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| **Housing authority of travis county**  **1/2020 REvision** |
| Housing Choice Voucher (Section 8) Administrative Plan |
| HOUSING CHOICE VOUCHER PROGRAM |
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**Introduction**

**ABOUT THE REFERENCES CITED IN THE MODEL ADMINSTRATIVE PLAN**

**Authorities in the Model Administrative Plan**

Authority for PHA policies is derived from many sources. Primary among these sources are regulations and guidance issued by HUD. State law also directs PHA policy. State law must be followed where such law exists and does not conflict with federal regulations. In the absence of legal requirements or HUD guidance, industry practice may lead to PHA policy.

**HUD**

HUD provides the primary source of PHA 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 PHAs through HUD published guidebooks. Expired HUD Notices and handbooks also provide guidance for PHA policy. Following HUD guidance is optional, as long as PHA 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, PHA reliance on HUD guidance provides HATC with a “safe harbor.”

Content contained on the HUD website can provide further clarification of HUD policies. For example, FAQs on the HUD website can provide direction on the application of federal regulations to a specific pattern.

**State Law**

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

**Industry Practice**

Where no law or HUD authority exists on a particular subject, industry practice may support PHA policy. An industry practice is a way of doing things that is followed by most housing authorities.

**Resources Cited in the Administrative Plan**

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

**Abbreviations**

|  |
| --- |
| **Document and Location** |
| Code of Federal Regulations <http://www.ecfr.gov/cgi-bin/ECFR?page=browse> |
| Earned Income Disregard FAQ <http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/phr/about/ao_faq_eid> |
| Eligibility of Students for Assisted Housing Under Section8 of the U.S. Housing Act of 1937; Final Rule <http://portal.hud.gov/hudportal/documents/huddoc?id=DOC_20482.pdf> |
| Enterprise Income Verification (EIV) System, Security Procedures for Upfront Income Verification data <http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/rhiip/uivsystem> |
| Federal Register <https://www.federalregister.gov/> |
| Housing Choice Voucher Program Guidebook <http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/hcv/forms/guidebook> |
| HUD-50058 Instruction Booklet <http://portal.hud.gov/hudportal/documents/huddoc?id=50058i.pdf> |
| Notice of Guidance to Federal Assistance Recipients Regarding Title VI Prohibition Affecting Limited English Proficient Person <http://www.lep.gov/guidance/HUD_guidance_Jan07.pdf> |
| OMB Circular A-133 <https://www.whitehouse.gov/omb/circulars/a133_compliance_supplement_2014> |
| PIH Notice 2002-01 (HA) Accessibility Notice <http://www.hud.gov/offices/pih/publications/notices/02/pih2002-1.pdf> |
| PIH Notice, Verification of Social Security Numbers, Verification of Social Security (SS) and Supplemental Security Income (SSI) Benefits  <http://portal.hud.gov/hudportal/documents/huddoc?id=pih2012-10.pdf> |
| PIH Notice 2005, Implementation of the Consolidated Appropriations Act (HR 4818– H Rept 108-792), 205 Funding Provisions for the Housing Choice Voucher Program <http://www.hud.gov/offices/pih/publications/notices/05/pih2005-9.pdf> |
| PIH Notice 2005-7 (HA), Rental Integrity Monitoring (RIM) Disallowed Costs and Sanctions Under the Rental Housing Integrity Improvement Project (RHIIP) Initiative <http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/rhiip/rim> |
| PIH Notice, Public Housing Agency (PHA) Implementation of the Federal Fiscal Year 2014 Funding Provisions for the Housing Choice Voucher Program<http://portal.hud.gov/hudportal/documents/huddoc?id=PIHHCVFundImplNotice031814.pdf> |
| Project-Based Voucher Program; Final Rule <http://www.gpo.gov/fdsys/pkg/FR-2005-10-13/pdf/05-20035.pdf> |
| Rental Housing Integrity Improvement Program (RHIIP) Frequently Asked Questions. <http://portal.hud.gov/hudportal/HUD?src=/program_offices/public_indian_housing/programs/ph/rhiip/faq_rhiip> |
| Guidebooks, handbooks and other HUD resources may be found at the HUD clips Web site: <http://portal.hud.gov/hudportal/HUD> |
| VAWA- Violence Against Women’s Act  <http://www.gpo.gov/fdsys/pkg/FR-2010-10-27/pdf/2010-26914.pdf> |

The following is a table of abbreviations of documents cited in the administrative plan.

|  |  |
| --- | --- |
| **Abbreviations** | **Documents** |
| CFR | Code of Federal Regulations |
| HCV GB | Housing Choice Voucher Program Guidebook (7420.10G), April 2001. |
| HUD-5008-IB | HUD-50058 Instruction Booklet |
| RHIP | Rental Housing Integrity Improvement Program (RHIP) |
| FAQs | Frequently Asked Questions |
| VG | PIH Notice 2004-01 Verification Guidance, March 9, 2004. |
| HB 4350.3 | Occupancy Requirements of Subsidized Multifamily Housing Programs. |

**Resources and Where to Find Them**

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

**Chapter 1**

**OVERVIEW OF THE PROGRAM AND PLAN**

INTRODUCTION

The Housing Authority of Travis County (HATC) receives its funding for the Housing Choice Voucher (HCV) program from the Department of Housing and Urban Development. HATC is not a federal department or agency. A public housing agency (HATC) is a governmental or public body, created and authorized by state law to develop and operate housing and housing programs for low-income families. HATC enters into an Annual Contributions Contract with HUD to administer the program requirements on behalf of HUD. HATC 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 HATC and its programs with emphasis on the HCV program and its various available programs. 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 Housing Authority of Travis County (HATC). This part includes a description of HATC, its jurisdiction, its programs, and its mission and intent.

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

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

**PART I: THE HOUSING AUTHORIY OF TRAVIS COUNTY**

1-I.A. OVERVIEW

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

1-I.B**. ORGANIZATION AND STRUCTURE OF HATC**

The Section 8 tenant-based Housing Choice Voucher (HCV) assistance program is funded by the federal government and administered by **Housing Authority of Travis County** for the jurisdiction of **Travis County with joint jurisdiction agreement with the City of Austin Housing Authority.**

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

The principal staff member of HATC 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 HATC’s staff in order to manage the day-to-day operations of HATC 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. HATC MISSION STATEMENT

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.

HATC Mission Statement:

At the Housing Authority of Travis County, Texas our mission is to preserve and develop affordable housing and vibrant communities which enhance the quality of life for all.

1-I.D. HATC’S PROGRAMS

The following programs are included under this administrative plan:

HATC POLICY

HATC’s administrative plan is applicable to the operation of the Housing Choice Voucher and related assisted programs.

**1-I.E. HATC’S COMMITMENT TO ETHICS AND SERVICE**

As a public service agency, HATC is committed to providing excellent service to HCV program participants – families and owners – in the community. HATC’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 HATC’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 HATC’s support systems and commitment to our employees and their development.

HATC 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 (This is 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. HATC is afforded choices in the operation of the program, which are included in HATC’s administrative plan, a document approved by the board of commissioners of HATC.

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

When a family is determined to be eligible for the program and funding is available, HATC issues the family a housing voucher. When the family finds a suitable housing unit and funding is available, HATC 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. HATC 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, HATC enters into a contractual relationship with HUD. HATC 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, HATC, 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:**

**Congress**

**Appropriates**

**Funding**

**HUD**

**Provides Funding**

**To HATC**

**Program Regulations and ACC specifies HATC Obligations and Voucher Funding**

**Housing Assistance Payments (HAP) Contract specifies Owner and HATC Obligations**

**Voucher specifies Family Obligations**

**Owner / Landlord**

**Family**

**(Program Participant)**

**HATC**

**Administers**

**Program**

**Lease specifies Tenant and Landlord Obligations**

**What does HUD do?**

HUD has the following major responsibilities:

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

**What does HATC do?**

HATC 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, HATC’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.
* HATC 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 HATC;
* 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 HATC with complete and accurate information, determined by HATC to be necessary for administration of the program;
* Make their best and most timely efforts to find a place to live that is suitable for them and that qualifies for the program;
* Cooperate in attending all appointments scheduled by HATC;
* Allow HATC 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 HATC and the owner before moving or termination 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 HATC of any changes in family composition;
* Promptly notify HATC of any changes in income;
* 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 in an effective manner.

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

Applicable regulations include:

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

**PART III. THE HCV ADMINISTRATIVE PLAN**

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

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

This administrative plan is set forth to define HATC'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.

HATC 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 HATC staff shall be in compliance with HATC's personnel policy and HUD’s Section 8 regulations as well as all federal, state and local fair housing laws and regulations.

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

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

* Selection and admission of applicants from HATC waiting list, including any PHA admission preferences, procedures for removing applicant names from the waiting list, and procedures for closing and reopening HATC waiting list (Chapter 4);
* Issuing or denying vouchers, including PHA 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 HATC decides to allow extensions or suspensions of the voucher term, the administrative plan must describe how HATC determines whether to grant extensions or suspensions, and how HATC determines the length of any extension or suspension (Chapter 5);
* Any special rules for use of available funds when HUD provides funding to HATC 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 HATC of amounts the family owes the HATC (Chapter 16);
* Interim redeterminations of family or individual 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
* HATC 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 PHAs to develop policies and procedures that are consistent with mandatory policies and to make clear the optional policies HATC has adopted. HATC’s administrative plan is the foundation of those policies and procedures. HUD’s directions require PHAs to make polices choices that provide guidance to staff and consistency to program applicants and participants.

Following HUD guidance, even though it is not mandatory, provides HATC with a “safe harbor”. HUD has already determined that the recommendations and suggestions it makes are consistent with mandatory policies. If HATC 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 from HUD’s safe harbor, but PHAs 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**

HATC will revise this administrative plan as needed to comply with changes in HUD regulations. HATC‘s Board of Commissioners must approve the original policy and any changes and a copy will be provided to HUD.

HATC POLICY

HATC will review and update the plan at least once a year, and more often if needed, to reflect changes in regulations, HATC 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 Public Housing Authorities (PHAs) to affirmatively further civil rights and fair housing in all federally assisted housing programs. The letter and spirit of these laws are implemented through consistent policy and processes. The responsibility to further nondiscrimination pertains to all areas of HATC’s housing choice voucher (HCV) operations.

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

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

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

Part III: Prohibition of Discrimination Against Limited English Proficiency Persons. This part details the obligations of the HATC to ensure meaningful access to the HCV program and its activities by persons with limited English proficiency (LEP). This part incorporates HUD and DOJ’s Notice of Guidance, published December 19, 2003 in the *Federal Register*

**PART I: NONDISCRIMINATION**

**2-I.A. OVERVIEW**

HATC will affirmatively further fair housing in all of it policies. HATC’s Affirmatively Furthering Fair Housing Addendum provides a significant amount of additional information on HATC’s fair housing efforts above and beyond the agency’s adherence to federal, state and local nondiscrimination and reasonable accommodation laws and regulations and serves as a complement to the HCV Administrative Plan’s Chapter 2 on Fair Housing and Equal Opportunity. The Affirmatively Furthering Fair Housing Addendum can be found at the end of this Administrative Plan as Appendix #1.

Federal laws require PHAs 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. HATC will comply fully with all federal, state, and local nondiscrimination laws, and with rules and regulations governing fair housing and equal opportunity in housing and employment, including:

* Title VI of the Civil Rights Act of 1964
* Title VIII of the Civil Rights Act of 1968 (as amended by the Community Development Act of 1974 and the Fair Housing Amendments Act of 1988)
* Executive Order 11063
* Section 504 of the Rehabilitation Act of 1973
* The Age Discrimination Act of 1975
* Title II of the Americans with Disabilities Act (to the extent that it applies, otherwise Section 504 and the Fair Housing Amendments govern)
* Violence Against Women Reauthorization Act of 2005 (VAWA)
* When more than one civil rights law applies to a situation, the laws will be read and applied together.
* Any applicable state laws or local ordinances and any legislation protecting individual rights of tenants, applicants, or staff that may subsequently be enacted

**2-I.B. NONDISCRIMINATION**

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

Except as allowed by, HATC 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.

HATC POLICY

HATC will not discriminate on the basis of marital status or sexual orientation or gender identity.

HATC 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 towardor 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**

HATC must take steps to ensure that families and owners are fully aware of all applicable civil rights laws. As part of the briefing process, HATC 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 HATC or an owner, the family should advise HATC. HUD requires HATC 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, HATC is required to provide the applicant or participant with information about how to file a discrimination complaint [24 CFR 982.304].

HATC POLICY

HATC shall conspicuously post a Fair Housing and Equal Opportunity poster and the toll-free Discrimination Complaint hotline number at HATC central administration office.

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

HATC will attempt to remedy discrimination complaints made against HATC.

Upon request, HATC 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 DISABIILTIES**

**2-II.A. OVERVIEW**

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

HATC must ensure that persons with disabilities have full access to HATC’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.

HATC POLICY

HATC will advise applicants and participants in writing of their rights to request accommodations, on the intake application, reexamination documents, and notices adverse action by HATC, by including the following language:

“The Housing Authority of Travis County is committed to compliance with the Americans with Disabilities Act and the Fair Housing Act. 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 applicant can request a reasonable accommodation from the Assisted Housing Supervisor. HCV program participants may contact their assigned Housing Specialist. The Assisted Housing Supervisor will serve as the Reasonable Accommodations Coordinator for the HCV program.

**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 HATC can provide include changes, exceptions, or adjustments to a rule, policy, practice, or service.

Federal regulations stipulate that request for accommodations will be considered reasonable if they do not create an “undue financial and administrative burden” for HATC, 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, HATC 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 HATC range) if HATC 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 HATC staff;
* Displaying posters and other housing information in locations throughout HATC's office in such a manner as to be easily readable from a wheelchair;
* Allowing a HATC-approved live-in aide to reside in the unit if that person is determined to be essential to the care of a person with disabilities, is not obligated for the support of the person with disabilities and would not be otherwise living in the unit.

**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 HATC 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 HATC’s programs and services.

If the need for the accommodation is not readily apparent or known to HATC, 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.

HATC POLICY

HATC will encourage the family to make its request in writing using a reasonable accommodation request form. However, HATC 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, HATC 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 HATC’s programs and services.

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

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

**2-II.E. Approval/Denial of a Requested Accommodation** [Joint Statement of the Departments of HUD and Justice: Reasonable Accommodations under the Fair Housing Act].

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

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

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

HATC POLICY

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

If HATC 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 HATC’s operations), HATC 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. The family will be given 30 days from the date of the written notice to respond and discuss alternative accommodations with HATC.

If the family does not respond to HATC within 30 days of the notice, or if HATC believes that the family has failed to identify a reasonable alternative accommodation after interactive discussion and negotiation, HATC will notify the family, in writing, or its determination within 30 days from the date of the most recent discussion or communication with the family. The notice will inform the family of the right to appeal HATC’s decision through an informal review (applicants) or hearing (participants) process (see Chapter 14).

**2-ii.F Program Accessibility for Persons with Hearing or Vision Impairments**

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

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

HATC POLICY

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

Relay Texas. Relay Texas provides telephone-interpreting service between people who can hear and those who are deaf, hard-of-hearing, deaf-blind or speech-disabled.

Additional accommodations include providing sign language interpreters, for scheduled appointments and meetings, upon advance request of the hearing impaired resident or applicant.

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 HATC 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**

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

* PIH 2002-01 (HA), Accessibility Notice
* Section 504 of the Rehabilitation Act of 1973
* The Americans with Disabilities Act of 1990
* The Architectural Barriers Act of 1968
* The Fair Housing Act of 1988

HATC’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 HATC’s responsibilities with regard to physical accessibility.
  + Notice PIH 2002-01(HA) Accessibility Notice (which must be posted in the HCV offices in a conspicuous place) summarizes information about pertinent laws and implementing regulations related to non-discrimination and accessibility in federally-funded housing programs.
  + HATC Plan provides information about self-evaluation, needs assessment, and transition plans.

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

HATC’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 HATC’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 HATC’s informal hearing process and their right to request a hearing and reasonable accommodation.

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

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

**2-III.A. OVERVIEw**

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

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

**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, HATC will generally offer, or ensure that the family is offered through other sources, competent services free of charge to the LEP person.

HATC POLICY

HATC 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, HATC will train and hire bilingual staff to be available to act as interpreters and translators, will pool resources with other Housing Authorities, and will standardize documents. Where feasible and possible, HATC 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 HATC. 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.

HATC POLICY

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

HATC 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. Such documents include but are not limited to: the housing application, briefing packet, annual recertification packet, notice of rent change, termination notice, and notice of informal hearing. Translation of other documents, if needed, can be provided upon request.

If there are fewer than 50 persons in a language group that reaches the 5 percent trigger, HATC 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, HATC shall determine whether it is necessary to develop a written implementation plan to address the identified needs of the LEP populations it serves.

If HATC 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 HATC’s Housing Choice Voucher program and services.

If it is determined that HATC serves very few LEP persons, and HATC has very limited resources, HATC 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 HATC 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 HATC‘s Housing Choice Voucher program and services.

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| **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 HATC) 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.

**Chapter 3**

**ELIGIBILITY**

**INTRODUCTION**

HATC 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 HATC 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 HATC.
* 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 HATC’s collection and use of family information as provided for in HATC-provided consent forms.
* HATC must determine that the current or past behavior of household members does not include activities that are prohibited by HUD or HATC.

This chapter contains three parts:

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

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

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

**PART I:** **DEFINITIONS OF FAMILY AND HOUSEHOLD MEMBERS**

**3-I.A. OVERVIEW**

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

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

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

**Family**

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

HATC POLICY

A family also includes two or more individuals who are not related by blood, marriage (either licensed or Texas common law), 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 and will be living in the same dwelling unit. Notwithstanding anything to be contrary, in order to qualify as a family in the context of a head of household with a minor who are not the head of household’s children, either:

1. A court order establishing custody, or
2. A notarized affidavit from the parent, which establishes custody with the head of household, is required as well as other requested documents establishing proof of custodial rights such as proof of guardianship with the child’s school, Food Stamp or TANF benefits for the child, or any other form of proof establishing residency with the head of household;
3. If the parent or legal guardian is deceased, their whereabouts are unknown, or they are unresponsive, the head of household must provide a notarized affidavit declaring one of the foregoing and that the child is/are residing with him/her and also provide proof of kinship care by producing documents relating to school, TANF, Medicaid or medical records.

A family does not include: (1) a group of unrelated non-elderly and/or disabled persons under 62 years of age living together,

(2) a housekeeper or live-in aide, or

(3) foster children and/or foster adults.

Each family must identify the individuals to be included in the family at the time of application, and must update this information in writing within 30 days of the change during tenancy if the family’s composition changes. Voucher size will be adjusted according to family size at each annual recertification.

**Household**

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

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

**Family Break-up [24 CFR 982.315]**

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

HATC 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. The family may request a change of Head of Household unless HATC determines, in its sole discretion that the requested change is for the purpose of the family obtaining a benefit by circumventing a limitation or requirement of the housing program, federal statute, regulation or other HATC POLICY.

If a court determines the disposition of property between members of the applicant or resident family in a divorce or separation decree, HATC will abide by the court’s determination.

In the absence of a judicial decision, or an agreement among the original family members, HATC will determine which family retains their placement on the waiting list, or will continue in occupancy. As a general rule, the applicant listed as head of household on the original application will retain the original application placement. Former family members listed as co-head or other adult will be required to make a new application with a new application when the wait list is open. HATC may 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) any possible risks to family members as a result of domestic violence or criminal activity, and;

(4) the recommendations of social service professionals.

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

The HUD definition of family includes the *remaining member of a tenant family,* which is a member of an assisted family who remains in the unit when other members of the family have left the unit. Household members such as live-in aides, foster children, and foster adults do not qualify as remaining members of a family. The remaining member of a tenant family must be a member of the family household for a year and current member of the household prior to being designated as head of household.

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-heador spouse.

HATC POLICY

The family may designate any qualified family member as the head of household. The qualified member must be a member of the family household for a year and current member of the household prior to being designated as 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.

HATC POLICY

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

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

HATC 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**

HATC 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. “51% of the time” is defined as 183 days of the year, which do not have to run consecutively.

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

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

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

Identifying each FTS is important because: (1) each family member that is an FTS, other than the head, spouse, or 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]**

**Elderly Persons**

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

**Near-Elderly Persons**

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

**Elderly Family**

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

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

**Persons with Disabilities**

Under the HCV program, special rules apply to persons with disabilities and to any family whose head, spouse, or 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, HATC must make all aspects of the HCV program accessible to persons with disabilities and consider reasonable accommodations requested based upon a person’s disability.

**Disabled Family**

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

Even though persons with drug or alcohol dependencies are considered persons with disabilities for the purpose of non-discrimination, this does not prevent HATC 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.

HATC 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. If the executed lease defines a shorter time frame for guest, the time period listed in the lease would prevail.

For the purpose of deciding whether to terminate voucher assistance for alleged guest, HATC will apply the thirty/ninety day test.

Children who attend college or trade school but who may come home for the summer and during breaks are not subject to the time limitations of guests as described above.

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.

Any adult, who has been in the unit more than 30 consecutive days without HATC approval, or a total of 90 days in a 12-month period, will be considered to be living in the unit as an unauthorized household member.

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.

The burden of proof that the individual is a visitor rests on the family. In the absence of such proof, the individual will be considered an unauthorized member of the household and HATC will terminate assistance since prior approval was not requested for the addition.

**3. I.K. FOSTER CHILDREN AND FOSTER ADULTS**

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

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

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

HATC 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 care arrangement with the custodial agency. HATC will require the applicant or tenant family to provide documentation to support such arrangement in their household.

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. The family must notify the HATC of the absent family member(s) in writing within ten (30) days of the occurrence.

**Definitions of Temporarily and Permanently Absent**

HATC POLICY

Generally an individual who is or is expected to be absent from the assisted unit for 90 consecutive days or less is considered temporarily absent and continues to be considered a family member. Generally an individual who is or is expected to be absent from the assisted unit for more than 90 consecutive days is considered permanently absent and no longer a family member. Exceptions to this general policy are discussed below. However, the family may not be absent from the unit for a period of more than 180 consecutive calendar days in any circumstance, or for any reason (24 CFR 982.312)

**Absent Students**

HATC 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 HATC indicating that the student has established a separate household or the family declares that the student has established a separate household. This applies at time of initial application as well.

To be considered a family member, the individual attending school must be enrolled Full time in an accredited two or four-year college or training institution and the student will reside in the unit during holidays and summer breaks.

**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.

HATC POLICY

If a child has been placed in foster care, HATC 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 for initial eligibility and continued participation. For subsidy standards, the temporarily absent child will be counted as family member.

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

HATC POLICY

An employed head, spouse, or co-head absent from the unit more than 180 consecutive days due to employment or employment situation that requires the employee to be away from the home 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].

HATC POLICY

HATC 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 or a permanent basis and request that the person not be considered a family member. If the verification indicates that the family member will return in less than **180 consecutive days at the discretion of the Section 8 Supervisor**, the family will not be considered permanently absent.

**Absence due to Incarceration**

HATC POLICY

If the sole member of the household is incarcerated for more than 45 consecutive days, she/he will be considered permanently absent. Any member of the household, other than the sole member, will be considered permanently absent if he/she is incarcerated for 45 consecutive days.

HATC will determine if the reason for incarceration is for drug-related or violent criminal activity, which may result in the termination of assistance prior to the 45 consecutive days.

**Absence of Entire Family**

HATC POLICY

The guideline below address situations when the family is absent from the unit, but has not moved out of the unit. In cases where the family has moved out of the unit, HATC will terminate assistance in accordance with termination procedures contained in this Plan.

Families are required both to notify HATC before they move out of a unit and to give HATC information about any family absence from the unit.

Families must notify HATC within 10 days after leaving the unit if they are going to be absent from the unit for more than 45 consecutive days.

If the entire family is absent from the assisted unit for more than 45 consecutive days, the unit will be considered vacated and the assistance will be terminated. If it is determined that the family is absent from the unit, HATC will not continue assistance payments.

HUD regulations require HATC to terminate assistance if the entire family is absent from the unit for a period of more than 180 consecutive calendar days.

“Absence” means that no family member is residing in the unit.

To determine if the family is absent from the unit, HATC may:

* Write letters to the family at the unit
* Telephone the family at the unit
* Interview neighbors
* Verify if the utilities are in service
* Check with the post office

A person with a disability may request an extension of time as an accommodation, provided that the extension does not go beyond the HUD-allowed 180 consecutive calendar day’s limit.

If the absence that resulted in termination of assistance was due to a person’s disability and HATC can verify that the person was unable to notify HATC in accordance with the family’s responsibilities, and if funding is available, HATC may reinstate the family as an accommodation. The family must make this request within 10 business days of the date of termination.

**Absence due to Military Duty**

HATC POLICY

Family members called to active duty will not be considered absent from the household during their term of active duty.

**Return of Permanently Absent Family Members**

HATC POLICY

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

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

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

HATC 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.

HATC POLICY

A family’s request for a live-in aide must be made in writing. Written verification will be required from a reliable, knowledgeable professional, such as a doctor, social worker, or case worker, that the live-in aide is essential for the care and well-being of the elderly, near-elderly, or disabled family member. At each annual re-examination, the head of household and the live-in aide must sign the live-in aide agreement form. The live-in aide agreement includes a certification from the family and live-in aide 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.

HATC 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 HATC or to another Housing Authority in connection with Section 8 or public housing assistance under the 1937 Act.

Occasional, intermittent, multiple or rotating care givers do not meet the definition of a live-in aide since 24 CFR Section 982.402(7) implies live-in-aides must reside with the family permanently for the family unit to be adjusted in accordance with subsidy standards established by HATC. Therefore regardless of whether these caregivers spend the night, an additional bedroom should not be approved.

Within 10 days of receiving a request for a live-in aide, including all required documentation related to the request, HATC will notify the family of its decision in writing. If HATC denies the request for a live-in aide or denies approval of a particular live-in aide, the family may request an informal hearing within the required timeframe specified in the decision letter.

### 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.

HATC POLICY

HATC will determine the eligibility of applicants based on the income reported at the initial appointment for admission. If income changes prior to initial tenancy, it must be reported to determine eligibility.

**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 exceed30 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 at the time of their initial appointment, a family must be one 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]

HATC POLICY

HATC 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 HATC.

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

HATC POLICY

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

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

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

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

All applicant families must be notified of the requirement to submit evidence of their citizenship status when they apply. Where feasible, and in accordance with the HATC’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 HATC to request additional documentation of their status, such as a passport.

HATC POLICY

Family members who declare citizenship or national status will be required to provide additional documentation supporting the individual’s declaration of citizenship and national status. Documents accepted included original birth certificate, original baptismal certificate, original naturalization certificate, unexpired INS card, or Social Security card.

***Eligible Noncitizens***

In addition to providing a signed declaration, those declaring eligible noncitizen status must sign a verification consent form and cooperate with HATC 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. Documentation reviewed and accepted will be in accordance with the Immigration and Nationality Act.

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. HATC is not required to verify a family member’s ineligible status and is not required to report an individual’s unlawful presence in the U.S. to the United States Citizenship and Immigration Services (USCIS).

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

**Mixed Families**

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

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

HATC 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 HATC 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 HATC in accordance with program requirements [24 CFR 5.512(a)].

HATC POLICY

HATC will not provide assistance to a family before the verification of at least one family member as a citizen, national or eligible noncitizen is made.

When a HATC 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 20 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 HATC. The informal hearing with HATC 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, HATC 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, HATC 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.

HATC POLICY

HATC 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]

In accordance with 24 CFR 5.216, applicants and participants (including each member of the household) are required to disclose his/her assigned SSN, with the exception of the following individuals:

1. Those individuals who do not contend to have eligible immigration status (individuals who may be unlawfully present in the United States). These individuals in most instances would not be eligible for a SSN.
2. A family that consists of a single household member (including a pregnant individual) who does not have eligible immigration status is **not eligible** for housing assistance cannot be house.
3. A family that consists of two or more household members **and at least one** household member that has eligible immigration status, is classified as a mixed family, and **is eligible** for prorated assistance in accordance with 24 CFR 5.520. HATC may **not** deny assistance to mixed families due to nondisclosure of an SSN by an individual who does not contend to have eligible immigration status.
4. Existing program participants as of January 31, 2010, who have previously disclosed their SSN and HUD has determined the SSN to be valid. HATC may confirm HUD’s validation of the participant’s SSN by viewing the household’s **Summary Report** or the **Identity Verification Report** in the EIV system.
5. Existing program participants as of January 31, 2010, who are 62 years of age or older, and had not previously disclosed a valid SSN. This exemption continues even if the individual moves to a new assisted unit.

**Note:** There is no provision under HUD regulations which prohibit an individual (head of household with other eligible household members) with ineligible immigration status from executing a lease or other legally binding contract. However, some state laws prohibit an individual with ineligible immigration status from executing a contract (i.e. lease or other legal binding documents). If this is the case in your state, the family must **not** be admitted into the program.

If a new member is added to the family, the new member’s SSN documentation must be submitted at the family’s next interim or regular reexamination, whichever comes first. If any member of the family obtains a previously undisclosed SSN, or has been assigned a new SSN, the documentation must be submitted at the family’s next regularly scheduled reexamination.

HATC must deny assistance to an applicant family if they do not meet the SSN disclosure, documentation and verification, and certification requirements contained in 24 CFR 5.216, 24 CFR 5.218 and 24 CFR 5.233, in accordance with the Final Rule: Refinement of Income and Rent Determinations in Public and Assisted Housing Programs: Implementation of the Enterprise Income Verification System-Amendments, effective January 31, 2010, as published at 74 FR 68924, on December 29, 2009.

A detailed discussion of acceptable documentation is provided in Chapter 7.

**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.

HATC 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 and FR Notice 4/10/06]**

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

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, and 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 HATC POLICY, the income of the student’s parents will not be considered in determining the student’s eligibility.

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

**Definitions**

In determining whether and how the new eligibility restrictions apply to a student, the HATC 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, is a person with a disability, or is a full-time student. Foster children and foster adults are not considered dependents.

**Independent Student**

HATC POLICY

HATC 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.

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

**Institution of Higher Education**

HATC 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**

HATC 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**

HATC 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**

HATC 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, HATC 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, HATC 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.

HATC POLICY

For any student who is subject to the 5.612 restrictions, the HATC 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 HATC determines that the student, the student’s parents (if applicable), or the student’s “family” is not eligible, HATC 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**

HATC 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, HATC will determine the income eligibility of the student’s parents as follows:

* If the student’s parents are married and living together, HATC will obtain a joint income declaration and certification of joint income from the parents.
* If the student’s parent is widowed or single, HATC will obtain an income declaration and certification of income from that parent.
* If the student’s parents are divorced or separated, HATC 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, HATC 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.  HATC 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, HATC 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 HATC to deny assistance based on certain types of current or past behaviors of family members as discussed in this part. HATC’s authority in this area is limited by the Violence against Women Reauthorization Act of 2005 (VAWA), which expressly prohibits the denial of admission to an otherwise qualified applicant on the basis that the applicant is or has been the victim of domestic violence, dating violence or stalking.

**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,
* Required denial of admission
* Other permitted reasons for denial of admission
* Screening
* Criteria for deciding to deny admission
* Prohibition against denial of admission to victims of domestic violence, dating violence or stalking
* Denying or withdrawing a voucher,
* Not approving a request for tenancy or refusing to enter into a HAP contract, or
* Refusing to process a request for or to provide assistance under portability procedures.

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

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

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

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

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

* Any member of the household has been evicted from federally assisted housing in the last three (3) years for drug-related criminal activity. HUD also permits public housing authorities to adopt a policy to deny admissions or terminate assistance if any member of the family has been evicted from federally assisted housing in the last five years (24 CFR 982.552 (c) (1) (ii). HUD also permits, but does not require, HATC to admit an otherwise-eligible family if the household member has HATC-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).

HATC POLICY

For families evicted from federally-assisted housing for drug related activity, HATC will deny assistance if they were evicted from federally-assisted housing in the last (5) five years.

HATC POLICY

If HATC determines that any household member is currently engaged in the use of illegal drugs, then housing will be denied. Drug means a controlled substance as defined in section 102 of the Controlled Substances Act [21 U.S.C. 802]. Currently engaged in the illegal drugs means a person has engaged in the behavior recently enough to justify a reasonable belief that there is continuing illegal drug use by a household member. Currently engaged in is defined as any use of illegal drugs during the **previous six months**. HATC 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.

HATC POLICY

In determining reasonable cause, HATC 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. HATC may, at its discretion, also consider evidence from treatment providers or community-based organizations providing services to household members.

* Any family member has been convicted of manufacturing or producing methamphetamine (commonly referred to as “speed”) on the premises of an assisted housing project (including the building or complex in which the unit is located and the associated common areas and grounds).

HATC POLICY

If any household member has ever been convicted of drug-related criminal activity for the production or manufacture of methamphetamine in any location, not just federally assisted housing, the family will be denied admission.

* The PHA must establish standards that prohibit admission to the program if any member of the household is subject to a lifetime registration requirement under a State sex offender registration program. In this screening of applicants, the PHA must perform criminal history background checks necessary to determine whether any household member is subject to a lifetime sex offender registration requirement in the State where the housing is located and in other States where the household members are known to have resided.

HATC POLICY

If any household member is currently registered as a sex offender under any State registration requirement, regardless of whether it is for lifetime or not, the family will be denied admission.

* The PHA must deny admission to the program for an applicant, or terminate program assistance for a participant, if any member of the family fails to sign and submit consent forms for obtaining information in accordance with part [5](https://www.law.cornell.edu/cfr/text/24/5), subparts B and F of this title.
* The family must submit required evidence of citizenship or eligible immigration status. See part [5 of this title](https://www.law.cornell.edu/cfr/text/24/5) for a statement of circumstances in which the PHA must deny admission or terminate program assistance because a family member does not establish citizenship or eligible immigration status, and the applicable informal hearing procedures.
* The PHA must deny or terminate assistance if any family member fails to meet the eligibility requirements concerning individuals enrolled at an institution of higher education as specified in 24 CFR [5.612](https://www.law.cornell.edu/cfr/text/24/5.612).

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

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

**Criminal Activity [24 CFR 982.553]**

HUD permits, but does not require, HATC to deny assistance if HATC 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. The types of criminal activity are described below:

If any household member is currently engaged in, or has engaged in any of the following criminal activities, within the past five (5) years, the family will be denied admission.

1. 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].
2. 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].
3. Illegal possession/discharge/display/carrying of firearm or illegal weapon/ deadly weapon.
4. Assault, aggravated assault, assault by threat, stalking.
5. Physical violence to persons or property, or criminal activity that has as one of its elements the use, attempted use or threatened use of physical force against the person or property of another.
6. 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
7. 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 HATC (including a HATC employee or a HATC contractor, subcontractor, or agent).

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

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

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

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

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

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

HATC POLICY

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

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

HUD authorizes HATC to deny assistance based on the family’s previous behavior in assisted housing.

In the event of the receipt of unfavorable information with respect to an applicant, HATC must consider the time, nature and extent of the applicant’s conduct (including the seriousness of the offence). As discussed in Section 3-III.F, HATC may also need to consider whether the cause of the unfavorable information may be that the applicant is the victim of domestic violence, dating violence or stalking.

HATC POLICY

HATC will deny admission to an applicant family if HATC determines that the family:

* If the head or co-head owes rent or other amounts to HATC or any other PHA in connection with the HCV, Certificate, Moderate Rehabilitation or public housing programs, unless the family repays the full debt amount or enters into a Prepayment Agreement with HATC or any other PHA prior to being selected from the waiting list.
* Misrepresented or does not provide completed information related to eligibility, including income, award of preferences for admission, expenses, family composition or rent.
* Any family member has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program. This includes intentional misrepresentation of citizenship or immigration status.
* Refuses to sign and submit consent forms for obtaining information necessary to determine eligibility and continued eligibly for housing assistance.
* Any family member has been evicted from federally-assisted housing in the last five years.
* Has engaged in or threatened violent or abusive behavior toward HATC personnel.

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

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

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

HATC will consider the existence of mitigating factors, such as loss of employment or other financial difficulties, before denying admission to an applicant based on the failure to meet prior financial obligations.

### 3-III.D. SCREENING

**Screening for Eligibility**

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

HATC POLICY

HATC will perform a criminal background check through local law enforcement or other source such as www.publicdata.com for every adult household member. HATC may require each adult household member to submit a current criminal history report processed by the Texas Department of Public Safety (DPS). The criminal history report must be no more than 60 days old at the time of the scheduled initial interview date.

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

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

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

HATC POLICY

HATC will not conduct additional screening to determine an applicant family’s suitability for tenancy. HATC 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 HATC to provide prospective owners with the family's current and prior address (as shown in HATC records) and the name and address (if known) of the owner at the family's current and prior addresses. HUD permits HATC 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.

HATC POLICY

HATC will inform owners of their responsibility to screen prospective tenants, and will provide owners with the required known name and address information, at the time of the initial HQS inspection or before. HATC 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)]**

HATC POLICY

HATC 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 HATC 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).

HATC POLICY

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

* The seriousness of the case, especially with respect to how it would affect other residents.
* The effects that denial of assistance may have on other members of the family who were not involved in the action or failure.
* The extent of participation or culpability of individual family members, including whether the culpable family member is a minor or a person with disabilities.
* The length of time since the violation occurred, the family’s recent history and the likelihood of favorable conduct in the future.
* Evidence of the applicant family’s participation in social service or other appropriate counseling service program.
* 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.

HATC 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.

* If previously incarcerated, the length of time the culpable family member has been released into society.

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

HUD permits HATC 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.

HATC 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 HATC request.

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

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

HATC POLICY

If the family indicates that the behavior of a family member with a disability is the reason for the proposed denial of assistance, HATC will determine whether the behavior is related to the disability. If so, upon the family’s request, HATC will determine whether alternative measures are appropriate as a reasonable accommodation. HATC 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, the HATC will notify the family when it extends the invitation to attend the voucher briefing appointment, as discussed in Chapter 5.

If HATC determines that a family is not eligible for the program at the time of their initial appointment, for any reason, the family must be notified promptly. Thenotice 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.

HATC POLICY

Notice policies related to preliminary ineligibly are as follows:

If an applicant is determined not to be eligible, the applicant shall be notified in writing of such ineligibility. The notice must specify the reasons for the determination and offer the applicant an opportunity for a review of the decision.

If the rejection was based on a debt owed to HATC, the notice shall inform the applicant that she/he has 30 calendar days from the date of the notification letter to pay ½ the amount owed to HATC and sign a Repayment Agreement for the remaining balance in order to keep their application date and time, or has 10 calendar days to request in writing an informal review.

If the applicant makes a written request for an informal review for a rejection based upon other preliminary eligibility criteria within the time frame allowed, the Hearing Officer will conduct the informal review. This review does not deprive the applicant of other rights if she or he believes that she or he has been discriminated against on the basis of race, color, religion, sex, national origin, age or handicap. The informal review shall only review the particular decision in question. If the Hearing Officer believes that the rejection was improper, the applicant’s application shall be processed in the same manner as all other applications in accordance with the date and time the application was submitted. The applicant will be entitled to review all documentation, including police reports, which are relied upon by HATC and provided the opportunity to dispute the accuracy and relevance of that record. If the Hearing Officer decides that the rejection was proper, the rejection will be final. The applicant will not be eligible to reapply or have this decision reviewed again until the proper time has elapsed.

**Additional policies relating to the informal hearings process can be found in Chapter 16, Part 3**

If HATC uses a criminal record or sex offender registration information obtained under 24 CFR 5, Subpart J, as the basis of 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 HATC 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)]. HATC must give the family an opportunity to dispute the accuracy and relevance of that record, in the informal review process in accordance with program requirement [24 CFR 982.553(d)].

HATC POLICY

If based on a criminal record or sex offender registration information, an applicant family appears to be ineligible HATC will notify the family in writing of the proposed denial. The family will be given 10 days to dispute the accuracy and relevance of the information. If the family does not contact HATC to dispute the information within that 10 day period, HATC will proceed with issuing the notice of denial. A family that does not exercise their right to dispute the accuracy of the information prior to issuance of the official denial 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 or stalking are contained in Section 3-III.G.

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

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

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

**Definitions**

As used in VAWA:

* The term ***bifurcate*** means, with respect to a public housing or Section 8 lease, to divide a lease as a matter of law such that certain tenants can be evicted or removed while the remaining family members’ lease and occupancy rights are allowed to remain intact.
* The term ***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 another person against an adult or youth victim who is protected from that person’s acts under the domestic or family violence laws of the jurisdiction.
* The term ***dating violence*** means violence committed by a person who is or has been in a social relationship of a romantic or intimate nature with the victim; and where the existence of such a relationship shall be determined based on a consideration of the following factors:
* The length of the relationship
* The type of relationship
* The frequency of interaction between the persons involved in the relationship
  + The term ***staking*** means:
* To follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate; or
* To place under surveillance with the intent to kill, injure, harass, or intimidate another person; and
* In the course of, or as a result of such following, pursuit, surveillance or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (1) that person, (2) a member of the immediate family of that person, or (3) the spouse or intimate partner of that person.
  + The term ***immediate family*** member means, with respect to a person:
* A spouse, parent, brother or sister, or child of that person, or an individual to whom that person stands in the position or place of a parent; or
* Any other person living in the household of that person and related to that person by blood and marriage.

**Notification**

HATC POLICY

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

(1) A statement of the protection against denial provided by VAWA.

(2) A description of HATC confidentiality requirements and

(3) A request that an applicant wishing to claim this protection submit to HATC documentation meeting the specifications below with her or his request for an informal review (see section 16-III.D).

**Documentation**

**Victim Documentation**

HATC POLICY

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

1. A signed statement by the victim certifying that the information provided is true and correct and that it describes bona fide incident(s) of actual or threatened domestic violence, dating violence, or stalking.
2. A police or court record documenting the domestic violence, dating violence, or stalking
3. Documentation signed by a person who has assisted the victim in addressing domestic violence, dating violence, or stalking, or the effects of such abuse. This person may be an employee, agent, or volunteer of a victim service provider; an attorney; or a medical professional. The person signing the documentation must attest under penalty of perjury to the person’s belief that the incidents in question are bona fide incidents of abuse. The victim must also sign the documentation.

**Perpetrator Removal or Documentation of Rehabilitation**

HATC 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 he perpetrator be removed from the application and (2) certifying that the perpetrator will not be permitted to visit or 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.

**Time Frame for Submitting Documentation**

HATC POLICY

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

**PHA Confidentiality Requirements**

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

**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 [42 U.S.C.6001 (8)], which defines developmental disability in functional terms as:

1. **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 person attains age twenty-two;

(iii) is likely to continue indefinitely;

(iv) results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-care, (ii) receptive and responsive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; *and*

(v) Reflects the person’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 individually planned and coordinated.

**(B)Infants and Young Children**

An individual from birth to age nine, 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**

*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 impairment; or is regarded as having such 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; genitor-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)(a) 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

(b) 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 HATC with the information needed to determine the family’s eligibility. HUD requires HATC to place all families that apply for assistance on a waiting list. When HCV assistance becomes available, HATC must select families from the waiting list in accordance with HUD requirements and HATC policies as stated in the administrative plan and the annual plan.

HATC 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 HATC to receive preferential treatment. Funding earmarked exclusively for families with particular characteristics may also alter the order in which families are served.

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

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

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

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

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

**PART I: THE APPLICATION PROCESS**

**4-I.A. OVERVIEW**

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

**4-I.B. APPLYING FOR ASSISTANCE [HCV GB, pp. 4-11 – 4-16]**

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

HATC POLICY

All persons who wish to apply for HATC HCV program must submit a pre-application, as indicated in the public notice. Pre-applications will be made available upon request from a person with a disability only when the waiting list is open.

Applicants will be provided the option to complete the HUD Form-92006, Supplement to Application for Federally Assisted Housing, to identify an individual or organization that HATC may contact and the reason(s) the individual or organization may be contacted.

To provide specific accommodation to persons with disabilities, upon request, the information may be mailed to the applicant and, if requested, it will be mailed in an accessible format.

When the Waiting List is open, families may obtain application forms at locations designated in HATC’s Public Notice.

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

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

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

**Limited English Proficiency**

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

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

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

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

**Ineligible for Placement on the Waiting List**

HATC POLICY

If HATC can determine from the information provided that a family is preliminarily ineligible, the family will not be placed on the waiting list. Where a family is determined to be preliminarily ineligible, HATC will send written notification as soon as possible of the ineligibility determination 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). If upon conclusion of the informal hearing process, the family’s preliminary eligibility is restored, the family will be placed according to their lottery number assigned.

**Eligible for Placement on the Waiting List**

HATC POLICY

HATC will send written notification of the preliminary eligibility determination as soon as possible of receiving a complete application. If applicable, the notice will also indicate the waiting list preference(s) for which the family appears to qualify.

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

Applicants will be placed on the waiting list according to HATC preference(s) for which they qualify, and the number that was issued by the lottery process.

Families can claim eligibility for any local preference any time from the date they applied until their name reaches the top of the waiting list. Preferences claims will be verified once a families name reaches the top of the waiting list.

**PART II: MANAGING THE WAITING LIST**

**4-II.A. OVERVIEW**

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

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

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

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

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

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

HATC POLICY

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

HUD directs that a family that applies for assistance from the HCV program must be offered the opportunity to be placed on the waiting list for any public housing, project-based voucher or moderate rehabilitation program HATC 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 PHAs 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.

HATC POLICY

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

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

**Closing the Waiting List**

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

HATC POLICY

HATC will utilize a computerized lottery system to determine pre application selection. The lottery system will be used to rank all pre- applications. Only 500 pre- applications will be selected from all pre-applications submitted. The pre- applications will then be placed on the Section 8 waiting list in sequential order based on the assigned lottery number, and then sorted by preference to determine position on the waiting list.

Any application that is not fully and accurately completed will not be considered and will be removed. Only one application per household will be considered throughout the entire process. If any household submits more than one pre-application, the pre- application will be void. Applicants not selected for the waiting list will be discarded.

Where HATC has preferences or target funding criteria, HATC may elect to continue to accept applications from the specified targeted group (ex: NED, PBV) in order to fill the targeted number of slots. Referrals may be received and applicants will be placed on waiting list for the specified target funding group. If families referred do not qualify for the target funding category, they will not be added to the regular HCV waiting list, unless the regular HCV waiting list is open.

Decisions about the waiting list will be based on the number of applicants who potentially qualify for available funding. Closing the waiting lists, restricting intake, or opening the waiting list will be publicly announced. HATC will provide public notice by publication in local newspapers of several circulations, and in minority media and other suitable means.

**Reopening the Waiting List**

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

HATC POLICY

HATC will announce the reopening of the waiting list at least 30 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.

Should HATC determine to re-open its HCV waiting list after any period of closure, it shall offer housing to all remaining eligible applicants on its current list. During the period when the waiting list is closed, HATC will not maintain a list of individuals who wish to be notified when the waiting list is re-opened. Applications for the Housing Choice Voucher Program will be accepted only during specific times as determined by the needs of the Housing Authority and as announced.

HATC will utilize the internet for all applications. HATC will not designate a specific location to accept applications. HATC will accept all applications received through the website during the open waiting list period. Once the waiting list is closed, HATC will complete a lottery drawing to select the pre-determined number of applications. For referred clients for specific projects/ targeted funding through partner agencies, applicants will be selected based on need of the project, date of referral, and receipt of all documents for eligibility.

All applicants will be directed to the internet to complete the application. If an applicant is elderly or disabled and does not have internet access, HATC will first direct the applicant to request assistance from family members or social service providers to complete the application through the internet. If the family is an elderly or disabled family and is unable to access the internet, HATC will accept phone applications. Under no circumstances will anyone be denied the right to request or submit an application. All applications must be completed during the time of the waiting list opening.

The applicants may complete the application during the time and at the place announced by HATC. HATC will give public notice by publishing the relevant information in suitable media outlets including, but not limited to:

**Austin American Statesman and other sources**

Notices may also be sent to organizations that typically assist low-income families, including but not limited to:

**Integral Care, Department of Human Services, ECHO, and any local Social Service Agencies**

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

HATC must conduct outreach as necessary to ensure that HATC has a sufficient number of applicants on the waiting list to use the HCV resources it has been allotted. HATC is affirmatively furthering fair housing and complying with the Fair Housing Act.

Because HUD requires HATC to serve a specified percentage of extremely low-income families (see Chapter 4, Part III), HATC 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].

PHA 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

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

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

HATC POLICY

HATC will monitor the characteristics of the population being served and the characteristics of the population as a whole in HATC’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**

HATC POLICY

While the family is on the waiting list, the family must immediately inform HATC of changes in contact information, including current residence, mailing address, and phone number. The changes must be submitted in writing. To avoid unauthorized changes, a photo ID must be presented in person, to confirm the applicant’s identify before any requested changes to the application are made.

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

HUD requires HATC 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 HATC’s request for information or updates because of the family member’s disability, HATC must reinstate the applicant family to their former position on the waiting list [24 CFR 982.204(c) (2)].

HATC POLICY

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

To update the waiting list, HATC 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 HATC 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, or by mail; no faxes or e-mails will be accepted.

Responses should be postmarked or received by HATC not later than 10 days from the date of HATC letter.

If the family fails to respond within 10 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 10 days to respond from the date the letter was re-sent. If the family fails to respond within the time frame, the family will be removed from the waiting list without further notice. If applicant has provided an email, an email notice will be sent and if the family does not respond within the specified time frame, then the families name will be removed from the waiting list.

When a family is removed from the waiting list during the update process for failure to respond, no informal review will be offered. Such failures to act on the part of the applicant prevent HATC from making an eligibility determination; therefore no informal review is required

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

**Removal from the Waiting List**

HATC POLICY

HATC will remove applicants from the waiting list if they have requested in writing that their name be removed. In such cases no informal review is required and none will be offered.

If HATC determines that the family is not eligible for assistance at the time of the family’s initial appointment (see Chapter 3), the family will be removed from the waiting list.

If HATC determines the family is not eligible for assistance (see Chapter 3) at any time while the family is on the waiting list the family will be removed from the waiting list.

If at the time of the family’s initial appointment, HATC has determined that the family is not eligible for assistance a notice will be sent to the family’s address of record. The notice will state the reasons the family was removed from the waiting list and will inform the family how to request an informal review regarding the HATC’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 HATC and is impacted in part by any selection preferences that the family qualifies for. The source of HCV funding also may affect the order in which families are selected from the waiting list.

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

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

**Special Admissions [24 CFR 982.203]**

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

HATC POLICY

HATC administers the following types of special admissions:

1. Families residing in a project covered by a project-based Section 8 HAP contract at or near the end of the HAP contract term.

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

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

HATC POLICY

HATC administers the following types of targeted funding:

1. Veterans Affairs Supportive Housing (VASH)
   * **Veterans Affairs Supportive Housing (VASH):** HATC accepts VASH applicants as referrals in the order received from the Veterans Affairs administration for the designated number of vouchers awarded by HUD.
2. Non Elderly Disabled (NED)
3. Rental Assistance Demonstration Program- Project Based Rental Assistance
4. Family Unification Program Vouchers (FUP)
   * The waiting list will remain open for FUP eligible referrals. Eligibility for the FUP vouchers will be based on the respective HUD Notice of Funding Availability and are limited to referrals from Texas Department of Family and Protective Services (DFPS), ECHO, and Lifeworks. When HATC receives a completed application and referral from Texas DFPS, ECHO, or Lifeworks, the applicant will be placed on the waiting list in order according to the date and time when HATC received the referral and completed application. FUP eligible applicants are granted a preference over all other applicants not eligible for FUP vouchers. If FUP vouchers are not available, FUP eligible families will maintain their original place on the waiting list for the issuance of a FUP voucher. If a referred family or youth was previously on the HCV waiting list, they will maintain their original place on the respective waiting list. If the family or youth who was referred for a FUP voucher, does not meet eligibility requirements, and they were only on the waiting list due to a FUP referral, they will be removed from the waiting list.
5. Mainstream Vouchers for Persons with Disabilities

HATC will assist the minimum number of families defined in the original grant and will replace any vacancies with eligible disabled households from the HCV waiting list.

Mainstream for homeless or institutional transitions (targeted funding) waiting list policy:

For the issuance of Mainstream vouchers, only applicants certified eligible for Mainstream Vouchers will be issued a Mainstream voucher. To be an eligible application for a Mainstream voucher, HATC will have to receive both (1) a completed application and (2) a completed referral from ECHO or Integral Care; or verification of age, verification of disability, and verification of homelessness or verification of residence in an eligible institution or eligible segregated setting. Until both are received, the application will not be considered an eligible application. The applicant will only be placed on the waiting list once both documents have been received. Mainstream eligible applicants are granted a preference over all other applicants not eligible for Mainstream vouchers. Applicants certified eligible for the Mainstream vouchers will be coded as such on HATC’s waiting list. This preference will be granted only for the issuance of Mainstream vouchers and not any other voucher. If Mainstream vouchers are not available, Mainstream eligible families will maintain their original place on the waiting list for the issuance of other vouchers. All families granted a Mainstream preference will be prioritized based on date and time of being certified eligible.

Placing Mainstream eligible families referred by ECHO or Integral Care or by direct application with necessary supplemental documentation on HATC’s HCV waiting list:

Those eligible applicants on the current waiting list will have priority over families not on the waiting list. If additional funding is available, and all eligible families on the waiting list are exhausted, the waiting list will remain open for Mainstream eligible families. If a family coded as Mainstream ceases to meet the criteria for Mainstream eligibility before the family has moved into an assisted unit, HATC will remove the Mainstream coding. If the family was previously on the waiting list, they will maintain their original place on the waiting list. If the family was only on the waiting list due to a Mainstream referral or a direct application for a Mainstream voucher, they will be removed from the waiting list or lose their voucher if already issued.

**Regular HCV Funding**

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

**4-III.C. SELECTION METHOD**

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

Per calendar year, applicant families will be selected according to random lottery number assigned from waiting list application, targeted funding, and/ or preference as described below:

* 25% of all new housing choice voucher admissions will be allocated to a homeless applicant referred by a community agency with an existing HATC Memorandum of Understanding and;
* 1/3 of HATC’s turnover vouchers will be available to families exercising Choice Mobility from any of its 3 covered projects transitioning into PBRA through the Rental Assistance Demonstration (RAD). HATC will establish an agency-wide Choice Mobility waiting list for times when there are more requests for vouchers than vouchers available due to the cap.

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

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

HATC POLICY

HATC will use the following preference system:

1. Homeless Preference:

Community agencies submitting referrals for this preference must meet the following criteria:

1. Meet the HUD definition of Homeless;
2. Are referred to HATC by a coalition of homeless providers with whom HATC has executed a Memorandum of Understanding (MOU) outlining the providers roles and responsibilities with respect to the provision of housing search assistance and supportive services for the referred household;
3. Have received a written commitment from the referring homeless service provider for housing search and location assistance;
4. Have received documentation from the referring homeless service provider regarding homeless status eligibility prior to providing housing assistance;
5. Have received a written commitment from the homeless service provider to offer support services on an as needed basis to help the household transition from homelessness to permanent housing; and
6. Have received written commitment from the homeless service provider to offer supportive services to help the household maintain housing and comply with HCV regulations.

While a referral from the coalition of homeless service providers is required for this preference, use of the offered supportive services is not a requirement. The choice of the applicant to refuse the offered services will not jeopardize any housing assistance for which they are eligible.

HATC will execute an MOU as necessary to ensure that homeless applicants have the opportunity to apply for housing assistance under this preference.

Individuals and families transitioning from Permanent Supportive Housing (PSH) through the Continuum of Care awarded grant, will also be included as a priority group as part of this preference. These are the persons that were previously homeless prior to entry into a PSH program but who no longer require that level of supportive services. This would require a referral from the current case manager or PSH provider as well as documentation that the family was homeless prior to entering the PSH unit. This documentation must be provided as part of the referral.

Applicants interested in project based units may apply directly to the project(s). Families who applied directly will be referred by the project to HATC and be placed on the HATC PBV site-specific waiting lists if the waiting list is open.

Applicants who qualify for this preference and report ZERO income at initial admission will not be required to pay minimum rent until income is obtained. Once income is obtained, minimum rent will apply accordingly. VASH is included in this category. See chapter 7.III for additional zero income guidance.

1. Non Elderly persons with disabilities who are transitioning out of institutional or other segregated settings, at serious risk of institutionalization, currently experiencing homelessness, previously experienced homelessness and currently a client in a permanent supportive housing or rapid rehousing project, or those at risk of experiencing homelessness.

HATC may limit the number of vouchers issued for each preference group as needed.

Proof of preference(s) will be required at the time of selection from waiting list in order to be provided assistance.

HATC will open the waiting list or leave the waiting list open for certain preference or targeted funding groups as needed to meet the preference caps outlined in this administrative plan.

HATC will maintain the following waiting lists for admission into the Housing Choice Voucher Program:

1. **Tenant-Based Voucher (TBV):** waiting list is established for applicants, if determined eligible, to be issued vouchers. The TBV waiting list will be maintained until expiration or exhaustion, and a new list is established.
2. **Project-Based Voucher (PBV):** waiting list for applicants, if determined eligible, to be placed in designated project-based units approved by HATC. The PBV waiting list will open and close based upon the need for an applicant pool based on project preferences. Referrals from the project will be accepted.
3. **Rental Assistance Demonstration (RAD) Choice Mobility Preference:** As

required by HUD and in accordance with all HUD RAD guidelines, HATC will provide a Choice-Mobility option to residents of covered RAD projects in accordance with policies outlined in Chapter 18 of this HCV Administrative Plan.

1. **Homeless Housing Choice Vouchers** – Referrals from community agencies will be placed on the homeless applicant waiting list and be offered a voucher according to selection method outlined above.
2. **HATC’s VAWA Emergency Transfer Preference:** HATC will give preference to families residing in a HATC owned Project Based Rental Assistance unit or Project Based Rental unit who are victims of domestic violence, dating violence, sexual assault, or stalking and meet the eligibility requirements outlined in HATC’s VAWA Emergency Transfer Plan. Emergency Transfer requests will be placed on the top of waiting list following the request from the tenant as outlined in Addendum 2-2 in this plan.

If it is determined that an applicant referred by a homeless service provider or an applicant who has applied for targeted funding, as described above, does not meet the criteria, the applicant will not be placed on the waiting list.

If the applicant was only on the HCV waiting list because of the homeless referral/ target funding, the applicant will be removed from the HCV waiting list or; if the applicant was on the HCV waiting list through the regular application process, the applicant will return to their lottery position on the waiting list without the preference.

If HATC denies an application, HATC will notify the applicant and referring service provider in writing, including the reason(s) for the denial. Applicants have the right to appeal the denial of eligibility using the established process for informal reviews.

**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 HATC’s fiscal year. ELI families are those with annual incomes at or below 30% of the area median income. To ensure this requirement is met, HATC 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)].

HATC POLICY

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

**Order of Selection**

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

HATC 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 HATC’s hierarchy of preferences, if applicable. Within each targeted funding or preference category, families will be selected according to **their lottery ranking number**. Documentation will be maintained by HATC 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 HATC 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, HATC must notify the family.

HATC POLICY

The HATC 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:

* Date, time, and location of the scheduled application interview, including any procedures for rescheduling the interview;
* Who is required to attend the interview;
* Documents that must be provided at the interview to document the legal identity of household members, including information about what constitutes acceptable documentation and;
* Other documents and information that should be brought to the interview.

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

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

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

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

HATC POLICY

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

The head of household and the spouse/co-head will be strongly encouraged to attend the interview together. However, either the head of household or the spouse/co-head 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 HATC.

The interview will be conducted only if the head of household or spouse/co-head provides appropriate documentation of legal identity. (Chapter 7 provides a discussion of proper documentation of legal identity). If the family representative does not provide the required documentation, the appointment may be rescheduled when the proper documents have been obtained.

If the family is claiming a waiting list preference, the family must provide documentation to verify their eligibility for a preference (see Chapter 7). If the family is verified as eligible for the preference, HATC will proceed with interview. If HATC determines the family is not eligible for the preference, the interview will not proceed and the family will be placed back on the waiting list according to the date and time of their application.

The family must provide the information necessary to establish the family’s eligibility, including suitability, and to determine the estimate amount of rent the family will pay. The family must also complete required forms, provide required signatures and submit required documentation. If any materials are missing, HATC 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 initial 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, HATC will provide translation services in accordance with HATC’s LEP plan.

If the family is unable to attend a scheduled interview, the family should contact HATC in advance of the interview to schedule a new appointment. In all circumstances, if a family does not attend a scheduled interview, HATC will send another notification letter with a new interview appointment time.Applicants who fail to attend two scheduled interviews without HATC approval will have their applications made inactive based on the family’s failure to supply information needed to determine eligibility. The second appointment letter will state that failure to appear for the appointment without a request to reschedule will be interpreted to mean that the family is no longer interested and their application will be made inactive. 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, HATC will provide the family with a written list of items that must be submitted.

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

HATC must verify all information provided by the family (see Chapter 7). Based on verified information and by determining the family’s income at the time of the initial appointment, HATC 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.

HATC POLICY

If HATC determines that the family is ineligible at the time of the initial appointment, HATC will send written notification of the ineligibility determination within 30 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. HATC will notify the family in writing that it has been returned to the waiting list, and will specify the reasons for it.

If HATC determines that the family is eligible to receive assistance, HATC 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 at the time of their initial appointment for the Housing Choice Voucher (HCV) program, HATC 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, HATC issues the family a voucher. The voucher includes the unit size the family qualifies for based on HATC’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 HATC 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 HATC’s standards for determining how many bedrooms a family of a given composition qualifies for, which in turn affects the amount of subsidy the family can receive. It also discusses the policies that dictate how vouchers are issued, and how long families have to locate a unit.

**PART I: BRIEFINGS AND FAMILY OBLIGATIONS**

**5-I.A. OVERVIEW**

HUD regulations require HATC to conduct mandatory briefings for applicant families. The briefing provides a broad description of owner and family responsibilities, explains HATC’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]**

HATC 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, HATC 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.

HATC POLICY

Briefings will be conducted in individual or group meetings.

The head of household is required to attend the briefing.

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

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

**Notification and Attendance**

HATC 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 schedule briefing will automatically be scheduled for another briefing. HATC will notify the family of the date and time of the second scheduled briefing. Applicants who fail to attend two scheduled briefings, without HATC 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 HATC’s jurisdiction;
* For families eligible under portability, an explanation of portability. HATC cannot discourage eligible families from moving under portability;
* For families living in high-poverty census tracts, an explanation of the advantages of moving to areas outside of high-poverty concentrations; and

HATC POLICY

When PHA-owned units are available for lease, HATC 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 HATC-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 HATC’s policies on any extensions or suspensions of the term. If HATC allows extensions, or if HATC does not allow 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 HATC determines the payment standard for a family, how HATC determines total tenant payment for a family, and information on the payment standard and utility allowance schedule.
* An explanation of how HATC 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 HATC jurisdiction under portability procedures, the information must include an explanation of how portability works.
* TheHUD-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 HATC POLICY on providing information about families to prospective owners.
* HATC 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 HATC.
* The family obligations under the program, including any obligations of a welfare-to-work family.
* The grounds on which HATC may terminate assistance for a participant family because of family action or failure to act.
* PHA informal hearing procedures including when HATC is required to offer a participant family the opportunity for an informal hearing, and how to request the hearing.

If HATC 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 hosing 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 HATCs including names, addresses, and telephone numbers.

**Additional Items to be Included in the Briefing Packet**

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

HATC POLICY

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

* When HATC-owned units are available for lease, however the family has the right to select any eligible unit available for lease, and is not obligated to choose a HATC-owned unit.
* Information on how to fill out and file a housing discrimination complaint form.
* The publication *Things You Should Know (HUD-1140-OIG)* that explains the types of actions a family must avoid and the penalties for program abuse.
* Copy of “A Good Place to Live” HUD Brochure:
* Copy of EPA form “protect your family from lead in your home”
* What you should know About EIV

**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. HATC 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**

HATC POLICY

Unless otherwise noted below, families are required to report any changes in family

composition, income, or circumstances in writing within 30 days of the date it occurred.

**Family Obligations [24 CFR 982.551]**

Following is a listing of a participant family’s obligations under the HCV program (NOTE: Family Obligations are subject to change in accordance with changes in 24 CFR 982.551 or in the HATC POLICY:

* The family must supply any information that HATC 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 HATC 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.

HATC 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 HATC 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.

HATC POLICY

HATC 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, or living or housekeeping habits that cause damage to the unit or premises and criminal activity. Generally, the criteria to be used are whether the reason for the eviction was through no fault of the tenant or guests.

If the court signs a judgment in favor of the landlord and against the family for damages and/or unpaid rent and the family fails to pay the landlord or make arrangements to pay the landlord in installment payments, HATC may terminate the family’s rental assistance. If the family appeals the court judgment, HATC shall not terminate assistance pending a final decision on the appeal.

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

HATC POLICY

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

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

HATC POLICY

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

* The family must promptly notify HATC in writing if any family member no longer lives in the unit.
* If HATC has given approval, a foster child or a live-in aide may reside in the unit. HATC has the discretion to adopt reasonable policies concerning residency by a foster child or a live-in aide, and to define when PHA 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.

HATC 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 HATC to verify that the family is living in the unit or information related to family absence from the unit.
* The family must promptly notify HATC when the family is absent from the unit.

HATC 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 HATC 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 PHA 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 PHA 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 HATC 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**

HATC 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. HATC 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, HATC determines the appropriate number of bedrooms under HATC 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 HATC 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.
* If children are projected to be out of the home for a period of more than 6 months from the initial removal date but will be returned to the home, the voucher size may be reduced.
* A family that consists of a pregnant woman (with no other persons) must be treated as a two-person family.
* Any live-in aide (approved by the HATC to reside in the unit to care for a family member who is disabled or is at least 55 years of age) must be counted in determining the family unit size;
* Unless a live-in aide resides with a family, the family unit size for any family consisting of a single person must be either a zero- or one-bedroom unit, as determined under the HATC subsidy standards.

HATC POLICY

Considering the great demand for HCV assistance and the limited funding, HATC’s policy regarding subsidy standards is designed to help the maximum number of families in need. If a family is within the subsidy range, they will not be upgraded unless they are over the maximum limit, unless there is approval discretion as defined in 5-II.C.

HATC will assign one bedroom for each two persons within the household.

Live-in aides will be allocated a separate bedroom. A live-in aide’s family members may be allowed to reside in the unit, however, a larger bedroom size would not be considered and the total number of people in the dwelling unit must meet housing subsidy standards. The live-in aide or live-in aide’s family members will not be considered as remaining family members for continued occupancy purposes.

Single person families will be allocated one bedroom.

HATC 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 Bedroom 1-2

2 Bedrooms 2-4

3 Bedrooms 3-6

4 Bedrooms 4-8

5 Bedrooms 6-10

**5-II.C.** **EXCEPTIONS TO SUBSIDY STANDARDS**

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

HATC POLICY

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

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

HATC will notify the family of its determination within 30 business days of receiving the family’s request. If a participant family’s request is denied, the notice will inform the family of their right to request an informal hearing.

* Two elderly or disabled household members may be given separate bedrooms as a reasonable accommodation for a person with a disability or because of a medical necessity.
* When a child in the household reaches age 6, if a family makes the request in writing for an additional bedroom so children with different genders can have their own room, HATC will consider approving upgrading the voucher bedroom size if HATC has enough funds to support the total number of HUD allocated vouchers. HATC will not provide an upgrade in bedroom size if funds are not available to lease the maximum number of HUD allocated vouchers.
* Same gender children or household members would not be eligible for an upgrade in bedroom size so each could have their own room, unless as a reasonable accommodation for a person with a disability.
* A need for a separate bedroom for reason related to a family member’s disability, medical or health condition. For requests to approve an additional room for medical equipment, the additional room should be to accommodate a person with a disability, because it has been determined by a knowledgeable profession source (e.g., doctor or health professional) that the person with a disability needs their own room or because of medical necessity. The additional room should not be approved for the purpose of storing exercise equipment or other medical equipment; if such equipment could be stored in the common living space, one of the bedrooms, a garage, or storage area. An inspection of the unit with documentation to support the need for the additional room for medical equipment or medical necessity will be placed in the file.
* For a single person who is not elderly, disabled, or a remaining family member, an exception cannot override the regulatory limit of a zero or one bedroom [24 CFR 982.402(b) (8)].

**5-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, HATC 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 HATC has determined the family to be eligible for the program, and that HATC expects to have money available to subsidize the family if the family finds an approvable unit. However, HATC 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 HATC’s housing choice voucher program [Voucher, form HUD-52646]

A voucher can be issued to an applicant family only after HATC 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].

HATC POLICY

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

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

HATC POLICY

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

If HATC determines that there is insufficient funding after a voucher has been issued, HATC 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)].

HATC POLICY

The initial voucher term will be 60 calendar days.

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

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

HATC 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. All requests for extension must be received prior to the expiration date of the voucher with documentation showing why the family has been unsuccessful in locating a unit. Extensions are permissible at the sole discretion of HATC, which will be determined by the Section 8 Supervisor, up to a maximum of an additional 60 days. Discretionary policies related to extension and expiration of search time must be described in the HATC’s administrative plan [24 CFR 982.54].

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

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

HATC POLICY

No extensions will be granted except for the following:

Up to a minimum of 15 days and a maximum of two 30-day extensions are permissible at the sole discretion of HATC, which will be determined by the Section 8 Supervisor. Extensions may be granted only upon written request from the family if funding is available. Total of 120 days from date of initial voucher issuance.

At the sole discretion of HATC, additional extensions may be granted only in the following circumstances:

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

It is necessary due to reasons beyond the family’s control, as determined by HATC. Following is a list of extenuating circumstances that the HATC 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 HATC
* Whether family size or other special requirements make finding a unit difficult
* Obstacles because of limited English proficiency
* Obstacles due to transportation difficulties

Any request for an additional extension must include the reason(s) an additional extension is necessary. HATC 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 HATC **prior** to the expiration date of the voucher (or extended term of the voucher).

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

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

At its discretion, HATC 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 HATC approves or denies the request[24 CFR 982.4]. HATC’s determination not to suspend a voucher term is not subject to informal review [24 CFR 982.554(c) (4)].

HATC POLICY

When a Request for Tenancy Approval and proposed lease is received by HATC, the term of the voucher will be suspended/ tolled while HATC approves or denies the RTA, to include affordability review and inspection of the unit.

When HATC denies a RTA, the family will be notified in writing that the RTA has been denied and the clock on the voucher term will be restarted effective the date the notice is mailed. The notice will include the new expiration date of the voucher and a new RTA.

**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, HATC 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].

HATC POLICY

If an applicant family’s voucher term or extension expires before the family has submitted a Request for Tenancy Approval (RTA), HATC will require the family to reapply for assistance.

Within 10 business days after the expiration of the voucher term or any extension, HATC 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. An informal review is not required for voucher expiration.

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

**PART I: ANNUAL INCOME**

**6-I.A.** **OVERVIEW**

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

5.609 Annual income.

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

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

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

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

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

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

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

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

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

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

**Temporarily Absent Family Members**

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

HATC POLICY

Generally an individual who is or is expected to be absent from the assisted unit for 90 consecutive days or less is considered temporarily absent and continues to be considered a family member. Generally an individual who is or is expected to be absent from the assisted unit for more than 90 consecutive days is considered permanently absent and no longer a family member. Under no circumstances shall a family member be absent from the unit for a period exceeding 90 consecutive days unless HATC determines that urgent or unusual circumstances exist and the household has obtained prior written approval from HATC. Exceptions to this general policy are discussed below.

***Absent Students***

HATC 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 HATC indicating that the student has established a separate household or the family declares that the student has established a separate household. To be considered a family member, the student would need to live at the assisted families’ residence at semester breaks and during the summer break.

***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].

HATC POLICY

If a child has been removed from the assisted unit and placed in foster care, HATC will make every attempt to verify with the appropriate agency whether and when the child is expected to be returned to the assisted unit. Unless the agency confirms that the child has been permanently removed from the assisted unit, the child will be counted as a family member. However, the household will not receive the $480 dependent allowance until the child is reunited with the assisted family. If more than 180 days elapse and the child has not been returned, then if applicable, HATC shall notify the family in writing that they will be subject to a voucher downgrade based on their remaining household composition.

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

HATC POLICY

An employed head, spouse, or co-head absent from the unit more than 90 consecutive days due to employment or to serve in the armed forces (not including pay for exposure to hostile fire) will continue to be considered a family member. The income from such employment will be included for purposes of determining rent.

**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].

HATC POLICY

If there is a question about the status of a family member, HATC 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.

**Joint Custody of Dependents**

HATC 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 at least 50% of the time. “51% of the time” is defined as 183 days of the year, which do not have to run consecutively.

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

**Caretakers for a Child**

HATC POLICY

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

(1) If a responsible agency has determined that another adult is to be brought into the 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’ timeframe, the caretaker must request to be added to the lease through HATC’s admissions process. The caretaker will be subject to HATC’s screening criteria and must be deemed eligible in order to be added to the lease. After the 90 days has elapsed and the add-on process has been completed, the caretaker will be considered a family member unless information is provided that could confirm that the caretaker’s role is temporary. In such cases HATC 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, as head of household, upon successfully completing the add-on process. The caretaker will be required to sign an agreement where he/she will agree to preserve the rental assistance for the original household member(s)/children. The caretaker will agree to terminate the lease should the remaining household members move out of the household.

(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**

HATC 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**

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

All PHAs are required to use HUD’s Enterprise Income Verification (EIV) system. HUD allows PHAs to use pay-stubs to project income once EIV data has been received in such cases where the family does not dispute the EIV employer data and where HATC does not determine it is necessary to obtain additional third-party data.

HATC POLICY

Whenever possible, HATC will use HUD’s EIV system. When EIV is obtained and the family does not dispute the EIV employer data, HATC will use current tenant-provided documents to project annual income. When the tenant provided documents are pay stubs, HATC will make every effort to obtain at least 6 consecutive pay stubs dated within the last 60 days.

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

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

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

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

***Known Changes in Income***

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

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

The family may present information that demonstrates that implementing a change before its effective date would create a hardship for the family. In such cases HATC 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 HATC’s policy on re-examinations does not require interim re-examinations for other types of changes.

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

**Projecting Income**

In HUD’s EIV webcast of January 2008, HUD stated that PHAs are 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)].

HATC POLICY

For persons who regularly receive bonuses or commissions, HATC will verify and then average amounts received for the two years preceding admission or reexamination. If only a one-year history is available, HATC will use the prior year amounts. In either case the family may provide, and HATC 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, HATC 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].

HATC 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. A pattern of temporary employment during the previous 12 months would NOT be considered sporadic income and would be included in the annual income for purposes of determining rent. The inclusion of this income may be disputed if there has been a change in circumstances.

***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)
* 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 HATC 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 HATC’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)].

HATC POLICY

HATC 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].

HATC 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, HATC 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 HATC'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.

HATC POLICY

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

***Earned Income Tax Credit***

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

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

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

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

**Eligibility**

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

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

**Calculation of the Disallowance**

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

HATC POLICY

HATC defines *prior income,* or *prequalifying income,* as the family member’s last certified income prior to qualifying for the EID. This income amount will be recorded on the family’s last Form 50058.

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 consecutive.

HATC 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.

This applies regardless of whether the eligible member reported the employment or increase in earnings in a timely manner (within 30 days of occurrence) or not. Example: an eligible family member reports a new job on June 12, 2008; HATC’s third party verification confirms that the family member actually started employment on January 5, 2008. The initial EID exclusion period for the family member will begin on February 1, 2008.

***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 consecutive.

***Lifetime Limitation.***

The EID has a two-year (24-month) lifetime maximum. The two-year eligibility period begins at the same time that the initial exclusion period begins and ends 24 months later. 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.

HATC POLICY

During the 24-month eligibility period, HATC will schedule and conduct an interim re-examination 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).

**Individual Savings Accounts [24 CFR 960.255(d)]**

HATC POLICY

HATC chooses not to establish a system of individual savings accounts (ISA’s) for Families who qualify for the EID.

**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].

HATC POLICY

To determine business expenses that may be deducted from gross income, the HATC 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 HATC to deduct from gross income expenses for business expansion.

HATC 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 HATC to deduct from gross income the amortization of capital indebtedness.

HATC POLICY

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

HATC 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, HATC 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**

HATC 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 HATC 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, HATC 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 PHA policies related to each type of asset.

**General Policies**

**Income from Assets**

HATC 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 HATC 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) HATC 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, HATC can take into consideration past rental income along with the prospects of obtaining a new tenant.

HATC 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 HATC to show why the asset income determination does not represent the family’s anticipated asset income. Assets owned by every family member, including minors are reviewed.

**Valuing Assets**

The calculation of asset income sometimes requires HATC 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.

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

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

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

***Jointly Owned Assets***

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

HATC POLICY

If an asset is owned by more than one person and any family member has unrestricted access to the asset, HATC 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, HATC will prorate the asset according to the percentage of ownership. If no percentage is specified or provided for by state or local law, HATC 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 HATC 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 HATC to set a threshold below which assets disposed of for less than fair market value will not be counted [HCV GB, p. 5-27].

HATC POLICY

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

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

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

*Separation or Divorce*

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

HATC 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*

HATC 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. HATC may verify the value of the assets disposed of if other information available to HATC 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.

HATC POLICY

In determining the value of a checking account, HATC will use the average monthly balance for the last six months.

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

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

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

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

HATC POLICY

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

How anticipated income from an investment account will be calculated depends on whether the rate of return is known. For assets that are held in an investment account with a known rate of return (e.g., savings certificates), asset income will be calculated based on that known rate (market value multiplied by rate of earnings). When the anticipated rate of return is not known (e.g., stocks), HATC 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].

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

* Equity accounts in HUD homeownership programs [24 CFR5.603(b)]
* The value of a home currently being purchased with assistance under the HCV program Homeownership Option for the first 10 years after the purchase date of the home [24 CFR 5.603(b)]
* Equity in 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]

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.

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

***Trusts***

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

*Revocable Trusts*

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

*Non-revocable Trusts*

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

***Retirement Accounts***

*Company Retirement/Pension Accounts*

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

HATC POLICY

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

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

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

HATC POLICY

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

***Life Insurance***

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

**6-I.H.** **PERIODIC PAYMENTS**

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

**Periodic Payments Included in Annual Income**

* Periodic payments from sources such as social security, unemployment and welfare assistance, annuities, insurance policies, child support payments, 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 child support 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)].

HATC POLICY

When a delayed-start payment is received and reported during the period in which HATC is processing an annual re-examination, HATC will adjust the tenant rent 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 HATC.

See the chapter on re-examinations for information about a family’s obligation to report lump-sum receipts between annual re-examinations.

**Periodic Payments Excluded from Annual Income**

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

HATC POLICY

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

* Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home [24 CFR 5.609(c)(16)]
* Amounts received under the Low-Income Home Energy Assistance Program (42 U.S.C. 1626(c)) [24 CFR 5.609(c)(17)]
* Amounts received under the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858q) [24 CFR 5.609(c)(17)]
* Earned Income Tax Credit (EITC) refund payments (26 U.S.C. 32(j)) [24 CFR 5.609(c) (17)]. *Note:* EITC may be paid periodically if the family elects to receive the amount due as part of payroll payments from an employer.
* Lump sums received as a result of delays in processing Social Security and SSI payments (see section 6-I.J.) [24 CFR 5.609(b) (4)].
* 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]**

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

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

***Offsets***

The amount of the imputed income is offset by the amount of additional income the family begins to receive after the sanction is imposed. When the additional income equals or exceeds the imputed welfare income, the imputed income is reduced to zero [24 CFR 5.615(c) (4)].

**6-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**

HATC must count alimony or child support amounts awarded as part of a divorce or separation agreement, including payments made in arrears.

HATC POLICY

HATC will count court-awarded amounts for alimony and child support unless the HATC 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**

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

HATC 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.

HATC will count as income monetary and nonmonetary contributions or gifts to a family that may come from nonrecurring or different sources, but the family is able to pay an expense on a regular basis. For example, a family pays for cable television service monthly and receives monetary contributions to pay if from a different source each month. The cost of the cable service will be included as income.

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

**6-I.L. STUDENT FINANCIAL ASSISTANCE [24 CFR 5.609(b) (9)]**

In 2005, Congress passed a law (for section 8 programs only) requiring that certain student financial assistance be included in annual income. Prior to that, the full amount of student financial assistance was excluded. For some students, the full exclusion still applies.

**Student Financial Assistance Included in Annual Income [24 CFR 5.609(b) (9) and FR 4/10/06]**

The regulation requiring the inclusion of certain student financial assistance applies only to students who satisfy all of the following conditions:

* They are enrolled in an institution of higher education, as defined under the Higher Education Act (HEA) of 1965.
* They are seeking or receiving Section 8 assistance on their own—that is, apart from their parents—through the HCV program, the project-based certificate program, the project-based voucher program, or the moderate rehabilitation program.
* They are under 24 years of age **OR** they have no dependent children.

For students who satisfy these three conditions, any financial assistance in excess of tuition received: (1) under the 1965 HEA, (2) from a private source, or (3) from an institution of higher education, as defined under the 1965 HEA, must be included in annual income.

To determine annual income in accordance with the above requirements, the HATC will use the definitions of *dependent child, institution of higher education,* and *parents* in Section 3-II.E, along with the following definitions [FR 4/10/06, pp. 18148-18150]:

* *Assistance under the Higher Education Act of 1965* includes Pell Grants, Federal Supplement Educational Opportunity Grants, Academic Achievement Incentive Scholarships, State Assistance under the Leveraging Educational Assistance Partnership Program, the Robert G. Byrd Honors Scholarship Program, and Federal Work Study programs.
* *Assistance from private sources* means assistance from nongovernmental sources, including parents, guardians, and other persons not residing with the student in an HCV assisted unit.

HATC POLICY

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

* *Tuition* will have the meaning given this term by the institution of higher education in which the student is enrolled.

**Student Financial Assistance Excluded from Annual Income [24 CFR 5.609(c) (6)]**

Any student financial assistance not subject to inclusion under 24 CFR 5.609(b) (9) is fully excluded from annual income under 24 CFR 5.609(c) (6), whether it is paid directly to the student or to the educational institution the student is attending. This includes any financial assistance received by:

* Students residing with parents who are seeking or receiving Section 8 assistance
* Students who are enrolled in an educational institution that does **not** meet the 1965 HEA definition of *institution of higher education*
* Students who are over 23 **AND** have at least one dependent child, as defined in Section 3‑II.E
* Students who are receiving financial assistance through a governmental program not authorized under the 1965 HEA.
* **6-I.M.** **ADDITIONAL EXCLUSIONS FROM ANNUAL INCOME**

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

* Reimbursement of medical expenses [24 CFR 5.609(c)(4)]
* Amounts received by participants in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred and which are made solely to allow participation in a specific program [24 CFR 5.609(c)(8)(iii)]
* Amounts received by a person with a disability that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS) [(24 CFR 5.609(c)(8)(ii)]
* Reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by persons who were persecuted during the Nazi era [24 CFR 5.609(c)(10)]
* Adoption assistance payments in excess of $480 per adopted child [24 CFR 5.609(c)(12)]
* Refunds or rebates on property taxes paid on the dwelling unit [24 CFR 5.609(c)(15)]
* Amounts paid by a state agency to a family with a member who has a developmental disability and is living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home [24 CFR 5.609(c)(16)]
* Amounts specifically excluded by any other federal statute [24 CFR 5.609(c) (17)]. HUD publishes an updated list of these exclusions periodically. It includes:

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

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

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

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

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

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

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

(h) The first $2,000 of per capita shares received from judgment funds awarded by the Indian Claims Commission or the U. S. Claims Court, the interests of individual Indians in trust or restricted lands, including the first $2,000 per year of income received by individual Indians from funds derived from interests held in such trust or restricted lands (25 U.S.C. 1407-1408)

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

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

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

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

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

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

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

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

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

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

**PART II: ADJUSTED INCOME**

**6-II.A.** **INTRODUCTION**

**Overview**

HUD regulations require PHAs 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 [PHA] must deduct the following amounts from annual income:

(1) $480 for each dependent;

(2) $400 for any elderly family or disabled family;

(3) The sum of the following, to the extent the sum exceeds three percent of annual income:

(i) Unreimbursed medical expenses of any elderly family or disabled family;

(ii) Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with disabilities, to the extent necessary to enable any member of the family (including the member who is a person with disabilities) to be employed. This deduction may not exceed the earned income received by family members who are 18 years of age or older and who are able to work because of such attendant care or auxiliary apparatus; and

(4) Any reasonable child care expenses necessary to enable a member of the family to be employed or to further his or her education.

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

**Anticipating Expenses**

HATC POLICY

Generally, HATC will use current circumstances to anticipate expenses. When possible, for costs that are expected to fluctuate during the year (e.g., child care during school and non-school periods and cyclical medical expenses), HATC will estimate costs based on historic data and known future costs.

If an elderly or disabled family has an accumulated debt for medical or disability assistance expenses, HATC will include as an eligible expense the portion of the debt that the family expects to pay during the period for which the income determination is being made. However, amounts previously deducted will not be allowed even if the amounts were not paid as expected in a preceding period. In addition, the family will be required to provide documentation of the reported debt for medical or disability assistance expenses. HATC may also 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]. Current medical expenses within the annual renewal period will be accepted for consideration. Upon annual re-certification, an accumulation of medical expenses incurred during the previous year, but not more than one year, will be considered for review.

**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.”

HATC POLICY

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

|  |  |
| --- | --- |
| **Summary of Allowable Medical Expenses from IRS Publication 502** | |
| Services of medical professionals  Surgery and medical procedures that are necessary, legal, non-cosmetic  Services of medical facilities  Hospitalization, long-term care, and in-home nursing services  Prescription medicines and insulin, but not nonprescription medicines even if recommended by a doctor  Improvements to housing directly related to medical needs (e.g., ramps for a wheel chair, handrails) | Substance abuse treatment programs  Psychiatric treatment  Ambulance services and some costs of transportation related to medical expenses  The cost and care of necessary equipment related to a medical condition (e.g., eyeglasses/lenses, hearing aids, crutches, and artificial teeth)  Cost and continuing care of necessary service animals  Medical insurance premiums or the cost of a health maintenance organization (HMO) |
| **Note:** This chart provides a summary of eligible medical expenses only. Detailed information is provided in IRS Publication 502. Medical expenses are considered only to the extent they are not reimbursed by insurance or some other source. | |

**Families That Qualify for Both Medical and Disability Assistance Expenses**

HATC POLICY

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

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

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

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

**Earned Income Limit on the Disability Assistance Expense Deduction**

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

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

HATC 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, HATC 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 HATC determines that the disability assistance expenses enable more than one family member to work, the expenses will be capped by the sum of the family members’ incomes.

**Eligible Disability Expenses**

Examples of auxiliary apparatus are provided in the *HCV Guidebook* as follows: “Auxiliary apparatus are items such as wheelchairs, ramps, adaptations to vehicles, or special equipment to enable a blind person to read or type, but only if these items are directly related to permitting the disabled person or other family member to work” [HCV GB, p. 5-30].

HUD advises PHAs to further define and describe auxiliary apparatus [VG, p. 30].

***Eligible Auxiliary Apparatus***

HATC 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.

HATC 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, HATC 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.

HATC POLICY

HATC determines the reasonableness of the expenses based on typical costs of care or apparatus in the locality. To establish typical costs, HATC will collect information from organizations that provide services and support to persons with disabilities. A family may present, and the HATC 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**

HATC POLICY

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

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

**6-II.F.** **CHILD CARE EXPENSE DEDUCTION**

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

**Clarifying the Meaning of *Child* for This Deduction**

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

**Qualifying for the Deduction**

***Determining Who Is Enabled to Pursue an Eligible Activity***

HATC 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, HATC 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***

HATC POLICY

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

***Furthering Education***

HATC POLICY

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

***Being Gainfully Employed***

HATC POLICY

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

**Earned Income Limit on Child Care Expense Deduction**

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

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

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

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

HATC POLICY

When the child care expense being claimed is to enable a family member to work, only one family member’s income will be considered for a given period of time. When more than one family member works during a given period, HATC 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. HATC may not refuse to give a family the child care expense deduction because there is an adult family member in the household that may be available to provide child care [VG, p. 26].

***Allowable Child Care Activities***

HATC POLICY

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

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

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

***Necessary and Reasonable Costs***

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

HATC POLICY

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

To establish the reasonableness of child care costs, HATC will use the schedule of child care costs from the local welfare agency. Families may present, and HATC will consider, justification for costs that exceed typical costs in the area.

**PART III: CALCULATING FAMILY SHARE AND HATC 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 of $50 that is established by HATC

HATC 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]***

HATC POLICY

Welfare rent does not apply in this locality.

***Minimum Rent [24 CFR 5.630]***

HATC POLICY

The minimum rent for this locality is $50.

**Family Share [24 CFR 982.305(a) (5)]**

If a family chooses a unit with a gross rent (rent to owner plus an allowance for tenant-paid utilities) that exceeds HATC’s applicable payment standard: (1) the family will pay more than the TTP, and (2) at initial occupancy HATC 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.)

**PHA Subsidy [24 CFR 982.505(b)]**

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

**Utility Reimbursement [24 CFR 982.514(b)]**

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

HATC POLICY

HATC will make utility reimbursement check out directly to the utility company. In order for HATC to mail the utility reimbursement check to the utility company, the head of household name must appear in the utility bill, as to where the name and the account number match the utility bill.

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

HATC POLICY

HATC has established a minimum rent of $50.

**Overview**

If HATC establishes a minimum rent greater than zero, HATC 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 HATC 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.

HATC 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. HATC does not consider a family appealing a denial decision under eligibility determination as “awaiting an eligibility determination. “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.

HATC 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.

HATC POLICY

For a family to qualify under this provision, the loss of employment (or source of income) must have been involuntary, and the income in question must have been included in the calculation of the family’s annual income.

(4) A death has occurred in the family.

HATC POLICY

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

(5) The family has experienced other circumstances determined by HATC.

HATC POLICY

HATC has not established any additional hardship criteria.

**Implementation of Hardship Exemption**

***Determination of Hardship***

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

HATC then determines whether the financial hardship exists and whether the hardship is temporary or long-term.

HATC POLICY

HATC defines temporary hardship as a hardship expected to last 90 days or less. Long-term hardship is defined as a hardship expected to last more than 90 days.

When the minimum rent is suspended, the family share reverts to the highest of the remaining components of the calculated TTP. The example below demonstrates the effect of the minimum rent exemption.

|  |  |  |  |
| --- | --- | --- | --- |
| **Example: Impact of Minimum Rent Exemption**  Assume the HATC has established a minimum rent of $35. | | | |
| **Family Share – No Hardship** | | **Family Share – With Hardship** | |
| $0  $15  N/A  $35 | 30% of monthly adjusted income  10% of monthly gross income  Welfare rent  Minimum rent | $0  $15  N/A  $35 | 30% of monthly adjusted income  10% of monthly gross income  Welfare rent  Minimum rent |
| Minimum rent applies.  TTP = $35 | | Hardship exemption granted.  TTP = $15 | |

HATC 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.

HATC will make the determination of hardship within 30 calendar days.

***No Financial Hardship***

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

HATC POLICY

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

***Temporary Hardship***

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

HATC POLICY

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

***Long-Term Hardship***

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

HATC 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**

HATC’s schedule of payment standards is used to calculate housing assistance payments for HCV families. This section covers the application of HATC’s payment standards. The establishment and revision of HATC’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 HATC’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 HATC 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, HATC must use the appropriate payment standard for the exception area.

HATC is required to pay a monthly housing assistance payment (HAP) for a family that is the lower of (1) the payment standard for the family minus the family’s TTP or (2) the gross rent for the family’s unit minus the TTP.

If during the term of the HAP contract for a family’s unit, the owner lowers the rent, the HATC 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 HATC 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 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. HATC will determine the payment standard for the family as follows:

**Step 1:** At the first regular reexamination following the decrease in the payment standard, HATC 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:** HATC will compare the payment standard from step 1 to the payment standard last used to calculate the monthly housing assistance payment for the family. The payment standard used by the HATC at the first regular reexamination following the decrease in the payment standard will be the higher of these two payment standards. HATC 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 HATC 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, HATC is allowed to establish a higher payment standard for the family within the basic range.

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

**Overview**

A HATC-established utility allowance schedule is used in determining family share and PHA subsidy. HATC 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 HATC subsidy standards. See Chapter 5 for information on HATC’s subsidy standards.

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

**Reasonable Accommodation**

HCV program regulations require HATC to approve a utility allowance amount higher than shown on HATC’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, HATC will approve an allowance for air-conditioning, even if HATC has determined that an allowance for air-conditioning generally is not needed.

The family must request the higher allowance and provide HATC 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, HATC must use HATC current utility allowance schedule [24 CFR 982.517(d) (2)].

HATC 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. HATC must prorate the assistance provided to a mixed family. HATC will first determine assistance as if all family members were eligible and then prorate the assistance based upon the percentage of family members that actually are eligible. For example, if the HATC subsidy for a family is calculated at $500 and two of four family members are ineligible, the HATC 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, child support payments, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump-sum amount or prospective monthly amounts for the delayed start of a periodic amount (except as provided in paragraph (c)(14) of this section);

(5) Payments in lieu of earnings, such as unemployment and disability compensation, worker's compensation and severance pay (except as provided in paragraph (c)(3) of this section);

(6) Welfare assistance payments.

(i) Welfare assistance payments made under the Temporary Assistance for Needy Families (TANF) program are included in annual income only to the extent such payments:

(A) Qualify as assistance under the TANF program definition at 45 CFR 260.31[[1]](#footnote-1); and

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

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

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

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

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

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

(9) For section 8 programs only and as provided in 24 CFR 5.612, any financial assistance, in excess of amounts received for tuition, that an individual receives under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.), from private sources, or from an institution of higher education (as defined under the Higher Education Act of 1965 (20 U.S.C. 1002)), shall be considered income to that individual, except that financial assistance described in this paragraph is not considered annual income for persons over the age of 23 with dependent children. For purposes of this paragraph, “financial assistance” does not include loan proceeds for the purpose of determining income.

**HHS DEFINITION OF "ASSISTANCE"**

**45 CFR: General Temporary Assistance for Needy Families**

**260.31 What does the term “assistance” mean?**

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

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

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

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

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

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

(b) [The definition of “assistance”] excludes: (1) Nonrecurring, short-term benefits that:

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

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

(iii) Will not extend beyond four months.

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

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

(4) Refundable earned income tax credits;

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

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

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

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| **EXHIBIT 6-2 ANNUAL INCOME EXLUSIONS** |

**24 CFR 5.609**

***(c)*** *Annual income does not include the following:*

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

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

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

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

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

(6) Subject to paragraph (b) (9) of this section, the full amount of student financial assistance paid directly to the student or to the educational institution;

(7) The special pay to a family member servicing 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 edibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS)

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

(iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed $200 per month) received by a resident for performing a service for the HATC or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the HATC'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 HATCs and housing owners identifying the benefits that qualify for this exclusion. Updates will be published and distributed when necessary. [See the following chart for a list of benefits that qualify for this exclusion.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**EXHIBIT 6-3: TREATMENT OF FAMILY ASSETS**

**24 CFR 5.603(b) Net Family Assets**

(1) Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded.

(2) In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining annual income under Sec. 5.609.

(3) In determining net family assets, HATCs or owners, as applicable, shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefore. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

(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 two 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 24 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 24 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 benefits 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 HATC 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 HATC, the welfare agency will inform HATC 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 HATC of any subsequent changes in the term or amount of such specified welfare benefit reduction. HATC 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 HATC's interim or regular reexamination of family income and composition, during the term of the welfare benefits reduction (as specified in information provided to HATC 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) HATC 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 HATC decision.*

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

(2) Section 8 participants. 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 HATC 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 HATC denies the family's request to modify such amount, HATC shall give the family written notice of such denial, with a brief explanation of the basis for HATC determination of the amount of imputed welfare income. Such notice shall also state that if the family does not agree with HATC determination, the family may request an informal hearing on the determination under HATC hearing procedure.

***(e)*** *PHA relation with welfare agency.*

(1) HATC must ask welfare agencies to inform HATC 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 HATC written notice of such reduction, the family's annual incomes shall include the imputed welfare income because of the specified welfare benefits reduction.

(2) HATC 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 HATC. However, HATC 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. HATC shall be entitled to rely on the welfare agency notice to HATC of the welfare agency's determination of a specified welfare benefits reduction.

**Chapter 7**

**VERIFICATION**

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

**INTRODUCTION**

HATC 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. HATC must not pass on the cost of verification to the family.

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

**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 HATC or HUD determines is necessary to the administration of the program and must consent to HATC 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 HATC 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, HATC 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 PHA procedures.

**7-I.B. OVERVIEW OF VERIFICATION REQUIREMENTS**

**HUD’s Verification Hierarchy**

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

HATC POLICY

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

Up-front Income Verification (UIV) whenever available

Third-party Written Verification

Third-party Oral Verification

Review of Documents

Self-Certification

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

**Requirements for Acceptable Documents**

HATC POLICY

Any documents used for verification must be the original (not photocopies) and generally must be dated within 60 calendar days of the date they are provided to HATC. The documents must not be damaged, altered or in any way illegible.

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

Print-outs from web pages are considered original documents.

HATC 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.

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

**File Documentation**

HATC 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 HATC 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.

HATC POLICY

HATC will document, in the family file, the following:

Reported family annual income

Value of assets

Expenses related to deductions from annual income

Other factors influencing the adjusted income or income-based rent determination

When HATC is unable to obtain 3rd party verification, HATC will document in the family file the reason that third-party verification was not available and will place a photocopy of any original document(s) in the family file. [24 CFR 960.259(c) (1); VG, p.15]

**7-I.C. UP-FRONT INCOME VERIFICATION (UIV)**

Up-front income verification (UIV) refers to HATC’s use of the verification tools available from independent sources that maintain computerized information about earnings and benefits. UIV will be used to the extent that these systems are available to HATC.

HATC POLICY

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

HUD’s EIV system (when it is available to the HATC)

Texas Workforce Commission wage and benefits records

Office of the Attorney General Child support income

The Work Number

Other resources that becomes available to HATC

There may be legitimate differences between the information provided by the family and UIV-generated information. No adverse action can be taken against a family until HATC 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 HATC. See Chapter 6 for HATC’s policy on the use of UIV/EIV to project annual income.

**Use of HUD’s Enterprise Income Verification (EIV) System**

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

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

***Tenant Income Data (TID) Reports***

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

HATC POLICY

HATC will obtain TID reports for annual reexaminations. Reports will be generated as part of the regular reexamination process.

TID reports will be compared to family-provided information as part of the annual reexamination process. TID reports may be used in the calculation of annual income, as described in Chapter 6.I.C. TID reports may also be used to meet the regulatory requirement for third party verification, as described above. Policies for resolving discrepancies between TID reports and family-provided information will be resolved as described in Chapter 6.I.C. and in this chapter.

TID reports will be used in interim reexaminations when it is necessary to verify and calculate earned income, unemployment benefits, Social Security and/or SSI benefits, and to verify that families claiming zero income are not receiving income from any of these sources.

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

When HATC determines through TID reports and third party verification that a family has concealed or under-reported income, corrective action will be taken pursuant to the policies in Chapter 14, Program Integrity.

**Income Discrepancy Reports (IDRs)**

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

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

HATC POLICY

HATC will generate and review IDRs on a monthly basis. The IDR threshold percentage will be adjusted as necessary based on the findings in the IDRs.

In reviewing IDRs, HATC will begin with the largest discrepancies.

When HATC determines that a participant appearing on the IDR 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 IDR processing until a subsequent interim or annual reexamination has been completed.

When it appears that a family may have concealed or under-reported income, HATC will request third-party written verification of the income in question.

When HATC determines through IDR review and third party verification that a family has concealed or under-reported income, corrective action will be taken pursuant to the policies in Chapter 14, Program Integrity.

***EIV Identity Verification***

The EIV system verifies tenant identities against SSA records. These records are compared to PIC data for a match on Social Security number, name, and date of birth.

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

HATC POLICY

HATC will identify participants whose identity verification has failed as part of the annual reexamination process.

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

**7-I.D. THIRD-PARTY WRITTEN AND ORAL VERIFICATION**

**Reasonable Effort and Timing**

Unless third-party verification is not required as described below, HUD requires HATC to make at least two unsuccessful attempts to obtain third-party verification before using another form of verification [VG, p. 15].

HATC POLICY

HATC will diligently seek third-party verification using a combination of written and oral requests to verification sources. Information received orally from third parties may be used either to clarify information provided in writing by the third party or as independent verification when written third-party verification is not received in a timely fashion.

HATC may mail, fax, e-mail, or hand deliver third-party written verification requests and will accept third-party responses using any of these methods. HATC will send a written request for verification to each required source within 5 days of securing a family’s authorization for the release of the information and give the source 10 days to respond in writing. If a response has not been received by the 11th day, HATC will request third-party oral verification.

HATC will make a minimum of two attempts, one of which may be oral, to obtain third-party verification. A record of each attempt to contact the third-party source (including no-answer calls) and all contacts with the source will be documented in the file. Regarding third-party oral verification, PHA 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 HATC will accept the verbal response as oral verification but will also request that the source complete and return any verification forms that were provided.

If a third party agrees to confirm in writing the information provided orally, HATC will wait no more than 5 days for the information to be provided. If the information is not provided by the 6th day, HATC will use any information provided orally in combination with reviewing family-provided documents.

**When Third-Party Information is Late**

When third-party verification has been requested and the timeframes for submission have been exceeded, HATC will use the information from documents on a provisional basis. If HATC later receives third-party verification that differs from the amounts used in income and rent determinations and it is past the deadline for processing the reexamination, HATC will conduct an interim reexamination to adjust the figures used for the reexamination, regardless of HATC’s interim reexamination policy.

**When Third-Party Verification is Not Required**

***Primary Documents***

Third-party verification is not required when legal documents are the primary source, such as a birth certificate or other legal documentation of birth.

***Certain Assets and Expenses***

HATC will accept a self-certification from a family as verification of assets disposed of for less than fair market value [HCV GB,p. 5-28].

HATC will determine that third-party verification is not available if the asset or expense involves an insignificant amount, making it not cost-effective or reasonable to obtain third-party verification [VG, p. 15].

HATC POLICY

HATC will use review of documents in lieu of requesting third-party verification when the market value of an individual asset or an expense is less than $850 annually ***and*** the family has original documents that support the declared amount.

Checking and savings accounts earning less than$20 annually will have a minimal impact on the TTP. It is not cost effective to obtain third party verification for these types of accounts, and document review is acceptable. Statements must contain a minimum: bank name, client name, account type, balance and interest information.

***Certain Income, Asset and Expense Sources***

HATC will determine that third-party verification is not available when it is known that an income source does not have the ability to provide written or oral third-party verification [VG, p. 15]. For example, HATC will rely upon review of documents when HATC determines that a third party's privacy rules prohibit the source from disclosing information.

HATC POLICY

HATC also will determine that third-party verification is not available when there is a service charge for verifying an asset or expense *and* the family has original documents that provide the necessary information.

HATC will document in the family file the reason that the third-party verification was not available and will place a photocopy of the original document(s) in the family file. [VG, p.15]

If the family cannot provide original documents, HATC will pay the service charge required to obtain third-party verification, unless it is not cost effective in which case a self-certification will be acceptable as the only means of verification. The cost of verification will not be passed on to the family.

The cost of postage and envelopes to obtain third-party verification of income, assets, and expenses is not an unreasonable cost [VG, p. 18].

**7-I.E. REVIEW OF DOCUMENTS**

**Using Review of Documents as Verification**

HATC POLICY

If HATC has determined that third-party verification is not available or not required, HATC will use documents provided by the family as verification. HATC will document the unsuccessful attempts and justification for document review in the family’s file.

HATC may also review documents when necessary to help clarify information provided by third parties. In such cases HATC will document in the file how HATC arrived at a final conclusion about the income or expense to include in its calculations.

**7-I.F. SELF-CERTIFICATION**

HATC POLICY

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

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

**Part II: Verifying FAMILY INFORMATION**

**7-II.A. VERIFICATION OF LEGAL IDENTITY**

HATC POLICY

HATC 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 | 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 HATC’s discretion, a third party who knows the person may attest to the person’s identity.The certification must be provided in a format acceptable to HATC and be signed in the presence of a HATC representative or PHA notary public.

Legal identity will be verified on an as needed basis.

**7-II.B. DOCUMENTATION OF SOCIAL SECURITY NUMBERS [24 CFR 5.216]**

HATC must request the applicant and participant (including each member of the household), who are not exempt under SECTION 3-IIC, to provide documentation of each disclosed SSN. Acceptable evidence of the SSN consists of:

* An original SSN card issued by SSA:
* An original SSA-issued documents, which contains the name and SSN of the individual; or
* An original document issued by a federal, state, or local government agency, which contains the name and SSN of the individual

It should be noted that most (if not all) individuals who are lawfully present in the U.S. have been assigned a SSN. Many existing laws require the disclosure of the SSN for various purposes. All applicants and participants, including each member of the household (with the exception of those individuals noted in Section 5 of this Notice) are required to disclose his/her assigned SSN.

The SSA issues three types of Social Security cards depending on individuals’ citizen or noncitizen status and whether or not a noncitizen is authorized by the Department of Homeland Security (DHS) to work in the United States. They include:

* The first type of a card shows the individual’s name and SSN only. This is the card most people have and reflects the fact that the holder can work in the U.S. without restriction. SSA issues this card to:
* U.S. citizens; or
* Noncitizens lawfully admitted to the United States for permanent residents and noncitizens with DHS permission to work permanently in the United States (i.e. refugees and asylees).
* The second type of card bears, in addition to the individual’s name and SSN, the legend: **“NOT VALID FOR EMPLOYMENT”**. SSA issues this card to lawful noncitizens who do have DHS permission to work, but are required by law to provide a SSN to obtain general assistance benefits that they already qualified for.
* The third type of card bears, in addition to the individual’s name and SSN, the legend: **“VALID FOR WORK ONLY WITH DHS AUTHORIZATION”**. SSA issues this card to people with DHS permission to work temporarily in the United States.

SSA verifies all noncitizens’ documents with DHS before a SSN card is issued to a noncitizen.

**7-II.B.A. REJECTION OF SOCIAL SECURITY NUMBER DOCUMENTATION:**

HATC may reject documentation of the SSN provided by the applicant or participant for only the following reasons:

* The document is not an original document; or
* The original document has been altered, mutilated, or not legible; or
* The document appears to be a forged document (i.e. does not appear to be authentic).

HATC should explain to the applicant or participant, the reason(s) the document is not acceptable and request the individual to obtain acceptable documentation of the SSN and submit it to HATC within a specified time frame.

**7-II.B.B. VERIFICATION OF THE SSN:**

HATC shall verify each disclosed SSN by:

1. Obtaining the documentation listed under Section 7-**II.B** from applicants and participants (including each member of the household);
2. Making a copy of the original documentation submitted, returning it to the individual, and retaining the copy in the file folder; and
3. Recording the SSN on line 3n of the form HUD-50058, and transmitting the form HUD-55058 to HUD within a timely manner, PHAs are encouraged to transmit the form HUD-55058 within 30 calendar days of completing the form, to enable HUD to initiate its computer matching efforts: Note: **not applicable to applicants.**

HUD, via its computer-matching program with the SSA, will validate the SSN (along with the individual’s name and date of birth) against the SSA’s database. EIV will report the status of the identify verification process as **Verified, Failed, Not Verified,** or **Deceased** on the household **Summary Report**. Below is a summary of the action HATC should take for each identity verification status.

**Verified**. If the information matches the SSA database, the individual’s identity verification status will be **Verified** (See Exhibit 1 below). No action is required by HATC.

**Failed**. If the information does not match the SSA database, the identity verification status will be **failed** (see Exhibit 2 below). See Section 16 of this Notice for guidance on how to correct personal identifiers of individual whose identity verification status is failed.

**Not Verified**. If an individual’s identity verification status is **Not Verified**, this means that HUD has not yet sent the tenant’s personal identifiers to SSA for validation. No action is required by HATC.

**Deceased**-If an individual’s identity verification status is **deceased**; this means that SSA’s records indicate the person is deceased. HATC should confirm the death with the family’s head of household or listed emergency contact person. If the individual is deceased and the only household member (singe 6 member household), HATC should complete an End of Participation (EOP) action on form HUD-50058, and discontinue assistance and/or tenancy. If there are remaining household members, update the family composition accordingly, complete an Interim Re-examination action on form HUD-50058, and take any other action in accordance with HUD guidance and PHA-established policies.

HATC is required to retain the EIV **Summary Report** or **Income Report** in each family file as confirmation of compliance with the SSN disclosure, documentation and verification requirements.

Once the individual’s verification status is classified as **verified**, HATC should remove and destroy, by no later than the next re-exam of family income or composition, the copy of the documentation. Paper documentation should be destroyed by either shredding or burning. Electronic documentation should be destroyed by erasing or permanently deleting the file. Additional guidance related to destruction of records is available in HUD Handbook 2400.25, Rev. 2: *HUD Information Technology Security Policy* dated October 1, 2008.

The retention of the aforementioned EIV report in the tenant file is adequate.

PHAs are permitted to maintain EIV reports in the tenant file for the duration of tenancy, and no longer than three years from the end of participation date. This will minimize the risk of exposing the individual’s SSN. PHAs are encouraged to minimize the number of the tenant records that contain documents which display the full nine-digit SSN.

**7-II.B.C. INDIVIDUALS WITHOUT AN ASSIGNED SOCIAL SECURITY NUMBER:**

It is not uncommon for certain individuals to not have a SSA-assigned SSN. Below is a listing of such individuals, which is not all-inclusive:

a. Newborn children (these individuals will be issued a SSN upon SSA confirmation of birth)

b. Noncitizens lawfully present in the U.S. (these individuals will be issued a SSN upon SSA confirmation of the individual’s DHS documentation or confirmation that the individual is required by law to provide a Social Security number to receive general assistance benefits that they already have qualified for)

c. Noncitizens unlawfully present in the U.S. (these individuals cannot be assigned a SSN)

Citizens and lawfully present noncitizens, who state that they have not been assigned a SSN by the SSA, should make such declaration in writing and under penalties of perjury to HATC. HATC should maintain the declaration in the tenant file.

PHAs may use the Alternate ID (ALTD ID) generator within the Public and Indian Housing information Center (PIC) to generate a unique identifier for those individuals who do not have or unable to disclose a SSN. Contact the PIC Coach in your local HUD office if you need assistance with PIC.

Once an individual discloses a SSN, HATC should delete the ALT ID, enter the SSN on line 3n of the form HUD-50058, and transmit the form HUD-50058 to HUD within 30 calendar days of receipt of the SSN.

***Note:*** An individual who has never been issued a SSN card or has lost their SSN card, may complete Form SS-5 – *Application for a Social Security Card* to request an original or 8 replacement SSN card, or change information on his/her SSA record. The form is available online at www.socialsecurity.gov, or can be obtained at the local SSA office.

**7-II.B.D DOCUMENTING ADDITION OF A NEW HOUSEHOLD MEMBER:**

When a participant requests to add a new household member, who is at least six year of age or under the age of six and has an assigned SSN, to the family, the participant must disclose the assigned SSN and provide HATC with the documentation referenced in item 6 of this notice at the time of such request, or at the time of processing the interim or annual reexamination of family income and/or composition. If the family is unable to provide the required documentation of the SSN, HATC may not add the new household member until the family provides such documentation.

When a participant requests to add a new household member, who is under the age of six and does not have an assigned SSN, the participant must disclose the assigned SSN and provide HATC with the documentation referenced in Section 6 of this Notice within 90 calendar days of the child being added to the household.

If the family is unable to disclose and provide evidence of the SSN within 90 calendar days, HATC is required to grant the family an additional 90-day period to comply with the SSN disclosure and documentation requirement, if HATC determines the family was unable to comply with the requirements due to circumstances that could not have reasonably been foreseen and were outside the control of the family. Examples include but are not limited to: delayed processing of SSN application by SSA, natural disaster, fire, death in family, etc.

The child is to be included as part of the assisted household and entitled to all the benefits of being a household member during the allotted time for the family to comply with the SSN disclosure and documentation requirements. HATC should generate an ALT ID as referenced in Section 9 of this Notice. Upon expiration of the provided time period, if the family has not complied with the SSN disclosure and documentation requirements, HATC must terminate the family‘s tenancy or assistance, or both of the entire family.

**7-II.B.E PENALTIES FOR FAILURE TO DISCLOSE AND/OR PROVIDE DOCUMENTATION OF THE SSN:**

In accordance with 24 CFR 5.218, the following penalties apply for noncompliance with the SSN disclosure and documentation requirements:

* **Applicants:**

HATC must deny the eligibility of an assistance applicant if s/he (including each member of the household required to disclose his/her SSN) does not disclose a SSN and/or provide documentation of such SSN. However, if the family is otherwise eligible to participate in the program, the family may maintain his/her position on the waiting list for a period of time as determined by HATC. HATC should prescribe in its policies, the maximum time the family may remain on the waiting list, pending disclosure of requested information. If all household members have not disclosed their SSN at the time a unit becomes available, HATC must offer the available unit to the next eligible applicant family on the waiting list.

* Applicants to the Section 8 Moderate Rehabilitation Single Room Occupancy (SRO) Program for Homeless, under 24 CFR 882, may be admitted to the program without providing the requested documentation (prior or at admission); however, the individual must provide HATC with such documentation within90 calendar days from the date of admission. (HATC may grant the individual one 90-day extension if in its discretion, determines that the individual’s failure to comply with SSN documentation requirements was due to unforeseen circumstances and outside the control of the family.) If upon the expiration of the provided time period, the individual fails to comply with the SSN disclosure and documentation requirements; HATC must terminate the tenancy or assistance, or both of the individual.
* **Participants:**

HATC must terminate the assistance of Section 8 program participants (the entire household) and terminate the tenancy of Public Housing participants (the entire household) if s/he (including each member of the household required to disclose his/her SSN) does not disclose his/her SSN and provide the required documentation.

However, if the family is otherwise eligible for continued assistance or tenancy in the program, HATC, at its discretion, may defer the family‘s termination and provide the family an opportunity to comply with the requirement within a period **not to exceed** 90 calendar days from the date HATC determined the family noncompliant with the SSN disclosure and documentation requirement, if HATC determines:

The failure to meet the SSN disclosure and documentation requirements was due to circumstances that could not have been foreseen and were outside the control of the family; and

There is a reasonable likelihood that the family will be able to disclose the SSN and provide such documentation of the SSN by the deadline. If the family is unable to comply with the requirements by the specified deadline, HATC must terminate the tenancy or assistance, or both of the entire family.

1**7-II.B.F**. **THIRD PARTY VERIFICATION REQUIREMENTS:**

PHAs are required to comply with admission and occupancy requirements for Public Housing under 24 CFR §960.259(c)(1) and Section 8 under 24 CFR §982.516(a)(2), which requires PHAs to obtain and document in the family/tenant file third party verification of the following factors, or document in the file why third party verification was not available: (1) reported family annual income; (2) the value of assets; (3) expenses related to deductions from annual income; and (4) other factors that affect the determination of adjusted income or income-based rent.

It is the Department‘s position that a SSA benefit verification letter (dated within the last 60 days of HATC request date for information or within HATC-tenant interview date) provided by the family or an EIV ***Income Report*** which displays the current social security benefit amount is third party verification. No additional verification is required by HATC.

PHAs should **not** submit requests to SSA to verify that a family is **not** receiving social security benefits.

**THIRD PARTY VERIFICATION OF SS/SSI BENEFITS OF APPLICANTS AND HOUSEHOLD MEMBERS:**

EIV does not contain SS and SSI benefit information of applicants for HUD's rental assistance programs. PHAs should ask applicants to provide a copy of their SS and/or SSI benefit letter, dated within the last 60 calendar days, for each household member that receives SS and/or SSI benefits. Do not send applicants to SSA offices if they do not have this information. Instead:

While meeting with the applicant, help the applicant request a benefit verification letter from SSA's website, Social Security Online, at www.socialsecurity.gov. This service is free and SSA will send the letter to the applicant within 10 business days. To access the site for requesting benefit verification letters, go to the Social Security Online front page, select *What You Can Do Online* and follow the instructions for requesting a *Proof of Income Letter*. Assist the applicant in answering questions and explain how the applicant should provide the letter to your office; **or**

Ask the applicant to request a *Proof of Income Letter* from SSA‘s toll-free number (800-772-1213).

**Note:** SSA encourages SS and SSI recipients to use SSA‘s web site rather than the toll- free number to request *Proof of Income* letters.

HATC should obtain the original SSA benefit letter from the individual, make a photocopy of the document for HATC file and return the original document to the individual. HATC should use the listed gross benefit amount to calculate annual income from social security benefits.

**THIRD PARTY VERIFICATION OF SS/SSI BENEFITS OF PARTICIPANTS AND HOUSEHOLD MEMBERS:**

SS/SSI benefit information for participants and household members, who have validated personal identifiers (the individual‘s identity verification status in EIV is ***verified***) is available from HUD‘s online EIV system, which can be accessed by authorized PHA staff.

* PHAs are required to use EIV to verify SS/SSI benefits of current participant s and household members.
* PHAs are required to print EIV Income Report and confirm with the tenant that the current listed benefit amount is correct. If the tenant agrees with the current EIV reported amount, HATC will use the gross benefit amount to calculate annual income from social security benefits.
* If the tenant disputes the EIV-reported benefit amount, HATC is required to request the tenant to provide a current (dated within the last 60 calendar days) SSA benefit letter. If the tenant is unable to provide the requested document, HATC should follow the instructions under *Third Party Verification of SS/SSI Benefits of Applicants and Household Members.*
* If benefit information is not available in the EIV system, HATC should follow the instructions under *Third Party Verification of SS/SSI Benefits of Applicants and Household Members* section.
* Photocopies of social security checks or bank statements are not acceptable forms of verification for SS/SSI benefits because the dollar amount listed may not be the gross benefit amount.

1**7-II.B.G TREATMENT OF SSA OVERPAYMENT DEDUCTIONS FROM SOCIAL SECURITY BENEFITS SSA OVERPAYMENT DEDUCTIONS.**

An overpayment occurs when SSA pays an individual more than s/he should have been paid. If this happens, SSA will notify the individual and his/her designated representative payee, if applicable. Recovery of an overpayment is made by withholding the monthly Social Security check until the overpayment is paid in full (individuals receiving SS benefits), unless the individual requests a lesser withholding amount and SSA approves the request. Full withholding would start 30 days after SSA notification of the overpayment. SSA begins deducting money (for overpayment recovery) from SSI payments at least 60 days after SSA notification of the overpayment.

Generally, SSA will withhold 10 percent of the maximum federal SSI benefit rate each month. However, an individual may request that less be taken from their benefit, or an individual may ask to pay back the overpayment at a rate greater than 10 percent.

Regardless of the amount withheld to repay SSA the overpayment amount, or the length of the anticipated withholding period, HATC must use the reduced benefit amount after deducting only the amount of the overpayment withholding from the gross benefit amount.

HATC should be cognizant of the SSA-determined overpayment amount and length of time the reduced payment will occur, to ensure the family‘s accurate rent contribution for the duration of reduced income; however circumstances may arise affecting the end date of the withholding period, causing it to go on longer than anticipated. See examples below.

**Note:** A Social Security overpayment can be withheld from a SSI underpayment due to the beneficiary.

**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.

HATC POLICY

If an official record of birth or evidence of social security retirement benefits cannot be provided, HATC will require the family to submit other documents that support the reported age of the family member (e.g., school records, driver's license if birth year is recorded) and to provide a self-certification.

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

**7-II.D. FAMILY RELATIONSHIPS**

Applicants and program participants are required to identify the relationship of each household member to the head of household. Definitions of the primary household relationships are provided in the Eligibility chapter.

HATC POLICY

Family relationships are verified only to the extent necessary to determine a family’s eligibility and level of assistance.Certification by the head of household normally is sufficient verification of family relationships.

**Marriage**

HATC POLICY

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

A marriage certificate generally is required to verify that a couple is married.

In the case of a common law marriage, the couple must demonstrate that they hold themselves to be married (e.g., by telling the community they are married, calling each other husband and wife, using the same last name, filing joint income tax returns).

**Separation or Divorce**

HATC POLICY

Certification by the head of household is normally sufficient verification. If the HATC has reasonable doubts about a separation or divorce, HATC 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**

HATC POLICY

If an adult member who was formerly a member of the household is reported to be permanently absent, the family must provide evidence to support that the person is no longer a member of the family (e.g., documentation of another address at which the person resides such as a lease or utility bill).

**Foster Children and Foster Adults**

HATC 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**

HATC POLICY

HATC 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.

The family reports child care expenses to enable a family member to further his or her education.

The family includes a student enrolled in an *institution of higher education.*

**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.

HATC POLICY

In accordance with the verification hierarchy described in Section 7-1.B, HATC 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 HATC cannot verify at least one of these exemption criteria, the HATC 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, HATC 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***

HATC POLICY

HATC 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

Both reviewing and 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**

HATC must verify the existence of a disability in order to allow certain income disallowances and deductions from income. HATC is not permitted to inquire about the nature or extent of a person’s disability [24 CFR 100.202(c)]. HATC may not inquire about a person’s diagnosis or details of treatment for a disability or medical condition. If HATC receives a verification document that provides such information, HATC will not place this information in the tenant file. Under no circumstances will HATC request a participant’s medical record(s). For more information on health care privacy laws, see the Department of Health and Human Services’ website at [www.os.dhhs.gov](http://www.os.dhhs.gov).

The above cited regulation does not prohibit the following inquiries, provided these inquiries are made of all applicants, whether or not they are persons with disabilities [VG, p. 24]:

* Inquiry into an applicant’s ability to meet the requirements of ownership or tenancy
* Inquiry to determine whether an applicant is qualified for a dwelling available only to persons with disabilities or to persons with a particular type of disability
* Inquiry to determine whether an applicant for a dwelling is qualified for a priority available to persons with disabilities or to persons with a particular type of disability
* Inquiring whether an applicant for a dwelling is a current illegal abuser or addict of a controlled substance
* Inquiring whether an applicant has been convicted of the illegal manufacture or distribution of a controlled substance

**Family Members Receiving SSA Disability Benefits**

Verification of the receipt of disability benefits from the Social Security Administration (SSA) is sufficient verification of disability for the purpose of qualifying for waiting list preferences (if applicable) or certain income disallowances and deductions [VG, p. 23].

HATC POLICY

For family members claiming disability who receive disability benefits from the SSA, the HATC will attempt to obtain information about disability benefits through the HUD Enterprise Income Verification (EIV) system when it is available, or HUD’s Tenant Assessment Subsystem (TASS). If documentation from HUD’s EIV System or TASS is not available, the HATC 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), HATC will ask the family to request a benefit verification letter by either calling SSA at 1-800-772-1213, or by requesting it from [www.ssa.gov](http://www.ssa.gov). Once the applicant or participant receives the benefit verification letter they will be required to provide it to HATC.

**Family Members Not Receiving SSA Disability Benefits**

Receipt of veteran’s disability benefits, worker’s compensation, or other non-SSA benefits based on the individual’s claimed disability are not sufficient verification that the individual meets HUD’s definition of disability in 24 CFR 5.603.

HATC POLICY

For family members claiming disability who do not receive disability benefits from the SSA, a knowledgeable professional must provide third-party verification that the family member meets the HUD definition of disability. See the Eligibility chapter for the HUD definition of disability. The knowledgeable professional will verify whether the family member does or does not meet the HUD definition. Based upon the knowledgeable medical professional’s response, HATC will or will not grant the family a wait list preference or certain income disallowances and deductions. If HATC does not receive a response from the medical professional with 30 calendar days, the family’s claim for disability status is denied. The family will receive written notification of the denial, the reason for the denial and is advised of their right to request an informal hearing.

**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 PHA verification requirements related to citizenship status.

The family must provide a certification that identifies each family member as a U.S. citizen, a U.S. national, an eligible noncitizen or an ineligible noncitizen and submit the documents discussed below for each family member. Once eligibility to receive assistance has been verified for an individual it need not be collected or verified again during continuously-assisted occupancy. [24 CFR 5.508(g) (5)]

**U.S. Citizens and Nationals**

HUD requires a declaration for each family member who claims to be a U.S. citizen or national. The declaration must be signed personally by any family member 18 or older and by a guardian for minors.

The HATC may request verification of the declaration by requiring presentation of a birth certificate, United States passport or other appropriate documentation.

HATC POLICY

Family members who claim U.S. citizenship or national status will be required to provide one of the following supporting documents: an original birth certificate, naturalization document, valid unexpired United States passport, an original baptism certificate or U.S. military report of separation (DD214).

**Eligible Immigrants**

***Documents Required***

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

The documentation required for eligible noncitizens varies depending upon factors such as the date the person entered the U.S., the conditions under which eligible immigration status has been granted, age, and the date on which the family began receiving HUD-funded assistance. Exhibit 7-2 at the end of this chapter summarizes documents family members must provide.

***PHA Verification*** [HCV GB, pp. 5-3 and 5-7]

For family members age 62 or older who claim to be eligible immigrants, proof of age is required in the manner described in 7-II.C. No further verification of eligible immigration status is required.

For family members under the age of 62 who claim to be eligible immigrants, HATC must verify immigration status with the United States Citizenship and Immigration Services (USCIS).

HATC will follow all USCIS protocols for verification of eligible immigration status.

**7-II.H.VERIFICATION OF PREFERENCE STATUS**

The HATC must verify any preferences claimed by an applicant.

HATC POLICY

HATC will offer a preference to any family that has been terminated from its HCV program due to insufficient program funding. HATC will verify this preference using HATC’s termination records.

HATC POLICY

HATC will give preference to the following:

**Homeless Preference:** This preference shall be extended to those families determined to be homeless and referred by local agencies in which an MOU has been established with HATC.

**Project Based Preference**: HATC will give preference to elderly families (55 and older) for the issuance of Project Based Vouchers (PBV) at Cambridge Villas only. Only applicants certified eligible for the PBV’s will be issued a PBV voucher for any approved Project Based Voucher Project with HATC.

**Disability Preference:** For purposes of the local preference only, the definition of a disabled person or family is: the head of household has been declared disabled by the Social Security Administration or a certified medical professional. The disability preference applies only to Non Elderly and Disabled Voucher Program.

HATC Board of Commissioners may add and approve a preference as needed.

**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 HATC policies that supplement the general verification procedures specified in Part I of this chapter.

**7-III.A. EARNED INCOME**

**Tips**

HATC POLICY

Unless tip income is included in a family member’s W-2 by the employer, persons who work in industries where tips are standard will be required to sign a certified estimate of tips received for the prior year and tips anticipated to be received in the coming year.

**7-III.B. BUSINESS AND SELF EMPLOYMENT INCOME**

HATC 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

HATC 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 HATC may request documents that support submitted financial statements such as manifests, appointment books, cash books, or bank statements.

If a family member has been self-employed less than three (3) months, HATC will accept the family member's certified estimate of income and schedule an interim reexamination in three (3) months. If the family member has been self-employed for three (3) to twelve (12) months HATC 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**

HATC POLICY

To verify the SS/SSI benefits of applicants, HATC 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), HATC will ask the family to request a benefit verification letter by either calling SSA at 1-800-772-1213, or by requesting it from [www.ssa.gov](http://www.ssa.gov). Once the applicant has received the benefit verification letter they will be required to provide it to HATC.

To verify the SS/SSI benefits of participants, HATC will obtain information about social security/SSI benefits through the HUD EIV System or the Tenant Assessment Subsystem (TASS). If benefit information is not available in HUD systems, HATC 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) HATC will ask the family to request a benefit verification letter by either calling SSA at 1-800-772-1213, or by requesting it from [www.ssa.gov](http://www.ssa.gov). Once the participant has received the benefit verification letter they will be required to provide it to HATC.

To verify the SS/SSI benefits of participants, HATC will obtain information about social security/SSI benefits through the HUD EIV System or the Tenant Assessment Subsystem (TASS). If benefit information is not available in HUD systems, HATC 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) HATC will ask the family to request a benefit verification letter by either calling SSA at 1-800-772-1213, or by requesting it from [www.ssa.gov](http://www.ssa.gov). Once the participant has received the benefit verification letter they will be required to provide it to HATC.

**7-III.D. ALIMONY OR CHILD SUPPORT**

HATC POLICY

The way HATC 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.

* HATC will access child support information via the Texas Office of Attorney General (OAG) child support online portal. Information accessed is limited to the custodial parent‘s case number(s), names of children related to each listed case, and a record of the last 12 payments received for each case, if any. Written consent by the family is secured via the OAG Form 1825, which is kept in the family‘s file.
* If the custodial parent does not have a Social Security number, or if HATC is unable to access the custodial parent‘s case information for any other reason, HATC will request a third party written verification from the Texas OAG‘s office directly.
* Third-party verification from the person paying the support.
* Copy of a separation or settlement agreement or a divorce decree stating the amount and type of support and payment schedules.
* Copy of the latest check and/or payment stubs.
* Family's self-certification of amount received and of the likelihood of support payments being received in the future, or that support payments are not being received.

If the family declares that it ***receives irregular or no payments***, in addition to the verification process listed above, HATC may require the family to 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. HATC needs to verify only those certifications that warrant documentation [HCV GB, p. 5-28].

HATC POLICY

HATC will verify the value of assets disposed of only if:

HATC 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 HATC verified this amount. Now the person reports that she has given this $10,000 to her son. HATC 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, HATC will verify the value of this asset.

**7-III.F. NET INCOME FROM RENTAL PROPERTY**

HATC 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, HATC 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**

HATC POLICY

When third-party verification is not available, the type of original document that will be accepted depends upon the family member‘s retirement status.

* *Before* retirement, HATC 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, HATC 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, HATC 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.

HATC must obtain verification for income exclusions only if, without verification, HATC 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, HATC will confirm that PHA 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.

HATC POLICY

HATC 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, HATC will report the amount to be excluded as indicated on documents provided by the family.

**7-III.I. ZERO ANNUAL INCOME STATUS**

HATC POLICY

HATC 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. If the family has reported zero income, HATC will conduct an interim re-examination **every 90 days** as long as the family continues to report zero income. During interim re-examination, the family will be required to provide information on how they pay for expenses. If a family continues to claim zero income, they will be required to complete a zero income form and provide a notarized affidavit claiming zero income status. If it is determined that the family failed to report income, the interim increase would become effective immediately. Income not reported accordingly will be reviewed for fraud according to repayment guidelines outlined in Chapter 16.

**7-III.J. STUDENT FINANCIAL ASSISTANCE**

Any financial assistance, in excess of amounts received for tuition, that a person attending an institution of higher education receives under the Higher Education Act of 1965, from private sources, or from an institution of higher education must be considered income unless the student is over the age of 23 with dependent children or is residing with parents who are seeking or receiving HCV assistance [24 CFR 5.609(b) (9) and FR 4/10/06].

For students over the age of 23 with dependent children or students residing with parents who are seeking or receiving HCV assistance, the full amount of student financial assistance is excluded from annual income [24 CFR 5.609(c)(6)]. The full amount of student financial assistance is also excluded for students attending schools that do not qualify as institutions of higher education (as defined in Exhibit 3-2). Excluded amounts are verified only if, without verification, HATC would not be able to determine whether or to what extent the income is to be excluded (see Section 7-III.H).

HATC 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), HATC will request third-party written verification of both the source and the amount from the educational institution attended by the student as well as from any other person or entity providing such assistance, as reported by the student.

In addition, HATC will request written verification from the institution of higher education regarding the student‘s tuition amount.

If HATC is unable to obtain third-party written verification of the requested information, HATC will pursue other forms of verification following the verification hierarchy in Section 7-I.B.

**7-III.K. PARENTAL INCOME OF STUDENTS SUBJECT TO ELIGIBILITY RESTRICTIONS**

If a student enrolled at an institution of higher education is under the age of 24, is not a veteran, is not married, does not have a dependent child, and is not a person with disabilities receiving HCV assistance as of November 30, 2005, the income of the student‘s parents must be considered when determining income eligibility, unless the student is determined independent from his or her parents in accordance with PHA policy [24 CFR 5.612 and FR 4/10/06, p. 18146].

This provision does not apply to students residing with parents who are seeking or receiving HCV assistance. It is limited to students who are seeking or receiving assistance on their own, separately from their parents.

HATC POLICY

If HATC is required to determine the income eligibility of a student‘s parents, HATC will request an income declaration and certification of income from the appropriate parent(s) (as determined in Section 3-II.E). HATC 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 HATC. The required information must be submitted (postmarked) within 15 calendar days of the date of HATC‘s request or within any extended timeframe approved by HATC.

HATC 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 HATC 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. HATC must verify that:

Any person under the age of 18 for whom the dependent deduction is claimed is not the head, spouse, or co-head of the family and is not a foster child

Any person age 18 or older for whom the dependent deduction is claimed is not a foster adult or live-in aide, and is a person with a disability or a full time student

**Elderly/Disabled Family Deduction**

See Eligibility chapter for a definition of elderly and disabled families and Chapter 6 (6-II.C.) for a discussion of the deduction. HATC must 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**

HATC POLICY

HATC will provide a third-party verification form directly to the medical provider requesting the needed information.

Medical expenses will be verified through:

* Third-party verification form signed by the provider, when possible
* If third-party is not possible, copies of cancelled checks used to make medical expense payments and/or printouts or receipts from the source will be used. In this case HATC will make a best effort to determine what expenses from the past are likely to continue to occur in the future. HATC will also accept evidence of monthly payments or total payments that will be due for medical expenses during the upcoming 12 months.
* If third-party or document review is not possible, written family certification as to costs anticipated to be incurred during the upcoming 12 months.

In addition, HATC 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. HATC must verify that the family meets the definition of an elderly or disabled family provided in the Eligibility chapter and as described in Chapter 7 (7-IV.A) of this plan.

**Qualified Expenses**

To be eligible for the medical expenses deduction, the costs must qualify as medical expenses. See Chapter 6 (6-II.D.) for HATC‘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.

HATC 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**

HATC POLICY

When anticipated costs are related to on-going payment of medical bills incurred in past years, HATC 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 expense are found in 6-II.E. The amount of deduction will be verified following the standard verification procedures described in Part I.

**Amount of Expense**

***Attendant Care***

HATC POLICY

HATC will provide a third-party verification form directly to the care provider, requesting the needed information.

Expenses for attendant care will be verified through:

* Third-party verification form signed by the provider, when possible.
* If third-party is not possible, copies of cancelled checks used to make attendant care payments and/or receipts from care source
* If third-party or document review is not possible, written family certification as to costs anticipated to be incurred for the upcoming 12 month

***Auxiliary Apparatus***

HATC POLICY

Expenses for auxiliary apparatus will be verified through:

* Third-party verification of anticipated purchase costs of auxiliary apparatus
* If third-party is not possible, billing statement for purchase of auxiliary apparatus, or other evidence of monthly payment or total payments that will be due for the apparatus during the upcoming 12 months.
* If third-party or document review is not possible, written family certification of estimated apparatus costs for the upcoming 12 months.

In addition, HATC must verify that:

* The family member for whom the expense is incurred is a person with disabilities (as described in 7-11.F above).
* The expense permits a family member, or members, to work (as described in 6-II.E).
* The expense is not reimbursed from another source (as described in 6-II.E).

**Family Member is a Person with Disabilities**

To be eligible for the disability assistance expense deduction, the costs must be incurred for attendant care or auxiliary apparatus expense associated with a person with disabilities.HATC will verify that the expense is incurred for a person with disabilities (See 7-II.F.).

**Family Member(s) Permitted to Work**

HATC must verify that the expenses claimed actually enable a family member, or members, (including the person with disabilities) to work.

HATC POLICY

HATC will seek third-party verification from a Rehabilitation Agency or knowledgeable medical professional indicating that the person with disabilities requires attendant care or an auxiliary apparatus to be employed, or that the attendant care or auxiliary apparatus enables another family member, or members, to work (See 6-II.E.).

If third-party and document review verification has been attempted and is either unavailable or proves unsuccessful, the family must certify that the disability assistance expense frees a family member, or members (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.

HATC POLICY

An attendant care provider will be asked to certify that, to the best of the provider’s knowledge, the expenses are not paid by or reimbursed to the family from any source.

The family will be required to certify that attendant care or auxiliary apparatus expenses are not paid by or reimbursed to the family from any source.

**7-IV.D. CHILD CARE EXPENSES**

Policies related to child care expenses are found in Chapter 6 (6-II.F). The amount of the deduction will be verified following the standard verification procedures described in Part I of this chapter. In addition, HATC must verify that:

* The child is eligible for care.
* The costs claimed are not reimbursed.
* The costs enable a family member to pursue an eligible activity.
* The costs are for an allowable type of child care.
* The costs are reasonable.

**Eligible Child**

To be eligible for the child care deduction, the costs must be incurred for the care of a child under the age of 12. HATC will verify that the child being cared for (including foster children) is under the age of 12(See 7-II.C.).

**Unreimbursed Expense**

To be eligible for the child care deduction, the costs must not be reimbursed by another source.

HATC POLICY

The child care provider will be asked to certify that, to the best of the provider’s knowledge, the child care expenses are not paid by or reimbursed to the family from any source.

The family will be required to certify that the child care expenses are not paid by or reimbursed to the family from any source.

**Pursuing an Eligible Activity**

HATC 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.

HATC POLICY

*Information to be Gathered*

HATC 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 HATC will use documentation from a state or local agency that monitors work-related requirements (e.g., welfare or unemployment). In such cases the HATC will request verification from the agency of the member’s job seeking efforts to date and require the family to submit to HATC any reports provided to the other agency.

In the event third-party verification is not available, HATC will provide the family with a form on which the family member must record job search efforts. HATC will review this information at each subsequent reexamination for which this deduction is claimed.

*Furthering Education*

HATC will ask that the academic or vocational educational institution verify that the person permitted to further his or her education by the child care is enrolled and provide information about the timing of classes for which the person is registered.

*Gainful Employment*

HATC will seek verification from the employer of the work schedule of the person who is permitted to work by the child care. In cases in which two or more family members could be permitted to work, the work schedules for all relevant family members may be verified.

**Allowable Type of Child Care**

The type of care to be provided is determined by the family, but must fall within certain guidelines, as discussed in Chapter 6.

HATC POLICY

HATC will verify that the type of child care selected by the family is allowable, as described in Chapter 6 (6-II.F).

HATC will verify that the fees paid to the child care provider cover only child care costs (e.g., no housekeeping services or personal services) and are paid only for the care of an eligible child (e.g., prorate costs if some of the care is provided for ineligible family members).

HATC will verify that the child care provider is not an assisted family member. Verification will be made through the head of household’s declaration of family members who are expected to reside in the unit.

**Reasonableness of Expenses**

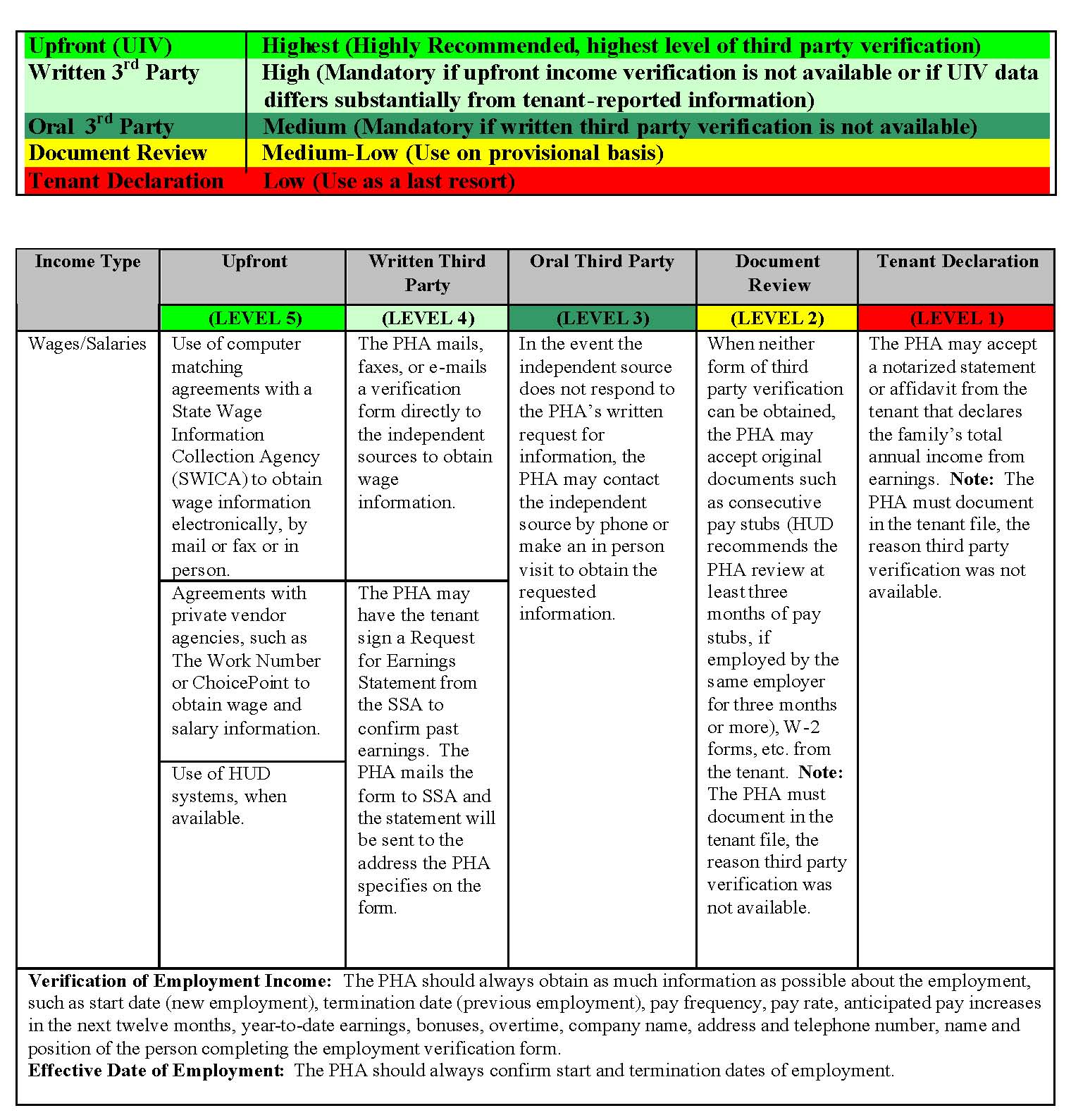
Only reasonable child care costs can be deducted.

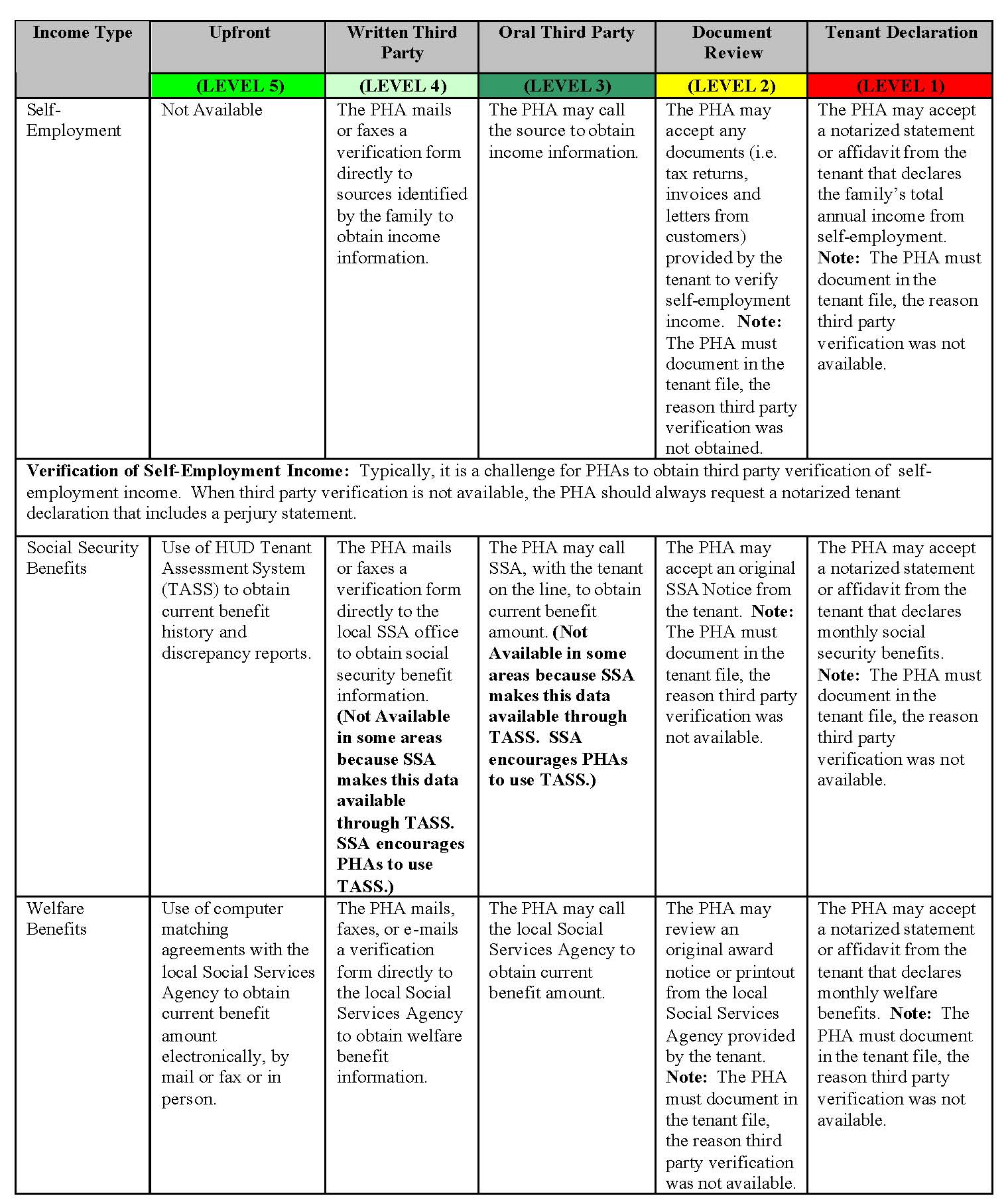
HATC POLICY

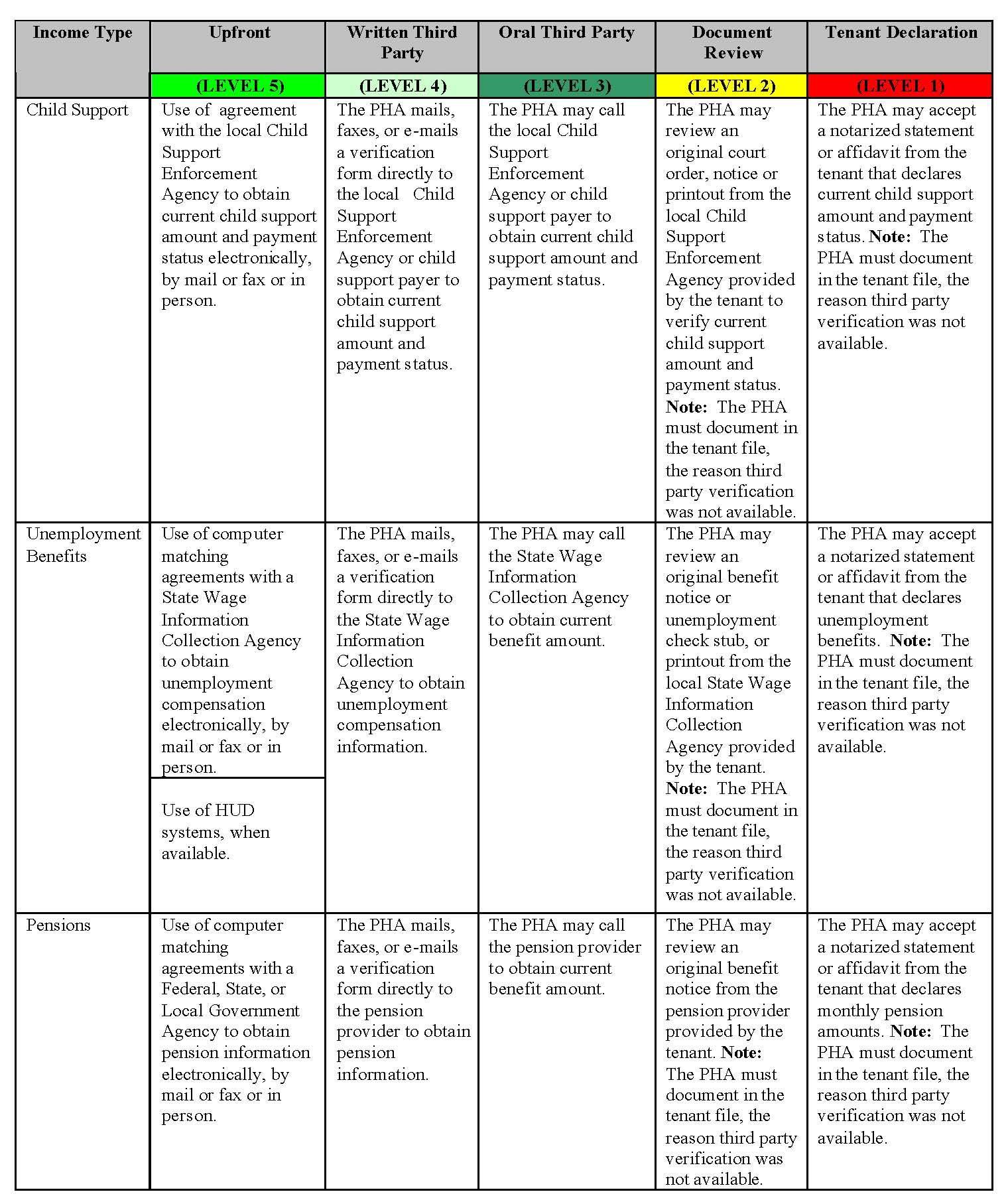
The actual costs the family incurs will be compared with HATC’s established standards of reasonableness for the type of care in the locality to ensure that the costs are reasonable.

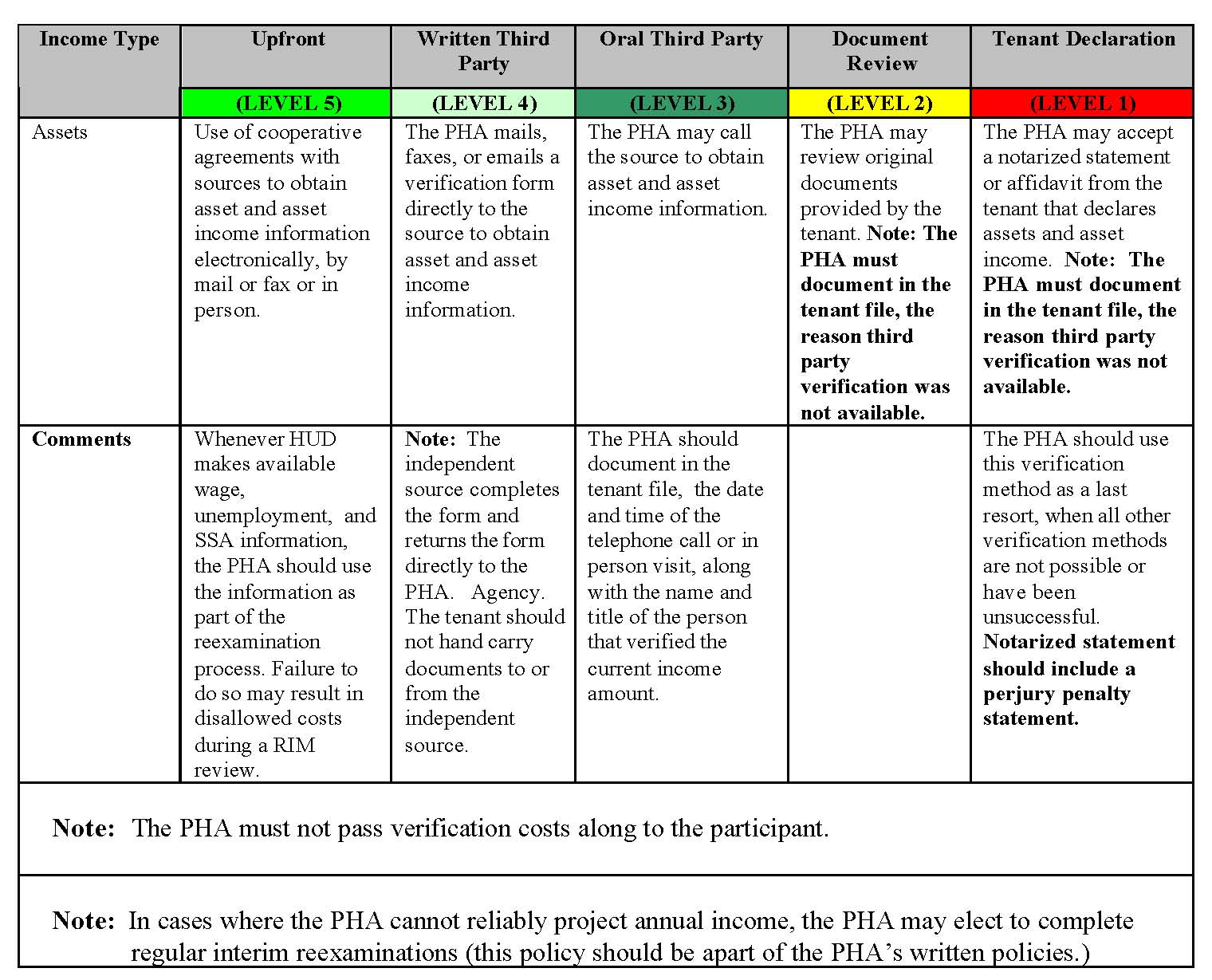
If the family presents a justification for costs that exceed typical costs in the area, HATC will request additional documentation, as required, to support a determination that the higher cost is appropriate.

**XHIBIT 7-1: EXCERPT FROM HUD VERIFICATION GUIDANCE   
NOTICE (PIH 2004-01, pp. 11-14)**

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**EXHIBIT 7-2: SUMMARY OF DOCUMENTATION REQUIREMENTS  
FOR NONCITIZENS[HCV GB, pp. 5-9 and 5-10]**

|  |  |
| --- | --- |
| * **All** noncitizens claiming eligible status must sign a declaration of eligible immigrant status on a form acceptable to the HATC. * Except for persons 62 or older, all noncitizens must sign a verification consent form * Additional documents are required based upon the person's status. | |
| **Elderly Noncitizens**   * A person 62 years of age or older who claims eligible immigration status also must provide proof of age such as birth certificate, passport, or documents showing receipt of SS old-age benefits. | |
| **All other Noncitizens**   * Noncitizens that claim eligible immigration status also must present the applicable USCIS document. Acceptable USCIS documents are listed below. | |
| * Form I-551 Alien Registration Receipt Card (for permanent resident aliens) * Form I-94 Arrival-Departure Record annotated with one of the following: * “Admitted as a Refugee Pursuant to Section 207” * “Section 208” or “Asylum” * “Section 243(h)” or “Deportation stayed by Attorney General” * “Paroled Pursuant to Section 221 (d)(5) of the USCIS” | * Form I-94 Arrival-Departure Record with no annotation accompanied by: * A final court decision granting asylum (but only if no appeal is taken); * A letter from a USCIS asylum officer granting asylum (if application is filed on or after 10/1/90) or from a USCIS district director granting asylum (application filed before 10/1/90); * A court decision granting withholding of deportation; or * A letter from an asylum officer granting withholding or deportation (if application filed on or after 10/1/90). |
| * Form I-688 Temporary Resident Card annotated “Section 245A” or Section 210”. | Form I-688B Employment Authorization Card annotated “Provision of Law 274a. 12(11)” or “Provision of Law 274a.12”. |
| * A receipt issued by the USCIS indicating that an application for issuance of a replacement document in one of the above listed categories has been made and the applicant’s entitlement to the document has been verified; or * Other acceptable evidence. If other documents are determined by the USCIS to constitute acceptable evidence of eligible immigration status, they will be announced by notice published in the *Federal Register* | |

**Chapter 8**

**HOUSING QUALITY STANDARDS AND RENT REASONABLENESS DETERMINATIONS**

[24 CFR 982 Subparts 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 HATC to establish additional requirements. The use of the term "HQS" in this plan refers to the combination of both HUD and PHA-established requirements. HQS inspections are required before the Housing Assistance Payments (HAP) Contract is signed and at least annually during the term of the contract.

HUD also requires PHAs to determine that units rented by families assisted under the HCV program have rents that are reasonable when compared to comparable unassisted units in the market area.

This chapter explains HUD and PHA 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 HATC 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 HATC will use to make rent reasonableness determinations.

Special HQS requirements for homeownership, manufactured homes, and other special housing types are discussed in Chapter 15 to the extent that they apply in this jurisdiction.

**PART I: PHYSICAL STANDARDS**

**8. I.A. GENERAL HUD REQUIREMENTS**

**HUD Performance and Acceptability Standards**

HUD's performance and acceptability standards for HCV-assisted housing are provided in 24 CFR 982.401. These standards cover the following areas:

* Sanitary facilities
* Food preparation and refuse disposal
* Space and Security
* Thermal Environment
* Illumination and electricity
* Structure and materials
* Interior Air Quality
* Water Supply
* Lead-based paint
* Access
* Site and neighborhood
* Sanitary condition
* Smoke Detectors

A summary of HUD performance criteria is provided in Attachment 8-1. Additional guidance on these requirements is found in the following HUD resources:

* Housing Choice Voucher Guidebook, Chapter 10.
* HUD Housing Inspection Manual for Section 8 Housing
* HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD‑52580‑A (9/00)
* HUD Notice 2003-31, Accessibility Notice: Section 504 of the Rehabilitation Act of 1973; the Americans with Disabilities Act of 1990; the Architectural Barriers Act of 1968 and the Fair Housing Act of 1988.

**Tenant Preference Items**

HUD requires HATC to enforce minimum HQS but also requires that certain judgments about acceptability be left to the family. For example, HATC must ensure that the unit contains the required sanitary facilities, but the family decides whether the cosmetic condition of the facilities is acceptable. Attachment 8-2 summarizes those items that are considered tenant preferences.

**Modifications to Provide Accessibility**

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

Modifications to units to provide access for a person with a disability must meet all applicable HQS requirements and conform to the design, construction, or alteration of facilities contained in the UFAS and the ADA Accessibility Guidelines (ADAAG) [28 CFR 35.151(c) and Notice 2003-31] See Chapter 2 of this plan for additional information on reasonable accommodations for persons with disabilities.

HATC POLICY

Information pertaining to the Fair Housing Act of 1998 will be provided to families that contain a person with a disability.

**8. I.B. ADDITIONAL LOCAL REQUIREMENTS**

HATC may impose additional quality standards as long as the additional criteria are not likely to adversely affect the health or safety of participant families or severely restrict housing choice. HUD approval is required if more stringent standards are imposed. HUD approval is not required if the HATC additions are clarifications of HUD's acceptability criteria or performance standards [24 CFR 982.401(a) (4)].

**Thermal Environment [HCV GB p.10-7]**

HATC 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.

HATC POLICY

The heating system must be capable of maintaining an interior temperature of 65 degrees Fahrenheit between October 1 and May 1.

**Clarifications of HUD Requirements**

HATC POLICY

As permitted by HUD, HATC has adopted the following specific requirements that elaborate on HUD standards.

***Walls***

In areas where plaster or drywall is sagging, severely cracked, or otherwise damaged, it must be repaired or replaced.

***Windows***

Window sashes must be in good condition, solid and intact, and properly fitted to the window frame. Damaged or deteriorated sashes must be replaced.

Windows must be weather-stripped as needed to ensure a weather-tight seal.

Any room for sleeping must have a window that leads to the exterior.

Any room with windows designed to be open must have at least one window that is able to open.

***Doors***

All exterior doors must be weather-tight to avoid any air or water infiltration, be lockable, have no holes, have all trim intact, and have a threshold.

All exterior doors must meet the lock requirements established by the Texas Property code Section 92.151. Doors cannot have double-key dead bolt locks.

All interior doors must have no holes, have all trim intact, and operate properly.

***Floors***

All wood floors must be sanded to a smooth surface and sealed. Any loose or warped boards must be secured and made level. If they cannot be leveled, they must be replaced.

All floors must be in a finished state (no plywood). Raw wood or unsealed concrete is not permitted.

All floors should have some type of base shoe, trim, or sealing for a "finished look." Vinyl base shoe is permitted.

***Sinks***

All sinks and commode water lines must have shut off valves, unless faucets are wall mounted.

All broken or cracked toilet seats and tank lids must be replaced and toilet tank lid must fit properly.

All sinks must have functioning stoppers.

***Security***

If window security bars or security screens are present on windows that are required for egress, they must be equipped with a quick release system. The owner is responsible for ensuring that the family is instructed on the use of the quick release system.

**8. I.C. LIFE THREATENING CONDITIONS [24 CFR 982.404(a)]**

HUD requires HATC 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 24hours of HATC notification.

HATC POLICY

The following are considered life threatening conditions:

* + Gas leak-This includes natural gas and propane supplied to the u nit that is actively leaking.
  + Exposed electrical wiring – Live/Hot electrical connections exposed in the interior or exterior of the unit.
  + Structural damage-Damage to the unit, or any part of the unit, that appears to compromise the stability of the structure.
  + Fire/smoke damage- Serious damage to the interior living areas caused by fire and smoke.
  + Any other serious deficiency deemed to be potentially life threatening.

If an owner fails to correct life threatening conditions as required by HATC, 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 HATC, HATC may terminate the family’s assistance. See 8-II.H.

**8-I.D. OWNER AND FAMILY RESPONSIBILITIES [24 CFR 982.404]**

**Family Responsibilities**

The family is responsible for correcting the following HQS deficiencies:

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

**Owner Responsibilities**

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

**8-I-E. SPECIAL REQUIREMENTS FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL [24 CFR 35.1225]**

If HATC 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, HATC 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 HATC, 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 HATC will take action in accordance with Section 8-II.G.

PHA 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 HATC determines that a unit does not meet the HQS space standards because of an increase in family size or a change in family composition, HATC must issue the family a new voucher, and the family and HATC must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, HATC must terminate the HAP contract in accordance with its terms.

**PART II: THE INSPECTION PROCESS**

**8-II.A. OVERVIEW [24 CFR 982.405]**

**Types of Inspections**

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

* *Initial Inspections*. HATC 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 HATC to inspect each unit under lease at least annually to confirm that the unit still meets HQS. The inspection may be conducted in conjunction with the family's annual reexamination but also may be conducted separately.
* *Special Inspections.* A special inspection may be requested by the owner, the family, or a third party as a result of problems identified with a unit between annual inspections.
* *Quality Control Inspections.* HUD requires that a sample of units be re-inspected by a supervisor or other qualified individual to ensure that HQS are being enforced correctly and uniformly by all inspectors.

**Inspection of PHA-owned Units [24 CFR 982.352(b)]**

HATC must obtain the services of an independent entity to perform all HQS inspections in cases where an HCV family is receiving assistance in a HATC-owned unit. A HATC-owned unit is defined as a unit that is owned by HATC that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by HATC). The independent agency must communicate the results of each inspection to the family and HATC. The independent agency must be approved by HUD, and may be the unit of general local government for the HATC jurisdiction (unless HATC is itself the unit of general local government or an agency of such government).

**Inspection Costs**

HATC may not charge the family or owner for unit inspections [24 CFR 982.405(e)]. In the case of inspections of HATC-owned units, HATC may compensate the independent agency from ongoing administrative fee for inspections performed. HATC 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 HATC to inspect the unit at reasonable times with reasonable notice [24 CFR 982.551(d)].

HATC POLICY

Both the family and the owner will be given reasonable notice of annual 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 9:00 a.m. and 4:00 p.m. Generally inspections will be conducted on business days only. In the case of a life threatening emergency, HATC will give as much notice as possible, given the nature of the emergency.

**Owner and Family Inspection Attendance**

HUD permits HATC to set policy regarding family and owner presence at the time of inspection [HCV GB p. 10-27].

HATC POLICY

At the time of the inspection, if the family occupies the unit, an adult family member or an adult designated by the family must be present for the inspection. The family may notify the inspector that the family will not be present but that the property owner or manger will be present for the inspection. HATC staff will not enter an occupied unit without the presence of an adult family member, property owner, manager or property owner’s representative. The family may request to reschedule the inspection appointment prior to the inspection date with good cause.

At initial inspection of a vacant unit, HATC will gain access as instructed by the owner and inspect the unit. The presence of the owner or owner's representative, or family 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)].

HATC POLICY

HATC will complete the initial inspection, determine whether the unit satisfies HQS and Rent Reasonableness, and notify the owner and the family of the determination within 15 days of submission of the Request for Tenancy Approval (RTA). The 15-day period will be suspended for any period during which the unit is not available for inspection.

**Inspection Results and Re-inspections**

HATC POLICY

If any HQS violations are identified, the owner will be notified of the deficiencies and be given a time frame to correct them no more than 30 calendar days from the initial inspection. If requested by the owner, the time frame for correcting the deficiencies may be extended by HATC for good cause. HATC will re-inspect the unit within 15 days of the date the owner notifies HATC that the required corrections have been made which shall not exceed 30 calendar days from initial inspection.

If the time period for correcting the deficiencies (or any HATC-approved extension) has elapsed, or the unit fails HQS at the time of the re-inspection, HATC will notify the owner and the family that the unit has been rejected and that the family must search for another unit. HATC may agree to conduct a second re-inspection, for good cause, at the request of the family and owner.

The family will be required to select another unit, if (a) the time period given by the inspector to correct the repairs has elapsed or (b) the unit has failed the re-inspection or (c) at the discretion of HATC a third re-inspection may be conducted. However, following a second failed re-inspection, the family may submit a new Request for Tenancy Approval for the same unit if the family has not found another unit by the time the owner completes all repairs and the family continues to wish 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.

HATC POLICY

All utilities must be in service and appliances must be installed prior to the inspection. If the utilities are not in service or the appliances are not installed at the time of inspection, the unit will be failed.

**Appliances**

HATC POLICY

If the family is responsible for supplying the stove and/or refrigerator, HATC 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 HATC executes the HAP contract. HATC will execute the HAP contract based upon a certification from the family that the appliances have been installed and are working. A confirmatory inspection will be scheduled as soon as possible.

**8. II.C. ANNUAL HQS INSPECTIONS [24 CFR 982.405(a)]**

**Scheduling the Inspection**

Each unit under HAP contract must have an annual inspection no more than 12 months after the most recent inspection.

24 CFR 982.405, 983.103

**Biennial inspections -** This provision authorizes PHA’s to conduct unit inspections every other year instead of annually. Permitting biennial inspections for HCV units will reduce the administrative and financial burden on PHAs and high performing landlords and enable PHAs to concentrate their inspection resources on the more marginal and higher risk units.

**HATC POLICY**

**HATC will conduct inspections biennially. Inspections will be conducted if requested by the tenant or landlord, and for quality control as needed.**

HATC POLICY

If an adult family member cannot be present on the scheduled date, the family should request that HATC reschedule the inspection. HATC and family will agree on a new inspection date that generally should take place within 5 days of the originally-scheduled date. HATC may schedule an inspection more than 5 days after the original date for good cause.

If the family misses a scheduled inspection without HATC approval or if the notice is returned by the post office with no forwarding address, HATC may consider the family to have violated its obligation to make the unit available for inspection. This may result in termination of the family’s assistance in accordance with Chapter 12.

The family may request to reschedule an inspection for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict, which seriously affects the health, safety or welfare of the family. Requests to reschedule an inspection must be made orally or in writing and will be considered on a case by case basis. At its discretion, HATC may request supporting documentation of the “good cause” prior to rescheduling the inspection.

**8-II.D. SPECIAL INSPECTIONS** [HCV GB p. 10-30]

HATC will conduct a special inspection if the owner, family, or another source reports HQS violations in the unit.

HATC POLICY

The owner and family are required to provide maintenance request in writing to the other party prior to requesting a special inspection. Excluding life threatening conditions, a reasonable amount of time must be provided to respond to, and complete the repairs. Requests for special inspections need to be made in writing explaining the reason for the request and include a copy of the written maintenance request submitted to the other party.

During a special inspection, HATC 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 30 days of the date the special inspection is scheduled, HATC 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 HATC supervisor or other qualified person to conduct quality control inspections of a sample of units to ensure that each inspector is conducting accurate and complete inspections and that there is consistency in the application of the HQS.

The unit sample must include only units that have been inspected within the preceding 3 months. The selected sample will include (1) each type of inspection (initial, annual, and special), (2) inspections completed by each inspector, and (3) units from a cross-section of neighborhoods.

HATC POLICY

The Section 8 Supervisor, or other designated qualified person will conduct the Quality Control Inspection.

Quality Control Inspections will be selected at random from HQS inspections that have been completed within the last 90 days.

The Quality Control Inspection will be scheduled with the tenant. QC Inspections will be conducted with the tenant’s permission and during normal business hours.

**8. II.F. INSPECTION RESULTS AND RE-INSEPCTIONS FOR UNITES 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, HATC will determine whether or not the failure is a life threatening condition and whether the family or owner is responsible.

HATC POLICY

When life threatening conditions are identified, HATC 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 HATC’s notice.

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 HATC-approved extension), the owner’s HAP will be abated in accordance with HATC 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 HATC-approved extension, if applicable) the family’s assistance will be terminated in accordance with HATC POLICY (see Chapter 12).

**Extensions**

For conditions that are life-threatening, HATC cannot grant an extension to the 24 hour corrective action period. For conditions that are not life-threatening, HATC may grant an exception to the required time frames for correcting the violation, if HATC determines that an extension is appropriate [24 CFR 982.404].

HATC POLICY

Extensions will be granted in cases where HATC 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 30 days. However, depending on the repair or in the case of delays caused by weather conditions. In the case of weather conditions, extensions may be continued until the weather has improved sufficiently to make repairs possible. The necessary repairs must be made within 30 calendar days, once the weather conditions have subsided.

**Re-inspections**

HATC POLICY

HATC will conduct a re-inspection within 15 days of notification by the owner that the repairs have been corrected, or any HATC approved extension. The owner must contact HATC to report when all the repairs have been completed

The family and owner will be given reasonable notice of the re-inspection appointment. Only one re-inspection will be conducted. If the deficiencies have not been corrected by the time of the re-inspection, HATC 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 HATC policies. If HATC is unable to gain entry to the unit in order to conduct the scheduled re-inspection, HATC 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.

**Certification of Completion**

Upon the HQS Inspector discretion the family and the owner may be permitted to sign the Certification of Completion form. The HQS Inspector will mail or fax the form to either the landlord or family for signatures. This form indicates that the repairs requested have been completed and both the family and landlord are satisfied with the repairs. The HQS Inspector will not be required to re-inspect the unit. The HQS Inspector may request receipts or pictures of the repair items. The passed date will be the date of the tenant and landlord signature verifying the repairs are completed. If there is a difference in dates between the landlord and the tenant signature, then the date of the responsible party will prevail. However, if the lease agreement between the tenant and landlord has a later move in date, the HAP contract will have the same date as the lease agreement.

The landlord and or tenant must turn in the Certificate of completion no later than five (5) working days from the date of the failed inspection.

**8. II.G. ENFORCING OWNER COMPLIANCE**

If the owner fails to maintain the dwelling unit in accordance with HQS, HATC must take prompt and vigorous action to enforce the owner obligations.

**HAP Abatement**

If an owner fails to correct HQS deficiencies by the time specified by the HATC, HUD requires the HATC 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.

HATC POLICY

HATC will make all HAP abatements effective the first of the month following the expiration of HATC specified correction period (including any extension).

HATC will inspect abated units within 5 business days of the owner's notification that the work has been completed. Payment will resume effective on the day the unit passes inspection.

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

**HAP Contract Termination**

HATC must decide how long any abatement period will continue before the HAP contract will be terminated. HATC 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. HATC will issue a voucher to permit the family to move to another unit as described in Chapter 10.

HATC POLICY

The maximum length of time that HAP may be abated is 90 days. However, if the owner completes corrections and notifies HATC before the termination date of the HAP contract, HATC 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 HATC is 30 days.

**8. II.H. ENFORCING FAMILY COMPLIANCE WITH HQS [24 CFR 982.404(b)]**

Families are responsible for correcting any HQS violations listed in paragraph8.I.D. If the family fails to correct a violation within the period allowed by HATC (and any extensions), HATC 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 HATC 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 HATC-owned unit, HATC 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 HATC-owned unit is defined as a unit that is owned by HATC that administers the assistance under the consolidated ACC (including a unit owned by an entity substantially controlled by HATC). The independent agency must communicate the results of the rent reasonableness determination to the family and HATC. The independent agency must be approved by HUD, and may be the unit of general local government for HATC jurisdiction (unless the HATC 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**

HATC 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. HATC (or independent agency in the case of PHA-owned units) will assist the family with the negotiations upon request. At initial occupancy HATC must determine whether the proposed rent is reasonable before 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.

HATC POLICY

After the initial occupancy period, the owner may request a rent adjustment in accordance with the owner’s lease and must submit a written request to HATC and tenant 60 days prior to renewal. For rent increase requests after initial lease-up, HATC 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 HATC will consider unit size and length of tenancy in the other units.

HATC will determine whether the requested increase is reasonable within 15 business days of receiving the request from the owner. The owner will be notified of the determination in writing.

After the initial occupancy period, all rents adjustment will be effective the first of the month following 60 days after HATC’s receipt of the owner’s request for increase or on the date specified by the owner, whichever is later

**PHA- and HUD-Initiated Rent Reasonableness Determinations**

HUD requires HATC 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 HATC to make a determination at any other time. HATC may decide that a new determination of rent reasonableness is needed at any time.

HATC POLICY

In addition to the instances described above, HATC will make a determination of rent reasonableness at any time after the initial occupancy period if: (1) HATC determines that the initial rent reasonableness determination was in error or (2) HATC 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. HATC 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 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.

**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 HATC 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 HATC information regarding rents charged for other units on the premises.

**8-III.D . HATC RENT REASONABLENESS METHODOLOGY**

**How Market Data is Collected**

HATC POLICY

HATC will collect and maintain data on market rents in HATC'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 6 months old will be eliminated from the database.

**How Rents are Determined**

HATC 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. HATC 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, HATC may make adjustments to the range of prices to account for these differences.

The adjustment must reflect the local market. Not all differences in units require adjustments (e.g., the presence or absence of a garbage disposal may not affect the rent in some market areas).

Adjustments may vary by unit type (e.g., a second bathroom may be more valuable in a three-bedroom unit than in a two-bedroom).

The adjustment must reflect the rental value of the difference – not its construction costs (e.g., it might cost $20,000 to put on a new roof, but the new roof might not make any difference in what a tenant would be willing to pay because rents units are presumed to have functioning roofs).

When a comparable project offers rent concessions (e.g., first month rent-free, or reduced rent) reported monthly rents will be adjusted accordingly. For example, if a comparable project reports rents of $500/month but new tenants receive the first month's rent free, the actual rent for the unit would be calculated as follows: $500 x 11 months = 5500/12 months = actual monthly rent of $488.

HATC will notify the owner of the rent HATC can approve based upon its analysis of rents for comparable units. The owner may submit information about other comparable units in the market area. HATC 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 HATC’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 havea 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 able to open window or other adequate ventilation. Any sleeping room must have at least one window. If a window was designed to be opened, it must be in proper working order.

**Water Supply**

The dwelling unit must be served by an approved public or private water supply that is sanitary and free from contamination. Plumbing fixtures and pipes must be free of leaks and threats to health and safety.

**Lead-Based Paint**

Lead-based paint requirements apply to dwelling units built prior to 1978 that are occupied or can be occupied by families with children less than six years of age, excluding zero bedroom dwellings. Owners must:

* Disclose known lead-based paint hazards to prospective tenants before the lease is signed,
* provide all prospective families with "Protect Your Family from Lead in Your Home",
* Stabilize deteriorated painted surfaces and conduct hazard reduction activities when identified by HATC
* 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 HATC). If lead hazards are identified during the risk assessment, the owner must complete hazard reduction activities.

See HCV GB p. 10-15 for a detailed description of these requirements. For additional information on lead-based paint requirements see 24 CFR 35, Subparts A, B, M, and R.

**Access**

Use and maintenance of the unit must be possible without unauthorized use of other private properties. The building must provide an alternate means of exit in case of fire.

**Site and Neighborhood**

The site and neighborhood must be reasonably free from disturbing noises and reverberations, excessive trash or vermin, or other dangers to the health, safety, and general welfare of the occupants.

**Sanitary Condition**

The dwelling unit and its equipment must be in sanitary condition and free of vermin and rodent infestation. The unit must have adequate barriers to prevent infestation.

**Smoke Detectors**

Smoke detectors must be installed in accordance with and meet the requirements of the National Fire Protection Association Standard (NFPA) 74 (or its successor standards). If the dwelling unit is occupied by any person with a hearing impairment, smoke detectors must have an appropriate alarm system as specified in NFPA 74 (or successor standards).

**Hazards and Heath/Safety**

The unit, interior and exterior common areas accessible to the family, the site, and the surrounding neighborhood must be free of hazards to the family's health and safety.

**EXHIBIT 8-2: SUMMARY OF TENANT PREFERENCE AREAS  
RELATED TO HOUSING QUALITY**

Note: This document provides an overview of unit and site characteristics and conditions for which the family determines acceptability. For more detailed information see the following documents:

* Housing Choice Voucher Guidebook, Chapter 10.
* HUD Housing Inspection Manual for Section 8 Housing
* HUD Inspection Form, form HUD-52580 (3/01) and Inspection Checklist, form HUD‑52580‑A (9/00)

Provided the minimum housing quality standards have been met, HUD permits the family to determine whether the unit is acceptable with regard to the following characteristics.

* + *Sanitary Facilities*. The family may determine the adequacy of the cosmetic condition and quality of the sanitary facilities, including the size of the lavatory, tub, or shower; the location of the sanitary facilities within the unit; and the adequacy of the water heater.
  + *Food Preparation and Refuse Disposal*. The family selects size and type of equipment it finds acceptable. When the family is responsible for supplying cooking appliances, the family may choose to use a microwave oven in place of a conventional oven, stove, or range. When the owner is responsible for providing cooking appliances, the owner may offer a microwave oven in place of an oven, stove, or range only if other subsidized and unsubsidized units on the premises are furnished with microwave ovens only. The adequacy of the amount and type of storage space, the cosmetic conditions of all equipment, and the size and location of the kitchen are all determined by the family.
  + *Space and Security*. The family may determine the adequacy of room sizes and room locations. 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 requiredto meet HQS standards) are acceptable or if the amount of electrical service is adequate for the use of appliances, computers, or stereo equipment.

(6) *Structure and Materials*. Families may determine whether minor defects, such as lack of paint, or worn flooring or carpeting will affect the livability of the unit.

(7) *Indoor Air*. Families may determine whether window and door screens, filters, fans, or other devices for proper ventilation are adequate to meet the family’s needs. However, if screens are present they must be in good condition.

(8) *Sanitary Conditions*. The family determines whether the sanitary conditions in the unit, including minor infestations, are acceptable.

(9) *Neighborhood conditions*. Families may determine whether neighborhood conditions such as the presence of drug activity, commercial enterprises, and convenience to shopping will affect the livability of the unit.

Families have no discretion with respect to lead-based paint standards and smoke detectors.

**Chapter 9**

**GENERAL LEASING POLICIES**

**INTRODUCTION**

Chapter 9 covers the lease-up process from the family's submission of a Request for Tenancy Approval to execution of the HAP contract.

In order for HATC to assist a family in a particular dwelling unit, or execute a Housing Assistance Payments (HAP) contract with the owner of a dwelling unit, the HATC 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 HATC 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 HATC, 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**

HATC 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)].

HATC may elect to screen applicants for family behavior or suitability for tenancy. See Chapter 3 for a discussion of HATC’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 HATC approval of the tenancy, HATC must inform the owner that screening and selection for tenancy is the responsibility of the owner [24 CFR 982.307(a) (2)].

HATC must provide the owner with the family's current and prior address (as shown in HATC records); and the name and address (if known to HATC) of the landlord at the family's current and prior address. [24 CFR 982.307 (b) (1)].

HATC is permitted, but not required, to offer the owner other information in HATC’s possession about the family’s tenancy [24 CFR 982.307(b) (2)].

HATC’s policy on providing information to the owner must be included in the family’s briefing packet [24 CFR 982.307(b) (3)].

HATC POLICY

HATC will not screen applicants for family behavior or suitability for tenancy.

HATC does have the responsibility for providing the owner with the family's current and prior address (as shown in HATC records); and the name and address (if known to HATC) of the landlord at the family's current and prior address.

The Violence Against Women Reauthorization Act of 2005 (VAWA) requires PHAs to notify Section 8 owners of their rights and obligations under the act specifically their right to request certification from an alleged victim and their obligation to maintain the confidentiality of any information they obtain, including the identity of the victim. These are stated in 24 CFR 5.2007. (See the subsection headed “Certification of Status and Confidentiality.

**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 HATC to approve the assisted tenancy in the selected unit.

The owner and the family must submit two documents to the HATC:

* Completed Request for Tenancy Approval (RTA) – Form HUD-52517
* Copy of the proposed lease, including the HUD-prescribed Tenancy Addendum – Form HUD-52641-A

The RTA contains important information about the rental unit selected by the family, including the unit address, number of bedrooms, structure type, year constructed, utilities included in the rent, and the requested beginning date of the lease, necessary for HATC 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 HATC has granted a request for reasonable accommodation for a person with disabilities who is a member of the tenant household.

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

Both the RTA and the proposed lease must be submitted no later than the expiration date stated on the voucher. [HCV GB p.8-15].

HATC POLICY

The RTA must be signed by both the family and the owner.

The owner may submit the RTA on behalf of the family, after the owner has approved the family to reside in the proposed unit.

Completed RTA (including the proposed dwelling lease) must be submitted as hard copies, in-person, by mail, or by fax.

The family may not submit, and HATC will not process, more than one (1) RTA at a time.

When the family submits the RTA HATC will review the RTA to ensure it’s completed. If the RTA is incomplete (including lack of signature by family, owner, or both), or if the dwelling lease is not submitted with the RTA, HATC will notify the family and the owner of the deficiencies. Missing information and/or missing documents will only be accepted as hard copies, in-person, by mail, or by fax. HATC will not accept missing information over the phone.

When the family submits the RTA and proposed lease, HATC will also review the terms of the RTA for consistency with the terms of the proposed lease.

If the terms of the RTA are not consistent with the terms of the proposed lease, HATC will notify the family and the owner of the discrepancies.

Corrections to the terms of the RTA and/or the proposed lease will only be accepted as hard copies, in-person, by mail or by fax. HATC will not accept corrections by phone.

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

**9-I.C. OWNER PARTICIPATION**

HATC does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where HATC 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 HATC’s jurisdiction. This includes the dwelling unit they are currently occupying.

**Ineligible Units [24 CFR 982.352(a)]**

HATC 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 or is owned by a parent, child, grandparent, grandchild, sister or brother of any family member unless their lease was effective prior to June 17, 1998.

**PHA-Owned Units [24 CFR 982.352(b)]**

Otherwise eligible units that are owned or substantially controlled by HATC issuing the voucher may also be leased in the voucher program. In order for a HATC-owned unit to be leased under the voucher program, the unit must not be ineligible housing and HATC 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 HATC-owned unit without any pressure or steering by HATC.

HATC POLICY

HATC has eligible units available that may also be leased in the voucher program. HATC will inform the family of this housing at the time of the briefing. HATC will also inform the family, that the family has the right to select any eligible unit available for lease and that the family is free to select a HATC-owned unit without any pressure or steering by HATC.

**Special Housing Types [24 CFR 982 Subpart M]**

HUD regulations permit, but do not generally require, HATC 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 HATC has chosen to allow.

The regulations do require HATC 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 dwelling unit rent must be at a level where the family’s share of rent does not exceed 40 percent of the family’s monthly adjusted income. See Chapter 6 for a discussion of calculation of gross rent, the use of payment standards, and calculation of family income, family share of rent and HAP.

**9-I.E. LEASE AND TENANCY ADDENDUM**

The family and the owner must execute and enter into a written dwelling lease for the assisted unit. This written lease is a contract between the tenant family and the owner; HATC is not a party to this contract.

The tenant must have legal capacity to enter a lease under State and local law. 'Legal capacity' means that the tenant is bound by the terms of the lease and may enforce the terms of the lease against the owner [24 CFR 982.308(a)]

**Lease Form and Tenancy Addendum [24 CFR 982.308]**

If the owner uses a standard lease form for rental to unassisted tenants in the locality or the premises, the lease must be in such standard form. If the owner does not use a standard lease form for rental to unassisted tenants, the owner may use another form of lease. The HAP contract prescribed by HUD contains the owner's certification that if the owner uses a standard lease form for rental to unassisted tenants, the lease is in such standard form.

All provisions in the HUD-required Tenancy Addendum must also be added word-for-word to the owner's standard lease form, for use with the assisted family. The Tenancy Addendum includes the tenancy requirements for the program and the composition of the household as approved by HATC. As a part of the lease, the tenant shall have the right to enforce the Tenancy Addendum against the owner and the terms of the Tenancy Addendum shall prevail over any other provisions of the lease.

HATC POLICY

HATC 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 HATC to approve a shorter initial lease term if certain conditions are met.

HATC POLICY

HATC 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.

HATC 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. HATC may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants. However, if HATC chooses to do so, language to this effect must be added to Part A of HAP contract [Form HUD-52641].

HATC POLICY

HATC 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 HATC’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)].

HATC POLICY

HATC permits owners and families to execute separate, non-lease agreements for services, appliances (other than range and refrigerator) and other items that are not included in the lease.

Any items, appliances, or other services that are customarily provided to unassisted families as part of the dwelling lease with those families, or are permanently installed in the dwelling unit must be included in the dwelling lease for the assisted family. These items, appliances or services cannot be placed under a separate non-lease agreement between the owner and family. Side payments for additional rent, or for items, appliances or services customarily provided to unassisted families as part of the dwelling lease for those families, are prohibited.

Any items, appliances, or other services that are not customarily provided to unassisted families as part of the dwelling lease with those families, are not permanently installed in the dwelling unit and where the family has the sole option of not utilizing the item, appliance or service, may be included in a separate non-lease agreement between the owner and the family.

The family is not liable and cannot be held responsible under the terms of the assisted dwelling lease for any charges pursuant to a separate non-lease agreement between the owner and the family. Non-payment of any charges pursuant to a separate non-lease agreement between the owner and the family cannot be a cause for eviction or termination of tenancy under the terms of the assisted dwelling lease.

Separate non-lease agreements that involve additional items, appliances or other services may be considered amenities offered by the owner and may be taken into consideration when determining the reasonableness of the rent for the property.

**PHA Review of Lease**

HATC will review the dwelling lease for compliance with all applicable requirements.

HATC POLICY

If the dwelling lease is incomplete or incorrect, HATC 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. HATC will not accept missing and corrected information over the phone

Because the initial leasing process is time-sensitive, HATC will attempt to communicate with the owner and family by phone, fax, or email. HATC will use mail when the parties can’t be reached by phone, fax, or email.

HATC 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 HATC determines that the lease does not comply with State or local law [24 CFR 982.308(c)]

HATC POLICY

HATC 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, HATC 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, HATC 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 HATC and meets the Housing Quality Standards (HQS); the lease offered by the owner is approvable and includes the required Tenancy Addendum; the rent to be charged by the owner for the unit must is reasonable; where the family is initially leasing a unit and the gross rent of the unit exceeds the applicable payment standard for the family, the share of rent to be paid by the family does not exceed 40 percent of the family’s monthly adjusted income [24 CFR 982.305(a)]; the owner is an eligible owner, not disapproved by the HATC, 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)].

HATC POLICY

HATC 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 HATC, HATC will obtain corrected copies of the RTA and proposed lease, signed by the family and the owner.

Corrections to the RTA/proposed lease will only be accepted as hard copies, in-person, by mail, or by fax. HATC will not accept corrections over the phone.

If HATC determines that the tenancy cannot be approved for any reason, the owner and the family will be notified in writing and given the opportunity to address any reasons for disapproval. HATC will instruct the owner and family of the steps that are necessary to approve the tenancy.

* + Where the tenancy is not approvable because the unit is not approvable, the family must continue to search for eligible housing within the timeframe of the issued voucher.
  + If the tenancy is not approvable due to rent affordability (including rent burden and rent reasonableness), HATC 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]**

HAP contract is a written agreement between HATC and the owner of the dwelling unit occupied by a housing choice voucher assisted family. Under the HAP contract, HATC agrees to make housing assistance payments to the owner on behalf of a specific family occupying a specific unit and obliges the owner to comply with all program requirements.

The HAP contract format is prescribed by HUD.

If HATC has given approval for the family of the assisted tenancy, the owner and HATC 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)].

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

HATC 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.

HATC 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, HATC 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 HAP contract (a maximum of 60 days).

Any HAP contract executed after the 60 day period is void, and HATC may not pay any housing assistance payment to the owner.

**HATC POLICY**

Owners who have not previously participated in the HCV program will be sent HATC “Landlord Participation”. Owners will be invited to attend a HCV owner orientation in which the terms of the Tenancy Addendum and the HAP contract will be explained.

The owner and the assisted family will execute the dwelling lease and the owner must provide a copy to HATC. HATC will ensure that both the owner and the assisted family receive copies of the dwelling lease.

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

**HATC POLICY**

For all unit transfers, HAP contracts may only begin on the 1st of the month following a passed inspection if a tenant is currently under a HAP contract/ lease. HAP contracts for all new admissions or tenants not under contract/ lease may begin on any day following a passed inspection and signed lease.

See Chapter 13 for a discussion of 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 HATC a copy of such changes. The lease, including any changes, must remain in accordance with the requirements of this chapter.

Generally, PHA approval of tenancy and execution of a new HAP contract are not required for changes in the lease. However, under certain circumstances, voucher assistance in the unit shall not be continued unless HATC has approved a new tenancy in accordance with program requirements and has executed a new HAP contract with the owner. These circumstances include:

* Changes in lease requirements governing tenant or owner responsibilities for utilities or appliances
* Changes in lease provisions governing the term of the lease
* The family moves to a new unit, even if the unit is in the same building or complex

In these cases, if the HCV assistance is to continue, the family must submit a new Request for Tenancy Approval (RTA) along with a new dwelling lease containing the altered terms. A new tenancy must then be approved in accordance with this chapter.

Where the owner is changing the amount of rent, the owner must notify HATC in writing of any changes in the amount of the rent to owner at least 60 days before any such changes go into effect [24 CFR 982.308(g)(4)]. HATC 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)].

HATC POLICY

Where the owner is requesting a rent increase, HATC will determine whether the requested increase is reasonable within 15 days of receiving the request from the owner. The owner will be notified of the determination in writing.

Rent increases will go into effect on the first of the month following the 60 day period after the owner notifies the HATC 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 HATC policies governing moves within or outside the HATC’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 HATC’s HCV program, whether the family moves to another unit within HATC’s jurisdiction or to a unit outside HATC’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 HATC’s jurisdiction. This part also covers the special responsibilities that HATC has under portability regulations and procedures.

**PART I. MOVING WITH CONTINUED ASSISTANCE**

**10-I.A. ALLOWABLE MOVES**

HUD regulations list five regulatory conditions and the statutory condition under VAWVA in which an assisted family is allowed to move to a new unit with continued assistance. Permission to move is subject to the restrictions set forth in section 10-I.B.

HATC POLICY

The following defines HATC’s policy an approving moves with continue assistance:

* 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 HATC a copy of the notice at the same time [24 CFR 982.314(d) (1)].
* The Violence Against Women Reauthorization Act of 2005 provides that “ a family may receive a voucher from a public housing agency and move to another jurisdiction under the tenant-based assistance program if the family has complied with all other obligations of the Section 8 program and has moved out of the assisted dwelling unit in order to protect the health or safety of an individual who is or has been a victim of domestic violence, dating violence, or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if he or she remained in the assisted dwelling unit” [24 CFR 982.353(b)]

The PHA must adopt an Emergency Transfer Plan as required by regulations at 24 CFR 5.2005 (e).

* + HATC Policy: If a family requests permission to move with continued assistance based on a claim that the move is necessary 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. HATC will request documentation in accordance with VAWA regulations and HATC’s Emergency Transfer Plan. The PHA has adopted an Emergency Transfer Plan, which is included as Addendum 2-2 in this plan.
* 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 HATC a copy of any owner eviction notice.
* HATC has terminated the assisted lease for the family’s unit for the owner’s breach [24 CFR 982.34(b) (i)].
* HATC determines that the family 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, HATC must issue the family a new voucher, and the family and PHA must try to find an acceptable unit as soon as possible. If an acceptable unit is available for the family, HATC 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 HATC give notice to the owner [24 CFR 928.204(a) and (c)].
* 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)].

**10-I.B. RESTRICTIONS ON MOVES**

A family’s right to move is generally contingent upon the family’s compliance with program requirements [24 CFR 982.1(b) (2)]. HUD specifies two conditions under which a HATC may deny a family permission to move and two ways in which a HATC may restrict moves by a family.

* **Denial of Moves**

HUD regulations permit HATC to deny a family permission to move under the following conditions:

***Insufficient Funding***

HATC may deny a family permission to move if HATC does not have sufficient funding for continued assistance [24 CFR 982.314(e) (1)]. However, Notice PIH 2008-43 significantly restricts the ability of PHAs to deny permission to move under portability due to insufficient fund. He requirements found in this notice are mandatory. **For moves outside HATC’s jurisdiction under portability no policy decisions are required.**

HATC POLICY

HATC will deny a family permission to move on grounds that HATC does not have sufficient funding for continued assistance if (a) the move is initiated by the family, not the owner or HATC; (b) HATC can demonstrate that the move will, in fact, result in higher subsidy costs; and (c) HATC 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.

***Grounds for Denial or Termination of Assistance***

HATC has grounds for denying or terminating the family’s assistance [24 CFR 982.314(e) (2)]. VAWA creates an exception to these restrictions for families who are otherwise in compliance with program obligations, but have moved to protect the health or safety of an individual who is a or has been a victim of domestic violence, dating violence or stalking, and who reasonably believed he or she has imminently threatened by harm from further violence if they remained in the unit [24 CFR 982.353(b)].

HATC POLICY

If HATC has grounds for denying or terminating a family’s assistance, HATC will act on those grounds in accordance with the regulations and policies set forth in Chapters 3 and 12, respectively. In general, it will not deny a family permission to move for this reason; however, it retains the discretion to do so under special circumstances. Refers to sections 3-III.G and 12-II.E for VAWA provisions.

**Restrictions on Elective Moves [24 CFR 982.314(c)]**

HUD regulations permit HATC to prohibit any elective move by a participant family during the family’s initial lease term. They also permit HATC to prohibit more than one elective move by a participant family during any 12-month period.

HATC POLICY

HATC will deny a family permission to make an elective move during the family’s initial lease term. This policy applies to moves within HATC’s jurisdiction or outside it under portability.

HATC 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, and witness protection programs), to accommodate a change in family circumstances (e.g., new employment, school attendance in a distant area), or to address an emergency situation over which a family has no control.

In addition, HATC will allow exceptions to these policies for purposes of reasonable accommodation of a family member who is a person with disabilities (see Chapter 2).

If the family owes HATC any money for unreported income, HATC may allow the family to enter into a payment agreement prior to moving. At HATC discretion the family may be require to make portion payment (up to half of the amount owed) before portability papers are forwarded to another housing authority.

If a family or owner seeks to terminate a lease prior to the end of the term, the family must make the request in writing to HATC. Only families, who have not violated family obligations and do not owe HATC any debts, may be approved to move. The family must receive approval from HATC to terminate the lease before the end of the term lease. After this approval is received in writing, the family and owner must sign a mutual rescission of lease.

If the Lease is to be terminated by means of a mutual rescission on the part of both landlord and tenant, the fully executed rescission form must be returned to HATC office at least 30 calendar days prior to the proposed rescission date. Families requesting relocation more than once during any given twelve month period will be denied relocation under continued assistance regardless of any mutual lease rescission rendered.

**10-I.C. MOVING PROCESS**

**Notification**

If a family wishes to move to a new unit, the family must notify HATC 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 HATC’s jurisdiction under portability, the notice to the HATC must specify the area where the family wishes to move [24 CFR 982.314(d) (2), Notice PIH 2004-12]. The notices must be in writing [24 CFR 982.5].

**Approval**

HATC POLICY

Upon receipt of a family’s notification that it wishes to move, HATC 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. HATC will notify the family in writing of its determination within 10 days following receipt of the family’s notification.

**Re-examination of Family Income and Composition**

HATC POLICY

For families approved to move to a new unit within HATC’s jurisdiction, HATC will perform a new annual re-examination in accordance with the policies set forth in Chapter 11 of this plan.

For families moving into or families approved to move out of HATC’s jurisdiction under portability, HATC will follow the policies set forth in Part II of this chapter.

**Voucher Issuance and Briefing**

HATC POLICY

For families approved to move to a new unit within HATC’s jurisdiction, HATC will issue a new voucher within 10 days of HATC’s written approval to move. No briefing is required for these families. HATC 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 HATC approves. Otherwise, the family will lose its assistance.

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

For families moving into or families approved to move out of HATC’s jurisdiction under portability, HATC 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, HATC 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.

HATC POLICY

The family is still required to comply with the scheduled move out date. No housing assistance payments will be made to the current owner after the scheduled move out date as stated in the intent to vacate notice and 30 day notice provided to the owner. To extend payment of subsidy beyond the scheduled move out date, a written request signed by the owner and tenant is required before the scheduled move out date.

**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 Public Housing Agency (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 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. The PHA will follow the rules and policies in section 10-II.B when it is acting as the initial PHA for a family. It will follow the rules and policies in section 10-II.C when it is acting as the receiving PHA for a family.

**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 HATC’s jurisdiction under portability. The initial PHA, in accordance with HUD regulations and PHA policy, determines whether a family qualifies.

***Applicant Families***

Under HUD regulations, most applicant families qualify to lease a unit outside HATC’s jurisdiction under portability. However, HUD gives HATC 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.

HATC POLICY

In determining whether or not to deny an applicant family permission to move under portability because HATC lacks sufficient funding or has grounds for denying assistance to the family, the initial PHA will follow the policies established in section 10-I.B of this chapter.

In addition, HATC 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)].

HATC POLICY

If neither the head of household nor the spouse/co-head of an applicant family had a domicile (legal residence) in HATC’s jurisdiction at the time the family’s application for assistance was submitted, the family must live in HATC’s jurisdiction with voucher assistance for at least 12 months before requesting portability.

HATC will consider exceptions to this policy for purposes of reasonable accommodation (see Chapter 2). However, any exception to this policy is subject to the approval of the receiving PHA [24 CFR 982.353(c) (3)].

***Participant Families***

The Initial PHA must not provide portable assistance for a participant if a family has moved out of its assisted unit in violation of the lease. [24 CFR 982.3539b).] VAWA creates an exception to this prohibition for families who are otherwise in compliance with program obligations but have moved to protect the health or safety of an individual who is or has been a victim of domestic violence, dating violence or stalking and who reasonably believed he or she was imminently threatened by harm from further violence if they remained in the unit [24 CFR 982.353(b)].

HATC POLICY

HATC will determine whether a participant family may move out of HATC’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. HATC 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, HATC 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)].

**Re-examination of Family Income and Composition**

No new re-examination of family income and composition is required for an applicant family.

HATC POLICY

For a participant family approved to move out of its jurisdiction under portability, HATC generally will conduct a re-examination of family income and composition only if the family’s annual re-examination must be completed on or before the initial billing deadline specified on form HUD-52665, Family Portability Information.

HATC 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 HATC to provide information on portability to all applicant families that qualify to lease a unit outside the HATC’s jurisdiction under the portability procedures. Therefore, no special briefing is required for these families.

HATC POLICY

No formal briefing will be required for a participant family wishing to move outside the HATC’s jurisdiction under portability. However, HATC 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). HATC will provide the name, address, and phone of the contact for the PHA in the jurisdiction to which they wish to move. HATC will advise the family that they will be under the receiving PHA’s policies and procedures, including subsidy standards and voucher extension policies.

**Voucher Issuance and Term**

An applicant family has no right to portability until after the family has been issued a voucher [24 CFR 982.353(b)]. In issuing vouchers to applicant families, HATC will follow the regulations and procedures set forth in Chapter 5. A new voucher is not required for portability purposes.

HATC POLICY

For families approved to move under portability, HATC will issue a new voucher within 10 days of HATC’s written approval to move.

The initial term of the voucher will be 60 days.

**Voucher Extensions and Expiration**

HATC POLICY

HATC will approve **no** extensions to a voucher issued to an applicant or participant family porting out of HATC’s jurisdiction except under the following circumstances: (a) the initial term of the voucher will expire before the portable family will be issued a voucher by the receiving PHA, (b) the family decides to return to the initial PHA’s jurisdiction and search for a unit there, or (c) the family decides to search for a unit in a third PHA’s jurisdiction. In such cases, the policies on voucher extensions set forth in Chapter 5, section 5-II.E, of this plan will apply, including the requirement that the family apply for an extension in writing prior to the expiration of the initial voucher term.

To receive or continue receiving assistance under the initial HATC’s voucher program, a family that moves to another PHA’s jurisdiction under portability must be under HAP contract in the receiving PHA’s jurisdiction within 60 days following the expiration date of the initial PHA’s voucher term (including any extensions). (See below under “Initial Billing Deadline” for one exception to this policy.)

**Initial Contact with the Receiving PHA**

After approving a family’s request to move under portability, the initial PHA must promptly notify the receiving PHA to expect the family [24 CFR 982.355(c) (2)]. This means that the initial PHA must contact the receiving PHA directly on the family’s behalf [Notice PIH 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)].

HATC POLICY

Because the portability process is time-sensitive, HATC will notify the receiving PHA by phone, fax, or e-mail to expect the family. The initial PHA will also ask the receiving PHA to provide any information the family may need upon arrival, including the name, fax, and email and telephone number of the staff person responsible for business with incoming portable families and procedures related to appointments for voucher issuance. HATC will pass this information along to the family. HATC will also ask for the name, address, telephone number, fax and email of the person responsible for processing the billing information.

**Sending Documentation to the Receiving PHA**

The initial PHA is required to send the receiving PHA the following documents:

* 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]

HATC POLICY

In addition to these documents, HATC will provide the following information, if available, to the receiving PHA:

* Social security numbers (SSNs)
* Documentation of SSNs for all family members age 6 and over
* 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

HATC 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 the initial PHA sends form HUD-52665 to the receiving PHA, it specifies in Part I the deadline by which it must receive the initial billing notice from the receiving PHA. This deadline is 60 days following the expiration date of the voucher issued to the family by the initial PHA. If the initial PHA does not receive a billing notice by the deadline and does not intend to honor a late billing submission, it must contact the receiving PHA to determine the status of the family. If the receiving PHA reports that the family is not yet under HAP contract, the initial PHA may refuse to accept a late billing submission. If the receiving PHA reports that the family is under HAP contract and the receiving PHA cannot absorb the family, the initial PHA must accept a late billing submission; however, it may report to HUD the receiving PHA’s failure to comply with the deadline.

HATC POLICY

If HATC 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, HATC 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. HATC will send the receiving PHA a written confirmation of its decision by mail.

HATC 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. HATC 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 PHA’s as well as for families that remain within its jurisdiction.

HATC POLICY

The initial PHA may utilize direct deposit to ensure that the payment is received by the deadline unless the receiving PHA notifies the initial PHA that direct deposit is not acceptable to them.

**Annual Updates of Form HUD-50058**

If the initial PHA is being billed on behalf of a portable family, it should receive an updated form HUD-50058 each year from the receiving PHA. If the initial PHA fails to receive an updated 50058 by the family’s annual reexamination date, the initial PHA should contact the receiving PHA to verify the status of the family.

**Denial or Termination of Assistance [24 CFR 982.355 (c) (9)]**

If the initial PHA has grounds for denying or terminating assistance for a portable family that has not been absorbed by the receiving PHA, the initial PHA may act on those grounds at any time. (For PHA polices 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)].

**Initial Contact with Family**

When a family moves into HATC’s jurisdiction under portability, the family is responsible for promptly contacting HATC and complying with HATC’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 2004-12].

When a portable family requests assistance from the receiving PHA, the receiving PHA must promptly inform the initial PHA whether the receiving PHA will bill the initial PHA for assistance on behalf of the portable family or will absorb the family into its own program [24 CFR 982.355(c)(5)]. If the PHA initially bills the initial PHA for the family’s assistance, it may later decide to absorb the family into its own program [Notice PIH 2004-12]. (See later under “Absorbing a Portable Family” for more on this topic.)

HATC POLICY

Within 10 days after a portable family requests assistance, the receiving PHA will notify the initial PHA whether it intends to bill the receiving PHA on behalf of the portable family or absorb the family into its own program.

If for any reason the receiving PHA refuses to process or provide assistance to a family under the portability procedures, the family must be given the opportunity for an informal review or hearing [Notice PIH 2004-12]. (For more on this topic, see later under “Denial or Termination of Assistance.”)

**Briefing**

HUD allows the receiving PHA to require a briefing for an incoming portable family as long as the requirement does not unduly delay the family‘s search [Notice PIH 2008-43].

HATC POLICY

HATC will require the family to attend a briefing. HATC will provide the family with a packet (as described in Chapter 5) and, in an individual briefing, will orally inform the family about HATC‘s payment and subsidy standards, procedures for requesting approval of a unit, the unit inspection process, and the leasing process.

**Income Eligibility and Re-examination**

HUD allows the receiving PHA to conduct its own income re-examination of a portable family [24 CFR 982.355(c) (4)]. However, the receiving PHA may not delay voucher issuance or unit approval until the re-examination process is complete unless the re-examination is necessary to determine that an applicant family is income eligible for admission to the program in the area where the family wishes to lease a unit [Notice PIH 2008-43, 24 CFR 982.201(b)(4)]. The receiving PHA does not re-determine income eligibility for a portable family that was already receiving assistance in the initial PHA‘s voucher program [24 CFR 982.355(c) (1)].

HATC POLICY

For any family moving into its jurisdiction under portability, HATC will conduct a new re-examination of family income and composition based on the current 50058 provided.

HATC will not delay issuing the family a voucher or delay approving a unit for the family until the re-examination process is complete unless the family is an applicant and HATC cannot otherwise confirm that the family is income eligible for admission to the program in the area where the unit is located.

In conducting its own reexamination, HATC will rely upon the current 50058 submitted by the Initial PHA along with any supporting documentation and verifications provided to the extent that they (a) accurately reflect the family‘s current circumstances and (b) were obtained within the last 120 days.

New information may be verified by documents provided by the family and readjusted retroactively to the initial start date of the first HAP, if necessary, when third party verification is received.

**Voucher Issuance**

When a family moves into its jurisdiction under portability, the receiving PHA is required to issue the family a voucher [24 CFR 982.355(b) (6)]. The family must submit a request for tenancy approval to the receiving PHA during the term of the receiving PHA‘s voucher [24 CFR 982.355(c) (6)].

***Timing of Voucher Issuance***

HUD expects the receiving PHA to issue the voucher within two weeks after receiving the family‘s paperwork from the initial PHA if the information is in order, the family has contacted the receiving PHA, and the family complies with the receiving PHA‘s procedures [Notice PIH 2008-43].

HATC POLICY

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

***Voucher Term***

The term of the receiving PHA‘s voucher may not expire before the term of the initial PHA‘s voucher [24 CFR 982.355(c) (6)].

HATC POLICY

The receiving PHA‘s voucher will expire on the same date as the initial PHA‘s voucher or with any approved extension as required by HUD.

***Voucher Extensions [24 CFR 982.355(c) (6), Notice 2008-43]***

The receiving PHA may provide additional search time to the family beyond the expiration date of the initial PHA‘s voucher; however, if it does so, it must inform the initial PHA of the extension. It must also bear in mind the billing deadline provided by the initial PHA. Unless willing and able to absorb the family, the receiving PHA should ensure that any voucher expiration date would leave sufficient time to process a request for tenancy approval, execute a HAP contract, and deliver the initial billing to the initial PHA.

HATC POLICY

HATC generally will not extend the term of the voucher that it issues to an incoming portable family unless HATC plans to absorb the family into its own program, in which case it will follow the policies on voucher extension set forth in section or if HUD policy provides guidance to extend as a requirement 5-II.E.

HATC will consider an exception to this policy as a reasonable accommodation to a person with disabilities (see Chapter 2).

**Notifying the Initial PHA**

The receiving PHA must promptly notify the initial PHA if the family has leased an eligible unit under the program or if the family fails to submit a request for tenancy approval for an eligible unit within the term of the receiving PHA‘s voucher [24 CFR 982.355(c) (8)]. The receiving PHA is required to use Part II of form HUD-52665, Family Portability Information, for this purpose [24 CFR 982.355(e) (5), Notice PIH 2008-43]. (For more on this topic and the deadline for notification, see below under ―Administering a Portable Family‘s Voucher.‖)

If an incoming portable family ultimately decides not to lease in the jurisdiction of the receiving PHA but instead wishes to return to the initial PHA‘s jurisdiction or to search in another jurisdiction, the receiving PHA must refer the family back to the initial PHA. In such a case the voucher of record for the family is once again the voucher originally issued by the initial PHA. Any extension of search time provided by the receiving PHA‘s voucher is only valid for the family‘s search in the receiving PHA‘s jurisdiction [Notice PIH 2008-43].

**Administering a Portable Family’s Voucher**

***Initial Billing Deadline***

If a portable family‘s search for a unit is successful and the receiving PHA intends to administer the family‘s voucher, the receiving PHA must submit its initial billing notice (Part II of form HUD-52665) (a) no later than 10 business days following the date the receiving PHA **executes** a HAP contract on behalf of the family **and** (b) in time that the notice will be **received** no later than 60 days following the expiration date of the family‘s voucher issued by the initial PHA [Notice PIH 2008-43]. A copy of the family‘s form HUD-50058, Family Report, completed by the receiving PHA must be attached to the initial billing notice. The receiving PHA may send these documents by mail, fax, or e-mail.

HATC POLICY

HATC will send its initial billing notice by fax or e-mail, if necessary, to meet the billing deadline but will also send the notice by regular mail.

If the receiving PHA fails to send the initial billing within 10 business days following the date the HAP contract is executed, it is required to absorb the family into its own program unless (a) the initial PHA is willing to accept the late submission or (b) HUD requires the initial PHA to honor the late submission (e.g., because the receiving PHA is over leased) [Notice PIH 2008-43].

***Ongoing Notification Responsibilities [Notice PIH 2008-43, HUD-52665]***

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

HATC POLICY

HATC will send a copy of the updated HUD-50058 by regular mail at the same time HATC and owner are notified of the re-examination results.

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

* 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 2008-43]***

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

***Overpayments [Notice PIH 2008-43]***

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

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

Return the full amount of the overpayment, including the portion provided for administrative fees, to the initial PHA.

Once full payment has been returned, notify the Office of Public Housing in the HUD area office with jurisdiction over the receiving PHA of the date and the amount of reimbursement to the initial PHA.

At HUD’s discretion, the receiving PHA will be subject to the sanctions spelled out in Notice PIH 2008-43.

***Denial or Termination of Assistance***

At any time, the receiving PHA may make a determination to deny or terminate assistance to a portable family for family action or inaction [24 CFR 982.355(c) (9), 24 CFR 982.355(c) (10)].

In the case of a termination, HATC should provide adequate notice of the effective date to the initial PHA to avoid having to return a payment. In no event should the receiving PHA fail to notify the initial PHA later than 10 business days following the effective date of the termination of the billing arrangement [Notice PIH 2008-43].

HATC POLICY

If HATC elects to deny or terminate assistance for a portable family, HATC will notify the initial PHA within 10 business days after the informal review or hearing if the denial or termination is upheld. HATC will base its denial or termination decision on the policies set forth in Chapter 3 or Chapter 12, respectively. The informal review or hearing will be held in accordance with the policies in Chapter 16. The receiving PHA will furnish the initial PHA with a copy of the review or hearing decision.

**Absorbing a Portable Family**

The receiving PHA may absorb an incoming portable family into its own program when HATC executes a HAP contract on behalf of the family or at any time thereafter providing that (a) HATC has funding available under its annual contributions contract (ACC) and (b) absorbing the family will not result in over leasing [24 CFR 982.355(d) (1), Notice PIH 2008-43].

If the receiving PHA absorbs a family from the point of admission, the admission will be counted against the income targeting obligation of the receiving PHA [24 CFR 982.201(b) (2) (vii)].

If the receiving PHA absorbs a family after providing assistance for the family under a billing arrangement with the initial PHA, HUD encourages the receiving PHA to provide adequate advance notice to the initial PHA to avoid having to return an overpayment. The receiving PHA must specify the effective date of the absorption of the family [Notice PIH 2008-43].

**HATC POLICY**

If HATC decides to absorb a portable family upon the execution of a HAP contract on behalf of the family, HATC 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 HATC decides to absorb a family after that, it will provide the initial PHA with 30 days ‘advance notice.

Following the absorption of an incoming portable family, the family is assisted with funds available under the consolidated ACC for the receiving PHA‘s voucher program [24 CFR 982.355(d)], and the receiving PHA becomes the initial PHA in any subsequent moves by the family under portability.

**Chapter 11**

**RE-EXAMINATIONS**

**INTRODUCTION**

HATC is required to re-examine 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 re-examinations, and the recalculation of family share and subsidy that occurs as a result. HUD regulations and HATC policies concerning re-examinations are presented in three parts:

Part I: Annual Re-examinations. This part discusses the process for conducting annual re-examinations.

Part II: Interim Re-examinations. This part details the requirements for families to report changes in family income and composition between annual re-examinations.

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 re-examinations.

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 RE-EXAMINATIONS [24 CFR 982.516]**

**11-I.A. OVERVIEW**

HATC must conduct a re-examination 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 re-examinations, the information to be collected and verified, and annual re-examination effective dates.

**11-I.B. SCHEDULING ANNUAL RE-EXAMINATIONS**

HATC must establish a policy to ensure that the annual re-examination for each family is completed *within* a 12-month period, and may require re-examinations more frequently [HCV GB p. 12-1].

HATC POLICY

HATC will begin the annual re-examination process 120 days in advance of its scheduled effective date. Generally, HATC 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 re-examination or, during a family’s first year in the program, from the effective date of the family’s initial examination (admission).

If the family moves to a new unit, HATC will perform a new annual re-examination.

HATC also may schedule an annual re-examination for completion prior to the anniversary date for administrative purposes.

**Notification of and Participation in the Annual Re-examination Process**

HATC is required to obtain the information needed to conduct annual re-examinations. How that information will be collected is left to the discretion of HATC.

HATC POLICY

Families generally are required to participate in an annual re-examination interview, which must be attended by the head of household, spouse or co-head and all adult members of the household. If participation in an in-person interview poses a hardship because of a family member’s disability, the family should contact the HATC to request a reasonable accommodation (see Chapter 2).

Notification of annual re-examination interviews will be sent by first-class mail and will contain the date, time, and location of the interview. In addition, it will inform the family of the information and documentation that must be brought to the interview notwithstanding the above; the family is responsible for contacting HATC regarding the renewal of their lease, at lease sixty (60) days in advance of the annual recertification date whether or not they receive a notice to renew.

If the family is unable to attend a scheduled interview, the family should contact HATC in advance of the interview to schedule a new appointment.

If a family fails to attend the scheduled interviews without HATC approval, or if the notice is returned by the post office with no forwarding address, a notice of termination (see Chapter 12) will be sent to the family’s address of record.

An advocate, interpreter, or other assistant may assist the family in the interview process

**11-I.C. CONDUCTING ANNUAL RE-EXAMINATIONS**

As part of the annual re-examination process, families are required to provide updated information to HATC regarding the family’s income, expenses, and composition [24 CFR 982.551(b)].

HATC POLICY

Families will be asked to bring all required information (as described in the re-examination notice) to the re-examination appointment. The required information will include a HATC-designated re-examination 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 15 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. If the family does not provide the required documents or information within the required time frame plus any approved extensions, the family will be sent a notice of termination in accordance with policies in 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), HATC must issue the family a new voucher, and the family and HATC must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, HATC must terminate the HAP contract in accordance with its terms [24 CFR 982.403].

EIV and Fraud

During the re-examination process, Housing Specialist will obtain EIV (upfront Income Verification) or TWC (Texas Workforce Commission) data at each annual review and identify any unreported or underreported income for a period of up to 36 months prior to data accessed. Housing Specialist may obtain information from any other sources, including but not limited to Texas Department of Human Services, the Attorney General’s office and The Work Number, for a period of up to 36 months.

If the re-examination discloses that the participant, at the time of admission or at any previous re-examination, made misrepresentations, the participant will be notified in writing of such misrepresentation. The procedures described in Chapter 14 will be followed and the participant may be required to repay HATC for any overpayments made as a result of misrepresentation or may be processed for termination. The procedures regarding enforcement of fraud are detailed in Chapter 12 and Chapter 14.

**11-I.D. DETERMINING ONGOING ELIGIBILITY OF CERTAIN STUDENTS [24 CFR 982.552(b) (5)]**

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

If a student enrolled in an institution of higher education is under the age of 24, is not a veteran, is not married, and does not have a dependent child, the student’s eligibility must be re-examined 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 PHA 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.

HATC POLICY

During the annual re-examination process, HATC 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), HATC will process a re-examination in accordance with the policies in this chapter.

**11-I.E. EFFECTIVE DATES**

HATC must establish policies concerning the effective date of changes that result from an annual re-examination [24 CFR 982.516].

HATC POLICY

In general, an ***increase*** in the family share of the rent that results from an annual re-examination 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 HATC chooses to schedule an annual re-examination for completion prior to the family’s anniversary date for administrative purposes, the effective date will be determined by HATC, but will always allow for the 30-day notice period.

If the family fails to report a change within the required time frames, or fails to provide all required information within the required time frames ***increases*** in the family share of the rent will be applied retroactively, to the scheduled effective date of the annual re-examination. The family will be responsible for any overpaid subsidy and may be offered a repayment agreement in accordance with the policies in Chapter 16.The family’s tenant file will be documented to reflect how the family caused the delay in processing and explain why the family did not receive the full 30 days’ notice of increase.

In general, a ***decrease*** in the family share of the rent that results from an annual re-examination 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 HATC chooses to schedule an annual re-examination for completion prior to the family’s anniversary date for administrative purposes, the effective date will be determined by HATC.

If a tenant causes a delay in the reexamination process and **less than** **thirty days** remain until the anniversary reexamination date, any new rent changes regardless of an increase or decrease in rent will become effective at the anniversary date of the annual re exam.

Delays in re-examination processing are considered to be caused by the family if one or more of the following occurs: the family fails to attend the scheduled annual re-examination interview; the family fails to attend the rescheduled annual re-examination interview; the family fails to sign paperwork or provide information and/or requested by HATC by the date specified, and this delay prevents HATC from completing the re-examination as scheduled.

**PART II: INTERIM RE-EXAMINATIONS [24 CFR 982.516]**

**11-II.A. OVERVIEW**

Family circumstances may change throughout the period between annual re-examinations. HUD and PHA policies dictate what kinds of information about changes in family circumstances must be reported, and under what circumstances HATC must process interim re-examinations to reflect those changes. HUD regulations also permit HATC to conduct interim re-examinations of income or family composition at any time. When an interim re-examination 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. HATC must complete the interim re-examination within a reasonable time after the family’s request.

This part includes HUD and PHA policies describing what changes families are required to report, what changes families may choose to report, and how HATC will process both PHA - and family-initiated interim reexaminations.

**11-II.B. CHANGES IN FAMILY AND HOUSEHOLD COMPOSITION**

HATC 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, HATC has limited discretion in this area.

HATC POLICY

HATC will conduct interim re-examinations to account for any changes in household composition that occur between annual re-examinations. All changes in family composition must be reported in writing **within 30 days** from the date of occurrence. The participant must complete an update form and provide necessary documentations to support the change.

**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 PHS approval. However, the family is required to promptly notify the HATC of the addition [24 CFR 982.551(h) (2)].

HATC POLICY

The family must inform HATC of the birth, adoption or court-awarded custody includes of a child within 30 days.

**New Family and HouseholdMembers 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 HATC 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, HATC must conduct a re-examination 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), HATC must issue the family a new voucher, and the family and HATC must try to find an acceptable unit as soon as possible. If an acceptable unit is available for rental by the family, HATC must terminate the current HAP contract in accordance with its terms [24 CFR 982.403].

HATC POLICY

Families must request HATC 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, and therefore no longer qualifies as a “guest.” Requests must be made in writing and approved by HATC prior to the individual moving into the unit.

All requests to add household members must be in writing and approved by HATC and the owner/manager of the dwelling unit. Each prospective household adult member is required to provide:

* An original Social Security Card, birth certificate, citizenship verification and income verification.
* A valid picture I.D.
* Custody documentation for minors who are not head of household’s children to include: (1) a court order establishing custody; or (2) proof that the adult is receiving income for the child and an affidavit from the parent which establishes custody is required (note: if the adult is not receiving income, records from the school or medical records could be provided to establish the unit as the child’s residence).
* A letter from the head of household’s landlord agreeing to add family member(s).
* All the add-on’s immigration information if they were not born in the U.S. (any INS documents with their registration number, such as: Passports, Permanent or Temporary Resident Cards, I-94, Arrival-Departure Records, work Permits, or Temporary Registration Cards, etc.)
* For Live-in Aide-provide documentation from a physician to indicate the need for a live-in aide is required. The live-in aide’s presence must be determined essential for the care and well-being of the elderly or disabled family member and the live-in aide would not be living in the unit except to provide the necessary care.
* For a blood related adult (except for head of household’s children) – require legal guardianship paperwork, proof of disability or age (62 or older), or a letter from a doctor stating the person requires assistance because of health reason.

HATC will not approve the addition of a new family or household member unless the individual meets HATC’s admissions eligibility criteria (see Chapter 3).

HATC will not approve the addition of new family or household members other than by birth, adoption, court-awarded custody or marriage, if it will require the family to receive a larger voucher size, unless the family can demonstrate that there are medical needs or other extenuating circumstances, including reasonable accommodation that should be considered by HATC. Exceptions will be made on a case-by-case basis.

HATC will not approve requests for additions to family composition where the request intends to provide housing assistance to extended family or multiple households. Information will be provided to participant regarding other housing alternatives for the second household. For the addition of children, the head of household must provide documentation to reflect legal custody, a letter from the parents or school records to indicate the address of the child/children and responsible guardian.

If HATC determines that a unit does not meet the HQS space standards (two persons per living/sleeping space) because of an increase in family size or change in family composition, HATC may issue the family a new voucher, based on the subsidy standards and process the family to move.

HATC will notify the family in writing of the approval or denial of the additional family or household member within 15 days of receiving all information required to verify the individual’s eligibility. If HATC denies approval, the reasons for the denial will be provide in the written notice.

**Departure of a Family or Household Member**

Families must promptly notify HATC 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 CFR982.402], the HATC also needs to know when any live-in aide, foster child, or foster adult ceases to reside in the unit.

HATC POLICY

Program participants must report to HATC in writing within 30 calendar days, any members absent from the household for a period more than 30 consecutive days. This includes any household member, live-in aides, foster child, foster adult who ceases to reside in the unit.

Household members will be removed at the request of the Head of Household, unless the reason for removal, in HATC’s sole discretion, is to attempt to circumvent a limitation or requirement of federal statute, regulation, or HATC POLICY, such as an imminent increase in rent portion due to new income.

In such cases, documentation of the removal of the family member may include one of the following:

Must include written signed notice by the head of household explaining the reason for the removal and one of the following:

* + A new lease showing a new address for the removed family member.
  + Any documentation (such a bill, agency, employment records, school, etc.) showing a new address for the removed family member.

If the change in family size requires a decrease in payment standard, this will occur at the next scheduled re-examination.

**Family absent from the Unit**

A family receiving Housing Choice Voucher (HCV) assistance may be absent from their unit for brief periods. However, at no time shall a family be absent from their HCV subsidized unit for a period exceeding (90) days. This includes families facing work-related transfers, incarceration, rehabilitation, or hospitalization. If the assisted family leaves the unit for 90 consecutive days, their (HCV) subsidy will be processed for termination.

HATC POLICY

HATC will verify family‘s absence from the unit by any single, or combination of the following: letters to the family, phone calls, visits with neighbors, landlords, verification of utilities, on-site inspection, or by any other practical method.

**Children Absent from the Unit**

If children/child is projected to be out of the home for a period of more than six months from the initial removal date but will be returned to the home, the Voucher size may be reduced. Documentation must be provided defining the length of time the children/child will be absent. If documentation reflects that the children/child will be out of the home for more than 6 months, and the parent(s) is in good standing with the HCV program, he/she will be issued an appropriate size bedroom per the subsidy standards at their next scheduled re-examination.

If the child/children later return, the parent must submit a written notice to report a change in family composition, provide proper documentation and request an appropriate bedroom size. Voucher size will be issued according to the subsidy standards.

**Adult Dependents Absent from the unit.**

If an adult dependent goes into the military (full time) or attends college away from home for more than 6 months out of the year, or is incarcerated, the adult dependent will be determined absent. In this instance, the family will be issued an appropriate size bedroom per the subsidy standards at their next scheduled re-examination.

**Joint Custody**

For purposes of establishing appropriate bedroom size, parents who have joint custody of a child must produce required documentation to include divorce decrees or guardianship documents establishing the assisted unit as the primary residence for the child. Primary residence is defined as more than 6 months out of the year.

**Visitors**

The length of stay for visitors is usually defined by the landlord and indicated in the lease. For program purposes, if any individual stays in the unit more than 30 consecutive days, the head of household must report in writing the additional person and request approval from the owner/manager and HATC to add the family member to the lease. The proposed new household member would need to meet the admissions screening criteria as described in Chapter 3.

**Family Break-Up**

In the event of family break up, the HCV subsidy shall remain with that parent/guardian whom has legal custody of any minor children involved. Should HATC be unable to make a determination as to which parent has legal custody, other factors to be considered would include which family member was the original head of household, whether family members are forced to leave as a result of actual or threatened violence, or any other mitigating circumstances brought to the attention of HATC. In cases where a court determines which family member remains with the subsidy, then the decision of the court shall be final. A written decision will be provided to the family, and the family will be provided a right to appeal the decision.

**11-II.C. CHANGES AFFECTING INCOME OR EXPENSES**

Interim re-examinations can be scheduled either because HATC 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, HATC may take different actions depending on whether the family reported the change voluntarily, or because it was required to do so.

**PHA-Initiated Interim Re-examinations**

PHA-initiated interim re-examinations are those that are scheduled based on circumstances or criteria defined by HATC. They are not scheduled because of changes reported by the family.

HATC POLICY

HATC will conduct interim re-examinations in each of the following instances:

**Interims as a result of Earned Income Disallowance (EID)**

For families receiving the Earned Income Disallowance (EID), HATC will conduct an interim re-examination at the start and conclusion of the second 12 month exclusion period (50 percent phase-in period).

**Zero Income**

If the family has reported zero income, HATC will conduct an interim re-examination at least every 3 months (90 days) as long as the family continues to report that they have no income. During the appointment, the family’s income and expenses will be reviewed. If the family still claims 0 (zero) income, they will be required to fill out a 0 (zero) income form and provide information on how they pay for expenses. If is determined that they had income and failed to report it, the interim increase would be made effective retroactively to the date they started to receive the income, they would be required to pay back any over-paid subsidies and their assistance will be processed for termination.

**Seasonal or cyclic income**

If at the time of the annual re-examination, it is not feasible to anticipate a level of income for the next 12 months (e.g. seasonal or cyclic income); HATC will schedule an interim reexamination to coincide with the end of the period for which it is feasible to project income.

**Other examples of HATC initiated Interim Re-examinations**

If at the time of the annual re-examination, tenant-provided documents were used on a provisional basis due to the lack of third-party verification, and third-party verification becomes available, HATC will conduct an interim re-examination.

HATC may conduct an interim re-examination at any time in order to correct an error in a previous re-examination, or to investigate a tenant fraud complaint.

**Payment Standard Errors**

If it is discovered during the screening process that the family was not downgraded or upgraded in error to the proper bedroom size based on current subsidy standard policy, HATC will conduct an interim to downgrade or upgrade to the proper bedroom size.

**Family-Initiated Interim Re-examinations**

HATC 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 re-examination any time the family has experienced a change in circumstances since the last determination [24 CFR 982.516(b) (2)].

***Reporting Requirements for Changes in income and family composition***

HATC POLICY

All changes in income or family composition must be reported in writing within **30** calendar days from the date of occurrence. The participant must complete an update form and provide necessary information to support the change. The participant must submit any required information or documents within 10 calendar days of receiving a request from HATC. This time frame may be extended for good cause with HATC approval. When all necessary verification is complete, the housing eligibility specialist will complete a Rent Change Notice reflecting the change in rent portions and the effective date. A notice will be sent to the family and owner. All changes will be effective on the first day of a given month. See 11.I.E. regarding effective dates.

**11-II.D. PROCESSING THE INTERIM RE-EXAMINATION**

**Method of Reporting**

HATC POLICY

The family must notify HATC of changes in writing by completing the Update Form. Generally, the family will not be required to attend an interview for an interim re-examination. However, if HATC determines that an interview is warranted, the family may be required to attend.

Based on the type of change reported, HATC 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 HATC. This time frame may be extended for good cause with HATC approval. HATC will accept required documentation by mail, by fax, or in person.

**Effective Dates**

HATC must establish the time frames in which any changes that result from an interim re-examination 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 required information within the required time frames [HCV GB, p. 12-10].

HATC POLICY

If the family share of the rent is to ***increase***:

When the change is reported in a timely manner (within 30 calendar days from the effective date of change), the family will be given a 30-day notice prior to the first of the month for any increase in tenant rent. Cost of living adjustments to recipients of Social Security or SSI, Welfare and Veterans Assistance will be calculated at the next annual re-examination. Monthly income increases that total $300 or less will be counted at the next re-examination (except when income is zero.)

In the event an increase in income was not reported in a timely manner, HATC may:

* Retroactively establish the correct Housing Assistance Payment and require the tenant to repay any amounts owed to HATC for the period they earned higher income but did not report;
* Terminate the participant from the program for willful intent to commit fraud; or
* Report the violation to the HUD Regional Inspector General and or local authorities for prosecution.
* The family will be responsible for any overpaid subsidy and may be offered a repayment agreement in accordance with the policies in Chapter 14 and 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 if the change was reported before the 15th of the month 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. However, any changes submitted after the 15th of the month which results in a decrease of the tenant rent portion will take effect the first day that follows a thirty (30) day period.

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.

No adjustments will be made for temporary family conditions not exceeding 30 days. Families experiencing a temporary loss of income shall be referred to various social service agencies for possible assistance.

**PART III: RECALCULATING FAMILY SHARE AND SUBSIDY AMOUNT**

**11-III.A. OVERVIEW**

After gathering and verifying required information for an annual or interim re-examination, HATC 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 HATC’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 HATC changes its payment standards or the family’s situation changes, new payment standards are applied at the following times:

* If HATC’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 i*ncreased,* the increased payment standard will be applied at the *first* *annual* re-examination 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 HATC’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 HATC’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, HATC must use the utility allowances in effect at the time the new lease and HAP contract are executed.

At re-examination, HATC must use HATC current utility allowance schedule [24 CFR 982.517(d) (2)].

HATC POLICY

Revised utility allowances will be applied to a family’s rent and subsidy calculations at the first annual re-examination after the new utility allowance is adopted and the effective date of the new utility allowance is established and provided in writing to staff.

**11-III.C. NOTIFICATION OF NEW FAMILY SHARE AND HAP AMOUNT**

HATC 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 HATC’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).

HATC POLICY

The notice to the family will include the annual and adjusted income amounts that were used to calculate the family share of the rent and the housing assistance payment. The notice also will state the procedures for requesting an informal hearing.

**11-III.D. DISCREPANCIES**

During an annual or interim re-examination, the HATC may discover that information previously reported by the family was in error, or that the family intentionally misrepresented information. In addition, the HATC may discover errors made by the HATC. 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 HATC 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 HATC 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 HATC may consider in lieu of termination, the criteria HATC must use when deciding what action to take and the steps HATC 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 HATC to terminate assistance for certain offenses and when the family no longer requires assistance. HUD permits HATC 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 HATC.

**12-I.B. FAMILY NO LONGER REQUIRES ASSISTANCE [24 CFR 982.455]**

As a family’s income increases, the amount of HATC subsidy goes down. If the amount of HCV assistance provided by HATC drops to zero and remains at zero for 180 consecutive calendar days the family's assistance terminates automatically.

HATC POLICY

A notice of termination will be sent to any family that has zero HAP for 180 consecutive days. 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 HATC of the changed circumstances and request an interim reexamination before the expiration of the 180-day period.

**12-I.C. FAMILY CHOOSES TO TERMINATE ASSISTANCE**

The family may request that the HATC terminate the family's assistance at any time.

HATC POLICY

The request to terminate assistance should be made in writing and signed by the head of household, spouse, or co-head. Before terminating the family’s assistance, the HATC will follow the notice requirements in Section 12-II.E.

**12-I.D. MANDATORY TERMINATION OF ASSISTANCE**

HUD requires HATC to terminate assistance in the following circumstances.

**Eviction [24 CFR 982.552(b) (2)]**

HATC must terminate assistance whenever a family is evicted from a unit assisted under the HCV programfor a serious or repeated violation of the lease. Incidents of actual or threatened violence, dating violence, or stalking may not be construed as serous or repeated violations of the lease by the victim or threatened victim of such violence or stalking.

HATC POLICY

A family will be considered *evicted* if the family moves after a legal eviction order has been issued, whether or not physical enforcement of the order was necessary.

If a family moves after the owner has given the family an eviction notice for serious or repeated lease violations but before a legal eviction order has been issued,termination of assistance is not mandatory. However, HATC will determine whether the family has committed serious or repeated violations of the lease based on available evidence and may terminate assistance or take any of the alternative measures described in Section 12-II.C. and other factors, HATC may, on a case-by-case, choose not terminate assistance.

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

**Failure to Provide Consent [24 CFR 982.552(b) (3)]**

HATC 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)]**

HATC 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 HATC, has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit.

For (3) above, such termination must be for a period of at least 24 months. This does not apply to ineligible noncitizens already in the household where the family’s assistance has been prorated. See Chapter 7 for a complete discussion of documentation requirements.

**Failure to Provide Social Security Documentation [24 CFR 5.218(c)]**

HATC must terminate assistance if a participant family fails to provide the documentation or certification required for any family member who has been assigned a social security number, including any new family members who are added to the household. See Chapter 7 for a complete discussion and certification requirements.

**Methamphetamine Manufacture or Production [24 CFR 982.553(b) (1) (ii)]**

HATC 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, and 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, HATC must the terminate the student’s assistance if, at the time of reexamination, either the student’s income or the income of the student’s parents (if applicable) exceeds the applicable income limit.

If a participant household consists of both eligible and ineligible students, the eligible students shall not be terminated, but must be issued a voucher to move with continued assistance in accordance with program regulations and PHA policies, or must be given the opportunity to lease in place if the terminated ineligible student members elect to move out of the assisted unit.

**12-I.E. MANDATORY POLICIES AND OTHER AUTHORIZED TERMINATIONS**

**Mandatory Policies [24 CFR 982.553(b) and 982.551(l)]**

HUD requires HATC to establish policies that permit HATC to terminate assistance if HATC 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***

HATC POLICY

HATC 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.

HATC will terminate assistance if any household member‘s abuse or pattern of abuse of alcohol threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

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

HATC will consider all credible evidence, including but not limited to, neighbors ‘complaints, 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, HATC 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, HATC 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.

HATC POLICY

HATC 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.

HATC will consider all credible evidence, including but not limited to, any record of arrests and/or convictions of household members related to drug-related or violent criminal activity, and any eviction or notice to evict based on drug-related or violent criminal activity.

In making its decision to terminate assistance, HATC 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, HATC may, on a case-by-case basis, choose not to terminate assistance.

**Other Authorized Reasons for Termination of Assistance [24 CFR 982.552(c)]**

HUD permits HATC to terminate assistance under a number of other circumstances. It is left to the discretion of HATC whether such circumstances in general warrant consideration for the termination of assistance.

HATC POLICY

HATC **will not** terminate a family’s assistance because of the family’s failure to meet its obligations under the Family Self-Sufficiency or Welfare to Work voucher programs.

HATC **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 HATC policies.

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

HATC has ever terminated assistance under the program for any member of the family.

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

The family currently owes rent or other amounts to any PHA in connection with the HCV, Certificate, Moderate Rehabilitation or public housing programs.

The family has not reimbursed any PHA for amounts HATC paid to an owner under a HAP contract for rent, damages to the unit, or other amounts owed by the family under the lease.

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

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

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

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

In making its decision to terminate assistance, HATC 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, HATC 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. HATC 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.

HATC 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.E.

***Insufficient Funding [24 CFR 982.454]***

HATC may terminate HAP contracts if HATC determines, in accordance with HUD requirements, that funding under the consolidated ACC is insufficient to support continued assistance for families in the program.

HATC POLICY

HATC will determine whether there is sufficient funding to pay for currently assisted families according to the policies in Part VIII of Chapter 16. If HATC determines there is a shortage of funding, prior to terminating any HAP contracts, HATC will determine if any other actions can be taken to reduce program costs. If after implementing all reasonable cost cutting measures there is not enough funding available to provide continued assistance for current participants, HATC will terminate HAP contracts as a last resort.

* Prior to terminating any HAP contracts, HATC will notify in writing all Voucher holders who were recently issued Vouchers and have not executed a HAP contract at this time. These families’ Vouchers will be suspended, until funds become available. After funds have become available, the families will be notified in writing that they may continue their search for housing. If a period of 60 days has elapsed, each family will need to be recertified to determine if they’re still eligible for the program as described in Chapter 3 admissions screening criteria.
* HATC will next notify all current non-elderly and non-disabled household participants that are attempting to move to a new location, with no current HAP Contract in effect. These families Voucher‘s will be suspended, until funds become available. After funds have become available, the families will be notified in writing that they may continue their search for housing. If a period of 60 days has elapsed, each family will need to be recertified.

If HATC must terminate HAP contracts due to insufficient funding, HATC will do so in accordance with the following criteria and instructions:

* HATC will inform the local HUD field office. HATC will terminate the minimum number needed in order to reduce HAP costs to a level within HATC’s annual budget authority.
* Rental assistance for Special Purpose Vouchers will be considered for termination last after considering all other voucher holder terminations. If terminated, they will be reinstated first and within 30 days of having sufficient funding.
* Single, non-elderly, non-disabled individuals will be terminated first.
* Non-elderly, non-disabled households who are able to pay 90 to 100% of their adjusted income towards rent would be terminated second.
* Non-elderly, non-disabled households who are able to pay 80 to 89% of their adjusted income towards rent would be terminated third.
* Non-elderly, non-disabled households who are able to pay 70 to 79% of their adjusted income towards rent would be terminated fourth.
* Non-elderly, non-disabled households who are able to pay 60 to 69% of their adjusted income towards rent would be terminated fifth.
* Non-elderly, non-disabled households who are able to pay 50 to 59% of their adjusted

**PART II: APPROACH TO TERMINATION OF ASSISTANCE**

**12-II.A. OVERVIEW**

HATC is required by regulation to terminate a family’s assistance if certain program rules are violated. For other types of offenses, the regulations give HATC the discretion to either terminate the family’s assistance or to take another action. This part discusses the various actions HATC may choose to take when it has discretion, and outlines the criteria HATC 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 HATC terminates assistance depends upon individual circumstances. HUD permits HATC 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, HATC 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)].

HATC POLICY

HATC will consider requiring the tenant to exclude a household member in order to continue to reside in the assisted unit, where that household member has participated in or has been culpable for action or failure to act that warrants termination.

As a condition of continued assistance, the head of household must certify that the culpable family member has vacated the unit and will not be permitted to visit or to stay as a guest in the assisted unit. The family must present evidence of the former family member’s current address upon HATC request.

**Repayment of Family Debts**

HATC POLICY

If a family owes amounts to HATC, as a condition of continued assistance, HATC will require the family to repay the full amount or to enter into a repayment agreement, within 30 days of receiving notice from HATC 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 HATC 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)].

HATC POLICY

HATC 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)]**

# HATC is permitted, but not required, to consider all relevant circumstances when determining whether a family’s assistance should be terminated.

HATC POLICY

HATC 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, or stalking.
* 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.

**Consideration of Rehabilitation**

HUD authorizes PHAs to take into consideration whether a household member who had used illegal drugs or abused alcohol and is no longer engaging in such use or abuse is participating in or has successfully completed a supervised drug or alcohol rehabilitation program.

HATC POLICY

In determining whether to terminate assistance for illegal drug use or a pattern of illegal drug use or for abuse or a pattern of abuse of alcohol, by a household member who is no longer engaging in such use or abuse, HATC will 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.

For this purpose, HATC will 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.

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

If the family includes a person with disabilities, HATC’s decision to terminate the family’s assistance is subject to consideration of reasonable accommodation in accordance with 24 CFR Part 8.

HATC POLICY

If a family indicates that the behavior of a family member with a disability is the reason for a proposed termination of assistance, HATC will determine whether the behavior is related to the disability.

If so, upon the family’s request, HATC will determine whether alternative measures are appropriate as a reasonable accommodation.

HATC will only consider accommodations that can reasonably be expected to address the behavior that is the basis of the proposed termination of assistance. See Chapter 2 for a discussion of reasonable accommodation.

**12-II.E. TERMINATING THE ASSISTANCE OF DOMESTIC VIOLENCE, DATING VIOLENCE, OR STALKING VICTIMS AND PERPETRATORS [Pub.L. 109-162, Pub.L.109-271]**

The Violence Against Women Reauthorization Act of 2005 (VAWA) provides that “criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of tenant’s household or any guest or other person under the tenant’s control shall not be a cause for termination of assistance, tenancy, or occupancy rights if the tenant or an immediate member of the tenant’s family is the victim or threatened victim of that domestic violence, dating violence, or stalking.”

VAWA also gives PHAs the authority to “terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others, without evicting, removing, terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant.”

VAWA does not limit the authority of the HATC to terminate the assistance of any participant if HATC “can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant is not evicted or terminated from assistance. However, situations where this might be relevant are extremely rare.

HATC POLICY

In determining whether a participant who is a victim of domestic violence, dating violence, or stalking is an actual and imminent threat to other tenants or those employed at or providing service to a property, HATC 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

If the tenant wishes to contest HATC’s determination that he or she is an actual and imminent threat to other tenants or employees, the tenant may do so as part of the informal hearing.

**Victim Documentation**

HATC POLICY

When a participant family is facing assistance termination because of the actions of a participant, household member, guest, or other person under the participant’s control and a participant or immediate family member of the participant’s family claims that she or he is the victim of such actions and that the actions are related to domestic violence, dating violence, or stalking, HATC will require the individual to submit documentation affirming that claim.

The documentation must include two elements:

* A completed and signed form HUD-50066, Certification of Domestic Violence, Dating Violence, or Stalking.
* One of the following:
* A police or court record documenting the actual or threatened abuse, or
* A statement signed by an employee, agent, or volunteer of a victim service provider; an attorney; a medical professional; or another knowledgeable professional from whom the victim has sought assistance in addressing the actual or threatened abuse. The professional must attest under penalty of perjury that the incidents in question are bona fide incidents of abuse, and the victim must sign or attest to the statement.

The required certification and supporting documentation must be submitted to the HATC within 14 business days after the individual claiming victim status receives a request for such certification. HATC staff will be aware that the delivery of the certification form to the tenant in response to an incident via mail may place the victim at risk, e.g., the abuser may monitor the mail. HATC may require that the tenant come into the office to pick up the certification form and will work with tenants to make delivery arrangements to do not place the tenant at risk. This 14-day delay deadline may be extended at HATC’s discretion.

If the individual does not provide the required certification and supporting documentation within 14 calendar days, or the approved extension period, HATC may proceed with assistance termination.

HATC also reserves the right to waive these victim verification requirements and accept only a self-certification from the victim if HATC deems the victim’s life to be in imminent danger.

Once a victim has completed certification requirements, HATC will continue to assist the victim and may use bifurcation as a tool to remove a perpetrator from assistance. Owners will be notified of their legal obligation to continue housing the victim, while using lease bifurcation to remove the perpetrator from a unit. HATC will make all best efforts to work with victims of domestic violence before terminating the victim’s assistance.

**Terminating the Assistance of a Domestic Violence Perpetrator [24 CFR 5.2005(c)]**

Although VAWA provides assistance termination protection for victims of domestic violence, it does not provide protection for perpetrators. VAWA gives HATC the explicit authority to ―terminate assistance to any individual who is a tenant or lawful occupant and who engages in criminal acts of physical violence against family members or others…without terminating assistance to, or otherwise penalizing the victim of such violence who is also a tenant or lawful occupant.‖ This authority is not dependent on a bifurcated lease or other eviction action by an owner against an individual family member. Further, this authority supersedes any local, state, or other federal law to the contrary. However, if HATC chooses to exercise this authority, it must follow any procedures prescribed by HUD or by applicable local, state, or federal law regarding termination of assistance [Pub.L. 109-271]. This means that HATC 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].

HATC POLICY

HATC will terminate assistance of a family member if HATC 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, HATC will request that the victim submit the required certification (HUD-50066) and supporting documentation in accordance with the stated time frame.

If the certification and supporting documentation are submitted within the required time frame or any approved extension period, HATC may terminate the assistance of the perpetrator. If the victim does not provide the certification and supporting documentation, as required, HATC may proceed with termination of the family’s assistance.

If HATC can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if the tenant’s tenancy is not terminated, HATC will bypass the standard process and proceed with the immediate termination of the family.

**PHA Confidentiality Requirements**

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

HATC POLICY

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

**12-II.F. TERMINATION NOTICE [HCV GB, p. 15-7]**

If a family’s assistance is to be terminated, whether voluntarily or involuntarily, the HATC must give the family and the owner written notice that specifies:

* The reasons for which assistance has been terminated
* The effective date of the termination
* The family’s right to an informal hearing as described in Chapter 16

If a criminal record is the basis of the termination, a copy of the record must accompany the notice. A copy of the criminal record also must be provided to the subject of the record [24 CFR 982.553(d)].

HATC POLICY

When termination is initiated by HATC, the notice to terminate will be sent to the family and the owner at least 30 calendar days prior to the effective date of the termination. However, if a family vacates the unit without informing HATC, 30 days’ notice will not be given. In these cases, the notice to terminate will be sent at the time HATC learns the family has vacated the unit.

When a family requests to be terminated from the program they must do so in writing to HATC (see section 12-I.C.). HATC will then send a confirmation notice to the family and the owner within 10 business days of the family’s request, but no later than the termination effective date (as requested by the family).

**Notice of Termination Based on Citizenship Status [24 CFR 5.514 (c) and (d)]**

HATC must terminate assistance if

(1) A family fails to submit required documentation within the required timeframe concerning any family member’s citizenship or eligible immigration status;

(2) Evidence of citizenship and eligible immigration status is submitted timely, but USCIS primary and secondary verification does not verify eligible immigration status of a family; or

(3) HATC determines that a family member has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the unit. For (3) above, such termination must be for a period of at least 24 months.

The notice of termination must advise the family of the reasons their assistance is being terminated, that they may be eligible for proration of assistance, the criteria and procedures for obtaining relief under the provisions for preservation of families, that they have the right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or a written explanation in support of the appeal, and that they have the right to request an informal hearing with HATC either upon completion of the USCIS appeal or in lieu of the USCIS appeal. Informal hearing procedures are contained in Chapter 16.

HATC POLICY

The notice to terminate will be sent to the family and the owner at least 30 calendar days prior to the effective date of the termination.

**12-II.G. HOW TERMINATION OF ASSISTANCE AFFECTS THE HAP CONTRACT AND LEASE**

When the family’s assistance is terminated, the lease and HAP contract terminate automatically [Form HUD-52641].

The owner may offer the family a separate unassisted lease [HCV GB, p. 15-8].

**PART III: TERMINATION OF TENANCY BY THE OWNER**

**12-III.A. OVERVIEW**

Termination of an assisted tenancy is a matter between the owner and the family; HATC is not directly involved. However, the owner is under some constraints when terminating an assisted tenancy and the reasons for which a tenancy is terminated dictate whether assistance also will be terminated.

**12-III.B. GROUNDS FOR OWNER TERMINATION OF TENANCY [24 CFR 982.310 and Form HUD-52641-A, Tenancy Addendum]**

During the term of the lease, the owner is not permitted to terminate the tenancy except for serious or repeated violations of the lease, certain violations of state or local law, or other good cause.

**Serious or Repeated Lease Violations**

The owner is permitted to terminate the family’s tenancy for serious or repeated violations of the terms and conditions of the lease, including failure to pay rent or other amounts due under the lease, except when the violations are related to incidents of actual or threatened domestic violence, dating violence, or stalking against that participant However, HATC’s failure to make a HAP payment to the owner is not a violation of the lease between the family and the owner.

**Violation of Federal, State, or Local Law**

The owner is permitted to terminate the tenancy if a family member violates federal, state, or local law that imposes obligations in connection with the occupancy or use of the premises.

**Criminal Activity or Alcohol Abuse**

The owner may terminate tenancy during the term of the lease if any *covered person*, meaning any member of the household, a guest or another person under the tenant’s control commits any of the following types of criminal activity (for applicable definitions see 24 CFR 5.100):

* Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of the premises by, other residents (including property management staff residing on the premises);
* Any criminal activity that threatens the health or safety of, or the right to peaceful enjoyment of their residences by, persons residing in the immediate vicinity of the premises;
* Any violent criminal activity on or near the premises; or
* Any drug-related criminal activity on or near the premises.

The owner may terminate tenancy during the term of the lease if any member of the household is:

* Fleeing to avoid prosecution, custody, or confinement after conviction for a crime or an attempt to commit a crime that is a felony under the laws of the place from which the individual flees, or that, in the case of the State of New Jersey, is a high misdemeanor; or
* Violating a condition of probation or parole imposed under federal or state law.

The owner may terminate tenancy for criminal activity by a household member in accordance with this section if the owner determines that the household member has committed the criminal activity, regardless of whether the household member has been arrested or convicted for such activity.

The owner may terminate tenancy during the term of the lease if any member of the household has engaged in abuse of alcohol that threatens the health, safety, or right to peaceful enjoyment of the premises by other residents.

***Evidence of Criminal Activity***

The owner may terminate tenancy and evict by judicial action a family for criminal activity by a covered person if the owner determines they have engaged in the criminal activity, regardless of arrest or conviction and without satisfying the standard of proof used for a criminal conviction, except in certain incidents where the criminal activity directly relates to domestic violence, dating violence, or stalking and the tenant or an immediate member of the tenant’s family is the victim or threatened victim of the domestic violence, dating violence, or stalking (SS Section 12-II.E).

**Other Good Cause**

During the initial lease term, the owner may not terminate the tenancy for “other good cause” unless the owner is terminating the tenancy because of something the family did or failed to do. During the initial lease term or during any extension term, other good cause includes the disturbance of neighbors, destruction of property, or living or housekeeping habits that cause damage to the unit or premises.

After the initial lease term, “other good cause” for termination of tenancy by the owner includes:

* Failure by the family to accept the offer of a new lease or revision;
* The owner's desire to use the unit for personal or family use, or for a purpose other than as a residential rental unit; or
* A business or economic reason for termination of the tenancy (such as sale of the property, renovation of the unit, or desire to lease the unit at a higher rent).

After the initial lease term, the owner may give the family notice at any time, in accordance with the terms of the lease.

**12-III.C. EVICTION [24 CFR 982.310(e) and (f) and Form HUD-52641-A, Tenancy Addendum]**

The owner must give the tenant a written notice that specifies the grounds for termination of tenancy during the term of the lease. The tenancy does not terminate before the owner has given this notice, and the notice must be given at or before commencement of the eviction action.

The notice of grounds may be included in, or may be combined with, any owner eviction notice to the tenant.

Owner eviction notice means a notice to vacate, or a complaint or other initial pleading used under state or local law to commence an eviction action. The owner may only evict the tenant from the unit by instituting a court action. The owner must give HATC a copy of any eviction notice at the same time the owner notifies the family. The family is also required to give HATC a copy of any eviction notice (see Chapter 5).

HATC POLICY

If the eviction action is finalized in court, the owner must provide HATC 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)]**

An owner who has grounds to terminate a tenancy is not required to do so, and may consider all of the circumstances relevant to a particular case before making a decision. These might include:

* The nature of the offending action;
* The seriousness of the offending action;
* The effect on the community of the termination, or of the owner’s failure to terminate the tenancy;
* The extent of participation by the leaseholder in the offending action;
* The effect of termination of tenancy on household members not involved in the offending activity;
* The demand for assisted housing by families who will adhere to lease responsibilities;
* The extent to which the leaseholder has shown personal responsibility and taken all reasonable steps to prevent or mitigate the offending action;
* The effect of the owner's action on the integrity of the program.

The owner may require a family to exclude a household member in order to continue to reside in the assisted unit, where that household member has participated in or been culpable for action or failure to act that warrants termination.

In determining whether to terminate tenancy for illegal use of drugs or alcohol abuse by a household member who is no longer engaged in such behavior, the owner may consider whether such household member is participating in or has successfully completed a supervised drug or alcohol rehabilitation program, or has otherwise been rehabilitated successfully (42 U.S.C. 13661). For this purpose, the owner may require the tenant to submit evidence of the household member's current participation in, or successful completion of, a supervised drug or alcohol rehabilitation program or evidence of otherwise having been rehabilitated successfully.

The owner's termination of tenancy actions must be consistent with the fair housing and equal opportunity provisions in 24 CFR 5.105.

An owner’s decision to terminate tenancy for incidents related to domestic violence, dating violence, or stalking is limited by the Violence Against Women Reauthorization Act of 2005 (VAWA). (See Section 12-II.E).

**12-III.E. EFFECT OF TERMINATION OF TENANCY ON THE FAMILY’S ASSISTANCE**

If a termination is not due to a serious or repeated violation of the lease, and if HATC has no other grounds for termination of assistance, HATC 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 HATC 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 HATC 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 HATC to inspect the unit at reasonable time 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.

HATC POLICY

HATC 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, or living or housekeeping habits that cause damage to the unit or premises and criminal activity.

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

HATC POLICY

The family must get HATC approval to move to a new unit with continued assistance prior to moving out of any assisted u nit.

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

HATC POLICY

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

* The family must promptly notify HATC in writing if any family member no longer lives in the unit.
* If HATC has given approval, a foster child or a live-in aide may reside in the unit. HATC has the discretion to adopt reasonable policies concerning residency by a foster child or a live-in aide, and to define when PHA 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.

HATC 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 HATC to verify that the family is living in the unit or information related to family absence from the unit.
* The family must promptly notify HATC when the family is absent from the unit.

HATC POLICY

Notice is required under this provision only when all family members will be absent from the unit for more than 30 calendar days. Written notice must be provided to HATC 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, Housing Choice Voucher Program].
* 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 PHA 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 PHA 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 HATC 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 HATC’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 HATC and the owner as expressed in the HAP contract.

For detailed information about HCV program responsibilities and processes, including HATC 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 HATC’s jurisdiction, particularly housing outside areas of poverty or minority concentration. A critical element in fulfilling this responsibility is for HATC to ensure that a sufficient number of owners, representing all types and ranges of affordable housing in HATC’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.

HATC POLICY

* HATC will conduct owner outreach to ensure that owners are familiar with the program and its advantages.
* HATC will actively recruit property owners with property located outside areas of poverty and minority concentration.
* Distributing printed material about the program to property owners and managers.
* 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, HATC must also provide the kind of customer service that will encourage participating owners to remain active in the program.

HATC POLICY

All HATC 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.

HATC will provide owners with a handbook that explains the program, including HUD and PHA policies and procedures.

The owner will be provided with a designated HATC contact person.

**13-I.B. BASIC HCV PROGRAM REQUIREMENTS**

HUD requires HATC to aid families in their housing search by providing the family with a list of landlords or other parties known to HATC who may be willing to lease a unit to the family, or to help the family find a unit. Although HATC cannot maintain a list of owners that are pre-qualified to participate in the program, owners may indicate to HATC 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)].

HATC POLICY

HATC will maintain a listing of such owners and provide this listing to the HCV family as part of the informational briefing packet

When a family approaches an owner to apply for tenancy, the owner is responsible for screening the family and deciding whether to lease to the family, just as the owner would with any potential tenant. HATC 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 HATC, this document is the first step in the process of obtaining approval for the family to receive the financial assistance it will need in order to occupy the unit. Also submitted with the RTA is a copy of the owner’s proposed dwelling lease, including the HUD-required Tenancy Addendum (Form HUD-52641-A). See Chapter 9 for more detail on request for tenancy approval policies and process.

HUD regulations stipulate that an assisted tenancy can be approved only under certain conditions.

The owner must be qualified to participate in the program [24 CFR 982.306]. Some owners are precluded from participating in the program, or from renting to a particular family, either because of their past history with this or another federal housing program, or because of certain conflicts of interest. Owner qualifications are discussed later in this chapter.

The selected unit must be of a type that is eligible for the program [24 CFR 982.305(a)]. Certain types of dwelling units cannot be assisted under the HCV program. Other types may be assisted under certain conditions. In addition, the owner must document legal ownership of the specified unit. See chapter 9 for more detail on unit eligibility policies and process.

The selected unit must meet HUD’s Housing Quality Standards (HQS) and/or equivalent state or local standards approved by HUD [24 CFR 982.305(a)]. HATC 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.

HATC 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, HATC 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.

HATC and the owner enter into a formal contractual relationship by executing the Housing Assistance Payment (HAP) Contract (Form HUD-52641). The HAP contract format is prescribed by HUD. See chapter 9 for a discussion of the HAP contract execution process. Specific HAP contract provisions and responsibilities are discussed later in this chapter 13.

**13-I.C. OWNER RESPONSIBILITIES [24 CFR 982.452]**

The basic owner responsibilities in the HCV program are outlined in the regulations as follows:

* Performing all of the owner's obligations under the Housing Assistance Payments (HAP) contract and the lease
* Performing all management and rental functions for the assisted unit, including selecting a voucher-holder to lease the unit, and deciding if the family is suitable for tenancy of the unit
* Maintaining the unit in accordance with the Housing Quality Standards (HQS), including performance of ordinary and extraordinary maintenance
* Complying with equal opportunity requirements
* Preparing and furnishing to HATC 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 HATC), and any charges for unit damage by the family.
* Enforcing tenant obligations under the dwelling lease
* Paying for utilities and services (unless paid by the family under the lease)
* Making modifications to a dwelling unit occupied or to be occupied by a disabled person [24 CFR 100.203]
* Comply with the Violence Against women Reauthorization Act of 2005 (VAWA) when screening and terminating tenants.

**13-I.D. OWNER QUALIFICATIONS**

HATC does not formally approve an owner to participate in the HCV program. However, there are a number of criteria where HATC 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)]**

HATC must not approve the assisted tenancy if HATC 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 HATC 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]**

HATC must not approve an RTA if the owner is the parent, child, grandparent, grandchild, sister, or brother of any member of the family. HATC 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.

HATC 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 HATC (except a participant commissioner)
* Any employee of HATC, or any contractor, subcontractor or agent of HATC, who formulates policy or who influences decisions with respect to the programs
* Any public official, member of a governing body, or State or local legislator, who exercises functions or responsibilities with respect to the programs
* Any member of the Congress of the United States

HUD may waive the conflict of interest requirements, except for members of Congress, for good cause. HATC must submit a waiver request to the appropriate HUD Field Office for determination.

Any waiver request submitted by HATC 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, HATC, or both parties may conduct this analysis. Where appropriate, an opinion by the state’s attorney general should be obtained;
* Opinion by the local HUD office as to whether there would be an appearance of impropriety if the waiver were granted;
* Statement regarding alternative existing housing available for lease under the HCV program or other assisted housing if the waiver is denied;
* If the case involves a hardship for a particular family, statement of the circumstances and discussion of possible alternatives;
* If the case involves a public official or member of the governing body, explanation of his/her duties under state or local law, including reference to any responsibilities involving the HCV program;
* If the case involves employment of a family member by HATC or assistance under the HCV program for an eligible PHA employee, explanation of the responsibilities and duties of the position, including any related to the HCV program;
* If the case involves an investment on the part of a member, officer, or employee of HATC, description of the nature of the investment, including disclosure/divestiture plans.

Where HATC has requested a conflict of interest waiver, HATC may not execute the HAP contract until HUD has made a decision on the waiver request.

HATC POLICY

In considering whether to request a conflict of interest waiver from HUD, HATC 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 HATC, at HATC’s discretion, to refuse to approve a request for tenancy if the owner has committed any of a number of different actions.

If HATC 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].

HATC POLICY

HATC will refuse to approve a request for tenancy if the HATC becomes aware that any of the following are true:

* Owner refusal to sign the Housing Assistance Payments Contract
* The owner has violated obligations under a HAP contract under Section 8 of the 1937 Act (42 U.S.C. 1437f);
* Owner’s failure to execute their responsibilities as outlined in the Lease, such as, paying utilities that are specified as the owner’s responsibility.
* The owner has committed fraud, bribery or any other corrupt or criminal act in connection with any federal housing program;
* The owner has engaged in any drug-related criminal activity or any violent criminal activity;
* The owner has a history or practice of non-compliance with the HQS for units leased under the tenant-based programs, or with applicable housing standards for units leased with project-based Section 8 assistance or leased under any other federal housing program;
* The owner has a history or practice of failing to terminate tenancy of tenants of units assisted under Section 8 or any other federally assisted housing program for activity engaged in by the tenant, any member of the household, a guest or another person under the control of any member of the household that: (i) Threatens the right to peaceful enjoyment of the premises by other residents; (ii) Threatens the health or safety of other residents, of employees of HATC, 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 practiceof renting units that fail to meet state or local housing codes; or
* The owner has not paid state or local real estate taxes, fines, or assessment.
* If the unit is sold or foreclosed on and the new owner is not willing to continue with the Section 8 program.
* In cases of fraud, receiving double assistance for the same unit or receiving subsidy payments for a vacant unit, the owner will be required to reimburse HATC the total amount received after the family vacated the unit. If the move-out date is not known, the utility cut-off date shall be used to calculate the overpayment.

In considering whether to disapprove owners for any of the discretionary reasons listed above, HATC 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, HATC may, on a case-by-case basis, choose to approve an owner.

**Legal Ownership of Unit**

The following represents PHA policy on legal ownership of a dwelling unit to be assisted under the HCV program.

HATC POLICY

HATC will only enter into a contractual relationship with the legal owner or designated property manager (a property management agreement would need to be signed by the legal owner and property manager or Management Company). No tenancy will be approved without acceptable documentation of legal ownership (e.g., deed of trust, proof of taxes for most recent year). The owner must provide Employer Identification Number or Social Security Number; completed W-9. The owner also needs to provide a telephone number and/or business telephone number and the current address of their business or residence. The Section 8 Landlord Participation document must be signed.

**13-I.E. NON-DISCRIMINATION [HAP Contract – Form HUD-52641]**

The owner must not discriminate against any person because of race, color, religion, sex, national origin, age, familial status, or disability, in connection with any actions or responsibilities under the HCV program and the HAP contract with HATC.

The owner must cooperate with HATC and with HUD in conducting any equal opportunity compliance reviews and complaint investigations in connection with the HCV program and the HAP contract with HATC.

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 HATC 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 HATC’s obligations. Under the HAP contract, HATC 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 HATC’s HCV program.

If HATC has given approval for the family of the assisted tenancy, the owner and HATC execute the HAP contract. See chapter 9 for a discussion of the leasing process, including provisions for execution of the HAP contract.

Upon the completion of the annual renewal process HATC will execute the HATC HAP Lease Addendum. The family and owner signatures are not required. HATC will send the family and owner copies of the HAP Lease Addendum informing them of the changes in rent amount and the effective dates (at least 30 days in advance from the effective date).

**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 PHA 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. PHA 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 HATC is deemed received by the owner (e.g., upon mailing by HATC or actual receipt by the owner).

HATC POLICY

HATC has not adopted a policy that defines when the housing assistance payment by HATC 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
* HATC Payment to Owner
* Prohibition of Discrimination
* Owner’s Breach of HAP Contract
* HATC and HUD Access to Premises and Owner’s Records
* Exclusion of Third Party Rights
* Conflict of Interest
* Assignment of the HAP Contract
* Written Notices
* Entire Agreement Interpretation

Part C of the contract includes the Tenancy Addendum (Form HUD-52641-A). The addendum sets forth the tenancy requirements for the program and the composition of the household, as approved by the HATC. 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, HATC must make monthly HAP payments to the owner on behalf of the family, by the first week 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. HATC 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.

**HATC POLICY:**

For all unit transfers, HAP contracts may only begin on the 1st of the month following a passed inspection if a tenant is currently under a HAP contract/ lease. HAP contracts for all new admissions or tenants not under contract/ lease may begin on any day following a passed inspection and signed lease.

The monthly HAP payment HATC is credited toward the monthly rent to owner under the family’s lease. The total of the rent paid by the tenant, plus HATC 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 HATC 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 HATC, the excess amount must be returned immediately. If HATC determines that the owner is not entitled to all or a portion of the HAP, HATC 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.

If the owner requests payment be stopped on a HAP check, the request must be in writing and HATC will charge the owner the bank’s current fee to stop payment before another check is issued.

**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 HATC, 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)]**

HATC is responsible for making HAP payments promptly when due to the owner, in accordance with the terms of the HAP contract. The first HAP check may take approximately sixty (60) days to be processed. Subsequent payments and mailed each month no later than the 5th. HATC fiscal year ends on June 30th and July payments may be mailed a few days later than usual. After the first two calendar months of the HAP contract term, the HAP contract provides for penalties if HATC fails to make 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.

HATC POLICY:

HATC will pay a maximum of $25.00 late fee per month to the owner for housing assistance payments that are not mailed to the owner by the 5th day of the month, if requested by the owner in writing within 20 days of actual receipt of the late housing assistance payment.

HATC is not required to pay a late payment penalty if HUD determines that the payment is late for reasons beyond HATC’s control. In addition, late payment penalties are not required if HATC 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)]**

HATC 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, HATC 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.

HATC POLICY

The owner must inform HATC when the owner has initiated eviction proceedings against the family and the family continues to reside in the unit.

The owner must inform HATC when the owner has obtained a court judgment or other process allowing the owner to evict the tenant, and provide HATC 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, HATC 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 HATC 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 regulation for the applicable program; or if the owner has committed fraud, bribery or any other corrupt or criminal act in connection with the mortgage or loan
* If the owner has engaged in drug-related criminal activity
* If the owner has committed any violent criminal activity

If HATC determines that a breach of the HAP contract has occurred, it may exercise any of its rights and remedies under the HAP contract.

HATC 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. HATC may also obtain additional relief by judicial order or action.

HATC 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. HATC must provide the owner with written notice of any reduction in housing assistance payments or the termination of the HAP contract.

HATC POLICY

Before HATC invokes a remedy against an owner, HATC will evaluate all information and documents available to determine if the contract has been breached.

If relevant, HATC 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, HATC 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;
* HATC terminates the HAP contract;
* HATC 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 HATC made the last housing assistance payment to the owner;
* The family is absent from the unit for longer than the maximum period permitted by the HATC;
* The Annual Contributions Contract (ACC) between the HATC and HUD expires
* HATC elects to terminate the HAP contract.

HATC POLICY

HATC may elect to terminate the HAP contract in each of the following situations:

* Available program funding is not sufficient to support continued assistance for families in the program [24 CFR 982.454];
* The unit does not meet HQS size requirements due to change in family composition [24 CFR 982.403] – see chapter 8;
* The unit does not meet HQS [24 CFR 982.404] – see chapter 8;
* The family breaks up [HUD Form 52641] – see chapter 3;
* The owner breaches the HAP contract [24 CFR 982.453(b)] – see Section 13-II.D.

If HATC terminates the HAP contract, HATC 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].

HATC POLICY

In general, HATC will provide the owner and the family a thirty (30) day notice prior to terminating the HAP contract or at the end of the calendar month that follows the calendar month in which HATC gives written notice to the owner. The owner is not entitled to any housing assistance payment after this period, and must return to HATC any housing assistance payment received after this period. HATC will provide less than a thirty (30) notice, if it is discovered that the family vacated the unit, and the owner failed to inform HATC of the vacancy in a timely manner. For deceased tenants, no HAP payments can be after the month the tenant passes away. Therefore, if a tenant passes away on February 28th, March payment will need to be returned to HATC.

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 HATC.

An owner under a HAP contract must notify HATC in writing prior to a change in the legal ownership of the unit. The owner must supply all information as requested by HATC.

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 HATC finds acceptable. The new owner must provide HATC with a copy of the executed agreement.

HATC 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.

HATC must receive a signed, written request from the existing owner stating the name and address of the new HAP payee and the effective date of the assignment in order to change the HAP payee under an outstanding HAP contract.

Within 10 business days of receiving the owner’s request, HATC will inform the current owner in writing whether the assignment may take place.

The new owner must provide a written certification to HATC that includes:

* A copy of the escrow statement or other document showing the transfer of title and recorded deed;
* A copy of the owner’s IRS Form W-9, Request for Taxpayer Identification Number and Certification, or the social security number of the new owner;
* The effective date of the HAP contract assignment;
* A written agreement to comply with the terms of the HAP contract; and
* 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, HATC 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, HATC will process the leasing in accordance with the policies in chapter 9.

**Chapter 14**

**PROGRAM INTEGRITY**

**INTRODUCTION**

HATC is committed to ensuring that subsidy funds made available to the HATC are spent in accordance with HUD requirements.

This chapter covers HUD and PHA policies designed to prevent, detect, investigate and resolve instances of program abuse or fraud. It also describes the actions that will be taken in the case of unintentional errors and omissions.

Part I: Preventing, Detecting, and Investigating Errors and Program Abuse. This part presents HATC policies related to preventing, detecting, and investigating errors and program abuse.

Part II: Corrective Measures and Penalties. This part describes the corrective measures the HATC must and may take when errors or program abuses are found.

PART I: PREVENTING, DETECTING, AND   
INVESTIGATING ERRORS AND PROGRAM ABUSE

**14-I.A. PREVENTING ERRORS AND PROGRAM ABUSE**

HATC POLICY

HATC anticipates that the vast majority of families, owners, and PHA employees intend to and will comply with program requirements and make reasonable efforts to avoid errors.

To ensure that HATC’s HCV program is administered effectively and according to the highest ethical and legal standards, HATC will employ a variety of techniques to ensure that both errors and intentional program abuse are rare.

HATC will discuss program compliance and integrity issues during the voucher briefing sessions described in Chapter 5.

HATC will provide each applicant and participant with the publication *Things You Should Know (HUD-1140-OIG)* that explains the types of actions a family must avoid and the penalties for program abuse.

HATC 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 PHA forms and form letters that request information from a family or owner.

HATC staff will be required to review and explain the contents of all HUD- and PHA -required forms prior to requesting family member signatures.

HATC will provide each PHA 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. P*rogram abuse* *or fraud* refers to a single act or pattern of actions that constitute a false statement, omission, or concealment of a substantial fact, made with the intent to deceive or mislead.

**14-I.B. DETECTING ERRORS AND PROGRAM ABUSE**

In addition to taking steps to prevent errors and program abuse, HATC 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 HATC 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).

HATC POLICY

In addition to the SEMAP quality control requirements, HATC will employ a variety of methods to detect errors and program abuse.

HATC routinely will use available sources of up-front income verification to compare with family-provided information.

At each annual reexamination, current information provided by the family will be compared to information provided at the last annual reexamination to identify inconsistencies and incomplete information.

HATC will compare family-reported income and expenditures to detect possible unreported income.

HATC will complete a quarterly over-housed, multi-subsidy and deceased tenant review.

**Independent Audits and HUD Monitoring**

OMB Circular A-133 requires all PHAs that expend $500,000 or more in federal awards annually to have an independent audit (IPA). In addition, HUD conducts periodic on-site and automated monitoring of PHA activities and notifies the HATC of errors and potential cases of program abuse.

HATC POLICY

HATC 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 HATC’s error detection and abuse prevention efforts.

**Individual Reporting of Possible Errors and Program Abuse**

HATC POLICY

HATC will encourage staff, program participants, and the public to report possible program abuse.

**14-I.C. INVESTIGATING ERRORS AND PROGRAM ABUSE**

**When the HATC Will Investigate**

HATC POLICY

HATC 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 HATC 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.

HATC 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]**

HATC may investigate possible instances of error or abuse using all available HATC and public records. If necessary, HATC will require HCV families to give consent to the release of additional information.

**Analysis and Findings**

HATC POLICY

HATC will base its evaluation on a preponderance of the evidence collected during its investigation.

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

For each investigation HATC will determine

(1) Whether an error or program abuse has occurred, (2) whether any amount of money is owed HATC, and (3) what corrective measures or penalties will be assessed.

**Consideration of Remedies**

All errors and instances of program abuse must be corrected prospectively. Whether the HATC will enforce other corrective actions and penalties depends upon the nature of the error or program abuse.

HATC POLICY

In the case of family-caused errors or program abuse, HATC 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, HATC 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**

HATC POLICY

HATC will inform the relevantparty in writing of its findings and remedies within 10 business days of the conclusion of the investigation. The notice will include (1) a description of the error or program abuse, (2) the basis on which HATC determined the error or program abuses, (3) the remedies to be employed, and (4) the family’s right to appeal the results through the informal review or hearing process, if applicable (see Chapter 16).

**PART II: CORRECTIVE MEASURES AND PENALTIES**

**14-II.A. SUBSIDY UNDER- OR OVERPAYMENTS**

A subsidy under- or overpayment includes (1) an incorrect housing assistance payment to the owner, (2) an incorrect family share established for the family, and (3) an incorrect utility reimbursement to a family.

**Corrections**

Whether the incorrect subsidy determination is an overpayment or underpayment of subsidy, HATC must promptly correct the HAP, family share, and any utility reimbursement prospectively.

HATC POLICY

Increases in the family share will be implemented only after the family has received 30 days, unless the family failed to report the change in a timely manner. In this case, the change will be made retroactively to the effective date that the change occurred.

Any decreases in family share will become effective the first of the month following the discovery of the error. (Review RHIP Notice on this for retro payments)

Downgrade or Upgrade errors discovered during screening process

If it is discovered during the screening process that the family was not downgraded or upgraded in error to the proper bedroom size based on current voucher size criteria, HATC will perform the following activities:

* Schedule the family for an appointment to discuss the downgrade options. If the family fails to attend the scheduled appointment, proceed with the downgrade based on subsidy standards and the process described below.
* At the appointment, the family will be given the opportunity to move or stay at the current unit and receive a lower subsidy.
* If the family elects to stay, a 60-day notice is given before the subsidy decreases due to the vouchers size downgrade. If it occurs during the re-exam, the Voucher decrease will occur at the re-exam effective date with at least a 30-day notice.
* If the family elects to move to a less expensive unit, 60-day intent to vacate notice will be issued to the owner. The tenant will then be issued a voucher with the appropriate bedroom size.

**Reimbursement**

Whether the family or owner is required to reimburse HATC or HATC 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 HATC to use incorrect information provided by a third party.

**Family Reimbursement to HATC [HCV GB pp. 22-12 to 22-13]**

HATC POLICY

In the case of family-caused errors or program abuse, the family will be required to repay any excess subsidy received. HATC 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, HATC will terminate the family’s assistance in accordance with the policies in Chapter 12.

**PHA Reimbursement to Family [HCV GB p. 22-12]**

HATC POLICY

HATC 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 HATC [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)].

HATC POLICY

Any of the following will be considered evidence of family program abuse:

* Payment to the owner in excess of amounts authorized by the HATC for rent, security deposit, and additional services
* Offering bribes or illegal gratuities to HATC Board of Commissioners, employees, contractors, or other PHA 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 HATC 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

HATC 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**

HATC may determine other actions to be program abuse based upon a preponderance of the evidence, as defined earlier in this chapter.

In the case of program abuse caused by a family HATC may, at its discretion, impose any of the following remedies.

* HATC may require the family to repay excess subsidy amounts paid by HATC, as described earlier in this section.
* HATC 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).
* HATC may deny or terminate the family’s assistance following the policies set forth in Chapter 3 and Chapter 12 respectively.
* HATC 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 HATC**

In all cases of overpayment of subsidy caused by the owner, the owner must repay to HATC any excess subsidy received. HATC may recover overpaid amounts by withholding housing assistance payments due for subsequent months, or if the debt is large, HATC may allow the owner to pay in installments over a period of time [HCV GB p. 22-13].

HATC POLICY

In cases where the owner has received excess subsidy, HATC 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 HATC [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:

HATC POLICY

Any of the following will be considered evidence of owner program abuse:

* Charging the family rent above or below the amount specified by HATC
* 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 HATC Board of Commissioners, employees, contractors, or other HATC representatives
* Offering payments or other incentives to an HCV family as an inducement for the family to make false or misleading statements to HATC
* Residing in the unit with an assisted family

**Remedies and Penalties**

When HATC determines that the owner has committed program abuse, the HATC 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 HATC programs.
* Refer the case to state or federal officials for criminal prosecution as described in section 14‑II.E.

**14-II.D. HATC-CAUSED ERRORS OR PROGRAM ABUSE**

The responsibilities and expectations of PHA staff with respect to normal program administration are discussed throughout this plan. This section specifically addresses actions of a HATC staff member that are considered errors or program abuse related to the HCV program. Additional standards of conduct may be provided in HATC personnel policy.

PHA-caused incorrect subsidy determinations include (1) failing to correctly apply HCV rules regarding family composition, income, assets, and expenses, (2) assigning the incorrect voucher size to a family, and (3) errors in calculation.

**Repayment to HATC**

Neither a family nor an owner is required to repay an overpayment of subsidy if the error or program abuse is caused by PHA staff [HCV GB. 22-12].

**PHA Reimbursement to Family or Owner**

HATC 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 HATC’s administrative fee reserves [HCV GB p. 22-12].

**Prohibited Activities**

HATC POLICY

Any of the following will be considered evidence of program abuse by PHA 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 HATC

Disclosing confidential or proprietary information to outside parties

Gaining profit as a result of insider knowledge of PHA 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**

HATC POLICY

When HATC determines that program abuse by an owner, family, or HATC staff member has occurred and the amount of overpaid subsidy meets or exceeds the threshold for prosecution under local or state law, HATC 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**

HATC may retain a portion of program fraud losses that HATC recovers from a family or owner through litigation, court order, or a repayment agreement [24 CFR 982.163].

HATC 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 HATC 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 HATC 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 HATC related to the collection, these costs must be deducted from the amount retained by HATC.

**Chapter 15**

**SPECIAL HOUSING TYPES**

[24 CFR 982 Subpart M]

**INTRODUCTION**

HATC may permit a family to use any of the special housing types discussed in this chapter. However, the HATC is not required to permit families receiving assistance in its jurisdiction to use these housing types, except that PHAs must permit use of any special housing type if needed as a reasonable accommodation for a person with a disability. HATC 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.

HATC POLICY

Families will not be permitted to use any special housing types, unless use is needed as a reasonable accommodation so that 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 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 HATC’s payment standard schedule.

The utility allowance for an assisted person residing in SRO housing is 75 percent of the zero bedroom utility allowance.

The HAP for an assisted occupant in an SRO facility is the lower of the SRO payment standard amount minus the TTP or the gross rent for the unit minus the TTP.

**15-I.C. HOUSING QUALITY STANDARDS (HQS)**

HQS requirements described in Chapter 8 apply to SRO housing except as modified below.

* *Access*: Access doors to the SRO unit must have working locks for privacy. The occupant must be able to access the unit without going through any other unit. Each unit must have immediate access to two or more approved means of exit from the building, appropriately marked and leading to safe and open space at ground level. The SRO unit must also have any other means of exit required by State or local law.
* *Fire Safety*: All SRO facilities must have a sprinkler system that protects major spaces. “Major spaces” are defined as hallways, common areas, and any other areas specified in local fire, building, or safety codes. SROs must also have hard-wired smoke detectors, and any other fire and safety equipment required by state or local law.

Sanitary facilities and space and security standards must meet local code requirements for SRO housing. In the absence of local code standards the requirements discussed below apply [24 CFR 982.605].

* *Sanitary Facilities*: 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 HATC, a family member or live-in aide may reside with the elderly person or person with disabilities. HATC 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), HATC must use the payment standard for a 0-bedroom unit. If the unit has two or more rooms (other than the bathroom and the kitchen), HATC must use the 1-bedroom payment standard.

The HAP for an assisted occupant in a congregate housing facility is the lower of the applicable payment standard minus the TTP or the gross rent for the unit minus the TTP.

The gross rent for the unit for the purpose of calculating HCV assistance is the shelter portion (including utilities) of the resident’s monthly housing expense only. The residents’ costs for food service should not be included in the rent for a congregate housing unit.

**15-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 HATC, a live-in aide may live in the group home with a person with disabilities. HATC must approve a live-in aide if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities.

When providing HCV assistance in a group home, a separate lease and HAP contract is executed for each assisted family, and the standard form of the HAP contract is used.

**15-III.B. PAYMENT STANDARD, UTILITY ALLOWANCE, AND HAP CALCULATION**

Unless there is a live-in aide, the family unit size for an assisted occupant of a group home must be 0- or 1-bedroom, depending on the HATC’s subsidy standard. If there is a live-in aide, the aide must be counted in determining the household’s unit size.

The payment standard used to calculate the HAP is the lower of the payment standard for the family unit size or the pro-rata share of the payment standard for the group home size. The pro-rata share is calculated by dividing the number of persons in the assisted household by the number of persons (assisted and unassisted) living in the group home.

The HAP for an assisted occupant in a group home is the lower of the payment standard minus the TTP or the gross rent minus the TTP.

The utility allowance for an assisted occupant in a group home is the pro-rata share of the utility allowance for the group home.

The rents paid for participants residing in group homes are subject to generally applicable standards for rent reasonableness. The rent for an assisted person must not exceed the pro-rata portion of the reasonable rent for the group home. In determining reasonable rent, the HATC 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 HATC, a live-in aide may reside with the family to care for a person with disabilities. HATC 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 pro-rata share of the payment standard for the shared housing unit size.

The pro-rata share is calculated by dividing the number of bedrooms available for occupancy by the assisted family in the private 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 pro-rata share of the utility allowance for the shared housing unit.

The rents paid for families living in shared housing are subject to generally applicable standards for rent reasonableness. The rent paid to the owner for the assisted family must not exceed the pro-rata portion of the reasonable rent for the shared unit. In determining reasonable rent, the HATC should consider whether sanitary and food preparation areas are private or shared.

**15-IV.C. HOUSING QUALITY STANDARDS**

HATC may not give approval to reside in shared housing unless the entire unit, including the portion of the unit available for use by the assisted family under its lease, meets the housing quality standards.

HQS requirements described in Chapter 8 apply to shared housing except for the requirements stated below.

* *Facilities Available for the Family*: Facilities available to the assisted family, whether shared or private, must include a living room, a bathroom, and food preparation and refuse disposal facilities.
* *Space and Security*: The entire unit must provide adequate space and security for all assisted and unassisted residents. The private space for each assisted family must contain at least one bedroom for each two persons in the family. The number of bedrooms in the private space of an assisted family must not be less than the family unit size. A 0-bedroom or 1-bedroom unit may not be used for shared housing.

**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 HATC 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. PHAs may, but are not required to, provide assistance for such families.

**15-VI.B. SPECIAL POLICIES FOR MANUFACTURED HOME OWNERS WHO LEASE A SPACE**

**Family Income**

In determining the annual income of families leasing manufactured home spaces, the value of the family’s equity in the manufactured home in which the family resides is not counted as a family asset.

**Lease and HAP Contract**

There is a separate Tenancy Addendum (Form 52642-a) and separate HAP Contract (Form 52642) for this special housing type.

**15-VI.C. PAYMENT STANDARD, UTILITY ALLOWANCE AND HAP CALCULATION**

**Payment Standards**

The FMR for a manufactured home space is generally 40 percent of the published FMR for a 2-bedroom unit or, where approved by HUD, the 40th percentile of the rental distribution of manufactured home spaces for the FMR area. HATC may establish a payment standard for manufactured home spaces that is between 90-110 percent of the FMR for manufactured home spaces.

**Utility Allowance**

HATC 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 HATC must determine that the rent for the manufactured home space is reasonable based on rents for comparable manufactured home spaces. The HATC 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. HATC must have the capacity to operate a successful HCV homeownership program as defined by the regulations.

There are two forms of homeownership assistance HATC may offer under this option: monthly homeownership assistance payments, or a single down payment assistance grant. HATCs may choose to offer either or both forms of homeownership assistance, or choose not to offer either. If HATC offers both forms of assistance, a family must choose which form of assistance to receive.

HATC must offer either form of homeownership assistance if needed as a reasonable accommodation so that the program is readily accessible to and usable by persons with disabilities. It is the sole responsibility of HATC to determine whether it is reasonable to implement a homeownership program as a reasonable accommodation. HATC must determine what is reasonable based on the specific circumstances and individual needs of the person with a disability. HATC may determine that it is not reasonable to offer homeownership assistance as a reasonable accommodation in cases where HATC has otherwise opted not to implement a homeownership program.

HATC 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.

HATC POLICY:

HATC has instituted a minimum homeowner down payment requirement of at least three percent of the purchase price, and requires that at least one percent of the purchase price come from the family’s personal resources.

HATC will offer the monthly homeownership assistance payments to qualified families.

**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. HATC may also establish additional initial requirements as long as they are described in HATC administrative plan.

* The family must have been admitted to the Housing Choice Voucher program.
* The family must qualify as a first-time homeowner, or may be a cooperative member.
* The family must meet the Federal minimum income requirement. The family must have a gross annual income equal to the Federal minimum wage multiplied by 2000, based on the income of adult family members who will own the home. HATC may establish a higher income standard for families. However, a family that meets the federal minimum income requirement (but not HATC's requirement) will be considered to meet the minimum income requirement if it can demonstrate that it has been pre-qualified or pre-approved for financing that is sufficient to purchase an eligible unit.
* For disabled families, the minimum income requirement is equal to the current SSI monthly payment for an individual living alone, multiplied by 12.
* For elderly or disabled families, welfare assistance payments for adult family members who will own the home will be included in determining whether the family meets the minimum income requirement. It will not be included for other families.
* The family must satisfy the employment requirements by demonstrating that one or more adult members of the family who will own the home at commencement of homeownership assistance is currently employed on a full-time basis (the term 'full-time employment' means not less than an average of 30 hours per week); and has been continuously so employed during the year before commencement of homeownership assistance for the family.
* 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, HATC must grant an exemption from the employment requirement if HATC determines that it is needed as a reasonable accommodation.
* The family has not defaulted on a mortgage securing debt to purchase a home under the homeownership option
* Except for cooperative members who have acquired cooperative membership shares prior to commencement of homeownership assistance, no family member has a present ownership interest in a residence at the commencement of homeownership assistance for the purchase of any home.
* Except for cooperative members who have acquired cooperative membership shares prior to the commencement of homeownership assistance, the family has entered a contract of sale in accordance with 24 CFR 982.631(c).

HATC POLICY

HATC will count self-employment in a business when determining whether the family meets the employment requirement.

HATC will impose additional eligibility requirements. To be eligible to participate in the homeownership option, families must meet the following criteria:

The family is not within the initial one-year period of a HAP Contract.

The family does not owe money to HATC.

The family has not committed any serious or repeated violations of a HATC -assisted lease within the past year.

**15-VII.C. SELECTION OF FAMILIES [24 CFR 982.626]**

Unless otherwise provided (under the homeownership option), HATC may limit homeownership assistance to families or purposes defined by HATC, and may prescribe additional requirements for commencement of homeownership assistance for a family. Any such limits or additional requirements must be described in HATC administrative plan.

If HATC limits the number of families that may participate in the homeownership option, HATC must establish a system by which to select families to participate.

**15-VII.D. ELIGIBLE UNITS [24 CFR 982.628]**

In order for a unit to be eligible, HATC must determine that the unit satisfies all of the following requirements:

* The unit must meet HUD’s “eligible housing” requirements. The unit may not be any of the following:
  + A public housing or Indian housing unit;
  + A unit receiving Section 8 project-based assistance;
  + A nursing home, board and care home, or facility providing continual psychiatric, medical or nursing services;
  + A college or other school dormitory;
  + On the grounds of penal, reformatory, medical, mental, or similar public or private institutions.
* The unit must be under construction or already exist at the time the family enters into the contract of sale.
* The unit must be a one-unit property or a single dwelling unit in a cooperative or condominium.
* The unit must have been inspected by HATC and by an independent inspector designated by the family.
* The unit must meet Housing Quality Standards (see Chapter 8).
* For a unit where the family will not own fee title to the real property (such as a manufactured home), the home must have a permanent foundation and the family must have the right to occupy the site for at least 40 years.
* For HATC-owned units all of the following conditions must be satisfied:
* The HATC informs the family, both orally and in writing, that the family has the right to purchase any eligible unit and a HATC-owned unit is freely selected by the family without HATC pressure or steering;
* The unit is not ineligible housing;
* HATC 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 HATC provided financing. All of these actions must be completed in accordance with program requirements.

HATC must not approve the unit if HATC has been informed that the seller is debarred, suspended, or subject to a limited denial of participation.

**15-VII.E. ADDITIONAL HATC 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. HATC may establish the maximum time that will be allowed for a family to locate and purchase a home, and may require the family to report on their progress in finding and purchasing a home. If the family is unable to purchase a home within the maximum time established by HATC, HATC may issue the family a voucher to lease a unit or place the family’s name on the waiting list for a voucher.

**15-VII.F. HOMEOWNERSHIP COUNSELING [24 CFR 982.630]**

Before commencement of homeownership assistance for a family, the family must attend and satisfactorily complete the pre-assistance homeownership and housing counseling program required by the HATC. HUD suggests the following topics for PHA-required pre-assistance counseling:

* Home maintenance (including care of the grounds);
* Budgeting and money management;
* Credit counseling;
* How to negotiate the purchase price of a home;
* How to obtain homeownership financing and loan pre-approvals, including a description of types of financing that may be available, and the pros and cons of different types of financing;
* How to find a home, including information about homeownership opportunities, schools, and transportation in HATC 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.

HATC may adapt the subjects covered in pre-assistance counseling (as listed) to local circumstances and the needs of individual families.

HATC may also offer additional counseling after commencement of homeownership assistance (ongoing counseling). If HATC offers a program of ongoing counseling for participants in the homeownership option, HATC shall have discretion to determine whether the family is required to participate in the ongoing counseling.

If HATC does not use a HUD-approved housing counseling agency to provide the counseling, HATC should ensure that its counseling program is consistent with the counseling provided under HUD’s Housing Counseling program.

**15-VII.G. HOME INSPECTIONS, CONTRACT OF SALE, AND HATC DISAPPROVAL OF SELLER [24 CFR 982.631]**

**Home Inspections**

HATC may not commence monthly homeownership assistance payments or provide down payment assistance grants for a family until HATC 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.

HATC may not require the family to use an independent inspector selected by HATC. The independent inspector may not be a HATC employee or contractor, or other person under control of HATC. However, HATC may establish standards for qualification of inspectors selected by families under the homeownership option.

HATC 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.

When the family locates a home they wish to purchase and submits a copy of their purchase offer/contract, HATC will conduct a Housing Quality Standards (HQS) inspection within a reasonable period. Any items found not to meet HQS must be repaired before the unit can be determined eligible for the homeownership program.

The family must hire an independent professional inspector, whose report must be submitted to HATC for review. The inspector must be recognized by the Texas Real Estate Commission and may not be a HATC employee.

HATC will review the professional report in a timely fashion and, based on the presence of major physical problems, may disapprove the purchase of the home.

If HATC disapproves the purchase of a home, the family will be notified in writing of the reasons for the disapproval.

HATC will not conduct HQS inspections while the family is receiving homeownership assistance.

**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 HATC 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, HATC may deny approval of a seller for the same reasons a HATC may disapprove an owner under the regular HCV program [see 24 CFR 982.306(c)].

**15-VII.H. FINANCING [24 CFR 982.632]**

HATC 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. HATC must establish policies describing these requirements in the administrative plan.

A PHA may not require that families acquire financing from one or more specified lenders, thereby restricting the family’s ability to secure favorable financing terms.

PHA Policy

As a check against predatory lending, HATC will review the financing of each purchase transaction, including estimated closing costs. HATC will review the loans for features, such as balloon payments, adjustable rate mortgages, and unusually high interest rates, all of which are prohibited. HATC also will not approve “seller financing” or “owner-held” mortgages. Beyond these basic criteria, HATC will rely on the lenders to determine that the loan will be affordable to program participants.

The mortgage the family applies for must require a minimum down payment of at least 3% of the sales price with 1% of the down payment coming from the purchaser’s personal funds. HATC will not require that the family have any more than the minimum of 1% of their own money in the transaction. However, in cases where a lender is requiring a larger amount, the family may be held to the underwriting guidelines set by their lending institution.

There is no prohibition against using local or State Community Development Block Grant (CDBG) or other subsidized financing in conjunction with the homeownership program.

HATC will approve a family’s request to utilize its Family Self-Sufficiency escrow account for down payment and/or closing costs when purchasing a unit under the HCV homeownership option.

**15-VII.I. CONTINUED ASSISTANCE REQUIREMENTS; FAMILY OBLIGATIONS [24 CFR 982.633]**

Homeownership assistance may only be paid while the family is residing in the home. If the family moves out of the home, HATC may not continue homeownership assistance after the month when the family moves out. The family or lender is not required to refund to e HATC the homeownership assistance for the month when the family moves out.

Before commencement of homeownership assistance, the family must execute a statement in which the family agrees to comply with all family obligations under the homeownership option.

The family must comply with the following obligations:

* The family must comply with the terms of the mortgage 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 HATC or HUD as specified in 24 CFR 982.551(b). The family must further supply any information required by HATC or HUD concerning mortgage financing or refinancing, sale or transfer of any interest in the home, or homeownership expenses.
* The family must notify HATC before moving out of the home.
* The family must notify HATC if the family defaults on the mortgage used to purchase the home.
* No family member may have any ownership interest in any other residential property.
* The family must comply with the obligations of a participant family described in 24 CFR 982.551, except for the following provisions which do not apply to assistance under the homeownership option: 24 CFR 982.551(c), (d), (e), (f), (g) and (j).

**15-VII.J. MAXIMUM TERM OF HOMEOWNER ASSISTANCE [24 CFR 982.634]**

Except in the case of a family that qualifies as an elderly or disabled family, other family members (described below) shall not receive homeownership assistance for more than:

* Fifteen years, if the initial mortgage incurred to finance purchase of the home has a term of 20 years or longer; or
* Ten years, in all other cases.

The maximum term described above applies to any member of the family who:

* Has an ownership interest in the unit during the time that homeownership payments are made; or
* Is the spouse of any member of the household who has an ownership interest in the unit during the time homeownership payments are made.

In the case of an elderly family, the exception only applies if the family qualifies as an elderly family at the start of homeownership assistance. In the case of a disabled family, the exception applies if at any time during receipt of homeownership assistance the family qualifies as a disabled family.

If, during the course of homeownership assistance, the family ceases to qualify as a disabled or elderly family, the maximum term becomes applicable from the date homeownership assistance commenced. However, such a family must be provided at least 6 months of homeownership assistance after the maximum term becomes applicable (provided the family is otherwise eligible to receive homeownership assistance).

If the family has received such assistance for different homes, or from different HATCs, 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, HATC 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.

HATC may pay the homeownership assistance payments directly to the family, or at HATC’s discretion, to a lender on behalf of the family. If the assistance payment exceeds the amount due to the lender, HATC 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. However, a PHA may grant relief from this requirement in those cases where automatic termination would result in extreme hardship for the family.

HATC must adopt policies for determining the amount of homeownership expenses to be allowed by HATC in accordance with HUD requirements.

Homeownership expenses (not including cooperatives) only include amounts allowed by HATC to cover:

* Principal and interest on initial mortgage debt, any refinancing of such debt, and any mortgage insurance premium incurred to finance purchase of the home;
* Real estate taxes and public assessments on the home;
* Home insurance;
* HATC allowance for maintenance expenses;
* HATC allowance for costs of major repairs and replacements;
* HATC 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 HATC 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 HATC 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;
* HATC allowance for maintenance expenses;
* HATC allowance for costs of major repairs and replacements;
* HATC 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 HATC determines that allowance of such costs as homeownership expenses is needed as a reasonable accommodation so that the homeownership option is readily accessible to and usable by such person.
* Cooperative operating charges or maintenance fees assessed by the cooperative homeowner association.

**15-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 PHA policies, a family may exercise portability if the receiving PHA is administering a voucher homeownership program and accepting new homeownership families. The receiving PHA may absorb the family into its voucher program, or bill the initial PHA.

The family must attend the briefing and counseling sessions required by the receiving PHA. The receiving PHA will determine whether the financing for, and the physical condition of the unit, are acceptable. The receiving PHA must promptly notify the initial HATC 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.

HATC may deny permission to move to a new unit with continued voucher assistance as follows:

* Lack of funding to provide continued assistance.
* At any time, HATC may deny permission to move with continued rental or homeownership assistance in accordance with 24 CFR 982.638, regarding denial or termination of assistance.
* In accordance with HATC’s policy regarding number of moves within a 12-month period.

HATC must deny the family permission to move to a new unit with continued voucher rental assistance if:

* The family defaulted on an FHA-insured mortgage; and
* The family fails to demonstrate that the family has conveyed, or will convey, title to the home, as required by HUD, to HUD or HUD's designee; and the family has moved, or will move, from the home within the period established or approved by HUD.

**15-VII.N. DENIAL OR TERMINATION OF ASSISTANCE [24 CFR 982.638]**

At any time, HATC 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).

HATC may also deny or terminate assistance for violation of participant obligations described in 24 CFR Parts 982.551 or 982.633.

HATC 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.

**15-VII.O Mortgage Default [24 CFR 982.638(d)**

HATC 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. HATC, in its discretion, may permit the family to move to a new unit with continued voucher rental assistance. However, HATC must deny such permission, if:

(1) The family defaulted on an FHA-insured mortgage; and (2) The family fails to demonstrate that:

(i) The family has conveyed, or will convey, title to the home, as required by HUD, to HUD or HUD's designee; and

(ii) The family has moved, or will move, from the home within the period established or approved by HUD.

HATC 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.

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 HATC’s policies with regard to oversight of expenditures from its administrative fee reserve.

Part II: Setting Program Standards and Schedules. This part describes what payment standards are, and how they are updated, as well as how utility allowances are established and revised.

Part III: Informal Reviews and Hearings. This part outlines the requirements and procedures for informal reviews and hearings, and for informal hearings regarding citizenship status.

Part IV: Owner or Family Debts to the HATC. This part describes policies for recovery of monies that the HATC has overpaid on behalf of families, or to owners, and describes the circumstances under which e HATC 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 HATC.

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 HATC will follow.

Part VII: Reporting and Record Keeping for Children with Environmental Intervention Blood Lead Level. This part describes HATC’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 HATC’s policies for determining if there is sufficient funding to issue vouchers, to approve moves to higher cost units or areas, and to continue assistance for all participant families.

**PART I: ADMINISTRATIVE FEE RESERVE [24 CFR 982.155]**

HATC must maintain an administrative fee reserve for the program to pay program administrative expenses in excess of administrative fees paid by HUD for HATC fiscal year. If funds in the administrative fee reserve are not needed to cover PHA administrative expenses, HATC may use these funds for other housing purposes permitted by Federal, State and local law.

If HATC has not adequately administered any Section 8 program, HUD may prohibit use of funds in the administrative fee reserve, and may direct HATC 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 HATC Board of Commissioners or other authorized officials to establish the maximum amount that may be charged against the administrative fee reserve without specific approval.

HATC 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 HATC’s Board of Commissioners.

PART II: SETTING PROGRAM STANDARDS AND SCHEDULES

**16-II.A. OVERVIEW**

Although many of the program’s requirements are established centrally by HUD, the HCV program’s regulations recognize that some flexibility is required to allow the HATC to adapt the program to local conditions. This part discusses how HATC 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).

HATC POLICY

Copies of the payment standard and utility allowance schedules are available for review in HATC’s offices during normal business hours.

Families, owners, and members of the public may submit written comments on the schedules discussed in this part, at any time, for consideration during the next revision cycle.

HATC 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; HCV GB, Chapter 7]**

The payment standard sets the maximum subsidy payment a family can receive from HATC 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.

HATC must establish a payment standard schedule that establishes payment standard amounts for each FMR area within HATC’s jurisdiction, and for each unit size within each of the FMR areas. For each unit size, HATC 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, HATC is required to establish a payment standard within a “basic range” established by HUD – between 90 and 110 percent of the published FMR for each unit size.

**Updating Payment Standards**

When HUD updates its FMRs, HATC must update its payment standards if the standards are no longer within the basic range [24 CFR 982.503(b)]. HUD may require HATC to make further adjustments if it determines that rent burdens for assisted families in HATC’s jurisdiction are unacceptably high 24 CFR 982.503(g)].

HATC POLICY

HATC 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” HATC will consider the following factors when determining whether an adjustment should be made to the payment standard schedule:

**Funding Availability**: HATC 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.

**Average rental amounts for unassisted units** – HATC will review the average rental amounts from HATC’s available units list and Multiple Listing Service for leased units.

**Changes in Rent to Owner**: HATC 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.

Any changes to payment standard amounts will be approved by the Board of Commissioners and the effective date will be provided in writing to staff and program

**Exception Payment Standards [982.503(c)]**

HATC must request HUD approval to establish payment standards that are higher than the basic range. At HUD’s sole discretion, HUD may approve a payment standard amount that is higher than the basic range for a designated part of the FMR area. HUD may approve an exception payment standard amount (in accordance with program requirements) for all units, or for all units of a given size, leased by program families in the exception area. Any PHA with jurisdiction in the exception area may use the HUD-approved exception payment standard amount. The total population of all HUD-approved exception areas in an FMR area may not include more than 50 percent of the population of the FMR area.

**Unit-by-Unit Exceptions [24 CFR 982.503(c) (2) (ii)]**

Unit-by-unit exceptions to HATC’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 HATC’s payment standard schedule.

When needed as a reasonable accommodation, HATC 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]. HATC may request HUD approval for an exception to the payment standard for a particular family if the required amount falls between 110 and 120 percent of the FMR.

HATC POLICY

A family that requires a reasonable accommodation may request a higher payment standard at the time the Request for Tenancy Approval (RFTA) is submitted. The family must document the need for the exception. In order to approve an exception, or request an exception from HUD, the HATC 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, HATC may request a “success rate payment standard” that applies to the entire jurisdiction. If approved by HUD, a success rate payment standard allows HATC 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, HATC 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;
* HATC had established payment standards for all unit sizes, and for the entire jurisdiction, at 110 percent of the published FMR; and
* HATC 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, HATC may choose to adjust the payment standard for only some unit sizes in all, or a designated part, of HATC’s jurisdiction within the FMR area.

**Decreases in the Payment Standard Below the Basic Range [24 CFR 982.503(d)]**

HATC must request HUD approval to establish a payment standard amount that is lower than the basic range. At HUD’s sole discretion, HUD may approve establishment of a payment standard lower than the basic range. HUD will not approve a lower payment standard if the family share for more than 40 percent of program participants exceeds 30 percent of adjusted monthly income.

**16-II.C. UTILITY ALLOWANCES [24 CFR 982.517]**

A HATC-established utility allowance schedule is used in determining family share and PHA subsidy. HATC 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, HATC 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, HATC 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 HATC about establishing utility allowance schedules.

**Air Conditioning**

An allowance for air-conditioning must be provided when the majority of housing units in the market have central air-conditioning or are wired for tenant-installed air conditioners.

HATC POLICY

HATC has included an allowance for air-conditioning in its schedule. Central air-conditioning or a portable air conditioner must be present in a unit before HATC will apply this allowance to a family’s rent and subsidy calculations.

**Reasonable Accommodation**

HCV program regulations require HATC to approve a utility allowance amount higher than shown on HATC’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, HATC will approve an allowance for air-conditioning, even if HATC 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).

HATC must review its schedule of utility allowances annually or as the need arises, 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.

HATC 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 HATC 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 Volume 60, No. 127, p 36490).

**Decisions Subject to Informal Review**

HATC 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 HATC 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 HATC
* General policy issues or class grievances
* A determination of the family unit size under HATC subsidy standards
* HATC determination not to grant approval of the tenancy
* HATC determination that the unit is not in compliance with the HQS
* HATC determination that the unit is not in accordance with the HQS due to family size or composition

HATC POLICY

HATC will only offer an informal review to applicants for whom assistance is being denied. Denial of assistance includes: denying listing on HATC waiting list; denying or withdrawing a voucher; refusing to enter into a HAP contract or approve a lease; HQS determination; refusing to process or provide assistance under portability procedures.

**Notice to the Applicant [24 CFR 982.554(a)]**

HATC must give an applicant prompt notice of a decision denying assistance. The notice must contain a brief statement of the reasons for HATC 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**

HATC POLICY

A request for an informal review must be made in writing and delivered to the HATC either in person or by first class mail, by the close of the business day, no later than 10 business days from the date of HATC’s denial of assistance. Failure to timely request an informal hearing will cause the termination decision to become final.

The HATC must schedule and send written notice of the informal review within 10 business days of the family’s request.

**Informal Review Procedures [24 CFR 982.554(b)]**

HATC POLICY

The informal review must be conducted by a person other than the one who made or approved the decision under review, or a subordinate of this person.

The applicant must be provided an opportunity to present written or oral objections to the decision of the HATC.

The Hearing Officer will render a decision on whether assistance should be granted or denied.

**Informal Review Decision [24 CFR 982.554(b)]**

HATC must notify the applicant of HATC’s final decision, including a brief statement of the reasons for the final decision.

HATC POLICY

In rendering a decision, HATC 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. See Chapter 3 for a detailed discussion of the ground for applicant denial.
* The validity of the evidence. HATC 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, HATC will uphold the decision to deny assistance.
* If the facts prove the grounds for denial, the Hearing Officer will make the final decision to deny assistance.

HATC will notify the applicant of the final decision, including a statement explaining the reason(s) for the decision. The notice will be mailed within 10 business days of the informal review, to the applicant and his or her representative, if any.

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.

The applicant may request that the Hearing Officer consider a request for Reasonable Accommodations under the Fair Housing Act and Section 504 with respect to past conduct (see below).

If the basis for the denial relates to family violence, the applicant may qualify for an exception under the Violence Against Women Amendments.

The Notice of Denial letter will include information for the tenant regarding who to contact for legal representation.

**Reasonable Accommodation for Persons with Disabilities [24 CFR 966.7]**

Persons with disabilities may request reasonable accommodations to participate in the informal hearing process and HATC must consider such accommodations. HATC must also consider reasonable accommodation requests pertaining to the reasons for denial if related to the person’s disability. See Chapter 2 for more detail pertaining to reasonable accommodation requests.

**16-III.C. INFORMAL HEARINGS FOR PARTICIPANTS [24 CFR 982.555]**

PHAs must offer an informal hearing for certain PHA determinations relating to the individual circumstances of a participant family. A participant is defined as a family that has been admitted to HATC’s HCV program and is currently assisted in the program. The purpose of the informal hearing is to consider whether HATC’s decisions related to the family’s circumstances are in accordance with the law, HUD regulations and PHA policies.

HATC 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 HATC 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 HATC utility allowance schedule
* A determination of the family unit size under HATC’s subsidy standards
* A determination that a certificate program family is residing in a unit with a larger number of bedrooms than appropriate for the family unit size under HATC’s subsidy standards, or HATC determination to deny the family’s request for exception from the standards
* A determination to terminate assistance for a participant family because of the family’s actions or failure to act
* A determination to terminate assistance because the participant has been absent from the assisted unit for longer than the maximum period permitted under PHA 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 to deny admission based on an unfavorable history that may result of domestic violence, dating violence, or stalking.

**Circumstances for which an informal hearing is not required are as follows:**

* Discretionary administrative determinations by HATC
* General policy issues or class grievances
* Establishment of HATC schedule of utility allowances for families in the program
* HATC determination not to approve an extension or suspension of a voucher term. HATC’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)].
* HATC determination not to approve a unit or tenancy
* HATC determination that a unit selected by the applicant is not in compliance with the HQS
* HATC determination that the unit is not in accordance with HQS because of family size
* A determination by HATC to exercise or not to exercise any right or remedy against an owner under a HAP contract
* HATC will not approve an informal hearing after the expiration date of the voucher, including any extensions.

HATC POLICY

HATC 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 HATC makes a decision that is subject to informal hearing procedures, HATC 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, HATC 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 HATC’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.

HATC POLICY

In cases where HATC 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 HATC.
* 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.

***Scheduling an Informal Hearing* [24 CFR 982.555(d)]**

When an informal hearing is required, HATC must proceed with the hearing in a reasonably expeditious manner upon the request of the family.

HATC POLICY

A request for an informal hearing must be made in writing and delivered to HATC either in person or by first class mail, by the close of the business day, no later than 10 days from the date of HATC’s decision or notice to terminate assistance. Failure to timely request an informal hearing will cause the termination decision to become final.

HATC must schedule and send written notice of the informal hearing to the family within 15 days from the date the request is timely received.

The family may request to reschedule a hearing for good cause, or if it is needed as a reasonable accommodation for a person with disabilities. Good cause is defined as an unavoidable conflict which seriously affects the health, safety or welfare of the family. Requests to reschedule a hearing must be made orally or in writing prior to the hearing date. At its discretion, HATC may request documentation of the “good cause” prior to rescheduling the hearing. Failure to adhere to the forty-eight (48) hour notice requirement or failure to show up for the hearing will result in automatic loss of appeal.

**Failure to Appear**

There may be times when a participant does not appear due to unforeseen circumstances that are out of their control and are no fault of their own.

HATC POLICY

If the tenant does not appear at the scheduled time of the hearing, the Hearing Officer will wait up to 15 minutes. If the tenant appears within 15 minutes of the scheduled time, the hearing will be held. If the tenant does not arrive within 15 minutes of the scheduled time, they will be considered to have failed to appear.

If the tenant fails to appear and was unable to reschedule the hearing in advance, the tenant must contact HATC within 24 hours of the scheduled hearing date, excluding weekends and holidays. The Hearing Officer will reschedule the hearing only if the tenant can show good cause for the failure to appear, or it is needed as a reasonable accommodation for a person with disabilities.

* Good cause is defined as an unavoidable conflict that seriously affects the health, safety or welfare of the family.

***Pre-Hearing Right to Discovery* [24 CFR 982.555(e)]**

Participants and HATC are permitted pre-hearing discovery rights. The family must be given the opportunity to examine before the hearing any PHA documents that are directly relevant to the hearing. The family must be allowed to copy any such documents at their own expense. If HATC does not make the document available for examination on request of the family, HATC may not rely on the document at the hearing.

HATC hearing procedures may provide that HATC must be given the opportunity to examine at HATC offices before the hearing, any family documents that are directly relevant to the hearing. HATC must be allowed to copy any such document at HATC‘s expense. If the family does not make the document available for examination on request of HATC, the family may not rely on the document at the hearing.

For the purpose of informal hearings, *documents* include records and regulations.

HATC POLICY

The family will be allowed to copy any documents related to the informal hearing at a cost of $.10 per page. The participant or representative must present any documents relevant to the informal hearing at the informal hearing or as requested by HATC, otherwise, the family many not rely on the documents at the informal hearing.

***Participant’s Right to Bring Counsel* [24 CFR 982.555(e) (3)]**

At its own expense, the family may be represented by a lawyer or other representative at the informal hearing.

***Informal Hearing Officer* [24 CFR 982.555(e) (4)]**

Informal hearings will be conducted by a person or persons approved by HATC, other than the person who made or approved the decision or a subordinate of the person who made or approved the decision.

HATC POLICY

The informal hearing will be conducted by an appointed Hearing Officer who is a person other than the one who made or approved the decision under review, or a subordinate of this person.

***Attendance at the Informal Hearing***

HATC POLICY

Hearings may be attended by a hearing officer and the following applicable persons:

* A HATC representative(s) and any witnesses for HATC
* The participant and any witnesses for the participant
* The participant’s counsel or other representative
* Any other person approved by HATC 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 HATC’s hearing procedures [24 CFR 982.555(4) (ii)].

HATC 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)]**

HATC 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.

HATC 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 HATC. Writings include all forms of recorded communication or representation, including letters, words, pictures, sounds, videotapes or symbols or combinations thereof.

**Demonstrative evidence**: Evidence created specifically for the hearing and presented as an illustrative aid to assist the hearing officer, such as a model, a chart or other diagram.

**Real evidence**: A tangible item relating directly to the case.

***Hearsay Evidence*** is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter. Even though evidence, including hearsay, is generally admissible, hearsay evidence alone cannot be used as the sole basis for the hearing officer’s decision.

If either HATC 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.

HATC POLICY

In rendering a decision, the hearing officer will consider the following matters:

**HATC Notice to the Family**: The hearing officer will determine if the reasons for HATC’s decision are factually stated in the Notice.

**Discovery:** The hearing officer will determine if HATC and the family were given the opportunity to examine any relevant documents in accordance with HATC POLICY.

**HATC Evidence to Support the HATC Decision**: The evidence consists of the facts presented. Evidence is not conclusion and it is not argument. The hearing officer will evaluate the facts to determine if they support the HATC’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 HATC policies. If the grounds for termination are not specified in the regulations or in compliance with HATC policies, then the decision of HATC will be overturned.

The hearing officer will issue a written decision to the family within 15 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 HATC representative; and

Name of family representative (if any).

Names of witnesses (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 HATC’s decision.

**Order:** The hearing report will include a statement of whether HATC’s decision is upheld or overturned. If it is overturned, the hearing officer will instruct HATC to change the decision in accordance with the hearing officer’s determination. In the case of termination of assistance, the hearing officer will instruct HATC to restore the participant’s program status.

***Procedures for Rehearing or Further Hearing***

HATC 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 HATC will take effect and another hearing will not be granted.

**16-III.D. HEARING AND APPEAL PROVISIONS FOR NON-CITIZENS [24 CFR 5.514]**

Denial or termination of assistance based on immigration status is subject to special hearing and notice rules. Applicants who are denied assistance due to immigration status are entitled to an informal hearing, not an informal review.

Assistance to a family may not be delayed, denied, or terminated on the basis of immigration status at any time prior to a decision under the United States Citizenship and Immigration Services (USCIS) appeal process. Assistance to a family may not be terminated or denied while HATC 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 HATC informal hearing process, does not preclude the family from exercising the right, that may otherwise be available, to seek redress directly through judicial procedures.

**Notice of Denial or Termination of Assistance [24 CFR 5.514(d)]**

As discussed in Chapters 3 and 11, the notice of denial or termination of assistance for noncitizens must advise the family:

* That financial assistance will be denied or terminated, and provide a brief explanation of the reasons for the proposed denial or termination of assistance.
* The family may be eligible for proration of assistance.
* In the case of a participant, the criteria and procedures for obtaining relief under the provisions for preservation of families [24 CFR 5.514 and 5.518].
* That the family has a right to request an appeal to the USCIS of the results of secondary verification of immigration status and to submit additional documentation or explanation in support of the appeal.
* That the family has a right to request an informal hearing with the HATC 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 HATC receives notification that the USCIS secondary verification failed to confirm eligible immigration status, the HATC 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 HATC with a copy of the written request for appeal and the proof of mailing.

HATC POLICY

HATC will notify the family in writing of the results of the USCIS secondary verification within 10 calendar days of receiving the results.

The family will have 30 calendar days from the date of HATC’s notification to appeal the results directly to the USCIS.

The family must provide HATC with a copy of the written request for appeal and proof of mailing within 10 calendar days of sending the request to the USCIS.

The family must forward to the designated USCIS office any additional documentation or written explanation in support of the appeal. This material must include a copy of the USCIS document verification request (used to process the secondary request) or such other form specified by the USCIS, and a letter indicating that the family is requesting an appeal of the USCIS immigration status verification results.

The USCIS will notify the family, with a copy to HATC, of its decision. When the USCIS notifies HATC of the decision, HATC must notify the family of its right to request an informal hearing.

HATC POLICY

HATC 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 HATC provide a hearing. The request for a hearing must be made either within 30 days of receipt of HATC 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***

HATC 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 HATC 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.

HATC POLICY

The family will be allowed to copy any documents related to the hearing at a cost of .10¢ per page. The family must request discovery of HATC 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 HATC, and to confront and cross-examine all witnesses on whose testimony or information HATC 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 HATC, as may be agreed upon by the two parties.

***Recording of the Hearing***

The family is entitled to have the hearing recorded by audiotape HATC may, but is not required to provide a transcript of the hearing.

HATC POLICY

HATC will not provide a transcript of an audio taped hearing.

***Hearing Decision***

HATC 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 HATC provide a hearing. The request for a hearing must be made either within 30 days of receipt of HATC 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)]**

HATC must retain for a minimum of 5 years the following documents that may have been submitted to HATC by the family, or provided to HATC as part of the USCIS appeal or HATC informal hearing process:

* The application for assistance
* The form completed by the family for income reexamination
* Photocopies of any original documents, including original USCIS documents
* The signed verification consent form
* The USCIS verification results
* The request for a USCIS appeal
* The final USCIS determination
* The request for an informal hearing
* The final informal hearing decision

PART IV: OWNER OR FAMILY DEBTS TO THE HATC

**16-IV.A. OVERVIEW**

PHAs are required to include in the administrative plan, policies concerning repayment by a family of amounts owed to HATC [24 CFR 982.54]. This part describes HATC’s policies for recovery of monies that have been overpaid on behalf of families, or to owners.

HATC POLICY

When an action or inaction of an owner or participant results in the overpayment of housing assistance, HATC holds the owner or participant liable to return any overpayments to HATC.

HATC 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 HATC, HATC 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

**16-IV.B. REPAYMENT POLICY**

**Owner Debts to HATC**

HATC POLICY

Any amount due to HATC by an owner must be repaid by the owner within 30 days of HATC determination of the debt.

If the owner fails to repay the debt within the required time frame and is entitled to future HAP payments, HATC 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 HATC will offer to enter into a repayment agreement in accordance with the policies below.

If the owner refuses to repay the debt, enter into a repayment agreement, or breaches a repayment agreement, HATC will ban the owner from future participation in the program and pursue other modes of collection.

**Family Debts to the HATC**

HATC POLICY

Any amount due to HATC by any participant must be repaid by the family. If the family is unable to repay the debt within 30 days, HATC will offer to enter into a repayment agreement in accordance with the policies below.

If the family refuses to repay the debt, enter into a repayment agreement, or breaches a repayment agreement, HATC will terminate the family’s tenancy in accordance with the policies in Chapter 13. HATC will also pursue other modes of collection.

If HATC receives notice that the family failed to report additional income a second time, while they are already on a Repayment Agreement, the family may be terminated and the family may not be eligible for an appeal. However, they must continue to make payments on the original Repayment Agreement.

**Repayment Agreement [24 CFR 792.103]**

The term **r*epayment agreement*** refers to a formal document signed by a tenant or owner and provided to HATC in which a tenant or owner acknowledges a debt in a specific amount and agrees to repay the amount due at specific time periods.

**Repayment Agreement Guidelines**

Tenants are required to reimburse HATC if they were charged less than required by HUD’s rent formula due to the tenant’s underreporting or failure to report income. The tenant is required to reimburse HATC for the difference between the tenant rent that should have been paid and the tenant rent that was charged. This rent underpayment is commonly referred to as retroactive rent. If the tenant refuses to enter into a repayment agreement or fails to make payments on an existing or new repayment agreement, HATC must terminate the family’s tenancy or assistance, or both. HUD does not authorize any HATC-sponsored amnesty or debt forgiveness programs.

All repayment agreements must be in writing, dated, signed by both the tenant and HATC, include the total retroactive rent amount owed, amount of lump sum payment made at the time of execution, if applicable, and the monthly repayment amount.

HATC is required to determine retroactive rent amount as far back as HATC has documentation of family reported income, not to exceed 5 years.

***Down Payment Requirement***

The monthly retroactive rent payment plus the amount of rent the tenant pays at the time the repayment agreement is executed should be affordable and not exceed 40 percent of the family’s monthly adjusted income. However, HATC has the discretion to establish thresholds and policies for repayment agreements in addition to HUD required procedures.

HATC POLICY

Prior to the execution of a repayment agreement, the owner or family must pay 10 percent of the balance owed to HATC.

If the client owes $5,000 or less, HATC may enter into a promissory note, require probation or issue a warning depending on the total amount owed. After reviewing all documentation, if it is determined that the findings are true and substantiated, and the client owes $5000 or less, HATC will enter into a promissory note with the client.

If the client owes more than $5,000, the assistance will be terminated and the case may be referred to the HUD Office of Inspector General (OIG) or local law enforcement for possible legal prosecution.

The client has the right to appeal this decision by requesting an informal hearing. If the termination is upheld and the client owes money, HATC reserves the right to report the debt to credit agencies.

If fraud is discovered, HATC will review the amounts owed and determine whether to enter into a repayment agreement based on the following:

HATC POLICY

* If the amount owed to HATC exceeds $2000 up to $5000 then a repayment agreement will be required and implemented accordingly.
* If the amount owed to HATC is less than $2000 then the family may be issued a warning and a one year probationary period. A warning letter will be mailed to tenant stating the probationary period if this is their first offense. If this is second warning, amount owed must be repaid regardless of amount.
* Amounts between $3,000 and the Federal or State threshold for criminal prosecution must be repaid within 36 months.
* Amounts between $2,000 and $2,999 must be repaid within 30 months.
* Prior to the execution of a repayment agreement, the owner or family must pay 10 percent of the balance owed to HATC
* Exceptions to this schedule may be made at the discretion of the Housing Manager

(revised 2014)

***Execution of the Agreement***

HATC POLICY

The head of household and spouse/co-head (if applicable) must sign the repayment agreement.

***Due Dates***

HATC POLICY

All payments are due by date agreed by the family and HATC. If the due date does not fall on a business day, the due date is the close of business on the first business day after the date agreed on.

***Non-Payment***

HATC POLICY

If the family fails to make any payment as required by the terms set forth within the repayment agreement, HATC retains the right to demand immediate payment of the remaining unpaid balance. If the family fails to make payment of the full balance, it will be considered a breach of the agreement and HATC will terminate tenancy in accordance with the policies in Chapter 12

***No Offer of Repayment Agreement***

HATC POLICY

The HATC will not enter into a repayment agreement if there is already a repayment agreement in place with the family or owner, or the amounts owed by the family or owner exceed the Federal or State threshold for criminal prosecution. The HATC at its own discretion may allow a family to decrease their payment. The family must submit the request in writing for review.

PART V: MANAGEMENT ASSESSMENT (SEMAP)

**16-V.A. OVERVIEW**

The Section 8 Management Assessment Program (SEMAP) is a tool that allows HUD to measure HATC performance in key areas to ensure program integrity and accountability. SEMAP scores translate into a rating for each HATC as high performing, standard, or troubled. Scores on individual SEMAP indicators, as well as overall SEMAP ratings, can affect HATC in several ways.

* High-performing HATCs 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 HATC'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 PHA board resolution and signed by HATC executive director. If HATC 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 HATC elects to have its performance assessed on an annual basis; or is designated as “troubled” [24 CFR 985.105].

Failure of a HATC to submit its SEMAP certification within the required time frame will result in an overall performance rating of “troubled.”

HATC’s SEMAP certification is subject to HUD verification by an on-site confirmatory review at any time.

Upon receipt of the HATC’s SEMAP certification, HUD will rate the HATC’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. HATC 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 HATC's certification on the indicator due to HATC'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.

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| **SEMAP Indicators** |
| **Indicator 1: Selection from the waiting list**  **Maximum Score: 15**   * This indicator shows whether HATC has written policies in its administrative plan for selecting applicants from the waiting list and whether HATC 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 HATC’s written policies, according to HATC’s quality control sample. |
| **Indicator 2: Rent reasonableness**  **Maximum Score: 20**   * This indicator shows whether HATC 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 HATC follows its written method to determine reasonable rent and has documented its determination that the rent to owner is reasonable, according to HATC’s quality control sample. |
| **Indicator 3: Determination of adjusted income**  **Maximum Score: 20**   * This indicator measures whether HATC 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 HATC’s quality control sample. |
| **Indicator 4: Utility allowance schedule**  **Maximum Score: 5**   * This indicator shows whether HATC maintains an up-to-date utility allowance schedule. * Points are based on whether HATC has reviewed the utility allowance schedule and adjusted it when required, according to HATC’s certification. |

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| **Indicator 5: HQS quality control inspections**  **Maximum Score: 5**   * This indicator shows whether a HATC supervisor re inspects a sample of units under contract during HATC 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 HATC’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 PHA-approved extension. * Points are based on whether HATC corrects all HQS deficiencies in accordance with required time frames, according to HATC’s certification. |
| **Indicator 7: Expanding housing opportunities**  **Maximum Points: 5**   * Only applies to PHAs with jurisdiction in metropolitan FMR areas. * This indicator shows whether HATC 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 HATC’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 HATC has adopted and implemented written policies in accordance with SEMAP requirements, according to HATC’s certification. |
| **Indicator 8: FMR limit and payment standards**  **Maximum Points: 5 points**   * This indicator shows whether HATC has adopted a payment standard schedule that establishes payment standard amounts by unit size for each FMR area in HATC’s jurisdiction, that are within the basic range of 90 to 110 percent of the published FMR. * Points are based on whether HATC has appropriately adopted a payment standard schedule(s), according to HATC’s certification. |
| **Indicator 9: Annual reexaminations**  **Maximum Points: 10**   * This indicator shows whether HATC 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. |

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| **Indicator 10: Correct tenant rent calculations**  **Maximum Points: 5**   * This indicator shows whether HATC 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 HATC 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 HATC 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 PHA fiscal year, or the percent of allocated budget authority that has been expended by HATC, according to data from HATC’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 HATC 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. |

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| **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 PHA 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. |
| **De-concentration Bonus Indicator**  **Maximum Points: 5**   * Submission of data for this indicator is mandatory for HATC using one or more payment standard amount(s) that exceed(s) 100 percent of the published FMR set at the 50 percentile rent, starting with the second full PHA fiscal year following initial use of payment standard amounts based on the FMRs set at the 50th percentile. * 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**

HATC 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, HATC 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, the HATC must keep:

* A copy of the executed lease;
* The HAP contract; and
* The application from the family.

In addition, HATC must keep the following records for at least three years:

* Records that provide income, racial, ethnic, gender, and disability status data on program applicants and participants;
* An application from each ineligible family and notice that the applicant is not eligible;
* HUD-required reports;
* Unit inspection reports;
* Lead-based paint records as required by 24 CFR 35, Subpart B.
* Accounts and other records supporting PHA budget and financial statements for the program;
* Records to document the basis for PHA determination that rent to owner is a reasonable rent (initially and during the term of a HAP contract); and
* Other records specified by HUD.

If an informal hearing to establish a family’s citizenship status is held, longer retention requirements apply for some types of documents. For specific requirements, see Section 16-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.

HATC POLICY

All applicant and participant information will be kept in a secure location and access will be limited to authorized HATC staff.

HATC 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.

If the family requests to review the documents in their tenant file or requests copies of those documents, HATC will make these documents available for review at HATC during normal business hours. The cost for reproduction of allowable documents will be $.10 per page.

**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 HATC 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.*

HATC POLICY

HATC has adopted and implemented EIV security procedures as required by HUD.

**Criminal Records**

HATC may only disclose the criminal conviction records which HATC receives from a law enforcement agency to officers or employees of HATC, or to authorized representatives of HATC who have a job-related need to have access to the information [24 CFR 5.903(e)].

HATC must establish and implement a system of records management that ensures that any criminal record received by HATC 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 HATC action without institution of a challenge or final disposition of any such litigation. [24 CFR 5.903(g)].

HATC must establish and implement a system of records management that ensures that any sex offender registration information received by HATC 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 HATC 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 HATC 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. HATC may not inquire about a person’s diagnosis or details of treatment for a disability or medical condition. If HATC receives a verification document that provides such information, HATC should not place this information in the tenant file. HATC should destroy the document.

**PART VII: REPORTING AND RECORD KEEPING FOR CHILDREN WITH ENVIRONMENTAL INTERVENTION BLOOD LEAD LEVEL**

**16-VII.A. OVERVIEW**

HATC 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 HATC is subject to.

**16-VII.B. REPORTING REQUIREMENT [24 CFR 35.1225(e)]**

HATC 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.

HATC POLICY

HATC 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, HATC 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 HATC obtains names and addresses of environmental intervention blood lead level children from the public health department(s), HATC 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, HATC must carry out the notification, verification, and hazard reduction requirements discussed in Chapter 8, and the reporting requirement discussed above.

At least quarterly, HATC 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.

HATC 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, HATC is not providing such a report.

**PART VIII: DETERMINATION OF INSUFFICIENT FUNDING**

**16-VIII.A. OVERVIEW**

The HCV regulations allow HATCs 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 HATC’s ability to issue vouchers to families on the waiting list. This part discusses the methodology the HATC will use to determine whether or not the HATC has sufficient funding to issue vouchers, approve moves, and to continue subsidizing all families currently under a HAP contract.

**16-VIII.B. METHODOLOGY**

HATC POLICY

HATC 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 HATC’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, HATC 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 HATC cannot support the cost of the proposed subsidy commitment (voucher issuance or move) based on the funding analysis, the HATC will be considered to have insufficient funding.

**PART IX: NOTIFICATION REGARDING APPLICABLE PROVISIONS OF THE VIOLENCE AGAINST WOMENT REAUTHORIZTION ACTO OF 2005 (VAWA)**

The Violence against Women Reauthorization Act of 2005 (VAWA) requires PHAs to inform assisted tenants of their rights under this law, including their right to confidentiality and the limits thereof. Since VAWA provides protections for applicants as well as tenants, PHAs may elect to provide the same information to applicants. VAWA also requires PHAs to inform owners and managers of their obligations under this law [24 CFR 5.2007(3)].

This part describes the steps that HATC will take to ensure that all actual and potential beneficiaries of its housing choice voucher program are notified about their rights and how owners and managers are notified of their obligations under VAWA.

HATC POLICY

HATC shall make the information regarding VAWA readily available to anyone who requests it.

A summary of the rights and protections provided by VAWA to housing choice voucher program applicants and participants who are or have been victims of domestic violence, dating violence, or stalking (see sample notices in Exhibits 16-1 and 16-2)

The definitions of *domestic violence*, *dating violence*, and *stalking* provided in VAWA (included in Exhibits 16-1 and 16-2)

An explanation of the documentation that HATC 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 HATC’s obligation to keep confidential any information that it receives from a victim unless (a) HATC 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

**16-IX.A NOTIFICATION TO PARTICIPANTS [Pub.l. 109-162}**

VAWA requires PHAs to notify public housing program participants of their rights under this law, including their right to confidentiality and the limits thereof.

HATC POLICY

HATC will provide all participants with notification of their protections and rights under VAWA at the time of admission and at annual reexamination.

The notice will explain the protections afforded under the law, inform the participant of HATC confidentiality requirements, and provide contact information for local victim advocacy groups or service providers.

The HATC will also include in all assistance termination notices a statement explaining assistance termination protection provided by VAWA (see Section 12-II.E.).

**16-IX.B. NOTIFCATION TO APPLICANTS**

HATC POLICY

HATC will provide all applicants with notification of their protections and rights under VAWA at the time they request an application for housing assistance.

The notice will explain the protections afforded under the law, inform each applicant of HATC confidentiality requirements, and provide contact information for local victim advocacy groups or service providers.

HATC will also include in all notices of denial a statement explaining the protection against denial provided by VAWA (see section 3-III.G).

**16-IX.C. NOTIFICATION TO OWNERS AND MANAGERS [Pub.L. 109-162]**

VAWA requires PHAs to notify owners and managers of their rights and responsibilities under this law.

HATC POLICY

Inform property owners and managers of their screening and termination responsibilities related to VAWA. HATC may utilize any or all of the following means to notify owners of their VAWA responsibilities:

* Inserts in HAP payments, 1099s, owner workshops, classes, orientations, and/or newsletters.
* Signs in the HATC lobby and/or mass mailings which include model VAWA certification forms

**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 2006 protects individuals who are victims of domestic violence, dating violence, 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, or stalking.

If you are the victim of domestic violence, dating violence, 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, 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, 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, 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.
* Provide a statement from a victim service provider, attorney, or medical professional who has helped you address incidents of domestic violence, dating violence, 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 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, or stalking.

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.

**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 2006 protects individuals who are victims of domestic violence, dating violence, 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, or stalking.

You cannot evict a tenant who is the victim of domestic violence, dating violence, or stalking based on acts or threats of violence committed against the victim. Also, criminal acts directly related to the domestic violence, dating violence, 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, or stalking if you can demonstrate that there is an *actual* or *imminent* (immediate) threat to other tenants or employees at the property if the victim is not evicted. Also, you may evict a victim for serious or repeated lease violations that are not related to the domestic violence, dating violence, or stalking. You cannot hold a victim of domestic violence, dating violence, or stalking to a more demanding standard that tenants who are not victims.

**Removing the Abuser from the Household**

You may split the lease to evict a tenant who has committed criminal acts of violence against family members or others, while allowing the victim and other household members to stay in the unit. If you choose to remove the abuser, you may not take away the remaining tenants ‘rights to the unit or otherwise punish the remaining tenants. In removing the abuser from the household, you must follow federal, state, and local eviction procedures.

**Certification of Domestic Violence, Dating Violence, 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, 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:

By completing a HUD-approved certification form. The most recent form is HUD-50066. This form is available at the housing authority, or online at <http://www.hud.gov/offices/adm/hudclips/>.

* By providing a statement from a victim service provider, attorney, or medical professional who has helped the victim address incidents of domestic violence, dating violence, 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.
* By providing a police or court record, such as a protective order.

If the tenant fails to provide one of these documents within 14 business days, you may evict the tenant if authorized by otherwise applicable law and lease provisions.

**Confidentiality**

You must keep confidential any information a tenant provides to certify that he or she is a victim of domestic violence, dating violence, 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, or stalking.

**Additional Information**

HUD Notice PIH 2006-42 contains detailed information regarding VAWA‘s certification requirements. The notice is available at <http://www.hud.gov/offices/adm/hudclips/>.

An overview of VAWA‘s housing provisions is available at <http://edocket.access.gpo.gov/2007/pdf/E7-4795.pdf>.

**Definitions**

For purposes of determining whether a tenant may be covered by VAWA, the following list of definitions applies:

VAWA defines *domestic violence* to include felony or misdemeanor crimes of violence committed by any of the following:

* A current or former spouse of the victim
* A person with whom the victim shares a child in common
* A person who is cohabitating with or has cohabitated with the victim as a spouse
* A person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies
* Any other person against an adult or youth victim who is protected from that person‘s acts under the domestic or family violence laws of the jurisdiction

VAWA defines *dating violence* as violence committed by a person (1) who is or has been in a social relationship of a romantic or intimate nature with the victim AND (2) where the existence of such a relationship shall be determined based on a consideration of the following factors:

* The length of the relationship
* The type of relationship
* The frequency of interaction between the persons involved in the relationship

VAWA defines *stalking* as (A)(i) to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person OR (ii) to place under surveillance with the intent to kill, injure, harass, or intimidate another person AND (B) in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to (i) that person, (ii) a member of the

Chapter 17

PROJECT-BASED VOUCHERS

**INTRODUCTION**

This chapter describes HUD regulations and HATC policies related to the project-based voucher (PBV) program in nine parts:

Part I: General Requirements. This part describes general provisions of the PBV program including maximum budget authority requirements, relocation requirements, and equal opportunity requirements.

Part II: PBV Owner Proposals. This part includes policies related to the submission and selection of owner proposals for PBV assistance. It describes the factors the HATC 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 the HATC’s discretion.

Part VI: Selection of PBV Program Participants. This part describes the requirements and policies governing how the HATC 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 HATC’s Annual Plan, and the goal of de-concentrating poverty and expanding housing and economic opportunities [42 U.S.C. 1437f(o)(13)].

HATC POLICY

HATC 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, HATC is not required to reduce the number of these units if the amount of budget authority is subsequently reduced. However, HATC 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 the HATC 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.

HATC POLICY

Except as otherwise noted in this chapter, or unless specifically prohibited by PBV program regulations, HATC 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. HATC may not use voucher program funds to cover relocation costs, except that HATC may use its 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 parts 24, subpart B. It is the responsibility of HATC to ensure the owner complies with these requirements.

**17-I.D. EQUAL OPPORTUNITY REQUIREMENTS [24 CFR 983.8]**

HATC 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, HATC must comply with HATC 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**

HATC must describe the procedures for owner submission of PBV proposals and for HATC selection of PBV proposals [24 CFR 983.51]. Before selecting a PBV proposal, HATC 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 building [24 CFR 983.56], and meets the site selection standards [24 CFR 983.57].

**17-II.B. OWNER PROPOSAL SELECTION PROCEDURES [24 CFR 983.51]**

HATC must select PBV proposals in accordance with the selection procedures in HATC administrative plan. HATC must select PBV proposals by either of the following two methods.

* HATC request for PBV Proposals. HATC may solicit proposals by using a request for proposals to select proposals on a competitive basis in response to HATC request. The HATC 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.
* HATC 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(b) and (c)]**

HATC 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 HATC. 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 HATC request for PBV proposals must specify the submission deadline. Detailed application and selection information must be provided at the request of interested parties.

PHA Request for Proposals for Rehabilitated and Newly Constructed Units

HATC will advertise its request for proposals (RFP) for rehabilitated and newly constructed housing in newspapers.

HATC will publish its advertisement in the newspapers for at least one day per week for three consecutive weeks. The advertisement will specify the number of units HATC estimates that it will be able to assist under the funding HATC is making available. Proposals will be due in HATC office by close of business 30 calendar days from the date of the last publication. HATC may establish alternative timetables that provide for adequate public notification of the RFP and time for responses by interested owners.

In order for the proposal to be considered, the owner must submit the proposal to HATC by the published deadline date, and the proposal must respond to all requirements as outlined in the RFP. Incomplete proposals will not be reviewed.

HATC will rate and rank proposals for rehabilitated and newly constructed housing using the following criteria:

Owner experience and capability to build or rehabilitate housing as identified in the RFP;

Extent to which the project furthers HATC goal of de-concentrating poverty and expanding housing and economic opportunities;

If applicable, the extent to which services for special populations are provided on site or in the immediate area for occupants of the property; and

Projects with less than 25 percent of the units assisted will be rated higher than projects with 25 percent of the units assisted. In the case of projects for occupancy by the elderly, persons with disabilities or families needing other services HATC will rate partially assisted projects on the percent of units assisted. Projects with the lowest percent of assisted units will receive the highest score.

HATC Requests for Proposals for Existing Housing Units

HATC will advertise its request for proposals (RFP) for existing housing in local newspapers.

HATC will periodically publish its advertisement in the newspapers for at least one day per week for three consecutive weeks. The advertisement will specify the number of units HATC estimates that it will be able to assist under the funding HATC is making available. Owner proposals will be accepted on a first-come first-served basis and will be evaluated using the following criteria:

Experience as an owner in the tenant-based voucher program and owner compliance with the owner’s obligations under the tenant-based program;

Extent to which the project furthers HATC goal of de-concentrating poverty and expanding housing and economic opportunities;

If applicable, extent to which services for special populations are provided on site or in the immediate area for occupants of the property; and

Extent to which units are occupied by families that are eligible to participate in the PBV program.

Alternatively, HATC may accept proposals until a deadline date, and may rate and rank proposals received by the deadline date using the criteria listed above and/or other relevant criteria. Whether HATC is accepting proposals on a first-come, first-served basis or by a deadline date, HATC may modify, add to, delete or replace the criteria listed above with relevant criteria, such as the owner’s willingness to accept PBV contract extensions if offered, demonstrated commitment to providing low-income housing and /or experience in the management of low-income housing.

HATC Selection of Proposals Subject to a Previous Competition under a Federal, State, or Local Housing Assistance Program

HATC 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.

HATC may periodically advertise that it is accepting proposals, in the following newspapers:

**NAHRO Update, Austin American Statesman, Local Social Service Agencies, HATC website**

In addition to, or in place of advertising, HATC 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. HATC will evaluate each proposal on its merits using the following factors:

Extent to which the project furthers the HATC goal of de-concentrating 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.

Such other relevant factors and HATC determines, consistent with the goals of HATC and the PBV program.

**PHA-owned Units [24 CFR 983.51(e) and 983.59]**

A PHA-owned unit may be assisted under the PBV program only if the HUD field office or HUD-approved independent entity reviews the selection process and determines that PHA-owned units were appropriately selected based on the selection procedures specified in HATC administrative plan.

The independent entity that performs these program services may be the unit of general local government for HATC jurisdiction (unless HATC is itself the unit of general local government or an agency of such government) or another HUD-approved public or private independent entity.

HATC may only compensate the independent entity and appraiser from HATC’s ongoing administrative fee income (including amounts credited to the administrative fee reserve). HATC may not use other program receipts to compensate the independent entity and appraiser for their services. HATC, independent entity, and appraiser may not charge the family any fee for the appraisal or the services provided by the independent entity.

**HATC Notice of Owner Selection [24 CFR 983.51(d)]**

HATC 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.

HATC POLICY

Subsequent to HATC making a selection, HATC will provide prompt notice to the selected owner in writing of the owner’s selection for the PBV program. HATC 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 HATC will publish its notice for selection of PBV proposals in the same newspapers and trade journals HATC used to solicit the proposals. The announcement will include the name of the owner that was selected for the PBV program. HATC will also post the notice of owner selection on its electronic web site.

HATC will make available to any interested party its rating and ranking sheets and documents that identify HATC 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. HATC will not make available sensitive owner information that is privileged, such as financial statements and similar information about the owner.

HATC will make these documents available for review at HATC during normal business hours. The cost for reproduction of allowable documents will be $.10 per page.

**17-II.C. HOUSING TYPE [24 CFR 983.52]**

HATC 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 HATC 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.

HATC must decide what housing type, new construction, rehabilitation, or existing housing, will be used to develop project-based housing. HATC 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]**

HATC 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; cooperative housing; and transitional housing. In addition, HATC may not attach or pay PBV assistance for a unit occupied by an owner and HATC 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.

***High-rise Elevator Projects for Families with Children [24 CFR 983.53(b)]***

HATC may use high-rise elevator building for families with children if it makes a determination that there is no practical alternative and HUD approves HATC determination. HATC may make this initial determination for its project-based voucher program, in whole or in part, and need not review each project on a case-by-case basis, and HUD may approve on the same basis.

HATC POLICY

HATC will not use high-rise elevator projects for families with children.

**Subsidized Housing [24 CFR 983.54]**

A PHA may not attach or pay PBV assistance to units in any of the following types of subsidized housing:

* A public housing unit;
* A unit subsidized with any other form of Section 8 assistance;
* A unit subsidized with any governmental rent subsidy;
* A unit subsidized with any governmental subsidy that covers all or any part of the operating costs of the housing;
* A unit subsidized with Section 236 rental assistance payments (except that a PHA may attach assistance to a unit subsidized with Section 236 interest reduction payments);
* A Section 202 project for non-elderly with disabilities;
* Section 811 project-based supportive housing for persons with disabilities;
* Section 202 supportive housing for the elderly;
* A Section 101 rent supplement project;
* A unit subsidized with any form of tenant-based rental assistance;
* A unit with any other duplicative federal, state, or local housing subsidy, as determined by HUD or HATC in accordance with HUD requirements.

**17-II.E. SUBSIDY LAYERING REQUIREMENTS [24 CFR 983.55]**

HATC 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.

HATC must submit the necessary documentation to HUD for a subsidy layering review. HATC 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.

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 BUILDING**

**25 Percent per Building Cap [24 CFR 983.56(a)]**

In general, HATC may not select a proposal to provide PBV assistance for units in a building or enter into an agreement to enter into a HAP or a HAP contract to provide PBV assistance for units in a building, if the total number of dwelling units in the building 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 building.

**Exceptions to 25 Percent per Building Cap [24 CFR 983.56(b)]**

Exceptions are allowed and PBV units are not counted against the 25 percent per building 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 its administrative plan the type of services offered to families for a project to qualify for the exception and the extent to which such services will be provided. It is not necessary that the services be provided at or by the project, if they are approved services. To qualify, a family must have at least one member receiving at least one qualifying supportive service. A PHA may not require participation in medical or disability-related services other than drug and alcohol treatment in the case of current abusers as a condition of living in an excepted unit, although such services may be offered.

If a family at the time of initial tenancy is receiving, and while the resident of an excepted unit has received, FSS supportive services or any other supportive services as defined in HATC’s 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.

HATC 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. HATC administrative plan must state the form and frequency of such monitoring.

HATC POLICY

HATC will not provide PBV assistance for excepted units.

**Promoting Partially-Assisted Buildings [24 CFR 983.56(c)]**

A PHA may establish local requirements designed to promote PBV assistance in partially assisted buildings. A *partially assisted building* is a building in which there are fewer units covered by a HAP contract than residential units [24 CFR 983.3].

A PHA may establish a per-building cap on the number of units that will receive PBV assistance or other project-based assistance in a multifamily building containing excepted units or in a single-family building. A PHA may also determine not to provide PBV assistance for excepted units, or HATC may establish a per-building cap of less than 25 percent.

HATC POLICY:

HATC will not provide assistance for excepted units. Beyond that, HATC will not impose any further cap on the number of PBV units assisted per building.

**17-II.G. SITE SELECTION STANDARDS**

**Compliance with PBV Goals, Civil Rights Requirements, and HQS Site Standards**   
**[24 CFR 983.57(b)]**

HATC 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 HATC has determined that PBV assistance for housing at the selected site is consistent with the goal of de-concentrating poverty and expanding housing and economic opportunities.

The standard for de-concentrating poverty and expanding housing and economic opportunities must be consistent with HATC Plan under 24 CFR 903 and HATC administrative plan.

In addition, prior to selecting a proposal, HATC 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).

HATC POLICY

It is HATC goal to select sites for PBV housing that provide for de-concentrating poverty and expanding housing and economic opportunities. In complying with this goal HATC will limit approval of sites for PBV housing in census tracts that have poverty concentrations of 20 percent or less.

However, HATC will grant exceptions to the 20 percent standard where the HATC 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)]**

HATC may not enter into an agreement to enter into a HAP contract nor enter into a HAP contract for existing or rehabilitated housing until it has determined that the site complies with the HUD required site and neighborhood standards. The site must:

* Be adequate in size, exposure, and contour to accommodate the number and type of units proposed;
* Have adequate utilities and streets available to service the site;
* Promote a greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons;
* Be accessible to social, recreational, educational, commercial, and health facilities and services and other municipal facilities and services equivalent to those found in neighborhoods consisting largely of unassisted similar units; and
* Be located so that travel time and cost via public transportation or private automobile from the neighborhood to places of employment is not excessive.

**New Construction Site and Neighborhood Standards [24 CFR 983.57(e)]**

In order to be selected for PBV assistance, a site for newly constructed housing must meet the following HUD required site and neighborhood standards:

* The site must be adequate in size, exposure, and contour to accommodate the number and type of units proposed;
* The site must have adequate utilities and streets available to service the site;
* The site must not be located in an area of minority concentration unless HATC 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]**

HATC 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.).

HATC 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.

HATC may not enter into an agreement to enter into a HAP contract or a HAP contract with an owner, and HATC, 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.

HATC must supply all available, relevant information necessary for the responsible entity to perform any required environmental review for any site.

The HATC 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, cooperative 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 does 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. The HATC 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)]**

HATC must examine the proposed site before the proposal selection date. If the units to be assisted already exist, HATC 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, HATC may not execute the HAP contract until the units fully comply with HQS.

**Pre-HAP Contract Inspections [24 CFR 983.103(b)]**

HATC must inspect each contract unit before execution of the HAP contract. HATC 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, HATC must inspect the unit. HATC 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, HATC 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, HATC must re-inspect 100 percent of the contract units in the building.

**Other Inspections [24 CFR 983.103(e)]**

HATC 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. HATC must take into account complaints and any other information coming to its attention in scheduling inspections.

HATC 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 HATC supervisory quality control HQS inspections, HATC should include a representative sample of both tenant-based and project-based units.

**Inspecting PHA-owned Units [24 CFR 983.103(f)]**

In the case of PHA-owned units, the inspections must be performed by an independent agency designated by HATC and approved by HUD. The independent entity must furnish a copy of each inspection report to e HATC and to the HUD field office where the project is located. HATC must take all necessary actions in response to inspection reports from the independent agency, including exercise of contractual remedies for violation of the HAP contract by the HATC-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, HATC 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 HATC agrees that upon timely completion of such development in accordance with the terms of the Agreement, HATC 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 the HATC, 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]**

The Agreement must be executed promptly after HATC notice of proposal selection to the selected owner. However, HATC may not enter into the Agreement with the owner until the subsidy layering review is completed. Likewise, HATC may not enter into the Agreement until the environmental review is completed and HATC has received environmental approval.

HATC POLICY

HATC will enter into the Agreement with the owner within 10 business days of receiving both environmental approval and notice that subsidy layering requirements have been met, and before construction or rehabilitation work has 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. HATC 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 HATC in the form and manner required by HATC:

* 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 HATC’s discretion, the Agreement may specify additional documentation that must be submitted by the owner as evidence of housing completion.

HATC POLICY

HATC 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. HATC will specify any additional documentation requirements in the Agreement to enter into HAP contract.

**HATC Acceptance of Completed Units [24 CFR 983.156]**

Upon notice from the owner that the housing is completed, HATC 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. HATC 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, HATC must not enter into the HAP contract.

If HATC determines the work has been completed in accordance with the Agreement and that the owner has submitted all required evidence of completion, HATC must submit the HAP contract for execution by the owner and must then execute HAP contract.

**PART V: HOUSING ASSISTANCE PAYMENTS CONTRACT (HAP)**

**17-V.A. OVERVIEW**

HATC 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 building that will exceed the 25 percent per building 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]**

HATC may not enter into a HAP contract until each contract unit has been inspected and HATC has determined that the unit complies with the Housing Quality Standards (HQS). For existing housing, the HAP contract must be executed promptly after HATC selects the owner proposal and inspects the housing units. For newly constructed or rehabilitated housing the HAP contract must be executed after HATC 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.

For existing housing, the HAP contract will be executed within 10 business days of HATC determining that all units pass HQS.

For rehabilitated or newly constructed housing, the HAP contract will be executed within 10 business days of HATC 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 [24 CFR 983.205]**

HATC may enter into a HAP contract with an owner for an initial term of no less than one year and no more than ten years.

The length of the term of HATC contract for any contract unit may not be less than one year or more than ten years.

Within one year before expiration of the HAP contract, HATC may extend the term of the contract for an additional term of up to five years if HATC determines an extension is appropriate to continue providing affordable housing for low-income families. Subsequent extensions are subject to the same limitations. All extensions must be on the form and subject to the conditions prescribed by HUD at the time of the extension.

When determining whether or not to extend an expiring PBV contract, HATC will consider several factors including, but not limited to:

The cost of extending the contract and the amount of available budget authority;

The condition of the contract units;

The owner’s record of compliance with obligations under the HAP contract and lease(s);

Whether the location of the units continues to support the goals of de-concentrating poverty and expanding housing opportunities; and

Whether the funding could be used more appropriately for tenant-based assistance.

***Termination by HATC [24 CFR 983.205(c)]***

The HAP contract must provide that the term of HATC’s contractual commitment is subject to the availability of sufficient appropriated funding as determined by HUD or by HATC 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, HATC 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 HATC. In this case, families living in the contract units must be offered tenant-based assistance.

**Remedies for HQS Violations [24 CFR 983.207(b)]**

HATC 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 HATC determines that a contract does not comply with HQS, HATC 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.

HATC 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 HATC’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, HATC must inspect the proposed unit and determine the reasonable rent for the unit.

**Addition of Contract Units [24 CFR 983.206(b)]**

At HATC’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 HATC’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.

HATC POLICY

HATC will consider adding contract units to the HAP contract when HATC 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 HATC, and the lease is in accordance with the HAP contract and HUD requirements;
* To the best of the owner’s knowledge the family resides in the contract unit for which the owner is receiving HAP, and the unit is the family’s only residence;
* The owner (including a principal or other interested party) is not the spouse, parent, child, grandparent, grandchild, sister, or brother of any member of a family residing in a contract unit;
* The amount of the HAP the owner is receiving is correct under the HAP contract;
* The rent for contract units does not exceed rents charged by the owner for comparable unassisted units;
* Except for HAP and tenant rent, the owner has not received and will not receive any other payment or consideration for rental of the contract unit; and
* The family does not own or have any interest in the contract unit.

**17-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 HATC 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.

HATC 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.

HATC will identify the need for any special features on a case-by-case basis depending on the intended occupancy of the PBV project. HATC 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 HATC, the HAP contract may provide for vacancy payments to the owner for a HATC-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 HATC 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).

HATC will decide on a case-by-case basis if HATC 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)]**

HATC may select families for the PBV program from those who are participants in HATC’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 HATC, 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 HATC’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.

HATC 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 HATC 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 HATC’s waiting list. Once the family’s continued eligibility is determined (HATC 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 HATC 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)]**

HATC may establish a separate waiting list for PBV units or it may use the same waiting list for both tenant-based and PBV assistance. HATC may also merge the PBV waiting list with a waiting list for other assisted housing programs offered by HATC. If HATC chooses to offer a separate waiting list for PBV assistance, HATC must offer to place applicants who are listed on the tenant-based waiting list on the waiting list for PBV assistance.

If HATC decides to establish a separate PBV waiting list, HATC may use a single waiting list for HATC’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.

HATC 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 HATC’s waiting list. HATC may establish selection criteria or preferences for occupancy of particular PBV units.

**Income Targeting [24 CFR 983.251(c) (6)]**

At least 75 percent of the families admitted to HATC’s tenant-based and project-based voucher programs during HATC 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, HATC must first refer families who require such features to the owner.

**Preferences [24 CFR 983.251(d)]**

HATC 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. HATC must provide an absolute selection preference for eligible in-place families as described in Section 17-VI.B.

Although HATC is prohibited from granting preferences to persons with a specific disability, HATC 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 HATC has buildings with more than 25 percent of the units receiving project-based assistance because those buildings include “excepted units” (units specifically made available for elderly or disabled families, or families receiving supportive services), HATC must give preference to such families when referring families to these units [24 CFR 983.261(b)].

HATC 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). HATC 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)]**

HATC 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 HATC’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, HATC 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, HATC must provide a briefing packet that explains how HATC 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, HATC 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, HATC must have a mechanism for referring a family that includes a member with mobility impairment to an appropriate accessible PBV unit.

***Persons with Limited English Proficiency***

HATC 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(b)].

**Leasing [24 CFR 983.253(a)]**

During the term of the HAP contract, the owner must lease contract units to eligible families that are selected and referred by HATC from HATC’s waiting list. The contract unit leased to the family must be the appropriate size unit for the size of the family, based on HATC’s subsidy standards.

**Filling Vacancies [24 CFR 983.254(a)]**

The owner must promptly notify HATC of any vacancy or expected vacancy in a contract unit. After receiving such notice, HATC must make every reasonable effort to promptly refer a sufficient number of families for the owner to fill such vacancies. HATC and the owner must make reasonable efforts to minimize the likelihood and length of any vacancy.

The owner must notify HATC in writing (mail, fax, or e-mail) within 5 business days of learning about any vacancy or expected vacancy.

HATC 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, HATC 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.

HATC POLICY

If any contract units have been vacant for 120 days, HATC 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. HATC 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 HATC’s notice.

**17-VI.G. TENANT SCREENING [24 CFR 983.255]**

**HATC Responsibility**

HATC is not responsible or liable to the owner or any other person for the family’s behavior or suitability for tenancy. HATC will not conduct screening to determine a PBV applicant family’s suitability for tenancy.

HATC must provide the owner with an applicant family’s current and prior address (as shown in HATC records) and the name and address (if known by HATC) of the family’s current landlord and any prior landlords.

In addition HATC may offer the owner other information HATC may have about a family, including information about the tenancy history of family members or about drug trafficking and criminal activity by family members. HATC must provide applicant families a description of HATC POLICY on providing information to owners, and HATC must give the same types of information to all owners.

HATC 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. HATC will not provide any additional information to the owner, such as tenancy history, criminal history, etc.

**Owner Responsibility**

The owner is responsible for screening and selection of the family to occupy the owner’s unit. When screening families the owner may consider a family’s background with respect to the following factors:

* Payment of rent and utility bills;
* Caring for a unit and premises;
* Respecting the rights of other residents to the peaceful enjoyment of their housing;
* Drug-related criminal activity or other criminal activity that is a threat to the health, safety, or property of others; and
* Compliance with other essential conditions of tenancy.

**PART VII: OCCUPANCY**

**17-VII.A. OVERVIEW**

After an applicant has been selected from the waiting list, determined eligible by the HATC, 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 HATC model lease.

HATC may review the owner’s lease form to determine if the lease complies with state and local law. If HATC determines that the lease does not comply with state or local law, HATC may decline to approve the tenancy.

HATC POLICY

HATC will not review the owner’s lease for compliance with state or local law.

**Lease Requirements [24 CFR 983.256(c)]**

The lease for a PBV unit must specify all of the following information:

* The names of the owner and the tenant;
* The unit rented (address, apartment number, if any, and any other information needed to identify the leased contract unit);
* The term of the lease (initial term and any provision for renewal);
* The amount of the tenant rent to owner, which is subject to change during the term of the lease in accordance with HUD requirements;
* A specification of the services, maintenance, equipment, and utilities that will be provide by the owner; and
* The amount of any charges for food, furniture, or supportive services.

**Tenancy Addendum [24 CFR 983.256(d)]**

The tenancy addendum in the lease must state:

* The program tenancy requirements;
* The composition of the household as approved by HATC (the names of family members and any HATC-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, HATC 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 HATC a copy of all changes.

The owner must notify HATC 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 HATC and in accordance with the terms of the lease relating to its amendment. HATC 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)]***

If a family is living in a project-based unit that is part of the 25 percent per building 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 HATC 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. HATC may prohibit security deposits in excess of private market practice, or in excess of amounts charged by the owner to unassisted tenants.

HATC 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. HATC 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 HATC determines that a family is occupying a wrong size unit, based on HATC’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, HATC must promptly notify the family and the owner of this determination, and HATC must offer the family the opportunity to receive continued housing assistance in another unit.

HATC will notify the family and the owner of the family’s need to move based on the occupancy of a wrong-size or accessible unit within 10 business days of the HATC’s determination. HATC 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 HATC offers the family a tenant-based voucher, HATC 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 HATC).

If HATC 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 HATC, or both, HATC must terminate the housing assistance payments for the unit at the expiration of a reasonable period as determined by HATC.

When HATC 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, HATC will terminate the housing assistance payments at the expiration of this 30-day period.

HATC 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.

HATC may allow under-housed or over-housed households to remain in occupancy for a period of time determined by HATC, based upon characteristics of the units, for former public housing residents that live in public housing units that have been disposed of or converted into PBV units.

**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 HATC. If the family wishes to move with continued tenant-based assistance, the family must contact HATC to request the rental assistance prior to providing notice to terminate the lease.

If the family terminates the lease in accordance with these requirements, HATC 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, HATC must give the family priority to receive the next available opportunity for continued tenant-based assistance.

If the family terminates the assisted lease before the end of the first year, the family relinquishes the opportunity for continued tenant-based assistance.

**17-VII.D. EXCEPTIONS TO THE OCCUPANCY CAP [24 CFR 983.261]**

HATC may not pay housing assistance under a PBV HAP contract for more than 25 percent of the number of dwelling units in a building 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 HATC. At least one member must be receiving at least one qualifying supportive service.

If a family at the time of initial tenancy is receiving and while the resident of an excepted unit has received Family Self-Sufficiency (FSS) supportive services or any other service as defined as defined by HATC 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 building 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 HATC, and HATC 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 HATC.

**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 HAP contract term.

During the tem 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 HATC, not to exceed 110 percent of the applicable fair market rent (or any HUD-approved exception payment standard) for the unit bedroom size minus any utility allowance;
* The reasonable rent; or
* The rent requested by the owner.

**Certain Tax Credit Units [24 CFR 983.301(c)]**

For certain tax credit units, the rent limits are determined differently than for other PBV units. These different limits apply to contract units that meet all of the following criteria:

* The contract unit receives a low-income housing tax credit under the Internal Revenue Code of 1986;
* The contract unit is not located in a qualified census tract;
* There are comparable tax credit units of the same bedroom size as the contract unit in the same building, and the comparable tax credit units do not have any form of rental assistance other than the tax credit; and
* The tax credit rent exceeds a PHA-determined amount (not to exceed 110 percent of the fair market rent or any approved exception payment standard);

For contract units that meet all of these criteria, the rent to owner must not exceed the lowest of:

* The tax credit rent minus any utility allowance;
* The reasonable rent; or
* The rent requested by the owner.

***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, HATC 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, the HATC must use the most recently published FMR and the utility allowance schedule in effect at the time of redetermination. At its discretion, HATC 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, HATC may not establish or apply different utility allowance amounts for the PBV program. The same utility allowance schedule applies to both the tenant-based and project-based voucher programs.

Upon written request by the owner, HATC will consider using the FMR or utility allowances in effect during the 30-day period before the start date of the HAP, or redetermination of rent. The owner must explain the need to use the previous FMRs or utility allowances and include documentation in support of the request. HATC 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, HATC may decide to use the FMR or utility allowances in effect during the 30-day period before the start date of the HAP, or redetermination of rent, if HATC determines it is necessary due to HATC budgetary constraints.

**Exceptions for Former Public Housing Residents**

The following exceptions apply to former public housing residents that live in public housing units that have been disposed of or converted into PBV units:

* HATC may allow households paying public housing flat rents to continue to pay such rents or transitional higher rents that remain below 30% of their adjusted incomes.
* With respect to pro-rated households who otherwise would see a significant rent increase, PHA-related entity owners of the PBV units may request lower contract rents for those families’ units without affecting rent comparability for other units at the developments.
* HATC may allow utility allowances consistent with the utility allowances the households were paying on the units in the public housing program, which may be more or less than the utility allowances that would be paid with respect to such units under the voucher program.

HATC may make any other necessary rent or occupancy policy adjustments to provide minimal negative impact to former public housing residents.

**Redetermination of Rent [24 CFR 983.302]**

HATC 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 the HATC, 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 HATC. HATC 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

An owner’s request for a rent increase must be submitted to HATC 60 days prior to the anniversary date of the HAP contract, and must include the new rent amount the owner is proposing.

HATC 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 the PHA to the owner specifying the amount of the re-determined rent. HATC 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.

HATC will provide the owner with at least 30 days written notice of any change in the amount of rent to owner.

**PHA-owned Units [24 CFR 983.301(g)]**

For PHA-owned PBV units, the initial rent to owner and the annual redetermination of rent at the anniversary of the HAP contract are determined by the independent entity approved by HUD. HATC must use the rent to owner established by the independent entity.

**17-VIII.C. REASONABLE RENT [24 CFR 983.303]**

At the time the initial rent is established and all times during the term of the HAP contract, the rent to owner for a contract unit may not exceed the reasonable rent for the unit as determined by the HATC.

**When Rent Reasonable Determinations are Required**

HATC 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;
* HATC 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, HATC 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 HATC. The comparability analysis may be performed by HATC staff or by another qualified person or entity. Those who conduct these analyses or are involved in determining the housing assistance payment based on the analyses may not have any direct or indirect interest in the property.

**PHA-owned Units**

For PHA-owned units, the amount of the reasonable rent must be determined by an independent agency approved by HUD in accordance with PBV program requirements. The independent entity must provide a copy of the determination of reasonable rent for PHA-owned units to HATC 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, HATC 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 PHA may reduce the initial rent to owner because of other governmental subsidies, including tax credit or tax exemption, grants, or 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;
* A project receiving low-income housing tax credits;
* 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, HATC 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 HATC agree on a later date.

Except for discretionary vacancy payments, HATC 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 HATC 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 HATC determines that the vacancy is the owner’s fault.

If HATC determines that the owner is responsible for a vacancy and, as a result, is not entitled to the keep the housing assistance payment, HATC will notify the landlord of the amount of housing assistance payment that the owner must repay. HATC will require the owner to repay the amount owed in accordance with the policies in Section 16-IV.B.

At the discretion of HATC, the HAP contract may provide for vacancy payments to the owner. HATC may only make vacancy payments if:

* The owner gives HATC 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 HATC 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 HATC and must provide any information or substantiation required by HATC to determine amount of any vacancy payment.

If an owner’s HAP contract calls for vacancy payments to be made, and the owner wishes to receive vacancy payments, the owner must have properly notified e HATC 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 HATC may require the owner to provide documentation to support the request. If the owner does not provide the information requested by HATC within 10 business days of HATC’s request, no vacancy payments will be made.

**17-IX.C. TENANT RENT TO OWNER [24 CFR 983.353]**

The tenant rent is the portion of the rent to owner paid by the family. The amount of tenant rent is determined by the HATC in accordance with HUD requirements. Any changes in the amount of tenant rent will be effective on the date stated in the HATC 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 HATC is the maximum amount the owner may charge the family for rental of a contract unit. The tenant rent covers all housing services, maintenance, equipment, and utilities to be provided by the owner. The owner may not demand or accept any rent payment from the tenant in excess of the tenant rent as determined by the HATC. The owner must immediately return any excess payment to the tenant.

**Tenant and HATC 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 HATC.

Likewise, HATC is responsible only for making the housing assistance payment to the owner in accordance with the HAP contract. HATC is not responsible for paying tenant rent, or any other claim by the owner, including damage to the unit. HATC 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, HATC 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.

HATC may pay the utility reimbursement directly to the family or to the utility supplier on behalf of the family. If HATC chooses to pay the utility supplier directly, HATC must notify the family of the amount paid to the utility supplier.

**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**

**Rental Assistance Demonstration (RAD)**

**HATC Choice Mobility Policy**

1. **Definitions**
   1. *Covered Project:* Any Public Housing property that has converted to the Project Based Rental Assistance (PBRA) program through RAD.
   2. *Choice Mobility:* The opportunity for families to request a Housing Choice Voucher (HCV) and move into the private rental market with voucher assistance.
   3. *Turnover Caps:* The maximum number of families that can receive a voucher in a calendar year. PHAs can establish caps for the maximum number of families that can receive a voucher in a calendar year.
2. **Eligibility and Voucher Caps**

HUD seeks to provide all residents of Covered Projects with viable Choice Mobility options. The Housing Choice Voucher (HCV) program provides the most options for families to choose where they want to live within that housing authority’s jurisdiction.

PHAs that are applying to convert the assistance of a project to PBRA are required to provide Choice Mobility option to residents of Covered Projects in accordance with the following:

* + 1. ***Resident Eligibility***. Residents have a right to move with tenant-based rental assistance (e.g., Housing Choice Voucher (HCV)) the later of: (a) 24 months from the date of execution of the HAP or (b) 24 months after the move-in date.
    2. ***Voucher inventory Turnover Cap***. Recognizing the limitation on the availability of turnover vouchers from year to year, a voucher agency would not be required, in any year, to provide more than one-third of its turnover vouchers to the residents of Covered Projects. While a voucher agency is not required to establish a voucher inventory turnover cap, if such a cap is implemented the voucher agency must create and maintain a waiting list in the order in which the requests from eligible households were received.

**HATC POLICY**

HATC will provide all residents the opportunity to request a Housing Choice Voucher after the later a) 24 months from the date of the execution of the HAP contract, or b) 24 months from the date of move in.

* If a family moves from one covered project to another covered project, their 24 month clock resets. These families will have to wait for 24 months from the date of move in to the new property, before they can exercise Choice Mobility.
* If a family transfers within the same covered project, their 24 month clock does not reset. They will be eligible to request a Choice Mobility voucher at the later of: (a) 24 months from the date of execution of the HAP or (b) 24 months after the move-in date.
* A family may request the choice mobility at any time after completing the 24 month requirement. They remain eligible as long as they continue living at the same covered project.
* A family that receives a Choice Mobility voucher, but allows it to expire without using it, can request another Choice Mobility voucher. However, they must wait 1 year from the date of the issuance of the expired voucher before requesting another Choice Mobility voucher. When they do request again, they will start the process from the beginning and are subject to any waiting lists in place at that time.

HATC will implement the voucher inventory cap. Each calendar year, the HCV program will only make 1/3 of its turnover vouchers available to families exercising Choice Mobility from any of its 3 covered projects transitioning into PBRA through the Rental Assistance Demonstration (RAD). HATC will establish an agency-wide Choice Mobility waiting list for times when there are more requests for vouchers than vouchers available due to the cap.

HATC will not implement the project turnover cap.

The HCV program also provides the opportunity to move to other parts of the country by exercising the portability options. Families will be required to follow the housing authority’s guidelines regarding when they can exercise the portability option.

**HATC POLICY**

In order to be eligible for the Choice Mobility option, families have to live in Travis County, in a HATC owned PBRA property for at least 2 years. These families meet HATC’s HCV program requirements and are eligible to exercise portability when they first receive a voucher.

1. **Notification of Eligibility**

In keeping with HUD’s goal to provide viable Choice Mobility options to residents of all covered projects, PHAs should provide clear notification and explanation of the Choice Mobility options available to them.

**HATC POLICY**

At the time of the initial lease signing, HATC will provide a copy of the Choice Mobility policy to the family and explain the Choice Mobility option. HATC will provide clear direction and guidance regarding how to request a Choice Mobility voucher. Residents will be asked to sign a certification indicating that they received the Choice Mobility policy.

In addition, HATC will provide a written notification to the residents as part of the 90 Day letter that each family received before their annual recertification appointment (See Appendix 1).

If anything changes in the method for requesting the Choice Mobility voucher, HATC will provide written notification to the residents at least 30 days in advance of the change becoming effective.

1. **Waiting Lists**

PHAs that establish a voucher turnover cap are required to create a waiting list for families that request the Choice Mobility voucher.

**HATC POLICY**

HATC will establish a Choice Mobility waiting list for all eligible families that request a voucher. The waiting list will managed by HATC.

Since HATC is not implementing a project turnover cap, there will be no project specific waiting lists. Eligible families that request the voucher will be placed directly onto the Choice Mobility waiting list.

HATC will remove families from Choice Mobility waiting list who move out of the covered project before receiving a voucher.

* If a family moves out of the covered project, into the private rental market after being placed on the Choice Mobility waiting list, there are no longer eligible for the voucher and their name will be removed from the Choice Mobility waiting list.
* If a family moves from one covered project to another covered project after being placed on the Choice Mobility waiting, their 2 year clock resets. They will be removed from the Choice Mobility waiting list. They can re-apply once they have lived at the new covered project for 2 years.

Families that are already on the regular HCV waiting will be allowed to request a Choice Mobility Voucher if they are eligible. Families will be allowed to keep their place on both lists until one of the following happens:

* The family moves out of the covered project and is no longer eligible to be on the Choice mobility list. The family will be removed from the Choice Mobility waiting list, but maintain their position on the regular HCV waiting list.
* The family voluntarily withdraws their name from one or both lists.
* The family receives a voucher and exercises the voucher by leasing up in the voucher program. The family will then be removed from the other list.
  + If a family receives a voucher through the regular HCV waiting list, but does not exercise the voucher (i.e. lease up in the voucher program), they will remain on the Choice Mobility waiting list.

1. **Exercising the Choice Mobility Option**

In order to ensure that all residents at all covered projects have an equal and fair opportunity to request and receive a Choice Mobility voucher, PHAs should provide clear guidance and instructions regarding how to apply for the voucher.

**HATC POLICY**

In order to maintain a safe, orderly and fair process for families to request a Choice Mobility voucher, HATC will implement the following:

* ***Voucher Request:***
  + When a family is eligible to request a voucher, they must do so in writing using the voucher request form provided at HATC’s Administrative Office (See Appendix 2).
  + The written request must be submitted to the HATC Office.
  + Once received, the family will be placed on the Choice Mobility waiting list.
* ***Acknowledgment of Request:*** 
  + Once the request is received and processed onto the Choice Mobility waiting list, HATC will send the family a notice acknowledging receipt of the voucher request (See Appendix 3).
  + This is the family’s confirmation that they are on the Choice Mobility waiting list.
  + The acknowledgement of request will be sent to the family within 5 business days of receipt of the request.
* ***Random Sorting:*** 
  + Once there are families on the Choice Mobility waiting list, HATC will select 1/3 of its monthly draw from the Choice Mobility waiting list.
  + Before each draw, HATC will conduct a random sort of the Choice Mobility waiting list.
  + The random sort protects each individual property from high volume resident turnover, while providing each family an equal opportunity to receives a voucher.

When a family is drawn from the Choice Mobility waiting list, they will be invited to attend the Housing Choice Voucher (HCV) program eligibility interview.

1. **Screening Process for the Choice Mobility HCV Voucher**

In order to receive a Housing Choice Voucher, families will be required to meet all the eligibility requirements for the HCV program in effect at the time of their eligibility processing. These requirements can be found in the HCV Administrative Plan.

**HATC POLICY**

HATC will screen all Choice Mobility families using the same criteria as for all other families. However, HATC will streamline the eligibility determination process in the following ways:

* HATC will use the certification of identification, age, social security number and citizenship that it already has on file for the family.
* HATC will review the most recent certification and 50059 for basic information and the family composition and annual household income.
* HATC will only require new verification of income if the certifications for the most recent certification are too old to meet the criteria for the HCV program.

If eligible to receive a voucher, families will follow the HCV program rules and guidelines for using the voucher. Families are reminded of the following:

* The voucher has an expiration date. If extensions are available, families must follow the HCV program guidelines if effect at that time to request an extension. Failure to use the voucher before it expires will result in loss of the voucher.
* Receipt of a voucher is not a guarantee that the family will be able to find a place to use the voucher. Landlords have their own screening criteria which families will have to meet to be able to live at their property.
* The family’s lease at their current property requires at least 30 day notice to vacate. The family must provide this notice to their current property management staff.

1. **Transitioning from Project Based Rental Assistance to the Housing Choice Voucher Program**

When transitioning form PBRA to the HCV program with a Choice Mobility voucher, program participants are required to fulfill their obligation to the terms of the PBRA lease as well as all HCV requirements. Families are not allowed to receive assistance from both programs at the same time. To assist with the transition process and prevent duplicate assistance, PHA’s should develop policies and guidelines to ensure that both program requirements are met.

**HATC POLICY**

Residents at a HATC PBRA property will be required to complete the following when transitioning to HATC’s HCV program with a Choice Mobility voucher:

* Remain current on all rent, fees or other balances owed to the PBRA property.
  + Families with outstanding debts who are in repayment agreement and who are current on their payments within the agreement are considered eligible.
  + Families with active repayment agreements must continue to make all payments until the balance is paid in full or risk losing their voucher assistance.
* Provide at least 30 days’ notice of their intent to vacate the unit to the property management.
* Participate in the move out inspection
* Turn in their keys to the property management.
* Pay all move-out expenses that may be charged after moving to their new home with voucher assistance.
  + If necessary, repayment agreements can be established to pay any outstanding move out balances
  + Failure to pay the move out balance or to remain current in any repayment agreements that are established is grounds for termination of the family’s voucher assistance.
* Pay all moving expenses related to the move from the PBRA property to their voucher assisted unit.

HATC and PBRA property staff will work to facilitate this process by doing the following:

* Communicate between departments any information related to the issuance of the voucher, move out notices, voucher extensions and specific dates of move out/move in.
  + Note: Coordination of communication between departments does not remove any of the family’s obligations.
* Communicate the move out date from the PBRA program to the HCV Intake Team to prevent the overlapping of assistance.
  + The move out from PBRA will not be effective until the property manager receives the keys from the resident family.
  + The family will be required to pay the full rental cost for any days that they have moved into their new unit before returning the keys to the PBRA property management at the HATC central office.

For detailed flow chart of the transition process, please see Appendix 4.

1. **Promoting Self-Sufficiency Through Choice Mobility**

The decision about where to live can have a significant impact on a family’s journey toward self-sufficiency. Through the Choice Mobility voucher option, families living in the PBRA property are given the opportunity to make their decision. Therefore, PHA’s should strategize how to maximize the use of the Choice Mobility voucher as a self-sufficiency tool.

**HATC POLICY**

Within available resources, HATC will intentionally strategize and leverage the utilization of specific supportive services to provide a solid foundation for the use of the Choice Mobility voucher as a self-sufficiency and resource building tool.

* HATC will explore how to efficiently and effectively use the 2 + years that families are living in PBRA to offer community development services that focus on preparing families for transition to use of a voucher in the private rental market. Such services may include, but are not limited to, financial literacy training, credit counseling and credit improvement, addressing rental history, increasing income through employment, financial coaching, and home maintenance and upkeep among others.
* HATC will explore how to use the resources available (i.e. opportunity mapping) to help direct families toward areas of higher opportunity when they are searching for neighborhoods and housing that meets their needs and where they can use the voucher. This will include helping families to understand how to use these tools to gain information on items such as schools, supportive services and transportation.

**Addendum 2-1:** **HUD RULE ON AFFIRMATIVELY FURTHERING FAIR HOUSING**

The U.S. Department of Housing and Urban Development (HUD) has released a final rule to equip communities that receive HUD funding with the data and tools that will help them to meet long-standing fair housing obligations in their use of HUD funds. HUD will provide publicly open data for grantees to use to assess the state of fair housing within their communities and to set locally-determined priorities and goals. The rule responds to recommendations of the Government Accountability Office and stakeholders for HUD to enhance its fair housing planning obligations by providing greater clarity and support to jurisdictions receiving HUD funding, and facilitating local decision-making on fair housing priorities and goals.

For more than forty years, HUD funding recipients have been obligated by law to reduce barriers to fair housing. Established in the Fair Housing Act of 1968, the law directs HUD and its program participants to affirmatively further the Act's goals of promoting fair housing and equal opportunity. The final rule on affirmatively furthering fair housing (AFFH) aims to provide all HUD grantees with clear guidelines and the data that will help them to achieve those goals, because no child's ZIP code should determine her opportunity to achieve.

HUD’s rule clarifies and simplifies existing fair housing obligations for HUD grantees to analyze their fair housing landscape and set locally-determined fair housing priorities and goals through an Assessment of Fair Housing (AFH). To aid communities in this work, HUD will provide open data to grantees and the public on patterns of integration and segregation, racially and ethnically concentrated areas of poverty, disproportionate housing needs, and disparities in access to opportunity. This improved approach provides a better mechanism for HUD grantees to build fair housing goals into their existing community development and housing planning processes. In addition to providing data and maps, HUD will also provide technical assistance to aid grantees as they adopt this approach.

**Key features of this final rule include:**

**Clarifying existing fair housing obligations.**

Existing patterns of meeting AFFH obligations have been undermined by limited access to data about fair housing conditions and access to opportunity. A Government Accountability Office report from 2010 also cited a lack of clarity, standards, and transparency for communities under the current process. HUD's rule clarifies and standardizes this process.

**Publically open data on fair housing and access to opportunity.**

HUD will provide publicly open data and mapping tools to aid community members and local leaders in setting local fair housing priorities and goals.

**A balanced approach to fair housing.**

The final rule helps to facilitate communities relying on local knowledge and local decision-making to determine best strategies for meeting their fair housing obligations at the local level- including making place-based investments to revitalize distressed areas, or expanding access to quality affordable

housing throughout a community.

**Expanding access to opportunity.**

The strength of America's economy, the stability and security of its neighborhoods, and the ability for all to prosper depends on all Americans having equal access to opportunity - no matter what they look like or where they come from. This rule facilitates local decision-making by HUD grantees to expand equal

access to opportunity for all Americans.

**Valuing local data and knowledge.**

HUD is providing grantees with publicly open data to assist with their assessment of fair housing, but grantees will also use local data and knowledge to inform local decision-making, including information obtained through the community participation process.

**Customized tools for local leaders.**

Recognizing that one size does not fit all grantees, given their differing responsibilities and geographic areas served, HUD will be providing fair housing assessment tools specific to local jurisdictions, public housing authorities (PHAs), and states and Insular Areas.

**Collaboration is encouraged.**

Many fair housing priorities transcend a grantee’s boundaries. Actions to advance these priorities often involve coordination by multiple jurisdictions. The final rule encourages grantees to collaborate on fair housing assessments to advance regional fair housing priorities and goals.

**Community voice.**

The rule facilitates community participation in the local process to analyze fair housing conditions and set local priorities and goals.

**A phased in approach.**

The final rule provides for additional time for communities to adopt this improved process for setting local fair housing priorities than originally proposed.

**Additional time for small grantees and recent regional collaborations.**

Local jurisdictions receiving a CDBG grant of $500,000 or less and qualified PHAs will have more time to submit their first AFH. Grantees that recently submitted a Regional Analysis of Impediments in connection with HUD's Sustainable Communities competition have additional time to submit their first AFH than originally proposed.

**Addendum 2-2**

**Housing Authority of Travis County (HATC)**

**Emergency Transfer Plan for Victims of Domestic Violence, Dating Violence, Sexual Assault, or Stalking**

**Emergency Transfers**

**The Housing Authority of Travis County** is concerned about the safety of its program participants in the Housing Choice Voucher Program (HCV), Project Based Rental Assistance Program (PBRA) and Project Based Program (PB). Such concern extends to tenants who are victims of domestic violence, dating violence, sexual assault, or stalking. In accordance with the Violence Against Women Act (VAWA),[[2]](#footnote-2) HATC allows tenants who are victims of domestic violence, dating violence, sexual assault, or stalking to request an emergency transfer from the tenant’s current unit to another unit. The ability to request a transfer is available regardless of sex, gender identity, or sexual orientation.[[3]](#footnote-3) The ability of HATC to honor such request for tenants currently receiving assistance, however; may depend upon a preliminary determination that the tenant is or has been a victim of domestic violence, dating violence, sexual assault, or stalking, and on whether HATC has another dwelling unit that is available and is safe to offer the tenant for temporary or more permanent occupancy.

This plan identifies tenants who are eligible for an emergency transfer, the documentation needed to request an emergency transfer, confidentiality protections, how an emergency transfer may occur, and guidance to tenants on safety and security. This plan is based on a model emergency transfer plan published by the U.S. Department of Housing and Urban Development (HUD), the Federal agency that oversees the HCV, PBRA, and PB programs.

**Eligibility for Emergency Transfers**

A tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking, as provided in HUD’s regulations at 24 CFR part 5, subpart L is eligible for an emergency transfer, if:

* the tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant remains within the same unit; or
* the tenant is a victim of sexual assault; the tenant may also be eligible to transfer if the sexual assault occurred on the premises within the 90-calendar-day period preceding a request for an emergency transfer.

A tenant requesting an emergency transfer must expressly request the transfer in accordance with the procedures described in this plan.

Tenants who are not in good standing may still request an emergency transfer if they meet the eligibility requirements in this section.

**Emergency Transfer Request Documentation**

To request an emergency transfer, the tenant shall notify HATC’s management and do the following:

HCV, PBRA, and PB: The tenant shall notify the housing specialist and submit a written request for a transfer to another unit. The Housing Specialist will provide the tenant with an Emergency Transfer Request form. HATC will provide reasonable accommodations to this policy for individuals with disabilities.

The tenant’s written request for an emergency transfer should include either:

1. A statement expressing that the tenant reasonably believes that there is a threat of imminent harm from further violence if the tenant were to remain in the same dwelling unit assisted under HATC’s program; OR

2. A statement that the tenant was a sexual assault victim and that the sexual assault occurred on the premises during the 90-calendar-day period preceding the tenant’s request for an emergency transfer.

**Confidentiality**

HATC will keep confidential any information that the tenant submits in requesting an emergency transfer, and information about the emergency transfer, unless:

* the tenant gives HATC written permission to release the information on a time limited basis; or
* disclosure of the information is required by law; or
* disclosure is required for use in an eviction proceeding or hearing regarding termination of assistance from the covered program.

This includes keeping confidential the new location of the dwelling unit of the tenant, if one is provided, from the person(s) that committed an act(s) of domestic violence, dating violence, sexual assault, or stalking against the tenant. See the Notice of Occupancy Rights under the Violence Against Women Act For All Tenants for more information about HP’s responsibility to maintain the confidentiality of information related to incidents of domestic violence, dating violence, sexual assault, or stalking.

**Emergency Transfer Timing and Availability**

HATC cannot guarantee that a transfer request will be approved or how long it will take to process a transfer request. HATC will act as quickly as possible to move a tenant who is a victim of domestic violence, dating violence, sexual assault, or stalking to another unit, subject to availability and safety of a unit.

Tenants can request internal and external transfer moves. Internal transfer moves are moves within the same program. External transfer moves are moves that cross over to a different program. Requests can be made simultaneously to allow for the safest opportunity for the tenant to move.

**HCV tenants:** Upon receipt of the Emergency Transfer Move Request and verification of being a victim of domestic violence, dating violence, sexual assault, or stalking, the housing specialist will provide the tenant with a rescission form to be completed by the tenant and current landlord. Other written forms of communication such as emails acknowledging and confirming the emergency transfer move will also be accepted from landlord and tenant.

* **Internal Transfer Move Options:** The tenant will be issued a voucher, which can be used to locate a new unit within HATC’s voucher jurisdiction where the family feels safe. The family has the option to use the portability feature of the voucher and move to another jurisdiction where an HCV program is administered.
* **External Transfer Move Options:** The tenant will be given the opportunity to place their name on the waiting list for any of HATC’s Project Based units if the tenant is 55 or older or any of the PBRA properties where the family feels safe, even if the waiting list for that property is closed. This placement of the waiting list is done with a preference that will move the family to the top of the list. The process will be streamlined to assist the family with moving as quickly as possible.

**PB and PBRA tenants:** Upon receipt of the Emergency Transfer Move Request and verification of being a victim of domestic violence, dating violence, sexual assault, or stalking, the housing specialist/ property manager will assist the tenant with both internal and external move options.

* **Internal Transfer Move Options:** The tenant will be given the opportunity to place their name of the waiting list for any of HATC’s PBRA properties where the family feels safe even if the waiting list for that property is closed. The placement on the waiting list is done with a preference that will move the family to the top of the waiting list. If the tenant reasonable believes, a proposed internal transfer would not be safe; the tenant may reject the transfer offer and request a transfer to a different unit.
* **External Transfer Move Options:** When voucher funding is available, the tenant may request to be placed on the housing choice voucher waiting list with an emergency preference, even if the list is closed. With a voucher, the family can locate a new unit within HATC’s voucher jurisdiction where the family feels safe. The family can also use the portability feature of the voucher and move to the jurisdiction of any other Public Housing Authority that administers the HCV program. The process will be streamlined to assist the family with moving as quickly as possible.

If a tenant reasonably believes a proposed transfer would not be safe, the tenant may request a transfer to a different unit. If a unit is available within HATC, the transferred tenant must agree to abide by the terms and conditions that govern occupancy in the unit and program to which the tenant transferred. HATC may be unable to transfer a tenant to a particular unit if the tenant has not or cannot establish eligibility for that unit.

If HATC has no safe and available units for which a tenant who needs an emergency is eligible, HATC will assist the tenant in identifying and referring to other housing providers or local organizations who offer assistance. At the tenant’s request, HATC will also assist tenants in contacting the local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or stalking that are attached to this plan.

**Safety and Security of Tenants**

Pending processing of the transfer and the actual transfer, if it is approved and occurs, the tenant is urged to take all reasonable precautions to be safe.

Tenants who are or have been victims of domestic violence are encouraged to contact the National Domestic Violence Hotline at 1-800-799-7233, or a local domestic violence shelter, for assistance in creating a safety plan. For persons with hearing impairments, that hotline can be accessed by calling 1-800-787-3224 (TTY).

Tenants who have been victims of sexual assault may call the Rape, Abuse & Incest National Network’s National Sexual Assault Hotline at 800-656-HOPE, or visit the online hotline at https://ohl.rainn.org/online/.

Tenants who are or have been victims of stalking seeking help may visit the National Center for Victims of Crime’s Stalking Resource Center at https://www.victimsofcrime.org/our-programs/stalking-resource-center.

**Attachment:** Local organizations offering assistance to victims of domestic violence, dating violence, sexual assault, or stalking.

* Safe Place

24/7 Hotline

512-267-SAFE (7233)

* The Salvation Army Shelter for Women and Children

4523 Tannehill Lane

Austin, Texas 78721

512-933-0600

* Casa Marianella

821 Gunter St.

Austin, Texas 78702

512-928-8862

* Asian Family Support Services of Austin

Hotline: 1-877-281-8371

Local: 512-651-3743

**Travis County Health and Human Services Community Centers**

|  |  |  |
| --- | --- | --- |
| **Name/ Location** | **Address** | **Phone** |
| Palm Square | 100 N IH 35 Suite 2000 Austin, TX 78701 | 512-854-4120 |
| Del Valle | 3518 FM 973 S Del Valle, TX 78617 | 512-854-1520 |
| Post Road | 2201 Post Rd. Suite 101 Austin, TX 78704 | 512-854-9130 |
| Manor | 600 W Carrie Manor St. Manor, TX 78653 | 512-854-1550 |
| Pflugerville | 15822 Foothill Farm Loop Pflugerville, TX 78660 | 512-854-1530 |
| Oak Hill | 8656 W HWY 71 Oak Hill, TX 78735 | 512-854-2130 |

**City of Austin Neighborhood Centers**

|  |  |  |
| --- | --- | --- |
| Blackland | 2005 Salina St. Austin, TX 78722 | 512-972-5790 |
| East Austin | 211 Comal St. Austin, TX 78702 | 512-972-6650 |
| Montopolis | 1416 Montopolis Dr. Austin, TX 78741 | 512-972-6650 |
| Rosewood | 2800 Webberville Rd. Austin, TX 78702 | 512-972-6740 |
| South Austin | 2508 Durwood St. Austin, TX 78704 | 512-972-6840 |

*GLOSSARY*

**A. ACRONYMS USED IN SUBSIDIZED HOUSING**

**AAF** Annual adjustment factor (published by HUD in the Federal Register and used to compute annual rent adjustments)

**ACC** Annualcontributions contract

**ADA** Americans with Disabilities Act of 1990

**BR** Bedroom

**CDBG** Community Development Block Grant (Program)

**CFR** Code of Federal Regulations (published federal rules that define and implement laws; commonly referred to as “the regulations”)

**CPI** Consumer price index (published monthly by the Department of Labor as an inflation indicator)

**EID** Earned Income Disallowance

**FDIC** Federal Deposit Insurance Corporation

**FHA** Federal Housing Administration

**FICA** Federal Insurance Contributions Act (established Social Security taxes)

**FMR** Fair market rent

**FR** Federal Register

**FSS** Family Self-Sufficiency (Program)

**FTS** Full Time Student

**FY** Fiscal year

**FYE** Fiscal year end

**GAO** Government Accountability Office

**GR** Gross rent

**HAP** Housing assistance payment

**HATC** Housing Authority of Travis County

**HCV** Housing choice voucher

**HQS** Housing Quality Standards.

**HUD** Department of Housing and Urban Development

**HUDCLIPS** HUD Client Information and Policy System

**IG** (HUD Office of) Inspector General

**IPA** Independent Public Accountant

**IRA** Individual Retirement Account

**IRS** Internal Revenue Service

**JTPA** Job Training Partnership Act

**LEP** Limited English Proficiency

**LBP** Lead-based paint

**MSA** Metropolitan statistical area (established by the U.S. Census Bureau)

**MTCS** Multi-family Tenant Characteristics System (now the Form HUD-50058 sub module of the PIC system)

**NOFA** Notice of funding availability

**OMB** Office of Management and Budget

**PASS** Plan for Achieving Self-Support

**PHA** Public housing agency

**PHRA** Public Housing Reform Act of 1998 (also known as the Quality Housing and Work Responsibility Act)

**PIC** PIH Information Center

**PIH** (HUD Office of) Public and Indian Housing

**PS** Payment standard

**QC** Quality control

**QHWRA** Quality Housing and Work Responsibility Act of 1998 (also known as the Public Housing Reform Act)

**REAC** (HUD) Real Estate Assessment Center

**RFP** Request for proposals

**RTA** Request for Tenancy Approval

**RIGI** Regional inspector general for investigation (handles fraud and program abuse matters for HUD at the regional office level)

**S+C** Shelter Plus Care Program

**SEMAP** Section 8 Management Assessment Program

**SRO** Single room occupancy

**SSA** Social Security Administration

**SSI** Supplemental security income

**TANF** Temporary assistance for needy families

**TR** Tenant rent

**TTP** Total tenant payment

**UIV** Upfront Income Verification

**UA** Utility allowance

**UAP** Utility allowance payment

**URP** Utility reimbursement payment

**USCIS** United States Citizenship and Immigration Services

**B. GLOSSARY OF TERMS IN SUBSIDIZED HOUSING**

***Absorption***. In portability (under subpart H of this part 982): the point at which a receiving PHA stops billing the initial PHA for assistance on behalf of a portability family. The receiving PHA uses funds available under the receiving PHA consolidated ACC.

***Accessible***. The facility or portion of the facility can be approached, entered, and used by individuals with physical handicaps.

***Adjusted Income*.** Annual income, less allowable HUD deductions.

***Adjusted Annual Income*.** Same as Adjusted Income.

***Administrative fee.*** Fee paid by HUD to the PHA for administration of the program. See §982.152.

***Administrative fee reserve*** (formerly “operating reserve”). Account established by PHA from excess administrative fee income. The administrative fee reserve must be used for housing purposes. See §982.155. Administrative fee reserves from FY 2004 and 2005 funding are further restricted to activities related to the provision of tenant-based rental assistance authorized under Section 8.

***Administrative plan****.* The plan that describes PHA policies for administration of the tenant-based programs. The Administrative Plan and any revisions must be approved by the PHA’s board and included as a supporting document to the PHA Plan. See §982.54.

***Admission***. The point when the family becomes a participant in the program. The date used for this purpose is the effective date of the first HAP contract for a family (first day of initial lease term) in a tenant-based program.

***Amortization payment.*** In a manufactured home space rental: The monthly debt service payment by the family to amortize the purchase price of the manufactured home.

***Annual contributions contract (ACC)****. The* written contract between HUD and a PHA under which HUD agrees to provide funding for a program under the 1937 Act, and the PHA agrees to comply with HUD requirements for the program.

***Annual Income*.** The anticipated total income of an eligible family from all sources for the 12-month period following the date of determination of income, computed in accordance with the regulations.

***Applicant (applicant family).*** A family that has applied for admission to a program but is not yet a participant in the program.

***Area Exception******Rent****.* An amount that exceeds the published FMR. See §982.504(b).

***“As-paid” States.*** States where the welfare agency adjusts the shelter and utility component of the welfare grant in accordance with actual housing costs.

***Assets*.** (See Net Family Assets.)

***Auxiliary******aids.*** Services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities receiving Federal financial assistance.

***Budget******authority****.* An amount authorized and appropriated by the Congress for payment to HAs under the program. For each funding increment in a PHA program, budget authority is the maximum amount that may be paid by HUD to the PHA over the ACC term of the funding increment.

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

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

***Citizen****. A* citizen or national of the United States.

***Co-head.*** An individual in the household who is equally responsible for the lease with the head of household. A family may have a co-head or spouse but not both. A co-head never qualifies as a dependent. The co-head must have legal capacity to enter into a lease.

***Common space***. In shared housing: Space available for use by the assisted family and other occupants of the unit.

***Computer******match****.* The automated comparison of data bases containing records about individuals.

***Confirmatory review.*** An on-site review performed by HUD to verify the management performance of a PHA.

***Consent******form***. Any consent form approved by HUD to be signed by assistance applicants and participants to obtain income information from employers and SWICAs; return information from the Social Security Administration (including wages, net earnings from self-employment, and retirement income); and return information for unearned income from the IRS. Consent forms expire after a certain time and may authorize the collection of other information to determine eligibility or level of benefits.

***Congregate******housing****.* Housing for elderly persons or persons with disabilities that meets the HQS for congregate housing. A special housing type: see §982.606 to §982.609.

***Contiguous******MSA****.* In portability (under subpart H of part 982): An MSA that shares a common boundary with the MSA in which the jurisdiction of the initial PHA is located.

***Continuously assisted****.* An applicant is continuously assisted under the 1937 Act if the family is already receiving assistance under any 1937 Housing Act program when the family is admitted to the voucher program.

***Contract*.** (See Housing Assistance Payments Contract.)

***Contract authority.***The maximum annual payment by HUD to a PHA for a funding increment.

***Cooperative*** (term includes mutual housing). Housing owned by a nonprofit corporation or association, and where a member of the corporation or association has the right to reside in a particular apartment, and to participate in management of the housing. A special housing type: see §982.619.

***Covered families***. Statutory term for families who are required to participate in a welfare agency economic self-sufficiency program and who may be subject to a welfare benefit sanction for noncompliance with this obligation. Includes families who receive welfare assistance or other public assistance under a program for which Federal, State or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for the assistance.

***Dependent***. A member of the family (except foster children and foster adults) other than the family head or spouse, who is under 18 years of age, or is a person with a disability, or is a full-time student.

***Disability assistance expenses*.** Reasonable expenses that are anticipated, during the period for which annual income is computed, for attendant care and auxiliary apparatus for a disabled family member and that are necessary to enable a family member (including the disabled member) to be employed, provided that the expenses are neither paid to a member of the family nor reimbursed by an outside source.

***Disabled******family***. A family whose head, spouse, or sole member is a person with disabilities; or two or more persons with disabilities living together; or one or more persons with disabilities living with one or more live-in aides.

***Disabled person.*** See Person with Disabilities.

***Displaced family*.** A family in which each member, or whose sole member, is a person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to Federal disaster relief laws.

***Domicile***. The legal residence of the household head or spouse as determined in accordance with State and local law.

***Drug-related criminal activity****.* As defined in 42 U.S.C. 1437f(f)(5).

***Drug-trafficking.*** The illegal manufacture, sale, or distribution, or the possession with intent to manufacture, sell, or distribute, of a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

***Economic Self-Sufficiency Program***. Any program designed to encourage, assist, train or facilitate the economic independence of assisted families, or to provide work for such families. Can include job training, employment counseling, work placement, basic skills training, education, English proficiency, Workfare, financial or household management, apprenticeship, or any other program necessary to ready a participant to work (such as treatment for drug abuse or mental health treatment). Includes any work activities as defined in the Social Security Act (42 U.S.C. 607(d)). Also see §5.603(c).

***Elderly******family***. A family whose head, spouse, or sole member is a person who is at least 62 years of age; or two or more persons who are at least 62 years of age living together; or one or more persons who are at least 62 years of age living with one or more live-in aides.

***Elderly Person*.** An individual who is at least 62 years of age.

***Eligible Family*** (Family). A family that is income eligible and meets the other requirements of the Act and Part 5 of 24 CFR.

***Employer Identification Number (EIN)*.** The nine-digit taxpayer identifying number that is assigned to an individual, trust, estate, partnership, association, company, or corporation.

***Evidence of citizenship or eligible status*.** The documents which must be submitted to evidence citizenship or eligible immigration status. (See §5.508(b).)

***Extremely Low Income Family.*** A family whose annual income does not exceed 30 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families.HUD may establish income ceilings higher or lower than 30 percent of median income if HUD finds such variations are necessary due to unusually high or low family incomes. *(CFR 5.603)*

***Facility****.* All or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other real or personal property or interest in the property.

***Fair Housing Act***means title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988

***Fair market rent (FMR)*.** The rent, including the cost of utilities (except telephone), as established by HUD for units of varying sizes (by number of bedrooms), that must be paid in the housing market area to rent privately owned, existing, decent, safe and sanitary rental housing of modest (non-luxury) nature with suitable amenities. See periodic publications in the Federal Register in accordance with 24 CFR part 888.

***Family*.** Includes but is not limited to the following, and can be further defined in PHA policy.

* A family with or without children (the temporary absence of a child from the home due to placement in foster care is not considered in determining family composition and family size)
* An elderly family or a near-elderly family
* A displaced family
* The remaining member of a tenant family
* A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a tenant family.

***Family rent to owner.*** In the voucher program, the portion of rent to owner paid by the family.

***Family self-sufficiency program* (**FSS program). The program established by a PHA in accordance with 24 CFR part 984 to promote self-sufficiency of assisted families, including the coordination of supportive services (42 U.S.C. 1437u).

***Family share.*** The portion of rent and utilities paid by the family. For calculation of family share, see §982.515(a).

***Family unit size.***The appropriate number of bedrooms for a family, as determined by the PHA under the PHA subsidy standards.

***Federal agency*.** A department of the executive branch of the Federal Government.

***Foster Child Care Payment*.** Payment to eligible households by state, local, or private agencies appointed by the State, to administer payments for the care of foster children.

***Full-time Student.*** A person who is attending school or vocational training on a full-time basis (carrying a subject load that is considered full-time for day students under the standards and practices of the educational institution attended). (*CFR 5.603*)

***Funding increment.*** Each commitment of budget authority by HUD to a PHA under the consolidated annual contributions contract for the PHA program.

***Gross rent.*** The sum of the rent to owner plus any utility allowance.

***Group home****.* A dwelling unit that is licensed by a State as a group home for the exclusive residential use of two to twelve persons who are elderly or persons with disabilities (including any live-in aide). A special housing type: see §982.610 to §982.614.

***Handicap***. Any condition or characteristic that renders a person an individual with handicaps. See 24CFR 8.3.

***Handicap Assistance Expense*.** See “Disability Assistance Expense.”

***HAP contract****.* Housing assistance payments contract. (Contract). A written contract between the PHA and an owner for the purpose of providing housing assistance payments to the owner on behalf of an eligible family.

***Head of household****.* The adult member of the family who is the head of the household for purposes of determining income eligibility and rent.

***Housing assistance payment****.* The monthly assistance payment by a PHA, which includes: (1) A payment to the owner for rent to the owner under the family's lease; and (2) An additional payment to the family if the total assistance payment exceeds the rent to owner.

***Housing agency (HA).*** *A* State, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) authorized to engage in or assist in the development or operation of low-income housing. (“PHA” and “HA” mean the same thing.)

***Housing Quality Standards****.* The HUD minimum quality standards for housing assisted under the voucher program.

***HUD.*** The Department of Housing and Urban Development.

***Imputed Asset.*** Asset disposed of for less than Fair Market Value during two years preceding examination or reexamination.

***Imputed Income.*** HUD passbook rate multiplied by the total cash value of assets. Calculation used when net family assets exceed $5,000.

***Imputed welfare income.*** An amount of annual income that is not actually received by a family as a result of a specified welfare benefit reduction, but is included in the family’s annual income and therefore reflected in the family’s rental contribution.

***Income*.** Income from all sources of each member of the household, as determined in accordance with criteria established by HUD.

***Income For Eligibility.*** Annual Income.

***Income information*** means information relating to an individual's income, including:

* All employment income information known to current or previous employers or other income sources
* All information about wages, as defined in the State's unemployment compensation law, including any Social Security Number; name of the employee; quarterly wages of the employee; and the name, full address, telephone number, and, when known, Employer Identification Number of an employer reporting wages under a State unemployment compensation law
* Whether an individual is receiving, has received, or has applied for unemployment compensation, and the amount and the period received
* Unearned IRS income and self-employment, wages and retirement income
* Wage, social security, and supplemental security income data obtained from the Social Security Administration.

***Individual with handicaps*.** Any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such an impairment; or is regarded as having such an impairment.

***Initial PHA***. In portability, the term refers to both: (1) A PHA that originally selected a family that later decides to move out of the jurisdiction of the selecting PHA; and (2) A PHA that absorbed a family that later decides to move out of the jurisdiction of the absorbing PHA.

***Initial payment standard.***The payment standard at the beginning of the HAP contract term.

***Initial rent to owner.*** The rent to owner at the beginning of the HAP contract term.

***Jurisdiction***. The area in which the PHA has authority under State and local law to administer the program.

***Landlord*.** Either the owner of the property or his/her representative or the managing agent or his/her representative, as shall be designated by the owner.

***Lease***. A written agreement between an owner and a tenant for the leasing of a dwelling unit to the tenant. The lease establishes the conditions for occupancy of the dwelling unit by a family with housing assistance payments under a HAP contract between the owner and the PHA.

***Live-in aide***. A person who resides with one or more elderly persons, or near-elderly persons, or persons with disabilities, and who:

* Is determined to be essential to the care and well-being of the persons;
* Is not obligated for the support of the persons; and
* Would not be living in the unit except to provide the necessary supportive services.

***Local Preference.*** A preference used by the PHA to select among applicant families.

***Low Income Family.***A family whose income does not exceed 80% of the median income for the area as determined by HUD with adjustments for smaller or larger families, except that HUD may establish income limits higher or lower than 80% for areas with unusually high or low incomes.

***Manufactured******home****.* A manufactured structure that is built on a permanent chassis, is designed for use as a principal place of residence, and meets the HQS. A special housing type: see §982.620 and §982.621.

***Manufactured******home******space****.* In manufactured home space rental: A space leased by an owner to a family. A manufactured home owned and occupied by the family is located on the space. See §982.622 to §982.624.

***Medical expenses*.** Medical expenses, including medical insurance premiums, that are anticipated during the period for which annual income is computed, and that are not covered by insurance. (A deduction for elderly or disabled families only.) These allowances are given when calculating adjusted income for medical expenses in excess of 3% of annual income.

***Merger Date.*** October 1, 1999.

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

***Mixed family****. A* family whose members include those with citizenship or eligible immigration status, and those without citizenship or eligible immigration status.

***Monthly adjusted income*.** One twelfth of adjusted income.

***Monthly income*.** One twelfth of annual income.

***Mutual housing****.* Included in the definition of “cooperative.”

***National****. A* person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

***Near-elderly family***. A family whose head, spouse, or sole member is a person who is at least 50 years of age but below the age of 62; or two or more persons, who are at least 50 years of age but below the age of 62, living together; or one or more persons who are at least 50 years of age but below the age of 62 living with one or more live-in aides.

***Net family assets*.** (1) Net cash value after deducting reasonable costs that would be incurred in disposing of real property, savings, stocks, bonds, and other forms of capital investment, excluding interests in Indian trust land and excluding equity accounts in HUD homeownership programs. The value of necessary items of personal property such as furniture and automobiles shall be excluded.

In cases where a trust fund has been established and the trust is not revocable by, or under the control of, any member of the family or household, the value of the trust fund will not be considered an asset so long as the fund continues to be held in trust. Any income distributed from the trust fund shall be counted when determining annual income under §5.609.

In determining net family assets, PHAs or owners, as applicable, shall include the value of any business or family assets disposed of by an applicant or tenant for less than fair market value (including a disposition in trust, but not in a foreclosure or bankruptcy sale) during the two years preceding the date of application for the program or reexamination, as applicable, in excess of the consideration received therefore. In the case of a disposition as part of a separation or divorce settlement, the disposition will not be considered to be for less than fair market value if the applicant or tenant receives important consideration not measurable in dollar terms.

***Noncitizen****. A* person who is neither a citizen nor national of the United States.

***Notice of Funding Availability (NOFA).*** For budget authority that HUD distributes by competitive process, the Federal Register document that invites applications for funding. This document explains how to apply for assistance and the criteria for awarding the funding.

***Office of General Counsel (OGC)*.** The General Counsel of HUD.

***Owner***. Any person or entity with the legal right to lease or sublease a unit to a participant.

***PHA Plan.*** The annual plan and the 5-year plan as adopted by the PHA and approved by HUD.

***PHA’s quality control sample.*** An annual sample of files or records drawn in an unbiased manner and reviewed by a PHA supervisor (or by another qualified person other than the person who performed the original work) to determine if the work documented in the files or records conforms to program requirements. For minimum sample size see CFR 985.3.

***Participant*** *(participant family).* A family that has been admitted to the PHA program and is currently assisted in the program. The family becomes a participant on the effective date of the first HAP contract executed by the PHA for the family (first day of initial lease term).

***Payment standard****.* The maximum monthly assistance payment for a family assisted in the voucher program (before deducting the total tenant payment by the family).

***Persons with Disabilities.*** A person who has a disability as defined in 42 U.S.C. 423 or a developmental disability as defined in 42 U.S.C. 6001. Also includes a person who is determined, under HUD regulations, to have a physical or mental impairment that is expected to be of long-continued and indefinite duration, substantially impedes the ability to live independently, and is of such a nature that the ability to live independently could be improved by more suitable housing conditions. For purposes of reasonable accommodation and program accessibility for persons with disabilities, means and “individual with handicaps” as defined in 24 CFR 8.3. Definition does not exclude persons who have AIDS or conditions arising from AIDS, but does not include a person whose disability is based solely on drug or alcohol dependence (for low-income housing eligibility purposes). See “Individual with handicaps”

***Portability***. Renting a dwelling unit with Section 8 housing choice voucher outside the jurisdiction of the initial PHA.

***Premises***. The building or complex in which the dwelling unit is located, including common areas and grounds.

***Private*** ***space***. In shared housing: The portion of a contract unit that is for the exclusive use of an assisted family.

***Processing******entity***. The person or entity that, under any of the programs covered is responsible for making eligibility and related determinations and any income reexamination. In the Section 8 program, the “processing entity” is the “responsible entity.”

***Project******owner****.* The person or entity that owns the housing project containing the assisted dwelling unit.

***Public Assistance*.** Welfare or other payments to families or individuals based on need, which are made under programs, funded, separately or jointly, by Federal, state, or local governments.

***Public* *Housing* *Agency*** *(PHA)*. Any State, county, municipality, or other governmental entity or public body, or agency or instrumentality of these entities that is authorized to engage or assist in the development or operation of low-income housing under the 1937 Act.

***Reasonable* *rent*.** A rent to owner that is not more than rent charged: (1) For comparable units in the private unassisted market; and (2) For comparable unassisted units in the premises.

***Receiving* *PHA*.** In portability: A PHA that receives a family selected for participation in the tenant-based program of another PHA. The receiving PHA issues a voucher and provides program assistance to the family.

***Recertification*.** Sometimes called reexamination. The process of securing documentation of total family income used to determine the rent the tenant will pay for the next 12 months if there are no additional changes to be reported.

***Remaining Member of Tenant Family*.** Person left in assisted housing who may or may not normally qualify for assistance on own circumstances (i.e., an elderly spouse dies, leaving widow age 47 who is not disabled).

***Rent to owner.*** The total monthly rent payable to the owner under the lease for the unit (also known as contract rent). Rent to owner covers payment for any housing services, maintenance and utilities that the owner is required to provide and pay for.

***Residency Preference.*** A PHA preference for admission of families that reside anywhere in a specified area, including families with a member who works or has been hired to work in the area (“residency preference area”).

***Residency Preference Area.*** The specified area where families must reside to qualify for a residency preference.

***Responsible entity****.* For the public housing and the Section 8 tenant-based assistance, project-based certificate assistance, and moderate rehabilitation programs, the responsible entity means the PHA administering the program under an ACC with HUD. For all other Section 8 programs, the responsible entity means the Section 8 owner.

***Secretary***. The Secretary of Housing and Urban Development.

***Section*** ***8***. Section 8 of the United States Housing Act of 1937.

***Section 8 covered programs****. A*ll HUD programs which assist housing under Section 8 of the 1937 Act, including Section 8 assisted housing for which loans are made under section 202 of the Housing Act of 1959.

***Section 214***Section 214 of the Housing and Community Development Act of 1980, as amended

***Section 214 covered programs***is the collective term for the HUD programs to which the restrictions imposed by Section 214 apply. These programs are set forth in §5.500.

***Security Deposit.*** A dollar amount (maximum set according to the regulations) which can be used for unpaid rent or damages to the owner upon termination of the lease.

***Set-up charges.***In a manufactured home space rental: Charges payable by the family for assembling, skirting and anchoring the manufactured home.

***Shared housing.*** A unit occupied by two or more families. The unit consists of both common space for shared use by the occupants of the unit and separate private space for each assisted family. A special housing type: see §982.615 to §982.618.

***Single Person.***A person living alone or intending to live alone.

***Single room occupancy housing*** *(SRO).* A unit that contains no sanitary facilities or food preparation facilities, or contains either, but not both, types of facilities. A special housing type: see §982.602 to §982.605.

***Social Security Number (SSN)*.** The nine-digit number that is assigned to a person by the Social Security Administration and that identifies the record of the person's earnings reported to the Social Security Administration. The term does not include a number with a letter as a suffix that is used to identify an auxiliary beneficiary.

***Special admission.*** Admission of an applicant that is not on the PHA waiting list or without considering the applicant's waiting list position.

***Special housing types*.** See subpart M of part 982. Subpart M states the special regulatory requirements for: SRO housing, congregate housing, group homes, shared housing, cooperatives (including mutual housing), and manufactured homes (including manufactured home space rental).

***Specified Welfare Benefit Reduction.*** Those reductions of welfare benefits (for a covered family) that may not result in a reduction of the family rental contribution. A reduction of welfare benefits because of fraud in connection with the welfare program, or because of welfare sanction due to noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

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

***State Wage Information Collection Agency (SWICA)*.** The state agency, including any Indian tribal agency, receiving quarterly wage reports from employers in the state, or an alternative system that has been determined by the Secretary of Labor to be as effective and timely in providing employment-related income and eligibility information.

***Subsidy standards.*** Standards established by a PHA to determine the appropriate number of bedrooms and amount of subsidy for families of different sizes and compositions.

***Suspension***. Stopping the clock on the term of a family's voucher after the family submits a request for approval of the tenancy. If the PHA decides to allow extensions or suspensions of the voucher term, the PHA administrative plan must describe how the PHA determines whether to grant extensions or suspensions, and how the PHA determines the length of any extension or suspension. This practice is also called “tolling”.

***Tenancy Addendum.*** For the Housing Choice Voucher Program, the lease language required by HUD in the lease between the tenant and the owner.

***Tenant***. The person or persons (other than a live-in aide) who executes the lease as lessee of the dwelling unit.

***Tenant******rent to owner****.* See “Family rent to owner”.

***Term of Lease.*** The amount of time a tenant agrees in writing to live in a dwelling unit.

***Total Tenant Payment (TTP)*.** The total amount the HUD rent formula requires the tenant to pay toward rent and utilities.

***Unit*.** Residential space for the private use of a family. The size of a unit is based on the number of bedrooms contained within the unit and generally ranges from zero (0) bedrooms to six (6) bedrooms.

***Utility allowance*.** If the cost of utilities (except telephone) and other housing services for an assisted unit is not included in the tenant rent but is the responsibility of the family occupying the unit, an amount equal to the estimate made or approved by a PHA or HUD of the monthly cost of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of a safe, sanitary, and healthful living environment.

***Utility reimbursement*.** In the voucher program, the portion of the housing assistance payment which exceeds the amount of rent to owner.

***Utility hook-up charge****.* In a manufactured home space rental: Costs payable by a family for connecting the manufactured home to utilities such as water, gas, electrical and sewer lines.

***Vacancy Loss Payments.***(*Applies only to pre-10/2/95 HAP Contracts in the Rental Certificate Program*). When a family vacates its unit in violation of its lease, the owner is eligible for 80% of the contract rent for a vacancy period of up to one additional month, (beyond the month in which the vacancy occurred) if s/he notifies the PHA as soon as s/he learns of the vacancy, makes an effort to advertise the unit, and does not reject any eligible applicant except for good cause.

***Very Low Income Family.***A low-income family whose annual income does not exceed 50% of the median income for the area, as determined by HUD, with adjustments for smaller and larger families. HUD may establish income limits higher or lower than 50% of the median income for the area on the basis of its finding that such variations are necessary because of unusually high or low family incomes. This is the income limit for the housing choice voucher program.

***Violent criminal activity.***Any illegal criminal activity that has as one of its elements the use, attempted use, or threatened use of physical force against the person or property of another.

***Voucher*** *(Housing Choice Voucher).* A document issued by a PHA to a family selected for admission to the housing choice voucher program. This document describes the program and the procedures for PHA approval of a unit selected by the family. The voucher also states obligations of the family under the program.

***Voucher holder.*** A family holding a voucher with an unexpired term (search time).

***Voucher program.*** The housing choice voucher program.

***Waiting list admission.***An admission from the PHA waiting list.

***Welfare assistance***. Income assistance from Federal or State welfare programs, including assistance provided under TANF and general assistance. Does not include assistance directed solely to meeting housing expenses, nor programs that provide health care, child care or other services for working families. FOR THE FSS PROGRAM (984.103(b)), “welfare assistance” includes only cash maintenance payments from Federal or State programs designed to meet a family’s ongoing basic needs, but does not include food stamps, emergency rental and utilities assistance, SSI, SSDI, or Social Security.

***Welfare-to-work (WTW) family.*** A family assisted by a PHA with Voucher funding awarded to the PHA under the HUD welfare-to-work voucher program (including any renewal of such WTW funding for the same purpose).

1. Text of 45 CFR 260.31 follows. [↑](#footnote-ref-1)
2. Despite the name of this law, VAWA protection is available to all victims of domestic violence, dating violence, sexual assault, and stalking, regardless of sex, gender identity, or sexual orientation. [↑](#footnote-ref-2)
3. Housing providers cannot discriminate on the basis of any protected characteristic, including race, color, national origin, religion, sex, familial status, disability, or age. HUD-assisted and HUD-insured housing must be made available to all otherwise eligible individuals regardless of actual or perceived sexual orientation, gender identity, or marital status. [↑](#footnote-ref-3)