

**Housing Authority of the County of San Mateo**

ADMINISTRATIVE PLAN  
FOR THE  
HOUSING VOUCHER AND  
MOVING TO WORK PROGRAMS

July 1, 2020 to June 30, 2021

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## Chapter 1

### PROGRAM OVERVIEW

#### I. INTRODUCTION

The Housing Authority of the County of San Mateo (HACSM) was created in March 1941 to provide housing assistance to low and very low-income families. The San Mateo County Board of Supervisors, in a separate legal capacity, serves as the Housing Authority's Board of Commissioners.

HACSM receives its funding for the Housing Voucher program from the Department of Housing and Urban Development (HUD). HACSM is not a federal department or agency. It is a governmental or public body, created and authorized by state law to develop and operate housing and housing programs for low-income families.

HACSM has been a participant in HUD's Moving To Work (MTW) demonstration program since the execution of its MTW Agreement in May 2000. Under the original agreement with HUD, HACSM was authorized to design and carry out a demonstration program for 300 families receiving tenant-based assistance. The demonstration exempted HACSM from many of the regulatory requirements that would otherwise apply to these families.

In April 2008, HUD signed a 10-year Moving-to-Work Agreement with HACSM to expand its MTW Program. Under the new MTW Agreement, HACSM is given the authorization to develop policies that are outside the limitations of certain HUD regulations and provisions of the Housing Act of 1937. This expansion applies to the original MTW demonstration program in addition to the other Voucher programs administered by HACSM. The MTW Agreement does *not* cover Permanent Supportive Housing (formerly Shelter Plus Care and Supportive Housing) programs.

The three primary goals of the MTW program are to increase cost effectiveness, promote self-sufficiency, and expand housing opportunities for program participants. The additional flexibility offered by MTW will allow HACSM to more successfully achieve its mission and program goals, as well as enhance its ability to serve the needs of low-income households and communities in the County of San Mateo.

This Administrative Plan addresses the policies and procedures for HACSM's Voucher Programs, which includes Family Unification/Foster Youth (FUP/FUPY), Family Self-Sufficiency, SC8 Homeownership, Project-Based Assistance, and Veterans Affairs Supportive Housing (VASH); in addition, the Administrative Plan addresses policies and procedures for the MTW Self-Sufficiency and Housing Readiness programs.

#### II. HACSM MISSION

The mission of HACSM is to:

1. Preserve and increase the availability of decent, safe and affordable housing;
  2. Ensure equal opportunity in housing for all;
  3. Promote self-sufficiency and asset development of families and individuals;
- and

#### 4. Improve community quality of life and economic viability.

HACSM is also a component of the San Mateo County Department of Housing (DOH) whose mission is to serve as a catalyst for increasing access to affordable housing, increasing the supply of workforce housing, and supporting related community development so that housing permanently exists for people of all income levels and generations in San Mateo County.

### **III. HACSM COMMITMENT TO ETHICS AND SERVICE**

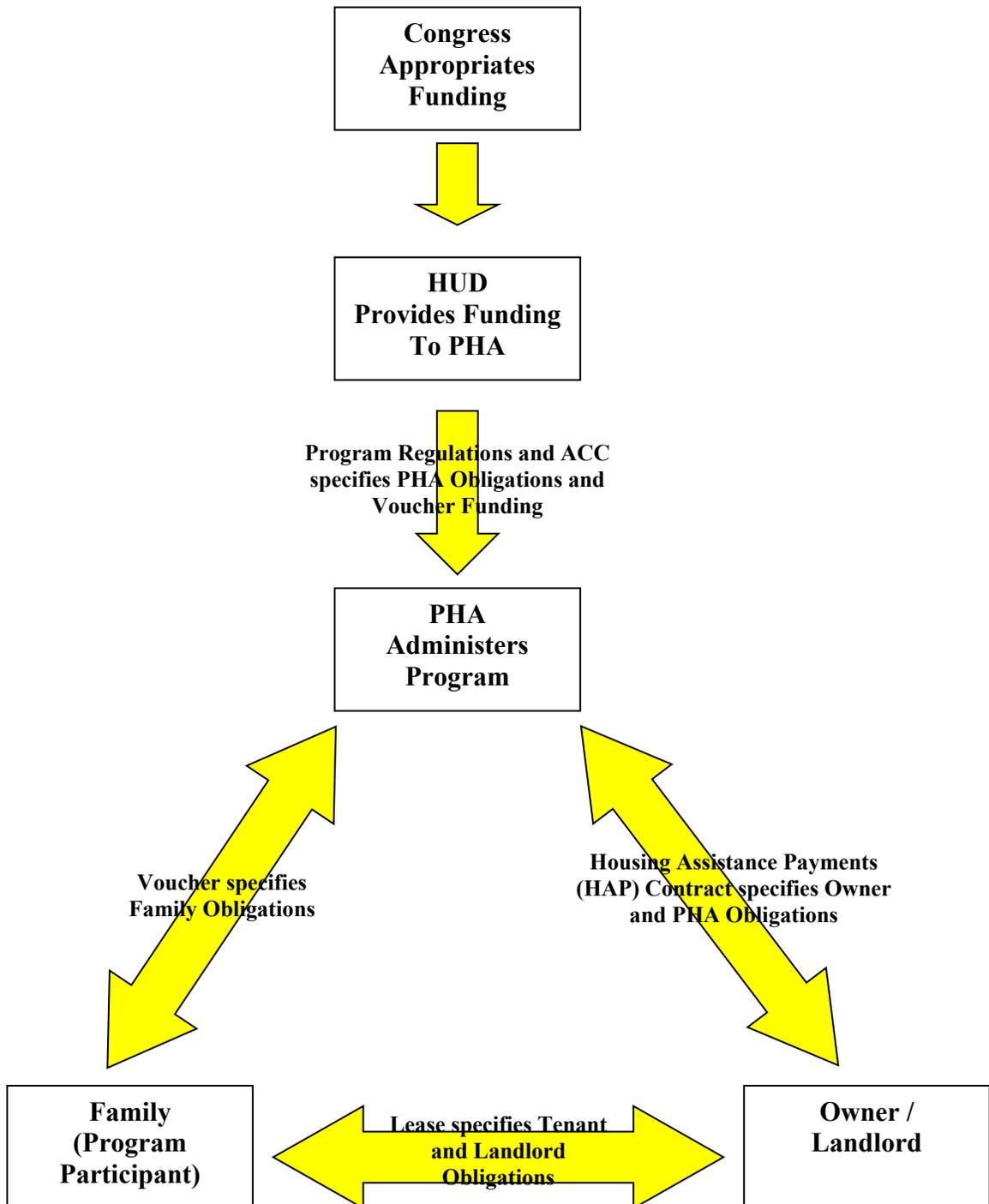
As a public service agency, HACSM is committed to providing excellent service to all program participants, owners, and to the community. HACSM standards include:

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

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

#### IV. HACSM AND HUD PARTNERSHIPS:

To administer the housing voucher programs, HACSM enters into a contractual relationship with HUD (Consolidated Annual Contributions Contract). HACSM also enters into a contractual relationship with the assisted family and the owner or landlord of the housing unit. For the programs to work and be successful, all parties involved—HUD, HACSM, owners, and families—have important roles to play. The following chart illustrates key aspects of these relationships.



## **V. HUD RESPONSIBILITIES**

HUD has the following major responsibilities:

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

## **VI. HACSM RESPONSIBILITIES**

HACSM administers the housing voucher programs under contract with HUD and has the following major responsibilities:

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

## **VII. OWNER RESPONSIBILITIES**

The owner has the following major responsibilities:

- Screen families who apply for tenancy, to determine suitability as renters.

- HACSM 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 HACSM;
- Comply with all applicable fair housing laws and do not discriminate against anyone;
- Maintain the housing unit in accordance with Housing Quality Standards (HQS) and make necessary repairs in a timely manner;
- Collect rent due from the assisted family and otherwise comply with and enforce provisions of the dwelling lease.

## **VIII. FAMILY RESPONSIBILITIES**

The family has the following responsibilities:

- Provide HACSM with complete and accurate information as determined by HACSM to be necessary for administration of the program;
  - The family must supply any information that HACSM or HUD determines is necessary in the administration of the program, including submission of required evidence of citizenship or eligible immigration status. Information includes any requested certification, release or other documentation.
- Make their best and most timely efforts to locate qualified and suitable housing;
- Attend all appointments scheduled by HACSM;
- Allow HACSM to inspect the unit at reasonable times and after reasonable notice (at least 24 hours notice, except in case of an emergency);
- Take responsibility for care of the housing unit, including any violations of housing quality standards caused by the family or its guests;
- Comply with the terms of the lease with the owner;
- Comply with the family obligations of the voucher;
- Not commit serious or repeated violations of the lease;
- Not engage in drug-related or violent criminal activity;
  - The members of the family must not abuse alcohol in a way that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises.

- Notify HACSM and the owner in writing before moving out of the unit or terminating the lease;
  - The family must promptly give HACSM a copy of any owner eviction notice it receives.
- Use the assisted unit only for residence and as the sole residence of the family. Not sublet the unit, assign the lease, own, or have any interest in the unit;
- Promptly notify HACSM of any changes in family composition;
  - HACSM must approve the composition of the assisted family residing in the unit. The family must promptly inform HACSM of the birth, adoption or court-awarded custody of a child. The family must request approval from HACSM to add any other family member as an occupant of the unit. Approval must be granted prior to the person(s) moving into the unit. No other person, i.e., no one but members of the assisted family, may reside in the unit, except for a foster child/foster adult or live-in aide, in accordance with policies within this Plan.
- Not commit fraud, bribery, or any other corrupt or criminal act in connection with any housing programs;
- Members of the household may engage in legal profit-making activities in the unit, but only if such activities are incidental to primary use of the unit for residence by members of the family. Any business uses of the unit must comply with zoning requirements and the affected household member must obtain all appropriate licenses and permission from the landlord;
- The family must supply any information or certification requested by HACSM to verify that the family is living in the unit, or relating to family absence from the unit, including any HACSM requested information or certification on the purposes of family absences. The family must cooperate with HACSM for this purpose. The family must promptly notify HACSM of its absence from the unit. Absence means that no approved member of the family is residing in the unit;
- An assisted family, or members of the family, may not receive Section 8 tenant-based assistance while receiving another housing subsidy, for the same unit or for a different unit, under any duplicative (as determined by HUD or in accordance with HUD requirements) federal, state or local housing-assistance program.

## Chapter 2

### FAIR HOUSING AND EQUAL OPPORTUNITY

#### I. INTRODUCTION

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

- Title VI of the Civil Rights Act of 1964
- Title VIII of the Civil Rights Act of 1968 (as amended by the Community Development Act of 1974 and the Fair Housing Amendments Act of 1988)
- Executive Orders 11063 and 13988
- Section 504 of the Rehabilitation Act of 1973
- The Age Discrimination Act of 1975
- Title II of the Americans with Disabilities Act (to the extent that it applies, otherwise Section 504 and the Fair Housing Amendments govern)
- The Equal Access to Housing in HUD Programs Regardless of Sexual Orientation or Gender Identity Final Rule, published in the *Federal Register* February 3, 2012 and further clarified in Notice PIH 2014-20
- Violence Against Women Reauthorization Act of 2013 (VAWA)

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

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

#### II. NONDISCRIMINATION

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

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

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

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

HACSM will not use any of these factors to:

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

### Providing Information to Families and Owners

HACSM will take steps to ensure that families and owners are fully aware of all applicable civil rights laws. As part of the briefing process, HACSM will provide information to applicant families about civil rights requirements and the opportunity to rent in a broad range of neighborhoods. The Housing Assistance Payments (HAP) contract informs owners of the requirement not to discriminate against any person because of race, color, religion, sex, national origin, age, familial status, or disability in connection with the contract.

### Discrimination Complaints

If an applicant or participant believes that any family member has been discriminated against by the PHA or an owner, the family should advise the PHA. The PHA should make every reasonable attempt to determine whether the applicant's or participant's

assertions have merit and take any warranted corrective action. In addition, the PHA is required to provide the applicant or participant with information about how to file a discrimination complaint [24 CFR 982.304].

Upon receipt of a housing discrimination complaint, the PHA is required to:

- Provide written notice of the complaint to those alleged and inform the complainant that such notice was made
- Investigate the allegations and provide the complainant and those alleged with findings and either a proposed corrective action or an explanation of why corrective action is not warranted
- Keep records of all complaints, investigations, notices, and corrective actions [Notice PIH 2014-20]

### **III. REASONABLE ACCOMMODATION**

A reasonable accommodation is an adjustment made to a rule, policy, practice, or service that allows a person with a disability to have equal access to the Voucher program.

Federal regulations stipulate that requests for accommodations will be considered reasonable if they do not create an 'undue financial and administrative burden' for the PHA or result in a 'fundamental alteration' in the nature of the program or service offered. A fundamental alteration is a modification that alters the essential nature of a provider's operations.

When needed, HACSM will modify normal procedures to accommodate the needs of a person with disabilities. Examples include:

- Permitting applications and reexaminations to be completed by mail
- Conducting home visits
- Using higher payment standards (either within the acceptable range or with HUD approval of a payment standard outside the PHA range) if the PHA determines this is necessary to enable a person with disabilities to obtain a suitable housing unit
- Providing time extensions for locating a unit when necessary because of lack of availability of accessible units or special challenges of the family in seeking a unit
- Permitting an authorized designee or advocate to participate in the application or certification process and any other meetings with HACSM

#### **Request for an Accommodation**

If an applicant or participant indicates that an exception, change, or adjustment to a rule, policy, practice, or service is needed because of a disability, HUD requires that the PHA (HACSM) treat the information as a request for a reasonable accommodation, even if no formal request is made [Joint Statement of the Departments of HUD and Justice:

Reasonable Accommodations under the Fair Housing Act].

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

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

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

#### **IV. VERIFICATION OF DISABILITY**

The regulatory civil rights definition for persons with disabilities is

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

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

The phrase "physical or mental impairment" includes:

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

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

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

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

such an impairment; or has a physical or mental impairment that substantially limits one or more major life activities, only as a result of the attitudes of others toward that impairment.

The definition of a person with disabilities does not include:

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

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

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

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

The definition of a person with a disability for the purpose of obtaining a reasonable accommodation is much broader than the HUD definition of disability which is used for waiting list preferences and income allowances. Before providing an accommodation, HACSM will determine that the person meets the definition of a person with a disability and that the accommodation will enhance the family's access to HACSM's programs and services.

If a person's disability is obvious or otherwise known to HACSM, and if the need for the requested accommodation is also readily apparent or known, no further verification will be required [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].

If a family indicates that an accommodation is required for a disability that is not obvious or otherwise known to HACSM, HACSM will 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.

All information related to a person's disability will be treated in accordance with confidentiality policies provided in this plan. 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]

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

## **V. APPROVAL/DENIAL OF A REQUESTED ACCOMMODATION**

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

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

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

After a request for accommodation is presented, HACSM will respond to the family, in writing, within 10 business days.

If HACSM denies a request for an accommodation because there is no relationship, or nexus, found between the disability and the requested accommodation, the notice will inform the family of the right to appeal the PHA's decision through an informal review.

If HACSM denies a request for an accommodation because it is not reasonable (i.e. it would impose an undue financial or administrative burden or fundamentally alter the nature of HACSM's operations), HACSM will discuss with the family whether an alternative accommodation could effectively address the family's disability-related needs

without a fundamental alteration to the Voucher program and without imposing undue financial and administrative burden.

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

#### Program Accessibility for Persons with Hearing or Vision Impairments

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

To meet the needs of persons with hearing impairments, TTD/TTY communication is available.

To meet the needs of persons with vision impairments, large-print versions of key program documents can be made available 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 (friend, relative, or advocate named by the applicant) to receive, interpret and explain housing materials and be present at all meetings.

#### Physical Accessibility

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

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

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

- This plan describes the key policies that govern the PHA's responsibilities regarding physical accessibility.
- Notice PIH 2010-26 summarizes information about pertinent laws and implementing regulations related to nondiscrimination and accessibility in federally-funded housing programs.
- The PHA Plan provides information about self-evaluation, needs assessment, and transition plans, if applicable.

The design, construction, or alteration of PHA facilities must conform to the Uniform Federal Accessibility Standards (UFAS). Newly-constructed facilities must be designed to be readily accessible to and usable by persons with disabilities. Alterations to existing facilities must be accessible to the maximum extent feasible, defined as not imposing an undue financial and administrative burden on the operations of the HCV program.

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.

#### Denial or Termination of Assistance

A PHA's decision to deny or terminate assistance of a family that includes a person with disabilities is subject to consideration of reasonable accommodation.

When applicants with disabilities are denied assistance, the notice of denial will inform them of the HACSM's informal review process and their right to request a review. In addition, the notice must inform applicants with disabilities of their right to request reasonable accommodations to participate in the informal review process.

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

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

## **VI. IMPROVING ACCESS TO SERVICES FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY (LEP)**

Language for Limited English Proficiency (LEP) persons can be a barrier to accessing important benefits or services, understanding and exercising important rights, complying with applicable responsibilities, or understanding other information provided by the HCV program. In certain circumstances, failure to ensure that LEP persons can effectively participate in or benefit from federally-assisted programs and activities may violate the prohibition under Title VI against discrimination on the basis of national origin. This part incorporates the Notice of Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Affecting Limited English Proficient Persons, published December 19, 2003 in the *Federal Register*.

HACSM will take affirmative steps to communicate with people who need services or information in a language other than English. These persons will be referred to as persons with Limited English Proficiency (LEP).

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

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

burdens on the HACSM.

### **Implementation Plan**

HACSM is committed to ensuring the accessibility of its programs and activities to all eligible applicants and program participants including LEP individuals. HACSM staff shall ensure responsible steps are taken to provide high quality customer service and meaningful access to its programs and services to all eligible LEP individuals by implementing the following activities:

1. When adult family members are LEP, staff can show them the *Language Identification Flashcard*, created by the Census Bureau, so that the family can identify what language they speak.

HACSM has identified staff members who speak Spanish, Russian, and Tagalog to assist in serving families. For other languages, an interpreter will be called to assist the staff person in serving the family.

2. All LEP families will be identified as to their primary language so that appropriate resources can be identified in advance of the family's needing assistance with an appointment.
3. When the number of families speaking a non-English language exceeds five percent (5%) of the number of persons eligible to be served or likely to be affected or encountered, HACSM will actively recruit staff that speak, read and write this language. HACSM has identified Spanish as a non-English language exceeding five percent (5%) of the number of persons eligible to be served or likely to be affected or encountered.
4. HACSM will post signs in public places in languages known to be spoken by LEP applicants and participants to inform them help is available in their own language.
5. HACSM will provide training to current and new staff about the resources available for LEP families and how to utilize these resources for participating families.

## Chapter 3 ELIGIBILITY

**MTW Waiver:** *The Agency is authorized to determine income qualifications for participation in the rental assistance program that differ from the currently mandated program requirements in the 1937 Act and its implementing regulations, as long as the requirements that i) at least 75 percent of those assisted under the demonstration are “very low income” as defined in section 3(b)(2) of the 1937 Act, ii) substantially the same number of low-income persons are assisted under the demonstration as would be without the MTW authorizations contained herein, and iii) a comparable mix of families are assisted under the Agreement as would have been otherwise in Section I.C. of the MTW Agreement are met. This authorization waives certain provisions of Section 16(b) and 8(o)(4) of the 1937 Act and 24 CFR 5.603, 5.609, 5.611, 5.628, and 982.201 as necessary to implement the Agency’s Annual MTW Plan.*

### I. INTRODUCTION

HACSM is responsible for ensuring that every individual and family admitted to the Voucher 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 HACSM to confirm eligibility and determine the level of the family’s assistance.

To be eligible for the Voucher program:

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

## II. FAMILY AND HOUSEHOLD [24 CFR 982.201(c); FR Notice 02/03/12; Notice PIH 2014-20]

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

### Family

To be eligible for assistance, an applicant must qualify as a family. *Family* as defined by HUD includes, but is not limited to the following, regardless actual or perceived sexual orientation, gender identity, or marital status, a single person, who may be an elderly person, disabled person, or any other single person; or a group of persons residing together. Such group includes but is not limited to a family with or without children, an elderly family, a disabled family, a displaced family, or the remaining member of a tenant family. HACSM has the discretion to determine if any other group of persons qualifies as a family.

*Gender identity* means actual or perceived gender characteristics.

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

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

### Household

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

### Head of Household (HOH)

The adult member of the family who is considered the head for purposes of determining income eligibility and rent. The HOH is responsible for ensuring the family fulfills all of its responsibilities under the program, alone or in conjunction with a co-head or spouse. The head of household must be have the legal capacity to enter into a lease under state and local law. A minor who is emancipated under state law may be designated as head of household.

### Changes in HOH

If a change in HOH is reported, the following criteria must be met:

1. The individual becoming the new HOH must be in the household for at least the previous 12 consecutive months; **and**
2. At the time of the HOH change, the household will join the time-limited MTW Self-Sufficiency program. However, if the household is already enrolled in the time-limited MTW Self-Sufficiency program, the remaining household members would only be eligible for the remaining term, not an additional term.

The following exceptions may apply to the automatic enrollment in HACSM's MTW Self-Sufficiency program:

1. If the newly designated HOH is elderly/disabled, they will have the ability to “opt out” of the time-limited MTW Self-Sufficiency program;
2. If the change in HOH is the result of domestic violence;
3. If the new HOH is an original household member (as verified by HACSM data);
4. When the change in HOH is the result of a temporary guardian becoming the permanent guardian of existing minors on the housing application;

### **Co-Head**

An individual in the household who is equally responsible with the head of household for ensuring the family fulfills all of its responsibilities under the program, but who is not a spouse. A family may have a co-head or spouse but not both. A family can have only one co-head. A co-head never qualifies as a dependent. The co-head must have legal capacity to enter into a lease.

### **Spouse**

The marriage partner of the head of household. 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.

### **Other Adult**

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.

### **Dependent**

A family member who is under 18 years of age or a person of any age who is a person with a disability, a full-time student under 24 years of age, and foster children/foster adults. The following persons can never be dependents: the head of household, spouse, co-head, and live-in aides.

A dependent under 18 years of age will not be included in the household unless the family can provide proof of guardianship, should none of the adults in the household be the dependent’s biological parent(s). Acceptable verifications include, but are not limited to, court documents and social service agency documents. HACSM will also accept a notarized written letter from the biological parent granting full custody of the dependent member(s) that is supported by at least one other form of supplemental documentation to confirm that the minors reside with the head of household (e.g. records of enrollment in the local school, childcare verification, etc.).

### **Full-Time Student**

A family member (other than the HOH, spouse, or co-head), less than 24 years old, who is attending school or vocational training at an accredited institution on a full-time basis. The time commitment or subject load that is needed to be full-time is defined by the educational institution.

For a family member, other than the head, co-head, or spouse to qualify for the full-time student (FTS) status, and hence the \$480 dependent deduction and earned

income exclusion, the family member must provide a transcript of their FTS status at all subsequent recertification appointments.

If documentation is not provided or cannot be confirmed, HACSM will include wage income in its calculation process and the family member will not receive the \$480 dependent deduction.

### **Elderly Family**

A family whose head, co-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.

### **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.

### **Guests**

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

HACSM policy allows for a guest to remain in the assisted unit no longer than 14 consecutive days or a total of 60 cumulative 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 the assisted household more than 50 percent of the time, are not subject to the time limitations of guest as described above.

Students are not included as a family member if they live outside the assisted household to attend school and they are not subject to the time limitations of guest as described above if visiting the assisted unit for school breaks, holidays, or vacations.

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

### **Foster Children/Foster Adults**

*Foster Child:* 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 Adult:* Generally, persons with disabilities, unrelated to the tenant family, who are unable to live alone.

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.

## **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.

Generally, absences *less* than 90 consecutive days will be considered temporary and absences *more* than 90 consecutive days will be considered permanent.

*Absent Students:* Students who attend school out of the area and who live away from the household will not be considered as family members. This removal does not mean the students will not be allowed to return to the unit; however, the students will not be considered in HACSM's determination of voucher size (subsidy standards) and the income will not be included.

*Absences Due to Incarceration:* If the sole member of the household (head of household) is incarcerated for more than 90 consecutive days, s/he will be considered permanently absent and HACSM will terminate assistance.

If a family member is expected to be incarcerated for more than 90 consecutive days, the person will be considered permanently absent and no longer considered a family member. If the individual intends to return to the unit following incarceration, the individual is subject to the eligibility and screening requirements discussed in this chapter.

*Absences Due to Placement in Foster Care:* If a child has been placed in foster care, HACSM 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 unless 90 days have lapsed since the removal. If the time period is to be greater than 90 days from the date of removal of the child/ren, the voucher size will be adjusted accordingly, if applicable. If all children are removed from the home permanently, the voucher size will be adjusted in accordance with HACSM's subsidy standards.

*Absent Head, Spouse, or Co-head:* A 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. In such circumstances the absent family member remains a member of the family and all of the employment income is considered available to the household. This would include, for instance, a head of household or spouse who has been called to active military duty or who does construction work in another state.

*Court-Ordered Absences:* If a member of the family is subject to a court order that restricts the member from the home, HACSM will determine whether the person will be considered temporarily or permanently absent. If the court order specifies a permanent restriction or if the court restriction exceeds 90 days, the person will no longer be considered a family member. If the individual intends to return to the unit at the end of the restriction, the individual is subject to the eligibility and screening requirements discussed in this chapter.

*Family Members Permanently Confined for Medical Reasons:* If the sole member of the household (head of household) is confined to a nursing home, rehab facility or

hospital for more than 90 consecutive days, s/he will be considered permanently absent and HACSM will terminate assistance.

If a family member is confined to a nursing home, rehab facility or hospital for more than 90 consecutive days, that person will no longer be considered a family member and the income of that person is not counted.

HACSM 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 if the time period is less than 90 days.

If the medical professional determines the time period or absence from the unit is to be greater than 90 days, the member will be considered permanently absent and, if applicable, the Voucher size will be reduced in accordance with HACSM subsidy standards. At any time, 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 may be 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.

### **III. FAMILY BREAK-UP AND REMAINING MEMBER OF TENANT FAMILY [24 CFR 982.315; Notice PIH 2017-08]**

#### **Family Breakup**

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

- If the family breakup results from an occurrence of domestic violence, dating violence, sexual assault, or stalking, HACSM must ensure that the victim retains assistance. In the event of more than one claim (e.g. husband and wife both claim they are victims of domestic violence and both provide supporting documentation), HACSM will seek legal or judicial guidance or third-party documentation in making its decision.
- In accordance with Notice PIH 2017-08, for HUD-Veterans Affairs Supportive Housing (HUD-VASH) vouchers, when the veteran is the perpetrator of domestic violence, dating violence, sexual assault, or stalking, the victim must continue to be assisted. Upon termination of the perpetrator's HUD-VASH voucher, the victim should be given a regular Housing Voucher if one is available, and the perpetrator's HUD-VASH voucher should be used to serve another eligible family. If a regular voucher is not available, the victim will continue to use the HUD-VASH voucher, which must be issued to another eligible family upon the voucher's turnover.

- If a court determines the disposition of property between members of the assisted family, HACSM 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. In the absence of agreement among the family members, HACSM will determine which family will retain the original application date. Other former family members may make a new application with a new application date when the waiting list is open. The application process and the selection policy of the new waiting list shall apply. Head of household status shall not be solely determinative in deciding who will retain the voucher assistance.

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, HACSM 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. The interest of any family member who is the victim of domestic violence, dating violence, sexual assault, or stalking, including a family member who was forced to leave an assisted unit as a result of such actual or threatened abuse;
4. Any possible risks to family members as a result criminal activity;
5. The recommendations of social service professionals.

### **Remaining Member of a Tenant Family**

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.

When the HOH dies and the only remaining household member is the live-in aide, the live-in aide is not entitled or eligible for any rental assistance or continued occupancy in a subsidized unit. By definition, the live-in aide would not be living in the subsidized unit except to provide the necessary supportive services on behalf of the elderly or disabled HOH. HACSM will not designate the live-in aide as the new HOH or change the relation code of the live-in aide to make him or her an eligible household member (eligible for assistance) nor pay HAP on behalf of the live-in aide for any month after the month in which the HOH died.

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 the policy below on “Caretakers for a Child.”

## Joint Custody of Dependents

Children who are subject to a joint-custody agreement but who live with one parent, applying for assistance or receiving assistance from HACSM, at least 183 days of the year (a minimum of 50% plus 1 day), whether consecutively or not, will be considered members of the household. Should both parents be applicants, and both are trying to claim the child, the parent whose address is listed in the school records will be allowed to claim the school-age child as a dependent. If school records are inconclusive, then other pertinent records, such as court records or IRS returns, will be utilized.

A child or children cannot be claimed by two different assisted households.

## Caretakers for a Child

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

- (1) If a responsible agency has determined that another adult is to be brought into the assisted unit to care for a child for an indefinite period, the designated caretaker will not be considered a family member until a determination of custody or legal guardianship is made.
- (2) If a caretaker has assumed responsibility for a child without the involvement of a responsible agency or formal assignment of custody or legal guardianship, the caretaker will be treated as a visitor for 90 days. After the 90 days has elapsed, the caretaker will be considered a family member unless information is provided that would confirm that the caretaker's role is temporary. In such cases, HACSM will extend the caretaker's status as an eligible visitor.
- (3) At any time that custody or guardianship legally has been awarded to a caretaker, the housing choice voucher will be transferred to the caretaker.
- (4) During any period that a caretaker is considered a visitor, the income of the caretaker is not counted in annual income and the caretaker does not qualify the family for any deductions from income.

## IV. LIVE-IN AIDE

A *live-in aide* is a person who resides with an elderly person(s), near elderly person(s) or person(s) with disabilities, and who: (1) is determined by HACSM to be essential to the care and well-being of the person(s); (2) is not obligated to support the family member; and (3) would not be living in the unit except to provide the necessary supportive services.

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

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

A family's request for a live-in aide must be made in writing. A live-in aide may only reside in the unit with the approval of HACSM and the landlord. 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 or disabled family member.

For continued approval, the necessity of a live-in aide shall be subject to review by HACSM at each reexamination and may be re-verified according to the procedure stated in the above paragraph.

The family and live-in aide will be required to sign 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. In addition, a live-in aide cannot have ownership or other interest in the subsidized unit. The live-in aide is required to complete a personal declaration form provided by HACSM.

HACSM will not approve a particular person as a live-in aide, and may withdraw such approval if:

- The person commits fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
- The person commits drug-related criminal activity or violent criminal activity; or
- The person currently owes rent or other amounts to HACSM or to another PHA in connection with Section 8 or public housing assistance under the 1937 Act.
- The person is currently engaged in or has engaged in other criminal activity which may threaten the health or safety of the premises by other residents or persons residing in the immediate vicinity of the unit.
- The person has an abuse or pattern of abuse of alcohol that may adversely affect the health or safety of, or right to peaceful enjoyment of the premises by, other residents and persons residing in the immediate vicinity of the premises or if HACSM believes it has reasonable cause to believe the live-in aide has a criminal record (within the past three years) that substantiates the pattern of alcohol abuse.
- The person is subject to a lifetime registration requirement under a State Sex Offender registration program.
- The person has been convicted of manufacturing or producing methamphetamine in a building or complex assisted under the Public Housing or Section 8 programs.

A relative who chooses to be a live-in aide will not be treated as a regular member of the household, but instead will be treated as a live-in aide. Once a person is approved and designated as a live-in aide, the status will not be changed to family member status. Conversely, a person designated as family member will not be changed to live-in aide status. A person who leaves the family household with one status will not be allowed to return to the family household with another status for a period of three (3) years.

The live-in aide's qualification for housing occupancy terminates when the individual needing the supportive services leaves the unit or fails to qualify for continued occupancy. The live-in aide does not qualify for continued occupancy as a remaining member of the tenant family, even if they are related by blood, marriage or operation of law.

Family members of a live-in aide may also reside in the unit provided the following conditions are met:

- The subsidy size is not increased; and
- The presence of the live-in aide's family does not overcrowd the unit.

A *care attendant* is a person that regularly visits the unit of a tenant to provide supportive or medical services. Care attendants are not live-in aides, since they have their own place of residence (and if requested by HACSM must demonstrate separate residence) and do not live in the subsidized unit. Care attendants have no rights of tenancy.

## V. BASIC ELIGIBILITY CRITERIA

### Income Limits

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

### Definitions of the Income Limits

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

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

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

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

### Using Income Limits for Eligibility and Targeting

Income limits are used for eligibility only at admission. Income eligibility is determined by comparing the annual income of an applicant to the applicable income limit for their family size. In order to be income eligible, an applicant family must be a *very low-income* family – income at 50%, or less, of median.

At least 75 percent of the families admitted to HACSM's tenant-based voucher program during the fiscal year from HACSM's waiting list shall be extremely low-

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

### **Asset Limits**

Applicants will be determined ineligible for the program if they have more than \$100,000 in net assets or have a present ownership interest in a suitable home in which they have a legal right to reside unless the family is making a good faith effort to sell the home and the subsequent proceeds are within the aforementioned net asset limit.

A 'suitable home' is defined as a detached house, duplex (includes triplex, etc), condominium, townhouse, mobile and manufactured homes.

Excluded from assets, for the purpose of asset limits, are interests in Indian trust land, equity accounts in HUD homeownership or FSS programs, certain inaccessible trust funds, retirement accounts that are codified by IRS (e.g. IRAs, Roth IRAs, 401(k), 403(b), and 457 plans), settlements or awards due to actions that resulted in the serious disability of a household member, tax-protected education savings accounts, and personal property not of significant value.

### **Other Factors Affecting Applicant Eligibility:**

See Chapter 12, "Denial and Termination of Assistance."

## **VI. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS**

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

### **Declaration**

HUD requires each family member to declare whether the individual is a citizen, a national, or an eligible non-citizen, except those members who elect not to contend that they have eligible immigration status. Those who elect not to contend their status are ineligible non-citizens. For citizens, nationals and eligible non-citizens 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 Non-citizens below). No declaration is required for live-in aides, foster children, or foster adults.

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

Citizens and nationals are required to submit a signed declaration as verification of their status. However, HUD regulations permit PHAs to request additional documentation of their status, such as a passport.

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

### **Eligible Non-citizens**

In addition to providing a signed declaration, those declaring eligible non-citizen status must sign a verification consent form and cooperate with HACSM efforts to verify their immigration status. The documentation required for establishing eligible non-citizen 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 Non-citizens**

Those non-citizens 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. HACSM will not verify a family member's ineligible status and will not report an individual's unlawful presence in the U.S. to the United States Citizenship and Immigration Services (USCIS).

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

### **Mixed Families**

A family is eligible for assistance if at least one member is a citizen, national, or eligible non-citizen. Families that include eligible and ineligible individuals are considered *mixed families*. Such families will be given notice that the amount of their subsidy may be reduced based on their status, and that they may request a hearing if they contest this determination.

### **Ineligible Families**

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

When HACSM determines that an applicant family does not include any citizens, nationals, or eligible non-citizens, following the verification process, the family will be sent a written notice of the determination.

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

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

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

In addition, each participant who has not previously disclosed an SSN, has previously disclosed an SSN that HUD or the Social Security Administration (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/triennial 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.

HACSM will deny assistance to an applicant family if they do not meet the SSN disclosure and documentation requirements in 24 CFR 5.216.

## **VIII. FAMILY CONSENT TO RELEASE OF INFORMATION**

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, the form HUD-52675 Debts Owed to Public Housing Agencies and Terminations and other consent forms as needed to collect information relevant to the family's eligibility and level of assistance.

HACSM will 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)].

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

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

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, does not have a dependent child, and is not a person with disabilities receiving Voucher 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 Voucher assistance. If, however, a student in these circumstances is determined independent from his/her parents, 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 Voucher assistance. It is limited to students who are seeking assistance on their own, separately from their parents.

## **X. EIV SYSTEM SEARCHES [Notice PIH 2018-18; EIV FAQs; EIV System Training 9/30/20]**

### **Existing Tenant Search**

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

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

HACSM will only approve assistance contingent upon the move-out from the currently occupied assisted unit.

### **Debts Owed to PHAs and Terminations**

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

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

## Chapter 4

### APPLICATIONS, WAITING LIST AND TENANT SELECTION

**MTW Waiver:** *The Agency is authorized to determine waiting list procedures, tenant selection procedures and criteria and preferences...This authorization waives certain provisions of Sections 8(o)(6), 8(o)(13)(J) and 8(o)(16) of the 1937 Act and 24 C.F.R. 982 Subpart E, 982.305 and 983 Subpart F as necessary to implement the Agency's Annual MTW Plan.*

#### I. INTRODUCTION

When a family wishes to receive assistance under the Voucher program, the family must submit a pre-application that provides HACSM with the information needed to determine the family's eligibility. HACSM determines how and when it will collect applications and establish a waiting list. When Voucher assistance becomes available, HACSM will select families from the waiting list in accordance with HUD requirements and HACSM policies as stated in the Administrative Plan and the MTW Annual Plan.

HACSM is required to adopt a clear approach to accepting pre-applications, placing families on the waiting list, selecting families from the waiting list and must follow this approach consistently.

HUD regulations require that all families have an equal opportunity to apply for and receive housing assistance and that HACSM affirmatively further fair housing goals in the administration of the program.

When HUD awards funding that is targeted for families with specific characteristics or families living in specific units, HACSM will apply those funds according to HUD guidelines. Persons qualifying for special purpose funding from HUD may be placed on, and selected from, the waiting list over other applicants on the list.

Examples of special funding include programs targeting the homeless and persons with disabilities; families or youths that qualify for the Family Unification program, HACSM public housing residents that are affected by the demolition/disposition process or service-enhanced housing stated in HACSM's MTW Agreement and Annual Plan.

#### II. THE APPLICATION PROCESS

##### Applying for Assistance

Any family that wishes to receive HCV assistance must apply for admission to the program. HACSM has an electronic/online pre-application process for anyone interested in the program.

The application process will involve the following three phases:

1. The **first phase** is the "pre-application" to be placed on the waiting list. Families who wish to apply for any one of HACSM's Voucher programs must complete a

pre-application.

The purpose of the pre-application is to permit HACSM to preliminarily assess family eligibility or ineligibility, and through a specified process, to be put on the waiting list. Any family that is interested in the program can complete a pre-application. All pre-applications received will be maintained in a third-party database. The family is required to update and/or renew their pre-application every 12 months, thus indicating their on-going interest in joining the program. If a pre-application is not updated and/or renewed within 12 months, the pre-application may be removed from the list. Once removed, the family can re-apply at any time.

The pre-application may contain questions designed to obtain the following information:

- Names of adult members and age of all members
- Gender and relationship of all members
- Street address (residence) and phone number(s)
- Mailing address (PO box okay if no permanent address)
- Amount(s) and source(s) of income received by all household members
- Information regarding disabilities to determine qualifications for allowances and deductions
- Information related to qualification for preferences
- Social Security Numbers
- Racial and ethnic designation of the head of household

Duplicate pre-applications, including applications from a segment of an applicant household, will be rejected.

2. The **second phase** takes place when HACSM has determined that there will be an insufficient number of applicants on the waiting list to fill the number of budgeted units or units made available by turnover. HACSM will initiate a random draw of families from the list. HACSM will complete eligibility determination for all applicants selected from the current list before serving the applicants selected from the next draw.

No applicant has a right or entitlement to be listed on the waiting list or to any particular position on the waiting list.

Since placement on the waiting list does not require an interview and the information contained on the pre-application does not require verification, ineligible families may inadvertently be placed on the waiting list. However, final eligibility will be determined only when the full application process is completed and all information is verified.

3. The **third phase** is the "full" application review and appointment for final eligibility determination. On an as needed basis, HACSM will select applicants from the waiting list (see step 2 above) for eligibility determination. The order in which the selection is made is based on the applicant's placement on the waiting list

assigned by the random draw and their preference. At the full application review, HACSM ensures that verification of all applicable eligibility factors is current in order to determine the family's eligibility for the issuance of a voucher.

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.

HACSM shall not approve any transfer or assignment of the pre-application or application to another person or household. HACSM may approve a change of head of household only if the new head of household is a member listed on the pre-application completed by the household and that was selected through the lottery process (second phase stated above).

### **III. MANAGING THE WAITING LIST**

#### **Organization of the Waiting List**

HACSM's Voucher program waiting list will be organized in such a manner to allow the agency to accurately identify and select families for assistance in the proper order, according to the admissions policies described in this plan.

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

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

HACSM will maintain a single waiting list for the Voucher program.

HACSM will maintain site-based waiting lists for the Project-Based Voucher Assistance program. The applicants may indicate which properties they are interested in on the pre-application.

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

HACSM has a continuously open database for interested families to submit a pre-application at any time for its tenant-based Housing Voucher program. Due to this policy, HACSM does not plan to close the waiting list. However, at such time as this might be necessary, HACSM will announce the closing of the waiting list by public notice. HACSM will give at least one (1) day's notice prior to closing the list.

In addition, the waiting list is always open to an otherwise eligible applicant who:

- Is a Continuum of Care Program (e.g. Shelter Plus Care, Supportive Housing) participant who, as determined by HACSM and the supportive service provider, has demonstrated high level of independent living skills, and has received minimal case management for at least 12 months;

- Is a VASH Program participant who, as determined by HACSM and the VAMC, has demonstrated high level of independent living skills, and has received minimal case management for at least 12 months;
- Is certified by the Public Child Welfare Agency as eligible for the Family Unification Program (FUP). HACSM will limit the number of families that may participate in FUP to no more than the baseline number determined by HUD.

In these cases, HACSM may admit such families whether or not they are on the waiting list, and, if they are on the waiting list, without considering the family's position on the waiting list.

### **Reopening the Waiting List**

If the waiting list does close, or has been closed, HACSM will advertise the opening of its waiting list through public notice in local newspapers of general circulation, minority media, and other suitable media outlets. The notice will comply with HUD fair housing requirements and specify who may apply and where and when applications will be received.

### **Outreach**

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

HACSM 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
- Avoiding outreach efforts that prefer to exclude people who are members of a protected class

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

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

## **Reporting Changes in Family Circumstances**

While the family is on the waiting list, or has submitted a pre-application, the family must update their changes through the online application portal. Types of changes include household contact information, current residence/ mailing address, and phone number(s).

Prior to being selected to the waiting list, it is the family's responsibility to update and/or renew the information in their pre-application within twelve (12) months. If the family does not update and/or renew their pre-application, it will be automatically purged from the Interest List. Once removed, the family can re-apply at any time.

## **Purging the Waiting List**

As discussed in Sections II and III above, HACSM has created a continuously open pre-application process for families who may be interested in HACSM's Voucher programs. To remain active on the list, the family is responsible for updating the information on, or renewing their application to indicate their on-going interest in the program at least every 12 months. HACSM will periodically conduct random draws to create a waiting list when vouchers become available through turnover. As such, HACSM expects that the information from the family's pre-application will be timely and current, thus eliminating the need to purge the waiting list.

Although HACSM does not foresee the need to manually update the applicants' information because of its online waiting list management methodology, HACSM shall follow the procedures stated below if an update is necessary:

To update the waiting list, HACSM will send an update request via first class mail and/or email address on record to each family on the waiting list to determine whether the family continues to be interested in, and to qualify for, the program. This update request will be sent to the last address that HACSM has on record for the family. The update request will provide a deadline by which the family must respond, the method for responding, 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 within the HACSM required time frame, the family will be removed from the waiting list without further notice.

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

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

If a family is removed from the waiting list for failure to respond, HACSM may reinstate the family if it determines the lack of response was due to HACSM error, or to circumstances beyond the family's control, or if approved as a reasonable accommodation.

The family may submit another pre-application after removal or expiration of their previous pre-application.

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

If at any time an applicant family is on the waiting list and HACSM determines that the family is not eligible for assistance, the family will be removed from the waiting list.

## **IV. SELECTION FOR ASSISTANCE**

### **VOUCHER PROGRAM**

#### **Local Preferences**

HACSM will assign preference to families who live, work or are hired to work in San Mateo County. Work or hired to work does not include volunteer work, internships, being an independent contractor or employment with temporary agencies.

#### **PSH Moving On**

HACSM will assign preference to current Permanent Supportive Housing (PSH) Program participants who meet the eligibility criteria of the PSH Moving-On policy as stated in HACSM's PSH Policy and Procedure manual. HACSM will limit the number of PSH Moving On preference up to 5 per calendar year, subject to availability of Section 8 Vouchers.

#### **Order of Selection**

HACSM will use a lottery system to select families from the Interest List for its Voucher waiting list. HACSM will pre-determine the total number of applicants it needs to select in order to maintain a waiting list to utilize the number of vouchers that have become available due to turnover. The draw will randomly assign a placement order for the applicant households. The resulting placement order along with the applicant's qualifying preferences will determine the order in which applicants will be scheduled for an eligibility interview.

### **SPECIAL ADMISSION**

Pursuant to HUD requirements that special purpose programs be targeted to families with specific characteristics, HACSM will use targeted funds solely for their intended purpose(s). Therefore, families with targeted characteristics may be selected from the waiting list before non-targeted families who applied before them. In the selection of families with targeted characteristics within the overall group of other families with similar targeted characteristics, families will be selected in the same order of preference as are those families on the regular waiting list.

## **V. NOTIFICATION OF SELECTION**

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

- Date, time, and process for the scheduled application interview, including any procedures for rescheduling the interview;

-Who is required to attend the interview;

-Documents and information that must be provided at the interview.

If a notification letter is returned to HACSM with no forwarding address, the family will be removed from the waiting list.

If a family is removed from the waiting list for failure to respond to an interview, HACSM may reinstate the family if it determines the lack of response was due to HACSM error, or to circumstances beyond the family's control, or if approved as a reasonable accommodation.

## **VI. THE APPLICATION INTERVIEW**

Due to the COVID-19 pandemic, HACSM is completing the initial intake process via an online portal (Rent Café PHA); any follow-up or initial eligibility appointments will occur via email, phone, or regular first-class mail or a combination of these methods – the process includes whatever avenue is most effective for the applicant. In person interviews will not occur until it is deemed safe to do so; therefore, alternate methods will continue for the foreseeable future and may be incorporated into HACSM's regular operations post-pandemic.

Families selected from the waiting list are required to complete the initial intake process. Being invited to complete the initial intake process does not constitute admission to the program. Reasonable accommodation will be made for persons with disabilities who are unable to complete the process due to their disability.

Assistance cannot be provided to the family until all SSN documentation requirements are met. However, if HACSM 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 determined by the PHA [Notice PIH 2018-24].

The head of household, spouse/co-head and all family members who are 18 years and older are required to sign all required documents provided by HACSM.

If an applicant fails to complete the online initial intake and/or attend any subsequently scheduled appointments, the application will be denied unless the applicant can provide documentation/verification as to the reason that the applicant could not complete the initial intake or attend appointments.

If an application is denied due to failure to complete the initial intake, the applicant will be sent a denial notice and offered an opportunity to request an informal review in accordance with the policies in this Plan.

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, HACSM will provide the family with a list of items that must be submitted.

Any required documents or information that the family is unable to provide at the interview must be provided within 30 calendar days of the interview. If the family is unable to obtain the information or materials within the required time frame, the family may request an extension. If the required documents and information are not provided within the required time frame (plus any extensions), the family will be sent a notice of denial.

If the family is unable to attend a scheduled interview (via phone or online), the family must contact HACSM in advance of the interview to request reschedule of appointment. If a family does not attend a scheduled interview and does not request a reschedule, HACSM will send a notice of denial in accordance with policies contained in this Plan.

Applicants who fail to attend two scheduled interviews 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 this Plan.

## **VII. COMPLETING THE APPLICATION PROCESS**

HACSM will verify all information provided by the family. Based on verified information, HACSM will make a final determination of eligibility and confirm that the family qualified for any selection preference that affected the order in which the family was selected from the waiting list.

If HACSM determines that the family is ineligible, HACSM will send a notice of denial in accordance with policies contained in this Plan.

If a family fails to qualify for any criteria that affected the order in which it was selected from the waiting list (e.g. preference, extremely low-income), the family will be returned to its original position on the waiting list but without the preference. HACSM will notify the family in writing that it has been returned to the waiting list and will specify the reasons for it.

## **VIII. INSUFFICIENT FUNDING**

HACSM will determine whether there is adequate funding to issue vouchers by comparing its annual budget authority to the annual total HAP needs on a monthly basis. The total HAP needs for the calendar year will be projected by establishing the actual HAP costs year to date. To that figure, HACSM will add anticipated HAP expenditures for the remainder of the calendar year. Projected HAP expenditures will be calculated by multiplying the projected number of units leased per remaining months by the most current month's average HAP. The projected number of units leased per month will take into account the average monthly turnover of participant families. If the total annual HAP needs equal or exceed the annual budget authority, or if HACSM cannot support the cost of the proposed subsidy commitment based on the funding analysis, HACSM will be considered to have insufficient funding.

## Chapter 5

### BRIEFINGS AND VOUCHER ISSUANCE

#### I. INTRODUCTION

When a family is determined to be eligible for the Housing Voucher program, HACSM will ensure that the family fully understands the way the program operates and the family's obligations under the program. This is accomplished through both an oral briefing and provision of a briefing packet containing the HUD-required documents and other information the family needs to know to lease a unit under the program.

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

#### II. BRIEFING SESSIONS

The briefing provides a broad description of owner and family responsibilities, explains HACSM's procedures, and includes instructions on how to lease a unit. Briefings are conducted to ensure that families understand the program and its requirements. All families who have been determined eligible for the Voucher program or who are moving to another unit will be scheduled for a briefing.

The issuance of a voucher does not constitute admission to the program. Admission to the program occurs when the Lease and HAP Contract become effective.

##### **In-Person Briefings**

In-person briefings will generally be conducted in group meetings. At the family's written request and as staffing resources are available, HACSM may provide an individual briefing.

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

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

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

Prior to the COVID-19 pandemic, briefings were conducted as in-person group or individual meetings. During the pandemic and post-pandemic, initial and relocation briefings are conducted remotely, primarily on an individual basis.

Remote briefings may be conducted over the phone, via video conferencing, or through other virtual platforms (i.e. Teams, Zoom).

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

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

The head of household is required to attend the briefing. If the head of household is unable to attend, HACSM may approve another adult family member to attend the briefing providing it receives a prior request and written authorization from the head of household.

HACSM will not issue a voucher to a family unless the household representative has attended a briefing and signed the voucher.

The briefing session gives families the opportunity to ask questions, discuss the information provided, and clearly understand their rights, duties and obligations as assisted families.

Each briefing will provide information on the following subjects:

- A description of how the Voucher program works;
- Family and owner responsibilities;
- Where the family can lease a unit, including renting a unit inside or outside HACSM's jurisdiction;
- An explanation of how portability works, if permitted. HACSM may not discourage eligible families from choosing to live anywhere in the HACSM jurisdiction or outside the HACSM jurisdiction under portability, unless otherwise expressly authorized by statute, regulation, PIH Notice, or court order. \*See Hardship Policy (Chapter 23) for further discussion on portability.
- The advantages of areas that do not have a high concentration of low-income families.

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

As with in-person briefings, the platform for conducting remote briefings must be accessible and the briefing conducted in accordance with Section 504 and accessibility requirements. This includes ensuring any information, websites, emails, digital notifications, and other virtual platforms are accessible for persons with vision,

hearing, and other disabilities. Further, providing effective communication in a digital context may require the use of individualized auxiliary aids or services, such as audio description, captioning, sign language and other types of interpreters, keyboard accessibility, accessible documents, screen reader support, and transcripts. Auxiliary aids or services must be provided in accessible formats, in a timely manner, and in such a way to protect the privacy and independence of the individual.

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

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

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

### **Briefing Packet**

At the same time HACSM issues a voucher, it will give the family a briefing packet containing the information listed below:

- The term of the voucher, voucher suspensions, and HACSM's policies on any extensions of the term and how the family can request an extension;
- A description of the method used to calculate the housing subsidy for a family;
- Housing Quality Standards (HQS) used by HACSM;
- Where the family may lease a unit;
- The HUD-required tenancy addendum, which must be included in the lease;
- The form the family must use to request approval of tenancy, and a description of the procedure for requesting approval for a tenancy;
- A statement of HACSM policy on providing information about families to prospective owners;
- HACSM subsidy standards including when and how exceptions are made;
- Materials (e.g. brochures) on how to select a unit and any additional information on selecting a unit that HUD provides;
- Materials (e.g. brochures) on how to select a unit and any additional information on selecting a unit that HUD provides;
- Information on federal, state and local equal opportunity laws and a copy of the housing discrimination complaint form;
- Resources, such as online search tools or organizations, known to HACSM that may assist the family in locating a unit. HACSM will ensure that the list of

landlords or other resources covers areas outside of poverty or minority concentration;

- Notice that if the family includes a person with disabilities, the family may request a list of available accessible units known to HACSM;
- Family obligations under the program;
- The grounds on which HACSM may terminate assistance for a participant family because of family action or failure to act;
- HACSM informal hearing procedures including when HACSM is required to offer a participant family the opportunity for an informal hearing, and how to request the hearing.

The briefing packet materials are posted on the Department of Housing website at [www.smchousing.org](http://www.smchousing.org) under Forms>Briefing Forms.

### **Briefing 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.

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

Applicants who provide prior notice of inability to attend a briefing will automatically be scheduled for the next available briefing. Applicants who fail to attend two scheduled briefings, without prior notification and HACSM approval, will be sent a notice of denial.

### **III. SUBSIDY STANDARDS AND VOUCHER ISSUANCE**

For each family, HACSM determines the appropriate number of bedrooms under its 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 lease, nor does it determine who within a household will share a bedroom/sleeping room.

The following requirements apply when HACSM determines family unit size:

- The subsidy standards will provide for the smallest number of bedrooms needed to house a family without overcrowding;
- The subsidy standards will be consistent with space requirements under the housing quality standards;
- The subsidy standards will be applied consistently for all families of like size and composition.

In issuing the voucher, HACSM will use the following guidelines:

- Head of household and his/her spouse, co-head, or partner (for example, boyfriend, girlfriend) will be issued one bedroom;
- All remaining family members will be issued one bedroom per two family members regardless of gender, age, or relationship of these family members;
- Foster children will be included in determining unit size only if they will be in the unit for more than nine months;
- Live-in aides will generally be assigned a separate bedroom. No additional bedrooms will be assigned for the live-in aide's family;
- Single person families will be issued one-bedroom;
- A family that consists of a pregnant woman will be treated as a two-person family;
- For participant families, the subsidy standard will not be increased for additions to the family *unless* the additions are approved by HACSM. Upon meeting the verification requirements, HACSM will approve additions due to birth, adoption, or court awarded custody. Any other additions require eligibility screenings. Upon approval, HACSM will evaluate subsidy standards based on the new household size. Any changes in the subsidy standard will be effective at the current annual/biennial/interim recertification. Conversely, if the household size decreases, the subsidy standard will be decreased at the annual/biennial/interim recertification.
- If the household size increases due to the addition of a spouse or partner and the spouse or partner has children, the subsidy standard will be increased to accommodate the spouse/partner and the children for whom s/he has legal custody (if applicable);
- Full-time students living away from the assisted unit will not be considered in the determination of subsidy standards;
- Adding additional members to the household will not be approved if it causes the family to be under-housed (overcrowded).
- A dependent under 18 years of age will not be included in the household unless the family can provide proof of guardianship, should none of the adults in the household be the dependent's biological parent(s).

All standards in this section relate to the number of bedrooms on the voucher, not the family's actual living arrangements.

HACSM will reference the following chart in determining the appropriate *voucher size* for a family:

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

4 Bedrooms	4-8
5 Bedrooms	6-10

Generally, Housing Quality Standards (HQS) and occupancy standards allow two persons per living/sleeping room and permit maximum occupancy levels (assuming a living room is used as a living/sleeping area). The levels may be exceeded if a room in addition to bedrooms and living room is used for sleeping.

### HQS GUIDELINES FOR UNIT SIZE SELECTED

	<u>Maximum # in Household</u>
0 Bedroom	2
1 Bedroom	4
2 Bedrooms	6
3 Bedrooms	8
4 Bedrooms	10
5 Bedrooms	12
6 Bedrooms	14

#### IV. EXCEPTIONS TO SUBSIDY STANDARDS

HACSM will only consider requests for exceptions to subsidy standards due to handicap or disability. 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

The family must request an exception to the subsidy standards in writing and explain the need or justification for a larger voucher size based on the handicap or disability and must include appropriate documentation.

Requests based on handicap or disability 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. HACSM may re-verify the family's continued need for an additional bedroom due to special medical equipment at annual reexamination.

HACSM will notify the family of its determination. If a participant family's request is denied, the notice will inform the family of their right to request an informal meeting.

#### V. VOUCHER ISSUANCE

The voucher is the family's authorization to search for housing. It specifies the unit size for which the family qualifies and includes both the date of voucher issuance and date of expiration. It contains a brief description of how the program works and explains the family obligations under the program. The voucher is evidence that

HACSM has determined the family to be eligible for the program and that HACSM expects to have money available to subsidize the family if the family finds an approvable unit. However, HACSM does not have any liability to any party by the issuance of the voucher, and the voucher does not give the family any right to participate in HACSM's Voucher Program.

## **VI. VOUCHER TERM AND EXTENSIONS**

### **Voucher Term**

The Housing Voucher is valid for a term of 180 calendar days.

The family must submit a Request for Tenancy Approval and proposed lease within the 180-day period.

### **Extensions of Voucher Term**

If a family is unable to find an acceptable unit within the specified 180-day term, the family must request an extension in writing and submit the request prior to the voucher expiration date and include the reason(s) for the extension. HACSM will consider requests as follows:

- a. Extenuating circumstances, such as hospitalization, family emergencies, etc., which affected the family's ability to locate an acceptable unit but are not expected to affect their search during the additional period, if granted. Any request for an extension must be in writing, submitted prior to the voucher expiration date, and include the reason(s) for the extension.
- b. If there is a request for a reasonable accommodation due to a disability, HACSM may require the family to provide documentation to support the request. HACSM will review the requests on a case-by-case basis to determine the appropriate length for an extension, if needed.

If additional time is requested due to other circumstances, HACSM will review and approve the extension request on a case-by-case basis. HACSM may require documentation to support the request.

### **Suspensions of Voucher Term**

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

### **Expiration of Voucher Term**

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

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

## Chapter 6

### VERIFICATIONS

**MTW Waiver:** *The Agency is authorized to adopt and implement any reasonable policy for verifying family income and composition and for determining resident eligibility that differ from the currently mandated program requirements in the 1937 Act and its implementing regulations. This authorization waives certain provisions of 24 CFR 982.516 and 982 Subpart E, as necessary to implement the Agency's Annual MTW Plan.*

#### I. INTRODUCTION

HACSM will verify information that is used to establish the family's eligibility and level of assistance and is required to obtain written authorization from the family in order to collect the information. Applicants and program participants must cooperate with the verification process as a condition of receiving assistance. HACSM cannot pass on the cost of verification to the family.

#### II. FAMILY CONSENT TO RELEASE OF INFORMATION

The family must supply any information that HACSM or HUD determines is necessary to the administration of the program and must consent to HACSM verification of that information.

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 HACSM may collect information from State Wage Information Collection Agencies (SWICAs) and current and former employers of adult family members. Only HUD is authorized to collect information directly from the Internal Revenue Service (IRS) and the Social Security Administration (SSA). Adult family members must sign other consent forms as needed to collect information relevant to the family's eligibility and level of assistance.

If any family member who is required to sign a consent form fails to do so, HACSM will deny admission to applicants and terminate assistance of participants. The family may request an informal review (applicants) or informal hearing (participants) in accordance with HACSM procedures.

#### III. OVERVIEW OF VERIFICATION REQUIREMENTS

HACSM will use the following resources related to verification processes:

- HUD's Enterprise Income Verification (EIV) program (a computer matching of tenant income and identity data) in combination with tenant-provided documents, enables HACSM staff to verify and confirm the reliability of tenant-provided documents without relying on third-party sources. The family must provide *three current and consecutive* pay stubs for HACSM to determine annual income.

- If the EIV system is not available, HACSM will accept family-provided documentation. The family must provide three current and consecutive pay stubs for HACSM to determine annual income.
- HACSM may continue to use third-party verification to resolve income discrepancies or in the absence of other verification or family-provided documents.
- Family self-certification will be used as a last resort. As an additional safeguard, HACSM will inform applicants about the UIV/EIV system during the briefing presentation, and to emphasize the penalties for under-reporting income.

### **Requirements for Acceptable Documents**

Any documents used for verification should be the original (not photocopies) to the maximum extent possible. The documents must not be damaged, altered or in any way illegible.

Verification documents should not be more than 180 days old from the date of the HACSM interview for applicants and participants.

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

Print-outs from web pages or websites are considered original documents. Any documentation from web sites or online accounts must contain an identifier (i.e. name, address) linking the statement or printout to the household member(s).

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

### **HUD's Enterprise Income Verification (EIV) System**

#### ***EIV Income Reports***

The data shown on income reports is updated quarterly. Data may be between three and six months old at the time reports are generated.

The EIV system contains income reports showing earned income, unemployment benefits, and Social Security/SSI benefits for participant families.

HACSM will obtain income reports from EIV as part of the annual or triennial reexamination process. The EIV income reports will be compared to family-provided documentation as part of these reexamination processes. The family must provide *three current and consecutive* pay stubs for HACSM to determine annual income. HACSM may use the year-to-date amounts on pay stubs or other documents such as W-2 forms, income tax returns, etc. if the information is a more accurate (or current) account of the family's earned income.

If additional information is not needed, HACSM will use the current family-provided documents to calculate annual income.

Third party verification is required only if the tenant disputes the EIV data or additional information is required as determined by HACSM (i.e. effective dates of employment, pay rate, number of hours worked, pay frequency for new jobs, or confirmation of change in circumstances). HACSM will use current family-provided documents or the most current information to calculate annual income.

The EIV income reports will be retained in participant files with the applicable reexamination documents.

When HACSM determines through the EIV reports and/or third-party verification that a family has concealed or under-reported income, HACSM will review the information and determine appropriate corrective action.

### ***EIV Identity Verification***

The EIV system verifies tenant identities against SSA records. These records are compared to PIC (PIH Information Center) data for a match on social security number, name, and date of birth.

HACSM will use EIV's *Identity Verification Report* on a monthly basis to improve the availability of income information in EIV [Notice PIH 2012-10].

When identity verification for a participant fails, a message will be displayed within the EIV system and no income information will be displayed.

HACSM will attempt to resolve PIC/SSA discrepancies by reviewing file documents. When HACSM determines that discrepancies exist due to HACSM errors such as spelling errors or incorrect birth dates, the errors will be corrected promptly.

If HACSM determines that discrepancies exist due to inconsistent or invalid family-provided documentation, it will require the family to provide current or valid documentation.

### ***Third-party Verification***

HACSM may continue to use third party verification to resolve discrepancies or in the absence of tenant-provided documents.

HACSM may mail, fax, e-mail, or hand deliver third-party written verification requests and will accept third-party responses using any of these methods.

HACSM will make at least one written and/or oral attempt to obtain third-party verification. A record of the attempt to contact the third-party source (including no-answer calls) and all contacts with the source will be documented in the file. Regarding third-party oral verification, HACSM 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.

HACSM may determine that third-party verification is not available (i.e. when there is a service charge for verifying an asset *and* the family has original documents that provide the necessary information). HACSM will document in the family file the reason that the third-party verification was not available and will place a copy of the original document(s) in the family file.

### **Self-Certification**

When information cannot be verified by EIV, third party or review of documents, family members will be required to submit self-certifications attesting to the accuracy of the information they have provided to HACSM.

HACSM 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 HACSM and must be signed by the family member whose information or status is being verified. All self-certifications must be signed in the presence of a HACSM representative or notary public.

## **IV. VERIFYING FAMILY INFORMATION**

### **Legal Identity**

HACSM will require families to furnish verification of legal identity for each household member.

Verification of legal identity includes, but is not necessarily limited to, certificate of birth, naturalization papers, current and valid driver's license or government-issued identification card, U.S. military discharge (DD-214), and current U.S. passport.

If a document submitted by a family is illegible for any reason or otherwise questionable, more than one of these documents may be required.

Legal identity will be verified for all applicants at the time of eligibility determination and in cases where HACSM has reason to doubt the identity of a person representing him or herself to be a participant.

### **Social Security Numbers (24 CFR 5.216, Notice PIH 2018-24)**

The family must provide documentation of a valid social security number (SSN) for each member of the household, with the exception of individuals who do not contend eligible immigration status. Exemptions also include: existing program participants who were at least 62 years of age as of January 31, 2010 and had not previously disclosed an SSN.

Note that an individual who previously declared to have eligible immigration status may not change his or her declaration for avoiding compliance with the SSN disclosure and documentation requirements or penalties associated with noncompliance with these requirements. Nor may the head of household opt to remove a household member from the family composition for this purpose.

HACSM will accept the following documentation as acceptable evidence of the social security number:

- a. An original SSN card issued by the Social Security Administration (SSA);
- b. An original SSA-issued document, which contains the name and SSN of the individual;
- c. An original document issued by a federal, state, or local government agency, which contains the name and SSN of the individual.

HACSM may only reject documentation of an SSN provided by an applicant or participant if the document is not an original document or if the original document has been altered, mutilated, is illegible, or appears to be forged.

If there are discrepancies between the name(s) on the SSN card and other identification documents and/or what the family reports, HACSM will use the name listed on the SSN card as the correct name for its records and may require the family to obtain a SSN card that matches other identification documents and/or what they report to HACSM.

When a *participant* requests to add a new household member who is at least six years of age, or who is under the age of six and has an SSN, the participant must provide the complete and accurate SSN assigned to each new member at the time of reexamination, in addition to the documentation required to verify it. HACSM will 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 six and has not been assigned an SSN, the participant must provide the SSN assigned to each new child and the required documentation within 90 calendar days of the child being added to the household. A 90-day extension will be granted if HACSM determines the participant's failure to comply was due to unforeseen circumstances and was outside of the participant's control. During the period HACSM is awaiting the documentation of the SSN, the child will be counted as part of the assisted household.

Social security numbers will be verified only once during continuously-assisted occupancy.

Once the individual's verification status is classified as "verified" in HUD's EIV system, HACSM may, at its discretion, remove and destroy copies of documentation accepted as evidence of social security numbers. The retention of the EIV Summary Report or Income Report is adequate documentation of an individual's SSN.

### **Documentation of Age**

A birth certificate or other official record of birth is the preferred form of age verification for all family members. For elderly family members, an original document that provides evidence of the receipt of social security retirement benefits is acceptable.

Age will be verified only once during continuously-assisted occupancy.

### **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 Chapter 3 (Eligibility) and Chapter 21 (Definitions).

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. In cases where reasonable doubt exists, HACSM may ask the family to provide further verification.

## **Marriage**

Certification by the head of household is normally sufficient verification. If HACSM has reasonable doubts about a marital relationship, HACSM will require the family to document the marriage.

For newly added spouses, a marriage certificate is required to verify that a couple is married.

## **Separation or Divorce**

Certification by the head of household is normally sufficient verification. If HACSM has reasonable doubts about a separation or divorce, or the spouse was a previous member of the household, HACSM will require the family to provide documentation of the divorce or separation.

## **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).

In the event a member of the household passes away, HACSM may request a copy of the certified death certificate from the family.

## **Foster Children and Foster Adults**

Third-party verification from the state or local government agency responsible for the placement of the foster children or foster adults with the family is required.

## **Student Status**

HACSM requires families to provide information about the student status of all students who are under 24 years of age. This information will be verified only if:

- The family reports full-time student status for an adult other than the head, spouse, or co-head;
- The family reports child care expenses to enable a family member to further his or her education;
- The family includes a student enrolled in an institution of higher education.

## **V. DOCUMENTATION OF DISABILITY**

HACSM will verify the existence of a disability to allow certain deductions from income. HACSM is not permitted to inquire about the nature or extent of a person's disability. HACSM will not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If HACSM receives a verification document that provides such information, HACSM will not place this information in the tenant file. Under no circumstances will HACSM request a participant's medical record(s). For more information on health care privacy laws, see the Department of Health and Human Services' website at <http://www.hhs.gov/ocr/privacy/>.

The above cited information does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they are persons with disabilities:

- 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 receipt of disability benefits from the Social Security Administration (SSA) is sufficient verification of disability for the purpose of qualifying for waiting list preferences (if applicable) or certain income deductions.

### **Family Members Not Receiving SSA Disability Benefits**

Receipt of veteran's disability benefits, worker's compensation, or other non-SSA benefits based on the individual's claimed disability are not sufficient verification that the individual meets HUD's definition of disability in 24 CFR 5.403.

For family members claiming disability who do not receive disability benefits from the SSA, a knowledgeable professional must provide third-party verification that the family member meets the HUD definition of disability. The knowledgeable professional will verify whether the family member does or does not meet the HUD definition.

## **VI. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS**

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. The family will be required to provide 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 appropriate documentation for each family member. HACSM is required to obtain verification of citizenship and immigration status declarations.

### **U.S. Citizens or Nationals**

HACSM 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 parent/guardian for minors.

HACSM may request verification of the declaration by requiring presentation of a birth certificate, United States passport or other appropriate documentation (as established by HACSM).

### **Eligible Immigrants**

All family members claiming eligible immigration status must declare their status in the same manner as U.S. citizens and nationals.

The documentation required for eligible non-citizens varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, age, and the date on which the family began receiving HUD-funded assistance.

- **All** non-citizens claiming eligible status must sign a declaration of eligible immigrant status on a form acceptable to the HACSM.
- Except for persons 62 or older, all non-citizens must sign a verification consent form. A person 62 year 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 retirement benefits.
- For family members under the age of 62 who claim to be eligible immigrants, the HACSM will verify immigration status with the United States Citizenship and Immigration Services (USCIS). The HACSM will follow all USCIS protocols for verification of eligible immigration status.
- Additional documents are required based upon the person's status.

## **VII. VERIFICATION OF PREFERENCE STATUS**

HACSM will verify any preferences claimed by an applicant that determined placement on the waiting list. In order to verify that an applicant lives, works, or is hired to work in San Mateo County, HACSM will require at least one of the following documents:

- Rent receipts showing address of San Mateo County unit
- Lease Agreement(s)
- Utility Bills
- Employer or agency records
- Employment offer letter
- Drivers' License
- Voters' registration records
- Credit report
- Statement from household with whom the family is residing

NOTE: Work or hired to work does not include volunteer work, internships, being an independent contractor or employment with temporary agencies.

## VIII. VERIFYING INCOME

### Earned Income

As described earlier in this chapter, HACSM will use the EIV system data in conjunction with family-provided documents to verify earned income. For wages, the family must provide three current and consecutive pay stubs.

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.

In the absence of family-provided documents, HACSM will verify earned income via third-party documentation or, as a last resort, family self-certification.

### Business and Self-Employment Income

Business owners and self-employed persons will be required to provide all schedules completed for filing federal and local (State) taxes in the preceding year. If such tax return is unavailable, HACSM will use gross receipts from the business or self-employment as income in determining the subsidy amount. Verification of gross receipts may be income reports or written confirmation from the payor. Print-outs generated from the payor's website are acceptable. As a last resort, family self-certification is acceptable with HACSM supervisor approval.

### Social Security/SSI Benefits

To verify the SS/SSI benefits of applicants, the family will be required to provide a current SSA benefit verification letter for each family member that receives SS/SSI benefits.

To verify the SS/SSI benefits of participants, HACSM will obtain information about SS/SSI benefits through the EIV System. If complete benefit information is not available in HUD systems, the family will be required to provide a current SSA benefit verification letter for each family member that receives SS/SSI, or as indicated by HACSM.

### Alimony or Child Support

If the family declares that it **receives regular payments** for alimony or child support, HACSM will use *at least one* of the following:

- Copy of the latest checks and/or payment stubs from the family or copy of a separation or settlement agreement or a divorce decree stating amount and type of support and payment schedules
- If payments are made through a state or local entity, HACSM will request a historical record of payments and request that the entity disclose any known information about the likelihood of future payments
- If payments are paid by a former spouse/absent parent, obtain third-party verification 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.

If a family receives amounts for alimony and/or child support that differ from the court-awarded amount (i.e. partial payments, arrears payments), HACSM will use the actual amount received by the family if there is verification of the payment(s) being made consistently and it appears the payments are anticipated to continue.

If the family declares that it ***receives irregular or no payments***, the family will be required to certify that support payments are not being received. HACSM may request further verification that the family does not receive support payments.

### **Income from Excluded Sources**

HACSM will not verify, count, or report income that is 100% excluded from the income calculation process on Form HUD-50058 MTW (see Chapter 7 or Definitions chapter for further detail on eligible income exclusions).

### **Zero Income Status**

HACSM will check the EIV system and may request information from third-party sources to verify that certain forms of income such as unemployment benefits, TANF, SS, SSI and earnings are not being received by families claiming to have zero income.

HACSM will conduct reviews with families claiming zero income every 120 days from the last effective date of action.

### **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.

For students subject to having a portion of their student financial assistance included in annual income, HACSM will require the family to provide verification of both the source and the amount from the educational institution attended by the student as well as from any other person or entity providing such assistance, as reported by the student. In addition, HACSM will request verification of the student's tuition amount.

If HACSM is unable to obtain acceptable verification of the requested information, it will pursue other forms of verification (i.e. third-party).

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. The full amount of student financial assistance is also excluded for students attending schools that do not qualify as institutions of higher education. Excluded amounts are verified only if, without

verification, the HACSM would not be able to determine whether or to what extent the income is to be excluded.

## **IX. VERIFYING ASSETS**

HACSM will review and use family-provided documents when the total value of assets is \$50,000 and less. Documentation for assets \$50,000 and less includes, but is not necessarily limited to, current statements and online printouts from the financial institution. Any documentation must contain an identifier (i.e. name, address) linking the statement or printout to the household member(s), an ending balance, and the documentation must be current (i.e. within 180 days of interview date).

If the total assets is over \$50,000, after excluding any retirement accounts, all asset accounts will require third-party verification. If third-party verification is not returned or not available, HACSM will accept family-provided documents.

HACSM will accept a self-certification from a family as verification of assets disposed of for less than fair market value.

### **Net Income from Rental Property**

When the family reports receiving income from rental property, the family must provide the following:

- A current executed lease for the property that shows the rental amount or certification from the current tenant; and
- 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 Schedule E (Rental Income). If Schedule E was not prepared, the HACSM will require the family members involved in the rental 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.

### **Retirement Accounts**

HACSM will accept original copies of documents from the financial entity supplied by the family as evidence of the status of retirement accounts.

The type of original document that will be accepted depends upon the family member's retirement status:

- *Before retirement*, HACSM will accept an original document from the entity holding the account dated within six months of submission.
- *Upon retirement*, HACSM will accept an original document from the entity holding the account that reflects any distributions of the account balance, any lump sums taken and any regular payments.
- *After retirement*, HACSM will accept an original document from the entity holding the account dated no earlier than 12 months before that reflects any distributions of the account balance, any lump sums taken and any regular payments.

## **X. VERIFYING DEDUCTIONS**

HACSM will only verify that the family members identified as dependents or elderly/disabled persons meet the definitions. No further verifications are required.

### **Dependent Deduction**

- 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
- Any person age 18 or older for whom the dependent deduction is claimed is not a live-in aide and is a person with a disability or a full time student less than 24 years of age.

### **Elderly/Disabled Family Deduction**

HACSM will verify that the head, spouse, or co-head is 62 years of age or older or a person with disabilities.

### **Medical Expenses Deduction**

HACSM will verify that:

- The household is eligible for the deduction.
- The costs to be deducted are qualified medical expenses (determined by HACSM).
- The expenses are not paid for or reimbursed by any other source.
- Costs incurred in past years are counted only once.

Medical expenses will be verified through the following method:

- Copies of cancelled checks used to make medical expense payments and/or printouts or receipts from the source. HACSM will include all eligible expenses incurred and paid within the 12 months prior to the current recertification in its calculation without trying to determine if the expense is anticipated to continue or not. However, if the family can provide credible verification that proves a medical expense is on-going in nature, such as monthly payments toward a medical bill or medical premium, HACSM will accept evidence of monthly payments or ongoing payments incurred in previous years that will be paid during the upcoming 12 months.

HACSM may also randomly select cases to request third-party verification as a means of ensuring accurate reporting from families while not unduly slowing the initial and continued eligibility processes.

If the family is unable to provide proof of expense listed under Section X within the timeframe given by HACSM, or the information provided is incomplete, HACSM shall calculate the family's annual adjusted income without the deduction. In the event the family submits proof of expense after the interim or recertification is completed and made effective, HACSM shall adjust the tenant portion of rent, if any, effective at least 30 days from the first of the month following receipt of proof of expense. In any event, HACSM shall not consider any expense if proof of expense is submitted 60 days after the effective date of the interim or recertification.

## **Disability Assistance (Expenses) Deduction**

HACSM will verify that:

- The family member for whom the expense is incurred is a person with disabilities
- The expense permits a family member, or members, to work
- The expense is not reimbursed from another source

### ***Attendant Care***

Expenses for attendant care will be verified through the following method:

- Copies of cancelled checks used to make attendant care payments and/or receipts from care source. The family will be required to provide at least three current and consecutive cancelled checks and/or receipts

HACSM may also randomly select cases to request third-party verification as a means of ensuring accurate reporting from families while not unduly slowing the initial and continued eligibility processes.

### ***Auxiliary Apparatus***

Expenses for auxiliary apparatus will be verified through the following method:

- Billing statements for purchase of auxiliary apparatus, or other evidence of monthly payments or total payments that will be due for the apparatus during the upcoming 12 months

If the family is unable to provide proof of expense listed under Section X within the timeframe given by HACSM, or the information provided is incomplete, HACSM shall calculate the family's annual adjusted income without the deduction. In the event the family submits proof of expense after the interim or recertification is completed and made effective, HACSM shall adjust the tenant portion of rent, if any, effective at least 30 days from the first of the month following receipt of proof of expense. In any event, HACSM shall not consider any expense if proof of expense is submitted 60 days after the effective date of the interim or recertification.

## **Child Care Expenses Deduction:**

HACSM will verify that:

- The child is eligible for care. To be eligible for the child care deduction, the costs must be incurred for the care of a child 12 years or younger.
- The costs claimed are not reimbursed by another source.
- The costs enable a family member who is either a parent or legal guardian of the child (Qualified Member) to work, actively seek work, or further his or her education and only to the extent such amounts are not reimbursed.
- The child care expenses do not include payments for care made to a parent of the child or someone who has a legal obligation to the child.
- The costs are reasonable (based on typical costs in the area). In evaluating child care expenses, HACSM will consider factors such as how the schedule for the

claimed activity relates to the hours of care provided and/or the time required for transportation.

If the family presents a justification for costs that exceed typical costs in the area, HACSM will request additional documentation from the family, as required, to support a determination that the higher cost is appropriate.

Expenses for child care will be verified through HACSM-provided certification form plus copies of cancelled checks used to make child care payments and/or receipts from child care source. The family will be required to provide at least three current and consecutive cancelled checks and/or receipts.

To reduce cases of over-reporting child care expenses and potential fraud, HACSM may require participating families to provide copies of their Federal and/or State tax return, if available, for proof of child care expenses claimed.

HACSM may also randomly select cases to request third-party verification as a means of ensuring accurate reporting from families while not unduly slowing the initial and continued eligibility processes.

If the family is unable to provide proof of expense listed under Section X within the timeframe given by HACSM, or the information provided is incomplete, HACSM shall calculate the family's annual adjusted income without the deduction. In the event the family submits proof of expense after the interim or recertification is completed and made effective, HACSM shall adjust the tenant portion of rent, if any, effective at least 30 days from the first of the month following receipt of proof of expense. In any event, HACSM shall not consider any expense if proof of expense is submitted 60 days after the effective date of the interim or recertification.

## Chapter 7

### COMPUTATION OF ANNUAL INCOME, SUBSIDY AND FAMILY SHARE

**MTW Waiver:** *The Agency is authorized to adopt and implement any reasonable policy to establish payment standards, rents or subsidy levels for tenant-based assistance that differ from the currently mandated program requirements in the 1937 Act and its implementing regulations. The Agency is authorized to adopt and implement any reasonable policies to calculate the tenant portion of the rent that differ from the currently mandated program requirements in the 1937 Act and its implementing regulations. This authorization waives certain provisions of Section 8(o)(1), 8(o)(2), 8(o)(3), 8(o)(10) and 8(o)(13)(H)-(I) of the 1937 Act and 24 CFR 982.508, 982.503 and 982.518, as necessary to implement the Agency's MTW Plan.*

#### I. INTRODUCTION

A family's income determines eligibility for assistance and is also used to calculate the family's payment and HACSM's subsidy. Once annual income has been established, HACSM may subtract from annual income any of five deductions for which a family qualifies. Based on the adjusted annual income, HACSM will determine its subsidy payment on behalf of the family.

#### II. ANNUAL INCOME

Annual income is the total income from all sources received by the family, including: the head of household, co-head and/or spouse/partner, each additional member of the family, and all net income derived from assets exclusive of income that is temporary, non-recurring or sporadic, and exclusive of certain other types of income (described later in this section).

HACSM may use either actual past income or projected future income for purposes of calculating annual income.

For school employees who are not paid during summer recess, HACSM will consider the actual wages earned during the school year, usually 9-10 months, as annual income. At the same time, HACSM will not process interims for these families when their earnings from school stop during the summer months.

For other seasonal employees (i.e. roofers, stadium concession/vendor employees), HACSM will consider the actual wages earned during the season as annual income. HACSM will not process interims for these families when their earnings from seasonal employment stop during the off-season.

Annual Income **includes**, but is not limited to:

- The full (gross) amount, before any payroll deductions, of wages and salaries, overtime pay, commission fees, tips and bonuses, and other compensation for personal services.
- All regular pay, special pay and allowances of a member of the Armed Forces **except** for the special pay to a family member serving in the Armed Forces who is exposed to hostile fire.
- 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 (IRS) regulations (Publication 535). 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.

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.

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.

To determine business expenses that may be deducted from gross income, HACSM will use current applicable IRS rules (see IRS Publication 535) for determining allowable business expenses, unless a topic is addressed by HUD regulations or guidance as described below:

- HUD regulations do not permit deductions from gross income for business expansion.
- HUD regulations do not permit deductions from gross income for the amortization of capital indebtedness.
- Interest and dividends from assets and other net income of any kind from real and personal property totaling \$50,000 and above.

For total assets that exceed \$50,000, HACSM will include as income the *actual* income anticipated to be derived from the assets.

**Asset Limits**: Current participants will be determined ineligible for the program if they have experienced an increase in assets, valuing more than \$100,000 in additional assets, or have gained ownership interest in a suitable home in

which they have a legal right to reside unless the family is making a good faith effort to sell the home and the subsequent proceeds are within the aforementioned net asset limit.

A 'suitable home' is defined as a single-family dwelling, duplex (includes triplex, etc.), condominium, townhome, mobile and manufactured homes.

Excluded from assets, for the purpose of asset limits, are interests in Indian trust land, equity accounts in HUD homeownership or FSS programs, certain inaccessible trust funds, retirement accounts that are codified by IRS (e.g. IRAs, Roth IRAs, 401(k), 403(b), and 457 plans), settlements or awards due to actions that resulted in the serious disability of a household member, tax-protected education savings accounts, and personal property not of significant value.

- 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).
- 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.
- Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation, and severance pay, if they are received either in the form of periodic payments or in the form of a lump-sum amount or prospective monthly amounts for the delayed start of a periodic payment. If they are received in a one-time lump sum (as a settlement, for instance), they are treated as lump-sum receipts.
- Disability or death benefits and lottery receipts paid periodically, rather than in a single lump sum.
- Most lump-sums received because of delays in processing periodic payments, such as unemployment or welfare assistance, are counted as income. However, lump-sum receipts for the delayed start of periodic social security or supplemental security income (SSI) payments are not counted as income.

Additionally, any deferred disability benefits that are received in a lump-sum or in prospective monthly amounts from the Department of Veterans Affairs are to be excluded from annual income.

HACSM will 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, HACSM will use the reduced benefit amount after deducting only the amount of the overpayment withholding from the gross benefit amount.

- Welfare assistance, including any amount being deducted from the family's income because of fraud or failure to participate in economic self-sufficiency programs or comply with work activities.
- Periodic and determinable allowance, such as alimony and child support payments. HACSM will count court-awarded amounts for alimony and child support unless the HACSM 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.

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.

If a family receives amounts for alimony and/or child support that differ from the court-awarded amount (i.e. partial payments, arrears payments), the HACSM will use the actual amount received by the family if there is verification of the payment(s) being made consistently and they are anticipated to continue.

- Regular contributions and gifts received from persons not residing in the dwelling.

Examples of regular contributions and gifts 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.

- Income, including wages/earnings, for each full-time student 24 years or older.
- Student Financial Assistance. The inclusion of certain student financial assistance applies only to students who satisfy all of the following conditions:
  - They are enrolled in an institution of higher education, as defined under the Higher Education Act (HEA) of 1965.
  - They are seeking or receiving Section 8 assistance on their own—that is, apart from their parents—through the HCV program, the project-based voucher program, or the moderate rehabilitation program.
  - They are under 24 years of age **OR** they have no dependent children.

For students who satisfy these three conditions, any financial assistance in excess of tuition 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.

- 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.

Generally, an individual who is expected to be absent from the assisted unit for 90 consecutive days *or less* is considered temporarily absent and continues to be considered a family member.

- 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).

HACSM will include 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. In addition, HACSM will include in annual income payments received from Kin-GAP (Kinship Guardian Assistance Payments - payments for foster care under California law).

- Adoption assistance payments.

Annual income **does not** include:

- Non-recurring income, such as casual, sporadic or irregular gifts. 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 would be considered sporadic if future work could not be anticipated and no historic, stable pattern of income existed.

- Income received from assets valued at less than \$50,000.
- Income received from retirement accounts that are codified by the IRS such as IRAs, Roth IRAs, 401(k)s, 403(b)s, and 457 plans.
- Lump-sums or prospective monthly amounts received as deferred disability benefits from the Department of Veterans Affairs.
- Lump-sums received as a result of delays in processing Social Security and SSI payments.
- Employment income earned by children (including foster children) under the age of 18 years.

- Earnings (wages) in excess of \$480 for each full-time student under 24 years old (except for the head, spouse, or co-head).

For a family member, other than the head, co-head, or spouse to qualify for the full-time student (FTS) status, and hence the \$480 dependent deduction and earned income exclusion, the family member must be a FTS at an accredited institution, and they must provide a transcript of their FTS status at all subsequent recertification appointments.

If documentation is not provided or cannot be confirmed, HACSM will include wage income in its calculation process and the family member will not receive the \$480 dependent deduction.

- Income earned by a live-in aide.
- Amounts received under a resident services 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 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.
- 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:
  1. Students residing with parents who are seeking or receiving Section 8 assistance
  2. Students who are enrolled in an educational institution that does not meet the 1965 HEA definition of *institution of higher education*
  3. Students who are over 23 AND have at least one dependent child
  4. Students who are receiving financial assistance through a governmental program not authorized under the 1965 HEA.
- Other exclusions contained in 24 CFR 5.609(c), 5.609(c)(17) and updated by FR Notice 5/20/14:
  - a) Reimbursement of medical expenses
  - b) Amounts received by participants in other publicly assisted programs which are specifically for or in reimbursement for out-of-pocket

expenses incurred and which are made solely to allow participation in a specific program

- c) 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)]
- d) 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)]
- e) Refunds or rebates on property taxes paid on the dwelling unit
- f) 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 that family member at home.
- g) The value of the allotment provided to an eligible household for coupons under the Food Stamp Act of 1977 (7 U.S.C. 2011-2029).
- h) Benefits under Section 1780 of the School Lunch Act and Child Nutrition Act of 1966, including WIC
- i) Payments to volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058)
- j) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c))
- k) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e)
- l) Amounts received under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f))
- m) Allowances, earnings, and payments to participants in programs funded under the Workforce Investment Act of 1998 (29 U.S.C. 2931)
- n) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, 90 Stat. 2503-04)
- o) Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b))
- p) A lump sum or periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the United States District Court case entitled *Elouise Cobell et al. v. Ken Salazar*

*et al.*, for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010.

- q) 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)
- r) Benefits under the Indian Veterans Housing Opportunity Act of 2010 (only applies to Native American housing programs)
- s) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f))
- t) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in *In Re Agent-Orange* product liability litigation, M.D.L. No. 381 (E.D.N.Y.)
- u) Payments received under 38 U.S.C. 1833(c) to children of Vietnam veterans born with spinal bifida, children of women Vietnam veterans born with certain birth defects, and children of certain Korean service veterans born with spinal bifida
- v) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721)
- w) 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)
- x) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j))
- y) 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)
- z) Amounts of scholarships funded under Title IV of the Higher Education Act of 1965, including awards under federal work-study programs or under the Bureau of Indian Affairs student assistant programs (20 U.S.C. 1087uu). For Section 8 programs, the exception found in § 237 of Public Law 109-249 applies and requires that the amount of financial assistance in excess of tuition and mandatory fees shall be considered income in accordance with the provisions codified at 24 CFR 5.609(b)(9), except for those persons with disabilities as defined by 42 U.S.C. 1437a(b)(3)(E) (Pub. L. 109-249)

- aa) Allowances, earnings and payments to AmeriCorps participants under the National and Community Service Act of 1990 [42 U.S.C. 12637(d)]
- bb) 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).
- cc) Any amounts in an “individual development account” as provided the Assets for Independence Act, as amended in 2002
- dd) Payments made from the proceeds of Indian tribal trust cases as described in Notice PIH 2013-30, “Exclusion from Income of Payments under Recent Tribal Trust Settlements” [24 U.S.C. 117b(a)]
- ee) Major disaster and emergency assistance received under the Robert T. Stafford Disaster Relief and Emergency Assistance Act and comparable disaster assistance provided by states, local governments, and disaster assistance organizations.

### **Income from Excluded Sources**

Generally, HACSM will not collect, verify, count or report income that is excluded from the income calculation process on Form HUD-50058 MTW.

For excluded asset income for households with assets valued at less than \$50,000, HACSM will continue to collect applicant and tenant-provided documentation regarding assets of all family members; however, if total assets of the family are valued at less than \$50,000 based on the provided documentation, HACSM will no longer calculate asset income in the family’s total annual income.

## **III. DETERMINING ANNUAL ADJUSTED INCOME**

### **Dependent Deduction**

An allowance of \$480 is deducted from annual income for each dependent. A *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 under the age of 24 years old, foster children, foster adults, and children who have been adopted. Live-in aides and any children that may reside with them are never considered dependents.

### **Elderly or Disabled Family Deduction**

A single deduction of \$400 is taken for any elderly or disabled family. 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.

### **Medical Expenses Deduction**

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.

Unreimbursed medical expenses, in combination with any disability assistance expenses in excess of three percent, of annual income will be deducted.

HACSM will include all eligible expenses in its calculation without trying to determine if the expense is anticipated to continue or not; however, HACSM will accept evidence of monthly or ongoing payments incurred in previous years that will be paid during the upcoming 12 months.

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

### **Disability Assistance Expenses Deduction**

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.

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

The family must identify the family members enabled to work as a result of the disability assistance expenses. In evaluating the family’s request, the HACSM 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 HACSM 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 as follows: 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.

### **Eligible Auxiliary Apparatus**

Expenses incurred for maintaining or repairing an auxiliary apparatus are eligible. In the case of an apparatus that is specially adapted to accommodate a person with disabilities (e.g., a vehicle or computer), the cost to maintain the special adaptations (but not maintenance of the apparatus itself) is an eligible expense.

The cost of service animals trained to give assistance to persons with disabilities, including the cost of acquiring the animal, veterinary care, food, grooming, and other continuing costs of care, may be included. The amount deducted shall reflect reasonable charges for such costs and care.

### **Eligible Attendant Care**

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

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

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

If the care attendant also provides other services to the family, the HACSM 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 will be deducted for payments to a member of an assisted family. 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. If HACSM deems the expense is not reasonable or the total amount claimed is disproportionate to the family income, HACSM may require further verification or ask the family to provide a detailed budget to substantiate how the household expenses, including medical expenses, are paid.

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

## **Child Care Expense Deduction**

HACSM defines *child care expenses* as amounts anticipated to be paid by the family for the care of children 12 years of age and under during the period for which annual income is computed, but only where such care is necessary to enable the parent(s) or legal guardian of the child(ren) (Qualified Member) to work, seek work, or go to school (furthering education), and only to the extent such amounts are not reimbursed.

The amount deducted shall reflect reasonable charges for child care. The maximum allowable child care deduction is the lesser of the actual expense or 50% of the gross earnings or net earnings from self-employment of the Qualified Member:

- If only one parent is in the subsidized household, the maximum child care expense deduction is 50% of the parent's gross earned income.
- If both parents are in the subsidized household, the 50% gross earnings cap will be based on the lower of the two earnings from the parents.

In evaluating child care expenses, HACSM will consider factors such as how the schedule for the claimed activity relates to the hours of care provided and the time required for transportation.

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. 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.

Payments for care are not eligible as child care deduction if paid to the non-custodial parent or legal guardian of the child. Child care expenses do not include payments

for care made to any household members, a parent of the child, or someone who has a legal obligation to the child.

### ***Work (Employment)***

If the child care expense being claimed is to enable a family member who is a Qualified Member to work, the family must provide evidence of the Qualified Member's employment during the time that child care is being provided. Employment is any legal work activity (full- or part-time) for which a family member is compensated. The amount deducted shall not exceed 50% of the annual gross earned income of the lower paid Qualified Member.

### ***Seek Work***

If the child care expense being claimed is to enable a family member who is a Qualified Member to seek employment, the family will be required to provide evidence of the Qualified Member's efforts to obtain employment at each reexamination. HACSM will allow the lesser of \$5,000 or the actual expense paid per year per qualifying child for a parent or guardian who lost employment and is seeking work.

The maximum period for such child care deduction under "Seek Work" is 12 months, beginning from the effective date of HACSM approval.

### ***Furthering Education***

If the child care expense being claimed is to enable a Qualified Member to further his or her education, the Qualified Member must be enrolled in an accredited school (academic or vocational) or participating in a formal training program. The family member is not required to be a full-time student, but the time spent in educational activities must be commensurate with the child care claimed. One parent may be considered as having earnings if the parent is a full-time student or a person with disabilities that inhibits the parent to care for the child. In this case, the earnings will be based on the working parent. The maximum allowable child care deduction for a parent or guardian who has no earnings but attends school full time will be the lesser of the actual expense paid or \$5000 per year per qualifying child.

### ***Eligible Child Care Expenses***

The type of care to be provided is determined by the assisted family; however, child care expenses paid to a family member who lives in the family's unit are not eligible and child care expenses paid to the legal parent not living in the assisted household (non-custodial parent; absent parent) are not eligible. Payments for child care to relatives who do not live in the unit are eligible.

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

The costs of general housekeeping and personal services are not eligible as child care expenses.

### **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 the services and that the expenses are not paid or reimbursed by any other source, and (3) the family provides supporting documents that are from credible and established sources such as day care invoices, receipts or written statements from the child care provider.

If the HACSM deems the expense is not reasonable or the total amount claimed is disproportionate to the family income, HACSM may require further verification or ask the family to provide a detailed budget to substantiate how the household expenses, including child care expenses, are paid.

## **IV. DETERMINING HACSM SUBSIDY AND FAMILY SHARE**

### **HACSM Subsidy**

HACSM will calculate the family's adjusted annual income by subtracting all allowable deductions from all reported income. Based on the family's adjusted annual income and eligible voucher size or unit size (whichever is smaller), HACSM will assign a monthly fixed subsidy amount from its established Tiered Subsidy Table (TST).

In any event, the maximum subsidy HACSM will pay on behalf of a family is the lesser of the fixed subsidy amount or the rent to owner (contract rent) minus \$100.00.

For purposes of the above calculation method, HACSM no longer utilizes payment standards or utility allowances in its calculation for the applicable programs.

### **Family Share**

Generally, the family share of rent will be the difference between HACSM's fixed subsidy amount from the TST and the rent to owner (contract rent).

The maximum subsidy HACSM will pay on behalf of a family is the lesser of the fixed subsidy amount or the rent to owner (contract rent) minus \$100.00. As a result of this calculation method, the family share of rent shall not be less than \$100.00.

Regardless of whether a family chooses a unit size smaller or larger than their eligible family unit (voucher) size, HACSM will apply the subsidy based on the smaller amount. For example, if a family qualifies for a two-bedroom voucher and rents a three-bedroom unit, HACSM's subsidy will be based on the two-bedroom voucher size. Similarly, if a family qualifies for a two-bedroom voucher and rents a one-bedroom unit, HACSM's subsidy will be based on the one-bedroom voucher.

Families can pay more than 40% of their annual adjusted income toward their portion of the rent to owner (contract rent) at initial move-in and relocation. During the move-in process for both new admissions and relocations, HACSM will continue to ensure that the rent to owner (contract rent) is reasonable for the potential unit. If a family chooses

to pay more than 40% of their adjusted annual income, HACSM will review the tenant portion with the family. HACSM may deny a unit if the tenant portion of rent is disproportionately high in comparison to the family income.

### **Prorated Assistance for Mixed Families**

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. HACSM will first determine assistance as if all family members were eligible and then apply a standard amount of \$150 per ineligible family member. For example, if HACSM subsidy for a family of four is calculated at \$1000 and two of the four family members are ineligible, HACSM subsidy would be reduced to \$700 ( $\$150 \times 2 = \$300$  then  $\$1000$  minus  $\$300 = \$700$ ).

### **Subsidy Calculation Using HUD Standards**

HACSM may use HUD standard methodology in calculating maximum subsidy. When HUD standard methodology is used, HACSM will follow HUD regulation in its entirety, and the application of such methodology will not be based individual circumstances. For example, HACSM may calculate subsidy for program participants residing at Project-Based properties using the Total Tenant Payment methodology in accordance with Housing Choice Voucher and Project-Based rules.

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

*MTW Waiver: The Agency is authorized to certify that housing assisted under MTW will meet housing quality standards established or approved by HUD. The certification form will be approved or provided by HUD. This authorization waives certain provisions of Section 8(o)(8) of the 1937 Act and 24 CFR 982, Subpart I as necessary to implement the Agency's Annual MTW Plan.*

**I. INTRODUCTION**

HUD requires that all units occupied by families receiving Voucher assistance meet HUD's Housing Quality Standards (HQS) and permits the PHA to establish additional requirements. The use of the term "HQS" in this plan refers to the combination of both HUD and HACSM-established requirements.

All units must pass an HQS inspection prior to the approval of a lease and at least once every 24 months (biennially) during the term of the contract, and at other times as needed, to determine that the unit meets HQS.

HUD also requires PHAs to determine that rents for units under the program are reasonable when compared to comparable unassisted units in the market area.

**II. GENERAL HUD REQUIREMENTS**

HUD's performance and acceptability standards for Voucher 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

HUD requires the PHA to enforce minimum HQS but also recognizes that certain judgements about the acceptability of the unit are left to the family. For example, HACSM will ensure that the unit contains the required sanitary facilities, but the family decides whether the cosmetic appearance of the facilities is acceptable.

Additional guidance on HQS 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.

### **III. HACSM REQUIREMENTS**

In addition to meeting HQS performance and acceptability standards, the unit must also meet the following requirements adopted by HACSM:

#### **Windows**

- If window security bars or security screens are present on the only emergency exit window(s), they must be equipped with a quick release system. The owner is responsible for ensuring that the family is instructed on the use of the quick release system.

#### **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 be in adequate condition and have all trim intact.
- Each main swinging entry door of a dwelling unit must have an operable single cylinder dead bolt lock in accordance with State law requirements. These doors include any exterior door, which will allow access to the unit (front door, back door, the door from the unit to the garage and any doors that allow direct access to the unit).
- Exterior and interior doors cannot have double key dead bolt locks. Exceptions may be approved by HACSM on a case by case basis, provided that all of the following criteria are met:
  - All household members are over 18 years old
  - Keys to the door lock are visible, readily and easily accessible.
  - A written statement from the head of household attesting that having double key dead bolt locks is the tenant's choice.

#### **Water Heaters**

- Water heaters must be braced, anchored, or strapped to resist falling or displacement due to earthquake motion.
- Discharge pipes must be directed towards the floor or outside of the living area.

- Discharge pipes must be made of rigid pipe material (not garden hose or thin plastic pipe).

### **Thermostat**

- The thermostat must be in the subsidized unit and accessible to the family.

### **Bedrooms**

- Any room used for sleeping must have at least one openable window.
- Closets are required in bedrooms.
- Bedrooms must not be less than 70 square feet and not less than 7 feet in any dimension.

### **Fences**

- For safety reasons, owners may be requested to repair or remove a fence if it is on the owner's property and/or the owner's responsibility.

### **Pools**

- Pools, if present, should not be empty or create unsafe conditions for the family.

### **Fire Extinguishers (in multi-unit buildings and/or common areas)**

- Fire extinguishers must be in proper working order with current tags from the local Fire Department or a licensed, certified company. Extinguishers must be fully charged (as evidenced by indicator in "green" zone), in an intact casing (if applicable), and rust-free.

### **Elevators**

- Elevators must be working and have current permit displayed in the elevator unit. If the permit is expired, the owner must provide proof of a scheduled appointment with the permitting agency or proof of current documentation submitted to the permitting agency to obtain permit (new or renewal).

### **Light Fixture Covers**

- Light fixture covers (globes) are not required on permanent light fixtures (including exterior lights), as long as the fixture is firmly supported and there is no hazardous wiring such as frayed or noninsulated wiring, or improper connections.

### **Garages**

- Owners are not allowed to store their items in the garage (or the unit). If during the lease negotiation, the use of the garage is clearly reserved for the owner and such an arrangement is accepted by the tenant, HACSM may approve an exception to this rule provided:

- A written acknowledgement is provided by the owner permitting HACSM to conduct annual or interim HQS inspections for the entire dwelling, including the garage; and
- The exclusion of the garage is stated in the lease agreement; and
- The contract rent is adjusted to reflect the exclusion of the garage.

### **Structural Modifications (includes In-law units and Garage Conversions)**

- Structural modifications to the unit such as subdividing the unit into two separate units must meet HQS requirements.

Upon request, HACSM may inspect the entire dwelling when such inspection is necessary to ensure HQS compliance.

### **Room Additions (basements, attics or garage conversions)**

- Rooms in a basement, attic or garage are not considered a bedroom unless they meet HQS requirements. HACSM will verify with the County Assessor's office to determine actual bedroom size of the unit. When there is a discrepancy, HACSM shall reserve the right to make the final determination.

### **Appliances**

- Any inoperable appliance, not required by HQS (e.g. disposal, dishwasher), must be repaired, replaced, or removed by the owner unless the appliance does not pose any safety or health threat to the family.

### **Modifications to Provide Accessibility**

Under the Fair Housing Act of 1988 an owner must not refuse the request of a family that contains a person with a disability to make necessary and reasonable modifications to the unit. Such modifications are at the family's expense. The owner may require restoration of the unit to its original condition if the modification would interfere with the owner or next occupant's full enjoyment of the premises. The owner may not increase a customarily required security deposit. However, the landlord may negotiate a restoration agreement that requires the family to restore the unit and, if necessary to ensure the likelihood of restoration, may require the tenant to pay a reasonable amount into an interest bearing escrow account over a reasonable period of time. The interest in any such account accrues to the benefit of the tenant. The owner may also require reasonable assurances that the quality of the work will be acceptable and that any required building permits will be obtained.[24 CFR 100.203; Notice 2003-31].

Modifications to units to provide access for a person with a disability must meet all applicable HQS requirements and conform to the design, construction, or alteration of facilities contained in the UFAS and the ADA Accessibility Guidelines (ADAAG) [28 CFR 35.151(c) and Notice 2003-31]

#### **IV. LIFE THREATENING CONDITIONS**

HUD requires the PHA to define life-threatening conditions and to notify the owner or the family (whichever is responsible) of the corrections required.

The following items are considered life-threatening conditions and the responsible party must correct life threatening conditions within 24 hours of HACSM notification:

- Gas leaks;
- Severe structural damage: collapsed walls, floors, ceiling;
- Severe plumbing leaks or flooding;
- An electrical problem or condition that could result in severe shock or fire;
- Utilities not in service, including no running hot water;
- Absence of a working heating system;
- Absence of a functioning flush toilet in the unit;
- No functioning smoke detector in the unit

If an owner fails to correct life threatening conditions as required by HACSM, HACSM will enforce the HQS in accordance with HUD requirements.

If a family fails to correct a family-caused life threatening condition as required by HACSM, HACSM will enforce the family obligations.

The owner will be required to repair an inoperable smoke detector unless HACSM 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.

#### **V. OWNER AND FAMILY RESPONSIBILITIES**

##### **Family Responsibilities**

The family is responsible for correcting the following HQS deficiencies:

- Tenant-paid utilities not in service
- Failure to provide or maintain appliances owned by the family
- Damage to the unit or premises caused by a household member or guest beyond normal wear and tear that results in a breach of the HQS. "Normal wear and tear" is defined as items which could not be charged against the tenant's security deposit under state law or court practice.

##### **Owner Responsibilities**

The owner is responsible for all HQS violations not listed as a family responsibility above, even if the violation is caused by the family's living habits (e.g., vermin infestation). However, if the family's actions constitute a serious or repeated lease violation the owner may take legal action to evict the family.

## **VI. SPECIAL REQUIREMENTS FOR CHILDREN WITH ELEVATED BLOOD LEAD LEVEL [24 CFR 35.1225]**

If HACSM is notified by a public health department or other medical health care provider, or verifies information from a source other than a public health department or medical health care provider, that a child of less than 6 years of age, living in an HCV-assisted unit has been identified as having an elevated blood lead level, HACSM will complete an environmental investigation of the dwelling unit. The environmental investigation must be completed in accordance with program requirements, and the result of the environmental investigation must be immediately provided to the owner of the dwelling unit. In cases where the public health department has already completed an evaluation of the unit, this information must be provided to the owner.

Within 30 days after receiving the environmental investigation report from HACSM, or the evaluation from the public health department, the owner is required to complete the reduction of identified lead-based paint hazards in accordance with the lead-based paint regulations [24 CFR 35.1325 and 35.1330; 40 CFR 745.227]. If the owner does not complete the “hazard reduction” as required, the dwelling unit is in violation of HQS and HACSM will take action in accordance with policies in this chapter.

### **Reporting and record keeping for children with environmental intervention blood lead level**

HACSM will provide the public health department written notice of the name and address of any child identified as having an elevated blood lead level within five (5) business days of being so notified by any other medical health care professional.

If HACSM obtains names and addresses of elevated blood lead level children from the public health department(s), HACSM 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, HACSM will carry out the notification, verification, and hazard reduction requirements and the reporting requirement discussed above.

## **VII. VIOLATION OF HQS SPACE STANDARDS**

A dwelling unit must:

- Provide adequate space and security for the family
- Have at least one bedroom or living/sleeping room for each two persons

A unit that does not meet these HQS space standards is defined as *overcrowded*.

A living room may be used as sleeping (bedroom) space, but no more than two persons may occupy the space. A bedroom or living/sleeping room must have at least:

- One window

- Two electrical outlets in proper operating condition (permanent overhead or wall-mounted light fixtures may count as one of the required electrical outlets)

If HACSM determines that a unit is overcrowded because of an increase in family size or a change in family composition, HACSM will issue the family a new voucher, and the family and HACSM must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, HACSM will terminate the HAP contract in accordance with its terms.

## VIII. TYPES OF INSPECTIONS

HACSM conducts the following types of inspections as needed. Each type of inspection is discussed in the paragraphs that follow.

- *Initial Inspections.* HACSM conducts initial (move-in) inspections to approve a unit for participation in the Voucher program. The unit must pass the HQS inspection on or before the effective date of the HAP Contract.
- *Annual/Biennial Inspections.* HACSM will inspect all units under lease at least biennially (every other year) to confirm that the unit continues to meet HQS. HACSM may make exceptions to this inspection schedule for landlords and properties that have a history of non-compliance with HQS (e.g. units abated in the previous 12 months).

Although units will have a biennial inspection schedule, the unit must at all times meet Housing Quality Standards while it is under contract. The biennial inspection may be conducted in conjunction with the family's annual reexamination or may be conducted separately as determined by HACSM.

- *Special Inspections.* A special (interim) inspection may be requested by the owner, the family, or a third party as a result of problems identified with a unit between annual inspections.
- *Quality Assurance Inspections.* A sample of units will be inspected by a supervisor, program compliance officer, or other qualified individual to evaluate the work of the inspectors and to ensure that inspections are performed in compliance with HQS.

### Inspection of HACSM-Owned Units

HACSM staff will inspect HACSM-owned units or HACSM-affiliated properties.

### Inspection Costs [Notice PIH 2016-05]

The PHA may not charge the family for unit inspections or reinspections [24 CFR 982.405(e)]. In the case of inspections of PHA-owned units, the PHA may compensate the independent agency from ongoing administrative fee for inspections performed. The PHA and the independent agency may not charge the family any fee or charge for the inspection [24 CFR.982.352(b)].

The PHA may not charge the owner for the inspection of the unit prior to the initial term of the lease or for a first inspection during assisted occupancy of the unit. However, the PHA may charge a reasonable fee to owners for reinspections in two situations: when the owner notifies the PHA that a repair has been made but the deficiency has not been corrected, and when the time for repairs has elapsed and the deficiency has not been corrected. Fees may not be imposed for tenant-caused damages, for cases in which the inspector could not gain access to the unit, or for new deficiencies discovered during a reinspection.

The owner may not pass the cost of a reinspection fee to the family. Reinspection fees must be added to the PHA's administrative fee reserves and may only be used for activities related to the provision of tenant-based assistance.

HACSM will not charge a fee for failed reinspections at this time.

### **Remote Video Inspections (RVIs) [Notice PIH 2020-31]**

As an alternative to some or all on-site inspections, the PHA may, but is not required to, perform HQS inspections from a remote location using video streaming technology and a proxy at the inspection site. Since there may be some circumstances in which the application of technology provides insufficient information or evidence to allow the PHA to make appropriate determinations about whether a condition violates HQS, Notice PIH 2020-31 requires that if a PHA chooses to implement RVIs, the PHA should have policies and procedures in place to address such limitations.

HACSM will not conduct any HQS inspection using RVI at this time.

## **IX. THE INSPECTION PROCESS**

### **Notice and Scheduling**

The family must allow HACSM to inspect the unit at reasonable times with reasonable notice. Both the family and the owner will be given reasonable notice for all inspections. Initial inspections may be scheduled with shorter notice.

Except in the case of a life threatening emergency, reasonable notice is considered to be not less than 48 hours. In the case of a life threatening emergency, HACSM will give as much notice as possible, given the nature of the emergency.

Generally, inspections will be conducted Monday through Friday, between 7:00 a.m. and 6:00 p.m.

Due to the COVID-19 pandemic, HACSM has modified some of its processes for initial inspections. HACSM will inform owners and voucher holders of the processes during the RTA process.

## **Initial Inspection Attendance**

At the initial inspection of a vacant unit, the owner or owner's representative must be present for the inspection. HACSM strongly encourages the presence of the voucher holder or another adult family representative but it is not required.

When a family occupies the unit at the time of an initial inspection, the voucher holder or another adult family representative must be present for the inspection. HACSM strongly encourages the presence of the owner or the owner's representative but it is not required.

## **Initial Inspection Results and Reinspections**

If any HQS violations are identified during the initial inspection, the owner will be notified of the deficiencies and be given a time frame to correct them. If requested by the owner, the time frame for correcting the deficiencies may be extended by the HACSM for good cause. HACSM will reinspect the unit once the owner notifies HACSM that the required corrections have been made. The time frame for the owner to correct the deficiencies will not exceed 30 days.

If the time period for correcting the deficiencies has elapsed, HACSM will notify the owner and the family that the unit has been rejected and that the family must search for another unit.

## **Utilities**

Generally, at initial lease-up the owner is responsible for demonstrating that all utilities are in working order including those utilities that the family will be responsible for paying.

If utility service is not available for testing at the time of the initial inspection, HACSM will notify the owner to have the utilities turned on. The unit will not pass inspection until HACSM has verified operable utility service.

## **Appliances**

The stove and refrigerator must be present when the unit is inspected if the owner provides these appliances.

If the family is responsible for supplying the stove and/or refrigerator, HACSM will allow the stove and refrigerator to be placed in the unit after the unit has met all other HQS requirements. HACSM will execute the HAP contract based on certification from the family that the appliances have been installed and are working. A confirmatory inspection will be scheduled within 30 days of HAP contract approval.

## **Biennial (or Annual) Inspections**

The family and owner are notified of the date and time of the inspection appointment by mail. If an adult family member cannot be present on the scheduled date, the family must request a rescheduled appointment so that the inspection is completed within 30 days. If the family is not home for the inspection appointment, HACSM will leave notification at the unit and another appointment will be scheduled automatically.

If the family misses two scheduled inspections, HACSM 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 HACSM policy.

### **Special Inspections**

HACSM will conduct a special inspection if the owner, family, or another source reports HQS violations in the unit. HACSM may request documentation that the deficiencies have been reported to the responsible party and the responsible party failed to cure the deficiencies within a reasonable time.

During a special inspection, HACSM will inspect only those deficiencies that were reported. However, the inspector will record any additional HQS deficiencies that are observed and will require the responsible party to make the necessary repairs.

If the biennial or annual inspection has been scheduled or is due within 120 days of the date the special inspection is scheduled, HACSM may elect to conduct a full inspection.

### **Quality Assurance Inspections**

HACSM will conduct quality assurance (QA) 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 HQS.

The unit sample will include only units that have been inspected within the preceding three (3) months. The selected sample should be drawn to represent a cross section of neighborhoods and the work of a cross section of inspectors.

### **INSPECTION RESULTS AND REINSPECTIONS**

When a biennial or annual inspection identifies HQS failures, HACSM will determine whether or not the failure is a life threatening condition and whether the family or owner is responsible.

When life threatening conditions are identified, HACSM will immediately notify both parties by telephone or email. The notice will specify who is responsible for correcting the violation. The corrective actions must be taken within 24 hours of the HACSM's notice. HACSM may verify correction or completion of life threatening conditions by telephone, fax, or e-mail.

When HQS failures that are not life threatening are identified, HACSM will send the owner and the family a written notification of the inspection results. The written notice will specify who is responsible for correcting the violation, and the time frame within which the failure must be corrected. Not more than 30 days will be allowed for the correction.

### **Extensions**

For conditions that are life-threatening, HACSM will not grant an extension to the 24-hour corrective action period. For conditions that are not life-threatening, HACSM may grant an exception to the required time frames for correcting the violation, if the HACSM determines that an extension is appropriate.

Extensions will be granted in cases where the HACSM 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 immediately available.
- A repair cannot be completed because of weather conditions.
- A reasonable accommodation is needed because the family includes a person with disabilities.

The length of the extension will be determined on a case-by-case basis, but will not exceed 60 days, except in the case of delays caused by weather conditions. In the case of weather conditions, extensions may be continued until the weather has improved sufficiently to make repairs possible.

### **Reinspections**

HACSM will conduct a reinspection immediately following the end of the corrective period, or any HACSM-approved extension.

If the deficiencies have not been corrected by the time of the reinspection (including any HACSM-approved extension), HACSM 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 HACSM policies.

If HACSM is unable to gain entry to the unit in order to conduct the scheduled reinspection, HACSM 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.

### **HAP Abatement**

If an owner fails to correct HQS deficiencies by the time specified, HACSM will abate housing assistance payments. For units with life threatening conditions or units that are deemed uninhabitable, HACSM will abate HAP immediately. In all other circumstances, HACSM will provide the owner with a 30-day written notification of abatement action. HACSM will make all HAP abatements effective on the first of the month following the 30-day written notification.

No retroactive payments will be made to the owner for the period of time the rent was abated.

Owner rents are not abated as a result of HQS failures that are the family's responsibility.

HACSM will inspect abated units within 3 business days of the owner's notification that the work has been completed. Payment will resume effective on the day the unit passes inspection.

If the owner makes repairs during the abatement period, payment will resume the earlier of (1) the day the unit passes inspection, or (2) the date the repairs were completed, providing proof of completion is available.

If abatement is a result of remediation of conditions such as asbestos, lead, mold, the owner must provide a written clearance by a qualified certified entity.

During any abatement period the family continues to be responsible for its share of the rent. The owner must not seek payment from the family for abated amounts and may not use the abatement as cause for eviction.

### **HAP Contract Termination**

The maximum length of time that HAP may be abated is 90 days. However, if the owner completes corrections and notifies the HACSM before the termination date of the HAP contract, HACSM may rescind the termination notice if (1) the family still resides in the unit and wishes to remain in the unit and (2) the unit passes inspection.

Reasonable notice of HAP contract termination by the HACSM is 30 days.

### **Enforcing Family Compliance with HQS**

Families are responsible for correcting any family-caused HQS violations mentioned earlier in this chapter. If the family fails to correct a violation within the period allowed by HACSM (and any extensions), HACSM will terminate the family's assistance.

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.

## **X. RENT REASONABLENESS**

Except in the case of certain LIHTC- and HOME-assisted units, no HAP contract can be approved until HACSM has determined that the rent for the unit is reasonable. The purpose of the rent reasonableness test is to ensure that a reasonable 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.

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 and are subject to rent reasonableness certification by the HACSM. Rent increases will not be approved unless any failed items identified by the most recent HQS inspection have been corrected.

If the requested increase is approved, all rents adjustments will be effective the first of the month following 60 days after HACSM's receipt of the owner's request or on the date specified by the owner, whichever is later.

### **LIHTC- and HOME-Assisted Units [24 CFR 982.507(c)]**

For units receiving low-income housing tax credits (LIHTCs) or units assisted under HUD's HOME Investment Partnerships (HOME) Program, a rent comparison with unassisted units is not required if the voucher rent does not exceed the rent for other

LIHTC- or HOME-assisted units in the project that are not occupied by families with tenant-based assistance.

For LIHTCs, if the rent requested by the owner does exceed the LIHTC rents for non-voucher families, HACSM must perform a rent comparability study in accordance with program regulations. In such cases, the rent shall not exceed the lesser of: (1) the reasonable rent as determined from the rent comparability study; or (2) the payment standard established by the PHA for the unit size involved.

### **Factors to Consider**

HACSM will 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 number of bedrooms and square footage
- Unit type (e.g. single family, duplex, garden, low-rise, high-rise)
- Quality and condition of the unit including the quality of the construction, maintenance and improvements made
- Amenities included

### **Rents Charged for Other Units on the Premises**

The Request for Tenancy Approval requires owners to provide information, on the form itself, about the rent charged for other unassisted comparable units on the premises if the premises include more than 4 units.

By accepting HACSM 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 HACSM information regarding rents charged for other units on the premises.

### **Units that Must Not be Used as Comparables**

Comparable units must represent unrestricted market rents. Therefore, units that receive some form of federal, state, or local assistance that imposes rent restrictions cannot be considered comparable units. These include units assisted by HUD through any of the following programs: Section 8 project-based assistance, Section 236 and Section 221(d)(3) Below Market Interest Rate (BMIR) projects, HOME or Community Development Block Grant (CDBG) program-assisted units in which the rents are subsidized; units subsidized through federal, state, or local tax credits; units subsidized by the Department of Agriculture rural housing programs, and units that are rent-controlled by local ordinance. [Notice PIH 2002-22, Notice PIH 2005-20, and Notice PIH 2020-19].

**Note:** Notice PIH 2020-19, issued August 21, 2020, provides further guidance on the issue of what constitutes an assisted unit

### **How Market Data is Collected**

HACSM will collect data on market rents within the HACSM jurisdiction or neighboring jurisdictions. The data will be maintained within an online database administered through a third-party source.

Market areas may be defined by zip codes or neighborhood and the data will be updated on an ongoing basis.

### **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 or similar market area. HACSM may use comparables in neighboring jurisdictions due to the similarity of units. Because units may be similar, but not exactly like the unit proposed for HCV assistance, HACSM may make adjustments to the range of prices to account for these differences.

HACSM will notify the owner of the rent it determines reasonable upon its analysis of rents for comparable units. The owner may submit information about other comparable units in the market area. HACSM will confirm the accuracy of the information provided and consider this additional information when making rent determinations.

## Chapter 9

### GENERAL LEASING POLICIES

*MTW Waiver: The Agency is authorized to determine contract rents and increases and to determine the content of contract rental agreements that differ from the currently mandated program requirement in the 1937 Act and its implementing regulations. This authorization waives certain provisions of Section 8(o)(7) and 8(o)(13) of the 1937 Act and 24 CFR 982.308, 982.451 and 983 Subpart E as necessary to implement the Agency's Annual MTW Plan.*

#### I. INTRODUCTION

This chapter covers the lease-up process from the family's submission of a Request for Tenancy Approval to execution of the HAP contract.

In order for HACSM to assist a family in a particular dwelling unit or execute a Housing Assistance Payments (HAP) contract with the owner of a dwelling unit, HACSM must determine that all the program requirements are met.

#### II. TENANT SCREENING

HACSM has no liability or responsibility to the owner or other persons for the family's behavior or suitability for tenancy; therefore, HACSM will not screen applicants for family behavior or suitability for tenancy.

The owner is responsible for screening and selection of the family to occupy the owner's unit.

HACSM will provide documented information regarding tenancy history for the past three (3) years to prospective owners upon written request from the owner. The information may be provided either orally or in writing. HACSM will make an exception to this requirement if the family's whereabouts must be protected due to domestic violence, dating violence, stalking or witness protection and providing such information could jeopardize the family's safety.

HACSM will provide the following information, based on documentation in its possession: Eviction history, damage to rental units, drug trafficking by family members, and/or other aspects of tenancy history that is a matter of public record, unless there is documentation on file that the applicant or participant is or has been a victim of domestic violence, dating violence, or stalking, and providing the information could jeopardize the family's safety.

#### III. REQUESTING TENANCY APPROVAL

After the family is issued a voucher, the family must locate an eligible unit, with an owner or landlord willing to participate in the voucher program. Once a family finds a suitable unit and the owner is willing to lease the unit under the program, the owner and the family must submit a completed Request for Tenancy Approval (RTA) form to HACSM.

The RTA contains important information about the rental unit selected by the family, including the unit address, number of bedrooms, structure type, year constructed, and the requested beginning date of the lease, necessary for HACSM to determine whether to approve the assisted tenancy in this unit.

On the RTA, owners must certify that they are not the parent, child, grandparent, grandchild, sister or brother of any member of the family, unless HACSM has granted a request for reasonable accommodation for a person with disabilities who is a member of the tenant household.

For units constructed prior to 1978, owners must either 1) certify that the unit, common areas, and exterior have been found to be free of lead-based paint by a certified inspector; or 2) attach a lead-based paint disclosure statement.

The RTA must be submitted no later than the expiration date stated on the voucher and it must be signed by both the family and the owner.

The completed RTA (including the proposed dwelling lease and Tax ID statement) can be submitted in-person, by mail, e-mail or fax.

HACSM will not process more than one RTA at a time per family/household.

Because of the time sensitive nature of the tenancy approval process, HACSM will attempt to communicate with the owner and family by phone, fax, or email. HACSM may use mail when the parties can't be reached by phone, fax, or email.

#### **IV. ELIGIBLE UNITS**

HACSM will 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.

##### **Duplicative Assistance**

A family may not receive the benefit of the Voucher program tenant-based assistance while receiving the benefit of any of the following forms of other housing subsidy, for the same unit or for a different unit:

- Public or Indian housing assistance;
- Other Section 8 assistance (including other tenant-based assistance);
- Assistance under former Section 23 of the United States Housing Act of 1937 (before amendment by the Housing and Community Development Act of 1974);
- Section 101 rent supplements;
- Section 236 rental assistance payments;
- Tenant-based assistance under the HOME Program;

- Rental assistance payments under Section 521 of the Housing Act of 1949 (a program of the Rural Development Administration);
- Any local or State rent subsidy;
- Section 202 supportive housing for the elderly;
- Section 811 supportive housing for persons with disabilities; (11) Section 202 projects for non-elderly persons with disabilities (Section 162 assistance); or
- Any other duplicative federal, State, or local housing subsidy, as determined by HUD. For this purpose, 'housing subsidy' does not include the housing component of a welfare payment, a social security payment received by the family, or a rent reduction because of a tax credit.

### **Housing Quality Standards (HQS)**

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 will 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 and occupancy space requirements. The family is also allowed to lease an otherwise acceptable dwelling unit with more bedrooms than the number of bedrooms stated on the voucher issued to the family. See Chapter 5 for a full discussion of subsidy standards.

### **Rent Reasonableness**

In order to be eligible, the dwelling unit must have a reasonable rent. The rent must be reasonable in relation to comparable unassisted units in the area and must not be in excess of rents charged by the owner for comparable, unassisted units on the premises. See Chapter 8 for a full discussion of rent reasonableness.

## **V. LEASE AND TENANCY ADDENDUM**

The family and the owner must execute a written dwelling lease agreement for the assisted unit. This written lease is a contract between the tenant family and the owner. HACSM is not a party to the lease agreement.

The tenant must have legal capacity to enter into a lease under State and local law. 'Legal capacity' means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner.

### **Lease Form and Tenancy Addendum**

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 contains the owner's certification that if the owner uses a standard lease form for rental to unassisted tenants, the lease for the assisted tenants is in such standard form.

The assisted dwelling lease must contain all of the required information as listed below:

1. The names of the owner and the tenant;
2. The unit rented (address, apartment number, and any other information needed to identify the contract unit);
3. The term of the lease (initial term and any provisions for renewals)
4. The amount of the monthly rent to owner; and
5. 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.

All provisions in the Tenancy Addendum must be added word-for-word to the owner's standard lease form. The Tenancy Addendum includes the HUD requirements for the tenancy. Because it is part of the lease, the tenant shall have the right to enforce the Tenancy Addendum against the owner. If there is a conflict between the owner's lease and the Tenancy Addendum, the terms of the Tenancy Addendum shall prevail over any other provisions of the lease.

### **Term of Assisted Tenancy**

HACSM will approve an initial lease term of less than one (1) year when it can determine that such shorter term would improve housing opportunities for the tenant or such shorter term is the prevailing local market practice.

During the initial term of the lease, the owner may not raise the rent to owner.

Any provisions for renewal of the dwelling lease will be stated in the dwelling lease. There are no HUD requirements regarding any renewal extension terms, except that they must be in the dwelling lease if they exist.

The lease term runs concurrently with the HAP contract term. The term of the HAP contract begins on the first day of the lease term and ends on the last day of the lease term.

### **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 HACSM's subsidy payments to the owner.

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.

HACSM 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.

### **Tenancy Approval**

HACSM will complete its determination within 15 business days of receiving all required information.

If HACSM 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. HACSM will instruct the owner and family of the steps that are necessary to obtain approval of the tenancy.

Where the tenancy is not approvable because the unit is not approvable, the family must continue to search for eligible housing within the timeframe of the issued voucher.

## **VI. HAP CONTRACT EXECUTION**

The HAP contract is a written agreement between HACSM and the owner of the dwelling unit. Under the HAP contract, HACSM agrees to make housing assistance payments to the owner on behalf of the family, and the owner agrees to comply with all program requirements as stated in the HAP contract.

The HAP contract form is prescribed by HUD.

If HACSM has given approval for the family of the assisted tenancy, the owner and the HACSM must execute the HAP contract.

HACSM is permitted to execute a HAP contract even if the funding currently available does not extend for the full term of the HAP contract.

HACSM will not pay any housing assistance payment to the owner until the HAP contract has been executed.

The owner and the assisted family will execute the dwelling lease and the owner must provide a copy to HACSM.

The owner and HACSM will execute the HAP contract. HACSM will not execute the HAP contract until the owner has submitted IRS form W-9 or a Tax ID Statement. HACSM will ensure that the owner receives a copy of the executed HAP contract.

## **VII. CHANGES IN LEASE OR RENT**

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 HACSM a copy of such changes. The lease, including any changes, must remain in accordance with the requirements of this chapter.

Generally, HACSM approval of tenancy and execution of a new HAP contract are not required for changes in the lease. However, under certain circumstances, the execution of a new lease and HAP contract are required. These circumstances include the family moving to a new unit, even if the unit is in the same building or complex.

In this case, if the Voucher assistance is to continue, the family must submit a new Request for Tenancy Approval (RTA) along with a new dwelling lease containing the proposed changes. A new tenancy must then be approved in accordance with this chapter.

No rent increase is permitted during the initial term of the lease. After the initial lease term, the owner may request a rent adjustment in accordance with the lease.

Where the owner is changing the amount of the rent to owner, the owner must notify HACSM at least 60 days before any such changes go into effect. HACSM will agree to such an increase only if the amount of the rent to owner is considered reasonable according to the rent reasonableness standards discussed in Chapter 8. If the requested rent is not found to be reasonable, the owner must either reduce the requested rent increase, or terminate the tenancy in accordance with the terms of the lease.

## Chapter 10

### MOVING WITH CONTINUED ASSISTANCE AND PORTABILITY

#### I. INTRODUCTION

This chapter discusses the general rules that apply to all moves by a family assisted under HACSM's Voucher program, whether the family moves to another unit within HACSM jurisdiction or to a unit outside HACSM jurisdiction under portability.

#### II. MOVING WITH CONTINUED ASSISTANCE

##### Allowable Moves

For families already participating in the Voucher program, HACSM will allow the family to move to a new unit with continued assistance for the following reasons:

- The family has a right to terminate the lease on notice to the owner (for the owner's breach or otherwise) and has given a notice of termination to the owner in accordance with the lease. If the family terminates the lease on notice to the owner, the family must give HACSM a copy of the notice at the same time. Failure to provide notification to HACSM may result in delay of processing the move or termination of assistance;
- The family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and the move is needed to protect the health or safety of the family or family member [24 CFR 982.354(b)(4)]. This condition applies even when the family has moved out of its unit in violation of the lease, with or without prior notification to HACSM, if the family or family member who is the victim reasonably believed that he or she was imminently threatened by harm from further violence if he or she remained in the unit [ 24 CFR 982.354(b)(4), 24 CFR 982.353(b)]. HACSM must adopt an emergency transfer plan as required by regulations at 24 CFR 5.2007(e).
- The lease for the family's unit has been terminated by mutual agreement of the owner and the family. If the family and the owner agree to terminate the lease for the family's unit, the family or owner must give HACSM a copy of the termination agreement;
- The owner has given the family a notice to vacate, has commenced an action to evict the family, or has obtained a court judgment or other process allowing the owner to evict the family. The family must give HACSM a copy of any owner eviction notice.
- HACSM has terminated the HAP contract for the family's unit for the owner's breach.
- HACSM 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, HACSM must issue the family a new voucher, and the family and HACSM must try to find an acceptable unit as soon as possible. If an acceptable unit is available for the family, HACSM 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 HACSM gives notice to the owner.

### **Restrictions on Moves**

A family's right to move is generally contingent upon the family's compliance with program requirements; therefore, if HACSM has grounds for denying or terminating the family's assistance, it may deny the family's right to move.

HACSM will consider exceptions to the policies for the following reasons: to protect the health or safety of a family member (e.g., lead-based paint hazards, domestic violence, and witness protection programs), to accommodate a change in family circumstances (e.g., new employment, school attendance in a distant area), or to address an emergency situation over which a family has no control.

HACSM will allow exceptions to these policies for purposes of reasonable accommodation of a family member who is a person with disabilities.

## **III. MOVING PROCESS**

### **Notification**

If a family wishes to move to a new unit, the family must notify HACSM and the owner before moving out of the old unit or terminating the lease on notice to the owner. If the family wishes to move to a unit outside the HACSM's jurisdiction under portability, the family must specify to HACSM the area where the family wishes to move.

### **Voucher Issuance and Briefing**

If the family has been determined eligible to move, HACSM will issue the family a relocation voucher. Although such families may be familiar with the operation of the program, they may still need much of the same information and services as provided first-time voucher holders, so attendance at the briefing is required.

HACSM will follow the policies set forth in Chapter 5 on voucher term, extension, and expiration. If a family does not locate a new unit within the term of the voucher and any extensions, the family may remain in its current unit with continued voucher assistance if the owner agrees and the HACSM approves. Otherwise, the family will lose its assistance.

## Housing Assistance Payments

When a family moves out of an assisted unit, HACSM will 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.

For deceased single member households or a household where the remaining household member is a live-in aide, HACSM will discontinue HAP to the owner no later than the first of the following month after the month in which the death occurred. The owner is **not** entitled to HAP for any month following the month in which the death occurred. There are no exceptions to this policy.

## IV. PORTABILITY

Within the limitations of the regulations and this Plan, a participant family or an applicant family that has been issued a voucher has the right to use tenant-based voucher assistance to lease a unit anywhere in the United States providing that the unit is located within the jurisdiction of a PHA administering a tenant-based voucher program [24 CFR 982.353(b)]. The process by which a family obtains a voucher from one PHA and uses it to lease a unit in the jurisdiction of another PHA is known as portability. The PHA that issues the voucher is called the **initial PHA**. The PHA that has jurisdiction in the area to which the family wants to move is called the **receiving PHA**.

The receiving PHA has the option of administering the family's voucher for the initial PHA or absorbing the family into its own program. Under the first option, the receiving PHA provides all services for the family and bills the initial PHA for the family's housing assistance payments and the fees for administering the family's voucher. Under the second option, the receiving PHA pays for the family's assistance with its own program funds, and the initial PHA has no further relationship with the family.

The initial PHA must contact the receiving PHA via e-mail or other confirmed delivery method to determine whether the receiving PHA will administer or absorb the initial PHA's voucher. Based on the receiving PHA's response, the initial PHA must determine whether they will approve or deny the portability request [Notice PIH 2016-09].

In administering portability, the initial PHA and the receiving PHA must comply with financial procedures required by HUD, including the use of HUD-required forms.

PHAs must also comply with billing and payment deadlines. HUD may reduce an administrative fee to an initial or receiving PHA if the PHA does not comply with HUD portability requirements [24 CFR 982.355(e)(7)].

## V. 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. If there is more than one PHA in the area, the initial PHA provides the family with the contact information for the receiving PHAs that serve the area, and the family selects the receiving PHA. The family must inform the initial PHA which PHA it has selected. If the family prefers not to select the receiving PHA, the initial PHA will select the receiving PHA on behalf of the family.

Applicant families that have been issued vouchers as well as participant families may qualify to lease a unit outside HACSM's jurisdiction under portability. HUD regulations and HACSM policy determine whether a family qualifies.

#### *Applicant Families*

- If there is insufficient funding by HUD to support current contracts and outstanding vouchers, HACSM may deny portability requests to families wishing to move to jurisdictions with higher Voucher Payment Standards or more lenient subsidy standards if that jurisdiction will not be absorbing the family. HACSM must verify that information before denying the portability request.
- If neither the head of household nor the spouse/co-head of an applicant family lives, works, or is hired to work in HACSM's jurisdiction at the time that the family's initial application for assistance was submitted, the family must lease a unit within HACSM's jurisdiction for at least 12 consecutive months before requesting portability.

HACSM will consider exceptions to this policy for purposes of reasonable accommodation.

#### *Participant Families*

HACSM will not provide portable assistance for a participant if a family has moved out of its assisted unit in violation of the lease. VAWA creates an exception to this prohibition for families who are otherwise in compliance with program obligations but have moved to protect the health or safety of an individual who is or has been a victim of domestic violence, dating violence, sexual assault, or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if they remained in the unit.

See Chapter 23 (Hardship Policy) for further guidance on HACSM portability policies.

### **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. The family must specify the area to which the family wishes to move [24 CFR 982.355(c)(1)].

The initial PHA is responsible for determining whether the family is income eligible in the area to which the family wishes to move. If the applicant family is not income

eligible in that area, HACSM will inform the family that it may not move there and receive voucher assistance.

### *Participant Families*

The income eligibility of a participant family is not re-determined if the family moves to a new jurisdiction under portability.

### **Reexamination of Family Income and Composition**

No new reexamination of family income and composition will be required for an applicant or participant family unless changes to the household or income are reported that may impact the voucher size or subsidy amount.

### **Briefing**

A relocation briefing will be required for a participant family wishing to move outside HACSM's jurisdiction under portability. HACSM will provide the family with the same oral and written explanation of portability that it provides to applicant families selected for admission to the program.

HACSM will provide the name, address, and phone for the PHA in the jurisdiction to which they wish to move. HACSM 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.

For participant families approved to move under portability, HACSM will issue a relocation voucher. The issue date of the Voucher will be based on the last date on the family or owner's notice to vacate or the date the family moved out of their previous unit (whichever is later).

See Chapter 5 for HACSM policy on Voucher issuance and term.

### **Voucher Extensions and Expiration**

See Chapter 5 for HACSM policy on voucher extensions and expiration.

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 90 days following the expiration date of the initial PHA's voucher term (including any extensions).

HACSM will allow exceptions to this policy for purposes of reasonable accommodation of a family member who is a person with disabilities.

### **Preapproval Contact with the Receiving PHA**

Prior to approving a family's request to move under portability, the initial PHA must contact the receiving PHA via e-mail or other confirmed delivery method to determine whether the receiving PHA will administer or absorb the family's voucher. Based on

the receiving PHA's response, the initial PHA must determine whether it will approve or deny the move [24 CFR 982.355(c)(3)].

### **Initial Notification to the Receiving PHA**

After approving a family's request to move under portability, the initial PHA must promptly notify the receiving PHA via email or other confirmed delivery method to expect the family [24 CFR 982.355(c)(3); 24 CFR 982.355(c)(7)]. The initial PHA must also advise the family how to contact and request assistance from the receiving PHA [24 CFR 982.355(c)(6)].

### **Sending Documentation to the Receiving PHA**

As the initial PHA, HACSM is required to send the receiving PHA the following documents:

- Form HUD-52665, Family Portability Information, with Part I filled out [Notice PIH 2016-09]
- A copy of the family's voucher [Notice PIH 2016-09]
- A copy of the family's most recent form HUD-50058, Family Report, or, if necessary, in the case of an applicant family, family and income information in a format similar to that of form HUD-50058 [24 CFR 982.355(c)(7), Notice PIH 2016-09]
- Copies of the income verifications backing up the form HUD-50058, including a copy of the family's current EIV data [24 CFR 982.355(c)(7), Notice PIH 2016-09]

HACSM will not provide additional documentation to the receiving PHA, unless requested by the receiving PHA in order to prevent delays in the portability process to the family.

### **Initial Billing Deadline [Notice PIH 2016-09]**

The deadline for submission of initial billing is 90 days following the expiration date of the voucher issued to the family by the initial PHA. In cases where suspension of the voucher delays the initial billing submission, the receiving PHA must notify the initial PHA of delayed billing before the billing deadline and document the delay is due to the suspension. In this case, the initial PHA must extend the billing deadline by 30 days.

If the initial PHA does not receive a billing notice by the deadline and does not intend to honor a late billing submission, it must notify the receiving PHA in writing. The initial PHA may report to HUD the receiving PHA's failure to comply with the deadline.

If the initial PHA will honor the late billing, no action is required.

### **Monthly Billing Payments [24 CFR 982.355(e), Notice PIH 2016-09]**

If the receiving PHA is administering the family's voucher, the receiving PHA bills the initial PHA for housing assistance payments and administrative fees. When reimbursing for administrative fees, the initial PHA must promptly reimburse the receiving PHA for the lesser of 80 percent of the initial PHA ongoing administrative fee or 100 percent of the receiving PHA's ongoing administrative fee for each program

unit under contract on the first day of the month for which the receiving PHA is billing the initial PHA under portability. If the administrative fees are prorated for the HCV program, the proration will apply to the amount of the administrative fee for which the receiving PHA may bill [24 CFR 982.355(e)(2)].

The initial PHA is responsible for making billing payments in a timely manner. The first billing amount is due within 30 calendar days after the initial PHA receives Part II of form HUD-52665 from the receiving PHA. Subsequent payments must be **received** by the receiving PHA no later than the fifth business day of each month. The payments must be provided in a form and manner that the receiving PHA is able and willing to accept.

The initial PHA may not terminate or delay making payments under existing portability billing arrangements because of over-leasing or funding shortfalls. The PHA must manage its tenant-based program in a manner that ensures that it has the financial ability to provide assistance for families that move out of its jurisdiction under portability and are not absorbed by receiving PHAs as well as for families that remain within its jurisdiction.

### **Annual Updates of Form HUD-50058**

If the initial PHA is being billed on behalf of a portable family, it should receive an updated form HUD-50058 each year from the receiving PHA. If the initial PHA fails to receive an updated 50058 by the family's annual reexamination date, the initial PHA should contact the receiving PHA to verify the status of the family. The initial PHA must continue paying the receiving PHA based on the last form HUD-50058 received, unless instructed otherwise by HUD. The initial PHA may seek absorption of the vouchers by following steps outlined in Notice PIH 2016-09.

### **Denial of Termination of Assistance [24 CFR 982.355(c)(17)]**

At any time, either the initial PHA or the receiving PHA may make a determination to deny or terminate assistance with the family in accordance with 24 CFR 982.552 and 24 CFR 982.553.

### **RECEIVING PHA ROLE**

If a family has a right to lease a unit in the receiving PHA's jurisdiction under portability, the receiving PHA must provide assistance for the family [24 CFR 982.355(10)]. HUD may determine in certain instances that a PHA is not required to accept incoming portable families, such as a PHA in a declared disaster area. However, the PHA must have approval in writing from HUD before refusing any incoming portable families [24 CFR 982.355(b)].

Administration of the voucher must be in accordance with the receiving PHA's policies. This requirement also applies to policies of Moving to Work agencies. The receiving PHA procedures and preferences for selection among eligible applicants do not apply to the family, and the receiving PHA waiting list is not used [24 CFR 982.355(c)(10)]. The family's unit, or voucher, size is determined in accordance with the subsidy standards of the receiving PHA [24 CFR 982.355(c)(12)], and the receiving PHA's policies on extensions of the voucher term apply [24 CFR 982.355(c)(14)].

## **Responding to Initial PHA's Request [24 CFR 982.355(c)]**

The receiving PHA must respond via e-mail or other confirmed delivery method to the initial PHA's inquiry to determine whether the family's voucher will be billed or absorbed [24 CFR 982.355(c)(3)]. If the receiving PHA informs the initial PHA that it will be absorbing the voucher, the receiving PHA cannot reverse its decision at a later date without consent of the initial PHA (24 CFR 982.355(c)(4)).

## **Initial Contact with Family**

When a family moves into the PHA's jurisdiction under portability, the family is responsible for promptly contacting the PHA and complying with the PHA's procedures for incoming portable families. The family's failure to comply may result in denial or termination of the receiving PHA's voucher [24 CFR 982.355(c)(8)].

If the voucher issued to the family by the initial PHA has expired, the receiving PHA must contact the initial PHA to determine if it will extend the voucher [24 CFR 982.355(c)(13)].

If for any reason the receiving PHA refuses to process or provide assistance to a family under the portability procedures, the family must be given the opportunity for an informal review or hearing [Notice PIH 2016-09].

## **Briefing**

HUD allows the receiving PHA to require a briefing for an incoming portable family as long as the requirement does not unduly delay the family's search [Notice PIH 2016-09].

HACSM will provide the family with a briefing packet (as described in Chapter 5) and, in an individual briefing, will orally inform the family about HACSM's subsidy standards and subsidy amounts, procedures for requesting approval of a unit, the unit inspection process, and the leasing process.

## **Income Eligibility and Reexamination**

The receiving PHA does not re-determine eligibility for a portable family that was already receiving assistance in the initial PHA's voucher program. If the receiving PHA opts to conduct a new reexamination for a current participant family, the receiving PHA may not delay issuing the family a voucher or otherwise delay approval of a unit.

## **Voucher Issuance**

When a family moves into its jurisdiction under portability, the receiving PHA is required to issue the family a voucher. The family must submit a request for tenancy approval to the receiving PHA during the term of the receiving PHA's voucher.

## **Timing of Voucher Issuance**

HUD expects the receiving PHA to issue the voucher within two weeks after receiving the family's paperwork from the initial PHA if the information is in order, the family has

contacted the receiving PHA, and the family complies with the receiving PHA's procedures [Notice PIH 2016-09].

When a family ports into its jurisdiction, HACSM will issue the family a voucher based on the paperwork provided by the initial PHA unless the family's paperwork from the initial PHA is incomplete, the family's voucher from the initial PHA has expired or the family does not comply with the PHA's procedures. The PHA will update the family's information when verification has been completed.

### **Voucher Term**

The term of the receiving PHA's voucher may not expire before 30 calendar days from the expiration of the initial PHA's voucher [24 CFR 982.355(c)(13)]. If the initial PHA extends the term of the voucher, the receiving PHA's voucher may not expire before 30 days from the new expiration date of the initial PHA's voucher [Notice PIH 2016-09].

### **Voucher Extensions [24 CFR 982.355(c)(14), Notice 2016-09]**

Once the receiving PHA issues the portable family a voucher, the receiving PHA's policies on extensions of the voucher term apply. The receiving PHA must inform the initial PHA of any extension granted to the term of the voucher. It must also bear in mind the billing deadline provided by the initial PHA. Unless willing and able to absorb the family, the receiving PHA should ensure that any voucher expiration date would leave sufficient time to process a request for tenancy approval, execute a HAP contract, and deliver the initial billing to the initial PHA.

### **Voucher Suspensions [24 CFR 982.303, 24 CFR 982.355(c)(15)]**

If the family submits a request for tenancy approval during the term of the receiving PHA's voucher, the PHA must suspend the term of that voucher. The term of the voucher stops from the date that the family submits a request for PHA approval of the tenancy until the date the PHA notifies the family in writing whether the request has been approved or denied [24 CFR 982.4(b)].

### **Notifying the Initial PHA**

The receiving PHA must promptly notify the initial PHA if the family has leased an eligible unit under the program or if the family fails to submit a request for tenancy approval for an eligible unit within the term of the receiving PHA's voucher [24 CFR 982.355(c)(16)]. The receiving PHA is required to use Part II of form HUD-52665, Family Portability Information, for this purpose [Notice PIH 2016-09]. (For more on this topic and the deadline for notification, see below under "Administering a Portable Family's Voucher.")

If an incoming portable family ultimately decides not to lease in the jurisdiction of the receiving PHA but instead wishes to return to the initial PHA's jurisdiction or to search in another jurisdiction, the receiving PHA must refer the family back to the initial PHA. In such a case the voucher of record for the family is once again the voucher originally issued by the initial PHA. Any extension of search time provided by the receiving PHA's voucher is only valid for the family's search in the receiving PHA's jurisdiction [Notice PIH 2016-09].

## **Administering a Portable Family's Voucher**

### ***Portability Billing [24 CFR 982.355(e)]***

To cover assistance for a portable family that was not absorbed, the receiving PHA bills the initial PHA for housing assistance payments and administrative fees. The amount of the housing assistance payment for a portable family in the receiving PHA's program is determined in the same manner as for other families in the receiving PHA's program.

The receiving PHA may bill the initial PHA for the lesser of 80 percent of the initial PHA's ongoing administrative fee or 100 percent of the receiving PHA's ongoing administrative fee for each program unit under contract on the first day of the month for which the receiving PHA is billing the initial PHA under portability. If the administrative fees are prorated for the HCV program, the proration will apply to the amount of the administrative fee for which the receiving PHA may bill (i.e., the receiving PHA may bill for the lesser of 80 percent of the initial PHA's prorated ongoing administrative fee or 100 percent of the receiving PHA's ongoing administrative fee).

If both PHAs agree, the PHAs may negotiate a different amount of reimbursement.

### ***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 2016-09]. 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.

If the receiving PHA fails to send the initial billing within 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 2016-09].

### ***Ongoing Notification Responsibilities [Notice PIH 2016-09, HUD-52665]***

**Annual Reexamination.** The receiving PHA must send the initial PHA a copy of a portable family's updated form HUD-50058 after each annual reexamination for the duration of time the receiving PHA is billing the initial PHA on behalf of the family, regardless of whether there is a change in the billing amount.

**Change in Billing Amount.** The receiving PHA is required to notify the initial PHA, using form HUD-52665, of any change in the billing amount for the family as a result of:

- A change in the HAP amount (because of a reexamination, a change in the applicable payment standard, a move to another unit, etc.)
- An abatement or subsequent resumption of the HAP payments
- Termination of the HAP contract
- Payment of a damage/vacancy loss claim for the family
- Termination of the family from the program

The timing of the notice of the change in the billing amount should correspond with the notification to the owner and the family in order to provide the initial PHA with advance notice of the change. Under no circumstances should the notification be later than 10 business days following the effective date of the change in the billing amount. If the receiving PHA fails to send Form HUD-52665 within 10 days of effective date of billing changes, the initial PHA is not responsible for any increase prior to notification. If the change resulted in a decrease in the monthly billing amount, the initial PHA will offset future monthly payments until the difference is reconciled.

#### ***Late Payments [Notice PIH 2016-09]***

If the initial PHA fails to make a monthly payment for a portable family by the fifth business day of the month, the receiving PHA must promptly notify the initial PHA in writing of the deficiency. The notice must identify the family, the amount of the billing payment, the date the billing payment was due, and the date the billing payment was received (if it arrived late). The receiving PHA must send a copy of the notification to the Office of Public Housing (OPH) in the HUD area office with jurisdiction over the receiving PHA. If the initial PHA fails to correct the problem by the second month following the notification, the receiving PHA may request by memorandum to the director of the OPH with jurisdiction over the receiving PHA that HUD transfer the unit in question. A copy of the initial notification and any subsequent correspondence between the PHAs on the matter must be attached. The receiving PHA must send a copy of the memorandum to the initial PHA. If the OPH decides to grant the transfer, the billing arrangement on behalf of the family ceases with the transfer, but the initial PHA is still responsible for any outstanding payments due to the receiving PHA.

#### ***Overpayments [Notice PIH 2016-09]***

In all cases where the receiving PHA has received billing payments for billing arrangements no longer in effect, the receiving PHA is responsible for returning the full amount of the overpayment (including the portion provided for administrative fees) to the initial PHA.

In the event that HUD determines billing payments have continued for at least three months because the receiving PHA failed to notify the initial PHA that the billing arrangement was terminated, the receiving PHA must take the following steps:

- Return the full amount of the overpayment, including the portion provided for administrative fees, to the initial PHA.
- Once full payment has been returned, notify the Office of Public Housing in the HUD area office with jurisdiction over the receiving PHA of the date and the amount of reimbursement to the initial PHA.

At HUD's discretion, the receiving PHA will be subject to the sanctions spelled out in Notice PIH 2016-09.

### ***Denial or Termination of Assistance***

At any time, the receiving PHA may make a determination to deny or terminate assistance to a portable family for family action or inaction [24 CFR 982.355(c)(17)].

In the case of a termination, the PHA should provide adequate notice of the effective date to the initial PHA to avoid having to return a payment. In no event should the receiving PHA fail to notify the initial PHA later than 10 business days following the effective date of the termination of the billing arrangement [HUD-52665; Notice PIH 2016-09].

### **Absorbing a Portable Family**

The receiving PHA may absorb an incoming portable family into its own program when the PHA executes a HAP contract on behalf of the family or at any time thereafter providing that the PHA has funding available under its annual contributions contract (ACC) [24 CFR 982.355(d)(1), Notice PIH 2016-09].

If the receiving PHA absorbs a family from the point of admission, the admission will be counted against the income targeting obligation of the receiving PHA [24 CFR 982.201(b)(2)(vii)].

If the receiving PHA absorbs a family after providing assistance for the family under a billing arrangement with the initial PHA, 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 2016-09].

Following the absorption of an incoming portable family, the family is assisted with funds available under the consolidated ACC for the receiving PHA's voucher program [24 CFR 982.355(d)], and the receiving PHA becomes the initial PHA in any subsequent moves by the family under portability [24 CFR 982.355(e)(4)].

## Chapter 11

### REEXAMINATIONS

**MTW waiver:** *The Agency is authorized to define, adopt and implement a reexamination program that differs from the reexamination program currently mandated in the 1937 Act and its implementing regulations. This authorization waives certain provisions of Section 8(o)(5) of the 1937 Act and 24 CFR 982.516 as necessary to implement the Agency's MTW Plan.*

#### I. INTRODUCTION

The reexamination process includes gathering and verifying current information about family composition, income, and expenses. Based on the information obtained during the reexamination process, HACSM will calculate the family's annual adjusted income.

#### II. ANNUAL OR TRIENNIAL REEXAMINATIONS

HACSM will institute a triennial reexamination schedule (every three years) for families that are designated as elderly or disabled (i.e. receiving the \$400 elderly household allowance). Generally, the sources of income for these households are subject to predictable and minimal increase.

For all other families (non-elderly, non-disabled), reexamination will occur annually.

The reexamination due date is determined by the program admission date of the family. Relocating to a different unit or change of lease date will not affect the reexamination due date.

All families are required to participate in a reexamination interview. All adult household members, 18 years and older must attend the reexamination interview.

Students who attend school out of the area and/or who live away from the household will not be considered as family members. This removal does not mean the students will not be allowed to return to the unit; however, the students will not be considered in HACSM's determination of unit size and the income will not be included.

Prior to the COVID-19 pandemic, notification of reexamination interviews was sent by first-class mail and contained the date, time, and location of the interview. In addition, it informed the family of the information and documentation that must be provided at the interview. Families were required to bring all information as described in the reexamination notice to the reexamination appointment.

As a result of the COVID-19 pandemic, processes surrounding reexaminations have been modified to include additional communication channels with families, such as email, telephone, DocuSign and online portals administered by HACSM's third-party software vendor, Rent Café PHA.

An advocate, interpreter, or other assistant may assist the family in the interview process.

Any required documents or information that the family is unable to provide at the time of the interview must be provided within 30 business days of the interview. If the family

is unable to obtain the information or materials within the required time frame, the family may request an extension.

If the family does not provide the required documentation or information within the required time frame, the family will be sent a notice of termination.

If a family fails to attend two scheduled interviews, or if the notice is returned by the post office with no forwarding address, a notice of termination will be sent to the family's address of record in the family's file.

### III. INTERIM REEXAMINATIONS

Families are required to report the following changes:

- Changes in family composition that occur between regularly scheduled reexaminations; or
- Changes in the status of Full-Time Students (FTS) between regularly scheduled reexaminations (i.e. if a member reports full-time student status, then drops or withdraws from classes and is no longer a full-time student); or
- If the family has reported a decrease in income resulting in an interim adjustment of the tenant rent with pending benefit, the family is required to subsequently report final determination in income or benefits; or
- If the family income status is at zero income (including income calculated based on HACSM's Income and Expense Statement)

An interim reexamination will be conducted or processed when:

- There is a change in the income that results in a *decrease* in total family income. The decrease must be expected to last at least 30 days or longer.  
  
The exception to this process is for school employees since HACSM has already calculated their income based on the school year – no interim examination or adjustment will be processed.
- Verification for pending benefits is unavailable and HASCM processed a rent adjustment without including the pending benefit as income. In such case, HACSM will adjust the family portion of rent once the verification of benefit is received.
- There is a change in family composition
- There is a change in the status of Full-Time Students who receive wages/earned income.
- The family reported zero income on the family's last housing application (including income calculated based on HACSM's Income and Expense Statement). HACSM will conduct interim redeterminations every 120 days for zero income families.
- The family's rent portion is 80% or more of its annual adjusted income (high rent burden). HACSM will conduct interim redeterminations every 120 days for high rent burden families.

- The family's rent was decreased due to a loss in earnings from self or seasonal employment, or employment from temporary agencies, HACSM will conduct an interim redetermination when the family member returns to work.

Families must request HACSM 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 14 consecutive days, or 60 cumulative days within a twelve-month period, and therefore no longer qualifies as a guest or visitor. Requests must be made in writing and approved by the HACSM *prior* to the individual moving in the unit.

HACSM will not approve the addition of other dependents to the household unless the family can provide proof of legal guardianship.

HACSM will not approve the addition of a new family or household member unless the individual meets the HACSM's eligibility criteria (see Chapter 3).

HACSM will not approve the addition of a foster child or foster adult if it will cause a violation of HQS space standards.

When an interim reexamination is conducted, only those factors that have been changed will be verified.

### **Changes in Head of Household (HOH)**

If a change in HOH is reported, the following provisions will be applied:

1. The individual becoming the new HOH must be in the household for at least the previous 12 consecutive months, **and**
2. At the time of the HOH change, the household would join the time-limited MTW Self-Sufficiency program. However, if the household is already enrolled in the time-limited MTW Self-Sufficiency program, the remaining household members would only be eligible for the remaining term, not an additional term.

The following exceptions may apply to the automatic enrollment in HACSM's MTW Self-Sufficiency program:

1. If the newly designated HOH is elderly/disabled, they will have the ability to "opt out" of the time-limited MTW Self-Sufficiency program;
2. If the change in HOH is the result of domestic violence;
3. If the new HOH is an original household member (verified by HACSM data);
4. When the change in HOH is the result of a temporary guardian becoming the permanent guardian of existing minors on the housing application;

## **IV. EFFECTIVE DATES**

For annual and triennial reexaminations, regardless of whether the family's portion of rent increases or decreases, the new rent amount will be effective on the family's designated "anniversary date."

If the family causes a delay so that the processing of the regular reexamination is not completed by the scheduled reexamination date, the adjustment in the housing assistance payment (increase or decrease) will be effective on the first day of the month following completion of the reexamination.

For interim reexaminations, a decrease in the family's portion of the rent is effective on the first day of the month following the completion of processing the change.

For interim reexaminations, an increase in the family's portion of the rent is effective at least 30 days from the first of the month following the completion of processing the change.

## **V. NOTIFICATION OF NEW FAMILY SHARE AND HAP AMOUNT**

HACSM will notify the owner and family of any changes in the amount of the HAP payment. The notice will include the following information:

- The amount and effective date of the new HAP payment
- The amount and effective date of the new tenant rent to owner

The family will be given an opportunity for an informal hearing and/or hardship review (for MTW rent reform initiatives) regarding HACSM's determination of their annual or adjusted income, and the use of such income to compute the housing assistance payment.

## Chapter 12

### DENIAL OR TERMINATION OF ASSISTANCE

**MTW waiver:** *The Agency is authorized to determine the term and content of Housing Assistance Payment (HAP) contracts to owners during the term of the MTW demonstration. However, any revised HAP contract must include language noting that the funding for the contract is subject to the availability of Appropriations. This authorization waives certain provisions of Section 8(o)(7) of the 1937 Act and 24 CFR 982.162 as necessary to implement the Agency's Annual MTW Plan.*

#### I. INTRODUCTION

HACSM may deny or terminate assistance to a family because of the family's action or failure to act. HACSM will provide families with a written description of the grounds under which HACSM is proposing to deny or terminate assistance and the process by which a tenant or an applicant may request an informal hearing or review. This chapter describes HACSM policies for denying or terminating Section 8 assistance.

#### II. FORMS OF DENIAL

Denial of assistance for an applicant may include any of the following:

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

#### III. PROHIBITED REASONS FOR DENIAL OF ASSISTANCE

Denial of program assistance does not include any of the following criteria:

- Age, disability, race, color, religion, sex, or national origin
- 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 HACSM's jurisdiction.
- Whether members of the family are unwed parents, recipients of public assistance, or children born out of wedlock
- Whether the family includes children
- Whether a family decides to participate in a family self-sufficiency program

- Whether or not a qualified applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking if the applicant is otherwise qualified for assistance

#### IV. MANDATORY DENIAL OF ASSISTANCE

HACSM will deny assistance in the following cases:

- Any household member has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine on the premises of federally assisted housing.
- Any household member is subject to a lifetime registration requirement under a state sex offender registration program.
- Any member of the household has been evicted from federally-assisted housing in the last three (3) years for drug-related criminal activity. HACSM will admit an otherwise-eligible family who was evicted from federally-assisted housing within the past three years for drug-related criminal activity, if HACSM is able to verify that the household member who engaged in the criminal activity has completed a supervised drug rehabilitation program, or the person who committed the crime, is no longer living in the household.
- HACSM determines that any household member is currently engaged in the use of illegal drugs. *Currently engaged in* is defined as any use of illegal drugs during the previous six months.
- HACSM has reasonable cause to believe that any household member's current use or pattern of use of illegal drugs, or current abuse or pattern of abuse of alcohol, may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents.

In determining reasonable cause, HACSM will consider all credible evidence, including but not limited to, any record of convictions, arrests, or evictions of household members related to the use of illegal drugs or the abuse of alcohol. A conviction will be given more weight than an arrest. HACSM will also consider evidence from treatment providers or community-based organizations providing services to household members.

- HACSM determines the family has no citizens or eligible alien members in the household. Housing assistance is restricted to citizens and non-citizens who have been lawfully admitted to the United States. "Mixed families" may be eligible for prorated assistance. If the family fails to submit required evidence of citizenship or eligible immigration status based on non-citizen rule regulations and applicable informal hearing procedures and is not eligible.
- If any member of the family fails to sign and submit consent forms allowing HACSM to obtain wage and income information.
- If the head of household or other adult family members are currently being assisted under HACSM's time-limited MTW Self-Sufficiency program or has exited the time-limited program within the last 36 months.

## V. OTHER REASONS FOR DENIAL OF ASSISTANCE

HACSM will deny an applicant (or a new adult member being added to an existing household) admission for participation in the program in the following cases:

- If any household member is currently engaged in, or has engaged in any of the following criminal activities, within the past three years:
  - *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].
    - HACSM exercises its discretion to adhere to Federal law which prohibits use of marijuana as a drug-related criminal activity.
  - *Violent criminal activity*, defined by HUD as any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage [24 CFR 5.100].
  - Criminal activity that may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity (*Immediate vicinity* means within a three-block radius of the premises); 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 the HA (including a HA employee or a HA contractor, subcontractor, or agent). Evidence of such criminal activity includes, but is not limited to:
    - Conviction for drug-related or violent criminal activity within the past three years.
    - Any record of eviction from public or privately-owned housing as a result of criminal activity within the past three years.
- Any family member has been evicted from federally-assisted housing in the last three years;
- Any PHA has ever terminated assistance under the program for any member of the family within the last three years;
- Any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program;
- The family owes rent or other amounts to any housing authority in connection with Section 8 or other public housing assistance under the 1937 Act, unless the family repays the full amount of the debt prior to program admission;
- If the family has not reimbursed any PHA for amounts the PHA paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease, unless the family repays the full amount of the debt prior to program admission;

- The family has breached the terms of a repayment agreement entered into with HACSM, unless the family repays the full amount of the debt covered in the repayment agreement prior to program admission;

Upon consideration of all factors, HACSM may, on a case-by-case basis, decide not to deny assistance.

## **VI. SCREENING FOR ELIGIBILITY**

### **Criminal Background Checks**

HACSM is required to perform criminal background checks necessary to determine whether applicants are engaging in or have engaged in certain criminal activities or 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. In order to obtain access to the records, HACSM will require every applicant family to submit a consent form signed by each adult household member.

Additionally, HACSM will ask whether the applicant, or any member of the applicant's household, is subject to a lifetime registered sex offender registration requirement in any state.

Should HACSM's screening process reveal that an applicant's household includes an individual subject to state lifetime registered sex offender registration, HACSM will offer the family the opportunity to remove the ineligible family member from the household. If the family is unwilling to remove that individual from the household, HACSM will deny admission to the family.

For other criminal activity, HACSM may permit the family to exclude the culpable family members as a condition of eligibility.

If HACSM proposes to deny assistance based on a criminal record or on lifetime sex offender registration information, HACSM will notify the household of the proposed action and 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.

### **Screening for Suitability as a Tenant**

HACSM has no liability or responsibility to the owner for the family's behavior or suitability for tenancy. HACSM will not conduct additional screening to determine an applicant family's suitability for tenancy.

The owner is responsible for screening and selection of the family to occupy the owner's unit. HACSM will 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.

HACSM will provide prospective owners with the family's current and prior address (as shown in HACSM records) and the name and address (if known) of the owner at the family's current and prior addresses.

HACSM may 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.

HACSM may not disclose to the owner any confidential information provided to HACSM by the family in response to a request for documentation of domestic violence, dating violence, sexual assault, or stalking except at the written request or with the written consent of the individual providing the documentation.

HACSM will provide the following information, based on documentation in its possession:

- Eviction history
- Damage to rental units
- Other aspects of tenancy history that is a matter of public record
- Drug trafficking by family members

HACSM policy on providing information to owners is included in the briefing packet and will apply uniformly to all families and owners.

## **VII. CRITERIA FOR DECIDING TO DENY ASSISTANCE**

HACSM will use the concept of “the preponderance of the evidence” as the standard for making all admission decisions.

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

### ***Consideration of Circumstances***

HACSM will consider the following factors when making its decision:

- The seriousness of the case, especially with respect to how it would affect other residents;
- The effects that denial of assistance may have on other members of the family who were not involved in the action or failure;
- The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities, or a victim of domestic violence, dating violence, sexual assault, 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:
  - HACSM 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.
- In the case of money owed to HACSM or any PHA, whether HACSM's applicant family is an adult member/adult child of the household with a debt incurred by the parent(s) or Head of Household.

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

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

For other criminal activity, HACSM may permit the family to exclude the culpable family members as a condition of eligibility. In such instances, the head of household must certify that the family member will not be permitted to visit, stay as a guest, or reside in the assisted unit.

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

## **VIII. NOTICE OF ELIGIBILITY OR DENIAL**

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

If HACSM determines that a family is not eligible for the program for any reason, the family will be notified promptly. The notice will describe the reasons for which assistance has been denied, the family's right to an informal review, and the process for obtaining the informal review.

If HACSM 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 HACSM 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)]. HACSM 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)]. The family will be given 10 business days to dispute the accuracy and relevance of the information.

If the family does not contact HACSM to dispute the information within the established time frame, HACSM 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.

## **IX. PROHIBITION AGAINST DENIAL OF ASSISTANCE TO VICTIMS OF DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, AND STALKING**

The Violence against Women Act of 2013 (VAWA) and HUD regulation at 24 CFR 5.2005(b) prohibit PHAs from denying an applicant admission to the Housing Voucher program “on the basis or as a direct result of the fact that the applicant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, if the applicant otherwise qualifies for assistance or admission.”

### **Definitions**

As used in VAWA:

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

- The term *stalking* means:
  - To engage in a course of conduct directed at a specific person that would cause a reasonable person to fear for his or her safety or the safety of others, or suffer substantial emotional distress.

### **Notification**

VAWA 2013 expanded notification requirements to include the obligation for PHAs to provide applicants who are denied assistance with a VAWA Notice of Occupancy Rights (form HUD-5380) and a domestic violence certification form (HUD-5382) at the time the applicant is denied.

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

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

### **Documentation**

A PHA presented with a claim for initial or continued assistance based on status as a victim of domestic violence, dating violence, sexual assault, stalking, or criminal activity related to any of these forms of abuse may—but is not required to—request that the individual making the claim document the abuse. Any request for documentation must be in writing, and the individual must be allowed at least 14 business days after receipt of the request to submit the documentation. The PHA may extend this time period at its discretion. [24 CFR 5.2007(a)]

The individual may satisfy the HACSM's request by providing any one of the following three forms of documentation [24 CFR 5.2007(b)]:

- (1) A completed and signed HUD-approved certification form (HUD-5382, Certification of Domestic Violence, Dating Violence, Sexual Assault, or Stalking), which must include the name of the perpetrator only if the name of the perpetrator is safe to provide and is known to the victim. The form may be filled out and submitted on behalf of the victim.
- (2) A federal, state, tribal, territorial, or local police report or court record, or an administrative record.
- (3) Documentation signed by a person who has assisted the victim in addressing domestic violence, dating violence, sexual assault or stalking, or the effects of such abuse. This person may be an employee, agent, or volunteer of a victim service provider; an attorney; a mental health professional; or a medical professional. The person signing the documentation must attest under penalty of perjury to the

person's belief that the incidents in question are bona fide incidents of abuse. The victim must also sign the documentation.

HACSM may not require third-party documentation (forms 2 and 3) in addition to certification (form 1), except as specified below under "Conflicting Documentation," nor may it require certification in addition to third-party documentation [VAWA final rule].

### **Conflicting Documentation [24 CFR 5.2007(e)]**

In cases where HACSM receives conflicting certification documents from two or more members of the household, each claiming to be a victim and naming one or more of the other petitioning household members as the perpetrator, HACSM may determine which is the true victim by requiring each to provide acceptable third-party documentation, as described above (forms 2 and 3). HACSM may also request third-party documentation when submitted documentation contains information that conflicts with existing information already available to the PHA. Individuals have 30 calendar days to return third-party verification to the PHA. If the PHA does not receive third-party documentation, and the PHA will deny or terminate assistance as a result, the PHA must hold separate hearings for the tenants [Notice PIH 2017-08].

HACSM will honor any court orders issued to protect the victim or to address the distribution of property.

### **Perpetrator Documentation**

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

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

### **Discretion to Require No Formal Documentation [24 CFR 5.2007(d)]**

HACSM has the discretion to provide benefits to an individual based solely on the individual's statement or other corroborating evidence—i.e., without requiring formal documentation of abuse in accordance with 24 CFR 5.2007(b). HUD recommends documentation in a confidential manner when a verbal statement or other evidence is accepted.

If HACSM accepts an individual's statement or other corroborating evidence (as determined by the victim) of domestic violence, dating violence, sexual assault or stalking, HACSM will document acceptance of the statement or evidence in the individual's file.

### **Failure to Provide Documentation [24 CFR 5.2007(c)]**

In order to deny relief for protection under VAWA, HACSM will provide the individual requesting relief with a written request for documentation of abuse. If the individual fails to provide the documentation within 14 business days from the date of receipt, or such longer time as HACSM may allow, the HACSM may deny relief for protection under VAWA.

### **Confidentiality [24 CFR 5.2007(b)(4)]**

All information provided to HACSM regarding domestic violence, dating violence, or stalking, including the fact that an individual is a victim of such violence or stalking, will be retained in confidence. This means that the HACSM (1) may not enter the information into any shared database, (2) may not allow employees or others to access the information unless they are explicitly authorized to do so and have a need to know the information for purposes of their work, and (3) may not provide the information to any other entity or individual, except to the extent that the disclosure is (a) requested or consented to by the individual in writing, (b) required for use in an eviction proceeding, or (c) otherwise required by applicable law.

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

## **X. TERMINATION OF ASSISTANCE**

### **Family Has Completed the Time-Limited MTW Programs**

Assistance for all new families who enter HACSM's time-limited MTW programs either through referral, as determined by HACSM, or via the HACSM waiting-list, will automatically end at the program term.

### **Family No Longer Requires Assistance**

As a family's income increases, the amount of the housing assistance payment decreases. If the amount of assistance provided by HACSM is reduced to zero, the family's assistance terminates automatically 90 days after the last HAP payment.

If a participating family receiving zero assistance experiences a change in circumstances that would result in a HAP payment to the owner, the family must notify HACSM of the change and request an interim reexamination before the expiration of the 90-day period.

### **Family Exceeds Asset Limits**

Participants will be determined ineligible for the program if they have experienced an increase in assets, valuing more than \$100,000 in assets, or have gained ownership interest in a suitable home in which they have a legal right to reside (see Chapter 7 for further details).

If a participating family is determined ineligible due to the above reason, HACSM will continue assistance for 90 days from the determination prior to terminating assistance.

If a participating family experiences a change in asset value during the 90 days, the family must notify HACSM of the change and request an interim before the expiration of the 90-day period.

### **Family Chooses to Terminate Assistance**

The family may request that HACSM terminate housing assistance payments on behalf of the family at any time.

The request to terminate assistance should be made in writing and signed by the head of household, spouse, or co-head.

If no written notice is received, but some other form of notification is received (verbal from family, verbal or written from owner), HACSM staff will document the file accordingly and send a confirmation notice to the family and the owner within 10 business days of the notification, but no later than the proposed termination effective date.

### **Family Absence from the Unit**

The family may be absent from the unit for brief periods. However, the family cannot be absent from the unit for a period of more than 90 consecutive calendar days for any reason. Absence in this context means that no member of the family is residing in the unit.

If the family is absent from the unit for more than 90 consecutive calendar days, the family's assistance will be terminated and notice of termination will be sent in accordance with policies set forth in this plan.

## **XI. MANDATORY TERMINATION OF ASSISTANCE**

HACSM will terminate assistance in the following circumstances:

- If any household member has ever been convicted of the manufacture or production of methamphetamine on the premises of federally-assisted housing.
- The family is evicted from a unit assisted under the Voucher program for a 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 criterion to be used will be whether or not the reason for the eviction was the fault of the tenant or guests.

Incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking may not be construed as serious or repeated violations of the lease by the victim or threatened victim of such violence or stalking.

A family will be considered *evicted* if the family moves after a legal eviction order has been issued, whether or not physical enforcement of the order was necessary.

If a family moves after the owner has given the family an eviction notice for serious or repeated lease violations but before a legal eviction order has been issued, termination of assistance is not mandatory. However, the HACSM 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 alternative measures. Upon consideration of such alternatives and factors, the HACSM may, on a case-by-case basis, choose not to terminate assistance.

- Any family member fails to sign and submit any consent form they are required to sign for a regular or interim reexamination.
- The family fails to submit required documentation within the required timeframe concerning any family member's citizenship or immigration status; 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 a family member, as determined by the HACSM, has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit. For the latter reason, such termination must be for a period of at least 24 months. This does not apply to ineligible non-citizens already in the household where the family's assistance has been prorated.
- 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 HACSM 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, HACSM may defer the family's termination and provide the opportunity to comply with the requirement within a period not to exceed 90 calendar days from the date HACSM determined the family to be noncompliant.

- HACSM will immediately terminate program assistance for deceased single member households.
- 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, and is not residing with his/her parents in a Voucher assisted household, HACSM 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 HACSM 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.

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

- 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.

HACSM 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.

*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. *Drug* means a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

- HACSM exercises its discretion to adhere to Federal law which prohibits the use of marijuana as a drug-related criminal activity.

*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.

- Should HACSM discover that a member of an assisted household was subject to a lifetime (sex offender) registration requirement at admission and was erroneously admitted after June 25, 2001, HACSM will immediately terminate assistance for the household member.

In this situation, HACSM will offer the family the opportunity to remove the ineligible family member from the household. If the family is unwilling to remove that individual from the household, HACSM will terminate assistance for the household.

Upon consideration of all factors or alternatives, HACSM may, on a case-by-case basis, decide not to terminate assistance.

## **XII. OTHER AUTHORIZED REASONS FOR TERMINATION OF ASSISTANCE**

HACSM **may** terminate a family's assistance if:

- The family has failed to comply with any family obligations under the program.
- Any family member has been evicted from federally-assisted housing in the last three years;
- Any PHA has terminated assistance under the program for any member of the family within the last three years;
- Any family member has committed fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program;
- The family currently owes rent or other amounts to any PHA in connection with Section 8 or public housing assistance under the 1937 Act;
- 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 lease;

- The family has breached the terms of a repayment agreement entered into with the HACSM;
- A family member has engaged in or threatened violent or abusive behavior toward HACSM personnel. *Abusive or violent behavior towards HA 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.

VAWA 2013 explicitly prohibits PHAs from considering incidents of, or criminal activity directly related to, domestic violence, dating violence, sexual assault, or stalking as reasons for terminating the assistance of a victim of such abuse.

Additionally, per the alternative requirements listed in the *Federal Register* notice dated December 29, 2014, PHAs are no longer permitted to terminate assistance to a family due to the family's failure to meet its obligations under the Family Self-Sufficiency (FSS) contract of participation [FR Notice 12/29/14].

Upon consideration of all factors or alternatives, HACSM may, on a case-by-case basis, decide not to terminate assistance.

### **XIII. ALTERNATIVES TO TERMINATION OF ASSISTANCE**

#### **Change in Household Composition**

As a condition of continued assistance, the head of household must certify that the culpable family member has vacated the unit and will not be permitted to visit or to stay as a guest in the assisted unit. The family must present evidence of the former family member's current address upon HACSM request.

#### **Repayment of Family Debts**

If a family owes amounts to HACSM, as a condition of continued assistance, HACSM will require the family to repay the full amount or to enter into a repayment agreement, within 30 days of receiving notice from HACSM of the amount owed.

### **XIV. CRITERIA FOR DECIDING TO TERMINATE ASSISTANCE**

HACSM will use the concept of "the preponderance of the evidence" as the standard for making 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**

HACSM will consider the following factors when making its decision:

- 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 a victim of domestic violence, dating violence, sexual assault, 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;

HACSM 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.

### **Reasonable Accommodation**

If the family includes a person with disabilities, HACSM'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, HACSM will determine whether the behavior is related to the disability. If so, upon the family's request, HACSM will determine whether alternative measures are appropriate as a reasonable accommodation. HACSM 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.

## **XV. TERMINATIONS RELATED TO DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT, OR STALKING**

This section describes the protections against termination of assistance that the Violence against Women Act of 2013 (VAWA) provides for victims of domestic violence, dating violence, sexual assault, or stalking.

### **VAWA Protections against Termination**

VAWA provides four specific protections against termination of HCV assistance for victims of domestic violence, dating violence, sexual assault or stalking. (*Note:* The second, third, and fourth protections also apply to terminations of tenancy or occupancy by owners participating in the HCV program, as do the limitations discussed under the next heading.)

First, VAWA provides that a PHA may not terminate assistance to a family that moves out of an assisted unit in violation of the lease, with or without prior notification to the PHA, if the move occurred to protect the health or safety of a family member who is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and who reasonable believed he or she was imminently threatened by harm from further violence if he or she remained in the unit [24 CFR 982.354(b)(4)].

Second, it provides that an incident or incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking may not be construed either as a serious or repeated lease violation by the victim or as good cause to terminate the assistance of the victim [24 CFR 5.2005(c)(1)].

Third, it provides that criminal activity directly related to domestic violence, dating violence, sexual assault, or stalking may not be construed as cause for terminating the assistance of a tenant if a member of the tenant's household, a guest, or another person under the tenant's control is the one engaging in the criminal activity and the tenant or affiliated individual or other individual is the actual or threatened victim of the domestic violence, dating violence, sexual assault, or stalking [24 CFR 5.2005(c)(2)].

Fourth, it gives PHAs the authority to terminate assistance to any tenant or lawful occupant who engages in criminal acts of physical violence against family members or others without terminating assistance to, or otherwise penalizing, the victim of the violence [24 CFR 5.2009(a)].

### **Limitations on VAWA Protections [24 CFR 5.2005(d) and (e)]**

VAWA does not limit the authority of a PHA to terminate the assistance of a victim of abuse for reasons unrelated to domestic violence, dating violence, sexual assault, or stalking so long as the PHA does not subject the victim to a more demanding standard than it applies to other program participants [24 CFR 5.2005(d)(1)].

Likewise, VAWA does not limit the authority of a PHA to terminate the assistance of a victim of domestic violence, dating violence, sexual assault, or stalking if the PHA can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the assisted property if the victim is not terminated from assistance [24 CFR 5.2005(d)(2)].

HUD regulations define *actual and imminent threat* to mean words, gestures, actions, or other indicators of a physical threat that (a) is real, (b) would occur within an immediate time frame, and (c) could result in death or serious bodily harm [24 CFR 5.2005(d)(2) and (e)]. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include:

- The duration of the risk
- The nature and severity of the potential harm
- The likelihood that the potential harm will occur
- The length of time before the potential harm would occur

In order to demonstrate an actual and imminent threat, the PHA must have objective evidence of words, gestures, actions, or other indicators. Even when a victim poses an actual and imminent threat, however, HUD regulations authorize a PHA to terminate the victim's assistance "only when there are no other actions that could be taken to reduce or eliminate the threat".

### **Documentation of Abuse**

When an individual facing termination of assistance for reasons related to domestic violence, dating violence, sexual assault, or stalking claims protection under VAWA, HACSM will request the individual provide documentation supporting the claim. The documentation must include one of the following elements:

1. A completed and signed HUD-approved certification form (HUD-50066, Certification of Domestic Violence, Dating Violence, or Stalking), which must include the name of the perpetrator
2. A federal, state, tribal, territorial, or local police report or court record documenting the domestic violence, dating violence, or stalking;
3. 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 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.

An individual may satisfy the request for documentation by providing any of the above forms of documentation. When a victim submits third-party documentation (items 2 and 3 above), HACSM will not request that the victim also complete HUD-50066 (item 1). Also, when a victim submits a completed, signed HUD-50066, HACSM will not ask the victim to provide third-party documentation.

HACSM may, with respect to any specific case, waive the above-stated requirements for verification and provide the benefits of this policy based on the victim's statement or other corroborating evidence.

The individual claiming victim status must submit the requested documentation within 14 business days after receipt of HACSM's written request or must request an extension within that time frame. HACSM may, at its discretion, extend the deadline for 10 business days.

If the individual provides the requested documentation within 14 business days, or any HACSM-approved extension, HACSM will reconsider its denial of assistance decision in light of the documentation.

If the individual does not provide the requested documentation within 14 business days, or any HACSM-approved extension, HACSM will proceed with denial of the family's assistance in accordance with applicable law, program regulations, and the policies in this plan.

If presented with conflicting certification documents from members of the same household, HACSM will attempt to determine which is the true victim by requiring each of them to provide third-party documentation in accordance with 24 CFR 5.2007(b)(2) or (3) and by following HUD guidance on how such determinations should be made.

### **Terminating the Assistance of a Domestic Violence Perpetrator**

Although VAWA provides protection against termination of assistance for victims of domestic violence, it does not provide protection for perpetrators. VAWA gives the

PHA 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 the PHA chooses to exercise this authority, it must follow any procedures prescribed by HUD or by applicable local, state, or federal law regarding termination of assistance. This means that the PHA must follow the same rules when terminating assistance to an individual as it would when terminating the assistance of an entire family [3/16/07 *Federal Register* notice on the applicability of VAWA to HUD programs].

If the perpetrator remains in the unit, the PHA continues to pay the owner until the PHA terminates the perpetrator from the program. The PHA must not stop paying HAP until 30 days after the owner bifurcates the lease to evict the perpetrator. The PHA may pay HAP for the full month if the 30-day period will end mid-month [Notice PIH 2017-08].

If the perpetrator is the only participant eligible to receive assistance, the PHA will provide any remaining participant a chance to establish eligibility for the program. If the remaining participant cannot do so, the PHA will provide them with 30 days to establish eligibility for another housing program prior to termination of the HAP contract.

### **Confidentiality**

All information provided to HACSM regarding domestic violence, dating violence, or stalking, including the fact that an individual is a victim of such violence or stalking, will be retained in confidence. This means that the HACSM (1) may not enter the information into any shared database, (2) may not allow employees or others to access the information unless they are explicitly authorized to do so and have a need to know the information for purposes of their work, and (3) may not provide the information to any other entity or individual, except to the extent that the disclosure is (a) requested or consented to by the individual in writing, (b) required for use in an eviction proceeding, or (c) otherwise required by applicable law.

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

## **XVI. TERMINATION NOTICE**

HUD regulations require PHAs to provide written notice of termination of assistance to a family only when the family is entitled to an informal hearing. However, since the family’s HAP contract and lease will also terminate when the family’s assistance terminates [form HUD-52641], it is a good business practice to provide written notification to both owner and family anytime assistance will be terminated, whether voluntarily or involuntarily.

If a family whose assistance is being terminated is entitled to an informal hearing, the notice of termination that the PHA sends to the family must meet the additional HUD

and PHA notice requirements. VAWA 2013 expands notification requirements to require PHAs to provide notice of VAWA rights and the HUD 5382 form whenever a PHA terminates a household's housing benefits.

Still other notice requirements apply in two situations:

- If a criminal record is the basis of a family's termination, the PHA must provide a copy of the record to the subject of the record and the tenant so that they have an opportunity to dispute the accuracy and relevance of the record [24 CFR 982.553(d)(2)].
- If immigration status is the basis of a family's termination, the special notice requirements must be followed.

## **XVII. TERMINATION OF TENANCY BY THE OWNER**

Termination of an assisted tenancy is a matter between the owner and the family; the HACSM is not directly involved. However, the owner is under some constraints when terminating an assisted tenancy. Termination of tenancy for certain reasons will also result in termination of assistance as discussed in this section.

During the term of the lease, the owner is not permitted to terminate the tenancy except for serious or repeated violations of the lease, certain violations of state or local law, or other good cause.

### **Serious or Repeated Lease Violations**

The owner is permitted to terminate the family's tenancy for serious or repeated violations of the terms and conditions of the lease, except when the violations are related to incidents of actual or threatened domestic violence, dating violence, sexual assault, or stalking and the victim is protected from eviction by the Violence against Women Act of 2013. A serious lease violation includes failure to pay rent or other amounts due under the lease. However, HACSM's failure to make a HAP payment to the owner is not a violation of the lease between the family and the owner.

### **Violation of Federal, State, or Local Law**

The owner is permitted to terminate the tenancy if a family member violates federal, state, or local law that imposes obligations in connection with the occupancy or use of the premises.

### **Criminal Activity or Alcohol Abuse**

The owner may terminate tenancy during the term of the lease if any *covered person*—meaning any member of the household, a guest or another person under the tenant's control—commits any of the following types of criminal activity (for applicable definitions see 24 CFR 5.100):

- Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents (including property management staff residing on the premises);

- Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of their residences by, persons residing in the immediate vicinity of the premises;
- Any violent criminal activity on or near the premises; or
- Any drug-related criminal activity on or near the premises.

However, in the case of criminal activity directly related to domestic violence, dating violence, sexual assault, or stalking, if the tenant or an affiliated individual is the victim, the criminal activity may not be construed as cause for terminating the victim's tenancy.

The owner may terminate tenancy during the term of the lease if any member of the household is:

- Fleeing to avoid prosecution, custody, or confinement after conviction for a crime or an attempt to commit a crime that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or
- Violating a condition of probation or parole imposed under federal or state law.

The owner may terminate tenancy during the term of the lease if any member of the household has engaged in abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

### **Evidence of Criminal Activity**

The owner may terminate tenancy and evict by judicial action a family for criminal activity by a covered person if the owner determines the covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying the standard of proof used for a criminal conviction. This is the case except in certain incidents where the criminal activity directly relates to domestic violence, dating violence, sexual assault, or stalking, and the tenant or an affiliated individual is the victim or threatened victim of the domestic violence, dating violence, sexual assault, or stalking.

### **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.

### **Eviction**

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 HACSM a copy of any eviction notice at the same time the owner notifies the family. The family is also required to give HACSM a copy of any eviction notice.

If the eviction action is finalized in court, the owner must provide the HACSM with documentation related to the eviction, including notice of the eviction date, as soon as possible

## **XVIII. DECIDING WHETHER TO TERMINATE TENANCY**

An owner who has grounds to terminate a tenancy is not required to do so and may consider all of the circumstances relevant to a particular case before making a decision. These might include:

- The nature of the offending action;
- The seriousness of the offending action;
- The effect on the community of the termination, or of the owner's failure to terminate the tenancy;
- The extent of participation by the leaseholder in the offending action;
- The effect of termination of tenancy on household members not involved in the offending activity;
- The demand for assisted housing by families who will adhere to lease responsibilities;
- The extent to which the leaseholder has shown personal responsibility and taken all reasonable steps to prevent or mitigate the offending action;
- The effect of the owner's action on the integrity of the program.

The owner may require a family to exclude a household member in order to continue to reside in the assisted unit, where that household member has participated in or been culpable for action or failure to act that warrants termination.

In determining whether to terminate tenancy for illegal use of drugs or alcohol abuse by a household member who is no longer engaged in such behavior, the owner may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program or has otherwise been rehabilitated successfully (42 U.S.C. 13661). For this purpose, the owner may require the tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

The owner's termination of tenancy actions must be consistent with the fair housing and equal opportunity provisions in 24 CFR 5.105.

An owner's decision to terminate tenancy for incidents related to domestic violence, dating violence, sexual assault, or stalking is limited by the Violence against Women Act of 2013 (VAWA) and the conforming regulations in 24 CFR Part 5, Subpart L.

## Chapter 13

### OWNERS

#### I. INTRODUCTION

Owners play a major role in the Voucher program by supplying decent, safe, and sanitary housing for participating families.

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.

#### II. OWNER RECRUITMENT AND RETENTION

##### Recruitment

HACSM is responsible for ensuring that very low-income families have access to all types and ranges of affordable housing in its jurisdiction, particularly housing outside areas of poverty or minority concentration. A critical element in fulfilling this responsibility is for the HACSM to ensure that a sufficient number of owners, representing all types and ranges of affordable housing in the jurisdiction, are willing to participate in the Voucher program.

HACSM will conduct owner outreach to ensure that owners are familiar with the program and its advantages. Outreach strategies may include, but are not limited to:

- Distributing printed material about the program to property owners and managers
- Contacting property owners and managers by phone or in-person
- Participating in community-based organizations comprised of private property and apartment owners and managers
- Developing working relationships with owners and real estate brokers associations

Outreach strategies will be monitored for effectiveness and adapted accordingly as change in the program and market occurs.

##### Retention

In addition to recruiting owners to participate in the Voucher program, HACSM must also provide the kind of customer service that will encourage participating owners to remain active in the program.

All HACSM 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.

HACSM will give special attention to helping new owners succeed through activities such as:

- Providing the owner with a designated contact person;
- Coordinating inspection and leasing activities between HACSM, the owner, and the family;
- Providing 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.

### **III. OWNER RESPONSIBILITIES**

The basic owner responsibilities in the Voucher program are outlined in the regulations as follows:

- Complying with all the owner's obligations under the housing assistance payments (HAP) contract and the lease
- Performing all management and rental functions for the assisted unit, including selecting a voucher holder to lease the unit, and deciding if the family is suitable for tenancy of the unit
- Maintaining the unit in accordance with Housing Quality Standards (HQS), including performance of ordinary and extraordinary maintenance
- Complying with equal opportunity requirements
- Preparing and furnishing HACSM with information required under the HAP contract
- Collecting the security deposit, the tenant rent, and any charges for unit damage by the family
- Enforcing tenant obligations under the dwelling lease
- Paying for utilities and services that are not the responsibility of the family as specified in the lease
- Allowing reasonable modifications to a dwelling unit occupied or to be occupied by a disabled person [24 CFR 100.203]
- Complying with the Violence Against Women Reauthorization Act of 2013 (VAWA) when screening prospective Voucher tenants or terminating the tenancy of a Voucher family

### **IV. OWNER QUALIFICATIONS**

HACSM does not formally approve an owner to participate in the Voucher program. However, there are several criteria where HACSM 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 Voucher program.

### **Owners Barred from Participation**

HACSM will not approve the assisted tenant if it 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 HACSM 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.

### **Conflict of Interest**

HACSM will 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 HACSM (except a participant commissioner)
- Any employee of HACSM, or any contractor, subcontractor or agent of the HACSM, 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. HACSM must submit a waiver request to the appropriate HUD Field Office for determination.

### **Leasing to Relatives**

HACSM will not approve a tenancy if the owner is the parent, child, grandparent, grandchild, sister, or brother of any member of the family. HACSM 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 the family initially receives assistance under the Voucher 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.

### **Owner Actions That May Result in Disapproval of a Tenancy Request**

HACSM may refuse to approve a request for tenancy if any of the following are true:

- The owner or his/her representative has violated obligations under a HAP contract under Section 8 of the 1937 Act (42 U.S.C. 1437f);
- HACSM has been informed by HUD (or otherwise) that the owner has been disbarred, suspended or subject to a limited denial of participation under 24 CFR Part 24;
- HUD has informed HACSM that the Federal Government has instituted an administrative or judicial action against the owner for violation of the Fair Housing Act or other federal equal-opportunity requirements and such action is pending;

- The owner or his/her representative has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
- The owner or his/her representative has engaged in any drug-related criminal activity or violent criminal activity;
- The owner or his/her representative 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 or his/her representative has been threatening, abusive, belligerent or confrontational with HACSM staff and behaves in a manner that disrupts the normal Housing Authority operations;
- The owner or his/her representative has a history or practice of harassing, retaliatory, or illegal activities towards tenants;
- The owner or his/her representative has a history or practice of renting units that fail to meet state or local housing codes;
- The owner or his/her representative has not paid state or local real estate taxes, fines, or assessment.
- The owner or his/her representative 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:
  - a. Threatens the right to peaceful enjoyment of the premises by other residents;
  - b. Threatens the health or safety of other residents, of employees of the HACSM, or of owner employees or other persons engaged in management of the housing;
  - c. 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
  - d. Is drug-related criminal activity or violent criminal activity;

In considering whether to disapprove owners for any of the discretionary reasons listed above, HACSM 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, HACSM may, on a case-by-case basis, choose to approve an owner.

### **Legal Ownership of Unit**

HACSM will only enter into a contractual relationship with the legal owner or his/her representative (with proper management agreement or written authorization) of a qualified unit. No tenancy will be approved without *acceptable* documentation of legal ownership (e.g. deed of trust, proof of taxes paid for most recent year).

HACSM will require owners to complete and execute tax identification certifications in accordance with IRS requirements. HACSM will comply with IRS regulations in income reporting and back-up withholding.

### **Non-Discrimination**

The owner must not discriminate against any person because of race, color, religion, sex, national origin, age, familial status, disability, marital status or sexual orientation in connection with any actions or responsibilities under the Voucher program and the HAP contract with HACSM.

The owner must cooperate with HACSM and with HUD in conducting any equal opportunity compliance reviews and complaint investigations in connection with the Voucher program and the HAP contract with HACSM.

## **V. HAP CONTRACTS**

The HAP contract represents a written agreement between HACSM and the owner of the dwelling unit occupied by a HCV assisted family. The contract spells out the owner's responsibilities under the program, as well as the Housing Authority's obligations. Under the HAP contract, HACSM agrees to make housing assistance payments to the owner on behalf of the family approved by HACSM to occupy the unit.

When HACSM has determined that the unit meets program requirements and the tenancy is approvable, HACSM and the owner will execute the HAP contract.

### **HAP Contract Payments**

During the term of the HAP contract, and subject to the provisions of the HAP contract, HACSM will 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 (subsidy) is determined according to the HACSM policies described in Chapter 7, and is subject to change during the term of the HAP contract. HACSM will notify the owner and the family in writing of any changes in the HAP payment.

HAP payments will be made only during the lease term, and only while the family is residing in the unit.

The monthly HAP payment by HACSM is credited toward the monthly rent to owner under the family's lease. The total of the rent paid by the tenant and the HAP payment is equal to the rent to owner as specified in the lease.

The family is not responsible for payment of the HAP payment, and HACSM 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 must not demand or accept any rent payment from the tenant in excess of this maximum. The owner must 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.

For deceased single member households or a household where the remaining household member is a live-in aide, HACSM will discontinue HAP to the owner no later than the first of the following month after the month in which the death occurred. The owner is **not** entitled to HAP for any month following the month in which the death occurred. There are no exceptions to this policy.

If the owner receives any excess HAP from HACSM, the excess amount must be returned immediately. If HACSM determines that the owner is not entitled to all or a portion of the HAP, HACSM may deduct the amount of overpayment from any amounts due to the owner, including amounts due under any other Voucher contract.

### **Late HAP Payments**

HACSM is responsible for making HAP payments promptly when due to the owner, in accordance with the terms of the HAP contract. After the first two calendar months of the HAP contract term, the HAP contract provides for late penalties if HACSM 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.

HACSM is not required to pay a late payment penalty if HUD determines that the payment is late for reasons beyond HACSM's control. In addition, late payment penalties are not required if the HACSM intentionally delays or denies payment as a remedy to an owner breach of the HAP contract.

### **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.

By endorsing the monthly check from HACSM, 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.

### **Termination of HAP Payments**

HACSM will 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, HACSM will 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 HACSM when the owner has initiated eviction proceedings against the family and the family continues to reside in the unit.

The owner must inform HACSM when the owner has obtained a court judgment or other process allowing the owner to evict the tenant and provide HACSM 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, HACSM 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 HACSM of the date when the family actually moves from the unit or the family is physically evicted from the unit.

### **Breach of HAP Contract**

Any of the following actions by the owner constitutes a breach of the HAP contract:

- If the owner violates any obligations under the HAP contract including failure to maintain the unit in accordance with HQS;
- If the owner has violated any obligation under any other HAP contract under Section 8;
- If the owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
- For projects with mortgages insured by HUD or loans made by HUD, if the owner has failed to comply with the regulation for the applicable program; or if the owner has committed fraud, bribery or any other corrupt or criminal act in connection with the mortgage or loan;
- If the owner has engaged in drug-related criminal activity
- If the owner has committed any violent criminal activity

HACSM 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. HACSM may also obtain additional relief by judicial order or action.

HACSM will 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. HACSM will provide the owner with written notice of any reduction in housing assistance payments or the termination of the HAP contract.

Before HACSM invokes a remedy against an owner, it will evaluate all information and documents available to determine if the contract has been breached. If relevant, HACSM 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, HACSM 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.

### **HAP Contract Term and Terminations**

The term of the HAP contract runs concurrently with the term of the dwelling lease, beginning on the first day of the initial term of the lease and termination on the last day of the term of the lease, including any lease term extensions.

The HAP contract and the housing assistance payments made under the HAP contract terminate if:

- The owner or the family terminates the lease;
- The lease expires;
- HACSM terminates the HAP contract;
- HACSM 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;
- 90 calendar days have elapsed since HACSM made the last housing assistance payment to the owner;
- The family is absent from the unit for longer than the maximum period permitted by HACSM;
- The Annual Contributions Contract (ACC) between HACSM and HUD expires;
- HACSM elects to terminate the HAP contract. HACSM 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;
  - The unit does not meet HQS size requirements due to change in family composition;
  - The unit does not meet HQS;
  - The family breaks up;
  - The owner breaches the HAP contract

If HACSM terminates the HAP contract, it will give the owner and the family written notice. The notice will specify the reasons for the termination and the effective date of the termination. Once a HAP contract is terminated, no further HAP payments will be made under that contract.

The HAP contract terminates at the end of the calendar month that follows the calendar month in which HACSM gives written notice to the owner. The owner is not entitled to any housing assistance payment after this period and must return to HACSM 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 is required.

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.

### **Change in Ownership / Assignment of the HAP Contract**

The HAP contract cannot be assigned to a new owner without the prior written consent of HACSM.

An owner under a HAP contract must notify HACSM in writing prior to a change in the legal ownership of the unit. The owner must supply all information as requested by HACSM.

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 HACSM finds acceptable. The new owner must provide HACSM with a copy of the executed agreement.

In order to process payment, the new owner must provide a written certification to HACSM 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 or Request for Taxpayer Identification Number and Certification;
- The effective date of the HAP contract assignment;
- A written agreement to comply with the terms of the HAP contract; and
- A certification that the new owner is not a prohibited relative.

If the new owner does not agree to an assignment of the HAP contract, or fails to provide the necessary documents, HACSM will terminate the HAP contract with the old owner.

## Chapter 14

### SPECIAL HOUSING TYPES

#### I. INTRODUCTION

HACSM may permit a family to use any of the special housing types discussed in this chapter. However, HACSM is not required to permit families receiving assistance in its jurisdiction to use these housing types, except that it will permit use if needed as a reasonable accommodation for a person with a disability. HACSM also may limit the number of families who receive assistance in these housing types and cannot require families to use a particular housing type. No special funding is provided for special housing types.

For the purposes of this chapter, special housing types may include single room occupancy (SRO), shared housing, and manufactured homes where the family owns the home and leases the space.

#### II. SINGLE ROOM OCCUPANCY

Single room occupancy (SRO) units provide living and sleeping space for the exclusive use of the occupant but require 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 Voucher 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.

#### **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.

### **III. SHARED HOUSING**

Families will be permitted to use shared housing only in the following situations:

1. Shared Housing is needed as a reasonable accommodation so that the program is readily accessible to a person with disabilities.
2. Shared Housing is needed to expand housing opportunity for the family.

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 program or with other unassisted persons. The owner of a shared housing unit may reside in the unit, but housing assistance cannot be paid on behalf of the owner. The owner of the residence cannot be related by blood or marriage to the assisted family.

Although other regulations permit the leasing of a rental unit from certain relatives when needed as a reasonable accommodation for a person's disability, HUD has not established a similar regulatory provision to allow an assisted person to share a home with a relative. HACSM defines relatives related by blood or marriage to the assisted family as the parent, child, grandparent, grandchild, sister, or brother of any member of the family.

If approved by HACSM, a live-in aide may reside with the family to care for a person with disabilities. HACSM will 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 Voucher assistance in shared housing, a separate lease and HAP contract are executed for each assisted family. The lease agreement must be between the property owner and the program participant, and HACSM will only contract with the property owner. The standard form of the HAP contract is used.

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, HACSM should consider whether sanitary and food preparation areas are private or shared.

To calculate the family's subsidy amount, HACSM will use the Tiered Subsidy Table amount based on the lesser of the Voucher size or the number of bedrooms rented. There is a minimum tenant rent of \$100.

### **Housing Quality Standards**

HACSM will not give approval to reside in shared housing unless the entire unit, including the portion of the unit available for use by the assisted family under its lease, meets the housing quality standards.

HQS requirements described in Chapter 8 apply to shared housing except for the requirements stated below.

- *Facilities Available for the Family:* Facilities available to the assisted family, whether shared or private, must include a living room, a bathroom, and food preparation and refuse disposal facilities.
- *Space and Security:* The entire unit must provide adequate space and security for all residents (whether assisted or unassisted). Each unit must contain private space for each assisted family, plus common space for shared use by the residents of the unit. Common space must be appropriate for shared use by the residents.

The private space for each assisted family must contain at least one bedroom for each two persons in the family. The number of bedrooms in the private space of an assisted family must not be less than the family unit size. A zero-bedroom or one-bedroom unit may not be used for shared housing.

## **IV. MANUFACTURED HOMES**

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. Voucher-assisted families may occupy manufactured homes in two different ways.

(1) HACSM will permit a family to rent a manufactured home already installed on a space. 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 below.

(2) HACSM will permit an otherwise eligible family that owns a manufactured home to rent a space for the manufactured home and receive Voucher assistance with the rent for the 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.

### **Rent Reasonableness**

Initially, and annually thereafter HACSM will determine that the rent for the manufactured home space is reasonable based on rents for comparable manufactured home spaces. HACSM will 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.

### **Housing Quality Standards**

Under either type of occupancy described above, the manufactured home must meet all HQS performance requirements and acceptability criteria discussed in Chapter 8 of this plan. In addition, the following requirement applies:

- *Manufactured Home Tie-Down:* A manufactured home must be placed on the site in a stable manner and must be free from hazards such as sliding or wind damage. The home must be securely anchored by a tie-down device that distributes and transfers the loads imposed by the unit to appropriate ground anchors to resist overturning and sliding.

## Chapter 15

### SECTION 8 HOMEOWNERSHIP PLAN

#### I. INTRODUCTION

A Section 8 Homeownership Program is hereby established pursuant to the HUD Final Rule dated September 12, 2000 (effective date October 12, 2000) and its changes to 24 CFR Parts 5, 903 and 982.

The Section 8 Homeownership Plan consists of the required and optional policies to administer the program.

The Housing Authority of the County of San Mateo (hereinafter referred to as HACSM) shall provide Section 8 Homeownership assistance up to 25 of the units allocated in HACSM's Section 8 Housing Choice Voucher Program. If this number is achieved, HACSM may suspend offering the Section 8 Homeownership option. HACSM shall not set aside a portion of its funding solely for this program, as it is simply permitting this option with a limit of up to 25 of its units. HACSM shall offer the Section 8 Homeownership Program to both non-elderly/disabled and to elderly/disabled families and may establish a Homeownership Program waiting list of interested participants.

For purposes of administering the Section 8 Homeownership Program, HACSM may establish partnerships with local agencies to assist in the implementation of the program by providing services, support and expertise in various areas. Such partnerships may be revised as HACSM determines necessary to best administer the homeownership program.

This program will provide assistance generally for first-time homebuyers or for families acquiring shares in a cooperative. The assistance may be used to purchase a home that is existing or under construction at the time HACSM determines that the family is eligible for Section 8 Homeownership assistance. If needed, HACSM may request a waiver from HUD to include new construction that has not started at the time of HACSM approval for a participant.

The Homeownership Option may be utilized in two types of housing:

- A single unit property owned by the family. Homes previously occupied under a lease-purchase agreement are eligible; or
- A single dwelling unit in a cooperative or condominium. One or more family members hold membership shares in the cooperative or condominium association.

HACSM shall encourage participants in the Family Self-Sufficiency (FSS) program to make homeownership a goal, if appropriate, and to utilize the Section 8 Homeownership Program. Likewise, participants and voucher holders who are interested in the Section 8 Homeownership Program will be required to participate in the FSS Program, unless the family can clearly demonstrate their readiness for homeownership.

## **II. GENERAL**

The homeownership option is used to assist a family residing in a home purchased and owned by one or more members of the family.

HACSM will 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.

HACSM may make homeownership available to all who qualify or restrict homeownership to families or purposes defined by the HACSM. HACSM may also limit the number of families assisted with homeownership.

HACSM provides homeownership assistance in the form of monthly payments.

A family that includes a person who was an adult member of a family that previously received either form of homeownership assistance may not receive the other form from any PHA.

HACSM will offer monthly homeownership assistance payments to qualified families according to the policies contained in this chapter.

## **III. MONTHLY HOMEOWNERSHIP ASSISTANCE PAYMENTS**

HACSM will offer monthly homeownership assistance only to participating families who:

- Have been a participant in HACSM's Section 8 Program for at least one year or are approved by HACSM to port in from another jurisdiction upon verification of completion of FSS, a pre-approval letter from an appropriate lending institution and a history of compliance.
- Are currently enrolled in the Family Self-Sufficiency (FSS) Program and in compliance with the FSS contract or are graduates of the HACSM's FSS Program or are porting in from another PHA upon successful participation in their FSS program. Elderly or disabled families are exempted from the FSS participation requirement.
- Have a credit score that will qualify for a mortgage.
- Have established a checking and savings account.

#### **IV. MONTHLY HOMEOWNERSHIP ASSISTANCE: ELIGIBILITY REQUIREMENTS**

[24 CFR 982.627]

The family must meet all of the requirements listed below before the commencement of homeownership assistance.

- The family has been admitted to the Section 8 Voucher program.
- The family must satisfy any first-time homeowner requirements.
- 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.
- 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.
- The family must demonstrate that it has been pre-qualified or pre-approved for financing.
- The family must meet the Federal minimum employment requirement.
- At least one adult family member who will own the home must be currently employed full time and must have been continuously employed for one year prior to homeownership assistance.

HUD regulations define “full time employment” as not less than an average of 30 hours per week.

A family member will be considered to have been continuously employed even if that family member has experienced a break in employment, provided that the break in employment did not exceed 30 calendar days; and did not occur within the 6 month period immediately prior to the family’s request to utilize the homeownership option; and has been the only break in employment within the past 12 calendar months.

The Federal minimum employment requirement does not apply to elderly or disabled families.

Any family member who was an adult member of a family that previously defaulted on a mortgage obtained through the homeownership option is barred from receiving future homeownership assistance.

HACSM will impose the following additional initial requirements:

- The family has not violated any Family Obligations within the last three years.
- The family is not within the initial 1-year period of a HAP Contract.
- The family does not owe money to the HACSM or any other PHA.

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.

## **V. HOMEOWNERSHIP COUNSELING REQUIREMENTS [24 CFR 982.630]**

When the family has been determined eligible, they must attend and complete homeownership counseling sessions within two years of purchasing a home. These counseling sessions will be conducted by HACSM staff or other HACSM-approved housing counseling agency. Such counseling shall be consistent with HUD-approved housing counseling.

The following topics will be included in the homeownership counseling sessions:

1. Home maintenance (including care of the grounds);
2. Budgeting and money management;
3. Credit counseling;
4. How to negotiate the purchase price of a home;
5. 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;
6. How to find a home, including information about homeownership opportunities, schools, and transportation in the HACSM jurisdiction;
7. 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;
8. Information about Real Estate Settlement Procedures Act, state and Federal truth-in-lending laws, and how to identify and avoid loans with oppressive terms and conditions;
9. The legal role of the real estate agent and how to choose one;
10. The search, inspection, disclosure, negotiation, finance and contract processes;
11. How to choose a lender

12. How to choose an appropriate inspector;
13. How to determine the prospective growth in housing values in a particular neighborhood;
14. How to locate down payment funds;
15. How to choose the best home insurance;
16. Home warranties and warranty service

## **VI. ELIGIBLE UNITS [24 CFR 982.628]**

The unit must meet 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 was already existing or under construction at the time the family was determined eligible for homeownership assistance.
- The unit is a one-unit property or a single dwelling unit in a cooperative or condominium.
- The unit has been inspected by HACSM and by an independent inspector designated by the family.
- The unit meets HUD Housing Quality Standards.
- The unit may be a home where the family will not own fee title to the real property (such as a manufactured home), if the home has a permanent foundation and the family has the right to occupy the site for at least 40 years.

HACSM will not approve the seller of the unit if it has been informed that the seller is debarred, suspended, or subject to a limited denial of participation. HACSM may disapprove the seller for any reason provided for disapproval of an owner in the voucher program.

## **VII. HACSM SEARCH AND PURCHASE REQUIREMENTS [24 CFR 982.629]**

HACSM has established the maximum time that will be allowed for a family to locate and purchase a home.

The family must obtain pre-qualified or pre-approval for financing by a lender prior to homeownership option is determined.

The family's deadline date for locating a home to purchase will be 120 calendar days from the date the family's eligibility for the homeownership option is determined.

The family must purchase the home within 120 calendar days of locating a home to purchase.

HACSM will require periodic reports on the family's progress in finding and purchasing a home. Such reports will be provided by the family at intervals of 30 calendar days.

If the family is unable to purchase a home within the maximum time limit and had not moved out the subsidized unit, HACSM will allow the family to remain in the Housing Choice Voucher Program.

If a current homeownership participant decides to sell their first home in order to purchase another, the participant must communicate with their homeownership coordinator, regarding on-going residence in their original home and the voucher relocation 90-day timeline.

## **VIII. INSPECTION AND CONTRACT [24 CFR 982.631]**

The unit must meet Housing Quality Standards and must also be inspected by an independent professional inspector selected and paid by the family.

The independent inspection must cover major building systems and components. The inspector must be qualified to identify physical defects and report on property conditions, including major building systems and components. These systems and components include, but are not limited to:

- Foundation and structure;
- Housing interior and exterior;
- Roofing;
- Plumbing, electrical and heating systems.

The independent inspector must not be a HACSM employee or contractor. HACSM will not require the family to use an independent inspector selected by HACSM, but HACSM has established the following standards for qualification of inspectors selected by the family:

- A member of American Society of Home Inspectors or a similar national organization

- Bonded and insured

Copies of the independent inspection report will be provided to the family and HACSM within 48 hours of completion. Based on the information in this report, the family and HACSM will determine whether any pre-purchase repairs are necessary.

HACSM may disapprove the unit for homeownership assistance because of information in the report.

The family must enter into a contract of sale with the seller of the unit. A copy of the contract must be given to the HACSM. The contract of sale must specify the price and terms of sale and provide that the purchaser will arrange for a pre-purchase independent inspection of the home. The contract must also:

- Provide that the purchaser is not obligated to buy the unit unless the inspection is satisfactory;
- Provide that the purchaser is not obligated to pay for necessary repairs; and
- Contain the seller's certification that he or she has not been debarred, suspended or subject to a limited denial of participation.

## **IX. FINANCING [24 CFR 982.632]**

The family is responsible for securing financing. Financing must be guaranteed by the State or Federal government, comply with secondary mortgage market underwriting requirements, or comply with generally accepted private sector underwriting standards.

HACSM assumes no responsibility for the finance arrangements. Participants are encouraged to apply all principles identified during the housing counseling and training sessions.

If the purchase of the home is financed with FHA mortgage insurance, such financing is subject to FHA mortgage insurance requirements.

HACSM may review lender qualifications and loan terms before authorizing homeownership assistance. Loan terms may comply with the secondary market's Community or Affordable Lending Guidelines.

HACSM may disapprove proposed financing if it determines that the debt is unaffordable.

HACSM will prohibit the following forms of financing:

- balloon payment mortgages
- variable interest rate loans
- seller financing on a case-by-case basis
- negative adjusted rate mortgages

Participants are required to have 3% of the purchase price of the home as a down payment. One percent (1%) of the purchase price must come from the family's own resources. The 3% down payment is the program requirement for HACSM; however, HACSM informs families that mortgage lenders might have a higher requirement for loan qualification purposes.

#### **X. CONTINUED ASSISTANCE [24 CFR 982.633]**

Homeownership assistance may only be paid while the family is residing in the home. The family or lender is not required to refund homeownership assistance for the month when the family moves out.

The family must comply with the following obligations:

1. The family must comply with the terms of the mortgage securing debt incurred to purchase the home, or any refinancing of such debt.
2. 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 CFR 982.551 (h) and (i).
3. The family must supply information to HACSM or HUD as specified in CFR 982.551(b). The family must further supply any information required by HACSM or HUD concerning mortgage financing or refinancing, sale or transfer of any interest in the home, or homeownership expenses at least 30 days prior to the change.
4. The family must notify HACSM before moving out of the home.
5. The family must notify HACSM if the family defaults on the mortgage used to purchase the home.
6. No family member may have any ownership interest in any other residential property.
7. The family must attend and complete ongoing homeownership counseling as needed when identified by HACSM.
8. The home must pass a HUD Housing Quality Standards (HQS) inspection.
9. The members of the family must not commit fraud, bribery or any other corrupt or criminal act in connection with the program.
10. The family or members of an assisted family may not receive any other type of housing subsidy for the same or a different unit under any federal, State or local housing assistance program.
11. The family must supply any information requested by HACSM or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition.

## **XI. MAXIMUM TERM OF HOMEOWNERSHIP ASSISTANCE [24 CFR 982.634]**

Except in the case of elderly or disabled families, the maximum term of homeownership assistance is:

- 15 years, if the initial mortgage term is 20 years or longer, or
- 10 years in all other cases.

The elderly exception only applies if the family qualified as elderly at the start of homeownership assistance. The disabled exception applies if, at any time during receipt of homeownership assistance, the family qualifies as disabled.

If the family ceases to qualify as elderly or disabled during the course of homeownership assistance, the maximum term becomes applicable from the date assistance commenced. However, such a family must be afforded at least 6 months of homeownership assistance after the maximum term becomes applicable.

If the family receives homeownership assistance for different homes, or from different PHA's, the total is subject to the maximum term limitations.

## **XII. HOMEOWNERSHIP ASSISTANCE PAYMENTS AND HOMEOWNERSHIP EXPENSES [24 CFR 982.635]**

In determining the amount of the homeownership assistance payment, HACSM will use the same Tiered Subsidy Table (TST) as described in this plan for the Voucher program (see Chapter 7).

The monthly homeownership assistance payment is the lower of the TST amount or the monthly homeownership expenses minus \$50.00.

HACSM will pay the homeownership assistance payment either directly to a lender on behalf of the family or may, upon HACSM approval, make payments to the family either by check or direct deposit for their subsidy amount.

Some homeownership expenses are allowances or standards determined by the HACSM in accordance with HUD regulations. These allowances are used in determining expenses for all homeownership families and are not based on the condition of the home.

Homeownership expenses include:

- Principal and interest on mortgage debt.
- Mortgage insurance premium.
- Taxes and insurance.
- HACSM allowance for maintenance expenses.

- Principal and interest on mortgage debt incurred to finance costs for major repairs, replacements, or improvements for the home.
- If the home is a cooperative or condominium, expenses also include operating expenses or maintenance fees assessed by the homeowner association.

### **XIII. PORTABILITY [24 CFR 982.636, 982.353(b) and (c), 982.552, 982.553]**

HACSM endeavors to increase the stability of the neighborhoods within its jurisdiction through the Section 8 Homeownership Program. As such, HACSM does not anticipate any participants utilizing the portability feature.

Subject to the restrictions on portability included in HUD regulations and HACSM policy, the family may exercise portability if the receiving PHA is administering a voucher homeownership program and accepting new homeownership families.

The receiving housing authority may absorb the family into its voucher program, or bill HACSM. The receiving housing authority arranges for housing counseling and the receiving housing authority's homeownership policies apply.

### **XIV. 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.

HACSM prohibits more than one move by the family during any one-year period.

HACSM will require the family to complete additional homeownership counseling prior to moving to a new unit with continued assistance under the homeownership option. The family must meet all initial requirements of the homeownership program except the requirement to be a first-time homeowner.

HACSM will deny permission to move with continued rental or homeownership assistance if the HACSM determines that it does not have sufficient funding to provide continued assistance.

### **XV. DENIAL OR TERMINATION OF ASSISTANCE [24 CFR 982.638]**

Termination of homeownership assistance is governed by the policies for the Housing Voucher program contained in Chapter 12 of the Administrative Plan. However, the provisions of CFR 982.551 (c) through (j) are not applicable to homeownership.

HACSM will terminate homeownership assistance if the family is dispossessed from the home due to a judgment or order of foreclosure. HACSM will not permit such a family to move with voucher rental assistance.

HACSM will terminate homeownership assistance and will not receive a Section 8 Housing Voucher if the family violates any of the family obligations contained in this section.

HACSM will terminate homeownership assistance and will not receive a Section 8 Housing Voucher if the family violates any of the following family obligations:

- Transfer or conveyance of ownership of the home;
- Providing requested information to HACSM or HUD;
- Notifying HACSM before moving out of the home.

## **XVI. DEFINITIONS (As Applicable to the Homeownership Plan)**

Cooperative Housing: Owned by a corporation or association, and where a member of the corporation or association has the right to reside in a particular unit, and to participate in management of the housing.

Cooperative member: A family of which one or more members own membership shares in a cooperative.

Family: A person or group of persons, as determined by the HACSM, approved to reside in a unit with assistance under the program.

First-time Homeowner: A family of which no member has any present ownership interest in a residence of any family member during the three (3) years before commencement of homeownership assistance for the family. The term "first time homeowner" includes a single parent or displaced homemaker who, while married, owned a home with his or her spouse, or resided in a home owned by his or her spouse.

Home: A dwelling unit for which the HACSM pays homeownership assistance.

Homeownership assistance: Assistance for a family under the homeownership option. There are two alternative and mutually exclusive forms of homeownership assistance by the HACSM for a family: monthly homeownership assistance payments, or a single down payment assistance grant. Either form of homeownership assistance may be paid to the family, or to a mortgage lender on behalf of the family.

Interest in the home: (1) In the case of assistance for a homeowner, *interest in the home* includes title to the home, any lease or other right to occupy the home, or other present interest in the home; or (2) In the case of assistance for a cooperative member, *interest in the home* includes ownership of membership shares in the cooperative, any lease or other right to occupy the home, or other present interest in the home.

Membership shares: Refers to shares in a cooperative. By owning such cooperative shares, the share-owner has the right to reside in the particular unit in the cooperative, and the right to participate in management of the housing.

Present ownership interest: Includes title, in whole or in part, to a residence, or ownership, in whole or in part, of membership shares in a cooperative. *Present ownership interest* does not include the right to purchase title to the residence under a lease-purchase agreement.

Special housing types: Includes single room occupancy housing, shared housing, manufactured homes, cooperative housing (excluding families that are not cooperative members) and the homeownership option.

Statement of homeowner obligations: The family's agreement to comply with program obligations.

## Chapter 16

### FAMILY SELF-SUFFICIENCY ACTION PLAN

**MTW Waiver:** *HACSM is authorized to operate any of its existing self-sufficiency and training programs, including its Family Self-Sufficiency (FSS) Program and any successor programs exempt from certain HUD program requirements. These may include those requirements governing program size or participation, including whether to establish escrow accounts and other rent incentives and whether to establish mandatory self-sufficiency participation requirements. If HACSM receives dedicated funding for an FSS coordinator, such funds must be used to employ a self-sufficiency coordinator. In developing and operating such programs, HACSM is authorized to establish strategic relationships and partnerships with local private and public agencies and service providers to leverage expertise and funding. However, notwithstanding the above, any funds granted pursuant to a competition must be used in accordance with the NOFA and the approved application and work plan. This authorization waives certain provisions of Section 23 of the 1937 Act and 24 C.F.R. 984 as necessary to implement the Agency's Annual MTW Plan.*

#### I. INTRODUCTION

The purpose of the FSS program is to promote the development of local strategies to coordinate the use of the Section 8 Voucher housing assistance program(s) with public and private resources to enable eligible families to achieve economic independence and self-sufficiency.

The objectives of the FSS program are to reduce the dependency of Section 8 participants on welfare and other public assistance programs and enhance economic independence through community coordinated efforts including but not limited to education, job training, savings, child care, personal financial management, counseling, and other related social service assistance.

#### II. PROGRAM COORDINATING COMMITTEE (PCC)

HACSM has established an FSS Program Coordinating Committee (PCC) as required in CFR 984.202., whose functions are to assist HACSM in securing commitments of public and private resources for the operation of the FSS program within HACSM's jurisdiction, including assistance in developing the Action Plan and in implementing the program.

##### **PCC Membership**

The PCC is comprised of a broad representation of community public and private organizations as well as program participants and representatives of HACSM.

In addition, the Committee composition may include, but is not limited to, representation from the following agencies:

- Employment and Job Training
  - Human Services Agency
  - Regional Occupational Program
- Child Care
  - Children and Family Services
  - Child Care Coordinating Council
- Education
  - San Mateo County Community Colleges
- Financial Services:
  - Meriwest Credit Corporation
  - San Mateo Credit Union
- Family and Health Services:
  - Human Service Agency
- Homeownership Education
  - 1st Time Home Buyers, Dept. of Housing, County of San Mateo

### **III. OUTREACH EFFORTS**

Currently, FSS outreach efforts focus primarily on Section 8 Housing Voucher recipients as participation in the FSS program is not mandatory for Voucher recipients.

HACSM may utilize the following methods to recruit current Voucher Program participants of the availability and advantages of participating in the FSS Program:

- Include FSS Program information at orientation briefings and annual reexaminations
- Post FSS Program information in the HACSM lobby
- Conduct FSS orientations at the HACSM office
- Provide FSS Program information to the community at large

### **IV. ASSURANCES OF NON-INTERFERENCE WITH RIGHTS OF NON-PARTICIPATING FAMILIES**

During recruitment efforts, HACSM shall provide assurances to Voucher families that their election not to participate in the FSS will in no way affect their admission, continued assistance, and right to occupancy in accordance with the Voucher program.

### **V. FSS PARTICIPANT SELECTION PROCEDURES**

Effective July 1, 2013, up to 800 vouchers of HACSM's voucher allocation are eligible for the time-limited assistance Moving-To-Work (MTW) vouchers.

Participation in the FSS Program is mandatory for the Moving-To-Work Self-Sufficiency Program participants.

HACSM shall select FSS participants without regard to race, color, religion, sex, sexual orientation, disability, familial status or national origin and shall comply fully with applicable Civil Rights laws. HACSM shall select a program size determined by HUD requirements, the existing funding availability, and current HACSM staff capacity.

In addition to currently participating in the Section 8 Housing Assistance Program(s), families also must meet the following additional requirements:

1. The family must be in compliance with all the Family's Obligations as stated on the voucher, including not owing money to HACSM or is current with the repayment agreement.
2. The head of household must agree to seek and maintain employment.
3. The head of household must sign an FSS Contract of Participation (COP).
4. The head of household, and all adult members, must agree to set short and long term goals, and commit to working towards meeting those goals.
5. The head of household must agree to meet at least annually with his/her FSS Coordinator to review these goals.
6. Families may participate only once. Exceptions may be made on a case by case basis and only if termination of the previous COP is with good cause. No exceptions shall be made if the family has been distributed escrow fund balance.
7. Remaining family members of a family who participated in the FSS Program are not eligible to assume the COP and may not participate in the FSS Program if the family has been distributed escrow fund balance.

When space is available, HACSM shall accept eligible families into the FSS Program on a first come first serve basis. HACSM does not keep a waiting list for FSS Program applicants.

HACSM will conduct orientation with interested families. At the orientation, the family is given a general overview of the program and details on the roles and responsibilities of FSS participants, as well as the role of the HACSM. A description of supportive services, escrow accounts, program policies, expectations, and requirements for successful completion of the program is provided. A needs assessment is conducted to develop an Individual Training and Services Plan (ITSP) for achieving self-sufficiency.

## VI. CONTRACT OF PARTICIPATION

Each family selected is required to enter into a contract with HACSM that outlines the participant's goals, individualized training and service plan, rights and responsibilities pursuant to the Section 8 FSS program requirements, resources and services provided and specific activities, including target dates, to be completed by the FSS program participant. The COP shall require that the FSS family comply with the terms and conditions of the Section 8 program. In addition to stating the rights and responsibilities of the participant, the contract will include an Individual Training and Services Plan (ITSP) as defined in Section VII and VIII of this plan.

### Term of Contract

All Voucher families selected for participation in the FSS program will be required to sign a five-year COP. All MTW Self-Sufficiency families will be required to sign a COP with a term that is up to the term limit of the MTW program.

The contract will be successfully completed when the HACSM determines that the family has fulfilled all of its responsibilities under the contract, or the subsidy payment becomes zero for 90 days.

Upon mutual consent, changes to the terms of the ITSP may be initiated by the FSS participant or Coordinator at any time. Notwithstanding any difficulties concerning compliance with the ITSP or any other FSS requirement, a Housing Voucher FSS participant may choose to withdraw voluntarily from FSS at any time. An FSS participant withdrawing from the FSS program will not lose any rights as a Housing Voucher participant, as long as other requirements of the Voucher program are met.

The early withdrawal option is not available to MTW Self-Sufficiency participants as FSS participation is mandatory. Therefore, termination of COP will result in termination of Section 8 rental assistance for MTW participants.

## VII. INCENTIVES TO ENCOUAGE PARTICIPATION

### FSS Individual Training and Service Plan

HACSM will assist each FSS participant to develop an Individual Training and Service Plan (ITSP) to help the participant determine the actions necessary to become self-sufficient. In addition, the contract must include obtaining employment and leaving welfare assistance at least 12 months prior to the end of contract term as final goals.

The FSS Coordinator and the participant may mutually agree to modify an existing ITSP as long as the new activities will enhance the participant's ability to achieve their self-sufficiency goals.

## **Training, Education, and Workshops**

Through the PCC and other forums, HACSM will link FSS participants with job training, educational, and social service agencies to provide the supportive services necessary to develop self-sufficiency. In addition, FSS participants will be provided with information on homeownership opportunities.

## **Escrow Accounts**

HACSM will award a flat escrow amount to FSS participants who have successfully completed their COP and are in compliance with their Housing Voucher family obligations.

FSS participants will need to provide proof that they have: 1) increased their earned income, 2) fulfilled their educational goals that enhanced their ability to succeed or advance in the workplace, 3) participated in a HACSM-approved budget class, 4) achieved increase in savings, and 5) improved their credit score.

See Section IX below for further detail about escrow accounts.

## **VIII. FSS ACTIVITIES AND SUPPORTIVE SERVICES**

### **Assessment and Referral**

Inquiries from potential participants and referrals to the FSS program are handled by FSS Coordinators. They explain the intent and structure of the program which is to maximize the participant's earnings through meaningful, full-time employment. The FSS Coordinators are trained to assist the family in assessing their strengths and needs. Individuals who need more education and/or training before seeking or returning to work are appropriately referred to the necessary supportive services.

For clients who are not working when they join the FSS program, the assessment will focus on the immediate barriers to employment and longer-range career goals. For those with jobs, the assessment will address needs and resources related to job stability, retention and career advancement. The assessment will identify the family's resources and needs in such areas as work experience, job search and retention skills, education, training, childcare and transportation. The assessment will also address such issues as physical and mental health, parenting, budgeting and household management, English language skills, coping skills and other skills necessary to gain and sustain employment. Several key objectives will guide the assessment process covering the many issues faced during a participant's preparation for and entry into employment, including, but not limited to the following:

- Determine whether the participant is ready to look for work, including whether the participant has the skills needed for the type of employment sought and whether additional training would enhance the participant's long-term employability.

- Determine which service needs the family can meet themselves and which will require outside assistance.
- Encourage participants to identify and build on the positive life skills, strengths, and capabilities they already possess.
- Establish priorities among identified needs.

The assessment will provide the basis for developing the family's ITSP. The ITSP will outline steps towards long-term independence from public assistance, establish interim goal timeframes, identify potential barriers, and anticipate strategies for overcoming barriers. The ITSP also outlines FSS program commitments to support the participant efforts, and the roles and responsibilities of program staff in helping participants reach their goals. The ITSP, like the assessment, will be reviewed periodically; staff and participants may choose to revise ITSPs as appropriate.

### **Services and Family Advocacy**

The primary goal of the HACSM approach to the FSS program is to help clients clarify their vocational goals, link and refer them to necessary services, and provide the ongoing support they need to maintain their focus and motivation.

Thus, the intake interview is the foundation of a client's participation in FSS. It is during this interview that the Coordinator lays the groundwork for developing a successful long-term relationship with the client. The objective is to build a relationship based upon respect for the client, an assessment of the client's needs and appreciation for their strengths, and an understanding of any barriers to employment and services necessary to overcome them.

Although staff will be supportive and share some responsibility for coordinating and arranging services, ultimately the participant will be encouraged to assume responsibility for obtaining the services needed to implement their strategy for self-sufficiency. Staff will convey a consistent message that participants need to take control of, and assume responsibility for their working lives. This acceptance of responsibility will be critical to participant success in the workplace.

### **Service Referrals**

Following the development of the ITSP, the coordinators begin assisting participants to identify the resources needed to begin implementing their plans for reaching self-sufficiency. Participants seeking further education are referred for additional academic assessment if needed; those who are still identifying their employment goals may be referred for in-depth testing and career counseling. Depending on the participant's interests and prior education, referrals may be made to local providers of basic education (GED), vocational or technical education, English as a Second Language (ESL) course, and/or academic training. Participants may also receive referrals for supportive services, such as childcare and transportation assistance, personal or family counseling, or medical services.

To make effective use of the education, training, and support services available to FSS-eligible families, FSS staff compiles, maintains, and updates a directory of local service providers. Coordinators will make every effort to follow up with participants and service providers regarding the outcomes of referrals. Heavy reliance is placed on clients reporting if they are unable to access the referred services so that, if needed, intervention can take place on their behalf.

FSS participants will meet with the FSS Coordinator as often as necessary but no less than once annually to evaluate progress towards the goals and objectives listed in ITSP.

## **IX. MAINTENANCE OF ESCROW ACCOUNTS**

### **Calculation of Escrow**

Effective July 1, 2009, HACSM will use the following schedule in determining escrow credit:

1. \$1,000 per family who has increased their annual earned income a minimum of \$1,200 from program entry to graduation.
2. \$100 for each completed educational goal such as a GED, a degree from an accredited school/college, a vocational certificate, etc. The maximum escrow credit for achieving educational goals will be \$300 per family.
3. \$100 per family for completing a HACSM-approved budget class.
4. \$1,500 per family for increasing their savings by an additional \$1,500 or from program entry to graduation.
5. \$1.00 for each credit score point improved. The escrow credit for improving credit score is limited to one adult family member, per family.

FSS participants may qualify for one or more of the escrow credits stated above.

Effective October 1, 2013, HACSM will use the following schedule in determining escrow credit:

1. Up to \$1,000 per family who meet one of the following:
  - a. If employed, and receiving more than \$2,000 gross annual income at program entry, realize a 15% increase in annual gross income or \$1500 increase in annual gross income, whichever is lower.
  - b. If annual gross income is between \$0 - \$2000 at program entry (or on assistance-only) at entry, must realize an increase in annual gross income of \$10,000.
2. \$200 per attainment of a degree or certificate program, that would further their employment readiness in their chosen field, from an accredited institution. Examples include: a GED, an Associate, Bachelor, and/or Master's degree, or other vocational program. Maximum escrow credit of \$1,000.

3. \$50 per class, workshop, or course that would enrich the individual and provide additional skills for job readiness and/or employment. Maximum escrow credit of \$250.
4. \$100 per completed step in families "Path to Citizenship." Maximum escrow credit of \$500.
5. Budgeting/Savings. Maximum escrow credit of \$500.
  - a. Step 1: Attend HACSM-sponsored Budgeting Class within the first six months of program entry. (\$25 escrow credit)
  - b. Step 2: Prepare and track personal budget for six months following attendance at the budgeting class. (\$200 escrow credit)
  - c. Step 3: Establish (open) a savings account within the first year of program entry
  - d. Step 4: Establish a pattern of savings.
    - i. Increase the savings balance by a minimum of \$1500 during the term of assistance
    - ii. During the final 12 consecutive months of participation, make a minimum of one deposit, of at least \$25 or 5% of the gross monthly earned income, for 10 of the 12 months, whichever is the lesser.
    - iii. Note: In all cases, the savings should be untouched, except in situations of extreme need or in support of other self-sufficiency goals.
6. \$1.00 for each credit score point improved. Maximum escrow credit of \$250. (Note: The escrow credit for improving credit score is limited to one adult family member, per family).
7. \$250 for each Personal Participant Accomplishment from ITSP (and not already included in the above credit schedule). Maximum escrow credit of \$500. These escrow credits are an acknowledgement of the unique family circumstances and the steps completed to become economically self-sufficient.

### **Escrow Reports to Families**

Because escrows are only calculated and credited at the end of the contract term, there will be no escrow reports to the FSS families.

For cumulated escrow fund balance prior to July 1, 2009, escrow account reports will be sent to each FSS family at least annually. The report will include the escrow balance, the amount of interest earned, and any deductions made from the account for the period.

### **Forfeiture of Escrow Funds**

A FSS family has no right to any escrow funds if the family's COP is terminated, declared null and void, or HACSM determines the family did not successfully graduate from the FSS program. For escrow balance accrued prior to July 1, 2009, HACSM will close the family's escrow account and will treat forfeited escrow funds as program receipts under the Section 8 program guidelines, or in accordance with HUD regulations at the time of the forfeiture.

### **Escrow Disbursements**

Escrow will be calculated and credited at the end of the FSS contract term and only if the family provides credible and verifiable documentation showing they qualify for the escrow credit. The maximum escrow credit and pay out at graduation will be \$3,500 per family plus any accrued balances prior to July 1, 2009 (if applicable). Because escrows are calculated and credited at the end of the FSS Contract term, there will be no interim withdrawals during the term of COP.

### **Succession to FSS Escrow Account**

Other family members have no succession right to the FSS escrow account if the FSS head of household left the assisted unit. If the FSS head of household fulfilled all the terms and conditions of the COP and ITSP, HACSM may disburse escrow balance to the FSS head of household upon receiving written request 30 days prior to his/her departure from the unit. At which time, an exit interview must be conducted by the FSS Coordinator. If the COP and ITSP obligations were not fulfilled or the FSS head of household failed to request escrow disbursement in writing 30 days prior to his/her departure, the escrow fund is considered forfeited.

## **X. TERMINATION AND GRIEVANCE PROCEDURES**

The COP is automatically terminated if:

- The family Section 8 assistance is terminated
- The family is at zero HAP for three (3) consecutive months (90 days)
- The family requests early termination
- The family moves to a different jurisdiction during the first 12 months of the FSS participation

The contract may be terminated for terms and conditions listed below:

- Failure to meet the obligations under the COP or ITSP without good cause
- Failure to comply with the COP requirements because the family has moved outside the jurisdiction of HACSM
- Such other act as is deemed inconsistent with the purpose of the FSS program

The FSS participant will be notified by mail of decisions affecting the family's participation in the FSS program. The notification will include the reasons for the

decision and the HACSM policies and HUD regulations supporting it. If the participant disagrees with the decision, an appeal may be made in accordance with the procedures stated in the Informal Hearing section of this Plan.

At the discretion of HACSM, the FSS Coordinator may schedule a pre-hearing conference with the participation to discuss whether an agreement can be reached to cure the violations without terminating the family's FSS participation. However, if the participant disagrees with the conference outcomes, he/she is still entitled to an informal hearing.

## **XI. PORTABILITY**

### **Port Out**

For non-MTW Self-Sufficiency program participants, after the first twelve (12) months of the FSS participation, the FSS family may move outside the HACSM jurisdiction with continued FSS participation. Because escrow is calculated and credited at the end of COP, there will be no transfer of escrow monies to the receiving housing authority at port out.

If the FSS family moves during the first twelve (12) months of the FSS participation, the COP will be automatically terminated.

A relocating FSS family may participate in the FSS program of the receiving housing authority if the receiving housing authority accepts the family into its FSS program. If the receiving housing authority does not accept the family into its FSS program, the family may continue with the HACSM FSS Program if servicing the COP and ITSP is practical and doable. If servicing the COP and ITSP is not practical or doable, the COP will be terminated.

For MTW Self-Sufficiency program participants, see Chapter 24 – Hardship Policy for MTW Initiatives.

## **XII. MONITORING PROGRAM PERFORMANCE**

HACSM staff and management are responsible for monitoring and assessing FSS program performance on a regular basis. Key indicators tracked on a regular basis are:

- Total enrollment
- Number of clients enrolled in any given month
- Number of households with increase in income
- Number of households with employment income
- Number of households achieved educational goals
- Number and amount of escrow pay out for the period

## Chapter 17

### MTW SELF-SUFFICIENCY PROGRAM

#### I. INTRODUCTION

The Housing Authority of the County of San Mateo (HACSM) has been a participant in HUD's Moving to Work (MTW) demonstration program since the execution of its MTW Agreement in May 2000. Under the original MTW Agreement with the U.S. Department of Housing and Urban Development (HUD), HACSM was authorized to design and carry out a demonstration program for 300 families receiving tenant-based assistance. The demonstration exempts HACSM from most of the regulatory requirements that would otherwise apply to these families.

In December 2007, HUD developed and offered HACSM a new Amended and Restated MTW agreement. The purpose of establishing the new agreement was to provide consistent, clear, and standardized language for all MTW agencies. While the new agreement preserved HACSM's funding, it also gave HACSM the opportunity to undertake additional program re-design based on the unique needs of our local community.

Effective July 1, 2013, HACSM received HUD approval to expand the number of vouchers in the time-limited self-sufficiency program up to 800 vouchers.

The goals and objectives of HACSM in developing its MTW Program are the same as that of HUD:

- Provide incentives and assistance to families to become economically self-sufficient
- Reduce program costs and achieve greater cost effectiveness
- Increase housing choice for low-income families

To promote incentives to families to become economically self-sufficient, HACSM provides case management services to MTW Self-Sufficiency participants to obtain employment, secure reliable child care, complete educational goals, improve credit ratings, establish savings, and participate in homeownership counseling. MTW participants are included in the FSS program and as such are eligible for potential escrow payments. Successful graduates in the MTW Self-Sufficiency Program receive the escrow fund balance at the end of their term.

This chapter states provisions unique to the Five-Year MTW Self-Sufficiency program. For items not addressed in this chapter, the Housing Voucher Program policies shall apply as stated in other chapters of this plan.

## **II. PARTICIPANT SELECTION**

### **1. Admission**

The Five-Year MTW Self-Sufficiency program has two components. The first component is to assist eligible individuals and families with their rent payments. The second component is to provide and coordinate a full range of supportive services for the individuals and families so that they may obtain self-sufficiency at the end of their contract term. The program relies upon the existing supportive services offered in San Mateo County. Some of these services are job training and placement, child care, transportation, education, homeownership education, alcohol and drug rehabilitation, domestic violence counseling, and other services that promote self-sufficiency.

Effective July 1, 2013, all new applicants from the Voucher waiting list who are determined to be eligible for the program are automatically enrolled in the Five-Year MTW Self-Sufficiency program.

### **2. Eligibility**

The applicants must meet the same income and other eligibility requirements as the Housing Voucher Program applicants. In addition, applicants must meet the following MTW Self-Sufficiency eligibility requirements:

- Applicants must agree to participate in the self-sufficiency component of the program.
- Applicants must agree to participate in the required case management with the goal of becoming self-sufficient.
- Applicants must agree to enter into a Contract of Participation Contract (COP) with HACSM. The COP is based on the family's self-sufficiency goal plan that describes a realistic process for achieving economic self-sufficiency within the five-year term of the Contract.

### **3. Preference**

HACSM has established a system of preferences for the selection of individuals or families admitted to the program. These preferences are based on local housing needs and priorities and are consistent with the program goals and objectives. The selection preferences affect only the order of selecting

applicants. They do not make any individual or family ineligible which would otherwise be eligible. See Chapter 4 for additional information regarding tenant selection from the waiting list.

### **III. WAITING LIST**

All new applicants from the HACSM Voucher waiting list will automatically be enrolled in the Five-year MTW Self-Sufficiency program.

HACSM may close its waitlist at any time.

### **IV. TIME-LIMITED ASSISTANCE**

As of July 1, 2011, new participants to the MTW Self-Sufficiency Program have a maximum of 60 months (five years) of rental assistance.

When applicants receive their vouchers, they will be given an MTW addendum describing time limits on MTW assistance and other aspects of the program that differ from the Housing Voucher Program. MTW families will also be required to sign a statement regarding time remaining in the program at each annual reexamination.

### **V. HARDSHIP EXCEPTIONS**

See Chapter 24 for MTW Self-Sufficiency participants who may want to request a hardship exception.

### **VI. PORTABILITY**

MTW Self-Sufficiency program participants may only use their rental assistance in the County of San Mateo. These MTW vouchers are not portable.

See Chapter 24 for HACSM's Hardship Policy.

### **VII. VOUCHER ISSUANCE**

All applicants selected to receive MTW vouchers will receive a briefing on how the program operates and what he/she, as an applicant, must do to achieve and maintain eligible status. Whether delivered individually or in a group setting, the briefing will contain all pertinent information about the voucher program in general and the MTW program in particular. The staff member conducting the

briefing will place special emphasis on non-traditional aspects of the program, particularly:

- The time limited feature of the program.
- The fact that MTW vouchers are not portable.
- The requirement for participation in the self-sufficiency component of the program by the head of household and all other adult members of the household.
- The requirement of having case management.
- The requirement that all minors who will turn or have turned 18 by program exit will be included in the case management services.
- The HACSM Hardship Policy.

To ensure that the applicant fully understands the differences between an MTW voucher and a Housing Voucher, the applicant must sign the MTW Voucher Addendum.

#### **VIII. SUBSIDY CALCULATION**

All definitions in subsidy calculation used in the Housing Voucher Program will apply to MTW Self-Sufficiency participants (see Chapter 7).

#### **IX. ESCROW CALCULATION**

The basic premise of the MTW escrow calculation, credit, and pay out are the same as the Section 8 FSS program. See chapter 16 of this Plan for further information.

#### **X. TERMINATION OF ASSISTANCE**

MTW participants may have their assistance terminated for failure to comply with the self-sufficiency activities or the COP.

## Chapter 18

### HOUSING READINESS PROGRAM

#### I. INTRODUCTION

The Housing Authority of the County of San Mateo (HACSM) has been a participant in HUD's Moving to Work (MTW) demonstration program since the execution of its MTW Agreement in May 2000. The demonstration exempts HACSM from many of the regulatory requirements that would otherwise apply to these families.

This chapter states provisions unique to the MTW Housing Readiness Program (HRP). For items not addressed in this chapter, the Housing Voucher Program policies shall apply as stated in other chapters of this Plan.

#### II. PARTICIPANT SELECTION

##### Admission

The MTW-HRP has two components. The first component is to assist eligible individuals and families with their rent payments. The second component is to provide and coordinate a full range of supportive services for the individuals and families so that they may obtain self-sufficiency at the end of the contract term. The program relies upon the existing supportive services offered in San Mateo County. Some of these services are job training and placement, child care, transportation, education, homeownership education, alcohol and drug rehabilitation, domestic violence counseling, and other services that promote self-sufficiency.

##### Eligibility

The applicants must meet the same income and other eligibility requirements as the Housing Voucher Program applicants. In addition, applicants must meet the following HRP eligibility requirements:

- Applicants must be homeless as defined by HACSM's policy;
- The applicant must be receiving case management services from a HACSM-approved Community Based Assistance Program, and the applicant must follow the requirements of those programs;

- Applicants must agree to participate in the required case management, throughout the duration of their participation, with the goal of becoming self-sufficient.

**HACSM Homeless Definition:**

Applicants are considered homeless if they are:

- In places not meant for human habitation, such as cars, parks, sidewalks, abandoned buildings (on the street).
- In an emergency shelter.
- In transitional or supportive housing for homeless persons who originally came from the streets or emergency shelters.
- In any of the above places but spending a short time (up to 30 consecutive days) in a hospital or other institution.
- Being discharged within 30 calendar days from an institution, such as a mental health or substance abuse treatment facility or a jail/prison, in which the person has been a resident for more than 30 consecutive days and no subsequent residence has been identified and the person lacks the resources and support networks needed to obtain housing.
- Fleeing a domestic violence housing situation and no subsequent residence has been identified and lacks the resources and support networks needed to obtain housing.

**Preference**

HACSM has established a system of preferences for the selection of individuals or families admitted to the program. These preferences are based on local housing needs and priorities and are consistent with the program goals and objectives. The selection preferences affect only the order of selecting applicants. They do not make any individual or family ineligible which would otherwise be eligible. Preference will be given to individuals and families that:

- Have members who reside, work, or are hired to work in San Mateo County.
- Are not a prior MTW participant.
- Are currently receiving case management services from an HACSM-approved CBO.

One preference point will be given for each of the verifiable preferences. HACSM will select families with the highest total preference points for eligibility interviews first. Families who have the same total preference points will be selected based on the time and date that the completed referral packet was received by HACSM.

Applicants who claim a preference must submit verifiable documents with their referral packet. Below are some examples of acceptable documents:

- Residency: signed lease, utility bills, governmental benefit notices prior to becoming homeless.
- Certification from supportive service agencies.
- First time program participant: HACSM will use its database to verify this preference.

### **III. TIME-LIMITED ASSISTANCE**

Participants in the MTW Housing Readiness Program have up to 60 months (five years) of rental assistance.

When applicants receive their vouchers, they will be given an MTW addendum describing time limits on MTW assistance and other aspects of the program that differ from the Housing Voucher Program. MTW families will also be required to sign a statement regarding time remaining in the program at each reexamination.

### **IV. PORTABILITY**

MTW Housing Readiness program participants may only use their rental assistance in the County of San Mateo. The HRP vouchers are not portable.

### **V. VOUCHER ISSUANCE**

All applicants selected to receive MTW-HRP vouchers will receive a briefing on how the program operates and what he/she as an applicant must do to achieve and maintain eligible status. Whether delivered individually or in a group setting, the briefing will contain all pertinent information about the voucher program in general and the MTW program in particular. The staff member conducting the briefing will place special emphasis on non-traditional aspects of the program, particularly:

- The time limited feature of the program.
- The fact that MTW-HRP vouchers are not portable.
- The requirement of having case management.
- The HACSM hardship policy.

To ensure that the applicant fully understands the differences between an MTW-HRP voucher and a Housing Voucher, the applicant must sign the MTW Voucher Addendum.

## **VI. SUBSIDY CALCULATION**

All definitions in subsidy calculation used in the Housing Voucher Program will apply to MTW-HRP participants (see Chapter 7).

## **VII. TERMINATION OF ASSISTANCE**

In addition to compliance with Voucher program polices, MTW-HRP participants may have their assistance terminated for failure to comply with case management services.

## Chapter 19

### INFORMAL REVIEWS AND HEARINGS

#### I. INTRODUCTION

Both applicants and participants have the right to disagree with, and appeal, certain decisions of HACSM that may adversely affect them. HACSM decisions that may be appealed by applicants and participants are discussed in this chapter.

The process for applicant appeals of HACSM decisions is called the “informal review”. For participants (or applicants denied admission because of citizenship issues), the appeal process is called an “informal hearing”.

#### II. 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” and will not be as elaborate as the informal hearing requirements.

HACSM will only offer an informal review to applicants for whom assistance is being denied. Denial of assistance includes:

- Removal from the 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
- An unfavorable history that may be the result of domestic violence, dating violence or stalking.

Informal reviews will *not* be provided for the following reasons:

- Discretionary administrative determinations by HACSM
- General policy issues or class grievances
- Determination of the voucher size under HACSM subsidy standards
- HACSM determination not to grant approval of the tenancy
- HACSM determination that the unit is not in compliance with the HQS
- HACSM determination that the unit is not in accordance with the HQS due to family size or composition

## **Notice to the Applicant**

HACSM will give an applicant prompt notice of a decision denying assistance. The notice will contain a brief statement of the reasons for HACSM's decision and state that the applicant may request an informal review of the decision and the process to request one.

## **Scheduling an Informal Review**

If the applicant requests an informal review, the request must be made in writing by an authorized member or representative of the family. The request must be delivered to HACSM either in person, by first class mail, fax, or e-mail by the close of the business day (5:00 PM), no later than the designated deadline date stated in the notice of denial of assistance.

## **Informal Review Procedures**

The informal review will be conducted by a person other than the one who made or approved the decision under review, or a subordinate of this person.

The applicant will be provided an opportunity to present written or oral objections to the decision of HACSM.

The person conducting the review will make a recommendation to HACSM, but HACSM is responsible for making the final decision as to whether assistance should be granted or denied.

If the decision to deny assistance 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.

## **Remote Informal Reviews [Notice PIH 2020-32]**

There is no requirement that informal reviews be conducted in-person and, as such, HUD allows PHAs to conduct all or a portion of their informal review remotely either over the phone, via video conferencing, or through other virtual platforms. If the PHA chooses to conduct remote informal reviews, applicants may still request an in-person informal review, as applicable.

## **III. INFORMAL HEARINGS FOR PARTICIPANTS**

HACSM will offer an informal hearing for certain determinations relating to the individual circumstances of a participant family. A participant is defined as a family that has been admitted to HACSM's Voucher program and is currently assisted in the program. The purpose of the informal hearing is to consider whether HACSM's decisions related to the family's circumstances are in accordance with the law, HUD regulations and HACSM policies.

HACSM will not terminate a family's assistance until the time allowed for the family to request an informal hearing has elapsed, and any requested hearing

has been completed. Termination of assistance for a participant may include any or all of the following:

- Refusing to enter into a HAP contract or approve a lease
- Terminating housing assistance payments under an outstanding HAP contract
- Refusing to process or provide assistance under portability procedures

### **Decisions Subject to Informal Hearing**

HACSM will give participants an opportunity for an informal hearing in the following circumstances:

- A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment (subsidy amount);
- A determination of the family unit size under HACSM's subsidy standards;
- A determination to terminate assistance for a participant family because of the family's actions or failure to act
- A determination to terminate assistance because the participant has been absent from the assisted unit for longer than the maximum period permitted under HACSM policy and HUD rules
- A determination to terminate a family's Family Self-Sufficiency contract, withhold supportive services, or propose forfeiture of the family's escrow account [24 CFR 984.303(i)]

Circumstances for which an informal hearing is not required are as follows:

- Discretionary administrative determinations by HACSM
- General policy issues or class grievances
- HACSM's determination not to approve an extension or suspension of a voucher term
- HACSM's determination not to approve a unit or tenancy
- HACSM's determination that a unit selected by the applicant is not in compliance with HQS
- HACSM's determination that the unit is not in accordance with HQS because of family size
- A determination by HACSM to exercise or not to exercise any right or remedy against an owner under a HAP contract

### **Remote Informal Hearings [Notice PIH 2020-32]**

There is no requirement that informal hearings be conducted in-person, and as such, HUD allows PHAs to conduct all or a portion of their informal hearings remotely either over the phone, via video conferencing, or through other virtual

platforms. If the PHA chooses to conduct remote informal hearings, applicants may still request an in-person informal hearing, as applicable.

#### **IV. INFORMAL HEARING PROCEDURES**

##### **Notice to the Family**

When HACSM makes a decision that is subject to informal hearing procedures, HACSM 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 and the determination of the family unit size, HACSM 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, the notice will 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.

##### **Scheduling an Informal Hearing**

A request for an informal hearing must be made in writing by an authorized member or representative of the family. The request must be delivered to HACSM either in person or by first class mail, fax, or e-mail by the close of the business day (5:00 PM), no later than the designated deadline date in the notice to terminate assistance (generally, 14 calendar days from the date of the notice).

After an informal hearing date has been set, either party may request that the hearing be rescheduled by submitting a request, in writing, at least three working days prior to the scheduled date of the hearing. Each party is entitled to one continuance as of right for up to 15 working (i.e. non-holiday, non-weekend) days and need not provide a reason for the request to reschedule. With the concurrence of both parties, a continuance of longer than 15 days may be granted. If the family fails to appear at a rescheduled hearing, they will forfeit their right to an informal hearing.

The family and HACSM will only be allowed to reschedule the hearing once. If the family misses the rescheduled hearing appointment, the HACSM decision to terminate assistance will stand.

If the family does not appear at the scheduled hearing and does not contact the HACSM to reschedule within the allotted time frame, the HACSM decision to terminate assistance will stand.

## **Pre-Hearing Right to Discovery**

Participants and HACSM are permitted pre-hearing discovery rights. The family will be given the opportunity to examine, before the hearing, any HACSM documents that are directly relevant to the hearing.

The family will be allowed to copy any such documents at their own expense. If HACSM does not make the document available for examination on request of the family, HACSM may not rely on the document at the hearing. The family must request discovery of HACSM documents no later than 5:00 p.m. three (3) full business days (no less than 72 hours) prior to the scheduled hearing date.

HACSM will request the opportunity to examine at the HACSM offices before the hearing, any family documents that are directly relevant to the hearing. HACSM will be allowed to copy any such document at the HACSM's expense. If the family does not make the document available for examination on request of the HACSM, the family may not rely on the document at the hearing. The participant must make the documents available no later than 5:00 pm three (3) full business days (no less than 72 hours) prior to the scheduled hearing date.

For informal hearings, *documents* include records and regulations.

## **Participant's Right to Bring Counsel**

At its own expense, the family may be represented by a lawyer or other representative at the informal hearing.

## **Informal Hearing Officer**

Informal hearings will be conducted by a person or persons approved by HACSM, other than the person who made or approved the decision or a subordinate of the person who made or approved the decision.

HACSM has designated the following to serve as hearing officers:

- Managers/Supervisors of the HACSM (based on a rotating schedule);
- Managers/Supervisors from other departments of the County of San Mateo;
- Managers/Supervisors from other Housing Authorities;
- Professional mediators or arbitrators.

## **Recording of the Hearing**

Hearings will be audio recorded or transcribed at the expense of HACSM.

HACSM will keep the audio recording for 90 days from the date of "Notice of Final Decision". The family may request a copy of the recording at its own expense.

## Conduct at Hearings

The hearing officer is responsible to manage the order of business and to ensure that hearings are conducted in a professional and businesslike manner. Attendees are expected to comply with all hearing procedures established by the hearing officer and guidelines for conduct. Any person demonstrating disruptive, abusive or otherwise inappropriate behavior will be excused from the hearing at the discretion of the hearing officer.

## Evidence

HACSM and the family will be given the opportunity to present evidence and question any witnesses. In general, all evidence is admissible at an informal hearing. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

Any evidence to be considered by the hearing officer must be presented at the time of the hearing. There are four categories of evidence:

1. **Oral evidence:** The testimony of witnesses.
2. **Documentary evidence:** A writing which is relevant to the case, for example, a letter written to the HACSM. Writings include all forms of recorded communication or representation, including letters, words, pictures, sounds, videotapes or symbols or combinations thereof.
3. **Demonstrative evidence:** Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a model, a chart or other diagram.
4. **Real evidence:** A tangible item relating directly to the case.

*Hearsay Evidence* is evidence based not on a witness' personal knowledge. In and of itself, hearsay evidence carries no weight when making a finding of fact. The hearing officer may include hearsay evidence when considering their decision if it is corroborated by other evidence. Even though hearsay evidence is generally admissible in a hearing, the hearing officer will not base a hearing decision on hearsay alone unless there is clear probative value and credibility of the evidence, and the party seeking the change has met the burden of proof.

If either HACSM or the family fail to comply with the discovery requirements described above, the hearing officer will refuse to admit such evidence.

The hearing officer has the authority to overrule any objections to evidence other than the failure of a party to comply with discovery.

## **Hearing Officer's Decision**

The hearing officer will issue a written decision summary, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family will be based on a preponderance of evidence presented at the hearing. A copy of the written decision will be provided to the family (and HACSM) no later than 15 business days after the hearing.

Failure of the hearing officer to render a decision within the stipulated time period because of extenuating circumstances shall not invalidate the decision when rendered.

## **Notice of Final Decision**

HACSM is not bound by the decision of the hearing officer for matters in which HACSM is not required to provide an opportunity for a hearing, decisions that exceed the authority of the hearing officer, decisions that conflict with or contradict HUD regulations, requirements, or are otherwise contrary to federal, state or local laws.

If HACSM determines it is not bound by the hearing officer's decision in accordance with HUD regulations, HACSM will promptly notify the family of the determination and the reason for the determination.

Within 15 days of its receipt of the informal hearing decision from the hearing officer, HACSM will provide a Notice of Final Decision to the family and their representative (if applicable).

The Notice will state: 1) whether or not HACSM adopts the decision or finding; 2) the date HACSM makes its final decision; 3) the date the HACSM decision will be effective and implemented; and 4) any appeal rights the family may have.

The Notice will be sent by first-class mail, with a "Proof of Service by Mail" enclosed.

## Chapter 20

### FAMILY OR OWNER DEBTS TO HACSM

#### I. INTRODUCTION

When an action or inaction of an owner or participant results in the overpayment of housing assistance, HACSM will hold the owner or participant liable to return any overpayments to HACSM.

When an owner or participant refuses to repay monies owed to HACSM, it will utilize other available collection alternatives including, but not limited to, the following:

- Collection agencies
- Small claims court
- Civil law suit
- State income tax set-off program

#### II. REPAYMENT POLICY

##### Owner Debts to HACSM

Any amount due to HACSM by an owner must be repaid by the owner within 30 days of HACSM determination of the debt.

If the owner fails to repay the debt within the required time frame and is entitled to future HAP payments, HACSM will reduce the future HAP payments by the amount owed until the debt is paid in full.

If the owner refuses to repay the debt, and does not have future HAP payments, HACSM will ban the owner from future participation in the program and pursue other modes of collection.

##### Family Debts to HACSM

Any amount due to HACSM by a program participant must be repaid by the family. If the family is unable to repay the debt within 30 days, HACSM will offer to enter into a repayment agreement in accordance with the policies below.

If the family refuses to repay the debt, enter into a repayment agreement, or breaches a repayment agreement, HACSM will terminate the assistance upon notification to the family and pursue other modes of collection.

## **Repayment Agreement**

The term *repayment agreement* refers to a formal document signed by a tenant and provided to the HACSM in which a tenant or owner acknowledges a debt in a specific amount and agrees to repay the amount due at specific time periods.

## **Down Payment Requirement**

Prior to the execution of a repayment agreement, the family must pay the first installment amount owed.

## **Payment Procedures**

The maximum length of time HACSM will enter into a payment agreement with a family is three (3) years.

The minimum monthly amount of payment for any repayment agreement is \$50.00.

The family will be required to pre-pay the down payment (first installment) amount owed prior to execution of the payment agreement.

Payments shall only be made by money order or cashier's check.

## **Execution of the Agreement**

The head of household and spouse/co-head (if applicable) must sign the repayment agreement.

## **Due Dates**

All payments are due by the close of business on the designated due date. If the due date does not fall on a business day, the due date is the close of business on the first business day after the due date.

## **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 HACSM, HACSM 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 HACSM will terminate assistance in accordance with policies in Chapter 12.

If a family receives three (3) delinquency notices for unexcused late payments in a 12-month period, the repayment agreement will be considered in default, and HACSM will terminate assistance in accordance with policies in Chapter 12.

## **No Offer of Repayment Agreement**

HACSM generally will not enter into a repayment agreement with a family if there is already a repayment agreement in place with the family or if the 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 HACSM 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 HACSM the monthly payment amount specified in the agreement but must also pay to the owner the family's monthly share of the rent to owner
- A statement that the terms of the repayment agreement may be renegotiated if the family's income decreases or increases
- A statement that late or missed payments constitute default of the repayment agreement and may result in termination of assistance

## Chapter 21

### QUALITY ASSURANCE

#### I. INTRODUCTION

Quality assurance measures are vital components in the administration of HACSM housing programs. To that extent, HACSM is committed to ensuring that subsidy funds made available to HACSM are spent in accordance with requirements and that HACSM develops comprehensive administrative policies and procedures that offer clear and consistent structure.

#### II. QUALITY ASSURANCE MEASURES

HACSM quality assurance measures include the following:

- Training – conduct staff training to increase and enhance their skills and competence in the respective areas of responsibility. Work guides and internal forms are designed to increase accuracy and uniformity.
- Procedures – develop internal procedures to offer consistency in the application of applicable regulations in a clear and concise manner relative to each subject matter.
- Auditing – supervisory and/or compliance personnel oversee performance standards by auditing administrative tasks related to new admissions, new contracts, Housing Quality Standards (HQS) inspections, HQS enforcement, recertification, occupancy and customer service. Audit checklists are designed to provide supervisory personnel with quality control mechanisms to ensure program rules and requirements are uniformly applied in the administration of the program.
- HACSM employees are expected to provide quality service to all of its clients: applicants, participants and owners, business associates and co-workers, and to treat clients in a polite and respectful manner. Should a client be dissatisfied with a service provided or have another concern or complaint, an employee is expected to give the matter prompt attention.

When a customer service-related complaint cannot be resolved at the direct service level, or if it is desired by the client, it should be referred to the appropriate supervisor or manager for review. HACSM will make every effort to fairly evaluate and address the issues raised by clients and will use feedback to make improvements, as appropriate to the situation.

HACSM's auditing practices along with policies and procedures for administrative tasks are designed to provide a comprehensive approach to ensure HACSM

personnel uniformly apply program requirements to the various job functions with accuracy and consistency to achieve the required quality control.

### **III. RECORD KEEPING AND MANAGEMENT**

HACSM 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 will be made available to HUD or the Comptroller General of the United States upon request.

All applicant and participant information will be kept in a secure location and access will be limited to authorized HACSM staff.

HACSM 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.

### **IV. RECORD RETENTION**

During the term of each assisted lease, and for at least three years thereafter, HACSM will keep:

- A copy of the executed lease;
- The HAP contract; and
- The application from the family.

In addition, HACSM will 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 HACSM budget and financial statements for the program;
- Records to document the basis for HACSM determination that rent to owner is a reasonable rent (initially and during the term of a HAP contract); and
- Other records specified by HUD.

Notice PIH 2014-20 requires PHAs to keep records of all complaints, investigations, notices, and corrective actions related to violations of the Fair Housing Act or the equal access final rule.

The PHA must keep confidential records of all emergency transfer requested by victims of domestic violence, dating violence, sexual assault, and stalking under the PHA's Emergency Transfer Plan, as well as the outcomes of such requests, and retain the records for a period of three years [24 CFR 5.2002(e)(12)].

If an informal hearing to establish a family's citizenship status is held, longer retention requirements apply for some types of documents.

### **Privacy Act Requirements [24 CFR 5.212 and Form-9886]**

The collection, maintenance, use, and dissemination of social security numbers (SSN), employer identification numbers (EIN), any information derived from these numbers, and income information of applicants and participants must be conducted, to the extent applicable, in compliance with the Privacy Act of 1974, and all other provisions of Federal, State, and local law.

Applicants and participants, including all adults in the household, are required to sign a consent form, HUD-9886, Authorization for Release of Information. This form incorporates the Federal Privacy Act Statement and describes how the information collected using the form may be used, and under what conditions HUD or the PHA may release the information collected.

### **Upfront Income Verification (UIV) Records**

PHAs that access 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*.

### **Criminal Records**

The PHA may only disclose the criminal conviction records which the PHA receives from a law enforcement agency to officers or employees of the PHA, or to authorized representatives of the PHA who have a job-related need to have access to the information [24 CFR 5.903(e)].

The PHA must establish and implement a system of records management that ensures that any criminal record received by the PHA from a law enforcement agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been accomplished, including expiration of the period for filing a challenge to the PHA action without institution of a challenge or final disposition of any such litigation [24 CFR 5.903(g)].

The PHA must establish and implement a system of records management that ensures that any sex offender registration information received by the PHA from a State or local agency is maintained confidentially, not misused or improperly disseminated, and destroyed, once the purpose for which the record was requested has been

accomplished, including expiration of the period for filing a challenge to the PHA action without institution of a challenge or final disposition of any such litigation. However, a record of the screening, including the type of screening and the date performed must be retained [Notice PIH 2012-28]. This requirement does not apply to information that is public information or is obtained by a 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. The PHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If the PHA receives a verification document that provides such information, the PHA should not place this information in the tenant file. The PHA should destroy the document.

## Chapter 22

### PROJECT-BASED VOUCHERS

*MTW Waiver: Some of the activities in this chapter are authorized in HACSM's MTW Agreement, Attachment C, Paragraph D (4) and 7(a)(b)(c) and waives certain provisions of Sections 8 (o)(6), 8(o)(8), 8(o)(13)(B and D), 8(o)(13)(J) and 8(o)(16) of the 1937 Act and 24 CFR 982 and CFR Part 983. In addition, some of the activities in this chapter are authorized in HACSM's MTW Agreement, Attachment D, for broader use of funds.*

#### I. INTRODUCTION

The Project-Based Voucher (PBV) program allows PHAs that already administer a tenant-based voucher program to take up to 20 percent of its authorized units and attach the funding to specific units rather than using it for tenant-based assistance [24 CFR 983.6].

This chapter describes HUD regulations and HACSM policies related to the project-based voucher (PBV) program and its administration.

#### II. GENERAL REQUIREMENTS [24 CFR 983.5]

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, HACSM is not required to reduce the number of these units if the amount of budget authority is subsequently reduced. However, HACSM 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, regardless of whether the PHA has vouchers available for project-basing [FR Notice 1/18/17].

Using its MTW authority, HACSM will operate a project-based voucher program using up to 35 percent of its budget authority for project-based assistance.

#### **Additional Project-Based Units [FR Notice 1/18/17]**

A PHA may project-base an additional 10 percent of its units above the usual 20 percent program limit, if the units:

- Are specifically made available to house individuals and families that meet the definition of homeless under section 103 of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11302).
- Are specifically made available to house families that are comprised of or include a veteran.
  - *Veteran* means an individual who has served in the United States Armed Forces.
- Provide supportive housing to persons with disabilities or elderly persons as defined in 24 CFR 5.403.

- Are located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year Estimates.

Only units that are under a HAP contract that was first executed on or after April 18, 2017, are covered by the 10 percent exception.

### **Units Not Subject to the PBV Program Limitation [FR Notice 1/18/17]**

PBV units under the RAD program and HUD-VASH PBV set-aside vouchers do not count toward the 20 percent limitation when PBV assistance is attached to them.

In addition, units that were previously subject to certain federal rent restrictions or were receiving another type of long-term housing subsidy provided by HUD are not subject to the cap. In order to be excepted, the unit must meet the following conditions:

The unit must be covered under a PBV HAP contract that first became effective on or after 4/18/17.

### **Tenant-Based vs. Project-Based Voucher Assistance [24 CFR 983.2]**

Much of the tenant-based voucher program regulations also apply to the PBV program. Consequently, many of the PHA 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 programs are listed at 24 CFR 983.2.

### **Relocation Requirements [24 CFR 983.7]**

Any persons displaced as a result of implementation of the PBV program will 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. HACSM may not use voucher program funds to cover relocation costs, except that HACSM 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 HACSM to ensure the owner complies with these requirements.

### **Equal Opportunity Requirements [24 CFR 983.8]**

HACSM will 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, HACSM will comply with the PHA Plan certification on civil rights and affirmatively furthering fair housing, submitted in accordance with 24 CFR 903.7(o).

### III. PBV OWNER PROPOSALS

With certain exceptions, a PHA must describe the procedures for owner submission of PBV proposals and for PHA selection of PBV proposals [24 CFR 983.51]. Before selecting a PBV proposal, the PHA must determine that the PBV proposal complies with HUD program regulations and requirements, including a determination that the property is eligible housing [24 CFR 983.53 and 983.54], complies with the cap on the number of PBV units per project [24 CFR 983.56], and meets the site selection standards [24 CFR 983.57]. The PHA may not commit PBVs until or unless it has followed the proposal selection requirements defined in 24 CFR 983.51 [Notice PIH 2011-54].

#### **Owner Proposal Selection Procedures [24 CFR 983.51]**

HACSM will select PBV proposals by either of the following two methods.

- HACSM request for PBV Proposals. HACSM may solicit proposals by using a request for proposals (RFP) to select proposals on a competitive basis. HACSM 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.
- HACSM may select proposals that were previously selected based on a competition. This may include selection of a proposal for housing assisted under a federal, state, or local government housing assistance program that was subject to a competition in accordance with the requirements of the applicable program, community development program, or supportive services program that requires competitive selection of proposals (e.g., HOME, and units for which competitively awarded LIHTCs have been provided), where the proposal has been selected in accordance with such program's competitive selection requirements within three years of the PBV proposal selection date, and the earlier competitive selection proposal did not involve any consideration that the project would receive PBV assistance. HACSM need not conduct another competition.
- HACSM may select projects under its MTW authority without engaging in a competitive process. Projects selected must be approved by the HACSM Board of Commissioners and are subject to HUD's requirements regarding environmental and subsidy layering reviews, if applicable.

#### **Units Selected Non-Competitively [FR Notice 1/18/17]**

For certain public housing projects where the PHA has an ownership interest or control and will spend a minimum amount per unit on rehabilitation or construction, the PHA may select a project without following one of the first two processes above.

#### **Solicitation and Selection of PBV Proposals [24 CFR 983.51(c)]**

HACSM procedures for selecting PBV proposals will be designed and actually operated to provide broad public notice of the opportunity to offer PBV proposals for consideration by HACSM. The public notice procedures may include publication of the public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice. The public notice of the HACSM

request for PBV proposals will specify the submission deadline. Detailed application and selection information will be provided at the request of interested parties.

### HACSM Request for Proposals for Rehabilitated and Newly Constructed Units

- HACSM will advertise its Request for Proposals (RFP) for rehabilitated and newly constructed housing in local newspapers of general circulation, online publications, and/or the Department of Housing web site.
- In order for the proposal to be considered, the owner must submit the proposal to HACSM by the published deadline date, and the proposal must respond to all requirements as outlined in the RFP. Incomplete proposals and late proposals will not be reviewed.
- HACSM will rate and rank proposals for rehabilitated and newly constructed housing using the following criteria:
  - Owner experience and capability to build or rehabilitate housing as identified in the RFP;
  - Extent to which the project furthers HACSM's 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;
  - New constructions that will be restricted to low or very-low income occupancy;
  - Projects that are situated along public transportation corridors;
  - Projects that are owned or developed by non-profit organizations that have a solid record of effective property management;
  - Projects that have completed feasibility/readiness reviews to commence construction.

### HACSM Requests for Proposals for Existing Housing Units

- HACSM will advertise its request for proposals (RFP) for existing housing in local newspapers of general circulation and/or the Department of Housing web site.
- Owner proposals will be evaluated using the following criteria:
  - Experience as an owner in the tenant-based voucher program and owner compliance with the owner's obligations under the tenant-based program;
  - Extent to which the project furthers HACSM's 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.

### HACSM Selection of Proposals Subject to a Previous Competition under a Federal, State, or Local Housing Assistance Program

- HACSM will accept proposals for PBV assistance from owners that were competitively selected under another federal, state or local housing assistance program, including projects that were competitively awarded Low-Income Housing Tax Credits (LIHTC) on an ongoing basis.
  - HACSM may periodically advertise that it is accepting proposals, in local newspapers of general circulation and the Department of Housing web site.
- In addition to, or in place of advertising, HACSM 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.
- HACSM will evaluate each proposal on its merits using the following factors:
  - Extent to which the project furthers HACSM's goal of deconcentrating poverty and expanding housing and economic opportunities; and
  - Extent to which the proposal complements other local activities such as the redevelopment of a public housing site under the HOPE VI program, the HOME program, CDBG activities, other development activities in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community.

### HACSM Selection of Projects under MTW Authority without Engaging in a Competitive Process

HACSM may select projects under MTW authority without engaging in a competitive process. Projects that may be selected for project-based voucher assistance without engaging in a competitive process include:

- Properties owned directly or indirectly by HACSM that are not Public Housing;
- HACSM Public Housing units that are being permanently removed from the Public Housing program inventory.

A PBV award to projects selected without engaging in a competitive process will be approved by the HACSM Board of Commissioners.

### **PHA-Owned Units [24 CFR 983.51(e) and 983.59, Notice PIH 2015-05, and FR Notice 1/18/17]**

PHA-owned units may be assisted under the PBV program only if the HUD field office or HUD-approved independent entity reviews the selection process and determines that 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.

Under its MTW authority, HACSM may select projects without engaging in a competitive process. Projects that may be selected for project-based voucher assistance without engaging in a competitive process include:

- Properties owned directly or indirectly by HACSM that are not Public Housing;
- HACSM Public Housing units that are being permanently removed from the Public Housing program inventory.

In the case of PHA-owned units, the term of the HAP contract and any HAP contract renewal must be agreed upon by the PHA and a HUD-approved independent entity. In addition, an independent entity must determine the rent to owner, the redetermined rent to owner, and reasonable rent. Housing quality standards inspections must also be conducted by an independent entity.

The independent entity that performs these program services may be the unit of general local government for the HACSM jurisdiction (unless HACSM is itself the unit of general local government or an agency of such government) or another HUD-approved public or private independent entity.

HACSM may only compensate the independent entity from HACSM ongoing administrative fee income (including amounts credited to the administrative fee reserve). HACSM may not use other program receipts to compensate the independent entity for its services. HACSM and any independent entity may not charge the family any fee for the appraisal or the services provided by the independent entity.

#### **HACSM Notice of Owner Selection [24 CFR 983.51(d)]**

HACSM will give prompt written notice to the party that submitted a selected proposal and HACSM will notify in writing all owners that submitted proposals that were not selected and advise such owners of the name of the selected owner.

HACSM will publish its notice for selection of PBV proposals for two consecutive days in the same newspapers it used to solicit the proposals. The announcement will include the name of the owner that was selected for the PBV program. HACSM will also post the notice of owner selection on its web site.

HACSM will make available to any interested party its rating and ranking sheets and documents that identify HACSM's 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. HACSM will not make available sensitive owner information that is privileged, such as financial statements and similar information about the owner.

HACSM will make these documents available for review at its office during normal business hours. There will be a nominal charge per page for the cost of reproduction of allowable documents.

## **Housing Type [24 CFR 983.52]**

HACSM 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 HACSM selection, the units substantially comply with HQS. Units for which new construction or rehabilitation began after the owner's proposal submission but prior to the execution of the HAP do not subsequently qualify as existing housing. Units that were newly constructed or rehabilitated in violation of program requirements also do not qualify as existing housing.

HACSM will decide what housing type, new construction, rehabilitation, or existing housing, will be used to develop project-based housing. HACSM's choice of housing type will be reflected in its solicitation for proposals.

## **Prohibition of Assistance for Certain Units**

### ***Ineligible Housing Types [24 CFR 983.53]***

HACSM cannot 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, HACSM will not attach or pay PBV assistance for a unit occupied by an owner and HACSM will not select or enter into an agreement to enter into a HAP contract or HAP contract for a unit occupied by a family ineligible for participation in the PBV program. A member of a cooperative who owns shares in the project assisted under the PBV program is not considered an owner for purposes of participation in the PBV program. Finally, PBV assistance may not be attached to units for which construction or rehabilitation has started after the proposal submission and prior to the execution of an AHAP.

### ***Subsidized Housing [24 CFR 983.54]***

HACSM will 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 (unless it's a unit subsidized with Section 236 interest reduction payments);

- A Section 202 project for non-elderly with disabilities;
- Section 811 project-based supportive housing for persons with disabilities;
- Section 202 supportive housing for the elderly;
- A Section 101 rent supplement project;
- A unit subsidized with any form of tenant-based rental assistance;
- A unit with any other duplicative federal, state, or local housing subsidy, as determined by HUD or HACSM in accordance with HUD requirements.

**Subsidy Layering Requirements [24 CFR 983.55, FR Notice 11/24/08, FR Notice 7/9/10, and FR Notice 6/25/14]**

HACSM 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.

Subsidy layering requirements do not apply to existing housing. A further subsidy layering review is not required for new construction or rehabilitation if HUD’s designee has conducted a review that included a review of PBV assistance in accordance with the PBV subsidy layering guidelines.

HACSM will submit the necessary documentation to HUD for a subsidy layering review. Except in cases noted above, HACSM may not enter into an agreement to enter into a HAP contract or AHAP until HUD, or a HUD-approved housing credit agency (HCA), has conducted any required subsidy layering review and determined that the PBV assistance is in accordance with HUD subsidy layering requirements. However, in order to satisfy applicable requirements, HCAs must conduct subsidy layering reviews in compliance with the guidelines set forth in the *Federal Register* notice published July 9, 2010.

The HAP contract must contain the owner's certification that the project has not received and will not receive (before or during the term of the HAP contract) any public assistance for acquisition, development, or operation of the housing other than assistance disclosed in the subsidy layering review in accordance with HUD requirements.

**Cap on Number of PBV Units in Each Project**

In general, PHAs 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 AHAP 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 25 units or 25 percent of the number of dwelling units (assisted or unassisted) in the project.

HACSM may enact its MTW authority and project-base up to 50% of the number of dwelling units (assisted or unassisted) in the project.

***Exceptions to 25 Percent per Project Cap [FR Notice 1/18/17]***

Exceptions are allowed and PBV units are not counted against the 25 percent per project cap if:

- The units are exclusively for elderly families
- The units are for households eligible for supportive services available to all families receiving PBV assistance in the project
- The project is located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year estimates

For these projects, the project cap is the greater of 25 units or 40 percent (instead of 25 percent) of the units in the project [FR Notice 7/14/17]; or HACSM may enact its MTW authority and project-base up to 50% of the number of dwelling units (assisted or unassisted) in the project.

The Housing Opportunity Through Modernization Act of 2016 (HOTMA) eliminated the project cap exemption for projects that serve disabled families and modified the exception for supportive services. Projects where these caps were implemented prior to HOTMA may continue to use the former exemptions and may renew their HAP contracts under the old requirements, unless the PHA and owner agree to change the conditions of the HAP contract. However, this change may not be made if it would jeopardize an assisted family's eligibility for continued assistance in the project.

***Supportive Services***

The types of supportive services offered to families for a project to qualify for the exception are those intended to promote self-sufficiency, including:

- Outreach
- Case management, counseling
- Health care, psychiatric and mental health care, substance abuse treatment
- Life skills, parenting skills
- Child care, transportation, housing search assistance, budgeting
- Employment assistance, job training/placement
- Education, vocational opportunities

The project must make supportive services available to all families receiving PBV assistance in the project, but the family does not actually have to accept and receive supportive services for the exception to apply to the unit, although the family must be eligible to receive the supportive services. It is not necessary that the services be provided at or by the project, but must be reasonably available to families receiving PBV assistance at the project and designed to help families in the project achieve self-sufficiency or live in the community as independently as possible. A PHA may not

require participation in the supportive service as a condition of living in the excepted unit, although such services may be offered.

### **Projects not Subject to a Project Cap [FR Notice 1/18/17]**

PBV units that were previously subject to certain federal rent restrictions or receiving another type of long-term housing subsidy provided by HUD are exempt from the project cap. In other words, 100 percent of the units in these projects may receive PBV assistance. To qualify for the exception, the unit must:

- Be covered by a PBV HAP contract that first became effective on or after 4/18/17; and
- In the five years prior to the date the PHA either issued the RFP under which the project was selected or the PHA selected the project without competition, the unit met at least one of the two following conditions:
  - The unit received Public Housing Capital or Operating Funds, Project-Based Rental Assistance, Housing for the Elderly (Section 202), Housing for Persons with disabilities (Section 811), the Rental Supplement program,
  - The unit was subject to a rent restriction as a result of one of the following HUD loans or insurance programs: Section 236, Section 221(d)(3) or (d)(4) BMIR, Housing for the Elderly (Section 202), or Housing for Persons with Disabilities (Section 811)

Units that were previously receiving PBV assistance are not covered by the exception. Both existing and rehabilitation units are eligible for this exception. Newly constructed units qualify if they meet the definition of *replacement unit* described in FR Notice 1/18/17.

### **Promoting Partially-Assisted Projects [24 CFR 983.56(c)]**

HACSM may establish local requirements designed to promote PBV assistance in partially assisted projects. A *partially assisted project* is a project in which there are fewer units covered by a HAP contract than residential units [24 CFR 983.3].

HACSM may establish a per-project cap on the number of units that will receive PBV assistance or other project-based assistance in a multifamily project containing excepted units or in a single-family building. HACSM may also determine not to provide PBV assistance for excepted units or may establish a per-project cap of less than 50 percent.

### **Site Selection Standards**

#### ***Compliance with PBV Goals, Civil Rights Requirements, and HQS Site Standards [24 CFR 983.57(b)]***

HACSM will 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 HACSM 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 administrative plan.

In addition, prior to selecting a proposal, HACSM 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 the HACSM goal to select sites for PBV housing that provide for deconcentrating poverty and expanding housing and economic opportunities. To achieve this goal, HACSM will limit approval of sites for PBV housing in census tracts that have poverty concentrations of 20 percent or less.

However, HACSM will grant exceptions to the 20 percent standard where it 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.

#### **Existing and Rehabilitated Housing Site and Neighborhood Standards [24 CFR 983.57(d)]**

HACSM will not enter into an agreement to enter into a HAP contract nor enter into a HAP contract for existing or rehabilitated housing until it has determined that the site complies with the HUD required site and neighborhood standards. The site must:

- Be adequate in size, exposure, and contour to accommodate the number and type of units proposed;
- Have adequate utilities and streets available to service the site;
- Promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons;
- Be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units; and
- Be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

#### **New Construction Site and Neighborhood Standards [24 CFR 983.57(e)]**

In order to be selected for PBV assistance, a site for newly constructed housing must meet the following HUD required site and neighborhood standards:

- The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed;
- The site must have adequate utilities and streets available to service the site;
- The site must not be located in an area of minority concentration unless HACSM 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.

### **Environmental Review [24 CFR 983.58]**

HACSM 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.). HACSM will 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 will 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.

HACSM will not enter into an agreement to enter into a HAP contract or a HAP contract with an owner, and HACSM, 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.

HACSM will supply all available, relevant information necessary for the responsible entity to perform any required environmental review for any site. HACSM will require the owner to carry out mitigating measures required by the responsible entity (or HUD, if applicable) as a result of the environmental review.

#### **IV. DWELLING UNITS**

This section 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.

##### **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.

##### **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. HACSM 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)

##### **Inspecting Units**

###### ***Pre-selection Inspection [24 CFR 983.103(a)]***

HACSM will examine the proposed site before the proposal selection date. If the units to be assisted already exist, HACSM will inspect all the units before the proposal selection date and will 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, HACSM will not execute the HAP contract until the units fully comply with HQS.

###### ***Pre-HAP Contract Inspections [24 CFR 983.103(b), FR Notice 1/18/17]***

HACSM will inspect each contract unit before execution of the HAP contract. HACSM will not enter into a HAP contract covering a unit until the unit fully complies with HQS, unless it adopts a policy to enter into a HAP contract for units that fail the initial HQS inspection as a result of only non-life-threatening conditions.

### ***Turnover Inspections [24 CFR 983.103(c)]***

Before providing assistance to a new family in a contract unit, HACSM will inspect the unit. HACSM may not provide assistance on behalf of the family until the unit fully complies with HQS.

### **Local PBV Inspection Process**

HACSM generally will inspect all units under lease at least biennially (every other year) to confirm that the units continue to meet HQS; however, HACSM may choose to inspect 20% of PBV units in a project annually.

If the inspected unit or units fail HQS and the deficiencies are not corrected within 30 days upon notification to the project owner, or the HACSM-approved extension period, HACSM will abate HAP for the unit. If the deficiencies are not corrected within 90 days after the abatement notice, HACSM will remove the unit from the PBV contract. No retroactive HAP will be made during the abatement period.

### ***Other Inspections [24 CFR 983.103(e)]***

HACSM will 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. HACSM will take into account complaints and any other information coming to its attention in scheduling inspections.

HACSM will conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected an HQS violation, and will conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family violation of HQS.

In conducting quality assurance (QA) HQS inspections, HACSM will include a representative sample of both tenant-based and project-based units.

### ***Inspecting HACSM-owned Units***

HACSM received authorization through its FY2009 MTW Annual Plan that it may inspect HACSM-owned units and will take prompt corrective actions to address any HQS findings. HACSM will retain its inspection reports for HACSM-owned units and not submit the reports to the HUD Field Office.

## **V. REHABILITATED AND NEWLY CONSTRUCTED UNITS [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.

### **Agreement to Enter Into HAP Contract**

In order to offer PBV assistance in rehabilitated or newly constructed units, HACSM will enter into an agreement to enter into a HAP contract (Agreement) with the owner of the property. The Agreement must be in the form required by HUD [24 CFR 983.152(a)].

HACSM cannot enter into an Agreement if commencement of construction or rehabilitation has commenced after proposal submission [24 CFR 983.152(c)]. Construction begins when excavation or site preparation (including clearing of the land) begins for the housing. Rehabilitation begins with the physical commencement of rehabilitation activity on the housing.

In the Agreement the owner agrees to develop the PBV contract units to comply with HQS, and HACSM agrees that upon timely completion of such development in accordance with the terms of the Agreement, HACSM will enter into a HAP contract with the owner for the contract units [24 CFR 983.152(a)].

#### ***Content of the Agreement [24 CFR 983.152(d)]***

At a minimum, the Agreement will 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 will include the rehabilitation work write up and, where determined necessary by HACSM, specifications and plans. For new construction units, the description will include the working drawings and specifications.
- Any additional requirements for quality, architecture, or design over and above HQS.

#### ***Execution of the Agreement [24 CFR 983.153]***

The Agreement will be executed promptly after HACSM notice of proposal selection to the selected owner. HACSM cannot enter into the Agreement if construction or rehabilitation has started after proposal submission. Generally, HACSM may not enter into the Agreement with the owner until the subsidy layering review is completed. Likewise, HACSM may not enter into the Agreement until the environmental review is completed and HACSM has received environmental approval. However, HACSM does not need to conduct a subsidy layering review in the case of a HAP contract for existing housing or if the applicable state or local agency has conducted such a review. Similarly, environmental reviews are not required for existing structures unless otherwise required by law or regulation.

## **Conduct of Development Work**

### ***Labor Standards [24 CFR 983.154(b)]***

If an Agreement covers the development of nine or more contract units (whether or not completed in stages), the owner and the owner's contractors and subcontractors must pay Davis-Bacon wages to laborers and mechanics employed in the development of housing. The HUD-prescribed form of the Agreement will include the labor standards clauses required by HUD, such as those involving Davis-Bacon wage rates.

The owner, contractors, and subcontractors must also comply with the Contract Work Hours and Safety Standards Act, Department of Labor regulations in 29 CFR part 5, and other applicable federal labor relations laws and regulations.

### ***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.

## **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 HACSM in the form and manner required by HACSM:

- 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.

HACSM 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. HACSM 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, HACSM will 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. HACSM 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, HACSM will not enter into the HAP contract.

If HACSM determines the work has been completed in accordance with the Agreement and that the owner has submitted all required evidence of completion, HACSM will submit the HAP contract for execution by the owner and then execute the HAP contract.

## **VI. HOUSING ASSISTANCE PAYMENTS CONTRACT (HAP)**

HACSM will enter into a HAP contract with an owner for units that are receiving PBV assistance. The purpose of the HAP contract is to provide housing assistance payments for eligible families. Housing assistance is paid for contract units leased and occupied by eligible families during the HAP contract term. With the exception of single-family scattered-site projects, a HAP contract shall cover a single project. If multiple projects exist, each project is covered by a separate HAP contract. The HAP contract must be in the form required by HUD [24 CFR 983.202(a)].

### **HAP Contract Requirements**

#### ***Contract Information [24 CFR 983.203]***

The HAP contract must specify the following information:

- The total number of contract units by number of bedrooms;
- The project's name, street address, city or county, state and zip code, block and lot number (if known), and any other information necessary to clearly identify the site and the building;
- The number of contract units in each project, 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 percent per project cap, which will be set-aside for occupancy by qualifying families (elderly and/or disabled families and families receiving supportive services); and
- The initial rent to owner for the first 12 months of the HAP contract term.

#### ***Execution of the HAP Contract [24 CFR 983.204]***

HACSM will not enter into a HAP contract until each contract unit has been inspected and it has determined that the unit complies with the Housing Quality Standards (HQS).

For existing housing, the HAP contract will be executed promptly after HACSM selects the owner proposal, inspects the housing units, and determines that all units pass HQS.

For newly constructed or rehabilitated housing, the HAP contract will be executed after HACSM 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.

***Term of HAP Contract [24 CFR 983.205, FR Notice 1/18/17]***

HACSM may enter into a HAP contract with an owner for an initial term of no less than one year and no more than 20 years for each contract unit. The length of the term of the HAP contract for any contract unit may not be less than one year, nor more than 20 years. In the case of HACSM-owned units, the term of the HAP contract must be agreed upon by HACSM and the independent entity approved by HUD [24 CFR 983.59(b)(2)]. The term of all PBV HAP contracts will be negotiated with the owner on a case-by-case basis.

At the time of the initial HAP contract term or any time before expiration of the HAP contract, HACSM may extend the term of the contract for an additional term of up to 20 years if HACSM determines an extension is appropriate to continue providing affordable housing for low-income families. A HAP contract extension may not exceed 20 years. HACSM may provide for multiple extensions; however, in no circumstances may such extensions exceed 20 years, cumulatively. Extensions after the initial extension are allowed at the end of any extension term, provided that not more than 24 months prior to the expiration of the previous extension contract HACSM agrees to extend the term, and that such extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities. Extensions after the initial extension term shall not begin prior to the expiration date of the previous extension term. Subsequent extensions are subject to the same limitations. All extensions must be on the form and subject to the conditions prescribed by HUD at the time of the extension. In the case of HACSM-owned units, any extension of the term of the HAP Contract must be agreed upon by HACSM and the independent entity approved by HUD [24 CFR 983.59(b)(2)].

When determining whether or not to extend an expiring PBV contract, HACSM will consider several factors including, but not limited to:

- The cost of extending the contract and the amount of available budget authority;
- The condition of the contract units;
- The owner's record of compliance with obligations under the HAP contract and lease(s);
- Whether the location of the units continues to support the goals of deconcentrating poverty and expanding housing opportunities; and
- Whether the funding could be used more appropriately for tenant-based assistance.

### ***Termination by HACSM [24 CFR 983.205(c), FR Notice 1/18/17]***

The HAP contract will provide that the term of HACSM's contractual commitment is subject to the availability of sufficient appropriated funding as determined by HUD or by HACSM in accordance with HUD instructions. For these purposes, sufficient funding means the availability of appropriations, and of funding under the ACC from such appropriations, to make full payment of housing assistance payments payable to the owner for any contract year in accordance with the terms of the HAP contract.

In times of insufficient funding, HUD requires that PHAs first take all cost-saving measures prior to failing to make payments under existing PBV HAP contracts.

If it is determined that there may not be sufficient funding to continue housing assistance payments for all contract units and for the full term of the HAP contract, HACSM may terminate the HAP contract by notice to the owner. The termination must be implemented in accordance with HUD instructions.

### ***Termination by Owner [24 CFR 983.205(d)]***

If in accordance with program requirements the amount of rent to an owner for any contract unit is reduced below the amount of the rent to owner at the beginning of the HAP contract term, the owner may terminate the HAP contract by giving notice to HACSM. In this case, families living in the contract units must be offered tenant-based assistance.

### **Statutory Notice Requirements: Contract Termination or Expiration [24 CFR 983.206, FR Notice 1/18/17]**

Not less than one year before the HAP contract terminates, or if the owner refuses to renew the HAP contract, the owner must notify HACSM and assisted tenants of the termination. The notice must be provided in the form prescribed by HUD. If the owner does not give timely notice, the owner must permit the tenants in assisted units to remain in their units for the required notice period with no increase in the tenant portion of their rent, and with no eviction as a result of the owner's inability to collect an increased tenant portion of rent. An owner may renew the terminating contract for a period of time sufficient to give tenants one-year advance notice under such terms as HUD may require.

Upon termination or expiration of the contract, a family living at the property is entitled to receive a tenant-based voucher. Tenant-based assistance would not begin until the owner's required notice period ends. The PHA must provide the family with a voucher and the family must also be given the option by the PHA and owner to remain in their unit with HCV tenant-based assistance as long as the unit complies with inspection and rent reasonableness requirements. The family must pay their total tenant payment (TTP) and any additional amount if the gross rent exceeds the applicable payment standard. The family has the right to remain in the project as long as the units are used for rental housing and are otherwise eligible for HCV assistance. The owner may not terminate the tenancy of a family that exercises its right to remain except for serious or repeated lease violations or other good cause. Families that receive a tenant-based voucher at the expiration or termination of the PBV HAP contract are not new admissions to the PHA HCV tenant-based program and are not subject to income

eligibility requirements or any other admission requirements. If the family chooses to remain in their unit with tenant-based assistance, the family may do so regardless of whether the family share would initially exceed 40 percent of the family's adjusted monthly income.

### **Remedies for HQS Violations [24 CFR 983.208(b)]**

HACSM will 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 HACSM determines that a contract does not comply with HQS, it will 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.

### **Amendments to the HAP Contract**

#### ***Substitution of Contract Units [24 CFR 983.207(a)]***

At HACSM's discretion and subject to all PBV requirements, the HAP contract may be amended to substitute a different unit with the same number of bedrooms in the same project for a previously covered contract unit. Before any such substitution can take place, HACSM will inspect the proposed unit and determine the reasonable rent for the unit.

#### ***Addition of Contract Units [FR Notice 1/18/17]***

The PHA and owner may amend the HAP contract to add additional PBV contract units in projects that already have a HAP contract without having to fulfill the selection requirements found at 24 CFR 983.51(b) for those additional PBV units, regardless of when the HAP contract was signed. The additional PBV units, however, are still subject to the PBV program cap and individual project caps. Prior to attaching additional units without competition, the PHA must submit to the local field office information outlined in FR Notice 1/18/17. The PHA must also detail in the administrative plan their intent to add PBV units and the rationale for adding units to the specific PBV project.

### **HAP Contract Year, Anniversary and Expiration Dates [24 CFR 983.207(b) and 983.302(e)]**

The HAP contract year is the period of 12 calendar months preceding each annual anniversary of the HAP contract during the HAP contract term. The initial contract year is calculated from the first day of the first calendar month of the HAP contract term.

The annual anniversary of the HAP contract is the first day of the first calendar month after the end of the preceding contract year.

There is a single annual anniversary and expiration date for all units under a particular HAP contract, even in cases where contract units are placed under the HAP contract in stages (on different dates) or units are added by amendment. The anniversary and expiration dates for all units coincide with the dates for the contract units that were originally placed under contract.

## **Owner Responsibilities under the HAP [24 CFR 983.210]**

When the owner executes the HAP contract, s/he certifies that at such execution and at all times during the term of the HAP contract:

- All contract units are in good condition and the owner is maintaining the premises and contract units in accordance with HQS;
- The owner is providing all services, maintenance, equipment and utilities as agreed to under the HAP contract and the leases;
- Each contract unit for which the owner is receiving HAP, is leased to an eligible family referred HACSM, 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 (does not apply to a family's membership in a cooperative); and
- Repair work on the project selected as an existing project that is performed after HAP execution within such post-execution period as specified by HUD may constitute development activity, and if determined to be development activity, the repair work undertaken shall be in compliance with Davis-Bacon wage requirements.

## **Additional HAP Requirements**

### ***Housing Quality and Design Requirements [24 CFR 983.101(e) and 983.208(a)]***

The owner is required to maintain and operate the contract units and premises in accordance with HQS, including performance of ordinary and extraordinary maintenance. The owner must provide all the services, maintenance, equipment, and utilities specified in the HAP contract with HACSM and in the lease with each assisted family. In addition, maintenance, replacement and redecoration must be in accordance with the standard practice for the project as established by the owner.

HACSM 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.

HACSM will identify the need for any special features on a case-by-case basis depending on the intended occupancy of the PBV project. HACSM 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 HACSM, the HAP contract may provide for vacancy payments to the owner for a HACSM-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 HACSM 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).

HACSM will decide on a case-by-case basis if it 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.

## **VII. SELECTION OF PBV PROGRAM PARTICIPANTS**

Many of the provisions of the tenant-based voucher regulations 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.

### **Eligibility for PBV Assistance [24 CFR 983.251(a) and (b)]**

HACSM may select families for the PBV program from those who are participants in HACSM'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 will be determined at the commencement of PBV assistance.

Applicants for PBV assistance must meet the same eligibility requirements as applicants for the tenant-based voucher program. Applicants must qualify as a family as defined by HUD and HACSM, 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 HACSM's collection and use of family information regarding income, expenses, and family composition [24 CFR 5.230]. HACSM may also not approve a tenant if the owner (including a principal or other interested party) of the unit is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless needed as a reasonable accommodation. An applicant family must also meet HUD requirements related to current or past criminal activity.

HACSM 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 HACSM 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 will be placed on HACSM's waiting list.

Once the family's continued eligibility is determined (HACSM may deny assistance to an in-place family for the grounds specified in 24 CFR 982.552 and 982.553), the family will be given an absolute selection preference and HACSM 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.

***Organization of the Waiting List [24 CFR 983.251(c)]***

HACSM will establish and manage separate waiting lists for individual projects that are receiving PBV assistance.

HACSM's Project-Based waiting list(s) will be organized in such a manner to allow the agency to accurately identify and select families for assistance in the proper order, according to the admissions policies described in this plan.

***Selection from the Waiting List [24 CFR 983.251(c)]***

Applicants who will occupy units with PBV assistance will be selected from HACSM's waiting list. HACSM may establish selection criteria or preferences for occupancy of particular PBV units. HACSM may place families referred by the PBV owner on its PBV waiting list.

HACSM may organize the PBV waiting list by time and date of the receipt of the completed application or by random selection (lottery). If HACSM elects random selection to organize a waiting list, applicants who are selected will also be randomly ordered on the list. HACSM will announce the method in which a waiting list is organized at the time when HACSM conducts its outreach activities and in the opening announcement.

***Income Targeting [24 CFR 983.251(c)(6)]***

At least 75 percent of the families admitted to HACSM's project-based voucher program during HACSM's fiscal year from the waiting list must be extremely-low income families. The income targeting requirement applies to the total of admissions to both programs.

### ***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, HACSM will first refer families who require such features to the owner.

### ***Preferences [24 CFR 983.251(d), FR Notice 11/24/08]***

HACSM 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. HACSM must provide an absolute selection preference for eligible in-place families as described above (see In-Place Families).

Although HACSM is prohibited from granting preferences to persons with a specific disability, HACSM 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.

HACSM will use the following preferences to select families from the HACSM's PBV site-based waiting lists. HACSM may selectively apply one or more of the following preferences to the PBV program as a whole or for particular PBV developments:

- **Resident**: Families who live, work, or have been hired to work in San Mateo County at the time of selection from the waiting list. See Chapter 4 for additional definitions.
- **Elderly**: A family whose head, co-head, spouse, or sole member is at least 62 years of age; or two or more persons, each of whom are at least 62; or one or more persons who are at least 62 living with one or more live-in aides.
- **Disabled**: A family whose head, co-head, spouse, or sole member is a person with disabilities as defined by HUD regulations; or two or more persons with disabilities; or one or more persons with disabilities with one or more live-in aides.
- **Dual Demo**: A family whose head, co-head, spouse, or sole member is a person with disabilities or elderly as defined by HUD regulations, and is eligible for Medi-Cal long-term care service and support, and is eligible for In-Home Supportive Services (IHSS) in San Mateo County, and is at risk of entering or currently living in a skilled nursing facility, and is certified from medical professional who will manage long-term care and direct service coordination.
- **Homeless**: Persons who meet one or more of the following of HUD's definition of homeless which is listed in Section 103 of the McKinney Vento Act as amended by HEARTH Act:
  1. An individual or family with a primary nighttime residence that is a public or private place not designed for or ordinarily used as a regular sleeping

- accommodation for human begins, including a car, park, abandoned building, bus or train station, airport, or camping ground; or
2. An individual or family living in a supervised publicly or privately-operated shelter designated to provide temporary living arrangements (including congregate shelters, transitional housing, and hotels and motels paid for by charitable organizations or by federal, state, or local government programs for low-income individuals); or
  3. An individual who is exiting an institution where he or she resided for 90 days or less and who resided in an emergency shelter or place not meant for human habitation immediately before entering that institution; or
  4. An individual or family who is fleeing, or is attempting to flee, domestic violence, dating violence, sexual assault, stalking, or other dangerous or life-threatening conditions that relate to violence against the individual or a family member, including a child, that has either taken place within the individual's or family's primary nighttime residence or has made the individual or family afraid to return to their primary nighttime residence; AND
    - Has no other residence; AND
    - Lacks the resources or support networks, e.g., family friends, and faith-based or other social networks, to obtain other permanent housing.
- Self-Sufficiency: Families who participate in self-sufficiency programs offered by HACSM, its approved designees, or the PBV project.
  - Supportive Services: Persons with disabilities that significantly interfere with their ability to obtain and maintain housing, and whose needs are mostly matched by the services offered by the PBV project, and who, without the appropriate services, will not be able to obtain or maintain housing.
  - Veteran-HUD-VASH: HACSM does not maintain a PBV waiting list or apply preferences for households that qualify for HUD-VASH as participants are referred for assistance directly from the Veterans Administration.
  - Veteran: A person who has served in the active military, air or naval service of the United States at any time and who shall have been discharged or released therefrom under conditions other than dishonorable.
  - Veteran-VHHP (Veterans Housing and Homelessness Prevention Program): Veterans who are ineligible for VA health care and/or HUD-VASH due to their discharge status.
  - Displaced-Half Moon Village Residents: Previous Half Moon Village residents that were displaced by the Half Moon Village redevelopment.
  - Displaced-Other Residents: A person or persons, residing in a property located within San Mateo County which is owned by HACSM or other non-profit affordable housing providers, who are required to relocate due to major rehabilitation or redevelopment of the property and the rehabilitation or redevelopment is partially or fully funded by HUD or other state and local government agencies.

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 HACSM has projects with more than 50 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), HACSM must give preference to such families when referring families to these units [24 CFR 983.261(b)].

HACSM 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).

HACSM will provide a selection preference when the available supportive services most match the family’s needs.

As approved in HACSM’s FY2009-2010 MTW Annual Plan, HACSM will permit residents of its Public Housing undergoing the disposition process and who are not eligible to receive a voucher due to exceeding the income limitation of the voucher program, to have the option of remaining in the unit at the higher of the flat rate or market rate for the unit for a maximum of twelve (12) months. At the end of the 12-month period, these residents must vacate the unit; at such time, the unit would convert to a standard project-based unit.

Additionally, after vacating the (formerly) public housing development, should the former resident’s income level in the subsequent six consecutive months decrease to a level that they would be income eligible, they will be allowed to reapply to the Project-Based wait list with a preference.

As approved in HACSM’s FY2014 MTW Annual Plan, HACSM will accept direct referrals from the project owner for eligibility consideration if:

- The unit is a supportive service exception unit; and
- HACSM is unable to provide the project owner eligible applicants that meet the owner selection criteria within 15 business days.

As always, the owner will be required to notify HACSM, in writing, of any rejected applicant and grounds for the rejection.

Families with equal preference will be selected based on time and date of the receipt of their housing application.

### **Selection Order For Project-Based Developments:**

HACSM will select applicants for project-based developments in the following order, except for the specific developments stated separately below:

1. Resident
2. Applicants without preferences

If the waiting is ordered by time and date, the tiebreaker for applicants with the same preference is the time and date when the application was received by HACSM.

If the waiting is ordered by random selection, the tiebreaker for applicants with the same preference is their placement ordered by the lottery.

Specific Developments:

**636 El Camino**

HACSM will select applicants for 636 El Camino in the following order:

1. Resident and supportive services (HACSM will limit the number of applicants that may qualify for this selection preference to no more than 21 households)
2. Resident
3. Applicants without preferences

**Alma Point at Foster Square**

HACSM will select applicants for Alma Point at Foster Square in the following order:

1. Resident and Dual Demo (HACSM will limit the number of applicants that may qualify for this selection preference to no more than 5 households.)
2. Resident and Homeless (HACSM will limit the number of applicants that may qualify for this selection preference to no more than 2 households.)
3. Resident
4. Applicants without preferences

**Arroyo Green**

HACSM will select applicants for Arroyo Green in the following order:

1. Resident and Supportive Services (HACSM will limit the number of applicants that may qualify for this selection preference to no more than 6 households.)
2. Resident and Dual Demo (HACSM will limit the number of applicants that may qualify for this selection preference to no more than 6 households.)
3. Resident
4. Applicants without preferences

**Colma Veterans Village**

HACSM will select applicants for Colma Veterans Village in the following order. All seven (7) PBV units are subject to this preference policy:

1. Veteran VHHP, Resident, and Homeless
2. Veteran VHHP and Resident

3. Veteran VHHP
4. Resident
5. Applicants without preference

### ***Delaware Pacific***

HACSM will select applicants for Delaware Pacific in the following order:

1. Resident and supportive services (HACSM will limit the number of applicants that may qualify for this selection preference to no more than 10).
2. Resident
3. Applicants without preferences

### ***Fair Oaks Commons***

HACSM will select applicants for Fair Oaks Commons in the following order:

1. Resident and Supportive Services (HACSM will limit the number of applicants that may qualify for this selection preference to no more than 6 households.)
2. Resident
3. Applicants without preferences

### ***Half Moon Village***

HACSM will select applicants for Half Moon Village in the following order:

1. Displaced-Half Moon Village Residents
2. Displaced-Other Residents (HACSM will limit this selection preference to applicants who submitted their pre-applications prior to June 30, 2015)
3. Resident and Dual Demo (HACSM will limit the number of applicants that may qualify for this selection preference to no more than 12 households)
4. Resident
5. Applicants without preferences

### ***Mosaic Garden***

HACSM will select applicants for Mosaic Garden in the following order:

1. Resident and Homeless (HACSM will limit the number of applicants that may qualify for this selection preference to no more than 4 households).
2. Resident
3. Applicants without preferences

### ***Redwood Oaks***

HACSM will select applicants for Redwood Oaks in the following order:

1. Resident and Support Services (HACSM will limit the number of applicants that may qualify for this selection preference to no more than 11)
2. Resident
3. Applicants without preferences

### ***Rotary Terrace***

HACSM will select applicants for Rotary Terrace in the following order. All 8 PBV units are subject to this preference policy:

1. Resident and Dual Demo
2. Resident
3. Applicants without preferences

### ***Sequoia Belle Haven***

HACSM will select applicants for Sequoia Belle Haven in the following order:

1. Displaced-Other Residents (HACSM will limit this selection preference to households that were a resident at Gateway Apartments in Menlo Park, CA, and were required to relocate due to redevelopment, and are returning to Sequoia Belle Haven within 60 days of the initial lease-up at Sequoia Belle Haven)
2. Resident and Homeless (HACSM will limit the number of applicants that may qualify for this selection preference to no more than 2 households)
3. Resident and Dual Demo (HACSM will limit the number of applicants that may qualify for this selection preference to no more than 11 households)
4. Resident
5. Applicants without preference

### ***Serenity Senior Housing (formerly known as University Avenue Senior Housing)***

HACSM will select applicants for Serenity Housing in the following order:

1. Displaced-Other Residents (HACSM will limit this selection preference to households that were a resident at University Avenue Apartments in East Palo Alto, CA, and were required to relocate due to redevelopment of the complex, and are returning to University Avenue Senior Housing within 60 days of the initial lease-up at University Avenue Senior Housing)
2. Resident and Homeless (HACSM will limit the number of applicants that may qualify for this selection preference to no more than 1 household)

3. Resident
4. Applicants without preference

### ***Sweeney Lane***

HACSM will select applicants for Sweeney Lane in the following order:

1. Resident and Homeless (HACSM will limit the number of applicants that may qualify for this selection preference to no more than 2 households)
2. Resident
3. Applicants without preference

### **Local Referral Process for Supportive Service or Exception Units in PBV complexes**

Upon approval of HACSM's FY2015 Moving To Work Annual Plan, HACSM has implemented a local referral process for supportive service or exception units.

Upon notice from the PBV owner that an exception unit is available, HACSM will provide a list of potentially eligible applicants to the owner from its waiting list. If HACSM is unable to provide a list of applicants to the project owner within 15 business days, or upon the owner and/or HACSM eligibility review, that none of the applicants provided by HACSM meet the unit requirements, HACSM will accept direct referrals from the owner or service providers that provide services for the exception units for eligibility determination.

### **Offer of PBV Assistance**

#### ***Refusal of Offer [24 CFR 983.251(e)(3)]***

HACSM 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 HACSM'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, HACSM will give the family an oral briefing. The briefing will include information on how the program works and the responsibilities of the family and owner. In addition to the oral briefing, HACSM will provide a briefing packet that explains how it determines the total tenant payment for a family, the family obligations under the program, and applicable fair housing information.

### ***Number of Offers***

The owner will offer an applicant a suitable unit. If the applicant refuses the unit without good cause as described below, the applicant's name will be removed from HACSM's PBV waiting list.

If an applicant refuses a unit with good cause, and with HACSM/owner approval, the applicant shall be offered the next available unit suitable to their family size. If an applicant refuses the second offer, the applicant's name will be removed from HACSM's PBV waiting list.

### ***Persons with Disabilities***

If an applicant family's head or spouse is disabled, HACSM must assure effective communication, in accordance with 24 CFR 8.6, in conducting the oral briefing and in providing the written information packet. This may include making alternative formats available (see Chapter 2). In addition, the PHA must have a mechanism for referring a family that includes a member with a mobility impairment to an appropriate accessible PBV unit.

### ***Persons with Limited English Proficiency***

HACSM will 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).

## **Good Cause for Unit Refusal**

Applicants may refuse to accept a unit offer for "good cause". Good cause includes situations in which an applicant is willing to move but is unable to do so at the time of the unit offer, or the applicant demonstrates that acceptance of the offer would cause undue hardship not related to considerations of the applicant's race, color, national origin, etc.

Examples of good cause for refusal of a unit offer include, but are not limited to, the following:

- The family demonstrates to HACSM's satisfaction that accepting the offer will place a family member's life, health or safety in jeopardy. The family should offer specific and compelling documentation such as restraining orders or other court orders. Reasons must be specific to the family. Refusals due to location alone do not qualify for good cause exemption.
- Temporary hospitalization or recovery from illness of the Head of Household, other household members (as listed on final application) or live-in aide necessary to the care of the Head of Household.
- The unit is inappropriate for the applicant's disabilities, or the family does not need the accessible features in the unit offered.

HACSM will require documentation of good cause for unit refusals. In the case of a unit refusal for good cause, the applicant will not be removed from the PBV waiting list. The applicant will remain on the waiting list until the family receives the next offer for which they do not have good cause to refuse.

### **Unit Refusal without Good Cause**

When an applicant rejects a unit offer without good cause, HACSM will remove the applicant's name from the PBV waiting list and send notice to the family of such removal. The notice will inform the family of their right to request an informal review.

The applicant may reapply for assistance if the waiting list is open. If the waiting list is not open, the applicant must wait to re-apply until HACSM opens the waiting list.

#### *Persons with Disabilities*

If an applicant family's head or spouse is disabled, HACSM will assure effective communication, in accordance with 24 CFR 8.6, in conducting the oral briefing and in providing the written information packet (see Chapter 2). In addition, HACSM will have a mechanism for referring a family that includes a member with mobility impairment to an appropriate accessible PBV unit.

#### *Persons with Limited English Proficiency*

HACSM will 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).

### **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 HACSM from HACSM's waiting list. The contract unit leased to the family must be the appropriate size unit for the size of the family, based on HACSM's subsidy standards.

### ***Filling Vacancies [24 CFR 983.254(a)]***

The owner must promptly notify HACSM of any vacancy or expected vacancy in a contract unit. After receiving such notice, HACSM will make every reasonable effort to promptly refer a sufficient number of families for the owner to fill such vacancies. HACSM and the owner must make reasonable efforts to minimize the likelihood and length of any vacancy.

### ***Reduction in HAP Contract Units Due to Vacancies [24 CFR 983.254(b)]***

If any contract units have been vacant for 120 or more days since owner notice of the vacancy, HACSM 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.

If HACSM gives notice to the owner amending the HAP contract, HACSM will provide the notice to the owner within 10 business days of the 120<sup>th</sup> day of the vacancy. The amendment to the HAP contract will be effective the 1<sup>st</sup> day of the month following the date of HACSM's notice.

### ***Tenant Screening [24 CFR 983.255]***

#### ***HACSM Responsibility***

HACSM is not responsible or liable to the owner or any other person for the family's behavior or suitability for tenancy.

HACSM will not conduct screening to determine a PBV applicant family's suitability for tenancy unless the PBV unit is HACSM-owned.

HACSM will provide the owner with an applicant family's current and prior address (as shown in HACSM records) and the name and address (if known by HACSM) of the family's current landlord and any prior landlords.

In addition, HACSM may offer the owner other information it may have about a family, including information about the tenancy history of family members or about drug trafficking and criminal activity by family members. HACSM will provide applicant families a description of its policy on providing information to owners, and HACSM will give the same types of information to all owners.

HACSM may not disclose to the owner any confidential information provided in response to a request for documentation of domestic violence, dating violence, sexual assault, or stalking except at the written request or with the written consent of the individual providing the documentation.

### **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.

### **IX. OCCUPANCY**

After an applicant has been selected from the waiting list, determined eligible by HACSM, referred to an owner and determined suitable by the owner, the family will sign the lease and occupancy of the unit will begin.

#### **Lease**

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.

#### **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 HACSM (the names of family members and any HACSM-approved live-in aide);

All provisions in the HUD-required tenancy addendum must be included in the lease. The terms of the tenancy addendum prevail over other provisions of the lease.

### ***Initial Term and Lease Renewal [24 CFR 983.256(f)]***

The initial lease term must be for at least one year. The lease must provide for automatic renewal after the initial term of the lease in either successive definitive terms (e.g. month-to-month or year-to-year) or an automatic indefinite extension of the lease term. For automatic indefinite extensions of the lease term, the lease terminates if any of the following occur:

- The owner terminates the lease for good cause
- The tenant terminates the lease
- The owner and tenant agree to terminate the lease
- HACSM terminates the HAP contract
- HACSM terminates assistance for the family

With the approval of HACSM's disposition application, existing public housing residents at the time of disposition will not be required to stay in their unit for 12 months after conversion to PBV assistance to receive the tenant-based transfer voucher. They may vacate at any time with proper notice to HACSM.

### ***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 HACSM a copy of all changes.

### ***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 24 CFR 982.310). In the PBV program, terminating tenancy for "good cause" does not include doing so for a business or economic reason, or a desire to use the unit for personal or family use or other non-residential purpose.

### ***Tenant Absence from the Unit [24 CFR 983.256(g) and 982.312(a)]***

The lease may specify a maximum period of family absence from the unit that may be shorter than the maximum period permitted by HACSM policy. According to HACSM policy requirements, the family's assistance will be terminated if they are absent from the unit for more than 90 consecutive days.

### ***Continuation of Housing Assistance Payments [24 CFR 982.258]***

Housing assistance payments shall continue until the tenant rent equals the rent to owner. The cessation of housing assistance payments at such point will not affect the family's other rights under its lease, nor will such cessation preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances if such changes occur within 90 days following the date of the last housing assistance payment by HACSM. After the 90-day period, the unit shall be removed from the HAP contract.

### ***Security Deposits [24 CFR 983.258]***

The owner may collect a security deposit from the tenant. HACSM will prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.

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. HACSM has no liability or responsibility for payment of any amount owed by the family to the owner.

## **Moves**

### ***Overcrowded, Under-Occupied, and Accessible Units [24 CFR 983.260]***

If HACSM determines that a family is occupying a wrong size unit, based on HACSM'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, HACSM will promptly notify the family and the owner of this determination, and HACSM will offer the family the opportunity to receive continued housing assistance in another unit.

HACSM 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 HACSM offers the family a tenant-based voucher, it will terminate the housing assistance payments for a wrong-sized or accessible unit at the earlier of the expiration of the term of the family's voucher (including any extension granted by HACSM) or the date upon which the family vacates the unit. If the family does not move out of the wrong-sized unit or accessible unit by the expiration of the term of the family's voucher, HACSM will remove the unit from the HAP contract.

If HACSM 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 HACSM, or both, HACSM will terminate the housing assistance payments for the unit at the expiration of a reasonable period as determined by HACSM and remove the unit from the HAP contract.

With its MTW authority, if HACSM issues the family a tenant-based voucher, the family will be issued a voucher under HACSM's time-limited MTW Self-Sufficiency program.

If a PBV unit is removed from the HAP contract due to the family no longer qualifies (including zero HAP families) for the PBV unit, HACSM may add the unit back to the HAP contract when the family moves out or replace the unit with another unit with the same bedroom size within the project as soon as one becomes available.

### ***Family Right to Move***

Using its MTW authority, HACSM requires the family to reside in the PBV unit for at least 24 months, unless the family is approved for a reasonable accommodation. The family may terminate the lease at any time after the first two years (or 24 months) 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 HACSM. If the family wishes to move with continued assistance, the family must contact HACSM to request the rental assistance prior to providing notice to terminate the lease.

If the family terminates the lease in accordance with the above requirements, HACSM will offer the family the opportunity for continued assistance under HACSM's time-limited MTW Self-Sufficiency Program and subject to all terms and conditions of the program (see Chapter 17). If MTW Self-Sufficiency assistance or other comparable assistance is not immediately available upon termination of the family's lease in the PBV unit, HACSM will give the family priority to receive the next available opportunity for continued assistance under the MTW Self-Sufficiency Program or other comparable programs as stated above. The owner must fill the vacancy immediately with the next eligible family or the unit will be removed from the PBV HAP contract.

If the family terminates the assisted lease before the end of the first two years (24 months), the family relinquishes the opportunity for continued assistance.

HACSM may grant exceptions to the type of assistance a family receives after terminating the lease as a reasonable accommodation. Should the original household member for whom the accommodation request was granted no longer be a part of the household, the type of assistance will be reverted back to the time-limited MTW Self-Sufficiency Program or other comparable program.

### **Emergency Transfers under VAWA [Notice PIH 2017-08]**

Except where special consideration is needed for the project-based voucher program, HACSM will follow VAWA policies as outlined in this Administrative Plan.

HUD requires that the PHA include policies that address when a victim has been living in a unit for less than a year or when a victim seeks to move sooner than a tenant-based voucher is available.

When the victim of domestic violence, dating violence, sexual assault, or stalking has lived in the unit for less than one year, HACSM will provide several options for continued assistance.

- HACSM will first try to transfer the participant to another PBV unit in the same development or transfer to a different development where the HACSM has PBV units. HACSM will expedite the administrative processes in this case in an effort to conduct the transfer as quickly as possible.
- If no units are available for an internal transfer, or if there is reasonable cause to believe that such a transfer would put the victim in jeopardy, the participant may receive continued assistance through an external transfer to tenant-based rental assistance (HCV) program. Such a decision will be made by the PHA based on the availability of tenant-based vouchers.

### **Exceptions to the Occupancy Cap**

HACSM will not pay housing assistance under a PBV HAP contract for more than the greater of 25 units or 25 percent of the number of dwelling units in a project unless:

- The units are exclusively for elderly families
- The units are for households eligible for supportive services available to all families receiving PBV assistance in the project
- The project is located in a census tract with a poverty rate of 20 percent or less, as determined in the most recent American Community Survey Five-Year estimates
  - For these projects, the project cap is the greater of 25 units or 40 percent (instead of 25 percent) of the units in the project [FR Notice 7/14/17].

If a family at the time of initial tenancy is receiving and while the resident of an excepted unit has received Family Self-Sufficiency (FSS) supportive services or any other service as defined as defined by HACSM and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit. However, if the FSS family fails to successfully complete the FSS contract of participation or supportive services objective and consequently is no longer eligible for the supportive services, the family must vacate the unit within a reasonable period of time established by the PHA, and the PHA shall cease paying HAP on behalf of the family.

Further, when a family (or remaining members of a family) residing in an excepted unit no longer meets the criteria for a “qualifying family” because the family is no longer an elderly family due to a change in family composition, the PHA has the discretion to allow the family to remain in the excepted unit. If the PHA does not exercise this discretion, the family must vacate the unit within a reasonable period of time established by the PHA, and the PHA must cease paying housing assistance payments on behalf of the non-qualifying family.

Individuals in units with supportive services who choose to no longer participate in a service or who no longer qualify for services they qualified for at the time of initial occupancy cannot subsequently be denied continued housing opportunity because of

this changed circumstance. A PHA or owner cannot determine that a participant's needs exceed the level of care offered by qualifying services or require that individuals be transitioned to different projects based on service needs.

If the family fails to vacate the unit within the established time, the unit must be removed from the HAP contract unless the project is partially assisted, and it is possible for the HAP contract to be amended to substitute a different unit in the project 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 will be terminated by HACSM.

HACSM may allow a family that initially qualified for occupancy of an excepted unit based on elderly or disabled family status to continue to reside in a unit, where through circumstances beyond the control of the family (e.g., death of the elderly or disabled family member or long-term or permanent hospitalization or nursing care), the elderly or disabled family member no longer resides in the unit. In this case, the unit may continue to be counted as an excepted unit for as long as the family resides in that unit. Once the family vacates the unit, in order to continue as an excepted unit under the HAP contract, the unit must be made available to and occupied by a qualified family.

## **X. DETERMINING RENT TO OWNER**

The amount of the initial rent to an owner of units receiving PBV assistance is established at the beginning of the HAP contract term. Although for rehabilitated or newly constructed housing, the agreement to enter into HAP Contract (Agreement) states the estimated amount of the initial rent to owner, the actual amount of the initial rent to owner is established at the beginning of the HAP contract term.

During the term of the HAP contract, the rent to owner is redetermined at the owner's request in accordance with program requirements, and at such time that there is a five percent or greater decrease in the published FMR.

### **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 HACSM, not to exceed 110 percent of the applicable fair market rent (or any HUD-approved exception payment standard) for the unit bedroom size minus any utility allowance;
- The reasonable rent; or
- The rent requested by the owner.

### ***Certain Tax Credit Units [24 CFR 983.301(c)]***

For certain tax credit units, the rent limits are determined differently than for other PBV units. Different limits apply to contract units that meet all of the following criteria:

- The contract unit receives a low-income housing tax credit under the Internal Revenue Code of 1986;

- The contract unit is not located in a qualified census tract;
- There are comparable tax credit units of the same bedroom size as the contract unit in the same project, and the comparable tax credit units do not have any form of rental assistance other than the tax credit; and
- The tax credit rent exceeds 110 percent of the fair market rent or any approved exception payment standard;

For contract units that meet all of these criteria, the rent to owner must not exceed the lowest of:

- The tax credit rent minus any utility allowance;
- The reasonable rent; or
- The rent requested by the owner.

**Definitions**

A *qualified census tract* is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income of less than 60 percent of Area Median Gross Income (AMGI), or where the poverty rate is at least 25 percent and where the census tract is designated as a qualified census tract by HUD.

*Tax credit rent* is the rent charged for comparable units of the same bedroom size in the project that also receive the low-income housing tax credit but do not have any additional rental assistance (e.g., tenant-based voucher assistance).

**Reasonable Rent [24 CFR 983.301(e) and 983.302(c)(2)]**

HACSM must determine reasonable rent in accordance with 24 CFR 983.303. The rent to owner for each contract unit may at no time exceed the reasonable rent, except in cases where HACSM has elected within the HAP contract not to reduce rents below the initial rent to owner and, upon redetermination of the rent to owner, the reasonable rent would result in a rent below the initial rent. However, the rent to owner must be reduced in the following cases:

- To correct errors in calculations in accordance with HUD requirements
- If additional housing assistance has been combined with PBV assistance after the execution of the initial HAP contract and a rent decrease is required pursuant to 24 CFR 983.55
- If a decrease in rent to owner is required based on changes in the allocation of the responsibility for utilities between owner and tenant

If HACSM has not elected within the HAP contract to establish the initial rent to owner as the rent floor, the rent to owner shall not at any time exceed the reasonable rent.

**Use of FMRs, Exception Payment Standards, and Utility Allowances [24 CFR 983.301(f)]**

When determining the initial rent to owner, HACSM will use the most recently published FMR in effect and the utility allowance schedule in effect at execution of the HAP

contract. When redetermining the rent to owner, HACSM will use the most recently published FMR and the utility allowance schedule in effect at the time of redetermination. At its discretion, HACSM may for initial rent, use the amounts in effect at any time during the 30-day period immediately before the beginning date of the HAP contract, or for redeterminations of rent, the 30-day period immediately before the redetermination date.

Any HUD-approved exception payment standard amount under the tenant-based voucher program also applies to the project-based voucher program. HUD will not approve a different exception payment standard amount for use in the PBV program.

Likewise, HACSM 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.

### ***Redetermination of Rent [24 CFR 983.302]***

HACSM will redetermine the rent to owner upon the owner's request or when there is a 10 percent or greater decrease in the published FMR.

### ***Rent Increase***

If an owner wishes to request an increase in the rent to owner from HACSM, it must be requested at the annual anniversary of the HAP contract. The request must be in writing and in the form and manner required by HACSM. HACSM 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 HACSM 60 days prior to the anniversary date of the HAP contract and must include the new rent amount the owner is proposing.

HACSM will not approve and the owner will 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 will 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 will be decreased regardless of whether the owner requested a rent adjustment, except where HACSM has elected within the HAP contract to not reduce rents below the initial rent under the initial HAP contract.

### ***Notice of Rent Change***

The rent to owner is redetermined by written notice by HACSM to the owner specifying the amount of the redetermined rent. HACSM 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.

HACSM will provide the owner with at least 30 days written notice of any change in the amount of rent to owner.

### ***HACSM-owned Units [24 CFR 983.301(g)]***

HACSM-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. HACSM must use the rent to owner established by the independent entity.

### **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 HACSM, except where HACSM has elected within the HAP contract to not reduce rents below the initial rent under the initial HAP contract.

### ***When Rent Reasonable Determinations Are Required***

HACSM will redetermine the reasonable rent for a unit receiving PBV assistance whenever any of the following occur:

- There is a five 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;
- HACSM approves a change in the allocation of responsibility for utilities between the owner and the tenant;
- The HAP contract is amended to substitute a different contract unit in the same building or project; or
- There is any other change that may substantially affect the reasonable rent.

### ***How to Determine Reasonable Rent***

The reasonable rent of a unit receiving PBV assistance will be determined by comparison to rent for other comparable unassisted units. When making this determination, HACSM will 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 will 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 will show how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units, and will be retained by HACSM. The comparability analysis may be performed by HACSM staff or by another qualified person or entity. Those who conduct

these analyses or are involved in determining the housing assistance payment based on the analyses may not have any direct or indirect interest in the property.

### ***HACSM-owned Units***

For HACSM-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 HACSM-owned units to HACSM 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, HACSM may require the owner to submit information on rents charged by the owner for other units in the premises or elsewhere.

### ***Effect of Other Subsidy and Rent Control***

In addition to the rent limits discussed in previous sections 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.

### ***Other Subsidy [24 CFR 983.304]***

To comply with HUD subsidy layering requirements, at the discretion of HUD or its designee, HACSM shall reduce the rent to owner because of other governmental subsidies, including tax credits or tax exemptions, grants, or other subsidized funding.

For units receiving assistance under the HOME program, rents may not exceed rent limits as required by that program.

For units in any of the following types of federally subsidized projects, the rent to owner may not exceed the subsidized rent (basic rent) or tax credit rent as determined in accordance with requirements for the applicable federal program:

- An insured or non-insured Section 236 project;
- A formerly insured or non-insured Section 236 project that continues to receive Interest Reduction Payment following a decoupling action;
- A Section 221(d)(3) below market interest rate (BMIR) project;
- A Section 515 project of the Rural Housing Service;
- Any other type of federally subsidized project specified by HUD.

### ***Combining Subsidy***

Rent to owner may not exceed any limitation required to comply with HUD subsidy layering requirements.

### ***Rent Control [24 CFR 983.305]***

In addition to the rent limits set by PBV program regulations, the amount of rent to owner may also be subject to rent control or other limits under local, state, or federal law.

## **XI. PAYMENTS TO OWNER**

### **Housing Assistance Payments [24 CFR 983.351]**

During the term of the HAP contract, HACSM will make housing assistance payments to the owner in accordance with the terms of the HAP contract. During the term of the HAP contract, payments will 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 will be paid to the owner on or about the first day of the month for which payment is due.

Except for discretionary vacancy payments, HACSM will 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).

HACSM received approval through its FY2009 MTW Annual Plan to institute an alternate subsidy calculation method which may be applied to PBV properties. When using the alternate subsidy calculation, the amount of the housing assistance payment by HACSM is the rent to owner minus the subsidy amount as determined by HACSM's applicable tiered subsidy table (TST).

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.

### **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 HACSM determines that the vacancy is the owner's fault.

If HACSM determines that the owner is responsible for a vacancy and, as a result, is not entitled to the keep the housing assistance payment, HACSM will notify the landlord of the amount of housing assistance payment that the owner must repay. HACSM will require the owner to repay the amount owed in accordance with the policies in Chapter 20.

At the discretion of HACSM, the HAP contract may provide for vacancy payments to the owner. HACSM may only make vacancy payments if:

- The owner gives HACSM prompt, written notice certifying that the family has vacated the unit and identifies the date when the family moved out (to the best of the owner's knowledge);
- The owner certifies that the vacancy is not the fault of the owner and that the unit was vacant during the period for which payment is claimed;
- The owner certifies that it has taken every reasonable action to minimize the likelihood and length of vacancy; and
- The owner provides any additional information required and requested by the PHA to verify that the owner is entitled to the vacancy payment.

The owner must submit a request for vacancy payments in the form and manner required by HACSM and must provide any information or substantiation required by HACSM to determine the amount of any vacancy payment.

### **Tenant Rent to Owner [24 CFR 983.353]**

The tenant rent is the portion of the rent to owner paid by the family. The amount of tenant rent is determined by the PHA in accordance with HUD requirements. Any changes in the amount of tenant rent will be effective on the date stated in the PHA notice to the family and owner.

The family is responsible for paying the tenant rent (total tenant payment minus the utility allowance). The amount of the tenant rent determined by the PHA is the maximum amount the owner may charge the family for rental of a contract unit. The tenant rent covers all housing services, maintenance, equipment, and utilities to be provided by the owner. The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by the PHA. The owner must immediately return any excess payment to the tenant.

### ***Tenant and HACSM 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 HACSM.

Likewise, HACSM is responsible only for making the housing assistance payment to the owner in accordance with the HAP contract. HACSM is not responsible for paying tenant rent, or any other claim by the owner, including damage to the unit. HACSM may not use housing assistance payments or other program funds (including administrative fee reserves) to pay any part of the tenant rent or other claim by the owner.

### ***Utility Reimbursements***

If the amount of the utility allowance exceeds the total tenant payment, the PHA must pay the amount of such excess to the tenant as a reimbursement for tenant-paid utilities, and the tenant rent to the owner must be zero.

HACSM will pay the utility reimbursement directly to the family.

### **Other Fees and Charges [24 CFR 983.354]**

#### ***Meals and Supportive Services***

With the exception of PBV assistance in assisted living developments, the owner may not require the tenant to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy.

In assisted living developments receiving PBV assistance, the owner may charge for meals or supportive services. These charges may not be included in the rent to owner, nor may the value of meals and supportive services be included in the calculation of the reasonable rent. However, non-payment of such charges is grounds for termination of the lease by the owner in an assisted living development.

***Other Charges by Owner***

The owner may not charge extra amounts for items customarily included in rent in the locality or provided at no additional cost to unsubsidized tenants in the premises.

## Chapter 23

### PROJECT BASED VOUCHERS (PBV) UNDER THE RENTAL ASSISTANCE DEMONSTRATION (RAD) PROGRAM

#### I. INTRODUCTION

The Rental Assistance Demonstration (RAD) program was authorized in 2012 in order to assess the effectiveness of converting public housing, moderate rehabilitation properties, and units under the rent supplement and rental assistance payments programs to long-term, project-based Section 8 rental assistance. The program's four primary objectives are to:

- Preserve and improve public and other assisted housing.
- Standardize the administration of the plethora of federally subsidized housing programs and rules. The conversions are intended to promote operating efficiency by using a Section 8 project-based assistance model that has proven successful and effective for over 30 years. In other words, RAD aligns eligible properties more closely with other affordable housing programs.
- Attract private market capital for property renovations. Through the use of this model, properties may be able to leverage private debt and equity to make capital repairs.
- Increase tenant mobility opportunities.

Under the first component, a PHA with public housing units may submit an application to HUD to convert some or all of their public housing units to long-term, project-based Section 8 HAP contracts under either:

- Project-based rental assistance (PBRA) under HUD's Office of Multifamily Housing Programs.
- Project-based vouchers (PBVs) under HUD's Office of Public and Indian Housing (PIH).

This chapter will focus on public housing conversions to the PBV program under RAD. In order to distinguish between requirements for public housing conversion under RAD and PBV units under the standard PBV program, we will refer to the standard PBV program and the RAD PBV program.

## II. APPLICABLE REGULATIONS

The regulations for both the standard and RAD PBV programs generally follow the regulations for the tenant-based HCV program found at 24 CFR Part 982. However, important parts of the tenant-based regulations do not apply to the project-based program. 24 CFR Part 983 outlines the sections of 24 CFR Part 982 that are not applicable to the project-based program.

For the RAD PBV program, Congress authorized HUD to waive certain statutory and regulatory provisions or establish alternative requirements from the standard PBV program. These provisions are identified in Notice PIH 2012-32, REV-2 (issued June 15, 2015) and Notice PIH 2012-32, REV-3 (issued January 12, 2017).

Otherwise, all regulatory and statutory requirements for the standard PBV program in 24 CFR Part 983 and Section 8(o)(13) of the Housing Act of 1937, and all applicable standing and subsequent Office of Public and Indian Housing (PIH) guidance, including related handbooks, apply to RAD PBV. This includes environmental review, Davis-Bacon, and fair housing requirements.

RAD is authorized by the Consolidated and Further Continuing Appropriations Act of 2012 (Public Law 112-55, approved November 18, 2011), as amended by the Consolidated Appropriations Act of 2014 (Public Law 113-76, approved January 17, 2014), and the Consolidated and Further Continuing Appropriations Act of 2015 (Public Law 113-235, approved December 6, 2014), and Division L, Title II, Section 237 of the Consolidated Appropriations Act (Public Law 114-113, enacted December 18, 2015) collectively, the "RAD Statute." Requirements specific to the RAD program may be found in the following:

- Generally, public housing projects converting assistance under RAD are bound by the terms of the notice in effect at the time of closing. Notice PIH 2012-32, REV-3 is applicable to projects converting assistance through RAD, including those where a CHAP has already been issued, upon the expiration of the 30-day comment period after publication of the notice. Notice PIH 2012-32, REV-3 was published January 12, 2017.
- Notice PIH 2012-32, REV-2, RAD – Final Implementation, REV-2 is applicable to projects converting assistance through RAD upon the expiration of the 30-day comment period after publication of the Notice. PIH Notice 2012-32, REV-2 was published June 15, 2015.
- RAD Quick Reference Guide for Public Housing Converting to PBV Assistance (10/14)
- RAD Welcome Guide for New Awardees: RAD 1st Component (3/15)
- Notice PIH 2016-17, Rental Assistance Demonstration (RAD) Notice Regarding Fair Housing and Civil Rights Requirements and Relocation Requirements Applicable to RAD First Component – Public Housing Conversions.
  - This Notice applies to all projects that have applied for RAD conversion but have not yet converted as of November 10, 2016.

- Notice PIH 2014-17, Relocation Requirements under the RAD Program, Public Housing in the First Component.
  - This notice may apply to projects that have converted to RAD prior to November 10, 2016 , AND who have requested and received approval from HUD to be governed by this notice. See PIH Notice 2016-17, Section 1, Paragraph 1.3 for applicability.
- RAD FAQs (<http://www.radresource.net/search.cfm>)

In other words, the standard PBV program follows many of the same regulations as the tenant-based HCV program, but not all of them, and the RAD PBV program follows many of the same regulations as the standard PBV program, but not all of them.

MTW agencies are able to apply activities impacting the PBV program that are approved in the MTW Plan to properties converting under RAD, provided they do not conflict with RAD requirements.

### **Tenant-Based Vs. Project-Based Voucher Assistance [24 CFR 983.2]**

Much of the tenant-based voucher program regulations also apply to the PBV program. Consequently, many of the PHA policies related to tenant-based assistance also apply to RAD PBV assistance. The provisions of the tenant-based voucher regulations that do not apply to the PBV program are listed at 24 CFR 983.2.

Except as otherwise noted in this chapter, or unless specifically prohibited by PBV program regulations, HACSM policies for the tenant-based voucher program contained in this administrative plan also apply to the RAD PBV program and its participants. This chapter is intended to address requirements specific to the RAD PBV program only.

### **Relocation Requirements [Notice PIH 2016-17]**

In some developments, in-place residents may need to be relocated as a result of properties undergoing repairs, being demolished and rebuilt, or when assistance is transferred from one site to another. RAD program rules prohibit the permanent, involuntary relocation of residents as a result of conversion. Residents that are temporarily relocated retain the right to return to the project once it has been completed.

Relocation assistance provided to residents will vary depending on the length of time relocation is required. Residents must be properly notified in advance of relocation requirements in accordance with RAD program rules and Uniform Relocation Act (URA) requirements.

### **Equal Opportunity Requirements [24 CFR 983.8; Notice PIH 2012-32, REV-3]**

RAD conversions are governed by the same civil rights authorities that govern HUD-assisted activities in general. PHAs must comply with all applicable fair housing and civil rights laws, including but not limited to the Fair Housing Act, Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973, when conducting relocation planning and providing relocation assistance. For example, persons with disabilities returning to the RAD project may not be turned away or placed on a waiting

list due to a lack of accessible units. Their need for an accessible unit must be accommodated.

### **III. PBV PROJECT SELECTION**

Unlike in the standard PBV program where the PHA typically selects the property through an owner proposal selection process, projects selected for assistance under RAD PBV are selected in accordance with the provisions in Notice PIH 2012-32, REV-3. Therefore, 24 CFR 983.51 does not apply since HUD selects RAD properties through a competitive selection process.

#### **Ownership And Control [Notice PIH 2012-32, REV-3]**

Except where permitted to facilitate the use of low-income housing tax credits, during both the initial term and renewal terms of the HAP contract, ownership must be by a public or non-profit entity. The requirement for a public or non-profit entity is satisfied if a public or non-profit entity (or entities), directly or through a wholly-owned affiliate (1) holds a fee simple interest in the property; (2) is the lessor under a ground lease with the property owner; (3) has the direct or indirect legal authority to direct the financial and legal interest of the property owner with respect to the RAD units, (4) owns 51 percent or more of the general partner interests in a limited partnership or 51 percent or more of the managing member interests in a limited liability company with all powers of a general partner or managing member, as applicable; (5) owns a lesser percentage of the general partner or managing member interests and holds certain control rights as approved by HUD; (6) owns 51 percent or more of all ownership interests in a limited partnership or limited liability company and holds certain control rights as approved by HUD; or (7) other ownership and control arrangements approved by HUD.

#### **PHA-Owned Units [24 CFR 983.59; Notice PIH 2012-32, REV-3; FR Notice 1/18/17]**

If the project is PHA-owned, rent-setting and inspection functions set out in 24 CFR 983.59 must be conducted by an independent entity approved by HUD.

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.

The PHA may compensate the independent entity from PHA ongoing administrative fee income (including amounts credited to the administrative fee reserve). The PHA may not use other program receipts to compensate the independent entity for its services. The PHA, and the independent entity, may not charge the family any fee for the services provided by the independent entity.

#### **Subsidy Layering Requirements [Notice PIH 2012-32, REV-3]**

In the case of a PHA that is converting all of its ACC units, there is no restriction on the amount of public housing funds that may be contributed to the covered project at closing; the PHA may convey all program funds to the covered projects. In order to cover the cost of administrative activities required to terminate the ACC, once it no

longer has units under the ACC and has no plans to develop additional public housing, the PHA may:

- Designate that a reserve associated with the project be available to fund any public housing closeout costs (such as an operating deficit reserve or a specific PHA close-out reserve). Any funds not needed for public housing close-out costs would remain in such reserve or may be transferred to another reserve associated with the project (such as the replacement reserve). Thereafter, these funds may be used at the project pursuant to the authorized use of the applicable reserve; or
- Retain funds under the public housing program for this purpose. However, HUD will recapture any public housing funds that a PHA does not expend for closeout costs.

Following execution of the HAP contract, PHAs are authorized to use operating and capital funds to make HAP payments for the remainder of the first calendar year in which the HAP contract is effective. Otherwise, a PHA may not contribute public housing program funds to the covered project unless such funding has been identified in the approved financing plan and included in the approved “sources and uses” attached to the RCC.

### **PBV Percentage Limitation [Notice PIH 2012-32, REV-3]**

Covered projects do not count against the maximum amount of assistance a PHA may utilize for the PBV program, which under the standard PBV program is set at 20 percent of the authorized units allocated to a PHA under the HCV program. To implement this provision, HUD is waiving section 8(o)(13)(B) of the 1937 Act as well as 24 CFR 983.6.

There is no cap on the number of units that may receive PBV assistance in a project.

### **Site Selection Standards [Notice PIH 2012-32, REV-3; Notice PIH 2016-17]**

Site selection requirements set forth in 24 CFR 983.57 apply to RAD PBV, with the exception of 983.57(b)(1) and (c)(2). HUD waives the provisions regarding deconcentration of poverty and expanding housing and economic opportunity for existing housing sites.

HUD will conduct a front-end civil rights review of the PHA’s proposed site in certain circumstances. For RAD PBV conversions that involve new construction located in an area of minority concentration (whether on the existing public housing site or on a new site) HUD will determine whether it meets one of the exceptions that would allow for new construction in an area of minority concentration.

The PHA must ensure that its RAD PBV conversion, including any associated new construction, is consistent with its certification to affirmatively further fair housing and complies with civil rights laws.

### **Environmental Review [Notice PIH 2012-32, REV-3]**

HUD cannot approve an applicant’s financing plan submission unless and until the required environmental review has been completed for the applicant’s proposed conversion project and found to meet environmental review requirements. Environmental documents must be submitted as part of the financing plan. HUD will not

issue a RAD Conversion Commitment (RCC) if the project plan does not meet the environmental review requirements described in Attachment 1A of Notice PIH 2012-32, REV-3.

#### **IV. DWELLING UNITS**

This part identifies the special housing quality standards that apply to the RAD PBV program, housing accessibility for persons with disabilities, and special procedures for conducting housing quality standards inspections.

##### **Housing Quality Standards [24 CFR 983.101]**

The housing quality standards (HQS) for the tenant-based program generally apply to the PBV program. HQS requirements for shared housing, manufactured home space rental, and the homeownership option do not apply because these housing types are not assisted under the PBV program.

The physical condition standards at 24 CFR 5.703 do not apply to the PBV program.

##### **Lead-based Paint [24 CFR 983.101(c)]**

The lead-based paint requirements for the tenant-based voucher program do not apply to the PBV program. Instead, The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR part 35, subparts A, B, H, and R, apply to the PBV program.

##### **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).

#### **V. INSPECTING UNITS**

##### **Initial Inspection [Notice PIH 2012-32, REV-3]**

Under RAD, all units must meet HQS no later than the date of completion of the work as indicated in the RCC.

##### **Turnover Inspections [24 CFR 983.103(c)]**

Before providing assistance to a new family in a contract unit, HACSM will inspect the unit. HACSM may not provide assistance on behalf of the family until the unit fully complies with HQS.

### **Annual/Biennial Inspections [24 CFR 983.103(d); FR Notice 6/25/14]**

At least once every 24 months during the term of the HAP contract, HACSM will inspect a random sample consisting of at least 20 percent of the contract units in each building, to determine if the contract units and the premises are maintained in accordance with HQS. Turnover inspections are not counted toward meeting this inspection requirement.

If more than 20 percent of the sample of inspected contract units in a building fail the initial inspection, HACSM will reinspect 100 percent of the contract units in the building.

### **Other Inspections [24 CFR 983.103(e)]**

HACSM will 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. HACSM will take into account complaints and any other information coming to its attention in scheduling inspections.

HACSM will conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected an HQS violation, and will conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family violation of HQS.

In conducting quality control HQS inspections, HACSM will include a representative sample of both tenant-based and project-based units.

### **Inspecting PHA-Owned Units [24 CFR 983.103(f)]**

In the case of PHA-owned units, the inspections must be performed by an independent agency designated by the PHA and approved by HUD. The independent entity must furnish a copy of each inspection report to the PHA and to the HUD field office where the project is located. The PHA must take all necessary actions in response to inspection reports from the independent agency, including exercise of contractual remedies for violation of the HAP contract by the PHA-owner.

## **VI. HOUSING ASSISTANCE PAYMENTS (HAP) CONTRACT**

Public housing projects converting under RAD do not employ the PBV Agreement to Enter into a Housing Assistance Payments (AHAP) contract. Instead, following the execution of all requirements contained in the Commitment to Enter into a HAP (CHAP) contract and the RAD Conversion Commitment (RCC), a project is converted immediately to the RAD PBV HAP contract following the closing of any construction financing. Owners of public housing projects converted to PBV assistance via RAD enter into a HAP contract with the PHA that will administer the PBV assistance. Units assisted under a RAD PBV HAP contract must be subject to long-term, renewable use and affordability restrictions.

### **HAP Contract Requirements - Contract Information [PBV Quick Reference Guide (10/14)]**

The RAD PBV program uses the PBV HAP contract for new construction or rehabilitated housing (Form HUD-52530A), as modified by the RAD rider (Form HUD-52621). The distinction between “existing housing” and “rehabilitated and newly

constructed housing” is overridden by RAD requirements. The RAD rider must be attached to the PBV HAP contract and effectuates the conversion of public housing to PBV under RAD PBV. The project must also have an initial RAD use agreement.

### **Execution and Effective date of the HAP Contract [RADBlast! 7/11/16]**

RAD PBV projects do not employ an Agreement to Enter into a Housing Assistance Payments (AHAP) contract like in the standard PBV program. Rather, when the conditions of the CHAP and the RCC are met and the conversion has closed, the PHA executes the HAP contract. Project owners may select the effective date of the HAP contract as the first day of either of the two months following the completed closing.

### **Term of HAP Contract [Notice PIH 2012-32, REV-3]**

The initial term of the HAP contract may not be for less than 15 years, and may be for a term of up to 20 years upon request of the owner and with approval of the administering voucher agency. Upon expiration of the initial term of the contract, and upon each renewal term of the contract, the owner must accept each offer to renew the contract, subject to the terms and conditions applicable at the time of each offer, and further subject to the availability of appropriations for each year of each such renewal. To implement this provision, HUD is waiving section 8(o)(13)(F) of The United States Housing Act of 1937, which established a maximum term of 15 years, as well as 24 CFR 983.205(a), which governs the contract term.

### **Agreement to Enter into a HAP (AHAP) Contract [Notice PIH 2012-32, REV-3]**

For public housing conversions to PBV, there will be no agreement to enter into a Housing Assistance Payments (AHAP) contract. Therefore, all regulatory references to the Agreement (AHAP), including regulations under 24 CFR Part 983 Subpart D, are waived. The definitions for proposal selection date, new construction, rehabilitation, and existing housing are not applicable.

### **Mandatory Contract Renewal [Notice PIH 2012-32, REV-3]**

By statute, upon contract expiration, the agency administering the vouchers will offer, and the PHA will accept, renewal of the contract subject to the terms and conditions applicable at the time of renewal and the availability of appropriations each year for such renewal. Consequently 24 CFR 983.205(b), governing the PHA discretion to renew the contract for term of up to 15 years, will not apply.

In the event that the HAP contract is removed due to breach, non-compliance or insufficiency of appropriations, for all units previously covered under the HAP contract, new tenants must have incomes at or below 80 percent of the area median income at the time of admission and rents may not exceed 30 percent of 80 percent of median income for an appropriate size unit for the remainder of the term of the RAD use agreement.

### **Remedies for HQS Violations [24 CFR 983.208(b)]**

The PHA may not make any HAP payment to the owner for a contract unit during any period in which the unit does not comply with HQS. If the PHA determines that a contract does not comply with HQS, the PHA may exercise any of its remedies under the HAP contract, for any or all of the contract units.

HACSM will abate and terminate PBV HAP contracts for noncompliance with HQS in accordance with the policies used in the tenant-based voucher program.

### **Reduction in HAP Contract Units [Notice PIH 2012-32, REV-3]**

Project owners are required to make available for occupancy by eligible tenants the number of assisted units under the terms of the HAP contract.

PHAs may not reduce the number of assisted units without HUD approval. Any HUD approval of a PHA's request to reduce the number of assisted units under contract is subject to conditions that HUD may impose. MTW agencies may not alter this requirement.

If units are removed from the HAP contract because a new admission's TTP comes to equal or exceed the gross rent for the unit and if the project is fully assisted, the PHA must reinstate the unit after the family has vacated the property. If the project is partially assisted, the PHA may substitute a different unit for the unit on the HAP contract in accordance with 24 CFR 983.207, or where "floating" units have been permitted.

### **HAP Contract Year and Anniversary Dates [24 Cfr 983.302(E)]**

The HAP contract year is the period of 12 calendar months preceding each annual anniversary of the HAP contract during the HAP contract term. The initial contract year is calculated from the first day of the first calendar month of the HAP contract term.

The annual anniversary of the HAP contract is the first day of the first calendar month after the end of the preceding contract year. There is a single annual anniversary date for all units under a particular HAP contract.

### **Owner Responsibilities Under the HAP Contract [24 Cfr 983.210]**

When the owner executes the HAP contract, he or she certifies that at such execution and at all times during the term of the HAP contract:

- All contract units are in good condition and the owner is maintaining the premises and contract units in accordance with HQS;
- The owner is providing all services, maintenance, equipment, and utilities as agreed to under the HAP contract and the leases;
- Each contract unit for which the owner is receiving HAP is leased to an eligible family referred by the PHA, and the lease is in accordance with the HAP contract and HUD requirements;
- To the best of the owner's knowledge, the family resides in the contract unit for which the owner is receiving HAP, and the unit is the family's only residence;
- The owner (including a principal or other interested party) is not the spouse, parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a contract unit;
- The amount of the HAP the owner is receiving is correct under the HAP contract;

- The rent for contract units does not exceed rents charged by the owner for comparable unassisted units;
- Except for HAP and tenant rent, the owner has not received and will not receive any other payment or consideration for rental of the contract unit;
- The family does not own or have any interest in the contract unit (this does not apply to the family's membership in a cooperative); and
- Repair work on the project selected as an existing project that is performed after HAP contract execution within such post-execution period as specified by HUD may constitute development activity, and if determined to be development activity, the repair work undertaken shall be in compliance with Davis-Bacon wage requirements.

### **Vacancy Payments [24 CFR 983.352(b)]**

At the discretion of the PHA, the HAP contract may provide for vacancy payments to the owner for a PHA-determined period of vacancy extending from the beginning of the first calendar month after the move-out month for a period not exceeding two full months following the move-out month. The amount of the vacancy payment will be determined by the PHA and cannot exceed the monthly rent to owner under the assisted lease, minus any portion of the rental payment received by the owner, including amounts available from the tenant's security deposit.

HACSM will provide vacancy payments to the owner. The HAP contract with the owner will contain the amount of the vacancy payment and the period for which the owner will qualify for these payments.

## **VII. SELECTION OF PBV PROGRAM PARTICIPANTS**

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.

### **Prohibited Rescreening of Existing Tenants Upon Conversion [Notice PIH 2012-32, REV-3]**

Current households cannot be excluded from occupancy at the covered project based on any rescreening, income eligibility, or income targeting provisions. Consequently, current households will be grandfathered for application of any eligibility criteria to conditions that occurred prior to conversion but will be subject to any ongoing eligibility requirements for actions that occur after conversion. Post-conversion, the tenure of all residents of the covered project is protected pursuant to PBV requirements regarding continued occupancy unless explicitly modified by Notice PIH 2012-32, REV-3 (e.g., rent phase-in provisions).

For example, a unit with a household that was over-income at time of conversion would continue to be treated as an assisted unit. Thus, 24 CFR 982.201, concerning eligibility and targeting, will not apply for current households. Once that remaining household

moves out, the unit must be leased to an eligible family. Existing residents at the time of conversion may not be rescreened for citizenship status or have their social security numbers reverified.

Further, so as to facilitate the right to return to the assisted property, this provision must apply to current public housing residents of the converting project that will reside in non-RAD PBV units placed in a project that contain RAD PBV units. Such families and such contract units will otherwise be subject to all requirements of the applicable program, specifically 24 CFR 983 for non-RAD PBV.

For the RAD PBV program, *in-place family* means a family who lived in a pre-conversion property at the time assistance was converted from public housing to PBV under RAD.

### **Eligibility For PBV Assistance [24 CFR 983.251(a) and (b)]**

Applicants for PBV assistance must meet the same eligibility requirements as applicants for the tenant-based voucher program. Applicants must qualify as a family as defined by HUD and the PHA, have income at or below HUD-specified income limits, and qualify on the basis of citizenship or the eligible immigration status of family members [24 CFR 982.201(a) and 24 CFR 983.2(a)]. In addition, an applicant family must provide social security information for family members [24 CFR 5.216 and 5.218] and consent to the PHA's collection and use of family information regarding income, expenses, and family composition [24 CFR 5.230]. The PHA may also not approve a tenancy if the owner (including a principal or other interested party) of the unit is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, unless needed as a reasonable accommodation. An applicant family must also meet HUD requirements related to current or past criminal activity.

HACSM will determine an applicant family's eligibility for the RAD PBV program in accordance with the policies in Chapter 3.

### **Organization of the Waiting List [24 CFR 983.251(c); Notice PIH 2012-32, REV-3]**

The standard PBV regulations at 24 CFR 983.251 set out program requirements related to establishing and maintaining a voucher-wide, PBV program-wide, or site-based waiting list from which residents will be admitted. These provisions will apply unless the project is covered by a remedial order or agreement that specifies the type of waiting list and other waiting list policies. See Chapter 4 for any specific information on PBV waiting lists.

### **Selection from the Waiting List [24 CFR 983.251(c)]**

After conversion to RAD PBV, applicants who will occupy units with RAD PBV assistance will be selected from the HACSM's waiting list. HACSM may establish selection criteria or preferences for occupancy of particular PBV units.

### **Income Targeting [24 CFR 983.251(c)(6); Notice PIH 2012-32, REV-3]**

At least 75 percent of the families admitted to HACSM's tenant-based and project-based voucher programs during the agency's fiscal year from the waiting list must be

extremely-low income families. The income targeting requirement applies to the total of admissions to both programs.

Families in place at the time of the conversion are exempt from income targeting requirements. New admissions follow standard PBV requirements.

### **Units with Accessibility Features [24 CFR 983.251(c)(7)]**

When selecting families to occupy PBV units that have special accessibility features for persons with disabilities, the HACSM must first refer families who require such features to the owner.

### **Preferences [24 CFR 983.251(d); FR Notice 11/24/08; Notice PIH 2012-32, REV-3]**

PHAs 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.

PHAs may establish a selection preference for families who qualify for voluntary services, including disability-specific services, offered in conjunction with assisted units, provided that preference is consistent with the PHA plan. The PHA may not, however, grant a preference to a person with a specific disability [FR Notice 1/18/17].

In advertising such a project, the owner may advertise the project as offering services for a particular type of disability; however, the project must be open to all otherwise eligible persons with disabilities who may benefit from services provided in the project. In these projects, residents with disabilities may not be required to accept the particular services offered as a condition of occupancy.

See Chapter 4 for specific information on preferences.

### **Offer of PBV Assistance**

#### ***Refusal of Offer [24 CFR 983.251(e)(3)]***

HACSM is prohibited from taking any of the following actions against a family who has applied for, received, or refused an offer of PBV assistance:

- Refusing to list the applicant on the waiting list for tenant-based voucher assistance
- Denying any admission preference for which the applicant qualifies
- Changing the applicant's place on the waiting list based on preference, date, and time of application, or other factors affecting selection under the PHA's selection policy
- Removing the applicant from the tenant-based voucher waiting list

#### ***Disapproval by Landlord [24 CFR 983.251(e)(2)]***

If a PBV owner rejects a family for admission to the owner's units, such rejection may not affect the family's position on the tenant-based voucher waiting list.

## **Acceptance of Offer [24 CFR 983.252]**

### ***Family Briefing***

When a family accepts an offer for PBV assistance, HACSM will 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, HACSM will provide a briefing packet that explains how the PHA determines the total tenant payment for a family, the family obligations under the program, and applicable fair housing information.

### ***Persons with Disabilities***

If an applicant family's head or spouse is disabled, HACSM will assure effective communication, in accordance with 24 CFR 8.6, in conducting the oral briefing and in providing the written information packet. This may include making alternative formats available (see Chapter 2). In addition, the PHA must have a mechanism for referring a family that includes a member with a mobility impairment to an appropriate accessible PBV unit.

### ***Persons with Limited English Proficiency***

The PHA should take reasonable steps to assure meaningful access by persons with limited English proficiency in accordance with Title VI of the Civil Rights Act of 1964 and Executive Order 13166 (see Chapter 2).

## **Owner Selection of Tenants**

The owner is responsible for developing written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant's ability to fulfill their obligations under the lease. An owner must promptly notify in writing any rejected applicant of the grounds for any rejection [24 CFR 983.253(a)(2) and (a)(3)].

### ***Leasing [24 CFR 983.253(a)]***

During the term of the HAP contract, the owner must lease contract units to eligible families that are selected and referred by HACSM from HACSM's waiting list. The contract unit leased to the family must be the appropriate size unit for the size of the family, based on the PHA's subsidy standards.

### ***Filling Vacancies [24 CFR 983.254(a)]***

The owner must promptly notify HACSM of any vacancy or expected vacancy in a contract unit. After receiving such notice, HACSM must make every reasonable effort to promptly refer a sufficient number of families for the owner to fill such vacancies. HACSM and the owner must make reasonable efforts to minimize the likelihood and length of any vacancy.

## **Tenant Screening [24 CFR 983.255]**

### ***PHA Responsibility***

HACSM is not responsible or liable to the owner or any other person for the family's behavior or suitability for tenancy. HACSM will not conduct screening to determine a PBV applicant family's suitability for tenancy.

HACSM must provide the owner with an applicant family's current and prior address (as shown in PHA records) and the name and address (if known by the PHA) of the family's current landlord and any prior landlords.

In addition, HACSM may offer the owner other information it may have about a family, including information about the tenancy history of family members or about drug trafficking and criminal activity by family members. HACSM must provide applicant families a description of the PHA policy on providing information to owners, and the PHA must give the same types of information to all owners.

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

### **Owner Responsibility**

The owner is responsible for screening and selection of the family to occupy the owner's unit. When screening families the owner may consider a family's background with respect to the following factors:

- Payment of rent and utility bills
- Caring for a unit and premises
- Respecting the rights of other residents to the peaceful enjoyment of their housing
- Drug-related criminal activity or other criminal activity that is a threat to the health, safety, or property of others
- Compliance with other essential conditions of tenancy

## **VIII. OCCUPANCY**

After an applicant has been selected from the waiting list, determined eligible by HACSM, referred to an owner, and determined suitable by the owner, the family will sign the lease and occupancy of the unit will begin.

### **Lease [24 CFR 983.256; Notice PIH 2012-32, REV-3]**

The tenant must have legal capacity to enter into a lease under state and local law. *Legal capacity* means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner.

The tenant and the owner must enter into a written lease agreement that is signed by both parties. The tenancy addendum must include, word-for-word, all provisions required by HUD.

### **Lease Requirements [24 CFR 983.256(c); Notice PIH 2012-32, REV-3]**

The lease for a PBV unit must specify all of the following information:

- The names of the owner and the tenant;
- The unit rented (address, apartment number, if any, and any other information needed to identify the leased contract unit);
- The term of the lease (initial term and any provision for renewal);
- The amount of the tenant rent to owner, which is subject to change during the term of the lease in accordance with HUD requirements;
- A specification of the services, maintenance, equipment, and utilities that will be provided by the owner; and
- The amount of any charges for food, furniture, or supportive services.

HACSM will include resident procedural rights for termination notification and grievance procedures in the owner's lease. These requirements are not part of the regular PBV program but are required under RAD.

### **Tenancy Addendum [24 CFR 983.256(d)]**

The tenancy addendum in the lease must state:

- The program tenancy requirements
- The composition of the household as approved by the PHA (the names of family members and any PHA-approved live-in aide)

All provisions in the HUD-required tenancy addendum must be included in the lease. The terms of the tenancy addendum prevail over other provisions of the lease.

### **Initial Term and Lease Renewal [24 CFR 983.256(f); PBV Quick Reference Guide (10/14)]**

Leases for residents who will remain in place (i.e., who will not be relocated solely as a result of conversion) must have an effective date that coincides with—and must be signed on or before—the effective date of the RAD PBV HAP contract.

The initial lease term must be for at least one year. The lease must provide for automatic renewal after the initial term of the lease in either successive definitive terms (e.g., month-to-month or year-to-year) or an automatic indefinite extension of the lease term. For automatic indefinite extension of the lease term, the lease terminates if any of the following occur:

- The owner terminates the lease for good cause
- The tenant terminates the lease
- The owner and tenant agree to terminate the lease
- The PHA terminates the HAP contract
- The PHA terminates assistance for the family

### **Changes in the Lease [24 CFR 983.256(e)]**

If the tenant and owner agree to any change in the lease, the change must be in writing, and the owner must immediately give HACSM a copy of all changes.

The owner must notify HACSM 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 HACSM and in accordance with the terms of the lease relating to its amendment. HACSM must redetermine reasonable rent, in accordance with program requirements, based on any change in the allocation of the responsibility for utilities between the owner and the tenant. The redetermined reasonable rent will be used in calculation of the rent to owner from the effective date of the change.

### **Owner Termination of Tenancy [24 CFR 983.257; Notice PIH 2012-32, REV-3]**

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 24 CFR 982.310). In the PBV program, terminating tenancy for “good cause” does not include doing so for a business or economic reason, or a desire to use the unit for personal or family use or other non-residential purpose.

Projects converting from public housing to PBV under RAD have additional procedural rights that do not apply to the standard PBV program. These procedural rights must be included in the owner’s lease as well as the PHA’s administrative plan. In addition to the regulations at 24 CFR 983.257 related to project owner termination of tenancy and eviction (which MTW agencies may not alter) the termination procedure for RAD conversions to PBV will require that PHAs provide adequate written notice of termination of the lease which may not be less than:

- A reasonable period of time, but not to exceed 30 days:
  - If the health or safety of other tenants, PHA employees, or persons residing in the immediate vicinity of the premises is threatened; or
  - In the event of any drug-related or violent criminal activity or any felony conviction
- 14 days in the case of nonpayment of rent
- 30 days in any other case, except that if a state or local law provides for a shorter period of time, such shorter period will apply

Unlike in the standard PBV program, residents in converted projects have the right to request an informal hearing for issues that adversely affect the resident’s rights, obligations, welfare, or status with both the PHA and the project owner. See Chapter 19 for more information on Informal Reviews and Hearings.

### ***Tenant Absence from the Unit [24 CFR 983.256(g) and 982.312(a)]***

The lease may specify a maximum period of family absence from the unit that may be shorter than the maximum period permitted by PHA policy. According to program requirements, the family’s assistance will be terminated if they are absent from the unit for more than 180 consecutive days. PHA termination of assistance actions due to

family absence from the unit are subject to 24 CFR 982.312, except that the unit is not terminated from the HAP contract if the family is absent for longer than the maximum period permitted.

**Continuation of Housing Assistance Payments [24 CFR 983.258; Notice PIH 2012-32, REV-3]**

Current residents living in the property prior to conversion are placed on and remain under the HAP contract when TTP equals or exceeds gross rent. In this case, until such time as the family's TTP falls below the gross rent, the family will pay the owner their TTP minus the utility allowance. The family will continue to pay this amount until/if circumstances change and HAP is paid on their behalf. In other words, assistance may subsequently be reinstated if the tenant becomes eligible for assistance. In such cases, the resident is still considered a program participant. All of the family obligations and protections under RAD and standard PBV apply to the resident. Likewise, all requirements with respect to the unit, such as compliance with the HQS requirements, apply as long as the unit is under HAP contract.

Normally, any new families referred to the RAD PBV project must be initially eligible for a HAP payment at admission to the program. Further, for any new families admitted after the conversion, assistance will be terminated 180 days after the last housing assistance payment on their behalf. The cessation of housing assistance payments does not affect the family's other rights under its lease, nor does it preclude the resumption of payments as a result of later changes in income, rents, or other relevant circumstances if such changes occur within the 180 day window. If a family's assistance is terminated as a result of their zero HAP status, the PHA must remove the unit from the HAP contract. If the project is fully assisted, the PHA must reinstate the unit after the family has vacated the property.

However, in August 2020, HACSM received HUD approval through a waiver request process to admit income eligible households to its RAD-PBV project, even if such families require zero assistance at admission. HACSM will not need to remove these units from the RAD-PBV HAP after 180 days of zero HAP.

**Security Deposits [24 CFR 983.259; PBV Quick Reference Guide (10/14)]**

Owners are permitted to recognize security deposit amounts that have been previously provided by tenants who are in-place at the time of the RAD conversion. Otherwise the security deposit requirements for standard PBV apply.

The owner may collect a security deposit from the tenant. HACSM will prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.

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. HACSM has no liability or responsibility for payment of any amount owed by the family to the owner.

### **Resident Participation and Funding [Notice PIH 2012-32, REV-3]**

Residents of covered projects converting assistance to PBVs will have the right to establish and operate a resident organization for the purpose of addressing issues related to their living environment and be eligible for resident participation funding.

### **Moves**

#### ***Overcrowded, Under-Occupied, and Accessible Units [24 CFR 983.260; Notice PIH 2012-32, REV-3]***

All in-place tenants at the time of conversion are eligible to remain in the project. Over-housed families should be moved into appropriately sized units if such units are available in the new or rehabbed project. If appropriately sized units are not available, the existing tenants may continue to be over-housed until an appropriately sized unit becomes available or until the tenant leaves the project. Once the unit turns over, it must be leased to an appropriately sized family.

Following conversion, the standard PBV regulations apply. If the PHA determines that a family is occupying a wrong-size unit, based on the PHA's subsidy standards, or a unit with accessibility features that the family does not require, and the unit is needed by a family that does require the features, the PHA must promptly notify the family and the owner of this determination, and the PHA must offer the family the opportunity to receive continued housing assistance in another unit.

If the PHA offers the family a tenant-based voucher, the PHA must terminate the housing assistance payments for a wrong-size or accessible unit at the earlier of the expiration of the term of the family's voucher, including any extension granted by the PHA, or the date upon which the family vacates the unit. If the family does not move out of the wrong-size unit or accessible unit by the expiration of the term of the family's voucher, the PHA must remove the unit from the HAP contract.

If the PHA offers the family another form of assistance that is not a tenant-based voucher, and the family does not accept the offer, does not move out of the PBV unit within a reasonable time as determined by the PHA, or both, the PHA must terminate the housing assistance payments for the unit at the expiration of a reasonable period as determined by the PHA and remove the unit from the HAP contract.

### **Family Right to Move [24 CFR 983.261]**

The family may terminate the lease at any time after the first year of occupancy. The family must give advance written notice to the owner in accordance with the lease and provide a copy of such notice to HACSM.

### **Choice Mobility [Notice PIH 2012-32, REV-3]**

If the family wishes to move with continued tenant-based assistance, the family must contact HACSM to request the rental assistance prior to providing notice to terminate the lease. If the family terminates the lease in accordance with lease requirements, the HACSM is required to offer the family the opportunity for continued tenant-based assistance, in the form of a voucher or other comparable tenant-based rental assistance. If a voucher or other comparable tenant-based assistance is not immediately available, HACSM 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.

### **Turnover Cap**

If as a result of RAD, the total number of PBV units (including RAD PBV units) administered by the PHA exceeds 20 percent of the PHA's authorized units under its HCV ACC with HUD, the PHA may establish a turnover cap. The PHA is not required to provide more than three-quarters of its turnover vouchers in any single year to the residents of covered projects. If the PHA chooses to establish a turnover cap and the cap is implemented, the PHA must create and maintain a waiting list in the order requests from eligible households were received.

### **Reexaminations [PBV Quick Reference Guide (10/14)]**

A family living in a unit converted from public housing to RAD PBV may retain its certification date. Unless a family's annual reexamination is due at the same time as the effective date of the RAD PBV HAP contract, HACSM does not need to recertify tenants at the point of conversion. For each family residing in a unit undergoing conversion of assistance under RAD, the administering PHA will have to submit a form HUD-50058 reflecting the family's admission to the voucher program. The effective date of the new admission will be the same as the effective date of the RAD PBV HAP contract. The form should include the same information previously found on the public housing form 50058, including the next annual reexamination date.

### **Residents' Procedural Rights [Notice PIH 2012-32, REV-3]**

HUD is incorporating additional termination notification requirements for public housing projects that convert assistance under RAD to PBV beyond those for the standard PBV program. In addition to the regulations at 24 CFR 983.257 related to owner termination of tenancy and eviction (which MTW agencies may not alter) the termination procedure for RAD conversions to PBV require that PHAs provide adequate written notice of termination of the lease, which is no less than:

- A reasonable period of time, but not to exceed 30 days:
  - If the health or safety of other tenants, project owner employees, or persons residing in the immediate vicinity of the premises is threatened; or
  - In the event of any drug-related or violent criminal activity or any felony conviction.

- Not less than 14 days in the case of nonpayment of rent
- Not less than 30 days in any other case, except that if a state or local law provides for a shorter period of time, such shorter period will apply

### **Informal Reviews and Hearings [Notice PIH 2012-32, REV-3]**

Unlike in the standard PBV program, residents in converted projects have the right to request an informal hearing for issues that adversely affect the resident's rights, obligations, welfare, or status with both the PHA and the project owner.

In addition to reasons for an informal hearing listed at 24 CFR 982.555(a)(1)(i)–(vi), an opportunity for an informal hearing must be given to residents for any dispute that a resident may have with respect to an owner action in accordance with the individual's lease or the contract administrator in accordance with RAD PBV requirements that adversely affect the resident's rights, obligations, welfare, or status.

- For any hearing required under 24 CFR 982.555(a)(1)(i)–(vi), the contract administrator will perform the hearing, as is the current standard in the program.
- For any additional hearings required under RAD, the PHA (as owner) will perform the hearing.

An informal hearing will not be required for class grievances or for disputes between residents not involving the PHA (as owner) or contract administrator. This hearing requirement does not apply to and is not intended as a forum for initiating or negotiating policy changes between a group or groups of residents and the PHA (as owner) or contract administrator.

The PHA (as owner) must give residents notice of their ability to request an informal hearing as outlined in 24 CFR 982.555(c)(1) for informal hearings that will address circumstances that fall outside of the scope of 24 CFR 982.555(a)(1)(i)–(vi). (See Chapter 19)

The PHA (as owner) must provide an opportunity for an informal hearing before an eviction.

## **IX. DETERMINING CONTRACT RENT**

### **Initial Contract Rents [Notice PIH 2012-32, REV-3]**

RAD conversions are intended to be cost-neutral, and therefore, should not exceed current public housing funding as adjusted for unit size. Since public housing units do not currently have contract rents, HUD provides an estimate of current contract rents for each PHA's public housing units based on current funding as adjusted by bedroom size. Current funding includes operating subsidy, tenant rents, capital funds, replacement housing factor funds (RHF), and demolition disposition transitional funding (DDTF). The funding may limit the amount of initial rent for a property. A detailed explanation of the determination of current funding may be found in Attachment 1C of Notice PIH 2012-32, REV-2. Once the current funding amount is calculated, the amount is adjusted by

bedroom size to determine the current funding rent. HUD uses the same bedroom adjustment factors as in the metropolitan FMR schedules where the project is located.

Notwithstanding the current funding level, the initial rents are set at the lower of:

- 110 percent of the fair market rent (FMR) or the PHA's exception payment standard approved by HUD, or the alternate rent cap in a PHA's MTW agreement
- Reasonable rent in comparison to the unassisted housing market
- An amount determined by current funding
  - Adjusted through rent bundling or reconfiguration of units

### **Adjusting Contract Rents [Notice PIH 2012-32, REV-3; PBV Quick Reference Guide (10/14)]**

Contract rents will be adjusted annually by HUD's operating cost adjustment factor (OCAF) at each anniversary of the HAP contract, subject to the availability of appropriations for each year of the contract term. As such, section 8(o)(13)(I) of the 1937 Act, and 24 CFR 983.301 and 983.302, concerning rent determinations, do not apply when adjusting rents. The rent to owner may at no time exceed the reasonable rent charged for comparable unassisted units in the private market, as determined by the contract administrator in accordance with 24 CFR 983.303.

Contract rents may not exceed the reasonable rent, with the exception that the contract rent for each unit may not be reduced below the initial contract rent under the initial HAP contract.

However, the rent to owner may fall below the initial contract rent in the following situations:

- To correct errors in calculations in accordance with HUD requirements
- If additional housing assistance has been combined with PBV assistance after the execution of the initial HAP contract and a rent decrease is required pursuant to 983.55 (prohibition of excess public assistance)
- If a decrease in rent to owner is required based on changes in the allocation of responsibility for utilities between the owner and the tenant

The contract rent adjustment will be the lesser of:

- The current contract rent increased by the operating cost adjustment factor (OCAF), which is published annually in the *Federal Register*; or
- The reasonable rent

The administering PHA (or independent entity, if the project is PHA-owned) is responsible for processing rent adjustments, at each contract anniversary date, in accordance with the prevailing OCAF.

At least 120 days before the contract anniversary date, HUD recommends that the owner submit the OCAF rent adjustment worksheet (Form HUD-9625) to the PHA administering the PBV assistance (or the independent entity). The PHA will validate the

data on the form and determine whether the rent exceeds the reasonable rent charged for comparable unassisted units in the private market, in accordance with 24 CFR 983.303. If rents would be unreasonable following application of the requested OCAF, then the rent can only be increased up to the reasonable rent. The approved rent adjustment will go into effect and the new rents to owner will take effect on the date of the contract anniversary.

### **Rent Decrease**

Rents must not be reduced below the initial rent except to correct errors, for additional subsidy to the property, or to realign utility responsibilities.

### **Utility Allowances [Notice PIH 2012-32, REV-3; PBV Quick Reference Guide (10/14)]**

When contract rent amounts are set initially, the amount does not include a utility allowance. In general, the utility allowances that are used on the initial HAP contract at closing are the public housing utility allowances that are in effect prior to conversion. The CHAP must be updated prior to conversion to reflect current public housing utility allowances. At its discretion, a PHA may use the FMRs and utility allowances in effect during the 30-day period immediately before the beginning date of the HAP contract. A PHA may request a waiver from HUD in order to establish a site-specific utility allowance schedule.

After conversion, unless a waiver is requested and approved by HUD, the PHA must maintain a utility allowance schedule for tenant-paid utilities in accordance with standard PBV and HCV utility allowance regulations at 24 CFR 983.301(f)(2)(ii) and 24 CFR 982.517 respectively. These utility allowances are effective for in-place families at recertification.

HACSM will use the HCV utility allowance schedule for the RAD development.

### **Reasonable Rent [24 CFR 983.303]**

At the time the initial rent is established and all times during the term of the HAP contract, the rent to owner for a contract unit may not exceed the reasonable rent for the unit as determined by the PHA, except rents must not be reduced below the initial rent except to correct errors, for additional subsidy to the property, or to realign utility responsibilities.

### **How to Determine Reasonable Rent**

The reasonable rent of a unit receiving PBV assistance must be determined by comparison to rent for other comparable unassisted units. When making this determination, the PHA must consider factors that affect market rent. Such factors include the location, quality, size, type and age of the unit, as well as the amenities, housing services maintenance, and utilities to be provided by the owner.

### **Comparability Analysis**

For each unit, the comparability analysis must use at least three comparable units in the private unassisted market. This may include units in the premises or project that is

receiving project-based assistance. The analysis must show how the reasonable rent was determined, including major differences between the contract units and comparable unassisted units, and must be retained by the PHA. The comparability analysis may be performed by PHA staff or by another qualified person or entity. Those who conduct these analyses or are involved in determining the housing assistance payment based on the analyses may not have any direct or indirect interest in the property.

### **PHA-Owned Units**

For PHA-owned units, the amount of the reasonable rent must be determined by an independent agency approved by HUD in accordance with PBV program requirements. The independent entity must provide a copy of the determination of reasonable rent for PHA-owned units to the PHA and to the HUD field office where the project is located.

## **X. PAYMENTS TO OWNER**

### **Housing Assistance Payments**

During the term of the HAP contract, the PHA must make housing assistance payments to the owner in accordance with the terms of the HAP contract. During the term of the HAP contract, payments must be made for each month that a contract unit complies with HQS and is leased to and occupied by an eligible family. The housing assistance payment must be paid to the owner on or about the first day of the month for which payment is due, unless the owner and the PHA agree on a later date.

Except for discretionary vacancy payments, the PHA may not make any housing assistance payment to the owner for any month after the month when the family moves out of the unit (even if household goods or property are left in the unit).

The amount of the housing assistance payment by the PHA is the rent to owner minus the tenant rent (total tenant payment minus the utility allowance).

In order to receive housing assistance payments, the owner must comply with all provisions of the HAP contract. Unless the owner complies with all provisions of the HAP contract, the owner does not have a right to receive housing assistance payments.

### **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 HACSM determines that the vacancy is the owner's fault.

If HACSM determines that the owner is responsible for a vacancy and as a result is not entitled to keep the housing assistance payment, HACSM will notify the landlord of the amount of housing assistance payment that the owner must repay. HACSM will require the owner to repay the amount owed in accordance with the policies in this chapter.

At the discretion of the HACSM, the HAP contract may provide for vacancy payments to the owner. HACSM may only make vacancy payments if:

- The owner gives HACSM 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 HACSM 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 HACSM and must provide any information or substantiation required by HACSM to determine the amount of any vacancy payment.

### **Tenant Rent To Owner [24 CFR 983.353]**

The tenant rent is the portion of the rent to owner paid by the family. The amount of tenant rent is determined by the PHA in accordance with HUD requirements. Any changes in the amount of tenant rent will be effective on the date stated in the PHA notice to the family and owner.

The family is responsible for paying the tenant rent (total tenant payment minus the utility allowance). The amount of the tenant rent determined by the PHA is the maximum amount the owner may charge the family for rental of a contract unit. The tenant rent covers all housing services, maintenance, equipment, and utilities to be provided by the owner. The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by the PHA. The owner must immediately return any excess payment to the tenant.

In August 2020, HACSM received HUD approval to admit income eligible households to its RAD-PBV project, even if such families require zero assistance at admission. HACSM will not need to remove these units from the RAD-PBV HAP after 180 days of zero HAP.

### **Tenant and PHA Responsibilities**

The family is not responsible for the portion of rent to owner that is covered by the housing assistance payment and the owner may not terminate the tenancy of an assisted family for nonpayment by the PHA.

Likewise, the PHA is responsible only for making the housing assistance payment to the owner in accordance with the HAP contract. The PHA is not responsible for paying tenant rent, or any other claim by the owner, including damage to the unit. The PHA may not use housing assistance payments or other program funds (including administrative fee reserves) to pay any part of the tenant rent or other claim by the owner.

## **Utility Reimbursements**

If the amount of the utility allowance exceeds the total tenant payment, HACSM will pay the amount of such excess to the tenant as a reimbursement for tenant-paid utilities, and the tenant rent to the owner will be zero.

## **Phase-In of Tenant Rent Increases [Notice PIH 2012-32, REV-3]**

For in-place tenants, if a tenant's monthly rent increases by more than the greater of 10 percent or \$25 purely as a result of conversion, the rent increase will be phased in over three years. To implement this provision, HUD is waiving section 3(a)(1) of the 1937 Act, as well as 24 CFR 983.3 (definition of *total tenant payment (TTP)*) only to the extent necessary to allow for the phase-in of tenant rent increases. For families who were on EID at the time of conversion to RAD PBV, upon the expiration of the EID, the rent adjustment is not subject to rent phase-in.

HACSM will implement a three-year phase-in for in-place families whose rent increases by more than the greater of 10 percent or \$25 as a result of the conversion as follows:

Year 1: Any recertification (interim or annual) performed prior to the second annual recertification after conversion: 33 percent of the difference between the most recently paid TTP and the calculated PBV TTP

Year 2: Year 2 annual recertification (AR) and any interim recertification (IR): 50 percent of the difference between the most recently paid TTP and the calculated PBV TTP

Year 3: Year 3 AR and all subsequent recertifications: Full calculated TTP

Once the standard TTP is equal to or less than the previous TTP, the phase-in ends and tenants will pay full TTP from that point forward.

## **Other Fees And Charges [24 CFR 983.354]**

### ***Meals and Supportive Services***

With the exception of PBV assistance in assisted living developments, the owner may not require the tenant to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy.

In assisted living developments receiving PBV assistance, the owner may charge for meals or supportive services. These charges may not be included in the rent to owner, nor may the value of meals and supportive services be included in the calculation of the reasonable rent. However, non-payment of such charges is grounds for termination of the lease by the owner in an assisted living development.

### ***Other Charges by Owner***

The owner may not charge extra amounts for items customarily included in rent in the locality or provided at no additional cost to unsubsidized tenants in the premises.

## Chapter 24

### HARDSHIP POLICY FOR MTW INITIATIVES

#### I. INTRODUCTION

HACSM's Hardship Policy is designed to address the following MTW initiatives:

##### A. Rent reform initiatives

- *Tiered Subsidy Table Activity*
- *Payment Standard Activity*
- *Full Time Student Activity*
- *Foster Care, KinGap, and Adoption Assistance Activity*
- *Earned Income Disallowance*
- *Child Care Expense Deduction*
- *Minimum Tenant Rent*

##### B. Time limited assistance

- *Extension of Program Participation*

##### C. Portability (Moving Out of San Mateo County)

- *Current Program Participants*
- *New Program Applicants*

All hardship requests must be made in writing, stating both the reason for the hardship and the expected duration.

Each request will be reviewed and weighed against other local resources available to the family. The result of the review may consist in referral to other local resources, an adjustment in the portion of the family's rent, or an extension in the length of subsidy assistance given.

## **A. Rent Reform**

- **Tiered Subsidy Table**

To qualify for hardship exemptions, households must meet all the criteria listed below:

1. The household is in compliance with all the program rules and regulations.
2. The household does not owe HACSM any money or is current with a re-payment agreement.
3. The household must be admitted to the program prior to March 1, 2010, unless the household is a resident of HACSM public housing, converting to the Project-Based Voucher (PBV) program and remaining in-place at the complex.
4. The household has not relocated on or after March 1, 2010.
5. The household must experience an increase of \$25.00 or more in rent as a direct result of the MTW rent reform initiatives.
6. The household requested the hardship waiver within the deadline set by HACSM. Households have 10 business days from the date of their "Notice of Change" letter in which to request an Informal Hearing and/or Hardship Review.
7. The household has not received a rent reform hardship relief for tiered subsidy calculation previously.

- **Payment Standards Application at Interim**

To qualify for hardship exemptions, households must meet all the criteria listed below:

1. The household is in compliance with all the program rules and regulations.
2. The household does not owe HACSM any money or is current with a re-payment agreement.
3. The household must be admitted to the program prior to July 1, 2010.
4. The household has not relocated on or after July 1, 2010.
5. The household must experience an increase of \$25.00 or more in rent as a direct result of the MTW rent reform initiatives.
6. The household requested the hardship waiver within the deadline set by HACSM. Households have 10 business days from the date of their "Notice of Change" letter in which to request an Informal Hearing and/or Hardship Review.
7. The household has not received a rent reform hardship relief for the Payment Standards application at interim recertification previously.

- **Full Time Students (FTS)**

To qualify for hardship exemptions, households must meet all the criteria listed below:

1. The household is in compliance with all the program rules and regulations.
2. The household does not owe HACSM any money or is current with a repayment agreement.
3. The household must be admitted to and have a household member with FTS in their household prior to July 1, 2011.
4. The FTS status must be established at the last annual or interim recertification prior to July 1, 2011.
5. The household must experience an increase of \$25.00 or more in rent as a direct result of the MTW rent reform initiatives.
6. The household requested the hardship waiver within the deadline set by HACSM. Households have 10 business days from the date of their “Notice of Change” letter in which to request an Informal Hearing and/or Hardship Review.
7. The household has not received a rent reform hardship relief for full time student’s income inclusion previously.

- **Foster Care, KinGap and Adoption Assistance**

To qualify for hardship exemptions, households must meet all the criteria listed below:

1. The household is in compliance with all the program rules and regulations.
2. The household does not owe HACSM any money or is current with a repayment agreement.
3. The household must be admitted to the program and have the foster child/adult in their household prior to July 1, 2011.
4. The Foster Child/Adult status of the household member must be established at the last annual or interim recertification prior to July 1, 2011.
5. The household must experience an increase of \$25.00 or more in rent as a direct result of the MTW rent reform initiatives.
6. The household requested the hardship waiver within the deadline set by HACSM. Households have 10 business days from the date of their “Notice of Change” letter in which to request an Informal Hearing and/or Hardship Review.
7. The household has not received a rent reform hardship relief for Foster Care, KinGap, or Adoption Assistance income inclusion previously.

- **Earned Income Disallowance**

To qualify for hardship exemptions, households must meet all the criteria listed below:

1. The household is in compliance with all the program rules and regulations.
2. The household does not owe HACSM any money or is current with a repayment agreement.
3. The household must be admitted to the program and received the benefits of Earned Income Disallowance in rent calculation prior to July 1, 2012.
4. The Earned Income Disallowance status of the household member must be established at the last annual or interim recertification prior to July 1, 2012.
5. The household must experience an increase of \$25.00 or more in rent as a direct result of the MTW rent reform initiatives.
6. The household requested the hardship waiver within the deadline set by HACSM. Households have 10 business days from the date of their "Notice of Change" letter in which to request an Informal Hearing and/or Hardship Review.
7. The household has not received a rent reform hardship relief for Earned Income Disallowance previously.

- **Child Care Expense Deduction**

To qualify for hardship exemptions, households must meet all the criteria listed below:

1. The household is in compliance with all program rules and regulations.
2. The household does not owe HACSM any money or is current with a repayment agreement.
3. The household must be admitted to the program and received the benefits of the Child Care Expense Deduction in rent calculation prior to July 1, 2013.
4. The Child Care Expense Deduction status of the household member must be established at the last annual or interim recertification prior to July 1, 2013.
5. The household must experience an increase of \$25.00 or more in rent as a direct result of the MTW rent reform initiatives.
6. The household requested the hardship waiver within the deadline set by HACSM. Households have 10 business days from the date of their "Notice of Change" letter in which to request an Informal Hearing and/or Hardship Review.
7. The household has not previously received a rent reform hardship relief for the Child Care Expense Deduction.

## **Approval Process for all Rent Reform Initiatives**

- Households who meet the criteria listed above may mail, fax, or e-mail their request to HACSM.
- Housing Programs Specialist will review the request promptly, using the HACSM provided tool, calculate the tenant rent and forward the result and the tenant file to the supervisor.
- Supervisor approves the new rent if there are no other issues. If there are other issues, the supervisor will conduct further review and consult with Rental Programs Manager.

## **Hardship Relief for all of the above Rent Reform Initiatives**

Households who qualify and receive waiver approval may pay their portion of rent based on the calculation under HUD regulations until their next recertification or relocation. At the next annual/triennial recertification, or relocation, whichever comes first, the household will automatically be subject to the rent reform initiatives.

Note: Each household is only eligible for one term of relief for each rent reform initiative and if the household qualifies for more than one relief at any given recertification (annual or interim), the reliefs will be calculated concurrently.

- **Minimum Tenant Rent**

HACSM's minimum tenant rent, without consideration of utility allowance, shall be \$100 effective August 1, 2016. The new minimum rent shall apply to the next 50058 change (unit/household/subsidy/contract rent). HACSM may adjust the amount of minimum tenant rent through future MTW Annual Plan processes.

In order to qualify for hardship exemptions, households must meet all of the criteria listed below:

1. The household is in compliance with all program rules and regulations.
2. The household does not owe HACSM any money or is current with a repayment agreement.
3. The household must be admitted to the program prior to August 1, 2016 and paid \$50 immediately prior to August 1, 2016 as a result of the HACSM's minimum rent policy.
4. The tenant rent portion, after applying the new minimum rent, is greater than 30% of the household's monthly adjusted income without consideration of utility allowance.

5. The household requested the hardship waiver within the deadline set by HACSM. Households have 10 business days from the date of their “Notice of Change” letter in which to request an Informal Hearing and/or Hardship Review.
6. The household has not previously received a hardship relief for the current minimum rent increase.

### **Approval Process for Minimum Rent Initiative**

- Households who meet the criteria listed above may mail, fax, or e-mail their request to HACSM.
- Housing Programs Specialist will review the request promptly, using the HACSM provided tool, calculate the tenant rent based on the new minimum rent and hardship policy and forward the result and the recert, interim, or rent increase package to the supervisor.
- Supervisor approves the new rent if there are no other issues. If there are other issues, the supervisor will conduct further review and consult with Rental Programs Manager.

### **Hardship Relief for Minimum Rent Initiative**

Households who qualify and receive waiver approval may pay \$50 as their portion of rent until their next annual/triennial recertification, interim due to increase in income or change in family composition, or relocation. At the next annual/triennial recertification, interim due to increase in income or change in family composition, or relocation, the household will automatically be subject to HACSM’s minimum rent at that time.

### **B. Time Limited Assistance - *Extension of program participation***

- **Basic Requirements**
  1. The household is in compliance with all program rules and regulations.
  2. The household does not owe HACSM any money or is current with a repayment agreement.
- **Qualification**
  1. The Head of Household and all the adult (18 and over) household members are 62 years of age or older and/or people with disabilities. (The HUD definition of disability shall apply)
  2. The Head of Household is the sole adult member who is responsible to care for a minor (under 18) household member who is a person with disability. (The HUD definition of disability shall apply).
  3. “Tight Rental Market”. In order to qualify, all four of the following thresholds must be met:

- a. At the time of program exit, the average vacancy rate in San Mateo County for rental units is less than 4% during the previous 6-month period; and
  - b. The HCV utilization rate is below 95%; and
  - c. The family's annual gross income is below 80% of AMI; and
  - d. The family agrees to actively participate in the MTW Self Sufficiency case management services.
4. The household is actively engaging in educational or vocational activities per the initial or subsequent revised service plan. The activities on a revised service plan must be approved by HACSM or the case manager at least 12 months prior to the program exit date.

### **Approval Process for Extension of Program Participation**

1. Households who meet qualification number 4 above must include the following information in the hardship request (all four items must be addressed):
  - a. Educational or vocational activities that the household is currently engaging in; and
  - b. The name of the school/institution/agency that provides the service; and
  - c. The expected completion date; and
  - d. A brief statement on how the extension of assistance would benefit the household in achieving its self-sufficiency goal.
2. The Family Self-Sufficiency Coordinator will review the request promptly and forward the file to the supervisor with his/her recommendation.
3. The Supervisor approves the extension if there are no other issues.

### **Hardship Relief for Extension of Program Participation**

1. For households who meet qualification number 1 and 2, the length of assistance may be extended for an additional 12 months. Any subsequent renewals on the extension will require a new request from the household and will be subject to the HACSM hardship policy in effect at that time.
2. For households who meet qualification number 3 and 4, HACSM will grant a 12-month extension, with the possibility of a second 12-month extension if the "tight rental market" condition persists.
3. For households who meet qualification number 4, the length of assistance may be extended for a maximum of 12 months and is subject to compliance to case management services and acceptable verification of educational or vocational activities listed in the hardship application.

**Note:** For Qualification Categories 3 and 4, the total combined extension period cannot exceed 24 months total.

In all instances, the extension period will be affected by changes in the family circumstances, for example, changes in family composition. If the family no longer meets the qualifications stated above after the change, the extension will be terminated (i.e. housing subsidy ends) 60 days from the effective date of the change. Decisions reached by HACSM will be final.

4. Decisions reached by HACSM will be final.

### **C. Portability (Moving out of San Mateo County)**

*Current Program Participants and New Voucher holders who have County resident status and have not leased up.*

“Current Participant” means a voucher holder has secured and leased a unit that they are living in within San Mateo County and have met all lease obligations.

- **Basic Requirements**

1. The household is in compliance with all program rules and regulations.
2. The household does not owe HACSM any money or is current with a repayment agreement.

- **Qualifications** (The household must meet one of the following)

1. The Head of Household and all the adult (18 and over) household members are 62 years of age or older and/or people with disabilities. (The HUD definition of disability shall apply).
2. The Head of Household is the sole adult member who is responsible to care for a minor (under 18) household member who is a person with disability. (The HUD definition of disability shall apply).
3. The Head of Household, Co-head, or Spouse has secured full-time employment of at least 32 hours/week and said employer’s, or job location, is greater than 35 miles beyond the nearest San Mateo County border and the voucher has a minimum of 18 months remaining term of assistance.
4. The Head of Household, Co-head, or Spouse is a full-time student at an accredited educational institution located more than 35 miles beyond the nearest San Mateo County border and the voucher has a minimum of 18 months remaining term of assistance.
5. The receiving Housing Authority is absorbing the household.

## Approval Process for Portability

1. All requests will be reviewed for completeness.
2. Households who meet qualification number 3 must provide proof of the following:
  - Employment. Written verification must include the employer's name, the position title, the number of hours to be worked per week and the rate of pay.
  - The physical address of the employer and the address of the job location.
3. Households who meet qualification number 4 must provide proof of the following:
  - Enrollment and attendance record at an accredited institution.
  - The location of the accredited institution's street address.
4. The Family Self-Sufficiency Coordinator will review the request promptly and forward the file to the supervisor with his/her recommendation.
5. The Supervisor will determine whether or not the hardship request is approved.

## Hardship Relief for Portability

For households who meet any of the qualification numbers 1 - 4, the Housing Authority may approve the household's request for portability.

Decisions reached by HACSM will be final.

*"New Voucher holders"* refers to households who have not yet leased a unit in San Mateo County from the MTW Wait List and who do not have county status.

*Note: Per the Housing Authority's Administrative Plan, applicants who do not have county preference at the time of eligibility determination are required to initially lease in San Mateo County for a period of no less than 12 months, unless Reasonable Accommodation (RA) has been approved.*

- **Basic Requirements**

1. The household has been determined eligible for the program.
2. The household has attended a briefing and is within the eligible voucher term.

- **Qualifications** (The household must meet one of the following)

1. The Head of Household and all the adult (18 and over) household members are 62 years of age or older and/or people with disabilities (the HUD definition)

- of disability shall apply), and the household has completed the Reasonable Accommodation (RA) process and a nexus has been established.
2. The Head of Household is the sole adult member who is responsible to care for a minor (under 18) household member who is a person with disability (the HUD definition of disability shall apply) and the household has completed the Reasonable Accommodation (RA) process and a nexus has been established.

### **Approval Process for Portability**

1. All applications will be reviewed for completeness.
2. The RA will be reviewed for completeness and nexus determination approval.
3. The Housing Programs Specialist will review the request promptly and forward recommendation to the supervisor with his/her recommendation
4. The Supervisor will review the request and determine whether or not the hardship request is approved.

### **Hardship Relief for Portability**

1. For households who meet qualification number 1, the Housing Authority may approve the household's request for portability.
2. For households who meet qualification number 2, the Housing Authority may approve the household's request for portability.
3. For households who require reasonable accommodation and a nexus is established, the Housing Authority will approve the household's request for portability.

Decisions reached by HACSM will be final.

## Chapter 25

### DEFINITIONS

- 1. 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. Generally, absences *less* than 90 consecutive days will be considered temporary and absences *more* than 90 consecutive days will be considered permanent.

*Absent Students:* Students who attend school out of the area and/or who live away from the household will not be considered as family members. This removal does not mean the students will not be allowed to return to visit the unit; however, the students will not be considered in HACSM's determination of voucher size (subsidy standards) and the income will not be included.

*Absences Due to Incarceration:* If the sole member of the household (head of household) is incarcerated for more than 90 consecutive days, s/he will be considered permanently absent and HACSM will terminate assistance.

If a family member is expected to be incarcerated for more than 90 consecutive days, the person will be considered permanently absent and no longer considered a family member. If the individual intends to return to the unit following incarceration, the individual is subject to the eligibility and screening requirements as discussed in Chapter 3.

*Absences Due to Placement in Foster Care:* If a child has been placed in foster care, HACSM 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 unless 90 days have lapsed since the removal. If the time period is to be greater than 90 days from the date of removal of the child/ren, the voucher size will be adjusted accordingly, if applicable. If all children are removed from the home permanently, the voucher size will be adjusted in accordance with HACSM's subsidy standards.

*Absent Head, Spouse, or Co-head:* A 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. In such circumstances the absent family member remains a member of the family and all of the employment income is considered available to the household. This would include, for instance, a head of household or spouse who has been called to active military duty or who does construction work in another state.

*Court-Ordered Absences:* If a member of the family is subject to a court order that restricts the member from the home, HACSM will determine whether the person will be considered temporarily or permanently absent. If the court order specifies a permanent restriction or if the court restriction exceeds 90 days, the person will no longer be considered a family member. If the individual intends to return to the unit at the end of

the restriction, the individual is subject to the eligibility and screening requirements discussed in Chapter 3.

**Family Members Permanently Confined for Medical Reasons:** If the sole member of the household (head of household) is confined to a nursing home, rehab facility, or hospital for more than 90 consecutive days, s/he will be considered permanently absent and HACSM will terminate assistance.

If a family member is confined to a nursing home, rehab facility, or hospital on a permanent basis, that person is no longer considered a family member and the income of that person is not counted.

HACSM 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 if the time period is less than 90 days.

If the medical professional determines the time period or absence from the unit is to be greater than 90 days, the member will be considered permanently absent and, if applicable, the Voucher size will be reduced in accordance with HACSM subsidy standards. At any time, 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 may be 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.

2. **Absorption:** In portability, the point at which a receiving Housing Authority stops billing the initial Housing Authority for assistance on behalf of a portability family.
3. **Adult:** A household member who is 18 years or older or who is the head of household, or spouse, or co-head. An adult must have the legal capacity to enter a lease under state and local law.
4. **Annual Income:** Annual income is the total income from all sources received by the family, including: the head of household, co-head and/or spouse/partner, each additional member of the family, and net income derived from assets exclusive of income that is temporary, non-recurring or sporadic, and exclusive of certain other types of income.  
See Chapter 7 for full details on Annual Income.
5. **Assets:** See Net Family Assets.
6. **Asset Income:** Actual income received from assets held by household members.
7. **Citizen:** A resident by birth or naturalization of the United States.
8. **Co-head:** An individual in the household who is equally responsible with the head of household for ensuring the family fulfills all of its responsibilities under the program, but

who is not a spouse. A family may have a co-head or spouse but not both. A family can have only one co-head. A co-head never qualifies as a dependent. The co-head must have legal capacity to enter into a lease.

9. **Contract Rent:** The rent charged by an owner for the use of the dwelling unit and appliances (such as ranges and refrigerators, but not including furniture).
10. **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
11. **Dependent:** 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 under the age of 24 years, foster children/adults. The following persons can never be dependents: the head of household, spouse, co-head, and live-in aides.
12. **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.
13. **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.
14. **Drug-related criminal activity:** Illegal use or personal use of a controlled substance and the illegal manufacture, sale, distribution, use or possession with intent to manufacture, sell, distribute or use, of a controlled substance.
15. **Drug-trafficking:** The illegal manufacture, sale, or distribution, or the possession with intent to manufacture, sell, or distribute, of a controlled substance.
16. **Elderly Family:** A family whose head, co-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.
17. **Elderly Person:** An individual who is at least 62 years of age.
18. **Fair Housing Act:** Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988.

- 19. Fair Market Rents:** HUD publishes fair-market rents on an annual basis to determine modest, non-luxury rents for the area. These rents are the basis for determining the subsidy amounts for the voucher program.
- 20. Family:** A single person or a group of persons, a family with a child or children, two or more elderly or disabled persons living together, and one or more elderly or disabled persons, with one or more live-in aides. The HACSM has the discretion to determine if any other group of persons qualifies as a family.
- 21. Family Share:** The portion of rent to owner paid by the family (also known as Tenant Rent).
- 22. Family Unit Size:** The appropriate number of bedrooms for a family, as determined by HACSM under its subsidy standards.
- 23. Foster Adult(s):** Generally, persons with disabilities, unrelated to the tenant family, who are unable to live alone.
- 24. Foster Child:** A child that is in the legal guardianship or custody of a state, county, or private adoption or foster care agency, yet is cared for by foster parents in their own homes, under some kind of short-term or long-term foster care arrangement with the custodial agency.

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

- 25. Full-time Student:** A person, less than 24 years old, who is attending school or vocational training at an accredited institution on a full-time basis. The time commitment or subject load that is needed to be full-time is defined by the educational institution.
- 26. Guests:** A person temporarily staying in the unit with the consent of a member of the household who has express or implied authority to so consent.

HACSM policy allows for a guest to remain in the assisted unit no longer than 14 consecutive days or a total of 60 cumulative 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 the assisted household more than 50 percent of the time, are not subject to the time limitations of guest as described above.

Students are not included as a family member if they live outside the assisted household to attend school and they are not subject to the time limitations of guest as described above if visiting the assisted unit for school breaks, holidays, or vacations.

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

- 27. Head of household (HOH):** The adult member of the family who is considered the head for purposes of determining income eligibility and rent. The HOH is responsible for ensuring the family fulfills all of its responsibilities under the program, alone or in conjunction with a co-head or spouse. A head of household must be at least 18 years of age or an emancipated minor.

- 28. Household:** A broader term than *family* – it includes additional people who, with HACSM’s permission, live in an assisted unit, such as live-in aides, foster children, and foster adults.
- 29. Housing Assistance Payment (Subsidy):** The monthly assistance payment by a Public Housing Agency (PHA), which includes payment to the owner for rent to the owner under the family’s lease.
- 30. Housing Assistance Payments Contract:** A written contract between the PHA and an owner for providing housing assistance payments to the owner on behalf of an eligible family (sometimes referred to as the HAP contract).
- 31. Housing Quality Standards (HQS):** The HUD minimum-quality standards for housing assisted under the Section 8 program.
- 32. Income Category:** Designates a family’s income range. There are three categories: low-income, very low-income, and extremely low-income.
- 33. Initial Housing Authority:** In portability, the term refers to both: (1) A Housing Authority that originally selected a family that later decides to move out of the jurisdiction of the selecting Housing Authority; and (2) A Housing Authority that absorbed a family that later decides to move out of the jurisdiction of the absorbing Housing Authority.
- 34. Initial Rent to Owner:** The rent to owner at the beginning of the initial lease term.
- 35. 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 Housing Authority.
- 36. Live-in aide:** A person who resides with one or more 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 financial support of the persons; and
  - Would not be living in the unit except to provide the necessary supportive services.
- 37. 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.
- 38. Minimum Rent:** The minimum rent for HACSM is \$100 (see Chapter 7 for further explanation of minimum rent).
- 39. Mixed family:** A family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.
- 40. Net family assets:** Value of equity in 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 less the cost of converting the assets to cash. 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 as an asset, so long as the fund continues to be held in trust. However, any income distributed from the trust fund shall be counted when determining annual income.

**Jointly Owned Assets:** If an asset is owned by more than one person and any family member has unrestricted access to the asset, HACSM 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, HACSM will prorate the asset according to the percentage of ownership. If no percentage is specified or provided for by state or local law, HACSM will prorate the asset evenly among all owners.

**Assets Disposed of for Less than Fair Market Value:** HACSM 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. If more than \$1,000, the amount counted will be the market value, less costs and the amount actually received.

- 41. Non-citizen:** A person who is neither a citizen nor national of the United States.
- 42. Occupancy Standards:** The standards that the Housing Authority establishes for determining the appropriate number of bedrooms needed to house families of different sizes or composition.
- 43. Other Adult:** 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.
- 44. Owner:** Any person or entity, including a cooperative, having the legal right to lease or sublease existing housing.
- 45. Participant (participant family):** A family that has been admitted to the Housing Authority's 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 Housing Authority for the family (first day of initial lease).
- 46. Payment Standard:** Under the traditional Voucher program, the maximum monthly assistance payment for a family assisted in the voucher program (before deducting the total tenant payment by the family).
- 47. 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).

- 48. Portability:** The ability of a Section 8 voucher holder to move from the jurisdiction of its current housing authority to the jurisdiction of another PHA.
- 49. Proration of Assistance:** “Mixed families” with some members who are citizens or eligible aliens, and some who are not, will have assistance prorated on the basis of total number of family members, divided by number of citizens or eligible non-citizen.
- 50. Receiving PHA:** In portability, a Housing Authority that receives a family selected for participation in the tenant-based program of another Housing Authority. The receiving Housing Authority issues a voucher and provides program assistance to the family.
- 51. Recertification:** A reexamination of a household’s income, expenses and family composition to determine the household’s continued program eligibility and rent.
- 52. Remaining Member of Tenant Family:** Person left in assisted housing who may or may not normally qualify for assistance on own circumstances. Does not include foster children, foster adults, or live-in aides.
- 53. Rent to Owner:** The monthly rent payable to the owner under the lease. Rent to owner covers payment for any housing services, maintenance and utilities that the owner is required to provide and pay for.
- 54. Rent Reasonableness:** The Housing Authority must certify and document that the contract rent is reasonable in relation to rents currently being charged for comparable units in the private, unassisted market, and that the contract rent is not in excess of rent currently being charged by the owner for comparable unassisted units, taking into consideration the location, unit type, age and amenities to be sure there is a valid comparison. To satisfy these requirements, the Housing Authority must have an overall knowledge of the rental market within its jurisdiction and data on the rents being charged for specific units.
- 55. Single Person:** A person living alone or intending to live alone, and who does not qualify as an elderly family or a person with disabilities, or as the remaining member of the family.
- 56. Spouse:** The marriage partner of the head of household. 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.
- 57. 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.
- 58. Subsidy Standards:** Standards established by a Housing Authority to determine the appropriate number of bedrooms and amount of subsidy for families of different sizes and compositions.

- 59. Suspension (sometimes called Tolling):** Stopping the clock on the term of a family's voucher for a period determined by the Housing Authority from the time when the family submits a Request for Lease Approval for a unit until the time when the housing authority approves, or denies, the request.
- 60. Tenant:** The person or persons (other than a live-in aide or foster adult) who executes the lease as lessee(s) of the dwelling unit.
- 61. Tiered Subsidy:** Monthly fixed subsidy amount from HACSM-established Tiered Subsidy Table. The maximum subsidy HACSM will pay on behalf of a family is the lesser of the fixed subsidy amount or the rent to owner (contract rent) minus \$50.00
- 62. Tolling:** See "Suspension".
- 63. Very Low-Income Family:** A 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 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.
- 64. 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.
- 65. Voucher:** A document issued by a PHA, declaring a family to be eligible for participation in the Voucher program and stating terms and conditions for the family's participation.
- 66. Voucher holder:** A family holding a Voucher with an unexpired search time.