHA determination that rent to owner is a reasonable rent (initially and during the term of a HAP contract); and
- Other records specified by HUD.

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 16-3.D., Retention of Documents.

### **16-6.C. RECORDS MANAGEMENT**

PHAs must maintain applicant and participant files and information in accordance with the regulatory requirements described below.

All applicant and participant information will be kept in a secure location and access will be limited to authorized MHB staff, and other authorized representatives/agents of MHB.

MHB 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 MHB may release the information collected.

### **Upfront Income Verification (UIV) Records**

PHAs that access UIV data through HUD’s Enterprise Income Verification (“EIV”) System are required to adopt and follow specific security procedures to ensure that all EIV data is protected in accordance with Federal laws, regardless of the media on which the data is recorded (e.g., electronic, paper). These requirements are contained in the HUD issued document, *Enterprise Income Verification (EIV) System, Security Procedures for Upfront Income Verification data*.

MHB has adopted and implemented EIV security procedures required by HUD.

### **Criminal Records**

MHB may only disclose the criminal conviction records which MHB receives from a law enforcement agency to officers or employees of MHB, or to authorized representatives of MHB who have a job-related need to have access to the information [24 CFR §5.903(e)].

MHB must establish and implement a system of records management that ensures that any criminal record received by MHB 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 MHB action without institution of a challenge or final disposition of any such litigation [24 CFR §5.903(g)].

MHB must establish and implement a system of records management that ensures that any sex offender registration information received by MHB 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 MHB action without institution of a challenge or final disposition of any such litigation. This requirement does not apply to

information that is public information, or is obtained by a PHA other than under 24 CFR §5.905.

### **Medical/Disability Records**

PHAs are not permitted to inquire about the nature or extent of a person's disability. MHB may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If MHB receives a verification document that provides such information, MHB should not place this information in the tenant file.

## **PART 7: REPORTING AND RECORD KEEPING FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL**

### **16-7.A. OVERVIEW**

MHB has certain responsibilities relative to children with environmental intervention blood lead levels that are receiving HCV assistance. The notification, verification, and hazard reduction requirements are discussed in Chapter 8. This part deals with the reporting requirements, and data collection and record keeping responsibilities that MHB is subject to.

### **16-7.B. REPORTING REQUIREMENT [24 CFR §35.1225(e)]**

MHB must report the name and address of a child identified as having an environmental intervention blood lead level to the public health department within five (5) business days of being so notified by any other medical health care professional.

### **16-7.C. DATA COLLECTION AND RECORD KEEPING [24 CFR §35.1225(f)]**

Unless medical privacy laws preclude the collection of such reports, and the Health Department agrees to disclose the information, at least quarterly, the PHA must attempt to obtain from the public health department(s) with a similar area of jurisdiction, the names and/or addresses of children less than 6 years old with an identified environmental intervention blood lead level.

If MHB obtains names and addresses of environmental intervention blood lead level children from the public health department(s), MHB 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, MHB must carry out the notification, verification, and hazard reduction requirements discussed in Chapter 8, and the reporting requirement discussed above.

At least quarterly, subject to medical privacy laws and regulations, MHB must also report an updated list of the addresses of units receiving assistance under the HCV program to the same public health department(s), unless the public health department(s) states that it does not wish to receive such a report. The public health department(s) has stated they **do not** wish to receive a report of an updated list of the addresses of units receiving assistance under the HCV program, on a quarterly basis.

Therefore, MHB is not providing such a report, but will provide the same to the health department upon its request.

## **PART 8: DETERMINATION OF INSUFFICIENT FUNDING**

### **16-8.A. OVERVIEW**

The HCV regulations allow PHAs to deny families permission to move and to terminate Housing Assistance Payments (HAP) contracts if funding under the consolidated ACC is insufficient to support continued assistance [24 CFR §982.314(e)(1) and §982.454]. Insufficient funding may also impact MHB's ability to issue vouchers to families on the waiting list. This part discusses the methodology MHB will use to determine whether or not MHB has sufficient funding to issue vouchers, approve moves, and to continue subsidizing all families currently under a HAP contract.

### **16-8.B. METHODOLOGY**

MHB 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 MHB's annual budget authority, as the same may be prorated or subject to offset by HUD, from time to time, to the annual total HAP needs on a monthly or other period basis. The total HAP needs for the previous quarter in line with HUD's funding protocol, and projecting those amounts for an entire calendar year based on the actual HAP costs year to date. To that figure, MHB will factor in 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 and maintenance of a reasonable HAP reserve. If the total annual HAP needs equal or exceed the annual budget authority, or if MHB cannot support the cost of the proposed subsidy commitment (voucher issuance or move) based on the funding analysis, MHB will be considered to have insufficient funding. MHB may use alternate financially sound protocols to determine whether it has insufficient funding.

If MHB, in its sole discretion, determines there is a shortage of funding, prior to terminating any HAP contracts, MHB will determine if any other actions can be taken to reduce program costs and still meet the requirements of HUD regulations, program administration responsibilities and MHB's internal policies and protocols. This includes, but is not limited to, the protocol highlighted in Chapter 9.1.H of this Administrative Plan, which among other efficiencies, seeks to maintain rents at then current levels and forgo rental increases so as to preserve HAP payments for a greater number of assisted families. If after evaluating and/or implementing all reasonable cost cutting measures there is not enough funding available to provide continued assistance for current participants, MHB will terminate HAP contracts as a last resort.

Prior to terminating any HAP contracts, MHB will inform the local HUD field office. MHB will terminate the minimum number needed in order to reduce HAP costs to a level within MHB's funding availability.

If MHB must terminate HAP contracts due to insufficient funding, MHB will make public its plan for terminating assistance.

### **PART 9: NOTIFICATION REGARDING APPLICABLE PROVISIONS OF THE VIOLENCE AGAINST WOMEN REAUTHORIZATION ACT OF 2013 (“VAWA”)**

The Violence against Women Reauthorization Act of 2013 (“VAWA 2013”), requires PHAs to inform assisted tenants of their rights under this law, including their right to confidentiality and the limits thereof. Since VAWA 2013 provides protections for applicants as well as tenants, PHAs may elect to provide the same information to applicants. VAWA 2013 also requires PHAs to inform owners and managers of their obligations under this law [24 CFR §5.2007(3), Pub. L. No. 113-4].

This part describes the steps that MHB will take to ensure that all actual and potential beneficiaries of its housing choice voucher program are notified about their rights and that owners and managers are notified of their obligations under VAWA 2013.

MHB post or otherwise make available, much of the following information regarding VAWA 2013 in its offices and/or on its Web site. It will also make the information readily available to anyone who requests it.

- A summary of the rights and protections provided by VAWA to housing choice voucher program applicants and participants who are or have been victims of domestic violence, dating violence, or stalking (see sample notices in Exhibits 16-1 and 16-2);
- The definitions of *domestic violence*, *dating violence*, and *stalking* provided in VAWA 2013 (included in Exhibits 16-1 and 16-2);
- An explanation of the documentation that MHB may require from an individual who claims the protections provided by VAWA 2013 (included in Exhibits 16-1 and 16-2);
- A copy of form HUD-50066, Certification of Domestic Violence, Dating Violence, or Stalking;
- A statement of MHB’s obligation to keep confidential any information that it receives from a victim unless: (a) MHB has the victim’s written permission to release the information, (b) it needs to use the information in an eviction proceeding, (c) it needs to use the information for other HCV Program administration reason(s), or (d) it is compelled by law to release the information (included in Exhibits 16-1 and 16-2);
- 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); and
- Contact information for local victim advocacy groups or service providers.

#### **16-9.A. NOTIFICATION TO PARTICIPANTS [24 CFR §5.2007(3)(i)]**

VAWA 2013 requires PHAs to notify HCV program participants of their rights under this law, including their right to confidentiality and the limits thereof.

Generally, MHB will provide all participants with notification or reference of their protections and rights under VAWA 2013 at the time of admission and at annual reexamination.

The notice will explain the protections afforded under the law, inform the participant of MHB confidentiality requirements, and provide contact information for local victim advocacy groups or service providers.

MHB will also include in all assistance termination notices a statement explaining assistance termination protection provided by VAWA 2013 (see Section 12-2.E).

#### **16-9.B. NOTIFICATION TO APPLICANTS**

MHB will provide all applicants with notification or references of their protections and rights under VAWA 2013 at the time they request an application for housing assistance.

The notice or reference will explain the protections afforded under the law, inform each applicant of MHB confidentiality requirements, and provide contact information for local victim advocacy groups or service providers.

MHB will also include in all notices of denial a statement explaining the protection against denial provided by VAWA 2013 (see section 3-3.G).

#### **16-9.C. NOTIFICATION TO OWNERS AND MANAGERS [24 CFR §5.2007(3)(ii)]**

VAWA 2013 requires PHAs to notify owners and managers of their rights and responsibilities under this law.

Inform property owners and managers of their screening and termination responsibilities related to VAWA 2013. MHB may utilize any or all of the following means to notify owners of their VAWA 2013 responsibilities:

- As appropriate in day-to-day interactions with owners and managers.
- Inserts in HAP payments, 1099s, owner workshops, classes, orientations, and/or newsletters.
- Signs in MHB lobby and/or mass mailings, email blasts or other electronic notification means which include model VAWA 2013 certification forms.

<b>EXHIBIT 16-1: SAMPLE NOTICE TO HOUSING CHOICE VOUCHER APPLICANTS AND TENANTS REGARDING THE VIOLENCE AGAINST WOMEN ACT (VAWA)</b>
---

*This sample notice was adapted from a notice prepared by the National Housing Law Project.*

A federal law that went into effect in 2006 and updated in 2013 protects individuals who are victims of domestic violence, dating violence, stalking or sexual assault. The name of the law is the Violence against Women Act, or "VAWA." This notice explains your rights under VAWA.

### **Protections for Victims**

If you are eligible for a Section 8 voucher, the housing authority cannot deny you rental assistance solely because you are a victim of domestic violence, dating violence, stalking or sexual assault.

If you are the victim of domestic violence, dating violence, stalking or sexual assault, you cannot be terminated from the Section 8 program or evicted based on acts or threats of violence committed against you. Also, criminal acts directly related to the domestic violence, dating violence, stalking or sexual assault that are caused by a member of your household or a guest can't be the reason for evicting you or terminating your rental assistance if you were the victim of the abuse.

### **Reasons You Can Be Evicted**

You can be evicted and your rental assistance can be terminated if the housing authority or your landlord can show there is an *actual* and *imminent* (immediate) threat to other tenants or employees at the property if you remain in your housing. Also, you can be evicted and your rental assistance can be terminated for serious or repeated lease violations that are not related to the domestic violence, dating violence, or stalking or sexual assault committed against you. The housing authority and your landlord cannot hold you to a more demanding set of rules than it applies to tenants who are not victims.

### **Removing the Abuser from the Household**

Your landlord may split the lease to evict a tenant who has committed criminal acts of violence against family members or others, while allowing the victim and other household members to stay in the assisted unit. Also, the housing authority can terminate the abuser's Section 8 rental assistance while allowing you to continue to receive assistance. If the landlord or housing authority chooses to remove the abuser, it may not take away the remaining tenants' rights to the unit or otherwise punish the remaining tenants. In removing the abuser from the household, your landlord must follow federal, state, and local eviction procedures.

### **Moving to Protect Your Safety**

The housing authority may permit you to move and still keep your rental assistance, even if your current lease has not yet expired. The housing authority may require that you be current on your rent or other obligations in the Housing Choice Voucher program. The housing authority may ask you to provide proof that you are moving because of incidences of abuse.

### **Proving that You Are a Victim of Domestic Violence, Dating Violence, Stalking or Sexual Assault**

The housing authority and your landlord can ask you to prove or "certify" that you are a victim of domestic violence, dating violence, stalking or sexual assault. The housing authority and your landlord must give you

at least 14 business days (i.e. Saturdays, Sundays, and holidays do not count) to provide this proof. The housing authority and your landlord are free to extend the deadline. There are three ways you can prove that you are a victim:

- Complete the certification form given to you by the housing authority or your landlord. The form will ask for your name, the name of your abuser, the abuser's relationship to you, the date, time, and location of the incident of violence, and a description of the violence.
- Provide a statement from a victim service provider, attorney, or medical professional who has helped you address incidents of domestic violence, dating violence, stalking or sexual assault. The professional must state that he or she believes that the incidents of abuse are real. Both you and the professional must sign the statement, and both of you must state that you are signing "under penalty of perjury."
- Provide a police or court record, such as a protective order.

If you fail to provide one of these documents within the required time, the landlord may evict you, and the housing authority may terminate your rental assistance.

### Confidentiality

The housing authority and your landlord must keep confidential any information you provide about the violence against you, unless:

- You give written permission to the housing authority or your landlord to release the information.
- Your landlord needs to use the information in an eviction proceeding, such as to evict your abuser.
- A law requires the housing authority or your landlord to release the information.

If release of the information would put your safety at risk, you should inform the housing authority and your landlord.

### VAWA and Other Laws

VAWA does not limit the housing authority's or your landlord'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.

VAWA does not replace any federal, state, or local law that provides greater protection for victims of domestic violence, dating violence, stalking or sexual assault.

### For Additional Information

If you have any questions regarding VAWA, please contact Penelope House at 800-650-6522.

For help and advice on escaping an abusive relationship, call the National Domestic Violence Hotline at 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY).

### Definitions

For purposes of determining whether a tenant may be covered by VAWA, the following list of definitions applies:

VAWA 2013 defines *domestic violence* to include felony or misdemeanor crimes of violence committed by any of the following:

- A current or former spouse of the victim
- A person with whom the victim shares a child in common
- A person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner
- A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies or
- Any other person who committed a crime against an adult or youth victim who is protected under the domestic or family violence laws of the jurisdiction

VAWA 2013 defines *dating violence* as 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 is determined based on the following factors:

- The length of the relationship
- The type of relationship
- The frequency of interaction between the persons involved in the relationship

VAWA 2013 defines *sexual assault* as any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent.

VAWA 2013 defines *stalking* as engaging in a course of conduct directed at a specific person that would cause a reasonable person to:

- Fear for his or her safety or others; or
- Suffer substantial emotional distress.

<b>EXHIBIT 16-2: SAMPLE NOTICE TO HOUSING CHOICE VOUCHER OWNERS AND MANAGERS REGARDING THE VIOLENCE AGAINST WOMEN ACT (VAWA)</b>
--

*This sample notice was adapted from a notice prepared by the National Housing Law Project.*

A federal law that went into effect in 2006 and updated in 2013 protects individuals who are victims of domestic violence, dating violence, stalking or sexual assault. The name of the law is the Violence against Women Act, or "VAWA." This notice explains your obligations under VAWA.

### **Protections for Victims**

You cannot refuse to rent to an applicant solely because he or she is a victim of domestic violence, dating violence, stalking or sexual assault.

You cannot evict a tenant who is the victim of domestic violence, dating violence, stalking or sexual assault based on acts or threats of violence committed against the victim. Also, criminal acts directly related to the domestic violence, dating violence, stalking or sexual abuse that are caused by a household member or guest cannot be cause for evicting the victim of the abuse.

### **Permissible Evictions**

You can evict a victim of domestic violence, dating violence, stalking or sexual abuse if you can demonstrate that there is an *actual* or *imminent* (immediate) threat to other tenants or employees at the property if the victim is not evicted. Also, you may evict a victim for serious or repeated lease violations that are not related to the domestic violence, dating violence, stalking or sexual abuse. You cannot hold a victim of domestic violence, dating violence, stalking or sexual abuse to a more demanding standard than tenants who are not victims.

### **Removing the Abuser from the Household**

You may split the lease to evict a tenant who has committed criminal acts of violence against family members or others, while allowing the victim and other household members to stay in the unit. If you choose to remove the abuser, you may not take away the remaining tenants' rights to the unit or otherwise punish the remaining tenants. In removing the abuser from the household, you must follow federal, state, and local eviction procedures.

### **Certification of Domestic Violence, Dating Violence, Stalking or Sexual Assault**

If a tenant asserts VAWA's protections, you can ask the tenant to certify that he or she is a victim of domestic violence, dating violence, stalking or sexual assault. You are not required to demand official documentation and may rely upon the victim's statement alone. If you choose to request certification, you must do so in writing and give the tenant at least 14 business days to provide documentation. You are free to extend this deadline. A tenant can certify that he or she is a victim by providing any one of the following three documents:

- By completing a HUD-approved certification form. The most recent form is HUD-50066. This form is available at the housing authority, or online at <http://www.hud.gov/offices/adm/hudclips/>.
- By providing a statement from a victim service provider, attorney, or medical professional who has helped the victim address incidents of domestic violence, dating violence, stalking or sexual

assault. The professional must state that he or she believes that the incidents of abuse are real. Both the victim and the professional must sign the statement under penalty of perjury.

- By providing a police or court record, such as a protective order.

If the tenant fails to provide one of these documents within 14 business days, you may evict the tenant if authorized by otherwise applicable law and lease provisions.

### Confidentiality

You must keep confidential any information a tenant provides to certify that he or she is a victim of domestic violence, dating violence, stalking or sexual assault. You cannot enter the information into a shared database or reveal it to outside entities unless:

- The tenant provides written permission releasing the information.
- The information is required for use in an eviction proceeding, such as to evict the abuser.
- Release of the information is otherwise required by law.

The victim should inform you if the release of the information would put his or her safety at risk.

### VAWA and Other Laws

VAWA does not limit your obligation to honor court orders regarding access to or control of the property. This includes orders issued to protect the victim and orders dividing property among household members in cases where a family breaks up.

VAWA does not replace any federal, state, or local law that provides greater protection for victims of domestic violence, dating violence, stalking or sexual assault.

### Additional Information

- If you have any questions regarding VAWA, please contact \_\_\_\_\_.
- HUD Notice PIH 2006-42 contains detailed information regarding VAWA's certification requirements. The notice is available at <http://www.hud.gov/offices/adm/hudclips/>.
- An overview of VAWA's housing provisions is available at <http://edocket.access.gpo.gov/2007/pdf/E7-4795.pdf>.

### Definitions

For purposes of determining whether a tenant may be covered by VAWA, the following list of definitions applies:

VAWA defines *domestic violence* to include felony or misdemeanor crimes of violence committed by any of the following:

- A current or former spouse of the victim
- A person with whom the victim shares a child in common
- A person who is cohabitating with or has cohabitated with the victim as a spouse

- A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies
- Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction

VAWA defines *dating violence* as 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:

- The length of the relationship
- The type of relationship
- The frequency of interaction between the persons involved in the relationship

VAWA defines *stalking* as (A)(i) to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person OR (ii) to place under surveillance with the intent to kill, injure, harass, or intimidate another person AND (B) 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 (i) that person, (ii) a member of the immediate family of that person, or (iii) the spouse or intimate partner of that person.

VAWA defines the term sexual assault means any nonconsensual sexual act proscribed by Federal, tribal State law, including when the victim lacks capacity to consent.

## Chapter 17

### PROJECT-BASED VOUCHERS

#### INTRODUCTION

This chapter describes HUD regulations and MHB's policies related to the Project-Based Voucher ("PBV") program in nine parts:

Part 1: General Requirements. This part describes general provisions of the PBV program including maximum budget authority requirements, relocation requirements, and equal opportunity requirements.

Part 2: PBV Owner Proposals. This part includes policies related to the submission and selection of owner proposals for PBV assistance. It describes the factors the PHA will consider when selecting proposals, the type of housing that is eligible to receive PBV assistance, the cap on assistance at projects receiving PBV assistance, subsidy layering requirements, site selection standards, and environmental review requirements.

Part 3: Dwelling Units. This part describes requirements related to housing quality standards, the type and frequency of inspections, and housing accessibility for persons with disabilities.

Part 4: 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 5: Housing Assistance Payments Contract. This part discusses HAP contract requirements and policies including the execution, term, and termination of the HAP contract. In addition, it describes how the HAP contract may be amended and identifies provisions that may be added to the HAP contract at the PHA's discretion.

Part 6: Selection of PBV Program Participants. This part describes the requirements and policies governing how the PHA and the owner will select a family to receive PBV assistance.

Part 7: 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 8: Determining Rent to Owner. This part describes how the initial rent to owner is determined, and how rent will be re-determined throughout the life of the HAP contract. Rent reasonableness requirements are also discussed.

Part 9: Payments to Owner. This part describes the types of payments owners may receive under this program.

## **PART 1: GENERAL REQUIREMENTS**

### **17-1.A. OVERVIEW [24 CFR §983.5]**

The Project-based Voucher (“PBV”) Program allows PHAs that already administer a tenant-based voucher program under an annual contributions contract (“ACC”) with HUD to take up to twenty (20) percent of its voucher program budget authority and attach the funding to specific units rather than using it for tenant-based assistance [24 CFR §983.6]. PHAs may only operate a PBV program if doing so is consistent with the PHA’s Annual Plan, and the goal of deconcentrating poverty and expanding housing and economic opportunities [42 U.S.C. §1437f(o)(13)].

MHB will operate a project-based voucher program using up to 20 percent of its budget authority for project-based 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, MHB is not required to reduce the number of these units if the amount of budget authority is subsequently reduced. However, MHB 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 [24 CFR §983.6].

### **17-1.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 MHB policies related to tenant-based assistance also apply to PBV assistance. The provisions of the tenant-based voucher regulations that do not apply to the PBV program are listed at 24 CFR §983.2.

Except as otherwise noted in this Chapter, or unless specifically prohibited by PBV Program regulations, MHB policies for the tenant-based voucher program contained in this Administrative Plan also apply to the PBV program and its participants.

### **17-1.C. RELOCATION REQUIREMENTS [24 CFR §983.7]**

Any persons displaced as a result of implementation of the PBV Program must be provided relocation assistance in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (“URA”)[42 U.S.C. §§4201-4655] and implementing regulations at 49 CFR § part 24.

The cost of required relocation assistance may be paid with funds provided by the owner, local public funds, or funds available from other sources. PHAs may not use voucher program funds to cover relocation costs, except that PHAs may use their administrative fee reserve to pay for relocation expenses after all other program administrative expenses are satisfied, and provided that payment of the relocation benefits is consistent with state and local law. Use of the administrative fee for these

purposes must also be consistent with other legal and regulatory requirements, including the requirement in 24 CFR §982.155 and other official HUD issuances.

The acquisition of real property for a PBV project is subject to the URA and 49 CFR § part 24, subpart B. It is the responsibility of MHB to ensure the owner complies with these requirements.

#### **17-1.D. EQUAL OPPORTUNITY REQUIREMENTS [24 CFR §983.8]**

MHB 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, MHB must comply with MHB Plan certification on civil rights and affirmatively furthering fair housing, submitted in accordance with 24 CFR §903.7(o).

## **PART 2: PBV OWNER PROPOSALS**

### **17-2.A. OVERVIEW**

MHB must describe the procedures for owner submission of PBV proposals and for MHB selection of PBV proposals [24 CFR § 983.51]. Before selecting a PBV proposal, MHB 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, FR Notice 11/24/08], and meets the site selection standards [24 CFR §983.57].

### **17-2.B. OWNER PROPOSAL SELECTION PROCEDURES [24 CFR §983.51]**

MHB must select PBV proposals in accordance with the selection procedures in MHB Administrative Plan. MHB must select PBV proposals by either of the following two methods.

- MHB request for PBV Proposals. MHB may solicit proposals by using a request for proposals to select proposals on a competitive basis in response to MHB request. MHB 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.
- MHB may select proposals that were previously selected based on a competition. This may include selection of a proposal for housing assisted under a federal, state, or local government housing assistance program that was subject to a competition in accordance with the requirements of the applicable program, community development program, or supportive services program that requires competitive selection of proposals (e.g., HOME, and units for which competitively awarded LIHTCs have been provided), where the proposal has been selected in accordance with such program's competitive selection requirements within three (3) 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.

### **Solicitation and Selection of PBV Proposals [24 CFR §§983.51(b) and (c)]**

MHB 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 MHB. 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 MHB request for PBV proposals must specify the submission deadline. Detailed application and selection information must be provided at the request of interested parties.

#### MHB Request for Proposals for Rehabilitated and Newly Constructed Units

MHB will advertise its request for proposals (“RFP”) for rehabilitated and newly constructed housing in accordance with its normal Acquisition and Management Services (“AMS”) Policy and protocols. Such Policy and protocol allow MHB to advertise using print media and electronic presence on the World Wide Web. In addition, MHB will post the RFP and proposal submission and rating and ranking procedures on its electronic web site.

The RFP will specify: (1) the number of units MHB estimates that it will be able to assist under the funding MHB is making available (2) the submission deadline date (3) requirements necessary to submit a complete response (4) evaluation criteria (5) other information relevant to the selection process.

MHB will rate and rank proposals for rehabilitated and newly constructed housing using the following general criteria, and such additional criteria as may be set forth in the RFP:

- Owner experience and capability to build or rehabilitate housing as identified in the RFP;
- Extent to which the project furthers MHB 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
- Generally, projects with less than 25 percent of the units assisted will be rated higher than projects with 25 percent of the units assisted. In the case of projects for occupancy by the elderly, persons with disabilities or families needing other services, MHB will rate partially assisted projects on the percent of units assisted. Generally, projects with the lowest percent of assisted units may receive the scoring incentives.

#### MHB Requests for Proposals for Existing Housing Units

MHB will advertise its request for proposals (“RFP”) for existing housing units in accordance with its normal Acquisition and Management Services (“AMS”) Policy and protocols. Such Policy and protocol allow MHB to advertise using print media and electronic presence on the World Wide Web. In addition, MHB will post the RFP and proposal submission and rating and ranking procedures on its electronic web site.

The RFP will specify: (1) the number of units MHB estimates that it will be able to assist under the funding MHB is making available (2) the submission deadline date (3) requirements necessary to submit a complete response (4) evaluation criteria (5) other information relevant to the selection process.

MHB will rate and rank proposals for existing housing units using the following general criteria, and such additional criteria as may be set forth in the RFP. In addition, MHB may evaluate owner proposals on a first-come first-served basis. No matter the evaluation methodology, MHB will generally evaluate proposal responses using the following general criteria, and such additional criteria as may be set forth in the RFP:

- 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 MHB 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.

#### MHB Selection of Proposals Subject to a Previous Competition under a Federal, State, or Local Housing Assistance Program

MHB will accept proposals for PBV assistance in accordance with its normal Acquisition and Management Services ("AMS") Policy and protocols, on an ongoing basis. Such Policy and protocol allow MHB to advertise using print media and electronic presence on the World Wide Web. Such proposals may be accepted 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.

MHB may periodically advertising that it is accepting proposals, in addition to, or in place of advertising, MHB 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. MHB will evaluate each proposal on its merits using the following general criteria, and such additional criteria as may be set forth by MHB, from time to time:

- Extent to which the project furthers MHB 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, Choice Neighborhood program, the HOME program, CDBG activities, redevelopment pursuant to MHB's Transformation Plan (as the same is amended from time to time) other development activities in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community.

**PHA-owned Units [24 CFR §983.51(e) and §983.59]**

A PHA-owned unit may be assisted under the PBV program only if the HUD field office or HUD-approved independent entity reviews the selection process and determines that the PHA-owned units were appropriately selected based on the selection procedures specified in the PHA Administrative Plan. If the PHA selects a proposal for housing that is owned or controlled by the PHA, the PHA must identify the entity that will review the PHA proposal selection process and perform specific functions with respect to rent determinations and inspections.

In the case of PHA-owned units, the initial contract rent must be approved by an independent entity based on an appraisal by a licensed, state-certified appraiser. In addition, housing quality standards inspections must be conducted by an independent entity.

The independent entity that performs these program services may be the unit of general local government for the PHA jurisdiction (unless the PHA is itself the unit of general local government or an agency of such government) or another HUD-approved public or private independent entity.

MHB may submit a proposal for project-based housing that is owned or controlled by MHB. If the proposal for PHA-owned housing is selected, MHB will seek to use an Alabama agency or other Alabama PHA to review MHB selection and to administer the PBV program. The PHA will obtain HUD approval of an Alabama agency prior to selecting the proposal for PHA-owned housing.

The PHA may only compensate the independent entity and appraiser from PHA ongoing administrative fee income (including amounts credited to the administrative fee reserve), if any, or other non-HAP funds. The PHA may not use other program receipts to compensate the independent entity and appraiser for their services. The PHA, independent entity, and appraiser may not charge the family any fee for the appraisal or the services provided by the independent entity.

**PHA Notice of Owner Selection [24 CFR §983.51(d)]**

The PHA must give prompt written notice to the party that submitted a selected proposal and must also give prompt public notice of such selection. Public notice procedures may include publication of public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice.

Within ten (10) business days of MHB making the selection and obtaining Board of Commissioner approval, if applicable, MHB will notify the selected owner in writing of the owner's selection for the PBV program. MHB will also notify all owners that submitted proposals that were not selected and advise such owners of the name of the selected owner.

In addition, MHB will publish its notice for selection of PBV proposals for a period on its electronic web site.

MHB will make available to any interested party its rating and ranking sheets and documents that identify MHB 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. MHB will not make available sensitive owner information that is privileged, such as financial statements and similar information about the owner.

MHB will make these documents available for review at the Acquisition and Management Services office during normal business hours. The cost for reproduction of allowable documents will be \$.25 per page.

#### **17-2.C. HOUSING TYPE [24 CFR §983.52]**

The PHA may attach PBV assistance for units in existing housing or for newly constructed or rehabilitated housing developed under and in accordance with an agreement to enter into a housing assistance payments contract that was executed prior to the start of construction. A housing unit is considered an existing unit for purposes of the PBV program, if, at the time of notice of PHA selection, the units substantially comply with HQS. Units for which new construction or rehabilitation was started in accordance with PBV program requirements do not qualify as existing housing.

The PHA must decide what housing type, new construction, rehabilitation, or existing housing, will be used to develop project-based housing. The PHA choice of housing type must be reflected in its solicitation for proposals.

#### **17-2.D. PROHIBITION OF ASSISTANCE FOR CERTAIN UNITS**

##### **Ineligible Housing Types [24 CFR §983.53]**

MHB 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, MHB may not attach or pay PBV assistance for a unit occupied by an owner and MHB 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.

##### **Subsidized Housing [24 CFR §983.54]**

MHB may not attach or pay PBV assistance to units in any of the following types of subsidized housing:

- A public housing unit;
- A unit subsidized with any other form of Section 8 assistance;
- A unit subsidized with any governmental rent subsidy;
- A unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing;

- A unit subsidized with Section 236 rental assistance payments (except that a PHA may attach assistance to a unit subsidized with Section 236 interest reduction payments);
- A Section 202 project for non-elderly with disabilities;
- Section 811 project-based supportive housing for persons with disabilities;
- Section 202 supportive housing for the elderly;
- A Section 101 rent supplement project;
- A unit subsidized with any form of tenant-based rental assistance; or
- A unit with any other duplicative federal, state, or local housing subsidy, as determined by HUD or the PHA in accordance with HUD requirements.

#### **17-2.E. SUBSIDY LAYERING REQUIREMENTS [24 CFR §§ 983.55, FR Notice 11/24/08, and FR Notice 7/9/10]**

The PHA may provide PBV assistance only in accordance with HUD subsidy layering regulations [24 CFR §4.13] and other requirements.

The subsidy layering review is intended to prevent excessive public assistance by combining (layering) housing assistance payment subsidy under the PBV program with other governmental housing assistance from federal, state, or local agencies, including assistance such as tax concessions or tax credits.

MHB must submit the necessary documentation to HUD, or HUD approved entity, for a subsidy layering review. Except in cases of HAP contracts for existing structures, or if such reviews have been conducted by the applicable state and local agencies (defined by HUD as qualified housing credit agencies, or HCAs), MHB may not enter into an agreement to enter into a HAP contract or a HAP contract until HUD, or an independent entity approved by HUD, has conducted any required subsidy layering review and determined that the PBV assistance is in accordance with HUD subsidy layering requirements. However, in order to satisfy applicable requirements, HCAs must conduct subsidy layering reviews in compliance with the guidelines set forth in the *Federal Register* notice published July 9, 2010.

The HAP contract must contain the owner's certification that the project has not received and will not receive (before or during the term of the HAP contract) any public assistance for acquisition, development, or operation of the housing other than assistance disclosed in the subsidy layering review in accordance with HUD requirements.

#### **17-2.F. CAP ON NUMBER OF PBV UNITS IN EACH PROJECT**

##### **25 Percent per Project Cap [24 CFR §983.56(a), FR Notice 11/24/08]**

In general, MHB 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

twenty-five (25) percent of the number of dwelling units (assisted or unassisted) in the project.

### **Exceptions to 25 Percent per Project Cap [24 CFR §983.56(b), FR Notice 11/24/08]**

Exceptions are allowed and PBV units are not counted against the 25 percent per project cap if:

- The units are in a single-family building (one to four units);
- The units are *excepted units* in a multifamily building because they are specifically made available for elderly or disabled families or families receiving supportive services (also known as *qualifying families*).

PHAs must include in the PHA Administrative Plan the type of services offered to families for a project to qualify for the exception and the extent to which such services will be provided. It is not necessary that the services be provided at or by the project, if they are approved services. To qualify, a family must have at least one member receiving at least one qualifying supportive service. A PHA may not require participation in medical or disability-related services other than drug and alcohol treatment in the case of current abusers as a condition of living in an excepted unit, although such services may be offered.

If a family at the time of initial tenancy is receiving, and while the resident of an excepted unit has received, FSS supportive services or any other supportive services as defined in the PHA Administrative Plan, and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit.

The PHA must monitor the excepted family's continued receipt of supportive services and take appropriate action regarding those families that fail without good cause to complete their supportive services requirement. The PHA Administrative Plan must state the form and frequency of such monitoring. For purposes of this Chapter, monitoring will be performed annually by review of FSS supportive services performed and interviews with the participants.

MHB will provide PBV assistance for excepted units provided that the excepted units over supportive services that include, but not limited to, FSS supportive services, senior or disabled congregate outings, wellness activities and events, medical referrals, social service referrals and assistance, other quality of life assistance and/or referrals.

### **Promoting Partially-Assisted Buildings [24 CFR §983.56(c)]**

A PHA may establish local requirements designed to promote PBV assistance in partially assisted buildings. A *partially assisted building* is a building in which there are fewer units covered by a HAP contract than residential units [24 CFR §983.3].

A PHA may establish a per-building cap on the number of units that will receive PBV assistance or other project-based assistance in a multifamily building containing excepted units or in a single-family building. A PHA may also determine not to provide PBV assistance for excepted units, or the PHA may establish a per-building cap of less than 25 percent.

MHB may provide assistance for excepted units. Beyond that, MHB will not impose any further cap on the number of PBV units assisted per building beyond the 25 percent cap, unless qualified for a waiver, set forth in the HUD regulations.

## **17-2.G. SITE SELECTION STANDARDS**

### **Compliance with PBV Goals, Civil Rights Requirements, and HQS Site Standards [24 CFR §983.57(b)]**

The PHA may not select a proposal for existing, newly constructed, or rehabilitated PBV housing on a site or enter into an agreement to enter into a HAP contract or HAP contract for units on the site, unless the PHA has determined that PBV assistance for housing at the selected site is consistent with the goal of deconcentrating poverty and expanding housing and economic opportunities. The standard for deconcentrating poverty and expanding housing and economic opportunities must be consistent with the PHA Plan under 24 CFR §903 and the PHA Administrative Plan.

In addition, prior to selecting a proposal, MHB must determine that the site is suitable from the standpoint of facilitating and furthering full compliance with the applicable Civil Rights Laws, regulations, and Executive Orders, and that the site meets the HQS site and neighborhood standards at 24 CFR §982.401(l).

It is MHB goal to select sites for PBV housing that provide for deconcentrating poverty and expanding housing and economic opportunities. In complying with this goal MHB will limit approval of sites for PBV housing in census tracts that have poverty concentrations of 20 percent or less.

However, MHB will grant exceptions to the 20 percent standard where MHB 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, or Renewal Community;
- A census tract where the concentration of assisted units will be or has decreased as a result of public housing demolition, HOPE VI, Choice Neighborhoods or other 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 elderly and/or disabled populations are underserved;
- 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)]**

MHB 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 or is exempted thereof. Generally, 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 MHB 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.

### **17-2.H. ENVIRONMENTAL REVIEW [24 CFR §983.58]**

MHB 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.). MHB 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.

MHB may not enter into an agreement to enter into a HAP contract or a HAP contract with an owner, and MHB, 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.

MHB must supply all available, relevant information necessary for the responsible entity to perform any required environmental review for any site. MHB 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 3: DWELLING UNITS**

### **17-3.A. OVERVIEW**

This part identifies the special housing quality standards that apply to the PBV program, housing accessibility for persons with disabilities, and special procedures for conducting housing quality standards inspections.

### **17-3.B. HOUSING QUALITY STANDARDS [24 CFR §983.101]**

The housing quality standards (“HQS”) for the tenant-based program, including those for special housing types, generally apply to the PBV program. HQS requirements for

shared housing, manufactured home space rental and the homeownership option do not apply because these housing types are not assisted under the PBV program.

The physical condition standards at 24 CFR §5.703 do not apply to the PBV program.

#### **Lead-based Paint [24 CFR §983.101(c)]**

The lead-based paint requirements for the tenant-based voucher program do not apply to the PBV program. Instead, The Lead-based Paint Poisoning Prevention Act (42 U.S.C. §§4821-4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. §4851-4856), and implementing regulations at 24 CFR § part 35, subparts A, B, H, and R, apply to the PBV program.

### **17-3.C. HOUSING ACCESSIBILITY FOR PERSONS WITH DISABILITIES**

The housing must comply with program accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. §794) and implementing regulations at 24 CFR § part 8. The PHA must ensure that the percentage of accessible dwelling units complies with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), as implemented by HUD's regulations at 24 CFR § 8, subpart C.

Housing first occupied after March 13, 1991, must comply with design and construction requirements of the Fair Housing Amendments Act of 1988 and implementing regulations at 24 CFR § 100.205, as applicable. (24 CFR §983.102)

### **17-III.D. INSPECTING UNITS**

#### **Pre-selection Inspection [24 CFR §983.103(a)]**

MHB must examine the proposed site before the proposal selection date. If the units to be assisted already exist, MHB must inspect all the units before the proposal selection date, and must determine whether the units substantially comply with HQS. To qualify as existing housing, units must substantially comply with HQS on the proposal selection date. However, MHB may not execute the HAP contract until the units fully comply with HQS.

#### **Pre-HAP Contract Inspections [24 CFR §983.103(b)]**

MHB must inspect each contract unit before execution of the HAP contract. MHB may not enter into a HAP contract covering a unit until the unit fully complies with HQS.

#### **Turnover Inspections [24 CFR §983.103(c)]**

Before providing assistance to a new family in a contract unit, MHB must inspect the unit. MHB may not provide assistance on behalf of the family until the unit fully complies with HQS.

#### **Annual Inspections [24 CFR §983.103(d)]**

At least annually (or such longer period as Federal law or HUD regulations allow) during the term of the HAP contract, MHB must inspect a random sample, consisting of at least 20 percent of the contract units in each building to determine if the contract units and

the premises are maintained in accordance with HQS. Turnover inspections are not counted toward meeting this annual inspection requirement.

If more than 20 percent of the annual sample of inspected contract units in a building fails the initial inspection, MHB must re-inspect 100 percent of the contract units in the building.

#### **Other Inspections [24 CFR §983.103(e)]**

MHB must inspect contract units whenever needed to determine that the contract units comply with HQS and that the owner is providing maintenance, utilities, and other services in accordance with the HAP contract. MHB must take into account complaints and any other information coming to its attention in scheduling inspections.

MHB must conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected an HQS violation, and must conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family violation of HQS.

In conducting MHB supervisory quality control HQS inspections, MHB should include a representative sample of both tenant-based and project-based units.

#### **Inspecting PHA-owned Units [24 CFR §983.103(f)]**

In the case of PHA-owned units, the inspections must be performed by an independent agency designated by MHB and approved by HUD. The independent entity must furnish a copy of each inspection report to MHB and to the HUD field office where the project is located. MHB must take all necessary actions in response to inspection reports from the independent agency, including exercise of contractual remedies for violation of the HAP contract by the PHA-owner.

### **PART IV: REHABILITATED AND NEWLY CONSTRUCTED UNITS**

#### **17-4.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.

#### **17-4.B. AGREEMENT TO ENTER INTO HAP CONTRACT**

In order to offer PBV assistance in rehabilitated or newly constructed units, MHB 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(a)].

In the Agreement the owner agrees to develop the PBV contract units to comply with HQS, and MHB agrees that upon timely completion of such development in accordance with the terms of the Agreement, MHB will enter into a HAP contract with the owner for the contract units [24 CFR §983.152(b)].

**Content of the Agreement [24 CFR §983.152(c)]**

At a minimum, the Agreement must describe the following features of the housing to be developed and assisted under the PBV program:

- Site and the location of the contract units;
- Number of contract units by area (size) and number of bedrooms and bathrooms;
- Services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent;
- Utilities available to the contract units, including a specification of utility services to be paid by the owner and utility services to be paid by the tenant;
- An indication of whether or not the design and construction requirements of the Fair Housing Act and section 504 of the Rehabilitation Act of 1973 apply to units under the Agreement. If applicable, any required work item resulting from these requirements must be included in the description of work to be performed under the Agreement;
- Estimated initial rents to owner for the contract units;
- Description of the work to be performed under the Agreement. For rehabilitated units, the description must include the rehabilitation work write up and, where determined necessary by MHB, specifications and plans. For new construction units, the description must include the working drawings and specifications.
- Any additional requirements for quality, architecture, or design over and above HQS.

**Execution of the Agreement [24 CFR §983.153, FR Notice 11/24/08]**

The Agreement must be executed promptly after MHB notice of proposal selection to the selected owner. Generally, MHB may not enter into the Agreement with the owner until the subsidy layering review is completed. Likewise, MHB may not enter into the Agreement until the environmental review is completed and MHB has received environmental approval. However, MHB does not need to conduct a subsidy layering review in the case of a HAP contract for an existing structure 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.

Generally, MHB will enter into the Agreement with the owner within 10 business days of receiving both environmental approval and notice that subsidy layering a requirement has been met, and before construction or rehabilitation work is started.

**17-4.C. CONDUCT OF DEVELOPMENT WORK****Labor Standards [24 CFR §983.154(b)]**

If an Agreement covers the development of nine (9) or more contract units (whether or not completed in stages), the owner and the owner's contractors and subcontractors must pay Davis-Bacon wages to laborers and mechanics employed in the development

of housing. The HUD-prescribed form of the Agreement will include the labor standards clauses required by HUD, such as those involving Davis-Bacon wage rates.

The owner, contractors, and subcontractors must also comply with the Contract Work Hours and Safety Standards Act, Department of Labor regulations in 29 CFR § part 5, and other applicable federal labor relations laws and regulations. The PHA must monitor compliance with labor standards.

#### **Equal Opportunity [24 CFR §983.154(c)]**

The owner must comply with Section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations at 24 CFR § part 135. The owner must also comply with federal equal employment opportunity requirements.

#### **Owner Disclosure [24 CFR §§983.154(d) and (e)]**

The Agreement and HAP contract must include a certification by the owner that the owner and other project principals are not on the U.S. General Services Administration list of parties excluded from federal procurement and non-procurement programs.

The owner must also disclose any possible conflict of interest that would be a violation of the Agreement, the HAP contract, or HUD regulations.

### **17-4.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 MHB in the form and manner required by MHB:

- Owner certification that the work has been completed in accordance with HQS and all requirements of the Agreement; and
- Owner certification that the owner has complied with labor standards and equal opportunity requirements in development of the housing.

At MHB's discretion, the Agreement may specify additional documentation that must be submitted by the owner as evidence of housing completion.

MHB 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. MHB will specify any additional documentation requirements in the Agreement to enter into HAP contract.

#### **PHA Acceptance of Completed Units [24 CFR §983.156]**

Upon notice from the owner that the housing is completed, MHB must inspect to determine if the housing has been completed in accordance with the Agreement, including compliance with HQS and any additional requirements imposed under the

Agreement. MHB 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, absent modifications or exceptions allowed and agreed to by MHB, MHB will not enter into the HAP contract.

If MHB determines the work has been completed in accordance with the Agreement and that the owner has submitted all required evidence of completion, MHB must submit the HAP contract for execution by the owner and must then execute the HAP contract.

## **PART V: HOUSING ASSISTANCE PAYMENTS CONTRACT (“HAP”)**

### **17-5.A. OVERVIEW**

MHB 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. The HAP contract must be in the form required by HUD [24 CFR § 983.202] and MHB.

### **17-5.B. HAP CONTRACT REQUIREMENTS**

#### **Contract Information [24 CFR §983.203, FR Notice 11/24/08]**

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; 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]**

MHB may not enter into a HAP contract until each contract unit has been inspected and MHB has determined that the unit complies with the Housing Quality Standards (“HQS”). For existing housing, the HAP contract must be executed promptly after MHB selects the owner proposal and inspects the housing units. For newly constructed or rehabilitated housing the HAP contract must be executed after MHB 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.

Generally, for existing housing, the HAP contract will be executed within ten (10) business days of MHB determining that all units pass HQS and appropriate internal approvals are received.

For rehabilitated or newly constructed housing, the HAP contract will be executed within ten (10) business days of MHB determining that the units have been completed in accordance with the agreement to enter into HAP, all units meet HQS, and the owner has submitted all required evidence of completion.

### **Term of HAP Contract [FR Notice 11/24/08]**

MHB may enter into a HAP contract with an owner for an initial term of no less than one year and no more than 15 years. The term of all PBV HAP contracts will be negotiated with the owner on a case-by-case basis.

At any time before expiration of the HAP contract, MHB may extend the term of the contract for an additional term of up to 15 years if MHB determines an extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities. 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.

When determining whether or not to extend an expiring PBV contract, MHB 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 de-concentrating poverty and expanding housing opportunities; and
- Whether the funding could be used more appropriately for tenant-based assistance.

**Termination by MHB [24 CFR § 983.205(c)]**

The HAP contract must provide that the term of MHB's contractual commitment is subject to the availability of sufficient appropriated funding as determined by HUD or by MHB 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.

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, MHB 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), FR Notice 11/24/08]**

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 MHB. In this case, families living in the contract units must be offered tenant-based assistance.

At their discretion PHAs may specify in the HAP contract that the maximum rent on a unit will not be less than the initial rent.

**Remedies for HQS Violations [24 CFR §983.207(b)]**

MHB may not make any HAP payment to the owner for a contract unit during any period in which the unit does not comply with HQS. If MHB determines that a contract does not comply with HQS, MHB 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.

Generally, MHB will abate and terminate PBV HAP contracts for non-compliance with HQS in accordance with the policies used in the tenant-based voucher program. These policies are contained in Section 8-2.G., Enforcing Owner Compliance.

**17-5.C. AMENDMENTS TO THE HAP CONTRACT****Substitution of Contract Units [24 CFR §983.206(a)]**

At MHB'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 building for a previously covered contract unit. Before any such substitution can take place, MHB must inspect the proposed unit and determine the reasonable rent for the unit.

**Addition of Contract Units [24 CFR §983.206(b)]**

At MHB's discretion and subject to the restrictions on the number of dwelling units that can receive PBV assistance per building and on the overall size of MHB's PBV program, a HAP contract may be amended during the three-year period following the execution date of the HAP contract to add additional PBV units in the same building. This type of amendment is subject to all PBV program requirements except that a new PBV proposal is not required.

MHB will consider adding contract units to the HAP contract when MHB determines that additional housing is needed to serve eligible low-income families. Circumstances may include, but are not limited to:

- The local housing inventory is reduced due to a disaster (either due to loss of housing units, or an influx of displaced families); and
- Voucher holders are having difficulty finding units that meet program requirements.

**17-5.D. HAP CONTRACT YEAR, ANNIVERSARY AND EXPIRATION DATES [24 CFR §983.206(c) and §983.302(e)]**

The HAP contract year is the period of twelve (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.

**17-5.E. OWNER RESPONSIBILITIES UNDER THE HAP [24 CFR §983.209]**

When the owner executes the HAP contract s/he certifies that at such execution and at all times during the term of the HAP contract:

- All contract units are in good condition and the owner is maintaining the premises and contract units in accordance with HQS;
- The owner is providing all services, maintenance, equipment and utilities as agreed to under the HAP contract and the leases;
- Each contract unit for which the owner is receiving HAP, is leased to an eligible family referred by MHB, and the lease is in accordance with the HAP contract and HUD requirements;
- To the best of the owner's knowledge the family resides in the contract unit for which the owner is receiving HAP, and the unit is the family's only residence;

- The owner (including a principal or other interested party) is not the spouse, parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a contract unit;
- The amount of the HAP the owner is receiving is correct under the HAP contract;
- The rent for contract units does not exceed rents charged by the owner for comparable unassisted units;
- Except for HAP and tenant rent, the owner has not received and will not receive any other payment or consideration for rental of the contract unit; and
- The family does not own or have any interest in the contract unit.

#### **17-5.F. ADDITIONAL HAP REQUIREMENTS**

##### **Housing Quality and Design Requirements [24 CFR §983.101(e) and §983.207(a)]**

The owner is required to maintain and operate the contract units and premises in accordance with HQS, including performance of ordinary and extraordinary maintenance. The owner must provide all the services, maintenance, equipment, and utilities specified in the HAP contract with MHB 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.

MHB may elect to establish additional requirements for quality, architecture, or design of PBV housing. Any such additional requirements must be specified in the Agreement to enter into a HAP contract and the HAP contract. These requirements must be in addition to, not in place of, compliance with HQS.

MHB will identify the need for any special features on a case-by-case basis depending on the intended occupancy of the PBV project. MHB 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 MHB, the HAP contract may provide for vacancy payments to the owner for a MHB-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 MHB 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).

MHB will decide on a case-by-case basis if MHB 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**

### **17-6.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.

### **17-6.B. ELIGIBILITY FOR PBV ASSISTANCE [24 CFR §§983.251(a) and (b)]**

MHB may select families for the PBV program from those who are participants in MHB's tenant-based voucher program and from those who have applied for admission to the voucher program. For voucher participants, eligibility was determined at original admission to the voucher program and does not need to be re-determined at the commencement of PBV assistance. For all others, eligibility for admission must be determined at the commencement of PBV assistance. The project may maintain a separate PBV project specific site-based waiting list for each particular PBV project.

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 MHB, 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 MHB's collection and use of family information regarding income, expenses, and family composition [24 CFR §5.230]. An applicant family must also meet HUD requirements related to current or past criminal activity.

MHB 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 MHB 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 MHB's waiting list. Once the family's continued eligibility is determined (the PHA may deny assistance to an in-place family for the grounds specified in 24 CFR §982.552 and 24 CFR §982.553), the family must be given an absolute selection preference and MHB 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.

**17-6.C. ORGANIZATION OF THE WAITING LIST [24 CFR §983.251(c)]**

The PHA may establish a separate waiting list for PBV units or it may use the same waiting list for both tenant-based and PBV assistance. The PHA may also merge the PBV waiting list with a waiting list for other assisted housing programs offered by the PHA. If the PHA chooses to offer a separate waiting list for PBV assistance, the PHA must offer to place applicants who are listed on the tenant-based waiting list on the waiting list for PBV assistance.

If a MHB decides to establish a separate PBV waiting list, MHB may use a single waiting list for MHB'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.

MHB will establish and manage separate waiting lists for individual projects or buildings that are receiving PBV assistance. MHB currently has waiting lists for the following PBV project(s):

Downtown Renaissance

**17-6.D. SELECTION FROM THE WAITING LIST [24 CFR § 983.251(c)]**

Applicants who will occupy units with PBV assistance must be selected from MHB's regular or site-based waiting lists. MHB may establish selection criteria or preferences for occupancy of particular PBV units. MHB 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 MHB's tenant-based and project-based voucher programs during MHB 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, MHB must first refer families who require such features to the owner.

**Preferences [24 CFR §983.251(d) , FR Notice 11/24/08]**

MHB 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. MHB must provide an absolute selection preference for eligible in-place families as described in Section 17-6.B. above.

Although MHB is prohibited from granting preferences to persons with a specific disability, MHB may give preference to disabled families who need services offered at a particular project or site if the preference is limited to families (including individuals):

- With disabilities that significantly interfere with their ability to obtain and maintain themselves in housing;

- Who, without appropriate supportive services, will not be able to obtain or maintain themselves in housing; and
- For whom such services cannot be provided in a non-segregated setting.

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 MHB has projects with more than 25 percent of the units receiving project-based assistance because those projects include “excepted units” (units specifically made available for elderly or disabled families, or families receiving supportive services), MHB must give preference to such families when referring families to these units [24 CFR §983.261(b)].

MHB will provide a selection preference when required by the regulation (e.g., eligible in-place families, qualifying families for “excepted units,” mobility impaired persons for accessible units). MHB will not offer any additional preferences for the PBV program or for particular PBV projects or units.

#### **17-6.E. OFFER OF PBV ASSISTANCE**

##### **Refusal of Offer [24 CFR §983.251(e)(3)]**

MHB 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 MHB’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, MHB 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, MHB must provide or make available a briefing packet that explains how MHB 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, MHB 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, MHB 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***

MHB 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).

## **17-6.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(b)].

### **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 MHB from MHB's waiting list. The contract unit leased to the family must be the appropriate size unit for the size of the family, based on MHB's subsidy standards.

### **Filling Vacancies [24 CFR §983.254(a)]**

The owner must promptly notify MHB of any vacancy or expected vacancy in a contract unit. After receiving such notice, MHB must make every reasonable effort to promptly refer a sufficient number of families for the owner to fill such vacancies. MHB and the owner must make reasonable efforts to minimize the likelihood and length of any vacancy.

The owner must notify MHB in writing (mail, fax, or e-mail) within 5 business days of learning about any vacancy or expected vacancy.

MHB 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 the owner's notice of the vacancy, MHB 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. Generally, MHB will provide the notice to the owner within ten (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 MHB's notice.

## **17-VI.G. TENANT SCREENING [24 CFR §983.255]**

### **PHA Responsibility**

MHB is not responsible or liable to the owner or any other person for the family's behavior or suitability for tenancy. However, MHB may opt to screen applicants for family behavior or suitability for tenancy and may deny applicants based on such screening. Generally, MHB will not conduct screening to determine a PBV applicant family's suitability for tenancy.

MHB will provide the owner with an applicant family's current and prior address (as shown in MHB records) and the name and address (if known by MHB) of the family's current landlord and any prior landlords.

In addition, MHB may offer the owner other information MHB may have about a family, including information about the tenancy history of family members or about drug trafficking and criminal activity by family members. MHB must provide applicant families a description of MHB policy on providing information to owners, and MHB must give the same types of information to all owners.

MHB will inform owners of their responsibility to screen prospective tenants, and will provide owners with the required known name and address information, at the time of the turnover HQS inspection or before. MHB 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

### 17-7.A. OVERVIEW

After an applicant has been selected from the waiting list, determined eligible by MHB, referred to an owner and determined suitable by the owner, the family will sign the lease and occupancy of the unit will begin.

### 17-7.B. LEASE [24 CFR §983.256]

The tenant must have legal capacity to enter a lease under state and local law. *Legal capacity* means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner.

#### Form of Lease [24 CFR §983.256(b)]

The tenant and the owner must enter into a written lease agreement that is signed by both parties. If an owner uses a standard lease form for rental units to unassisted tenants in the locality or premises, the same lease must be used for assisted tenants, except that the lease must include a HUD-required tenancy addendum. The tenancy addendum must include, word-for-word, all provisions required by HUD.

If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease, such as a PHA model lease.

While, MHB may review the owner's lease form to determine if the lease complies with state and local law; and if MHB determines that the lease does not comply with state or local law, MHB may decline to approve the tenancy. However, generally, MHB will not review the owner's lease for compliance with state or local law.

#### Lease Requirements [24 CFR §983.256(c)]

The lease for a PBV unit must specify all of the following information:

- The names of the owner and the tenant;
- The unit rented (address, apartment number, if any, and any other information needed to identify the leased contract unit);
- The term of the lease (initial term and any provision for renewal);
- The amount of the tenant rent to owner, which is subject to change during the term of the lease in accordance with HUD requirements;
- A specification of the services, maintenance, equipment, and utilities that will be provide by the owner; and
- The amount of any charges for food, furniture, or supportive services.

#### Tenancy Addendum [24 CFR §983.256(d)]

The tenancy addendum in the lease must state:

- The program tenancy requirements;

- The composition of the household as approved by MHB (the names of family members and any MHB-approved live-in aide);
- All provisions in the HUD-required tenancy addendum must be included in the lease. The terms of the tenancy addendum prevail over other provisions of the lease.

**Initial Term and Lease Renewal [24 CFR §983.256(f) and §983.257(b)]**

The initial lease term must be for at least one year. Upon expiration of the lease, an owner may renew the lease, refuse to renew the lease for “good cause,” or refuse to renew the lease without good cause. If the owner refuses to renew the lease without good cause, MHB must provide the family with a tenant-based voucher and remove the unit from the PBV HAP contract.

**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 MHB a copy of all changes.

The owner must notify MHB 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 MHB and in accordance with the terms of the lease relating to its amendment. MHB must re-determine reasonable rent, in accordance with program requirements, based on any change in the allocation of the responsibility for utilities between the owner and the tenant. The re-determined reasonable rent will be used in calculation of the rent to owner from the effective date of the change.

**Owner Termination of Tenancy [24 CFR §983.257]**

With two exceptions, the owner of a PBV unit may terminate tenancy for the same reasons an owner may in the tenant-based voucher program (see Section 12-3.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.

***Non-Compliance with Supportive Services Requirement [24 CFR §983.257(c), FR Notice 11/24/08]***

If a family is living in a project-based unit that is excepted from the 25 percent per project cap on project-basing because of participation in a supportive services program (e.g., Family Self-Sufficiency), and the family fails to complete its supportive services requirement without good cause, such failure is grounds for lease termination by the owner.

***Tenant Absence from the Unit [24 CFR §983.256(g) and §982.312(a)]***

The owner may specify in the lease a maximum period of tenant absence from the unit that is shorter than the maximum period permitted by MHB policy. According to program

requirements, the family's assistance must be terminated if they are absent from the unit for more than one hundred eighty (180) consecutive days.

### **Security Deposits [24 CFR §983.258]**

The owner may collect a security deposit from the tenant. MHB may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants. Generally, however, MHB 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. MHB has no liability or responsibility for payment of any amount owed by the family to the owner.

## **17-7.C. MOVES**

### **Overcrowded, Under-Occupied, and Accessible Units [24 CFR §983.259]**

If MHB determines that a family is occupying a wrong size unit, based on MHB'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, MHB must promptly notify the family and the owner of this determination, and MHB must offer the family the opportunity to receive continued housing assistance in another unit.

MHB 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 MHB's determination. MHB 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 MHB offers the family a tenant-based voucher, MHB must terminate the housing assistance payments for a wrong-sized or accessible unit at expiration of the term of the family's voucher (including any extension granted by MHB).

If MHB 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 MHB, or both, MHB must terminate the housing assistance payments for the unit at the expiration of a reasonable period as determined by MHB.

When MHB 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, MHB will terminate the housing assistance payments at the expiration of this 30-day period.

MHB may, but is not obligated so to do, make exceptions to this 30-day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency of a family member.

#### **Family Right to Move [24 CFR §983.260]**

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 MHB. If the family wishes to move with continued tenant-based assistance, the family must contact MHB to request the rental assistance prior to providing notice to terminate the lease.

If the family terminates the lease in accordance with these requirements, MHB 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, MHB 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.

#### **17-7.D. EXCEPTIONS TO THE OCCUPANCY CAP [24 CFR §983.261, FR Notice 11/24/08]**

MHB may not pay housing assistance under a PBV HAP contract for more than 25 percent of the number of dwelling units in a project unless the units are [24 CFR §983.56]:

- In a single-family building;
- Specifically made available for elderly or disabled families; or
- Specifically made available for families receiving supportive services as defined by MHB. At least one member must be receiving at least one qualifying supportive service.

If a family at the time of initial tenancy is receiving and while the resident of an excepted unit has received Family Self-Sufficiency ("FSS") supportive services or any other service as defined as defined by MHB and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit.

A family (or remaining members of a family) residing in an excepted unit that no longer meets the criteria for a "qualifying family" in connection with the 25 percent per project cap exception (e.g., the family does not successfully complete supportive services requirements, or due to a change in family composition the family is no longer elderly or

disabled), must vacate the unit within a reasonable period of time established by MHB, and MHB must cease paying housing assistance payments on behalf of the non-qualifying family.

If the family fails to vacate the unit within the established time, the unit must be removed from the HAP contract unless the project is partially assisted, and it is possible for the HAP contract to be amended to substitute a different unit in the building in accordance with program requirements; or the owner terminates the lease and evicts the family. The housing assistance payments for a family residing in an excepted unit that is not in compliance with its family obligations to comply with supportive services requirements must be terminated by MHB.

## **PART 8: DETERMINING RENT TO OWNER**

### **17-8.A. OVERVIEW**

The amount of the initial rent to an owner of units receiving PBV assistance is established at the beginning of the HAP contract term. Although for rehabilitated or newly constructed housing, the agreement to enter into HAP Contract (“Agreement”) states the estimated amount of the initial rent to owner, the actual amount of the initial rent to owner is established at the beginning of the HAP contract term.

During the term of the HAP contract, the rent to owner is re-determined at the owner’s request in accordance with program requirements, and at such time that there is a five percent or greater decrease in the published FMR.

### **17-8.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 MHB, 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), FR Notice 11/24/08]**

For certain tax credit units, the rent limits are determined differently than for other PBV units. These 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 building, 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 a PHA-determined amount (not to exceed 110 percent of the fair market rent or any approved exception payment standard).

For contract units that meet all of these criteria, the rent to owner must not exceed the lowest of:

- The tax credit rent minus any utility allowance;
- The reasonable rent; or
- The rent requested by the owner.

However, PHAs are permitted to use the higher Section 8 rent for a tax credit unit if the tax credit rent is less than the amount that would be permitted under Section 8. In these cases, Section 8 rent reasonableness requirements must continue to be met.

### ***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 building that also receive the low-income housing tax credit but do not have any additional rental assistance (e.g., tenant-based voucher assistance).

### **Use of FMRs, Exception Payment Standards, and Utility Allowances [24 CFR §983.301(f)]**

When determining the initial rent to owner, MHB must use the most recently published FMR in effect and the utility allowance schedule in effect at execution of the HAP contract. When re-determining the rent to owner, MHB must use the most recently published FMR and the utility allowance schedule in effect at the time of redetermination. At its discretion, MHB 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 re-determinations of rent, the 30-day period immediately before the re-determination date.

Any HUD-approved exception payment standard amount under the tenant-based voucher program also applies to the project-based voucher program. HUD will not approve a different exception payment standard amount for use in the PBV program.

Likewise, MHB may not establish or apply different utility allowance amounts for the PBV program. The same utility allowance schedule applies to both the tenant-based and project-based voucher programs.

Upon written request by the owner, MHB will consider using the FMR or utility allowances in effect during the 30-day period before the start date of the HAP, or re-determination of rent. The owner must explain the need to use the previous FMRs or utility allowances and include documentation in support of the request. MHB 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, MHB may decide to use the FMR or utility allowances in effect during the 30-day period before the start date of the HAP, or re-determination of rent, if MHB determines it is necessary due to MHB budgetary constraints.

### **Re-determination of Rent [24 CFR §983.302, FR Notice 11/24/08]**

MHB must re-determine the rent to owner upon the owner's request or when there is a five percent or greater decrease in the published FMR.

#### ***Rent Increase***

If an owner wishes to request an increase in the rent to owner from MHB, 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 MHB. MHB may only make rent increases in accordance with the rent limits described previously. There are no provisions in the PBV program for special adjustments (e.g., adjustments that reflect increases in the actual and necessary expenses of owning and maintaining the units which have resulted from substantial general increases in real property taxes, utility rates, or similar costs).

An owner's request for a rent increase must be submitted to MHB sixty (60) days prior to the anniversary date of the HAP contract, and must include the new rent amount the owner is proposing.

MHB may not approve and the owner may not receive any increase of rent to owner until and unless the owner has complied with requirements of the HAP contract, including compliance with HQS. The owner may not receive any retroactive increase of rent for any period of noncompliance.

#### ***Rent Decrease***

If there is a decrease in the rent to owner, as established in accordance with program requirements such as a change in the FMR or exception payment standard, or reasonable rent amount, the rent to owner must be decreased regardless of whether the owner requested a rent adjustment. However, MHB may stipulate in the HAP contract that the maximum rent on a unit will not be less than the initial rent.

#### ***Notice of Rent Change***

The rent to owner is re-determined by written notice by MHB to the owner specifying the amount of the re-determined rent. MHB 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.

MHB will provide the owner with at least 30 days written notice of any change in the amount of rent to owner.

### **PHA-owned Units [24 CFR §983.301(g)]**

For PHA-owned PBV units, the initial rent to owner and the annual redetermination of rent at the anniversary of the HAP contract are determined by the independent entity approved by HUD. The PHA must use the rent to owner established by the independent entity.

### **17-8.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 MHB.

#### **When Rent Reasonable Determinations are Required**

MHB must re-determine the reasonable rent for a unit receiving PBV assistance whenever any of the following occur:

- There is a five (5) 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;
- MHB 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
- 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, MHB 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 MHB. The comparability analysis may be performed by MHB 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 financial interest in the property.

## **PHA-owned Units**

For PHA-owned units, the amount of the reasonable rent must be determined by an independent agency approved by HUD in accordance with PBV program requirements. The independent entity must provide a copy of the determination of reasonable rent for PHA-owned units to the PHA and to the HUD field office where the project is located.

### **Owner Certification of Reasonable Rent**

By accepting each monthly housing assistance payment, the owner certifies that the rent to owner is not more than rent charged by the owner for other comparable unassisted units in the premises. At any time, MHB may require the owner to submit information on rents charged by the owner for other units in the premises or elsewhere.

### **17-8.D. EFFECT OF OTHER SUBSIDY AND RENT CONTROL**

In addition to the rent limits discussed in Section 17-8.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 17-3.D).

#### **Other Subsidy [24 CFR §983.304]**

At its discretion, a PHA may reduce the initial rent to owner because of other governmental subsidies, including grants and other subsidized financing.

For units receiving assistance under the HOME program, rents may not exceed rent limits as required by that program.

For units in any of the following types of federally subsidized projects, the rent to owner may not exceed the subsidized rent (basic rent) or tax credit rent as determined in accordance with requirements for the applicable federal program:

- An insured or non-insured Section 236 project;
- A formerly insured or non-insured Section 236 project that continues to receive Interest Reduction Payment following a decoupling action;
- A Section 221(d)(3) below market interest rate (BMIR) project;
- A Section 515 project of the Rural Housing Service;
- Any other type of federally subsidized project specified by HUD.

#### ***Combining Subsidy***

Rent to owner may not exceed any limitation required to comply with HUD subsidy layering requirements.

#### **Rent Control [24 CFR §983.305]**

In addition to the rent limits set by PBV program regulations, the amount of rent to owner may also be subject to rent control or other limits under local, state, or federal law.

## **PART 9: PAYMENTS TO OWNER**

### **17-9.A. HOUSING ASSISTANCE PAYMENTS [24 CFR §983.351]**

During the term of the HAP contract, MHB must make housing assistance payments to the owner in accordance with the terms of the HAP contract. During the term of the HAP contract, payments must be made for each month that a contract unit complies with HQS and is leased to and occupied by an eligible family. The housing assistance payment must be paid to the owner on or about the first day of the month for which payment is due, unless the owner and MHB agree on a later date.

Except for discretionary vacancy payments, MHB 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 MHB 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.

### **17-9.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 MHB determines that the vacancy is the owner's fault.

If MHB determines that the owner is responsible for a vacancy and, as a result, is not entitled to keep the housing assistance payment, MHB will notify the landlord of the amount of housing assistance payment that the owner must repay. MHB will require the owner to repay the amount owed in accordance with the policies in Section 16-4.B.

At the discretion of MHB, the HAP contract may provide for vacancy payments to the owner. MHB may only make vacancy payments if:

- The owner gives MHB 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 MHB 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 MHB and must provide any information or substantiation required by MHB to determine the amount of any vacancy payment.

If an owner's HAP contract calls for vacancy payments to be made, and the owner wishes to receive vacancy payments, the owner must have properly notified MHB of the vacancy in accordance with the policy in Section 17-6.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 MHB may require the owner to provide documentation to support the request. If the owner does not provide the information requested by MHB within 10 business days of MHB'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 MHB in accordance with HUD requirements. Any changes in the amount of tenant rent will be effective on the date stated in MHB 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 MHB 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 MHB. The owner must immediately return any excess payment to the tenant.

#### **Tenant and PHA Responsibilities**

The family is not responsible for the portion of rent to owner that is covered by the housing assistance payment and the owner may not terminate the tenancy of an assisted family for nonpayment by MHB.

Likewise, MHB is responsible only for making the housing assistance payment to the owner in accordance with the HAP contract. MHB is not responsible for paying tenant rent, or any other claim by the owner, including damage to the unit. MHB 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, MHB must pay the amount of such excess to the tenant or to the utility company as a reimbursement for tenant-paid utilities, and the tenant rent to the owner will be zero.

MHB may pay the utility reimbursement directly to the family or to the utility supplier on behalf of the family. If MHB chooses to pay the utility supplier directly, MHB must notify the family of the amount paid to the utility supplier.

Generally, MHB may make utility reimbursements to the utility supplier directly on behalf of the family.

**17-9.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.

**A. ACRONYMS USED IN SUBSIDIZED HOUSING**

- AAF** Annual adjustment factor (published by HUD in the Federal Register and used to compute annual rent adjustments)
- ACC** Annual contributions contract
- ADA** Americans with Disabilities Act of 1990
- BR** Bedroom
- CDBG** Community Development Block Grant (Program)
- CFR §** Code of Federal Regulations (published federal rules that define and implement laws; commonly referred to as “the regulations”)
- CPI** Consumer price index (published monthly by the Department of Labor as an inflation indicator)
- FDIC** Federal Deposit Insurance Corporation
- FHA** Federal Housing Administration
- FICA** Federal Insurance Contributions Act (established Social Security taxes)
- FMR** Fair market rent
- FR** Federal Register
- FSS** Family Self-Sufficiency (Program)
- FY** Fiscal year
- FYE** Fiscal year end
- GAO** Government Accountability Office
- GR** Gross rent
- HAP** Housing assistance payment
- HCV** Housing choice voucher
- HQS** Housing quality standards.
- HUD** Department of Housing and Urban Development
- HUDCLIPS** HUD Client Information and Policy System
- IG** (HUD Office of) Inspector General
- IPA** Independent public accountant
- IRA** Individual Retirement Account
- IRS** Internal Revenue Service
- JTPA** Job Training Partnership Act
- LBP** Lead-based paint
- MSA** Metropolitan statistical area (established by the U.S. Census Bureau)

**MTCS** Multi-family Tenant Characteristics System (now the Form HUD-50058 sub-module of the PIC system)

**NOFA** Notice of funding availability

**OMB** Office of Management and Budget

**PASS** Plan for Achieving Self-Support

**PHA** Public housing agency

**PHRA** Public Housing Reform Act of 1998 (also known as the Quality Housing and Work Responsibility Act)

**PIC** PIH Information Center

**PIH** (HUD Office of) Public and Indian Housing

**PS** Payment standard

**QC** Quality control

**QHWRA** Quality Housing and Work Responsibility Act of 1998 (also known as the Public Housing Reform Act)

**REAC** (HUD) Real Estate Assessment Center

**RFP** Request for proposals

**RFTA** Request for tenancy approval

**RIGI** Regional inspector general for investigation (handles fraud and program abuse matters for HUD at the regional office level)

**SEMAP** Section 8 Management Assessment Program

**SRO** Single room occupancy

**SSA** Social Security Administration

**SSI** Supplemental security income

**TANF** Temporary assistance for needy families

**TR** Tenant rent

**TTP** Total tenant payment

**UA** Utility allowance

**URP** Utility reimbursement payment

**VAWA** Violence Against Women Reauthorization Act

## **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 individuals with physical handicaps.

**Adjusted Income.** Annual income, less allowable HUD deductions.

**Adjusted Annual Income.** Same as Adjusted Income.

**Administrative fee.** Fee paid by HUD to the PHA for administration of the program. See §982.152.

**Administrative fee reserve** (formerly “operating reserve”). Account established by PHA from excess administrative fee income. The administrative fee reserve must be used for housing purposes. See §982.155. Administrative fee reserves from FY 2004 and 2005 funding are further restricted to activities related to the provision of tenant-based rental assistance authorized under Section 8.

**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.

**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 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.** The anticipated total income of an eligible family from all sources for the 12-month period following the date of determination of income, computed in accordance with the regulations.

**Applicant (applicant family).** A family that has applied for admission to a program but is not yet a participant in the program.

**Area Exception Rent.** An amount that exceeds the published FMR. See §982.504(b).

**“As-paid” States.** States where the welfare agency adjusts the shelter and utility component of the welfare grant in accordance with actual housing costs.

**Assets.** (See Net Family Assets.)

**Auxiliary aids.** Services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities receiving Federal financial assistance.

**Budget authority.** An amount authorized and appropriated by the Congress for payment to HAs under the program. For each funding increment in a PHA program, budget authority is the maximum amount that may be paid by HUD to the PHA over the ACC term of the funding increment less HUD prorated amount, if any.

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

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

**Citizen.** A citizen or national of the United States.

**Co-head.** An individual in the household who is equally responsible for the lease with the head of household. A family may have a co-head or spouse but not both. A co-head never qualifies as a dependent. The co-head must have legal capacity to enter into a lease.

**Common space.** In shared housing: Space available for use by the assisted family and other occupants of the unit.

**Computer match.** The automated comparison of data bases containing records about individuals.

**Confirmatory review.** An on-site review performed by HUD to verify the management performance of a PHA.

**Consent form.** Any consent form approved by HUD to be signed by assistance applicants and participants to obtain income information from employers and SWICAs; return information from the Social Security Administration (including wages, net earnings from self-employment, and retirement income); and return information for unearned income from the IRS. Consent forms expire after a certain time and may authorize the collection of other information to determine eligibility or level of benefits.

**Congregate housing.** Housing for elderly persons or persons with disabilities that meets the HQS for congregate housing. A special housing type: see 24 CFR §982.606 to §982.609.

**Contiguous MSA.** In portability (under subpart H of part 982): An MSA that shares a common boundary with the MSA in which the jurisdiction of the initial PHA is located.

**Continuously assisted.** An applicant is continuously assisted under the 1937 Act if the family is already receiving assistance under any 1937 Housing Act program when the family is admitted to the voucher program.

**Contract.** (See Housing Assistance Payments Contract.)

**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 §982.619.

**Covered families.** Statutory term for families who are required to participate in a welfare agency economic self-sufficiency program and who may be subject to a welfare benefit sanction for noncompliance with this obligation. Includes families who receive welfare assistance or other public assistance under a program for which Federal, State or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for the assistance.

**Dating violence.** Violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship
- The type of relationship
- The frequency of interaction between the persons involved in the relationship

**Dependent.** A member of the family (except foster children and foster adults) other than the family head or spouse, who is under 18 years of age, or is a person with a disability, or is a full-time student.

**Disability assistance expenses.** Reasonable expenses that are anticipated, during the period for which annual income is computed, for attendant care and auxiliary apparatus for a disabled family member and that are necessary to enable a family member (including the disabled member) to be employed, provided that the expenses are neither paid to a member of the family nor reimbursed by an outside source.

**Disabled family.** A family whose head, spouse, or sole member is a person with disabilities; or two or more persons with disabilities living together; or one or more persons with disabilities living with one or more live-in aides.

**Disabled person.** See Person with Disabilities.

**Displaced family.** A family in which each member, or whose sole member, is a person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to Federal disaster relief laws.

**Domestic violence.** Felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction.

**Domicile.** The legal residence of the household head or spouse as determined in accordance with State and local law.

**Drug-related criminal activity.** As defined in 42 U.S.C. §1437f(f)(5).

**Drug-trafficking.** The illegal manufacture, sale, or distribution, or the possession with intent to manufacture, sell, or distribute, of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. § 802).

**Economic Self-Sufficiency Program.** Any program designed to encourage, assist, train or facilitate the economic independence of assisted families, or to provide work for such families. Can include job training, employment counseling, work placement, basic skills training, education, English proficiency, Workfare, financial or household management, apprenticeship, or any other program necessary to ready a participant to work (such as treatment for drug abuse or mental health treatment). Includes any work activities as defined in the Social Security Act (42 U.S.C. §607(d)). Also see 24 CFR §§5.603(c).

**Elderly family.** A family whose head, spouse, or sole member is a person who is at least 62 years of age; or 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 (Family).** A family that is income eligible and meets the other requirements of the Act and Part 5 of 24 CFR §.

**Employer Identification Number (EIN).** The nine-digit taxpayer identifying number that is assigned to an individual, trust, estate, partnership, association, company, or corporation.

**Evidence of citizenship or eligible status.** The documents which must be submitted to evidence citizenship or eligible immigration status. (See 24 CFR §5.508(b).)

**Extremely Low Income Family.** A family whose annual income does not exceed 30 percent of the median income for the area, as 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. (CFR § 5.603)

**Facility.** All or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other real or personal property or interest in the property.

**Fair Housing Act** means title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, as amended.

**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, and can be further defined in PHA policy.

- A single person, who may be an elderly person, displaced person, disabled person, near-elderly person, or any other single person.
- A group of persons residing together. Such a group includes, but is not limited to:
  - A family with or without children (the temporary absence of a child from the home due to placement in foster care is not considered in determining family composition and family size)
  - An elderly family or a near-elderly family
  - A displaced family
  - The remaining member of a tenant family
  - A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a tenant family.

**Family rent to owner.** In the voucher program, the portion of rent to owner paid by the family.

**Family self-sufficiency program (FSS program).** The program established by a PHA in accordance with 24 CFR § part 984 to promote self-sufficiency of assisted families, including the coordination of supportive services (42 U.S.C. §1437u).

**Family share.** The portion of rent and utilities paid by the family. For calculation of family share, see 24 CFR §982.515(a).

**Family unit size.** The appropriate number of bedrooms for a family, as determined by the PHA under the PHA subsidy standards.

**Federal agency.** A department of the executive branch of the Federal Government.

**Foster Child Care Payment.** Payment to eligible households by state, local, or private agencies appointed by the State, to administer payments for the care of foster children.

**Full-time Student.** A person who is attending school or vocational training on a full-time basis (carrying a subject load that is considered full-time for day students under the standards and practices of the educational institution attended). (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.

**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 to §982.614.

**Handicap.** Any condition or characteristic that renders a person an individual with handicaps. See 24 CFR §8.3.

**Handicap Assistance Expense.** See “Disability Assistance Expense.”

**HAP contract.** Housing assistance payments contract. (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.

**Housing assistance payment.** The monthly assistance payment by a PHA, which includes: (1) A payment to the owner for rent to the owner under the family's lease; and (2) An additional payment to the family if the total assistance payment exceeds the rent to owner.

**Housing agency (HA).** A State, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) authorized to engage in or assist in the development or operation of low-income housing. (“PHA” and “HA” mean the same thing.)

**Housing Quality Standards.** The HUD minimum quality standards for housing assisted under the voucher program.

**HUD.** The U.S. Department of Housing and Urban Development.

**Immediate family member.** A spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in the position or place of a parent; or any other person living in the household of that person and related to that person by blood and marriage.

**Imputed Asset.** Asset disposed of for less than Fair Market Value during two years preceding examination or reexamination.

**Imputed Income.** HUD passbook rate multiplied by the total cash value of assets. Calculation used when net family assets exceed \$5,000.

**Imputed welfare income.** An amount of annual income that is not actually received by a family as a result of a specified welfare benefit reduction, but is included in the family's annual income and therefore reflected in the family's rental contribution.

**Income.** Income from all sources of each member of the household, as determined in accordance with criteria established by HUD.

**Income for Eligibility.** Annual Income.

**Income information** means information relating to an individual's income, including:

- All employment income information known to current or previous employers or other income sources
- All information about wages, as defined in the State's unemployment compensation law, including any Social Security Number; name of the employee; quarterly wages of the employee; and the name, full address, telephone number, and, when known, Employer Identification Number of an employer reporting wages under a State unemployment compensation law
- Whether an individual is receiving, has received, or has applied for unemployment compensation, and the amount and the period received
- Unearned IRS income and self-employment, wages and retirement income
- Wage, social security, and supplemental security income data obtained from the Social Security Administration.

**Individual with handicaps.** Any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment.

**Initial PHA.** In portability, the term refers to both: (1) A PHA that originally selected a family that later decides to move out of the jurisdiction of the selecting PHA; and (2) A PHA that absorbed a family that later decides to move out of the jurisdiction of the absorbing PHA.

**Initial payment standard.** The payment standard at the beginning of the HAP contract term.

**Initial rent to owner.** The rent to owner at the beginning of the HAP contract term.

**Jurisdiction.** The area in which the PHA has authority under State and local law to administer the program.

**Landlord.** Either the owner of the property or his/her representative or the managing agent or his/her representative, as shall be designated by the owner.

**Lease.** A written agreement between an owner and a tenant for the leasing of a dwelling unit to the tenant. The lease establishes the conditions for occupancy of the dwelling unit by a family with housing assistance payments under a HAP contract between the owner and the PHA.

**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 Income Family.** A family whose income does not exceed 80% of the median income for the area as determined by HUD with adjustments for smaller or larger families, except that HUD may establish income limits higher or lower than 80% for areas with unusually high or low incomes.

**Manufactured home.** A manufactured structure that is built on a permanent chassis, is designed for use as a principal place of residence, and meets the HQS. A special housing type: see 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.

**Medical expenses.** Medical expenses, including medical insurance premiums that are anticipated during the period for which annual income is computed, and that are not covered by insurance. (A deduction for elderly or disabled families only.) These allowances are given when calculating adjusted income for medical expenses in excess of 3% of annual income.

**Merger Date.** October 1, 1999.

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

**Mixed family.** A family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

**Monthly adjusted income.** One twelfth of adjusted income.

**Monthly income.** One twelfth of annual income.

**Mutual housing.** Included in the definition of “cooperative.”

**National.** A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

**Near-elderly family.** A family whose head, spouse, or sole member is a person who is at least 50 years of age but below the age of 62; or two or more persons, who are at least 50 years of age but below the age of 62, living together; or one or more persons who are at least 50 years of age but below the age of 62 living with one or more live-in aides.

**Net family assets.** (1) Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded.

- In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be

held in trust. Any income distributed from the trust fund shall be counted when determining annual income under §5.609.

- In determining net family assets, PHAs or owners, as applicable, shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefore. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

**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.

**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).

**Persons With Disabilities.** A person who has a disability as defined in 42 U.S.C. §423 or a developmental disability as defined in 42 U.S.C. §6001. Also includes a person who is determined, under HUD regulations, to have a physical or mental impairment that is expected to be of long-continued and indefinite duration, substantially impedes the ability to live independently, and is of such a nature that the ability to live independently could be improved by more suitable housing conditions. For purposes of reasonable accommodation and program accessibility for persons with disabilities, means and “individual with handicaps” as defined in 24 CFR §8.3. Definition does not exclude persons who have AIDS or conditions arising from AIDS, but does not include a person whose disability is based solely on drug or alcohol dependence (for low-income housing eligibility purposes). See “Individual with handicaps”

**Portability.** Renting a dwelling unit with Section 8 housing choice voucher outside the jurisdiction of the initial PHA.

**Premises.** The building or complex in which the dwelling unit is located, including common areas and grounds.

**Private space.** In shared housing: The portion of a contract unit that is for the exclusive use of an assisted family.

**Processing entity.** The person or entity that, under any of the programs covered is responsible for making eligibility and related determinations and any income reexamination. In the Section 8 program, the “processing entity” is the “responsible entity.”

**Project owner.** The person or entity that owns the housing project containing the assisted dwelling unit.

**Public Assistance.** Welfare or other payments to families or individuals based on need, which are made under programs, funded, separately or jointly, by Federal, state, or local governments.

**Public Housing Agency (PHA).** Any State, county, municipality, or other governmental entity or public body, or agency or instrumentality of these entities that is authorized to engage or assist in the development or operation of low-income housing under the 1937 Act.

**Reasonable rent.** A rent to owner that is not more than rent charged: (1) For comparable units in the private unassisted market; and (2) For comparable unassisted units in the premises.

**Receiving PHA.** In portability: A PHA that receives a family selected for participation in the tenant-based program of another PHA. The receiving PHA issues a voucher and provides program assistance to the family.

**Recertification.** Sometimes called reexamination. The process of securing documentation of total family income used to determine the rent the tenant will pay for the next 12 months if there are no additional changes to be reported.

**Remaining Member of Tenant Family.** Person left in assisted housing who may or may not normally qualify for assistance on own circumstances (i.e., an elderly spouse dies, leaving widow age 47 who is not disabled).

**Rent to owner.** The total monthly rent payable to the owner under the lease for the unit (also known as contract rent). Rent to owner covers payment for any housing services, maintenance and utilities that the owner is required to provide and pay for.

**Residency Preference.** A PHA preference for admission of families that reside anywhere in a specified area, including families with a member who works or has been hired to work in the area (“residency preference area”).

**Residency Preference Area.** The specified area where families must reside to qualify for a residency preference.

**Responsible entity.** For the public housing and the Section 8 tenant-based assistance, project-based certificate 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** is the collective term for the HUD programs to which the restrictions imposed by Section 214 apply. These programs are set forth in §5.500.

**Security Deposit.** A dollar amount (maximum set according to the regulations) which can be used for unpaid rent or damages to the owner upon termination of the lease.

**Set-up charges.** In a manufactured home space rental: Charges payable by the family for assembling, skirting and anchoring the manufactured home.

**Sexual Assault.** The term sexual assault means any nonconsensual sexual act proscribed by Federal, tribal or State law, including when the victim lacks capacity to consent.

**Shared housing.** A unit occupied by two or more families. The unit consists of both common space for shared use by the occupants of the unit and separate private space for each assisted family. A special housing type: see §982.615 to §982.618.

**Single Person.** A person living alone or intending to live alone.

**Single room occupancy housing (SRO).** A unit that contains no sanitary facilities or food preparation facilities, or contains either, but not both, types of facilities. A special housing type: see 24 CFR §982.602 to §982.605.

**Social Security Number (“SSN”).** The nine-digit number that is assigned to a person by the Social Security Administration and that identifies the record of the person's earnings reported to the Social Security Administration. The term does not include a number with a letter as a suffix that is used to identify an auxiliary beneficiary.

**Special admission.** Admission of an applicant that is not on the 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.** Stopping the clock on the term of a family's voucher after the family submits a request for approval of the tenancy. If the PHA decides to allow extensions or suspensions of the voucher term, the PHA Administrative Plan must describe how the PHA determines whether to grant extensions or suspensions, and how the PHA determines the length of any extension or suspension. This practice is also called “tolling”.

**Tenancy Addendum.** For the Housing Choice Voucher Program, the lease language required by HUD in the lease between the tenant and the owner.

**Tenant.** The person or persons (other than a live-in aide) who execute the lease as lessee of the dwelling unit.

**Tenant rent to owner.** See “Family rent to owner”.

**Term of Lease.** The amount of time a tenant agrees in writing to live in a dwelling unit.

**Total Tenant Payment (“TTP”).** The total amount the HUD rent formula requires the tenant to pay toward rent and utilities.

**Unit.** Residential space for the private use of a family. The size of a unit is based on the number of bedrooms contained within the unit and generally ranges from zero (0) bedrooms to six (6) bedrooms.

**Utility allowance.** If the cost of utilities (except telephone) and other housing services for an assisted unit is not included in the tenant rent but is the responsibility of the family occupying the unit, an amount equal to the estimate made or approved by a PHA or HUD of the monthly cost of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.

**Utility reimbursement.** In the voucher program, the portion of the housing assistance payment which exceeds the amount of rent to owner.

**Utility hook-up charge.** In a manufactured home space rental: Costs payable by a family for connecting the manufactured home to utilities such as water, gas, electrical and sewer lines.

**Vacancy Loss Payments.** (*Applies only to pre-10/2/95 HAP Contracts in the Rental Certificate Program*). When a family vacates its unit in violation of its lease, the owner is eligible for 80% of the contract rent for a vacancy period of up to one additional month, (beyond the month in which the vacancy occurred) if s/he notifies the PHA as soon as s/he learns of the vacancy, makes an effort to advertise the unit, and does not reject any eligible applicant except for good cause.

**Very Low Income Family.** A low-income family whose annual income does not exceed 50% of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 50% of the median income for the area on the basis of its finding that such variations are necessary because of unusually high or low family incomes. This is the income limit for the housing choice voucher program.

**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 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(b)), “welfare assistance” includes only cash maintenance payments from Federal or State programs designed to meet a family’s ongoing basic needs, but does not include food stamps, emergency rental and utilities assistance, SSI, SSDI, or Social Security.

**Welfare-to-work (“WTW”) family.** A family assisted by a PHA with Voucher funding awarded to the PHA under the HUD welfare-to-work voucher program (including any renewal of such WTW funding for the same purpose).