
LUCAS METROPOLITAN HOUSING AUTHORITY

ADMINISTRATIVE PLAN

THE LUCAS METROPOLITAN HOUSING AUTHORITY - Administrative Plan contains the policies of the Lucas Metropolitan Housing Authority – LMHA, for the operation of its Housing Choice Voucher program administered by the Department of Housing and Urban Development (H.U.D). These LMHA that have been adopted by the Board of Commissioners, as required by CFR 982.54, governing the establishment and administration of a waiting list, the issuance of Section 8 Housing Choice Vouchers, the equal opportunity housing plan, and overall program administration.

Authority for LMHA’s policies is derived from many sources. Primary among these sources are regulations and guidance issued by U. S. Department of Housing and Urban Development (HUD).

Ohio law also directs LMHA policy. State and local law must be followed where such law exists and does not conflict with federal regulations. In the absence of legal requirements or HUD guidance, property management industry practice guides LMHA policy.

HUD provides the primary source of LMHA’s policy through federal regulations, HUD Notices and handbooks. Compliance with federal regulations, current HUD Notices and HUD handbooks is mandatory.

HUD provides non-mandatory guidance to housing authorities through HUD-published guidebooks. Expired HUD Notices and handbooks also provide guidance for LMHA’s policy. Following HUD guidance is optional, as long as LMHA’s policies comply with federal law, federal regulations and mandatory policy. Because HUD has already determined that the guidance it provides is consistent with mandatory policies, LMHA’s reliance on HUD guidance provides LMHA with a “safe harbor.”

Content contained on the HUD website provides further clarification of HUD policies www.hud.gov. For example, FAQs (Frequently Asked Questions) on the HUD website provides direction on the application of federal regulations to a specific pattern.

Revision Date	Revision Date
#7228 – December 20, 2000	#7910 – August 21, 2013
#7253 – April 4, 2001	#7924 – October 16, 2013
#7441 – September 7, 2005	#7940 – December 18, 2013
#7475 – January 17, 2007	#8007 – June 9, 2014
#7507 – September 26, 2007	#8048 – October 15, 2014
#7610 – January 20, 2010	#8089 - March 18, 2015
#7656 – July 21, 2010	#8143 – October 7, 2015
#7666 – September 15, 2010	#8244 – September 22, 2016
#7727 – June 14, 2011	#8333 —July 18, 2017
#7737 – September 28, 2011	#8500- January 21, 2020
#7824 – October 4, 2012	#8561 – January 19, 2021
#7847 – December 19, 2012	#8572 – March 16, 2021
#7896 – June 5, 2013	#8592 – July 6, 2021

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GLOSSARY

Chapter 1

OVERVIEW OF THE PROGRAM AND PLAN

INTRODUCTION

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

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

There are three parts to this chapter:

Part I: The Public Housing Agency (PHA). This part includes a description of LMHA, its jurisdiction, its programs, and its mission and intent.

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

Part III: The HCV Administrative Plan. This part discusses the purpose and organization of the plan and its revision requirements.

PART I: LMHA

1-I.A. OVERVIEW

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

1-I.B. ORGANIZATION AND STRUCTURE OF LMHA

The Section 8 tenant-based Housing Choice Voucher (HCV) assistance program is funded by the federal government and administered by the Lucas Metropolitan Housing Authority (LMHA) for the jurisdiction defined as Fulton, Wood (excluding the City of Bowling Green) and Lucas counties in Ohio and Monroe County in Michigan, except as may further be approved by agreements with the Housing Authorities of those municipalities as provided under state and local law.

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

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

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

1-I.C. LMHA MISSION

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

Mission Statement:

Home is vital to our past, present and future! We create quality housing opportunities and build communities through collaborative partnerships. While stimulating economic growth, we empower individuals and develop the neighborhoods of tomorrow for the people of today.

1-I.D. LMHA'S PROGRAMS

The following programs are included under this administrative plan:

LMHA Policy

LMHA's administrative plan is applicable to the operation of the Housing Choice Voucher program, including Project Based Vouchers and Family Self-Sufficiency. In addition, the administrative plan addresses policies for the following special programs:

Single room occupancy (SRO)

Congregate housing

Group home

Shared housing

Manufactured home (where family owns the home and leases the space)

Homeownership

1-I.E. LMHA'S COMMITMENT TO ETHICS AND SERVICE

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

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

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

PART II: THE HOUSING CHOICE VOUCHER (HCV) PROGRAM

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

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

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

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

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

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

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

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

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

In 1998, the Quality Housing and Work Responsibility Act (QHWRA) – also known as the Public Housing Reform Act – was signed into law. QHWRA eliminated all statutory differences between the

Certificate and Voucher tenant-based programs and required that the two programs be merged into a single tenant-based assistance program, now known as the Housing Choice Voucher (HCV) program.

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

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

1-II.B. HCV PROGRAM BASICS

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

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

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

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

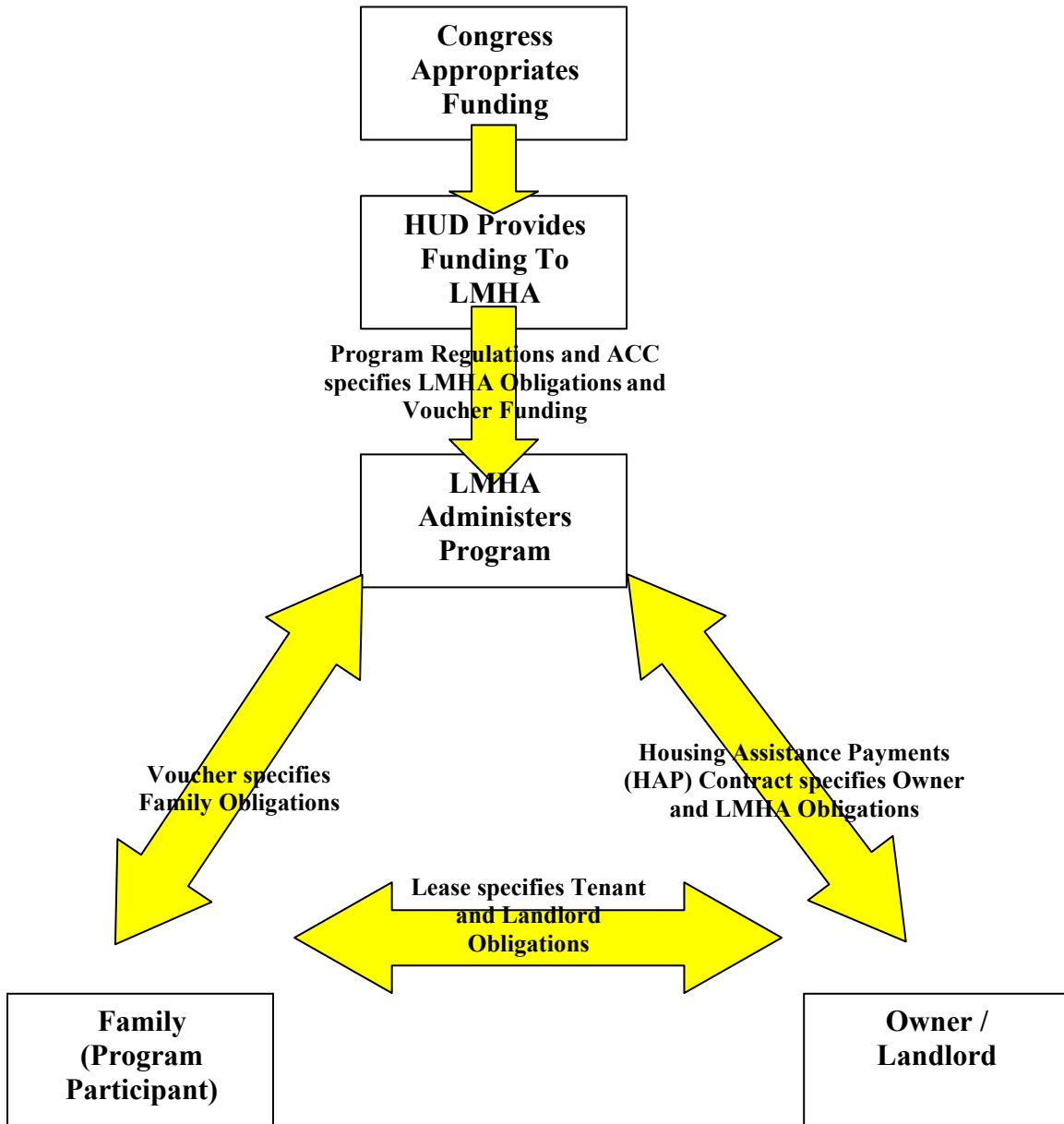
1-II.C. THE HCV PARTNERSHIPS

To administer the HCV program, LMHA enters into a contractual relationship with HUD. LMHA also enters into contractual relationships with the assisted family and the owner or landlord of the housing unit.

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

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

The HCV Relationships:



What does HUD do?

HUD has the following major responsibilities:

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

What does LMHA do?

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

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

What does the Owner do?

The owner has the following major responsibilities:

- Screen families who apply for tenancy, to determine if they will be good renters.
 - LMHA 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 LMHA;
- Comply with all applicable fair housing laws and discriminate against no one;
- Maintain the housing unit by making necessary repairs in a timely manner;
- Collect rent due from the assisted family and otherwise comply with and enforce provisions of the dwelling lease.

What does the Family do?

The family has the following responsibilities:

- Provide LMHA with complete and accurate information, determined by LMHA to be necessary for administration of the program;
- Make their best and most timely efforts to find a place to live that is suitable for them and that qualifies for the program;
- Attend all appointments scheduled by LMHA;
- Allow LMHA to inspect the unit at reasonable times and after reasonable notice;
- Take responsibility for care of the housing unit, including any violations of housing quality standards caused by the family;
- Comply with the terms of the lease with the owner;
- Comply with the family obligations of the voucher;
- Not commit serious or repeated violations of the lease;
- Not engage in drug-related or violent criminal activity;
- Notify LMHA and the owner before moving or terminating the lease;
- Use the assisted unit only for residence and as the sole residence of the family. Not sublet the unit, assign the lease, or have any interest in the unit;
- Promptly notify LMHA of any changes in family composition;
- Not commit fraud, bribery, or any other corrupt or criminal act in connection with any housing programs.

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

1-II.D. APPLICABLE REGULATIONS

Applicable regulations include:

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

PART III: THE HCV ADMINISTRATIVE PLAN

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

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

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

LMHA is responsible for complying with all changes in HUD regulations pertaining to the HCV program. If such changes conflict with this plan, HUD regulations will have precedence.

Administration of the HCV program and the functions and responsibilities of LMHA staff shall be in compliance with LMHA's personnel policy and HUD's Section 8 regulations as well as all federal, state and local fair housing laws and regulations.

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

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

- Selection and admission of applicants from LMHA waiting list, including any LMHA admission preferences, procedures for removing applicant names from the waiting list, and procedures for closing and reopening LMHA waiting list (Chapter 4);
- Issuing or denying vouchers, including LMHA policy governing the voucher term and any extensions or suspensions of the voucher term. 'Suspension' means stopping the clock on the term of a family's voucher after the family submits a request for approval of the tenancy. If LMHA decides to allow extensions or suspensions of the voucher term, LMHA administrative plan must describe how LMHA determines whether to grant extensions or suspensions, and how LMHA determines the length of any extension or suspension (Chapter 5);
- Any special rules for use of available funds when HUD provides funding to LMHA for a special purpose (e.g., desegregation), including funding for specified families or a specified category of families (Chapter 4);
- Occupancy policies, including definition of what group of persons may qualify as a 'family', definition of when a family is considered to be 'continuously assisted'; standards for denying admission or terminating assistance based on criminal activity or alcohol abuse in accordance with 982.553 (Chapters 3 and 12);
- Encouraging participation by owners of suitable units located outside areas of low income or minority concentration (Chapter 13);
- Assisting a family that claims that illegal discrimination has prevented the family from leasing a suitable unit (Chapter 2);

- Providing information about a family to prospective owners (Chapters 3 and 9);
- Disapproval of owners (Chapter 13);
- Subsidy standards (Chapter 5);
- Family absence from the dwelling unit (Chapter 12) ;
- How to determine who remains in the program if a family breaks up (Chapter 3);
- Informal review procedures for applicants (Chapter 16);
- Informal hearing procedures for participants (Chapter 16);
- The process for establishing and revising voucher payment standards (Chapter 16);
- The method of determining that rent to owner is a reasonable rent (initially and during the term of a HAP contract) (Chapter 8);
- Special policies concerning special housing types in the program (e.g., use of shared housing) (Chapter 15);
- Policies concerning payment by a family to LMHA of amounts the family owes LMHA (Chapter 16);
- Interim redeterminations of family income and composition (Chapter 11);
- Restrictions, if any, on the number of moves by a participant family (Chapter 10);
- Approval by the board of commissioners or other authorized officials to charge the administrative fee reserve (Chapter 16);
- Procedural guidelines and performance standards for conducting required housing quality standards inspections (Chapter 8); and
- LMHA screening of applicants for family behavior or suitability for tenancy (Chapter 3).

Mandatory vs. Discretionary Policy

HUD makes a distinction between:

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

HUD expects LMHA to develop policies and procedures that are consistent with mandatory policies and to make clear the optional policies LMHA has adopted. LMHA's administrative plan is the foundation of those policies and procedures. HUD's directions require LMHA to make policy choices that provide guidance to staff and consistency to program applicants and participants.

Following HUD guidance, even though it is not mandatory, provides a LMHA with a "safe harbor." HUD has already determined that the recommendations and suggestions it makes are consistent with mandatory policies. If a LMHA adopts an alternative strategy, it must make its own determination that the alternative approach is consistent with legislation, regulations, and other mandatory requirements. There may be very good reasons for adopting a policy or procedure that is different than HUD's safe harbor, but LMHA should carefully think through those decisions.

1-III.C. ORGANIZATION OF THE PLAN

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

1-III.D. UPDATING AND REVISING THE PLAN

LMHA will revise this administrative plan as needed to comply with changes in HUD regulations. The original plan and any changes must be approved by the board of commissioners of the agency, the pertinent sections included in the Agency Plan, and a copy provided to HUD.

LMHA Policy

LMHA will review and update the plan at least once a year, and more often if needed, to reflect changes in regulations, LMHA operations, or when needed to ensure staff consistency in operation.

Chapter 2

FAIR HOUSING AND EQUAL OPPORTUNITY

INTRODUCTION

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

This chapter describes HUD regulations and LMHA policies related to these topics in three parts: Part I:

Nondiscrimination. This part presents the body of laws and regulations governing the responsibilities of LMHA regarding nondiscrimination.

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

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

PART I: NONDISCRIMINATION

2-I.A. OVERVIEW

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

- Title VI of the Civil Rights Act of 1964
- Title VIII of the Civil Rights Act of 1968 (as amended by the Community Development Act of 1974 and the Fair Housing Amendments Act of 1988)
- Executive Order 11063
- Section 504 of the Rehabilitation Act of 1973
- The Age Discrimination Act of 1975
- Title II of the Americans with Disabilities Act (to the extent that it applies, otherwise Section 504 and the Fair Housing Amendments govern)
- Violence Against Women Reauthorization Act of 2013 (VAWA)
- 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

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.

LMHA Policy

No state or local nondiscrimination laws or ordinances apply.

2-I.B. NONDISCRIMINATION

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

LMHA 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.

LMHA will not discriminate on the basis of marital status, gender identity, or sexual orientation [FR Notice 02/03/12].

LMHA Policy

LMHA does not identify any additional protected classes.

LMHA will not use any of these factors to:

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

Providing Information to Families and Owners

LMHA must take steps to ensure that families and owners are fully aware of all applicable civil rights laws. As part of the briefing process, LMHA must provide information to HCV applicant families about civil rights requirements and the opportunity to rent in a broad range of neighborhoods [24 CFR 982.301]. The Housing Assistance Payments (HAP) contract informs owners of the requirement not to discriminate against any person because of race, color, religion, sex, national origin, age, familial status, or disability in connection with the contract.

Discrimination Complaints

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

LMHA Policy

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

LMHA will attempt to remedy discrimination complaints made against LMHA.

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

PART II: POLICIES RELATED TO PERSONS WITH DISABILITIES

2-II.A. OVERVIEW

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

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

LMHA Policy

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

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

The documents will include contact information for requests for accommodation for persons with disabilities.

2-II.B. DEFINITION OF REASONABLE ACCOMMODATION

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

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

Types of Reasonable Accommodations

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

- Permitting applications and reexaminations to be completed by mail
- Conducting home visits
- Using higher payment standards (either within the acceptable range or with HUD approval of a payment standard outside LMHA range) if LMHA 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 LMHA staff
- Displaying posters and other housing information in locations throughout LMHA's office in such a manner as to be easily readable from a wheelchair
- Approving the leasing of a unit from a relative to provide reasonable accommodation for persons with disabilities but this provision does not apply to shared housing
- Using a utility allowance that is higher than the applicable amount on the utility allowance schedule

2-II.C. REQUEST FOR AN ACCOMMODATION

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

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

LMHA Policy

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

2-II.D. VERIFICATION OF DISABILITY

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

Before providing an accommodation, LMHA must determine that the person meets the definition of a person with a disability, and that the accommodation will enhance the family's access to LMHA's programs and services.

If a person's disability is obvious or otherwise known to LMHA, 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 LMHA, LMHA must verify that the person meets the definition of a person with a disability, and that the limitations imposed by the disability require the requested accommodation.

When verifying a disability, LMHA will follow the verification policies provided in Chapter 7. All information related to a person's disability will be treated in accordance with the confidentiality policies provided in Chapter 16. In addition to the general requirements that govern all verification efforts, the following requirements apply when verifying a disability:

Depending on the individual's circumstances, information verifying that the person meets the Act's definition of disability can usually be provided by the individual himself or herself (e.g., proof that an individual under 65 years of age receives Supplemental Security Income or Social Security Disability Insurance benefits). 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 also provide verification of a disability. In most cases, an individual's medical records or detailed information about the nature of a person's disability is not necessary for this inquiry.

- LMHA must request only information that is necessary to evaluate the disability-related need for the accommodation. LMHA 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 LMHA does receive confidential information about a person's specific diagnosis, treatment, or the nature or severity of the disability, LMHA will dispose or redact the information that is retained for the files. In place of the information, LMHA will note in the file that the disability and other requested information have been verified, the date the verification was received, and the name and address of the knowledgeable professional who sent the information [Notice PIH 2010-26].

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

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

Requests for accommodations must be assessed on a case-by-case basis, taking into account factors such as the overall size of LMHA'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, LMHA 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 LMHA may verify the need for the requested accommodation.

LMHA Policy

After a request for an accommodation is presented, LMHA will respond, in writing, within 30 business days.

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

If LMHA believes that the family has failed to identify a reasonable alternative accommodation after interactive discussion and negotiation, LMHA will notify the family, in writing, of its determination within 15 business days from the date of the most recent discussion or communication with the family.

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

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

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

LMHA Policy

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

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

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

2-II.G. PHYSICAL ACCESSIBILITY

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

- Notice PIH 2010-26 and subsequent notices
- 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

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

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

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

When issuing a voucher to a family that includes an individual with disabilities, LMHA will include a current list of available accessible units known to LMHA and will assist the family in locating an available accessible unit, if necessary.

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

2-II.H. DENIAL OR TERMINATION OF ASSISTANCE

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

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

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

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

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

2-III.A. OVERVIEW

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

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

2-III.B. ORAL INTERPRETATION

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

LMHA Policy

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

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

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

2-III.C. WRITTEN TRANSLATION

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

LMHA Policy

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

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

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

2-III.D. IMPLEMENTATION PLAN

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

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

LMHA Policy

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

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

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

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

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

The phrase “physical or mental impairment” includes:

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

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

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

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

The definition of a person with disabilities does not include:

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

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

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

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

Chapter 3

ELIGIBILITY

INTRODUCTION

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

To be eligible for the HCV program:

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

This chapter contains three parts:

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

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

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

PART I: DEFINITIONS OF FAMILY AND HOUSEHOLD MEMBERS

3-I.A. OVERVIEW

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

3-I.B. FAMILY AND HOUSEHOLD [24 CFR 5.403, 24 CFR 982.54, 24 CFR 982.4, 24 CFR 982.201(c); HUD-50058 IB, p. 13; NOTICE PIH 2014-20]

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

Family

To be eligible for assistance, an applicant must qualify as a family. *Family* as defined by HUD includes, but is not limited to the following, regardless of actual or perceived sexual orientation, gender identity, or marital status, a single person, who may be an elderly person, displaced person, disabled person, near- elderly person, or any other single person; or a group of persons residing together and such group includes, but is not limited to a family with or without children (a child who is temporarily away from the home because of placement in foster care is considered a member of the family), an elderly family, a near- elderly family, a disabled family, a displaced family, or the remaining member of a tenant family. LMHA 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.

LMHA Policy

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

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

Household

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

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

Family Breakup [24 CFR 982.315]

Except under the following conditions, LMHA 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, LMHA must ensure that the victim retains assistance. (For documentation requirements and policies related to domestic violence, dating violence, sexual assault and stalking, see section 16-IX.D of this plan.)
- If a court determines the disposition of property between members of the assisted family in a divorce or separation decree, LMHA is bound by the court's determination of which family members continue to receive assistance.

LMHA Policy

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

If a family breaks up into two otherwise eligible families while receiving assistance, only one of the new families will continue to be assisted. For participants in the Veteran's Affairs Supportive Housing Program (VASH), those program rules will apply for family break-ups.

In the absence of a judicial decision, such as a divorce decree or a will, or an agreement among the original family members, LMHA will determine which family will retain their placement on the waiting list or continue to receive assistance. In making its determination, LMHA will take into consideration the following factors: (1) the interest of any minor children, including custody arrangements; (2) the interest of any ill, elderly, or disabled family members; (3) the interest of any family member who is the victim of domestic violence, dating violence, sexual assault 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 of criminal activity; and (5) the recommendations of social service professionals.

Remaining Member of a Tenant Family [24 CFR 5.403]

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

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

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

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

LMHA Policy

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

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

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

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

Spouse means the marriage partner of the head of household.

LMHA Policy

A *marriage partner* includes the partner in a "common law" marriage as defined in state law; although Ohio no longer recognizes "common law" marriages entered into prior to October 10, 1991. The term "spouse" does not apply to friends, roommates, or significant others who are not marriage partners. A minor who is emancipated under state law may be designated as a spouse.

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

LMHA Policy

Minors who are emancipated under state law may be designated as a co-head.

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

3-I.F. DEPENDENT [24 CFR 5.603]

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

Joint Custody of Dependents

LMHA Policy

Dependents that are subject to a joint custody arrangement will be considered a member of the family, if they live with the applicant or participant family 51 percent or more of the time.

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

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

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

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

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

Elderly Persons

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

Near-Elderly Persons

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

Elderly Family

An *elderly family* is one in which the head, spouse, co-head, or sole member is a person who is at least 62 years of age. Identifying elderly families is important because these families qualify for special deductions from income as described in Chapter 6.

Near Elderly Family

A family whose head (including co-head), spouse or sole member is a person who is at least 50 years of age but below 62; or two or more persons, who are at least 50 years of age but below the age of 62, living together; or one or more person who are at least 50 years of age but below the age of 62.

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

Persons with Disabilities

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

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

Disabled Family

A *disabled family* means a family whose head (including co-head), spouse, or sole member is a person with disabilities. Identifying disabled families is important because these families qualify for special deductions from income as described in Chapter 6.

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

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

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

LMHA Policy

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

Children who are subject to a joint custody arrangement or for whom a family has visitation privileges, that are not included as a family member because they live outside of the assisted household more than 51 percent of the time, are not subject to the time limitations of guests as described above.

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

3-I.K. FOSTER CHILDREN AND FOSTER ADULTS

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

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

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

LMHA Policy

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

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

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

3-I.L. ABSENT FAMILY MEMBERS

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

Definitions of Temporarily and Permanently Absent

LMHA Policy

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

Absent Students

LMHA Policy

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

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

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

LMHA Policy

If a child has been placed in foster care, LMHA 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.

Children who are temporarily absent due to placement in foster care who have been placed in another subsidized unit will be reviewed by LMHA on a case by case basis.

Absent Head, Spouse, or Co-head

LMHA Policy

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

Family Members Permanently Confined for Medical Reasons [HCV GB, p. 5-22]

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

LMHA Policy

LMHA 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 unless the absence exceeds 180 days and the family member will be considered permanently absent. The family may present evidence that the family member is confined on a permanent basis and request that the person not be considered a family member.

Return of Permanently Absent Family Members

LMHA Policy

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

3-I.M. LIVE-IN AIDE

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

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

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

LMHA Policy

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 pre-approval from LMHA. Written verification will be required from a reliable, knowledgeable professional, such as a doctor, social worker, or case worker, that the live-in aide is essential for the care and well-being of the elderly, near-elderly, or disabled family member. For continued approval, the live-in aide will be subject to LMHA's background screening criteria and must annually certify proof of continued residence in the unit. The household will be subject to annual re-certification of the continued disability/need for the live-in aide for those that were not certified with a permanent disability. Permanent disability will be defined as any individual receiving disability benefits for their disability through the Social Security disability insurance program, the Supplemental Security Income (SSI) program or certification through a reliable, knowledgeable professional as provided by the family, such as a doctor, social worker, or case worker.

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

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

The person commits fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;

The person commits drug-related criminal activity or violent criminal activity; or

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

Within 30 business days of receiving a request for a live-in aide, including all required documentation related to the request, LMHA will notify the family of its decision in writing.

PART II: BASIC ELIGIBILITY CRITERIA

3-II.A. INCOME ELIGIBILITY AND TARGETING

Income Limits

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

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

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

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

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

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

Using Income Limits for Eligibility [24 CFR 982.201]

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

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

LMHA Policy

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

- A low-income family that qualifies for voucher assistance as a non-purchasing household living in HOPE 1 (public housing homeownership), HOPE 2 (multifamily housing homeownership) developments, or other HUD-assisted multifamily homeownership programs covered by 24 CFR 248.173
- A low-income or moderate-income family that is displaced as a result of the prepayment of a mortgage or voluntary termination of a mortgage insurance contract on eligible low-income housing as defined in 24 CFR 248.101

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

LMHA Policy

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

Using Income Limits for Targeting [24 CFR 982.201]

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

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

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

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

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

Declaration [24 CFR 5.508]

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

U.S. Citizens and Nationals

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

LMHA Policy

Family members who declare citizenship or national status will be required to provide additional documentation such as a birth certificate or other legal document.

Eligible Noncitizens

In addition to providing a signed declaration, those declaring eligible noncitizen status must sign a verification consent form and cooperate with LMHA efforts to verify their immigration status as described in Chapter 7. The documentation required for establishing eligible noncitizen status varies depending

upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, the person's age, and the date on which the family began receiving HUD-funded assistance.

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

Ineligible Noncitizens

Those noncitizens who do not wish to contend their immigration status are required to have their names listed on a non-contending family members listing, signed by the head, spouse, or co-head (regardless of citizenship status), indicating their ineligible immigration status. LMHA is not required to verify a family member's ineligible status and is not required to report an individual's unlawful presence in the U.S. to the United States Citizenship and Immigration Services (USCIS).

Providing housing assistance to noncitizen students is prohibited [24 CFR 5.522]. This prohibition extends to the noncitizen spouse of a noncitizen student as well as to minor children who accompany or follow to join the noncitizen student. Such prohibition does not extend to the citizen spouse of a noncitizen student or to the children of the citizen spouse and noncitizen student. Such a family is eligible for prorated assistance as a mixed family.

Mixed Families

A family is eligible for assistance as long as at least one member is a citizen, national, or eligible noncitizen. Families that include eligible and ineligible individuals are considered *mixed families*. Such families will be given notice that their assistance will be pro-rated, and that they may request a hearing if they contest this determination. See Chapter 6 for a discussion of how rents are prorated, and Chapter 16 for a discussion of informal hearing procedures.

Ineligible Families [24 CFR 5.514(d), (e), and (f)]

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

LMHA Policy

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

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

The notice will explain the reasons for the denial of assistance, that the family may be eligible for proration of assistance, and will advise the family of its right to request an appeal to the United States Citizenship and Immigration Services (USCIS), or to request an informal hearing with LMHA. The informal hearing with LMHA may be requested in lieu of the USCIS appeal, or at the conclusion of the USCIS appeal process. The notice must also inform the applicant family that

assistance may not be delayed until the conclusion of the USCIS appeal process, but that it may be delayed pending the completion of the informal hearing process.

Informal hearing procedures are contained in Chapter 16.

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

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

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

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

LMHA Policy

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

3-II.C.SOCIAL SECURITY NUMBERS [24 CFR 5.216 and 5.218, Notice PIH 2012-10]

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

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

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

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

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

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

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

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

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

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

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

Definitions

In determining whether and how the new eligibility restrictions apply to a student, LMHA will rely on the following definitions [FR 4/10/06, p. 18148].

Dependent Child

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

Independent Student

LMHA Policy

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

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

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

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

Be an orphan or a ward of the court through the age of 18

Be a veteran of the U.S. Armed Forces

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

Be a graduate or professional student

Be married

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

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

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

Institution of Higher Education

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

Parents

LMHA Policy

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

Person with Disabilities

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

Veteran

LMHA Policy

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

Determining Student Eligibility

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

LMHA Policy

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

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

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

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

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

Determining Parental Income Eligibility

LMHA Policy

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

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

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

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

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

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

PART III: DENIAL OF ASSISTANCE

3-III.A. OVERVIEW

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

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

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

Denial of assistance includes any of the following:

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

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

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

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

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

HUD requires LMHA to deny assistance in the following cases:

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

LMHA Policy

LMHA will not admit an otherwise-eligible family who was evicted from federally-assisted housing within the past 5 years for drug-related criminal activity. However, LMHA will admit an otherwise-eligible family who was evicted from federally-assisted housing within the past 5 years for drug-related criminal activity, if LMHA is able to verify that the household member who engaged in the criminal activity has completed a supervised drug rehabilitation program approved by LMHA, or the person who committed the crime, is no longer living in the household.

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

LMHA Policy

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

- LMHA 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.

LMHA Policy

In determining reasonable cause, LMHA 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. LMHA will also consider evidence from treatment providers or community-based organizations providing services to household members.

- Any household member has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine on the premises of federally assisted housing
- Any household member is subject to a lifetime registration requirement under a state sex offender registration program

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

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

Criminal Activity [24 CFR 982.553]

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

LMHA Policy

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

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

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

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

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

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

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

- Any conviction for drug-related or violent criminal activity within the past 5 years.
- Any arrests for drug-related or violent criminal activity within the past 5 years.
- Any record of eviction from public or privately-owned housing as a result of criminal activity within the past 5 years.
- A conviction for drug-related or violent criminal activity will be given more weight than an arrest for such activity.
- Circumstantial evidence, a preponderance of evidence, or any arrests for drug-related or violent criminal activity within the past 5 years.
- If on probation or parole for any conviction, assistance will be denied until discharged from probation or parole.
- If incarcerated for any conviction, denied until five years after release. Exceptions may be considered for completion and/or compliance with a Re-Entry Program approved by LMHA.
- Convictions of any household member for crimes of physical violence including but not limited to intentionally or recklessly causing another's death, arson, rape, sexual assault and

convictions which require one to register as a sex offender. Such individuals are subject to a permanent prohibition against admission to LMHA Housing Choice Voucher Program.

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

Previous Behavior in Assisted Housing [24 CFR 982.552(c)]

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

LMHA Policy

LMHA **will not** deny assistance to an otherwise eligible family because the family previously failed to meet its obligations under the Family Self-Sufficiency (FSS) program.

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

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

The family does not provide complete and true information to LMHA.

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

Any LMHA has ever terminated assistance under the program for any member of the family for violations of the family obligations within the last five years.

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

The family owes rent or other amounts to any PHA in connection with the HCV, Moderate Rehabilitation or public housing programs, unless the family repays the full amount of the debt prior to being selected from the waiting list.

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

A family member has engaged in or threatened violent or abusive behavior toward LMHA personnel or managing agents and owners.

Abusive or violent behavior includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.

Threatening refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.

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

3-III.D. SCREENING

Screening for Eligibility

LMHA is authorized to obtain criminal conviction records from law enforcement agencies to screen applicants for admission to the HCV program. This authority assists LMHA in complying with HUD requirements and LMHA policies to deny assistance to applicants who are engaging in or have engaged in certain criminal activities. In order to obtain access to the records LMHA must require every applicant family to submit a consent form signed by each adult household member [24 CFR 5.903].

LMHA Policy

LMHA will perform a criminal background check through local law enforcement for every adult household member and through public electronic databases. LMHA may also perform criminal background checks through third party service providers.

LMHA is required to perform criminal background checks necessary to determine whether any household member is subject to a lifetime registration requirement under a state sex offender program in the state where the housing is located, as well as in any other state where a household member is known to have resided [24 CFR 982.553(a)(2)(i)].

If LMHA proposes to deny assistance based on a criminal record or on lifetime sex offender registration information, LMHA must notify the household of the proposed action and must provide the subject of the record and the applicant a copy of the record and an opportunity to dispute the accuracy and relevance of the information prior to a denial of admission. [24 CFR 5.903(f) and 5.905(d)].

Screening for Suitability as a Tenant [24 CFR 982.307]

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

LMHA Policy

LMHA 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. LMHA must inform the owner that screening and selection for tenancy is the responsibility of the owner. An owner may consider a family's history with respect to factors such as: payment of rent and utilities, caring for a unit and premises, respecting the rights of other residents to the peaceful enjoyment of their housing, criminal activity that is a threat to the health, safety or property of others, and compliance with other essential conditions of tenancy.

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

LMHA may not disclose to the owner any confidential information provided in response to a LMHA 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(a)(4)].

LMHA Policy

LMHA will inform owners of their responsibility to screen prospective tenants, and will provide owners with the required known name and address information, when written request has been received. LMHA will not provide any additional information to the owner, such as tenancy history, criminal history, etc.

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

Evidence [24 CFR 982.553(c)]

LMHA Policy

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

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

Consideration of Circumstances [24 CFR 982.552(c)(2)]

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

LMHA Policy

LMHA will consider the following factors prior to making its decision:

- The seriousness of the case, especially with respect to how it would affect other residents
- The effects that denial of assistance may have on other members of the family who were not involved in the action or failure
- The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities, or (as discussed further in section 3-III.G) 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
- LMHA will require the applicant to submit evidence of the household member's current participation in or successful completion of a supervised drug or alcohol rehabilitation program, or evidence of otherwise having been rehabilitated successfully.

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

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

LMHA Policy

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

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

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

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

LMHA Policy

If the family indicates that the behavior of a family member with a disability is the reason for the proposed denial of assistance, LMHA will determine whether the behavior is related to the disability. If so, upon the family's request, LMHA will determine whether alternative measures are appropriate as a reasonable accommodation. LMHA will only consider accommodations that can reasonably be expected to address the behavior that is the basis of the proposed denial of assistance. See Chapter 2 for a discussion of reasonable accommodation.

3-III.F. NOTICE OF ELIGIBILITY OR DENIAL

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

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

LMHA Policy

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

If a LMHA 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 LMHA 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)]. LMHA 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)].

LMHA Policy

If based on a criminal record or sex offender registration information, an applicant family appears to be ineligible LMHA will notify the family in writing of the proposed denial and the availability of a copy of the record to the applicant and to the subject of the record. The family will be given 7 business days to dispute the accuracy and relevance of the information. If the family does not contact LMHA to dispute the information within that 7-day period, LMHA will proceed with issuing the notice of denial of admission. A family that does not exercise their right to dispute the accuracy of the information prior to issuance of the official denial letter will still be given the opportunity to do so as part of the informal review process.

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

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

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

The Violence against Women Act of 2015 (VAWA) and the HUD regulation at 24 CFR 5.2005(b) prohibit LMHA from denying an applicant admission to the HCV program “on the basis 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 of key terms used in VAWA are provided in section 16-IX of this plan, where general VAWA requirements and policies pertaining to notification, documentation, and confidentiality are also located.

Notification

VAWA 2013 expanded notification requirements to include the obligation for PHA’s to provide applicants who are denied assistance with a notice of rights and the form HUD-50066 at the time the applicant is denied.

LMHA Policy

LMHA acknowledges that a victim of domestic violence, dating violence, sexual assault or stalking may have an unfavorable history (e.g., a poor credit history, a record of previous damage to an apartment, a prior arrest record) that would warrant denial under LMHA’s policies. Therefore, if LMHA makes a determination to deny assistance to an applicant family, LMHA will include in its notice of denial the VAWA information described in section 16-IX.C of this plan as well as including a copy of the form HUD-50066. LMHA will request that an applicant wishing to claim protection under VAWA notify LMHA within 14 business days.

Documentation

Victim Documentation [24 CFR 5.2007]

LMHA Policy

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

Perpetrator Documentation

LMHA Policy

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

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

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

EXHIBIT 3-1: DETAILED DEFINITIONS RELATED TO DISABILITIES

Person with Disabilities [24 CFR 5.403]

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

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

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

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

(A) In General

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

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

(B) Infants and Young Children

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

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

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

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

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

Individual with Handicaps [24 CFR 8.3]

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

(1) Physical or mental impairment includes:

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

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

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

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

- (a) Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by a recipient as constituting such a limitation;
- (b) Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of others toward such impairment; or
- (c) Has none of the impairments defined in paragraph (1) of this section but is treated by a recipient as having such an impairment.

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

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

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

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

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

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

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

- (1) Inclusion of additional institutions. Subject to paragraphs (2) through (4) of this subsection, the term “institution of higher education” for purposes of subchapter IV of this chapter and part C of subchapter I of chapter 34 of title 42 includes, in addition to the institutions covered by the definition in section 1001 of this title—
 - (A) A proprietary institution of higher education (as defined in subsection (b) of this section);
 - (B) A postsecondary vocational institution (as defined in subsection (c) of this section); and
 - (C) Only for the purposes of part B of subchapter IV of this chapter, an institution outside the United States that is comparable to an institution of higher education as defined in section 1001 of this title and that has been approved by the Secretary for the purpose of part B of subchapter IV of this chapter.
- (2) Institutions outside the United States
 - (A) In general. For the purpose of qualifying as an institution under paragraph (1)(C), the Secretary shall establish criteria by regulation for the approval of institutions outside the United States and for the determination that such institutions are comparable to an institution of higher education as defined in section 1001 of this title (except that a graduate medical school, or a veterinary school, located outside the United States shall not be required to meet the requirements of section 1001 (a)(4) of this title). Such criteria shall include a requirement that a student attending such school outside the United States is ineligible for loans made, insured, or guaranteed under part B of subchapter IV of this chapter unless—
 - (i) In the case of a graduate medical school located outside the United States—
 - (I)(aa) At least 60 percent of those enrolled in, and at least 60 percent of the graduates of, the graduate medical school outside the United States were not persons described in section 1091(a)(5) of this title in the year preceding the year for which a student is seeking a loan under part B of subchapter IV of this chapter; and
 - (bb) At least 60 percent of the individuals who were students or graduates of the graduate medical school outside the United States or Canada (both nationals of the United States and others) taking the examinations administered by the Educational Commission for Foreign Medical Graduates received a passing score in the year preceding the year for which a student is seeking a loan under part B of subchapter IV of this chapter; or
 - (II) The institution has a clinical training program that was approved by a State as of January 1, 1992; or
 - (ii) In the case of a veterinary school located outside the United States that does not meet the requirements of section 1001(a)(4) of this title, the institution’s students complete their clinical training at an approved veterinary school located in the United States.
 - (B) Advisory panel
 - (i) In general. For the purpose of qualifying as an institution under paragraph (1)(C) of this subsection, the Secretary shall establish an advisory panel of medical experts that shall—
 - (I) Evaluate the standards of accreditation applied to applicant foreign medical schools; and

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

primary function of which is to provide health care educational services (or an affiliate of such an institution that has the power, by contract or ownership interest, to direct or cause the direction of the institution's management or policies) that files for bankruptcy under chapter 11 of title 11 between July 1, 1998, and December 1, 1998; or

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

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

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

(b) Proprietary institution of higher education

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

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

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

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

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

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

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

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

(c) Postsecondary vocational institution.

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

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

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

- (C) Has been in existence for at least 2 years.
- (2) Additional institutions. The term “postsecondary vocational institution” also includes an educational institution in any State that, in lieu of the requirement in paragraph (1) of section 1001 (a) of this title, admits as regular students persons who are beyond the age of compulsory school attendance in the State in which the institution is located.

Chapter 4

APPLICATIONS, WAITING LIST AND TENANT SELECTION

INTRODUCTION

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

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

HUD regulations require that all families have an equal opportunity to apply for and receive housing assistance, and that LMHA affirmatively further fair housing goals in the administration of the program [24 CFR 982.53, HCV GB p. 4-1]. Adherence to the selection policies described in this chapter ensures that LMHA will be in compliance with all relevant fair housing requirements, as described in Chapter 2.

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

Part I: The Application Process. This part provides an overview of the application process, and discusses how applicants can obtain and submit applications. It also specifies how LMHA will handle the applications it receives.

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

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

PART I: THE APPLICATION PROCESS

4-I.A. OVERVIEW

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

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

Any family that wishes to receive HCV assistance must apply for admission to the program. HUD permits LMHA to determine the format and content of HCV applications, as well how such applications will be made available to interested families and how applications will be accepted by LMHA. LMHA must include Form HUD-92006, Supplement to Application for Federally Assisted Housing, as part of LMHA's application.

LMHA Policy

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

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

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

Families may apply online when the waiting list is open. Applications must be complete in order to be accepted by LMHA for processing. If an application is incomplete, LMHA will notify the family of the additional information required.

4-I.C. ACCESSIBILITY OF THE APPLICATION PROCESS

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

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

Limited English Proficiency

LMHA is required to take reasonable steps to ensure equal access to their programs and activities by persons with limited English proficiency [24 CFR 1]. Chapter 2 provides a full discussion on LMHA's policies related to ensuring access to people with limited English proficiency (LEP).**4-I.D.**

PLACEMENT ON THE WAITING LIST

LMHA must review each complete application received and make a preliminary assessment of the family's eligibility. LMHA will accept applications from families for whom the list is open unless there is good cause for not accepting the application (such as denial of assistance) for the grounds stated in the regulations [24 CFR 982.206(b)(2)]. Where the family is determined to be ineligible, LMHA will notify the family in writing [24 CFR 982.201(f)]. Where the family is not determined to be ineligible, the family will be placed on a waiting list of applicants.

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

Ineligible for Placement on the Waiting List

LMHA Policy

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

Eligible for Placement on the Waiting List

LMHA Policy

LMHA will send written notification of the preliminary eligibility determination and family's placement on the waiting list within 10 business days of receiving a complete application.

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

Prior to the opening of the waiting list, LMHA will select one of the following methodologies for determining placement on the waiting list:

- Applicants will be placed on the waiting list according to any preference(s) for which they qualify, and the date and time their complete application is received by LMHA.
- Applicants will be placed on the waiting list using a lottery system. Once each application has been randomly assigned a number, the applications will be placed on the waiting list in order of the assigned numbers and according to LMHA preference(s).

Instructions for completing the application will indicate which methodology has been chosen by LMHA.

PART II: MANAGING THE WAITING LIST

4-II.A. OVERVIEW

LMHA must have policies regarding various aspects of organizing and managing the waiting list of applicant families. This includes opening the list to new applicants, closing the list to new applicants, notifying the public of waiting list openings and closings, updating waiting list information, purging the list of families that are no longer interested in or eligible for assistance, as well as conducting outreach to ensure a sufficient number of applicants.

In addition, HUD imposes requirements on how a LMHA may structure its waiting list and how families must be treated if they apply for assistance from a LMHA that administers more than one assisted housing program.

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

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

The waiting list contains the following information for each applicant listed:

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

HUD requires LMHA to maintain a single waiting list for the HCV program unless it serves more than one county or municipality. As such LMHA is permitted, but not required, to maintain a separate waiting list for each county or municipality served.

LMHA Policy

LMHA will maintain a single waiting list for the tenant-based HCV program. LMHA will also maintain separate waiting lists for each project-based voucher project and for the Moderate Rehabilitation program.

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

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

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

LMHA Policy

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

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

Closing the Waiting List

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

LMHA Policy

LMHA will close the list only if it determines that the existing waiting list contains an adequate pool for use of available program funding. Where LMHA has particular preferences or funding criteria that require a specific category of family, the LMHA may elect to continue to accept applications from these applicants while closing the waiting list to others.

Reopening the Waiting List

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

LMHA Policy

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

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

- Local papers of general circulation
- Minority papers of general circulation
- LMHA website

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

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

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

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

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

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

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

LMHA Policy

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

4-II.E. REPORTING CHANGES IN FAMILY CIRCUMSTANCES

LMHA Policy

While the family is on the waiting list, the family must immediately inform LMHA of changes in contact information, including current residence, mailing addresses, and phone number. The family must additionally report any changes that might occur in their preference eligibility. The changes must be promptly submitted online or in writing promptly.

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

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

Purging the Waiting List

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

LMHA Policy

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

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

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

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

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

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

If a family is removed from the waiting list for failure to respond, a member of LMHA's management team may reinstate the family if s/he determines the lack of response was due to LMHA error, or to circumstances beyond the family's control. However, in these instances, the time frame to be reinstated to the list will not exceed one year from the date the family's name was removed from the list.

Removal from the Waiting List

LMHA Policy

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

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

PART III: SELECTION FOR HCV ASSISTANCE

4-III.A. OVERVIEW

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

The order in which families receive assistance from the waiting list depends on the selection method chosen by LMHA and is impacted in part by any selection preferences for which the family qualifies. The availability of targeted funding may also affect the order in which families are selected from the waiting list. LMHA must maintain a clear record of all information required to verify that the family is selected from the waiting list according to LMHA's selection policies [24 CFR 982.204(b) and 982.207(e)].

4-III.B. SELECTION AND HCV FUNDING SOURCES

Special Admissions [24 CFR 982.203]

HUD may award funding for specifically named families living in specified types of units. In these cases, LMHA may admit 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. LMHA must maintain records showing that such families were admitted with special program funding.

The following are examples of types of program funding that may be designated by HUD for families living in a specified unit:

- (1) A family displaced because of demolition or disposition of a public housing project or substantial renovation of public housing through the Rental Assistance Demonstration program;
- (2) A family residing in a multifamily rental housing project when HUD sells, forecloses or demolishes the project;
- (3) For housing covered by the Low-Income Housing Preservation and Resident Homeownership Act of 1990, (41 U.S.C. 4101 et seq.):
 - (i) A non-purchasing family residing in a project subject to a homeownership program, (under 24CFR 248.173); or
 - (ii) A family displaced because of mortgage prepayment or voluntary termination of a mortgage insurance contract, (as provided in 24 CFR 248.165);
- (4) A family residing in a project covered by a project-based Section 8 HAP contract at or near the end of the HAP contract term;
- (5) A non-purchasing family residing in a HOPE 1 or HOPE 2 project; and
- (6) Shelter Plus Care.

Targeted Funding [24 CFR 982.204(e)]

HUD may award a LMHA funding for a specified category of families on the waiting list. LMHA must use this funding only to assist the families within the specified category.

In order to assist families within a targeted funding category, the PHA may skip families that do not qualify within the targeted funding category. Within this category of families, the order in which such families are assisted is determined according to the policies provided in Section 4-III.C.

LMHA Policy

LMHA currently administers the following types of targeted funding:

Family Unification Program

Mainstream Vouchers for Persons with a Disability

Mainstream (Section 811) Vouchers

Veterans Affairs Supportive Housing

Non-Elderly Disabled

Money Follows the Person Initiative

Regular HCV Funding

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

OTHER ADMISSIONS

Supportive Housing:

Contingent upon funding availability, LMHA will make up to 178 Housing Choice vouchers available for tenant-based assistance through referrals from Toledo Lucas County Homelessness Board (TLCHB), the Toledo Lucas County Continuum of Care, The Ridge Project, and the LHSC Bridge to Independence and Success Program. Agencies, identified by TLCHB or the Ridge Project, must provide ongoing supportive services to the families served. LMHA will make up to 65 Housing Choice vouchers available for either homeless or chronically homeless families through the Housing First model and up to 90 Housing Choice vouchers available for families experiencing homelessness or unstable housing who are either pregnant or have a child(ren) 12 months of age or younger through the Getting to 1 Through Housing project. LMHA will also make up to 20 Housing Choice vouchers available for previously incarcerated citizens participating in a reentry program developed and operated by The Ridge Project, in an effort to reduce recidivism and keep families together after incarceration, as determined and referred by the Coordinator of The Ridge Project (also referred to as Reentry vouchers). LMHA will make up to 3 Housing Choice Vouchers available for the Bridge to Independence and Success Transition Age Youth (TAY) Pilot through LHSC. They will be identified as “Supportive Housing.”

When a family is referred to LMHA through “Supportive Housing” they will receive a voucher if they meet all of the eligibility requirements in this plan, and a voucher is available for the program.

Preference will be given to families who are referred, regardless of whether the family is on the regular voucher waiting list, regardless of the family’s current waiting list position, and regardless of whether the waiting list is closed. When a family is referred to LMHA through “Supportive Housing”, LMHA will search its regular voucher waiting list to determine whether the referred family is on that list. If the referred family’s name is on the regular LMHA waiting list, the “Supportive Housing” preference will be added to applicants waiting list preferences, and the family will be counted toward the 178 “Supportive Housing” vouchers.

“Supportive Housing” providers are responsible for referring families to LMHA, via the above identified entities, in the order deemed acceptable by the participating agencies and as specified in the executed MOU. The MOU will specify all other responsibilities of the participating agencies.

Supportive Housing is defined as: “A combination of housing and wrap-around services, provided directly by the proposer or through acquired services providers, aimed at providing supportive services for individuals or families without housing alternatives due to homelessness or unstable housing. Supportive housing can be coupled with social services such as, but not limited to (at LMHA’s discretion), as job training, life skills training, alcohol and drug abuse programs, community support services (e.g., child care, educational programs, etc.), and case management to the populations in need of assistance.”

Emergency Housing Vouchers:

LMHA will administer 123 Emergency Housing Vouchers (EHV) in partnership with the local Continuum of Care (CoC) the Toledo Lucas County Homelessness Board. EHV’s are available for individuals and families who are: homeless; at risk of homelessness; fleeing, or attempting to flee, domestic violence, dating violence, sexual assault, stalking or human trafficking; or recently homeless and for whom providing rental assistance will prevent the family’s homelessness or having high risk of housing instability. EHV’s will be administered in accordance with the Administrative Plan and operating requirements established in HUD Notice PIH 2021-15 (HA) and subsequent notices and requirements pertaining to EHV’s.

Verification that the individual or family meets one of these four eligibility categories is conducted by the CoC that makes direct referrals to LMHA. The CoC must provide supporting documentation to LMHA of the referring agency’s verification that the family meets one of the four eligible categories for EHV assistance.

LMHA must enter into a Memorandum of Understanding (MOU) with the CoC to establish a partnership for the administration of the EHV’s. The MOU is a complete statement of the responsibilities of the parties and evidence of a commitment of resources to the EHV program. The MOU may be subsequently amended to add or change the services that the CoC may provide but must always retain the direct referral responsibility of the CoC.

EHV’s are tenant-based vouchers under Section 8(o) of the United States Housing Act of 1937. Unless expressly waived, all statutory and regulatory requirements and HUD directives regarding the HCV program are applicable to EHV’s, including the use of all HUD- required contracts and other forms. The administrative policies adopted in LMHA’s written administrative plan apply to the EHV vouchers unless such local policy conflicts with the requirements of the American Rescue Plan (ARP), the requirements of applicable PIH notice(s), or other waivers and alternative requirements.

EHV Services Fees

LMHA will use the services fee(s) it receives as part of EHV’s in accordance with requirements established in HUD Notice PIH 2021-15(HA) and subsequent notices and requirements pertaining to EHV’s, and, where necessary, in consultation with the CoC. LMHA may use the services fee to provide any or all of the defined eligible uses to assist families to successfully lease units with the EHV’s.

As described in HUD Notice PIH 2021-15 (HA), the services fees fall into four main components comprised of specific activities:

- i. Housing Search Assistance
- ii. Security Deposit/Utility Deposit/Rental Application/Holding Fee Uses
 - a. Application fees/non-refundable administrative or processing fees/refundable application deposit assistance.

- b. Holding fees
 - c. Security deposit assistance
 - d. Utility deposit assistance/utility arrears
- iii. Owner-Related Uses
- a. Owner recruitment and outreach
 - b. Owner incentive and/or retention payments
- iv. Other eligible uses.
- a. Moving expenses (including move-in fees and deposits)
 - b. Tenant-readiness services.
 - c. Essential household items
 - d. Renter's insurance if required by the lease

Permissive Prohibitions on PHA Denial of Assistance to an EHV applicant

LMHA will administer EHV's, including mandatory and permissive prohibitions, in accordance with the Administrative Plan, operating requirements established in HUD Notice PIH 2021-15 (HA), subsequent notices and requirements pertaining to EHV's, and the MOU with the CoC.

LMHA may prohibit admission of a family for the grounds stated below. LMHA may choose not to prohibit admission for these grounds or may establish a more permissive policy than LMHA's policy for admission to the regular HCV program. LMHA may not establish a permissive prohibition policy for EHV applicants that is more prohibitive than the policy established for admissions to the regular HCV program. LMHA policy on EHV permissive prohibitions must be described in the PHA's administrative plan.

If LMHA intends to establish permissive prohibition policies for EHV applicants, LMHA must consult with its CoC partner to understand the impact that the proposed prohibitions may have on referrals and must take the CoC's recommendations into consideration. The LMHA policy on EHV permissive prohibitions must be described in the PHA's administrative plan.

Determinations must be made based on an individualized assessment of relevant mitigating information. The permissive prohibitions are:

- (1) If the PHA determines that any household member is currently engaged in, or has engaged in within the previous 12 months:
 - a. Violent criminal activity.
 - b. Other criminal activity which may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents or persons residing in the immediate vicinity.
- (2) If any member of the family has committed fraud, bribery, or any other corrupt or criminal act in connection with any Federal housing program within the previous 12 months.
- (3) If the family engaged in or threatened abusive or violent behavior toward PHA personnel within the previous 12 months.

Moderate Rehabilitation Admissions:

A family may be admitted to the voucher program if they are a family in the Moderate Rehabilitation Program and it has been determined by LMHA that the family must relocate because the family is under housed or the family has a disabled member and there are not available Moderate Rehabilitation units of the appropriate size or type.

Applicants are required to complete an application and be placed on the Moderate Rehabilitation program waiting list. A voucher will be issued to the family immediately upon verifying the family's need for more suitable housing.

Eligible families are placed on LMHA's Moderate Rehabilitation waiting list. When vacancies occur in Moderate Rehabilitation projects, LMHA refers eligible families for participation in the Moderate Rehabilitation program from its waiting list to owners. Owners select families for occupancy of a particular unit after screening each family.

Involuntarily Displaced by Government Action or Natural Disaster:

Involuntarily displaced by government action is limited to the following: Current LMHA housing programs which are not approved for renewal funding, FUP participants (youth aging out of Foster care) who have reached their voucher life limitation, families in the Moderate Rehabilitation Program who must relocate because the family is under housed or the family has a disabled member who needs to relocate due to a reasonable accommodation and there are not available Moderate Rehabilitation units of the appropriate size or type, a project based voucher contract which is terminated, etc.

Involuntarily displaced by natural disaster- With proper documentation, families who are victims of a natural disaster are eligible to be added to the waiting list. Natural disasters include, but are not limited to floods, tornadoes, hurricanes, earthquakes and tsunamis. Proper documentation includes, but is not limited to, written statements from disaster relief agencies such as Federal, State or local Emergency Management Agencies, the Red Cross and other Federal, State or local agencies either within or outside the jurisdiction where the natural disaster occurred. Vouchers will be made available to these families, regardless of whether the family is on the regular voucher waiting list, regardless of the family's current waiting list position, and regardless of whether the waiting list is closed.

VASH Program Graduates:

Under the VASH Program, when the VA determines that the participant family no longer requires case management, this is not grounds for termination of assistance. In such a case, at LMHA's option, and if available, LMHA will offer the family continued voucher program assistance through one of its regular vouchers, to free up the HUD-VASH voucher for another eligible family referred by the VA.

4-III.C. SELECTION METHOD

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

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

LMHA is permitted to establish local preferences, and to give priority to serving families that meet those criteria. HUD specifically authorizes and places restrictions on certain types of local preferences. HUD also permits LMHA to establish other local preferences, at its discretion. Any local preferences established must be consistent with LMHA plan and the consolidated plan, and must be based on local

housing needs and priorities that can be documented by generally accepted data sources.

LMHA Policy

LMHA will select families based on the following preferences, by priority:

Homeless individuals and families, and Reentry participants to include Supportive Housing (limited to up to 178 vouchers); TLCHB, the Ridge Project (for Reentry), or the LHSC Bridge to Independence and Success Program (for Bridge to Independence and Success TAY Pilot) will refer to LMHA families that meet the above criteria.	1
Involuntarily Displaced Families involuntarily displaced (defined above) due to natural disaster or government action.	2
Insufficient Funding LMHA will offer a preference to any family that has been terminated from its HCV program due to insufficient program funding.	3
Disabled persons and their families.	4

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

HUD requires that extremely low-income (ELI) families make up at least 75% of the families admitted to the HCV program during LMHA’s fiscal year. ELI families are those with annual incomes at or below the federal poverty level or 30% of the area median income, whichever is higher. To ensure this requirement is met, LMHA may skip non-ELI families on the waiting list in order to select an ELI family.

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

LMHA Policy

LMHA will monitor progress in meeting the ELI requirement throughout the fiscal year. Extremely low-income families will be selected ahead of other eligible families on an as-needed basis to ensure the income-targeting requirement is met. If there are not enough ELI families on the waiting list, LMHA shall conduct special outreach to attract ELI families to the program to meet the statutory requirements.

Continuously assisted is defined as families that reside in and are receiving assistance under a federally subsidized program.

Order of Selection

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

LMHA Policy

Families will be selected from the waiting list based on the targeted funding or selection preference(s) for which they qualify, and in accordance with LMHA's hierarchy of preferences. Within each targeted funding or preference category, families that have applied electronically through the lottery process will be selected in a random order assigned by the computer. This random order will serve as the established date and time of application. LMHA may choose to limit the number of pre-applications accepted through the lottery process and those pre-applications not randomly chosen will be discarded.

Applications received for the moderate rehabilitation, project based and special programs/special admission process, will be placed on the waiting list within each targeted funding or preference category, and then on a first-come, first-served basis according to the date and time the application is received by LMHA.

Documentation will be maintained by LMHA as to whether families on the list qualify for and are interested in targeted funding. If a higher placed family on the waiting list is not qualified or not interested in targeted funding, there will be a notation maintained so that LMHA does not have to ask higher placed families each time targeted selections are made.

4-III.D. NOTIFICATION OF SELECTION

When a family has been selected from the waiting list, LMHA will notify the family.

LMHA Policy

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

Where to obtain the full application package

Date (14 calendar days from date of selection notice), completed application must be submitted

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

4-III.E. THE APPLICATION INTERVIEW

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

Assistance cannot be provided to the family until all SSN documentation requirements are met. However, if the PHA determines that an applicant family is otherwise eligible to participate in the program, the

family may retain its place on the waiting list for a period of time determined by the PHA [Notice PIH 2012-10].

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

LMHA Policy

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

LMHA

The head of household and all household members eighteen (18) and older must be present for the application interview. Verification of information pertaining to adult members of the household not present at scheduled meetings will not begin until signed release forms are returned to LMHA.

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

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

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

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

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

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

If the family is unable to attend a scheduled interview, the family should contact the PHA in advance of the interview to schedule a new appointment. In all circumstances, if a family does not attend a scheduled interview, LMHA will send another notification letter with a new interview appointment time. The second interview appointment will usually be scheduled within thirty days of the initial appointment. Applicants who fail to attend two scheduled interviews without LMHA approval, or if the second notification letter is returned to LMHA with no forwarding address, will

be denied assistance based on the family's failure to supply information needed to determine eligibility. A notice of denial will be issued in accordance with policies contained in Chapter 3.

4-III.F. COMPLETING THE APPLICATION PROCESS

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

LMHA Policy

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

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

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

Chapter 5 BRIEFINGS AND VOUCHER ISSUANCE

INTRODUCTION

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

This chapter describes HUD regulations and LMHA policies related to these topics in two parts: Part I:

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

Standards and Voucher Issuance. This part discusses LMHA's standards for affects the amount of subsidy the family can receive. It also discusses the policies that dictate how vouchers are issued, and how long families have to locate a unit.

PART I: BRIEFINGS AND FAMILY OBLIGATIONS

5-I.A. OVERVIEW

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

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

LMHA must give the family an oral briefing and provide the family with a briefing packet containing written information about the program. Families may be briefed individually or in groups. At the briefing, LMHA must ensure effective communication in accordance with Section 504 requirements (Section 504 of the Rehabilitation Act of 1973), and ensure that the briefing site is accessible to individuals with disabilities. For a more thorough discussion of accessibility requirements, refer to Chapter 2.

LMHA Policy

- Briefings will be conducted in group meetings.
- The head of household is required to attend the briefing and all adults ages 18 and older will be encouraged to attend. If the head of household is unable to attend, LMHA 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 LMHA staff person.
- Briefings will be conducted in English. For limited English proficient (LEP) applicants, LMHA will provide translation services in accordance with LMHA's LEP plan (See Chapter 2).

Notification and Attendance

LMHA Policy

- 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, the applicant will be denied and their name will not be placed back on the waiting list. If the notice is returned by the post office with a forwarding address, the notice will be re-sent to the address indicated.
- Applicants who fail to attend a scheduled briefing will automatically be scheduled for another briefing. LMHA will notify the family of the date and time of the second scheduled briefing. Applicants who fail to attend two scheduled briefings, without LMHA approval, will be denied assistance (see Chapter 3).

Oral Briefing [24 CFR 982.301(a)]

Each briefing must provide information on the following subjects:

- How the Housing Choice Voucher program works;
- Family and owner responsibilities;
- Where the family can lease a unit, including renting a unit inside or outside LMHA's jurisdiction;
- For families eligible under portability, an explanation of portability. LMHA cannot discourage eligible families from moving under portability;
- An explanation of the advantages of moving to areas outside of high-poverty concentrations will be given to all families; and
- For families receiving welfare-to-work vouchers, a description of any local obligations of a welfare-to-work family and an explanation that failure to meet the obligations is grounds for denial of admission or termination of assistance.

LMHA Policy

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

Briefing Packet [24 CFR 982.301(b)]

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

- The term of the voucher, and LMHA's policies on any extensions or suspensions of the term. If LMHA allows extensions, the packet must explain how the family can request an extension.
- A description of the method used to calculate the housing assistance payment for a family, including how LMHA determines the payment standard for a family, how LMHA determines total tenant payment for a family, and information on the payment standard and utility allowance schedule.
- An explanation of how LMHA determines the maximum allowable rent for an assisted unit.
- Where the family may lease a unit. For a family that qualifies to lease a unit outside LMHA jurisdiction under portability procedures, the information must include an explanation of how portability may affect the family's assistance through rescreening, changes in subsidy standards and payment standards and other elements of portability that may affect the family's assistance.
- The HUD-required tenancy addendum, which must be included in the lease.
- The form the family must use to request approval of tenancy, and a description of the procedure for requesting approval for a tenancy.
- A statement of LMHA policy on providing information about families to prospective owners.
- LMHA subsidy standards including when and how exceptions are made.
- The HUD brochure on how to select a unit.
- The HUD pamphlet on lead-based paint entitled *Protect Your Family from Lead in Your Home*.

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

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

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

Additional Items to Be Included in the Briefing Packet

In addition to items required by the regulations, LMHA may wish to include supplemental materials to help explain the program to both participants and owners [HCV GB p. 8-7, Notice PIH 2010-19].

LMHA Policy

LMHA will provide the following additional materials in the briefing packet:

- When LMHA-owned units are available for lease, a written statement that the family has the right to select any eligible unit available for lease and is not obligated to choose a LMHA-owned unit
- Information on how to fill out and file a housing discrimination complaint form
- Information about the protections afforded by the Violence against Women Act of 2013 (VAWA) to victims of domestic violence, dating violence, sexual assault and stalking (see section 16-IX.C)
- Information about the protections afforded by the Protecting Tenants at Foreclosure Act (PTFA) (see section 13-II.G)
- “Is Fraud Worth It?” (form HUD-1141-OIG), which explains the types of actions a family must avoid and the penalties for program abuse

- “What You Should Know about EIV,” a guide to the Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH 2010-19
- LMHA owner information brochure which can be given by the family to a prospective owner to help explain the program

5-I.C. FAMILY OBLIGATIONS

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

Time Frames for Reporting Changes Required By Family Obligations

LMHA Policy

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

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

Family Obligations [24 CFR 982.551]

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

- The family must supply any information that LMHA or HUD determines to be necessary, including submission of required evidence of citizenship or eligible immigration status.
- The family must supply any information requested by LMHA or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition.
- The family must disclose and verify social security numbers and sign and submit consent forms for obtaining information.
- Any information supplied by the family must be true and complete.
- The family is responsible for any Housing Quality Standards (HQS) breach by the family caused by failure to pay tenant-provided utilities or appliances, or damages to the dwelling unit or premises beyond normal wear and tear caused by any member of the household or guest.
- The family must allow LMHA to inspect the unit at reasonable times and after reasonable notice, as described in Chapter 8 of this plan.
- The family must not commit any serious or repeated violation of the lease.

LMHA Policy

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

Serious and repeated lease violations will include, but not be limited to, nonpayment of rent, disturbance of neighbors, destruction of property, living or housekeeping habits that cause damage to the unit or premises, and criminal activity. Generally, the criterion to be used will be whether or not the reason for the eviction was the fault of the tenant or guests. Any incidents of, or criminal

activity related to, domestic violence, dating violence, sexual assault or stalking will not be construed as serious or repeated lease violations by the victim [24 CFR 5.2005(c)(1)].

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

LMHA Policy

The family must comply with lease requirements regarding written notice to the owner.

The family must provide written notice to LMHA at the same time the owner is notified.

- The family must promptly give LMHA a copy of any owner eviction notice.
- The family must use the assisted unit for residence by the family. The unit must be the family's only residence.
- The composition of the assisted family residing in the unit must be approved by LMHA. The family must promptly notify LMHA in writing of the birth, adoption, or court-awarded custody of a child. The family must request LMHA approval to add any other family member as an occupant of the unit.

LMHA Policy

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

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

LMHA Policy

LMHA defines promptly as 10 business days.

- If LMHA has given approval, a foster child or a live-in aide may reside in the unit. LMHA has the discretion to adopt reasonable policies concerning residency by a foster child or a live-in aide, and to define when LMHA consent may be given or denied. For policies related to the request and approval/disapproval of foster children, foster adults, and live-in aides, see Chapter 3 (sections I.K and I.M), and Chapter 11 (section II.B).
- The family must not sublease the unit, assign the lease, or transfer the unit.

LMHA Policy

Subleasing includes receiving payment to cover rent and utility costs by a person living in the unit who is not listed as a family member.

- The family must supply any information requested by LMHA to verify that the family is living in the unit or information related to family absence from the unit.
- The family must promptly notify LMHA when the family is absent from the unit.

LMHA Policy

Notice is required under this provision only when all family members will be absent from the unit for an extended period. An extended period is defined as any period greater than 30 calendar days. Written notice must be provided to LMHA at the start of the extended absence.

- The family must pay utility bills and provide and maintain any appliances that the owner is not required to provide under the lease [Form HUD-52646, Voucher].
- The family must not own or have any interest in the unit, (other than in a cooperative and owners of a manufactured home leasing a manufactured home space).
- Family members must not commit fraud, bribery, or any other corrupt or criminal act in connection with the program. (See Chapter 14, Program Integrity for additional information).
- Family members must not engage in drug-related criminal activity or violent criminal activity or other criminal activity that threatens the health, safety or right to peaceful enjoyment of other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for HUD and LMHA policies related to drug-related and violent criminal activity.
- Members of the household must not engage in abuse of alcohol in a way that threatens the health, safety or right to peaceful enjoyment of the other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for a discussion of HUD and LMHA policies related to alcohol abuse.
- An assisted family or member of the family must not receive HCV program assistance while receiving another housing subsidy, for the same unit or a different unit under any other federal, state or local housing assistance program.
- A family must not receive HCV program assistance while residing in a unit owned by a parent, child, grandparent, grandchild, sister or brother of any member of the family, unless LMHA has determined (and has notified the owner and the family of such determination) that approving rental of the unit, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities. [Form HUD-52646, Voucher]

PART II: SUBSIDY STANDARDS AND VOUCHER ISSUANCE

5-II.A. OVERVIEW

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

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

For each family, LMHA determines the appropriate number of bedrooms under LMHA subsidy standards and enters the family unit size on the voucher that is issued to the family. The family unit size does not dictate the size of unit the family must actually lease, nor does it determine who within a household will share a bedroom/sleeping room.

The following requirements apply when LMHA determines family unit size:

- The subsidy standards must provide for the smallest number of bedrooms needed to house a family without overcrowding.
- The subsidy standards must be consistent with space requirements under the housing quality standards.
- The subsidy standards must be applied consistently for all families of like size and composition.
- A child who is temporarily away from the home because of placement in foster care is considered a member of the family in determining the family unit size.
- A family that consists of a pregnant woman (with no other persons) must be treated as a two-person family.
- Any live-in aide (approved by LMHA to reside in the unit to care for a family member who is disabled or is at least 50 years of age) must be counted in determining the family unit size;
- Unless a live-in-aide resides with a family, the family unit size for any family consisting of a single person must be either a zero- or one-bedroom unit, as determined under LMHA subsidy standards.

LMHA Policy

LMHA will assign one bedroom for the head of household and co-head and an additional bedroom on the voucher for each (2) members of the family only. The live-in aide and his/her family members will not be classified as family members and will only be allowed a *maximum* of one additional bedroom on the voucher.

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

Voucher Size	Persons in Household	
	(Minimum –	Maximum)
0 Bedroom	1	1
1 Bedroom	1	2
2 Bedrooms	2	4
3 Bedrooms	3	6
4 Bedrooms	4	8
5 Bedrooms	6	10

A participant may select a smaller size unit than the size listed on their Housing Choice Voucher; however, the payment standard for the smaller size unit shall be utilized.

If LMHA errs in the bedroom size designation, the family will be issued a voucher of the appropriate size.

5-II.C. EXCEPTIONS TO SUBSIDY STANDARDS

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

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

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

LMHA Policy

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

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

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

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

When a family is selected from the waiting list (or as a special admission as described in Chapter 4), or when a participant family wants to move to another unit, LMHA issues a Housing Choice Voucher, form HUD-52646. This chapter deals only with voucher issuance for applicants. For voucher issuance associated with moves of program participants, please refer to Chapter 10.

The voucher is the family's authorization to search for housing. It specifies the unit size for which the family qualifies, and includes both the date of voucher issuance and date of expiration. It contains a brief description of how the program works and explains the family obligations under the program. The voucher is evidence that LMHA has determined the family to be eligible for the program, and that LMHA expects to have money available to subsidize the family if the family finds an approvable unit. However, LMHA 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 LMHA's housing choice voucher program [Voucher, form HUD-52646]

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

LMHA Policy

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

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

LMHA Policy

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

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

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

Voucher Term [24 CFR 982.303]

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

LMHA Policy

The initial voucher term will be 120 calendar days.

LMHA may grant an extension as described in the following section.

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

LMHA has the authority to grant extensions of search time, to specify the length of an extension, and to determine the circumstances under which extensions will be granted. There is no limit on the number of extensions that LMHA can approve. Discretionary policies related to extension and expiration of search time must be described in LMHA's administrative plan [24 CFR 982.54].

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

The family must be notified in writing of LMHA's decision to approve or deny an extension. LMHA's decision to deny a request for an extension of the voucher term is not subject to informal review [24 CFR 982.554(c)(4)].

LMHA Policy

LMHA will not approve any extension of the voucher unless a written request from the family is received for the following circumstances:

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

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

Serious illness or death in the family

Other family emergency

Obstacles due to employment

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

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

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

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

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

LMHA may grant one or more extensions of the term, but the initial term plus any extensions will not exceed 120 calendar days from the initial date of issuance without an extraordinary reason.

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

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

LMHA Policy

When a Request for Tenancy Approval is received by LMHA, the term of the voucher will be suspended while LMHA processes the request. Suspension starts when the family submits a

request for tenancy approval and ends when LMHA notifies the family in writing whether the request has been approved or denied.

Expiration of Voucher Term

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

LMHA Policy

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

Within 30 business days after the expiration of the voucher term or any extension, LMHA will notify the family in writing that the voucher term has expired and that the family must reapply in order to be placed on the waiting list.

Chapter 6

INCOME AND SUBSIDY DETERMINATIONS

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

INTRODUCTION

A family's income determines eligibility for assistance and is also used to calculate the family's payment and LMHA's subsidy. LMHA will use the policies and methods described in this chapter to ensure that only eligible families receive assistance and that no family pays more or less than its obligation under the regulations. This chapter describes HUD regulations and LMHA policies related to these topics in three parts as follows:

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

PART I: ANNUAL INCOME

6-I.A. OVERVIEW

The general regulatory definition of *Annual Income* shown below is from 24 CFR 5.609.

5.609 Annual income.

(a) Annual income means all amounts, monetary or non-monetary, which:

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

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

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

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

6-I.B. HOUSEHOLD COMPOSITIONS AND INCOME

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

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

Temporarily Absent Family Members

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

LMHA Policy

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

Absent Students

LMHA Policy

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

Absences Due to Placement in Foster Care

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

LMHA Policy

If a child has been placed in foster care, LMHA will verify with the appropriate agency whether and when the child is expected to return to the home, the child will be counted as a family member.

Children who are temporarily absent due to placement in foster care who have been placed in another subsidized unit will be reviewed by the PHA on a case by case basis

Absent Head, Spouse, or Co head

LMHA Policy

An employed head, spouse, or co head absent from the unit more than 180 consecutive days will not continue to be considered a family member.

Family Members Permanently Confined for Medical Reasons

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

LMHA Policy

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

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

Joint Custody of Dependents

LMHA Policy

Dependents that are subject to a joint custody arrangement will be considered a member of the family, if they reside with the applicant or participant family 51 percent or more of the time.

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

Caretakers for a Child

LMHA Policy

If neither a parent nor a designated guardian remains in a household receiving HCV assistance, LMHA 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 LMHA 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, upon completion all eligibility processing for the caretaker. When the voucher has been transferred to the caretaker, the parent/designated guardian who left the unit is no longer considered a family member. However, if the initial parent/designated guardian who did not remain in the unit returns, the family may determine whether or not to add the parent/guardian to the household. The returning parent/designated guardian must also complete all eligibility processing prior to returning to the unit.
- (4) During any period that a caretaker is considered a visitor, the income of the caretaker is not counted in annual income and the caretaker does not qualify the family for any deductions from income.

6-I.C. ANTICIPATING ANNUAL INCOME

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

Basis of Annual Income Projection

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

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

Policy

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

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

LMHA Policy

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

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

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

In such cases, LMHA will review and analyze current data to anticipate annual income. In all cases, the family file will be documented with a clear record of the reason for the decision, and a clear audit trail will be left as to how LMHA annualized projected income.

When LMHA cannot readily anticipate income based upon current circumstances (e.g., in the case of teacher's employment, seasonal employment, unstable working hours, or suspected fraud), LMHA will review and analyze historical data for patterns of employment, paid benefits, and receipt of other income and use the results of this analysis to establish annual income. Where the anticipated income is determined by LMHA to be predictable, LMHA will use all income expected to be earned over the course of a year for the annual income amount.

Example – Calculating Anticipated Annual Income

A teacher’s assistant works nine months annually and receives \$1,300 per month. During the summer recess, the teacher’s assistant works for the Parks and Recreation Department for \$600 per month. LMHA will calculate the family’s income using the following method:

1. Calculate annual income based on anticipated changes through the year:

\$11,700 (\$1,300 x 9 months)

+1,800 (\$ 600 x 3 months)

\$13,500

LMHA would not conduct an interim re-examination at the end of the school year. In order to use this method effectively, history of income from all sources in prior years should be available.

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

Known Changes in Income

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

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

The family may present information that demonstrates that implementing a change before its effective date would create a hardship for the family. In such cases LMHA will calculate annual income using current circumstances and then require an interim reexamination when the change actually occurs. This requirement will be imposed even if LMHA’s policy on reexaminations does not require interim reexaminations for other types of changes.

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

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

Projecting Income

In HUD’s EIV webcast of January 2008, HUD made clear that LMHA is not to use EIV quarterly wages to project annual income.

6-I.D. EARNED INCOME

Types of Earned Income Included in Annual Income

Wages and Related Compensation

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

LMHA Policy

For persons who regularly receive bonuses or commissions, LMHA will verify and then average amounts received for the two preceding admission or reexamination. If less than one-year history is available, LMHA will use the information available. In either case the family may provide, and LMHA will consider, a credible justification for not using this history to anticipate future bonuses or commissions. If a new employee has not yet received any bonuses or commissions, LMHA will count only the amount estimated by the employer. The file will be documented appropriately.

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

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

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

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

LMHA Policy

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

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

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

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

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

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

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

Resident Service Stipend. Amounts received under a resident service stipend are not included in annual income. A resident service stipend is a modest amount (not to exceed \$200 per individual per month) received by a resident for performing a service for LMHA 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 LMHA's governing board. No resident may receive more than one such stipend during the same period of time [24 CFR 5.600(c)(8)(iv)].

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

LMHA Policy

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

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

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

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

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

LMHA Policy

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

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

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

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

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

Eligibility

This disallowance applies only to individuals in families already participating in the HCV program. To qualify, the family must experience an increase in annual income that is the result of one of the following events:

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

Calculation of the Disallowance

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

LMHA Policy

LMHA defines *prior income*, or *prequalifying income*, as the family member's last certified income prior to qualifying event for the EID.

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

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

LMHA Policy

The initial EID exclusion period will begin on the first of the month following the date an eligible member of a qualified family is first employed or first experiences an increase in earnings, whether the family reports the earnings or not.

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

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

LMHA Policy

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

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

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

Business Expenses

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

LMHA Policy

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

Business Expansion

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

LMHA Policy

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

Capital Indebtedness

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

LMHA Policy

Capital indebtedness is defined as the principal portion of the payment on a capital asset such as land, buildings, and machinery. This means LMHA will allow as a business expense interest, but not principal, paid on capital indebtedness.

Negative Business Income

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

Withdrawal of Cash or Assets from a Business

HUD regulations require LMHA to include in annual income the withdrawal of cash or assets from the operation of a business or profession unless the withdrawal reimburses a family member for cash or assets invested in the business by the family.

LMHA Policy

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

Co-owned Businesses

LMHA Policy

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

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

Overview

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

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

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

Per PIH Notice 2013-03, LMHA may use a family's declaration, or self-certification, of the amount of assets of less than \$5,000, and the amount of income expected to be received from those assets. The PHA's application and reexamination documentation, which is signed by all adult family members, can serve as the declaration.

General Policies

Income from Assets

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

LMHA Policy

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

Valuing Assets

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

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

LMHA Policy

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

Lump-Sum Receipts

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

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

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

Determining Actual Anticipated Income from Assets

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

Withdrawal of Cash or Liquidation of Investments

Any withdrawal of cash or assets from an investment will be included in income except to the extent the withdrawal reimburses amounts invested by the family. For example, when a family member retires, the

amount received by the family from a retirement plan is not counted as income until the family has received payments equal to the amount the family member deposited into the retirement fund.

Jointly Owned Assets

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

LMHA Policy

If an asset is owned by more than one person and any family member has unrestricted access to the asset, LMHA 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, LMHA will prorate the asset according to the percentage of ownership. If no percentage is specified or provided for by state or local law, LMHA will prorate the asset evenly among all owners.

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

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

Minimum Threshold

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

LMHA Policy

LMHA 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 \$3,000.

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

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

Separation or Divorce

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

LMHA Policy

All assets disposed of as part of a separation or divorce settlement will be considered assets for which important consideration not measurable in monetary terms has been received. In order to

qualify for this exemption, a family member must be subject to a formal separation or divorce settlement agreement established through arbitration, mediation, or court order.

Foreclosure or Bankruptcy

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

Family Declaration

LMHA Policy

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

Types of Assets

Checking and Savings Accounts

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

LMHA Policy

In determining the value of a checking account, LMHA may use the family's self-certification or may use the current balance.

In determining the value of a savings account, LMHA may use the family's self-certification or may use the current balance.

In determining the anticipated income from an interest-bearing checking or savings account, LMHA may use the family's self-certification or may multiply the value of the account by the current rate of interest paid on the account.

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

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

LMHA Policy

LMHA may use self-certification to determine the market value and anticipated income of an investment account.

If LMHA does not use self-certification in determining the market value of an investment account, LMHA will use the value of the account on the most recent investment report. How the anticipated income from an investment account will be calculated depends on whether the rate of return is known. For assets that are held in an investment account with a known rate of return (e.g., savings certificates), asset income will be calculated based on that known rate (market value multiplied by rate of earnings). When the anticipated rate of return is not known (e.g., stocks), and LMHA will calculate asset income based on the earnings for the most recent reporting period.

Equity in Real Property or Other Capital Investments

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

LMHA Policy

LMHA may determine the equity using a self-certification.

If LMHA does not use a self-certification in determining the equity, LMHA will determine market value by examining recent sales of at least three properties in the surrounding or similar neighborhood that possess comparable factors that affect market value. LMHA will first use the payoff amount for the loan (mortgage) as the unpaid balance to calculate equity. If the payoff amount is not available, LMHA will use the basic loan balance information to deduct from the market value in the equity calculation.

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

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

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

LMHA Policy

For the purposes of calculating expenses to convert to cash for real property, LMHA may use self-certification.

If LMHA does not use self-certification for the purposes of calculating expenses to case for real property, LMHA will use ten percent of the market value of the home.

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

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

LMHA Policy

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

Trusts

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

Revocable Trusts

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

Nonrevocable Trusts

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

Retirement Accounts

Company Retirement/Pension Accounts

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

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

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

IRA, Keogh, and Similar Retirement Savings Accounts

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

Personal Property

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

LMHA Policy

In determining the value of personal property held as an investment, LMHA will use the family's estimate of the value, LMHA may obtain an appraisal to confirm the value of the asset if there is reason to believe that the family's estimated value is off by \$50 or more. The family must cooperate with the appraiser, but cannot be charged any costs related to the appraisal.

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

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

LMHA Policy

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

Life Insurance

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

6-I.H. PERIODIC PAYMENTS

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

Periodic Payments Included in Annual Income

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

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

Most lump sums received as a result of delays in processing periodic payments, such as unemployment or welfare assistance, are counted as income. However, lump-sum receipts for the delayed start of periodic social security or supplemental security income (SSI) payments are not counted as income [CFR 5.609(b)(4)]. Additionally, any deferred disability benefits that are received in a lump-sum or in prospective monthly amounts from the Department of Veterans Affairs are to be excluded from annual income [FR Notice 11/24/08].

LMHA Policy

When a delayed-start payment is received other than for social security or supplemental security income (SSI) and reported during the period in which LMHA is processing an annual reexamination, LMHA will adjust the family share and LMHA subsidy retroactively for the period the payment was intended to cover. The family may pay in full any amount due or request to enter into a repayment agreement with LMHA.

Treatment of Overpayment Deductions from Social Security Benefits

LMHA must make a special calculation of annual income when the Social Security Administration (SSA) overpays an individual, resulting in a withholding or deduction from his or her benefit amount until the overpayment is paid in full. The amount and duration of the withholding will vary depending on the amount of the overpayment and the percent of the benefit rate withheld. Regardless of the amount withheld or the length of the withholding period, LMHA must use the reduced benefit amount after deducting only the amount of the overpayment withholding from the gross benefit amount [Notice PIH 2012-10].

Periodic Payments Excluded from Annual Income

Per PIH Notice, 2013-04 income that is fully excluded means the entire amount qualifies to be excluded from the annual income determination. For fully excluded income, LMHA is not required to (1) Verify the income in accordance with the HUD-prescribed verification hierarchy; (2) Document in the tenant file why third party verification was not available as required by 24 CFR 960.259(c)(i) and 24 CFR 982.516(a)(2); and (3) Report the income in Section 7 of the form HUD-50058. Income that is partially excluded means that only a certain portion of the income reported by the family qualifies to be excluded, while the remainder must be included when determining the family's annual income. For partially excluded income, LMHA is required to (1) Comply with HUD-prescribed verification requirements and all applicable regulations pertaining to the determination of annual income; and (2) Report the income in Section 7 of the form HUD-50058.

- Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the assisted family, who are unable to live alone) [24 CFR 5.609(c)(2)]. Kinship guardianship assistance payments (Kin-GAP) and other similar guardianship payments are treated the same as foster care payments and are likewise excluded from annual income [Notice PIH 2012-1].

LMHA Policy

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

- Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home [24 CFR 5.609(c)(16)]
- Amounts received under the Low-Income Home Energy Assistance Program (42 U.S.C. 1626(c)) [24 CFR 5.609(c)(17)]
- Amounts received under the ChildCareandDevelopmentBlockGrantActof1990 (42 U.S.C. 9858q) [24 CFR 5.609(c)(17)]

- Earned Income Tax Credit (EITC) refund payments (26 U.S.C. 32(j)) [24 CFR 5.609(c)(17)]. *Note:* EITC may be paid periodically if the family elects to receive the amount due as part of payroll payments from an employer.
- Lump sums received as a result of delays in processing Social Security and SSI payments (see section 6-I.J.) [24 CFR 5.609(b)(4)].
- Lump-sums or prospective monthly amounts received as deferred disability benefits from the Department of Veterans Affairs (VA) [FR Notice 11/24/08].

6-I.I. PAYMENTS IN LIEU OF EARNINGS

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

6-I.J. WELFARE ASSISTANCE

Overview

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

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

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

Covered Families

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

Imputed Income

When a welfare agency imposes a sanction that reduces a family’s welfare income because the family commits fraud or fails to comply with the agency’s economic self-sufficiency program or work activities requirement, LMHA must include in annual income “imputed” welfare income. LMHA must request that the welfare agency inform LMHA when the benefits of an HCV participant family are reduced. The imputed income is the amount the family would have received if the family had not been sanctioned.

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

activities requirements, or (3) because a family member has not complied with other welfare agency requirements, or (4) for inadvertent overpayment [24 CFR 5.615(b)(2)].

Offsets

The amount of the imputed income is offset by the amount of additional income the family begins to receive after the sanction is imposed. When the additional income equals or exceeds the imputed welfare income, the imputed income is reduced to zero [24 CFR 5.615(c)(4)].

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

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

Alimony and Child Support

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

LMHA Policy

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

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

Regular Contributions or Gifts

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

LMHA Policy

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

Non-monetary contributions will be valued at the cost of purchasing the items, as determined by LMHA. For contributions that may vary from month to month (e.g., utility payments), LMHA will include an average amount based upon past history. The family will be required to provide a copy of paid bills upon LMHA request.

6-I.L. STUDENT FINANCIAL ASSISTANCE [24 CFR 5.609(b)(9); PIH 2015-21; FR 3/8/16]

HUD has become aware of many institutions of higher education moving from a traditional tuition-only structure to a new tuition and fee structure. Fees often include, but are not limited to, student service fees, student association fees, student activities fees, and laboratory fees. HUD believes the inclusion of many of these required fees within the definition of tuition will increase opportunities for its participants to

further their education. This position was reinforced with the inclusion of the language (in bold below) of section 215(b) in the Fiscal Year 2012 appropriations. The FY 2012 appropriations require that the amount of any financial assistance an individual receives in excess of amounts received for tuition and “other required fees and charges” be considered when determining an applicant’s or participant’s annual income. For purposes of section 8 programs only see section 215 (b) below.

SEC. 215. (b) For purposes of determining the eligibility of a person to receive assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f), any financial assistance (in excess of amounts received for tuition and any other required fees and charges) that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), from private sources, or an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except for a person over the age of 23 with dependent children.

Student Financial Assistance Included in Annual Income [24 CFR 5.609(b)(9); PIH 2015-21 and FR 3/8/16]

The regulation requiring the inclusion of certain student financial assistance applies only to students who satisfy all of the following conditions:

- They are enrolled in an institution of higher education, as defined under the Higher Education Act (HEA) of 1965.
- They are seeking or receiving Section 8 assistance on their own—that is, apart from their parents—through the HCV program, the project-based certificate program, the project-based voucher program, or the moderate rehabilitation program.
- They are under 24 years of age **OR** they have no dependent children.

The Department of Education defines tuition as the amount of money charged to students for instructional services which may be charged per term, per course, or per credit. The Department of Education further defines tuition and fees as the amount of tuition and required fees covering a full academic year most frequently charged to students. These values represent what a typical student would be charged and may not be the same for all students at an institution. If tuition is charged on a per-credit-hour basis, the average fulltime credit hour load for an entire academic year is used to estimate average tuition. Required fees include all fixed sum charges that are required of a large proportion of all students. The student who does not pay the charges is an exception. Examples of required fees include, but are not limited to, writing and science lab fees and fees specific to the student’s major or program (i.e., nursing program).

Expenses related to attending an institution of higher education must not be included as tuition. Examples of these expenses include, but are not limited to, room and board, books, supplies, meal plans, transportation and parking, student health insurance plans, and other non-fixed sum charges.

(9) For section 8 programs only and as provided in [24CFR5.612](#), any financial assistance, in excess of amounts received for tuition and any other required fees and charges, that an individual receives under the Higher Education Act of 1965 ([20U.S.C.1001 et seq.](#)), from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965 ([20U.S.C.1002](#))), shall be considered income to that individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. For purposes of this paragraph, “financial assistance” does not include loan proceeds for the purpose of determining income.

LMHA Policy

In implementing the amended definition of tuition, for section 8 programs only, LMHA must include amounts of financial assistance an individual receives in excess of tuition and other required fees and charges when determining annual income in accordance with 24 CFR 5.609(b)(9).

Under other programs, such as LIHP, the full amount of financial assistance a student receives while participating in the program continues to be excluded from the program participant's annual income pursuant to 24 CFR § 5.609(c)(6).

Example:

Kim, a 22 year old, married, participant in a Section 8 program is enrolled in a nursing program at her local community college. She is receiving \$7,000 in financial assistance to cover the full cost of tuition and fees of \$6,000 for the academic year. The \$6,000 includes:

- \$2,500 in tuition per semester (total \$5,000) *plus*
- \$500 in individual fees (total \$1,000)—athletic fee, writing laboratory fee, student center fee, science laboratory fee, technology fee—charged to every student per semester.

In this example, the excess \$1,000 (\$7,000 - \$6,000) Kim received in financial assistance will be included in her annual income in accordance with 24 CFR 5.609(b)(9).

Student Financial Assistance Excluded from Annual Income [24 CFR 5.609(c)(6)]

Any student financial assistance not subject to inclusion under 24 CFR 5.609(b)(9) is fully excluded from annual income under 24 CFR 5.609(c)(6), whether it is paid directly to the student or to the educational institution the student is attending. This includes any financial assistance received by:

- Students residing with parents who are seeking or receiving Section 8 assistance
- Students who are enrolled in an educational institution that does **not** meet the 1965 HEA definition of *institution of higher education*
- Students who are over 23 **AND** have at least one dependent child, as defined in section 3-II.E
- Students who are receiving financial assistance through a governmental program not authorized under the 1965 HEA.

Per PIH Notice, 2013-04 income that is fully excluded means the entire amount qualifies to be excluded from the annual income determination. For fully excluded income, the PHA is not required to (1) Verify the income in accordance with the HUD-prescribed verification hierarchy; (2) Document in the tenant file why third party verification was not available as required by 24 CFR 960.259(c)(i) and 24 CFR 982.516(a)(2); and (3) Report the income in Section 7 of the form HUD-50058.

6-I.M. ADDITIONAL EXCLUSIONS FROM ANNUAL INCOME

Other exclusions contained in 24 CFR 5.609(c) and updated by FR Notice 5/20/14 that have not been discussed earlier in this chapter include the following:

- Reimbursement of medical expenses [24 CFR 5.609(c)(4)]
- Amounts received by participants in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred and which are made solely to allow participation in a specific program [24 CFR 5.609(c)(8)(iii)]

- Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS) [(24 CFR 5.609(c)(8)(ii)]
- Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era [24 CFR 5.609(c)(10)]
- Adoption assistance payments in excess of \$480 per adopted child [24 CFR 5.609(c)(12)]
- Refunds or rebates on property taxes paid on the dwelling unit [24 CFR 5.609(c)(15)]
- Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home [24 CFR 5.609(c)(16)]
- Amounts specifically excluded by any other federal statute [24 CFR 5.609(c)(17) FR Notice 5/20/14].. HUD publishes an updated list of these exclusions periodically. It includes:
 - (a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 (b))
 - (b) Benefits under Section 1780 of the School Lunch Act and Child Nutrition Act of 1966, including WIC
 - (c) Payments to volunteers under the Domestic Volunteer Services Act of 1973 (42 U.S.C. 5044(g), 5058)
 - (d) Payments received under the Alaska Native Claims Settlement Act (43 U.S.C. 1626(c))
 - (e) Income derived from certain submarginal land of the United States that is held in trust for certain Indian tribes (25 U.S.C. 459e)
 - (f) Payments or allowances made under the Department of Health and Human Services' Low-Income Home Energy Assistance Program (42 U.S.C. 8624(f))
 - (g) Payment received under programs funded in whole or in part under the Workforce Investment Act of 1998 (29 U.S.C. 2931)
 - (h) Deferred disability benefits from the Department of Veterans Affairs, whether received as a lump sum or in monthly prospective amounts
 - (i) Income derived from the disposition of funds to the Grand River Band of Ottawa Indians (Pub. L. 94-540, 90 Stat. 2503-04)
 - (j) Payments, funds, or distributions authorized, established, or directed by the Seneca Nation Settlement Act of 1990 (25 U.S.C. 1774f(b))
 - (k) A lump sum or periodic payment received by an individual Indian pursuant to the Class Action Settlement Agreement in the United States District Court case entitled Elouise Cobel et al. v. Kalzaer et al., for a period of one year from the time of receipt of that payment as provided in the Claims Resolution Act of 2010
 - (l) The first \$2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first \$2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408)

- (m) Payments received from programs funded under Title V of the Older Americans Act of 1985 (42 U.S.C. 3056(f))
- (n) Payments received on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in *In Re Agent*-product liability litigation, M.D.L. No. 381 (E.D.N.Y.)
- (o) Payments received under 38 U.S.C. 1833 © 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
- (p) Payments received under the Maine Indian Claims Settlement Act of 1980 (25 U.S.C. 1721)
- (q) 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)
- (r) Earned income tax credit (EITC) refund payments received on or after January 1, 1991 (26 U.S.C. 32(j))
- (s) Payments by the Indian Claims Commission to the Confederated Tribes and Bands of Yakima Indian Nation or the Apache Tribe of Mescalero Reservation (Pub. L. 95-433)
- (t) Amounts of scholarships funded under Title IV of the Higher Education Act of 1965 j, including awards under federal work-study programs or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu). For Section 8 programs, the exception found in § 237 of Public Law 109-249 applies and requires that the amount of financial assistance in excess of tuition and mandatory fees shall be considered income in accordance with the provisions codified at 24 CFR 5.609(b)(9), except for those person with disabilities as defined by 42 U.S.C. 1437a(b)(3)(E) (Pub. L. 109-249) (See Section 6-I.L. for exceptions.)
- (u) 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)(v) Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931)
- (v) Allowances, earnings and payments to individuals participating in programs under the Workforce Investment Act of 1998 (29 U.S.C. 2931)
- (w) Any amounts in an "individual development account" as provided by the Assets for Independence Act, as amended in 2002
- (x) Payments made from the proceeds of Indian tribal trust cases as described in Notice PIH 2013-30, "Exclusion from Income of Payments under Recent Tribal Trust Settlements" (25 U.S.C. 117b(a))
- (y) 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

- (z) Compensation received by or on behalf of a veteran for service-connected disability, death, dependency, or indemnity compensation as provided by an amendment by the Indian Veterans Housing Opportunity Act of 2010 (Pub. L. 111-269; 25 U.S.C. 4103(9)) to the definition of income applicable to program authorized under the Native American Housing Assistance and Self-Determination Act (NAHASDA) (25 U.S.C. 4101 *et seq.*) and administered by the Office of Native American Programs.

PART II: ADJUSTED INCOME

6-II.A. INTRODUCTION

Overview

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

5.611(a) Mandatory Deductions. In determining adjusted income, the responsible entity [LMHA] must deduct the following amounts from annual income:

- (1) \$480 for each dependent;
- (2) \$400 for any elderly family or disabled family;
- (3) The sum of the following, to the extent the sum exceeds three percent of annual income:
 - (i) Unreimbursed medical expenses of any elderly family or disabled family;
 - (ii) Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with disabilities, to the extent necessary to enable any member of the family (including the member who is a person with disabilities) to be employed. This deduction may not exceed the earned income received by family members who are 18 years of age or older and who are able to work because of such attendant care or auxiliary apparatus; and
- (4) Any reasonable child care expenses necessary to enable a member of the family to be employed, further his or her education or seek employment.

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

Anticipating Expenses

LMHA Policy

Generally, LMHA will use current circumstances to anticipate expenses. When possible, for costs that are expected to fluctuate during the year (e.g., child care during school and nonschool periods and cyclical medical expenses), LMHA will estimate costs based on historic data and known future costs.

If a family has an accumulated debt for medical or disability assistance expenses, LMHA will include as an eligible expense the portion of the expense that the family expects to pay during the period for which the income determination is being made. However, amounts previously deducted will not be allowed even if the amounts were not paid as expected in a preceding period. LMHA may require the family to provide documentation of payments made in the preceding year.

6-II.B. DEPENDENT DEDUCTION

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

6-II.C. ELDERLY OR DISABLED FAMILY DEDUCTION

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

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

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

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

Definition of *Medical Expenses*

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

LMHA Policy

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

Summary of Allowable Medical Expenses from IRS Publication 502	
Services of medical professionals	Substance abuse treatment programs
Surgery and medical procedures that are necessary, legal, non-cosmetic	Psychiatric treatment
Services of medical facilities	Ambulance services and some costs of transportation related to medical expenses
Hospitalization, long-term care, and in-home nursing services	The cost and care of necessary equipment related to a medical condition (e.g., eyeglasses/lenses, hearing aids, crutches, and artificial teeth)
Prescription medicines and insulin, but <u>not</u> nonprescription medicines even if recommended by a doctor	Reasonable cost and continuing care of necessary service animals not to exceed the income of adult member claiming the expense.
Improvements to housing directly related to medical needs (e.g., ramps for a wheel chair, handrails)	Medical insurance premiums or the cost of a health maintenance organization (HMO)

Note: This chart provides a summary of eligible medical expenses only. Detailed information is provided in IRS Publication 502. Medical expenses are considered only to the extent they are not reimbursed by insurance or some other source.

Families That Qualify for Both Medical and Disability Assistance Expenses LMHA

Policy

This policy applies only to families in which the head, spouse, or co head is 62 or older, a disabled family, or when a family also includes a person with disabilities that qualifies for a disability expense.

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

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

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

Earned Income Limit on the Disability Assistance Expense Deduction

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

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

LMHA Policy

The family must identify the family members enabled to work as a result of the disability assistance expenses. In evaluating the family’s request, LMHA 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 LMHA determines the disability assistance expenses enable more than one family member to work, the expenses will be capped by the sum of the family members’ income.

Eligible Disability Expenses

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

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

Eligible Auxiliary Apparatus

LMHA Policy

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

Eligible Attendant Care

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

LMHA Policy

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

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

If the care attendant also provides other services to the family, LMHA will prorate the cost and allow only that portion of the expenses attributable to attendant care that enables a family member to work. For example, if the care provider also cares for a child who is not the person with disabilities, the cost of care must be prorated. Unless otherwise specified by the care provider, the calculation will be based upon the number of hours spent in each activity and/or the number of persons under care.

Payments to Family Members

No disability assistance expenses may be deducted for payments to a member of an assisted family [24 CFR 5.603(b)]. However, expenses paid to a relative who is not a member of the assisted family may be deducted if they are not reimbursed by an outside source.

Necessary and Reasonable Expenses

The family determines the type of care or auxiliary apparatus to be provided and must describe how the expenses enable a family member to work. The family must certify that the disability assistance expenses are necessary and are not paid or reimbursed by any other source.

LMHA Policy

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

Families That Qualify for Both Medical and Disability Assistance Expenses

LMHA Policy

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

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

6-II.F. CHILD CARE EXPENSE DEDUCTION

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

Clarifying the Meaning of *Child* for This Deduction

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

Qualifying for the Deduction

Determining Who Is Enabled to Pursue an Eligible Activity

LMHA Policy

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

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

Seeking Work

LMHA Policy

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

Furthering Education

LMHA Policy

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

Being Gainfully Employed

LMHA Policy

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

Earned Income Limit on Child Care Expense Deduction

When a family member looks for work or furthers his or her education, the cap on the amount that may be deducted for childcare is established a reasonable amount as determined by LMHA. However, when childcare enables a family member to work, the deduction is capped by "the amount of employment income that is included in annual income" [24 CFR 5.603(b)].

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

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

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

LMHA Policy

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

Eligible Child Care Expenses

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

Allowable Child Care Activities

LMHA Policy

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

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

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

Necessary and Reasonable Costs

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

LMHA Policy

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

To establish the reasonableness of childcare costs, LMHA will use the schedule of childcare costs from either the local welfare agency or from qualified professional services in the area. Families may present, and LMHA will consider, justification for costs that exceed typical costs in the area.

PART III: CALCULATING FAMILY SHARE AND LMHA SUBSIDY

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

TTP Formula [24 CFR 5.628]

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

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

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

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

Welfare Rent [24 CFR 5.628]

LMHA Policy

Welfare rent does not apply in this locality.

Minimum Rent [24 CFR 5.630]

LMHA Policy

The minimum rent for this locality is \$50.00.

Family Share [24 CFR 982.305(a)(5)]

If a family chooses a unit with a gross rent (rent to owner plus an allowance for tenant-paid utilities) that exceeds LMHA's applicable payment standard: (1) the family will pay more than the TTP, and (2) at initial occupancy LMHA may not approve the tenancy if it would require the family share to exceed 40 percent of the family's monthly adjusted income. The income used for this determination must have been verified no earlier than 60 days before the family's voucher was issued. (For a discussion of the application of payment standards, see section 6-III.C.)

LMHA Subsidy [24CFR982.505(b)]

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

Utility Reimbursement [24 CFR 982.514(b)]

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

LMHA Policy

LMHA will make utility reimbursements to the family.

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

Overview

LMHA establishes a minimum rent greater than zero; therefore, LMHA must grant an exemption from the minimum rent if a family is unable to pay the minimum rent because of financial hardship.

The financial hardship exemption applies only to families required to pay the minimum rent. If a family's TTP is higher than the minimum rent, the family is not eligible for a hardship exemption. If LMHA determines that a hardship exists, the family share is the highest of the remaining components of the family's calculated TTP.

HUD-Defined Financial Hardship

Financial hardship includes the following situations:

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

LMHA Policy

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

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

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

LMHA Policy

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

- (3) Family income has decreased because of changed family circumstances, including the loss of employment.
- (4) A death has occurred in the family.

LMHA Policy

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

(5) The family has experienced other circumstances determined by LMHA.

LMHA Policy

LMHA has not established any additional hardship criteria.

Implementation of Hardship Exemption

Determination of Hardship

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

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

LMHA Policy

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

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

Example: Impact of Minimum Rent Exemption	
Family Share – No Hardship	Family Share – With Hardship
\$0 30% of monthly adjusted income	\$0 30% of monthly adjusted income
\$15 10% of monthly gross income	\$15 10% of monthly gross income
N/A Welfare rent	N/A Welfare rent
\$50 Minimum rent	\$50 Minimum rent
Minimum rent applies. TTP = \$50	Hardship exemption granted. TTP = \$15

LMHA Policy

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

LMHA will make the determination of hardship within 30 business days.

No Financial Hardship

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

LMHA Policy

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

Temporary Hardship

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

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

LMHA Policy

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

Long-Term Hardship

If LMHA determines that the financial hardship is long-term, LMHA must exempt the family from the minimum rent requirement for so long as the hardship continues. The exemption will apply from the first of the month following the family's request until the end of the qualifying hardship. When the financial hardship has been determined to be long-term, the family is not required to repay the minimum rent.

LMHA Policy

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

- (1) At an interim or annual reexamination, the family's calculated TTP is greater than the minimum rent.
- (2) For hardship conditions based on loss of income, the hardship condition will continue to be recognized until new sources of income are received that are at least equal to the amount lost. For example, if a hardship is approved because a family no longer receives a \$60/month child support payment, the hardship will continue to exist until the family receives at least \$60/month in income from another source or once again begins to receive the child support.
- (3) For hardship conditions based upon hardship-related expenses, the minimum rent exemption will continue to be recognized until the cumulative amount exempted is equal to the expense incurred.

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

Overview

LMHA's schedule of payment standards is used to calculate housing assistance payments for HCV families. This section covers the application of LMHA's payment standards. The establishment and revision of LMHA's payment standard schedule are covered in Chapter 16.

Payment standard is defined as "the maximum monthly assistance payment for a family assisted in the voucher program (before deducting the total tenant payment by the family)" [24 CFR 982.4(b)].

The payment standard for a family is the lower of (1) the payment standard for the family unit size, which is defined as the appropriate number of bedrooms for the family under LMHA's subsidy standards [24 CFR 982.4(b)], or (2) the payment standard for the size of the dwelling unit rented by the family.

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

LMHA is required to pay a monthly housing assistance payment (HAP) for a family that is the lower of (1) the payment standard for the family minus the family's TTP or (2) the gross rent for the family's unit minus the TTP.

If during the term of the HAP contract for a family's unit, the owner lowers the rent, LMHA will recalculate the HAP using the lower of the initial payment standard or the gross rent for the unit [HCV GB, p. 7-8].

Changes in Payment Standards

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

Decreases

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

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

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

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

Increases

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

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

Changes in Family Unit Size

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

Reasonable Accommodation

If a family requires a higher payment standard as a reasonable accommodation for a family member who is a person with disabilities, LMHA is allowed to establish a payment standard of not more than 120 percent of the current and effective fair market rent (FMR) without HUD approval as a reasonable accommodation per PIH notice 2013-03.

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

Overview

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

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

Reasonable Accommodation

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

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

Utility Allowance Revisions

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

LMHA Policy

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

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

HUD regulations prohibit assistance to ineligible family members. A *mixed family* is one that includes at least one U.S. citizen or eligible immigrant and any number of ineligible family members. LMHA must prorate the assistance provided to a mixed family. LMHA will first determine assistance as if all family members were eligible and then prorate the assistance based upon the percentage of family members that actually are eligible. For example, if LMHA subsidy for a family is calculated at \$500 and two of four family members are ineligible, LMHA subsidy would be reduced to \$250.

EXHIBIT 6-1: ANNUAL INCOME INCLUSIONS

24 CFR 5.609

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

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

(b) Annual income includes, but is not limited to:

- (1) The full amount, before any payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;
- (2) The net income from the operation of a business or profession. Expenditures for business expansion or amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation of assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations. Any withdrawal of cash or assets from the operation of a business or profession will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the family;

(3) Interest, dividends, and other net income of any kind from real or personal property. Expenditures for amortization of capital indebtedness shall not be used as deductions in determining net income. An allowance for depreciation is permitted only as authorized in paragraph (b)(2) of this section. Any withdrawal of cash or assets from an investment will be included in income, except to the extent the withdrawal is reimbursement of cash or assets invested by the family. Where the family has net family assets in excess of \$5,000, annual income shall include the greater of the actual income derived from all net family assets or a percentage of the value of such assets based on the current passbook savings rate, as determined by HUD;

(4) The full amount of periodic amounts received from Social Security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in paragraph (c)(14) of this section);

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided in paragraph (c)(3) of this section);

(6) Welfare assistance payments.

(i) Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income only to the extent such payments:

(A) Qualify as assistance under the TANF program definition at 45 CFR 260.31¹; and

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

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

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

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

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

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

(9) For Section 8 programs only and as provided in 24 CFR 5.612, any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965, from private sources, or from an institution of higher education, shall be considered income to the individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. For purposes of this paragraph, "financial assistance" does not include loan proceeds for the purpose of determining income.

(10) The amount of the "housing" portion of an athletic scholarship.

¹ Text of 45 CFR 260.31 follows.

<p style="text-align: center;">HHS DEFINITION OF "ASSISTANCE"</p>
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**45 CFR: GENERAL TEMPORARY
ASSISTANCE FOR NEEDY FAMILIES**

**260.31 What does the term "assistance"
mean?**

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

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

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

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

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

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

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

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

(iii) Will not extend beyond four months.

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

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

(4) Refundable earned income tax credits; (5) Contributions to, and distributions from, Individual Development Accounts;

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

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

EXHIBIT 6-2: ANNUAL INCOME EXCLUSIONS

24 CFR 5.609

(c) Annual income does not include the following:

- (1) Income from employment of children (including foster children) under the age of 18 years;
- (2) Payments received for the care of foster children or foster adults (usually persons with disabilities, unrelated to the tenant family, who are unable to live alone);
- (3) Lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses (except as provided in paragraph (b)(5) of this section);
- (4) Amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
- (5) Income of a live-in aide, as defined in Sec. 5.403;
- (6) Subject to paragraph (b) (9) of the inclusions, the full amount of student financial assistance paid directly to the student or to the educational institution;
- (7) The special pay to a family member serving in the Armed Forces who is exposed to hostile fire;
- (8) (i) Amounts received under training programs funded by HUD;
(ii) Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

- (iii) Amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;
- (iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed \$200 per month) received by a resident for performing a service for LMHA 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 LMHA's governing board. No resident may receive more than one such stipend during the same period of time;
- (v) Incremental earnings and benefits resulting to any family member from participation in qualifying State or local employment training programs (including training programs not affiliated with a local government) and training of a family member as resident management staff. Amounts excluded by this provision must be received under employment training programs with clearly defined goals and objectives, and are excluded only for the period during which the family member participates in the employment training program;
- (9) Temporary, nonrecurring or sporadic income (including gifts);
- (10) Reparation payments paid by a foreign government pursuant to claims filed under the

laws of that government by persons who were persecuted during the Nazi era;

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

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

(13) [Reserved]

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

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

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

(17) Amounts specifically excluded by any other Federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24

CFR 5.609(c) apply. A notice will be published in the Federal Register and distributed to PHAs and housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary. [See the following chart for a list of benefits that qualify for this exclusion.]

Sources of Income Excluded by Federal Statute from Consideration as Income for Purposes of Determining Eligibility or Benefits
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a) The value of the allotment provided to an eligible household under the Food Stamp Act of 1977 (7 U.S.C. 2017 (b));

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

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

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

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

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

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

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

i) Except as indicated in the ineligible student provisions of included income, the amounts of scholarships funded under title IV of the Higher Education Act of 1965, including awards under federal work-study program or under the Bureau of Indian Affairs student assistance programs (20 U.S.C. 1087uu);

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

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

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

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

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

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

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

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

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

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

t) The Medicare incentive allowance

EXHIBIT 6-3: TREATMENT OF FAMILY ASSETS

24 CFR 5.603(b) Net Family Assets

(1) Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded.

(2) In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining annual income under Sec. 5.609.

(3) In determining net family assets, PHAs or owners, as applicable, shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefor. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

(4) For purposes of determining annual income under Sec. 5.609, the term "net family assets" does not include the value of a home currently being purchased with assistance under part 982, subpart M of this title. This exclusion is limited to the first 10 years after the purchase date of the home.

EXHIBIT 6-4: EARNED INCOME DISALLOWANCE FOR PERSONS WITH DISABILITIES

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

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

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

Disallowance. Exclusion from annual income.

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

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

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

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

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

(c) Disallowance of increase in annual income—

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

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

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

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

EXHIBIT 6-5: THE EFFECT OF WELFARE BENEFIT REDUCTION

24 CFR 5.615

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

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

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

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

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

Imputed welfare income. The amount of annual income not actually received by a family, as a result of a specified welfare benefit reduction, that is nonetheless included in the family's annual income for purposes of determining rent.

Specified welfare benefit reduction.

(1) A reduction of welfare benefits by the welfare agency, in whole or in part, for a family member, as determined by the welfare agency, because of fraud by a family member in connection with the welfare program; or because of welfare agency sanction against a family member for noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

(2) "Specified welfare benefit reduction" does not include a reduction or termination of welfare benefits by the welfare agency:

(i) at expiration of a lifetime or other time limit on the payment of welfare benefits;

(ii) because a family member is not able to obtain employment, even though the family member has complied with welfare agency economic self-sufficiency or work activities requirements; or

(iii) because a family member has not complied with other welfare agency requirements.

(c) Imputed welfare income.

(1) A family's annual income includes the amount of imputed welfare income (because of a specified welfare benefits reduction, as specified in notice to the PHA by the welfare agency), plus the total amount of other annual income as determined in accordance with Sec. 5.609.

(2) At the request of the PHA, the welfare agency will inform the PHA in writing of the amount and term of any specified welfare benefit reduction for a family member, and the reason for such reduction, and will also inform the PHA of any subsequent changes in the term or amount of such specified welfare benefit reduction. The PHA will use this information to determine the amount of imputed welfare income for a family.

(3) A family's annual income includes imputed welfare income in family annual income, as determined at the PHA's interim or regular reexamination of family income and composition, during the term of the welfare benefits reduction (as specified in information provided to the PHA by the welfare agency).

(4) The amount of the imputed welfare income is offset by the amount of additional income a family receives that commences after the time the sanction was imposed. When such additional income from other sources is at least equal to the imputed

(5) The PHA may not include imputed welfare income in annual income if the family was not an assisted resident at the time of sanction.

(d) Review of PHA decision.

(1) Public housing. If a public housing tenant claims that the PHA has not correctly calculated the amount of imputed welfare income in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the tenant written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. The PHA notice shall also state that if the tenant does not agree with the PHA determination, the tenant may request a grievance hearing in accordance with part 966, subpart B of this title to review the PHA determination. The tenant is not required to pay an escrow deposit pursuant to Sec. 966.55(e) for the portion of tenant rent attributable to the imputed welfare income in order to obtain a grievance hearing on the PHA determination.

(2) Section 8 participant. A participant in the Section 8 tenant-based assistance program may request an informal hearing, in accordance with Sec. 982.555 of this title, to review the PHA determination of the amount of imputed welfare income that must be included in the family's annual income in accordance with this section. If the family claims that such amount is not correctly calculated in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the family written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. Such notice shall also state that if the family does not agree with the PHA determination, the family may request an informal hearing on the determination under the PHA hearing procedure.

(e) PHA relation with welfare agency.

(1) The PHA must ask welfare agencies to inform the PHA of any specified welfare benefits reduction for a family member, the reason for such reduction, the term of any such reduction, and any subsequent welfare agency determination affecting the amount or term of a specified welfare benefits reduction. If the welfare agency determines a specified welfare benefits reduction for a family member, and gives the PHA written notice of such reduction, the family's annual incomes shall include the imputed welfare income because of the specified welfare benefits reduction.

(2) The PHA is responsible for determining the amount of imputed welfare income that is included in the family's annual income as a result of a specified welfare benefits reduction as determined by the welfare agency, and specified in the notice by the welfare agency to the PHA. However, the PHA is not responsible for determining whether a reduction of welfare benefits by the welfare agency was correctly determined by the welfare agency in accordance with welfare program requirements and procedures, nor for providing the opportunity for review or hearing on such welfare agency determinations.

(3) Such welfare agency determinations are the responsibility of the welfare agency, and the family may seek appeal of such determinations through the welfare agency's normal due process procedures. The PHA shall be entitled to rely on the welfare agency notice to the PHA of the welfare agency's determination of a specified welfare benefits reduction.

Chapter 7

VERIFICATION

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

INTRODUCTION

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

LMHA will follow the verification guidance provided by HUD in Notice PIH 2010-19 and any subsequent guidance issued by HUD. This chapter summarizes those requirements and provides supplementary LMHA policies.

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

Verification policies, rules and procedures will be modified as needed to accommodate persons with disabilities. All information obtained through the verification process will be handled in accordance with the records management policies of LMHA.

PART I. GENERAL VERIFICATION REQUIREMENTS

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

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

Consent Forms

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

Penalties for Failing to Consent [24 CFR 5.232]

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

7-I.B. OVERVIEW OF VERIFICATION REQUIREMENTS

HUD's Verification Hierarchy

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

LMHA Policy

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

- Upfront Income Verification (UIV) using HUD's Enterprise Income Verification (EIV) system
- Upfront Income Verification (UIV) using a non-HUD system
- Written Third Party Verification (may be provided by applicant or participant)*
- Written third Party Verification Form
- Oral Third Party Verification
- Self-Certification

** PIH Notice 2013-03 allows PHAs to allow households to self-certify as to having assets of less than \$5,000 in lieu of moving through the hierarchy.*

Requirements for Acceptable Documents

LMHA Policy

Any documents used for verification must be the original (not photocopies) and generally must be dated within 60 days of the date they are provided to LMHA. The documents must not be damaged, altered or in any way illegible.

Print-outs from web pages are considered original documents.

LMHA staff member who views the original document must make a photocopy, annotate the copy with the name of the person who provided the document and the date the original was viewed, and sign the copy.

File Documentation

LMHA must document in the file how the figures used in income and rent calculations were determined. All verification attempts, information obtained, and decisions reached during the verification process will be recorded in the family's file in sufficient detail to demonstrate that LMHA has followed all of the verification policies set forth in this plan. The record should be sufficient to enable a staff member or HUD reviewer to understand the process followed and conclusions reached.

When LMHA is unable to obtain 3rd party verification, LMHA will document in the family file the reason that third-party verification was not available [24 CFR 960.259(c)(1); Notice PIH 2010-19].

7-I.C. UP-FRONT INCOME VERIFICATION (UIV)

Up-front income verification (UIV) refers to LMHA's use of the verification tools available from independent sources that maintain computerized information about earnings and benefits. EIV will be used to the extent that these systems are available to LMHA.

There may be legitimate differences between the information provided by the family and UIV-generated information. If the family disputes the accuracy of UIV data, no adverse action can be taken until LMHA has independently verified the UIV information and the family has been granted an opportunity to contest any adverse findings through the informal review/hearing process of LMHA.

See Chapter 6 for LMHA's policy on the use of UIV/EIV to project annual income.

Upfront Income Verification Using HUD's Enterprise Income Verification (EIV) System (Mandatory)

HUD's EIV system contains data showing earned income, unemployment benefits, social security benefits, and SSI benefits for participant families. HUD requires LMHA to use the EIV system in its entirety, including additional requirements outlined in subsequent PIH notices. The following policies apply to the use of HUD's EIV system. LMHA must restrict access to and safeguard EIV data in accordance with HUD guidance on security procedures.

EIV Income Reports

LMHA Policy

LMHA will obtain EIV income reports for annual reexaminations on a monthly basis. Reports will be generated as part of the reexamination process.

Income reports will be compared to family-provided information as part of the annual reexamination process. Income reports may be used in the calculation of annual income, as described in Chapter 6-I.C. Income reports may also be used to meet the regulatory requirement

for third party verification, as described above. Policies for resolving discrepancies between income reports and family-provided information will be resolved as described in Chapter 6-I.C. and in this chapter.

Income reports will be used in interim reexaminations and other circumstances deemed appropriate by LMHA to identify any discrepancies between reported income and income shown in the EIV system, and as necessary to verify and calculate earned income, unemployment benefits, Social Security and/or SSI benefits. EIV will also be used to verify that families claiming zero income are not receiving income from any of these sources at annual reexamination.

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

When LMHA determines through income reports and third-party verification that a family has concealed or under-reported income, corrective action will be taken pursuant to the policies in Chapter 14, Program Integrity.

EIV Discrepancy Reports

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

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

Income discrepancies may be identified through use of the EIV “Income Discrepancy Report” or by review of the discrepancy tab for the individual family.

LMHA Policy

LMHA will generate the Income Discrepancy Report at least once every 6 months.

When LMHA determines that a participant appearing on the Income Discrepancy Report has not concealed or under-reported income, the participant’s name will be placed on a list of “false positive” reviews. To avoid multiple reviews in this situation, participants appearing on this list will be eliminated from discrepancy processing until a subsequent interim or annual reexamination has been completed.

LMHA will review the EIV discrepancy tab during processing of annual and interim reexaminations.

When it appears that a family may have concealed or under-reported income, LMHA will request written third-party verification of the income in question.

When LMHA determines through file review and third-party verification that a family has concealed or under-reported income, corrective action will be taken pursuant to the policies in Chapter 14, Program Integrity.

EIV Identity Verification

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

LMHA is required to 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.

LMHA Policy

LMHA will identify participants whose identity verification has failed by reviewing EIV's *Identity Verification Report* on a monthly basis.

LMHA will attempt to resolve PIC/SSA discrepancies by obtaining appropriate documentation from the participant. When LMHA determines that discrepancies exist due to LMHA errors such as spelling errors or incorrect birth dates, the errors will be corrected promptly.

Upfront Income Verification Using Non-HUD Systems (Optional)

In addition to mandatory use of the EIV system, HUD encourages LMHA to utilize other upfront verification sources.

LMHA Policy

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

- HUD's EIV system
- The Work Number

7-I.D. THIRD-PARTY WRITTEN AND ORAL VERIFICATION

HUD's current verification hierarchy defines two types of written third-party verification. The more preferable form, "written third-party verification," consists of an original document generated by a third-party source, which may be received directly from a third-party source or provided to LMHA by the family. If written third-party verification is not available, LMHA must attempt to obtain a "written third-party verification form." This is a standardized form used to collect information from a third party.

Written Third-Party Verification [Notice PIH 2010-19]

Written third-party verification documents must be original and authentic and may be supplied by the family or received from a third-party source.

Examples of acceptable tenant-provided documents include, but are not limited to: pay stubs, payroll summary reports, employer notice or letters of hire and termination, SSA benefit verification letters, bank statements, child support payment stubs, welfare benefit letters and/or printouts, and unemployment monetary benefit notices.

LMHA is required to obtain, at minimum, two current and consecutive pay stubs for determining annual income from wages.

LMHA may reject documentation provided by the family if the document is not an original, if the document appears to be forged, or if the document is altered, mutilated, or illegible.

LMHA Policy

Third-party documents provided by the family must be dated within 60 calendar days of LMHA request date.

If LMHA determines that third-party documents provided by the family are not acceptable, LMHA will explain the reason to the family and request additional documentation.

As verification of earned income, LMHA will request pay stubs covering the 60-day period prior to LMHA's request.

Written Third-Party Verification Form

When upfront verification is not available and the family is unable to provide written third-party documents, LMHA must request a written third-party verification form. HUD's position is that this traditional third-party verification method presents administrative burdens and risks which may be reduced through the use of family-provided third-party documents.

A written third-party verification form is mandatory when there is an unreported source of income or a substantial difference in reported income (\$2400 annually or more) and there is no UIV or tenant-provided documentation to support the income discrepancy.

LMHA may mail, fax, or e-mail third-party written verification form requests to third-party sources.

LMHA Policy

LMHA will send third-party verification forms directly to the third party.

Third-party verification forms will be sent when third-party verification documents are unavailable or are rejected by LMHA.

Oral Third-Party Verification [Notice PIH 2010-19]

For third-party oral verification, LMHA may contact sources, identified by UIV techniques or by the family, by telephone or in person.

Oral third-party verification is mandatory if neither form of written third-party verification is available.

Third-party oral verification may be used when requests for written third-party verification forms have not been returned within a reasonable time—e.g., 10 business days.

LMHA should document in the file the date and time of the telephone call or visit, the name of the person contacted, the telephone number, as well as the information confirmed.

LMHA Policy

In collecting third-party oral verification, LMHA staff will record in the family's file the name and title of the person contacted, the date and time of the conversation (or attempt), the telephone number used, and the facts provided.

When any source responds verbally to the initial written request for verification LMHA will accept the verbal response as oral verification but will also request that the source complete and return any verification forms that were provided.

When Third-Party Verification is Not Required [Notice PIH 2010-19]

Third-party verification may not be available in all situations. HUD has acknowledged that it may not be cost-effective or reasonable to obtain third-party verification of income, assets, or expenses when these items would have a minimal impact on the family's total tenant payment.

LMHA Policy

If the family cannot provide original documents, LMHA will pay the service charge required to obtain third-party verification, unless it is not cost effective in which case a self-certification will be acceptable as the only means of verification. The cost of verification will not be passed on to the family.

The cost of postage and envelopes to obtain third-party verification of income, assets, and expenses is not an unreasonable cost [VG, p. 18].

Primary Documents

Third-party verification is not required when legal documents are the primary source, such as a birth certificate or other legal documentation of birth.

Assets and Imputed Assets

HUD permits LMHA

HUD permits LMHA to accept a self-certification from a family as verification of assets disposed of for less than fair market value [HCV GB, p. 5-28].

LMHA Policy

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

7-I.E. SELF-CERTIFICATION

Self-certification, or “tenant declaration,” is used as a last resort when LMHA is unable to obtain third-party verification. However, PIH Notice 2013-03 allows LMHA to use self-certification for the verification of assets under \$5,000 in lieu of moving through the hierarchy.

When LMHA relies on a tenant declaration for verification of income, assets, or expenses, the family’s file must be documented to explain why third-party verification was not available.

LMHA Policy

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

LMHA 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 LMHA and must be signed by the family member whose information or status is being verified.

PART II. VERIFYING FAMILY INFORMATION

7-II.A. VERIFICATION OF LEGAL IDENTITY

LMHA Policy

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

Verification of Legal Identity for Adults	Verification of Legal Identity for Children
Certificate of birth, naturalization papers Church issued baptismal certificate Current, valid driver's license or Department of Motor Vehicles identification card U.S. military discharge (DD 214) U.S. passport Employer identification card State Issued ID (for Non-drivers)	Certificate of birth Adoption papers Custody agreement Health and Human Services ID School records

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

If none of these documents can be provided and at LMHA's discretion, a third party who knows the person may attest to the person's identity. Legal identity will be verified and on an as needed basis.

7-II.B. SOCIAL SECURITY NUMBERS [24 CFR 5.216; Notice PIH 2012-10; FR 3/8/16]

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.

The change creates a 90-day period during which an applicant family may become a program participant, even if the family lacks the documentation necessary to verify the Social Security Number (SSN) of a family member under the age of 6 years. An extension of one additional 90-day period must be granted if the PHA determines that, in its discretion, the applicant's failure to comply was due to circumstances that could not reasonably have been foreseen and were outside of the control of the applicant. For example, an applicant may be able to demonstrate timely submission of a request for an SSN, in which case processing time would be the cause of the delay. If the applicant family does not produce the required documentation within the authorized time period, the PHA or processing entity must impose appropriate penalties, in accordance with 24 CFR 5.218.

An applicant family with a child under the age of 6 years may become a participant family, even if the SSN for the child has not been verified at the time of admission. If the SSN has still not been verified at the end of the initial 90-day period, then the PHA must determine whether a 90-day extension is merited.

If it is not merited, then the PHA must follow the provisions of 24 CFR 5.218. If a 90-day extension is merited, then the PHA must either verify the SSN for the child by the end of the 90-day extension period or follow the provisions of 24 CFR 5.218.

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

LMHA Policy

LMHA must accept the following documentation as acceptable evidence of the social security number:

An original SSN card issued by the Social Security Administration (SSA)

An original SSA-issued document, which contains the name and SSN of the individual

An original document issued by a federal, state, or local government agency, which contains the name and SSN of the individual

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

LMHA Policy

LMHA will explain to the applicant or participant the reasons the document is not acceptable and request that the individual obtain and submit acceptable documentation of the SSN to LMHA within 10 calendar days.

The required documentation must be provided within 90 calendar days from the date of admission into the program. LMHA must grant one additional 90-day extension if it determines that the applicant's failure to comply was due to circumstances that were beyond the applicant's control and could not have been reasonably foreseen.

LMHA Policy

LMHA will grant one additional 90-day extension if needed for reasons beyond the participant's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency. If the individual fails to comply with SSN disclosure and documentation requirements upon expiration of the provided time period, LMHA will terminate the individual's assistance.

When the participant requests to add a new household member who is at least 6 years of age, or who is under the age of 6 and has an SSN, the participant must provide the complete and accurate SSN assigned to each new member at the time of reexamination or recertification, in addition to the documentation required to verify it. LMHA may not add the new household member until such documentation is provided.

When a participant requests to add a new household member who is under the age of 6 and has not been assigned an SSN, the participant must provide the SSN assigned to each new child and the required documentation within 90 calendar days of the child being added to the household. A 90-day extension will be granted if LMHA determines that the participant's failure to comply was due to unforeseen

circumstances and was outside of the participant's control. During the period LMHA is awaiting documentation of the SSN, the child will be counted as part of the assisted household.

For applicants, the change is slightly more flexible, requiring at least one 90-day grace period if the SSN has not been verified (for program participants, the standard is that the SSN has not been assigned). Program staff, in considering the change, determined that greater flexibility could make a difference for applicant families who adopt a child or add a foster child within the 6-month period preceding their admission to the program; such a child may already have been assigned a SSN, but there may be circumstances that make it difficult for the adoptive or foster family to obtain the documentation in a timely fashion

LMHA Policy

LMHA will grant one additional 90-day extension if needed for reasons beyond the participant's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency.

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

LMHA Policy

LMHA will verify each disclosed SSN by:

Obtaining documentation from applicants and participants that is acceptable as evidence of social security numbers.

Make a copy of the original documentation submitted, returning it to the individual, and retaining a copy in the file folder.

Once the individual's verification status is classified as "verified," LMHA 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.

7-II.C. DOCUMENTATION OF AGE

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

LMHA Policy

If an official record of birth or evidence of social security retirement benefits cannot be provided, LMHA will require the family to submit other documents that support the reported age and sex of the family member (e.g., school records, driver's license if birth year and sex is recorded) and to provide a self-certification.

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

7-II.D. FAMILY RELATIONSHIPS

Applicants and program participants are required to identify the relationship of each household member to the head of household. Definitions of the primary household relationships are provided in the Eligibility chapter.

LMHA Policy

Family relationships are verified only to the extent necessary to determine a family's eligibility and level of assistance. Certification by the head of household normally is sufficient verification of family relationships, however, copies of birth certificates, custody/court paperwork, etc. is preferred.

Marriage

LMHA Policy

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

A marriage certificate generally is required to verify that a couple is married.

Separation or Divorce

LMHA Policy

Certification by the head of household is normally sufficient verification. If LMHA has reasonable doubts about a separation or divorce, LMHA will require the family to document the divorce, or separation.

A certified copy of a divorce decree, signed by a court officer, is required to document that a couple is divorced.

A copy of a court-ordered maintenance or other court record is required to document a separation.

If no court document is available, documentation from a community-based agency will be accepted.

Absence of Adult Member

LMHA Policy

If an adult member who was formerly a member of the household is reported to be permanently absent, the family must provide evidence to support that the person is no longer a member of the family (e.g., documentation of another address at which the person resides such as a lease or utility bill).

If no documentation is readily available, self-certification from the absent family member that indicates they have moved from the household will be accepted.

Foster Children and Foster Adults

LMHA Policy

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

7-II.E. VERIFICATION OF STUDENT STATUS

General Requirements

LMHA Policy

LMHA requires families to provide information about the student status of all students who are 18 years of age or older. This information will be verified only if:

The family reports full-time student status for an adult other than the head, spouse, or co head. Full-time is defined by the learning institution that the family member is attending.

The family reports childcare expenses to enable a family member to further his or her education.

The family includes a student enrolled in an *institution of higher education*.

Restrictions on Assistance to Students Enrolled in Institutions of Higher Education

This section applies only to students who are seeking assistance on their own, separately from their parents. It does not apply to students residing with parents who are seeking or receiving HCV assistance.

LMHA Policy

In accordance with the verification hierarchy described in section 7-1.B, LMHA will determine whether the student is exempt from the restrictions in 24 CFR 5.612 by verifying any one of the following exemption criteria:

The student is enrolled at an educational institution that does not meet the definition of *institution of higher education* in the Higher Education Act of 1965 (see section Exhibit 3-2).

The student is at least 24 years old.

The student is a veteran, as defined in section 3-II.E.

The student is married.

The student has at least one dependent child, as defined in section 3-II.E.

The student is a person with disabilities, as defined in section 3-II.E, and was receiving assistance prior to November 30, 2005.

If LMHA cannot verify at least one of these exemption criteria, LMHA will conclude that the student is subject to the restrictions on assistance at 24 CFR 5.612. In addition to verifying the student's income eligibility, LMHA will then proceed to verify either the student's parents' income eligibility (see section 7-III.J) or the student's independence from his/her parents (see below).

Independent Student

LMHA Policy

LMHA will verify a student's independence from his/her parents to determine that the student's parents' income is not relevant for determining the student's eligibility by doing all of the following:

Either reviewing or verifying previous address information to determine whether the student has established a household separate from his/her parents for at least one year or reviewing and verifying documentation relevant to determining whether the student meets the U.S. Department of Education's definition of *independent student* (see section 3-II.E).

Reviewing prior year income tax returns to verify whether a parent has claimed the student as a dependent.

Requesting and obtaining written certification directly from the student's parents identifying the amount of support they will be providing to the student, even if the amount of support is \$0.

7-II.F. DOCUMENTATION OF DISABILITY

LMHA must verify the existence of a disability in order to allow certain income disallowances and deductions from income. LMHA is not permitted to inquire about the nature or extent of a person's disability [24 CFR 100.202(c)]. LMHA may not inquire about a person's diagnosis or details of treatment for a disability or medical condition. If LMHA receives a verification document that provides such information, LMHA will not place this information in the tenant file. LMHA shall either return the document, destroy the document, or redact. Under no circumstances will LMHA request a participant's medical record(s). For more information on health care privacy laws, see the Department of Health and Human Services' website at www.os.dhhs.gov.

The above cited regulation does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they are persons with disabilities [VG, p. 24]:

- Inquiry into an applicant's ability to meet the requirements of ownership or tenancy
- Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with disabilities or to persons with a particular type of disability
- Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with disabilities or to persons with a particular type of disability
- Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance
- Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance

Family Members Receiving SSA Disability Benefits

Verification of the receipt of disability benefits from the Social Security Administration (SSA) is sufficient verification of disability for the purpose of qualifying for waiting list preferences (if applicable) or certain income disallowances and deductions [VG, p. 23].

LMHA Policy

For family members claiming disability who receive disability benefits from the SSA, LMHA will attempt to obtain information about disability benefits through the HUD Enterprise Income Verification (EIV) system when it is available and accurate. If documentation from HUD's EIV System is not available, LMHA will request a current (dated within the last 60 days) SSA benefit verification letter from each family member claiming disability status. If the family is unable to provide the document(s), LMHA will ask the family to request a benefit verification letter by either calling SSA at 1-800-772-1213, or by the participant/applicant requesting it from www.ssa.gov. Once the applicant or participant receives the benefit verification letter they will be required to provide it to LMHA.

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.

LMHA Policy

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

7-II.G. CITIZENSHIP OR ELIGIBLE IMMIGRATION STATUS [24 CFR 5.508]

Overview

Housing assistance is not available to persons who are not citizens, nationals, or eligible immigrants. Prorated assistance is provided for "mixed families" containing both eligible and ineligible persons. A detailed discussion of eligibility requirements is in the Eligibility chapter. This verifications chapter discusses HUD and LMHA verification requirements related to citizenship status.

The family must provide a certification that identifies each family member as a U.S. citizen, a U.S. national, an eligible noncitizen or an ineligible noncitizen and submit the documents discussed below for each family member. Once eligibility to receive assistance has been verified for an individual it need not be collected or verified again during continuously-assisted occupancy. Verification of non-citizens having temporary status will need to be re-verified prior to the expiration date. [24 CFR 5.508(g)(5)]

U.S. Citizens and Nationals

HUD requires a declaration for each family member who claims to be a U.S. citizen or national. The declaration must be signed personally by any family member 18 or older and by a guardian for minors.

LMHA may request verification of the declaration by requiring presentation of a birth certificate, United States passport or other appropriate documentation.

LMHA Policy

Family members who claim U.S. citizenship or national status will be required to provide additional documentation such as a birth certificate or other acceptable documentation.

Eligible Immigrants

Documents Required

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

The documentation required for eligible non-citizens varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, age, and the date on which the family began receiving HUD-funded assistance. Exhibit 7-1 at the end of this chapter summarizes documents family members must provide.

LMHA Verification [HCV GB, pp. 5-3 and 5-7]

For family members age 62 or older and receiving housing assistance on or before 6-19-05 who claim to be eligible immigrants, proof of age is required in the manner described in 7-II.C. of this plan. No further verification of eligible immigration status is required.

For family members under the age of 62 who claim to be eligible immigrants, LMHA must verify immigration status with the United States Citizenship and Immigration Services (USCIS).

LMHA will follow all USCIS protocols for verification of eligible immigration status.

7-II.H. VERIFICATION OF PREFERENCE STATUS

LMHA must verify any preferences claimed by an applicant.

LMHA Policy

LMHA will offer a preference to any family that has been terminated from its HCV program due to insufficient program funding.	50 Points
Special Admissions (HUD targeted funding)	30 Points
Special Programs (limited to 10% of program size that is inclusive to person transitioning from nursing homes or institutions that is covered under the Olmstead decision; Project Based Vouchers may also be classified in this category).	30 Points
Families without income based rent (over those with income based rent)	15 Points

PART III. VERIFYING INCOME AND ASSETS

Chapter 6, Part I of this plan describes in detail the types of income that are included and excluded and how assets and income from assets are handled. Any assets and income reported by the family must be verified. This part provides LMHA policies that supplement the general verification procedures specified in Part I of this chapter.

7-III.A. EARNED INCOME

Tips

LMHA Policy

Unless tip income is included in a family member's W-2 by the employer, pays stubs provided by the family or indicated on the third party verification, persons who work in industries where tips are standard will be required to sign a certified estimate of tips received for the prior year and tips anticipated to be received in the coming year.

7-III.B. BUSINESS AND SELF-EMPLOYMENT INCOME

LMHA Policy

Business owners and self-employed persons will be required to provide:

An audited financial statement for the previous fiscal year if an audit was conducted. If an audit was not conducted, a statement of income and expenses must be submitted and the business owner or self-employed person must certify to its accuracy.

All schedules completed for filing federal and local taxes in the preceding year.

If accelerated depreciation was used on the tax return or financial statement, an accountant's calculation of depreciation expense, computed using straight-line depreciation rules.

LMHA will provide a format for any person who is unable to provide such a statement to record income and expenses for the coming year. The business owner/self-employed person will be required to submit the information requested and to certify to its accuracy at all future reexaminations.

At any reexamination LMHA may request documents that support submitted financial statements such as manifests, appointment books, cashbooks, or bank statements.

If a family member has been self-employed less than three (3) months, LMHA will accept the family member's certified estimate of income. If the family member has been self-employed for three (3) to twelve (12) months LMHA will require the family to provide documentation of income and expenses for this period and use that information to project income.

7-III.C. PERIODIC PAYMENTS AND PAYMENTS IN LIEU OF EARNINGS

Social Security/SSI Benefits

LMHA Policy

To verify the SS/SSI benefits of applicants, LMHA will request a current (dated within the last 60 days) SSA benefit verification letter from each family member that receives social security benefits. If the family is unable to provide the document(s), LMHA will ask the family to request a benefit verification letter by either calling SSA at 1-800-772-1213, or by requesting it from www.ssa.gov. Once the applicant has received the benefit verification letter they will be required to provide it to LMHA

To verify the SS/SSI benefits of participants, LMHA will obtain information about social security/SSI benefits through the HUD EIV System, and confirm with the participant(s) that the current listed benefit amount is correct. If the participant disputes the EIV-reported benefit amount, or if benefit information is not available in HUD systems, LMHA will request a current SSA benefit verification letter from each family member that receives social security benefits. If the family is unable to provide the document(s) LMHA will help the participant request a benefit verification letter from SSA's Web site at www.ssa.gov or ask the family to request one by calling SSA at 1-800-772-1213. Once the participant has received the benefit verification letter they will be required to provide it to LMHA.

7-III.D. ALIMONY OR CHILD SUPPORT

LMHA Policy

The way LMHA will seek verification for alimony and child support differs depending on whether the family declares that it receives regular payments.

If the family declares that it ***receives regular payments***, verification will be sought in the following order.

Copy of the receipts and/or payment stubs for the 6 months prior to LMHA request.

Third-party verification form from the state or local child support enforcement agency of payments for the last 6 months.

Copy of a separation or settlement agreement or a divorce decree stating amount and type of support and payment schedules.

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, or that support payments are not being received.

If the family declares that it ***receives irregular or no payments***, in addition to the verification process listed above, the family must provide evidence that it has taken all reasonable efforts to collect amounts due.

This may include:

A statement from any agency responsible for enforcing payment that shows the family has requested enforcement and is cooperating with all enforcement efforts

If the family has made independent efforts at collection, a written statement from the attorney or other collection entity that has assisted the family in these efforts

Note: Families are not required to undertake independent enforcement action.

7-III.E. ASSETS AND INCOME FROM ASSETS

Assets Disposed of for Less than Fair Market Value

The family must certify whether any assets have been disposed of for less than fair market value in the preceding two years. LMHA needs to verify only those certifications that warrant documentation [HCV GB, p. 5-28].

LMHA Policy

Under PIH Notice 2013-03, LMHA may accept a self-certification for assets \$5,000 or less.

LMHA will verify the value of assets disposed of only if:

LMHA does not already have a reasonable estimation of its value from previously collected information, or;

The amount reported by the family in the certification appears obviously in error.

Example 1: An elderly participant reported a \$10,000 certificate of deposit at the last annual reexamination and LMHA verified this amount. Now the person reports that she has given this \$10,000 to her son. LMHA has a reasonable estimate of the value of the asset; therefore, re-verification of the value of the asset is not necessary.

Example 2: A family member has disposed of its 1/4 share of real property located in a desirable area and has valued her share at approximately 5,000. Based upon market conditions, this declaration does not seem realistic. Therefore, LMHA will verify the value of this asset.

7-III.F. NET INCOME FROM RENTAL PROPERTY

LMHA Policy

The family must provide:

A current executed lease for the property that shows the rental amount or certification from the current tenant.

A self-certification from the family members engaged in the rental of property providing an estimate of expenses for the coming year and the most recent IRS Form 1040 with Schedule E (Rental Income). If schedule E was not prepared, LMHA will require the family members involved in the rental of property to provide a self-certification of income and expenses for the previous year and may request documentation to support the statement including: tax statements, insurance invoices, bills for reasonable maintenance and utilities, and bank statements or amortization schedules showing monthly interest expense.

7-III.G. RETIREMENT ACCOUNTS

LMHA Policy

LMHA will accept written third-party documents supplied by the family as evidence of the status of retirement accounts.

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

Before retirement, LMHA will accept an original document from the entity holding the account with a date that shows it is the most recently scheduled statement for the account but in no case earlier than 6 months from the effective date of the examination.

Upon retirement, LMHA 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, LMHA will accept an original document from the entity holding the account dated no earlier than 12 months before that reflects any distributions of the account balance, any lump sums taken and any regular payments.

7-III.H. INCOME FROM EXCLUDED SOURCES

A detailed discussion of excluded income is provided in Chapter 6, Part I.

LMHA must obtain verification for income exclusions only if, without verification, LMHA would not be able to determine whether the income is to be excluded. For example: If a family's 16 year old has a job at a fast food restaurant, LMHA will confirm that LMHA records verify the child's age but will not send a verification request to the restaurant. However, if a family claims the earned income disallowance for a source of income, both the source and the income must be verified.

Under PIH Notice 2013-04, LMHA does not have to obtain verifications for fully excluded income sources.

LMHA Policy

LMHA will reconcile differences in amounts reported by the third party and the family only when the excluded amount is used to calculate the family share (as is the case with the earned income disallowance). In all other cases, LMHA will report the amount to be excluded as indicated on documents provided by the family.

7-III.I. ZERO ANNUAL INCOME STATUS

LMHA Policy

LMHA will check UIV sources and/or request information from third-party sources to verify that certain forms of income such as unemployment benefits, TANF, SSI, etc., are not being received by families claiming to have zero annual income.

7-III.J. TEMPORARY ADDENDUM - [PIH Notice 2013-03 Dated January 22, 2013]

INTRODUCTION

On January 22, 2013 HUD issued Notice PIH 2013-03. Effective until March 31, 2014 and extended through PIH 2013-26 until March 31, 2015, the notice acknowledges and addresses the budget and staff constraints that PHAs have had to face in recent years. To address these burdens, the notice gives a series of three optional methods to reduce administrative burden, addressed below.

HUD posted Frequently Asked Questions (FAQs) about the notice on March 1, 2013.

Before implementing any of the temporary policy options, the PHA must notify HUD by e-mail.

The e-mail must state which of the 3 options will be implemented.

The PHA must revise its admissions and continued occupancy policies (ACOP) before any of the temporary policies are implemented. This document, with Board approval, contains the PHA's policies for implementation. The PHA must also evaluate whether adoption of any of the temporary policies would constitute a significant amendment to its annual plan, and must revise the annual plan if necessary.

The temporary provisions that an agency may adopt include:

Option 1: Allow option to use participants' past income in verifying income- This option may simplify the verification process by eliminating the need for family-provided documents, such as pay stubs, in some situations.

Option 2: Allow households to self-certify assets of \$5,000 or less- Due to the imputed asset calculation, assets with a value of \$5,000 or less have little to no impact on TTP. The notice allows agencies to accept a self-certification to save administrative time.

Option 3: Allow optional streamlined annual reexaminations for elderly families and disabled families on fixed incomes- For elderly and disabled families whose income is limited to such fixed sources as Social Security or a pension, the agency can reduce administrative time by simply updating income on an annual basis for any cost of living adjustments. If the family has other sources of income that are not fixed a streamlined reexamination would not be an option.

HUD has clarified that Option 1 and Option 3 are mutually exclusive. Therefore, the PHA may not implement both options.

Policies contained in this temporary addendum will override existing Administrative Plan policies until March 31, 2015.

OPTION 2: ALLOW HOUSEHOLD TO SELF-CERTIFY ASSETS OF \$5,000 OR LESS

OPTION 3: ALLOW OPTIONAL STREAMLINED ANNUAL REEXAMINATIONS FOR ELDERLY FAMILIES AND DISABLED FAMILIES ON FIXED INCOMES

PHAs are statutorily required to verify income and calculate rent annually, including for elderly and disabled families on fixed incomes. The requirement to undertake the complete process for income verification and rent determination for families on fixed incomes is not necessary given the infrequency of changes to their incomes. Further, this requirement requires considerable staff time and PHA resources. This provision is intended to simplify the requirements associated with determining the annual income of participants on fixed incomes (24 CFR 982.516, 960.257).

LMHA Policy:

LMHA will implement Option 2 and 3, and will comply with all HUD requirements.

LMHA will opt to conduct a streamlined reexamination of income for elderly families and disabled families when 100 percent of the family's income consists of fixed income. In a streamlined reexamination,

LMHA will allow households to self-certify assets of \$5,000 or less.

LMHA will recalculate family incomes by applying any published cost of living adjustments to the previously verified income amount.

For purposes of this notice, the term 'fixed income' includes income from:

1. Social Security payments to include Supplemental Security Income (SSI) and Supplemental Security Disability Insurance (SSDI);
2. Federal, State, local, and private pension plans; and
3. Other periodic payments received from annuities, insurance policies, retirement funds, disability or death benefits, and other similar types of periodic receipts that are substantially the same amounts from year to year

7-III.K. STUDENT FINANCIAL ASSISTANCE

Any financial assistance, in excess of amounts received for tuition, that a person attending an institution of higher education receives under the Higher Education Act of 1965, from private sources, or from an institution of higher education must be considered income unless the student is over the age of 23 with dependent children or is residing with parents who are seeking or receiving HCV assistance [24 CFR 5.609(b)(9) and FR 3/8/16].

For students over the age of 23 with dependent children or students residing with parents who are seeking or receiving HCV assistance, the full amount of student financial assistance is excluded from annual income [24 CFR 5.609(c)(6)]. The full amount of student financial assistance is also excluded for students attending schools that do not qualify as institutions of higher education (as defined in Exhibit 3-2). Excluded amounts are verified only if, without verification, LMHA would not be able to determine whether or to what extent the income is to be excluded (see section 7-III.H).

LMHA Policy

For a student subject to having a portion of his/her student financial assistance included in annual income in accordance with 24 CFR 5.609(b)(9), LMHA will request written third-party verification of both the source and the amount. Family-provided documents from the educational institution attended by the student will be requested, as well as documents generated by any other person or entity providing such assistance, as reported by the student. In addition, LMHA will request written verification of the student's tuition amount.

If LMHA is unable to obtain third-party written verification of the requested information, LMHA will pursue other forms of verification following the verification hierarchy in section 7-I.B.

Verification of Tuition and Fees

LMHA will verify the amounts of tuition and required fees charged by the school when determining annual income. LMHA may verify the amounts using the student's bill or account statement (including

an online account statement) as provided by the school's bursar's office, or by contacting the bursar's office directly. Additionally, LMHA may obtain an itemized list covering tuition and fees from the school.

7-III.L. PARENTAL INCOME OF STUDENTS SUBJECT TO ELIGIBILITY RESTRICTIONS

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, does not have a dependent child, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the income of the student's parents must be considered when determining income eligibility, unless the student is determined independent from his or her parents in accordance with LMHA policy [24 CFR 5.612 and FR 4/10/06, p. 18146].

This provision does not apply to students residing with parents who are seeking or receiving HCV assistance. It is limited to students who are seeking or receiving assistance on their own, separately from their parents.

LMHA Policy

If LMHA is required to determine the income eligibility of a student's parents, LMHA will request an income declaration and certification of income from the appropriate parent(s) (as determined in section 3-II.E). LMHA will send the request directly to the parents, who will be required to certify to their income under penalty of perjury. The parents will be required to submit the information directly to LMHA. The required information must be submitted (postmarked) within 10 business days of the date of LMHA's request or within any extended timeframe approved by LMHA. LMHA reserves the right to request and review supporting documentation at any time if it questions the declaration or certification. Supporting documentation may include, but is not limited to, Internal Revenue Service (IRS) tax returns, consecutive and original pay stubs, bank statements, pension benefit statements, benefit award letters, and other official and authentic documents from a federal, state, or local agency.

PART IV. VERIFYING MANDATORY DEDUCTIONS

7-IV.A. DEPENDENT AND ELDERLY/DISABLED HOUSEHOLD DEDUCTIONS

The dependent and elderly/disabled family deductions require only that LMHA verify that the family members identified as dependents or elderly/disabled persons meet the statutory definitions. No further verifications are required.

Dependent Deduction

See Chapter 6 (6-II.B.) for a full discussion of this deduction. LMHA will verify that:

- Any person under the age of 18 for whom the dependent deduction is claimed is not the head, spouse, or co head of the family and is not a foster child
- Any person age 18 or older for whom the dependent deduction is claimed is not a foster adult or live-in aide, and is a person with a disability or a full time student

Elderly/Disabled Family Deduction

See Eligibility chapter for a definition of elderly and disabled families and Chapter 6 (6-II.C.) for a discussion of the deduction. LMHA will verify that the head, spouse, or co head is 62 years of age or older or a person with disabilities.

7-IV.B. MEDICAL EXPENSE DEDUCTION

Policies related to medical expenses are found in 6-II.D. The amount of the deduction will be verified following the standard verification procedures described in Part I.

Amount of Expense

LMHA Policy

- Medical expenses will be verified through:
 - Written third-party documents provided by the family, such as pharmacy printouts or receipts.
 - LMHA will make a best effort to determine what expenses from the past are likely to continue to occur in the future. LMHA will also accept evidence of monthly payments or total payments that will be due for medical expenses during the upcoming 12 months.
 - Written third-party verification forms, if the family is unable to provide acceptable documentation.
 - If third-party or document review is not possible, written family certification as to costs anticipated to be incurred during the upcoming 12 months
- In addition, LMHA must verify that:
 - The household is eligible for the deduction.
 - The costs to be deducted are qualified medical expenses.
 - The expenses are not paid for or reimbursed by any other source.
 - Costs incurred in past years are counted only once.

Eligible Household

The medical expense deduction is permitted only for households in which the head, spouse, or co-head is at least 62, or a person with disabilities. LMHA will verify that the family meets the definition of an elderly or disabled family provided in the Eligibility chapter and as described in Chapter 7 (7-IV.A.) of this plan.

Qualified Expenses

To be eligible for the medical expenses deduction, the costs must qualify as medical expenses. See Chapter 6 (6-II.D.) for LMHA's policy on what counts as a medical expense.

Unreimbursed Expenses

To be eligible for the medical expenses deduction, the costs must not be reimbursed by another source.

LMHA Policy

The family will be required to certify that the medical expenses are not paid or reimbursed to the family from any source.

Expenses Incurred in Past Years

LMHA Policy

When anticipated costs are related to on-going payment of medical bills incurred in past years, LMHA will verify:

The anticipated repayment schedule

The amounts paid in the past, and

Whether the amounts to be repaid have been deducted from the family's annual income in past years

7-IV.C. DISABILITY ASSISTANCE EXPENSES

Policies related to disability assistance expenses are found in 6-II.E. The amount of the deduction will be verified following the standard verification procedures described in Part I.

Amount of Expense

Attendant Care

LMHA Policy

LMHA will accept written third-party documents provided by the family

If family-provided documents are not available, LMHA will provide a third-party verification form directly to the care provider requesting the needed information.

Expenses for attendant care will be verified through:

Written third-party documents provided by the family, such as receipts or cancelled checks.

Third-party verification form signed by the provider, if family-provided documents are not available.

If third-party or document review is not possible, written family certification as to costs anticipated to be incurred for the upcoming 12 months

Auxiliary Apparatus

LMHA Policy

- Expenses for auxiliary apparatus will be verified through:
- Written third-party documents provided by the family, such as billing statements for purchase of auxiliary apparatus, or other evidence of monthly payments or total payments that will be due for the apparatus during the upcoming 12 months.
- Third-party verification form signed by the provider, if family-provided documents are not verifiable.
- If third-party or document review is not possible, written family certification of estimated apparatus costs for the upcoming 12 months

In addition, LMHA must verify that:

- The family member for whom the expense is incurred is disabled (as described in 7-II.F above).
- The expense permits a family member, or members, to work (as described in 6-II.E.).
- The expense is not reimbursed from another source (as described in 6-II.E.).
- The expense does not exceed the earned income received by the family member who is unable to work.

Family Member is a Person with Disabilities

To be eligible for the disability assistance expense deduction, the costs must be incurred for attendant care or auxiliary apparatus expense associated with a person with disabilities. LMHA will verify that the expense is incurred for a person with disabilities (See 7-II.F.).

Family Member(s) Permitted to Work

LMHA must verify that the expenses claimed actually enable a family member, or members, (including the person with disabilities) to work.

LMHA Policy

LMHA will request third-party verification from a rehabilitation agency or knowledgeable medical professional indicating that the person with disabilities requires attendant care or an auxiliary apparatus to be employed, or that the attendant care or auxiliary apparatus enables another family member, or members, to work (See 6-II.E.).

If third-party and document review verification has been attempted and is either unavailable or proves unsuccessful, the family must certify that the disability assistance expense frees a family member, or members (possibly including the family member receiving the assistance), to work.

Unreimbursed Expenses

To be eligible for the disability expenses deduction, the costs must not be reimbursed by another source.

LMHA Policy

The family will be required to certify that attendant care or auxiliary apparatus expenses are not paid by or reimbursed to the family from any source. LMHA may also require an attendant care

provider to certify that to the best of the provider's knowledge that attendant care or auxiliary apparatus expenses are not paid by or reimbursed to the family from any source.

7-IV.D. CHILD CARE EXPENSES

Policies related to childcare expenses are found in Chapter 6 (6-II.F). The amount of the deduction will be verified following the standard verification procedures described in Part I of this chapter. In addition, the

LMHA Policy

LMHA must verify that:

- The child is eligible for care.
- The costs claimed are not reimbursed.
- The costs enable a family member to pursue an eligible activity.
- The costs are for an allowable type of childcare.
- The costs are reasonable. if seeking employment or furthering education.

Eligible Child

To be eligible for the childcare deduction, the costs must be incurred for the care of a child under the age of 13. LMHA will verify that the child being cared for (including foster children) is under the age of 13 (See 7-II.C.).

Unreimbursed Expense

To be eligible for the childcare deduction, the costs must not be reimbursed by another source.

LMHA Policy

The childcare provider will be asked to certify that, to the best of the provider's knowledge, the childcare expenses are not paid by or reimbursed to the family from any source.

Pursuing an Eligible Activity

LMHA must verify that the family member(s) that the family has identified as being enabled to seek work, pursue education, or be gainfully employed, are actually pursuing those activities.

LMHA Policy

Information to be Gathered

LMHA will verify information about how the schedule for the claimed activity relates to the hours of care provided, the time required for transportation, the time required for study (for students), the relationship of the family member(s) to the child, and any special needs of the child that might help determine which family member is enabled to pursue an eligible activity.

Seeking Work

Whenever possible LMHA will use documentation from a state or local agency that monitors work-related requirements (e.g., welfare or unemployment). In such cases LMHA will request verification from the agency of the member's job seeking efforts to date and require the family to submit to LMHA any reports provided to the other agency.

In the event third-party verification is not available, LMHA will provide the family with a form on which the family member must record job search efforts. LMHA will review this information at each subsequent reexamination for which this deduction is claimed.

Furthering Education

LMHA will ask that the academic or vocational educational institution verify that the person permitted to further his or her education by the childcare is enrolled and provide information about the timing of classes for which the person is registered.

Gainful Employment

LMHA will seek verification from the employer of the work schedule of the person who is permitted to work by the childcare. In cases in which two or more family members could be permitted to work, the work schedules for all relevant family members may be verified. The documentation may be provided by the family.

Allowable Type of Child Care

The type of care to be provided is determined by the family, but must fall within certain guidelines, as discussed in Chapter 6.

LMHA Policy

LMHA will verify that the type of childcare selected by the family is allowable, as described in Chapter 6 (6-II.F).

LMHA will verify that the fees paid to the childcare provider cover only childcare costs (e.g., no housekeeping services or personal services) and are paid only for the care of an eligible child (e.g., prorated costs if some of the care is provided for ineligible family members).

LMHA will verify the childcare provider is not a family member residing in the household. Verification will be made through the head of household's declaration of family members who are expected to reside in the unit.

Reasonableness of Expenses

Only reasonable childcare costs can be deducted for seeking employment or furthering education.

LMHA Policy

The actual costs the family incurs will be compared with LMHA's established standards of reasonableness for the type of care in the locality to ensure that the costs are reasonable. LMHA will use local welfare agency guidelines.

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

**EXHIBIT 7-1: SUMMARY OF DOCUMENTATION REQUIREMENTS
 FOR NONCITIZENS [HCV GB, pp. 5-9 and 5-10]**

<ul style="list-style-type: none"> • All noncitizens claiming eligible status must sign a declaration of eligible immigrant status on a form acceptable to LMHA. • Except for persons 62 or older, all noncitizens must sign a verification consent form • Additional documents are required based upon the person's status. 	
<p>Elderly Noncitizens</p> <ul style="list-style-type: none"> • A person 62 years of age or older who claims eligible immigration status also must provide proof of age such as birth certificate, passport, or documents showing receipt of SS old-age benefits. 	
<p>All other Noncitizens</p> <ul style="list-style-type: none"> • Noncitizens that claim eligible immigration status also must present the applicable USCIS document. Acceptable USCIS documents are listed below. 	
<ul style="list-style-type: none"> • Form I-551 Alien Registration Receipt Card (for permanent resident aliens) • Form I-94 Arrival-Departure Record annotated with one of the following: <ul style="list-style-type: none"> • “Admitted as a Refugee Pursuant to Section 207” • “Section 208” or “Asylum” • “Section 243(h)” or “Deportation stayed by Attorney General” • “Paroled Pursuant to Section 221 (d)(5) of the USCIS” 	<ul style="list-style-type: none"> • Form I-94 Arrival-Departure Record with no annotation accompanied by: <ul style="list-style-type: none"> • A final court decision granting asylum (but only if no appeal is taken); • A letter from a USCIS asylum officer granting asylum (if application is filed on or after 10/1/90) or from a USCIS district director granting asylum (application filed before 10/1/90); • A court decision granting withholding of deportation; or • A letter from an asylum officer granting withholding or deportation (if application filed on or after 10/1/90).
<ul style="list-style-type: none"> • Form I-688 Temporary Resident Card annotated “Section 245A” or Section 210”. 	<ul style="list-style-type: none"> • Form I-688B Employment Authorization Card annotated “Provision of Law 274a. 12(11)” or “Provision of Law 274a.12”.
<ul style="list-style-type: none"> • A receipt issued by the USCIS indicating that an application for issuance of a replacement document in one of the above listed categories has been made and the applicant’s entitlement to the document has been verified; or • Other acceptable evidence. If other documents are determined by the USCIS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the <i>Federal Register</i> 	

Chapter 8

HOUSING QUALITY STANDARDS AND RENT REASONABLENESS DETERMINATIONS

[24 CFR 982 Subpart I and 24 CFR 982.507]

INTRODUCTION

HUD requires that all units occupied by families receiving Housing Choice Voucher (HCV) assistance meet HUD's Housing Quality Standards (HQS) and permits LMHA to establish additional requirements. The use of the term "HQS" in this plan refers to the combination of both HUD and LMHA-established requirements. HQS inspections are required before the Housing Assistance Payments (HAP) Contract is signed and at least biennially during the term of the contract.

HUD also requires LMHA to determine that units rented by families assisted under the HCV program have rents that are reasonable when compared to comparable unassisted units in the market area.

This chapter explains HUD and LMHA requirements related to housing quality and rent reasonableness as follows:

Part I. Physical Standards. This part discusses the physical standards required of units occupied by HCV-assisted families and identifies decisions about the acceptability of the unit that may be made by the family based upon the family's preference. It also identifies life-threatening conditions that must be addressed on an expedited basis.

Part II. The Inspection Process. This part describes the types of inspections LMHA will make and the steps that will be taken when units do not meet HQS.

Part III. Rent Reasonableness Determinations. This part discusses the policies LMHA will use to make rent reasonableness determinations.

Special HQS requirements for homeownership, manufactured homes, and other special housing types are discussed in Chapter 15 to the extent that they apply in this jurisdiction.

PART I: PHYSICAL STANDARDS

8-I.A. GENERAL HUD REQUIREMENTS

HUD Performance and Acceptability Standards

HUD's performance and acceptability standards for HCV-assisted housing are provided in 24 CFR 982.401. These standards cover the following areas:

- Sanitary facilities
- Food preparation and refuse disposal
- Space and Security
- Thermal Environment
- Illumination and electricity
- Structure and materials
- Interior Air Quality
- Water Supply
- Lead-based paint
- Access
- Site and neighborhood
- Sanitary condition
- Smoke Detectors

A summary of HUD performance criteria is provided in Exhibit 8-1. Additional guidance on these requirements is found in the following HUD resources:

- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)
- HUD Notice 2003-31, Accessibility Notice: Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Architectural Barriers Act of 1968 and the Fair Housing Act of 1988.

Tenant Preference Items

HUD requires LMHA to enforce minimum HQS but also requires that certain judgments about acceptability be left to the family. For example, LMHA must ensure that the unit contains the required sanitary facilities, but the family decides whether the cosmetic condition of the facilities is acceptable. Exhibit 8-2 summarizes those items that are considered tenant preferences.

Modifications to Provide Accessibility

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

Modifications to units to provide access for a person with a disability must meet all applicable HQS requirements and conform to the design, construction, or alteration of facilities contained in the UFAS and the ADA Accessibility Guidelines (ADAAG) [28 CFR 35.151(c) and Notice 2003-31] See Chapter 2 of this plan for additional information on reasonable accommodations for persons with disabilities.

LMHA Policy

Any owner that intends to negotiate a restoration agreement or require an escrow account must submit the agreement(s) to LMHA for review.

8-I.B. ADDITIONAL LOCAL REQUIREMENTS

LMHA may impose additional quality standards as long as the additional criteria are not likely to adversely affect the health or safety of participant families or severely restrict housing choice. HUD approval is required if more stringent standards are imposed. HUD approval is not required if LMHA additions are clarifications of HUD's acceptability criteria or performance standards [24 CFR 982.401(a)(4)].

Thermal Environment [HCV GB p.10-7]

LMHA must define a “healthy living environment” for the local climate. This may be done by establishing a temperature that the heating system must be capable of maintaining, that is appropriate for the local climate.

LMHA Policy

The heating system must be capable of maintaining an interior temperature of 68 degrees Fahrenheit between October 1 and May 1.

The air conditioning system must be capable of maintaining an interior temperature of 74 degrees Fahrenheit between May 1 and October 1.

Clarifications of HUD Requirements

LMHA Policy

As permitted by HUD, LMHA has adopted the following specific requirements that elaborate on HUD standards.

Illumination and Electricity

Every bathroom, including half-baths, must be equipped with at least one electrical outlet and one permanently mounted light fixture. All electrical outlets in bathrooms, including half baths, must be GFCI outlets. If no ground wire exists the GFCI need not be grounded.

All regular (non-GFCI) three prong outlets must be grounded and wired to the correct polarity. If no ground wire exists functional two prong outlets are acceptable.

All optional equipment, such as garbage disposals, dishwashers, air conditioners, ceiling fans, etc., that is present in the unit must be properly installed, have no missing parts, and must operate as designed.

A globe or cover must be present on all light fixtures designed to have a globe or cover.

Walls

In areas where plaster or drywall is sagging, severely cracked, or otherwise damaged, it must be repaired or replaced.

All walls in a tub or shower area must be covered with a waterproof material, such as a tub wall or ceramic tile. All seams and edges must be properly sealed.

The unit must be free from holes larger than two square inches in any interior wall, ceiling or door. No holes of any size that permits entry of insects, rodents, or excessive air infiltration are permitted interiorly or exteriorly.

Interior painted surfaces in all units must be in good condition and not excessively soiled. All repairs completed on walls or ceilings due to moisture problems must be painted to seal the area.

Windows

Window sashes must be in good condition, solid and intact, and properly fitted to the window frame. Damaged or deteriorated sashes must be replaced.

Windows must be weather-stripped as needed to ensure a weather-tight seal. Window screens must be in good condition (applies only if screens are present). One window in each living area with windows designed to open must be equipped with a fully operational window screen.

Doors

All exterior doors must be weather-tight to avoid any air or water infiltration, have a bolt lock, have no holes, have all trim intact, and have a threshold.

All interior doors must have no holes, have all trim intact, and be able to open without the use of a key.

Storm doors or screen doors are not required, but if present they must be in a safe, operable condition and be equipped with an operable closer mechanism. A spring alone is not acceptable as a closer mechanism.

Floors

All wood floors must be sanded to a smooth surface and sealed. Any loose or warped boards must be re-secured and made level. If they cannot be leveled, they must be replaced.

All floors must be in a finished state. Raw wood or unsealed concrete is not permitted.

All floors should have some type of baseshoe, trim, or sealing for a "finished look." Vinyl baseshoe is permitted.

Sinks

All sinks and commode water lines must have shut off valves, unless faucets are wall mounted.

Toilets

All worn or cracked toilet seats and tank lids must be replaced and toilet tank lid must fit properly.

Plumbing and Heating

Water heaters must be equipped with a temperature/pressure relief valve fitted with a permanently attached discharge equal in diameter to the relief valve, and must extend to approximately 3 -5 inches from the floor and not have a treated edge (as to prevent capping).

Flexible gas supply lines must be attached to rigid pip extending from furnaces, boilers and water heaters. No part of a flexible gas supply line may be located inside a furnace, boiler or water heater.

Owners may certify the safety of water heaters and heating systems that are not accessible to inspectors, such as water heaters and heating systems located in crawl spaces above or below dwelling units. This does not include installations in areas that are locked, but would be otherwise accessible. Such areas must be unlocked for inspection. Landlord certification must be on a form acceptable to LMHA.

Clothes dryers must be properly vented to the outside. The tenant is responsible for connection to the outside vent, while the landlord is responsible for the vent through the wall. Interior moisture collection boxes are not permitted.

Space and Security

A closet is required for each bedroom. Closets may be located in the bedroom, in a hallway near the bedroom or may be of a portable type. A clothes rod must be present in each bedroom closet. Unenclosed clothes racks are not acceptable as closets.

Bathrooms and bedrooms must have properly fitting doors that latch. Locks, such as key locks or bolt locks that restrict exit from any room are not permitted. The family must not be required to go through one bedroom to get to another bedroom. Bedrooms in basements and attics are not allowed unless they meet HQS and local code requirements, including ventilation and emergency exit requirements.

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

Smoke detectors in basements must be located on the basement ceiling near the basement stairs, at least four inches from the nearest wall. On an open joist ceiling, the smoke detector must be mounted on the bottom of the joist.

In units where there is a hearing impaired occupant a visual alarm must be located in the bedroom of the hearing impaired occupant. A detector located immediately outside of the bedroom must control this alarm.

A simple bolt lock is not acceptable on an entry door if it is the only entry door to the unit. A bolt lock may be present, along with a key lock, on additional entry doors. All entry doors must be opening able from the inside of the unit without the need for a key or tool. Consequently, double cylinder deadbolt locks are not acceptable.

Entry doors must be weather tight to avoid air or water infiltration [24 CFR 982.404(a)]

Building Exterior

Gutters and downspouts must be in good condition clear of debris and vegetation. Downspouts must have diverters to keep water from entering the unit.

Street number must be visible from the street must be installed on the front of the unit or building.

Health and Safety

The unit and any related common areas must be free of excessive amounts of mold or mildew.

Severe infestation by insects or rodents must be eradicated by a licensed exterminator. All holes that could provide access by insects or rodents must be closed off.

An inspector encountering infestations of insects or rodents may, at his or her discretion, cancel or terminate the inspection until such time that the owner provides written certification of eradication of the infestation.

Units that have an excess of items or other possible hazards (i.e. animals, possibility of mold, extreme poor housekeeping) causing the inability to properly inspect the unit will be consider a health and safety deficiency and the inspector has the discretion to fail the inspection.

Access

The unit must provide an alternate means of exit from the building in case of fire or other emergency. The exits cannot be blocked or obstructed by debris, used as a storage area, or secured by nails.

8-I.C. LIFE THREATENING CONDITIONS [24 CFR 982.404(a)]

HUD requires LMHA to define life threatening conditions and to notify the owner or the family (whichever is responsible) of the corrections required. The responsible party must correct life threatening conditions within 24 hours of LMHA notification.

LMHA Policy

The following are considered life threatening conditions:

Hazards that create an imminent threat to the health and safety of the occupants as determined by LMHA.

Any condition that jeopardizes the security of the unit.

Major plumbing leaks or flooding, waterlogged ceiling or floor in imminent danger of falling

Natural or LP gas or fuel oil leaks

Any electrical problem or condition that could result in shock or fire

Absence of a working heating system when outside temperature is below 60 degrees Fahrenheit.

Utilities not in service, including no running hot water

Conditions that present the imminent possibility of injury

Obstacles that prevent safe entrance or exit from the unit

Absence of a functioning toilet in the unit

Inoperable smoke detectors

If an owner fails to correct life threatening conditions as required by LMHA, the housing assistance payment will be abated and the HAP contract will be terminated. See 8-II-G.

If a family fails to correct a family caused life threatening condition as required by LMHA, LMHA may terminate the family's assistance. See 8-II.H.

The owner will be required to repair an inoperable smoke detector unless LMHA determines that the family has intentionally disconnected it (by removing batteries or other means). In this case, the family will be required to repair the smoke detector within 24 hours.

8-I.D. OWNER AND FAMILY RESPONSIBILITIES [24 CFR 982.404]

Family Responsibilities

The family is responsible for correcting the following HQS deficiencies:

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

Owner Responsibilities

The owner is responsible for all HQS violations not listed as a family responsibility above. However, if the family's actions constitute a serious or repeated lease violation the owner may take legal action to evict the family.

If the owner threatens or is violent towards LMHA personnel, the HAP contract will be terminated and LMHA may debar the landlord from further participation in the HCV program.

8-I.E. SPECIAL REQUIREMENTS FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL [24 CFR 35.1225]

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

Within 30 days after receiving the risk assessment report from LMHA, or the evaluation from the public health department, the owner is required to complete the reduction of identified lead-based paint hazards in accordance with the lead-based paint regulations [24 CFR 35.1325 and 35.1330]. If the owner does not

complete the “hazard reduction” as required, the dwelling unit is in violation of HQS and LMHA will take action in accordance with Section 8-II.G.

LMHA reporting requirements, and data collection and record keeping responsibilities related to children with an environmental intervention blood lead level are discussed in Chapter 16.

8-I.F. VIOLATION OF HQS SPACE STANDARDS [24 CFR 982.403]

If LMHA determines that a unit does not meet the HQS space standards because of an increase in family size or a change in family composition, LMHA must issue the family a new voucher, and the family and LMHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, LMHA must terminate the HAP contract in accordance with its terms.

LMHA Policy

A unit meets HQS space standard if the dwelling unit has at least one bedroom or living/sleeping room for each two persons. A living/sleeping room is any living space other than a kitchen, bathroom or hallway that is equipped with at least one window that opens, if it was designed to open, and two electrical outlets or one electrical outlet and one permanently mounted light fixture.

Per 1952 Toledo Municipal Code; § 40-1-3.14; Ord. 847-74:

In every dwelling unit of two or more rooms, every room occupied for sleeping purposes shall contain at least seventy square feet of floor space for the first occupant, and at least forty square feet of floor space for each additional occupant thereof.

PART II: THE INSPECTION PROCESS

8-II.A. OVERVIEW [24 CFR 982.405]

Types of Inspections

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

- *Initial Inspections.* LMHA conducts initial inspections in response to a request from the family to approve a unit for participation in the HCV program. The unit must pass the HQS inspection before the effective date of the HAP Contract.
- *Annual Inspections.* HUD requires LMHA to inspect each unit under lease at least biennially to confirm that the unit still meets HQS. The inspection may be conducted in conjunction with the family's annual reexamination but also may be conducted separately.
- *Special Inspections.* A special inspection may be requested by the owner, the family, or a third party as a result of problems identified with a unit between annual inspections.
- *Quality Control Inspections.* HUD requires that a sample of units be re-inspected by a supervisor or other qualified individual to ensure that HQS are being enforced correctly and uniformly by all inspectors.

Inspection of LMHA-owned Units [24 CFR 982.352(b)]

LMHA must obtain the services of an independent entity to perform all HQS inspections in cases where an HCV family is receiving assistance in a LMHA-owned unit. A LMHA-owned unit is defined as a unit that is owned by LMHA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by LMHA). The independent agency must communicate the results of each inspection to the family and LMHA. The independent agency must be approved by HUD, and may be the unit of general local government for LMHA jurisdiction (unless LMHA is itself the unit of general local government or an agency of such government).

Inspection Costs

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

Notice and Scheduling

The family must allow LMHA to inspect the unit at reasonable times with reasonable notice [24 CFR 982.551(d)].

LMHA Policy

Both the family and the owner will be given reasonable notice of all inspections. Except in the case of a life-threatening emergency, reasonable notice is considered to be not less than 48 hours. Inspections may be scheduled between 8:30 a.m. and 4:30 p.m. Generally, inspections will be conducted on business days only. In the case of a life-threatening emergency, LMHA will give as much notice as possible, given the nature of the emergency.

Owner and Family Inspection Attendance

HUD permits LMHA to set policy regarding family and owner presence at the time of inspection [HCV GB p. 10-27].

LMHA Policy

When a family occupies the unit at the time of inspection an adult family member must be present for the inspection. The presence of the owner or the owner's representative is encouraged but is not required.

At initial inspection of a vacant unit, LMHA will inspect the unit in the presence of the owner or owner's representative (unless a lockbox has been provided). The presence of a family representative is permitted, but is not required.

8-II.B. INITIAL HQS INSPECTION [24 CFR 982.401(a)]

Timing of Initial Inspections

HUD requires the unit to pass HQS before the effective date of the lease and HAP Contract. HUD requires PHAs with fewer than 1,250 budgeted units to complete the initial inspection, determine whether the unit satisfies HQS, and notify the owner and the family of the determination within 15 days of submission of the Request for Tenancy Approval (RTA). For PHAs with 1,250 or more budgeted units, to the extent practicable such inspection and determination must be completed within 15 days. The 15-day period is suspended for any period during which the unit is not available for inspection [982.305(b)(2)].

LMHA Policy

LMHA will complete the initial inspection, determine whether the unit satisfies HQS, and notify the owner and the family of the determination within 15 business days of submission of the Request for Tenancy Approval (RTA).

Inspection Results and Re-inspections

LMHA Policy

If any HQS violations are identified, the owner will be notified of the deficiencies and be given a time frame to correct them. If requested by the owner, the time frame for correcting the deficiencies may be extended by LMHA for good cause. LMHA will re-inspect the unit within 10 business days of the date the owner notifies LMHA that the required corrections have been made.

If the time period for correcting the deficiencies (or any LMHA-approved extension) has elapsed, or the unit fails HQS at the time of the re-inspection, LMHA will notify the owner and the family that the unit has been rejected and that the family must search for another unit. LMHA may agree to conduct a second re-inspection, for good cause, at the request of the family and owner.

Following a failed re-inspection, the family may submit a new Request for Tenancy Approval for the unit if the family has not found another unit by the time the owner completes all repairs and the family continues to wish to live in the 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.

LMHA Policy

All utilities must be on to make a full and accurate inspection of the unit.

Appliances

LMHA Policy

If the family is responsible for supplying the stove and/or refrigerator, LMHA will allow the stove and refrigerator to be placed in the unit after the unit has met all other HQS requirements. The required appliances must be in place before the HAP contract is executed by LMHA. LMHA may accept a signed affidavit from the family that the appliances are installed and are in good working order.

8-II.C. ANNUAL HQS INSPECTIONS [24 CFR 982.405(a); SECTION 220 OF THE 2014 APPROPRIATION ACT]

Scheduling the Inspection

Each unit under HAP contract must have an inspection not less than biennially.

LMHA Policy

If an adult family member cannot be present on the scheduled date, the family should request that LMHA reschedule the inspection. LMHA and family will agree on a new inspection date that generally should take place within 5 business days of the originally-scheduled date. LMHA may schedule an inspection more than 5 business days after the original date for good cause.

If the family misses the first scheduled appointment without requesting a new inspection date, LMHA will automatically schedule a second inspection within 10 business days. If the family misses two scheduled inspections without LMHA approval, LMHA will consider the family to have violated its obligation to make the unit available for inspection. This may result in termination of the family's assistance in accordance with Chapter 12.

In accordance with regulation 982.202(a)(3) LMHA may elect not to do a re-inspection for minor deficiencies that can be verified by the property owner and/or tenant in the form of a receipt for repairs from a contractor, repair person or business that clearly provides evidence that the work was completed, a photograph that is clearly time stamped and can clearly illustrate the repair. Examples of minor repairs may include electrical outlet or switch covers, replacement of globes on light fixtures, replacement or repair of windows or screens, minor tripping hazards, missing door handles or knobs, installation of closet poles, repair of small holes, evidence of professional extermination.

LMHA will annually inspect each unit under a HAP contract unless a contracted unit receives a passing score under HQS on the first scheduled appointment date for two consecutive years. When that occurs, the contracted unit will be inspected biennially. The contracted unit will continue to be inspected biennially so long as it passes its first appointed inspection each time. Hence, a unit will not move to biennial inspections if the "pass" score was received at a scheduled re-inspection appointment date. Units moved to biennial inspections that subsequently receive a "fail" score under HQS will return to annual inspections (until such time that the unit receives a "pass" score once again on the first scheduled appointment date for two consecutive years).

~~Compliance with the biennial inspection requirement may be met by reliance upon an inspection of housing assisted under the HOME Investment Partnerships (HOME) program (under Title II of the Cranston-Gonzalez National Affordable Housing Act, 42 U.S.C. 12701 note) or housing financed via the Treasury Department's Low-Income Housing Tax Credit program (LIHTC), taking into account the standards employed by those programs.~~

8-II.D. SPECIAL INSPECTIONS [HCV GB, p. 10-30]

The LMHA will conduct a special inspection if the owner, family, or another source reports HQS violations in the unit. If the reported condition is not life-threatening (i.e., LMHA would require the owner to make the repair within no more than 30 calendar days), then the PHA must inspect the unit within 15 days of when LMHA received the complaint.

LMHA Policy

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

If the annual inspection has been scheduled or is due within 90 days of the date the special inspection is scheduled LMHA may elect to conduct a full annual inspection.

8-II.E. QUALITY CONTROL INSPECTIONS [24 CFR 982.405(b); HCV GB, p. 10-32]

HUD requires a LMHA supervisor or other qualified person to conduct quality control inspections of a sample of units to ensure that each inspector is conducting accurate and complete inspections and that there is consistency in the application of the HQS.

The unit sample must include only units that have been inspected within the preceding 3 months. The random sample will include (1) each type of inspection (initial, annual, and special), (2) inspections completed by each inspector, and (3) units from a cross-section of neighborhoods.

8-II.F. INSPECTION RESULTS AND REINSPECTIONS FOR UNITS UNDER HAP CONTRACT

Notification of Corrective Actions

The owner and the family will be notified in writing of the results of all inspections. When an inspection identifies HQS failures, LMHA will determine (1) whether or not the failure is a life threatening condition and (2) whether the family or owner is responsible.

LMHA Policy

When life threatening conditions are identified, LMHA will immediately notify both parties by telephone, facsimile, or email. The notice will specify who is responsible for correcting the violation. The corrective actions must be taken within 24 hours of LMHA's notice.

When failures that are not life threatening are identified, LMHA will send the owner and the family a written notification of the inspection results within 5 business days of the inspection. The written notice will specify who is responsible for correcting the violation, and the time frame within which the failure must be corrected. Generally, not more than 30 days will be allowed for the correction.

The notice of inspection results will inform the owner that if life threatening conditions are not corrected within 24 hours, and non-life-threatening conditions are not corrected within the specified time frame (or any LMHA-approved extension), the owner's HAP will be abated in accordance with LMHA policy (see 8-II.G.). Likewise, in the case of family caused deficiencies, the notice will inform the family that if corrections are not made within the specified time frame (or any LMHA-approved extension, if applicable) the family's assistance will be terminated in accordance with LMHA policy (see Chapter 12).

Extensions

For conditions that are life-threatening, LMHA cannot grant an extension to the 24 hour corrective action period. For conditions that are not life-threatening, LMHA may grant an exception to the required time frames for correcting the violation, if LMHA determines that an extension is appropriate [24 CFR 982.404].

LMHA Policy

Extensions will be granted in cases where LMHA has determined that the owner has made a good faith effort to correct the deficiencies and is unable to for reasons beyond the owner's control. Reasons may include, but are not limited to:

A repair cannot be completed because required parts or services are not available.

A repair cannot be completed because of weather conditions.

A reasonable accommodation is needed because the family includes a person with disabilities.

The length of the extension will be determined on a case by case basis, but will not exceed 60 days. In the case of weather conditions, extensions may be continued until the weather has improved sufficiently to make repairs possible. The necessary repairs must be made within 15 calendar days, once the weather conditions have subsided.

Re-inspections

LMHA Policy

LMHA will conduct a re-inspection immediately following the end of the corrective period, or any LMHA approved extension.

The family and owner will be given reasonable notice of the re-inspection appointment. If the deficiencies have not been corrected by the time of the re-inspection, LMHA 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 LMHA policies. If LMHA is unable to gain entry to the unit in order to conduct the scheduled re-inspection, LMHA will consider the family to have violated its obligation to make the unit available for inspection. This may result in termination of the family's assistance in accordance with Chapter 12.

8-II.G. ENFORCING OWNER COMPLIANCE

If the owner fails to maintain the dwelling unit in accordance with HQS, LMHA must take prompt and vigorous action to enforce the owner obligations.

HAP Abatement

If an owner fails to correct HQS deficiencies by the time specified by LMHA, HUD requires LMHA to abate housing assistance payments no later than the first of the month following the specified correction period (including any approved extension) [24 CFR 985.3(f)]. No retroactive payments will be made to the owner for the period of time the rent was abated. Owner rents are not abated as a result of HQS failures that are the family's responsibility.

LMHA Policy

LMHA will make all HAP abatements effective the first of the month following the expiration of LMHA specified correction period (including any extension). LMHA specified correction period is following the 2nd failed inspection or 30 calendar days, whichever comes first (with the exception of any approved extension).

LMHA will inspect abated units within 10 business days of the owner's notification that the work has been completed. Payment will resume effective on the day the unit passes inspection.

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

HAP Contract Termination

LMHA must decide how long any abatement period will continue before the HAP contract will be terminated. LMHA should not terminate the contract until the family finds another unit, provided the family does so in a reasonable time [HCV GB p. 10-29] and must give the owner reasonable notice of the termination. LMHA will issue a voucher to permit the family to move to another unit as described in Chapter 10.

LMHA Policy

The maximum length of time that HAP may be abated is 60 calendar days. The current voucher will terminate when the HAP Contract terminates. However, if the owner completes corrections and notifies LMHA before the termination date of the HAP contract, LMHA 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 LMHA is 30 calendar days.

8-II.H. ENFORCING FAMILY COMPLIANCE WITH HQS [24 CFR 982.404(b)]

Families are responsible for correcting any HQS violations listed in paragraph 8.I.D. If the family fails to correct a violation within the period allowed by LMHA (and any extensions), LMHA will terminate the family's assistance, according to the policies described in Chapter 12.

If the owner carries out a repair for which the family is responsible under the lease, the owner may bill the family for the cost of the repair.

PART III: RENT REASONABLENESS [24 CFR 982.507]

8-III.A. OVERVIEW

No HAP contract can be approved until LMHA has determined that the rent for the unit is reasonable. The purpose of the rent reasonableness test is to ensure that a fair rent is paid for each unit rented under the HCV program.

HUD regulations define a reasonable rent as one that does not exceed the rent charged for comparable, unassisted units in the same market area. HUD also requires that owners not charge more for assisted units than for comparable units on the premises. This part explains the method used to determine whether a unit's rent is reasonable.

PHA-owned Units [24 CFR 982.352(b)]

In cases where an HCV family is receiving assistance in a LMHA-owned unit, LMHA must obtain the services of an independent entity to determine rent reasonableness in accordance with program requirements, and to assist the family in negotiating the contract rent when the family requests assistance. A LMHA-owned unit is defined as a unit that is owned by LMHA that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by LMHA). The independent agency must communicate the results of the rent reasonableness determination to the family and LMHA. The independent agency must be approved by HUD, and may be the unit of general local government for LMHA jurisdiction (unless LMHA is itself the unit of general local government or an agency of such government).

8-III.B. WHEN RENT REASONABLENESS DETERMINATIONS ARE REQUIRED

Owner-initiated Rent Determinations

LMHA must make a rent reasonableness determination at initial occupancy and whenever the owner requests a rent adjustment.

The owner and family first negotiate the rent for a unit. LMHA (or independent agency in the case of LMHA-owned units) will assist the family with the negotiations upon request. At initial occupancy LMHA must determine whether the proposed rent is reasonable before a HAP Contract is signed. The owner must not change the rent during the initial lease term. Subsequent requests for rent adjustments must be consistent with the lease between the owner and the family. Rent increases will not be approved unless any failed items identified by the most recent HQS inspection have been corrected.

LMHA Policy

After the initial occupancy period, the owner may request a rent adjustment in accordance with the owner's lease. Rent increases must be requested at least 60 calendar days before the effective date of the participant's annual review.

For rent increase requests after initial lease-up, LMHA may request owners to provide information about the rents charged for other units on the premises, if the premises include more than 4 units. In evaluating the proposed rents in comparison to other units on the premises LMHA will consider unit size and length of tenancy in the other units.

LMHA will determine whether the requested increase is reasonable promptly after receiving the request from the owner. The owner will be notified of the determination in writing.

LMHA- and HUD-Initiated Rent Reasonableness Determinations

HUD requires LMHA to make a determination of rent reasonableness (even if the owner has not requested a change) if there is a 5 percent decrease in the Fair Market Rent that goes into effect at least 60 days before the contract anniversary date. HUD also may direct LMHA to make a determination at any other time. LMHA may decide that a new determination of rent reasonableness is needed at any time.

LMHA Policy

In addition to the instances described above, LMHA will make a determination of rent reasonableness at any time after the initial occupancy period if: (1) LMHA determines that the initial rent reasonableness determination was in error or (2) LMHA determines that the information provided by the owner about the unit or other units on the same premises was incorrect.

8-III.C. HOW COMPARABILITY IS ESTABLISHED

Factors to Consider

HUD requires PHAs to take into consideration the factors listed below when determining rent comparability. LMHA may use these factors to make upward or downward adjustments to the rents of comparison units when the units are not identical to the HCV-assisted unit.

- Location and age
- Unit size including the number of rooms and square footage of rooms
- The type of unit including construction type (e.g., single family, duplex, garden, low-rise, high-rise)
- The quality of the units including the quality of the original construction, maintenance and improvements made
- Amenities, services, and utilities included in the rent

Units that Must Not be Used as a Comparable

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

Note: Notice PIH 2011-46, issued August 17, 2011, provides further guidance on the issue of what constitutes an assisted unit.

Rents Charged for Other Units on the Premises

The Request for Tenancy Approval (HUD-52517) requires owners to provide information, on the form itself, about the rent charged for other unassisted comparable units on the premises if the premises include more than 4 units.

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

8-III.D. LMHA RENT REASONABLENESS METHODOLOGY

How Market Data is Collected

LMHA Policy

LMHA uses an online database from a third party provider to obtain market data. The system collects and maintains data on market rents in LMHA's jurisdiction. Information sources include newspapers, realtors, market surveys, inquiries of owners and other available sources. The data will be maintained by bedroom size and market areas. Market areas may be defined by zip codes, census tract, neighborhood, and identifiable natural or man-made boundaries. The data will be updated on an ongoing basis and rent information that is more than 12 months old will be eliminated from the database.

How Rents are Determined

LMHA Policy

The rent for a unit proposed for HCV assistance will be compared to the rent charged for comparable units in the same market area. LMHA will develop a range of prices for comparable units by bedroom size within defined market areas. Units proposed for HCV assistance will be compared to the units within this rent range. Because units may be similar, but not exactly like the unit proposed for HCV assistance, LMHA may make adjustments to the range of prices to account for these differences.

The adjustment must reflect the local market. Not all differences in units require adjustments (e.g., the presence or absence of a garbage disposal may not affect the rent in some market areas).

Adjustments may vary by unit type (e.g., a second bathroom may be more valuable in a three-bedroom unit than in a two-bedroom).

The adjustment must reflect the rental value of the difference—not its construction costs (e.g., it might cost \$20,000 to put on a new roof, but the new roof might not make any difference in what a tenant would be willing to pay because rental units are presumed to have functioning roofs).

When a comparable project offers rent concessions (e.g., first month rent-free, or reduced rent) reported monthly rents will be adjusted accordingly. For example, if a comparable project reports rents of \$500/month but new tenants receive the first month's rent free, the actual rent for the unit would be calculated as follows: $\$500 \times 11 \text{ months} = 5500 / 12 \text{ months} = \text{actual monthly rent of } \488 .

LMHA will notify the owner of the rent LMHA can approve based upon its analysis of rents for comparable units. The owner may submit information about other comparable units in the market area. LMHA will confirm the accuracy of the information provided and consider this additional information when making rent determinations. The owner must submit any additional information within 5 business days of LMHA's request for information or the owner's request to submit information.

EXHIBIT 8-1: OVERVIEW OF HUD HOUSING QUALITY STANDARDS

Note: This document provides an overview of HQS. For more detailed information see the following documents:

- 24 CFR 982.401, Housing Quality Standards (HQS)
- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)

Sanitary Facilities

The dwelling unit must include sanitary facilities within the unit. The sanitary facilities must be usable in privacy and must be in proper operating condition and adequate for personal cleanliness and disposal of human waste.

Food Preparation and Refuse Disposal

The dwelling unit must have space and equipment suitable for the family to store, prepare, and serve food in a sanitary manner.

Space and Security

The dwelling unit must provide adequate space and security for the family. This includes having at least one bedroom or living/sleeping room for each two persons.

Thermal Environment

The unit must have a safe system for heating the dwelling unit. Air conditioning is not required but if provided must be in proper operating condition. The dwelling unit must not contain unvented room heaters that burn gas, oil, or kerosene. Portable electric room heaters or kitchen stoves with built-in heating units are not acceptable as a primary source of heat for units located in climatic areas where permanent heat systems are required.

Illumination and Electricity

Each room must have adequate natural or artificial illumination to permit normal indoor activities and to support the health and safety of occupants. The dwelling unit must have sufficient electrical sources so occupants can use essential electrical appliances. Minimum standards are set for different types of rooms. Once the minimum standards are met, the number, type and location of electrical sources are a matter of tenant preference.

Structure and Materials

The dwelling unit must be structurally sound. Handrails are required when four or more steps (risers) are present, and protective railings are required when porches, balconies, and stoops are thirty inches or more off the ground. The elevator servicing the unit must be working [if there is one]. Manufactured homes must have proper tie-down devices capable of surviving wind loads common to the area.

Interior Air Quality

The dwelling unit must be free of air pollutant levels that threaten the occupants' health. There must be adequate air circulation in the dwelling unit. Bathroom areas must have one window that opens or other

adequate ventilation. Any sleeping room must have at least one window. If a window was designed to be opened, it must be in proper working order.

Water Supply

The dwelling unit must be served by an approved public or private water supply that is sanitary and free from contamination. Plumbing fixtures and pipes must be free of leaks and threats to health and safety.

Lead-Based Paint

Lead-based paint requirements apply to dwelling units built prior to 1978 that are occupied or can be occupied by families with children under six years of age, excluding zero bedroom dwellings. Owners must:

- Disclose known lead-based paint hazards to prospective tenants before the lease is signed,
- provide all prospective families with "Protect Your Family from Lead in Your Home",
- Stabilize deteriorated painted surfaces and conduct hazard reduction activities when identified by LMHA
- Notify tenants each time such an activity is performed
- Conduct all work in accordance with HUD safe practices
- As part of ongoing maintenance ask each family to report deteriorated paint.

For units occupied by environmental intervention blood lead level (lead poisoned) children under six years of age, a risk assessment must be conducted (paid for by LMHA). If lead hazards are identified during the risk assessment, the owner must complete hazard reduction activities.

See HCV GB p. 10-15 for a detailed description of these requirements. For additional information on lead-based paint requirements see 24 CFR 35, Subparts A, B, M, and R.

Access

Use and maintenance of the unit must be possible without unauthorized use of other private properties. The building must provide an alternate means of exit in case of fire.

Site and Neighborhood

The site and neighborhood must be reasonably free from disturbing noises and reverberations, excessive trash or vermin, or other dangers to the health, safety, and general welfare of the occupants.

Sanitary Condition

The dwelling unit and its equipment must be in sanitary condition and free of vermin and rodent infestation. The unit must have adequate barriers to prevent infestation.

Smoke Detectors

Smoke detectors must be installed in accordance with and meet the requirements of the National Fire Protection Association Standard (NFPA) 74 (or its successor standards). If the dwelling unit is occupied by any person with a hearing impairment, smoke detectors must have an appropriate alarm system as specified in NFPA 74 (or successor standards).

Hazards and Health/Safety

The unit, interior and exterior common areas accessible to the family, the site, and the surrounding neighborhood must be free of hazards to the family's health and safety.

**EXHIBIT 8-2: SUMMARY OF TENANT PREFERENCE AREAS
RELATED TO HOUSING QUALITY**

Note: This document provides an overview of unit and site characteristics and conditions for which the family determines acceptability. For more detailed information see the following documents:

- Housing Choice Voucher Guidebook, Chapter 10.
- HUD Housing Inspection Manual for Section 8 Housing
- HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD-52580-A (9/00)

Provided the minimum housing quality standards have been met, HUD permits the family to determine whether the unit is acceptable with regard to the following characteristics.

- *Sanitary Facilities.* The family may determine the adequacy of the cosmetic condition and quality of the sanitary facilities, including the size of the lavatory, tub, or shower; the location of the sanitary facilities within the unit; and the adequacy of the water heater.
 - *Food Preparation and Refuse Disposal.* The family selects size and type of equipment it finds acceptable. When the family is responsible for supplying cooking appliances, the family may choose to use a microwave oven in place of a conventional oven, stove, or range. When the owner is responsible for providing cooking appliances, the owner may offer a microwave oven in place of an oven, stove, or range only if other subsidized and unsubsidized units on the premises are furnished with microwave ovens only. The adequacy of the amount and type of storage space, the cosmetic conditions of all equipment, and the size and location of the kitchen are all determined by the family.
 - *Space and Security.* The family may determine the adequacy of room sizes and room locations. The family is also responsible for deciding the acceptability of the type of door and window locks.
 - *Energy conservation items.* The family may determine whether the amount of insulation, presence of absence of storm doors and windows and other energy conservation items are acceptable.
 - *Illumination and Electricity.* The family may determine whether the location and the number of outlets and fixtures (over and above those required to meet HQS standards) are acceptable or if the amount of electrical service is adequate for the use of appliances, computers, or stereo equipment.
- (6) *Structure and Materials.* Families may determine whether minor defects, such as lack of paint, or worn flooring or carpeting will affect the livability of the unit.
- (7) *Indoor Air.* Families may determine whether window and door screens, filters, fans, or other devices for proper ventilation are adequate to meet the family's needs. However, if screens are present they must be in good condition.
- (8) *Sanitary Conditions.* The family determines whether the sanitary conditions in the unit, including minor infestations, are acceptable.
- (9) *Neighborhood conditions.* Families may determine whether neighborhood conditions such as the presence of drug activity, commercial enterprises, and convenience to shopping will affect the livability of the unit.

Families have no discretion with respect to lead-based paint standards and smoke detectors.

Chapter 9

GENERAL LEASING POLICIES

INTRODUCTION

This Section 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 LMHA to assist a family in a particular dwelling unit, or execute a Housing Assistance Payments (HAP) contract with the owner of a dwelling unit, LMHA must determine that all the following program requirements are met:

- The unit itself must qualify as an eligible unit [24 CFR 982.305(a)]
- The unit must be inspected by LMHA and meet the Housing Quality Standards (HQS) [24 CFR 982.305(a)]
- The lease offered by the owner must be approvable and must include the required Tenancy Addendum [24 CFR 982.305(a)]
- The rent to be charged by the owner for the unit must be reasonable [24 CFR 982.305(a)]
- The owner must be an eligible owner, approvable by LMHA, with no conflicts of interest [24 CFR 982.306]
- For families initially leasing a unit only: Where the gross rent of the unit exceeds the applicable payment standard for the family, the share of rent to be paid by the family cannot exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]

9-I.A. TENANT SCREENING

LMHA has no liability or responsibility to the owner or other persons for the family's behavior or suitability for tenancy [24 CFR 982.307(a)(1)].

LMHA may elect to screen applicants for family behavior or suitability for tenancy. See Chapter 3 for a discussion of LMHA's policies with regard to screening applicant families for program eligibility [24 CFR 982.307(a)(1)].

The owner is responsible for screening and selection of the family to occupy the owner's unit. At or before LMHA approval of the tenancy, LMHA must inform the owner that screening and selection for tenancy is the responsibility of the owner [24 CFR 982.307(a)(2)]. LMHA must also inform the owner or manager of his/her rights and obligations under the Violence against Women Act 2013 (VAWA) [24 CFR 5.2005(a)(2)].

LMHA must provide the owner with the family's current and prior address (as shown in LMHA records); and the name and address (if known to LMHA) of the landlord at the family's current and prior address. [24 CFR 982.307 (b)(1)].

LMHA is permitted, but not required, to offer the owner other information in LMHA's possession about the tenancy history or drug trafficking of family members [24 CFR 982.307(b)(2)].

LMHA's policy on providing information to the owner must be included in the family's briefing packet [24 CFR 982.307(b)(3)].

LMHA may not disclose to the owner any confidential information provided by the family in response to a LMHA 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(b)(4)].

LMHA Policy

LMHA will not screen applicants for family behavior or suitability for tenancy.

LMHA will not provide additional screening information to the owner.

9-I.B. REQUESTING TENANCY APPROVAL [Form HUD-52517]

After the family is issued a voucher, the family must locate an eligible unit, with an owner or landlord willing to participate in the voucher program. Once a family finds a suitable unit and the owner is willing to lease the unit under the program, the owner and the family must request LMHA to approve the assisted tenancy in the selected unit.

The owner and the family must submit two documents to LMHA:

- Completed Request for Tenancy Approval (RTA) – Form HUD-52517
- Copy of the proposed lease, including the HUD-prescribed Tenancy Addendum– Form HUD-52641A

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

Owners must certify to the most recent amount of rent charged for the unit and provide an explanation for any difference between the prior rent and the proposed rent.

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

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

Both the RFTA and the proposed lease must be submitted no later than the expiration date stated on the voucher. [HCV GB p. 8-15].

LMHA Policy

The RFTA must be signed by both the family and the owner. Completed RFTA (including the proposed dwelling lease) must be submitted as hard copies, in-person, or by email. The family may not submit, and LMHA will not process, more than one (1) RFTA at a time.

When the family submits the RFTA, LMHA will review the RFTA for completeness.

If the RTA is incomplete (including lack of signature by family, owner, or both), or if the dwelling lease is not submitted with the RFTA, LMHA will notify the family and the owner of the deficiencies.

Missing information and/or missing documents will only be accepted as hard copies, in-person, or by email. LMHA will not accept missing information over the phone.

When the family submits the RFTA and proposed lease, LMHA will also review the terms of the RTFA for consistency with the terms of the proposed lease.

If the terms of the RFTA are not consistent with the terms of the proposed lease, LMHA will notify the family and the owner of the discrepancies.

Corrections to the terms of the RFTA and/or the proposed lease will only be accepted as hard copies, in-person or by email. LMHA will not accept corrections over the phone.

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

9-I.C. OWNER PARTICIPATION

LMHA does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where LMHA may deny approval of an assisted tenancy based on past owner behavior, conflict of interest, or other owner-related issues. No owner has a right to participate in the HCV program [24 CFR 982.306(e)]

See Chapter 13 for a full discussion of owner qualification to participate in the HCV program.

9-I.D. ELIGIBLE UNITS

There are a number of criteria that a dwelling unit must meet in order to be eligible for assistance under the voucher program. Generally, a voucher-holder family may choose any available rental dwelling unit on the market in LMHA's jurisdiction. This includes the dwelling unit they are currently occupying.

Ineligible Units [24 CFR 982.352(a)]

LMHA may not assist a unit under the voucher program if the unit is a public housing or Indian housing unit; a unit receiving project-based assistance under section 8 of the 1937 Act (42 U.S.C. 1437f); nursing homes, board and care homes, or facilities providing continual psychiatric, medical, or nursing services; college or other school dormitories; units on the grounds of penal, reformatory, medical, mental, and similar public or private institutions; a unit occupied by its owner or by a person with any interest in the unit.

PHA-Owned Units [24 CFR 982.352(b)]

Otherwise eligible units that are owned or substantially controlled by LMHA issuing the voucher may also be leased in the voucher program. In order for a LMHA-owned unit to be leased under the voucher program, the unit must not be ineligible housing and LMHA must inform the family, both orally and in writing, that the family has the right to select any eligible unit available for lease and that the family is free to select a LMHA-owned unit without any pressure or steering by LMHA.

LMHA Policy

LMHA has eligible LMHA-owned units available for leasing under the voucher program.

LMHA will inform the family of this housing at the time of the briefing. LMHA will also inform the family, both orally and in writing, that the family has the right to select any eligible unit available for lease and that the family is free to select a LMHA-owned unit without any pressure or steering by the LMHA.

LMHA will port all families interested in leasing LMHA-owned properties to Erie Metropolitan Housing Authority to administer on its behalf.

Special Housing Types [24 CFR 982 Subpart M]

HUD regulations permit, but do not generally require, LMHA to permit families to use voucher assistance in a number of special housing types in accordance with the specific requirements applicable to those programs. These special housing types include single room occupancy (SRO) housing, congregate housing, group home, shared housing, manufactured home space (where the family owns the manufactured home and leases only the space), cooperative housing and homeownership option. See Chapter 15 for specific information and policies on any of these housing types that LMHA has chosen to allow.

The regulations do require LMHA to permit use of any special housing type if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

Duplicative Assistance [24 CFR 982.352(c)]

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

- Public or Indian housing assistance;
- Other Section 8 assistance (including other tenant-based assistance);
- Assistance under former Section 23 of the United States Housing Act of 1937 (before amendment by the Housing and Community Development Act of 1974);
- Section 101 rent supplements;
- Section 236 rental assistance payments;
- Tenant-based assistance under the HOME Program;
- Rental assistance payments under Section 521 of the Housing Act of 1949 (a program of the Rural Development Administration);
- Any local or State rent subsidy;
- Section 202 supportive housing for the elderly;
- Section 811 supportive housing for persons with disabilities; (11) Section 202 projects for non-elderly persons with disabilities (Section 162 assistance); or
- Any other duplicative federal, State, or local housing subsidy, as determined by HUD. For this purpose, 'housing subsidy' does not include the housing component of a welfare payment, a social security payment received by the family, or a rent reduction because of a tax credit.

Housing Quality Standards (HQS) [24 CFR 982.305 and 24 CFR 982.401]

In order to be eligible, the dwelling unit must be in decent, safe and sanitary condition. This determination is made using HUD's Housing Quality Standards (HQS) and/or equivalent state or local standards approved by HUD. See Chapter 8 for a full discussion of the HQS standards, as well as the process for HQS inspection at initial lease-up.

Unit Size

In order to be eligible, the dwelling unit must be appropriate for the number of persons in the household. A family must be allowed to lease an otherwise acceptable dwelling unit with fewer bedrooms than the number of bedrooms stated on the voucher issued to the family, provided the unit meets the applicable HQS space requirements [24 CFR 982.402(d)]. The family must be allowed to lease an otherwise acceptable dwelling unit with more bedrooms than the number of bedrooms stated on the voucher issued to the family. See Chapter 5 for a full discussion of subsidy standards.

Rent Reasonableness [24 CFR 982.305 and 24 CFR 982.507]

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

Rent Burden [24 CFR 982.508]

Where a family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the family, the family share cannot exceed 40 percent of the family's adjusted monthly income. The term "family share" refers to the amount the family pays toward rent and utilities. The gross rent for the unit minus the total housing assistance payment (HAP) for the unit equals the family share. See Chapter 6 for a discussion of calculation of gross rent, the use of payment standards, and calculation of family income, family share of rent and HAP.

9-I.E. LEASE AND TENANCY ADDENDUM

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

The tenant must have legal capacity to enter a lease under State and local law. 'Legal capacity' means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner [24 CFR 982.308(a)]

Lease Form and Tenancy Addendum [24 CFR 982.308]

If the owner uses a standard lease form for rental to unassisted tenants in the locality or the premises, the lease must be in such standard form. If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease. The HAP contract prescribed by HUD contains the owner's certification that if the owner uses a standard lease form for rental to unassisted tenants, the lease is in such standard form.

All provisions in the HUD-required Tenancy Addendum must also be added word-for-word to the owner's standard lease form, for use with the assisted family. The Tenancy Addendum includes the HUD requirements for the tenancy. Because it is a part of the lease, the tenant shall have the right to enforce the

Tenancy Addendum against the owner. If there is a conflict between the owner's lease and the Tenancy Addendum, the terms of the Tenancy Addendum shall prevail over any other provisions of the lease.

LMHA
Policy

LMHA does not provide a model or standard dwelling lease for owners to use in the HCV program.

Lease Information [24 CFR 982.308(d)]

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

- The names of the owner and the tenant:
- The unit rented (address, apartment number, and any other information needed to identify the contract unit)
- The term of the lease (initial term and any provisions for renewal)
- The amount of the monthly rent to owner
- A specification of what utilities and appliances are to be supplied by the owner, and what utilities and appliances are to be supplied by the family

Term of Assisted Tenancy

The initial term of the assisted dwelling lease must be for at least one year [24 CFR 982.309]. The initial lease term is also stated in the HAP contract.

The HUD program regulations permit LMHA to approve a shorter initial lease term if certain conditions are met.

LMHA Policy

The PHA will not approve an initial lease term of less than one (1) year.

During the initial term of the lease, the owner may not raise the rent to owner [24 CFR 982.309].

Any provisions for renewal of the dwelling lease will be stated in the dwelling lease [HCV Guidebook, pg. 8-22]. There are no HUD requirements regarding any renewal extension terms, except that they must be in the dwelling lease if they exist.

LMHA may execute the HAP contract even if there is less than one year remaining from the beginning of the initial lease term to the end of the last expiring funding increment under the consolidated ACC. [24 CFR 982.309(b)].

Security Deposit [24 CFR 982.313 (a) and (b)]

The owner may collect a security deposit from the tenant. LMHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants. However, if LMHA chooses to do so, language to this effect must be added to Part A of the HAP contract [Form HUD-52641].

LMHA Policy

LMHA will allow the owner to collect any security deposit amount the owner determines is appropriate. Therefore, no modifications to the HAP contract will be necessary.

Separate Non-Lease Agreements between Owner and Tenant

Owners may not demand or accept any rent payment from the family in excess of the rent to the owner minus LMHA's housing assistance payments to the owner [24 CFR 982.451(b)(4)].

The owner may not charge the tenant extra amounts for items customarily included in rent in the locality, or provided at no additional cost to unsubsidized tenants in the premises [24 CFR 982.510(c)].

LMHA Policy

LMHA permits owners and families to execute separate and reasonable cost, 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.

LMHA Review of Lease

LMHA will review the dwelling lease for compliance with all applicable requirements.

LMHA Policy

If the dwelling lease is incomplete or incorrect, LMHA will notify the family and the owner of the deficiencies. Missing and corrected lease information will only be accepted as hard copies, in-person, by mail, or by fax. LMHA will not accept missing and corrected information over the phone

Because the initial leasing process is time-sensitive, LMHA will attempt to communicate with the owner and family by phone, fax, or email. LMHA will use mail when the parties can't be reached by phone, fax, or email.

LMHA is permitted, but is not required, to review the lease to determine if the lease complies with State and local law and is permitted to decline to approve the tenancy if LMHA determines that the lease does not comply with State or local law [24 CFR 982.308(c)]

LMHA Policy

LMHA will not review the owner's lease for compliance with state/local law

9-I.F. TENANCY APPROVAL [24 CFR 982.305]

After receiving the family's Request for Tenancy Approval, with proposed dwelling lease, LMHA must promptly notify the family and owner whether the assisted tenancy is approved.

Prior to approving the assisted tenancy and execution of a HAP contract, LMHA must ensure that all required actions and determinations, discussed in Part I of this chapter have been completed.

These actions include ensuring that the unit is eligible; the unit has been inspected by LMHA and meets the Housing Quality Standards (HQS); the lease offered by the owner is approvable and includes the required Tenancy Addendum; the rent to be charged by the owner for the unit must be reasonable; where the family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the family, the share of rent to be paid by the family does not exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]; the owner is an eligible owner, not disapproved by LMHA, with no conflicts of interest [24 CFR 982.306]; the family and the owner have executed the lease, including the Tenancy Addendum, and the lead-based paint disclosure information [24 CFR 982.305(b)].

LMHA Policy

LMHA will complete its determination within 10 business days of receiving all required information.

If the terms of the RTA/proposed lease are changed for any reason, including but not limited to negotiation with LMHA, LMHA will obtain corrected copies of the RFTA and proposed lease, signed by the family and the owner.

Corrections to the RTA/proposed lease will only be accepted as hard copies, in-person, by mail, or by fax. LMHA will not accept corrections over the phone.

If LMHA determines the tenancy cannot be approved for any reason, the owner and the family will be notified in writing and given the opportunity to address any reasons for disapproval. LMHA will instruct the owner and family of the steps that are necessary to approve the tenancy.

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

If the tenancy is not approvable due to rent affordability or rent reasonableness, LMHA will attempt to negotiate the rent with the owner. If a new, approvable rent is negotiated, the tenancy will be approved. If the owner is not willing to negotiate an approvable rent, the family must continue to search for eligible housing within the timeframe of the issued voucher.

9-I.G. HAP CONTRACT EXECUTION [24 CFR 982.305]

The HAP contract is a written agreement between LMHA and the owner of the dwelling unit. Under the HAP contract, LMHA 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 format is prescribed by HUD.

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

The term of the HAP contract must be the same as the term of the lease [24 CFR 982.451(a)(2)].

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

LMHA must make a best effort to ensure that the HAP contract is executed before the beginning of the lease term. Regardless, the HAP contract must be executed no later than 60 calendar days from the beginning of the lease term.

LMHA may not pay any housing assistance payment to the owner until the HAP contract has been executed. If the HAP contract is executed during the period of 60 calendar days from the beginning of the lease term, LMHA will pay housing assistance payments after execution of the HAP contract (in accordance with the terms of the HAP contract), to cover the portion of the lease term before execution of the HAP contract (a maximum of 60 days).

Any HAP contract executed after the 60-day period is void, and LMHA may not pay any housing assistance payment to the owner.

LMHA Policy

The owner and the assisted family will execute the dwelling lease and the owner must provide a copy to LMHA. LMHA will ensure that both the owner and the assisted family receive copies of the dwelling lease.

The owner and LMHA will execute the HAP contract. LMHA will not execute the HAP contract until the owner has submitted IRS form W-9. LMHA will ensure the owner receives a copy of the executed HAP contract.

See Chapter 13 for a discussion of the HAP contract and contract provisions.

9-I.H. CHANGES IN LEASE OR RENT [24 CFR 982.308]

If the tenant and the owner agree to any changes in the lease, such changes must be in writing, and the owner must immediately give LMHA a copy of such changes. The lease, including any changes, must remain in accordance with the requirements of this chapter.

Generally, LMHA approval of tenancy and execution of a new HAP contract are not required for changes in the lease. However, under certain circumstances, the execution of a new lease and HAP contract are required. These circumstances include:

- Changes in lease requirements governing tenant or owner responsibilities for utilities or appliances
- Changes in lease provisions governing the term of the lease
- The family moves to a new unit, even if the unit is in the same building or complex

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

Where the owner is changing the amount of rent to owner, the owner must notify LMHA of at least 60 days before any such changes go into effect [24 CFR 982.308(g)(4)]. LMHA 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 give the family notice in accordance with the terms of the lease.

No rent increase is permitted during the initial term of the lease [24 CFR 982.309(a)(3)].

LMHA Policy

Where the owner is requesting a rent increase, LMHA will determine whether the requested increase is reasonable within 30 business days of receiving the request from the owner. The owner will be notified of the determination in writing or orally.

Rent increases will go into effect on the first of the month following the 60 day period after the owner notifies LMHA of the rent change or on the date specified by the owner, whichever is later.

Chapter 10

MOVING WITH CONTINUED ASSISTANCE AND PORTABILITY

INTRODUCTION

Freedom of choice is a hallmark of the housing choice voucher (HCV) program. In general, therefore, HUD regulations impose few restrictions on where families may live or move with HCV assistance. This chapter sets forth HUD regulations and LMHA policies governing moves within or outside LMHA's jurisdiction in two parts:

Part I: Moving with Continued Assistance. This part covers the general rules that apply to all moves by a family assisted under LMHA's HCV program, whether the family moves to another unit within LMHA's jurisdiction or to a unit outside LMHA's jurisdiction under portability.

Part II: Portability. This part covers the special rules that apply to moves by a family under portability, whether the family moves out of or into LMHA's jurisdiction. This part also covers the special responsibilities that LMHA has under portability regulations and procedures.

PART I. MOVING WITH CONTINUED ASSISTANCE

10-I.A. ALLOWABLE MOVES

HUD regulations list five conditions under which an assisted family is allowed to move to a new unit with continued assistance. Permission to move is subject to the restrictions set forth in section 10-I.B.

- The family has a right to terminate the lease on notice to the owner (for the owner's breach or otherwise) and has given a notice of termination to the owner in accordance with the lease [24 CFR 982.314(b)(3)]. If the family terminates the lease on notice to the owner, the family must give LMHA a copy of the notice at the same time [24 CFR 982.314(d)(1)].
- The lease for the family's unit has been terminated by mutual agreement of the owner and the family [24 CFR 982.314(b)(1)(ii)].

LMHA Policy

If the family and the owner mutually agree to terminate the lease for the family's unit, the family must give LMHA a copy of the termination agreement.

- The owner has given the family a notice to vacate, has commenced an action to evict the family, or has obtained a court judgment or other process allowing the owner to evict the family [24 CFR 982.314(b)(2)]. The family must give LMHA a copy of any owner eviction notice [24 CFR 982.551(g)].
- The family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault, or stalking and the move is needed to protect the health or safety of the family or family member [24 CFR 982.314(b)(4)]. This condition applies even when the family has moved out of its unit in violation of the lease, with or without prior notification to the PHA, 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 982.314(b)(4), 24 CFR 982.353(b)].
LMHA Policy
 - 1) LMHA will request documentation in accordance with section 16 1X.D of this plan to verify victim status.
 - 2) Verified families covered under VAWA protection may request an emergency transfer. Families must use form HUD-5383 to request an emergency transfer. LMHA will make this form available. Emergency Transfer requests will be expedited as reasonably possible; including reviewing the request and issuing protected families a voucher to move with continued assistance.
- LMHA has terminated the assisted lease for the family's unit for the owner's breach [24 CFR 982.314(b)(1)(i)].
- LMHA determines 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, LMHA must issue the family a new voucher, and the family and LMHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for the family, LMHA 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 LMHA gives notice to the owner. [24 CFR 982.403(a) and (c)]

10-I.B. RESTRICTIONS ON MOVES

A family's right to move is generally contingent upon the family's compliance with program requirements [24 CFR 982.1(b)(2)]. HUD specifies two conditions under which LMHA may deny a family permission to move and two ways in which LMHA may restrict moves by a family.

Denial of Moves

HUD regulations permit LMHA to deny a family permission to move under the following conditions:

Insufficient Funding

LMHA may deny a family permission to move if LMHA does not have sufficient funding for continued assistance [24 CFR 982.314(e)(1)]. However, Notice PIH 2011-3 significantly restricts the ability of PHAs to deny permission to move due to insufficient funding and places further requirements on PHAs regarding moves denied due to lack of funding. The requirements found in this notice are mandatory.

LMHA Policy

LMHA will deny a family permission to move on grounds LMHA does not have sufficient funding for continued assistance if (a) the move is initiated by the family, not the owner or LMHA; (b) LMHA can demonstrate that the move will, in fact, result in higher subsidy costs; and (c) LMHA can demonstrate, in accordance with the policies in Part VIII of Chapter 16, that it does not have sufficient funding in its annual budget to accommodate the higher subsidy costs.

LMHA will create a list of families whose moves have been denied due to insufficient funding. When funds become available, the families on this list will take precedence over families on the waiting list. LMHA will use the same procedures for notifying families with open requests to move when funds become available as it uses for notifying families on the waiting list (see section 4-III.D).

LMHA will inform the family of its policy regarding moves denied due to insufficient funding in a letter to the family at the time the move is denied.

LMHA must provide written notification to the local HUD Office within 10 business days of determining it is necessary to deny moves to a higher-cost unit based on insufficient funding.

Grounds for Denial or Termination of Assistance

LMHA has grounds for denying or terminating the family's assistance [24 CFR 982.314(e)(2)].

LMHA Policy

LMHA will grant a family permission to move if LMHA has no grounds to deny or terminate the family's assistance for program violations, (a thorough definition of program violations can be found in Chapter 5-I.C. Family Obligations). Further definition of a family's obligations include:

- The client is current on any repayment agreements.
- Client has provided a copy of the thirty (30) day notice, submitted to and signed by the current landlord. The notice must clearly state the client is in good standing and owes no money.
- The client has not received a notice of cancellation from the Housing Authority.

However, in addition, if the calculations reveal that the subsidy amount to be paid to the new owner on behalf of the client would be zero, LMHA would not render any assistance should the family proceed with the move.

Restrictions on Elective Moves [24 CFR 982.314(c)]

HUD regulations permit LMHA to prohibit any elective move by a participant family during the family's initial lease term. They also permit LMHA to prohibit more than one elective move by a participant family during any 12-month period. However, such prohibitions, if adopted, do not apply when the family or a member of the family is or has been the victim of domestic violence, dating violence, sexual assault or stalking and the move is needed to protect the health or safety of the family or family member. (For the policy on documentation of abuse, see section 10-I.A.)

LMHA Policy

LMHA will deny a family permission to make an elective move during the family's initial lease term. This policy applies to moves within LMHA's jurisdiction or outside it under portability.

LMHA will also deny a family permission to make more than one elective move during any 12-month period. This policy applies to all assisted families residing in LMHA's jurisdiction.

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

In addition, LMHA will allow exceptions to these policies for purposes of reasonable accommodation of a family member who is a person with disabilities (see Chapter 2).

10-I.C. MOVING PROCESS

Notification

If a family wishes to move to a new unit, the family must notify LMHA and the owner before moving out of the old unit or terminating the lease on notice to the owner [24 CFR 982.314(d)(2)]. If the family wishes to move to a unit outside LMHA's jurisdiction under portability, the notice to LMHA must specify the area where the family wishes to move [24 CFR 982.314(d)(2), Notice PIH 2011-3]. The notices must be in writing [24 CFR 982.5].

Approval

LMHA Policy

Families that wish to move must contact their Housing Specialist. The Housing Specialist will determine whether the move is approvable in accordance with the regulations and policies set forth in sections 10-I.A. and 10-I.B. If the family is eligible to move the Housing Specialist may assign the date and time for the family to attend a rehouse class if one is required.

Reexamination of Family Income and Composition

LMHA Policy

Families that are approved to move may be required to update their income at the time they are assigned a rehouse class. Only the income that has changed needs to be updated.

For families moving into or families approved to move out of LMHA's jurisdiction under portability, LMHA will follow the policies set forth in Part II of this chapter.

Criminal Background Check

LMHA Policy

LMHA is authorized to obtain criminal conviction records from law enforcement agencies to verify a household's eligibility for continued participation in the HCV program. This authority assists LMHA in complying with HUD requirements and LMHA policies to terminate assistance to participants who are engaging in or have engaged in certain criminal activities. In order to obtain access to the records LMHA must require every participant family to submit a consent form signed by each adult household member [24 CFR 5.903] at annual reexamination and at the time of a move with continued assistance. A move with continued assistance includes moves within LMHA's jurisdiction as well as inbound and outbound portability households. LMHA will process the criminal background screening in accordance with the policies described in Section 3-III.D.

LMHA is required to perform criminal background checks necessary to determine whether any household member is subject to a lifetime registration requirement under a state sex offender program in the state where the housing is located, as well as in any other state where a household member is known to have resided [24 CFR 982.553(a)(2)(i)].

If LMHA proposes to terminate assistance based on a criminal record or on lifetime sex offender registration information, LMHA must notify the household of the proposed action and must provide the subject of the record and the participant a copy of the record and an opportunity to dispute the accuracy and relevance of the information prior to termination of assistance. [24 CFR 5.903(f) and 5.905(d)].

Voucher Issuance and Briefing

LMHA Policy

For families approved to move to a new unit within LMHA's jurisdiction, LMHA will issue a new voucher within 10 business days of LMHA's written approval to move. No briefing is required for these families. LMHA 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 LMHA approves. Otherwise, the family will lose its assistance.

For families moving into or families approved to move out of LMHA's jurisdiction under portability, LMHA will follow the policies set forth in Part II of this chapter.

Housing Assistance Payments [24 CFR 982.311(d)]

When a family moves out of an assisted unit, LMHA may not make any housing assistance payment to the owner for any month **after** the month the family moves out. The owner may keep the housing assistance payment for the month when the family moves out of the unit.

If a participant family moves from an assisted unit with continued tenant-based assistance, the term of the assisted lease for the new assisted unit may begin during the month the family moves out of **the** first assisted unit. Overlap of the last housing assistance payment (for the month when the family moves out of the old unit) and the first assistance payment for the new unit, is not considered to constitute a duplicative housing subsidy.

PART II: PORTABILITY

10-II.A. OVERVIEW

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

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

The same PHA commonly acts as the initial PHA for some families and as the receiving PHA for others. Each role involves different responsibilities. LMHA will follow the rules and policies in section 10-II.B when it is acting as the initial PHA for a family. LMHA will follow the rules and policies in section 10-II.C when it is acting as the receiving PHA for a family.

LMHA shall not deny a victim of domestic violence that is eligible under VAWA the access to portability.

10-II.B. INITIAL PHA ROLE

Allowable Moves under Portability

A family may move with voucher assistance only to an area where there is at least one PHA administering a voucher program [24 CFR 982.353(b)]. If there is more than one PHA in the area, the initial PHA may choose the receiving PHA [24 CFR 982.355(b)].

Applicant families that have been issued vouchers as well as participant families may qualify to lease a unit outside LMHA's jurisdiction under portability. The initial PHA, in accordance with HUD regulations and LMHA's policy, determines whether a family qualifies including non-residence status[24 CFR 982.354(c)] Nonresident applicant does not have any right to move under portability for a period of 12 months from the time when the family is admitted into the HCV program.

Applicant Families

Under HUD regulations, most applicant families qualify to lease a unit outside the PHA's jurisdiction under portability. However, HUD gives LMHA discretion to deny a portability move by an applicant family for the same two reasons that it may deny any move by a participant family: insufficient funding and grounds for denial or termination of assistance.

LMHA Policy

In determining whether or not to deny an applicant family permission to move under portability because LMHA lacks sufficient funding or has grounds for denying assistance to the family, LMHA will follow the policies established in section 10-I.B of this chapter.

In addition, LMHA may establish a policy denying the right to portability to nonresident applicants during the first 12 months after they are admitted to the program [24 CFR 982.353(c)].

LMHA Policy

If neither the head of household nor the spouse/co head of an applicant family had a domicile (legal residence) in LMHA's jurisdiction at the time the family's application for assistance was submitted, the family must live in LMHA's jurisdiction with voucher assistance for at least 12 months before requesting portability.

LMHA will consider exceptions to this policy for purposes of reasonable accommodation (see Chapter 2).

Participant Families

LMHA must not provide portable assistance for a participant if a family has moved out of its assisted unit in violation of the lease. [24 CFR 982.353b)]. The Violence against Women Act of 2013 (VAWA) creates an exception to this prohibition for families who are otherwise in compliance with program obligations but have moved to protect the health or safety of a family member who is or has been a victim of domestic violence, dating violence, sexual assault or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the unit [24 CFR 982.353(b)].

LMHA Policy

LMHA will determine whether a participant family may move out of LMHA's jurisdiction with continued assistance in accordance with the regulations and policies set forth here and in sections 10-I.A and 10-I.B of this chapter. LMHA will notify the family of its determination in accordance with the approval policy set forth in section 10-I.C of this chapter.

Determining Income Eligibility

Applicant Families

An applicant family may lease a unit in a particular area under portability only if the family is income eligible for admission to the voucher program in that area [24 CFR 982.353(d)(3)]. The family must specify the area to which the family wishes to move [Notice 2004-12].

The initial PHA is responsible for determining whether the family is income eligible in the area to which the family wishes to move [24 CFR 982.355(c)(1)]. If the applicant family is not income eligible in that area, the PHA must inform the family that it may not move there and receive voucher assistance [Notice PIH 2004-12].

Participant Families

The income eligibility of a participant family is not re-determined if the family moves to a new jurisdiction under portability [24 CFR 982.353(d)(2), 24 CFR 982.355(c)(1)].

Reexamination of Family Income and Composition

No new reexamination of family income and composition is required for an applicant family.

LMHA Policy

For a participant family approved to move out of its jurisdiction under portability, LMHA generally will conduct a reexamination of family income and composition only if the family's annual reexamination must be completed on or before the initial billing deadline specified on form HUD-52665, Family Portability Information.

LMHA will make any exceptions to this policy necessary to remain in compliance with HUD regulations.

Briefing

The regulations and policies on briefings set forth in Chapter 5 of this plan require LMHA to provide information on portability to all applicant families that qualify to lease a unit outside LMHA's jurisdiction under the portability procedures. Therefore, no special briefing is required for these families.

LMHA Policy

No formal briefing will be required for a participant family wishing to move outside LMHA's jurisdiction under portability. However, LMHA will provide the family with the same oral and written explanation of portability that it provides to applicant families selected for admission to the program (see Chapter 5). LMHA will provide the name, address, and phone of the contact for LMHA in the jurisdiction to which they wish to move. LMHA will advise the family which PHAs policies and procedures including subsidy standards and voucher extension policies.

Voucher Issuance and Term

An applicant family has no right to portability until after the family has been issued a voucher [24 CFR 982.353(b),(c)(6), and(c)(&)]. In issuing vouchers to applicant families, LMHA will follow the regulations and procedures set forth in Chapter 5. The initial housing PHA must determine the family's eligibility to move in accordance with [24 CFR 982.355(c)(2)].

LMHA Policy

For families approved to move under portability, LMHA will issue a new voucher within 10 business days of LMHA's written approval to move.

The initial term of the voucher will be 120 days.

If the family moving under portability is living in a unit where HAP has been abated because of the failure to complete the HQS repairs, or the client previously vacated their unit due to unsafe condition, the voucher issuance date will be the effective date of that action.

Voucher Extensions and Expiration

LMHA Policy

The receiving PHA must contact LMHA if the family's voucher expires before the family arrives at the receiving PHA, to determine whether the initial PHA will extend the voucher. The receiving PHA must contact LMHA of any extensions granted to the term of the voucher.

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). (See below under "Initial Billing Deadline" for one exception to this policy.)

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 [Notice PIH 2011-3].

LMHA Policy

LMHA will use e-mail, when possible, to contact the receiving PHA regarding whether the receiving PHA will administer or absorb the family's voucher.

Initial Contact with the Receiving PHA

After approving a family's request to move under portability, the initial PHA must promptly notify the receiving PHA to expect the family [24 CFR 982.355(c)(2)]. This means that the initial PHA must contact the receiving PHA directly on the family's behalf [Notice PIH 2004-12]. The initial PHA must also advise the family how to contact and request assistance from the receiving PHA [24 CFR 982.355(c)(2)].

LMHA Policy

Because the portability process is time-sensitive, LMHA will notify the receiving PHA by phone, fax, or e-mail to expect the family. LMHA will also ask the receiving PHA to provide any information the family may need upon arrival, including the name, fax, e-mail and telephone number of the staff person responsible for business with incoming portable families and procedures related to appointments for voucher issuance. LMHA will pass this information along to the family and the family chooses the receiving PHA. LMHA will also ask for the name, address, telephone number, fax and email of the person responsible for processing the billing information. The family may request LMHA to choose the receiving PHA.

Sending Documentation to the Receiving PHA

LMHA is required to send the receiving PHA the following documents:

- Form HUD-52665, Family Portability Information, with Part I filled out [Notice PIH 2004-12]
- A copy of the family's voucher [Notice PIH 2004-12]
- A copy of the family's most recent form HUD-50058, Family Report, or, if necessary in the case of an applicant family, family and income information in a format similar to that of form HUD-50058 [24 CFR 982.355(c)(4), Notice PIH 2004-12]
- Copies of the income verifications backing up the form HUD-50058 [24 CFR 982.355(c)(4), Notice PIH 2004-12]

LMHA Policy

In addition to these documents, LMHA will provide the following information, if available, to the receiving PHA:

- Social security Numbers (SSNs)
- Documentation of SSNs in the file
- Documentation of legal identity
- Documentation of citizenship or eligible immigration status
- Documentation of participation in the earned income disallowance (EID) benefit
- Documentation of participation in a family self-sufficiency (FSS) program

LMHA will notify the family in writing regarding any information provided to the receiving PHA [HCV GB, p. 13-3].

Initial Billing Deadline [Notice PIH 2004-12]

When LMHA sends form HUD-52665 to the receiving PHA, it specifies in Part I the deadline by which it must receive the initial billing notice from the receiving PHA. This deadline is 60 days following the expiration date of the voucher issued to the family by the initial PHA. If the initial PHA does not receive a billing notice by the deadline and does not intend to honor a late billing submission, it must contact the receiving PHA to determine the status of the family. If the receiving PHA reports that the family is not yet under HAP contract, the initial PHA may refuse to accept a late billing submission. If the receiving PHA reports that the family is under HAP contract and the receiving PHA cannot absorb the family, the initial PHA must accept a late billing submission; however, it may report to HUD the receiving PHA's failure to comply with the deadline.

LMHA Policy

If LMHA has not received an initial billing notice from the receiving PHA by the deadline specified on form HUD-52665, it will contact the receiving PHA by phone, fax, or e-mail on the next business day. If the PHA reports that the family is not yet under HAP contract, LMHA will inform the receiving PHA that it will not honor a late billing submission and will return any subsequent billings that it receives on behalf of the family. LMHA will send the receiving PHA a written confirmation of its decision by mail.

LMHA will allow an exception to this policy if the family includes a person with disabilities and the late billing is a result of a reasonable accommodation granted to the family by the receiving PHA.

Monthly Billing Payments [24 CFR 982.355(e), Notice PIH 2004-12]

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

The initial PHA may not terminate or delay making payments under existing portability billing arrangements as a result of 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.

LMHA Policy

LMHA will utilize direct deposit to ensure that the payment is received by the deadline unless the receiving PHA notifies LMHA that direct deposit is not acceptable to them.

Annual Updates of Form HUD-50058

If LMHA is being billed on behalf of a portable family, it should receive an updated form HUD-50058 each year from the receiving PHA. If LMHA fails to receive an updated 50058 by the family's annual reexamination date, LMHA should contact the receiving PHA to verify the status of the family.

Subsequent Family Moves

Within the Receiving PHA's Jurisdiction [24 CFR 314(e)(1), Notice PIH 2005-1]

The initial PHA has the authority to deny subsequent moves by portable families whom it is assisting under portability billing arrangements if it does not have sufficient funding for continued assistance.

LMHA Policy

If LMHA determines that it must deny moves on the grounds that it lacks sufficient funding (see section 10-I.B), it will notify all receiving PHAs with which it has entered into portability billing arrangements that they, too, must deny moves to higher cost units by portable families from LMHA's jurisdiction.

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

Outside the Receiving PHA's Jurisdiction [Notice PIH 2004-12]

If LMHA is assisting a portable family under a billing arrangement and the family subsequently decides to move out of the receiving PHA's jurisdiction, LMHA is responsible for issuing the family a voucher while the family is either being assisted or has a voucher from the receiving PHA and, if the family wishes to port to another jurisdiction, sending form HUD-52665 and supporting documentation to the new receiving PHA. Any extensions of LMHA's voucher necessary to allow the family additional search-time to return to LMHA's jurisdiction or to move to another jurisdiction would be at the discretion of LMHA.

Denial or Termination of Assistance [24 CFR 982.355(c)(9)]

If LMHA has grounds for denying or terminating assistance for a portable family that has not been absorbed by the receiving PHA, LMHA may act on those grounds at any time. (For LMHA policies on denial and termination, see Chapters 3 and 12, respectively.)

10-II.C. RECEIVING PHA ROLE

If a family has a right to lease a unit in the receiving PHA's jurisdiction under portability, the receiving PHA must provide assistance for the family [24 CFR 982.355(10)].

The receiving PHA's procedures and preferences for selection among eligible applicants do not apply, and the receiving PHA's waiting list is not used [24 CFR 982.355(10)]. However, the family's unit, or voucher, size is determined in accordance with the subsidy standards of the receiving PHA [24 CFR 982.355(7)], and the amount of the family's housing assistance payment is determined in the same manner as for other families in the receiving PHA's voucher program [24 CFR 982.355(e)(2)]. The receiving PHA cannot refuse to assist incoming portable families or direct them to another neighboring PHA. [24 CFR 982.355(b)] The administration of the ported voucher must be in accordance with the receiving PHA's policies. The receiving PHA must respond to the initial request in writing. If the receiving PHA notifies LMHA that it will absorb the voucher, it cannot reverse its decision at a later date without consent of LMHA. [24 CFR 982.355(c)(5)]

Responding to Initial PHA's Request

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. 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 [Notice PIH 2011-3].

LMHA Policy

LMHA will use e-mail, when possible, to notify the initial PHA whether it will administer or absorb the family's voucher.

Initial Contact with Family

When a family moves into LMHA's jurisdiction under portability, the family is responsible for promptly contacting LMHA and complying with LMHA's procedures for incoming portable families [24 CFR 982.355(c)(3)].

If the voucher issued to the family by the initial PHA has expired, the receiving PHA does not process the family's paperwork but instead refers the family back to the initial PHA [Notice PIH 2011-3].

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 2011-3]. (For more on this topic, see later under "Denial or Termination of Assistance.")

Briefing

HUD allows LMHA to require a briefing for an incoming portable family as long as the requirement does not unduly delay the family's search [Notice PIH 2011-3].

LMHA Policy

LMHA will require the family to attend a briefing. LMHA will provide the family with a briefing packet (as described in Chapter 5) and, inform the family about LMHA's payment and subsidy standards, procedures for requesting approval of a unit, the unit inspection process, and the leasing process.

Income Eligibility and Reexamination

HUD allows LMHA to conduct its own income reexamination of a portable family [24 CFR 982.355(c)(4)]. However, LMHA may not delay voucher issuance or unit approval until the reexamination process is complete unless the reexamination is necessary to determine that an applicant family is income eligible for admission to the program in the area where the family wishes to lease a unit [Notice PIH 2004-12, 24 CFR 982.201(b)(4)]. LMHA does not redetermine income eligibility for a portable family that was already receiving assistance in the initial PHA's voucher program [24 CFR 982.355(c)(1)].

LMHA Policy

LMHA will rely upon the income information provided by the initial PHA and will not conduct a new reexamination of income and composition for incoming participant families.

For any family moving into its jurisdiction under portability, LMHA will conduct a criminal background check for each family member age 18 and older. LMHA will not conduct a criminal background check of an applicant family moving into the jurisdiction unless the jurisdiction from which the family is porting did not conduct a criminal background screening or the criminal background screening is over 120 days old. The criminal background screening will be conducted in accordance with the applicant screening procedures for LMHA.

Voucher Issuance

When a family moves into its jurisdiction under portability, LMHA is required to issue the family a voucher [24 CFR 982.355(b)(6)]. The family must submit a request for tenancy approval to LMHA during the term of LMHA's voucher [24 CFR 982.355(c)(6)].

Timing of Voucher Issuance

HUD expects LMHA 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 LMHA, and the family complies with LMHA's procedures [Notice PIH 2011-3].

LMHA Policy

When a family port into its jurisdiction, LMHA will issue the family a voucher in accordance with LMHA's policies 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 LMHA's procedures. LMHA will update the family's information when verification has been completed.

Voucher Term

LMHA must issue a voucher to the ported family that does not expire before 30 calendar days from the expiration date of the initial PHA's voucher [24 CFR 982.355(c)(6)].

LMHA Policy

LMHA's voucher will expire on the same date as the initial PHA's voucher.

Voucher Extensions [24 CFR 982.355(c)(6), Notice 2011-3]

LMHA may provide additional search time to the family beyond the expiration date of the initial PHA's voucher; however, if it does so, it must inform the initial PHA of the extension. It must also bear in mind the billing deadline provided by the initial PHA. Unless willing and able to absorb the family, LMHA 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.

LMHA Policy

LMHA generally will not extend the term of the voucher that it issues to an incoming portable family unless LMHA plans to absorb the family into its own program, in which case it will follow the policies on voucher extension set forth in section 5-II.E.

LMHA will consider an exception to this policy as a reasonable accommodation to a person with disabilities (see Chapter 2).

Notifying the Initial PHA

LMHA 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 LMHA's voucher [24 CFR 982.355(c)(8)]. LMHA is required to use Part II of form HUD-52665, Family Portability Information, for this purpose [24 CFR 982.355(e)(5), Notice PIH 2011-3]. (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 LMHA but instead wishes to return to the initial PHA's jurisdiction or to search in another jurisdiction, LMHA 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 LMHA's voucher is only valid for the family's search in LMHA's jurisdiction. Notice PIH 2011-3].

Administering a Portable Family's Voucher

Initial Billing Deadline

If a portable family's search for a unit is successful and LMHA intends to administer the family's voucher, LMHA must submit its initial billing notice (Part II of form HUD-52665) (a) no later than 10 business days following the date LMHA **executes** a HAP contract on behalf of the family **and** (b) in time that the notice will be **received** no later than 90 days following the expiration date of the family's voucher issued by the initial PHA Notice PIH 2011-3]. A copy of the family's form HUD-50058, Family Report, completed by LMHA must be attached to the initial billing notice. LMHA may send these documents by mail, fax, or e-mail.

LMHA Policy

LMHA will send its initial billing notice by fax or e-mail, if necessary, to meet the billing deadline but will also send the notice by regular mail.

If LMHA 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 LMHA is over-leased). [Notice PIH 2011-3].

Ongoing Notification Responsibilities [Notice PIH 2011-3], HUD-52665]

Annual Reexamination.

LMHA 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 LMHA is billing the initial PHA on behalf of the family, regardless of whether there is a change in the billing amount.

LMHA Policy

LMHA will send a copy of the updated HUD-50058 by regular mail at the same time the participant and owner are notified of the reexamination results.

Change in Billing Amount. LMHA 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.

Late Payments [Notice PIH 2011-3]

If the initial PHA fails to make a monthly payment for a portable family by the fifth business day of the month, LMHA 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). LMHA must send a copy of the notification to the Office of Public Housing (OPH) in the HUD area office with jurisdiction over LMHA. If the initial PHA fails to correct the problem by the second month following the notification, LMHA may request by memorandum to the director of the OPH with jurisdiction over the 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. LMHA 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 LMHA.

Overpayments [Notice PIH 2011-3]

In all cases where LMHA has received billing payments for billing arrangements no longer in effect, LMHA 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 LMHA failed to notify the initial PHA that the billing arrangement was terminated, LMHA 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 LMHA of the date and the amount of reimbursement to the initial PHA.

At HUD's discretion, LMHA will be subject to the sanctions spelled out in *[Notice PIH 2011-3]*

Denial or Termination of Assistance

At any time, LMHA may make a determination to deny or terminate assistance to a portable family for family action or inaction [24 CFR 982.355(c)(9), 24 CFR 982.355(c)(10)].

In the case of a termination, LMHA should provide adequate notice of the effective date to the initial PHA to avoid having to return a payment. In no event should LMHA fail to notify the initial PHA later than 10 business days following the effective date of the termination of the billing arrangement. *[Notice PIH 2011-3]*

LMHA Policy

If LMHA elects to deny or terminate assistance for a portable family, LMHA will notify the initial PHA within 10 business days after the informal review or hearing if the denial or termination is upheld. LMHA will base its denial or termination decision on the policies set forth in Chapter 3 or Chapter 12, respectively. The informal review or hearing will be held in accordance with the policies in Chapter 16. LMHA will furnish the initial PHA with a copy of the review or hearing decision.

Absorbing a Portable Family

LMHA may absorb an incoming portable family into its own program when LMHA executes a HAP contract on behalf of the family or at any time thereafter providing that (a) LMHA has funding available under its annual contributions contract (ACC) and (b) absorbing the family will not result in overleasing [24 CFR 982.355(d)(1)]. *[Notice PIH 2011-3]*

If LMHA absorbs a family from the point of admission, the admission will be counted against the income-targeting obligation of LMHA [24 CFR 982.201(b)(2)(vii)].

If LMHA absorbs a family after providing assistance for the family under a billing arrangement with the initial PHA, HUD encourages LMHA to provide adequate advance notice to the initial PHA to avoid having to return an overpayment. LMHA must specify the effective date of the absorption of the family. *[Notice PIH 2011-3]*

LMHA Policy

If LMHA decides to absorb a portable family upon the execution of a HAP contract on behalf of the family, LMHA will notify the initial PHA by the initial billing deadline specified on form HUD-52665. The effective date of the HAP contract will be the effective date of the absorption.

If LMHA decides to absorb a family after that, it will provide the initial PHA with 30 days' advance notice.

Following the absorption of an incoming portable family, the family is assisted with funds available under the consolidated ACC for LMHA's voucher program [24 CFR 982.355(d)], and LMHA becomes the initial PHA in any subsequent moves by the family under portability.

Chapter 11

RE-EXAMINATIONS

INTRODUCTION

LMHA is required to reexamine each family's income and composition at least annually, and to adjust the family's level of assistance accordingly. Interim reexaminations are also needed in certain situations. This chapter discusses both annual and interim reexaminations, and the recalculation of family share and subsidy that occurs as a result. HUD regulations and LMHA policies concerning reexaminations are presented in three parts:

Part I: Annual Reexaminations. This part discusses the process for conducting annual reexaminations.

Part II: Interim Reexaminations. This part details the requirements for families to report changes in family income and composition between annual reexaminations.

Part III: Recalculating Family Share and Subsidy Amount. This part discusses the recalculation of family share and subsidy amounts based on the results of annual and interim reexaminations.

Policies governing reasonable accommodation, family privacy, required family cooperation, and program abuse, as described elsewhere in this plan, apply to both annual and interim reexaminations.

PART I: ANNUAL REEXAMINATIONS [24 CFR 982.516]

11-I.A. OVERVIEW

LMHA must conduct a reexamination of family income and composition at least annually. This includes gathering and verifying current information about family composition, income, and expenses. Based on this updated information, the family's income and rent must be recalculated. This part discusses the schedule for annual reexaminations, the information to be collected and verified, and annual reexamination effective dates.

11-I.B. SCHEDULING ANNUAL REEXAMINATIONS

LMHA must establish a policy to ensure that the annual reexamination for each family is completed *within* a 12-month period, and may require reexaminations more frequently [HCV GB p. 12-1].

LMHA Policy

LMHA will begin the annual reexamination process 120 days in advance of its scheduled effective date. Generally, LMHA will schedule annual reexamination effective dates to coincide with the family's anniversary date.

Anniversary date is defined as 12 months from the effective date of the family's last annual reexamination or, during a family's first year in the program, from the effective date of the family's initial examination (admission).

LMHA also may schedule an annual reexamination for completion prior to the anniversary date for administrative purposes.

Notification of and Participation in the Annual Reexamination Process

LMHA is required to obtain the information needed to conduct annual reexaminations. How that information will be collected is left to the discretion of LMHA. However, LMHA should give tenants who were not provided the opportunity the option to complete Form HUD-92006 at this time [Notice PIH 2009-36].

LMHA Policy

Families generally are required to participate in an annual reexamination interview, which must be attended by all adult family members. If participation in an in-person interview poses a hardship because of a family member's disability, the family should contact LMHA to request a reasonable accommodation (see Chapter 2).

Notification of annual reexamination interviews will be generally sent by first-class mail, but may be delivered by Fax, email, or tenant portal, and will contain the date, time, and location of the interview. In addition, it will inform the family of the information and documentation that must be brought to the interview.

If the family is unable to attend a scheduled interview, the family should contact LMHA in advance of the interview to schedule a new appointment. If a family does not attend the scheduled interview, LMHA will send a second notification with a new interview appointment time.

If a family fails to attend two scheduled interviews without LMHA approval, or if the notice is returned by the post office with no forwarding address, a notice of termination (see Chapter 12) will be sent to the family's address of record, and to any alternate address provided in the family's file.

An advocate, interpreter, or other assistant may assist the family in the interview process.

11-I.C. CONDUCTING ANNUAL REEXAMINATIONS

As part of the annual reexamination process, families are required to provide updated information to LMHA regarding the family's income, expenses, and composition [24 CFR 982.551(b)].

LMHA Policy

Families will be asked to bring all required information (as described in the reexamination notice) to the reexamination appointment. The required information will include an LMHA-designated reexamination form, an Authorization for the Release of Information/Privacy Act Notice, as well as supporting documentation related to the family's income, expenses, and family composition.

Any required documents or information that the family is unable to provide at the time of the interview must be provided within 10 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 in writing, not to exceed 10 days.

If the family does not provide the required documents or information within the required time frame (plus any extensions), the family will be sent a notice of termination (See Chapter 12).

The information provided by the family generally must be verified in accordance with the policies in Chapter 7. Unless the family reports a change, or the agency has reason to believe a change has occurred in information previously reported by the family, certain types of information that are verified at admission typically do not need to be re-verified on an annual basis. These include:

- Legal identity
- Age
- Social Security Numbers
- A person's disability status
- Citizenship or immigration status

If adding a new family member to the unit causes overcrowding according to the Housing Quality Standards (HQS) (see Chapter 8), LMHA must issue the family a new voucher, and the family and LMHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, LMHA must terminate the HAP contract in accordance with its terms [24 CFR 982.403].

LMHA shall request documentation of the need for a Reasonable Accommodation, as identified on the Request for Reasonable Accommodation Form, annually for program participants during the recertification process.

The family must supply any information requested by LMHA or HUD for use in a regularly scheduled reexamination or interim reexamination of family income and composition in accordance with HUD requirements. LMHA will ensure that all applicants/residents are aware of the opportunity to request reasonable accommodations.

11-I.D. CRIMINAL BACKGROUND AT ANNUAL REEXAMINATION

LMHA is authorized to obtain criminal conviction records from law enforcement agencies to verify a household's eligibility for continued participation in the HCV program. This authority assists LMHA in complying with HUD requirements and LMHA policies to terminate assistance to participants who are

engaging in or have engaged in certain criminal activities. In order to obtain access to the records LMHA must require every participant family to submit a consent form signed by each adult household member [24 CFR 5.903] at annual reexamination and at the time of a move with continued assistance. LMHA will process the criminal background screening in accordance with the policies described in Section 3-III.D.

LMHA is required to perform criminal background checks necessary to determine whether any household member is subject to a lifetime registration requirement under a state sex offender program in the state where the housing is located, as well as in any other state where a household member is known to have resided [24 CFR 982.553(a)(2)(i)].

If LMHA proposes to terminate assistance based on a criminal record or on lifetime sex offender registration information, LMHA must notify the household of the proposed action and must provide the subject of the record and the participant a copy of the record and an opportunity to dispute the accuracy and relevance of the information **prior to termination of assistance**. [24 CFR 5.903(f) and 5.905(d)].

11-I.E. DETERMINING ONGOING ELIGIBILITY OF CERTAIN STUDENTS **[24 CFR 982.552(b)(5)]**

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

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

Students who reside with parents in an HCV assisted unit are not subject to this provision. It is limited to students who are receiving assistance on their own, separately from their parents.

LMHA Policy

During the annual reexamination process, LMHA will determine the ongoing eligibility of each student who is subject to the eligibility restrictions in 24 CFR 5.612 by reviewing the student's individual income as well as the income of the student's parents. If the student has been determined "independent" from his/her parents based on the policies in Sections 3-II.E and 7-II.E, the parents' income will not be reviewed.

If the student is no longer income eligible based on his/her own income or the income of his/her parents, the student's assistance will be terminated in accordance with the policies in Section 12-I.D.

If the student continues to be income eligible based on his/her own income and the income of his/her parents (if applicable), LMHA will process a reexamination in accordance with the policies in this chapter.

11-I.F. EFFECTIVE DATES

LMHA must establish policies concerning the effective date of changes that result from an annual reexamination [24 CFR 982.516].

LMHA Policy

In general, an *increase* in the family share of the rent that results from an annual reexamination will take effect on the family's anniversary date, and the family will be notified at least 30 days in advance.

If less than 30 days remain before the scheduled effective date, the increase will take effect on the first of the month following the end of the 30-day notice period.

If a family moves to a new unit, the increase will take effect on the effective date of the new lease and HAP contract, and no 30-day notice is required.

If LMHA chooses to schedule an annual reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be determined by LMHA, but will always allow for the 30-day notice period.

If the family causes a delay in processing the annual reexamination, *increases* in the family share of the rent will be applied retroactively, to the scheduled effective date of the annual reexamination. The family will be responsible for any overpaid subsidy and may be offered a repayment agreement in accordance with the policies in Chapter 16.

In general, a *decrease* in the family share of the rent that results from an annual reexamination will take effect on the family's anniversary date.

If a family moves to a new unit, the decrease will take effect on the effective date of the new lease and HAP contract.

If LMHA chooses to schedule an annual reexamination for completion prior to the family's anniversary date for administrative purposes, the effective date will be determined by LMHA.

If the family causes a delay in processing the annual reexamination, *decreases* in the family share of the rent will be applied prospectively, from the first day of the month following completion of the reexamination processing.

Delays in reexamination processing are considered to be caused by the family if the family fails to provide information requested by LMHA by the date specified, and this delay prevents LMHA from completing the reexamination as scheduled.

PART II: INTERIM REEXAMINATIONS [24 CFR 982.516]

11-II.A. OVERVIEW

Family circumstances may change throughout the period between annual reexaminations. HUD and LMHA policies dictate what kinds of information about changes in family circumstances must be reported, and under what circumstances LMHA must process interim reexaminations to reflect those changes. HUD regulations also permit LMHA to conduct interim reexaminations of income or family composition at any time. When an interim reexamination is conducted, only those factors that have changed are verified and adjusted [HCV GB, p. 12-10].

In addition to specifying what information the family must report, HUD regulations permit the family to request an interim determination if other aspects of the family's income or composition changes. LMHA must complete the interim reexamination within a reasonable time after the family's request.

This part includes HUD and LMHA policies describing what changes families are required to report, what changes families may choose to report, and how LMHA will process both LMHA- and family-initiated interim reexaminations.

11-II.B. CHANGES IN FAMILY AND HOUSEHOLD COMPOSITION

LMHA must adopt policies prescribing when and under what conditions the family must report changes in family composition. However, due to family obligations under the program, LMHA has limited discretion in this area.

LMHA Policy

LMHA will conduct interim reexaminations to account for any changes in household composition that occur between annual reexaminations.

New Family Members Not Requiring Approval

The addition of a family member as a result of birth, adoption, or court-awarded custody does not require LMHA approval. However, the family is required to promptly notify LMHA of the addition [24 CFR 982.551(h)(2)].

LMHA Policy

The family must inform LMHA of the birth, adoption or court-awarded custody of a child within 10 business days.

New Family and Household Members Requiring Approval

With the exception of children who join the family as a result of birth, adoption, or court-awarded custody, a family must request LMHA approval to add a new family member [24 CFR 982.551(h)(2)] or other household member (live-in aide or foster child) [24 CFR 982.551(h)(4)].

When any new family member is added, LMHA must conduct a reexamination to determine any new income or deductions associated with the additional family member, and to make appropriate adjustments in the family share of the rent and the HAP payment [24 CFR 982.516(e)].

If a change in family size causes a violation of Housing Quality Standards (HQS) space standards (see Chapter 8), LMHA must issue the family a new voucher, and the family and LMHA must try to find an

acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, LMHA must terminate the HAP contract in accordance with its terms [24 CFR 982.403].

LMHA Policy

Families must request LMHA approval to add a new family member, live-in aide, foster child, or foster adult. This includes any person not on the lease who is expected to stay in the unit for more than 30 consecutive days, or 90 cumulative days, within a twelve-month period, or in accordance with the lease terms, and therefore no longer qualifies as a “guest.” Requests must be made in writing and approved by LMHA prior to the individual moving in the unit.

LMHA will not approve the addition of a new family or household member unless the individual meets LMHA’s eligibility criteria (see Chapter 3) and documentation requirements (see Chapter 7, Part II).

LMHA will not approve the addition of a foster child or foster adult if it will cause a violation of HQS space standards.

If LMHA determines an individual meets LMHA’s eligibility criteria as defined in Chapter 3, LMHA will provide written approval to the family. If the approval of a new family member or live-in aide will cause overcrowding according to HQS standards, the approval letter will explain that the family will be issued another voucher and will be required to move.

If LMHA determines that an individual does not meet LMHA’s eligibility criteria as defined in Chapter 3, LMHA will notify the family in writing of its decision to deny approval of the new family or household member and the reasons for the denial.

LMHA will make its determination within 10 business days of receiving all information required to verify the individual’s eligibility.

Only the following will be considered as an addition to the household:

- Minors – birth, adoption, custody
- Persons eighteen (18) years of age or older – significant other, marriage.
- Adult child that has previously been in the household while the family was on the program will not be automatically eligible to be added back into the household (must have management approval)
- Live in aide
- Foster child/Foster adult
- Other good cause as confirmed and approved by management

Departure of a Family or Household Member

Families must promptly notify LMHA if any family member no longer lives in the unit [24 CFR 982.551(h)(3)]. Because household members are considered when determining the family unit (voucher) size [24 CFR 982.402], LMHA also needs to know when any live-in aide, foster child, or foster adult ceases to reside in the unit.

LMHA Policy

If a household member ceases to reside in the unit, the family must inform LMHA within 10 business days. This requirement also applies to a family member who has been considered temporarily absent at the point that the family concludes the individual is permanently absent.

If a live-in aide, foster child or foster adult ceases to reside in the unit, the family must inform LMHA within 10 business days.

11-II.C. CHANGES AFFECTING INCOME OR EXPENSES

Interim reexaminations can be scheduled either because LMHA has reason to believe that changes in income or expenses may have occurred, or because the family reports a change. When a family reports a change, LMHA may take different actions depending on whether the family reported the change voluntarily, or because it was required to do so.

LMHA-Initiated Interim Reexaminations

LMHA-initiated interim reexaminations are those that are scheduled based on circumstances or criteria defined by LMHA. They are not scheduled because of changes reported by the family.

LMHA Policy

LMHA will conduct interim reexaminations in each of the following instances:

For families receiving the Earned Income Disallowance (EID), LMHA will conduct an interim reexamination at the start and conclusion of the second 12-month exclusion period (50 percent phase-in period).

LMHA may conduct an interim reexamination at any time in order to correct an error in a previous reexamination, or to investigate a tenant fraud complaint.

Family-Initiated Interim Reexaminations

LMHA must adopt policies prescribing when and under what conditions the family must report changes in family income or expenses [24 CFR 982.516(c)]. In addition, HUD regulations require that the family be permitted to obtain an interim reexamination any time the family has experienced a change in circumstances since the last determination [24 CFR 982.516(b)(2)].

Required Reporting

HUD regulations give LMHA the freedom to determine the circumstances under which families will be required to report changes affecting income.

LMHA Policy

LMHA will only conduct interim reexaminations for families that qualify for the earned income disallowance (EID), and only when the EID family's share of rent will change as a result of the increase. In all other cases, LMHA will note the information in the tenant file, but will not conduct an interim reexamination.

Families are not required to report any other changes in income or expenses.

Families receiving a temporary minimum rent hardship exemption and/or paying minimum rent will be required to report any changes in income and the change will be processed. Changes should be reported within 10 business days.

Optional Reporting

The family may request an interim reexamination any time the family has experienced a change in circumstances since the last determination [24 CFR 982.516(b)(2)]. LMHA must process the request if the family reports a change that will result in a reduced family income [HCV GB, p. 12-9].

If a family reports a decrease in income from the loss of welfare benefits due to fraud or non-compliance with a welfare agency requirement to participate in an economic self-sufficiency program, the family's share of the rent will not be reduced [24 CFR 5.615]. For more information regarding the requirement to impute welfare income see Chapter 6.

LMHA Policy

If a family reports a change that it was not required to report and that would result in an increase in the family share of the rent, LMHA will note the information in the tenant file, but will not conduct an interim reexamination except for by request from Family Self-Sufficiency participants. LMHA will process a change that results in an increase in the family share of the rent for FSS participants if requested by the family.

If a family reports a change that it was not required to report and that would result in a decrease in the family share of rent, LMHA will conduct an interim reexamination. See Section 11-II.D. for the effective dates.

11-II.D. PROCESSING THE INTERIM REEXAMINATION

Method of Reporting

LMHA Policy

The family must notify LMHA of changes in writing.

Generally, the family will not be required to attend an interview for an interim reexamination. However, if LMHA determines that an interview is not warranted, the family may be required to attend.

Based on the type of change reported, LMHA will determine the documentation the family will be required to submit. The family must submit any required information or documents within 10 days of receiving a request from LMHA. This time frame may be extended for good cause with LMHA approval. LMHA will accept required documentation by mail, by fax, or in person.

Effective Dates

LMHA must establish the time frames in which any changes that result from an interim reexamination will take effect [24 CFR 982.516(d)]. The changes may be applied either retroactively or prospectively, depending on whether there is to be an increase or a decrease in the family share of the rent, and whether the family reported any required information within the required time frames [HCV GB, p. 12-10].

LMHA Policy

If the family share of the rent is to *increase*:

If a family fails to report a change within the required time frames, or fails to provide all required information within the required time frames, the increase will be applied retroactively, to the date it would have been effective had the information been provided on a timely basis. The family will be responsible for any overpaid subsidy and may be offered a repayment agreement in accordance with the policies in Chapter 16.

If the family share of the rent is to *decrease*:

The decrease will be effective on the first day of the month following the month in which the change was reported and all required documentation was submitted. In cases where the change cannot be verified until after the date the change would have become effective, the change will be made retroactively.

PART III: RECALCULATING FAMILY SHARE AND SUBSIDY AMOUNT

11-III.A. OVERVIEW

After gathering and verifying required information for an annual or interim reexamination, LMHA must recalculate the family share of the rent and the subsidy amount, and notify the family and owner of the changes [24 CFR 982.516(d)(2), HCV 12-6 and 12-10]. While the basic policies that govern these calculations are provided in Chapter 6, this part lays out policies that affect these calculations during a reexamination.

11-III.B. CHANGES IN PAYMENT STANDARDS AND UTILITY ALLOWANCES

In order to calculate the family share of the rent and HAP amount correctly, changes in payment standards, subsidy standards, or utility allowances may need to be updated and included in LMHA's calculations.

Specific policies governing how subsidy standards, payment standards, and utility allowances are applied are discussed below.

Payment Standards [24 CFR 982.505]

The family share of the rent and HAP calculations must use the correct payment standard for the family, taking into consideration the family unit size, the size of unit, and the area in which the unit is located [HCV GB, p. 12-5]. See Chapter 6 for information on how to select the appropriate payment standard.

When LMHA changes its payment standards or the family's situation changes, new payment standards are applied at the following times:

- If LMHA's payment standard amount changes during the term of the HAP contract, the date on which the new standard is applied depends on whether the standard has increased or decreased:
 - If the payment standard amount has *increased*, the increased payment standard will be applied at the *first annual* reexamination following the effective date of the increase in the payment standard.
 - If the payment standard amount has *decreased*, the decreased payment standard will be applied at the *second annual* reexamination following the effective date of the decrease in the payment standard.
- If the family moves to a new unit, or a new HAP contract is executed due to changes in the lease (even if the family remains in place) the current payment standard applicable to the family will be used when the new HAP contract is processed.

Subsidy Standards [24 CFR 982.505(c)(4)]

If there is a change in the family unit size that would apply to a family during the HAP contract term, either due to a change in family composition, or a change in LMHA's subsidy standards (see Chapter 5), the new family unit size must be used to determine the payment standard amount for the family at the family's *first annual* reexamination following the change in family unit size.

Utility Allowances [24 CFR 982.517(d)]

The family share of the rent and HAP calculations must reflect any changes in the family's utility arrangement with the owner, or in LMHA's utility allowance schedule [HCV GB, p. 12-5]. Chapter 16 discusses how utility allowance schedules are established.

When there are changes in the utility arrangement with the owner, LMHA must use the utility allowances in effect at the time the new lease and HAP contract are executed.

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

LMHA Policy

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

11-III.C. NOTIFICATION OF NEW FAMILY SHARE AND HAP AMOUNT

LMHA must notify the owner and family of any changes in the amount of the HAP payment [HUD-52641, HAP Contract]. The notice must include the following information [HCV GB, p. 12-6]:

- The amount and effective date of the new HAP payment
- The amount and effective date of the new family share of the rent
- The amount and effective date of the new tenant rent to owner

The family must be given an opportunity for an informal hearing regarding LMHA's determination of their annual or adjusted income, and the use of such income to compute the housing assistance payment [24 CFR 982.555(a)(1)(i)] (see Chapter 16).

LMHA Policy

The notice to the family will include the amount and effective date of the new HAP payment, the new family share of the rent, utility allowance payments (if applicable), and the new tenant rent to owner. The notice also will state the procedures for requesting an informal hearing.

11-III.D. DISCREPANCIES

During an annual or interim reexamination, LMHA may discover that information previously reported by the family was in error, or that the family intentionally misrepresented information. In addition, LMHA may discover errors made by LMHA. When errors resulting in the overpayment or underpayment of subsidy are discovered, corrections will be made in accordance with the policies in Chapter 13.

Chapter 12

TERMINATION OF ASSISTANCE AND TENANCY

HUD regulations specify the reasons for which a LMHA can terminate a family's assistance, and the ways in which such terminations must take place. They also dictate the circumstances under which an owner may terminate the tenancy of an assisted family. This chapter presents the policies that govern voluntary and involuntary terminations of assistance, and termination of tenancy by the owner. It is presented in three parts:

Part I: Grounds for Termination of Assistance. This part discusses various reasons that a family's assistance may be terminated, including voluntary termination by the family, termination because the family no longer qualifies to receive subsidy, and termination by LMHA based on the family's behavior.

Part II: Approach to Termination of Assistance. This part describes the policies that govern how an involuntary termination takes place. It specifies the alternatives that LMHA may consider in lieu of termination, the criteria LMHA must use when deciding what action to take and the steps LMHA must take when terminating a family's assistance.

Part III: Termination of Tenancy by the Owner. This part presents the policies that govern the owner's right to terminate an assisted tenancy.

PART I: GROUNDS FOR TERMINATION OF ASSISTANCE

12-I.A. OVERVIEW

HUD requires LMHA to terminate assistance for certain offenses and when the family no longer requires assistance. HUD permits LMHA to terminate assistance for certain other actions family members take or fail to take. In addition, a family may decide to stop receiving HCV assistance at any time by notifying LMHA.

12-I.B. FAMILY NO LONGER REQUIRES ASSISTANCE [24 CFR 982.455]

As a family's income increases, the amount of LMHA subsidy goes down. If the amount of HCV assistance provided by LMHA drops to zero and remains at zero for 180 consecutive calendar days the family's assistance terminates automatically.

LMHA Policy

If a participating family receiving zero assistance experiences a change in circumstances that would cause the HAP payment to rise above zero, the family must notify LMHA of the changed circumstances and request an interim reexamination before the expiration of the 180-day period.

LMHA will not execute a HAP contract where the HAP assistance provided by LMHA will be zero.

12-I.C. FAMILY CHOOSES TO TERMINATE ASSISTANCE

The family may request that LMHA terminate the family's assistance at any time.

LMHA Policy

The request to terminate assistance should be made in writing at least 30 days prior to their requested end of participation and signed by the head of household, spouse, or co-head.

12-I.D. MANDATORY TERMINATION OF ASSISTANCE

HUD requires LMHA to terminate assistance in the following circumstances.

Eviction [24 CFR 982.552(b)(2), 24 CFR 5.2005(c)(1)]

LMHA must terminate assistance whenever a family is evicted from a unit assisted under the HCV program for a serious or repeated violation of the lease. As discussed further in section 12-II.E, incidents of actual or threatened domestic violence, dating violence, sexual assault 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.

LMHA Policy

Failure to Provide Consent [24 CFR 982.552(b)(3)]

LMHA must terminate assistance if any family member fails to sign and submit any consent form they are required to sign for a reexamination. See Chapter 7 for a complete discussion of consent requirements.

Failure to Document Citizenship [24 CFR 982.552(b)(4) and [24 CFR 5.514(c)]

LMHA must terminate assistance if (1) a family fails to submit required documentation within the required timeframe concerning any family member's citizenship or immigration status; (2) a family submits evidence of citizenship and eligible immigration status in a timely manner, but United States Citizenship and Immigration Services (USCIS) primary and secondary verification does not verify eligible immigration status of the family; or (3) a family member, as determined by LMHA, has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit.

For (3) above, such termination must be for a period of at least 24 months. This does not apply to ineligible noncitizens already in the household where the family's assistance has been prorated. See Chapter 7 for a complete discussion of documentation requirements.

Failure to Disclose and Document Social Security Numbers [24 CFR 5.218(c), Notice PIH 2012-10]

LMHA must terminate assistance if a participant family fails to disclose the complete and accurate social security numbers of each household member and the documentation necessary to verify each social security number.

However, if the family is otherwise eligible for continued program assistance, and LMHA 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, LMHA 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 LMHA determined the family to be noncompliant.

LMHA Policy

LMHA will defer the family's termination and provide the family with the opportunity to comply with the requirement for a period of 90 calendar days for circumstances beyond the participant's control such as delayed processing of the SSN application by the SSA, natural disaster, fire, death in the family, or other emergency, if there is a reasonable likelihood that the participant will be able to disclose an SSN by the deadline.

Methamphetamine Manufacture or Production [24 CFR 982.553(b)(1)(ii)]

LMHA must terminate assistance if any household member has ever been convicted of the manufacture or production of methamphetamine on the premises of federally-assisted housing.

Failure of Students to Meet Ongoing Eligibility Requirements [24 CFR 982.552(b)(5) and FR 4/10/06]

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, does not have dependent children, is not residing with his/her parents in an HCV assisted household, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, LMHA 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 LMHA policies, or must be given the opportunity to lease in place if the terminated ineligible student members elect to move out of the assisted unit.

Death of the Sole Family Member [24 CFR 982.311(d) and Notice PIH 2010-9]

LMHA must immediately terminate program assistance for deceased single member households.

12-IE. MANDATORY POLICIES AND OTHER AUTHORIZED TERMINATIONS

Mandatory Policies [24 CFR 982.553(b) and 982.551(l)]

HUD requires LMHA to establish policies that permit LMHA to terminate assistance if LMHA determines that:

- Any household member is currently engaged in any illegal use of a drug, or has a pattern of illegal drug use that interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents
- Any household member's abuse or pattern of abuse of alcohol may threaten the health, safety, or right to peaceful enjoyment of the premises by other residents
- Any household member has violated the family's obligation not to engage in any drug-related criminal activity
- Any household member has violated the family's obligation not to engage in violent criminal activity

Use of Illegal Drugs and Alcohol Abuse

LMHA Policy

LMHA will terminate a family's assistance if any household member is currently engaged in any illegal use of a drug, or has a pattern of illegal drug use that interferes with the health, safety, or right to peaceful enjoyment of the premises by other residents.

LMHA will terminate assistance if any household member's abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

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

LMHA will consider all credible evidence, including but not limited to, any record of arrests, convictions, or eviction of household members related to the use of illegal drugs or abuse of alcohol.

In making its decision to terminate assistance, LMHA will consider alternatives as described in Section 12-II.C and other factors described in Sections 12-II.D and 12-II.E. Upon consideration of such alternatives and factors, LMHA may, on a case-by-case basis, choose not to terminate assistance.

Drug-Related and Violent Criminal Activity [24 CFR 5.100]

Drug means a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

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

Violent criminal activity means any criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force substantial enough to cause, or be reasonably likely to cause, serious bodily injury or property damage.

LMHA Policy

LMHA 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.

LMHA will consider all credible evidence, including but not limited to, any record of arrests and/or convictions of household members related to drug-related or violent criminal activity, and any eviction or notice to evict based on drug-related or violent criminal activity, police reports and search warrants.

In making its decision to terminate assistance, LMHA will consider alternatives as described in Section 12-II.C and other factors described in Sections 12-II.D and 12-II.E. Upon consideration of such alternatives and factors, LMHA may, on a case-by-case basis, choose not to terminate assistance.

Other Authorized Reasons for Termination of Assistance
[24 CFR 982.552(c), 24 CFR 5.2005(c)]

HUD permits LMHA to terminate assistance under a number of other circumstances. It is left to the discretion of LMHA whether such circumstances in general warrant consideration for the termination of assistance. As discussed further in section 12-II.E, the Violence Against Women Act of 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.

LMHA Policy

LMHA **will not** terminate a family's assistance because of the family's failure to meet its obligations under the Family Self-Sufficiency program.

LMHA **will** terminate a family's assistance if:

The family has failed to comply with any family obligations under the program. See Exhibit 12-1 for a listing of family obligations and related LMHA policies.

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

Any LMHA has ever terminated assistance under the program for any member of the family.

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

The family currently owes rent or other amounts to any PHA in connection with the HCV, Moderate Rehabilitation or public housing programs.

The family has not reimbursed any PHA for amounts the PHA paid to an owner under a HAP contract for rent or other amounts owed by the family under the lease.

The family has breached the terms of a repayment agreement entered into with LMHA or other PHA.

A family member is a sex offender.

A family member has engaged in or threatened violent or abusive behavior toward LMHA personnel or landlords/management agents.

The family's action or failure to act to notification that LMHA has terminated the HAP Contract with their landlord and that they must schedule and attend a program moved orientation session to receive a new voucher to relocate to another property.

Abusive or violent behavior towards LMHA personnel or landlord/management agents includes verbal as well as physical abuse or violence. Use of racial epithets, or other language, written or oral, that is customarily used to intimidate may be considered abusive or violent behavior.

Threatening refers to oral or written threats or physical gestures that communicate intent to abuse or commit violence.

In making its decision to terminate assistance, LMHA will consider alternatives as described in Section 12-II.C and other factors described in Sections 12-II.D and 12-II.E. Upon consideration of such alternatives and factors, LMHA may, on a case-by-case basis, choose not to terminate assistance.

Family Absence from the Unit [24 CFR 982.312]

The family may be absent from the unit for brief periods. LMHA must establish a policy on how long the family may be absent from the assisted unit. However, the family may not be absent from the unit for a period of more than 180 consecutive calendar days for any reason. Absence in this context means that no member of the family is residing in the unit.

LMHA Policy

If the family is absent from the unit for more than 180 consecutive calendar days, the family's assistance will be terminated. Notice of termination will be sent in accordance with Section 12-II.F. LMHA also will terminate assistance if the family fails to notify LMHA prior to the absence.

Insufficient Funding [24 CFR 982.454]

LMHA may terminate HAP contracts if LMHA determines, in accordance with HUD requirements, that funding under the consolidated ACC is insufficient to support continued assistance for families in the program.

LMHA Policy

LMHA will determine whether there is sufficient funding to pay for currently assisted families according to the policies in Part VIII of Chapter 16. If LMHA determines there is a shortage of funding, prior to terminating any HAP contracts, LMHA will determine if any other actions can be taken to reduce program costs.

In the event that LMHA decides to stop issuing vouchers as a result of a funding shortfall, and LMHA is not assisting the required number of special purpose vouchers (NED families, HUD- Veterans Affairs Supportive Housing (VASH) families, and family unification program (FUP) families), when LMHA resumes issuing vouchers, LMHA will issue vouchers first to the special purpose voucher families on its waiting list until it has reached the required number of special purpose vouchers, when applicable.

If after implementing all reasonable cost cutting measures there is not enough funding available to provide continued assistance for current participants, LMHA will terminate HAP contracts as a last resort.

Prior to terminating any HAP contracts, LMHA will inform the local HUD field office. LMHA will terminate the minimum number needed in order to reduce HAP costs to a level within LMHA's annual budget authority.

If LMHA must terminate HAP contracts due to insufficient funding, LMHA will do so in accordance with the following criteria and instructions:

In addition to implementing cost saving measures such as ceasing to issue vouchers, if LMHA continues to have insufficient funding, the Agency will also rescind vouchers for applicants.

Should LMHA continue to have insufficient funding after ceasing to issuing vouchers and rescinding vouchers, LMHA will terminate HAP contracts in the most recent order of execution. However, families comprising the required number of special purpose vouchers, including nonelderly disabled (NED), HUD-Veteran's Affairs Supportive Housing (HUD-VASH), and family unification program (FUP) will be the last to be terminated.

PART II: APPROACH TO TERMINATION OF ASSISTANCE

12-II.A. OVERVIEW

LMHA is required by regulation to terminate a family's assistance if certain program rules are violated. For other types of offenses, the regulations give LMHA the discretion to either terminate the family's assistance or to take another action. This part discusses the various actions LMHA may choose to take when it has discretion, and outlines the criteria LMHA will use to make its decision about whether or not to terminate assistance. It also specifies the requirements for the notice that must be provided before terminating assistance.

12-II.B. METHOD OF TERMINATION [24 CFR 982.552(a)(3)]

The way in which LMHA terminates assistance depends upon individual circumstances. HUD permits LMHA to terminate assistance by:

- Terminating housing assistance payments under a current HAP contract,
- Refusing to approve a request for tenancy or to enter into a new HAP contract, or
- Refusing to process a request for or to provide assistance under portability procedures.

12-II.C. ALTERNATIVES TO TERMINATION OF ASSISTANCE

Change in Household Composition

As a condition of continued assistance, LMHA may require that any household member who participated in or was responsible for an offense no longer resides in the unit [24 CFR 982.552(c)(2)(ii)].

LMHA Policy

As a condition of continued assistance, the head of household must certify that the culpable 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 member's current address upon LMHA request.

Repayment of Family Debts

LMHA Policy

If a family owes amounts to LMHA or another PHA, as a condition of continued assistance, LMHA will require the family to repay the full amount or to enter into a repayment agreement, within 30 days of receiving notice from LMHA or other PHA of the amount owed. See Chapter 16 for policies on repayment agreements.

12-II.D. CRITERIA FOR DECIDING TO TERMINATE ASSISTANCE

Evidence

For criminal activity, HUD permits LMHA to terminate assistance if a *preponderance of the evidence* indicates that a household member has engaged in the activity, regardless of whether the household member has been arrested or convicted [24 CFR 982.553(c)].

LMHA Policy

LMHA will use the concept of the preponderance of the evidence as the standard for making all termination decisions.

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

Consideration of Circumstances [24 CFR 982.552(c)(2)(i)]

LMHA is permitted, but not required, to consider all relevant circumstances when determining whether a family’s assistance should be terminated.

LMHA Policy

LMHA will consider the following factors when making its decision to terminate assistance:

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

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

The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities or (as discussed further in section 12-II.E) 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

LMHA will require the participant to submit evidence of the household member’s current participation in or successful completion of a supervised drug or alcohol rehabilitation program, or evidence of otherwise having been rehabilitated successfully.

In the case of program abuse, the dollar amount of the overpaid assistance and whether or not a false certification was signed by the family

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

If the family includes a person with disabilities, LMHA’s decision to terminate the family’s assistance is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.

LMHA Policy

If a family indicates that the behavior of a family member with a disability is the reason for a proposed termination of assistance, LMHA will determine whether the behavior is related to the disability. If so, upon the family’s request, LMHA will determine whether alternative measures are appropriate as a reasonable accommodation. LMHA will only consider accommodations that can reasonably be expected to address the behavior that is the basis of the proposed termination of assistance. See Chapter 2 for a discussion of reasonable accommodation.

12-II.E. TERMINATIONS RELATED TO DOMESTIC VIOLENCE, DATING VIOLENCE, SEXUAL ASSAULT OR STALKING

This section addresses 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 and stalking. For general VAWA requirements and LMHA policies pertaining to notification, documentation, and confidentiality, see section 16-IX of this plan, where definitions of key VAWA terms are also located.

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. So do the limitations discussed under the next heading.)

First, VAWA provides that a LMHA 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 LMHA, 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 reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the unit [24 CFR 982.314(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, 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 LMHA to terminate the assistance of a victim of abuse for reasons unrelated to domestic violence, dating violence, sexual assault or stalking so long as LMHA 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 LMHA to terminate the assistance of a victim of domestic violence, dating violence, sexual assault or stalking if LMHA can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the assisted property if the victim is not terminated from assistance [24 CFR 5.2005(d)(2)].

HUD regulations define *actual and imminent threat* to mean words, gestures, actions, or other indicators of a physical threat that (a) is real, (b) would occur within an immediate time frame, and (c) could result in death or serious bodily harm [24 CFR 5.2005(d)(2) and (e)]. In determining whether an individual would pose an actual and imminent threat, the factors to be considered include:

- The duration of the risk
- The nature and severity of the potential harm
- The likelihood that the potential harm will occur
- The length of time before the potential harm would occur [24 CFR 5.2005(e)]

Even when a victim poses an actual and imminent threat, however, HUD regulations authorize a LMHA to terminate the victim’s assistance “only when there are no other actions that could be taken to reduce or eliminate the threat” [24 CFR 5.2005(d)(3)].

LMHA Policy

In determining whether a program participant who is a victim of domestic violence, dating violence, sexual assault or stalking is an actual and imminent threat to other tenants or those employed at or providing service to a property, LMHA will consider the following, and any other relevant, factors:

Whether the threat is toward an employee or tenant other than the victim of domestic violence, dating violence, or stalking

Whether the threat is a physical danger beyond a speculative threat

Whether the threat is likely to happen within a short period of time

Whether the threat to other tenants or employees can be eliminated in some other way, such as by helping the victim relocate to a confidential location or seeking a legal remedy to prevent the perpetrator from acting on the threat

If the participant wishes to contest LMHA’s determination that he or she is an actual and imminent threat to other tenants or employees, the participant may do so as part of the informal hearing.

Documentation of Abuse [24 CFR 5.2007]

LMHA Policy

When an individual facing termination of assistance for reasons related to domestic violence, dating violence, sexual assault or stalking claims protection under VAWA, LMHA will request that the individual provide documentation supporting the claim in accordance with the policies in section 16-IX.D of this plan.

LMHA reserves the right to waive the documentation requirement if it determines that a statement or other corroborating evidence from the individual will suffice. In such cases LMHA will document the waiver in the individual’s file.

Terminating the Assistance of a Domestic Violence Perpetrator

Although VAWA provides protection against termination of assistance for victims of domestic violence, it does not provide such protection for perpetrators. VAWA gives LMHA the explicit authority to “terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others” without terminating assistance to “or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant” [24 CFR 5.2009(a)]. This authority is not dependent on a bifurcated lease or other eviction action by an owner against an individual family member. Further, this authority supersedes any local, state, or other federal law to the contrary. However, if LMHA 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 LMHA 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].

LMHA Policy

LMHA will terminate assistance to a family member if LMHA determines that the family member has committed criminal acts of physical violence against other family members or others. This action will not affect the assistance of the remaining, non-culpable family members.

In making its decision, LMHA will consider all credible evidence, including, but not limited to, a signed certification (form HUD-50066) or other documentation of abuse submitted to LMHA by the victim in accordance with this section and section 16-IX.D. LMHA will also consider the factors in section 12-II.D. Upon such consideration, LMHA may, on a case-by-case basis, choose not to terminate the assistance of the culpable family member.

If LMHA does terminate the assistance of the culpable family member, it will do so in accordance with applicable law, HUD regulations, and the policies in this plan.

12-II.F. TERMINATION NOTICE

HUD regulations require 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.

LMHA Policy

Whenever a family's assistance will be terminated, LMHA will send a written notice of termination to the family and to the owner. LMHA will also send a form HUD-50066 to the family with the termination notice. The notice will state the date on which the termination will become effective. This date generally will be at least 30 calendar days following the date of the termination notice, but exceptions will be made whenever HUD rules, other LMHA policies, or the circumstances surrounding the termination require. When a family vacates the unit without informing LMHA, 30 days notice will not be given. In these cases, the notice to terminate will be sent at the time LMHA learns the family has vacated the unit.

When a family requests to be terminated from the program, they must do so in writing to LMHA. LMHA will then send a confirmation notice to the family and the owner within 10 business days of the family's request.

When LMHA notifies an owner that a family's assistance will be terminated, LMHA will, if appropriate, advise the owner of his/her right to offer the family a separate, unassisted lease.

If a family whose assistance is being terminated is entitled to an informal hearing, the notice of termination that LMHA sends to the family must meet the additional HUD and LMHA notice requirements discussed in section 16-III.C of this plan. VAWA 2013 expands notification requirements to require LMHA to provide notice of VAWA rights and the HUD-50066 form when LMHA 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, a copy of the record must accompany (or precede) the termination notice, and a copy of the record must also be provided to the subject of the record [24 CFR 982.553(d)].
- If immigration status is the basis of a family's termination, as discussed in section 12-I.D, the special notice requirements in section 16-III.D must be followed.

PART III: TERMINATION OF TENANCY BY THE OWNER

12-III.A. OVERVIEW

Termination of an assisted tenancy is a matter between the owner and the family; LMHA is not directly involved. However, the owner is under some constraints when terminating an assisted tenancy, and the reasons for which a tenancy is terminated dictate whether assistance also will be terminated.

12-III.B. GROUNDS FOR OWNER TERMINATION OF TENANCY [24 CFR 982.310, 24 CFR 5.2005(c), and Form HUD-52641-A, Tenancy Addendum]

During the term of the lease, the owner is not permitted to terminate the tenancy except for serious or repeated violations of the lease, certain violations of state or local law, or other good cause.

Serious or Repeated Lease Violations

The owner is permitted to terminate the family's tenancy for serious or repeated violations of the terms and conditions of the lease, except when the violations are related to incidents of actual or threatened domestic violence, dating violence, sexual assault or stalking and the victim is protected from eviction by the Violence against Women Act of 2013 (see section 12-II.E). A serious lease violation includes failure to pay rent or other amounts due under the lease. However, LMHA'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, regardless of whether there has been an arrest or conviction (for applicable definitions see 24 CFR 5.100):

- Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents (including property management staff residing on the premises)
- Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of their residences by, persons residing in the immediate vicinity of the premises
- Any violent criminal activity on or near the premises
- Any drug-related criminal activity on or near the premises

However, in the case of criminal activity directly related to domestic violence, dating violence, sexual assault 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 (see section 12-II.E).

The owner may terminate tenancy during the term of the lease if any member of the household is:

- Fleeing to avoid prosecution, custody, or confinement after conviction for a crime or an attempt to commit a crime that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or
- Violating a condition of probation or parole imposed under federal or state law.

The owner may terminate tenancy during the term of the lease if any member of the household has engaged in abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

Evidence of Criminal Activity

The owner may terminate tenancy and evict by judicial action a family for criminal activity by a covered person if the owner determines the covered person has engaged in the criminal activity, regardless of whether the covered person has been arrested or convicted for such activity and without satisfying the standard of proof used for a criminal conviction.

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. (24 CFR 982.310) During the initial lease term or during any extension term, other good cause includes the disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises.

After the initial lease term, “other good cause” for termination of tenancy by the owner includes:

- Failure by the family to accept the offer of a new lease or revision
- The owner’s desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit
- A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, or desire to lease the unit at a higher rent)

After the initial lease term, the owner may give the family written notice at any time, in accordance with the terms of the lease.

Note that “other good cause” does **not** include vacating a property that has been foreclosed upon during the lease term prior to the sale of that property. However, the new owner of the property may terminate the tenancy effective on the date of transfer of the unit if the owner will occupy the unit as a primary residence and has provided the tenant a notice to vacate at least 90 days before the effective date of such notice [Notice PIH 2010-49]. Further information on the protections afforded to tenants in the event of foreclosure can be found in Section 13-II.G.

12-III.C. EVICTION [24 CFR 982.310(e) and (f) and Form HUD-52641-A, Tenancy Addendum]

The owner must give the tenant a written notice that specifies the grounds for termination of tenancy during the term of the lease. The tenancy does not terminate before the owner has given this notice, and the notice must be given at or before commencement of the eviction action.

The notice of grounds may be included in, or may be combined with, any owner eviction notice to the tenant.

Owner eviction notice means a notice to vacate, or a complaint or other initial pleading used under state or local law to commence an eviction action. The owner may only evict the tenant from the unit by instituting a court action. The owner must give LMHA a copy of any eviction notice at the same time the owner notifies the family. The family is also required to give LMHA a copy of any eviction notice (see Chapter 5).

LMHA Policy

If the eviction action is finalized in court, the owner must provide LMHA with documentation related to the eviction, including notice of the eviction date, as soon as possible, but no later than 5 business days following the court-ordered eviction.

12-III.D. DECIDING WHETHER TO TERMINATE TENANCY [24 CFR 982.310(h), 24 CFR 982.310(h)(4)]

An owner who has grounds to terminate a tenancy is not required to do so, and may consider all of the circumstances relevant to a particular case before making a decision. These might include:

- The nature of the offending action
- The seriousness of the offending action;
- The effect on the community of the termination, or of the owner's failure to terminate the tenancy;
- The extent of participation by the leaseholder in the offending action;
- The effect of termination of tenancy on household members not involved in the offending activity;
- The demand for assisted housing by families who will adhere to lease responsibilities;
- The extent to which the leaseholder has shown personal responsibility and taken all reasonable steps to prevent or mitigate the offending action;
- The effect of the owner's action on the integrity of the program.

The owner may require a family to exclude a household member in order to continue to reside in the assisted unit, where that household member has participated in or been culpable for action or failure to act that warrants termination.

In determining whether to terminate tenancy for illegal use of drugs or alcohol abuse by a household member who is no longer engaged in such behavior, the owner may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully (42 U.S.C. 13661). For this purpose, the owner may require the tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

The owner's termination of tenancy actions must be consistent with the fair housing and equal opportunity provisions in 24 CFR 5.105.

An owner's decision to terminate tenancy for incidents related to domestic violence, dating violence, sexual assault or stalking is limited by the Violence against Women Act of 2013 (VAWA) and the conforming regulations in 24 CFR Part 5, Subpart L. (See section 12-II.E.)

12-III.E. EFFECT OF TENANCY TERMINATION ON THE FAMILY'S ASSISTANCE

If a termination is not due to a serious or repeated violation of the lease, and if LMHA has no other grounds for termination of assistance, LMHA may issue a new voucher so that the family can move with continued assistance (see Chapter 10).

EXHIBIT 12-1: STATEMENT OF FAMILY OBLIGATIONS

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

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

LMHA Policy

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

- The family must allow LMHA to inspect the unit at reasonable times and after reasonable notice, as described in Chapter 8 of this plan.
- The family must not commit any serious or repeated violation of the lease.

LMHA Policy

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

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

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

LMHA Policy

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

- The family must promptly give LMHA a copy of any owner eviction notice.

LMHA Policy

The family must provide LMHA with a copy of any owner eviction notice within three days of receipt of the notice.

- The family must use the assisted unit for residence by the family. The unit must be the family's only residence.

- The composition of the assisted family residing in the unit must be approved by LMHA. The family must promptly notify LMHA in writing of the birth, adoption, or court-awarded custody of a child. The family must request LMHA approval to add any other family member as an occupant of the unit.

LMHA Policy

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

- The family must promptly notify LMHA in writing if any family member no longer lives in the unit.
- If LMHA has given approval, a foster child or a live-in aide may reside in the unit. LMHA has the discretion to adopt reasonable policies concerning residency by a foster child or a live-in aide, and to define when LMHA consent may be given or denied. For policies related to the request and approval/disapproval of foster children, foster adults, and live-in aides, see Chapter 3 (Sections I.K and I.M), and Chapter 11 (Section II.B).
- The family must not sublease the unit, assign the lease, or transfer the unit.

LMHA Policy

Subleasing includes receiving payment to cover rent and utility costs by a person living in the unit who is not listed as a family member.

- The family must supply any information requested by LMHA to verify that the family is living in the unit or information related to family absence from the unit.
- The family must promptly notify LMHA when the family is absent from the unit.

LMHA Policy

Notice is required under this provision only when all family members will be absent from the unit for an extended period prior to the absence. An extended period is defined as any period greater than 30 calendar days. Written notice must be provided to LMHA at the start of the extended absence.

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

- Members of the household must not engage in abuse of alcohol in a way that threatens the health, safety or right to peaceful enjoyment of the other residents and persons residing in the immediate vicinity of the premises. See Chapter 12 for a discussion of HUD and LMHA policies related to alcohol abuse.
- An assisted family or member of the family must not receive HCV program assistance while receiving another housing subsidy, for the same unit or a different unit under any other federal, state or local housing assistance program.
- A family must not receive HCV program assistance while residing in a unit owned by a parent, child, grandparent, grandchild, sister or brother of any member of the family, unless LMHA has determined (and has notified the owner and the family of such determination) that approving rental of the unit, notwithstanding such relationship, would provide reasonable accommodation for a family member who is a person with disabilities. [Form HUD-52646, Voucher]

Chapter 13

OWNERS

INTRODUCTION

Owners play a central role in the HCV program by supplying decent, safe, and sanitary housing for participating families.

The term “owner” refers to any person or entity with the legal right to lease or sublease a unit to a participant in the HCV program [24 CFR 982.4(b)]. The term “owner” includes a principal or other interested party [24 CFR 982.453; 24 CFR 982.306(f)], such as a designated agent of the owner.

Owners have numerous responsibilities under the program, including screening and leasing to families, maintaining the dwelling unit, enforcing the lease, and complying with various contractual obligations. However, this chapter is not meant to be an overview of all aspects of owner participation in the HCV program.

The chapter is organized in two parts:

Part I: Owners in the HCV Program. This part discusses the role of an owner in LMHA’s HCV program and highlights key owner rights and responsibilities.

Part II: HAP Contracts. This part explains provisions of the HAP contract and the relationship between LMHA and the owner as expressed in the HAP contract.

For detailed information about HCV program responsibilities and processes, including LMHA policies in key areas, owners will need to refer to several other chapters in this plan. Where appropriate, Chapter 13 will reference the other chapters.

PART I. OWNERS IN THE HCV PROGRAM

13-I.A. OWNER RECRUITMENT AND RETENTION [HCV GB, pp. 2-4 to 2-6]

Recruitment

PHAs are responsible for ensuring that very low income families have access to all types and ranges of affordable housing in LMHA's jurisdiction, particularly housing outside areas of poverty or minority concentration. A critical element in fulfilling this responsibility is for LMHA to ensure that a sufficient number of owners, representing all types and ranges of affordable housing in LMHA's jurisdiction, are willing to participate in the HCV program.

To accomplish this objective, PHAs must identify and recruit new owners to participate in the program.

LMHA Policy

LMHA will conduct owner outreach to ensure that owners are familiar with the program and its advantages. LMHA will actively recruit property owners with property located outside areas of poverty and minority concentration. These outreach strategies will include:

- Distributing printed material about the program to property owners and managers
- Contacting property owners and managers by phone or in-person
- 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.

Retention

In addition to recruiting owners to participate in the HCV program, LMHA must also provide the kind of customer service that will encourage participating owners to remain active in the program.

LMHA Policy

All LMHA 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.

LMHA will provide owners with a handbook that explains the program, including HUD and LMHA policies and procedures, in easy-to-understand language.

LMHA will give special attention to helping new owners succeed through activities such as:

- Coordinating inspection and leasing activities between LMHA, the owner, and the family.
- Initiating telephone contact with the owner to explain the inspection process, and providing an inspection booklet and other resource materials about HUD housing quality standards.
- Providing other written information about how the program operates, including answers to frequently asked questions.

Additional services may be undertaken on an as-needed basis, and as resources permit.

13-I.B. BASIC HCV PROGRAM REQUIREMENTS

HUD requires LMHA to aid families in their housing search by providing the family with a list of landlords or other parties known to LMHA who may be willing to lease a unit to the family, or to help the family find a unit. Although LMHA cannot maintain a list of owners that are pre-qualified to participate in the program, owners may indicate to LMHA their willingness to lease a unit to an eligible HCV family, or to help the HCV family find a unit [24 CFR 982.301(b)(11)].

LMHA Policy

Owners that wish to indicate their willingness to lease a unit to an eligible HCV family or to help the HCV family find a unit may post their unit availability on LMHA's third party website for property listings. LMHA will provide the website information to the HCV family as part of the voucher briefing packet.

When a family approaches an owner to apply for tenancy, the owner is responsible for screening the family and deciding whether to lease to the family, just as the owner would with any potential tenant. LMHA has no liability or responsibility to the owner or other persons for the family's behavior or suitability for tenancy. See chapters 3 and 9 for more detail on tenant family screening policies and process.

If the owner is willing, the family and the owner must jointly complete a Request for Tenancy Approval (RTA, Form HUD 52517), which constitutes the family's request for assistance in the specified unit, and which documents the owner's willingness to lease to the family and to follow the program's requirements. When submitted to LMHA, this document is the first step in the process of obtaining approval for the family to receive the financial assistance it will need in order to occupy the unit. See Chapter 9 for more detail on request for tenancy approval policies and process.

HUD regulations stipulate that an assisted tenancy can be approved only under certain conditions.

The owner must be qualified to participate in the program [24 CFR 982.306]. Some owners are precluded from participating in the program, or from renting to a particular family, either because of their past history with this or another federal housing program, or because of certain conflicts of interest. Owner qualifications are discussed later in this chapter.

The selected unit must be of a type that is eligible for the program [24 CFR 982.305(a)]. Certain types of dwelling units cannot be assisted under the HCV program. Other types may be assisted under certain conditions. In addition, the owner must document legal ownership of the specified unit. See chapter 9 for more detail on unit eligibility policies and process.

The selected unit must meet HUD's Housing Quality Standards (HQS) and/or equivalent state or local standards approved by HUD [24 CFR 982.305(a)]. LMHA will inspect the owner's dwelling unit at various stages of HCV program participation, to ensure that the unit continues to meet HQS requirements. See chapter 8 for a discussion of the HQS standards, as well as the process for HQS inspections at initial lease-up and throughout the family's tenancy.

LMHA must determine that the cost of the unit is reasonable [24 CFR 982.305(a)]. The rent must be reasonable in relation to comparable unassisted units in the area and must not be in excess of rents charged by the owner for comparable, unassisted units on the premises. See chapter 8 for a discussion of requirements and policies on rent reasonableness, rent comparability and the rent reasonableness determination process.

At initial lease-up of a unit, LMHA must determine that the share of rent to be paid by the family does not exceed 40 percent of the family's monthly adjusted income [24 CFR 982.305(a)]. See chapter 6 for a discussion of the calculation of family income, family share of rent and HAP.

The dwelling lease must comply with all program requirements [24 CFR 982.308]. Owners are encouraged to use their standard leases when renting to an assisted family. However, the HCV program requires that the Tenancy Addendum, which helps standardize the tenancy requirements for all assisted families, be added word-for-word to that lease. See chapter 9 for a discussion of the dwelling lease and tenancy addendum, including lease terms and provisions. LMHA and the owner enter into a formal contractual relationship by executing the Housing Assistance Payment (HAP) Contract (Form HUD-52641). The HAP contract format is prescribed by HUD. See chapter 9 for a discussion of the HAP contract execution process. Specific HAP contract provisions and responsibilities are discussed in Part II of Chapter 13.

13-I.C. OWNER RESPONSIBILITIES [24 CFR 982.452]

The basic owner responsibilities in the HCV program are outlined in the regulations as follows:

- Performing all of the owner's obligations under the housing assistance payments (HAP) contract and the lease
- Performing all management and rental functions for the assisted unit, including selecting a voucher-holder to lease the unit, and deciding if the family is suitable for tenancy of the unit
- Maintaining the unit in accordance with the Housing Quality Standards (HQS), including performance of ordinary and extraordinary maintenance
- Complying with equal opportunity requirements
- Preparing and furnishing to LMHA information required under the HAP contract
- Collecting from the family any security deposit, the tenant's contribution to rent (that part of rent to owner not covered by the housing assistance payment from LMHA), and any charges for unit damage by the family.
- Not engaging in threatening, violent or abusive behavior towards LMHA staff or tenants
- Enforcing tenant obligations under the dwelling lease
- Paying for utilities and services (unless paid by the family under the lease)
- Making modifications to a dwelling unit occupied or to be occupied by a disabled person [24 CFR 100.203]
- Complying with the Violence against Women Reauthorization Act of 2013 (VAWA) when screening prospective HCV tenants or terminating the tenancy of an HCV family (see 24 CFR Part 5, Subpart L; 24 CFR 982.310(h)(4); and 24 CFR 982.452(b)(1))

13-1.D. OWNER QUALIFICATIONS

LMHA does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where LMHA may deny approval of an assisted tenancy based on past owner behavior, conflict of interest, or other owner-related issues. No owner has a right to participate in the HCV program [24 CFR 982.306(e)].

Owners Barred from Participation [24 CFR 982.306(a) and (b)]

LMHA must not approve the assisted tenancy if LMHA 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 LMHA not to approve a tenancy request if a court or administrative agency has determined that the owner violated the Fair Housing Act or other federal equal opportunity requirements, or if such an action is pending.

Leasing to Relatives [24 CFR 982.306(d), HCV GB p. 11-2]

LMHA must not approve an RTA if the owner is the parent, child, grandparent, grandchild, sister, or brother of any member of the family, including any other generational relationships (e.g. great grandparent) or step-family relationships (e.g. step-grandmother). LMHA may make an exception as a reasonable accommodation for a family member with a disability. The owner is required to certify that no such relationship exists. This restriction applies at the time that the family receives assistance under the HCV program for occupancy of a particular unit. Current contracts on behalf of owners and families that are related may continue, but any new leases or contracts for these families may not be approved.

Conflict of Interest [24 CFR 982.161; HCV GB p. 8-19]

LMHA must not approve a tenancy in which any of the following classes of persons has any interest, direct or indirect, during tenure or for one year thereafter:

- Any present or former member or officer of LMHA (except a participant commissioner)
- Any employee of LMHA, or any contractor, subcontractor or agent of LMHA, who formulates policy or who influences decisions with respect to the programs or for one year thereafter
- 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
- Any current employee, contractor, subcontractor or agent of LMHA or for one year thereafter

HUD may waive the conflict of interest requirements, except for members of Congress, for good cause. LMHA must submit a waiver request to the appropriate HUD Field Office for determination.

Any waiver request submitted by LMHA must include [HCV Guidebook pp.11-2 and 11-3]:

- Complete statement of the facts of the case;
- Analysis of the specific conflict of interest provision of the HAP contract and justification as to why the provision should be waived;
- Analysis of and statement of consistency with state and local laws. The local HUD office, LMHA, or both parties may conduct this analysis. Where appropriate, an opinion by the state's attorney general should be obtained;
- Opinion by the local HUD office as to whether there would be an appearance of impropriety if the waiver were granted;

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- Statement regarding alternative existing housing available for lease under the HCV program or other assisted housing if the waiver is denied;
 - If the case involves a hardship for a particular family, statement of the circumstances and discussion of possible alternatives;
 - If the case involves a public official or member of the governing body, explanation of his/her duties under state or local law, including reference to any responsibilities involving the HCV program;
 - If the case involves employment of a family member by LMHA or assistance under the HCV program for an eligible LMHA employee, explanation of the responsibilities and duties of the position, including any related to the HCV program;
 - If the case involves an investment on the part of a member, officer, or employee of LMHA, description of the nature of the investment, including disclosure/divestiture plans.

Where LMHA has requested a conflict of interest waiver, LMHA may not execute the HAP contract until HUD has made a decision on the waiver request.

LMHA Policy

In considering whether to request a conflict of interest waiver from HUD, LMHA will consider factors the reasons for waiving the requirement; consistency with state and local laws; the existence of alternative housing available to families; the individual circumstances of a particular family; the specific duties of individuals whose positions present a possible conflict of interest; the nature of any financial investment in the property and plans for disclosure/divestiture; and the possible appearance of impropriety.

Owner Actions That May Result in Disapproval of a Tenancy Request [24 CFR 982.306(c)]

HUD regulations permit LMHA, at LMHA's discretion, to refuse to approve a request for tenancy if the owner has committed any of a number of different actions.

If LMHA disapproves a request for tenancy because an owner is not qualified, it may not terminate the HAP contract for any assisted families that are already living in the owner's properties unless the owner has violated the HAP contract for those units [HCV GB p. 11-4].

LMHA Policy

LMHA will refuse to approve a request for tenancy if LMHA becomes aware that any of the following are true:

The owner has violated obligations under a HAP contract under Section 8 of the 1937 Act (42U.S.C. 1437f);

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

The owner or owner's representative has engaged in any drug-related criminal activity or any violent criminal activity;

The owner has a history or practice of non-compliance with the HQS for units leased under the tenant-based programs, or with applicable housing standards for units leased with project-based Section 8 assistance or leased under any other federal housing program;

The owner has a history or practice of failing to terminate tenancy of tenants of units assisted under Section 8 or any other federally assisted housing program for activity engaged in by the tenant, any member of the household, a guest or another person under the control of any member of the household that: (i) Threatens the right to peaceful enjoyment of the premises by other

residents; (ii) Threatens the health or safety of other residents, of employees of LMHA, or of owner employees or other persons engaged in management of the housing; (iii) Threatens the health or safety of, or the right to peaceful enjoyment of their residences, by persons residing in the immediate vicinity of the premises; or (iv) Is drug-related criminal activity or violent criminal activity;

The owner has a history or practice of renting units that fail to meet state or local housing codes;

The owner has not paid state or local real estate taxes, fines, or assessment; or

LMHA will review the owners eligibility to participate if there has been a complaint (whether public or private) or LMHA receives information that is available through the public domain. LMHA may further screen and review information once a year to determine approval or disapproval of an owner.

In considering whether to disapprove owners for any of the discretionary reasons listed above, LMHA 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, LMHA may, on a case-by-case basis, choose to approve an owner.

Legal Ownership of Unit

The following represents LMHA policy on legal ownership of a dwelling unit to be assisted under the HCV program.

LMHA Policy

LMHA will only enter into a contractual relationship with the legal owner of a qualified unit. No tenancy will be approved without acceptable documentation of legal ownership (e.g., deed of trust, proof of real estate taxes for most recent year).

For a land contract, acceptable documentation of legal ownership includes a copy of the contract that permits the property to be leased. In addition, the contract must be recorded with the county recorder's office.

A copy of any management agreement is required for those units being managed on behalf of an owner.

13-I.E. NON-DISCRIMINATION [HAP Contract – Form HUD-52641]

The owner must not discriminate against any person because of race, color, religion, sex, ancestry, national origin, age, familial status, or disability, in connection with any actions or responsibilities under the HCV program and the HAP contract with LMHA.

The owner must cooperate with LMHA and with HUD in conducting any equal opportunity compliance reviews and complaint investigations in connection with the HCV program and the HAP contract with LMHA.

See Chapter 2 for a more thorough discussion of Fair Housing and Equal Opportunity requirements in the HCV program.

PART II. HAP CONTRACTS

13-II.A. OVERVIEW

The HAP contract represents a written agreement between LMHA 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 LMHA's obligations. Under the HAP contract, LMHA agrees to make housing assistance payments to the owner on behalf of a specific family occupying a specific unit.

The HAP contract is used for all HCV program tenancies except for assistance under the Section 8 homeownership program, and assistance to families that own a manufactured home and lease the space. See chapter 15 for a discussion of any special housing types included in LMHA's HCV program.

If LMHA has given approval for the family of the assisted tenancy, the owner and LMHA execute the HAP contract. See chapter 9 for a discussion of the leasing process, including provisions for execution of the HAP contract.

13-II.B. HAP CONTRACT CONTENTS

The HAP contract format is required by HUD, specifically Housing Assistance Payment (HAP) Contract, Form HUD-52641.

The HAP contract contains three parts.

Part A of the contract includes basic **contract information** about the name of the tenant family, address of the contract unit, names of all household members, first and last dates of initial lease term, amount of initial monthly rent to owner, amount of initial housing assistance payment, utilities and appliances to be supplied by owner and tenant, signatures of LMHA and owner [HCV Guidebook, pp 11-10 and 11-11].

In general, the HAP contract cannot be modified. However, PHAs do have the discretion to add language to Part A of the HAP contract which prohibits the owner from collecting a security deposit in excess of private market practices or in excess of amounts charged to unassisted tenants. LMHA policy on the amount of security deposit an owner may collect is found in chapter 9.

In addition, PHAs have the discretion to add language to Part A of the HAP contract that defines when the housing assistance payment by LMHA is deemed received by the owner (e.g., upon mailing by LMHA or actual receipt by the owner).

LMHA Policy

LMHA has not adopted a policy that defines when the housing assistance payment by LMHA is deemed received by the owner. Therefore, no modifications to the HAP contract will be necessary.

Part B is the body of the contract. It describes in detail program requirements affecting the owner and owner roles and responsibilities under the HCV program. Most of the requirements contained in Part B of the HAP contract are outlined elsewhere in this plan. Topics addressed in Part B include:

- Lease of Contract Unit
- Maintenance, Utilities, and Other Services
- Term of HAP Contract
- Provision and Payment of Utilities and Appliances
- Rent to Owner: Reasonable Rent
- LMHA Payment to Owner

- Prohibition of Discrimination
- Owner's Breach of HAP Contract
- LMHA and HUD Access to Premises and Owner's Records
- Exclusion of Third Party Rights
- Conflict of Interest
- Assignment of the HAP Contract
- Written Notices
- Entire Agreement Interpretation

Part C of the contract includes the Tenancy Addendum (Form HUD-52641-A). The addendum sets forth the tenancy requirements for the program and the composition of the household, as approved by LMHA. The owner must sign the HUD Tenancy Addendum with the prospective tenant, and the tenant has the right to enforce the Tenancy Addendum against the owner. The terms of the Tenancy Addendum prevail over any other provisions of the lease.

13-II.C. HAP CONTRACT PAYMENTS

General

During the term of the HAP contract, and subject to the provisions of the HAP contract, LMHA must make monthly HAP payments to the owner on behalf of the family, at the beginning of each month. If a lease term begins after the first of the month, the HAP payment for the first month is prorated for a partial month.

The amount of the HAP payment is determined according to the policies described in Chapter 6, and is subject to change during the term of the HAP contract. LMHA must notify the owner and the family in writing of any changes in the HAP payment.

HAP payments can be made only during the lease term, and only while the family is residing in the unit. The monthly HAP payment by LMHA is credited toward the monthly rent to owner under the family's lease. The total of the rent paid by the tenant, plus LMHA HAP payment, should be equal to the rent specified in the lease (the rent to owner).

The family is not responsible for payment of the HAP payment, and LMHA is not responsible for payment of the family share of rent.

The family's share of the rent cannot be more than the difference between the total rent to the owner and the HAP payment. The owner may not demand or accept any rent payment from the tenant in excess of this maximum [24 CFR 982.451(b)(4)]. The owner may not charge the tenant extra amounts for items customarily included in rent in the locality, or provided at no additional cost to unsubsidized tenants in the premises [24 CFR 982.510(c)]. See chapter 9 for a discussion of separate, non-lease agreements for services, appliances and other items that are not included in the lease.

If the owner receives any excess HAP from LMHA, the excess amount must be returned immediately. If LMHA determines that the owner is not entitled to all or a portion of the HAP, LMHA may deduct the amount of overpayment from any amounts due to the owner, including amounts due under any other Section 8 HCV contract. See Chapter 16 for additional detail on owner reimbursement of HAP overpayments.

Owner Certification of Compliance

Unless the owner complies with all provisions of the HAP contract, the owner is not entitled to receive housing assistance payments under the HAP contract [HAP Contract – Form HUD-52641].

By endorsing the monthly check from LMHA, the owner certifies to compliance with the terms of the HAP contract. This includes certification that the owner is maintaining the unit and premises in accordance with HQS; that the contract unit is leased to the tenant family and, to the best of the owner’s knowledge, the family resides in the unit as the family’s only residence; the rent to owner does not exceed rents charged by the owner for comparable unassisted units on the premises; and that the owner does not receive (other than rent to owner) any additional payments or other consideration for rent of the contract unit during the HAP term.

Late HAP Payments [24 CFR 982.451(a)(5)]

LMHA is responsible for making HAP payments promptly when due to the owner, in accordance with the terms of the HAP contract. After the first two calendar months of the HAP contract term, the HAP contract provides for penalties if LMHA 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.

LMHA is not required to pay a late payment penalty if HUD determines that the payment is late for reasons beyond LMHA’s control. In addition, late payment penalties are not required if LMHA intentionally delays or denies payment as a remedy to an owner breach of the HAP contract [HCV Guidebook p. 11-7].

Termination of HAP Payments [24 CFR 982.311(b)]

LMHA must continue making housing assistance payments to the owner in accordance with the HAP contract as long as the tenant continues to occupy the unit and the HAP contract is not violated.

HAP payments terminate when the HAP contract terminates or when the tenancy is terminated in accordance with the terms of the lease.

If the owner has initiated eviction proceedings against the family and the family continues to reside in the unit, LMHA must continue to make housing assistance payments to the owner until the owner has obtained a court judgment or other process allowing the owner to evict the tenant.

LMHA Policy

The owner must inform LMHA when the owner has initiated eviction proceedings against the family and the family continues to reside in the unit.

The owner must inform LMHA when the owner has obtained a court judgment or other process allowing the owner to evict the tenant, and provide LMHA 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, LMHA 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 LMHA of the date when the family actually moves from the unit or the family is physically evicted from the unit.

13-II.D. BREACH OF HAP CONTRACT [24 CFR 982.453]

Any of the following actions by the owner constitutes a breach of the HAP contract:

- If the owner violates any obligations under the HAP contract including failure to maintain the unit in accordance with HQS
- If the owner has violated any obligation under any other HAP contract under Section 8
- If the owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program
- For projects with mortgages insured by HUD or loans made by HUD, if the owner has failed to comply with the regulations for the applicable program; or if the owner has committed fraud, bribery or any other corrupt or criminal act in connection with the mortgage or loan
- If the owner has engaged in drug-related criminal activity
- If the owner has committed any violent criminal activity

If LMHA determines that a breach of the HAP contract has occurred, it may exercise any of its rights and remedies under the HAP contract.

LMHA 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. LMHA may also obtain additional relief by judicial order or action.

LMHA must notify the owner of its determination and provide in writing the reasons for the determination. The notice may require the owner to take corrective action by an established deadline. LMHA must provide the owner with written notice of any reduction in housing assistance payments or the termination of the HAP contract.

LMHA Policy

Before LMHA invokes a remedy against an owner, LMHA will evaluate all information and documents available to determine if the contract has been breached.

If relevant, LMHA 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, LMHA will consider all of the relevant factors including the seriousness of the breach, the effect on the family, the owner's record of compliance and the number and seriousness of any prior HAP contract violations.

13-II.E. HAP CONTRACT TERM AND TERMINATIONS

The term of the HAP contract runs concurrently with the term of the dwelling lease [24 CFR 982.451(a)(2)], beginning on the first day of the initial term of the lease and terminating on the last day of the term of the lease, including any lease term extensions.

The HAP contract and the housing assistance payments made under the HAP contract terminate if [HCV Guidebook pp.11-4 and 11-5, pg. 15-3]:

- The owner or the family terminates the lease;
- The lease expires;

- LMHA terminates the HAP contract;
- LMHA terminates assistance for the family;
- The family moves from the assisted unit. In this situation, the owner is entitled to keep the housing assistance payment for the month when the family moves out of the unit.
- 180 calendar days have elapsed since LMHA made the last housing assistance payment to the owner;
- The family is absent from the unit for longer than the maximum period permitted by LMHA;
- The Annual Contributions Contract (ACC) between LMHA and HUD expires
- LMHA elects to terminate the HAP contract.

LMHA Policy

LMHA may elect to terminate the HAP contract in each of the following situations:
Available program funding is not sufficient to support continued assistance for families in the program [24 CFR 982.454];
The unit does not meet HQS size requirements due to change in family composition [24 CFR 982.403] – see chapter 8;
The unit does not meet HQS [24 CFR 982.404] – see chapter 8;
LMHA has not made a HAP payment on the unit for 60 days due to an HQS abatement.
The family breaks up [HUD Form 52641] – see chapter 3;
The owner breaches the HAP contract [24 CFR 982.453(b)] – see Section 13-II.D.

If LMHA terminates the HAP contract, LMHA must give the owner and the family written notice. The notice must specify the reasons for the termination and the effective date of the termination. Once a HAP contract is terminated, no further HAP payments may be made under that contract [HCV Guidebook pg.15-4].

LMHA Policy

In all cases, the HAP contract terminates at the end of the calendar month that follows the calendar month in which LMHA gives written notice to the owner. The owner is not entitled to any housing assistance payment after this period, and must return to LMHA any housing assistance payment received after this period.

If the family moves from the assisted unit into a new unit, even if the new unit is in the same building or complex as the assisted unit, the HAP contract for the assisted unit terminates. A new HAP contract would be required [HCV GB, p. 11-17].

When the family moves from an assisted unit into a new unit, the term of the HAP contract for the new unit may begin in the same month in which the family moves out of its old unit. This is not considered a duplicative subsidy [HCV GB, p. 8-22].

13-II.F. CHANGE IN OWNERSHIP / ASSIGNMENT OF THE HAP CONTRACT **[HUD-52641]**

The HAP contract cannot be assigned to a new owner without the prior written consent of LMHA.

An owner under a HAP contract must notify LMHA in writing prior to a change in the legal ownership of the unit. The owner must supply all information as requested by LMHA.

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 LMHA finds acceptable. The new owner must provide LMHA with a copy of the executed agreement.

LMHA Policy

Assignment of the HAP contract will be approved only if the new owner is qualified to become an owner under the HCV program according to the policies in Section 13-I.D. of this chapter.

LMHA must receive a signed, written request from the existing owner stating the name and address of the new HAP payee and the effective date of the assignment in order to change the HAP payee under an outstanding HAP contract. LMHA reserves the right to request closing documents, tax receipts, or any other relevant documentation necessary to validate the transfer of name.

Within 20 business days of receiving the owner's request, LMHA will inform the current owner in writing whether the assignment may take place.

The new owner must provide a written certification to LMHA that includes:

A copy of the escrow statement or other document showing the transfer of title and recorded deed;

A copy of the owner's IRS Form W-9, Request for Taxpayer Identification Number and Certification, or the social security number of the new owner;

Copy of the management agreement in lieu of owner information, if applicable

The effective date of the HAP contract assignment;

A written agreement to comply with the terms of the HAP contract; and

Confirmation that the new owner is not a prohibited relative.

If the new owner does not agree to an assignment of the HAP contract, or fails to provide the necessary documents, LMHA will terminate the HAP contract with the old owner. If the new owner wants to offer the family a new lease, and the family elects to stay with continued assistance, LMHA will process the leasing in accordance with the policies in Chapter 9.

13-II.G. FORECLOSURE [HUD-52641 and Notice PIH 2010-49]

Families receiving HCV assistance are entitled to certain protections set forth under the Protecting Tenants at Foreclosure Act (PTFA). Specifically, the HAP contract now contains language stating that in the case of any foreclosure, the immediate successor in interest in the property pursuant to the foreclosure will assume such interest subject to the lease between the prior owner and the tenant, and to the HAP contract between the prior owner and LMHA for the occupied unit. This provision of the HAP contract does not affect any state or local law that provides longer time periods or other additional protections for tenants.

If LMHA learns that a property is in foreclosure, it must take the following actions:

- Make all reasonable efforts to determine the status of the foreclosure and ownership of the property. (Further guidance on how to obtain this information can be found in Notice PIH 2010-49.)
- Continue to make payments to the original owner until ownership legally transfers in accordance with the HAP contract.
- Attempt to obtain a written acknowledgement of the assignment of the HAP contract from the successor in interest. The written agreement should include a request for owner information, such as a

tax identification number, and payment instructions from the new owner. Even if the new owner does not acknowledge the assignment of the HAP contract in writing, the assignment is still effective by operation of law.

- Inform the tenant that they must continue to pay rent in accordance with the lease, and if the successor in interest refuses to accept payment or cannot be identified, the tenant should pay rent into escrow. Failure to pay rent may constitute an independent ground for eviction.
- Inform the tenant in the event that LMHA is unable to make HAP payments to the successor in interest due an action or inaction by the successor that prevents such payments (e.g., rejection of payments or failure to maintain the property according to HQS), or due to an inability to identify the successor. LMHA should also refer the tenant, as needed, to the local legal aid office in order to ensure adequate protection of the tenant's rights and enforcement of the successor in interest's performance under the HAP contract.
- Make reasonable inquiries to determine whether the unit, in addition to having a tenant receiving HCV assistance, will be or has been assisted under the Neighborhood Stabilization Program (NSP). (For further guidance on cases in where the units have been assisted under the NSP, see Notice PIH 2010-49.)

PHAs are also required to notify HCV applicants who have been issued a voucher, participant heads of household, and current and prospective owners of HCV-assisted housing of the protections afforded to tenants under the PTFA.

LMHA Policy

LMHA will provide all HCV applicants that have been issued a voucher with information regarding the PTFA at admission (see Section 5-I.B) and to participant heads of household at annual reexamination.

LMHA will provide information regarding the PTFA to prospective owners when they begin their participation in the HCV program, and to current HCV owners one time with the monthly HAP.

Note that the foreclosure provision of the HAP contract and additional tenant protections under the Protecting Tenants at Foreclosure Act will sunset December 31, 2014.

See Section 12-III.B for a discussion of foreclosure as it pertains to owner termination of tenancy.

Chapter 14

PROGRAM INTEGRITY

INTRODUCTION

LMHA is committed to ensuring that subsidy funds made available to LMHA are spent in accordance with HUD requirements.

This chapter covers HUD and LMHA policies designed to prevent, detect, investigate and resolve instances of program abuse or fraud. It also describes the actions that will be taken in the case of unintentional errors and omissions.

Part I: Preventing, Detecting, and Investigating Errors and Program Abuse. This part presents LMHA policies related to preventing, detecting, and investigating errors and program abuse.

Part II: Corrective Measures and Penalties. This part describes the corrective measures LMHA must and may take when errors or program abuses are found.

PART I: PREVENTING, DETECTING, AND INVESTIGATING ERRORS AND PROGRAM ABUSE

14-1.A. PREVENTING ERRORS AND PROGRAM ABUSE

HUD created the Enterprise Income Verification (EIV) system to provide PHAs with a powerful tool for preventing errors and program abuse. PHAs are required to use the EIV system in its entirety in accordance with HUD administrative guidance [24 CFR 5.233]. PHAs are further required to:

- Provide applicants and participants with form HUD-52675, “Debts Owed to PHAs and Terminations”
- Require all adult members of an applicant or participant family to acknowledge receipt of form HUD-52675 by signing a copy of the form for retention in the family file

LMHA Policy

LMHA anticipates that the vast majority of families, owners, and LMHA employees intend to and will comply with program requirements and make reasonable efforts to avoid errors.

To ensure LMHA’s HCV program is administered effectively and according to the highest ethical and legal standards, LMHA will employ a variety of techniques to ensure that both errors and intentional program abuse are rare.

LMHA will discuss program compliance and integrity issues during the voucher briefing sessions described in Chapter 5.

LMHA will provide each applicant and participant with *a copy of “Is Fraud Worth It?” (HUD-1141-OIG)* which explains the types of actions a family must avoid and the penalties for program abuse.

LMHA will provide each applicant and participant with a copy of “What You Should Know about EIV,” a guide to the Enterprise Income Verification (EIV) system published by HUD as an attachment to Notice PIH 2010-19. In addition, LMHA will require the head of each household to acknowledge receipt of the guide by signing a copy for retention in the family file.

LMHA will place a warning statement about the penalties for fraud (as described in the False Statement Act, U.S.C. 1001 and 1010) on key LMHA forms and form letters that request information from a family or owner.

LMHA staff will be required to review and explain the contents of all HUD- and LMHA-required forms prior to requesting family member signatures.

LMHA will provide each LMHA employee with the necessary training on program rules and the organization’s standards of conduct and ethics.

For purposes of this chapter the term *error* refers to an unintentional error or omission. *Program abuse or fraud* refers to a single act or pattern of actions that constitute a false statement, omission, or concealment of a substantial fact, made with the intent to deceive or mislead.

14-I.B. DETECTING ERRORS AND PROGRAM ABUSE

In addition to taking steps to prevent errors and program abuse, LMHA will use a variety of activities to detect errors and program abuse.

Quality Control and Analysis of Data

Under the Section 8 Management Assessment Program (SEMAP), HUD requires LMHA to review a random sample of tenant records annually to determine if the records conform to program requirements and to conduct quality control inspections of a sample of units to ensure HQS compliance [24 CFR, Part 985]. (See Chapter 16 for additional information about SEMAP requirements).

LMHA Policy

In addition to the SEMAP quality control requirements, LMHA will employ a variety of methods to detect errors and program abuse.

LMHA routinely will use available sources of up-front income verification, including HUD's EIV system, to compare with family-provided information.

At each annual reexamination, current information provided by the family will be compared to information provided at the last annual reexamination to identify inconsistencies and incomplete information.

LMHA will compare family-reported income and expenditures to detect possible unreported income.

Independent Audits and HUD Monitoring

OMB Circular A-133 requires all LMHAs that expend \$500,000 or more in federal awards annually to have an independent audit (IPA). In addition, HUD conducts periodic on-site and automated monitoring of LMHA activities and notifies LMHA of errors and potential cases of program abuse.

LMHA Policy

LMHA will use the results reported in any IPA or HUD monitoring reports to identify potential program abuses as well as to assess the effectiveness of LMHA's error detection and abuse prevention efforts.

Individual Reporting of Possible Errors and Program Abuse

LMHA Policy

LMHA will encourage staff, program participants, and the public to report possible program abuse.

14-I.C. INVESTIGATING ERRORS AND PROGRAM ABUSE

When LMHA Will Investigate

LMHA Policy

LMHA will review all referrals, specific allegations, complaints, and tips from any source including other agencies, companies, and individuals, to determine if they warrant investigation. In order for LMHA to investigate, the allegation must contain at least one independently-verifiable item of information, such as the name of an employer or the name of an unauthorized household member.

LMHA will investigate inconsistent information related to the family that is identified through file reviews and the verification process.

Consent to Release of Information [24 CFR 982.516]

LMHA may investigate possible instances of error or abuse using all available LMHA and public records. If necessary, LMHA will require HCV families to give consent to the release of additional information.

Analysis and Findings

LMHA Policy

LMHA will base its evaluation on a preponderance of the evidence collected during its investigation.

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

For each investigation LMHA will determine (1) whether an error or program abuse has occurred, (2) whether any amount of money is owed LMHA, and (3) what corrective measures or penalties will be assessed.

Consideration of Remedies

All errors and instances of program abuse must be corrected prospectively. Whether LMHA will enforce other corrective actions and penalties depends upon the nature of the error or program abuse.

LMHA Policy

In the case of family-caused errors or program abuse, LMHA will take into consideration (1) the seriousness of the offense and the extent of participation or culpability of individual family members, (2) any special circumstances surrounding the case, (3) any mitigating circumstances related to the disability of a family member, (4) the effects of a particular remedy on family members who were not involved in the offense.

In the case of owner-caused errors or program abuse, LMHA will take into consideration (1) the seriousness of the offense, (2) the length of time since the violation has occurred, and (3) the effects of a particular remedy on family members who were not involved in the offense.

Notice and Appeals

LMHA Policy

LMHA will inform the relevant party in writing of its findings and remedies within 20 business days of the conclusion of the investigation. The notice will include (1) a description of the error or program abuse, (2) the basis on which LMHA determined the error or program abuses, (3) the remedies to be employed, and (4) the family's right to appeal the results through the informal review or hearing process, if applicable.

PART II: CORRECTIVE MEASURES AND PENALTIES

14-II.A. SUBSIDY UNDER- OR OVERPAYMENTS

A subsidy under- or overpayment includes (1) an incorrect housing assistance payment to the owner, (2) an incorrect family share established for the family, and (3) an incorrect utility reimbursement to a family.

Corrections

Whether the incorrect subsidy determination is an overpayment or underpayment of subsidy, LMHA must promptly correct the HAP, family share, and any utility reimbursement prospectively.

LMHA Policy

Increases in the family share will be implemented only after the family has received 30 day notice.

Any decreases in family share will become effective the first of the month following the discovery of the error.

Reimbursement

Whether the family or owner is required to reimburse LMHA or LMHA is required to make retroactive subsidy payments to the owner or family depends upon which party is responsible for the incorrect subsidy payment and whether the action taken was an error or program abuse. Policies regarding reimbursement are discussed in the three sections that follow.

14-II.B. FAMILY-CAUSED ERRORS AND PROGRAM ABUSE

Family obligations and general administrative requirements for participating in the program are discussed throughout this plan. This section deals specifically with errors and program abuse by family members.

An incorrect subsidy determination caused by a family generally would be the result of incorrect reporting of family composition, income, assets, or expenses, but also would include instances in which the family knowingly allows LMHA to use incorrect information provided by a third party.

Family Reimbursement to LMHA [HCV GB pp. 22-12 to 22-13]

LMHA Policy

In the case of family-caused errors or program abuse, the family will be required to repay any excess subsidy received. LMHA may, but is not required to, offer the family a repayment agreement in accordance with Chapter 16. If the family fails to repay the excess subsidy, LMHA will terminate the family's assistance in accordance with the policies in Chapter 12.

PHA Reimbursement to Family [HCV GB p. 22-12]

LMHA Policy

LMHA will not reimburse the family for any underpayment of assistance when the underpayment clearly is caused by the family.

Prohibited Actions

An applicant or participant in the HCV program must not knowingly:

- Make a false statement to LMHA [Title 18 U.S.C. Section 1001].

- Commit fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program [24 CFR 982.552(c)(iv)].

LMHA Policy

Any of the following will be considered evidence of family program abuse:

Payment to the owner in excess of amounts authorized by LMHA for rent, security deposit, and additional services

Offering bribes or illegal gratuities to LMHA Board of Commissioners, employees, contractors, or other LMHA representatives

Offering payments or other incentives to the owner or a third party as an inducement for the third party to make false or misleading statements to LMHA on the family's behalf

Use of a false name or the use of falsified, forged, or altered documents

Intentional misreporting of family information or circumstances (e.g. income, family composition)

Omitted facts that were obviously known by a family member (e.g., not reporting employment income)

Admission of program abuse by an adult family member

LMHA may determine other actions to be program abuse based upon a preponderance of the evidence, as defined earlier in this chapter.

Penalties for Program Abuse

In the case of program abuse caused by a family LMHA may, at its discretion, impose any of the following remedies.

- LMHA may require the family to repay excess subsidy amounts paid by LMHA, as described earlier in this section.
- LMHA may require, as a condition of receiving or continuing assistance, that a culpable family member not reside in the unit. See policies in Chapter 3 (for applicants) and Chapter 12 (for participants).
- LMHA may deny or terminate the family's assistance following the policies set forth in Chapter 3 and Chapter 12 respectively.
- LMHA may refer the family for state or federal criminal prosecution as described in section 14-II.E.

14-II.C. OWNER-CAUSED ERROR OR PROGRAM ABUSE

Owner requirements that are part of the regular process of offering, leasing, and maintaining a unit (e.g., HQS compliance, fair housing) are addressed in the appropriate chapters of this plan. This section focuses on errors and program abuse by owners.

An incorrect subsidy determination caused by an owner generally would be the result of an incorrect owner statement about the characteristics of the assisted unit (e.g., the number of bedrooms, which utilities are paid by the family). It also includes accepting duplicate housing assistance payments for the same unit in the same month, or after a family no longer resides in the unit.

Owner Reimbursement to LMHA

In all cases of overpayment of subsidy caused by the owner, the owner must repay to LMHA any excess subsidy received. LMHA may recover overpaid amounts by withholding housing assistance payments due for subsequent months, or if the debt is large, LMHA may allow the owner to pay in installments over a period of time [HCV GB p. 22-13].

LMHA Policy

In cases where the owner has received excess subsidy, LMHA will require the owner to repay the amount owed in accordance with the policies in Section 16-IV.B.

Prohibited Owner Actions

An owner participating in the HCV program must not:

- Make any false statement to LMHA [Title 18 U.S.C. Section 1001].
- Commit fraud, bribery, or any other corrupt or criminal act in connection with any federal housing program [24 CFR 982.453(a)(3)] including:

LMHA Policy

Any of the following will be considered evidence of owner program abuse:

Charging the family rent above or below the amount specified by LMHA

Charging a security deposit other than that specified in the family's lease

Charging the family for services that are provided to unassisted tenants at no extra charge

Knowingly accepting housing assistance payments for any month(s) after the family has vacated the unit

Knowingly accepting incorrect or excess housing assistance payments

Offering bribes or illegal gratuities to LMHA Board of Commissioners, employees, contractors, or other LMHA representatives

Offering payments or other incentives to an HCV family as an inducement for the family to make false or misleading statements to LMHA

Residing in the unit with an assisted family

Remedies and Penalties

When LMHA determines that the owner has committed program abuse, LMHA may take any of the following actions:

- Require the owner to repay excess housing assistance payments, as discussed earlier in this section and in accordance with the policies in Chapter 16.
- Terminate the HAP contract (See Chapter 13).
- Bar the owner from future participation in any LMHA programs.
- Refer the case to state or federal officials for criminal prosecution as described in section 14-II.E.

14-II.D. PHA-CAUSED ERRORS OR PROGRAM ABUSE

The responsibilities and expectations of LMHA staff with respect to normal program administration are discussed throughout this plan. This section specifically addresses actions of a LMHA staff member that additional standards of conduct in LMHA personnel policy.

Incorrect subsidy determinations by LMHA staff include (1) failing to correctly apply HCV rules regarding family composition, income, assets, and expenses, (2) assigning the incorrect voucher size to a family, and (3) errors in calculation.

Upon discovery, LMHA will reimburse a participant/family for any underpayment of subsidy resulting from error on the part of a staff person.

Repayment to LMHA

Neither a family nor an owner is required to repay an overpayment of subsidy if the error or program abuse is caused by LMHA staff [HCV GB. 22-12].

LMHA Reimbursement to Family or Owner

LMHA must reimburse a family for any underpayment of subsidy, regardless of whether the underpayment was the result of staff-caused error or staff or owner program abuse. Funds for this reimbursement must come from LMHA's administrative fee reserves [HCV GB p. 22-12].

Prohibited Activities

LMHA Policy

Any of the following will be considered evidence of program abuse by LMHA staff:

Failing to comply with any HCV program requirements for personal gain

Failing to comply with any HCV program requirements as a result of a conflict of interest relationship with any applicant, participant, or owner

Seeking or accepting anything of material value from applicants, participating families, vendors, owners, contractors, or other persons who provide services or materials to LMHA

Disclosing confidential or proprietary information to outside parties

Gaining profit as a result of insider knowledge of LMHA activities, policies, or practices

Misappropriating or misusing HCV funds

Destroying, concealing, removing, or inappropriately using any records related to the HCV program

Committing any other corrupt or criminal act in connection with any federal housing program

14-II.E. CRIMINAL PROSECUTION

LMHA Policy

When LMHA determines that program abuse by an owner, family, or LMHA staff member has occurred and the amount of overpaid subsidy meets or exceeds the threshold for prosecution under local or state law, LMHA will refer the matter to the appropriate entity for prosecution. When the amount of overpaid assistance meets or exceeds the federal threshold, the case will also be referred to the HUD Office of Inspector General (OIG).

Other criminal violations related to the HCV program will be referred to the appropriate local, state, or federal entity.

14-II.F. FRAUD AND PROGRAM ABUSE RECOVERIES

LMHA may retain a portion of program fraud losses that LMHA recovers from a family or owner through litigation, court order, or a repayment agreement [24 CFR 982.163].

LMHA must be the principal party initiating or sustaining the action to recover amounts due from tenants that are due as a result of fraud and abuse. 24 CFR 792.202 permits LMHA to retain the greater of:

- 50 percent of the amount it actually collects from a judgment, litigation (including settlement of a lawsuit) or an administrative repayment agreement, or
- Reasonable and necessary costs that LMHA incurs related to the collection including costs of investigation, legal fees, and agency collection fees.

The family must be afforded the opportunity for an informal hearing in accordance with requirements in 24 CFR 982.555.

If HUD incurs costs on behalf of LMHA related to the collection, these costs must be deducted from the amount retained by LMHA.

Chapter 15

SPECIAL HOUSING TYPES [24 CFR 982 Subpart M]

INTRODUCTION

LMHA may permit a family to use any of the special housing types discussed in this chapter. However, LMHA is not required to permit families receiving assistance in its jurisdiction to use these housing types, except that LMHA must permit use of any special housing type if needed as a reasonable accommodation for a person with a disability. LMHA also may limit the number of families who receive HCV assistance in these housing types and cannot require families to use a particular housing type. No special funding is provided for special housing types.

LMHA Policy

With the exception of the HCV Homeownership Program and Moderate Rehabilitation Programs, families will not be permitted to use any special housing types, unless use is needed as a reasonable accommodation so the program is readily accessible to a person with disabilities.

Special housing types include single room occupancy (SRO), congregate housing, group homes, shared housing, cooperative housing, manufactured homes where the family owns the home and leases the space, and homeownership [24 CFR 982.601].

This chapter consists of the following seven parts. Each part contains a description of the housing type and any special requirements associated with it. Except as modified by this chapter, the general requirements of the HCV program apply to special housing types.

Part I: Single Room Occupancy

Part II: Congregate Housing

Part III: Group Homes

Part IV: Shared Housing

Part V: Cooperative Housing

Part VI: Manufactured Homes (including manufactured home space rental)

Part VII: Homeownership

Part VIII: Moderate Rehabilitation

Part VIII: Project Based Assistance

PART I. SINGLE ROOM OCCUPANCY

[24 CFR 982.602 through 982.605]

15-I.A. OVERVIEW

A single room occupancy (SRO) unit provides living and sleeping space for the exclusive use of the occupant but requires the occupant to share sanitary and/or food preparation facilities with others. More than one person may not occupy an SRO unit. HCV regulations do not limit the number of units in an SRO facility, but the size of a facility may be limited by local ordinances.

When providing HCV assistance in an SRO unit, a separate lease and HAP contract are executed for each assisted person, and the standard form of the HAP contract is used.

15-I.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION

The payment standard for SRO housing is 75 percent of the 0-bedroom payment standard amount on LMHA payment standard schedule.

The utility allowance for an assisted person residing in SRO housing is 75 percent of the zero-bedroom utility allowance.

The HAP for an assisted occupant in an SRO facility is the lower of the SRO payment standard amount minus the TTP or the gross rent for the unit minus the TTP.

15-I.C. HOUSING QUALITY STANDARDS (HQS)

HQS requirements described in Chapter 8 apply to SRO housing except as modified below.

- *Access:* Access doors to the SRO unit must have working locks for privacy. The occupant must be able to access the unit without going through any other unit. Each unit must have immediate access to two or more approved means of exit from the building, appropriately marked and leading to safe and open space at ground level. The SRO unit must also have any other means of exit required by State or local law.
- *Fire Safety:* All SRO facilities must have a sprinkler system that protects major spaces. “Major spaces” are defined as hallways, common areas, and any other areas specified in local fire, building, or safety codes. SROs must also have hard-wired smoke detectors, and any other fire and safety equipment required by state or local law.

Sanitary facilities and space and security standards must meet local code requirements for SRO housing. In the absence of local code standards, the requirements discussed below apply [24 CFR 982.605].

- *Sanitary Facilities:* At least one flush toilet that can be used in privacy, a lavatory basin, and a bathtub or shower in proper operating condition must be provided for each six persons (or fewer) residing in the SRO facility. If the SRO units are leased only to men, flush urinals may be substituted for up to one half of the required number of toilets. Sanitary facilities must be reasonably accessible from a common hall or passageway and may not be located more than one floor above or below the SRO unit. They may not be located below grade unless the SRO units are located on that level.
- *Space and Security:* An SRO unit must contain at least 110 square feet of floor space, and at least four square feet of closet space with an unobstructed height of at least five feet, for use by the occupant. If the closet space is less than four square feet, the habitable floor space in the SRO unit must be

increased by the amount of the deficiency. Exterior doors and windows accessible from outside the SRO unit must be lockable.

Because no children live in SRO housing, the housing quality standards applicable to lead-based paint do not apply.

PART II. CONGREGATE HOUSING

[24 CFR 982.606 through 982.609]

15-II.A. OVERVIEW

Congregate housing is intended for use by elderly persons or persons with disabilities. A congregate housing facility contains a shared central kitchen and dining area and a private living area for the individual household that includes at least a living room, bedroom and bathroom. Food service for residents must be provided.

If approved by LMHA, a family member or live-in aide may reside with the elderly person or person with disabilities. LMHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in congregate housing, a separate lease and HAP contract are executed for each assisted family, and the standard form of the HAP contract is used.

15-II.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION

The payment standard for an individual unit in a congregate housing facility is based on the number of rooms in the private living area. If there is only one room in the unit (not including the bathroom or the kitchen, if a kitchen is provided), LMHA must use the payment standard for a 0-bedroom unit. LMHA must use the 1-bedroom payment standard if the unit has two or more rooms (other than the bathroom and the kitchen).

The HAP for an assisted occupant in a congregate housing facility is the lower of the applicable payment standard minus the TTP or the gross rent for the unit minus the TTP.

The gross rent for the unit for the purpose of calculating HCV assistance is the shelter portion (including utilities) of the resident's monthly housing expense only. The residents' costs for food service should not be included in the rent for a congregate housing unit.

15-II.C. HOUSING QUALITY STANDARDS

HQS requirements as described in Chapter 8 apply to congregate housing except for the requirements stated below.

Congregate housing must have (1) a refrigerator of appropriate size in the private living area of each resident; (2) a central kitchen and dining facilities located within the premises and accessible to the residents, and (3) food service for the residents, that is not provided by the residents themselves.

The housing quality standards applicable to lead-based paint do not apply.

PART III. GROUP HOME

[24 CFR 982.610 through 982.614 and HCV GB p. 7-4]

15-III.A. OVERVIEW

A group home is a state-licensed facility intended for occupancy by elderly persons and/or persons with disabilities. Except for live-in aides, all persons living in a group home, whether assisted or not, must be elderly persons or persons with disabilities. Persons living in a group home must not require continuous medical or nursing care.

A group home consists of bedrooms for residents, which can be shared by no more than two people, and a living room, kitchen, dining area, bathroom, and other appropriate social, recreational, or community space that may be shared with other residents.

No more than 12 persons may reside in a group home including assisted and unassisted residents and any live-in aides.

If approved by LMHA, a live-in aide may live in the group home with a person with disabilities. LMHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in a group home, a separate lease and HAP contract is executed for each assisted family, and the standard form of the HAP contract is used.

15-III.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION

Unless there is a live-in aide, the family unit size for an assisted occupant of a group home must be zero (0)- or one (1)-bedroom, depending on LMHA subsidy standard. If there is a live-in aide, the aide must be counted in determining the household's unit size.

The payment standard used to calculate the HAP is the lower of the payment standard for the family unit size or the prorata share of the payment standard for the group home size. The prorata share is calculated by dividing the number of persons in the assisted household by the number of persons (assisted and unassisted) living in the group home.

The HAP for an assisted occupant in a group home is the lower of the payment standard minus the TTP or the gross rent minus the TTP.

The utility allowance for an assisted occupant in a group home is the prorata share of the utility allowance for the group home.

The rents paid for participants residing in group homes are subject to generally applicable standards for rent reasonableness. The rent for an assisted person must not exceed the prorata portion of the reasonable rent for the group home. In determining reasonable rent, LMHA should consider whether sanitary facilities and facilities for food preparation and service are common facilities or private facilities.

15-III.C. HOUSING QUALITY STANDARDS

HQS requirements described in Chapter 8 apply to group homes except for the requirements stated below.

- *Sanitary Facilities:* A group home must have at least one bathroom in the facility, with a flush toilet that can be used in privacy, a fixed basin with hot and cold running water, and a shower or bathtub with hot and cold running water. A group home may contain private or common bathrooms. However, no more than four residents can be required to share a bathroom.
- *Food Preparation and Service:* Group home units must contain a kitchen and dining area with adequate space to store, prepare, and serve food. The facilities for food preparation and service may be private or may be shared by the residents. The kitchen must contain a range, an oven, a refrigerator, and a sink with hot and cold running water. The sink must drain into an approvable public or private disposal system.
- *Space and Security:* Group homes must contain at least one bedroom of appropriate size for every two people, and a living room, kitchen, dining area, bathroom, and other appropriate social, recreational, or community space that may be shared with other residents.
- *Structure and Material:* To avoid any threat to the health and safety of the residents, group homes must be structurally sound. Elevators must be in good condition. Group homes must be accessible to and usable by residents with disabilities.
- *Site and Neighborhood:* Group homes must be located in a residential setting. The site and neighborhood should be reasonably free from hazards to the health, safety, and general welfare of the residents, and should not be subject to serious adverse conditions, such as:
 - Dangerous walks or steps
 - Instability
 - Flooding, poor drainage
 - Septic tank back-ups
 - Sewage hazards
 - Mud slides
 - Abnormal air pollution
 - Smoke or dust
 - Excessive noise
 - Vibrations or vehicular traffic
 - Excessive accumulations of trash
 - Vermin or rodent infestation, and
 - Fire hazards.

The housing quality standards applicable to lead-based paint do not apply.

PART IV. SHARED HOUSING

[24 CFR 982.615 through 982.618]

15-IV.I. OVERVIEW

Shared housing is a single housing unit occupied by an assisted family and another resident or residents. The shared unit consists of both common space for use by the occupants of the unit and separate private space for each assisted family.

An assisted family may share a unit with other persons assisted under the HCV program or with other unassisted persons. The owner of a shared housing unit may reside in the unit, but housing assistance may not be paid on behalf of the owner. The resident owner may not be related by blood or marriage to the assisted family.

If approved by LMHA, a live-in aide may reside with the family to care for a person with disabilities. LMHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in shared housing, a separate lease and HAP contract are executed for each assisted family, and the standard form of the HAP contract is used.

15-IV.B. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION

The payment standard for a family in shared housing is the lower of the payment standard for the family unit size or the prorata share of the payment standard for the shared housing unit size.

The prorata share is calculated by dividing the number of bedrooms available for occupancy by the assisted family in the private space by the total number of bedrooms in the unit.

The HAP for a family in shared housing is the lower of the payment standard minus the TTP or the gross rent minus the TTP. The utility allowance for an assisted family living in shared housing is the prorata share of the utility allowance for the shared housing unit.

The rents paid for families living in shared housing are subject to generally applicable standards for rent reasonableness. The rent paid to the owner for the assisted family must not exceed the pro-rata portion of the reasonable rent for the shared unit. In determining reasonable rent, LMHA should consider whether sanitary and food preparation areas are private or shared.

15-IV.C. HOUSING QUALITY STANDARDS

LMHA may not give approval to reside in shared housing unless the entire unit, including the portion of the unit available for use by the assisted family under its lease, meets the housing quality standards.

HQS requirements described in Chapter 8 apply to shared housing except for the requirements stated below.

- *Facilities Available for the Family:* Facilities available to the assisted family, whether shared or private, must include a living room, a bathroom, and food preparation and refuse disposal facilities.
- *Space and Security:* The entire unit must provide adequate space and security for all assisted and unassisted residents. The private space for each assisted family must contain at least one bedroom for each two persons in the family. The number of bedrooms in the private space of an assisted family must not be less than the family unit size. A zero (0)-bedroom or one (1)-bedroom unit may not be used for shared housing.

PART V. COOPERATIVE HOUSING

[24 CFR 982.619]

15-V.A. OVERVIEW

This part applies to rental assistance for a cooperative member residing in cooperative housing. It does not apply to assistance for a cooperative member who has purchased membership under the HCV homeownership option, or to rental assistance for a family that leases a cooperative housing unit from a cooperative member.

A cooperative is a form of ownership (nonprofit corporation or association) in which the residents purchase memberships in the ownership entity. Rather than being charged “rent” a cooperative member is charged a “carrying charge.”

When providing HCV assistance in cooperative housing, the standard form of the HAP contract is used.

15-V.B. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION

The payment standard and utility allowance are determined according to regular HCV program requirements.

The HAP for a cooperative housing unit is the lower of the payment standard minus the TTP or the monthly carrying charge for the unit, plus any utility allowance, minus the TTP. The monthly carrying charge includes the member’s share of the cooperative debt service, operating expenses, and necessary payments to cooperative reserve funds. The carrying charge does not include down payments or other payments to purchase the cooperative unit or to amortize a loan made to the family for this purpose.

15-V.C. HOUSING QUALITY STANDARDS

All standard HQS requirements apply to cooperative housing units. There are no additional HQS requirements.

PART VI. MANUFACTURED HOMES

[24 CFR 982.620 through 982.624]

15-VI.A. OVERVIEW

A manufactured home is a manufactured structure, transportable in one or more parts, that is built on a permanent chassis, and designed for use as a principal place of residence. HCV-assisted families may occupy manufactured homes in two different ways.

(1) A family can choose to rent a manufactured home already installed on a space and LMHA must permit it. In this instance program rules are the same as when a family rents any other residential housing, except that there are special HQS requirements as provided in 15-VI.D below.

(2) HUD also permits an otherwise eligible family that owns a manufactured home to rent a space for the manufactured home and receive HCV assistance with the rent for the space. LMHA may, but are not required to, provide assistance for such families.

15-VI.B. SPECIAL POLICIES FOR MANUFACTURED HOME OWNERS WHO LEASE A SPACE

Family Income

In determining the annual income of families leasing manufactured home spaces, the value of the family's equity in the manufactured home in which the family resides is not counted as a family asset.

Lease and HAP Contract

There is a separate Tenancy Addendum (Form 52642-a) and separate HAP Contract (Form 52642) for this special housing type.

15-VI.C. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION

Payment Standards

The FMR for a manufactured home space is generally 40 percent of the published FMR for a two (2)-bedroom unit or, where approved by HUD, the 40th percentile of the rental distribution of manufactured home spaces for the FMR area. LMHA may establish a payment standard for manufactured home spaces that is between 90-110 percent of the FMR for manufactured home spaces.

Utility Allowance

LMHA must establish utility allowances for manufactured home space rental. For the first 12 months of the initial lease term only, the allowance must include an amount for a utility hook-up charge if the family actually incurred a hook-up charge because of a move. This allowance will not be given to a family that leases in place. Utility allowances for manufactured home space must not include the costs of digging a well or installing a septic system.

Space Rent

The space rent is the sum of the rent to the owner for the manufactured home space, any charges for maintenance and management provided by the owner, and the utility allowance for tenant-paid utilities.

Housing Assistance Payment

The HAP for a manufactured home space under the housing choice voucher program is the lower of the payment standard minus the TTP or the (gross) manufactured home space rent minus the TTP.

Rent Reasonableness

Initially, and annually thereafter LMHA must determine that the rent for the manufactured home space is reasonable based on rents for comparable manufactured home spaces. LMHA must consider the location and size of the space, and any services and maintenance to be provided by the owner. By accepting the monthly HAP check, the owner certifies that the rent does not exceed rents charged by the owner for comparable unassisted spaces in the manufactured home park or elsewhere.

15-VI.D. HOUSING QUALITY STANDARDS

Under either type of occupancy described in 15-VI.A above, the manufactured home must meet all HQS performance requirements and acceptability criteria discussed in Chapter 8 of this plan. In addition, the following requirement applies:

Manufactured Home Tie-Down

A manufactured home must be placed on the site in a stable manner, and must be free from hazards such as sliding or wind damage. The home must be securely anchored by a tie-down device that distributes and transfers the loads imposed by the unit to appropriate ground anchors to resist overturning and sliding.

PART VII. HOMEOWNERSHIP

[24 CFR 982.625 through 982.643]

15-VII.A. OVERVIEW [24 CFR 982.625]

The homeownership option is used to assist a family residing in a home purchased and owned by one or more members of the family. A family assisted under this option may be newly admitted or an existing participant in the HCV program. LMHA must have the capacity to operate a successful HCV homeownership program as defined by the regulations.

There are two forms of homeownership assistance a LMHA may offer under this option: monthly homeownership assistance payments, or a single down payment assistance grant. LMHA may choose to offer either or both forms of homeownership assistance, or choose not to offer either. If LMHA offers both forms of assistance, a family must choose which form of assistance to receive.

LMHA may offer homeownership assistance if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities. It is the sole responsibility of LMHA to determine whether it is reasonable to implement a homeownership program as a reasonable accommodation. LMHA must determine what is reasonable based on the specific circumstances and individual needs of the person with a disability. LMHA may determine that it is not reasonable to offer homeownership assistance as a reasonable accommodation in cases where LMHA has otherwise opted not to implement a homeownership program.

The LMHA must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

Criteria to be used to demonstrate LMHA capacity:

- LMHA requires the financing for purchase of a home under its Section 8 homeownership program complies with secondary mortgage market requirements; or complies with generally accepted private sector underwriting standards.
- LMHA reserves the right to impose additional criteria on the financial instruments, depending on family circumstances or changes in the homeownership market.

LMHA will offer only the monthly homeownership assistance payments to qualified families at this time since the down-payment assistance portion of the regulation cannot be implemented until HUD publishes a notice in the *Federal Register*. No such appropriation has been made available to date.

15-VII.B. FAMILY ELIGIBILITY [24 CFR 982.627]

The family must meet all of the requirements listed below before the commencement of homeownership assistance. LMHA may also establish additional initial requirements as long as they are described in LMHA administrative plan.

- The family must be a current participant in the Housing Choice Voucher program for at least one year.
- The family must qualify as a first-time homeowner, or may be a cooperative member.
- The family must meet the Federal minimum income requirement. The family must have a gross annual income equal to the Federal minimum wage multiplied by 2000, based on the income of adult family members who will own the home. LMHA may establish a higher income standard for

families. However, a family that meets the federal minimum income requirement (but not the LMHA's requirement) will be considered to meet the minimum income requirement if it can demonstrate that it has been pre-qualified or pre-approved for financing that is sufficient to purchase an eligible unit.

- For disabled families, the minimum income requirement is equal to the current SSI monthly payment for an individual living alone, multiplied by 12.
- For elderly or disabled families, welfare assistance payments for adult family members who will own the home will be included in determining whether the family meets the minimum income requirement. It will not be included for other families.
- The family must satisfy the employment requirements by demonstrating that one or more adult members of the family who will own the home at commencement of homeownership assistance is currently employed on a full-time basis (the term 'full-time employment' means not less than an average of 30 hours per week); and has been continuously (Continuously employed is defined as if the break in employment does not exceed two months)so employed during the year before commencement of homeownership assistance for the family.
- LMHA will count self-employment in a business when determining whether the family meets the employment requirement.
- The employment requirement does not apply to elderly and disabled families. In addition, if a family, other than an elderly or disabled family includes a person with disabilities, LMHA must grant an exemption from the employment requirement if LMHA determines that it is needed as a reasonable accommodation.
- The family has not previously defaulted on a mortgage securing debt to purchase a home under the homeownership option
- Except for cooperative members who have acquired cooperative membership shares prior to commencement of homeownership assistance, no family member has a present ownership interest in a residence at the commencement of homeownership assistance for the purchase of any home.
- Except for cooperative members who have acquired cooperative membership shares prior to the commencement of homeownership assistance, the family has entered a contract of sale in accordance with 24 CFR 982.631(c).
- The family has had no family-caused violations of HUD's Housing Quality Standards within the past year.
- The family does not owe money to LMHA or any other PHA.
- The family has not committed any serious or repeated violations of a LMHA-assisted lease within the past year.
- The family is in good standing with all terms of the family obligations and has been so for at least one year.

15-VII.C. SELECTION OF FAMILIES [24 CFR 982.626]

Unless otherwise provided (under the homeownership option), LMHA will limit homeownership assistance to participant families or purposes defined by LMHA and may prescribe additional requirements for commencement of homeownership assistance for a family.

If LMHA limits the number of families that may participate in the homeownership option, LMHA must establish a system by which to select families to participate.

LMHA Policy

LMHA will administer up to 10 new homeownership units per year. LMHA may exceed the number of units planned per year if it is necessary as a reasonable accommodation for a person with a disability. If this occurs, LMHA may reduce the number of homeownership unit offered in subsequent years.

Families who are participating in LMHA Family Self-Sufficiency program or have graduated from the FSS program will be given preference over other families. Elderly and disabled families will automatically be given preference.

Applicants enrolled in the FSS program will be given a preference over other families for the HCV Homeownership Program. LMHA limits the number of applicants that may be provided this form of preference on an annual basis. (See preference for HCV Program).

Within preference and non-preference categories, families will be selected according to the date and time of their application for participating in the homeownership option approved by LMHA.

All families must meet eligibility requirements as defined in Section 15-VII.B of this plan.

15-VII.D. ELIGIBLE UNITS [24 CFR 982.628]

In order for a unit to be eligible, LMHA must determine that the unit satisfies all of the following requirements:

- The unit must meet HUD’s “eligible housing” requirements. The unit may not be any of the following:
 - A current public housing or Indian housing rental unit;
 - A unit receiving Section 8 project-based assistance;
 - A nursing home, board and care home, or facility providing continual psychiatric, medical or nursing services;
 - A college or other school dormitory;
 - On the grounds of penal, reformatory, medical, mental, or similar public or private institutions.
- The unit must be under construction or already exist at the time the family enters into the contract of sale. Under construction requires that at least the footers are poured and in place.
- The unit must be a one-unit property or a single dwelling unit in a cooperative or condominium.
- The unit must have been inspected by LMHA for HQS and also by an independent inspector designated by the family for the systems, structure and other requirements for the independent inspection.
- The unit must meet Housing Quality Standards (see Chapter 8) prior to the time of closing.
- For a unit where the family will not own fee title to the real property (such as a manufactured home), the home must have a permanent foundation and the family must have the right to occupy the site for at least 40 years.
- For LMHA-owned units all of the following conditions must be satisfied:

- LMHA informs the family, both orally and in writing, that the family has the right to purchase any eligible unit and a LMHA-owned unit is freely selected by the family without LMHA pressure or steering;
- The unit is not an ineligible housing unit;
- LMHA obtains the services of an independent agency to inspect the unit for compliance with HQS, review the independent inspection report, review the contract of sale, determine the reasonableness of the sales price and any LMHA provided financing. All of these actions must be completed in accordance with program requirements. LMHA will obtain the services of a neighboring PHA or the statewide HCV administering agency to perform this service, so long as the independent agency is operating a HCV Homeownership Program
- LMHA will port all families interested in purchasing a LMHA-owned property to Erie Metropolitan Housing Authority to administer the HCV service on its behalf.

LMHA must not approve the unit if LMHA has been informed that the seller is debarred, suspended, or subject to a limited denial of participation.

15-VI.E. ADDITIONAL PHA REQUIREMENTS FOR SEARCH AND PURCHASE [24 CFR 982.629]

It is the family's responsibility to find a home that meets the criteria for voucher homeownership assistance. LMHA has established the maximum time that will be allowed for a family to locate and purchase a home, and will require the family to report on their progress in finding and purchasing a home. If the family is unable to purchase a home within the maximum time established by LMHA, LMHA may issue the family a voucher to lease a unit or place the family's name on the waiting list for a voucher.

LMHA Policy

The family will be allowed 120 days to identify a unit and submit a sales contract to LMHA for review. The family will be allowed an additional 90 days to close on the home.

LMHA may grant extensions to either of these periods for good cause. The length of the extension(s) will be determined on a case-by-case, but in no case will an extension exceed a total of 120 days. The maximum amount of time a family will given to locate and complete the purchase of a home under the homeownership option is 240 days.

During these periods, the family will continue to receive HCV rental assistance in accordance with any applicable lease and HAP contract until the family vacates the rental unit for its purchased home.

All requests for extensions must be submitted in writing to LMHA prior to the expiration of the period for which the extension is being requested. LMHA will approve or disapprove the extension request within 10 business days. The family will be notified of LMHA's decision in writing.

The family will be required to report their progress on locating and purchasing a home to LMHA every 30 days until the home is purchased.

If a family is receiving voucher rental assistance under a HAP contract at the time the homeownership search and purchase time period expires, the family will continue to receive rental assistance.

If the participant family cannot complete the purchase of a unit within the maximum required time frame, and is not receiving rental assistance under a HAP contract at the time the search and purchase time period expires, the family will be issued a voucher and allowed to lease a unit and remain in the HCV rental program, so long as they are still in good standing with the program.

15-VII.F. HOMEOWNERSHIP COUNSELING [24 CFR 982.630]

Before commencement of homeownership assistance for a family, the family must attend and satisfactorily complete the pre-assistance homeownership and housing counseling program required by LMHA. LMHA or its counseling partner will require as a minimum the following pre-assistance counseling program:

- Home maintenance (including care of the grounds);
- Budgeting and money management;
- Credit counseling;
- How to negotiate the purchase price of a home;
- How to obtain homeownership financing and loan pre-approvals, including a description of types of financing that may be available, and the pros and cons of different types of financing;
- How to find a home, including information about homeownership opportunities, schools, and transportation in LMHA's jurisdiction;
- Advantages of purchasing a home in an area that does not have a high concentration of low-income families and how to locate homes in such areas;
- Information on fair housing, including fair housing lending and local fair housing enforcement agencies; and
- Information about the Real Estate Settlement Procedures Act (12 U.S.C. 2601 et seq.) (RESPA), state and Federal truth-in-lending laws, and how to identify and avoid loans with oppressive terms and conditions.

LMHA will adapt the subjects covered in pre-assistance counseling (as listed) to local circumstances and the needs of individual families. LMHA will further require families to attend one-on-one counseling to make sure they understand the obligations and are fully prepared to become homeowners.

LMHA or its counseling partner will offer additional counseling after commencement of homeownership assistance (ongoing counseling). This is part of the program and attendance remains a participant's obligation in order to continue to be assisted by LMHA.

If LMHA does not use a HUD-approved housing counseling agency to provide the counseling, LMHA will ensure that its counseling program is consistent with the counseling provided under HUD's Housing Counseling program.

LMHA Policy

LMHA will require all families to attend and complete post-purchase ongoing homeownership counseling.

All families wishing to participate in the Homeownership Program must complete a minimum of the required eight hours of pre-purchase homeownership counseling and any individually required

counseling sessions. The family must submit proof of completion of the pre-purchase homeownership counseling to LMHA.

All family must submit a mortgage pre-approval letter from a lender within twelve (12) months of the pre-purchase homeownership counseling.

15-VII.G. HOME INSPECTIONS, CONTRACT OF SALE, AND LMHA DISAPPROVAL OF SELLER [24 CFR 982.631]

Home Inspections

LMHA may not commence monthly homeownership assistance payments or provide down payment assistance grants for a family until LMHA has inspected the unit and has determined that the unit passes HQS.

An independent professional inspector selected by and paid for by the family must also inspect the unit. The independent inspection must cover major building systems and components, including foundation and structure, housing interior and exterior, and the roofing, plumbing, electrical, and heating systems. The independent inspector must be qualified to report on property conditions, including major building systems and components.

LMHA may not require the family to use an independent inspector selected by LMHA. The independent inspector may not be a LMHA employee or contractor, or other person under control of LMHA. However, LMHA has established standards for qualification of inspectors selected by families under the homeownership option.

LMHA may disapprove a unit for assistance based on information in the independent inspector's report, even if the unit was found to comply with HQS.

LMHA Policy

When a family locates a home they wish to purchase and submits a copy of their purchase offer/contract, LMHA will conduct a housing quality standards (HQS) inspection within 10 business days. Any items found not to meet HQS must be repaired before the unit can be determined eligible for the homeownership program and before the closing date.

The family must hire an independent professional inspector, whose report must be submitted to LMHA for review. The inspector must be a member of the American Society of Home Inspectors (ASHI) or other recognized professional society, or a licensed engineer. The inspector may not be a LMHA employee.

LMHA will review the professional report within 5 days of submission and based on the presence of major physical problems, LMHA may disapprove the purchase of the home.

If LMHA disapproves the purchase of a home, the family will be notified in writing of the reasons for the disapproval.

Following the purchase of a home, LMHA will conduct three Housing Quality Standards (HQS) inspections, each six months apart. No further inspections will be conducted.

Contract of Sale

Before commencement of monthly homeownership assistance payments or receipt of a down payment assistance grant, a member or members of the family must enter into a contract of sale with the seller of the unit to be acquired by the family. The family must give LMHA a copy of the contract of sale. The contract of sale must:

- Specify the price and other terms of sale by the seller to the purchaser;
- Provide that the purchaser will arrange for a pre-purchase inspection of the dwelling unit by an independent inspector selected by the purchaser;
- Provide that the purchaser is not obligated to purchase the unit unless the inspection is satisfactory to the purchaser;
- Provide that the purchaser is not obligated to pay for any necessary repairs; and
- Contain a certification from the seller that the seller has not been debarred, suspended, or subject to a limited denial of participation under CFR part 24.

Disapproval of a Seller

In its administrative discretion, LMHA may deny approval of a seller for the same reasons a LMHA may disapprove an owner under the regular HCV program [see 24 CFR 982.306(c)].

15-VII.H. FINANCING [24 CFR 982.632]

LMHA may establish requirements for financing purchase of a home under the homeownership option. This may include requirements concerning qualification of lenders, terms of financing, restrictions concerning debt secured by the home, lender qualifications, loan terms, and affordability of the debt. LMHA established policies describing these requirements are contained in the administrative plan.

LMHA may not require that families acquire financing from one or more specified lenders, thereby restricting the family's ability to secure favorable financing terms.

LMHA Policy

As a check against predatory lending, LMHA will review the financing and refinancing of each purchase transaction, including estimated closing cost. LMHA will review the loans for features, such as balloon payments, adjustable rate mortgages, and unusually high interest rates, all of which are prohibited. LMHA will not approve any loans that contain predatory practices. LMHA also will not approve "seller financing" or "owner held" mortgages. Beyond these basic criteria, LMHA will rely on the lenders or the secondary market to determine the loan that will be affordable to program participants.

The mortgage the family applies for may require a minimum down of at least 3% of the sales price with 2% of the down payment coming from the purchaser's personal funds. LMHA will not require the family have more than the minimum of 2% of their money in the transaction. However, in cases where a lender is requiring a larger amount, the family must be held to the underwriting guidelines set by their lending institution. LMHA will consider waiving or reducing the minimum down payment requirement in cases where the family is using down payment assistance grants in excess of \$3,500 to purchase the unit. Waivers will be granted on a case-by- case basis at the discretion of the Vice President of Housing Choice Voucher Programs.

LMHA will approve a family's request to utilize its Family Self Sufficiency escrow account for down payment and/or closing cost when purchasing a unit under the HCV homeownership option.

15-VII.I. CONTINUED ASSISTANCE REQUIREMENTS; FAMILY OBLIGATIONS [24 CFR 982.633]

Homeownership assistance may only be paid while the family is residing in the home. If the family moves out of the home, LMHA may not continue homeownership assistance after the month when the family moves out. The family or lender is not required to refund to LMHA the HCV homeownership assistance for the month when the family moves out.

Before commencement of homeownership assistance, the family must execute a statement in which the family agrees to comply with all family obligations under the homeownership option.

Families who violate their obligations under the homeownership option will have their assistance terminated in accordance with the policies in Chapter 12.

The family must comply with the following obligations:

- The family must comply with the terms of the mortgage securing debt incurred to purchase the home, or any refinancing of such debt.
- The family may not convey or transfer ownership of the home, except for purposes of financing, refinancing, or pending settlement of the estate of a deceased family member. Use and occupancy of the home are subject to 24 CFR 982.551 (h) and (i).
- The family must supply information to LMHA or HUD as specified in 24 CFR 982.551(b). The family must further supply any information required by LMHA or HUD concerning mortgage financing or refinancing, sale or transfer of any interest in the home, or homeownership expenses.
- The family must notify LMHA before moving out of the home.
- The family must notify LMHA if the family defaults on the mortgage used to purchase the home.
- No family member may have any ownership interest in any other residential property.
- The family must comply with the obligations of a participant family described in 24 CFR 982.551, except for the following provisions which do not apply to assistance under the homeownership option: 24 CFR 982.551(c), (d), (e), (f), (g) and (j).
- The family will comply with all post assistance counseling requirements.
- The family will obtain LMHA approval on all financing and refinancing and provide LMHA with documentation of the use of the equity funds, so long as they are being assisted under the program.
- The family must satisfy the employment requirements by demonstrating that one or more adult members of the family maintains employment on a full-time basis (the term 'full-time employment' means not less than an average of 30 hours per week); and has been continuously employed (Continuously employed is defined as if the break in employment does not exceed two months) and earning not less than the Federal minimum hourly wage multiplied by 2000 hours (example: currently federal minimum wage as of 4/6/17 is $\$7.25 \times 2000 = \$14,500$).
 - LMHA will provide for temporary hardship in case of employment lay-offs or other unusual unemployment circumstances in the local economy.

- The homeowners housing assistance will not be adjusted for adult members who lose their employment due their own fault (i.e. they are fired for personnel policy violations or quit their job for no good cause).
- For a disabled family (a family whose head, spouse or sole member is a person with disabilities), the adult family members who owns the home must have an annual income that is not less than the monthly federal Supplemental Security Income (SSI) benefit for an individual living alone multiplied by 12.
- The family must, at annual reexamination, document that the family is current on mortgage, insurance, taxes and utility payments. Following the purchase of a home, LMHA will conduct three (3) Housing Quality Standards (HQS) inspections, each six (6) months apart. The family will be required to make any improvements identified in the inspection reports. No further HQS inspections will be conducted after the three inspections have been completed and passed.

15-VII.J. MAXIMUM TERM OF HOMEOWNER ASSISTANCE [24 CFR 982.634]

Except in the case of a family that qualifies as an elderly or disabled family, the family members (described below) shall not receive homeownership assistance for more than:

- Fifteen years, if the initial mortgage incurred to finance purchase of the home has a term of 20 years or longer; or
- Ten years, in all other cases.

The maximum term described above applies to any member of the family who:

- Has an ownership interest in the unit during the time that homeownership payments are made; or
- Is the spouse of any member of the household who has an ownership interest in the unit during the time homeownership payments are made.

In the case of an elderly family, the exception only applies if the family qualifies as an elderly family at the start of homeownership assistance. In the case of a disabled family, the exception applies if at any time during receipt of homeownership assistance the family qualifies as a disabled family.

If, during the course of homeownership assistance, the family ceases to qualify as a disabled or elderly family, the maximum term becomes applicable from the date homeownership assistance commenced. However, such a family must be provided at least 6 months of homeownership assistance after the maximum term becomes applicable (provided the family is otherwise eligible to receive homeownership assistance).

If the family has received such assistance for different homes, or from different PHA's, the total of such assistance terms is subject to the maximum term described in this part.

15-VII.K. HOMEOWNERSHIP ASSISTANCE PAYMENTS AND HOMEOWNERSHIP EXPENSES [24 CFR 982.635]

The monthly homeownership assistance payment is the lower of: the voucher payment standard minus the total tenant payment, or the monthly homeownership expenses minus the total tenant payment.

In determining the amount of the homeownership assistance payment, LMHA will use the same payment standard schedule, payment standard amounts, and subsidy standards as those described in elsewhere in this plan for the Housing Choice Voucher program.

LMHA may pay the homeownership assistance payments directly to the family, or at LMHA discretion, to a lender on behalf of the family. If the assistance payment exceeds the amount due to the lender, LMHA must pay the excess directly to the family. The payment standard for a family is the greater of (i) The payment standard as determined at the commencement of homeownership assistance for occupancy of the home, or (ii) The payment standard at the most recent regular reexamination of family income and composition since the commencement of homeownership assistance for occupancy of the home.

The LMHA may pay the homeownership assistance payments directly to the family, or at the LMHA's discretion, to a lender on behalf of the family. If the assistance payment exceeds the amount due to the lender, the LMHA must pay the excess directly to the family.

Homeownership assistance for a family terminates automatically 180 calendar days after the last homeownership assistance payment on behalf of the family.

LMHA must adopt policies for determining the amount of homeownership expenses to be allowed by LMHA in accordance with HUD requirements.

LMHA Policy

LMHA housing assistance payment will be paid directly to the lender. If LMHA would make the payment to the family, it will be the family's responsibility to make the entire payments to the lender. LMHA may make the exception if the family requests the payment to be made directly to them, and this arrangement is acceptable to the mortgage company. If the assistance payment exceeds the amount due to the lender, LMHA must pay the excess directly to the family. The family, at its option, can also place these funds in an escrow account that can be used for repairs or other homeownership expenses.

Homeownership expenses (not including cooperatives) only include amounts allowed by LMHA to cover;

LMHA will allow the following homeownership expenses:

Monthly homeownership payment: This includes principal and interest on initial mortgage debt, taxes, and insurance, and any mortgage insurance premium, if applicable.

Utility Allowance: LMHA utility allowance for the unit, based on the current HCV utility allowance schedule.

Monthly maintenance allowance: The monthly maintenance allowance will be the annual maintenance allowance, divided by twelve. The annual maintenance allowance will be set at \$900 at this time, subject to future adjustments.

Monthly major repair/replacement allowance: The monthly major repair/replacement allowance will be the annual major repair/replacement allowance divided by 12. The annual major repair/replacement allowance will be set at \$900 at this time, subject to future adjustments.

Monthly co-op/condominium assessments or dues. If applicable, the monthly amount of co-op or condominium association fees or operation and maintenance assessments.

Monthly principal and interest on debt for handicap accessible improvements. Principal and interest for major home repair, replacements, or improvements, if applicable.

In determining expenses, LMHA will use the following homeownership expenses (not including cooperatives) to only include amounts allowed by LMHA to cover:

- Principal and interest on initial mortgage debt, any refinancing of such debt, and any mortgage insurance premium incurred to finance purchase of the home;
- Real estate taxes and public assessments on the home;
- Homeowner insurance;
- LMHA allowance for maintenance expenses;
- LMHA allowance for costs of major repairs and replacements;
- LMHA utility allowance for the home;
- Principal and interest on mortgage debt incurred to finance costs for major repairs, replacements or improvements for the home. If a member of the family is a person with disabilities, such debt may include debt incurred by the family to finance costs needed to make the home accessible for such person, if LMHA determines that allowance of such costs as homeownership expenses is needed as a reasonable accommodation so that the homeownership option is readily accessible to and usable by such person;
- Land lease payments where a family does not own fee title to the real property on which the home is located; [see 24 CFR 982.628(b)].
- For a condominium unit, condominium operating charges or maintenance fees assessed by the condominium homeowner association.

Homeownership expenses for a cooperative member may only include amounts allowed by LMHA to cover:

- The cooperative charge under the cooperative occupancy agreement including payment for real estate taxes and public assessments on the home;
- Principal and interest on initial debt incurred to finance purchase of cooperative membership shares and any refinancing of such debt;
- Home insurance;
- LMHA allowance for maintenance expenses;
- LMHA allowance for costs of major repairs and replacements;
- LMHA utility allowance for the home; and
- Principal and interest on debt incurred to finance major repairs, replacements or improvements for the home. If a member of the family is a person with disabilities, such debt may include debt incurred by the family to finance costs needed to make the home accessible for such person, if LMHA determines that allowance of such costs as homeownership expenses is needed as a reasonable accommodation so that the homeownership option is readily accessible to and usable by such person.
- Cooperative operating charges or maintenance fees assessed by the cooperative homeowner association.

In order for the PHA to consider granting relief from the requirement to automatically terminate homeownership assistance 180 days following the PHA's last housing assistance payment on behalf of the family, the family must submit a request to the PHA at least 30 days prior to the date of automatic termination. The request must include an explanation of the circumstances that will cause an extreme

hardship for the family (e.g., the imminent loss of income or employment) as well as documentation supporting the request. The PHA will determine on a case-by-case basis whether to grant relief from the requirement and for what period of time. In no case will the PHA postpone termination beyond an additional 90 days.

15-VII.L. PORTABILITY [24 CFR 982.636, 982.637, 982.353(b) and (c), 982.552, 982.553]

Subject to the restrictions on portability included in HUD regulations and LMHA policies, a family may exercise portability if the receiving PHA is administering a voucher homeownership program and accepting new homeownership families. The receiving PHA may absorb the family into its voucher program, or bill the initial PHA.

The family must attend the briefing and counseling sessions required by the receiving PHA. The receiving PHA will determine whether the financing, and the physical condition of the unit, are acceptable. The receiving PHA must promptly notify the initial PHA if the family has purchased an eligible unit under the program, or if the family is unable to purchase a home within the maximum time established by the PHA.

15-VII.M. MOVING WITH CONTINUED ASSISTANCE [24 CFR 982.637]

A family receiving homeownership assistance may move with continued tenant-based assistance. The family may move with voucher rental assistance or with voucher homeownership assistance. Continued tenant-based assistance for a new unit cannot begin so long as any family member holds title to the prior home.

LMHA may deny permission to move to a new unit with continued voucher assistance as follows:

- Lack of funding to provide continued assistance.
- In accordance with 24 CFR 982.638, regarding denial or termination of assistance.
- In accordance with LMHA policy regarding number of moves within a 12-month period.

LMHA must deny the family permission to move to a new unit with continued voucher rental assistance if:

- The family defaulted on an FHA-insured mortgage; and
- The family fails to demonstrate that the family has conveyed, or will convey, title to the home, as required by HUD, to HUD or HUD's designee; and the family has moved, or will move, from the home within the period established or approved by HUD.

LMHA Policy

For families participating in the homeownership option, requests to move will be approved and/or denied in accordance with LMHA policies stated in Chapter 10.

LMHA will require additional counseling of any families who move with continued assistance.

15-VII.N. DENIAL OR TERMINATION OF ASSISTANCE [24 CFR 982.638]

At any time, LMHA may deny or terminate homeownership assistance in accordance with HCV program requirements in 24 CFR 982.552 (Grounds for denial or termination of assistance) or 24 CFR 982.553 (Crime by family members).

LMHA may also deny or terminate assistance for violation of participant obligations described in 24 CFR Parts 982.551 or 982.633 and in accordance with its own policy.

LMHA must terminate voucher homeownership assistance for any member of family receiving homeownership assistance that is dispossessed from the home pursuant to a judgment or order of foreclosure on any mortgage (whether FHA insured or non-FHA) securing debt incurred to purchase the home, or any refinancing of such debt.

LMHA Policy

LMHA will terminate a family's homeownership assistance if the family violates any of the homeowner obligations, as well as for any of the reasons listed in the Statement of Homeownership Obligation Housing Choice Voucher Homeownership Program.

In making its decision to terminate homeownership assistance, LMHA will consider alternatives as described in Section 12-II.C and other factors described in Section 12-II.D. Upon consideration of such alternatives and factors, LMHA may, on a case-by-case basis, choose not to terminate assistance.

Termination notices will be sent in accordance with the requirements and policies set forth in Section 12-II.F.

15-VII.O.DEFAULT

LMHA Policy

If the family defaults on the home mortgage loan, the participant will not be able to use the homeownership voucher for rental housing but may reapply for the Section 8 waiting list.

15-VII.P. RECAPTURE

LMHA Policy

By regulation, LMHA cannot recapture any of the HCV Homeownership assistance, unless there is an act of fraud.

PART VIII. MODERATE REHABILITATION

(24 CFR PART 882)

This section applies to units rehabilitated under the Section 8 Moderate Rehabilitation Program and placed under a 15-year HAP contract between the owner and LMHA. Except with respect to the following, LMHA's policies for these units are the same as those for the Tenant-Based Programs.

When a Mod Rehab unit becomes vacant, the owner is required to notify LMHA immediately upon learning of the vacancy or prospective vacancy so that a prospective tenant can be referred. LMHA will notify current applicants from the waiting list and voucher holders of the availability of the unit. LMHA will advise applicants and voucher holders that if they select a Mod Rehab unit, their assistance will be tied to the unit and they will not be able to move to another unit and continue to receive assistance.

- A) If the unit has not been leased to an applicant or a voucher holder after 30 days, the owner may advertise or solicit applications from low-income families and refer them to LMHA to determine eligibility.
- B) Regardless of the source of applicants for unit vacancies, it will be the responsibility of the owner to ensure that at least 40% of the applicants admitted to a Mod Rehab development during any fiscal year are extremely low income (below 30% of the area median).
- C) LMHA will terminate the HAP contract of owners who do not notify LMHA promptly of a vacancy, arbitrarily reject prospective tenants referred by LMHA, or fail to lease the unit to an eligible family within 90 days or, in the case of multiple units under one HAP contract, will amend their HAP contract to exclude the unit.
- D) LMHA will terminate the HAP contract of owners who do not make required repairs to a Mod Rehab unit within 90 days of notice from LMHA following an annual inspection or, in the case of multiple units under HAP, will amend their HAP contract to exclude the unit.
- E) LMHA will convert the form of assistance for families living in Mod Rehab units for which the HAP contracts are terminated for owner non-compliance or owner opt-out to a Section 8 voucher.
- F) If LMHA determines that a contract unit is not decent, safe and sanitary by reason of increase in family size or is larger than appropriate for the size of the family, the owner must offer the family a suitable alternative unit, should one be available, and the family will be required to move. If the owner does not have a suitable available unit, LMHA will provide a voucher to lease another unit, assist the family in locating another unit within the family's ability to pay, and require the family to move to soon as possible.
- G) Other than in the situations described above, Mod Rehab Program participants who move will not continue to receive assistance.

Chapter 16

PROGRAM ADMINISTRATION

INTRODUCTION

This chapter discusses administrative policies and practices that are relevant to the activities covered in this plan. The policies are discussed in seven parts as described below:

Part I: Administrative Fee Reserve. This part describes LMHA's policies with regard to oversight of expenditures from its administrative fee reserve.

Part II: Setting Program Standards and Schedules. This part describes what payment standards are, and how they are updated, as well as how utility allowances are established and revised.

Part III: Informal Reviews and Hearings. This part outlines the requirements and procedures for informal reviews and hearings, and for informal hearings regarding citizenship status.

Part IV: Owner or Family Debts to LMHA. This part describes policies for recovery of monies that LMHA has overpaid on behalf of families, or to owners, and describes the circumstances under which LMHA will offer repayment agreements to owners and families. Also discussed are the consequences for failure to make payments in accordance with a repayment agreement.

Part V: Section 8 Management Assessment Program (SEMAP). This part describes what the SEMAP scores represent, how they are established, and how those scores affect a LMHA.

Part VI: Record-Keeping. All aspects of the program involve certain types of record-keeping. This part outlines the privacy rights of applicants and participants and record retention policies LMHA will follow.

Part VII: Reporting and Record Keeping for Children with Environmental Intervention Blood Lead Level. This part describes LMHA's responsibilities for reporting, data collection, and record keeping relative to children with environmental intervention blood lead levels that are less than six years of age, and are receiving HCV assistance.

Part VIII: Determination of Insufficient Funding. This part describes LMHA's policies for determining if there is sufficient funding to issue vouchers, to approve moves to higher cost units or areas, and to continue assistance for all participant families.

Part IX: Violence against Women Act (VAWA): Notification, Documentation, Confidentiality. This part contains key terms used in VAWA and describes requirements related to notifying families and owners about their rights and responsibilities under VAWA; requesting documentation from victims of domestic violence, dating violence, sexual assault and stalking; and maintaining the confidentiality of information obtained from victims.

PART I: ADMINISTRATIVE FEE RESERVE [24 CFR 982.155]

LMHA must maintain an administrative fee reserve for the program to pay program administrative expenses in excess of administrative fees paid by HUD for a LMHA fiscal year. If funds in the administrative fee reserve are not needed to cover LMHA administrative expenses, LMHA may use these funds for other housing purposes permitted by Federal, State and local law.

If LMHA has not adequately administered any Section 8 program, HUD may prohibit use of funds in the administrative fee reserve and may direct LMHA to use funds in the reserve to improve administration of the program or to reimburse ineligible expenses. HUD also may prohibit use of the funds for certain purposes.

HUD requires LMHA Board of Commissioners or other authorized officials to establish the maximum amount that may be charged against the administrative fee reserve without specific approval.

LMHA Policy

Expenditures from the administrative fee reserve will be made in accordance with all applicable Federal requirements. Expenditures will not exceed \$10,000 per occurrence without the prior approval of LMHA's Board of Commissioners.

PART II: SETTING PROGRAM STANDARDS AND SCHEDULES

16-II.A. OVERVIEW

Although many of the program's requirements are established centrally by HUD, the HCV program's regulations recognize that some flexibility is required to allow LMHA to adapt the program to local conditions. This part discusses how LMHA establishes and updates certain schedules and standards that are used to administer the program locally. Details about how these schedules are applied to individual families are provided in other chapters. The schedules and standards discussed here include:

- *Payment Standards*, which dictate the maximum subsidy a family can receive (application of the payment standards is discussed in Chapter 6); and
- *Utility Allowances*, which specify how a family's payment should be adjusted to account for tenant-paid utilities (application of utility allowances is discussed in Chapter 6).

LMHA Policy

Copies of the payment standard and utility allowance schedules are available for review in LMHA's offices during normal business hours. They can also be found online at www.lucasmha.org.

Families, owners, and members of the public may submit written comments on the schedules discussed in this part, at any time, for consideration during the next revision cycle.

LMHA will maintain documentation to support its annual review of payment standards and utility allowance schedules. This documentation will be retained for at least 3 years.

16-II.B. PAYMENT STANDARDS [24 CFR 982.503; 982.505 HCV GB, Chapter 7; PIH2016-05]

The payment standard sets the maximum subsidy payment a family can receive from LMHA each month [24 CFR 982.505(a)]. Payment standards are based on fair market rents (FMRs) published annually by HUD. FMRs are set at a percentile within the rent distribution of standard quality rental housing units in each FMR area. For most jurisdictions FMRs are set at the 40th percentile of rents in the market area.

LMHA must establish a payment standard schedule that establishes payment standard amounts for each FMR area within LMHA's jurisdiction, and for each unit size within each of the FMR areas. For each unit size, LMHA may establish a single payment standard amount for the whole FMR area, or may set different payment standards for different parts of the FMR area. Unless HUD grants an exception, LMHA is required to establish a payment standard within a "basic range" established by HUD – between 90 and 110 percent of the published FMR for each unit size. Per PIH Notice 2016-05, LMHA may approve a payment standard of not more than 120 percent of the FMR without HUD approval if requested as a reasonable accommodation by a family that includes a person with a disability.

Updating Payment Standards

When HUD updates its FMRs, LMHA must update its payment standards if the standards are no longer within the basic range [24 CFR 982.503(b)]. HUD may require LMHA to make further adjustments if it determines that rent burdens for assisted families in LMHA's jurisdiction are unacceptably high [24 CFR 982.503(g)].

LMHA Policy

LMHA will review the appropriateness of the payment standards on an annual basis when the new FMR is published. In addition to ensuring the payment standards are always within the "basic

range” LMHA will consider the following factors when determining whether an adjustment should be made to the payment standard schedule:

Funding Availability: LMHA will review the budget to determine the impact projected subsidy adjustments will have on funding available for the program and the number of families served. LMHA will compare the number of families who could be served under revised payment standard amounts with the number assisted under current payment standard amounts.

Rent Burden of Participating Families: Rent burden will be determined by identifying the percentage of families, for each unit size, that are paying more than 30 percent of their monthly adjusted income as the family share. When 40 percent or more of families, for any given unit size, are paying more than 30 percent of adjusted monthly income as the family share, LMHA will consider increasing the payment standard. In evaluating rent burdens, LMHA will not include families renting a larger unit than their family unit size.

Quality of Units Selected: LMHA will review the quality of units selected by participant families when making the determination of the percent of income families are paying for housing, to ensure that payment standard increases are only made when needed to reach the mid-range of the market.

Changes in Rent to Owner: LMHA may review a sample of the units to determine how often owners are increasing or decreasing rents and the average percent of increases/decreases by bedroom size.

Unit Availability: LMHA will review the availability of units for each unit size, particularly in areas with low concentrations of poor and minority families.

Lease-up Time and Success Rate: LMHA will consider the percentage of families that are unable to locate suitable housing before the voucher expires and whether families are leaving the jurisdiction to find affordable housing.

Exception Payment Standards [982.503(c)]

LMHA must request HUD approval to establish payment standards that are higher than 120%. However, per PIH Notice 2016-05, LMHA may approve an exception payment standard from 110% - 120% of the FMR for reasonable accommodations without HUD approval.

LMHA Policy

LMHA will approve a payment standard of not more than 120 percent of the FMR without HUD approval if requested as a reasonable accommodation by a family that includes a person with a disability. The following documentation will be obtained:

- a rent reasonableness analysis was conducted in accordance with the HCV program regulations at 24 CFR 982.507;
- the family requested lease approval for the unit and requested an exception payment standard as a reasonable accommodation; and
- the unit has features that meet the needs of a family member with disabilities. For example, a unit may be suitable because of its physical features or for other reasons, such as having the requisite number of bedrooms, location on an accessible transit route, or proximity to accessible employment, education, services, or recreation.

A PHA may accept a verbal request for a reasonable accommodation from a family. PHAs are advised to make clear in their Admin. Plan whether the request must be in writing and/or include supporting documentation, for example from a medical professional.

Unit-by-Unit Exceptions [24 CFR 982.503(c)(2)(ii), 24 CFR 982.505(d), Notice PIH 2010-26; PIH2016-05]

Unit-by-unit exceptions to LMHA's payment standards generally are not permitted. However, an exception may be made as a reasonable accommodation for a family that includes a person with disabilities. (See Chapter 2 for a discussion of reasonable accommodations.) This type of exception does not affect LMHA's payment standard schedule.

When needed as a reasonable accommodation, LMHA may make an exception to the payment standard without HUD approval if the exception amount does not exceed 110 percent of the applicable FMR for the unit size [HCV GB 7-9]. However, per PIH Notice 2016-05, LMHA may approve an exception payment standard up to 120% of the FMR for reasonable accommodations.

LMHA Policy

A family that requires a reasonable accommodation may request a higher payment standard at the time the Request for Tenancy Approval (RTA) is submitted. The family must document the need for the exception. In order to approve an exception up to 120%, or request an exception above 120% from HUD, LMHA must determine that:

There is a shortage of affordable units that would be appropriate for the family;

The family's TTP would otherwise exceed 40 percent of adjusted monthly income; and

The rent for the unit is reasonable.

"Success Rate" Payment Standard Amounts [24 CFR 982.503(e)]

If a substantial percentage of families have difficulty finding a suitable unit, LMHA may request a "success rate payment standard" that applies to the entire jurisdiction. If approved by HUD, a success rate payment standard allows LMHA to set its payment standards at 90-110 percent of a higher FMR (the 50th, rather than the 40th percentile FMR). To support the request, LMHA must demonstrate that during the most recent 6-month period for which information is available:

- Fewer than 75 percent of families who were issued vouchers became participants;
- LMHA had established payment standards for all unit sizes, and for the entire jurisdiction, at 110 percent of the published FMR; and
- LMHA had a policy of allowing voucher holders who made sustained efforts to locate units at least 90 days to search for a unit.

Although HUD approves the success rate payment standard for all unit sizes in the FMR area, LMHA may choose to adjust the payment standard for only some unit sizes in all, or a designated part, of LMHA's jurisdiction within the FMR area.

Decreases in the Payment Standard Below the Basic Range [24 CFR 982.503(d)]

LMHA must request HUD approval to establish a payment standard amount that is lower than the basic range. At HUD's sole discretion, HUD may approve establishment of a payment standard lower than the basic range. HUD will not approve a lower payment standard if the family share for more than 40 percent of program participants exceeds 30 percent of adjusted monthly income.

16-II.C. UTILITY ALLOWANCES [24 CFR 982.517; PIH 2014-25; FR 3/8/16]

A LMHA-established utility allowance schedule is used in determining family share and LMHA subsidy. LMHA must maintain a utility allowance schedule for (1) all tenant-paid utilities, (2) the cost of tenant-supplied refrigerators and ranges, and (3) other tenant-paid housing services such as trash collection.

The utility allowance schedule must be determined based on the typical cost of utilities and services paid by energy-conservative households that occupy housing of similar size and type in the same locality. In developing the schedule, LMHA must use normal patterns of consumption for the community as a whole, and current utility rates.

The utility allowance must include the utilities and services that are necessary in the locality to provide housing that complies with housing quality standards. Costs for telephone, cable/satellite television, and internet services are not included in the utility allowance schedule.

In the utility allowance schedule, LMHA must classify utilities and other housing services according to the following general categories: space heating; air conditioning; cooking; water heating; water; sewer; trash collection; other electric; cost of tenant-supplied refrigerator; cost of tenant-supplied range; and other specified housing services.

The cost of each utility and housing service must be stated separately by unit size and type. Chapter 18 of the *HCV Guidebook* provides detailed guidance to LMHA about establishing utility allowance schedules.

LMHA Policy

LMHA will use the appropriate utility allowance for the lesser of the size of dwelling unit actually leased by the family or the voucher size issued, as determined under the subsidy standard.

Air Conditioning

An allowance for air-conditioning must be provided when the majority of housing units in the market have central air-conditioning or are wired for tenant-installed air conditioners.

LMHA Policy

LMHA has not included an allowance for air-conditioning in its schedule.

Reasonable Accommodation

HCV program regulations require a LMHA to approve a utility allowance amount higher than shown on LMHA's schedule if a higher allowance is needed as a reasonable accommodation for a family member with a disability. For example, if a family member with a disability requires such an accommodation, LMHA will approve an allowance for air-conditioning, even if LMHA has determined that an allowance for air-conditioning generally is not needed (See Chapter 2 for policies regarding the request and approval of reasonable accommodations).

LMHA Policy

In cases where a reasonable accommodation has been provided to a family that includes a person with disabilities, LMHA will use the appropriate utility allowance for the size of the dwelling unit actually leased by the family.

Utility Allowance Revisions

LMHA must review its schedule of utility allowances each year, and must revise the schedule if there has been a change of 10 percent or more in any utility rate since the last time the allowance for that utility was revised.

LMHA must maintain information supporting its annual review of utility allowance and any revisions made in its utility allowance schedule.

PART III: INFORMAL REVIEWS AND HEARINGS

16-III.A. OVERVIEW

When LMHA makes a decision that has a negative impact on a family, the family is often entitled to appeal the decision. For applicants, the appeal takes the form of an informal review; for participants, or for applicants denied admission because of citizenship issues, the appeal takes the form of an informal hearing.

PHAs are required to include in their administrative plans, informal review procedures for applicants, and informal hearing procedures for participants [24 CFR 982.54(d)(12) and (13)].

16-III.B. INFORMAL REVIEWS

Informal reviews are provided for program applicants. An applicant is someone who has applied for admission to the program, but is not yet a participant in the program. Informal reviews are intended to provide a “minimum hearing requirement” [24 CFR 982.554], and need not be as elaborate as the informal hearing requirements [*Federal Register* 60, no. 127 (3 July 1995): 34690].

Decisions Subject to Informal Review

LMHA must give an applicant the opportunity for an informal review of a decision denying assistance [24 CFR 982.554(a)]. Denial of assistance may include any or all of the following [24 CFR 982.552(a)(2)]:

- Denying listing on LMHA waiting list
- Denying or withdrawing a voucher
- Refusing to enter into a HAP contract or approve a lease
- Refusing to process or provide assistance under portability procedures

Informal reviews are *not* required for the following reasons [24 CFR 982.554(c)]:

- Discretionary administrative determinations by LMHA
- General policy issues or class grievances
- A determination of the family unit size under LMHA subsidy standards
- A LMHA determination not to approve an extension or suspension of a voucher term
- A LMHA determination not to grant approval of the tenancy
- A LMHA determination that the unit is not in compliance with the HQS
- A LMHA determination that the unit is not in accordance with the HQS due to family size or composition

LMHA Policy

LMHA will only offer an informal review to applicants for whom assistance is being denied. Denial of assistance includes: denying listing on LMHA waiting list; denying or withdrawing a voucher; refusing to enter into a HAP contract or approve a lease; refusing to process or provide assistance under portability procedures.

Notice to the Applicant [24 CFR 982.554(a)]

LMHA must give an applicant prompt notice of a decision denying assistance. The notice must contain a brief statement of the reasons for LMHA decision, and must also state that the applicant may request an informal review of the decision. The notice must describe how to obtain the informal review.

Scheduling an Informal Review

LMHA Policy

A request for an informal review must be made in writing and delivered to LMHA either in person or by first class mail, by the close of the business day, no later than 10 calendar days from the date of LMHA's denial of assistance.

LMHA must schedule and send written notice of the informal review within 14 calendar days of the family's request.

Informal Review Procedures [24 CFR 982.554(b)]

The informal review must be conducted by a person other than the one who made or approved the decision under review, or a subordinate of this person.

The applicant must be provided an opportunity to present written or oral objections to the decision of LMHA.

LMHA Policy

The informal review may be conducted in person or by phone, whichever gives the applicant the opportunity to an informal review in a reasonably expeditious manner. When conducted by phone, LMHA will first require confirmation from the caller that they are the person who is entitled to the informal review (i.e. date of birth, client ID).

Informal Review Decision [24 CFR 982.554(b)]

LMHA must notify the applicant of LMHA's final decision, including a brief statement of the reasons for the final decision.

LMHA Policy

In rendering a decision, LMHA will evaluate the following matters:

Whether or not the grounds for denial were stated factually in the Notice.

The validity of grounds for denial of assistance. If the grounds for denial are not specified in the regulations, then the decision to deny assistance will be overturned.

The validity of the evidence. LMHA will evaluate whether the facts presented prove the grounds for denial of assistance. If the facts prove that there are grounds for denial, and the denial is required by HUD, LMHA will uphold the decision to deny assistance.

If the facts prove the grounds for denial, and the denial is discretionary, LMHA will consider the recommendation of the person conducting the informal review in making the final decision whether to deny assistance.

LMHA will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed within 30 calendar days of the informal review, to the applicant and his or her representative, if any, along with proof of mailing.

If the decision to deny is overturned as a result of the informal review, processing for admission will resume.

If the family fails to appear for their informal review, the denial of admission will stand and the family will be so notified.

16-III.C. INFORMAL HEARINGS FOR PARTICIPANTS [24 CFR 982.555]

PHAs must offer an informal hearing for certain LMHA determinations relating to the individual circumstances of a participant family. A participant is defined as a family that has been admitted to LMHA's HCV program and is currently assisted in the program. The purpose of the informal hearing is to consider whether LMHA's decisions related to the family's circumstances are in accordance with the law, HUD regulations and LMHA policies.

LMHA is not permitted to terminate a family's assistance until the time allowed for the family to request an informal hearing has elapsed, and any requested hearing has been completed. Termination of assistance for a participant may include any or all of the following:

- Refusing to enter into a HAP contract or approve a lease
- Terminating housing assistance payments under an outstanding HAP contract
- Refusing to process or provide assistance under portability procedures

Decisions Subject to Informal Hearing

Circumstances for which LMHA must give a participant family an opportunity for an informal hearing are as follows:

- A determination of the family's annual or adjusted income, and the use of such income to compute the housing assistance payment
- A determination of the appropriate utility allowance (if any) for tenant-paid utilities from LMHA utility allowance schedule
- A determination of the family unit size under LMHA'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 LMHA 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)]
- A determination that a family has failed to fulfill its obligations under the Homeownership Program
- A determination that the family is an ineligible student under the student rule provisions

Circumstances for which an informal hearing is not required are as follows:

- Discretionary administrative determinations by LMHA
- General policy issues or class grievances
- Establishment of LMHA schedule of utility allowances for families in the program
- A LMHA determination not to approve an extension or suspension of a voucher term
- A LMHA determination not to approve a unit or tenancy
- A LMHA determination that a unit selected by the applicant is not in compliance with the HQS
- A LMHA determination that the unit is not in accordance with HQS because of family size
- A determination by LMHA to exercise or not to exercise any right or remedy against an owner under a HAP contract
- Resolution of tenant-landlord disputes.

LMHA Policy

LMHA will only offer participants the opportunity for an informal hearing when required to by the regulations.

Informal Hearing Procedures

Notice to the Family [24 CFR 982.555(c)]

When LMHA makes a decision that is subject to informal hearing procedures, LMHA must inform the family of its right to an informal hearing at the same time that it informs the family of the decision.

For decisions related to the family's annual or adjusted income, the determination of the appropriate utility allowance, and the determination of the family unit size, LMHA must notify the family that they may ask for an explanation of the basis of the determination, and that if they do not agree with the decision, they may request an informal hearing on the decision.

For decisions related to the termination of the family's assistance, or the denial of a family's request for an exception to LMHA's subsidy standards, the notice must contain a brief statement of the reasons for the decision, a statement that if the family does not agree with the decision, the family may request an informal hearing on the decision, and a statement of the deadline for the family to request an informal hearing.

LMHA Policy

In cases where LMHA makes a decision for which an informal hearing must be offered, the notice to the family will include all of the following:

The proposed action or decision of LMHA.

A brief statement of the reasons for the decision including the regulatory reference.

The date the proposed action will take place.

A statement that if the family does not agree with the decision the family may request an informal hearing of the decision.

A deadline for the family to request the informal hearing.

To whom the hearing request should be addressed.

A copy of LMHA's hearing procedures.

A notice that persons with disabilities have a right to request a reasonable accommodation.

Scheduling an Informal Hearing [24 CFR 982.555(d)]

When an informal hearing is required, LMHA must proceed with the hearing in a reasonably expeditious manner upon the request of the family.

LMHA Policy

A request for an informal hearing must be made in writing and delivered to LMHA either in person or by first class mail, by the close of the business day, no later than 10 calendar days from the date of LMHA's decision or notice to terminate assistance.

LMHA must schedule and send written notice of the informal hearing to the family within 14 calendar days of the family's request.

The family may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family (e.g. hospitalization, documented religious holiday). Requests to reschedule a hearing must be made orally or in writing prior to the hearing date. At its discretion, LMHA may request documentation of the "good cause" prior to rescheduling the hearing.

If the family does not appear at the scheduled time, and was unable to reschedule the hearing in advance due to the nature of the conflict, the family must contact LMHA within 24 hours of the scheduled hearing date, excluding weekends and holidays. LMHA will reschedule the hearing only if the family can show good cause for the failure to appear, or if it is needed as a reasonable accommodation for a person with disabilities. LMHA only allows one opportunity to reschedule the informal hearing.

Pre-Hearing Right to Discovery [24 CFR 982.555(e)]

Participants and LMHA are permitted pre-hearing discovery rights. The family must be given the opportunity to examine before the hearing any LMHA documents that are directly relevant to the hearing. The family must be allowed to copy any such documents at their own expense. If LMHA does not make the document available for examination on request of the family, LMHA may not rely on the document at the hearing.

LMHA hearing procedures may provide that LMHA must be given the opportunity to examine at LMHA offices before the hearing, any family documents that are directly relevant to the hearing. LMHA must be allowed to copy any such document at LMHA's expense. If the family does not make the document available for examination on request of LMHA, the family may not rely on the document at the hearing.

For the purpose of informal hearings, *documents* include records and regulations.

LMHA Policy

The family will be allowed to copy any documents related to the hearing at a cost of \$.25 per page. The family must request discovery of LMHA documents no later than 12:00 p.m. on the business day prior to the scheduled hearing date

LMHA must be given an opportunity to examine at LMHA offices before the hearing any family documents that are directly relevant to the hearing. Whenever a participant requests an informal hearing, LMHA will automatically mail a letter to the participant requesting a copy of all documents that the participant intends to present or utilize at the hearing. The participant must make the documents available no later than 12:00 pm on the business day prior to the scheduled hearing date.

Participant's Right to Bring Counsel [24 CFR 982.555(e)(3)]

At its own expense, the family may be represented by a lawyer or other representative at the informal hearing.

Informal Hearing Officer [24 CFR 982.555(e)(4)]

Informal hearings will be conducted by a person or persons approved by LMHA, other than the person who made or approved the decision or a subordinate of the person who made or approved the decision.

LMHA Policy

LMHA has designated the following to serve as hearing officers:

A hearing officer employed or contracted by LMHA

Staff other than the person who made or approved the decision or a subordinate of the person who made the decision.

Attendance at the Informal Hearing

LMHA Policy

Hearings may be attended by a hearing officer and the following applicable persons:

A LMHA representative(s) and any witnesses for LMHA

The participant and any witnesses for the participant

The participant's counsel or other representative

Any other person approved by LMHA as a reasonable accommodation for a person with a disability

Conduct at Hearings

The person who conducts the hearing may regulate the conduct of the hearing in accordance with LMHA's hearing procedures [24 CFR 982.555(4)(ii)].

LMHA Policy

The hearing officer is responsible to manage the order of business and to ensure that hearings are conducted in a professional and businesslike manner. Attendees are expected to comply with all hearing procedures established by the hearing officer and guidelines for conduct. Any person demonstrating disruptive, abusive or otherwise inappropriate behavior will be excused from the hearing at the discretion of the hearing officer.

Evidence [24 CFR 982.555(e)(5)]

LMHA and the family must be given the opportunity to present evidence and question any witnesses. In general, all evidence is admissible at an informal hearing. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

LMHA Policy

Any evidence to be considered by the hearing officer must be presented at the time of the hearing. There are four categories of evidence.

Oral evidence: the testimony of witnesses

Documentary evidence: a writing which is relevant to the case, for example, a letter written to LMHA. Writings include all forms of recorded communication or representation, including letters, words, pictures, sounds, videotapes or symbols or combinations thereof.

Demonstrative evidence: Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a model, a chart or other diagram.

Real evidence: A tangible item relating directly to the case.

Hearsay Evidence is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter. Even though evidence, including hearsay, is generally admissible, hearsay evidence alone cannot be used as the sole basis for the hearing officer's decision. Law enforcement officers' statements are considered to be factual descriptions of the events and not generally considered hearsay.

If either LMHA or the family fail to comply with the discovery requirements described above, the hearing officer will refuse to admit such evidence.

Other than the failure of a party to comply with discovery, the hearing officer has the authority to overrule any objections to evidence.

Hearing Officer's Decision [24 CFR 982.555(e)(6)]

The person who conducts the hearing must issue a written decision, stating briefly the reasons for the decision. Factual determinations relating to the individual circumstances of the family must be based on a preponderance of evidence presented at the hearing. A copy of the hearing must be furnished promptly to the family.

LMHA Policy

In rendering a decision, the hearing officer will consider the following matters:

LMHA Notice to the Family: The hearing officer will determine if the reasons for LMHA's decision are factually stated in the Notice.

Discovery: The hearing officer will determine if LMHA and the family were given the opportunity to examine any relevant documents in accordance with LMHA policy.

LMHA Evidence to Support LMHA Decision: The evidence consists of the facts presented. Evidence is not conclusion and it is not argument. The hearing officer will evaluate the facts to determine if they support LMHA's conclusion.

Validity of Grounds for Termination of Assistance (when applicable): The hearing officer will determine if the termination of assistance is for one of the grounds specified in the HUD regulations and LMHA policies. If the grounds for termination are not specified in the regulations or in compliance with LMHA policies, then the decision of LMHA will be overturned.

The hearing officer will issue a written decision to the family and LMHA no later than 30 calendar days after the hearing. The report will contain the following information:

Hearing information:

Name of the participant;
Date, time and place of the hearing;
Name of the hearing officer;
Name of LMHA representative; and
Name of family representative (if any).

Background: A brief, impartial statement of the reason for the hearing.

Summary of the Evidence: The hearing officer will summarize the testimony of each witness and identify any documents that a witness produced in support of his/her testimony and that are admitted into evidence.

Findings of Fact: The hearing officer will include all findings of fact, based on a preponderance of the evidence. *Preponderance of the evidence* is defined as evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

Conclusions: The hearing officer will render a conclusion derived from the facts that were found to be true by a preponderance of the evidence. The conclusion will result in a determination of whether these facts uphold LMHA's decision.

Order: The hearing report will include a statement of whether LMHA's decision is upheld or overturned. If it is overturned, the hearing officer will instruct LMHA to change the decision in accordance with the hearing officer's determination. In the case of termination of assistance, the hearing officer will instruct LMHA to restore the participant's program status.

Procedures for Rehearing or Further Hearing

LMHA Policy

The hearing officer may ask the family for additional information and/or might adjourn the hearing in order to reconvene at a later date, before reaching a decision. If the family misses an appointment or deadline ordered by the hearing officer, the action of LMHA will take effect and another hearing will not be granted.

LMHA Notice of Final Decision [24 CFR 982.555(f)]

LMHA is not bound by the decision of the hearing officer for matters in which LMHA 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 LMHA determines it is not bound by the hearing officer's decision in accordance with HUD regulations, LMHA must promptly notify the family of the determination and the reason for the determination.

LMHA Policy

LMHA is not bound by the decision of the hearing officer for matters in which LMHA 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. The overturning of a hearing officer decision can only be made by LMHA Executive Director, or his/her designee.

LMHA will mail a “Notice of Final Decision” including the hearing officer’s report, to the participant and their representative. This Notice will be sent by first-class mail. A copy of the “Notice of Final Decision” will be maintained in LMHA’s file.

16-III.D. HEARING AND APPEAL PROVISIONS FOR NONCITIZENS [24 CFR 5.514]

Denial or termination of assistance based on immigration status is subject to special hearing and notice rules. Applicants who are denied assistance due to immigration status are entitled to an informal hearing, not an informal review.

Assistance to a family may not be delayed, denied, or terminated on the basis of immigration status at any time prior to a decision under the United States Citizenship and Immigration Services (USCIS) appeal process. Assistance to a family may not be terminated or denied while LMHA hearing is pending, but assistance to an applicant may be delayed pending the completion of the informal hearing.

A decision against a family member, issued in accordance with the USCIS appeal process or LMHA informal hearing process, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

Notice of Denial or Termination of Assistance [24 CFR 5.514(d)]

The notice of denial or termination of assistance for noncitizens must advise the family:

- That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance.
- The family may be eligible for proration of assistance.
- In the case of a participant, the criteria and procedures for obtaining relief under the provisions for preservation of families [24 CFR 5.514 and 5.518].
- That the family has a right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or explanation in support of the appeal.
- That the family has a right to request an informal hearing with LMHA either upon completion of the USCIS appeal or in lieu of the USCIS appeal.
- For applicants, assistance may not be delayed until the conclusion of the USCIS appeal process, but assistance may be delayed during the period of the informal hearing process.

USCIS Appeal Process [24 CFR 5.514(e)]

When LMHA receives notification that the USCIS secondary verification failed to confirm eligible immigration status, LMHA must notify the family of the results of the USCIS verification. The family will have 30 days from the date of the notification to request an appeal of the USCIS results. The request for appeal must be made by the family in writing directly to the USCIS. The family must provide LMHA with a copy of the written request for appeal and the proof of mailing.

LMHA Policy

LMHA will notify the family in writing of the results of the USCIS secondary verification within 10 business days of receiving the results.

The family must provide LMHA with a copy of the written request for appeal and proof of mailing within 10 business days of sending the request to the USCIS.

The family must forward to the designated USCIS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the USCIS document verification request (used to process the secondary request) or such other form specified by the USCIS, and a letter indicating that the family is requesting an appeal of the USCIS immigration status verification results.

The USCIS will notify the family, with a copy to LMHA, of its decision. When the USCIS notifies LMHA of the decision, LMHA must notify the family of its right to request an informal hearing.

LMHA Policy

LMHA will send written notice to the family of its right to request an informal hearing within 10 business days of receiving notice of the USCIS decision regarding the family's immigration status.

Informal Hearing Procedures for Applicants [24 CFR 5.514(f)]

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that LMHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of LMHA notice of denial, or within 30 days of receipt of the USCIS appeal decision.

The informal hearing procedures for applicant families are described below.

Informal Hearing Officer

LMHA must provide an informal hearing before an impartial individual, other than a person who made or approved the decision under review, and other than a person who is a subordinate of the person who made or approved the decision. See Section 16-III.C. for a listing of positions that serve as informal hearing officers.

Evidence

The family must be provided the opportunity to examine and copy at the family's expense, at a reasonable time in advance of the hearing, any documents in the possession of LMHA pertaining to the family's eligibility status, or in the possession of the USCIS (as permitted by USCIS requirements), including any records and regulations that may be relevant to the hearing.

LMHA Policy

The family will be allowed to copy any documents related to the hearing at a cost of \$.25 per page. The family must request discovery of LMHA documents no later than 12:00 p.m. on the business day prior to the hearing.

The family must be provided the opportunity to present evidence and arguments in support of eligible status. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

The family must also be provided the opportunity to refute evidence relied upon by LMHA, and to confront and cross-examine all witnesses on whose testimony or information LMHA relies.

Representation and Interpretive Services

The family is entitled to be represented by an attorney or other designee, at the family's expense, and to have such person make statements on the family's behalf.

The family is entitled to arrange for an interpreter to attend the hearing, at the expense of the family, or LMHA, as may be agreed upon by the two parties.

Recording of the Hearing

The family is entitled to have the hearing recorded by audiotape. LMHA may, but is not required to provide a transcript of the hearing.

LMHA Policy

LMHA will not provide a transcript of an audio taped hearing.

Hearing Decision

LMHA must provide the family with a written final decision, based solely on the facts presented at the hearing, within 14 calendar days of the date of the informal hearing. The decision must state the basis for the decision.

Informal Hearing Procedures for Residents [24 CFR 5.514(f)]

After notification of the USCIS decision on appeal, or in lieu of an appeal to the USCIS, the family may request that LMHA provide a hearing. The request for a hearing must be made either within 30 days of receipt of LMHA notice of termination, or within 30 days of receipt of the USCIS appeal decision.

For the informal hearing procedures that apply to participant families whose assistance is being terminated based on immigration status, see Section 16-III.C.

Retention of Documents [24 CFR 5.514(h)]

LMHA must retain for a minimum of 5 years the following documents that may have been submitted to LMHA by the family, or provided to LMHA as part of the USCIS appeal or LMHA informal hearing process:

- The application for assistance
- The form completed by the family for income reexamination
- Photocopies of any original documents, including original USCIS documents
- The signed verification consent form
- The USCIS verification results
- The request for a USCIS appeal
- The final USCIS determination
- The request for an informal hearing
- The final informal hearing decision

PART IV: OWNER OR FAMILY DEBTS TO LMHA

16-IV.A. OVERVIEW

PHAs are required to include in the administrative plan, policies concerning repayment by a family of amounts owed to LMHA [24 CFR 982.54]. This part describes LMHA's policies for recovery of monies owed to LMHA by families or owners.

LMHA Policy

When an action or inaction of an owner or participant results in the overpayment of housing assistance, LMHA holds the owner or participant liable to return any overpayments to LMHA.

LMHA will enter into repayment agreements in accordance with the policies contained in this part as a means to recover overpayments.

When an owner or participant refuses to repay monies owed to LMHA, LMHA 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
- Office of the Inspector General
- Office of the Attorney General

16-IV.B. REPAYMENT POLICY

Owner Debts to LMHA

LMHA Policy

Any amount due to LMHA by an owner must be repaid by the owner within 30 days of LMHA determination of the debt.

If the owner fails to repay the debt within the required time frame and is entitled to future HAP payments, LMHA will reduce the future HAP payments by the amount owed until the debt is paid in full.

If the owner is not entitled to future HAP payments LMHA may, in its sole discretion, offer to enter into a repayment agreement on terms prescribed by LMHA.

If the owner refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, LMHA will ban the owner from future participation in the program and pursue other modes of collection.

Family Debts to LMHA

LMHA Policy

Any amount owed to LMHA by an HCV family must be repaid by the family. If the family is unable to repay the debt within 30 days, LMHA will offer to enter into a repayment agreement in accordance with the policies below.

If the family refuses to repay the debt, does not enter into a repayment agreement, or breaches a repayment agreement, LMHA will terminate assistance in accordance with the policies in Chapter 12 and pursue other modes of collection.

Repayment Agreement [24 CFR 792.103]

The term *repayment agreement* refers to a formal written document signed by a tenant or owner and provided to LMHA in which a tenant or owner acknowledges a debt in a specific amount and agrees to repay the amount due at specific time periods.

General Repayment Agreement Guidelines for Families

Down Payment Requirement

LMHA Policy

Before executing a repayment agreement with a family, LMHA will generally require a down payment of 10 percent of the total amount owed. If the family can provide evidence satisfactory to LMHA that a down payment of 10 percent would impose an undue hardship, LMHA may, in its sole discretion, require a lesser percentage or waive the requirement.

Payment Thresholds

Notice PIH 2010-19 recommends that the total amount that a family must pay each month—the family’s monthly share of rent plus the monthly debt repayment amount—should not exceed 40 percent of the family’s monthly adjusted income. However, a family may already be paying 40 per cent or more of its monthly adjusted income in rent. Moreover, Notice PIH 2010-19 acknowledges that PHAs have the discretion to establish “thresholds and policies” for repayment agreements with families [24 CFR 982.552(c)(1)(vii)].

LMHA Policy

LMHA will not enter into a repayment agreement for an amount over \$4,999 or less than \$100. All debts less than \$100 must be repaid immediately to LMHA. The minimum monthly payment must be \$50. LMHA may choose to execute a repayment agreement for a different month payment amount.

If a family can provide evidence satisfactory to LMHA that the threshold applicable to the family’s debt would impose an undue hardship, LMHA may, in its sole discretion, determine that a lower monthly payment amount is reasonable. In making its determination, LMHA will consider all relevant information, including the following:

- The amount owed by the family to LMHA
- The reason for the debt, including whether the debt was the result of family action/inaction or circumstances beyond the family’s control
- The family’s current and potential income and expenses

- The family's current family share, as calculated under 24 CFR 982.515
- The family's history of meeting its financial responsibilities

Execution of the Agreement

LMHA Policy

All adult members must sign the repayment agreement.

Due Dates

LMHA Policy

All payments are due by the close of business on the 7th day of the month. If the 7th day of the month does not fall on a business day, the due date is the close of business on the first business day after the 7th.

Late or Missed Payments

LMHA Policy

If a payment is not received by the end of the business day on the date due, and prior approval for the missed payment has not been given by LMHA, LMHA will send the family a delinquency notice giving the family a deadline 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 LMHA will terminate assistance in accordance with the policies in Chapter 12.

If a family receives two delinquency notices for unexcused late payments in a 12-month period, the repayment agreement will be considered in default, and LMHA will terminate assistance in accordance with the policies in Chapter 12.

No Offer of Repayment Agreement

LMHA Policy

LMHA 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. LMHA will not enter into a repayment agreement for an amount over \$4,999 or less than \$100.

LMHA will not enter into a repayment agreement unless there is a reasonable expectation that the family will be able to repay the amounts owed in the timeframes specified by LMHA.

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 LMHA 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 LMHA the monthly payment amount specified in the agreement but must also pay to the owner the family's monthly share of the rent to owner

- A statement that the terms of the repayment agreement may be renegotiated if the family's income decreases or increases
- A statement that late or missed payments constitute default of the repayment agreement and may result in termination of assistance

PART V: MANAGEMENT ASSESSMENT (SEMAP)

16-V.A. OVERVIEW

The Section 8 Management Assessment Program (SEMAP) is a tool that allows HUD to measure LMHA performance in key areas to ensure program integrity and accountability. SEMAP scores translate into a rating for each LMHA as high performing, standard, or troubled. Scores on individual SEMAP indicators, as well as overall SEMAP ratings, can affect LMHA in several ways.

- High-performing PHAs can be given a competitive advantage under notices of funding availability [24 CFR 985.103].
- PHAs with deficiencies on one or more indicators are required to correct the deficiencies and report to HUD [24 CFR 985.106].
- PHAs with an overall rating of “troubled” are subject to additional HUD oversight, including on-site reviews by HUD staff, a requirement to develop a corrective action plan, and monitoring to ensure the successful implementation of the corrective action plan. In addition, PHAs that are designated “troubled” may not use any part of the administrative fee reserve for other housing purposes [24 CFR 985.107].
- HUD may determine that a LMHA's failure to correct identified SEMAP deficiencies or to prepare and implement a corrective action plan required by HUD constitutes a default under the ACC [24 CFR 985.109].

16-V.B. SEMAP CERTIFICATION [24 CFR 985.101]

PHAs must submit the HUD-required SEMAP certification form within 60 calendar days after the end of its fiscal year. The certification must be approved by LMHA board resolution and signed by LMHA executive director. If the PHA is a unit of local government or a state, a resolution approving the certification is not required, and the certification must be executed by the Section 8 program director.

PHAs with less than 250 voucher units are only required to be assessed every other PHA fiscal year. HUD will assess such PHAs annually if LMHA elects to have its performance assessed on an annual basis; or is designated as “troubled” [24 CFR 985.105].

Failure of a PHA to submit its SEMAP certification within the required time frame will result in an overall performance rating of “troubled.”

A PHA’s SEMAP certification is subject to HUD verification by an on-site confirmatory review at any time.

Upon receipt of LMHA’s SEMAP certification, HUD will rate LMHA’s performance under each SEMAP indicator in accordance with program requirements.

HUD Verification Method

Several of the SEMAP indicators are scored based on a review of a quality control sample selected for this purpose. LMHA or the Independent Auditor must select an unbiased sample that provides an adequate representation of the types of information to be assessed, in accordance with SEMAP requirements [24 CFR 985.2].

If the HUD verification method for the indicator relies on data in the Form-50058 module (formerly known as MTCS) in the PIH Information Center (PIC), and HUD determines that those data are

insufficient to verify LMHA's certification on the indicator due to LMHA's failure to adequately report family data, HUD will assign a zero rating for the indicator [24 CFR 985.3].

16-V.C. SEMAP INDICATORS [24 CFR 985.3 and form HUD-52648]

The table below lists each of the SEMAP indicators, contains a description of each indicator, and explains the basis for points awarded under each indicator.

A PHA that expends less than \$300,000 in Federal awards and whose Section 8 programs are not audited by an independent auditor, is not be rated under SEMAP indicators 1-7.

SEMAP Indicators
<p>Indicator 1: Selection from the waiting list</p> <p>Maximum Score: 15</p> <ul style="list-style-type: none"> • This indicator shows whether LMHA has written policies in its administrative plan for selecting applicants from the waiting list and whether LMHA follows these policies when selecting applicants for admission from the waiting list. • Points are based on the percent of families that are selected from the waiting list in accordance with LMHA’s written policies, according to LMHA’s quality control sample.
<p>Indicator 2: Rent reasonableness</p> <p>Maximum Score: 20</p> <ul style="list-style-type: none"> • This indicator shows whether LMHA has and implements a reasonable written method to determine and document for each unit leased that the rent to owner is reasonable based on current rents for comparable unassisted units • Points are based on the percent of units for which LMHA follows its written method to determine reasonable rent and has documented its determination that the rent to owner is reasonable, according to LMHA’s quality control sample.
<p>Indicator 3: Determination of adjusted income</p> <p>Maximum Score: 20</p> <ul style="list-style-type: none"> • This indicator measures whether LMHA verifies and correctly determines adjusted income for each assisted family, and where applicable, uses the appropriate utility allowances for the unit leased in determining the gross rent. • Points are based on the percent of files that are calculated and verified correctly, according to LMHA’s quality control sample.
<p>Indicator 4: Utility allowance schedule</p> <p>Maximum Score: 5</p> <ul style="list-style-type: none"> • This indicator shows whether LMHA maintains an up-to-date utility allowance schedule. • Points are based on whether LMHA has reviewed the utility allowance schedule and adjusted it when required, according to LMHA’s certification.

Indicator 5: HQS quality control inspections

Maximum Score: 5

- This indicator shows whether a LMHA supervisor re-inspects a sample of units under contract during LMHA fiscal year, which meets the minimum sample size requirements for quality control of HQS inspections.
- Points are based on whether the required quality control re-inspections were completed, according to LMHA's certification.

Indicator 6: HQS enforcement

Maximum Score: 10

- This indicator shows whether, following each HQS inspection of a unit under contract where the unit fails to meet HQS, any cited life-threatening deficiencies are corrected within 24 hours from the inspection and all other deficiencies are corrected within no more than 30 calendar days from the inspection or any LMHA-approved extension.
- Points are based on whether LMHA corrects all HQS deficiencies in accordance with required time frames, according to LMHA's certification.

Indicator 7: Expanding housing opportunities

Maximum Points: 5

- Only applies to PHAs with jurisdiction in metropolitan FMR areas.
- This indicator shows whether LMHA has adopted and implemented a written policy to encourage participation by owners of units located outside areas of poverty or minority concentration; informs voucher holders of the full range of areas where they may lease units both inside and outside LMHA's jurisdiction; and supplies a list of landlords or other parties who are willing to lease units or help families find units, including units outside areas of poverty or minority concentration.
- Points are based on whether LMHA has adopted and implemented written policies in accordance with SEMAP requirements, according to LMHA's certification.

Indicator 8: FMR limit and payment standards

Maximum Points: 5 points

- This indicator shows whether LMHA has adopted a payment standard schedule that establishes payment standard amounts by unit size for each FMR area in LMHA's jurisdiction, that are within the basic range of 90 to 110 percent of the published FMR.
- Points are based on whether LMHA has appropriately adopted a payment standard schedule(s), according to LMHA's certification.

Indicator 9: Annual reexaminations

Maximum Points: 10

- This indicator shows whether LMHA completes a reexamination for each participating family at least every 12 months.
- Points are based on the percent of reexaminations that are more than 2 months overdue, according to data from PIC.

Indicator 10: Correct tenant rent calculations

Maximum Points: 5

- This indicator shows whether LMHA correctly calculates the family’s share of the rent to owner.
- Points are based on the percent of correct calculations of family share of the rent, according to data from PIC.

Indicator 11: Pre-contract HQS inspections

Maximum Points: 5

- This indicator shows whether newly leased units pass HQS inspection on or before the effective date of the assisted lease and HAP contract.
- Points are based on the percent of newly leased units that passed HQS inspection prior to the effective date of the lease and HAP contract, according to data from PIC.

Indicator 12: Annual HQS inspections

Maximum Points: 10

- This indicator shows whether LMHA inspects each unit under contract at least annually.
- Points are based on the percent of annual HQS inspections of units under contract that are more than 2 months overdue, according to data from PIC.

Indicator 13: Lease-up

Maximum Points: 20 points

- This indicator shows whether LMHA enters HAP contracts for the number of units or funding reserved under ACC for at least one year.
- Points are based on the percent of units leased during the last completed LMHA fiscal year, or the percent of allocated budget authority that has been expended by LMHA, according to data from LMHA’s last year-end operating statement that is recorded in HUD’s accounting system.

Indicator 14: Family self-sufficiency (FSS) enrollment and escrow account balances

Maximum Points: 10

- Only applies to PHAs with mandatory FSS programs.
- This indicator shows whether LMHA has enrolled families in the FSS program as required, and measures the percent of current FSS participants that have had increases in earned income which resulted in escrow account balances.
- Points are based on the percent of mandatory FSS slots that are filled and the percent of families with escrow account balances, according to data from PIC.

Success Rate of Voucher Holders

Maximum Points: 5

- Only applies to PHAs that have received approval to establish success rate payment standard amounts, and isn’t effective until the second full LMHA fiscal year following the date of HUD approval of success rate payment standard amounts.
- This indicator shows whether voucher holders were successful in leasing units with voucher assistance.

- Points are based on the percent of families that were issued vouchers, and that became participants in the voucher program.

Deconcentration Bonus Indicator

Maximum Points: 5

- Submission of data for this indicator is mandatory for a LMHA using one or more payment standard amount(s) that exceed(s) 100 percent of the published FMR set at the 50 percentile rent, starting with the second full LMHA fiscal year following initial use of payment standard amounts based on the FMRs set at the 50th percentile.
- Additional points are available to PHAs that have jurisdiction in metropolitan FMR areas and that choose to submit the required data.
- Points are based on whether the data that is submitted meets the requirements for bonus points.

PART VI: RECORD KEEPING

16-VI.A. OVERVIEW

LMHA must maintain complete and accurate accounts and other records for the program in accordance with HUD requirements, in a manner that permits a speedy and effective audit. All such records must be made available to HUD or the Comptroller General of the United States upon request.

In addition, LMHA must ensure that all applicant and participant files are maintained in a way that protects an individual's privacy rights.

16-VI.B. RECORD RETENTION [24 CFR 982.158]

During the term of each assisted lease, and for at least three years thereafter, LMHA must keep:

- A copy of the executed lease;
- The HAP contract; and
- The application from the family.

In addition, LMHA must keep the following records for at least three years:

- Records that provide income, racial, ethnic, gender, and disability status data on program applicants and participants;
- An application from each ineligible family and notice that the applicant is not eligible;
- HUD-required reports;
- Unit inspection reports;
- Lead-based paint records as required by 24 CFR 35, Subpart B.
- Accounts and other records supporting LMHA budget and financial statements for the program;
- Records to document the basis for LMHA determination that rent to owner is a reasonable rent (initially and during the term of a HAP contract); and
- Other records specified by HUD.

If an informal hearing to establish a family's citizenship status is held, longer retention requirements apply for some types of documents. For specific requirements, see Section 16-III.D., Retention of Documents.

16-VI.C. RECORDS MANAGEMENT

PHAs must maintain applicant and participant files and information in accordance with the regulatory requirements described below.

LMHA Policy

All applicant and participant information will be kept in a secure location and access will be limited to authorized LMHA staff.

LMHA staff will not discuss personal family information unless there is a business reason to do so. Inappropriate discussion of family information or improper disclosure of family information by staff will result in disciplinary action.

Privacy Act Requirements [24 CFR 5.212 and Form-9886]

The collection, maintenance, use, and dissemination of social security numbers (SSN), employer identification numbers (EIN), any information derived from these numbers, and income information of applicants and participants must be conducted, to the extent applicable, in compliance with the Privacy Act of 1974, and all other provisions of Federal, State, and local law.

Applicants and participants, including all adults in the household, are required to sign a consent form, HUD-9886, Authorization for Release of Information. This form incorporates the Federal Privacy Act Statement and describes how the information collected using the form may be used, and under what conditions HUD or LMHA may release the information collected.

Upfront Income Verification (UIV) Records

PHAs that access UIV data through HUD's Enterprise Income Verification (EIV) System are required to adopt and follow specific security procedures to ensure that all EIV data is protected in accordance with Federal laws, regardless of the media on which the data is recorded (e.g. electronic, paper). These requirements are contained in the HUD issued document, *Enterprise Income Verification (EIV) System, Security Procedures for Upfront Income Verification data*.

LMHA Policy

Prior to utilizing HUD's EIV system, LMHA will adopt and implement EIV security procedures required by HUD.

Criminal Records

LMHA may only disclose the criminal conviction records which LMHA receives from a law enforcement agency to officers or employees of LMHA, or to authorized representatives of LMHA who have a job-related need to have access to the information [24 CFR 5.903(e)].

LMHA must establish and implement a system of records management that ensures that any criminal record received by LMHA 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 LMHA action without institution of a challenge or final disposition of any such litigation [24 CFR 5.903(g)].

LMHA must establish and implement a system of records management that ensures that any sex offender registration information received by LMHA 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 LMHA action without

institution of a challenge or final disposition of any such litigation. This requirement does not apply to information that is public information, or is obtained by a LMHA 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. LMHA may not inquire about a person’s diagnosis or details of treatment for a disability or medical condition. If LMHA receives a verification document that provides such information, LMHA should not place this information in the tenant file. LMHA should destroy the document.

Documentation of Domestic Violence, Dating Violence, Sexual Assault or Stalking

For requirements and LMHA policies related to management of documentation obtained from victims of domestic violence, dating violence, sexual assault or stalking, see section 16-IX.E.

PART VII: REPORTING AND RECORD KEEPING FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL

16-VII.A. OVERVIEW

LMHA has certain responsibilities relative to children with environmental intervention blood lead levels that are receiving HCV assistance. The notification, verification, and hazard reduction requirements are discussed in Chapter 8. This part deals with the reporting requirements, and data collection and record keeping responsibilities that LMHA is subject to.

16-VII.B. REPORTING REQUIREMENT [24 CFR 35.1225(e)]

LMHA must report the name and address of a child identified as having an environmental intervention blood lead level to the public health department within 5 business days of being so notified by any other medical health care professional.

LMHA Policy

LMHA will provide the public health department written notice of the name and address of any child identified as having an environmental intervention blood lead level.

16-VII.C. DATA COLLECTION AND RECORD KEEPING [24 CFR 35.1225(f)]

At least quarterly, LMHA must attempt to obtain from the public health department(s) with a similar area of jurisdiction, the names and/or addresses of children less than 6 years old with an identified environmental intervention blood lead level.

If LMHA obtains names and addresses of environmental intervention blood lead level children from the public health department(s), LMHA 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, LMHA must carry out the notification, verification, and hazard reduction requirements discussed in Chapter 8, and the reporting requirement discussed above.

At least quarterly, LMHA must also report an updated list of the addresses of units receiving assistance under the HCV program to the same public health department(s), unless the public health department(s) states that it does not wish to receive such a report.

LMHA Policy

The public health department(s) has stated they **do not** wish to receive a report of an updated list of the addresses of units receiving assistance under the HCV program, on a quarterly basis. Therefore, LMHA is not providing such a report.

PART VIII: DETERMINATION OF INSUFFICIENT FUNDING

16-VIII.A. OVERVIEW

The HCV regulations allow PHAs to deny families permission to move and to terminate Housing Assistance Payments (HAP) contracts if funding under the consolidated ACC is insufficient to support continued assistance [24 CFR 982.314(e)(1) and 982.454]. Insufficient funding may also impact LMHA's ability to issue vouchers to families on the waiting list. This part discusses the methodology LMHA will use to determine whether or not LMHA has sufficient funding to issue vouchers, approve moves, and to continue subsidizing all families currently under a HAP contract.

16-VIII.B. METHODOLOGY

LMHA Policy

LMHA will determine whether there is adequate funding to issue vouchers, approve moves to higher cost units and areas, and continue subsidizing all current participants by comparing LMHA's annual budget authority to the annual total HAP needs on a monthly basis. The total HAP needs for the calendar year will be projected by establishing the actual HAP costs year to date. To that figure, LMHA 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 LMHA cannot support the cost of the proposed subsidy commitment (voucher issuance or move) based on the funding analysis, LMHA will be considered to have insufficient funding.

**PART IX: VIOLENCE AGAINST WOMEN ACT (VAWA): NOTIFICATION,
DOCUMENTATION, CONFIDENTIALITY**

16-IX.A. OVERVIEW

The Violence against Women Act of 2013 (VAWA) provides special protections for victims of domestic violence, dating violence, sexual assault and stalking who are applying for or receiving assistance under the housing choice voucher (HCV) program. If your state or local laws provide greater protection for such victims, those laws take precedence over VAWA.

In addition to definitions of key terms used in VAWA, this part contains general VAWA requirements and LMHA policies in three areas: notification, documentation, and confidentiality. Specific VAWA requirements and LMHA policies are located primarily in the following sections: 3-I.C, “Family Breakup and Remaining Member of Tenant Family”; 3-III.G, “Prohibition against Denial of Assistance to Victims of Domestic Violence, Dating Violence, and Stalking”; 10-I.A, “Allowable Moves”; 10-I.B, “Restrictions on Moves”; 12-II.E, “Terminations Related to Domestic Violence, Dating Violence, or Stalking”; and 12- II.F, “Termination Notice.”

16-IX.B. DEFINITIONS [24 CFR 5.2003]

As used in VAWA:

- The term *bifurcate* means, with respect to a public housing or Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members’ lease and occupancy rights are allowed to remain intact.
- The term *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 person stands in the position or place of a parent; or
 - Any other individual, tenant or lawful occupant living in the household of that individual
- The term *sexual assault* means:
 - Any nonconsensual sexual act prescribed by Federal, tribal, or State law, including when the victim lacks the capacity to consent.

- The term *stalking* means:
 - To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate; or
 - To place under surveillance with the intent to kill, injure, harass, or intimidate another person; and
 - In the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (1) that person, (2) a member of the immediate family of that person, or (3) the spouse or intimate partner of that person.

16-IX.C. NOTIFICATION [24 CFR 5.2005(a)]

Notification to Public

LMHA adopts the following policy to help ensure that all actual and potential beneficiaries of its HCV program are aware of their rights under VAWA.

LMHA Policy

LMHA will post the following information regarding VAWA in its offices and on its Web site. It will also make the information readily available to anyone who requests it.

A summary of the rights and protections provided by VAWA to housing choice voucher program applicants and participants who are or have been victims of domestic violence, dating violence, or stalking (see sample notices in Exhibits 16-1 and 16-2)

The definitions of *domestic violence*, *dating violence*, *sexual assault* and *stalking* provided in VAWA (included in Exhibits 16-1 and 16-2)

An explanation of the documentation that LMHA may require from an individual who claims the protections provided by VAWA (included in Exhibits 16-1 and 16-2)

A copy of form HUD-50066, Certification of Domestic Violence, Dating Violence, or Stalking

A statement of LMHA's obligation to keep confidential any information that it receives from a victim unless (a) LMHA has the victim's written permission to release the information, (b) it needs to use the information in an eviction proceeding, or (c) it is compelled by law to release the information (included in Exhibits 16-1 and 16-2)

The National Domestic Violence Hot Line: 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY) (included in Exhibits 16-1 and 16-2)

Contact information for local victim advocacy groups or service providers

Notification to Program Applicants and Participants [24 CFR 5.2005(a)(1)]

PHAs are required to inform program applicants and participants of their rights under VAWA, including their right to confidentiality and the limits thereof, when they are denied assistance, when they are admitted to the program, and when they are notified of an eviction or termination of housing benefits.

LMHA Policy

LMHA will provide all applicants with information about VAWA at the time they request an application for housing assistance. LMHA will also include information about VAWA in all notices of denial of assistance (see section 3-III.G).

LMHA will provide all participants with information about VAWA at the time of admission (see section 5-I.B) and at annual reexamination. LMHA will also include information about VAWA in notices of termination of assistance, as provided in section 12-II.F.

The VAWA information provided to applicants and participants will consist of the notice in Exhibit 16-1 and a copy of form HUD-50066, Certification of Domestic Violence, Dating Violence, and Stalking.

Notification to Owners and Managers [24 CFR 5.2005(a)(2)]

PHAs are required to notify owners and managers participating in the HCV program of their rights and obligations under VAWA.

LMHA Policy

LMHA will provide owners and managers with information about their rights and obligations under VAWA when they begin their participation in the HCV program and at least annually thereafter.

The VAWA information provided to owners will consist of the notice in Exhibit 16-2 and a copy of form HUD-50066, Certification of Domestic Violence, Dating Violence, and Stalking.

16-IX.D. DOCUMENTATION [24 CFR 5.2007]

A LMHA 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. LMHA may extend this time period at its discretion. [24 CFR 5.2007(a)]

The individual may satisfy LMHA’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, and Alternate Documentation), 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
- (2) A document:
 - a. Signed by an employee, agent, or volunteer of a victim service provider, an attorney, or medical professional or a mental health professional (collectively, “professional”) from whom the victim has sought assistance relating to domestic violence, dating violence, sexual assault, or stalking, or the effects of abuse:
 - b. Signed by the applicant or tenant; and
 - c. That specifies, under penalty of perjury, that the professional believes in the occurrence of the incident of domestic violence, dating violence, sexual assault, or stalking that is the ground for protection and remedies under the VAWA Final Rule, and that the incident meets the applicable definition of domestic violence, dating violence, sexual assault, or stalking under 24 CFR 5.2003;

or

Lucas Metropolitan Housing Authority

Adopted by Commission: July 6, 2021

Last Revision: July 6, 2021

- (3) A record of a Federal, State, tribal, territorial or local law enforcement agency (may include a police report), court, or administrative agency.

LMHA Policy

Any request for documentation of domestic violence, dating violence, sexual assault or stalking will specify a deadline of 14 business days following receipt of the request, will describe the three forms of acceptable documentation, will provide explicit instructions on where and to whom the documentation must be submitted, and will state the consequences for failure to submit the documentation or request an extension in writing by the deadline.

LMHA may, in its discretion, extend the deadline for 10 business days. Any extension granted by LMHA will be in writing.

Conflicting Documentation [24 CFR 5.2007(b)(2)]

LMHA must accept the submitted documentation and is prohibited from seeking additional documentation of victim status, unless the submitted documentation does not meet the criteria in the VAWA Final Rule or the submitted documentation contains conflicting information, including conflicting claims between two parties. Third-party documentation that meets the criteria in 24 CFR 5.2007(b)(1)(ii) or (b)(1)(iii) is indicated in #2 or #3 above. The applicant(s) or tenant(s) must be given 30 calendar days from the date of the request to provide such documentation. If an applicant or tenant responds with third-party documentation that meets the criteria above and supports the applicant or tenant's VAWA request, LMHA is prohibited from requiring further documentation of the applicant or tenant's status as a victim of domestic violence, dating violence, sexual assault, or stalking.

Discretion to Require No Formal Documentation [24 CFR 5.2007(d)]

LMHA 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).

LMHA Policy

If LMHA accepts an individual's statement or other corroborating evidence of domestic violence, dating violence, sexual assault or stalking, LMHA will document acceptance of the statement or evidence in the individual's file.

Failure to Provide Documentation [24 CFR 5.2007(c)]

In order to deny relief for protection under VAWA, a LMHA must provide the individual requesting relief with a written request for documentation of abuse. If the individual fails to provide the documentation within 14 business days from the date of receipt, or such longer time as LMHA may allow, LMHA may deny relief for protection under VAWA.

16-IX.E. CONFIDENTIALITY [24 CFR 5.2007(b)(4)]

All information provided to LMHA regarding domestic violence, dating violence, sexual assault or stalking, including the fact that an individual is a victim of such violence or stalking, must be retained in confidence. This means that LMHA (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.

LMHA Policy

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

EXHIBIT 16-1: SAMPLE NOTICE TO HOUSING CHOICE VOUCHER APPLICANTS AND TENANTS REGARDING THE VIOLENCE AGAINST WOMEN ACT (VAWA)

This sample notice was adapted from a notice prepared by the National Housing Law Project.

A federal law that went into effect in 2013 protects individuals who are victims of domestic violence, dating violence, sexual assault and stalking. The name of the law is the Violence against Women Act, or “VAWA.” This notice explains your rights under VAWA.

Protections for Victims

If you are eligible for a Section 8 voucher, the housing authority cannot deny you rental assistance solely because you are a victim of domestic violence, dating violence, sexual assault or stalking.

If you are the victim of domestic violence, dating violence, sexual assault or stalking, you cannot be terminated from the Section 8 program or evicted based on acts or threats of violence committed against you. Also, criminal acts directly related to the domestic violence, dating violence, sexual assault or stalking that are caused by a member of your household or a guest can’t be the reason for evicting you or terminating your rental assistance if you were the victim of the abuse.

Reasons You Can Be Evicted

You can be evicted and your rental assistance can be terminated if the housing authority or your landlord can show there is an *actual* and *imminent* (immediate) threat to other tenants or employees at the property if you remain in your housing. Also, you can be evicted and your rental assistance can be terminated for serious or repeated lease violations that are not related to the domestic violence, dating violence, sexual assault or stalking committed against you. The housing authority and your landlord cannot hold you to a more demanding set of rules than it applies to tenants who are not victims.

Removing the Abuser from the Household

Your landlord may split the lease to evict a tenant who has committed criminal acts of violence against family members or others, while allowing the victim and other household members to stay in the assisted unit. Also, the housing authority can terminate the abuser’s Section 8 rental assistance while allowing you to continue to receive assistance. If the landlord or housing authority chooses to remove the abuser, it may not take away the remaining tenants’ rights to the unit or otherwise punish the remaining tenants. In removing the abuser from the household, your landlord must follow federal, state, and local eviction procedures.

Moving to Protect Your Safety

The housing authority may permit you to move and still keep your rental assistance, even if your current lease has not yet expired. The housing authority may require that you be current on your rent or other obligations in the housing choice voucher program. The housing authority may ask you to provide proof that you are moving because of incidences of abuse.

Proving That You Are a Victim of Domestic Violence, Dating Violence, or Stalking

The housing authority and your landlord can ask you to prove or “certify” that you are a victim of domestic violence, dating violence, sexual assault or stalking. The housing authority or your landlord must give you at least 14 business days (i.e., Saturdays, Sundays, and holidays do not count) to provide this proof. The housing authority and your landlord are free to extend the deadline. There are three ways you can prove that you are a victim:

- Complete the certification form given to you by the housing authority or your landlord. The form will ask for your name, the name of your abuser, the abuser’s relationship to you, the date, time, and location of the incident of violence, and a description of the violence. You are only required to provide the name of the abuser if it is safe to provide and you know their name.
- Provide a statement from a victim service provider, attorney, or medical professional who has helped you address incidents of domestic violence, dating violence, sexual assault or stalking. The professional must state that he or she believes that the incidents of abuse are real. Both you and the professional must sign the statement, and both of you must state that you are signing “under penalty of perjury.”
- Provide a police or court record, such as a protective order.

If you fail to provide one of these documents within the required time, the landlord may evict you, and the housing authority may terminate your rental assistance.

Confidentiality

The housing authority and your landlord must keep confidential any information you provide about the violence against you, unless:

- You give written permission to the housing authority or your landlord to release the information.
- Your landlord needs to use the information in an eviction proceeding, such as to evict your abuser.
- A law requires the housing authority or your landlord to release the information.

If release of the information would put your safety at risk, you should inform the housing authority and your landlord.

VAWA and Other Laws

VAWA does not limit the housing authority’s or your landlord’s duty to honor court orders about access to or control of the property. This includes orders issued to protect a victim and orders dividing property among household members in cases where a family breaks up.

VAWA does not replace any federal, state, or local law that provides greater protection for victims of domestic violence, dating violence, sexual assault or stalking.

For Additional Information

If you have any questions regarding VAWA, please contact LMHA HCV Program at 419-259-9448.

For help and advice on escaping an abusive relationship, call the National Domestic Violence Hotline at 1-800-799-SAFE (7233) or 1-800-787-3224 (TTY).

Definitions

For purposes of determining whether a tenant may be covered by VAWA, the following list of definitions applies:

VAWA defines *domestic violence* to include felony or misdemeanor crimes of violence committed by any of the following:

- A current or former spouse of the victim

- A person with whom the victim shares a child in common
- A person who is cohabitating with or has cohabitated with the victim as a spouse
- A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies
- Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction

VAWA defines *dating violence* as violence committed by a person (1) who is or has been in a social relationship of a romantic or intimate nature with the victim AND (2) where the existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship
- The type of relationship
- The frequency of interaction between the persons involved in the relationship

VAWA defines *stalking* as (A)(i) to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person OR (ii) to place under surveillance with the intent to kill, injure, harass, or intimidate another person AND (B) in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (i) that person, (ii) a member of the immediate family of that person, or (iii) the spouse or intimate partner of that person.

VAWA defines sexual assault as “any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent” (42 U.S.C. 13925(a)).

EXHIBIT 16-2: SAMPLE NOTICE TO HOUSING CHOICE VOUCHER OWNERS AND MANAGERS REGARDING THE VIOLENCE AGAINST WOMEN ACT (VAWA)

This sample notice was adapted from a notice prepared by the National Housing Law Project.

A federal law that went into effect in 2013 protects individuals who are victims of domestic violence, dating violence, sexual assault and stalking. The name of the law is the Violence against Women Act, or “VAWA.” This notice explains your obligations under VAWA.

Protections for Victims

You cannot refuse to rent to an applicant solely because he or she is a victim of domestic violence, dating violence, sexual assault or stalking.

You cannot evict a tenant who is the victim of domestic violence, dating violence, sexual assault or stalking based on acts or threats of violence committed against the victim. Also, criminal acts directly related to the domestic violence, dating violence, sexual assault or stalking that are caused by a household member or guest cannot be cause for evicting the victim of the abuse.

Permissible Evictions

You can evict a victim of domestic violence, dating violence, sexual assault or stalking if you can demonstrate that there is an *actual and imminent* (immediate) threat to other tenants or employees at the property if the victim is not evicted. Also, you may evict a victim for serious or repeated lease violations that are not related to the domestic violence, dating violence, sexual assault or stalking. You cannot hold a victim of domestic violence, dating violence, sexual assault or stalking to a more demanding standard than you hold tenants who are not victims.

Removing the Abuser from the Household

You may bifurcate (split) the lease to evict a tenant who has committed criminal acts of violence against family members or others, while allowing the victim and other household members to stay in the unit. If you choose to remove the abuser, you may not take away the remaining tenants’ rights to the unit or otherwise punish the remaining tenants. In removing the abuser from the household, you must follow federal, state, and local eviction procedures.

Certification of Domestic Violence, Dating Violence, Sexual Assault or Stalking

If a tenant asserts VAWA’s protections, you can ask the tenant to certify that he or she is a victim of domestic violence, dating violence, sexual assault or stalking. You are not required to demand official documentation and may rely upon the victim’s statement alone. If you choose to request certification, you must do so in writing and give the tenant at least 14 business days to provide documentation. You are free to extend this deadline. A tenant can certify that he or she is a victim by providing any one of the following three documents:

- A completed, signed HUD-approved certification form. The most recent form is HUD-50066. This form is available at the housing authority or online at <http://www.hud.gov/offices/adm/hudclips/forms/hud5.cfm>.
- A statement from a victim service provider, attorney, or medical professional who has helped the victim address incidents of domestic violence, dating violence, sexual assault or stalking. The professional must state that he or she believes that the incidents of abuse are real. Both the victim and the professional must sign the statement under penalty of perjury.

- A police or court record, such as a protective order.

If the tenant fails to provide one of these documents within 14 business days, you may evict the tenant if authorized by otherwise applicable law and lease provisions.

Confidentiality

You must keep confidential any information a tenant provides to certify that he or she is a victim of domestic violence, dating violence, sexual assault or stalking. You cannot enter the information into a shared database or reveal it to outside entities unless:

- The tenant provides written permission releasing the information.
- The information is required for use in an eviction proceeding, such as to evict the abuser.
- Release of the information is otherwise required by law.

The victim should inform you if the release of the information would put his or her safety at risk.

VAWA and Other Laws

VAWA does not limit your obligation to honor court orders regarding access to or control of the property. This includes orders issued to protect the victim and orders dividing property among household members in cases where a family breaks up.

VAWA does not replace any federal, state, or local law that provides greater protection for victims of domestic violence, dating violence, sexual assault or stalking.

Additional Information

- If you have any questions regarding VAWA, please contact 419-259-9448.
- HUD Notice PIH 2006-42 contains detailed information regarding VAWA's certification requirements. The notice is available at <http://www.hud.gov/offices/adm/hudclips/>.
- For a discussion of VAWA's housing provisions, see the preamble to the final VAWA rule, which is available at <http://www.gpo.gov/fdsys/pkg/FR-2010-10-27/pdf/2010-26914.pdf>.

Definitions

For purposes of determining whether a tenant may be covered by VAWA, the following list of definitions applies:

VAWA defines *domestic violence* to include felony or misdemeanor crimes of violence committed by any of the following:

- A current or former spouse of the victim
- A person with whom the victim shares a child in common
- A person who is cohabitating with or has cohabitated with the victim as a spouse
- A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies
- Any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction

VAWA defines *dating violence* as violence committed by a person (1) who is or has been in a social relationship of a romantic or intimate nature with the victim AND (2) where the existence of such a relationship shall be determined based on a consideration of the following factors:

- The length of the relationship
- The type of relationship
- The frequency of interaction between the persons involved in the relationship

VAWA defines *stalking* as (A)(i) to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person OR (ii) to place under surveillance with the intent to kill, injure, harass, or intimidate another person AND (B) in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (i) that person, (ii) a member of the immediate family of that person, or (iii) the spouse or intimate partner of that person.

VAWA defines sexual assault as “any nonconsensual sexual act proscribed by Federal, tribal, or State law, including when the victim lacks capacity to consent” (42U.S.C. 13925(a)).

Chapter 17

PROJECT-BASED VOUCHERS

INTRODUCTION

This chapter describes HUD regulations and LMHA policies related to the project-based voucher (PBV) program in nine parts:

Part I: General Requirements. This part describes general provisions of the PBV program including maximum budget authority requirements, relocation requirements, and equal opportunity requirements.

Part II: PBV Owner Proposals. This part includes policies related to the submission and selection of owner proposals for PBV assistance. It describes the factors LMHA will consider when selecting proposals, the type of housing that is eligible to receive PBV assistance, the cap on assistance at projects receiving PBV assistance, subsidy layering requirements, site selection standards, and environmental review requirements.

Part III: Dwelling Units. This part describes requirements related to housing quality standards, the type and frequency of inspections, and housing accessibility for persons with disabilities.

Part IV: Rehabilitated and Newly Constructed Units. This part describes requirements and policies related to the development and completion of rehabilitated and newly constructed housing units that will be receiving PBV assistance.

Part V: Housing Assistance Payments Contract. This part discusses HAP contract requirements and policies including the execution, term, and termination of the HAP contract. In addition, it describes how the HAP contract may be amended and identifies provisions that may be added to the HAP contract at LMHA's discretion.

Part VI: Selection of PBV Program Participants. This part describes the requirements and policies governing how LMHA and the owner will select a family to receive PBV assistance.

Part VII: Occupancy. This part discusses occupancy requirements related to the lease, and describes under what conditions families are allowed or required to move. In addition, exceptions to the occupancy cap (which limits PBV assistance to 25 percent of the units in any project) are also discussed.

Part VIII: Determining Rent to Owner. This part describes how the initial rent to owner is determined, and how rent will be re-determined throughout the life of the HAP contract. Rent reasonableness requirements are also discussed.

Part IX: Payments to Owner. This part describes the types of payments owners may receive under this program.

PART I: GENERAL REQUIREMENTS

17-I.A. OVERVIEW [24 CFR 983.5]

The project-based voucher (PBV) program allows PHAs that already administer a tenant-based voucher program under an annual contributions contract (ACC) with HUD to take up to 20 percent of its voucher program budget authority and attach the funding to specific units rather than using it for tenant-based assistance [24 CFR 983.6]. PHAs may only operate a PBV program if doing so is consistent with LMHA's Annual Plan, and the goal of deconcentrating poverty and expanding housing and economic opportunities [42 U.S.C. 1437f(o)(13)].

LMHA Policy

LMHA will operate a project-based voucher program using up to 20 percent of its budget authority for project-based assistance.

PBV assistance may be attached to existing housing or newly constructed or rehabilitated housing [24 CFR 983.52]. If PBV units are already selected for project-based assistance either under an agreement to enter into HAP Contract (Agreement) or a HAP contract, LMHA is not required to reduce the number of these units if the amount of budget authority is subsequently reduced. However, LMHA is responsible for determining the amount of budget authority that is available for project-based vouchers and ensuring that the amount of assistance that is attached to units is within the amounts available under the ACC [24 CFR 983.6].

17-I.B. TENANT-BASED VS. PROJECT-BASED VOUCHER ASSISTANCE [24 CFR 983.2]

Much of the tenant-based voucher program regulations also apply to the PBV program. Consequently, many of LMHA policies related to tenant-based assistance also apply to PBV assistance. The provisions of the tenant-based voucher regulations that do not apply to the PBV program are listed at 24 CFR 983.2.

LMHA Policy

Except as otherwise noted in this chapter, or unless specifically prohibited by PBV program regulations, LMHA policies for the tenant-based voucher program contained in this administrative plan also apply to the PBV program and its participants.

17-I.C. RELOCATION REQUIREMENTS [24 CFR 983.7]

Any persons displaced as a result of implementation of the PBV program must be provided relocation assistance in accordance with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (URA)[42 U.S.C. 4201-4655] and implementing regulations at 49 CFR part 24.

The cost of required relocation assistance may be paid with funds provided by the owner, local public funds, or funds available from other sources. PHAs may not use voucher program funds to cover relocation costs, except that PHAs may use their administrative fee reserve to pay for relocation expenses after all other program administrative expenses are satisfied, and provided that payment of the relocation benefits is consistent with state and local law. Use of the administrative fee for these purposes must also be consistent with other legal and regulatory requirements, including the requirement in 24 CFR 982.155 and other official HUD issuances.

The acquisition of real property for a PBV project is subject to the URA and 49 CFR part 24, subpart B. It is the responsibility of LMHA to ensure the owner complies with these requirements.

17-I.D. EQUAL OPPORTUNITY REQUIREMENTS [24 CFR 983.8]

LMHA must comply with all equal opportunity requirements under federal law and regulations in its implementation of the PBV program. This includes the requirements and authorities cited at 24 CFR 5.105(a). In addition, LMHA must comply with LMHA Plan certification on civil rights and affirmatively furthering fair housing, submitted in accordance with 24 CFR 903.7(o).

PART II: PBV OWNER PROPOSALS

17-II.A. OVERVIEW

LMHA must describe the procedures for owner submission of PBV proposals and for LMHA selection of PBV proposals [24 CFR 983.51]. Before selecting a PBV proposal, LMHA must determine that the PBV proposal complies with HUD program regulations and requirements, including a determination that the property is eligible housing [24 CFR 983.53 and 983.54], complies with the cap on the number of PBV units per project [24 CFR 983.56, FR Notice 11/24/08], and meets the site selection standards [24 CFR 983.57]. LMHA may not commit PBVs until or unless it has followed the proposal selection requirements defined in 24 CFR 983.51 [Notice PIH 2011-54].

17-II.B. OWNER PROPOSAL SELECTION PROCEDURES [24 CFR 983.51(b)]

LMHA must select PBV proposals in accordance with the selection procedures in LMHA administrative plan. LMHA must select PBV proposals by either of the following two methods.

- LMHA request for PBV Proposals. LMHA may solicit proposals by using a request for proposals to select proposals on a competitive basis in response to LMHA request. LMHA 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.
- LMHA may select proposal that were previously selected based on a competition. This may include selection of a proposal for housing assisted under a federal, state, or local government housing assistance program that was subject to a competition in accordance with the requirements of the applicable program, community development program, or supportive services program that requires competitive selection of proposals (e.g., HOME, and units for which competitively awarded LIHTCs have been provided), where the proposal has been selected in accordance with such program's competitive selection requirements within three years of the PBV proposal selection date, and the earlier competitive selection proposal did not involve any consideration that the project would receive PBV assistance.

Solicitation and Selection of PBV Proposals [24 CFR 983.51(c)]

LMHA procedures for selecting PBV proposals must be designed and actually operated to provide broad public notice of the opportunity to offer PBV proposals for consideration by LMHA. 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 LMHA request for PBV proposals must specify the submission deadline. Detailed application and selection information must be provided at the request of interested parties.

LMHA Policy

LMHA Request for Proposals for Rehabilitated and Newly Constructed Units

LMHA will advertise its request for proposals (RFP) for rehabilitated and newly constructed housing in the following newspapers and trade journals.

- Local papers of general circulation
- Minority papers of general circulation

In addition, LMHA will post the RFP and proposal submission and rating and ranking procedures on its electronic web site.

LMHA will publish its advertisement in the newspapers and trade journals mentioned above for at least one day per week for three consecutive weeks. The advertisement will specify the number of units LMHA estimates that it will be able to assist under the funding LMHA is making available. Proposals will be due in LMHA office by the date specified in the published deadline.

In order for the proposal to be considered, the owner must submit the proposal to LMHA by the published deadline date, and the proposal must respond to all requirements as outlined in the RFP. Incomplete proposals will not be reviewed.

LMHA will rate and rank proposals for rehabilitated and newly constructed housing using the following criteria:

- The housing must promote one of LMHA's priorities for its PBV program.
- The proposal must comply with all HUD program regulations and requirements.
- The property must be eligible housing as determined under 24 CFR 983.52 – 983.54.
- The proposal must comply with the applicable HUD limitations on the number of PBV units per building; [The housing site must meet the site selection standards detailed at 24 CFR 983.57].
- Proposals for all housing must demonstrate capacity, experience, and successful outcomes in property management, particularly management of housing targeted to low- income persons and families.
- Proposals must provide evidence of sufficient financing commitments (for construction, operations, and supportive services if applicable) to demonstrate the project's long-term viability.
- Proposals for supportive housing must demonstrate the capacity, experience, and successful outcomes of the supportive services provider that indicate its ability to effectively provide sufficient supportive services; and
- Capacity, experience, and successful outcomes in prior projects that indicate their ability to complete the construction work effectively and within the proposed time schedule for project completion.

LMHA Requests for Proposals for Existing Housing Units

LMHA will advertise its request for proposals (RFP) for existing housing in the following newspapers and trade journals.

- Local papers of general circulation
- Minority papers of general circulation

In addition, LMHA will post the notice inviting such proposal submission and the rating and ranking procedures on its electronic web site.

LMHA will periodically publish its advertisement in the newspapers and trade journals mentioned above for at least one day per week for three consecutive weeks. The advertisement will specify the number of units LMHA estimates that it will be able to assist under the funding LMHA is making available. Owner proposals will be accepted on a first-come first-served basis and will be evaluated using the following criteria:

- The housing must promote one of LMHA's priorities for its PBV program.
- The proposal must comply with all HUD program regulations and requirements.
- The property must be eligible housing as determined under 24 CFR 983.52 – 983.54.

- The proposal must comply with the applicable HUD limitations on the number of PBV units per building; [The housing site must meet the site selection standards detailed at 24 CFR 983.57].
- Proposals for all housing must demonstrate capacity, experience, and successful outcomes in property management, particularly management of housing targeted to low- income persons and families.
- Proposals must provide evidence of sufficient financing commitments (for construction, operations, and supportive services if applicable) to demonstrate the project’s long-term viability.
- Proposals for supportive housing must demonstrate the capacity, experience, and successful outcomes of the supportive services provider that indicate its ability to effectively provide sufficient supportive services.

LMHA Selection of Proposals Subject to a Previous Competition under a Federal, State, or Local Housing Assistance Program

LMHA will accept proposals for PBV assistance from owners that were competitively selected under another federal, state or local housing assistance program, including projects that were competitively awarded Low-Income Housing Tax Credits on an ongoing basis.

LMHA may periodically advertise that it is accepting proposals, in the following newspapers and trade journals:

- Local papers of general circulation
- Minority papers of general circulation

In addition to, or in place of advertising, LMHA may also directly contact specific owners that have already been selected for Federal, state, or local housing assistance based on a previously held competition, to inform them of available PBV assistance.

Proposals will be reviewed on a first-come first-served basis. LMHA will evaluate each proposal on its merits using the following factors:

Extent to which the project furthers LMHA 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.

PHA-owned Units [24 CFR 983.51(e) and 983.59]

A LMHA-owned unit may be assisted under the PBV program only if the HUD field office or HUD-approved independent entity reviews the selection process and determines that LMHA-owned units were appropriately selected based on the selection procedures specified in LMHA administrative plan. If LMHA selects a proposal for housing that is owned or controlled by LMHA, LMHA must identify the entity that will review LMHA proposal selection process and perform specific functions with respect to rent determinations and inspections.

In the case of LMHA-owned units, the initial contract rent must be approved by an independent entity based on an appraisal by a licensed, state-certified appraiser. In addition, housing quality standards inspections must be conducted by an independent entity.

The independent entity that performs these program services may be the unit of general local government for LMHA jurisdiction (unless LMHA is itself the unit of general local government or an agency of such government) or another HUD-approved public or private independent entity.

LMHA Policy

LMHA may submit a proposal for project-based housing that is owned or controlled by LMHA. If the proposal for LMHA-owned housing is selected, LMHA will use an independent entity to review LMHA selection and to administer the PBV program. LMHA will obtain HUD approval of the independent entity prior to selecting the proposal for LMHA-owned housing.

LMHA may only compensate the independent entity and appraiser from LMHA ongoing administrative fee income (including amounts credited to the administrative fee reserve). LMHA may not use other program receipts to compensate the independent entity and appraiser for their services. LMHA, independent entity, and appraiser may not charge the family any fee for the appraisal or the services provided by the independent entity.

PHA Notice of Owner Selection [24 CFR 983.51(d)]

LMHA must give prompt written notice to the party that submitted a selected proposal and must also give prompt public notice of such selection. Public notice procedures may include publication of public notice in a local newspaper of general circulation and other means designed and actually operated to provide broad public notice.

LMHA Policy

Within 30 calendar days of LMHA making the selection, LMHA will notify the selected owner in writing of the owner's selection for the PBV program. LMHA will also notify in writing all owners that submitted proposals that were not selected and advise such owners of the name of the selected owner.

In addition, LMHA will publish its notice for selection of PBV proposals for two consecutive days in the same newspapers and trade journals LMHA used to solicit the proposals. The announcement will include the name of the owner that was selected for the PBV program. LMHA will also post the notice of owner selection on its electronic web site.

LMHA will make available to any interested party its rating and ranking sheets and documents that identify LMHA 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. LMHA will not make available sensitive owner information that is privileged, such as financial statements and similar information about the owner.

LMHA will make these documents available for review at LMHA during normal business hours. The cost for reproduction of allowable documents will be \$.25 per page.

17-II.C. HOUSING TYPE [24 CFR 983.52]

LMHA 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 LMHA selection, the units substantially comply with HQS. Units for which new construction or rehabilitation was started in accordance with PBV program requirements do not qualify as existing housing.

LMHA must decide what housing type, new construction, rehabilitation, or existing housing, will be used to develop project-based housing. LMHA choice of housing type must be reflected in its solicitation for proposals.

17-II.D. PROHIBITION OF ASSISTANCE FOR CERTAIN UNITS

Ineligible Housing Types [24 CFR 983.53]

LMHA may not attach or pay PBV assistance to shared housing units; units on the grounds of a penal reformatory, medical, mental, or similar public or private institution; nursing homes or facilities providing continuous psychiatric, medical, nursing services, board and care, or intermediate care (except that assistance may be provided in assisted living facilities); units that are owned or controlled by an educational institution or its affiliate and are designated for occupancy by students; manufactured homes; and transitional housing. In addition, LMHA may not attach or pay PBV assistance for a unit occupied by an owner and LMHA may not select or enter into an agreement to enter into a HAP contract or HAP contract for a unit occupied by a family ineligible for participation in the PBV program.

Subsidized Housing [24 CFR 983.54]

A LMHA may not attach or pay PBV assistance to units in any of the following types of subsidized housing:

- A public housing unit;
- A unit subsidized with any other form of Section 8 assistance;
- A unit subsidized with any governmental rent subsidy;
- A unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing;
- A unit subsidized with Section 236 rental assistance payments (except that a LMHA may attach assistance to a unit subsidized with Section 236 interest reduction payments);
- A Section 202 project for non-elderly with disabilities;
- Section 811 project-based supportive housing for persons with disabilities;
- Section 202 supportive housing for the elderly;
- A Section 101 rent supplement project;
- A unit subsidized with any form of tenant-based rental assistance;
- A unit with any other duplicative federal, state, or local housing subsidy, as determined by HUD or LMHA in accordance with HUD requirements.

17-II.E. SUBSIDY LAYERING REQUIREMENTS [24 CFR 983.55, FR Notice 11/24/08, and FR Notice 7/9/10]

LMHA 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.

LMHA must submit the necessary documentation to HUD for a subsidy layering review. Except in cases of HAP contracts for existing structures, or if such reviews have been conducted by the applicable state and local agencies (defined by HUD as qualified housing credit agencies, or HCAs), LMHA may not enter into an agreement to enter into a HAP contract or a HAP contract until HUD, or an independent entity approved by HUD, has conducted any required subsidy layering review and determined that the PBV assistance is in accordance with HUD subsidy layering requirements. However, in order to satisfy applicable requirements, HCAs must conduct subsidy layering reviews in compliance with the guidelines set forth in the *Federal Register* notice published July 9, 2010.

The HAP contract must contain the owner's certification that the project has not received and will not receive (before or during the term of the HAP contract) any public assistance for acquisition, development, or operation of the housing other than assistance disclosed in the subsidy layering review in accordance with HUD requirements.

17-II.F. CAP ON NUMBER OF PBV UNITS IN EACH PROJECT

25 Percent per Project Cap [24 CFR 983.56(a), FR Notice 11/24/08]

In general, LMHA may not select a proposal to provide PBV assistance for units in a project or enter into an agreement to enter into a HAP or a HAP contract to provide PBV assistance for units in a project, if the total number of dwelling units in the project that will receive PBV assistance during the term of the PBV HAP contract is more than 25 percent of the number of dwelling units (assisted or unassisted) in the project.

Exceptions to 25 Percent per Project Cap [24 CFR 983.56(b), FR Notice 11/24/08]

Exceptions are allowed and PBV units are not counted against the 25 percent per project cap if:

- The units are in a single-family building (one to four units);
- The units are *excepted units* in a multifamily building because they are specifically made available for elderly or disabled families or families receiving supportive services (also known as *qualifying families*).

PHAs must include in LMHA administrative plan the type of services offered to families for a project to qualify for the exception and the extent to which such services will be provided. It is not necessary that the services be provided at or by the project, if they are approved services. To qualify, a family must have at least one member receiving at least one qualifying supportive service. A LMHA may not require participation in medical or disability-related services other than drug and alcohol treatment in the case of current abusers as a condition of living in an excepted unit, although such services may be offered.

If a family at the time of initial tenancy is receiving, and while the resident of an excepted unit has received, FSS supportive services or any other supportive services as defined in LMHA administrative plan, and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit.

LMHA must monitor the excepted family's continued receipt of supportive services and take appropriate action regarding those families that fail without good cause to complete their supportive services requirement. LMHA administrative plan must state the form and frequency of such monitoring.

LMHA Policy

LMHA may provide PBV assistance for excepted units.

Promoting Partially-Assisted Buildings [24 CFR 983.56(c)]

A LMHA may establish local requirements designed to promote PBV assistance in partially assisted buildings. A *partially assisted building* is a building in which there are fewer units covered by a HAP contract than residential units [24 CFR 983.3].

A LMHA may establish a per-building cap on the number of units that will receive PBV assistance or other project-based assistance in a multifamily building containing excepted units or in a single-family building. A LMHA may also determine not to provide PBV assistance for excepted units, or LMHA may establish a per-building cap of less than 25 percent.

17-II.G. SITE SELECTION STANDARDS

Compliance with PBV Goals, Civil Rights Requirements, and HQS Site Standards [24 CFR 983.57(b)]

LMHA may not select a proposal for existing, newly constructed, or rehabilitated PBV housing on a site or enter into an agreement to enter into a HAP contract or HAP contract for units on the site, unless LMHA 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 LMHA Plan under 24 CFR 903 and LMHA administrative plan.

In addition, prior to selecting a proposal, LMHA 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).

LMHA Policy

It is LMHA goal to select sites for PBV housing that provide for de-concentrating poverty and expanding housing and economic opportunities. In complying with this goal LMHA will limit approval of sites for PBV housing in census tracts that have poverty concentrations of 20 percent or less.

However, LMHA will grant exceptions to the 20 percent standard where LMHA determines that the PBV assistance will complement other local redevelopment activities designed to de- concentrate poverty and expand housing and economic opportunities in census tracts with poverty concentrations greater than 20 percent, such as sites in:

A census tract in which the proposed PBV development will be located in a HUD-designated Enterprise Zone, Economic Community, or Renewal Community;

A census tract where the concentration of assisted units will be or has decreased as a result of public housing demolition and HOPE VI redevelopment;

A census tract in which the proposed PBV development will be located is undergoing significant revitalization as a result of state, local, or federal dollars invested in the area;

A census tract where new market rate units are being developed where such market rate units will positively impact the poverty rate in the area;

A census tract where there has been an overall decline in the poverty rate within the past five years; or

A census tract where there are meaningful opportunities for educational and economic advancement.

Existing and Rehabilitated Housing Site and Neighborhood Standards [24 CFR 983.57(d)]

LMHA may not enter into an agreement to enter into a HAP contract nor enter into a HAP contract for existing or rehabilitated housing until it has determined that the site complies with the HUD required site and neighborhood standards. The site must:

- Be adequate in size, exposure, and contour to accommodate the number and type of units proposed;
- Have adequate utilities and streets available to service the site;
- Promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons;
- Be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units of similar market rents; 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, except for elderly designated housing.

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 LMHA determines that sufficient, comparable opportunities exist for housing for minority families in the income range to be served by the proposed project outside areas of minority concentration or that the project is necessary to meet overriding housing needs that cannot be met in that housing market area;
- The site must not be located in a racially mixed area if the project will cause a significant increase in the proportion of minority to non-minority residents in the area.
- The site must promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons;
- The neighborhood must not be one that is seriously detrimental to family life or in which substandard dwellings or other undesirable conditions predominate;
- The housing must be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units; and

- Except for housing designed for elderly persons, the housing must be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

17-II.H. ENVIRONMENTAL REVIEW [24 CFR 983.58]

LMHA 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.). LMHA may not enter into an agreement to enter into a HAP contract nor enter into a HAP contract until it has complied with the environmental review requirements.

In the case of existing housing, the responsible entity that is responsible for the environmental review under 24 CFR part 58 must determine whether or not PBV assistance is categorically excluded from review under the National Environmental Policy Act and whether or not the assistance is subject to review under the laws and authorities listed in 24 CFR 58.5.

LMHA may not enter into an agreement to enter into a HAP contract or a HAP contract with an owner, and LMHA, 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.

LMHA must supply all available, relevant information necessary for the responsible entity to perform any required environmental review for any site. LMHA must require the owner to carry out mitigating measures required by the responsible entity (or HUD, if applicable) as a result of the environmental review.

PART III: DWELLING UNITS

17-III.A. OVERVIEW

This part identifies the special housing quality standards that apply to the PBV program, housing accessibility for persons with disabilities, and special procedures for conducting housing quality standards inspections.

17-III.B. HOUSING QUALITY STANDARDS [24 CFR 983.101]

The housing quality standards (HQS) for the tenant-based program, including those for special housing types, generally apply to the PBV program. HQS requirements for shared housing, manufactured home space rental, and the homeownership option do not apply because these housing types are not assisted under the PBV program.

The physical condition standards at 24 CFR 5.703 do not apply to the PBV program.

Lead-based Paint [24 CFR 983.101(c)]

The lead-based paint requirements for the tenant-based voucher program do not apply to the PBV program. Instead, The Lead-based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations at 24 CFR part 35, subparts A, B, H, and R, apply to the PBV program.

17-III.C. HOUSING ACCESSIBILITY FOR PERSONS WITH DISABILITIES

The housing must comply with program accessibility requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at 24 CFR part 8. LMHA must ensure that the percentage of accessible dwelling units complies with the requirements of section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by HUD's regulations at 24 CFR 8, subpart C.

Housing first occupied after March 13, 1991, must comply with design and construction requirements of the Fair Housing Amendments Act of 1988 and implementing regulations at 24 CFR 100.205, as applicable. (24 CFR 983.102)

17-III.D. INSPECTING UNITS

Pre-selection Inspection [24 CFR 983.103(a)]

LMHA must examine the proposed site before the proposal selection date. If the units to be assisted already exist, LMHA must inspect all the units before the proposal selection date, and must determine whether the units substantially comply with HQS. To qualify as existing housing, units must substantially comply with HQS on the proposal selection date. However, LMHA may not execute the HAP contract until the units fully comply with HQS.

Pre-HAP Contract Inspections [24 CFR 983.103(b)]

LMHA must inspect each contract unit before execution of the HAP contract. LMHA may not enter into a HAP contract covering a unit until the unit fully complies with HQS.

Turnover Inspections [24 CFR 983.103(c)]

Before providing assistance to a new family in a contract unit, LMHA must inspect the unit. LMHA may not provide assistance on behalf of the family until the unit fully complies with HQS.

Annual Inspections [24 CFR 983.103(d)]

At least annually during the term of the HAP contract, LMHA must inspect a random sample, consisting of at least 20 percent of the contract units in each building to determine if the contract units and the premises are maintained in accordance with HQS. Turnover inspections are not counted toward meeting this annual inspection requirement.

If more than 20 percent of the annual sample of inspected contract units in a building fails the initial inspection, LMHA must re-inspect 100 percent of the contract units in the building.

Other Inspections [24 CFR 983.103(e)]

LMHA must inspect contract units whenever needed to determine that the contract units comply with HQS and that the owner is providing maintenance, utilities, and other services in accordance with the HAP contract. LMHA must take into account complaints and any other information coming to its attention in scheduling inspections.

LMHA must conduct follow-up inspections needed to determine if the owner (or, if applicable, the family) has corrected an HQS violation, and must conduct inspections to determine the basis for exercise of contractual and other remedies for owner or family violation of HQS.

In conducting LMHA supervisory quality control HQS inspections, LMHA should include a representative sample of both tenant-based and project-based units.

Inspecting LMHA-owned Units [24 CFR 983.103(f)]

In the case of LMHA-owned units, the inspections must be performed by an independent agency designated by LMHA and approved by HUD. The independent entity must furnish a copy of each inspection report to LMHA and to the HUD field office where the project is located. LMHA 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 LMHA-owner.

PART IV: REHABILITATED AND NEWLY CONSTRUCTED UNITS

17-IV.A. OVERVIEW [24 CFR 983.151]

There are specific requirements that apply to PBV assistance for newly constructed or rehabilitated housing that do not apply to PBV assistance in existing housing. This part describes the requirements unique to this type of assistance.

Housing selected for this type of assistance may not at a later date be selected for PBV assistance as existing housing.

17-IV.B. AGREEMENT TO ENTER INTO HAP CONTRACT

In order to offer PBV assistance in rehabilitated or newly constructed units, LMHA must enter into an agreement to enter into HAP contract (Agreement) with the owner of the property. The Agreement must be in the form required by HUD [24 CFR 983.152(a)].

In the Agreement the owner agrees to develop the PBV contract units to comply with HQS, and LMHA agrees that upon timely completion of such development in accordance with the terms of the Agreement, LMHA will enter into a HAP contract with the owner for the contract units [24 CFR 983.152(b)].

Content of the Agreement [24 CFR 983.152(c)]

At a minimum, the Agreement must describe the following features of the housing to be developed and assisted under the PBV program:

- Site and the location of the contract units;
- Number of contract units by area (size) and number of bedrooms and bathrooms;
- Services, maintenance, or equipment to be supplied by the owner without charges in addition to the rent;
- Utilities available to the contract units, including a specification of utility services to be paid by the owner and utility services to be paid by the tenant;
- An indication of whether or not the design and construction requirements of the Fair Housing Act and section 504 of the Rehabilitation Act of 1973 apply to units under the Agreement. If applicable, any required work item resulting from these requirements must be included in the description of work to be performed under the Agreement;
- Estimated initial rents to owner for the contract units;
- Description of the work to be performed under the Agreement. For rehabilitated units, the description must include the rehabilitation work write up and, where determined necessary by LMHA, specifications and plans. For new construction units, the description must include the working drawings and specifications.
- Any additional requirements for quality, architecture, or design over and above HQS.

Execution of the Agreement [24 CFR 983.153, FR Notice 11/24/08]

The Agreement must be executed promptly after LMHA notice of proposal selection to the selected owner. Generally, LMHA may not enter into the Agreement with the owner until the subsidy layering review is completed. Likewise, LMHA may not enter into the Agreement until the environmental review is completed and LMHA has received environmental approval. However, LMHA does not need to

conduct a subsidy layering review in the case of a HAP contract for an existing structure or if the applicable state or local agency has conducted such a review. Similarly, environmental reviews are not required for existing structures unless otherwise required by law or regulation.

LMHA Policy

LMHA will enter into the Agreement with the owner within 30 calendar days of receiving both environmental approval and notice that subsidy layering requirements have been met, and before construction or rehabilitation work is started.

17-IV.C. CONDUCT OF DEVELOPMENT WORK

Labor Standards [24 CFR 983.154(b)]

If an Agreement covers the development of nine or more contract units (whether or not completed in stages), the owner and the owner's contractors and subcontractors must pay Davis-Bacon wages to laborers and mechanics employed in the development of housing. 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. LMHA must monitor compliance with labor standards.

Equal Opportunity [24 CFR 983.154(c)]

The owner must comply with Section 3 of the Housing and Urban Development Act of 1968 and the implementing regulations at 24 CFR part 135. The owner must also comply with federal equal employment opportunity requirements.

Owner Disclosure [24 CFR 983.154(d) and (e)]

The Agreement and HAP contract must include a certification by the owner that the owner and other project principals are not on the U.S. General Services Administration list of parties excluded from federal procurement and non-procurement programs.

The owner must also disclose any possible conflict of interest that would be a violation of the Agreement, the HAP contract, or HUD regulations.

17-IV.D. COMPLETION OF HOUSING

The Agreement must specify the deadlines for completion of the housing, and the owner must develop and complete the housing in accordance with these deadlines. The Agreement must also specify the deadline for submission by the owner of the required evidence of completion.

Evidence of Completion [24 CFR 983.155(b)]

At a minimum, the owner must submit the following evidence of completion to LMHA in the form and manner required by LMHA:

- Owner certification that the work has been completed in accordance with HQS and all requirements of the Agreement; and
- Owner certification that the owner has complied with labor standards and equal opportunity requirements in development of the housing.

At LMHA's discretion, the Agreement may specify additional documentation that must be submitted by the owner as evidence of housing completion.

LMHA Policy

LMHA 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. LMHA 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, LMHA must inspect to determine if the housing has been completed in accordance with the Agreement, including compliance with HQS and any additional requirements imposed under the Agreement. LMHA 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, LMHA must not enter into the HAP contract.

If LMHA determines the work has been completed in accordance with the Agreement and that the owner has submitted all required evidence of completion, LMHA must submit the HAP contract for execution by the owner and must then execute the HAP contract.

PART V: HOUSING ASSISTANCE PAYMENTS CONTRACT (HAP)

17-V.A. OVERVIEW

LMHA must enter into a HAP contract with an owner for units that are receiving PBV assistance. The purpose of the HAP contract is to provide housing assistance payments for eligible families. Housing assistance is paid for contract units leased and occupied by eligible families during the HAP contract term. The HAP contract must be in the form required by HUD [24 CFR 983.202].

17-V.B. HAP CONTRACT REQUIREMENTS

Contract Information [24 CFR 983.203]

The HAP contract must specify the following information:

- The total number of contract units by number of bedrooms;
- The project's name, street address, city or county, state and zip code, block and lot number (if known), and any other information necessary to clearly identify the site and the building;
- The number of contract units in each building, the location of each contract unit, the area of each contract unit, and the number of bedrooms and bathrooms in each contract unit;
- Services, maintenance, and equipment to be supplied by the owner and included in the rent to owner;
- Utilities available to the contract units, including a specification of utility services to be paid by the owner (included in rent) and utility services to be paid by the tenant;
- Features provided to comply with program accessibility requirements of Section 504 of the Rehabilitation Act of 1973 and implementing regulations at 24 CFR part 8;
- The HAP contract term;
- The number of units in any project that will exceed the 25 percent per project cap, which will be set-aside for occupancy by qualifying families; 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]

LMHA may not enter into a HAP contract until each contract unit has been inspected and LMHA has determined that the unit complies with the Housing Quality Standards (HQS). For existing housing, the HAP contract must be executed promptly after LMHA selects the owner proposal and inspects the housing units. For newly constructed or rehabilitated housing the HAP contract must be executed after LMHA 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.

LMHA Policy

For existing housing, the HAP contract will be executed within 30 business days of LMHA determining that all units pass HQS.

For rehabilitated or newly constructed housing, the HAP contract will be executed within 30 business days of LMHA determining that the units have been completed in accordance with the

agreement to enter into HAP, all units meet HQS, and the owner has submitted all required evidence of completion.

Term of HAP Contract [FR Notice 11/24/08]

LMHA may enter into a HAP contract with an owner for an initial term of no less than one year and no more than 15 years.

LMHA Policy

The term of all PBV HAP contracts will be negotiated with the owner on a case-by-case basis.

At any time before expiration of the HAP contract, LMHA may extend the term of the contract for an additional term of up to 15 years if LMHA determines an extension is appropriate to continue providing affordable housing for low-income families or to expand housing opportunities. Subsequent extensions are subject to the same limitations. All extensions must be on the form and subject to the conditions prescribed by HUD at the time of the extension.

LMHA Policy

When determining whether or not to extend an expiring PBV contract, LMHA 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 LMHA [24 CFR 983.205(c)]

The HAP contract must provide that the term of LMHA's contractual commitment is subject to the availability of sufficient appropriated funding as determined by HUD or by LMHA in accordance with HUD instructions. For these purposes, sufficient funding means the availability of appropriations, and of funding under the ACC from such appropriations, to make full payment of housing assistance payments payable to the owner for any contract year in accordance with the terms of the HAP contract.

If it is determined that there may not be sufficient funding to continue housing assistance payments for all contract units and for the full term of the HAP contract, LMHA 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 LMHA. In this case, families living in the contract units must be offered tenant-based assistance.

Remedies for HQS Violations [24 CFR 983.207(b)]

LMHA 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 LMHA determines that a contract does not comply with HQS, LMHA may exercise any of its remedies under the HAP contract, for any or all of the contract units. Available

remedies include termination of housing assistance payments, abatement or reduction of housing assistance payments, reduction of contract units, and termination of the HAP contract.

LMHA Policy

LMHA will abate and terminate PBV HAP contracts for non-compliance with HQS in accordance with the policies used in the tenant-based voucher program. These policies are contained in Section 8-II.G., Enforcing Owner Compliance.

17-V.C. AMENDMENTS TO THE HAP CONTRACT

Substitution of Contract Units [24 CFR 983.206(a)]

At LMHA's discretion and subject to all PBV requirements, the HAP contract may be amended to substitute a different unit with the same number of bedrooms in the same building for a previously covered contract unit. Before any such substitution can take place, LMHA must inspect the proposed unit and determine the reasonable rent for the unit.

Addition of Contract Units [24 CFR 983.206(b)]

At LMHA's discretion and subject to the restrictions on the number of dwelling units that can receive PBV assistance per building and on the overall size of LMHA's PBV program, a HAP contract may be amended during the three-year period following the execution date of the HAP contract to add additional PBV units in the same building. This type of amendment is subject to all PBV program requirements except that a new PBV proposal is not required.

LMHA Policy

LMHA will consider adding contract units to the HAP contract when LMHA determines that additional housing is needed to serve eligible low-income families. Circumstances may include, but are not limited to:

The local housing inventory is reduced due to a disaster (either due to loss of housing units, or an influx of displaced families); and

Voucher holders are having difficulty finding units that meet program requirements.

17-V.D. HAP CONTRACT YEAR, ANNIVERSARY AND EXPIRATION DATES [24 CFR 983.206(c) and 983.302(e)]

The HAP contract year is the period of 12 calendar months preceding each annual anniversary of the HAP contract during the HAP contract term. The initial contract year is calculated from the first day of the first calendar month of the HAP contract term.

The annual anniversary of the HAP contract is the first day of the first calendar month after the end of the preceding contract year.

There is a single annual anniversary and expiration date for all units under a particular HAP contract, even in cases where contract units are placed under the HAP contract in stages (on different dates) or units are added by amendment. The anniversary and expiration dates for all units coincide with the dates for the contract units that were originally placed under contract.

17-V.E. OWNER RESPONSIBILITIES UNDER THE HAP [24 CFR 983.209]

When the owner executes the HAP contract s/he certifies that at such execution and at all times during the term of the HAP contract:

- All contract units are in good condition and the owner is maintaining the premises and contract units in accordance with HQS;
- The owner is providing all services, maintenance, equipment and utilities as agreed to under the HAP contract and the leases;
- Each contract unit for which the owner is receiving HAP, is leased to an eligible family referred by LMHA, 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 (from the family, LMHA, HUD, or any other public or private sources); and
- The family does not own or have any interest in the contract unit.

17-V.F. ADDITIONAL HAP REQUIREMENTS

Housing Quality and Design Requirements [24 CFR 983.101(e) and 983.207(a)]

The owner is required to maintain and operate the contract units and premises in accordance with HQS, including performance of ordinary and extraordinary maintenance. The owner must provide all the services, maintenance, equipment, and utilities specified in the HAP contract with LMHA and in the lease with each assisted family. In addition, maintenance, replacement and redecoration must be in accordance with the standard practice for the building as established by the owner.

LMHA 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.

LMHA Policy

LMHA will identify the need for any special features on a case-by-case basis depending on the intended occupancy of the PBV project. LMHA 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 LMHA, the HAP contract may provide for vacancy payments to the owner for a LMHA-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 LMHA 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).

LMHA Policy

LMHA will decide on a case-by-case basis if LMHA will provide vacancy payments to the owner. The HAP contract with the owner will contain any such agreement, including the amount of the vacancy payment and the period for which the owner will qualify for these payments.

PART VI: SELECTION OF PBV PROGRAM PARTICIPANTS

17-VI.A. OVERVIEW

Many of the provisions of the tenant-based voucher regulations [24 CFR 982] also apply to the PBV program. This includes requirements related to determining eligibility and selecting applicants from the waiting list. Even with these similarities, there are requirements that are unique to the PBV program. This part describes the requirements and policies related to eligibility and admission to the PBV program.

17-VI.B. ELIGIBILITY FOR PBV ASSISTANCE [24 CFR 983.251(a) and (b)]

LMHA may select families for the PBV program from those who are participants in LMHA's tenant-based voucher program and from those who have applied for admission to the voucher program. For voucher participants, eligibility was determined at original admission to the voucher program and does not need to be re-determined at the commencement of PBV assistance. For all others, eligibility for admission must be determined at the commencement of PBV assistance.

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 LMHA, 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 LMHA's collection and use of family information regarding income, expenses, and family composition [24 CFR 5.230]. An applicant family must also meet HUD requirements related to current or past criminal activity.

LMHA Policy

LMHA 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 LMHA is considered an "in-place family." These families are afforded protection from displacement under the PBV rule. If a unit to be placed under contract (either an existing unit or a unit requiring rehabilitation) is occupied by an eligible family on the date the proposal is selected, the in-place family must be placed on LMHA's waiting list. Once the family's continued eligibility is determined (LMHA may deny assistance to an in-place family for the grounds specified in 24 CFR 982.552 and 982.553), the family must be given an absolute selection preference and LMHA must refer these families to the project owner for an appropriately sized PBV unit in the project. Admission of eligible in-place families is not subject to income targeting requirements.

This regulatory protection from displacement does not apply to families that are not eligible to participate in the program on the proposal selection date.

17-VI.C. ORGANIZATION OF THE WAITING LIST [24 CFR 983.251(c)]

LMHA may establish a separate waiting list for PBV units or it may use the same waiting list for both tenant-based and PBV assistance. LMHA may also merge the PBV waiting list with a waiting list for other assisted housing programs offered by LMHA. If LMHA chooses to offer a separate waiting list for PBV assistance, LMHA must offer to place applicants who are listed on the tenant-based waiting list on the waiting list for PBV assistance.

If a LMHA decides to establish a separate PBV waiting list, LMHA may use a single waiting list for LMHA's whole PBV program, or it may establish separate waiting lists for PBV units in particular projects or buildings or for sets of such units.

LMHA Policy

LMHA will establish and manage separate waiting lists for individual projects or buildings that are receiving PBV assistance.

17-VI.D. SELECTION FROM THE WAITING LIST [24 CFR 983.251(c)]

Applicants who will occupy units with PBV assistance must be selected from LMHA's waiting list. LMHA may establish selection criteria or preferences for occupancy of particular PBV units. LMHA may place families referred by the PBV owner on its PBV waiting list.

Income Targeting [24 CFR 983.251(c)(6)]

At least 75 percent of the families admitted to LMHA's tenant-based and project-based voucher programs during LMHA 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, LMHA must first refer families who require such features to the owner.

Preferences [24 CFR 983.251(d), FR Notice 11/24/08]

LMHA 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. LMHA must provide an absolute selection preference for eligible in-place families as described in Section 17-VI.B. above.

Although LMHA is prohibited from granting preferences to persons with a specific disability, LMHA may give preference to disabled families who need services offered at a particular project or site if the preference is limited to families (including individuals):

- With disabilities that significantly interfere with their ability to obtain and maintain themselves in housing;
- Who, without appropriate supportive services, will not be able to obtain or maintain themselves in housing; and
- For whom such services cannot be provided in a non-segregated setting.

In advertising such a project, the owner may advertise the project as offering services for a particular type of disability; however, the project must be open to all otherwise eligible disabled persons who may benefit from services provided in the project. In these projects, disabled residents may not be required to accept the particular services offered as a condition of occupancy.

If LMHA has projects with more than 25 percent of the units receiving project-based assistance because those projects include "excepted units" (units specifically made available for elderly or disabled families, or families receiving supportive services), LMHA must give preference to such families when referring families to these units [24 CFR 983.261(b)].

LMHA Policy

LMHA 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). LMHA will not offer any additional preferences for the PBV program or for particular PBV projects or units.

17-VI.E. OFFER OF PBV ASSISTANCE

Refusal of Offer [24 CFR 983.251(e)(3)]

LMHA 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 LMHA’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, LMHA must give the family an oral briefing. The briefing must include information on how the program works and the responsibilities of the family and owner. In addition to the oral briefing, LMHA must provide a briefing packet that explains how LMHA 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, LMHA 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, LMHA 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

LMHA should take reasonable steps to assure meaningful access by persons with limited English proficiency in accordance with Title VI of the Civil Rights Act of 1964 and Executive Order 13166 (see Chapter 2).

17-VI.F. OWNER SELECTION OF TENANTS

The owner is responsible for developing written tenant selection procedures that are consistent with the purpose of improving housing opportunities for very low-income families and reasonably related to program eligibility and an applicant’s ability to fulfill their obligations under the lease. An owner must

promptly notify in writing any rejected applicant of the grounds for any rejection [24 CFR 983.253(a)(2) and (a)(3)].

Leasing [24 CFR 983.253(a)]

During the term of the HAP contract, the owner must lease contract units to eligible families that are selected and referred by LMHA from LMHA’s waiting list. The contract unit leased to the family must be the appropriate size unit for the size of the family, based on LMHA’s subsidy standards.

Filling Vacancies [24 CFR 983.254(a)]

The owner must promptly notify LMHA of any vacancy or expected vacancy in a contract unit. After receiving such notice, LMHA must make every reasonable effort to promptly refer a sufficient number of families for the owner to fill such vacancies. LMHA and the owner must make reasonable efforts to minimize the likelihood and length of any vacancy.

LMHA Policy

The owner must notify LMHA in writing (mail, fax, or e-mail) within 5 business days of learning about any vacancy or expected vacancy.

LMHA will make every reasonable effort to refer families to the owner within 10 business days of receiving such notice from the owner.

Reduction in HAP Contract Units Due to Vacancies [24 CFR 983.254(b)]

If any contract units have been vacant for 120 or more days since owner notice of the vacancy, LMHA 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.

LMHA Policy

If any contract units have been vacant for 120 days, LMHA will give notice to the owner that the HAP contract will be amended to reduce the number of contract units that have been vacant for this period. LMHA will provide the notice to the owner within 10 business days of the 120th day of the vacancy. The amendment to the HAP contract will be effective the 1st day of the month following the date of LMHA’s notice.

17-VI.G. TENANT SCREENING [24 CFR 983.255]

LMHA Responsibility

LMHA is not responsible or liable to the owner or any other person for the family’s behavior or suitability for tenancy. However, LMHA may opt to screen applicants for family behavior or suitability for tenancy and may deny applicants based on such screening.

LMHA Policy

LMHA will not conduct screening to determine a PBV applicant family’s suitability for tenancy.

LMHA must provide the owner with an applicant family’s current and prior address (as shown in LMHA records) and the name and address (if known by LMHA) of the family’s current landlord and any prior landlords.

In addition, LMHA may offer the owner other information LMHA may have about a family, including information about the tenancy history of family members or about drug trafficking and criminal activity

by family members. LMHA must provide applicant families a description of LMHA policy on providing information to owners, and LMHA must give the same types of information to all owners.

LMHA 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(a)(4)].

LMHA Policy

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

Owner Responsibility

The owner is responsible for screening and selection of the family to occupy the owner's unit. When screening families the owner may consider a family's background with respect to the following factors:

- Payment of rent and utility bills;
- Caring for a unit and premises;
- Respecting the rights of other residents to the peaceful enjoyment of their housing;
- Drug-related criminal activity or other criminal activity that is a threat to the health, safety, or property of others; and
- Compliance with other essential conditions of tenancy.

PART VII: OCCUPANCY

17-VII.A. OVERVIEW

After an applicant has been selected from the waiting list, determined eligible by LMHA, referred to an owner and determined suitable by the owner, the family will sign the lease and occupancy of the unit will begin.

17-VII.B. LEASE [24 CFR 983.256]

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

Form of Lease [24 CFR 983.256(b)]

The tenant and the owner must enter into a written lease agreement that is signed by both parties. If an owner uses a standard lease form for rental units to unassisted tenants in the locality or premises, the same lease must be used for assisted tenants, except that the lease must include a HUD-required tenancy addendum. The tenancy addendum must include, word-for-word, all provisions required by HUD.

If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease, such as a LMHA model lease.

LMHA may review the owner's lease form to determine if the lease complies with state and local law. If LMHA determines that the lease does not comply with state or local law, LMHA may decline to approve the tenancy.

LMHA Policy

LMHA will not review the owner's lease for compliance with state or local law.

Lease Requirements [24 CFR 983.256(c)]

The lease for a PBV unit must specify all of the following information:

- The names of the owner and the tenant;
- The unit rented (address, apartment number, if any, and any other information needed to identify the leased contract unit);
- The term of the lease (initial term and any provision for renewal);
- The amount of the tenant rent to owner, which is subject to change during the term of the lease in accordance with HUD requirements;
- A specification of the services, maintenance, equipment, and utilities that will be provided 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 LMHA (the names of family members and any LMHA-approved live-in aide);
- All provisions in the HUD-required tenancy addendum must be included in the lease. The terms of the tenancy addendum prevail over other provisions of the lease.

Initial Term and Lease Renewal [24 CFR 983.256(f) and 983.257(b)]

The initial lease term must be for at least one year. Upon expiration of the lease, an owner may renew the lease, refuse to renew the lease for “good cause,” or refuse to renew the lease without good cause. If the owner refuses to renew the lease without good cause, LMHA must provide the family with a tenant-based voucher and remove the unit from the PBV HAP contract.

Changes in the Lease [24 CFR 983.256(e)]

If the tenant and owner agree to any change in the lease, the change must be in writing, and the owner must immediately give LMHA a copy of all changes.

The owner must notify LMHA 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 LMHA and in accordance with the terms of the lease relating to its amendment. LMHA must re-determine reasonable rent, in accordance with program requirements, based on any change in the allocation of the responsibility for utilities between the owner and the tenant. The re-determined reasonable rent will be used in calculation of the rent to owner from the effective date of the change.

Owner Termination of Tenancy [24 CFR 983.257]

With two exceptions, the owner of a PBV unit may terminate tenancy for the same reasons an owner may in the tenant-based voucher program (see Section 12-III.B. and 24 CFR 982.310). In the PBV program, terminating tenancy for “good cause” does not include doing so for a business or economic reason, or a desire to use the unit for personal or family use or other non-residential purpose.

Non-Compliance with Supportive Services Requirement [24 CFR 983.257(c), FR Notice 11/24/08]

If a family is living in a project-based unit that is excepted from the 25 percent per project cap on project-basing because of participation in a supportive services program (e.g., Family Self-Sufficiency), and the family fails to complete its supportive services requirement without good cause, such failure is grounds for lease termination by the owner.

Tenant Absence from the Unit [24 CFR 983.256(g) and 982.312(a)]

The owner may specify in the lease a maximum period of tenant absence from the unit that is shorter than the maximum period permitted by LMHA policy. According to program requirements, the family’s assistance must be terminated if they are absent from the unit for more than 180 consecutive days.

Security Deposits [24 CFR 983.258]

The owner may collect a security deposit from the tenant. LMHA may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.

LMHA Policy

LMHA will allow the owner to collect a security deposit amount the owner determines is appropriate.

When the tenant moves out of a contract unit, the owner, subject to state and local law, may use the security deposit, including any interest on the deposit, in accordance with the lease, as reimbursement for any unpaid tenant rent, damages to the unit, or other amounts owed by the tenant under the lease.

The owner must give the tenant a written list of all items charged against the security deposit and the amount of each item. After deducting the amount used to reimburse the owner, the owner must promptly refund the full amount of the balance to the tenant.

If the security deposit does not cover the amount owed by the tenant under the lease, the owner may seek to collect the balance from the tenant. LMHA has no liability or responsibility for payment of any amount owed by the family to the owner.

17-VII.C. MOVES

Overcrowded, Under-Occupied, and Accessible Units [24 CFR 983.259]

If LMHA determines that a family is occupying a wrong size unit, based on LMHA'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, LMHA must promptly notify the family and the owner of this determination, and LMHA must offer the family the opportunity to receive continued housing assistance in another unit.

LMHA Policy

LMHA will notify the family and the owner of the family's need to move based on the occupancy of a wrong-size or accessible unit within 10 business days of LMHA's determination. LMHA 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 LMHA offers the family a tenant-based voucher, LMHA must terminate the housing assistance payments for a wrong-sized or accessible unit at expiration of the term of the family's voucher (including any extension granted by LMHA).

If LMHA 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 LMHA, or both, LMHA must terminate the housing assistance payments for the unit at the expiration of a reasonable period as determined by LMHA.

LMHA Policy

When LMHA offers a family another form of assistance that is not a tenant-based voucher, the family will be given 30 days from the date of the offer to accept the offer and move out of the PBV unit. If the family does not move out within this 30-day time frame, LMHA will terminate the housing assistance payments at the expiration of this 30-day period.

LMHA may make exceptions to this 30-day period if needed for reasons beyond the family's control such as death, serious illness, or other medical emergency of a family member.

Family Right to Move [24 CFR 983.260]

The family may terminate the lease at any time after the first year of occupancy. The family must give advance written notice to the owner in accordance with the lease and provide a copy of such notice to LMHA. If the family wishes to move with continued tenant-based assistance, the family must contact LMHA to request the rental assistance prior to providing notice to terminate the lease.

If the family terminates the lease in accordance with these requirements, LMHA is required to offer the family the opportunity for continued tenant-based assistance, in the form of a voucher or other comparable tenant-based rental assistance. If voucher or other comparable tenant-based assistance is not immediately available upon termination of the family's lease in the PBV unit, LMHA 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.

Families covered under VAWA protections who request an emergency transfer to protect the health and safety of the victim will be permitted to move even if they have not resided in their unit for one year or more. The family may opt to move to another safe PBV unit or request a tenant-based voucher. If the family requests a tenant-based voucher, the family will be permitted to apply to the tenant-based waiting list and will be issued the next available tenant-based voucher. See Chapter 10 Moving with Continued Assistance and Portability.

17-VI.D. EXCEPTIONS TO THE OCCUPANCY CAP [24 CFR 983.261, FR Notice 11/24/08]

LMHA may not pay housing assistance under a PBV HAP contract for more than 25 percent of the number of dwelling units in a project unless the units are [24 CFR 983.56]:

- In a single-family building;
- Specifically made available for elderly or disabled families; or
- Specifically made available for families receiving supportive services as defined by LMHA. At least one member must be receiving at least one qualifying supportive service.

If a family at the time of initial tenancy is receiving and while the resident of an excepted unit has received Family Self-Sufficiency (FSS) supportive services or any other service as defined by LMHA and successfully completes the FSS contract of participation or the supportive services requirement, the unit continues to count as an excepted unit for as long as the family resides in the unit.

A family (or remaining members of a family) residing in an excepted unit that no longer meets the criteria for a "qualifying family" in connection with the 25 percent per project cap exception (e.g., the family does not successfully complete supportive services requirements, or due to a change in family composition the family is no longer elderly or disabled), must vacate the unit within a reasonable period of time established by LMHA, and LMHA must cease paying housing assistance payments on behalf of the non-qualifying family.

If the family fails to vacate the unit within the established time, the unit must be removed from the HAP contract unless the project is partially assisted, and it is possible for the HAP contract to be amended to substitute a different unit in the building in accordance with program requirements; or the owner terminates the lease and evicts the family. The housing assistance payments for a family residing in an excepted unit that is not in compliance with its family obligations to comply with supportive services requirements must be terminated by LMHA.

LMHA Policy

LMHA may provide PBV assistance for excepted units.

PART VIII: DETERMINING RENT TO OWNER

17-VIII.A. OVERVIEW

The amount of the initial rent to an owner of units receiving PBV assistance is established at the beginning of the HAP contract term. Although for rehabilitated or newly constructed housing, the agreement to enter into HAP Contract (Agreement) states the estimated amount of the initial rent to owner, the actual amount of the initial rent to owner is established at the beginning of the HAP contract term.

During the term of the HAP contract, the rent to owner is re-determined at the owner's request in accordance with program requirements, and at such time that there is a five percent or greater decrease in the published FMR.

17-VIII.B. RENT LIMITS [24 CFR 983.301]

Except for certain tax credit units (discussed below), the rent to owner must not exceed the lowest of the following amounts:

- An amount determined by LMHA, not to exceed 110 percent of the applicable fair market rent (or any HUD-approved exception payment standard) for the unit bedroom size minus any utility allowance;
- The reasonable rent; or
- The rent requested by the owner.

Certain Tax Credit Units [24 CFR 983.301(c), FR Notice 11/24/08]

For certain tax credit units, the rent limits are determined differently than for other PBV units. These different limits apply to contract units that meet all of the following criteria:

- The contract unit receives a low-income housing tax credit under the Internal Revenue Code of 1986;
- The contract unit is not located in a qualified census tract;
- There are comparable tax credit units of the same bedroom size as the contract unit in the same building, and the comparable tax credit units do not have any form of rental assistance other than the tax credit; and
- The tax credit rent exceeds a LMHA-determined amount (not to exceed 110 percent of the fair market rent or any approved exception payment standard);

For contract units that meet all of these criteria, the rent to owner must not exceed the lowest of:

- The tax credit rent minus any utility allowance;
- The reasonable rent; or
- The rent requested by the owner.

However, PHAs are permitted to use the higher Section 8 rent for a tax credit unit if the tax credit rent is less than the amount that would be permitted under Section 8. In these cases, Section 8 rent reasonableness requirements must continue to be met.

Definitions

A *qualified census tract* is any census tract (or equivalent geographic area defined by the Bureau of the Census) in which at least 50 percent of households have an income of less than 60 percent of Area Median Gross Income (AMGI), or where the poverty rate is at least 25 percent and where the census tract is designated as a qualified census tract by HUD.

Tax credit rent is the rent charged for comparable units of the same bedroom size in the building that also receive the low-income housing tax credit but do not have any additional rental assistance (e.g., tenant-based voucher assistance).

Use of FMRs, Exception Payment Standards, and Utility Allowances [24 CFR 983.301(f)]

When determining the initial rent to owner, LMHA must use the most recently published FMR in effect and the utility allowance schedule in effect at execution of the HAP contract. When re-determining the rent to owner, LMHA must use the most recently published FMR and the utility allowance schedule in effect at the time of redetermination. At its discretion, LMHA 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, LMHA 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.

LMHA Policy

Upon written request by the owner, LMHA will consider using the FMR or utility allowances in effect during the 60-day period before the start date of the HAP, or redetermination of rent. The owner must explain the need to use the previous FMRs or utility allowances and include documentation in support of the request. LMHA will review and make a decision based on the circumstances and merit of each request.

In addition to considering a written request from an owner, LMHA may decide to use the FMR or utility allowances in effect during the 60-day period before the start date of the HAP, or redetermination of rent, if LMHA determines it is necessary due to LMHA budgetary constraints.

Redetermination of Rent [24 CFR 983.302]

LMHA must re-determine the rent to owner upon the owner's request or when there is a five percent or greater decrease in the published FMR.

Rent Increase

If an owner wishes to request an increase in the rent to owner from LMHA, it must be requested at the annual anniversary of the HAP contract (see Section 17-V.D.). The request must be in writing and in the form and manner required by LMHA. LMHA 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).

LMHA Policy

An owner's request for a rent increase must be submitted to LMHA 60 days prior to the anniversary date of the HAP contract, and must include the new rent amount the owner is proposing.

LMHA may not approve and the owner may not receive any increase of rent to owner until and unless the owner has complied with requirements of the HAP contract, including compliance with HQS. The owner may not receive any retroactive increase of rent for any period of noncompliance.

Rent Decrease

If there is a decrease in the rent to owner, as established in accordance with program requirements such as a change in the FMR or exception payment standard, or reasonable rent amount, the rent to owner must be decreased regardless of whether the owner requested a rent adjustment.

Notice of Rent Change

The rent to owner is re-determined by written notice by LMHA to the owner specifying the amount of the re-determined rent. LMHA 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.

LMHA Policy

LMHA will provide the owner with at least 30 days written notice of any change in the amount of rent to owner.

PHA-owned Units [24 CFR 983.301(g)]

For LMHA-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. LMHA must use the rent to owner established by the independent entity.

17-VIII.C. REASONABLE RENT [24 CFR 983.303]

At the time the initial rent is established and all times during the term of the HAP contract, the rent to owner for a contract unit may not exceed the reasonable rent for the unit as determined by LMHA.

When Rent Reasonable Determinations are Required

LMHA must re-determine 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;
- LMHA approves a change in the allocation of responsibility for utilities between the owner and the tenant;
- The HAP contract is amended to substitute a different contract unit in the same building; or
- There is any other change that may substantially affect the reasonable rent.

How to Determine Reasonable Rent

The reasonable rent of a unit receiving PBV assistance must be determined by comparison to rent for other comparable unassisted units. When making this determination, LMHA 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 LMHA. The comparability analysis may be performed by LMHA 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.

LMHA-owned Units

For LMHA-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 LMHA-owned units to LMHA 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, LMHA may require the owner to submit information on rents charged by the owner for other units in the premises or elsewhere.

17-VIII.D. EFFECT OF OTHER SUBSIDY AND RENT CONTROL

In addition to the rent limits discussed in Section 17-VIII.B above, other restrictions may limit the amount of rent to owner in a PBV unit. In addition, certain types of subsidized housing are not even eligible to receive PBV assistance (see Section 17-II.D).

Other Subsidy [24 CFR 983.304]

At its discretion, a LMHA may reduce the initial rent to owner because of other governmental subsidies, including grants and other subsidized financing.

For units receiving assistance under the HOME program, rents may not exceed rent limits as required by that program.

For units in any of the following types of federally subsidized projects, the rent to owner may not exceed the subsidized rent (basic rent) or tax credit rent as determined in accordance with requirements for the applicable federal program:

- An insured or non-insured Section 236 project;
- A formerly insured or non-insured Section 236 project that continues to receive Interest Reduction Payment following a decoupling action;
- A Section 221(d)(3) below market interest rate (BMIR) project;

- A Section 515 project of the Rural Housing Service;
- Any other type of federally subsidized project specified by HUD.

Combining Subsidy

Rent to owner may not exceed any limitation required to comply with HUD subsidy layering requirements.

Rent Control [24 CFR 983.305]

In addition to the rent limits set by PBV program regulations, the amount of rent to owner may also be subject to rent control or other limits under local, state, or federal law.

PART IX: PAYMENTS TO OWNER

17-IX.A. HOUSING ASSISTANCE PAYMENTS [24 CFR 983.351]

During the term of the HAP contract, LMHA 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 LMHA agree on a later date.

Except for discretionary vacancy payments, LMHA 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 LMHA is the rent to owner minus the tenant rent (total tenant payment minus the utility allowance).

In order to receive housing assistance payments, the owner must comply with all provisions of the HAP contract. Unless the owner complies with all provisions of the HAP contract, the owner does not have a right to receive housing assistance payments.

17-IX.B. VACANCY PAYMENTS [24 CFR 983.352]

If an assisted family moves out of the unit, the owner may keep the housing assistance payment for the calendar month when the family moves out. However, the owner may not keep the payment if LMHA determines that the vacancy is the owner's fault.

LMHA Policy

If LMHA determines that the owner is responsible for a vacancy and, as a result, is not entitled to keep the housing assistance payment, LMHA will notify the landlord of the amount of housing assistance payment that the owner must repay. LMHA will require the owner to repay the amount owed in accordance with the policies in Section 16-IV.B.

At the discretion of LMHA, the HAP contract may provide for vacancy payments to the owner. LMHA may only make vacancy payments if:

- The owner gives LMHA 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 LMHA 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 LMHA and must provide any information or substantiation required by LMHA to determine the amount of any vacancy payment.

LMHA Policy

If an owner's HAP contract calls for vacancy payments to be made, and the owner wishes to receive vacancy payments, the owner must have properly notified LMHA of the vacancy in accordance with the policy in Section 17-VI.F. regarding filling vacancies.

In order for a vacancy payment request to be considered, it must be made within 10 business days of the end of the period for which the owner is requesting the vacancy payment. The request must include the required owner certifications and LMHA may require the owner to provide documentation to support the request. If the owner does not provide the information requested by LMHA within 10 business days of LMHA's request, no vacancy payments will be made.

17-IX.C. TENANT RENT TO OWNER [24 CFR 983.353]

The tenant rent is the portion of the rent to owner paid by the family. The amount of tenant rent is determined by LMHA in accordance with HUD requirements. Any changes in the amount of tenant rent will be effective on the date stated in LMHA 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 LMHA 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 LMHA. The owner must immediately return any excess payment to the tenant.

Tenant and LMHA 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 LMHA.

Likewise, LMHA is responsible only for making the housing assistance payment to the owner in accordance with the HAP contract. LMHA is not responsible for paying tenant rent, or any other claim by the owner, including damage to the unit. LMHA 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, LMHA 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.

LMHA may pay the utility reimbursement directly to the family or to the utility supplier on behalf of the family. If LMHA chooses to pay the utility supplier directly, LMHA must notify the family of the amount paid to the utility supplier.

LMHA Policy

LMHA will make utility reimbursements to the family.

17-IX.D. OTHER FEES AND CHARGES [24 CFR 983.354]

Meals and Supportive Services

With the exception of PBV assistance in assisted living developments, the owner may not require the tenant to pay charges for meals or supportive services. Non-payment of such charges is not grounds for termination of tenancy.

In assisted living developments receiving PBV assistance, the owner may charge for meals or supportive services. These charges may not be included in the rent to owner, nor may the value of meals and supportive services be included in the calculation of the reasonable rent. However, non-payment of such charges is grounds for termination of the lease by the owner in an assisted living development.

Other Charges by Owner

The owner may not charge extra amounts for items customarily included in rent in the locality or provided at no additional cost to unsubsidized tenants in the premises.

Chapter 18
FAMILY SELF-SUFFICIENCY PROGRAM ACTION PLAN
[24 CFR Part 984]
PART I: FAMILY SELF-SUFFICIENCY PROGRAM

18-I.A. Program Objectives

The Family Self-Sufficiency (FSS) objectives of the Lucas Metropolitan Housing Authority include:

- (a) Develop and promote local strategies that coordinate Housing Choice Voucher (HCV) participants with resources in order to reduce the dependency of low-income families on government assistance.
- (b) Coordinate the planning and delivery of services to participants of the Family Self-Sufficiency (FSS) Program based on the Contract of Participation.
- (c) Implement a case management system to identify needs and plan and deliver services to a family based on the family's commitment to becoming self-sufficient.
- (d) Document the implementation of services to be used for future planning of a broad-based FSS Program.
- (e) Establish inter-agency partnerships to achieve high quality, comprehensive service delivery to all members of a family with long-term results. Assess accountability of the family, the case management, and the agencies and entities providing services and resources.

The objectives of the Families participating in FSS include:

- Elevate themselves from a status of dependency to that of self-reliance and growth towards the goal of economic self-sufficiency.
- Demonstrate commitment and accountability to a Personal Action Plan, which is a customized service plan for the individual family in which both goals and barriers are assessed.

18-I.B. Program Overview

LMHA will administer a Family Self-Sufficiency Program for its Housing Choice Voucher participants. The program's objective is to assist eligible families in receiving comprehensive supportive services from various social service agencies, allowing them to gain economic independence and self-sufficiency.

The Contract of Participation will set forth provisions by HUD for Family Self-Sufficiency, also known as FSS. The Individual Training and Services Plan includes interim goals, as well as final goals, objectives, and a time frame for completion of the contract. In addition, the Contract of Participation specifies responsibilities and obligations of the participating family. The Individual Training and Services Plan, which is part of the Contract, will list the resources and available supportive services for the participating family.

FSS participants will be selected from HCV participants who have volunteered to participate in the Program, thus eliminating delayed assistance to HCV waiting list families who elect not to participate. Offering the FSS account to participants is an incentive for families to participate in the FSS Program. LMHA's goal is to increase the number of participants and ensure services are available to meet the needs.

The FSS Program Coordinating Committee acts as a governing board to oversee that overall implementation of this Program is accomplished. This committee is also responsible for assisting the FSS Coordinator with assessing potential participants and securing supportive services and job commitments.

Members are from both the public and private sectors of the business community and will include a staff and resident representative.

Committee members' expertise includes but is not limited to the following disciplines: housing, childcare, educational, vocational, social and economic counseling, employment counseling, and employment and medical assistance.

Program Coordinating Committee members, also known as PCC, will meet on a quarterly basis. The FSS Coordinator will remain in contact with PCC members to maintain service delivery and continuous input and guidance from members.

18-I.C. Program Coordinating Committee

The Program Coordinating Committee will participate in the development of the FSS Program policies, assist LMHA in obtaining supportive services funding and services commitments, and oversee the overall implementation of the FSS Program. LMHA has the final decision-making authority with respect to FSS Program policies and membership of the PCC.

In addition to LMHA representation, PCC members include representatives from the following organizations:

HCV participants

NODA

Ohio Means Jobs

Owens Community College

Catholic Charities

Lucas County Department of Jobs and Family Services

ZEPF Center

Sarah Outreach and Recovery Center LLC (SORC)

The Urban Minority Alcoholism and Drug Outreach Program, Inc. (UMADAOP Lucas County)

Pathways, Inc.

Toledo Public Schools, Continuing Adult Education

Lucas County Children Services

Ohio Bureau of Employment Services

University of Toledo

YWCA

Financial Opportunity Center/Financial Greater Toledo Economic Partnerships

ABC Health Care

Adult Basic Literacy Education (ABLE)

Keeping it Together

PENTA Career Center

Maumee Valley Habitat for Humanity

United Way

Asset of Toledo

Lucas County Family First-Bridges out of Poverty

18-I.D. Recruitment of FSS Participants

Outreach Efforts

Participants in FSS will be recruited from among current HCV participants. HCV participants will receive a letter and flyer describing the FSS Program in staggered increments as needed when the program is actively recruiting new participants. This letter will include the following:

- Description of the FSS Program and its goals

- Incentives to participate

- Assurance that a family's election not to participate will not affect the family's continued occupancy of assisted housing

- Statement that participation is voluntary

- A response form for families to indicate whether they are currently interested in participating or may be interested at some point in the future.

Additional outreach efforts will include:

- Inter-agency announcements

- Local media

- Distribution of brochures to service providers

- Community network with supportive services providers and local resource information groups

- Encouraging staff who have direct contact with tenants to remind tenants of the FSS Program and encourage participation

LMHA's actions to assure that both minority and non-minority groups are informed about the FSS Program will include notifications to the media and community organizations that serve the targeted population. [required by 984.201(d)(6)(ii)]

18-I.E. Selection of FSS Participants

Memorandum of Understanding with MDRC Affecting Selection and Eligibility

LMHA has entered into a Memorandum of Understanding with MDRC, a non-profit national research organization hired by HUD, to conduct a national study of the Family Self Sufficiency (FSS) Program. The goal of the study is to understand whether the services that FSS provides—such as escrow accounts, referrals for education, job training, employment and social services, and job search assistance—have a significant impact on participants.

During the study enrollment period (approximately the next 12 months), the first 50 tenants from the FSS Waiting List who wish to participate in the FSS program must be given the choice to be a part of the study or wait to join the FSS program at the expiration of the enrollment period when the application process will go back to our prior method.

During the study period, selection into FSS will be done by a computerized random assignment method. The computer will randomly assign applicants to one of two groups: The FSS Group – clients assigned to this group will be enrolled in the FSS program and receive all of the services offered by the FSS program, or The Control Group – clients assigned to this group will not be able to enroll in FSS or receive its services, but will be given a list of other available education and employment programs in the community.

Applicants assigned to either group will be a part of the study. Group assignment is strictly random and is not based on personal characteristics, background or any other criteria—much like a lottery.

Participants in either group may withdraw at any time; however, members of "The Control Group" will have to wait three (3) years after the date of enrollment into the study to apply for enrollment into the housing authority's FSS program

Once the obligations are fulfilled under through the Memorandum of Understanding with MDRC of this Selection process then Participants will be selected from among the following:

- Individuals who express an interest in the Program by responding to the introductory letter or other informational resources. Service will be provided on a "first come, first served" basis.
- Referrals, primarily from the Family Unification Program (FUP) and Supplemental Assistance for Families in Assisted Housing (SAFAH). These programs will provide case management services as well.
- A monthly letter to newly housed and rehoused families.
- Special invitations will be mailed to individuals who have begun self-sufficiency on their own. Housing Specialists will provide referrals.
- Staff who directly contacts HCV participants will discuss FSS during various encounters.

LMHA's selection procedures will ensure that families will be selected without regard to race, color, religion, sex, handicap, disability, familial status, national origin, age, or ancestry. [required by 984.201(d)(4)] R.C. 4112.

18-I.F. Screening and Application Procedures

ELIGIBILITY CRITERIA

Under HUD guidelines, families to be selected to participate in the FSS Program must be eligible for the HCVP. Such determination of eligibility will be made in accordance with the relevant policies of the Lucas Metropolitan Housing Authority.

The following requirements must be met in order to enroll in the FSS Program:

- Only current HCVP participants are eligible to participate in the HCV FSS Program.
- Client must be the Head of Household for HCVP eligibility and rent determination.
- Client must be in good standing with LMHA. This includes but is not limited to: no outstanding program violations, compliance with family obligations (see Chapter 5 §I-C), and income guideline qualification.
- Previous FSS graduates from LMHA may not re-enroll in the program.
- Previous termination from the FSS Program for failure to complete the Contract of Participation (including voluntary withdrawal) does not bar a participant from re-enrolling in the Program if eligible, but participants must wait two years from the date of termination. A participant may only attempt to complete a Contract twice.

The following obligations are to be fulfilled by interested individuals as a condition for acceptance into the FSS Program:

- Individuals must respond to the introductory letter or contact LMHA and express an interest in participating in the FSS Program.

- They must attend a Program orientation in which they will be informed about the FSS Program and sign up for a follow-up workshop.
- They must attend a job readiness or job enhancement workshop conducted by Ohio Means Jobs. They will meet their case manager, complete the pre-enrollment form, and schedule an appointment for needs assessment.
- A needs assessment will be done, the Contract terms and Individual Training and Services Plan will be developed, and outreach volunteers will be assigned to work with them (accepting outreach volunteers is voluntary).
- Participants will schedule an appointment with the FSS Coordinator to sign a Contract of Participation.
- Families must have an updated annual or interim recertification completed within the last 120 days to sign the FSS Contract of Participation;
- All adult family members are eligible to participate in the FSS program; however a family member can enroll in the program only if the head of household enrolls. The head of the FSS family is the head of household for purposes of determining income eligibility and rent and as defined in LMHA's Administrative Plan;
- Families are not excluded from the program based on the family's likelihood of success;
- LMHA will deny FSS participation a second time if the family previously participated and did not meet its FSS obligations was terminated from the FSS program, or a family that previously participated and successfully graduated from the FSS program. Consideration may be given to accepting a previous FSS participant that voluntary withdraws for verifiable extenuating reasons.

18-I.G. Provision of Services

Contract of Participation

The Contract of Participation is to be administered in compliance with HUD regulations. It states the rights and responsibilities of the family and LMHA, the resources and supportive services to be provided to the family, and the activities to be completed by the family. The Contract designates the head of the FSS family as the adult family member who is head of household for purposes of determining income eligibility and rent and lists income information for the participating family. The Contract also specifies the term of the contract and requires a family to be independent of welfare assistance at least twelve consecutive months prior to the Contract expiration. The initial Contract is for five years and can be extended up to two additional years by submitting a written request to the FSS Coordinator, which must include a description of the need for the extension. "Good cause" for an extension means circumstances beyond the control of the family, such as involuntary loss of employment or a serious illness that could prevent a family from fulfilling their Contract.

A Contract of Participation is considered complete when:

- (a) The family has fulfilled all Contract obligations on or before the end of the Contract.
- (b) 30 percent of monthly-adjusted income equals or exceeds the fair market rent.

Individual Training and Services Plan

The Individual Training and Services Plan specifies interim and final goals, and resources and supportive services to be provided. An Individual Training and Services Plan will be developed for the designated

head and any adult family member (eighteen years of age or older) who agrees to participate, provided supportive services are available.

Short and Long Term Goals

During the first year, the designated head of family must have initiated one of the following goals:

- (a) Vocational or educational training.
- (b) Job training or employment for advancement.
- (c) Actively seeking employment, with ability to verify sincere efforts made to obtain employment.
- (d) Follow through with all referrals for employment.

During the second and third years the designated head of family must be involved in the following:

- (a) Employment with potential for advancement.
- (b) Educational or vocational training towards earning a degree.
- (c) Nearing completion in educational or vocational training.
- (d) Employment during some part of this period or seeking employment.
- (e) Completion of interim goals in the Individual Training and Services Plan.

During the fourth and fifth years, the designated head of family must be involved in the following:

- (a) Employment and working toward self-sufficiency.
- (b) Nearing completion of training.
- (c) Actively seeking employment and obtaining employment upon completion of training.
- (d) Independence from federal or state welfare assistance at least twelve consecutive months prior to the contract expiring.
- (e) Completion of Individual Training and Services Plan.

Case Management and Supportive Services Providers

LMHA will work closely with the following agencies to provide case management and supportive services.

Lucas County Children Services (Family Unification) – will provide two years case management and support for FUP families who are also FSS families.

Foster Grandparent Program – will provide foster grandparents to support participants age 21 and under.

One-to-One Support

Participants will be encouraged to accept our one-to-one outreach service provided by various volunteer organizations. This service is designed to provide “non-agency” support and guidance. Outreach volunteers will offer their friendship through phone calls, home visits, and by accompanying participants to various service agencies. The volunteers will be trained to access information and supportive services as well as to become mentors and a positive force to enhance participants on their journey to self-sufficiency.

Social and Economic Development:

In addition to the individual one-to-one support that participants will receive, the FSS Coordinator and the PCC will coordinate periodic training sessions. These sessions will address topics such as:

- (f) Budget Counseling
- (g) Family Planning
- (h) Consumer Credit
- (i) Home Ownership
- (j) Small Business Establishment
- (k) Job Security
- (l) Job Advancement

Career and Personal Development:

- Job Readiness/Job Enhancement Class – will be provided by FOCUS and will be required of all participants.
- Career/Needs Assessment – will be provided by the case manager. Participants will be encouraged to participate in the JOBS Program Career Assessment.
- Job Development and Placement – PCC members and the FSS Coordinator will be responsible for securing job commitments for participants as well as information and referrals about job openings. The FSS Coordinator and PCC will develop a network with job providers from the private and public sector.

Any physical barriers to appropriate job placements will be addressed by the case manager by use of devices such as hearing aids, glasses, and medical apparatus. LMHA will network with agencies that provide services to disabled individuals.

Case managers and outreach representatives will assist participants with job placement and development based on their capabilities. Employment counseling will be provided on an ongoing basis.

- (m) Child Care – In addition to accessing various subsidized childcare services, the PCC and FSS Coordinator will develop a participants' childcare network in which childcare services could be exchanged among participants.
- (n) Supplementary Education – Supplementary education will be made available through various adult continuing education programs. Some possible needs include adult literacy, GED, educational counseling, drug counseling, etc. All activities will be documented.
- (o) Transportation – Transportation assistance for medical services will be provided to eligible participants through Medicaid. Other services include free bus passes through Toledo Public Schools, Department of Jobs and Family Services, JOBS, and PIC.

The PCC will work towards securing additional bus passes from TARTA for FSS participants.

GENERAL STIPULATIONS

A PHA is not obligated to enroll a relocating family in its FSS Program.

LMHA may not adopt any policies that would prevent or limit a FSS family's ability to move to another jurisdiction with its voucher.

OUTGOING PORTS

If the FSS family elects to exercise portability and move out of the jurisdiction of LMHA after a minimum of 12 months from the effective date of the FSS Contract, the family may:

- Transfer their FSS participation to the receiving PHA if that PHA operates a FSS Program and is willing to accept the family. The original FSS Contract would be terminated and a new FSS Contract executed with the receiving PHA for the remaining term left on the initial FSS Contract with LMHA. This family would no longer be counted toward LMHA minimum FSS Program size.

Or

- Remain in LMHA's FSS Program if the receiving PHA does not operate a FSS Program or refuses to offer the family a new contract and the move was made to meet an obligation of the FSS Contract (employment, education, etc.). If this is the case, there will be only one contract of participation, which shall be the contract executed and monitored by the initial PHA.

Or

- Elect to terminate their FSS Contract and FSS Program participation. If the family demonstrates good cause for moving, no penalty regarding their subsidy shall be imposed.

INCOMING PORTS

Upon receiving notification that a family is moving into LMHA's jurisdiction and that the family is participating in the issuing PHA's FSS Program, the case manager in consultation will review the family's ITSP and contract to determine whether or not the appropriate services are available to the family under LMHA's FSS Program. If the family's service needs can be met, the family will be accepted into the Program. The decision to administer or absorb the assistance will be made separately in compliance with LMHA's portability procedures. (See Chapter 10 § II-A).

The PHA holding the FSS Contract is responsible for determining if the family has violated the contract in any way. The PHA providing the funds must abide by the termination decision.

The receiving PHA must use the amounts listed for the Annual Income, Earned Income, and Family Rent on the original Contract between the initial PHA and the family.

If the family is terminated from the FSS Program because it did not fulfill its contract obligations, the funds in the escrow account will be treated as program receipts of the PHA or program maintaining the account at the time of termination.

FSS Escrow Account

LMHA will establish a single depository escrow account in which to deposit the FSS account funds of all families participating in the FSS Program. These funds will be deposited in one or more interest-bearing, HUD-approved investments.

LMHA will maintain a subsidiary ledger showing the balance applicable to each FSS family. The investment income for funds in the FSS account will be prorated based on the balance in each family's

FSS account at the end of the period for which the investment income is credited. If the family has not paid amounts due LMHA, the balance in the family's FSS account will be reduced by that amount before prorating investment income. If the family fraudulently under-reports income, the amount credited to the FSS account will be based on the income amounts originally reported by the FSS family.

The FSS credit shall be credited periodically, but not less than annually, to each participating family's FSS account, with annual reports provided to FSS families. The report will state the balance at the beginning of the reporting period, the amount of the family's rent payment credited to the FSS account during the reporting period, any deductions from the account for amounts due LMHA before interest distribution, the amount of interest earned, and the total in the account.

For very low-income families, the FSS credit will be the lesser of thirty percent of monthly adjusted income less the family rent, obtained by disregarding any increases in earned income from the effective date of the Contract of Participation; or, the current family rent less the family rent at the time of the effective date of the Contract. For low-income but not very low-income families, the FSS credit is the amount determined under the preceding sentence, but which shall not exceed the amount computed for 50 percent of median income. FSS families who are not low-income families are not entitled to any FSS credit.

If the head of family ceases to reside with the other family members in the unit, the remaining family members, after consultation with LMHA, will have the right to designate another family member to receive the funds.

An FSS family has completed the Contract of Participation and concluded its participation in the Program when the family has fulfilled all obligations under the Contract on or before the expiration of the Contract term, including extensions, or thirty percent of their monthly adjusted income equals or exceeds the published existing housing FME for the unit size and the area in which it is located. LMHA will not make any additional credits to the family's FSS account when the family has completed the Contract or it is terminated or otherwise nullified. The amount in the FSS account, in excess of any amount owed to LMHA, will be paid to the head of family when the Contract has been completed, or the family has fulfilled its obligations under the Contract before the expiration of the Contract, and the head of family submits to LMHA a certification that no member of the family is a recipient of welfare assistance. The FSS Coordinator will verify information by telephone verification or written verification from the agency. Amounts in the FSS account will be forfeited if: **1)** the Contract is declared null and void as provided in 24 CFR Section 984.303(e) or terminated as provided by 24 CFR Section 984.303(h); or **2)** the Contract is completed but the family is receiving welfare assistance at the time of expiration of the term of the Contract, including any extension. Forfeited funds will be treated as program receipts for payment of Section 8 program expenses in accordance with HUD requirements governing the use of program receipts.

(Interim Escrow Disbursements)

HUD requires that Interim Disbursements be consistent with the Contract of Participation and established goals therein such as education, employment, or building an asset. The approval of the disbursement is at the sole discretion of LMHA.

The following pre-requisites must be met before a partial disbursement can be granted:

- The FSS participant must be enrolled in the FSS Program for at least one year and must demonstrate appropriate participation with case management
- The FSS participant must have accomplished certain interim goals which demonstrate to the FSS case manager a commitment to completing final program goals
- The FSS participant must provide a written request to the partial disbursement

- The FSS participant must provide a minimum of three (3) estimates whenever possible (except in the case of tuition and related expenses or job training costs)
- No Interim Disbursement will be granted to a FSS participant who has a debt to LMHA greater than their monthly Total Tenant Payment.
- Disbursements will only be granted once per 12-month period and cannot equal more than 25% of the total escrow balance.
- Monies requested to assist with down payment and/or closing costs on a home can total 50% of the total escrow balance.
- The participant must submit a receipt documenting the proper use of the check within two (2) weeks of the date the participant takes possession of the check. Failure to do so may result in a fraud investigation and subsequent repayment requirement.
- **CAR EXPENSES** Car repairs require at least a 20% contribution from the participant.
- **REPAYMENT** An Interim Disbursement must be paid back if the participant does not accomplish the task for which the money was requested. Failure to repay this money would jeopardize the participant's continued participation in the FSS Program. Repayments must be completed before graduating from the FSS Program. Terminated FSS participants not satisfying the repayment must do so before re-enrolling in FSS. Unpaid debts may be attached to HVCP debts. In circumstances where fraud is suspected, the participant may be referred for termination from the HCVP.

Note: If the family does not complete its FSS contract, the family is not required to repay the amount received as an interim disbursement unless the advance payment was made based on fraudulent information from the family.

(Down payment Assistance)

Section 185 provides that FSS families may use up to 50 percent of the amount in their FSS account funds for a down payment under the homeownership program. After the purchase of a unit, the FSS family may use any remaining FSS account funds for the costs of major repair and replacement needs.

(Final Disbursement)

The FSS family requesting a final disbursement must be in full compliance with the provisions of the Housing Choice Voucher Program.

The amount in the FSS escrow account, less any money owed to LMHA by the FSS family, is paid to the head of the FSS family when:

- The family has completed all of its FSS Contract responsibilities as identified in the FSS Contract of Participation on or before the expiration of the contract, including the requirement that no member has been a recipient of welfare assistance for twelve months **or**
- 30% of the family's monthly adjusted income (generally, but not necessarily, the Total Tenant Payment) meets or exceeds the Fair Market Rent (FMR) amount for the unit size for which the family qualifies and the head of the family certifies that, to the best of his knowledge and belief, no family member is receiving Federal, state, or local welfare assistance at that time (*the 30% stipulation does not apply to elderly or disabled families*).
- If the family wishes to be considered for FSS graduation they not only need to meet one of the above requirements, but they should also have gained and maintained suitable employment six months prior to graduation. For the FSS program, minimum suitable employment is defined as annual earned income equal to or exceeding the 50% percentile of the areas current income limit

according to the family's size. This limit may be waived for good cause as will be determined by LMHA.

(Escrow Forfeiture)

Amounts in the escrow account shall be forfeited upon the occurrence of the following:

- The Contract of Participation is terminated due to:
 - mutual consent of the parties
 - the failure of the family to meet its obligations under the contract of participation without good cause
 - the family's voluntary withdrawal from the FSS Program
 - such other act as is deemed inconsistent with the purpose of the FSS Program
 - the family has been terminated from the Housing Choice Voucher rental assistance program
 - the Contract and any extension thereof expires
- The Contract of Participation is completed by the family, but the FSS family is receiving welfare assistance at the time of expiration of the term of the Contract of Participation, including any extension thereof.
- If the Head of Household is deceased and the remaining members of the family choose not to continue to participate in the program and the family's Contract of Participation obligations have not been met

18-I.H. Grievance and Hearing Procedures

Informal Reviews (Applicants)

An informal hearing will be provided to applicants for a decision to deny participation in the Program. The rules and procedures set forth in Section XII.A. of LMHA Section 8 Administrative Plan, entitled "Informal Reviews," will apply.

Informal Hearings (Participants):

An informal hearing will be provided to participants for a decision to deny or terminate assistance. The rules and procedures set forth in Section XII.B. of LMHA Section 8 Administrative Plan, entitled "Informal Hearings," will apply.

18-I.I. Miscellaneous Procedures

Denial of FSS Services

An FSS applicant will not be approved based on the following:

- The applicant's income does not fall under the HCV guidelines.
- Applicant refuses to pay money owed to LMHA.
- Applicant doesn't comply with FSS requirements for acceptance.
- Applicant is uncooperative during the interview process, such as abusive, belligerent, irresponsible, and chronically late, etc.
- Based on applicant's history, there appears to be a pattern of criminal behavior, and the applicant shows no signs of changed behavior.

The right to an informal review is as set forth above.

FSS Portability

LMHA will establish one FSS account for portable families. FSS families must lease an assisted unit, for a minimum period of 12 months after the effective date of the Contract of Participation, in the jurisdiction of the initial housing agency that selected the family for the FSS Program before the family may move outside the initial agency's jurisdiction under portability procedures.

Unavailability of Supportive Services

Supportive services are subject to availability. In the event of failure on the part of a social service agency to provide services, the FSS Coordinator and case manager will make a good faith effort to obtain a replacement.

The FSS Coordinator must determine if unavailable services are integral to the family's progress or advancement towards self-sufficiency. If services are not integral to the family's progress, the FSS Coordinator shall revise the Individual Training and Services Plan to delete services and modify the Contract to remove any obligations on the family to accept unavailable services. If unavailable services are integral, the FSS Coordinator shall declare the Contract null and void and reclassify the FSS family as a non-FSS family.

Terminations

An FSS family can be terminated for one of the following:

- If the participating family fails to comply with the Contract of Participation or Individual Training and Services Plan.
- A participant voluntarily withdraws from the FSS Program for personal reasons.
- The parties mutually consent to termination.
- If the Contract and any extension thereof expires.
- If the FSS family commits fraud, that can be grounds for suspension or termination of housing assistance.
- If any other act is committed that is deemed inconsistent with the purpose of the FSS Program.

The right to an informal hearing is as set forth above.

Exit Interviews

Exit interviews will be conducted with all outgoing participants who have achieved self-sufficiency, to assess what services were beneficial in attaining their goals. This interview is to troubleshoot any problem areas they have experienced and to encourage FSS participants to become involved with the FSS alumni. The FSS alumni will act as mentors to incoming participants.

18-I.J. Definitions

Family Self-Sufficiency (FSS) Program – a program established by the Lucas Metropolitan Housing Authority (LMHA) within its jurisdiction to promote self-sufficiency among participating families, including the provision of “supportive services” to these families.

Supportive Services – appropriate services that LMHA will make available, or cause to be made available to, an FSS family under a Contract of Participation.

Earned Income – income or earnings included in annual income from wages, tips, salaries, other employee compensation, and self-employment. The term does not include any pension or annuity, transfer

payments, any cash or in-kind benefits, or funds deposited in or accrued interest on the FSS escrow account established by LMHA FSS Program on behalf of a “participating family.”

FSS Account – the FSS “escrow account” LMHA is required to establish and in which it deposits the FSS account funds of all families participating in the FSS Program.

FSS Credit –the amount credited by LMHA to the participating family’s FSS account.

Contract of Participation – an agreement between LMHA and a participating family that sets forth the terms and conditions governing participation in the FSS Program, including all Individual Training and Services Plans attached to the Contract. The Contract specifies the resources and supportive services to be made available to, and the responsibilities and obligations of, a participating family. The Contract shall provide that LMHA may:

- terminate or withhold FSS supportive services for a participating HCV family; and
- terminate or withhold the HCV assistance if the participating family fails to comply with the requirements of the Contract of Participation.